ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC005185
Case Name	INSURANCE COMPLIANCE v. PRO MOVERS INC
Consolidated Cases	
Proceeding Type	Petition for Penalties
Decision Type	***Corrected Decision***
Commission Decision Number	25IWCC0043/19INC00015
Number of Pages of Decision	7
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Chris Zarek
Respondent Attorney	

DATE FILED: 2/3/2025

/s/Deborah Simpson,Commissioner

Signature

STATE OF ILLINOIS)
)
COUNTY OF KANE)

ILLINOIS WORKERS' COMPENSATION COMMISSION
COMMISSION DECISION

Illinois Department of Insurance[1],
Petitioner

Case No. 20WC005185
INC No. 19INC00015

v.

Geneva, IL

Pro Movers, Incorporated,
Employers/Respondent

DECISION AND OPINION ON REVIEW AFTER RECALL OF ORDER
FOR CLERICAL ERROR PURSUANT TO §19(F) OF THE ACT

Petitioner brings this action by and though the Office of the Illinois Attorney General, against Respondent, alleging violations of §4(a) of the Illinois Workers' Compensation Act ("Act") and §9100 of the Rules Governing Practice Before the Illinois Workers' Compensation Commission ("Rules") for failure to procure mandatory workers' compensation insurance. Petitioner alleges Respondent knowingly and willfully lacked workers' compensation insurance for 2,639 days from August 4th, 2007 to October 19th, 2007 (77 days), August 19th, 2008 to September 3rd, 2008 (16 days), May 9th, 2011 to January 13th, 2017 (2077 days), November 2nd, 2017 to November 6th, 2017 (5 days), January 15th 2018 to January 17th 2018 (3 days), and February 8, 2018 to May 4th, 2019 (461 days). Proper and timely notice was provided to Respondent and a hearing was held before Commissioner Deborah Simpson in Geneva, Illinois on November 21st, 2024. Petitioner was represented by the Office of the Illinois Attorney General. Respondent did not appear in person or through counsel.

The Commission, after considering the record in its entirety and being advised of the applicable law, finds that Respondent knowingly and willfully violated §4(a) of the Act and §9100 of the Rules from August 4th, 2007 to October 19th, 2007 (77 days), August 19th, 2008 to September 3rd, 2008 (16 days), May 9th, 2011 to January 13th, 2017 (2077 days), November 2nd, 2017 to November 6th, 2017 (5 days), January 15th 2018 to January 17th 2018 (3 days), and February 8, 2018 to May 4th, 2019 (461 days). Accordingly, Respondent shall be held liable for non-compliance with the Act and shall pay a penalty in accordance with §4(d) of the Act in the sum of $1,319,500.00. The Commission further orders Respondent to reimburse the Injured Workers' Benefit Fund in the amount of $20,189.91, for a total amount of $1,339,689.91.

I. Findings of Fact

On January 25th, 2022, personal service was made on Respondent Pro Movers, Inc., via its registered agent, William Volk. PX2. Investigator Michael Cadman delivered a Notice of Insurance Compliance Hearing upon William Volk at his residence at 9:08 a.m. *Id.* Assistant Attorney General

[1] Formerly the Illinois Workers' Compensation Commission's Insurance Compliance Department

Jake Snowman further stated on the record that notice of the hearing date was given in person on July 25th, 2024, where registered agent William Volk appeared on behalf of Pro Movers, Incorporated and agreed to the November 21, 2024, date. Furthermore, Assistant Attorney General Snowman stated that he had emailed Mr. Volk two days prior to hearing and received no response, nor had he received communication from Mr. Volk since the July 25th hearing. (T at 6).

George Sweeney, the Assistant Deputy Director of the Illinois Department of Insurance, Insurance Compliance Department, testified that their investigation of Respondent began in 2019. (T at 15). On May 14, 2019, a State of Illinois Notice of Non-Compliance was sent via certified mail by his office to Respondent individually as the registered agent of the Respondent corporation to 2136 Country Lakes Drive, Naperville, Illinois as well as to 340 Marshall Avenue, Unit 105 in Aurora. (PX3, T at 16). The Notice stated that according to Commission records, the Respondent was not in compliance with the requirements of Section 4(a) of the Act for the period beginning July 20, 2007, through the date of the notice. *Id.* Also on May 14, 2019, Petitioner sent a notice for an Insurance Compliance Informal Conference, set for June 13, 2020. PX4. Neither Respondent nor any proxy appeared on that date. (T at 17).

Assistant Deputy Director Sweeney testified that their investigation concluded that Respondent was required by the Act to provide workers' compensation insurance coverage for its employees. In support of this, Assistant Deputy Director Sweeney identified the arbitration decision of *Aaron Alberico v. Pro Movers, Inc.; Illinois State Treasurer as Ex-Officio Custodian of the Injured Workers' Benefit Fund*, Ill. Workers' Comp. Commission, No. 18WC013238 (April 22, 2019), PX11. In the decision, which was issued on April 22, 2019, the Commission found that an employer-employee relationship did exist between the parties. *Id.* Additionally, the Commission found that, as part of its operation, Respondent's employees drove box trucks to carry loads and that therefore Respondent was automatically subject to the mandatory coverage provisions of §3 of the Act. *Id.* at 5. The Commission also found that Respondent was uninsured on the accident date of January 3, 2017. *Id.* at 10. An award for permanent partial disability benefits was entered on behalf of the Petitioner. *Id.* at 4. The award was entered against the Injured Workers' Benefit Fund to the extent permitted and allowed under section 4(d) of the Act. *Id.* at 4. On January 31, 2020, The Injured Workers' Benefit Fund issued payment to Petitioner in the amount of $20,189.91 in the form of a check. PX12. The check indicated this was the full and final workers' compensation benefit award for case 18WC013238. *Id.*

Assistant Deputy Director Sweeney investigated whether Respondent was self-insured by making a request to the Commission's Office of Self-Insurance Administration. A sworn certification by Maria Sarli-Dehlin of the Commission's Office of Self-Insurance Administration stated that Respondent was not authorized to self-insure and that no certificate of approval to self-insure was issued by the Commission to Pro Movers, Inc. from July 20, 2007, to May 14, 2019. PX8.

Assistant Deputy Director Sweeney also requested insurance information from the National Council on Compensation Insurance (NCCI). Topaz Bertino certified that the NCCI is the agent designated by the Commission for the purpose of collecting proof of insurance coverage information on Illinois employers and that Respondent did not file policy information showing proof of workers' compensation insurance from August 4th, 2007 to October 19th, 2007, August 19th, 2008 to September

3rd, 2008, May 9th, 2011 to January 13th, 2017, November 2nd, 2017 to November 6th, 2017, January 15th 2018 to January 17th 2018, and February 8, 2018 to May 4th, 2019. PX7.

Per the NCCI Certification and the first exhibit contained therein, Respondent Pro Movers, Inc., with FEIN 421537959 did file policy information showing proof of workers' compensation insurance for the following dates:

a) October 29, 2006, through October 29, 2007, with a policy cancellation effective date of March 28, 2007;
b) March 30, 2007, through October 29, 2007, with a policy cancellation effective date of August 4, 2007;
c) October 19, 2007, through October 19, 2008, with a policy cancellation effective date of August 19, 2008;
d) September 4, 2008, through October 19, 2008;
e) October 19, 2008, through October 19, 2009;
f) October 19, 2009, through October 19, 2010;
g) October 19, 2010, through October 19, 2011, with a policy cancellation effective date of May 9, 2011;
h) January 14, 2017, through January 14, 2018, with a policy cancellation effective date of November 2, 2017;
i) November 7, 2017, through January 14, 2018; and
j) January 18, 2018, through January 14, 2019, with a policy cancellation effective date of February 8, 2018.

Assistant Deputy Director Sweeney noted on the record that the policies not showing a policy cancellation effective date (represented by lines d, e, f, and i above) were in effect for the entirety of the policy period, but those policies with policy cancellation effective dates (represented by lines a, b, c, g, h, and j above) were not reinstated and ended on the policy cancellation effective date listed in Exhibit 1 of Petitioner's Exhibit 7. PX7.

Assistant Deputy Director Sweeney also requested records from the Illinois Secretary of State, which indicated Respondent was incorporated on May 29, 2002, and was dissolved on October 14, 2022. PX5. Further, the Secretary of State records list Respondent's registered agent as William Volk, whose address was 2136 Country Lakes Dr., Naperville IL 60563.

Assistant Deputy Director Sweeney requested records from the Illinois Department of Revenue who certified that the department had processed Illinois corporation income and replacement tax returns for the years 2002 through 2022 but not thereafter. PX9.

I. Conclusions of Law

The Commission's authority and jurisdiction over insurance non-compliance cases is authorized by Section 4(d) of the Act, as well as the Rules. Under Section 4 of the Act, all employers who come within the auspices of the Act are required to provide workers' compensation insurance, whether this is done through being self-insured, through security, indemnity, or bond or through a purchased policy. Section 9100.90 of the Rules codifies the language of the Act, and additionally

describes the notice of non-compliance required, as well as the procedures of the Insurance Compliance Division, and how hearings are to be conducted. Reasonable and proper notice of the proceedings, as noted above, was provided to Respondent.

The Commission first addresses whether Respondent is subject to the Act. Pursuant to §3 of the Act, certain employers and their employees are automatically subject to the provisions of the Act if they engage in specific businesses, including those "engaged in any department of the following enterprises or businesses which are declared to be extra hazardous, namely:

> 15. Any business or enterprise in which electric, gasoline or other power-driven equipment is used in the operation thereof."
>
> *820 ILCS 305/3(15) (West 2016).*

The Commission finds that Respondent's business falls within these provisions of the Act. Assistant Deputy Director Sweeney's testimony that Respondent was subject to the Act is supported by the Commission's decision in *Alberico*, wherein the Commission concluded that, as part of its operation, Respondent's employees drove box trucks to transport loads, which was sufficient to subject Respondent to the automatic coverage provisions of §3 of the Act. PX11 at 7. Sweeney testified that the employees drove box trucks as part of their job duties. Accordingly, the Commission finds that Respondent's business engaged in work which automatically fell within the provisions of the Act.

Pursuant to §4(a) of the Act, all employers who come within the provisions of the Act are required to provide workers' compensation insurance. 820 ILCS 305/4(a) (West 2016). Section 9100.90(a) of our Rules similarly provides that any employer subject to Section §3 of the Act shall insure payment of compensation required by §4 of the Act "by obtaining approval from the Commission to operate as a self-insurer or by insuring its entire liability to pay the compensation in some insurance carrier authorized, licensed or permitted to do such insurance business in Illinois." 50 Ill. Adm. Code 9100.90(a). The Rules also provide that a certification from a Commission employee "that an employer has not been certified as a self-insurer shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(E). Additionally, "A certification from an employee of the National Council on Compensation Insurance stating that no policy information page has been filed in accordance with Section 9100.20 shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D).

Here, Petitioner submitted a certification from the Department of Self-Insurance that no certificate of approval to self-insure was issued by the Commission to Pro Movers, Inc. from July 20, 2007, to May 14, 2019. Petitioner also submitted the NCCI certification that Respondent did not file policy information showing proof of workers' compensation insurance at any time for the periods of August 4th, 2007, to October 19th, 2007, August 19th, 2008 to September 3rd, 2008, May 9th, 2011 to January 13th, 2017, November 2nd, 2017 to November 6th, 2017, January 15th 2018 to January 17th 2018, and February 8, 2018 to May 4th, 2019. Assistant Deputy Director Sweeney concluded that Respondent did not have workers' compensation insurance, nor was it self-insured during the relevant time period(s). Accordingly, the Commission concludes that Respondent failed to comply with the legal obligations imposed by §4(a) of the Act from August 4th, 2007, to October 19th, 2007, August

19th, 2008, to September 3rd, 2008, May 9th, 2011, to January 13th, 2017, November 2nd, 2017 to November 6th, 2017, January 15th 2018 to January 17th 2018, and February 8, 2018 to May 4th, 2019.

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

> Upon a finding by the Commission, after reasonable notice and hearing, of the knowing and willful failure or refusal of an employer to comply with any of the provisions of paragraph (a) of this Section . . . the Commission may assess a civil penalty of up to $500 per day for each day of such failure or refusal after the effective date of this amendatory Act of 1989. The minimum penalty under this Section shall be the sum of $10,000. Each day of such failure or refusal shall constitute a separate offense. The Commission may assess the civil penalty personally and individually against the corporate officers and directors of a corporate employer, the partners of an employer partnership, and the members of an employer limited liability company, after a finding of a knowing and willful refusal or failure of each such named corporate officer, director, partner, or member to comply with this Section. The liability for the assessed penalty shall be against the named employer first, and if the named employer refuses to pay the penalty to the Commission within 30 days after the final order of the Commission, then the named corporate officers, directors, partners, or members who have been found to have knowingly and willfully refused or failed to comply with this Section shall be liable for the unpaid penalty or any unpaid portion of the penalty. *820 ILCS 305/4(d)(West 2016).*

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

The Commission finds that the length of time that Respondent was in violation of the Act in failing to obtain workers' compensation insurance was significant. Respondent failed to have insurance for 2,639 days from August 4th, 2007, to October 19th, 2007, August 19th, 2008, to September 3rd, 2008, May 9th, 2011, to January 13th, 2017, November 2nd, 2017, to November 6th, 2017, January 15th, 2018, to January 17th 2018, and February 8, 2018 to May 4th, 2019. Further, the Commission, in case 18WC013238, has determined that Respondent had employees, one of whom sustained a work injury on January 3, 2017. Respondent failed to have workers' compensation insurance to protect that employee, or any of its other employees, and failed to pay any benefits to same. The Injured Workers' Benefit Fund was required to pay benefits on behalf of this employer to its employees, and the Fund has the right to recover the benefits paid on this employer's behalf. Further, the periods during which the Respondent purchased workers' compensation insurance coverage show clear knowledge by the Respondent of the need to obtain same and the knowing disregard during the periods they did not. This clear knowledge of the requirement and disregard for their employees is further shown by Respondent not having insurance in January 2017 at the time

their employee was injured, procuring insurance immediately thereafter and then cancelling that policy a few months later. Having reviewed the record, the Commission finds no evidence as to the inability to secure and pay for workers' compensation coverage and no evidence of mitigating circumstances.

The Commission finds Respondent knowingly and willfully failed to comply with the Act for a significant period. Based on the record before us, the Commission finds the appropriate penalty to be $500.00 per each day of noncompliance. The Commission assesses a penalty of $1,319,500.00 ($500.00 x 2,639 days) against Respondent William Volk, individually and as president of Pro Movers, Inc., a dissolved corporation. Pursuant to Section 9100.85(a)(1) of the Rules, the Commission is also entitled to obtain reimbursement from Respondent Volk in the amount of $20,189.91 representing the liability imposed on the Injured Workers' Benefit Fund in the *Alberico* case (18WC013238).

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent William Volk, individually and as president of Pro Movers, Inc., a dissolved corporation, pay to the Illinois Workers' Compensation Commission the sum of $1,339,689.91 pursuant to Section 4(d) of the Act and Section 9100.85(a)(1) of the Rules.

Pursuant to Commission Rule 9100.90(e), once the Commission assesses a penalty against an employer in accordance with Section 4(d) of the Act, payment shall be made according to the following procedure: 1) payment of the penalty shall be made by certified check or money order payable to the Illinois Workers' Compensation Commission, or by an electronic format prescribed by the Commission and accepted by the Illinois Office of the Comptroller; and 2) payment shall be mailed or presented within 30 days after the final order of the Commission or the order of the court on review after final adjudication to:

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

Bond for the removal of this case 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.

February 3, 2025

s/Deborah L. Simpson
Deborah L. Simpson

/s/Raychel A. Wesley
Raychel A. Wesley

s/Stephen J. Mathis
Stephen J. Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC028680
Case Name	Henry Ballard v. East St. Louis School District
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0044
Number of Pages of Decision	11
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	David Galanti
Respondent Attorney	Rodney Thompson

DATE FILED: 2/4/2025

/s/Maria Portela,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Henry Ballard,

Petitioner,

vs. NO: 22 WC 028680

East St. Louis School 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 causal connection, medical expenses, prospective medical, 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 March 18, 2024 is hereby affirmed and adopted.

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

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

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

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.

February 4, 2025

o011425
MEP/yp
049

/s/ *Maria E. Portela*
Maria E. Portela
/s/ *Amylee H. Simonovich*
Amylee H. Simonovich
/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC028680
Case Name	Henry Ballard v. East St. Louis School District
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	David Galanti
Respondent Attorney	Rodney Thompson

DATE FILED: 3/18/2024

/s/William Gallagher, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF MARCH 12, 2024 5.10%

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Henry Ballard
Employee/Petitioner

Case # 22 WC 28680

v.

Consolidated cases: n/a

East St. Louis School District
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 February 14, 2024. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's 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, July 21, 2022, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $54,447.12; the average weekly wage was $1,047.06.

On the date of accident, Petitioner was 46 years of age, single with 2 dependent child(ren).

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

Respondent shall be given a credit of $1,184.07 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $1,184.07.

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

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 8, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule.

Respondent shall authorize and pay for prospective medical treatment including, but not limited to, the cervical disc replacement surgery as recommended by Dr. Matthew Gornet.

Respondent shall pay Petitioner additional temporary total disability benefits of $511.47.

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

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

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

William R. Gallagher, Arbitrator
ICArbDec19(b)
March 18, 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 July 21, 2022. According to the Application, Petitioner sustained an injury to his "Neck, Low Back and other parts" when an "Elevator fell one floor" (Arbitrator's Exhibit 2). This case was tried in a 19(b) proceeding and Petitioner sought an order for payment of medical bills as well as prospective medical treatment. Respondent stipulated Petitioner sustained a work-related accident, but disputed liability on the basis of causal relationship (Arbitrator's Exhibit 1).

In regard to the prospective medical treatment, the treatment sought by Petitioner was cervical disc replacement surgery as recommended by Dr. Matthew Gornet, an orthopedic surgeon. Further, Petitioner and Respondent stipulated Petitioner was temporarily totally disabled for two and three-sevenths (2 3/7) weeks and was paid temporary total disability benefits for same; however, Petitioner and Respondent further stipulated Petitioner was underpaid temporary total disability benefits in the amount of $511.47 (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a warehouse worker/supervisor. On July 21, 2022, Petitioner was in the process of loading three skids of paper, each of which weighed approximately 800 pounds, onto a freight elevator. After the skids were loaded onto the elevator, the elevator collapsed and fell six to 10 feet. The elevator bottomed out past the basement floor. When this occurred, Petitioner fell to his knees and experienced pain in his neck, low back, shoulders, and testicles. The accident was reported to Respondent that same day and Petitioner was directed to go to the hospital.

Petitioner was seen in the ER of St. Elizabeth's Hospital on July 21, 2022. At that time, Petitioner advised of the accident he sustained that same day and complained of pain in his neck, back, left ankle and testicles. Multiple x-rays were taken of Petitioner's cervical, thoracic and lumbar spine as well as the left ankle. Petitioner was prescribed medication and directed to be seen by his family physician (Petitioner's Exhibit 1).

Petitioner was evaluated by Dr. Gregory Climaco, his family physician, on July 25, 2022. At that time, Petitioner informed Dr. Climaco that he had sustained an injury when he was in an elevator that dropped. Petitioner complained of soreness in the buttocks, neck, low back, shoulders and testicles. Dr. Climaco diagnosed Petitioner with acute neck and low back pain with bilateral sciatica, as well as tension headaches. He prescribed medication and ordered physical therapy (Petitioner's Exhibit 2).

Petitioner received physical therapy from August 15, 2022, through November 17, 2022. Petitioner received physical therapy for neck, left hip, left shoulder and midline low back pain (Petitioner's Exhibit 3). At trial, Petitioner testified the physical therapy did not help him much.

Dr. Climaco continued to see Petitioner in August, September, and October, 2022. He authorized Petitioner to return to work effective November 1, 2022, but subject to multiple restrictions (Petitioner's Exhibit 2).

An MRI scan of Petitioner's cervical spine was performed on September 13, 2022. According to the radiologist, there were disc bulges and facet arthropathy at multiple levels of the cervical spine as well as moderate/severe bilateral foraminal stenosis (Petitioner's Exhibit 4).

At the direction of Respondent, Petitioner was examined by Dr. Michael Chabot, an orthopedic surgeon, on October 5, 2022. In connection with his examination of Petitioner, Dr. Chabot reviewed medical records and diagnostic studies provided to him by Respondent. When examined by Dr. Chabot, Petitioner complained of pain in the left side of his neck with numbness in the left shoulder/arm and bilateral low back pain, left more than right. Dr. Chabot reviewed the MRI of September 13, 2022, and opined it revealed multilevel disc degenerations, spondylosis at multiple levels, central stenosis of C5-C6 and C6-C7, and disc bulges at C4-C5, C5-C6, and C6-C7 (Respondent's Exhibit 1; Deposition Exhibit 2).

Dr. Chabot opined there was no evidence of radiculopathy and the changes he observed in the diagnostic studies were chronic without any acute changes. He stated Petitioner's subjective complaints did not correlate to objective findings on examination and Petitioner showed signs of what he described as "symptom embellishment." Further, he opined Petitioner could return to work without restrictions (Respondent's Exhibit 1; Deposition Exhibit 2).

When Dr. Climaco saw Petitioner on October 28, 2022, he opined Petitioner had a bulging lumbar disc, neck pain, cervical and lumbar radiculopathy and myalgia of the muscle of the neck. He referred Petitioner to Dr. Matthew Gornet, an orthopedic surgeon (Petitioner's Exhibit 2).

Dr. Gornet evaluated Petitioner on January 9, 2023. At that time, Petitioner informed Dr. Gornet of the accident of July 21, 2022, and complained of neck and low back pain, but more so in the neck and scapula. Petitioner's neck/scapular complaints were worse with reaching, pulling, over head work and lifting. Petitioner's low back complaints were worse with prolonged sitting, standing and bending. Dr. Gornet reviewed the MRI of September 13, 2022, and opined it revealed disc herniations on the left side of C5-C6, C6-C7, and C7-T1, as well as herniations at C5-C6 and C6-C7 on the foraminal views. Dr. Gornet directed Petitioner to undergo a steroid injection at C6-C7 on the left, ordered a new MRI scan of the cervical spine, and prescribed medication. He opined Petitioner's symptoms and need for treatment were related to the work-related injury (Petitioner's Exhibit 5).

Petitioner was seen by Dr. Helen Blake on February 14, 2023. At that time, Dr. Blake administered an epidural steroid injection at C6-C7 on the left side (Petitioner's Exhibit 6).

An MRI of Petitioner's cervical spine was performed on March 20, 2023. According to the radiologist, the MRI revealed annular tears/protrusions at multiple levels of the cervical spine, foraminal extruded discs at C5-C6 and C6-C7, foraminal and central canal stenosis at multiple levels of the cervical spine, and a disc bulge with foraminal protrusions at C7-T1 (Petitioner's Exhibit 4).

Dr. Gornet saw Petitioner on March 20, 2023, and he reviewed the MRI scan performed that day. Dr. Gornet's interpretation of the MRI scan was consistent with that of the radiologist. He recommended Petitioner undergo cervical disc replacement surgery at C5-C6, C6-C7 and C7-T1, and also opined that, because of Petitioner's axial neck pain, treatment might also be required at C3-C4 and C4-C5 (Petitioner's Exhibit 5).

Dr. Gornet subsequently saw Petitioner on June 12, 2023, and October 12, 2023. While Petitioner had returned to work at full duty, he continued to experience neck and low back symptoms. Dr. Gornet reaffirmed his opinion that Petitioner's symptoms were related to the accident of July 21, 2022, as well as his recommendation Petitioner undergo cervical disc replacement surgery (Petitioner's Exhibit 5).

Dr. Gornet was deposed on November 2, 2023, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Gornet's testimony was consistent with his medical records and he reaffirmed the opinions contained therein. Specifically, Dr. Gornet testified Petitioner had objective findings on the left side at the C6-C7 distribution as well as decreased sensation at C6. He stated that both of the MRI scans revealed disc pathology and narrowing at multiple levels of the cervical spine. He testified Petitioner's symptoms were related to the accident of July 21, 2022, and Petitioner should undergo disc replacement surgery at C5-C6, C6-C7 and C7-T1, but that if his symptoms do not improve, further treatment at C3-C4 and C4-C5 might be also required (Petitioner's Exhibit 7; pp 7-11).

Dr. Gornet last saw Petitioner on January 29, 2024. Petitioner's symptoms remained essentially the same and Dr. Gornet renewed his recommendation Petitioner undergo cervical disc replacement surgery (Petitioner's Exhibit 5).

Dr. Chabot was deposed on December 1, 2023, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Chabot's testimony was consistent with his medical report and he reaffirmed the opinions contained therein. Specifically, Dr. Chabot testified the diagnostic tests revealed degenerative disc disease, spondylitic changes, foraminal narrowing/stenosis and disc bulges at multiple levels of the cervical spine, but he stated these were chronic, not acute changes. Dr. Chabot testified Petitioner's complaints of neck and low back pain were related to the accident of July 21, 2022, but that Petitioner's subjective complaints were not supported by his findings on examination. He also testified Petitioner could continue to work at full duty and further medical treatment was not required (Respondent's Exhibit 1; pp 20-24, 30-35).

On cross-examination, Dr. Chabot agreed one could have degenerative disc disease which is asymptomatic, but that it could be made symptomatic as a result of trauma. He also acknowledged that he had not reviewed the MRI scan which was ordered by Dr. Gornet (Respondent's Exhibit 1; pp 40-41).

At trial, Petitioner testified he no longer works for Respondent, but he has continued to work for the City of East St. Louis, as a Liquor Commissioner. This job is significantly less physically demanding than the job he had when he worked for Respondent. Petitioner continues to experience neck and left arm/hand symptoms and wants to proceed with the surgery recommended by Dr. Gornet.

Conclusions of Law

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

The Arbitrator concludes Petitioner's current condition of ill-being is causally related to the accident of July 21, 2022.

In support of this conclusion the Arbitrator notes following:

There was no dispute Petitioner sustained a work-related accident on July 21, 2022. Petitioner's testimony regarding the circumstances of the accident was credible and unrebutted.

Petitioner experienced neck and low back symptoms shortly after the accident.

Petitioner underwent numerous diagnostic tests in regard to the cervical spine, including two MRI scans. The diagnostic studies revealed abnormalities at multiple levels of the cervical spine including degenerative disc disease, spondylosis, foraminal and central stenosis and disc bulges/herniations.

Dr. Gornet, Petitioner's primary treating physician, examined Petitioner and opined there were objective findings on the left side of the cervical spine and the diagnostic studies revealed abnormalities at multiple levels of the cervical spine. Dr. Gornet further opined Petitioner's symptoms were causally related to the accident of July 21, 2022.

Dr. Chabot, Respondent's Section 12 examining physician, also opined the diagnostic tests revealed Petitioner had abnormalities at multiple levels of the cervical spine, but that they were chronic, not acute changes. However, when deposed, on cross-examination, Dr. Chabot conceded that one could have degenerative disc disease which was asymptomatic, but made symptomatic as a result of trauma.

Petitioner's testimony regarding his ongoing neck complaints was credible and unrebutted.

Based on the preceding, the Arbitrator finds the opinion of Dr. Gornet be more persuasive than that of Dr. Chabot in regard to causality.

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 that all of the medical services provided to Petitioner were reasonable and necessary and Respondent is liable for payment of the medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 8, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule.

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

The Arbitrator concludes Petitioner is entitled to prospective medical treatment including, but not limited to, the cervical disc replacement surgery as recommended by Dr. Matthew Gornet.

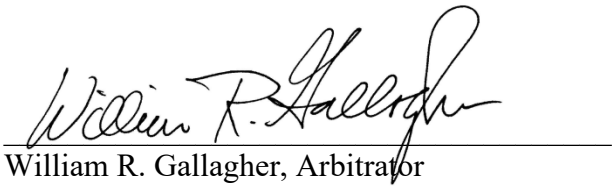
In support of this conclusion the Arbitrator notes the following:

As previously stated herein in disputed issue (F), the Arbitrator found Dr. Gornet to be more persuasive than Dr. Chabot in regard to causality.

Petitioner has continued to experience neck and left upper extremity symptoms and Dr. Gornet has recommended Petitioner undergo cervical disc replacement surgery. Petitioner wants to proceed with same.

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

Based upon the stipulation of counsel for Petitioner and Respondent, Petitioner is owed an additional payment of $511.47 of temporary total disability benefits.



William R. Gallagher, Arbitrator

March 18, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC005476
Case Name	Robbie Sipes v. Georgia Pacific
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0045
Number of Pages of Decision	17
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Nathan Becker, Mary Massa
Respondent Attorney	Quinn Brennan

DATE FILED: 2/4/2025

/s/Maria Portela,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Robbie Sipes,

Petitioner,

vs. NO: 23 WC 005476

Georgia Pacific,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, prospective medical, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 10, 2024 is hereby affirmed and adopted.

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

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

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

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

February 4, 2025

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MEP/yp
049

/s/ *Maria E. Portela*
Maria E. Portela
/s/ *Amylee H. Simonovich*
Amylee H. Simonovich
/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC005476
Case Name	Robbie Sipes v. Georgia Pacific
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Nathan Becker
Respondent Attorney	Quinn Brennan

DATE FILED: 4/10/2024

/s/Linda Cantrell, Arbitrator

Signature

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

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)

Robbie Sipes
Employee/Petitioner

v.

Georgia Pacific
Employer/Respondent

Case # **23** WC **005476**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Springfield**, on **2/29/24**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **2/23/23**, 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 $**50,766.04**; the average weekly wage was $**976.27**.

On the date of accident, Petitioner was **49** years of age, ***married*** with **2** dependent children.

Respondent **N/A** paid all reasonable and necessary charges for all reasonable and necessary medical services. No medical expenses claimed or admitted into evidence.

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 provide and pay for prospective medical treatment, including, but not limited to, plain and dynamic radiographs, a CT myelogram, EMG/NCSs, surgery as indicated by the objective diagnostic studies and recommended by Dr. Taylor, and all reasonable and necessary attendant care.

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

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

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

Arbitrator Linda J. Cantrell

April 10, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

ROBBIE SIPES,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 23-WC-005476
	)	
GEORGIA PACIFIC,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Springfield on February 29, 2024, pursuant to Section 19(b) of the Act. On 2/27/23, Petitioner filed an Application for Adjustment of Claim alleging injuries to his low back as a result of repetitive trauma that manifested on 2/23/23. (AX2) The issues in dispute are accident, causal connection, and prospective medical care.

TESTIMONY

Petitioner was 49 years old, married, with two dependent children at the time of the alleged accident. Petitioner has worked for Respondent for over 27 years and has been a forklift driver for over 20 years. He currently works in the shipping department, and he operates the same forklift every shift. The forklift is a standard Hyster forklift with rear steer and hard rubber tires. He stated the rear tires are slightly smaller than the front tires. Petitioner testified that his seat has an adjustable spring, but the seat bounces a little and goes all the way down when he sits on it. He drives the same forklift today that he drove in January 2023. He does not believe the seat on his forklift has ever been replaced. He stated that forklift seats are only replaced if they are broken. He is not aware that his forklift has shock absorbers. Petitioner testified that two forklift drivers work during his shift which includes himself.

Petitioner testified that Respondent's facility has two departments. The Flexo department has four machines that make corrugated boxes and bands them into large units. The units come down a dispatch line where Petitioner picks them up with a forklift, stacks them on pallets, and loads them into trailers. The Die Cut department has two machines and the forklift driver is in charge of going outside to unload pallets from delivery trucks.

Petitioner testified that his job is fast-paced and many new hires do not last a day. He stated that the forklift job is not a standard pick-and-pull position because they have to keep up with production lines, pick orders from the floor, and unload trucks.

Petitioner testified that 99% of his work is performed inside. He stated that if he is driving on a flat smooth concrete surface he does not get bounced around on the forklift, but driving into trailers or hitting cracks on the warehouse floor causes most of the bouncing. He stated there are some cracks on the floor of the warehouse, but it is mostly smooth concrete. Petitioner testified that when he works in the Flexo department and retrieves units from four machines, he has to drive over dock plates multiple times to load the units into trailers. He estimated that on a very slow day he loads units into trailers a minimum of 100 times per shift, which results in 200 trips in and out of trailers and driving over the dock plate. On a fast day he drives in and out of trailers at least 500 times per shift, and on an average day it ranges from 300 to 350. Petitioner testified that every time he drives over the dock plate he bounces and jerks around on his forklift. He stated the seats are worn and it is like sitting on concrete.

Petitioner testified that in addition to unloading the delivery trucks, he also drives his forklift outside to fuel it once or twice per shift. He stated that the ramp used to go outside is wavy and bumpy going down. He has to use the ramp when he exits and enters the building. Petitioner testified that the outside driveway is full of potholes from semis and weather. He complains every year about the potholes and Respondent periodically repairs them. He testified that the potholes are filled with a soft patch and within weeks they are sunken in again. Petitioner testified that there is a long pothole where the forklifts pull up to the propane shed. Respondent just filled the pothole a few weeks ago and the hole is sunken and cratered already. He stated there is no way to avoid the pothole when refueling the forklifts.

Petitioner testified that in February 2023 he got two 10-minute breaks and a 20-minute lunch break per shift. He estimated he operated a forklift 6 hours per 8-hour workday. He completed paperwork the remainder of the time which was required after completing each load.

Petitioner testified that the age of the forklift makes a big difference and driving an old forklift is like driving a log wagon. He testified that they have two forklifts in shipping and two on each shift. After 5,000 to 6,000 hours the forklifts are transferred to the back of the warehouse to be used and shipping receives two new forklifts. He stated that now they want 20,000 hours out of a forklift. He has 16,700 hours on the forklift he currently operates. He testified that the rubber tires usually get replaced once per year depending on how bad they are. Petitioner testified that he requested a tire replacement for one month and his tires were just replaced two days ago. He stated the tires get chunks taken out of them which causes the forklift to wobble while it is being driven.

Petitioner testified that he began noticing low back issues in January 2023. He had pain into his left lower back that radiated down his left leg. He sought treatment with a chiropractor who refused to treat him and referred him to his primary care physician. Petitioner saw his primary care physician and underwent a lumbar MRI on 3/17/23. Petitioner testified that he reported his injury on 2/23/23 because the pain in his back and left leg became unbearable. He stated that his symptoms improved when he got off his forklift, but driving the forklift hurt.

Petitioner testified that he was examined by Dr. O'Boynick on 5/23/23 pursuant to Section 12 of the Act. He was examined by Dr. Brett Taylor on 8/23/23 who recommends additional diagnostic testing and believes Petitioner will require a lumbar spine surgery. Petitioner desires to undergo the tests and surgery recommended by Dr. Taylor.

Petitioner testified that he has learned to control his symptoms by getting off his forklift and walking around if there is a lull in his job duties. He transfers his weight to the right side when sitting to alleviate his symptoms. His symptoms increase when he is busy at work. He continues to experience the same symptoms he reported to Dr. Taylor and Dr. O'Boynick.

Petitioner testified that in 2009 or 2010 he had some back issues on the right side that were successfully treated with chiropractic treatment. He testified that his current symptoms are different.

On cross-examination, Petitioner testified that he first sought treatment for his low back on 2/9/23 with his primary care physician at Litchfield Family Practice. He stated that his back just started hurting to the point he sought treatment. He agreed that he reported to his doctor that his heart palpitations improved after he quit using caffeine approximately three weeks prior. He stated that at the time he saw his doctor on 2/9/23 he only had pain while sitting and it radiated down the back of his left leg. He did not have pain at that time while standing. Petitioner testified that he has adapted to his symptoms and leans to his right side, but it is hard to do while driving a forklift. If he sits equally on both buttocks the pain eventually starts and goes down his leg. He has the same pain while driving his car if he does not sit a certain way. He has not returned to his primary care physician since February 2023 for his low back condition.

Petitioner testified that he continues to perform his regular work duties because he has a family to provide for and a three-year-old child that was unexpected. Petitioner does not smoke but uses chew tobacco.

MEDICAL HISTORY

On 2/9/23, Petitioner sought treatment with his primary care provider, Dr. Timothy Ishmael at Litchfield Family Practice. (PX2) He reported having back pain and pain radiating down his left leg that started approximately three weeks earlier. Petitioner reported that his symptoms only occurred when sitting. He denied a specific injury. Dr. Ishmael diagnosed low back pain, prescribed Prednisone, and ordered lumbar spine x-rays. X-rays were performed on 2/10/23 that revealed slight narrowing at L3-4 with mild-to-moderate facet arthritis in the mid and lower lumbar spine. Dr. Ishmael ordered a lumbar spine MRI.

On 8/23/23, Petitioner was examined by Dr. Brett Taylor. (PX1) Dr. Taylor noted Petitioner worked for Respondent for 27 years, with the last 21 years driving a seated forklift. He drove a forklift the entirety of his shift, always in a seated position. Petitioner reported that the forklifts did not have shock absorbers and had solid tires. Previously, when a forklift reached a lifespan of 6,000 to 8,000 hours, they were replaced with brand-new forklifts. As of two years ago, the forklifts are used until they reach a lifespan of 20,000 hours. His current forklift has 15,000+ hours. Petitioner reported that he constantly drove over potholes and dock plates

throughout his shift. He reported that for nearly 18 years he worked 12-hour shifts every weekday driving a forklift. He underwent a right total knee replacement two years ago, and thereafter worked 10-hour shifts every weekday. In February 2023, he began developing low back pain that radiated into his left leg while working. He went to chiropractor Dr. Rademacher who planned to perform a lumbar manipulation but encouraged Petitioner to present to his PCP secondary to his complaints. He underwent lumbar spine x-rays. His low back pain and radiculopathy was worsening to the point he could "hardly sit". Petitioner reported his symptoms to Respondent on 2/23/23 and an MRI was ordered. Respondent had him evaluated by Dr. Christopher O'Boynick on 6/30/23. Dr. Taylor noted Petitioner had not completed any treatment for his lumbar spine and he was taking Celebrex and Tylenol for his symptoms. Petitioner had not missed work following the onset of his symptoms.

Petitioner reported 90% back pain and 10% leg pain. His radiculopathy was confined to the left leg and sitting made his pain worse. Dr. Taylor noted Petitioner was 6 foot tall and weighed 426 pounds with a BMI of 57.8. Dr. Taylor reviewed the 3/17/23 lumbar MRI which he found to be of poor quality but adequate enough to make a diagnosis. The study revealed multilevel facet arthropathy throughout the lumbar spine most notable at L4–5 and L5–S1, resulting in bilateral foraminal stenosis. At L4–5, there was a far lateral right disc protrusion and congenital stenosis. Dr. Taylor reviewed Dr. O'Boynick's Section 12 report. He documented that Dr. O'Boynick believed Petitioner would be at MMI only after surgical intervention.

Dr. Taylor performed a physical examination and diagnosed discogenic v. facetagenic back pain, clinical left L4–5 and left L5–S1 lumbar radiculopathy; pre-existing lumbar congenital stenosis; and pre-existing lumbar disc disease. He opined that Petitioner's job duties of driving a forklift aggravated his pre-existing lumbar congenital stenosis and degenerative disc disease resulting in his current lumbar radiculopathy with axial back pain. Dr. Taylor commented on the effect of whole body vibration on the human body. He stated: "Whole body vibration, WBV, occurs when the human body is supported on a vibrating surface such as operating a forklift. His workplace exposure to detrimental vibration led to his symptomatic lumbar health issues. Research confirms that occupational exposure to WBV increases the risk of symptomatic low back pain, sciatic pain, and degenerative spinal changes. He stated that Petitioner's clinical findings and imaging pathology aligned with epidemiological descriptions of WBV related pathology. In this case, there is a causal connection between his forklift related WBV and his symptomatic lumbar spine issues. The literature describes innovative facility driven approach involving improved forklift seats and tires significantly reduced WBV related lumbar symptomology. Forklift operators face over twice the risk of experiencing low back pain compared to their non-driving counterparts. There is a causal relationship between forklift operation and lower back pain that is simply observed across various studies. His symptomatic lumbar condition is causally connected to his described work exposure".

Dr. Taylor believed Petitioner required surgical intervention but recommended additional testing to include radiographs of the lumbar spine corrected for magnification including dynamic views. He recommended a lumbar CT myelogram and bilateral lower extremity EMGs to confirm the presence of lumbar radiculopathy. Petitioner was encouraged to follow-up with his primary care physician to have labs drawn and to discuss different weight loss options. Petitioner

was encouraged to lose approximately 55 pounds; however, Dr. Taylor opined that ultimately his weight would not be a barrier to surgical intervention.

Dr. Brett Taylor testified by way of deposition on 10/19/23. (PX3) Dr. Taylor is an orthopedic spine surgeon. He noted Petitioner's work duties as set forth in his 8/23/23 report. Dr. Taylor testified that Petitioner was severely obese with a BMI of 57.8. His physical examination revealed pitting edema in the lower extremities, an L-5 innervated muscle, and S-1 innervated musculature or focal motor deficit. He noted Petitioner was not malingering. He testified that the MRI findings were consistent with his physical examination and Petitioner's complaints. Dr. Taylor diagnosed discogenic and facetogenic back pain and clinical left L4-5 and L5-S1 radiculopathy with pre-existing congenital stenosis and degenerative disc disease. He recommended additional testing and a weight loss program or bariatric surgery. Dr. Taylor testified that Petitioner would require surgery to address his lumbar condition.

Dr. Taylor testified that it would be optimal for Petitioner to lose 55 pounds to reduce his BMI to less than 50 for an elective lumbar surgery for a nonprogressive neurologic deficit. He explained that there are higher complication rates with surgery on a patient with a high BMI. He testified that if Petitioner were to develop a progressive neurologic deficit, urgent surgery would be performed at his current BMI. He stated that he has performed surgery on patients with a BMI as high as 62 without major complication. Dr. Taylor testified that nicotine is a destructive agent as it relates to spinal arthritis and affects wound healing after surgery.

Dr. Taylor opined that Petitioner's forklift driving permanently aggravated his pre-existing lumbar congenital stenosis and degenerative disc disease resulting in his current lumbar radiculopathy and axial back pain. He noted that Petitioner had some pre-existing conditions that predisposed him to developing back problems, including congenital stenosis which is an abnormal shape of the bony spine canal. He testified that when a patient has a smaller canal, he is predisposed to develop symptoms of stenosis or nerve pressure with fewer arthritic changes at a younger age. He testified that the congenital stenosis combined with his other comorbidities, including the use of nicotine, and exposure to whole body vibration over 10 to 12-hour shifts driving a seated forklift over potholes and different surfaces that regularly cause shocks to his person, caused him to develop spinal problems. He opined that it is consistent in Petitioner's case that his pre-existing condition combined with the work exposure would be enough to aggravate his baseline spinal condition causing him to be symptomatic and need treatment. Dr. Taylor testified that the recommended treatment was in part necessitated by his work activities.

On cross-examination, Dr. Taylor testified that he only met with Petitioner one time at the request of Petitioner's counsel. He did not review any of Petitioner's medical records other than Dr. O'Boynick's Section 12 report. Petitioner reported that he underwent 3 to 6 months of chiropractic care 14 or 15 years ago for back pain on the right side. Petitioner reported that when he returned the chiropractor following his February 2023 work accident Dr. Radmacher planned to perform lumbar manipulation but referred him to his PCP. Dr. Taylor stated he took a history of employment directly from Petitioner and he did not know the full description of Petitioner's role or whether he periodically got off his forklift during a shift. He was not aware of how many breaks Petitioner was allowed per shift. He did not know the brand name of the forklift Petitioner

operated and he took Petitioner's word that the forklifts did not have shock absorbers. He stated that solid tires do not have bounce in them as air tires do.

Dr. Taylor testified that obesity is defined as a BMI greater than 30, and greater than 50 is considered severe obesity. He testified that people who are obese have a higher risk of back pain. He recommended plain radiographs to fully assess Petitioner's spine because he did not have any, and dynamic radiographs to assess instability. He recommended a CT myelogram because of the poor quality of the MRI and because Petitioner is claustrophobic. He also recommended EMGs to confirm radiculopathy and rule out nerve disorders. He opined that these studies are critical before operating. Dr. Taylor opined that Petitioner needed surgery, but he could not opine exactly which procedure until the additional studies were performed. He opined that surgery is medically reasonable and necessary. Dr. Taylor noted that Petitioner has used one-third can of tobacco per day for 35 years, which he considered to be on the lower end of the spectrum. He agreed that tobacco usage affects spinal health and negatively affects wound healing.

Dr. Christopher O'Boynick testified by way of deposition on 11/15/23. (RX2) Dr. O'Boynick is an orthopedic spine surgeon. His testimony was consistent with his Section 12 report. He testified that a 400-pound individual has increased stresses on the joint and lumbar spine. Dr. O'Boynick testified that some hospitals refused elective surgeries on patients with a BMI greater than 42 due to increased complications.

Dr. O'Boynick reviewed the MRI and performed x-rays in his office. He interpreted the MRI as showing an L5-S1 left-sided paracentral bulge with mass effect on the S1 nerve root. He also felt there could be a right-sided L4-5 protrusion laterally. He noted a large subset of degenerative changes and opined that Petitioner's employment did not create this pre-existing congenital spinal stenosis. He testified that Petitioner's morbid obesity and tobacco use contributed to the degeneration of his lumbar spine. He testified that in his clinical experience patients present with similar complaints without any particular injury.

Dr. O'Boynick diagnosed Petitioner with low back pain and left lower extremity radiculopathy in the setting of a congenitally narrowed lumbar spine with varying degrees of disc protrusion or bulge most notably at L4-5 and L5-S1. He opined that Petitioner's condition was not causally connected to his employment as a forklift driver. Despite causation, Dr. O'Boynick opined that Petitioner would be a candidate for a microdiscectomy but for his high BMI. He explained that he recently had a patient that weighed 348 pounds, and the surgical instruments were not physically long enough to reach his spine with the wound open. He testified that the maximum weight limit for surgical instruments is approximately 350 pounds.

Dr. O'Boynick testified that Dr. Taylor's impression was identical to his with respect to lumbar radiculopathy from L5 or S1, pre-existing lumbar stenosis, and degenerative disc disease. He disagreed with Dr. Taylor that Petitioner's forklift driving aggravated his pre-existing degenerative lumbar condition. He opined that Petitioner's symptoms were secondary to his morbid obesity, tobacco use, and degenerative disc disease in congenital spinal stenosis. He testified that based on literature there is no causation between objective imaging findings and whole body vibration. Dr. O'Boynick opined that it is theoretically possible that a patient with

congenital spinal stenosis and severe obesity would experience a greater impact on the spinal column.

Dr. O'Boynick described Petitioner's job as ambulating, standing, and sitting. He stated that it was unlikely that Petitioner's repetitive sitting led to his diagnosis. He pointed out that Petitioner had no obvious injury date or mechanism of injury other than ambulating, standing, and sitting, which are normal requirements of everyday life. Dr. O'Boynick testified that some of the factors in determining how much vibration is exerted on a person while driving a forklift is age of the vehicle and the type of seat, tires, and terrain. He testified that these are all very important to know when assessing full body vibration. Dr. O'Boynick agreed that he did not know the type of seat or tires that were on Petitioner's forklift, or the age of the forklift or tires. He agreed that Petitioner told him he drove over potholes but did not provide details of specific surfaces. He testified that he did not review a job description for Petitioner's job.

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?

In a repetitive trauma case, issues of accident and causation are intertwined. *Elizabeth Boettcher v. Spectrum Property Group and First Merit Venture*, 99 I.I.C. 0961. In order to better define "repetitive trauma" the Commission has stated: "The term "repetitive trauma" should not be measured by the frequency and duration of a single work activity, but by the totality of work activity that requires a specific movement that is associated with the development of a condition. Thus, the variance in job duties is not as important as the specific three, flexion and vibratory movements requisite in Petitioner's job." *Craig Briley v. Pinckneyville Corr. Ctr.,* 13 I.W.C.C. 0519 (2013).

"[I]n no way can quantitative proof be held as the *sine qua non* of repetitive trauma case." *Christopher Parker v. IDOT*, 15 I.W.C.C. 0302 (2015). The Appellate Court's decision in *Edward Hines Precision Components v. Indus. Comm'n* further highlights that there is no standard threshold which a claimant must meet in order for his or her job to classify as sufficiently "repetitive" to establish causal connection. *Edward Hines*, 365 Ill.App.3d 186, 825 N.E.2d 773, 292 Ill.Dec. 185 (Ill.App.2d Dist. 2005). In fact, the Court expressly stated, "There is no legal requirement that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma." *Id.* at N.E.2d 780. Similarly, the Commission recently noted in *Dorhesca Ranclell v. St. Alexius Medical Center*, 13 I.W.C.C. 0135 (2013), a repetitive trauma claim, a claimant must show that work activities are a cause of his or her condition; the claimant does not have to establish that the work activities are the sole or primary cause, and there is no requirement that a claimant must spend a certain amount of time each day on a specific task before a finding of repetitive trauma can be made. *Randell* citing *All Steel, Inc. v. Indus. Comm'n*, 582 N.E.2d 240 (1991) and *Edward Hines, supra.*

The Appellate Court in *Darling v. Indus. Comm'n* even stipulated that quantitative evidence of the exact nature of repetitive work duties is not required to establish repetitive

trauma injury in reversing a denial of benefits, stating that demanding such evidence was improper. *Darling v. Industrial Comm'n*, 530 N.E.2d 1135, 1142 (1st Dist. 1988). The Appellate Court found that requiring specific quantitative evidence of amount, time, duration, exposure or "dosage" (which in Petitioner's case would be force) would expand the requirements for proving causal connection by demanding more specific proof requirements, and the Appellate Court refused to do so. *Id.* at 1143. The Court further noted, "To demand proof of 'the effort required' or the 'exertion needed' . . . would be meaningless" in a case where such evidence is neither dispositive nor the basis of the claim of repetitive trauma." *Id.* at 1142. Additionally, the Court noted that such information "*may*" carry great weight "only where the work duty complained of is a common movement made by the general public. *Id. at 1142.* The evidence shows that Petitioner's job duties involve the performance of tasks distinctly related to his employment for Respondent, many of which are not activities that are even performed by the general public, let alone ones to which the public would be equally exposed, specifically driving a forklift for 8 to 10 hours per day during a 10 to 12-hour work shift.

In *City of Springfield v. Illinois Workers' Comp. Comm'n*, the Appellate Court issued a favorable decision in a repetitive case to a claimant in which the claimant's work was "varied" but also "repetitive" or "intensive" in that he used his hands, albeit for different task, for at least five hours out of an eight hour work day. *City of Springfield v. Illinois Workers' Comp. Comm'n*, 901 N.E. 2d 1066, (Ill. App. 4th Dist., 2009). As was noted by the Commission and reiterated in the Appellate Court decision in the *City of Springfield,* "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.*

Under Illinois law an injury need not be the sole factor, or even the primary factor of an injury, as long as it is **a** causative factor. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193, 205 (Ill. 2003) [Emphasis added]. Even when other non-occupational factors contribute to the condition of ill-being, "[*A*] Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Indus. Comm'n*, 309 Ill.App.3d 1037 (3rd Dist. 2000). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Indus. Comm'n*, 834 N.E.2d 583 (2d Dist. 2005). Employers are to take their employees as they find them. *A.C. & S. v. Industrial Comm'n*, 710 N.E.2d 837 (Ill. App. 1 Dist. 1999), citing *General Electric Co. v. Industrial Comm'n*, 433 N.E.2d 671, 672 (1982). The Supreme Court in *Durand v. Indus. Comm'n* noted that the purpose of the Illinois Workers' Compensation Act is best served by allowing compensation where an injury is gradual but linked to the employee's work. *Durand v. Indus. Comm'n*, 862 N.E.2d 918, 925 (Ill. 2006).

Petitioner's job description as a Fork Lift Operator was admitted into evidence. (RX3) Petitioner was required to sit 67% to 100% out of an 8 to 10-hour work shift, with a 10-minute break and a 30-minute lunch break. He was required to stand/walk 1% to 33% of his workday. Petitioner's testimony as to his job requirements, physical activities, and operation of the forklift were undisputed. He testified that he has driven a forklift for Respondent for over 20 years. He operates the same forklift every shift which is a standard Hyster forklift with rear steer and hard rubber tires. Petitioner reported to Dr. Taylor that for the first 18 years he worked 12-hour shifts

every weekday. He underwent a right total knee replacement two years ago, and thereafter worked 10-hour shifts every weekday. He estimated that he operates a forklift 6 hours out of every 8-hour shift. Petitioner testified that his job is fast-paced and is not a standard pick-and-pull position because they have to keep up with production lines, pick orders from the floor, and unload trucks.

Petitioner testified that 99% of his work is performed inside which mostly consists of smooth concrete, but there are some cracks in the warehouse floor that cause him to bounce around on the forklift. He stated that driving over dock plates to load and unload trailers causes him to bounce and jerk around. He estimated that on a very slow day he loads units into trailers a minimum of 100 times per shift, which results in 200 trips in and out of trailers and driving over the dock plate. On a fast day he drives in and out of trailers at least 500 times per shift, and on an average day it ranges from 300 to 350.

Petitioner testified that the seat is worn on his forklift, and it is like sitting on concrete. He stated that the seat has an adjustable spring, but the seat bounces a little and goes all the way down when he sits on it. He does not believe the seat on his forklift has ever been replaced, which is the forklift he drove in February 2023. He did not believe his forklift had shock absorbers. Petitioner testified that the tires on his forklift are rubber and get chunks taken out of them, which causes the forklift to wobble while being driven. He testified that the tires usually get replaced once per year depending on how bad they are. His last tire replacement took one month from the date of his request.

Petitioner testified that he also drives his forklift outside and the ramp used to go outside is wavy and bumpy. He stated that the outside driveway is full of potholes, including a large pothole at the fuel station that is unavoidable. Petitioner testified that the age of the forklift makes a big difference and driving an old forklift is like driving a log wagon. He is expected to get 20,000 hours out of a forklift and his current forklift has logged 16,700 hours.

There is no evidence that Petitioner had injuries or symptoms to his low back or left lower extremity in the ten years prior to his work accident. He testified that in 2009 or 2010 he had some back issues on the right side that were successfully treated with chiropractic treatment. He testified that his current symptoms are different. He began noticing low back pain in January 2023 that radiated down his left leg. Petitioner testified that he sought treatment with his primary care physician on 2/9/23 because his symptoms became unbearable. He stated that his symptoms improved when he got off his forklift, but driving the forklift hurt.

The Arbitrator finds the opinions of Dr. Taylor more persuasive than those of Dr. O'Boynick. Petitioner provided a consistent job duty description to Dr. Taylor. Dr. Taylor opined that Petitioner's work exposure of driving a forklift permanently aggravated his pre-existing lumbar congenital stenosis and degenerative disc disease resulting in his current lumbar radiculopathy and axial back pain. Dr. Taylor agreed that Petitioner had some pre-existing conditions that predisposed him to developing back problems, including congenital stenosis. He testified that a patient with a smaller canal is predisposed to develop symptoms of stenosis or nerve pressure with fewer arthritic changes at a younger age. He testified that the congenital stenosis combined with Petitioner's other comorbidities, including the use of nicotine, and

exposure to whole body vibration over 10 to 12-hour shifts driving a seated forklift over potholes and different surfaces that regularly cause shocks to his person, caused him to develop spinal problems. He opined that it is consistent in Petitioner's case that his pre-existing condition combined with the work exposure would be enough to aggravate his baseline spinal condition causing him to be symptomatic and need treatment.

Dr. Taylor and Dr. O'Boynick agree on Petitioner's diagnosis and need for surgery; however, Dr. O'Boynick opined that Petitioner's morbid obesity and tobacco use contributed to the degeneration of his lumbar spine and his employment as a forklift driver did not cause or aggravate his pre-existing condition. He testified that it is theoretically possible that a patient with congenital spinal stenosis and severe obesity would experience a greater impact on the spinal column.

Dr. O'Boynick testified that he reviewed the articles cited in Dr. Taylor's medical record and opined there is no causation between objective imaging findings and whole body vibration. He testified that some factors in determining how much vibration is exerted on a person while driving a forklift is the age of the vehicle and the type of seat, tires, and terrain. He agreed that these factors are all very important to know when assessing full body vibration and he did not know the type of seat or tires that were on Petitioner's forklift, or the age of the forklift or tires.

Dr. O'Boynick described Petitioner's job duties as ambulating, standing, and sitting. The Arbitrator notes that the job duty description of a forklift operator requires sitting 67% to 100% out of an 8 to 10-hour work shift, with a 10-minute break and a 30-minute lunch break, and standing/walking 1% to 33% of the workday. Dr. O'Boynick testified that it is unlikely that Petitioner's repetitive sitting led to his diagnosis as sitting is a normal requirement of everyday life. While the Arbitrator agrees that sitting is a daily life activity, the Arbitrator does not find that sitting while operating a forklift 6 to 8 hours per day is an activity that the general public is equally exposed.

Based on the record as a whole, the Arbitrator finds that Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent on 2/23/23, and that his current condition of ill-being is causally connected to his work injuries.

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

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

The Arbitrator finds that Petitioner is entitled to receive the additional care recommended by Dr. Taylor. Dr. Taylor recommended plain radiographs to fully assess Petitioner's spine and dynamic radiographs to assess instability. He recommended a CT myelogram because of the poor quality of the previous MRI and because Petitioner is claustrophobic. He also recommended

EMGs to confirm radiculopathy and rule out nerve disorders. He opined that these studies are critical before operating. Dr. Taylor testified that surgery is reasonable and necessary; however, he cannot opine exactly which surgical procedure until the additional studies are performed.

Therefore, Respondent shall provide and pay for prospective medical treatment, including, but not limited to, plain and dynamic radiographs, a CT myelogram, EMG/NCSs, surgery as indicated by the objective diagnostic studies and recommended by Dr. Taylor, and all reasonable and necessary attendant care.

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

Arbitrator Linda J. Cantrell

April 10, 2024
DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC023747
Case Name	Roxana Jones v. State of Illinois - Southern Illinois University Edwardsville - School of Nursing
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0046
Number of Pages of Decision	8
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Samuel Mormino, Jr.
Respondent Attorney	Caitlin Fiello

DATE FILED: 2/4/2025

/s/Marc Parker,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Roxana Jones,

Petitioner,

vs. No. 18 WC 023747

SIUE School of Nursing,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 8, 2023, is hereby affirmed and adopted.

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

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

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

February 4, 2025

MP/mcp
o-01/16/25
068

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC023747
Case Name	Roxana Jones v. SIUE School of Nursing
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	5
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Samuel Mormino, Jr.
Respondent Attorney	Caitlin Fiello

DATE FILED: 12/8/2023

THE INTEREST RATE FOR THE WEEK OF DECEMBER 5, 2023 5.19%

/s/ Edward Lee, Arbitrator
Signature

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

December 8, 2023

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

ROXANA JONES
Employee/Petitioner

v.

SIUE SCHOOL OF NURSING
Employer/Respondent

Case # **18** WC **23747**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Collinsville**, on **9/29/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **6/25/18**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**30,225.94**; the average weekly wage was $**581.26**.

On the date of accident, Petitioner was **45** 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 and/or, $**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 Respondent shall pay the Petitioner temporary total disability benefits of $328.51 for 8 3/7 weeks following her surgeries while under the doctor's care as provided in §8(b) of the Act, because the injury sustained caused the disabling condition of the Petitioner.

The Respondent shall pay $11,888.10 for medical services provided in §8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of 24.7 weeks weeks for the right hand because she sustained 13% loss of use of the right hand pursuant to Section 8e(9) of the Act, 19 weeks of the left hand because she sustained 10% loss of use of the left hand pursuant Section 8e(9) of the Act, 30.36 weeks for the right arm because she sustained 12% loss of use of the right arm pursuant to Section 8e(10) of the Act and 25.3 weeks for the left arm because she sustained 10% loss of use of the left arm as provided in §8e(10) of the Act.

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

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

Edward Lee_____ **DECEMBER 8, 2023**
Signature of Arbitrator

ROXANA JONES V. SIUE SCHOOL OF NURSING
18-WC-23747

The Arbitrator finds the following facts:

Petitioner, Roxana Jones, a 50 year old woman, at the time of hearing, began working for Respondent, SIUE in 2006 in a clerical position as a office support associate. At the present time, she continues to work for SIUE and has been assigned to the School of Nursing with the title of office support specialist. She testified that she had been associated with the School of Nursing in that capacity since 2015. With respect to her work at SIUE from 2006 through the present, she testified that her jobs were primarily clerical in nature, and that she spent most of the day typing and data entry at a keyboard sitting at her desk. She indicated that her job involved typing, taking minutes at meetings, both handwritten and recorded, and transcribing those minutes into a word document. She also does a lot of excel spreadsheets. She takes data from different programs within the University and transposes that data into excel spreadsheets. Her work is at a desk with the keyboard sitting on top of the desk with two monitors and a mouse. She has worked throughout her time at SIUE since 2006 full-time from 8:00 a.m. to 4:30 p.m. In her testimony she indicated that she spends her entire day typing or using a keyboard and a mouse. Prior to late 2017, when she measured her typing ability, she averaged 55 to 60 wpm. When she was assigned to the School of Nursing in 2015 her workload became more intense with more reports, letters, and dictation to type. Because the job was so busy, she would forgo portions of her one hour lunch and fifteen minute breaks in the morning and afternoon. Additionally, she testified that she would take extra work home if she was unable to keep up during the day. When doing this work, she demonstrated how she sat at her desk with her hands on the keyboard and her elbows in a flexed position and testified that she would hold her hands and arms in that position for most of the day.

In late 2017 she began experiencing symptoms of pain and numbness in both of her hands and elbows. She consulted with her primary care physician, Dr. Rajnikant Patel on 4/26/18. She described the pain as numbness and tingling and her fingers which were uncomfortable making it difficult to work and waking her up at night. She reported that she had no symptoms in her hands, wrists, or elbows prior to the end of 2017 and early 2018. Dr. Patel ordered an EMG which was positive for carpal tunnel bilaterally. Thereafter she was referred to Dr. Ryan Diederich who diagnosed bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. Dr. Diederich's clinical findings supported the diagnosis of those conditions, and he performed a carpal tunnel release and a cubital tunnel decompression, the first on the right side on 5/9/19 and then on the left side on 5/23/19. Ms. Jones' remained off work through her release by Dr. Diederich on 7/8/19. Thereafter she returned to work and has continued to work since that time.

Ms. Jones' notified her employer in a timely manner and subsequently received a denial letter from her employer. Her employer has denied the claim and has not paid medical bills associated with her surgeries or recovery, nor has her employer paid for her 8 3/7 weeks of TTD benefits for her time off following her surgeries.

Following the denial of the claim and until surgery could be paid for privately, the Petitioner testified that her pain got so bad that it was difficult to do her job sending her into a depression which caused her to contemplate suicide.

Following the surgeries, she experienced relief from some of her symptoms. However, she has testified that she continues to suffer from lack of grip strength, causing her to drop things constantly. She noted a decrease in her speed with respect to typing to 45 wpm. She testified that she has radiating pain into her middle fingers and thumb and pain in her elbow that continues to be associated with her work activities. At work when the pain continues, she will need to take short breaks and get up and walk and shake her hands until the pain goes away.

Petitioner testified that she has also been diagnosed with diabetes II, lupus and fibromyalgia. Dr. Diederich, her treating doctor, testified in his deposition that those conditions can be a factor in the onset of symptoms related to carpal tunnel syndrome. However, he felt that her work activity was causally related or a contributing factor in the development of the symptoms in her case. Additionally, he testified that those conditions may increase her susceptibility to the development of carpal tunnel syndrome and cubital tunnel syndrome when repetitive motion or trauma is superimposed upon those joints. Dr. Diederich further testified that she had improved following the surgery but, however, remained symptomatic as of his last visit with her on 5/23/19. He further testified that the treatment rendered was reasonable, necessary and proper for her condition.

Dr. Charles Goldfarb was asked to perform a §12 examination by the Respondent. Dr. Goldfarb testified that it was unclear why he was asked to testify. Dr. Goldfarb testified that the surgery and treatment performed by Dr. Diederich was reasonable, necessary, and proper and that she did in fact have bilateral carpal tunnel and bilateral cubital tunnel. Dr. Goldfarb opined that her work activity was not a causal factor in the developmental, of her symptoms. However, those opinions were based upon a job description that was not admitted into evidence and had not been provided to the Petitioner prior to the deposition or prior to hearing. Additionally, Dr. Goldfarb testified that his opinions were based upon the fact that she had only been working as a secretary for three years and her job did not involve intensive typing, contrary to her testimony in this case. Dr. Goldfarb testified that intensive typing can be a causative factor in the development of carpal and cubital tunnel syndrome. Dr. Goldfarb suggested that her underlying medical conditions were causative despite reviewing no records or having any understanding as to the severity or extent of her systemic condition. In light of the mistaken assumption regarding the intensity of her work activity, Dr. Goldfarb's opinions are given little weight.

Based upon the forgoing findings of fact, the Arbitrator concludes:

The Petitioner did sustain an accident that arose out of in the course of her employment and that her condition of ill-being mainly bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome is causally related to the accident.

The Respondent is hereby ordered to pay all reasonable and necessary medical services related to the treatment received by the Petitioner, including the following bills which were entered into evidence as exhibits herein: (a) Dr. Rajnikant Patel $390; (b) Alton Memorial Hospital $1,704.00; (c) Dr. Michael Liu $304.00; (d) Dr. Ryan Diederich $4,578.00; (e) Dr. Stephen Burger $1,168.00; (f) Anderson Hospital $925.40; (g) Anderson Hospital $628.70; (h) Maryville Radiology $68.00; (i) Dr. Rafe Heng $22.00; (j) Edwardsville Ambulatory Surgery Center $1,400.00; and (k) AIM Anesthesia $700.00.

8.1b of the Act requires reference to the five factors to establish permanent partial disability:

1. AMA disability report. Neither Party submitted a report. Accordingly, the Arbitrator gives no weight to this factor.

2. Occupation. The Petitioner's clerical work may be impacted by her disability. The Arbitrator gives some weight to this factor.

3. No evidence was offered on the impact of the Petitioners age. Accordingly, the Arbitrator gives no weight to this factor.

4. Future earning capacity. The Arbitrator finds the Petitioner's future earnings may be diminished by her symptoms. The Arbitrator gives moderate weight to this factor.

5. Evidence of disability corroborated by treating medical records. The Petitioner sustained bilateral carpal tunnel release surgery and bilateral cubital tunnel decompression surgery. According to her treating doctor, Dr. Diederich her symptoms continued after her surgeries. This was corroborated by Petitioner's testimony. The Arbitrator gives significant weight to this factor.

Based on the above the Arbitrator awards permanent patial disability as set forth in the Order.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC006939
Case Name	Lynne Spencer v. Illinois Central School Bus Co
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision on Remand from the Appellate Court of Illinois
Commission Decision Number	25IWCC0047
Number of Pages of Decision	6
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Robert Newman

DATE FILED: 2/5/2025

/s/Marc Parker,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Lynne Spencer,

Petitioner,

vs. No. 15 WC 006939

Illinois Centra School Bus Co.,

Respondent.

DECISION AND OPINION ON REMAND

This cause comes before the Commission on remand from the Second District Appellate Court of Illinois, Workers' Compensation Commission Division, which affirmed in part and reversed in part the Commission's July 31, 2023 decision in this matter.

The Appellate Court affirmed the Commission's findings on accident, causal connection, average weekly wage, medical expenses, and temporary total disability benefits. However, the Appellate Court found the Commission's award of permanent *partial* disability benefits for the 50% loss of the person-as-a-whole was against the manifest weight of the evidence, as was the Commission's denial of permanent *total* disability benefits, penalties, and attorney's fees. The Appellate Court vacated the PPD award and remanded this matter back to the Commission with directions to: (1) calculate claimant's PTD benefits, (2) determine the date upon which claimant is entitled to such award, and (3) determine the amount of penalties and attorney fees to be assessed against the employer for its intentional delay in payment.

On February 20, 2015, Petitioner, a school bus driver for Respondent, arrived early at the bus lot to perform her DOT check. The lot had no fencing, lighting, or security, and the doors to the buses remained unlocked overnight. Petitioner opened the unlocked doors and entered the dark bus. As she reached for her checklist and to turn the ignition key, she was struck on the back of her head. She saw black and flashes of light before passing out. She awoke at the bottom of the stairs. After switching on the bus lights and observing no one present and nothing out of

place, she went to the office building on the lot and reported she had been hit on the head. Petitioner's co-worker, Jerald Marshall, testified that he inspected Petitioner's bus and found fresh urine in it, and that sometimes persons from a nearby homeless encampment would sleep on the buses.

Petitioner was treated at Delnor Hospital, where she reported being struck in the back of the head with an unknown object. She followed up with primary care physician, Dr. Tebeau, who diagnosed a concussion, memory loss, and post-trauma anxiety; and with psychiatrist, Dr. Foroutan, who opined Petitioner's accident caused or aggravated her PTSD and prevented her from returning to her career as a bus driver. Certified rehabilitation counselor, Laura Belmonte, opined that Petitioner was unemployable.

The Arbitrator found Petitioner failed to prove accident. In our July 31, 2023 decision, we reversed that finding and awarded Petitioner, inter alia, 50% of the person-as-a-whole under Section 8(d)2, after we found Petitioner failed to prove entitlement to PTD benefits. The Circuit Court set aside the Commission's decision. The Appellate Court held the Circuit Court erred in setting aside the Commission's decision, and remanded this matter to the Commission with directions. We now address the issues mandated by the Appellate Court.

Permanent Total Disability Rate

Section 8(b)4.1 of the Act provides, inter alia, that the weekly compensation rate for permanent total disability under Section 8(f) of the Act shall in no event be less than 50% of the state's average weekly wage. The law in effect at the time of the injury governs the claimant's rights. *Grigsby v. Industrial Commission,* 76 Ill. 2d 528 (1979). As of February 20, 2015, the date of Petitioner's accident, the state average weekly wage was $1,021.34. The Commission therefore finds Petitioner's PTD rate to be 50% of $1,021.34, or $510.67 per week.

Petitioner's Permanent Total Disability Date

In our July 31, 2023 decision, we found that Petitioner reached maximum medical improvement for her injuries on August 5, 2019, and we awarded Petitioner temporarily total disability benefits of 232-4/7 weeks, from February 20, 2015, through August 5, 2019, at a weekly rate of $293.99. The Appellate Court affirmed that finding and award.

The Commission now finds that beginning August 6, 2019, the day after Petitioner reached MMI, she became entitled to permanent total disability benefits in the amount of $510.67 per week – the applicable minimum rate for permanent total disability. We therefore award Petitioner PTD benefits of $510.67 per week commencing August 6, 2019 for the duration of her life, pursuant to Sections 8(b)4.1 and 8(f) of the Act.

Penalties and Attorney's Fees

The Appellate Court has held that Respondent herein unreasonably withheld benefits from Petitioner and failed to provide justification for its delay. The Commission now finds, in accordance with the Appellate Court's mandate, as follows:

Section 19(l) Penalty: Penalties under this Section of the Act are $30.00 per day for each day that benefits are withheld or refused, not to exceed $10,000.00. Because Respondent failed to pay Petitioner any benefits from February 20, 2015 through the arbitration hearing date of March 30, 2022, the Commission finds Respondent liable to pay to Petitioner the maximum penalty of $10,000.00, pursuant to Section 19(l) of the Act.

Section 19(k) Penalty: Penalties under this Section of the Act are equal to 50% of the amount of compensation payable at the time of such award which was unreasonably or vexatiously delayed or intentionally underpaid. The Appellate Court has held that regardless of whether Petitioner suffered injuries from a fall or an attack by an unknown assailant, her injuries arose out of her employment, and Respondent unreasonably withheld benefits and failed to provide justification for the delay.

Accordingly, the Commission finds Respondent liable to pay to Petitioner a penalty under Section 19(k) in the amount of $34,186.63 (50% of the awarded TTD[1]), plus 50% of the reasonable and necessary medical expenses contained in Petitioner's Exhibits 3 and 5, which were incurred for Dr. Foroutan's and Dr. Couch's treatment of Petitioner's PTSD, anxiety, and depression, as provided under Section 8(a) and Section 8.2 of the Act.

Section 16 Attorney's Fees: This Section of the Act provides for an award of attorney fees when an award of additional compensation under Section 19(k) is appropriate. The standard for awarding attorney fees is the same as for awarding penalties under Section 19(k). *Jacobo v. Ill. Workers' Comp. Comm'n,* 950 N.E.2d 772 (3rd Dist., 2011).

Accordingly, the Commission finds Respondent liable to pay to Petitioner attorney's fees under Section 16 in the amount of $13,674.65 (20% of the awarded TTD), plus 20% of the reasonable and necessary medical expenses contained in Petitioner's Exhibits 3 and 5, which were incurred for Dr. Foroutan's and Dr. Couch's treatment of Petitioner's PTSD, anxiety, and depression, as provided under Section 8(a) and Section 8.2 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed July 15, 2022, is hereby reversed. The Commission finds Petitioner sustained an accident on February 20, 2015, that arose out of and in the course of her employment, and that

[1] Our TTD award was 232-4/7 weeks for the period February 15, 2015 through August 5, 2019, at a weekly rate of $293.99. Therefore, our TTD award is $68,373.25 (232.57 weeks x $293.99). One-half of that TTD is $34,186.63.

timely notice was provided. The Commission further finds that Petitioner's current condition of ill-being is causally related to the work accident.

IT IS FURTHER ORDERED BY THE COMMISSION that in the year preceding the work injury, Petitioner's average weekly wage was $440.98.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the reasonable and necessary medical expenses contained in Petitioner's Exhibits 3 and 5, which were incurred for Dr. Foroutan's and Dr. Couch's treatment of Petitioner's PTSD, anxiety, and depression, as provided under Section 8(a) and Section 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of $293.99 per week for 232-4/7 weeks, from February 20, 2015, through August 5, 2019, that being the period of temporary total incapacity for work, as provided under Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner, as a penalty pursuant to Section 19(l) of the Act, additional compensation of $10,000.00, for the period between February 20, 2015 and March 30, 2022.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner, as a penalty pursuant to Section 19(k) of the Act, additional compensation of $34,186.63 (50% of the awarded TTD), plus 50% of the reasonable and necessary medical expenses contained in Petitioner's Exhibits 3 and 5, which were incurred for Dr. Foroutan's and Dr. Couch's treatment of Petitioner's PTSD, anxiety, and depression, as provided under Section 8(a) and Section 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner, as provided in Section 16 of the Act, additional attorney's fees of $13,674.65 (20% of the awarded TTD), plus 20% of the reasonable and necessary medical expenses contained in Petitioner's Exhibits 3 and 5, which were incurred for Dr. Foroutan's and Dr. Couch's treatment of Petitioner's PTSD, anxiety, and depression, as provided under Section 8(a) and Section 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that commencing August 6, 2019 for the life of Petitioner, Respondent pay to Petitioner the sum of $510.67 per week as provided under §8(f) of the Act, for the reason that the injuries sustained caused the permanent total disability of Petitioner. Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the Rate Adjustment Fund, as provided in Section 8(g) of the Act.

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

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

February 5, 2025

MP/mcp
r-12/4/24
068

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC004586
Case Name	Julio Alfaro v. Besco Air Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0048
Number of Pages of Decision	15
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Mario Encinas
Respondent Attorney	Dan Simones

DATE FILED: 2/5/2025

/s/Christopher Harris,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JULIO ALFARO,

Petitioner,

vs. NO: 22 WC 4586

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 28, 2024 is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $11,800.00. 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.

February 5, 2025

CAH/tdm
O: 1/30/25
052

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC004586
Case Name	Julio Alfaro v. Besco Air Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Rosa Ornelas
Respondent Attorney	Dan Simones

DATE FILED: 3/28/2024

/s/Ana Vazquez, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF MARCH 26, 2024 5.105%

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)

Julio Alfaro
Employee/Petitioner

v.

Besco Air, Inc.
Employer/Respondent

Case # **22** WC **004586**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Ana Vazquez**, Arbitrator of the Commission, in the city of **Chicago**, on **January 5, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **December 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 $**75,000.12**; the average weekly wage was $**1,442.31**.

On the date of accident, Petitioner was **49** years of age, ***single,*** with **0** dependent children.

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

Respondent shall be given a credit of $**12,571.32** for TTD, $**0** for TPD, $**0** for maintenance, and $**0,** for other benefits, for a total credit of $**12,571.32**.

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

ORDER

Respondent shall pay for the reasonable and necessary medical services, as provided in Px5, Px6, Px7, Px8, and Px9, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. [See also "§8.2 Medical Fee Schedule Agreed Stipulation" attached to Ax1.] Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses.

Per the Parties' stipulation, Respondent has or will pay the bill of Northwest Infectious Disease Consultants, as provided in Px3, directly to the provider pursuant to the fee schedule. Transcript of Proceedings on Arbitration ("Tr.") at 10. Also by stipulation, Respondent is entitled to a credit for bills paid, as reflected in Respondent's medical payment ledger, Respondent's Exhibit ("Rx") 2. Tr. at 10-11.

Respondent shall authorize and is liable for the prospective medical treatment plan recommended by Dr. Rerri, including a right knee arthroscopy and partial meniscectomy, as provided in Section 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of **$961.54/week** for **18 2/7 weeks**, commencing **December 10, 2021** through **January 10, 2022** and **February 20, 2022** through **May 26, 2022**, as provided in Section 8(b) of the Act. Per the Parties' stipulation, Respondent is entitled to a credit in the amount of **$12,571.32** for TTD paid to Petitioner by Respondent. Ax1 at No. 9.

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

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

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

Ana Vazquez

Signature of Arbitrator

ICArbDec19(b)

March 28, 2024

PROCEDURAL HISTORY

This matter proceeded to arbitration on January 5, 2024 before Arbitrator Ana Vazquez in Chicago, Illinois pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act ("the Act."). The issues in dispute include: (1) causal connection, (2) unpaid medical bills, (4) prospective medical, and (5) temporary total disability ("TTD") benefits. Arbitrator's Exhibit ("Ax") 1. All other issues have been stipulated. Ax1.

Regarding the issue of unpaid medical bills, Respondent stipulated that the bill from Northwest Infectious Disease Consultants is not in dispute and that Respondent has or will pay the bill directly to the provider pursuant to the fee schedule. Transcript of Proceedings on Arbitration ("Tr.") at 10. The Parties further stipulated that Respondent is entitled to a credit for bills paid, as reflected in Respondent's medical payment ledger, Respondent's Exhibit ("Rx") 2. Tr. at 10-11.

FINDINGS OF FACT

Petitioner testified in Spanish through an interpreter. Tr. at 11. Petitioner began working at Respondent on October 11, 2021. Tr. at 31-32. Petitioner testified that he was employed as an installer at Respondent on December 9, 2021. Tr. at 13.

Accident

Petitioner testified that on December 9, 2021, he was installing a unit in an attic, and that he had been working in the attic for around five days. Tr. at 13. Petitioner testified that he worked a half day installing a unit in the attic on December 9, 2021, and that he was then sent to another job by his supervisor, Gene. Tr. at 13. Petitioner testified that he was told by Gene to go to another job installing a hot water tank. Tr. at 13-14. Petitioner had a partner with him. Tr. at 15. They also had to remove an old residential 75-gallon water tank. Tr. at 15. Petitioner testified that the tank weighed 250 pounds when empty. Tr. at 15.

Petitioner testified that they first removed the water from the tank, and that afterwards, they had to manually move the tank onto a two-wheeler. Tr. at 16. Petitioner testified that his partner grabbed the handles of the two-wheeler and started walking backwards with it towards the stairs. Tr. at 16. Petitioner then squatted down so that they could take the tank up step-by-step. Tr. at 16, 17. Petitioner testified that the tank was in the basement and there were around 12 steps leading in and out of the basement. Tr. at 16. Petitioner was lifting the tank with his arms and his body from a squatting position. Tr. at 16. Petitioner testified that when he began to lift the tank, he felt pain in his right knee. Tr. at 17. Petitioner testified that his knee hurt more as time passed. Tr. at 17. Petitioner was able to finish the new water tank installation. Tr. at 17.

Petitioner testified that as he was installing the last part of the new water tank, the gas hose, he could not get up because his knee hurt. Petitioner testified that his partner carried the tools out from the basement, and that he "went up one would say backwards with my buttocks up each step of the ladder and then he helped me into the car." Tr. at 18. Petitioner then went home, and his wife helped him out of the truck. Tr. at 18. Petitioner was sent to Concentra Medical Center the following day. Tr. at 18.

Pre-accident Injuries/Treatment

Petitioner testified that he did not have any problems with his right knee during the time that he worked at Respondent. Tr. at 29. Petitioner testified that he did not have pain in his right knee prior to December 9, 2021. Tr. at 36.

Petitioner testified that prior to working at Respondent, he worked as an installer at Four Seasons for seven years, and that he did not have any problems with his right knee while working at Four Seasons. Tr. at 29-30, 32. Petitioner testified that the job duties of an installer included "[b]egin practically removing the old unit and putting in the new one including duct work if needed." Tr. at 32. Petitioner testified that there was not a lot of kneeling involved in his job at Four Seasons. Tr. at 32.

Petitioner testified that he had a cyst removed from his right knee when he was four years old. Tr. at 28-29, 35. Petitioner testified that the cyst was not painful. Tr. at 36. Petitioner testified that he did not have any right knee problems between the ages of four and 49. Tr. at 29. Petitioner testified that he did not have any right knee treatment after he was five years old. Tr. at 36.

Petitioner did not remember whether he ever sought treatment for his right knee from Dr. Ghannad. Tr. at 41. Petitioner testified that he did not receive prior right knee x-rays or medications for his right knee. Tr. at 41.

Pre-accident Medical Records Summary

On June 22, 2021, Petitioner was seen by Dr. Leda Ghannad at Midwest Orthopedics at Rush for bilateral knee pain. Rx3. Petitioner reported that his right knee pain began one year prior without trauma and that his left knee pain began two months prior without trauma. Dr. Ghannad noted that Petitioner pointed to the anterior medial knee when describing his right knee pain and that Petitioner reported that his right knee pain was worse with kneeling. Dr. Ghannad noted that Petitioner pointed to the anterior lateral knee when describing his left knee pain and that Petitioner described the pain as a burning sensation with intermittent numbness and tingling. Dr. Ghannad noted that Petitioner worked in heating and cooling, that he had worked in that field for 11 years, and that he was frequently kneeling. A positive McMurray's sign for the right knee was noted. Dr. Ghannad's diagnosis was patellofemoral osteoarthritis. Dr. Ghannad noted that Petitioner's right knee pain was more consistent with a degenerative medial meniscal tear and that Petitioner's left knee pain seemed more consistent with patellofemoral pain syndrome and likely patellofemoral osteoarthritis. Dr. Ghannad noted that treatment options were discussed including a short course of anti-inflammatory medications, physical therapy, and intra-articular cortisone or viscosupplementation injections. Dr. Ghannad noted that if Petitioner's symptoms did not improve with conservative treatment, advanced imaging with an MRI and discussion regarding possible surgical consultation for arthroscopic surgery may be considered. Dr. Ghannad noted that Petitioner was not interested in physical therapy at that time, and that good ergonomics at work was discussed. Petitioner was prescribed Meloxicam 15mg for two weeks, then as needed. Dr. Ghannad noted that if Petitioner had persistent pain after completing the course of Meloxicam, he could return for an intra-articular knee cortisone injection, and an MRI in the future was discussed if Petitioner did not ultimately improve.

Post-accident Medical Records Summary

Petitioner was seen by Dr. Jose Ayala at Concentra Medical Center on December 10, 2021. Px1. Petitioner reported that while at work on December 9, 2021, he developed right knee symptoms after kneeling for a prolonged amount of time. Dr. Ayala's assessment was cellulitis of the right knee. Petitioner was referred to emergency medicine. Physical therapy and a cane were recommended. Petitioner was released to return to work on December 11, 2021 with the restrictions of sitting 100% of the time and use of a cane.

Petitioner presented at Rush University Medical Center Emergency Department on December 10, 2021. Px10. Petitioner presented with right knee pain, swelling, and warmth that had been ongoing for two days. It was noted that Petitioner was sent from a clinic for concerns of cellulitis. Petitioner underwent a VAS Duplex of the right lower extremity veins with compression, which demonstrated no evidence of right lower extremity deep venous thrombosis.

Petitioner was then seen at Amita Health Resurrection Center on December 11, 2021. Px2 at 3. Petitioner presented with right lower extremity pain. Petitioner reported that for the past three or four days he had increasing redness and pain. Px2 at 9. Petitioner reported that he was kneeling down for his job, and he believed that was the cause of the start of the pain. Px2 at 9. Petitioner reported that he had gone to the hospital the day prior, that he waited for 12 hours and was not seen, and so he left. Px2 at 9. Petitioner was diagnosed with right lower extremity cellulitis and was prescribed Cephalexin 500mg capsules. Px2 at 8, 3. Petitioner was discharged and instructed to return if the antibiotic did not reduce pain and redness in the following 48 hours. Px2 at 3.

Petitioner returned to Dr. Ayala on December 13, 2021. Px1. Dr. Ayala noted that Petitioner went to Rush Hospital on December 10, 2021, waited 12 hours and was not seen, and left. He returned to Rush Hospital on December 11, 2021 and was only given Cephalexin 500mg. Petitioner reported continued pain. Dr. Ayala's assessment was cellulitis of the right knee. Petitioner was instructed to return to the emergency department for follow up. Physical therapy was ordered. Petitioner was released to return to work with the restriction of sitting 100% of the time, use of a cane, and weight bearing as tolerated.

Petitioner returned to Amita Health Resurrection Center on December 13, 2021. Px2 at 39. Petitioner was admitted for the diagnosis of cellulitis of the right lower extremity. Px2 at 48. Petitioner underwent a VAS Duplex of the right lower extremity, and no evidence of right lower extremity deep venous thrombosis was demonstrated. Px2 at 39-40. A right lower extremity duplex sonography was also obtained, and no specific sonographic evidence of acute deep venous thrombosis was demonstrated. Petitioner was treated with intravenous antibiotic. Px2 at 39-40. Petitioner was discharged on December 16, 2021 and instructed to continue taking Cephalexin 500mg. Px2 at 40-44. Petitioner was advised to wear knee pads during work for protection. Px2 at 58.

Petitioner again saw Dr. Ayala on December 20, 2021, at which time Petitioner's diagnoses were right knee cellulitis and right knee contusion. Px1. Physical therapy was ordered. Petitioner was released to return to work with the restriction of sitting 100% of the time, use of a cane, and weight bearing as tolerated.

Petitioner attended six sessions of physical therapy at Concentra Medical Center from December 20, 2021 through January 6, 2022. Px1. Petitioner testified that his pain returned after attending physical therapy. Tr. at 23.

Petitioner followed up with Dr. Ayala on January 7, 2022. Px1. Petitioner reported pain in the lateral sides of the knee. Petitioner reported that he was still experiencing pain when going up the stairs. Dr. Ayala's assessments were right knee contusion and right knee cellulitis. Petitioner was given a knee sleeve. Continued physical therapy was recommended. Petitioner was released to return to work with the restrictions of lifting up to 10 pounds occasionally, pushing and pulling up to 10 pounds occasionally, and sitting 50% of the time.

Petitioner returned to Dr. Ayala on January 14, 2022. Px1. Petitioner reported continued pain, made worse with going up the stairs. Dr. Ayala's assessment was right knee contusion. An MRI was ordered. Use of a wrap bandage and ice were recommended. Petitioner was released to return to work with the restrictions of sitting 100% of the time and wear splint/brace on right lower extremity constantly.

On January 18, 2022, Petitioner underwent a right knee MRI without contrast, which demonstrated a large horizontal tear of the body and posterior horn of the right medial meniscus, with the tear extending close to the posterior meniscal root and mild patellofemoral compartment chondrosis. Px1; Px4. Evaluation of the body of the lateral meniscus was limited by susceptibility artifact from instrumentation at the lateral tibial plateau. The anterior horn and posterior horn of the lateral meniscus were intact.

Petitioner was seen by Dr. Anjali Kalra at Concentra Medical Center on January 21, 2022 for follow up. Px1. Dr. Kalra's diagnoses were right knee contusion and acute right medial meniscus tear. Petitioner was referred to an orthopedic specialist. Petitioner was released to return to work with the restriction of sitting 100% of the time and wear splint/brace on right lower extremity constantly.

On February 1, 2022, Petitioner saw Dr. Craig Westin at Concentra Medical Center for an initial orthopedic consultation. Px1. Crepitus was noted on exam of the right knee. Dr. Westin's diagnosis was persistent right knee pain approaching two months post injury. Dr. Westin noted that he would need to review the MRI findings, but that an arthroscopic meniscus repair and possible meniscectomy after inspection of the lateral meniscus, were indicated because of Petitioner's persistent pain and intolerance to therapy. Petitioner was maintained on light duty restrictions.

Petitioner saw Dr. Mark Gerber at Fullerton Drake Medical Center on February 14, 2022. Px5. Petitioner complained of pain and limitation of the right knee. Petitioner was referred to Dr. Bernard Rerri for orthopedic recommendations. Physical therapy was ordered. Petitioner was released to return to work with the restrictions of light duty only, no kneeling, and no squatting.

On February 23, 2022, Petitioner saw Dr. Bernard Rerri at Delaware Physicians. Px8. Petitioner's chief complaints was right knee pain and locking episodes. Dr. Rerri noted that Petitioner had pain predominantly in the medial compartment of his right knee, had difficulty with stairs, and experienced locking episodes everyday particularly when bending or rising from a seated position. Dr. Rerri noted that Petitioner's symptoms had persisted despite anti-inflammatory medications and physical therapy. Dr. Rerri noted that Petitioner walked slowly with a slight limp. On exam, a positive McMurray sign in Petitioner's right knee medial compartment was noted. Dr. Rerri reviewed Petitioner's right knee MRI and noted that it showed a complex tear of his right medial meniscus and lateral compartment obliterated by artifact from an old foreign body. Dr. Rerri noted that the medial meniscal tear findings correlated with Petitioner's complaints. Dr. Rerri recommended a right knee arthroscopy and partial medial meniscectomy. Petitioner was to continue with physical therapy and was to continue taking his medications. Petitioner was kept off work.

Petitioner followed up with Dr. Gerber on March 14, 2022. Px5. Petitioner was kept off work.

Petitioner attended 13 sessions of physical therapy at Fullerton Drake Medical from February 14, 2022 through March 28, 2022. Px5.

Petitioner returned to Dr. Rerri on April 25, 2022. Px8. Dr. Rerri noted that he reviewed Dr. Shadid's Independent Medical Examination ("IME") report and that he agreed with Dr. Shadid that Petitioner has a symptomatic medial meniscal tear requiring arthroscopic surgery. Dr. Rerri noted that he disagreed with Dr. Shadid's conclusion that Petitioner's right knee condition was unrelated to Petitioner's job. Dr. Rerri noted that it was his view that the medial meniscal tear in Petitioner's right knee was a direct result of the injury at work, particularly as Petitioner had no symptoms in his right knee prior to this period. Dr. Rerri further noted that the MRI findings were consistent with Petitioner's complaints and with the injury. Dr. Rerri also noted that "[i]t is irrelevant if at his age he had some mild degenerative changes in his right knee. Whatever the wear was asymptomatic until this injury happened, and since then has remained symptomatic." Px8. Dr. Rerri noted that it was his view that the only reliable evidence was Petitioner's pain-free right knee and a period of repetitive knee bending, leading to prepatellar bursitis and cellulitis and an additional catastrophic event involving lifting and twisting, affecting his right knee, following which Petitioner was left with persistent medial compartment pain and locking episodes and an MRI showing a medial meniscal tear. Dr. Rerri noted that Petitioner was still waiting for surgical authorization. Additional physical therapy was ordered. Petitioner was kept off work.

Petitioner presented at Midwest Orthopedics at Rush on May 24, 2022 and was seen by Dr. Ghannad for a second opinion. Rx3. Petitioner presented for follow up of bilateral knee pain. Dr. Ghannad noted that Petitioner was last seen on June 22, 2021 and "believed that his right knee pain was likely due to degenerative medial meniscal tear and left knee pain was due to patellofemoral pain and likely patellofemoral osteoarthritis." Dr. Ghannad noted that at his last visit, Petitioner was not interested in physical therapy because of his busy schedule and that good ergonomics at work was discussed and Mobic was prescribed. Dr. Ghannad noted that Petitioner was present for a second opinion regarding the surgical recommendation. Dr. Ghannad noted that at that time, Petitioner was having primarily medial right knee pain that was worse with going up or down stairs and that the pain was constant. Petitioner denied instability, catching, and locking. On exam, a positive McMurray's was noted for the right knee. Petitioner's imaging was reviewed. Dr. Ghannad's diagnosis was patellofemoral osteoarthritis. Treatment options were discussed including surgical consultation regarding meniscal debridement.

Current Condition

Petitioner testified that his right knee hurts at night and that he cannot sleep. Tr. at 30. Petitioner testified that when he goes up stairs, his right knee hurts a lot. Tr. at 30. Petitioner testified that he wants the surgery recommended by Dr. Westin and Dr. Rerri. Tr. at 30.

Petitioner testified that he is still working as an installer at Respondent, and that his coworkers help him. Tr. at 30-31, 41. Petitioner testified that when he was hired at Respondent, he earned $37.00 per hour, and that at the time of arbitration, he was earning $39.00 per hour. Tr. at 41-42.

Respondent's Section 12 Examination Report by Dr. Hythem P. Shadid

Dr. Shadid prepared an IME report dated March 21, 2022, and noted that he evaluated Petitioner on March 10, 2022. Rx1.

Dr. Shadid opined that Petitioner's right knee symptoms of pain and crepitus were not related to his work injury because (1) the work-related injury was cellulitis, not a medial meniscus tear and (2) the MRI appearance of a medial meniscus tear was more consistent with a degenerative delamination tear rather than an acute tear. Dr. Shadid noted that the mechanism of injury was consistent with prepatellar bursitis from extended kneeling over three days that developed into cellulitis which is a common occurrence. Dr. Shadid opined that the cellulitis had resolved and was no longer an active problem. Dr. Shadid opined that a diagnostic arthroscopy was reasonable for the degenerative medial meniscus tear, but it was not related to the December 9, 2021 work injury. Dr. Shadid noted that the tear had been in existence prior to the reported injury. Dr. Shadid opined that Petitioner had reached maximum medical improvement ("MMI") for his work injury.

CONCLUSIONS OF LAW

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

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

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

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

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

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 888 (2007). Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied if the claimant can show that a work-related injury played a role in aggravating or accelerating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient to prove a causal connection between the accident and the claimant's injury. *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 (1982).

The Parties have stipulated to accident. Ax1 at No. 2.

The Arbitrator finds that Petitioner's current right knee condition of ill-being is causally related to the December 9, 2021 injury. The Arbitrator relies on the following in support of her findings: (1) the records of Concentra Medical Center, (2) the records of Rush University Medical Center, (3) the records of Amita Health Resurrection Center, (4) the records of Fullerton Drake Medical Center, (5) the records of Delaware Physicians, and (6) the fact that none of the records in evidence reflect that Petitioner was actively treating for a right knee condition immediately prior to December 9, 2021. The Arbitrator acknowledges that Petitioner complained of bilateral knee pain on June 22, 2021. The treatment records in evidence, however, do not reflect that any diagnostic testing was ordered or that Petitioner was taken off work or placed on restrictions at that time. The Arbitrator notes that at that time, Petitioner declined physical therapy, only work ergonomics were discussed with Petitioner, and Meloxicam was prescribed. The Arbitrator notes that the medical evidence demonstrates that Petitioner did not return for any follow up treatment for his right knee after the June 22, 2021 visit with Dr. Ghannad. The Arbitrator notes that the record demonstrates (1) that Petitioner was in condition of good health immediately prior to December 9, 2021, (2) that Petitioner was able to work full duty and without restrictions immediately prior to the work accident, and (3) consistent complaints and continuous symptomology of the right knee following the December 9, 2021 injury.

The Arbitrator has considered the medical opinions of Dr. Shadid and finds that they do not outweigh the medical opinions of Dr. Rerri. The Arbitrator finds that overall, the record supports Dr. Rerri's opinion as to causation, specifically that Petitioner's right knee condition of ill-being is a result of the injury that Petitioner sustained at work on December 9, 2021. The Arbitrator notes that the record is consistent with Dr. Rerri's opinion that any degenerative changes in Petitioner's right knee were rendered symptomatic following the

December 9, 2021 injury. The Arbitrator further notes that there is no evidence of any reinjury or other intervening event that would sever the chain of causation.

In resolving the issue of causal connection, the Arbitrator also finds that Petitioner is not at MMI for his current right knee condition of ill-being.

Issue J, whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

Consistent with the Arbitrator's prior findings, the Arbitrator finds that the medical services that were provided to Petitioner were reasonable and necessary, and that Respondent has not paid all appropriate charges for all reasonable and necessary medical services. Petitioner claims the following unpaid medical bills: (1) Fullerton Drake Medical (Fee Scheduled Amount-$696.56), (2) Alikai Health (Fee Scheduled Amount-$1,233.84, (3) Prescription Partners (Fee Scheduled Amount-$2,203.29), (4) Flexus Medical (Fee Scheduled Amount-$1,736.42, and (5) Delaware Physicians (Fee Scheduled Amount- $270.49). [See "§8.2 Medical Fee Schedule Agreed Stipulation" attached to Ax1]. As the Arbitrator has found that Petitioner's treatment was reasonable and necessary, the Arbitrator further finds that all bills, as provided in Px5, Px6, Px7, Px8, and Px9, are awarded and that Respondent is liable for payment of these bills, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. [See also "§8.2 Medical Fee Schedule Agreed Stipulation" attached to Ax1]. Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses.

Per the Parties' stipulation, Respondent has or will pay the bill of Northwest Infectious Disease Consultants, as provided in Px3, directly to the provider pursuant to the fee schedule. Transcript of Proceedings on Arbitration ("Tr.") at 10. The Parties further stipulated that Respondent is entitled to a credit for bills paid, as reflected in Respondent's medical payment ledger, Respondent's Exhibit ("Rx") 2. Tr. at 10-11.

Issue K, whether Petitioner is entitled to any prospective medical care, the Arbitrator finds as follows:

Consistent with the Arbitrator's prior findings, the Arbitrator finds that Petitioner is entitled to prospective medical care as recommended by Dr. Rerri. As of February 23, 2022, Dr. Rerri has recommended a right knee arthroscopy and partial medial meniscectomy, which is contemplated as compensable treatment under Section 8(a) of the Act, and therefore, Respondent is responsible for authorizing and paying for same.

Issue L, whether Petitioner is entitled to temporary total disability, the Arbitrator finds as follows:

Petitioner claims that he is entitled to TTD benefits from December 10, 2021 through January 10, 2022 and February 20, 2022 through May 26, 2022. Ax1 at No. 8. Respondent disputes Petitioner's claim for TTD benefits and claims that TTD benefits were owed only from December 10, 2021 through December 16, 2021. Ax1 at No. 8. The Arbitrator notes that the TTD benefits period in dispute is from December 17, 2021 through January 10, 2022 and February 20, 2022 through May 26, 2022.

Consistent with the Arbitrator's prior findings, the Arbitrator finds that Petitioner is entitled to TTD benefits. The record demonstrates that Petitioner was placed on work restrictions beginning on December 11, 2021, and that Petitioner was subsequently kept off work beginning on February 23, 2022. There is no evidence that Respondent accommodated Petitioner's work restrictions during the TTD period claimed by Petitioner. Having considered all the evidence, the Arbitrator finds that Petitioner is entitled to TTD benefits from December 10, 2021 through January 10, 2022 and from February 20, 2022 through May 26, 2022.

Further, based on the Parties' stipulation, Respondent is entitled to a credit in the amount of $12,571.32 for TTD paid by Respondent to Petitioner.

Ana Vazquez

ANA VAZQUEZ, ARBITRATOR

March 28, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC026275
Case Name	Jason J Ott v. Strata Earth Services, LLC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0049
Number of Pages of Decision	17
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Kenneth Lubinski
Respondent Attorney	Francis O'Byrne

DATE FILED: 2/5/2025

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jason J. Ott,

Petitioner,

vs. NO: 16 WC 026275

Strata Earth Services, LLC,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, medical expenses, prospective medical care, Rule 103, claim of error for appeal/erroneous, ruling/offer of proof/judicial error, motion for remand to Arbitrator for Respondent's expert witness testimony, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 3, 2024, is hereby affirmed and adopted.

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

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $1,400.00. 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.

February 5, 2025

MP:yl
o 1/30/25
68

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC026275
Case Name	Jason J Ott v. Strata Earth Services, LLC
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Kenneth Lubinski
Respondent Attorney	Francis O'Byrne

DATE FILED: 6/3/2024

/s/William McLaughlin, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF MAY 29, 2024 5.17%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
19B ARBITRATION DECISION

Jason Ott
Employee/Petitioner

v.

Strata Earth Services, LLC
Employer/Respondent

Case # **16** WC **26275**

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 **McLaughlin**, Arbitrator of the Commission, in the city of **Chicago**, on **April 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. 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 **Is Petitioner entitled to prospective medical treatment**

FINDINGS

On **May 9, 2016**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**104,665.60**; the average weekly wage was $**2,012.80**.

On the date of accident, Petitioner was **36** years of age, ***single*** with **1** dependent children.

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

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

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

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

ORDER

Respondent shall authorize and pay reasonable and necessary medical services associated with the replacement bridge as recommended by Dr. Szeszycki provided in Section 8(a) of the Act.

Petitioner shall pay Petitioner temporary total disability benefits of $1,341.73/week for 1 week, commencing 5/9/16 thru 5/26/16, 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.

Signature of Arbitrator

June 3, 2024

FINDINGS OF FACT

The Petitioner testified that he sustained an injury on May 9, 2016, at approximately 2 p.m. while working for Strata Earth Services. (Tr. 6, 10). Strata is a company that performs soil samples prior to construction. (Tr.11). On the date of the accident, the petitioner was employed by Strata as a Drill Helper. (Tr..11). He was earning $50.32 per hour at the time of the accident and was working 40-50 hours per week. (Tr.18)

On the date of the incident, the petitioner was working at a jobsite in downtown Chicago and was using a drill rig to sample the soil for a construction project. (Tr.11, 12).

The petitioner was standing on a slippery piece of plywood while performing his duties. (Tr.19). He was placing a pipe onto a construction horse. (Tr.17). One end of the pipe was on the horse and the other end was under his arm. The pipe slipped off the construction horse which caused the petitioner to slip on the plywood. As a result, he fell and his chin landed on the pipe, which knocked him unconscious and broke his teeth. (Tr. 20-21).

The petitioner said that he woke up with pain in his neck and chin, spitting teeth, blood, and mud out of his mouth. He looked into the mirror of his truck and saw that the roots of his teeth were sticking out. (Tr. 21,23).

Following this incident, his co-worker asked him to help put the drill rods away and drive the drill rig truck back to the yard, before seeking medical treatment, which took approximately an hour and a half. (Tr.24, 25).

As a result of the accident, the petitioner sustained injuries to five teeth which he had to have extracted. (Tr..23, 34). He had three studs installed in his mouth which are anchors for a denture or bridge that replaces the five teeth that he lost in the accident. (A.34). A portion of this dental work was done incorrectly and now needs to be re-done. (A.34).

MEDICAL TREATMENT

Petitioner initially sought medical treatment at Silver Cross Hospital on May 9, 2016, at approximately 8:00 p.m. Petitioner testified that his jaw was “popping” and “cracking,” making it essentially impossible to move his neck up and down. (TR.31). During this initial visit, the physician reported a history of tripping on plywood and hitting a pole. With that history, the

physician reported a diagnosis of facial contusion/laceration including missing teeth. On May 10, 2016, the following day, Petitioner's teeth were extracted. (TR. 35)

On May 11, 2016, Petitioner followed up with Dr. Bouchelion, D.D.S., at Chicago Dental Implants. (TR.36). Dr. Bouchelion is an oral surgeon who primarily guided the Petitioner's medical treatment he was receiving, as well as being the doctor who performed the grafting and dental implants. Dr. Bouchelion advised the Petitioner which dentists to see and what specific treatment to seek. Dr. Bouchelion listed a history of "fell and broke several teeth." Due to the severity of Petitioners' injuries, Dr. Bouchelion reported that the teeth were not capable of being fixed and ultimately would require extraction. He further opined that future grafts and dental reconstruction would be required for adequate medical outcomes.

On May 17th a bone graft was performed. After gaining authorizations, on June 30, 2016, Petitioner followed up with Dr. Rubis, another dentist referred by Dr. Bouchelion, following the bone graft procedure. (Tr.36).

On July 18, 2016, Petitioner presented to Dr. Rubis from Advanced Family Dental as an emergency with complaints of "severe pain in teeth number 8 and 11." A clinical exam revealed a fracture within the teeth**.**

On December 28, 2016, Petitioner had teeth numbers 11 and 12 removed, and a portion of number 10 removed. On March 28, 2017, Petitioner followed up with Dr. Bouchelion at Chicago Dental Implants. On November 7, 2017, Petitioner followed up with Dr. Bouchelion at Chicago Dental Implants.

On January 18, 2018, Petitioner arrived at Chicago Dental Implants for a recast of the implants. following day, January 19, 2018, Petitioner spoke to Dr. Bouchelion regarding the implants, and arrived at Brookforest Dental. On February 6, 2018, Petitioner elected to proceed with a "flipper" or denture procedure.

On February 19, 2018, Petitioner presented to Dr. Bouchelion at Chicago Dental Implants with a chief complaint of "I can't function. I need to chew." The following day, Petitioner was seen at Chicago Dental Implants for the "flipper" procedure. A flipper is a temporary replacement, cosmetic mouthpiece that slips in and out of the mouth that is to be taken out prior to chewing. (Tr.37). Dr. Bouchelion completed pre-operation procedure and adjustment of denture (flipper).

February, Petitioner was informed that he would be required to have a "gum graft" procedure completed by Dr. Bouchelion. (A.39). Petitioner testified that he didn't have any gum line towards the top of his front teeth, so the oral surgeons needed to take some gum line from the roof of his mouth in order to stitch it to the front of his teeth. (Tr.39).

On May 9, 2019, Dr. Bouchelion opined that Petitioner would require three more implants (teeth number 8, 10, 11) whereby Dr. Williamson would work-up the Petitioner. On June 12, 2019, Petitioner was referred to Dr. Bouchelion by Dr Williamson for grafting and implants. On August 6, 2019, the Petitioner was seen at Chicago Dental Implants, Petitioner reported "finally ready I think, Dr. Williamson wanted me to see you." Dr. Bouchelion noted that future implants are approved.

On March 10, 2020, Dr. Bouchelion noted that Petitioner is ready to see Dr. Williamson pre-op for surgery. On May 4, 2020, Petitioner's chief complaint was that he was getting headaches and sore jaws that start in the morning and gets worse throughout the day. In turn, Petitioner was referred to Dr. Williamson

On January 6, 2021, Dr. Williamson noted that he was waiting until Dr. Bouchelions' work was completed. March 2, 2021, Petitioner stated "still waiting for authorization for surgery." Dr. Bouchelion noted that Dr. Williamson is ready to proceed as soon as the financial component is approved.

On May 7, 2021, Dr. Bouchelion finally installed the implants that Petitioner required at Chicago Dental Implants. On December 7, 2021, Dr. Williamson ordered a maxillary and mandibular

impression. On December 22, 2021, and January 20, 2022, Dr. Williamson performed those impressions.

On May 11, 2022, Dr. Williamson approved Petitioner's crowns. Dr. Williamson also installed Petitioner's bridge. (A.40). Petitioner testified during that time period he was undergoing teeth pain when he chewed. Petitioner testified that he lost 100 lbs. because he was unable to eat as much Petitioner testified that he continues to have problems with the bridge installed by Dr. Williamson. (Tr..42). The list of Petitioners complaints include: clicking up and down , the bridge disconnecting from the metal stud , the bridge wiggles and doesn't feel securely snug , the bridge scraps his gums , he experiences pain in his teeth , onset of TMJ (jaw cracking, jaw locking, headaches) , the left side of his jaw does not match with the right side and he has to shift his jaw for it to line up , his jaw is off-center , there is a difference in color between his real teeth and the bridge his teeth are not aligned and his smile is crooked , and he speaks with a lisp (because of the lisp and crooked smile, Petitioner is not social like he used to be and continues to have excruciating pain. (Tr.42-49).

On June 7, 2023, Petitioner presented to Artistic Dentistry. Petitioner received treatment in reference to replacing all teeth, realigning teeth, completely redoing the job, and shaving of the teeth (Tr.46) (Px. 9).

Petitioner, at the request of Respondent, was examined by Dr. Szeszycki who agreed that the teeth needed to be replaced. Dr. Szeszycki agreed that Petitioner's complaints of pain were due to the treatment rendered by Dr. Williamson.

EVIDENCE DEPOSITION OF DR. SHARON SZESZYCKI

Dr. Szeszycki is retired from the clinical practice of general dentistry. (6). She was retained by the Respondent.

Dr. Szeszycki concluded all teeth were lost as a result of the accident. (Dep.13-14).

Dr. Szeszycki opined that a new bridge needs to be fabricated and installed, tooth number 7 needs to be crowned, the bridge from tooth 8 to 12 and the abutments need to be replaced, that gum tissue may need work done, and in addition. she recommended a temporary bridge. (Dep. 60-67).

The need for this treatment is due to the improper work done by Dr. Williamson. (Dep. 68-71).

CONCLUSIONS OF LAW

(C) Did an accident occur that arose out of and in the course of Petitioner's employment by the respondent?

The Arbitrator finds that the accident arose out of and in the course of the petitioner's employment with Strata Earth Services that resulted in the dental injuries the petitioner sustained. The petitioner's testimony was credible and consistent with the medical records presented in this case as well as with the opinions of Dr. Szesycki, which the Arbitrator finds persuasive.

The petitioner's credible and un-rebutted testimony establishes that he was working for Strata Earth Services on May 9, 2016. On that date, he sustained an accident in which he slipped and fell, and his chin landed on a pipe, which knocked him unconscious and caused the loss of five teeth. (Tr.21).

The medical records also support a finding that the petitioner sustained an accident that arose out of and in the course of his employment with Strata Earth Services. Those records show that he was seen on May 9, 2016, at Silver Cross Hospital. It is reported that the petitioner Tripped on plywood and hit a pole. The diagnosis was facial contusion/laceration, and missing teeth.

The testimony of Dr. Szesycki also supports a conclusion that an accident occurred on May 9, 2016. Dr. Szesycki testified that as a result of the work accident, Mr. Ott sustained injuries to teeth numbers 8, 9, 10, 11 and 12.

Based upon the above facts the Arbitrator finds that the petitioner sustained an injury that arose out of and in the course of his employment with Strata Earth Services.

F. <u>Is the petitioner's current condition of ill-being causally related to the injury?</u>

The Arbitrator notes that even though both parties submitted a Request for hearing sheet (Arb. 1) which indicated that they were in agreement to Causation, the Arbitrator will analyze this issue as both the Respondent and the Petitioner addressed it in their proposals and in their order submitted. Having said that Arbitrator Finds that the petitioner's current condition of ill-being is causally related to the work accident he sustained on May 9, 2016. A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee' injury. *International Harvesier v. Industrial Commission*, 93

III.2d 59, 63-64 (1982). Causal connection between work duties and an injured condition may be established by a chain of events including claimant's ability to perform duties before the date of an accident and inability to perform same duties following date of accident. *Darling v. Industrial Commission,* 176 III.App.3d 186, 530 N.E.2d 1135 (1988).

The chain of events in this matter demonstrates that the Petitioner had a previous condition of good health, an accident, and a subsequent injury resulting in disability, which sufficiently proves a causal nexus between the accident and the Petitioner's injury. This finding is based upon the testimony of the petitioner which the Arbitrator finds credible and consistent with the medical records presented in this case.

The Petitioner's Testimony establishes a causal nexus between the accident and his injuries. He testified that on May 9, 2016, he slipped and fell at a job site and sustained the loss of five teeth. (Tr.21)

The Illinois Worker's Compensation Act was created to protect the health and survival of workers injured in their jobs. *Peoria County Bellwood V. IC 115 ill 2d 524, 529 (1987*).

International Harvester Co. v. IND. COM. 46 Ill. 2d 238, 263 N.E.2d 49 (1970) addressed an issue similar to the one in this case. In *Harvester*, the court stated that it is well-established that where the work injury itself causes a subsequent injury the chain of causation is not broken. (Harper v. Industrial Com., 24 Ill. 2d 103, 108.) International Harvester v. INDUS. COM. 71 Ill. 2d 180 374 N.E.2d 182 (1978).

In this context, the cases have applied a "but for" test, basing compensability for an ultimate injury or disability upon a finding that it was caused by an event which would not have occurred had it not been for the original injury. (See Harper v. Industrial Com., 24 Ill. 2d 103, 108; Shell Oil Co. v. Industrial Com., 2 Ill. 2d 590, 595.) Clear illustrations of this chain of causation relationship are cases where a second injury occurs due to treatment for the first (Shell Oil Co. v. Industrial Com., 2 Ill. 2d 590; Lincoln Park Coal and Brick Co. v. Industrial Com., 317 Ill. 302,) or where a suicidal act is caused by the effects of an original injury. (Harper v. Industrial Com., 24 Ill. 2d 103.)

The "but for" rationale has also been extended to cases where the event immediately causing the second injury was not itself caused by the first injury, yet but for the first injury, the second event would not have been injurious. Thus, a broken leg may be a compensable injury

where it breaks upon stepping out of bed or off a *246 curb, if the break is due to bone weakness caused by the original injury. (Hammond Co. v. Industrial Com., 288 Ill. 262; Bailey v. Industrial Com., 286 Ill. 623.) The injury, followed by infection and amputation of a finger, has been found to have lowered claimant's resistance to tubercle bacilli which caused death, and the causal connection sustained an award of death benefits. Chicago, Wilmington & Franklin Coal Co. v. Industrial Com., 400 Ill. 60.

A somewhat similar application of the "but for" rationale is made in heart attack cases, where the causal connection between employment activity and an ensuing injury the heart attack is at issue. "To come within the statute the employee must prove that some act or phase of the employment was a causative factor in the ensuing injury. He need not prove it was the sole causative factor nor even that it was the principal causative factor, but only that it was a causative factor in the resulting injury." (Republic Steel Corp. v. Industrial Com., 26 Ill. 2d 32, 45.) This "a causative factor" test has been applied as well to the causal connection between a compensable injury and a subsequent heart attack (Proctor Community Hosp. v. Industrial Com., 41 Ill. 2d 537; see also Gudeman Co. v. Industrial Com., 399 Ill. 279), and has been alluded to as the proper test of causal connection between a compensable injury and ensuing disability in a nonheart case. A.O. Smith Corp. v. Industrial Com., 33 Ill. 2d 510, 513.

The "but for" or "a causative factor" test has thus been employed in a variety of instances as the measure of causal connection between compensable injuries and subsequent injuries and disabilities. While other language has been used in many cases (see, e.g., "proximate cause", Boland v. Industrial Com., 34 Ill. 2d 422, 423, American Smelting and Refining Co. v. Industrial Com., 353 Ill. 324, 328, Harrisburg Coal Mining Co. v. Industrial Com., 315 Ill. 377, 378; "causal connection", Livingston Service Co. v. Industrial Com., 42 Ill. 2d 313, 317-18, Gudeman Co. v. *247 Industrial Com., 399 Ill. 279, 280; "directly traceable", Shell Oil Co. v. Industrial Com., 2 Ill. 2d 590, 595; "results from", Douglass and Co. v. Industrial Com., 35 Ill. 2d 100, 104; "arising out of", Postal Telegraph Cable Co. v. Industrial Com., 345 Ill. 349, 352), and some cases do not articulate any standard, the rationale of the "a causative factor" test has been generally applied. Thus, if a nonemployment-related factor is a contributing cause, with the compensable injury, in an ensuing injury or disability, it does not constitute an "independent intervening cause" breaking the causal connection where it is not brought about by claimant's intentional or negligent misconduct. (See 1 Larson, Workmen's Compensation Law (1968 ed.) §

13.00 et seq.) This proposition squares with a reasonable interpretation of the Bunge Brothers case, where the unrelated causative factor was apparently the sole cause of claimant's disability. To the extent the case suggests that compensation must be apportioned to cover only the proportion of a single disability deemed to be due solely to the work injury, where another factor has aggravated the condition without claimant's fault, we disapprove of the case. In our judgment compensation for subsequent injury or disability is properly awardable whenever, but only whenever, the existing employment-connected condition is a causative factor in producing either the subsequent injury or the subsequent disability.

Zick . Ind. Comm, 93 Ill.2d 353, 93 Ill.2d 353 (1982) does not change this analysis. In *Zick*, the petitioner claimed to have sustained an injury to the sesamoid bones of her left great toe as a result of an accident at work for which she underwent multiple surgeries. Those surgeries led to an additional condition, an entrapment of the medial plantar nerve, which had no relationship to the initial injury but was alleged to have been due to malpractice. The petitioner's doctor stated that the left toe condition was caused by trauma. The respondent's doctor testified that this condition was congenital, that the injury has no relationship to the accident, that there was no need for the surgery, and that the surgery may be due to overtreatment.

In addressing a malpractice argument, the *Zick* court specifically stated that the issue before the arbitrator was not whether her condition was mistreated by her doctors, but instead was whether the condition was due to trauma or to a congenital condition. In this case, the court found that the condition was due to a congenital condition, not due to trauma. In reaching its conclusion, the court did, however, in dicta stated that where treatment results in a disability unrelated to the injury sustained during employment, it would be unjust to hold the respondent liable. The Illinois Supreme Court held that the petitioner's congenital condition and entrapment of the medial plantar nerve were not caused by injuries the petitioner sustained in the accident as they were due to congenital conditions. *Zick* does not state that medical malpractice breaks a causal connection.

The instant case is distinguishable from Zick as the petitioner's dental condition was clearly caused by the work accident. In *Zick*, the condition that the plaintiff was treated for was a congenital condition not caused by the accident. The malpractice was alleged to have resulted in an unrelated condition in *Zick*, thererfore, the Court found that the unrelated congenital condition

was the sole cause of claimant's disability and did not rule on the malpractice. Here, it is undisputed that the condition that the petitioner was treated for, his dental injuries, were caused by the work accident. The condition allegedly mistreated by Dr. Williamson is the exact same condition that the petitioner sustain as a result of the accident.

Furthermore, there is no finding of malpractice against Dr. Williamson. The only fact in the case is whether the dental work performed by Dr. Williamson needs to be redone, which is a fact that is not in dispute.

Moreover, under Section 5(b) the Respondent is free to pursue a claim against a responsible third party if the petitioner does not do so. That section states:

> *In the event the employee or his personal representative fails to institute a proceeding against such third person at any time prior to 3 months before such action would be barred, the employer may in his own name or in the name of the employee, or his personal representative, commence a proceeding against such other person for the recovery of damages on account of such injury or death to the employee, and out of any amount recovered the employer shall pay over to the injured employee or his personal representatives all sums collected from such other person by judgment or otherwise in excess of the amount of such compensation paid or to be paid under this Act, including amounts paid or to be paid pursuant to paragraph (a) of Section 8 of this Act, and costs, attorney's fees and reasonable expenses as may be incurred by such employer in making such collection or in enforcing such liability. (Source: P.A. 101-6, eff. 5-17-19.)*

If the Respondent believes that it can successfully pursue a medical malpractice claim against Dr. Williamson, it can do so. This does not negate its responsible to pay workers compensation benefits for an injury that is clearly due to a work accident.

In this case, prior to the incident, the petitioner was fully performing his job duties as a Drill Helper. An incident occurred on May 9, 2016, after which he underwent a course of medical treatment for his dental injuries. A portion of that treatment now needs to be redone. The Arbitrator finds that the improper dental treatment performed by Dr. Williamson does not break the causal connection as that treatment was directly related to injuries the petitioner sustained in the accident. The Arbitrator has carefully reviewed and considered all medical evidence along with all testimony. The Arbitrator concludes that Petitioner has proven by the

preponderance of the evidence that a causal connection exists between the petitioner's current condition of ill-being and the work accident he sustained on May 9, 2016.

(G) What were the Petitioner's Earnings?

The Petitioner testified that he earned $50.32 per hour at the time of the accident and was working 40-50 hours per week, which equates to an average weekly wage of between $2,012.80 and $2,516.00. (A.18). This testimony was not contradicted. The Arbitrator finds that the petitioner's average weekly wage is $2,012.80, which is $50.32 multiple by 40 hours per week.

(J) Were the medical services that were provided to the petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonably and necessary medical services?

The Arbitrator finds that the medical treatment that the petitioner received is causally related to the work accident he sustained on May 9, 2016, and that the medical bills that were submitted as Petitioner's Exhibit 11 constitute reasonable and necessary medical treatment pursuant to Section 8(a) of the Act. Section 8(a) of the Act states that the employer shall provide and pay 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.

The treatment rendered by Silver Cross, Chicago Dental Implants, Brook forest Dental, Dr. Williamson, Dr. Rubis, Dr. Logan, and Lockport Dentistry, were reasonably required to relieve the effects of the injuries the petitioner sustained on May 9, 2016. The Petitioner testified that following the May 9, 2016, accident, he underwent treatment on a regular and consistent basis.

Dr. Szesycki agreed that the treatment was reasonable and necessary. She said that that while treatment resulted in a less than desirable result, it was nevertheless appropriate. (Dep.69). Dr. Szesycki stated that the work done by Dr. Williamson was done because of injuries Mr. Ott sustained in the accident. (Dep. 68).

(Px. 11) contains the medical bills that the Petitioner incurred for treatment. With respect to the bills, the Arbitrator finds that the bills constitute reasonable and necessary medical treatment pursuant to Section 8(a) of the Act.

Based on the above, the Arbitrator awards the petitioner the medical expenses contained in (Px. 11) pursuant to the medical fee schedule in Section 8.2 of the Act.

(O) Is Petitioner entitled to prospective medical treatment?

The Arbitrator finds that because of the conclusions already discussed above, the respondent shall be responsible for payment of the following treatment that was recommended by Dr. Szesycki and is listed in the treatment plan of Artistic Dentistry, which consists of the following:

- The fabrication and installation of a new bridge.
- A crown on tooth number 7.
- Replacement of the abutments.
- Any necessary work to the gum tissue.
- A temporary bridge.
- A splint or night guard.
- Referral to a TMJ specialist.

The medical records and credible testimony of Dr. Szesycki support a finding that the petitioner is entitled to prospective medical treatment. She testified that the need for this treatment is due to the improper work done by Dr. Williamson. The work done by Dr. Williamson was done as a result of injuries Mr. Ott sustained in the accident. She said that Dr. Williamson's treatment was appropriate but resulted in a less than desirable result. (Dep. 68-69).

Arbitrator finds that the opinions offered by Dr. Szesycki are credible, and persuasive, and therefore adopts those conclusions Therefore Respondent shall be responsible for the authorization and payment of the treatment, as recommended by Dr. Szesycki.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC004622
Case Name	Kathleen Collins v. J-H Alliance Inc. dba The UPS Store
Consolidated Cases	
Proceeding Type	Remand from the Cook County Circuit Court
Decision Type	Commission Decision Remand Arbitration
Commission Decision Number	25IWCC0050
Number of Pages of Decision	30
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Raymond Asher
Respondent Attorney	Courtney Schoch

DATE FILED: 2/5/2025

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KATHLEEN COLLINS,

Petitioner,

vs. NO: 21 WC 004622

J-H ALLIANCE INC., d/b/a THE UPS STORE,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Illinois Workers' Compensation Commission ("Commission") pursuant to a remand from the Cook County Circuit Court, case number 2023 L 050465, entered March 28, 2024. The Circuit Court, after being fully briefed and apprised of the facts, law and premises, reversed the Decision and Opinion of the Commission regarding the issue of concurrent employment for the purpose of calculating Petitioner's average weekly wage at the time of the accident, and remanded the matter to the Commission with instructions to "include wages earned from Collins' employment with Sunline in calculating her Average Weekly Wage." *Collins v. Illinois Workers' Comp. Comm'n, et. al*., No. 2023 L 050465 (Cir. Ct. Cook County, March 28, 2024). The Appellate Court subsequently dismissed their appeal for want of jurisdiction. *Collins v. Illinois Workers' Compensation Comm'n, et.al.* (J-H Alliance, Inc., d/b/a The UPS Store, Appellant), No. 1-24-0946WC (Ill. September 2024) (First District unpublished order).

Background

On March 21, 2022, Arbitrator Charles Watts issued a Decision finding that the Petitioner sustained accidental injuries arising out of and in the course of her employment on October 22, 2020, wherein she sustained an injury to her right hand and wrist. The Arbitrator awarded temporary partial disability ("TPD") benefits from November 22, 2021, through December 9, 2021, a period of 2-3/7 weeks. The Arbitrator further awarded temporary total disability ("TTD") benefits, from October 23, 2020, through November 19, 2021, and again from December 9, 2021, through the date of trial, March 21, 2022, totaling 70 weeks, holding that Respondent shall receive credit for benefits paid.

In the Conclusions of Law, the Arbitrator noted that Respondent shall have credit for $18,781.19 for TTD paid and $392.40 for TPD paid. The Arbitrator noted that Respondent shall also receive credit for $198,315.23 paid in medical expenses. The Arbitrator concluded, however, that Petitioner failed to prove she had concurrent employment at the time of the accident, and calculated Petitioner's average weekly wage rate as $372.14, corresponding to the minimum benefit rate of $266.67. *Collins v. J-H INC., d/b/a THE UPS STORE*, Ill. Workers' Comp. Comm'n 21 WC 004622 (September 2, 2022).

On review, the Commission affirmed and adopted the Arbitrator's Decision except modified the Petitioner's average weekly wage rate at J-H Alliance Inc., d/b/a The UPS store to $404.79, corresponding to a TTD rate of $269.87 and modifying the TPD and TTD awards accordingly. Commissioner Simonovich dissented and would have reversed the Decision of the Arbitrator finding that Petitioner met her burden of proving that she had concurrent employment. *Collins v. J-H INC., d/b/a THE UPS STORE*, Ill. Workers' Comp. Comm'n, NO. 23 IWCC 0345.

Conclusions of Law

In accordance with the Circuit Court Remand Order, after considering the entire record, and being advised of the facts and law, the Commission affirms and adopts the Arbitrator's Statement of Facts and modifies the Issues of "(O) Concurrent Employment", and "(G) What Were Petitioner's Earnings" in the Conclusions of Law and affirms and adopts the Arbitrator's Conclusions of Law with respect to Issues "(J) Has Respondent Paid All Appropriate Charges For Reasonable And Necessary Services," "(K) Temporary Benefits In Dispute," "(M) Temporary Benefits In Dispute" and "(N) Is Respondent Due Any Credit."

The Commission modifies the Arbitrator's Conclusion of Law in "Section (O) Concurrent Employment" finding that Petitioner has sustained her burden of proving concurrent employment pursuant to the reasoning in the Circuit's Court's remand. In coming to this Conclusion, the Circuit Court held the following:

> The Court finds that the Commission's determination that Collins was not working concurrently at UPS and Sunline was against the manifest weight of the evidence. The evidence was uncontested that UPS knew at the time of Collins' hiring that she would be working concurrently at Sunline. The evidence is also uncontested that at the time of her accident, Collins remained employed by Sunline, but on furlough subject to recall. But for a (hopefully) once in a lifetime global pandemic, which effectively shut down international travel, Collins would have continued to work for both Sunline and UPS, with increased or reduced hours at each employer, depending on the season. Moreover, the evidence was clear that but for her accident, Collins would have returned to Sunline and worked concurrently at UPS as she intended before the pandemic and the accident intervened. See *Flynn,* 211 Ill. 2d at 561 (If the facts support finding that the employment relationship would have played a part in the claimant's future earnings "but for the injury," the future earnings must be considered in the award).

The Illinois Supreme Court in *Flynn,* citing the Pennsylvania Supreme Court's decision in *Triangle Building Center v. Workers' Compensation Appeal Board (Linch),* 560 Pa. 540, 542 (2000), adopted a test or rule as follows: "an employment relationship which had temporarily been severed due to layoff could 'constitute concurrent employment' so long as the relationship 'remains sufficiently intact such that the claimant's past earning experience remains a valid predictor of future earnings loss.'" 211 Ill. 2d at 560 *(quoting Triangle Building Center,* 560 Pa. at 549.) Here, the evidence was uncontested that at the time of the accident, Collins's status with Sunline was on furlough subject to recall. The only evidence of Collins' employment status with Sunline was that once full time work was available, she would return to Sunline. The Commission's decision failed to take into account this evidence and the extraordinary effect of the COVID-19 pandemic. The Commission understandably cited the number of months the furlough lasted to determine that Collins failed to prove that she remained employed with Sunline. As the dissenting Commissioner noted, this was not a typical layoff; it was caused by a global pandemic that shut down international travel.

In addition, the Commission's finding that Section 10 does not apply based upon UPS's lack of knowledge of concurrent employment at the time of the accident was also against the manifest weight of the evidence as it created a requirement not found in the statute. The Commission held Collins needed to establish that UPS knew she was being paid by Sunline at the time of the accident. (Arb Decision, p. 16). In so finding, the Commission misconstrued the holding of the appellate court's decision in *Bagwell v. Illinois Workers Compensation Commission (Nestle USA, Inc.),* 2017 IL App (4th) 160407WC, where the court held that an employer did not have knowledge of its injured employee's alleged "concurrent employment." There, the employer knew that the employee performed pastoral duties at his church, but did not know that he was paid by the church. The appellate court held that to prove knowledge of employment, the employer must know that the employee was engaged in "paid work." The *Bagwell* court stressed the employer's knowledge of paid work because it was "reasonable for the employer to assume that the claimant performed those services on a *volunteer basis." Id.* at, 29 (Emphasis added). Here, there is no question Collins was compensated for her work at Sunline.

Contrary to the Commission's finding, here, Section 10 requires only knowledge of such - employment *"prior to the injury."* 820 ILCS 305/10 (West 2008) (Emphasis added.). The testimony here clearly met that standard. When Collins was hired at UPS, the owner knew that Collins was also employed at the airport and that her hours would vary between the two employers depending on the season. In fact, in the weeks before the COVID-19 shutdowns in March 2020, Collins had informed UPS that she would be increasing her hours at the airport and decreasing her hours at UPS. Thus, there was overwhelming evidence that UPS knew of Collins' concurrent employment "prior to the accident." *Collins v. Illinois Workers' Comp. Comm'n, et. al*., No. 2023 L 050465 (Cir. Ct. Cook County, March 28, 2024).

The Commission further modifies the Arbitrator's Conclusions of Law in "Section (G) What Were Petitioner's Earnings" by striking the second paragraph and substituting the following: Petitioner earned gross wages of $17,810.65 in the 44 weeks/22 pay periods preceding the date of accident working for Respondent J-H Alliance, Inc., d/b/a The UPS Store resulting in an average weekly wage (AWW) rate of $404.79. The Commission further finds Petitioner is entitled to average weekly wages earned with Respondent Sunline Services, Inc., in the amount of $352.88. The combined wages equal $757.67, representing Petitioner's AWW rate at the time of the accident, with a corresponding TTD rate of $505.11.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on September 2, 2022, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Petitioner sustained her burden of proving concurrent employment, and her AWW rate is $757.67.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary partial disability benefits of $434.59/week for 2-3/7 weeks, commencing November 22, 2021, through December 9, 2021, as provided in Section 8(a) of the Act. Respondent shall be provided a credit for temporary partial disability benefits that have been paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $505.11 per week for a period of 70 weeks, commencing October 23, 2020, through November 19, 2021, and December 9, 2021, through March 21, 2022, the date of the arbitration hearing, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any. Respondent shall be provided a credit of $28,289.24 for temporary total disability and temporary partial disability, and other benefits that have been paid.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $8,225.00. 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.

February 5, 2025
O012825
KAD/bsd
42

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Maria E. Portela*
Maria E. Portela

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC004622
Case Name	KATHLEEN COLLINS v. J-H ALLIANCE, INC., D/B/A THE UPS STORE
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	24
Decision Issued By	Charles Watts, Arbitrator

Petitioner Attorney	Raymond Asher
Respondent Attorney	Courtney Schoch

DATE FILED: 9/2/2022

THE INTEREST RATE FOR THE WEEK OF AUGUST 30, 2022 3.23%

/s/Charles Watts, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Kathleen Collins
Employee/Petitioner

v.

J-H Alliance Inc., d/b/a The UPS Store
Employer/Respondent

Case # **21** WC **4622 (Chicago)**

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 **Watts**, Arbitrator of the Commission, in the city of **Chicago**, on **March 21, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **10/22/20**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**17,810.65**; the average weekly wage was $**372.14**.

On the date of accident, Petitioner was **68** 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 $**18,781.19** for TTD, $**392.40** for TPD, $**0** for maintenance, and $**9,115.65** for other benefits, for a total credit of $**28,289.24**.

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

ORDER

Temporary Partial Disability
Respondent shall pay Petitioner temporary partial disability benefits of $161.57/week for 2 3/7 weeks, commencing 11/22/2021-12/9/2021, as provided in Section 8(a) of the Act. Respondent shall be provided a credit for temporary total disability benefits that have been paid.

Temporary Total Disability
Respondent shall pay Petitioner temporary total disability benefits of $266.67/week for 70 weeks, commencing 10/23/2020-11/19/2021 and 12/9/2021-03/21/2022, date of trial, as provided in Section 8(b) of the Act. Respondent shall be provided a credit for temporary total disability benefits that have been paid.

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

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

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

SEPTEMBER 2, 2022

Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

KATHLEEN COLLINS,	)	
	)	
Employee/Petitioner,	)	
	)	Case Number 21 WC 4622
v.	)	Arbitrator Watts
	)	
J-H ALLIANCE INC., d/b/a THE UPS STORE	)	
	)	
Employer/Respondent.	)	

RIDER TO MEMORANDUM OF DECISION OF ARBITRATOR

STATEMENT OF FACTS

Petitioner worked for respondent employer, J-H Alliance, Inc., d/b/a The UPS Store at the time of injury on October 22, 2020. (T. 7). Accident is not in dispute. On the date of accident, Petitioner worked at The UPS Store. While she was carrying a box to the back of the store, she tripped on a rug, fell on the concrete floor, and the box she carried landed on her right wrist. (T. 20-21). Petitioner's continued treatment is undisputed at the time of trial.

The main issue is concurrent employment at the time of injury, with all other disputed issues stemming from the issue of concurrent employment. Petitioner maintains that she was employed by both J-H Alliance, Inc., d/b/a The UPS Store, and maintains that she was also employed by Sunline Services at the time of injury on October 22, 2020, although she was furloughed by Sunline Services in March of 2020. (T. 7-9, 12-13).

The crux of the concurrent employment dispute hinges on Petitioner's furlough by Sunline Services in March of 2020 and what respondent employer J-H Alliance, d/b/a The UPS

Store knew about Petitioner's other employment with Sunline Services at the time of the injury on October 22, 2020. (T. 55-57).

Testimony of Kathleen Collins, Petitioner:

Petitioner managed a UPS Store in Chicago prior to June 2019, a completely different employer than J-H Alliance, Inc., d/b/a The UPS Store of Oak Park. (T. 7-8, 11). Petitioner identified the current employer J-H Alliance, Inc. d/b/a The UPS Store in her testimony as The UPS Store or The UPS Store of Oak Park.

Petitioner testified that she began working for Sunline Services in April 2019, a contract company providing gate and ticket employees to Lufthansa airline. (T. 7-9). She identified her Application for Employment with Sunline Services within Respondent's Exhibit 1, pages 26-28. (T. 37). Petitioner sought full or part-time work with open availability any day of the week, any shift. (T. 37-38). Petitioner considered Sunline Services her primary employer, working between 32 and 40 hours per week. (T.10).

Petitioner testified that she began work at The UPS Store in Oak Park two months after she began working with Sunline Services. (T.7). She applied to work at The UPS Store in Oak Park in person with C.J. Quist. (T. 10-11). Petitioner testified she made C.J. Quist aware of her employment at Sunline Services (T. 11). Petitioner testified she made Sunline Services aware of her employment at The UPS Store in Oak Park. (T. 12).

She worked seven days per week between the two jobs with Sunline Services and The UPS Store in Oak Park, until she was furloughed from Sunline Services in March of 2020 due to the pandemic. (T. 12-13). The last date that she physically worked at Sunline Services was in March of 2020. (T. 31). Approximately five months after the initial furlough, Petitioner was offered part time work at Sunline Services, yet she declined the offer of part time employment.

(T. 15-16). She turned in her badge at Sunline Services during the conversation with her supervisor regarding return to work. (T. 31). Declining the offer to return to work did not affect her furloughed status. (T. 16).

After the March 2020 furlough, she has not received compensation from Sunline Services. (T. 31). She has not physically returned to work at Sunline Services. (T. 32). She did not have a work schedule with Sunline Services in October 2020. (T. 32).

On the date of accident, October 22, 2020, she was carrying a box to the back of the store when she tripped on a rug, fell on the concrete floor, and the box she carried landed on her right wrist. (T. 20-21). Petitioner testified that she remained under medical care. (T. 21). She had surgery to her right wrist and three surgeries on her right hand. (T. 21).

Petitioner applied for unemployment with the Illinois Department of Unemployment, indicating that she had been furloughed from Sunline Services. (T. 17). She indicated to the Illinois Department of Employment Security that she also worked at The UPS Store in Oak Park. (T. 17-18). She received unemployment in April 2020 through July 15, 2020, receiving approximately $290.00 per week. (T. 18-19). Petitioner initially testified that she received unemployment until July 2020, and then upon gentle correction by her attorney, clarified that she received unemployment until July 2021. (T. 19). Unemployment terminated when she was called back to work at Sunline Services but could not work. (T. 19).

Petitioner receives Social Security compensation. (T. 24). Petitioner received unemployment insurance compensation from April 2020 through July 2021. (T. 18-19). Petitioner received compensation via indemnity from Travelers' adjusters. (T. 22-24, 33). Petitioner also received compensation weekly from C.J. Quist, respondent employer. (T. 24, 33).

The Travelers indemnity payments were separate payments from the compensation issued directly from C.J. Quist, respondent employer. (T. 33-34).

Petitioner returned to work at The UPS Store in Oak Park on November 20, 2021 for about two and a half weeks. (T. 25-26).

Testimony of C.J. Quist, Owner and Franchisee of J-H Alliance, d/b/a The UPS Store:

C.J. Quist is the owner and franchisee of J-H Alliance, d/b/at The UPS Store. (T. 50). The business is a small family business with between five and ten employees. (T. 50).

Petitioner proposed in a social conversation with C.J. Quist that Petitioner needed a little extra money, and Petitioner offered to come help C.J. Quist at The UPS Store. (T. 53). C.J. Quist testified that Petitioner worked at the airport and needed additional income. (T. 51). C.J. Quist hired Petitioner in May 2019 for a customer service/cashier part-time position because she was short staffed and needed the extra help. (T. 51-52).

At the time of hire, C.J. Quist had to work around Petitioner's schedule at her other job. (T. 53). At the time of hire, Petitioner's hours at The UPS Store varied dependent on the season. (T. 52). The UPS Store's busy season was the airline's slow season. (T. 52). C.J. Quist did not need Petitioner to work as much in the summer, she needed Petitioner more in the winter as the winter was The UPS Store's busy season. (T. 52). Petitioner would normally work four to twelve hours per week in the summer at The UPS Store. (T. 52). In the peak season in December, Petitioner would work around forty hours per week at The UPS Store. (T. 52).

C.J. Quist recalled a conversation with Petitioner in March 2020 that her airline busy season was about to begin, and Petitioner would have to reduce her hours at The UPS Store. (T. 54). After St. Patrick's Day in 2020, Covid began in earnest. Shortly after that Petitioner's hours

had gone to full time for a week or two at the airline. (T. 54-55). Petitioner's hours then reduced at Sunline Services due to restriction on foreign travel. (T. 54-55).

To C.J. Quist's knowledge, Petitioner did not return to work with her job at Sunline after the furlough. (T. 55). To C.J. Quist's knowledge, Petitioner did not work for pay at her other job after the furlough. (T. 55). C.J. Quist testified that to her knowledge, the other job asked a few times if Petitioner was available for a call back to work. (T. 44). C.J. Quist testified that her understanding was the Petitioner was no longer an employee for Sunline Services, however, she qualified that she did not understand the definition of furlough. (T. 44). To her, furlough was somewhere between "you're still an employee" and "we hope to call you back." (T. 44).

To C.J. Quist's knowledge, she did not have to consider the impact of a second job when scheduling Petitioner for work at The UPS Store after Petitioner's furlough. (T. 56). C.J. Quist did not have any limitations in scheduling Petitioner for work at The UPS Store after March 2020. (T. 56). C.J. Quist did not have limitations in scheduling Petitioner in July 2020. (T. 56). She did not have limitations in scheduling Petitioner for work at The UPS Store in October 2020.

On the date of accident, October 22, 2020, to C.J. Quist's knowledge, Petitioner was not performing work for compensation for another employer besides The UPS Store. (T. 57). It was C.J. Quist's understanding that as of last year, Petitioner lost her job at Sunline Services. (T. 77). If Petitioner's status at Sunline Services had changed in the last few months, they had not discussed it. (T. 77). C.J. Quist did not know Petitioner's current furlough status. (T. 78).

C.J. Quist identified Respondent's Exhibit 2 as the form she filled out regarding Petitioner's earnings prior to the date of accident. (T. 58-60).

C.J. Quist testified that she continued to pay Petitioner every pay period after the date of injury. (T. 47). C.J. Quist identified Respondent's Exhibit 3 as a report of all Petitioner's wages since her date of hire per year, from 2019 through year-to-date 2022. (T. 60).

C.J. Quist testified that Respondent's Exhibit 3 showed all the hours Petitioner has worked, in addition to the payments C.J. Quist has been giving her since the date of accident. (T. 61). She has been paying Petitioner one-third of her average weekly wage at the time of the accident. (T. 61). She paid the extra third while Travelers paid two-thirds. (T. 61). She felt a moral obligation that as Petitioner had an accident at the store, that if she had not been injured, she would have made her full paycheck. (T. 62). She did not understand the two-thirds rule under workers' compensation, and felt it was the right thing to do to make up the difference. She anticipated at the time that Petitioner would be back to work by Christmas. (T. 62). C.J. Quist had budgeted to pay Petitioner the extra third, so she did so. (T. 62-63). C.J. Quist did not replace Petitioner at work as she expected Petitioner to come back to work quickly. (T. 63). She paid Petitioner a bonus for hours worked in the pandemic. At the time of trial, the last payment was made on March 18, 2022. (T. 65). C.J. Quist testified that to her knowledge, Petitioner received both payments from Travelers as indemnity and from C.J. Quist. (T. 65).

C.J. Quist identified an example of how she calculated the additional payments of one-third the average weekly wage in Respondent's Exhibit 4. She confirmed that Petitioner was not working during those periods. (T. 68). C.J. Quist identified Respondent's Exhibit 5 as schedules posted on the bulletin board in the employee area, including hiring a new employee. (T. 69). Petitioner is identified initially as "KC Jr" and later as either "Katie," or "Kate." (T. 70).

C.J. Quist identified Respondent's Exhibit 8 as the download from a mobile app used for time sheet program since July 2021. This document illustrated that Petitioner worked November 22, 2021, November 23, 2021, November 29, 2021, November 30, 2021, and December 6, 2021.

Testimony of Ingrid Perrino, Sunline Services:

Ingrid Perrino testified that she is the president of Sunline Services (T. 79). Sunline Services is an airline handling company that provides manpower to international airlines in Chicago. (T. 79). Ms. Perrino hired Petitioner. (T. 80). Petitioner worked for Sunline Services in 2019 and 2020. (T. 81). Petitioner was furloughed in March 2020. (T. 81-82). Petitioner remains on furloughed status. (T. 82).

Sunline Services offered Petitioner part-time work in July 2020. (T. 85). Specifically, Ms. Perrino identified her statement within Respondent's Exhibit 1, that "[w]hen our flights started coming back in July 2020, Kate was unable to return to work, as we only had part time to offer." (T. 93). Ms. Perrino testified that Petitioner did not accept the part-time position in July 2020 because she needed more money to pay her bills. (T. 93). Ms. Perrino indicated that Petitioner said, "I can't do part time, but if you have full time, let me know." (T. 93).

Ms. Perrino indicated that flights came in two or three times per week, indicating between four and twenty hours could have been offered. (T. 86). She also testified that with three flights, it would been between twelve to fifteen hours, perhaps twenty hours at most. (T. 94). She testified that if Petitioner worked a double shift, she could have twenty-four hours. (T. 94). Petitioner declined part-time work in July 2020, but the declination of the part-time work did not adversely affect furlough status. (T. 86).

Ms. Perrino identified Respondent's Exhibit 1 as a copy of Petitioner's personnel record. (T. 89). Ms. Perrino pulled Petitioner's file. (T. 89). Ms. Perrino identified her signature on

Respondent's Exhibit 1. (T. 89). Ms. Perrino identified Petitioner's Application for Employment on page 26. Ms. Perrino identified that Petitioner indicated full or part-time employment on her Application. (T. 90). Ms. Perrino testified that page 61 was a printout of Petitioner's Payroll. (T. 90-91). Petitioner's last date worked was March 22, 2020. (T. 91). This was Petitioner's last date worked, as far as Ms. Perrino knew. (T. 91). To Ms. Perrino's knowledge, Petitioner had not physically returned to work following the March 22, 2020 date. (T. 91-92).

(O) CONCURRENT EMPLOYMENT:

The Arbitrator chooses to discuss the issue of concurrent employment first, as all other disputed issues hinge on the findings related to the issue of concurrent employment. Petitioner argues that she was concurrently employed with both J-H Alliance, Inc. d/b/a The UPS Store as well as Sunline Services at the time of her injury on October 22, 2020 and therefore argues in favor of an average weekly wage reflective of Petitioner's earnings at both The UPS Store as well as Sunline Services. Respondent argues against concurrent employment and argues in favor of an average weekly wage reflective solely based upon Petitioner's earnings at The UPS Store. Respondent argues in favor of the plain and ordinary meaning of Section 10 of the Workers' Compensation Act ("Act").

The primary goal of statutory construction is to ascertain and effectuate the legislature's intent. Modern Drop Forge Corp. v. Industrial Comm'n, 284 Ill.App.3d 259, 219 Ill.Dec. 586, 671 N.E.2d 753 (1996). The best indicator of legislative intent is the plain and ordinary meaning of the statutory language. Illinois Graphics Co. v. Nickum, 159 Ill.2d 469, 203 Ill.Dec. 463, 639 N.E.2d 1282 (1994). We will not resort to extrinsic aids for construction in lieu of applying such meaning. See Bogseth v. Emanuel, 166 Ill.2d 507, 211 Ill.Dec. 505, 655 N.E.2d 888 (1995). We may only go beyond the words of the statute itself if we cannot discern the intent

of the legislature from the statutory language. See Dodaro v. Illinois Workers' Compensation Comm'n, 403 Ill. App. 3d 538, 545, (2010); City of Chicago v. Indus. Comm'n, 331 Ill. App. 3d 402, 403, 770 N.E.2d 1208, 1209 (1st Dist. 2002).

Section 10 of the Workers' Compensation Act ("Act") provides that:

> The compensation shall be computed on the basis of "Average Weekly Wage" which shall mean the **actual earnings** of the employee in the employment **in which he was working at the time of the injury** during the period of 52 weeks ending with the last day of the employee's last full pay period immediately preceding the date of injury . . . When the employee is working concurrently with two or more employers and the respondent employer has knowledge of such employment prior to the injury, his wages from all such employers shall be considered as if earned from the employer liable for compensation. 820 ILCS 305/10 (Last amended June 28, 2013) (emphasis not in the original).

Respondent argues that under the plain meaning of Section 10 of the Workers' Compensation Act, Petitioner did not have actual earnings in which she was working at the time of injury from Sunline Services and therefore concurrent employment is not appropriate. Under City of Chicago, "the **plain meaning** of the term "earnings" warrants an affirmative answer. 331 Ill. App. 3d 402, 404 (1st Dist. 2002).

Petitioner attempts to bypass the assessment of "actual earnings" at the time of accident with her argument focusing on Petitioner's employment status with Sunline Services at the time of injury. Respondent argues there is no real dispute that Petitioner did not have actual earnings from Sunline Services at the time of injury on October 22, 2020, and that under the plain meaning of the Act, concurrent employment is not appropriate in the present case.

Petitioner relies heavily on Jacobs v. Industrial Commission, 269 Ill. App. 3d 444 (2d Dist. 1995). In Jacobs, the claimant's sole argument on appeal was concurrent employment, impacting the calculation of average weekly wage. In Jacobs, the court acknowledged the Act does not define the term "concurrently," and assessed that the term "concurrently" must be

assessed in context. In Jacobs, the claimant worked for Village Apartments as a maintenance man. He also worked as a union journeyman sheet metal worker. The claimant testified that he had been laid off from his sheet metal job for two or three weeks at the time of the accident. The court in Jacobs assessed that (1) the claimant was employed as a sheet metal worker for *most* of the 52 weeks prior to his injury except for *two short layoff periods* that are common in the industry, (2) his part-time job at Village Apartments was a supplement to the claimant's regular work and primary source of income as a sheet metal worker, (3) Village Apartments was aware of claimant's concurrent employment as a sheet metal worker, and (4) claimant was readily available and subject to recall for work as a sheet metal worker even though at the time of injury he had been *temporarily laid off for two or three weeks*. Jacobs, 269 Ill. App. 3d at 448.

The Arbitrator recognizes that the court in Jacobs relied heavily on the factual context of the underlying claim. The court in Jacobs referenced multiple times that the claimant worked both jobs for the majority of the 52 weeks prior to accident, with only a temporary and short layoff period in the two or three weeks prior to the date of accident. The court in Jacobs further considered the claimant's future return to work date.

The fact pattern in the present claim is dramatically different from the fact pattern in Jacobs. Here, Petitioner's nearly **seven-month** long furlough at the time of injury is a significantly longer period than the "short layoff" of a temporary nature, a **period of weeks**, considered in Jacobs. The Arbitrator turns to additional caselaw that may provide additional guidance.

The Supreme Court of Illinois considered the issue of concurrent employment in 2004 in Flynn v. Industrial Commission, 211 Ill. 2d 546, 549 (2004). In Flynn, the Supreme Court considered the phrase "working concurrently with two or more employers," in context of

workers in seasonal industries. The claimant in Flynn drove asphalt trucks, was a member of a Teamsters union, and had employment dependent on the weather. During the winter off-season, Petitioner remained on call with asphalt companies, and was *sometimes* called to work in the off-season. The Supreme Court recognized that in Jacobs, a claimant may be concurrently employed by two employers even during *temporary* layoff from one of his jobs. The claimant in Jacobs was primarily employed as a sheet-metal worker and injured while clearing snow. He had been laid off from his sheet-metal work for **two-three weeks**. The Flynn court assessed that each of the claimants in Jacobs and Flynn were performing part time work during a layoff period from the main employment. However, each claimant remained available and subject to recall for work when it was available. The Flynn court assessed that the part time job was a supplement to the primary source of income, not a replacement for it.

The Flynn court further assessed that the factors in Jacobs were not an exhaustive or exclusive list in considering concurrent employment. Flynn, 211 Ill. 2d at 558. The Flynn court further considered whether the claimant was ready and willing to be recalled at any time, and whether the claimant intended to return to work as soon as the opportunity presented itself. Id. The Flynn court, much as the Jacobs court, further relied on the *temporary* nature of the layoff, as evidenced by the recurrent nature of the profession with return to work from temporary layoffs routinely over two decades prior to accident. Id. at 561. The Flynn court concluded:

> It is undisputed that claimant was laid off from one of his jobs at the time that he suffered the injury in his other job. But claimant's long and consistent history of rehire after layoff, in the seasonal business in which he was employed, in addition to the facts that he was subject to rehire at any time during the layoff and that he did return to that employment after the layoff, lead to the conclusion that his employment relationship was not wholly severed such that his earnings from that employment became irrelevant to prediction of his lost future earnings.

The Arbitrator considers that while Jacobs and Flynn involved temporary layoffs of a routine if not seasonal nature, both claimants in those cases had in past actually returned to work following temporary layoff.

Here, Petitioner's open-ended layoff with no expectation of a firm return to work date, seasonally or otherwise, in the **seven months** prior to the alleged work accident is not directly comparable to *temporary*, *seasonal*, and *short-term* **weeks**-long layoffs considered in Jacobs and Flynn.

The Flynn court also relied upon the claimant's *intention* to return to work as soon as an opportunity presented itself. Here, Petitioner and Sunline Services both testified that Petitioner had an opportunity to return to work in July 2020, approximately five months prior to the October 2020 date of accident, and declined the return to work. The Arbitrator turns to additional caselaw that may provide additional guidance.

The Illinois Workers' Compensation Commission further considered the issue of concurrent employment in Tucker v. Rush University Medical Center, 11 IL. W.C. 08197 (Ill. Indus. Com'n June 19, 2015). Specifically, the Commission in Tucker considered the knowledge of the respondent employer at the time of injury:

> The Appellate Court in Village of Winnetka v. Industrial Commission, 250 Ill.App.3d 240, 621 N.E.2d 150, 190 Ill. Dec. 281 (1993), found that when calculating average weekly wage with concurrent employment . . . the manner of calculation is to "fairly represent the claimant's earning power at the time of his injury." 621 N.E.2d at 153. Jacobs v. Industrial Comm'n, 269 Ill. App. 3d 444 (2nd Dist. 1995) goes further into the Court's analysis of concurrent employment. In Jacobs, the Petitioner was injured working for an apartment complex while on scheduled layoff as a sheet metal worker. The Court noted that the Act doesn't define "concurrently" and therefore, the decision then turns to what the Court determines the word to mean in the context of the case. It noted that the underlying purpose of the Act is to provide financial protection for workers whose earning power is interrupted or terminated due to injuries arising out of their employment. Id, at 447. In Jacobs, the Petitioner worked at the apartment complex even when he was not laid off from sheet metal work, and his sheet

> metal work regularly was subject to short layoff periods which did not sever his employment relationship. The Commission also notes the finding of the Court in Zanger v. Industrial Comm'n, 306 Ill. App. 3d 887, 240 Ill. Dec. 80, 715 N.E. 2d 767 (4th Dist. 1999). In Zanger, the Court found that although average weekly wage is calculated over a 52 week period, the earnings considered are those from the employment in which claimant ***was working when injured***; thus, the claimant's earnings from a prior employer over the prior 52 weeks, **for which he did not work after he was laid off and was not working at the time of the injury, could not be considered in determining his average weekly wage.** (emphasis added). *Id.* at 892. Section 10 of the Act defines the computation of a Petitioner's average weekly wage as "the actual earnings of the employee in the employment in which he was working *at the time of the injury* during the period of 52 weeks...divided by 52. 820 ILCS 305/10 (emphasis added). Petitioner worked concurrently at Norwegian and Respondent Rush for a period of four weeks from October 23, 2010 to November 20, 2010. Petitioner terminated her employment with Norwegian approximately nine weeks prior to the accident date and there is no evidence in the record that it was a temporary layoff or that she intended to resume employment at Norwegian. The Commission finds no evidence in the record to support Petitioner's claim for concurrent employment wages to be included in the calculation of her benefit rates.

Tucker considers the distinction of concurrent employment when working both positions at the time of accident. Tucker also considers "temporary layoff" in context of the intent to resume employment. Tucker relies heavily on the analysis in Zanger, where the claimant did not work after his layoff with the alleged concurrent employer. Zanger considered relevant the fact that claimant did not work for the alleged concurrent employer and the respondent employer concurrently *at the time of injury*. The Zanger court also declined to consider claimant a seasonal employee when there was no evidence in the record that the layoff was temporary or that Petitioner in fact intended to resume employment.

In the present case, there is similarly no evidence that Petitioner's furlough or layoff at Sunline Services is temporary. While Petitioner maintains she is yet an employee with a furloughed status at Sunline Services, the record also reflects that Petitioner declined to return to work at Sunline Services in July 2020, prior to the alleged date of accident. She declined to

return to work with Sunline Services prior to the October 2020 work accident at The UPS Store. The Arbitrator turns to additional caselaw that may provide additional guidance.

The Commission has also denied concurrent employment where a claimant initially had concurrent employment but left the concurrent job for increased hours at the respondent employer. In Kelly Claypool v. Medstar Ambulance, 17 IL.W.C. 00211 (Ill. Indus. Com'n May 22, 2019), the Commission relied on the fact that claimant testified that she had no intention of returning to her prior concurrent employer. The Commission distinguished the truly seasonal nature of the work in Jacobs from Claypool and stated the relationship in Claypool was terminated and "wholly severed." This was also evidenced by Petitioner cashing out paid time off. Here, Petitioner testified that when she declined to return to work in July 2020, she also returned her work badge during that same conversation with Sunline Services. Petitioner testified that she has not been scheduled to return physically to work since March of 2020. As in Claypool, the record thus supports the premise that even prior to October 2020 work accident, Petitioner neither intended nor in fact availed herself of the opportunity to return to work at Sunline Services.

The Arbitrator considers Bagwell v. Illinois Workers' Compensation Commission (Nestle USA, Inc.), 2017 IL App (4th) 160407WC, ¶ 28, 84 N.E.3d 1149, 1155. In Bagwell, the claimant worked for Nestle and alleged concurrent employment from his pastoral duties at a church. The Appellate Court considered what constituted "knowledge of employment." It considered what defined employment. In Bagwell, employment is defined as *paid work*. In Bagwell, "employment" is considered to be payment for work or services rendered. The Bagwell court determined the claimant's wages as a pastor should only be included as wages earned pursuant to Section 10 *only if the employer knew the claimant received payment for his work as a pastor.*

The court assessed that even though the employer knew the claimant was a pastor during the relevant period, *there was no evidence the employer knew he was compensated for that service.* The claimant argued the employer would not have known about his payment for his ministry because it was "none of their business." The Bagwell court found:

> In the alternative, the claimant argues that it is irrelevant whether the employer knew that he was paid for his religious services because section 10 merely requires the employer to have knowledge of the claimant's other "employment," not the wages he earned from such employment. **We do not find this argument persuasive. As noted above, the word "employment" means "paid work" or "work for hire." Thus, the legislature clearly intended section 10's concurrent wage requirements to apply only if the employer knew that the claimant had other paid work at the time of his work injury.** (Bold emphasis not in the original.) Bagwell, 2017 IL App (4th) 160407WC at ¶ 30.

The Arbitrator finds the Bagwell analysis to be compelling regarding the language and terminology used when considering the issue of concurrent employment. The Commission has found the legislature intended concurrent wage requirements to apply if the employer knew that the claimant had other paid work at the time of work injury.

Here, the respondent employer, C.J. Quist as owner/franchisee of J-H Alliance d/b/a The UPS Store, testified that on the date of accident, October 22, 2020, to C.J. Quist's knowledge, Petitioner was not performing work for compensation for another employer besides The UPS Store. (T. 57). To C.J. Quist's knowledge, Petitioner did not return to work with her job at Sunline after the furlough. (T. 55). To C.J. Quist's knowledge, Petitioner did not work for pay at her other job after the furlough. (T. 55). C.J. Quist did not have any limitations in scheduling Petitioner for work at The UPS Store after March 2020. (T. 56). C.J. Quist did not have limitations in scheduling Petitioner in July 2020. (T. 56). C.J. Quist did not have limitations in scheduling Petitioner for work at The UPS Store in October 2020.

The Arbitrator finds that the present case is different than either Jacobs or Flynn. The Arbitrator finds persuasive analysis in the cases of Tucker and Bagwell. Based on the analysis described above, the Arbitrator finds Petitioner failed to prove that respondent knew Petitioner was being compensated for her position at Sunline Services at the time of accident. The record does not support that Petitioner was in fact paid for her position of Sunline Services at the time of accident, nor had she been paid for said position in the seven months prior to the alleged date of accident.

(G) WHAT WERE PETITIONER'S EARNINGS:

As the Arbitrator found Petitioner failed to prove that Respondent knew Petitioner was being compensated for her position at Sunline Services at the time of accident and thereby denied concurrent employment, the Arbitrator now finds that Petitioner's earnings are correctly calculated based solely on her earnings from J-H Alliance d/b/a The UPS Store.

Petitioner earned gross wages of $17,810.65 in the 47.86 weeks preceding the date of accident. The Arbitrator finds an average weekly wage of $372.14, corresponding to the minimum benefit rate of $266.67.

The Arbitrator notes that while Petitioner testified that she received compensation from unemployment, that unemployment benefits are not considered in the calculation of earnings or average weekly wage. The Arbitrator considers the following. In Zanger, the court considered that unemployment compensation was neither earnings nor wages. The court found that unemployment benefits are excluded from the calculation of average weekly wage as the purpose of the Unemployment Insurance Act is to provide security for and alleviate burdens of involuntarily unemployed workers and their families. Zanger, 306 Ill. App. 3d at 892.

(J) HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR REASONABLE AND NECESSARY SERVICES:

Petitioner testified that on the date of accident she tripped on a rug, fell on the concrete floor, and a box landed on her right wrist. Petitioner testified that she has had surgery to her right wrist and three surgeries to her right hand. She is still under medical care.

On the Request for Hearing Stipulation Sheet, line 7, Petitioner did not enumerate that any specific medical bills remain unpaid. The Arbitrator notes that Petitioner did not allege in her testimony that any bills remained unpaid. She did not testify that any of her care is denied. Petitioner's 19(b), Petitioner's Exhibit 9, listed that whether any medical bills were in dispute was unknown. Petitioner's Exhibit 5, Midwest Orthopaedics at Rush records as well as Petitioner's Exhibit 6, Dr. Fernandez's progress notes, confirms that Petitioner's treatment has been authorized, and appear to have been admitted onto the record for the purpose of identifying what temporary benefits are in dispute, discussed in subsequent section. Respondent's Exhibit 7 indicates that $198,315.23 has been paid by Respondent for medical at the time of trial.

Based upon this information, the Arbitrator determines that no dispute or controversy exists regarding whether Respondent has paid all appropriate charges for reasonable and necessary services. Respondent shall receive credit for amounts paid.

(K) TEMPORARY BENEFITS IN DISPUTE:

The Arbitrator recognizes that the parties largely agree regarding the period of disability, not to characterization of disability. Petitioner alleges entitlement to temporary total disability from October 23, 2020 through the date of trial, at approximately 73 and 3/7 weeks. Respondent alleges approximately the same period but differs in the categorization of that period. Respondent alleges 70 weeks of temporary total disability from October 23, 2020 through November 19, 2021 and again from December 9, 2021 through the date of trial. Respondent

alleges 2 3/7 weeks of temporary partial disability from November 22, 2021 through December 9, 2021.

The November 22, 2021 through December 9, 2021 is the period at issue. Respondent identifies this period as temporary partial disability, whereas Petitioner alleges this is more appropriately temporary partial disability under Mechanical Devices v. Industrial Commission, 344 Ill. App. 3d 752, 760 (2003) (A claimant's earnings of occasional wages does not *necessarily* preclude a finding of temporary total disability).

The Arbitrator notes that Mechanical Devices involved a situation of the payment of TTD benefits versus the wholesale termination of benefits. The Illinois Workers' Compensation Commission clarified the application of Mechanical Devices in Kuzmar v. Hinckley Springs, where the Commission assessed that Mechanical Devices included concurrent employment, and where the claimant had returned to work at the concurrent employer with a job that was within his restrictions but did not return to work with the Respondent employer as that job was outside his restrictions. In Kuzmar, the Commission analyzed that temporary total disability was awarded in Mechanical Devices because the claimant had not returned to his job with his respondent employer. 04 I.I.C. 0741 (Ill. Indus. Com'n November 17, 2004).

This case is distinguishable from Mechanical Devices based upon the analysis in Kuzmar. Respondent's Exhibit 8 details the period at issue in the present case as a period Petitioner had temporarily **returned to work** for The UPS Store, the respondent employer. Petitioner worked 17.13 hours between November 22, 2021 and December 8, 2021, working two to three times per week.

Further, respondent employer, testified that Petitioner's hours prior to injury ranged between four to twelve hours per week, and in peak season, possibly up to forty hours. (T. 52).

Respondent's Exhibit 5 detailed the work schedule from May 2019 through October 2020. Between May 16, 2019 through August 2019, Petitioner worked on average once a week, primarily 4-5 hours per week. From October 5, 2020 through October 10, 2020, Petitioner was scheduled to work twice, or for about 16 hours. The week prior to the accident, the week of October 12, 2020 through October 17, 2020, Petitioner was scheduled for approximately three days a week, or about 20 hours.

The Arbitrator awards Petitioner temporary total disability benefits from October 23, 2020 through November 19, 2021 and again from December 9, 2021 through the date of trial, 70 weeks. Respondent shall receive credit for benefits paid.

The Arbitrator awards Petitioner temporary partial disability from November 22, 2021 through December 9, 2021, 2 3/7 weeks. Respondent shall receive credit for benefits paid.

(M) SHOULD PENALTIES OR FEES BE IMPOSED UPON RESPONDENT:

The Arbitrator declines to impose penalties and fees against Respondent since Respondent had a reasonable basis to dispute the issues of concurrent employment as well as the issues stemming from concurrent employment, including average weekly wage, temporary total disability, and temporary partial disability. Further the Arbitrator notes that the Petitioner received additional payments from C.J. Quist beyond what she was entitled to under the Act.

(N) IS RESPONDENT DUE ANY CREDIT:

The Arbitrator orders that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injuries.

The Arbitrator takes notice that Respondent shall receive credit for $18,781.19 for TTD, $392.40 in TPD, as noted in Respondent's Exhibit 6. The Arbitrator takes notice that Respondent shall receive credit for the $198,315.23 paid in medical expenses.

The Arbitrator takes notice that Respondent employer paid additional compensation on a weekly basis following the date of accident through the date of trial that were not required under the Act, per C.J. Quist's testimony, confirmed by Petitioner's testimony, and detailed in Respondent's Exhibit 3. Respondent employer paid Petitioner additional compensation due to her own compulsion of a moral obligation with the anticipation that Petitioner would eventually return to work. Respondent paid the following additional compensation beyond what the Act requires under Respondent employer's payroll system, in addition to the indemnity paid by Travelers Insurance. Respondent shall receive a credit for the additional compensation in the amount of $9,115.65.

Check Date:	**Check Amount:**	**Check Date:**	**Check Amount:**
11/3/2020	$ 654.64	7/16/2021	$ 232.66
11/18/2020	$ 276.12	8/3/2021	$ 269.77
12/3/2020	$ 308.89	8/16/2021	$ 232.66
12/18/2020	$ 271.79	9/3/2021	$ 269.77
12/31/2020	$ 379.30	9/18/2021	$ 269.75
1/18/2021	$ 193.13	10/3/2021	$ 232.67
2/3/2021	$ 232.67	10/18/2021	$ 269.76
2/18/2021	$ 232.66	11/3/2021	$ 232.67
3/3/2021	$ 232.66	11/18/2021	$ 232.66
3/18/2021	$ 232.66	12/3/2021	$ 394.45
4/3/2021	$ 306.88	12/17/2021	$ 294.80
4/18/2021	$ 232.66	1/3/2022	$ 243.75
5/3/2021	$ 269.76	1/18/2022	$ 232.87
5/18/2021	$ 232.66	2/3/2022	$ 269.98
6/3/2021	$ 232.66	2/18/2022	$ 269.97
6/18/2021	$ 399.76	3/3/2022	$ 195.78
7/3/2021	$ 269.77	3/18/2022	$ 269.96
Total:			**$9,372.60**

The Arbitrator notes that Respondent's Exhibit 8 details the period at issue in the present case as a period Petitioner had temporarily **returned to work** for The UPS Store, the respondent employer. Petitioner worked 17.13 hours between November 22, 2021 and December 8, 2021, working two to three times per week. Respondent's Exhibit 3 details that Petitioner received compensation for hours worked at $15.00 per hour, amounting to approximately $256.95 across two pay periods. Respondent shall receive the credit for additional compensation paid in excess of what is owed under the act by subtracting the $256.95 from the payments of $9,372.60, for a total credit of $9,115.65

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC004010
Case Name	Douglas Donaldson v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0051
Number of Pages of Decision	20
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Thomas Bowman

DATE FILED: 2/5/2025

/s/Deborah Simpson,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Donald Donaldson,
Petitioner,

vs.

NO: 22 WC 4010

State of Illinois Graham Correctional Center,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of nature and extent, accident, medical expenses, permanent disability, temporary disability and whether the Arbitrator improperly granted Petitioner's Motion to Reopen Proofs after proofs were closed 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 finds as to the reopening of proofs, that if it was an error, it is deemed a harmless error.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 5, 2024, is hereby affirmed and adopted.

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

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

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.

February 5, 2025

o: 1/15/25
DLS/rm
046

/s/*Deborah L. Simpson*
Deborah L. Simpson

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC004010
Case Name	Douglas Donaldson v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Thomas Bowman

DATE FILED: 1/5/2024

/s/ Jeanne AuBuchon, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF JANUARY 3, 2024 5.045%

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

January 5, 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

Douglas Donaldson
Employee/Petitioner

v.

SOI / Graham C.C.
Employer/Respondent

Case # **22** WC **004010**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Springfield, Illinois**, on **November 28, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **01/13/2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**89,070.30**; the average weekly wage was $**1,712.89**.

On the date of accident, Petitioner was **57** years of age, ***married*** with **0** dependent children.

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

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

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

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

ORDER

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

Respondent shall pay Petitioner permanent partial disability benefits of $937.11/week for 56.32 weeks, because the injuries sustained caused the 9% loss of the left hand, 9% of the left arm, the 5% loss of the right arm and the 2% loss of the right hand as provided in Sections 8(e)9 and 8(e)10 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 05/23/2022 through 11/28/2023, and shall pay the remainder of the award, if any, in weekly payments.

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

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

Jeanne L. PuBuchon
Signature of Arbitrator

January 4, 2024

PROCEDURAL HISTORY

This matter proceeded to trial on November 28, 2023, on all disputed issues. 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 bilateral carpal and cubital tunnel syndromes; 3) liability for medical bills incurred; and 4) the nature and extent of the Petitioner's injuries.

FINDINGS OF FACT

The Petitioner was employed with the Illinois Department of Corrections since 2003. (T. 15) For the first 13 years, he worked as a correctional officer at Graham Correctional Center, performing numerous duties, such as control room officer, day room officer, personal property officer. (Id.) He said he opened and closed and turned a lot of keys. (T. 15-16) He said he was on the wing or gallery 80 percent of the time. (T. 16) He said that during lockdowns, his duties increased significantly because he any time he had interaction with inmates, he had to key open the doors. (Id.) He said that in the Reception and Classification Unit or Restrictive Housing unit, he had to remove padlocks and key open doors. (Id.) He said he had to cuff and uncuff inmates, perform property box searches and shakedowns, escort inmates and restrain inmates who were attempting to resist. (T. 16-17) He said he primarily used his hands to perform those tasks, and the activities required force, grip and tension. (T. 17) The Petitioner was promoted to correctional sergeant, working in that position about a year performing the same tasks plus writing reports. (T. 18)

The Petitioner was then promoted to staff development specialist working at the training academy, where he trained correctional officers from May 2017 until October 2020. (T. 19, 28) He described the job as "hands on" and said he showed trainees such things as how to properly

place restraints, restraining an individual, methods of joint manipulation. (T. 19-20) On cross-examination, he said 60-70 percent of his work was classroom training. (T. 31)

In October 2020, the Petitioner returned to Graham Correctional Center as a correctional counselor. (T. 20) He said that during the COVID pandemic, he spent more time in the cell houses because inmates were not out of their cells. (T. 21) He also did not have inmate assistance in cleaning his office and putting up supplies. (Id.) He said the use of his hands increased. (Id.)

Maj. Trevor Wright, as a representative of the Respondent, was present during the Petitioner's testimony. Maj. Wright testified that that he could not think of anything in the Petitioner's testimony regarding his job duties that was not true. (T. 49) He said he was "not really" familiar with the Petitioner's job duties as a counselor, but had a general idea. (T. 49-50) He said the job was "not really" hand intensive. (T. 50) He said currently the Petitioner did not go to the different buildings throughout the compound – or very seldom at most. (Id.)

Prior to working for the Respondent, the Petitioner was an electrician for the U.S. Army for 11½ years as an electrician with the last four years as a construction engineering supervisor. (T. 10-11) He said he used hand tools and power tools and pulled wire. (T. 10) He characterized the job as hand-intensive. (T. 11) After his discharge, he continued to work as an electrician then as a production engineer doing drafting and computer work designing over-the-road semi-trailers. (T. 12-13) He then worked as a production manager for a parts manufacturer and a sports equipment manufacturer developing and building production lines. (T. 13-14)

The Petitioner submitted a six-page, handwritten job description form listing various activities for the jobs he had that was consistent with his testimony but contained few details. (PX7) He also submitted a five-page, typed job description and a three-page, typed work history timeline that detailed his physical actions while working for the Respondent and his prior

employers. (Id.) These tasks included lifting property boxes weighing 20-100 pounds, lifting food trays, pushing food carts, lifting mail bags, lifting 30-pound "writ boxes," lifting weapons and ammo boxes weighing about 15 pounds, lifting boxes of supplies weighing 20 or more pounds, and unlocking and locking padlocks on cells in segregation for feeding and showers. (Id.) He wrote that over 400 times per shower day, he was turning his wrists with force unlocking doors and chuckholes. (Id.)

The Respondent submitted employee timesheets for the Respondent. (RX2) No testimony was elicited to explain the entries on the timesheets. The Respondent also submitted position descriptions for Correctional Counselor that described the position's essential functions, qualifications and conditions of employment. (RX4)

The Petitioner testified that five years before seeking medical treatment in 2022, he developed symptoms in his hands and arms. (T. 22) He said his hands would tingle and wake him up at night. (Id.) He said he had to shake out his hands to help temporarily. (Id.) He said he didn't seek treatment then because he thought it was maybe arthritis. (T. 35) He said he tolerated it by taking Aleve but got to the point where he couldn't take it anymore. (T. 23) He acknowledged having high blood pressure for which he took medication and was hospitalized in February 2021. (T. 38) He said he had never been told by a doctor that he was obese, never injured his arms or wrists in the past, had used tobacco and rode motorcycles several years ago. (T. 39) He denied bowling or weightlifting. (T. 39-40)

He contacted his attorney because other people at work said he could "get it fixed." (Id.) Counsel sent him to Dr. Matthew Bradley, an orthopedic surgeon at Metro-East Orthopedics. (T. 23-24)

On January 13, 2022, the Petitioner presented to Dr. Bradley's office with symptoms of tingling, pain and numbness in his bilateral elbows and wrists. (PX3) The Petitioner reported that his thumb had the worst symptoms and that his fifth digit was numb the majority of the time. (Id.) Dr. Bradley noted that Petitioner had been a correctional officer for 13 years and that he had noticed symptoms for five years that significantly worsened during the past year and a half due to lockdown at his facility and the significant increase in repetitive use and keying. (Id.) The Petitioner had used anti-inflammatory medications and previously was able to shake his hands to alleviate his symptoms, but this no longer worked. (Id.)

X-rays of the bilateral upper extremities showed no acute fractures, dislocation or significant degenerative changes. (Id.) A physical examination revealed tingling and decreased sensation to light touch along the ulnar nerve distribution bilaterally, positive Tinel's sign at the right elbow, numbness and tingling over the median nerve distribution bilaterally and positive Tinel's sign and Phalen's testing to the bilateral wrists. (Id.)

Dr. Bradley's diagnosed bilateral carpal and cubital tunnel syndrome, with the right being symptomatically worse than the left. (Id.) He opined that the Petitioner's 13-year history as a correctional officer, including the increase in activity during the past year and a half, contributed to and was causally related to the development of his conditions. (Id.) Dr. Bradley ordered electromyography and nerve conduction studies (EMG/NCS) and recommended continuing anti-inflammatory medication, a home exercise program and wearing braces at night. (Id.) The studies were performed that day by Dr. Ravi Yadava and showed bilateral carpal syndrome, bilateral cubital tunnel syndrome and Guyton's canal syndrome at the left wrist. (PX4) He stated that the level of severity was early to mild for carpal tunnel syndrome, mild for Guyton's canal syndrome and mild to moderate for left cubital tunnel syndrome. (Id.)

The Petitioner returned to Dr. Bradley on February 10, 2022, and indicated that he experienced no change in his symptoms and that his nonoperative modalities helped only mildly. (PX3) Dr. Bradley discussed the EMG/NCS results and surgery with the Petitioner. (Id.) The Petitioner wished to proceed with surgery. (Id.)

On May 4, 2022, Petitioner underwent a left ulnar neurolysis at the elbow and a left open carpal tunnel decompression with Dr. Bradley. (PX3, PX5) CUT???Intraoperatively, Dr. Bradley noted moderate adhesions to the nerve just posterior to the medial epicondyle with constriction distally at the fascia. (Id.) He noted that the carpal tunnel was very severe, with severe flattening to hourglass shaping of the median nerve, and the transverse carpal ligament was very thickened. (Id.)

The Petitioner underwent a Section 12 examination on May 20, 2022, by Dr. Patrick Stewart, a hand surgeon at Sarah Bush Lincoln. (RX5) Dr. Stewart's report synopsized the Petitioner's medical records from Dr. Bradley and Dr. Yadava, which he shared with the Petitioner. (Id.) Dr. Stewart stated that the Petitioner's history taken was similar in that he reported several years of numbness and tingling. (Id.) Dr. Stewart reported that on specific questioning in reference to his position as a counselor, he asked about the Petitioner's activities on a day-to-day basis, and the Petitioner declined to respond. (Id.) The Petitioner acknowledged that he refused to answer because he had already answered those questions and provided the information to the Respondent In the work comp packet he had to fill out. (T. 41-42)

Dr. Stewart was unable to fully examine the Petitioner's left hand and arm because he was still bandaged from surgery. (Id.) On the right side, he found no tenderness over the medial and lateral epicondyle, radial tunnel, pronator teres interval or ulnar nerve at the elbow. (Id.) Compression was equivocal. (Id.) Tinel's sign, compression, Phalen's testing and reverse

Phalen's testing were negative at both the carpal tunnel and ulnar tunnel were negative. (Id.) A1 pulleys were benign throughout and there was no evidence of de Quervain's tenosynovitis or intersection syndrome. (Id.) There was no thenar or first dorsal interossei atrophy, and strength was normal. (Id.) Dr. Stewart noted tenderness over the anatomic snuffbox, scaphoid tubercle and CMC joint. (Id.) He then stated there was no tenderness over the anatomic snuffbox. (Id.) He said Watson shuck testing caused no instability or tenderness dorsally, and the Petitioner had no tenderness over the scapholunate or lunotriquetral interval. (Id.) Pisotriquetral grind was negative, the distal radioulnar joint was stable and nontender, and there was no tenderness over the hamulus. (Id.)

Dr. Stewart diagnosed status post left carpal tunnel and cubital tunnel release and right mild cubital tunnel syndrome. (RX5) He opined that there was not a causal relationship between the Petitioner's work as a counselor and the development of the compression neuropathies. (Id.) He said there was no indication that the Petitioner would be required to perform a prolonged forceful grasp or prolonged elbow flexion/hyperflexion or repetitive elbow flexion and extension in the performance of his duties as a counselor that would place him at an increased risk for developing cubital tunnel syndrome. (Id.) He stated that the carpal tunnel syndrome was based on a comparison of the conduction velocities and latencies in deference to the radial nerve, but the absolute numbers were normal. (Id.) He said that on physical exam that day, the Petitioner had no provocative signs over the median nerve at the right wrist and limited findings the elbow. (Id.)

Regarding treatment, Dr. Stewart said he did not see an indication in the medical record for the 18 X-rays performed – noting that the Petitioner had not suffered any trauma and did not have swelling of the joints. (Id.) He said the diagnosis of carpal tunnel was essentially made purely on a clinical basis from the standpoint that the EMG/NCS findings were normal and only a

difference was noted in comparison to the radial nerve. (Id.) He said there was no conservative treatment for the cubital tunnel. (Id.)

At a follow-up visit with Dr. Bradley on May 23, 2022, the Petitioner had very mild stiffness in his hand and wrist, but he had complete resolution of his numbness and tingling. (PX3) Dr. Bradley noted that the Petitioner continued to have symptoms of carpal and cubital tunnel on the right. (Id.) The Petitioner wished to return to work and to treat his right upper extremity non-operatively. (Id.) Dr. Bradley indicated Petitioner could return to work without restrictions on May 30, 2022. (Id.)

Dr. Bradley testified consistently with his reports at a deposition on February 17, 2023. (PX6) He said carpal and cubital tunnel can be acute but significantly more of the time, they are cumulative and don't show up for many months or years after a repetitive action is started and worsen with time. (Id.) He explained that in repetitive kinds of conditions, there is usually a latency period where a person will start an activity and not have symptoms, later get some intermittent symptoms and then the symptoms become more constant, severe and painful. (Id.) Dr. Bradley acknowledged that during the Petitioner's career with the Respondent, he held multiple job titles with changing activities, and said in all of his jobs, he has had repetitive activities. (Id.)

As to Dr. Stewart's criticism of the number of X-rays he took, Dr. Bradley stated that the standard of care for an orthopedic patient who has symptoms in and around a joint is to X-ray the joint above and below. (Id.) He said carpal and cubital tunnel can be caused by many things, including tumors, bone spurs and arthritic changes in joints and in the tunnels. (Id.) He said that without X-rays, he did not think one could come to a causation opinion of what is truly causing or not causing these conditions. (Id.) Regarding the EMG/NCS, Dr. Bradley said they showed mild

carpal tunnel syndrome bilaterally and moderate cubital tunnel syndrome bilaterally. (Id.) He said that in discussing surgery versus nonoperative treatment, the Petitioner reported having used ibuprofen, home exercises and wearing braces, but these did not change his symptoms. (Id.) He said his interoperative findings were that of standard carpal and cubital tunnel with some thickened ligaments and scar tissue. (Id.)

During this deposition, Dr. Bradley revealed that he reviewed the three-page, typed work history timeline and the five-page typed job description prepared by the Petitioner. (Id.) The Respondent's counsel had not seen the documents and lodged an objection, at which time the deposition was stopped. (Id.) The deposition was reconvened on June 21, 2023, for the Respondent's counsel to continue her cross-examination. (Id.) Dr. Bradley said he did not know what portion of a shift or period of time the Petitioner performed the tasks he described. (Id.) He said the Petitioner did not physically demonstrate how he held his hands and arms while doing computer work. (Id.) He said he would not pick out one particular job or activity the Petitioner performed that was any more causative than any of the others, but it was the multiple different repetitive activities he did during his employment with the Respondent. (Id.)

Also on cross-examination, Dr. Bradley acknowledged that the Petitioner had comorbidities of age, borderline obesity and high blood pressure. (Id.) He said that although most patients want to have surgery performed on both sides right away, it is fairly common for them to wait a year or two between surgeries because they're able to function after getting surgery on one side. (Id.)

Dr. Stewart testified consistently with his report at a deposition on September 12, 2023. (RX6) He said the Petitioner had other risk factors for developing carpal or cubital tunnel syndrome – elevated body mass index (BMI), hypertension and age. (Id.) Regarding his criticism

of Dr. Stewart not attempting sufficient conservative measures, he said that commonly if there is a clinical diagnosis of carpal tunnel syndrome and not electrodiagnostic reports, one could do carpal tunnel injections to obviate the need for surgery. (Id.) He also did not know the size of the keys the Petitioner used. (Id.)

Dr. Stewart testified that he toured the facility in spring 2022 and opened and closed doors, locks and padlocks. (Id.) He felt the locks required nominal force to unlock and lock them. (Id.) Petitioner's counsel objected to this testimony. (Id.) This objection is taken up below.

On cross-examination, Dr. Stewart acknowledged that repetitive trauma is cumulative in nature. (Id.) He said that because he did not examine the Petitioner prior to his surgery, he could not comment on whether the Petitioner had left carpal or cubital tunnel syndrome. (Id.) He explained that in forming his causation opinions, he looks at the job duties for a person going back to a year before he or she started developing symptoms because looking at prior work activities for years prior to developing symptoms is not clinically reasonable or appropriate. (Id.)

Dr. Stewart also stated that he was not provided either Dr. Bradley's deposition or the TYPED? job description that was produced during that deposition. (Id.) He said his assumption was that the Petitioner was working as a correctional counselor for his entire tenure with the Respondent. (Id.)

The Petitioner testified that the surgery provided significant relief. (T. 25) He said he did not have surgery on his right hand because he did not want to use his time off from work. (Id.) He said that after returning to work after surgery, he was able to perform his job satisfactorily. (T. 37) The Petitioner still works for the Respondent as a correctional counselor. (T. 9) He said his left hand was doing well and he no longer dropped things and had all the strength he used to have.

(T. 45) He said his right hand was the same as his left was before surgery and he notices his little finger falling asleep. (T. 45-56)

CONCLUSIONS OF LAW

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

The Arbitrator notes objections by the Petitioner to testimony elicited from Dr. Stewart in his deposition about visiting the prison. Although this information was not contained in his report, it was apparent from the deposition that Petitioner's counsel was aware of this visit from prior cases involving corrections officers. The conclusion he drew from opening and closing locks at the prison was that the activity took nominal force. The information Dr. Stewart gathered from his visit appeared to have very little, if any, impact on his opinions in this case, as he was unaware of the Petitioner's history of being a corrections officer before becoming a corrections counselor. Therefore, the objection is overruled, but no weight is given to the testimony.

As to the Petitioner's credibility, his testimony and reports to his doctors were consistent. However, the Petitioner was not forthcoming with Dr. Stewart in describing his job duties. This does not mean the Petitioner was not credible – just that he was not cooperative with the Section 12 examination. Further, Maj. Wright did not see any inaccuracies in the Petitioner's testimony, although he was "not really" familiar with the Petitioner's duties as a corrections counselor. Therefore, the Arbitrator finds the Petitioner's testimony to be credible.

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 accident?

The claimant in a worker's compensation proceeding has the burden of proving by a preponderance of the credible evidence that the injury arose out of and in the course of employment, and that involves as an element a causal connection between the accident and the condition of claimant. *Cassens Transp. Co. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 330, 633 N.E.2d 1344, 199 Ill. Dec. 353 (2nd Dist. 1994) An injury is considered "accidental" even though it develops gradually over a period of time as a result of repetitive trauma, without requiring complete dysfunction, if it is caused by the performance of claimant's job. *Id*. Compensation may be allowed where a workman's existing physical structure, whatever it may be, gives way under the stress of his usual labor. *Laclede Steel Co. v. Indus. Comm'n.*, 6 Ill.2d 296 at 300, 128 N.E.2d 718, 720 (Ill. 1955)

Further, a Petitioner's job duties need not be repetitive in the sense that the same task is done over and over again as on an assembly line to result in a compensable injury. *City of Springfield v. Illinois Workers' Comp. Comm'n*, 388 Ill.App.3d 297, 901 N.E.2d 1066, 327 Ill.Dec. 333 (4th Dist., 2009). There is no legal requirement that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma. *Edward Hines Precision Components v. Indus. Comm'n*, 365 Ill.App.3d 186, 192, 825 N.E.2d 773, 292 Ill.Dec. 185 (2nd Dist. 2005) See also *Darling v. Indus. Comm'n*, 176 Ill.App.3d 186, 530 N.E.2d 1135, 1142 (1st Dist. 1988). Proof of effort required or exertion needed may carry great weight only where the work duty complained of is a common movement made by the general public. *Darling*, 176 Ill.App3d. at 1142. As to whether the Petitioner's work duties complained of were common movements made by the general public, the Arbitrator finds that his duties were not common movements made by the general public. Therefore, proof of effort or exertion is not required.

By all accounts, the Petitioner began experiencing symptoms of carpal and cubital tunnel syndromes when he had just finished or was about to finish a 13-year stint as a corrections officer for the Petitioner. For the next few years, he continued to perform forceful hand activities as a trainer. He returned to Graham Correctional Center as a corrections counselor during the COVID pandemic when the inmates were on lockdown, and he had to access them in their cells.

Dr. Stewart did not find evidence of carpal tunnel syndrome on the right in his examination or in the EMG/NCS and did not believe any compression neuropathies that the Petitioner may have sustained were caused by his work. Dr. Bradley's examination of the Petitioner did reveal signs of both carpal and cubital tunnel bilaterally. He reviewed the detailed work history and job descriptions and found that the Petitioner's conditions were causally related to his work.

Dr. Stewart did not consider the 13 years during which the Petitioner was a corrections officer nor his three years as a trainer, even though a detailed job description and work history was available to him prior to his deposition. The Appellate Court has held that work history extending years before a claimant's alleged manifestation date is relevant because a repetitive-trauma injury is one which has been shown to be caused by the performance of the claimant's job and has developed gradually over a period of time, without requiring complete dysfunction. *PPG Indus. v. Illinois Workers' Comp. Comm'n*, 2014 IL App (4th) 130698WC, ¶ 19, 22 N.E.3d 48.

Dr. Bradley did take the Petitioner's entire work history into consideration in forming his causation opinion. He considered the very detailed typed description of the Petitioner's activities. Although the Respondent had this description prior to Dr. Stewart's deposition, it did not provide it to him. The Arbitrator gives greater weight to the opinions of Dr. Bradley. His opinions are further supported by the Petitioner's reports that he began experiencing symptoms five years prior to seeking treatment – while he was still a corrections officer or just finishing his work as a

corrections officer. These reports were consistent with Dr. Bradley's explanation of how carpal tunnel develops. Dr. Bradley's opinions also deserve greater weight. because he was the Petitioner's treating physician and had more opportunities to become familiar with the Petitioner and his condition – especially prior to having surgery.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that his bilateral carpal and cubital tunnel syndromes arose out of and in the course of his employment and were causally related to his work duties.

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

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

Although Dr. Stewart was critical of the number of X-rays taken and insufficient conservative care prior to surgery, Dr. Bradley thoroughly explained the rationale for his course of treatment. Based on this and the findings above, the Arbitrator finds that the medical services provided to the Petitioner were reasonable and necessary and orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 1. The Respondent shall have credit for any amounts already paid or paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

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

Pursuant to Section 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, is to be established using the following criteria: (i) the reported level of

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

(i) **Level of Impairment.** There was no AMA impairment rating produced. Therefore, the Arbitrator gives this factor no weight.

(ii) **Occupation.** The Petitioner still works as a counselor for the Respondent. Barring another COVID lockdown, it is unlikely that the Petitioner will be performing work that involves forceful grasping or prolonged and repeated flexion and extension of his elbows. The Arbitrator places some weight on this factor.

(iii) **Age.** The Petitioner was 57 years old at the time of the injury. He has several work years left during which time he will need to deal with the residual effects of the injuries. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity.** There was no evidence of limitation of the Petitioner's earning capacity. Therefore, the Arbitrator places no weight on this factor.

(v) **Disability.** The Petitioner's achieved a good result from his surgery and was returned to work full duty. He complained of right-sided symptoms but has opted for conservative treatment rather than surgery. Apparently, his right-sided symptoms are not severe enough to require surgery. The Arbitrator puts some weight on this factor.

Therefore, the Arbitrator finds the Petitioner's permanent partial disability to be 9 percent of the left arm, 9 percent of the left hand, 5 percent of the right arm and 2 percent of the right hand.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC019107
Case Name	Diana Portillo v. Georgia Nut Company
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0052
Number of Pages of Decision	23
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Kenneth Lubinski
Respondent Attorney	Nicholas Rubino

DATE FILED: 2/5/2025

/s/Raychel Wesley,Commissioner
Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DIANA PORTILLO,

Petitioner,

vs. NO: 21 WC 19107

GEORGIA NUT COMPANY,

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 sustained repetitive trauma injuries manifesting on April 29, 2019, whether Petitioner provided timely notice, whether Petitioner's condition is causally related to her work activities, entitlement to Temporary Total Disability benefits, entitlement to incurred medical expenses as well as prospective medical care, and Respondent's credit, and being advised of the facts and law, modifies the Decision as set forth below but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

PROLOGUE

The Commission observes Petitioner's personal identity information was unredacted from Petitioner's Exhibit 2 and Respondent's Exhibit 3. The Commission cautions Counsel to adhere to Supreme Court Rule 138. *Ill. S. Ct. R. 138* (eff. Jan. 1, 2018).

CONCLUSIONS OF LAW

I. Accident

The Arbitrator concluded Petitioner sustained repetitive trauma injuries manifesting on April 29, 2019, the date Dr. Edelstein diagnosed her with bilateral carpal tunnel syndrome and imposed work restrictions. The Commission's analysis of the evidence yields the same outcome. We note, however, the Decision improperly references an alternative "valid manifestation date of April 20, 2021." The Commission emphasizes a claimant in a repetitive trauma claim is held to the same standard of proof as a claimant alleging a single, definable accident and "must prove a precise, identifiable date when the accidental injury manifested itself." *Three "D" Discount Store v. Industrial Commission*, 198 Ill. App. 3d 43, 47 (4th Dist. 1989). Here, Petitioner alleged, and proved, an April 29, 2019 manifestation date. ArbX1. As such, the Commission strikes the fourth sentence from the second full paragraph on Page 9.

II. Notice

On the Request for Hearing, Petitioner alleged notice was provided to her supervisor, Raul Rebota, in September 2019. ArbX1. On Review, Respondent argues this constitutes a "binding judicial admission" that Petitioner failed to provide timely notice of her April 29, 2019 accident. The Commission disagrees and notes Respondent's argument fails to consider the implications of its claim for credit. To be clear, on the Request For Hearing, Respondent sought credit pursuant to §8(j), which provides, *inter alia*, that in the event the employee receives medical benefits through a group plan contributed to by the employer, "the period of time for giving notice of accidental injury and filing application for adjustment of claim does not commence to run until the termination of such payments." *820 ILCS 305/8(j)* (Emphasis added). Here, Respondent's payment ledger in support of its §8(j) credit (RX10) reflects medical payments were last made on March 12, 2022; as such, under the plain language of §8(j), the 45-day notice period did not expire until April 25, 2022. Therefore, Petitioner's provision of notice in September 2019 was timely.

III. Temporary Disability

The Arbitrator found Petitioner proved entitlement to Temporary Total Disability ("TTD") benefits. The Commission agrees, however, we find the award itself requires correction; specifically, the Arbitrator awarded two overlapping periods of benefits, which is impermissible under the Act, and the Decision fails to identify the applicable benefit rate. The Commission strikes the last three paragraphs on Page 15 and substitutes the following analysis:

On the Request for Hearing, Petitioner alleged entitlement to TTD benefits from May 28, 2021 through March 1, 2022. ArbX1. The record reflects Petitioner was off work as of her left carpal tunnel release surgery on May 28, 2021. Petitioner testified she remained off work for approximately three months thereafter. T. 62-63. The Commission observes Petitioner's testimony is corroborated by Dr. Rhode's August 20, 2021 initial evaluation, wherein the doctor documented Petitioner had not yet returned to work following surgery with Dr. Miller. PX5. That day, Dr. Rhode authorized Petitioner off work, and his records demonstrate he kept Petitioner off work until January 24, 2022, when Petitioner was released to full duty pending surgery. PX5.

The Commission finds Petitioner is entitled to TTD benefits from May 28, 2021 through January 24, 2022. Petitioner's average weekly wage was calculated at $589.50, which yields a TTD rate of $393.00 ($589.50 / 3 x 2 = $393.00). The Commission finds Petitioner is entitled to 34 4/7 weeks of TTD benefits, representing the single continuous period of May 28, 2021 through January 24, 2022, at the rate of $393.00 per week.

IV. Correction

The parties stipulated Respondent is entitled to a §8(j) credit of $2,449.11 (ArbX1), however the Decision omits the stipulated credit. The Commission corrects the Decision to incorporate Respondent's §8(j) credit of $2,449.11.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 31, 2023, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $393.00 per week for a period of 34 4/7 weeks, representing May 28, 2021 through January 24, 2022, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b), this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of $14,768.71 for medical expenses, as provided in §8(a), subject to §8.2 of the Act. Respondent shall be given a credit of $2,449.11 for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in §8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for right wrist treatment as recommended by Dr. Blair Rhode, 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 $36,000.00. 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.

February 5, 2025

/s/ *Raychel A. Wesley*

RAW/mck

O: 12/11/24

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC019107
Case Name	Diana Portillo v. Georgia Nut Company
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Kenneth Lubinski
Respondent Attorney	Nicholas Rubino

DATE FILED: 10/31/2023

THE INTEREST RATE FOR THE WEEK OF OCTOBER 31, 2023 5.32%

/s/William McLaughlin, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Diana Portillo
Employee/Petitioner

v.

Georgia Nut Company
Employer/Respondent

Case # **21** WC **19107**

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 **McLaughlin**, Arbitrator of the Commission, in the city of **Chicago**, on **9/5/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **4/29/19**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**30,143.23** the average weekly wage was $**589.50**

On the date of accident, Petitioner was **48** years of age, ***single*** with **0** dependent children.

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

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

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

ORDER

Respondent shall pay reasonable and necessary medical services of $14,768.71 as provided in Section 8(a) of the Act.

Respondent shall authorize and pay for the right carpal tunnel release and the post-surgical therapy as prescribed by Dr. Rhose.

Respondent shall pay Petitioner temporary total disability benefits of 35-4/7 weeks, commencing 5/28/21 through 8/28/21, and 8/20/21 through 1/24/22 and 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.

OCTOBER 31, 2023

Signature of Arbitrator

Findings of Fact

On the date of the work injury Diana Portillo, herein referred to as Petitioner, was employed by Georgia Nut Company. (A.12).

Georgia Nut is a nut packing facility located in Niles, IL. and packages various types of nuts. (A 13.15). The petitioner began working for Georgia Nut on September 5, 2017. (A.18). stopped working for Georgia Nut in August of 2021, after her left carpel tunnel release surgery. (A.18, 94). The petitioner testified that she started at Georgia Nut with a rate of $15.75 per hour. (A.75).

Petitioner job title was Line Lead. (A.19). The duties of a Line Lead were supposed to be to take care of paperwork and take care of labor, despite her job title the petitioner worked in packing. (A.19).

Packing involves working on an assembly line, taking bags of nuts from a conveyer belt and putting them into boxes. (A.21). Part of her duties were to assemble a box. (A.22). The boxes are stacked flat in front of her at waist height. (A.25). Petitioner would pick up the flat box by pinching it with her five fingers. (A.27). She then used both hands to press the sides of the box and fold the box. (A.26, 30). She would hold it with the left hand and push it with the right hand to make into box shape. (A.27, 29).

The bags of the product are on the conveyer belt. (A.21). The bags vary in size from 1.5 ounces to 40 ounces. (A.22). Petitioner would put the bags into the box, as the box continued down the conveyor belt. (A.22). To grab the bags of nuts, Petitioner would close her hand on the bags and take it over to the box requiring her to flex her wrists down to the grab the bags and extend them back up to move the bags to the box. (A.24, 25).

The conveyer belt was vibrating all the time. (A.23). She said that when she touched the belt, it was vibrating into her hands, shaking her hands back and forth. (A.33, 34).

Petitioner performed this packing job for seven and a half hours a day and would make Approximately 30 boxes of nuts per minute. (A.31).

The petitioner first sought medical treatment in 2019. because she was experiencing a burning pain and numbness in her hands, (A.53,55, 80).

Unable to perform her work duties because of her injury the petitioner was temporarily suspended until she was able to provide was told to get a doctor's note supporting her claims. (A.50). On April 29, 2019, the petitioner's doctor, Dr. Edelstein, put her on work restrictions for her injuries. (A.35). She obtained the doctor's note and was put on packing for only 20 minutes per day. (A.51).

On or about April 6, 2020, petitioners job duties changed again to the 499 line on the second shift, which she did for two years. (A.20,36). On the 499 Line, petitioner had to lift product onto a table using a shovel and then mix product with the shovel in a fast manner. (A.38). She then had to put the product into boxes. (A.44). While she was performing these duties, she felt pain and numbness all the time. As such Petitioner was not able to do that job at Georgia Nut. (A.46).

The petitioner was initially examined on February 5, 2019, by Dr. Edelstein. At that time, she reported hand numbness for 3 months. She returned to Dr. Edelstein on April 29, 2019, at which time he diagnosed the petitioner with bilateral carpel tunnel syndrome and placed the plaintiff on lifting restrictions of 10 lbs. with limited repetitive movements of her hands. It was her understanding that the lifting restrictions were due to the vibration of the conveyer belt and the repetitive work she was doing. (A.57). He also recommended an EMG, which was

performed at Swedish Covenant. Petitioner returned to Dr. Edelstein on July 15, 2019; at which time she was referred to a hand surgeon. The 10 lbs. lifting restrictions were continued.

On September 24, 2019, the petitioner was seen at Windy City Ortho by Dr. Miller. (A.58). It was noted that she started experiencing pain six months prior to her visit. (A.91). Petitioner also reported bilateral wrist and finger pain. Petitioner was diagnosed was bilateral carpel tunnel syndrome. A brace and medications were prescribed, and the petitioner was told to return to the office if she wanted to have surgery. Petitioner underwent surgery until May of 2021. (A.59).

On October 15, 2019, petitioner followed up with Dr. Edelstein who again diagnosed bilateral carpel tunnel syndrome. On October 18, 2019, Dr. Edelstein gave her work restrictions, of performing the packing job 2x per day for 20 minutes each.

On January 14, 2020, the petitioner returned to Dr. Edelstein. He stated that the petitioner needed surgery. On March 19, 2020, the petitioner returned to Dr. Edelstein. The petitioner reported that she couldn't do surgery because she could not take time off work.

On April 29, 2020, the petitioner was seen by Dr. Miller. At that time, she had complaints of weakness, fatigue, numbness, and instability. He recommended that she proceed with a brace.

Her employment with Respondent ended in 2021 when her light duty request could not be accommodated. (A. 47,49).

The petitioner was seen on May 4, 2021, by Dr. Edelstein for a pre-op for surgery. When she was seen on May 5, 2021, by Dr. Miller, the petitioner still had complaints of left and right wrist pain. A left carpel tunnel release was performed on May 28, 2021, at Swedish Covenant by Dr. Miller.

Following the surgery, on August 20, 2021, the petitioner followed up at Orland Park Orthopedics with Dr. Rhode. Dr. Rhode opined that the bilateral carpel tunnel syndrome was work related based on his level of causation and placed the petitioner off duty.

She followed up on September 17, 2021, at Orland Park Ortho with Dr. Rhode. At that time, she had complaints of right wrist pain,

On November 1, 2021, the petitioner followed up with Dr. Rhode. He again opined that her injury was a work-related bilateral wrist injury due to a highly repetitive job. On that date, they were still awaiting surgical authorization and the petitioner was kept off duty.

The petitioner returned to work on March 22, 2022, for Amazon Fresh (A.63). Her job duties require her to explain to customers how to use the App to shop. (A.65). This is a light duty job, and she performs no manual labor at Amazon Fresh. (A.65). She only works part time, between 20 to 22 hours per week. (A.65). She earns $16.80 per hour. (A.66). The petitioner said that it is not possible for her to remain completely off work. (A.64).

At the time of this hearing petitioner testified that she still suffers from numbness in her hands. (A.16). At the time of the hearing, petitioner had surgery to her left hand, but wants surgery to her right hand. (A.18).

In her right hand, she has pain when sweeping, vacuuming, putting on her makeup, driving, lifting, folding, writing, and tying. (A.68). Petitioner testified that she needs assistance with household activities like mopping, sweeping, and groceries. (A.69).

Before working at Georgia Nut, the petitioner did not seek medical treatment for her wrists and did not have treatment for carpel tunnel syndrome. (A.52). nor did she have difficulties with her daily activities due to pain in her wrists or hands. (A.53).

The petitioner testified that at the beginning of her treatment, she notified her manager named Eric about her injuries. (A.72). Eric was replaced by Raul Rivota. (A. 72). The petitioner said that she was telling Raul all the time about her injuries. (A.73).

Also, when she received the work restrictions in April of 2019, she took those to the human resources department and gave them to Brian Morales. (A.73). Respondant accommodated her restrictions in April of 2019. (A.92).

BRIAN MORALES

Brian Morales testified that he is a Human Resources Generalist at Georgia Nut for 4-5 years. (A.111, 129).

Brian Morales testified that there are three shifts at Georgia Nut. He worked during the first shift, from 6am to 4 or 4:30 pm. (A.136). The second shift was from 3pm to 11pm. (A.136). The third shift goes until 7 am. (A.137).

Morales testified was not the petitioner's direct supervisor, and as such he did not oversee Petitioners work on a daily basis. (A. 125,127).

Morales testified that the petitioner was hired as a Line Lead. Morales reviewed two job descriptions. "Line Lead Foreman Fill Bag" was marked as Respondent's Exhibit 5. Line lead is a supervisory role. (A.114). The job description, however, also includes case packing, carton packing, and box making. (A.133). "Hand Packaging Operator" was marked as Respondent's Exhibit 6. Hand Packaging Operator is a packaging role to fill boxes. (A.114). Both job descriptions applied to the petitioner. Therefore, petitioner performed some hand packaging. (A.117, 133).

Morales testified that the petitioner brought her the work restrictions on April 29, 2019. At which time, the Respondent accommodated her restrictions. (A.120). In August of 2021,

Morales received a call from the petitioner which informed him that she was not able to return to work due to her hand injuries. (A.122).

EVIDENCE DEPOSITION OF DR. BLAIR RHODE

The evidence deposition of Dr. Blair Rhode was taken on June 20, 2022. (PX.7). Dr. Rhode treated the petitioner's right wrist carpal tunnel syndrome. (Rhode, 9). Dr. Rhode stated that forceful, repetitious, vibratory jobs, as well as forceful repetitive activities, cause carpal tunnel syndrome. (Rhode, 11).

The petitioner advised Dr. Rhode that her primary job was to package 12-ounce bags into boxes. (Rhode, 16). She described it as highly repetitive with a component of vibratory exposure and repetitive gripping. (Rhode, 16).

Based on his examination of the Petitioner it was Dr. Rhode's recommendation to proceed with the right carpel tunnel release. (A.24, 28). Dr. Rhodes recommended Petitioner stop working during the course of her treatment until January 24, 2022, at which time she was released back to work full duty pending surgical authorization. (A.26).

It is Dr. Rhodes opinion that the petitioner's repetitive job duties caused Petitioners right and left wrist, carpal tunnel syndrome. (Rhode, 17, 29, 30). The need for the carpal tunnel releases are due to the plaintiff's job activities. (Rhode, 31).

Evidence Deposition of Micheal Bryan Neal

Dr. Neal performed an IME on February 16, 2022. (Neal, 12). Dr. Neal concluded that the petitioner's right or left sided carpal tunnel syndrome was not due to her job duties. (Neal, 29, 30). Dr. Neal believed that the cause is idiopathic, which means that the cause is unknown.

(Neal, 42). Dr. Neal agreed that the petitioner's treatment was reasonable and necessary. (Neal, 37). Dr. Neal agreed that repetitive work activities can cause carpal tunnel syndrome. (Neal, 52).

Conclusions of Law

C. Whether an accident occurred that arose out of and in the course of Petitioner's employment ?

The Arbitrator finds that the injuries suffered by the Petitioner occurred out of and in the course of her employment with the Respondent.

The arbitrator finds the petitioner's credible and un-rebutted testimony establishes that April 29, 2019, is a valid manifestation date for her injuries.

In a repetitive trauma case, there are multiple potential dates for when the injury manifests itself. Peoria County Bellwood Nursing Home v. Ind. Comm, 115 Ill.2d 524, 106 Ill.Dec. 235, 238 (1987). The manifestation date is defined as the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person. Id. This could be the date that the petitioner first sought medical treatment for her condition. Id. Alternatively, when the employee recognizes that she has a work-related condition but has continued working, the manifestation date can be the last day that the Petitioner worked prior to disablement, or the time at which she can no longer perform her job. Id.

Arbitrator finds the Petitioners credible testimony that in 2019, the petitioner started to experience pain due to repetitive tasks. She said that she was experiencing numbness in her hands, which she had been experiencing for approximately three months. (A.53, 80). At that time, she also had a burning pain. (A.55). In addition, she was having trouble doing everyday tasks. (A.54).

Petitioner first sought medical treatment and was placed on work restrictions by Dr. Edelstein on April 29, 2019. It was at this time, when she was placed on work restrictions for the first time, that the causal relationship of the injury to the claimant's employment should have been made apparent to the petitioner. Arbitrator concludes that the manifestation date is April 29, 2019, when the Petitioner was suffering from pain and numbness in her wrists.

Arbitrator also finds, based on Petitioners testimony, that her job duties involved constant repetitive movements of her wrists and hands, and that her accident arose out of and in the course of her employment with Respondent.

Arbitrator gives great weight to medical records to support said conclusion. Petitioners February 5, 2019, visit with Dr. Edelstein notes that at that time, she reported hand numbness for 3 months. On September 24, 2019, when the petitioner was seen at Windy City Ortho by Dr. Miller, it is noted that she started experiencing pain six months prior. (A.91). At the August 20, 2021, when the petitioner followed up at Orland Park Orthopedics with Dr. Rhode, Dr. Rhode opined that the bilateral carpel tunnel syndrome was work related based on his level of causation and placed the petitioner off duty.

In addition, Dr. Rhode testified that there was no evidence of a pre-existing condition. He said that the petitioner did not exhibit the risk factors for carpal tunnel, such as thyroid disease or diabetes. (Rhode, 18).

Further, the doctor's opinions support a finding that the petitioner's job duties were due to repetitive trauma. Dr. Rhode testified that the petitioner's repetitive job duties caused her right and left wrist, carpal tunnel syndrome. (Rhode, 17, 29, 30).

The Arbitrator gives lessor weight to the testimony of Brian Morales in relation to the petitioner's job duties. While he was aware of the petitioner's job title, and knew of her job

duties in general, he testified that he was not the petitioner's direct supervisor and had little knowledge of what work she was actually doing on a daily basis.

The Arbitrator finds that the testimony of Dr. Rhode is more credible than that of the respondent's IME doctor, Dr. Neal, who testified that that the cause of the petitioner's condition was idiopathic, or unknown. (Neal, 42).

The Arbitrator has carefully reviewed and considered all medical evidence along with all testimony. Based upon the above facts the Arbitrator finds that the petitioner sustained an injury that arose out of and in the course of her employment with Respondent. The Arbitrator finds that the injury manifested itself on April 29, 2019, which is the date that she sought medical treatment Dr. Edelstein, who at that time placed on work restrictions. The Arbitrator notes, however, that the petitioner continued to work at Georgia Nut despite her pain, and that the last date that the petitioner worked is also a valid manifestation date of April 20,2021.

E. Whether timely notice of the accident given to the Respondent?

The evidence presented indicates the Petitioner provided timely notice of a work-related injury to the Respondent. It is well established that the notice provisions of the Workers Compensation Act are to be liberally construed. WHITE v. FREEMAN UNITED COAL MINING COMPANY, 2006 Ill. Wrk. Comp. LEXIS 46. Further, a claim will not be defeated by defective notice in the absence of prejudice. Id.

In this case, the respondent had actual notice of the petitioner's work-related repetitive trauma injuries. The petitioner testified that she told her supervisors about her condition when she first sought medical treatment. The petitioner testified that at the beginning of her treatment, she notified her manager named Eric about her injuries. (A.72). Eric was replaced by Raul Rivota. (A. 72). The petitioner said that she was telling Raul all the time about her injuries.

(A.73). Further, the petitioner was suspended by Respondant due to not being able to do the work because of her condition. (A.50). She was told to get a doctor's note, which she did in April of 2019. (A.50).

The HR Generalist, Morales, confirmed that he was aware of the petitioner's repetitive trauma accident. Morales agreed that the petitioner brought her the work restrictions on April 29, 2019. (A.120). The note from Dr. Edelstein dated April 29, 2019, specifically states that the petitioner is to avoid repetitive hand movements as much as possible. (PX.2, pg 226 of 250). At that time, Georgia Nut accommodated her restrictions. (A.120).

Further, the petitioner testified that she resigned due to her inability to perform the work. She testified that she left the employment with Georgia Nut, when she could no longer work due to her condition. (A.37). The petitioner asked Brian Morales in HR for light duty, but light duty work was not provided. (A.49). This was confirmed by Morales who testified that In August of 2021, he received a call from the petitioner that she was not able to return to work due to her hand injuries. (A.122).

Therefore, Arbitrator concludes that the respondent had actual notice of the accident within the time prescribed by The Act.

F. Whether the petitioner's current condition of ill-being causally related to the injury?

The Arbitrator finds that the petitioner's current condition of ill-being is causally related to the work accident she sustained on April 29, 2019. This finding is based upon the petitioner's testimony, which the Arbitrator finds to be credible, on the medical records submitted, as well as on the opinion of Dr. Rhode.

A claimant must show, by a preponderance of the evidence, that she suffered a disabling injury that arose out of and in the course of her employment. *Baggett v. Industrial Comm 'n,* 201 Ill. 2d 187, 194 (2002). An injury "arises out of' one's employment if it originated from a risk connected with, or incidental to, the employment and involved a causal connection between the employment and the accidental injury. *Id.* "In the course of' refers to the time, place, and circumstances of the accident. *Illinois Bell Telephone Co. v. Industrial Comm'n,* 131 Ill. 2d 478,483 (1989). Both elements must be present at the time of the claimant's injury to justify compensation under the Act. *Id.*

It is well-settled that there is no legal requirement that a certain percentage of the workday be spent on repetitive tasks norder 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 (2005). The Commission is allowed to consider evidence, or the lack thereof, of the repetitive "manner and method" of a claimant's job duties. *Williams v. Industrial Comm 'n,* 244 Ill. App. 3d 204, 211 (1993) (citing *Perkins Product Co. v. Industrial Comm 'n,* 379 Ill. 115, 120, 39 N.E.2d 372 (1942)). The question of whether a claimant's work activities are sufficiently repetitive in nature as to establish a compensable accident under a repetitive trauma theory will be decided based upon the particular facts in each case, and it is the province of the Commission to resolve this factual issue. *Williams,* 244 Ill. App. 3d at 210-11.

In addition, an employee who alleges an injury based upon repetitive trauma must "showthat the injury is work-related and not the result of a normal degenerative aging process." *Peoria County Bellwood Nursing Home v. Industrial Comm'n,* 115

Ill. 2d 524, 530 (1987); *Glister Mary Lee Corp. v. Industrial Comm'n,* 326 Ill. App. 3d 177, 182 (2001). "It is axiomatic that employers take their employees as they find them." *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill. 2d 193,205 (2003). When an employee has a preexisting condition, "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. A claimant need only prove that her work for the employer "was *a* causative factor in the resulting condition of ill-being." (Emphasis in original.) *Id.* at 205.

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); see *Johnson v. Industrial Comm'n,* 89 Ill. 2d 438, 442-43 (1982). Of course, "'[e]xpert opinions must be supported by facts and are only as valid as the facts underlying them.'" *Gross v. Illinois Workers' Compensation Comm'n,*2011 IL App (4th) 100615WC, 124 (quoting *In re Joseph* S., 339 Ill. App. 3d 599,607 (2003)).'"An expert opinion is only as valid as the reasons for the opinion."' *Id.* (quoting *Kleiss v. Cassida,* 297 Ill. App. 3d 165, 174 (1998)). "The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion." *Id.*

The Arbitrator finds that the petitioner's work activities were sufficiently repetitive in nature as to establish a compensable accident. In support of the finding

Arbitrator relies on the petitioner's credible testimony as well as her medical records and the opinion of Dr. Rhode. Petitioner testified that prior to working for Georgia Nut, she did not experience problems with her hands or wrists. She testified that in 2019, she started experiencing symptoms in her bilateral wrists as she was doing her repetitive work. As noted above, the Petitioner credibly testified that her job with respondent involved constant repetitive movements of her wrists and hands, as well as exposure to vibrations. The medical records further support a finding that the petitioner's injuries were due to her repetitive job duties. Those records show that she did not undergo any medical treatment for her bilateral wrists prior to working for Respondent. Furthermore, the medical testimony establishes a causal connection between the work performed and claimant's disability. Dr. Rhode testified that the petitioner's activities at Georgia Nut were the cause of the development of both her right and left carpal tunnel syndrome and were the cause of the need for both her right and left carpal tunnel releases. Dr. Rhode noted that the petitioner had none of the risk factors for the development of carpel tunnel syndrome,

The Arbitrator gives less weight to Dr. Neal's conclusions in that that are not supported to the rest of the evidence presented at trial.

The Arbitrator has carefully reviewed and considered all medical evidence along with all testimony and concludes a causal connection exists between the petitioner's current condition of ill-being and the work accident she sustained on April 29, 2019.

G. **What were the petitioner's earnings.**

The Arbitrator provided his calculations in the Statement of Facts. Petitioner earned a total of $30,143.23 in wages over the course of the 52-weeks prior to the work accident alleged in this action, which is an average weekly wage of $579.68.

The Arbitrator does note that Respondent agreed to an average weekly wage of $589.50. Petitioner is not due benefits in this cause of action; however, the Arbitrator does take a position that Petitioner's average weekly wage for the sake of calculation at the time of the alleged date of loss was $589.50/week and finds Petitioner has not met her burden of proof as to overtime or any additional income.

J. Whether the medical services that were provided to the petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonably and necessary medical services?

The Arbitrator finds that the medical treatment that the petitioner received is causally related to the work accident she sustained on April 29, 2019, and that the medical bills that were submitted as Petitioner's Exhibit 8 constitute reasonable and necessary medical treatment pursuant to Section 8(a) of the Act. Dr. Rhode and Dr. Neal both testified that the course of treatment that the petitioner underwent was reasonable and appropriate for her injuries. The Arbitrator therefore finds that this course of treatment is reasonable and related to the injuries she sustained.

With respect to the bills listed in Exhibit 8, the Arbitrator finds that the bills constitute reasonable and necessary medical treatment pursuant to Section 8(a) of the Act. Petitioner's Exhibit 8 shows a total amount of charges of $14,76871. Based on the above, the Arbitrator awards the petitioner the medical expenses in petitioner's exhibit 8 in the amount of the balance of $14,76871 pursuant to the medical fee schedule in Section 8.2 of the Act.

K. Whether Petitioner entitled to prospective medical treatment?

The Arbitrator finds that the respondent shall be responsible for payment of the right carpal tunnel release as recommended by the petitioner's treating physician, Dr. Rhode. The petitioner testified that she was seen by Dr. Rhode and that Dr. Rhode recommended a carpal tunnel surgery on the right. Dr. Rhode testified that his current recommendation is a right carpal tunnel release. (PX. 7). He said that following the surgery, the petitioner will need post operative therapy. (PX. 7, p34). He testified that he would expect her to be off of work for twelve weeks following the right carpal tunnel release. (PX. 7, p34).

Based upon the above, the Arbitrator finds that the respondent shall be responsible for the authorization and payment of the right carpal tunnel release, as recommended by Dr. Rhode.

L. Whether compensation is due for temporary total disability?

The Arbitrator finds that the petitioner was restricted from work for three months while she was recovering from the left carpal tunnel release. The surgery occurred on May 28, 2021. Three months from that date is August 28, 2021, which converts to 13 1/7 weeks. Arbitrator finds that the Petitioner has met her burden as to this issue.

The Arbitrator also finds that the petitioner was restricted from work by Dr. Rhode from August 20, 2021, until January 24, 2022, at which time she was released back to work full duty pending surgical authorization, which is a period of 22 3/7 weeks.

Based on the above, the Arbitrator finds that the petitioner was restricted from work for a period of 35 and 4/7 weeks. This finding is based upon the testimony of the petitioner which the Arbitrator finds credible and is also based on the medical records. Based on this, the Arbitrator finds that the petitioner is entitled to 35 and 4/7 weeks of temporary total disability benefits.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC023492
Case Name	Armando Mendez Soto v. Gillespie Automotive, LLC
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0053
Number of Pages of Decision	15
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Alexandra Broderick
Respondent Attorney	Paul Dykstra

DATE FILED: 2/5/2025

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Armando Mendez Soto,

Petitioner,

vs. NO: 20 WC 023492

Gillespie Automotive, LLC,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 17, 2024, is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $17,400.00. 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.

February 5, 2025

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/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC023492
Case Name	Armando Mendez Soto v. Gillespie Automotive, LLC
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Alexandra Broderick
Respondent Attorney	Paul Dykstra

DATE FILED: 5/17/2024

/s/Michael Glaub, Arbitrator
Signature

INTEREST RATE WEEK OF MAY 14, 2024 5.165%

25IWCC0053

STATE OF ILLINOIS)
)
COUNTY OF Lake)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Armando Mendez Soto
Employee/Petitioner

v.

Gillespie Automotive, LLC.
Employer/Respondent

Case # 20 WC 23492

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Michael Glaub, arbitrator of the Industrial Commission, in the city of Waukegan, on 2/14/24. 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 the 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 the petitioner's employment by the respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to the respondent?
F. ☒ Is the petitioner's present condition of ill-being causally related to the injury?
G. ☐ What were the petitioner's earnings?
H. ☐ What was the petitioner's age at the time of the accident?
I. ☐ What was the 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 the respondent?
N. ☐ Is the respondent due any credit?
O. Other _____

FINDINGS

- On 6/22/2020 , the respondent Gillespie Automotive, LLC. *was* operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship *did* exist between the petitioner and respondent.
- On this date, the petitioner *did* sustain injuries that arose out of and in the course of employment.
- Timely notice of this accident *was* given to the respondent. **mAYmA**
- Petitioner's current condition of ill-being ***is*** causally related to the accident.
- In the year preceding the injury, Petitioner earned $**24,960.00**; the average weekly wage was $**480.00**.
- On the date of accident, Petitioner was **46** 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**.
- Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner directly for the following outstanding medical services, pursuant to the Illinois Medical Fee Schedule and Sections 8(a) and 8.2 of the Act: Dr Parreno ($220.00); Petitioner paid $120.00 to Dr. Parreno Riverside Health Clinic ($5,995.00); Lakeshore Open MRI ($2,320.00); G&T Orthopedics ($960.00);

Respondent shall pay Petitioner temporary total disability benefits of $ 320.67 per week for 8 weeks, commencing 3/22/21 through 5/16/21, as provided in Section 8(b) of the Act.

The Arbitrator makes an award of 7.5% loss of use of the right leg under Section 8(e) which corresponds to 16.125 weeks of permanent partial disability benefits at a weekly rate of $320.67

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

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest of _____ % shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Michael A. Glaub

Signature of arbitrator

MAY 17 2024

FINDINGS OF FACT

This matter proceeded to hearing on February 14, 2024 in Waukegan, Illinois before Arbitrator Michael Glaub. Issues in dispute include accident, notice causal connection, unpaid medical bills, temporary total disability "TTD" benefits, the nature and extent of injury. Arbitrator's Exhibit "Ax" 1.

The parties stipulated that at the time of the alleged accident, the parties were operating under the Act, that the AWW was $480.00 and that the Petitioner was 46 years old, single with 2 dependents.

Petitioner testified through the use of a Spanish interpreter. Petitioner testified that he was employed by Gillespie Ford as a porter (T9). His duties included cleaning cars, throwing away oil and moving cars (T9-10). Petitioner testified that was on his feet most of the day (T10).

Petitioner testified that he had no prior history of injury to his right knee, although he once had a mosquito bite to his right leg at Six Flags that required him to be seen at a hospital (T10.) He was able to perform his job duties without issue prior to June 22, 2020 (T11). On June 22, 2020, he was given the keys by client relations to bring a client's car around and was walking towards the parking lot when he slipped and fell and hurt his knee (T12). Petitioner testified that he slipped on oil on the pavement (T12). After the accident he noted that he was not able to walk well (T13). Petitioner testified that he went to look for the manager, after the accident, but the manager had already left for the day (T13). Petitioner reported the accident the next morning to his manager Anthony (T13).

Petitioner sought treatment with Dr. Xavier Parreno on July 1, 2020 (PX 1). At that time, he complained of right knee pain and inflammation when he slipped at work. The notes of Dr

Parreno mentioned that Petitioner had seen a chiropractor. Petitioner acknowledged at arbitration that he had previously gone to see a chiropractor, but chiropractor was too expensive, therefore, Petitioner was never actually treated by the chiropractor (T14). Petitioner further clarified that the accident date was in fact June 22, 2020 (T15). He was taken off work for one week by Dr. Parreno. Petitioner testified that he although he was taken off work by Dr. Parreno, Petitioner kept working as he had no money to pay his bills (T16).

Petitioner testified that he resigned from his job with Respondent in August of 2020.

Petitioner next sought treatment with Riverside Health Clinic on September 11, 2020 complaining of ongoing right knee pain (PX 2). Petitioner reported a consistent accident history of walking in the parking lot of his work place when he slipped on oil. Dr. Hudson recommended therapy 2-3 times per week and further recommended an MRI if there were no improvement.

Petitioner was referred by Dr. Hudson for a right knee MRI which he underwent at Lakeshore MRI on October 1, 2020. Under clinical history, the MRI notes: "work related injury with knee pain". The impression, as read by the radiologist of the MRI was: "medical meniscal tear involving the posterior horn, extending to the midbody region., joint effusion."

Post MRI, Petitioner was referred by Riverside Health Clinic to Dr. Giannoulias at G & T Orthopaedics (T 20). During the initial exam with Dr. Giannoulias on October 15, 2020, Petitioner was diagnosed with a right knee medical meniscus tear (PX 3). Dr. Giannoulias noted that the MRI revealed a complex tear of the medial meniscus and recommended that Petitioner undergo surgery for the knee.

Petitioner followed up with Dr. Giannoulias on March 22, 2021, noting continued pain in the right knee. Dr. Giannoulias stated, "Again, he has a complex tear of the medial meniscus

which is related to his work injury." We are waiting for authorization to proceed with surgery. Petitioner was also placed off work at that time.

Petitioner followed up for the last time with Dr. Giannoulias on May 17, 2021. Again, it was noted that it was "a work-related meniscus tear." Surgery was again recommended, and Dr. Giannoulias noted that Petitioner wanted to undergo the procedure done so that Petitioner could get back to work. At that time Petitioner was given work restrictions of no lifting over 10 pounds (PX 3).

Subsequently, Petitioner followed up on May 23 2022 with Dr. Parreno with continued complaint of right knee pain (PX 1). Petitioner is currently working as a seasonal employee as a cook (T21, 22). Petitioner advised Dr. Parreno that he noted that he can no longer look for construction jobs (T. at 22). Further, when standing for long periods of time, Petitioner noted his knee became swollen (T. at 22). Petitioner testified that he is unable to play with his children as he did prior to the incident (T22).

Respondent presented several witnesses at trial including Justin Mordica, another Porter. Mr. Mordica testified that although he worked with Petitioner, he did not talk to Petitioner very often (T32) and that he also did not speak Spanish (T34). Mr. Mordica filled out a statement saying he did not witness an accident and did not receive notice of an accident (RX 3). Mr. Mordica acknowledged, however, that he likely completed the signed statement a month or two after the alleged accident (T34). On cross exam, Mr. Mordica testified that he did not spend the entire day with Petitioner on date of accident, June 22, 2020, and further acknowledged that was not, in fact, Petitioner's supervisor (T35).

Phil Brown, another Valet/Porter, was also presented as a witness for Respondent (T36). Mr. Brown testified that he never spoke to Petitioner and that Petitioner would only speak to the other Spanish speaking co-workers (T38). Mr. Brown completed, (RX 5), a statement indicating he never saw Petitioner have an accident and that the alleged work accident was not reported to him (T39). Mr. Brown acknowledged, however, that he completed the form quite a while after the alleged accident date (T39). Mr. Brown also acknowledged that he did spend the whole day with Petitioner on June 22, 2020 and that he does not speak Spanish (T40).

Respondent also brought in Jim Sledz, the General Manger of Gillespie Ford to testify. Mr. Sledz testified that on average day he wouldn't speak to Petitioner unless he something specific to talk to Petitioner about (T44). Mr. Sledz testified that the statements of Phil Brown and Justin Mordica were taken around November of 2022, approximately 5 months after the alleged accident (T48). Mr. Sledz testified that Petitioner's supervisor Anthony (the supervisor to whom Petitioner claimed to have reported the accident), was no longer an employee of Respondent as of 2021 (T. at 54). Mr. Sledz further testified that he is not fluent in Spanish (T. at 54).

Respondent next called Colin Wall, a videographer, as a witness. Mr. Wall testified as to his observations of Petitioner on June 23, 2021. Mr. Wall stated that he saw Petitioner lift a large bag, but could not identify what was in the bag, nor could state how heavy the object was (T61, 62). Although Mr. Wall recorded Petitioner, the video recorded on that day was not offered into evidence.

CONCLUSIONS OF LAW

With respect to the issue of accident the Arbitrator finds as follows:

Petitioner testified that on that date the Petitioner was walking to bring a client's car back when he slipped on oil injuring his right knee. The medical records submitted into evidence corroborate Petitioner's' testimony. The Arbitrator took Petitioner's demeanor into account and found him to be a credible witness. This was a risk connected to the Petitioner's employment, and the accident arose out of and occurred in the course of his employment. While the accident was unwitnessed, Petitioner's testimony is unrebutted. Respondent presented no evidence to dispute that the accident occurred. Based on all of the above including the petitioner's unrebutted testimony that was corroborated by the medical records, the Arbitrator finds that on June 22, 2022, the petitioner sustained an accident occurred that arose out of and in the course of his employment with the Respondent.

With respect to the issue of notice, the Arbitrator finds as follows:

Petitioner testified that he reported the accident the day after it happened to his supervisor Anthony. Respondent presented no evidence to successfully rebut this testimony. Each of respondent's witnesses authored statement five months after the alleged accident. There was no evidence introduced to refute the petitioner's testimony that he reported the accident to his supervisor Anthony. The respondent did acknowledge Anthony was the petitioner's supervisor but that he left their employment subsequent to the petitioner's alleged date of accident. Based on the unrebutted testimony of the petitioner, the Arbitrator finds that Petitioner timely reported the accident.

With respect to the issue of whether petitioners' medical condition is causally related to his accidental injuries of June 22, 2020, the Arbitrator finds as follows:

In determining whether the petitioner proved that his current medical condition is causally related to his accidental injuries of June 22, 2020, the Arbitrator takes into account the petitioner's testimony regarding the accident, the medical chain of events, the consistency of Petitioner's complaints of right knee pain, and the medical opinions of Dr. Giannoulias.

It is well-established law that proof of prior sound health and change immediately following and continuing after an injury may demonstrate that an impaired condition was due to the injury. Navistar International Transportation Corporation, 315 Ill. App. 3d 1197, 1206 (2000). The Court specifically stated that a causal connection between work duties and a condition may be established by a chain of events. This includes the Petitioner's ability to perform duties before the date of the accident and inability to perform the same duties following that date. Id.

Petitioner testified that he had no history of right knee injury other than a previous mosquito bite at Six Flags that caused swelling. This history is consistently noted in both Dr. Parreno's records as well as Riverside Health. Dr. Giannoulias opined that Petitioner has a "complex tear of the medial meniscus which is related to his work injury" (PX 3). Respondent presented no evidence to dispute causal connection and has no submitted no independent medical examination.

Based on all of the above including the medical opinions of Dr. Giannoulias, the Arbitrator finds Petitioner met the burden of proof and established his right knee condition of ill-being is causally related to the June 22, 2020, work accident.

With respect to the reasonableness and necessity of accrued medical, the Arbitrator finds as follows:

The Arbitrator finds the record as a whole to support a finding that all care rendered through the date of arbitration was reasonable, necessary, and causally related to the work accident.

Pursuant to Section 8.7(i)(3) of the Act, once the utilization review process is invoked by Respondent, "An employer may only deny payment of or refuse to authorize payment of medical services rendered or proposed to be rendered on the grounds that the extent and scope of medical treatment is excessive and unnecessary in compliance with an accredited utilization review program under this Section."

Respondent did not offer a UR report into evidence to deny the necessity of any of the care rendered. Further, Respondent did not offer any opinions of a Section 12 expert to deny the necessity of care. The issues of accident and causal connection have already been addressed, therefore, there is no dispute as to the reasonableness and necessity of the care rendered.

The Arbitrator therefore finds all the medical bills to be reasonable and necessary, and award the following medical bills pursuant to the Illinois Medical fee Schedule: Dr Parreno ($220.00); Petitioner paid $120.00 to Dr. Parreno Riverside Health Clinic ($5,995.00); Lakeshore Open MRI ($2,320.00); G& T Orthopedics ($960.00). Total: $9,615.00. Again, those figures shall be reduced by any reductions afforded by the Illinois Medical fee Schedule.

With respect to TTD the Arbitrator finds as follows:

The Arbitrator notes petitioner was taken off work by Dr. Giannoulias for the period from 3/22/21 to 5/16/21 while he was actively treating his right knee condition. Respondent failed to offer any medical evidence to dispute Dr. Giannoulias' opinions regarding the duration of Petitioner's ability to work. The Arbitrator found above that the petitioner sustained an accident on June 22, 2020 and that the petitioner's right knee is causally related to that accident. Accordingly, the Arbitrator awards petitioner TTD benefits for the period of 3/22/21-5/16/21pursuant to the authorization by Dr. Giannoulias. Utilizing the minimum TTD rate of $320.67 on June 22, 2020, the Arbitrator's award equates to $2,565.36 in TTD.

With Respect to Nature & Extent the Arbitrator finds as follows:

The Arbitrator having found casual connection, finds that Petitioner sustained a right knee meniscal tear, with a recommendation for a right knee surgery. Taking into account Section 8.1.b(b) the Arbitrator notes as follows:

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence by either party. The Arbitrator therefore finds that this factor has no effect on permanency.

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 valet/Porter at the time of the accident and that he now employed as a seasonal employee as a cook. The Arbitrator notes that the petitioner's change of occupation was not caused by the accident. Further, both his pre and post-accident occupations are not that physical in nature. The Arbitrator that this factor weighs in favor of decreased permanency.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 48 years old at the time of the accident. The petitioner is in the latter half of his expected work life. The Arbitrator therefore gives greater weight to this factor weighs in favor of decreased permanency.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that no evidence was presented that the accident caused any effect on petitioner's future earnings. The Arbitrator finds that his factor weighs in favor of decreased permanency.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that an MRI revealed a tear involving the posterior horn of the medical meniscus. There was no damage to the lateral meniscus or the Collateral or cruciate ligaments. Dr. Giannoulias did prescribe surgery for the medical meniscus tear. The Arbitrator finds that this factor weighs in favor of increased permanence.

Based on all of the above, the Arbitrator awards the Petitioner 7.5% loss of the right leg under Section 8(e) of the Act. Utilizing the minimum PPD rate of $320.67 of June 22, 2020, this award equates to $5,170.80 in PPD benefits.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC031900
Case Name	Rocio Cruz-Andrade v. Rockford Mass Transit District
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0054
Number of Pages of Decision	23
Decision Issued By	Kathryn Doerries, Commissioner, Maria Portela, Commissioner

Petitioner Attorney	James Gesmer
Respondent Attorney	Glenn Blackmon

DATE FILED: 2/5/2025

/s/Maria Portela,Commissioner
Signature

DISSENT: /s/Kathryn Doerries,Commissioner
Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rocio Cruz-Andrade,

Petitioner,

vs. NO: 21 WC 031900

Rockford Mass Transit District,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 12, 2023 is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $50,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

February 5, 2025

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/s/ *Maria E. Portela*
Maria E. Portela

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

DISSENT

I respectfully disagree with the majority's opinion and would reverse. I view the evidence and law differently and would find that Petitioner's accident did not arise out of or in the course of her employment. Petitioner, a 63-year-old custodial services worker, attempted to climb onto the ledge of a retaining planter wall, intending to knock on an elevated window because she left her work key at home, and fell backwards off the ledge onto the sidewalk. Because this act exposed Petitioner to a hazard of her own making and was not one which the employee might reasonably have been expected to perform incident to her assigned duties, and because there were safer alternative options to seek access to the building, Petitioner's injury arose from a non-compensable personal risk and did not arise out of or in the course of her employment.

Petitioner's primary job duties included cleaning buses, placing signage on the buses, cleaning bus shelters, and cleaning the transport center. (T. 13) On October 18, 2021, Petitioner began her shift at 5:00 p.m. and worked in the garage area located inside the main Rockford Mass Transit facility, where she cleaned buses and picked up the garbage in the lunchroom and bathrooms. (T. 14-15, 35) This building also housed the maintenance department and was accessible by entering a code. (T. 35-36, 38) Several hours later, Petitioner finished her work in the main building and proceeded to walk over to a second building referred to as the transit center or transport center. (T. 16) A photo marked as PX8 depicted the main entrance to this second building, showing two adjacent glass doors, above which are windowpanes with the words "Passenger Terminal." Petitioner testified the accident site was to the right of that entrance. (T. 49-50; PX8) The transit center housed the terminal, dispatcher's station, and administrative offices. At the transit center, Petitioner was responsible for cleaning the offices, and this building required a key for entry when the transit center was closed. (T. 16-17) Petitioner realized she had forgotten her work key at home and was unable to enter the building. (T. 16, 38)

The employee entrance is always locked and after hours the passenger entrances are locked as well. Petitioner testified she knocked at the employee entrance door for a "couple of minutes" and looked through the little window and did not see anyone. (T. 17) Petitioner testified

she then walked towards a different window and observed another custodian cleaning the lobby. Petitioner testified she attempted to alert the other custodian but was unsuccessful. Petitioner believed the other employee did not see her. Petitioner testified she did not see anyone else around. Petitioner testified she was thinking, "I need to get going because it's getting later, and I'm not going to be able to finish." (T. 17) Petitioner testified she did not have a cell phone and stated she does not carry a phone around. (T. 18) Petitioner also described the area outside the building as dangerous and she was thinking she needed to get inside the building. (T. 23)

Petitioner next decided to knock on a different window where the dispatcher was located. (T. 18) A photo marked as PX6 shows the sidewalk along the building with the dispatcher's window. The dispatcher's office has multiple windowpanes and is best described as a bay window jutting out from the building with retaining planter walls situated on both sides running along the sidewalk. Black dirt and some bushes are visible. The retaining wall has the appearance of a speckled granite stone with the surface of the ledge narrowed by a beveled edge. (PX6) Petitioner attempted to climb on top of the ledge and fell backwards onto the sidewalk.

On cross-examination, Petitioner testified that the transit center building where she fell was located across the drive which separated the two buildings. (T. 36) Petitioner viewed a photo marked as RX1A and testified she exited the main building through the garage area and crossed over the drive. (T. 36-37) Petitioner testified she walked over to the transit center because every night she cleans the offices in that building. (T. 37) Petitioner testified she was locked out of the transit center because she left her work key at home. (T. 38) Petitioner was able to enter the main building with the maintenance department because that building required only a code number. (T. 38)

On further cross-examination, Petitioner testified she knocked on the door for two minutes before she attempted to climb on top of the retaining planter wall. (T. 39) Petitioner testified there was interior and exterior lighting activated at that time. (T. 39) Inside the passenger terminal building was the dispatcher, a security guard, and another custodian cleaning the lobby. (T. 41) Petitioner testified she saw the other custodian inside and waved a couple of times but was unable to get her attention. (T. 42)

Mr. Drexel McCalvin, Respondent's training and safety manager, testified his office is located in the maintenance facility on the second floor. (T. 54) Mr. McCalvin testified he had been employed as the training and safety manager for two years and was familiar with the premises. Mr. McCalvin testified the dispatcher's window looks out over the entire drive where the buses come into the terminals and directly across the drive is the maintenance shop. (T. 55) Mr. McCalvin testified that the employee entrance was situated to the left of the dispatcher's window and persons inside the dispatch office could potentially hear knocking on the employee entrance door unless there was a lot of radio traffic. (T. 55-58) According to Mr. McCalvin, there would have been less radio traffic at the time of Petitioner's accident around 11:30 p.m. (T. 58) Mr. McCalvin pulled the security camera footage and testified Petitioner may have possibly knocked on the employee entrance door, but from what he could see, all he could say was that Petitioner was making a gesture and couldn't say whether she actually knocked on the door. (T. 83)

Regarding the options available to Petitioner at the time of the accident, Mr. McCalvin testified there were three sets of doors (two separate passenger entrances and the employee entrance) and that Petitioner could have tried knocking on all of them. (T. 73) Petitioner could have also waved in front of the glass window where the other custodian was mopping. Petitioner could have also waved her hand by the dispatcher's window. Finally, Petitioner could have walked back to the first building across the drive and used the phone inside the maintenance office to call the dispatcher's office. (T. 73-74) The security camera video was then presented and viewed by the parties and the Arbitrator. (RX2)

Petitioner testified again in rebuttal and reiterated her prior testimony that she knocked on the employee entrance door for a couple minutes and then modified her testimony, stating "maybe a couple seconds." (T. 89) Petitioner offered no rebuttal testimony in response to Mr. McCalvin's testimony describing the other options available: knocking on the doors to one or both of the passenger entrances, waving at other windows, waving at the dispatcher's window, or returning to the maintenance office to use the phone.

The accident was captured on video from a security camera facing the dispatcher's window and the sidewalk. (RX2) According to the medical records, Petitioner is 5'2" in height with a weight of 135 pounds. (PX1) When Petitioner is seen in the video as she is about to attempt her climb, it is clear that the height of the ledge is even with Petitioner's lower thigh, just above her knee. (RX2) Petitioner is seen stepping onto the ledge with her right foot and raising her left leg. Petitioner then placed her left foot atop the ledge. Petitioner then attempted to raise herself upward and almost reached a standing position before losing her balance and falling backwards onto the sidewalk. (RX2) As mentioned, the surface of the ledge was narrower than the retaining wall due its beveled edge. Petitioner testified, "I couldn't even get onto the ledge when I fell." (T. 21) Petitioner further testified she tried to stand straight up but fell before she could get both feet onto the ledge. (T. 21) The accident occurred at 11:36 p.m.

As mentioned, Petitioner testified she knocked on the employee entrance door for two minutes before she attempted to climb on top of the retaining planter wall. She later modified this statement and testified she may have knocked on the door for "maybe a couple of seconds." The security camera video recording, which starts at 11:36 p.m., shows Petitioner's actions before the accident. (RX2) At the start of the video, Petitioner was situated several feet past the window where the dispatcher is seated and walked on the sidewalk with her back to the camera. Petitioner is seen stopping to pause and peek inside the employee entrance door for one to two seconds. It is difficult to discern whether Petitioner actually knocked. Petitioner then turned around and walked along the sidewalk towards the dispatcher's window. Petitioner walked past the dispatcher's window and paused to briefly glance towards the windows above the planter. She continued walking a few feet and again stopped to briefly glance through the windows. This glass façade is comprised of upper and lower horizontal rows of large windows. At no time did Petitioner wave while looking through the large glass windows. The dispatcher's bay window is smaller and level with the upper row of the glass façade. It appears the dispatcher is seated from an elevated position at the bay window with a full view of the drive. I infer that persons on the sidewalk immediately below the dispatcher's window are out of view from where the dispatcher is seated. On the opposite side of the sidewalk is a concrete barrier with a steel hand rail separating the sidewalk from the drive. At no time during the video did Petitioner step away to

reposition herself closer to the barrier which would have placed her person within the dispatcher's field of vision. If she had stepped back closer to the barrier and handrail, she could have raised her hands and arms into the air and waved; however, she never attempted to signal the dispatcher. When asked on cross-examination if she stepped back to wave at the dispatcher, Petitioner testified she did not remember doing that. (T. 43)

In order to establish a compensable claim under the Act, claimants must prove by a preponderance of the evidence that: (1) the injury occurred in the course of the employment, and (2) arose out of the employment. *McAllister vs. Ill. Workers' Comp. Comm'n,* 2020 IL 124848, P32. 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. *Id*. at 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. Risks are considered distinctly associated with employment, if, at the time of the occurrence, the employee was performing an act: (1) she was instructed to perform by her employer, (2) she had a common law or statutory duty to perform, or (3) which the employee might reasonably be expected to perform incident to her assigned duties. *Id*. at P46.

It is undisputed that Petitioner was not instructed to climb onto the ledge of the retaining planter wall, nor was she trained to do so in event she ever forgot her work key. Petitioner was not under any common law duty or statutory duty to perform this act. Thus, Petitioner's decision to climb onto the ledge of the retaining planter wall can only be considered a risk distinctly associated with the employment if her decision was one that she might reasonably be expected to perform incidental to her assigned duties. A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in fulfilling her duties. *Orsini v. Industrial Com.*, 117 Ill. 2d 38, 45, 509 N.E.2d 1005 (1987). An injury is not compensable if it resulted from a risk personal to the employee rather than incidental to the employment. *Id*. Petitioner was employed to perform cleaning and custodial services and climbing onto the retaining planter wall was not an act in fulfillment of her job duties. I might view this case differently if she had been instructed to wash the dispatcher's window on the day of her accident. However, those facts are not before us. I would find Petitioner's voluntary decision to climb onto the ledge of the retaining planter wall was unsafe, unreasonable, and was not reasonably expected in the fulfillment of her duties. Petitioner's decision to climb onto the ledge of the retaining wall was a choice she made which was for her own benefit and that action exposed Petitioner to a hazard of her own making.

Petitioner's attempts to grab the attention of co-workers inside the building were minimal or non-existent. The security camera video demonstrated that Petitioner stood by the employee entrance door for one or two seconds, after which she walked past the dispatcher's window and paced in front of the glass façade without attempting to wave her hands at the co-employee who is seen in the video cleaning near the window. Petitioner then turned back and walked towards the dispatcher's window and approached the retaining wall. Per the video's running time clock, the video started at 11:36:00 p.m. and Petitioner fell 35 seconds later at 11:36:35. Petitioner is

seen walking during the majority of this timespan. Additionally, Petitioner failed to avail herself of safer alternative options. Petitioner made no attempt to step further away from the building on the sidewalk and wave to the dispatcher's window. Petitioner also could have returned to the maintenance department (where she had access with the code) and used the phone to call for assistance.

Accordingly, Petitioner's injury arose from a personal risk and not an employment risk. "An injury does not arise out of employment where an employee voluntarily exposes herself to an unnecessary personal danger solely for her own convenience." *Purcell v. Illinois Workers' Compensation Comm'n*, 2021 IL App (4th) 200359WC, P24 (claimant voluntarily chose to hop over a chain fence while walking to the personnel services building to drop off her time card). See also, *Hatfill vs. Industrial Comm'n*, 202 Ill. App. 3d 547, 554 560 N.E.2d 369 (1990) (claimant leaped over accumulation of water in parking lot), where the Court determined the Commission could have reasonably inferred from the evidence that claimant's injuries "resulted from a personal risk assumed by the claimant," and *Orsini v. Industrial Comm'n.*, 117 Ill. 2d 38, 47, 509 N.E.2d 1005 (1987), where the Supreme Court noted, "This court has consistently held that where the injury results from a personal risk, as opposed to a risk inherent in the claimant's work or workplace, such injuries are not compensable."

The legal principles governing Petitioner's claim are longstanding and shield employers from liability where employees engage in dangerous conduct having no reasonable connection with the duties for which they were hired to perform. Depending on the circumstances, the employee's performance of a dangerous act may be analyzed under either the "course of employment" element or the "arising out of" element. In *Segler vs. Industrial Comm'n.*, 81 Ill. 2d 125, 406 N.E.2d 542 (1980), the Supreme Court affirmed the Commission's decision denying benefits for a claimant who sustained injuries while cooking a frozen pie for his own consumption in one of his employer's industrial ovens. The dispositive issue was not that the claimant sought to cook food for personal comfort; rather, the controversy stemmed from his decision to use the industrial oven which was connected to a conveyor system. The Court noted, "[a]cts of personal comfort are generally held to be incidental to employment duties and, thus, are in the course of employment. However, if the employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties, any injury incurred as a result will not be within the *course of employment*." (Emphasis added.) *Segler*, 81 Ill. 2d at 128.

Turning to the "arising out of" element, a claimant's unsafe act was analyzed under this prong in *Dodson v. Industrial Comm'n*, 308 Ill. App. 3d 572, 720 N.E.2d 275 (1999). The Appellate Court affirmed the denial of benefits where the claimant, while exiting her employer's premises through the employee exit, left the sidewalk and took a shortcut across a grassy slope in the rain to reach her car where she slipped and fell. The sidewalk and stairs were in good condition and not blocked by any obstruction; however, the claimant testified that she walked across the grass because it was the most direct route to her car. The Court found that the claimant's voluntary decision to traverse the grassy slope, instead of the walkway, exposed her to an unnecessary danger for her own benefit and was entirely separate from her employment responsibilities. *Id.* at 576. The Court noted that the claimant was still in the course of her employment as she had just clocked out and was still on the premises; however, "an injury *does*

not arise out of the employment where an employee voluntarily exposes himself or herself to an unnecessary personal danger solely for his own convenience." (Emphasis added.) *Id.* The Court further expressed the following: "To be sure, employees are free to choose any safe route. However, where the employee ventures from a safe sidewalk provided by the employer and instead proceeds to walk down a grassy slope covered with water and ice, we cannot say the Commission's decision finding that the employee voluntarily exposed herself to an unnecessary personal risk only for her own convenience is against the manifest weight of the evidence." *Id.* at 577.

In 2011, this Commission had occasion to consider a claim involving a retaining wall and denied benefits. In *Hanson vs. Trinity Express Care*, 11 IWCC 0711; 2011 Ill. Wrk. Comp. LEXIS 795, the Commission ruled that an accident did not arise out of the employment where the claimant took a shortcut and injured her knee while stepping onto a retaining wall. Claimant described the retaining wall as three bricks in height with each brick being "approximately four to six inches high" for a total height of 12 to 18 inches. The employer's form 45 report of injury described the retaining wall as 18 inches in height. The claimant had already arrived at work and clocked in that day but forgot her bag in her car which contained a piece of paper with her passwords needed to log in to her computer. The claimant testified she left the building to return to her car and took the shortcut as the weather was "20 below outside." The claimant also testified she took that same shortcut every time she worked. She successfully stepped onto and over the retaining wall and reached her car; however, on her return trip she injured her knee using the same retaining wall. The claimant admitted that the sidewalk was in good condition and unobstructed. The Commission ultimately concluded, "In choosing to use a 'hill' or a retaining wall as a means of getting to and from her car, petitioner, like the claimant in *Dodson,* made a voluntary decision to take an increased personal risk by taking the shortcut." The fact that the claimant's act also served the interests of the employer did not convert the personal risk she created into an employment risk. On appeal before the Appellate Court, the claimant argued her case was distinguishable from the *Dodson* decision since her actions were in furtherance of her employer's interests at the time she stepped onto the retaining wall. In an unpublished decision, the Appellate Court rejected this argument, writing, "Claimant contends that the *claimant in Dodson* '*was not furthering the employer's interest*' and walked on more dangerous and unsafe grass. To the extent that the facts in this case are distinguishable, the differences are of no consequence." (Emphasis added.) *Hanson v. Illinois Workers' Compensation Comm'n*, 2013 IL App (3d) 120989WC-U, PP23-24

In 2014, this Commission considered a case involving a claimant who inadvertently locked himself out of his office and sustained injury attempting to climb over a wall, and denied benefits. See *Geyer vs. Aardvark Builders*, 14 IWCC 901; 2014 Ill. Wrk. Comp. LEXIS 897. In that case, the claimant worked in a commercial building occupied by multiple businesses which shared a loading dock. While working in his office, the claimant overheard one of the employer's delivery drivers having an argument with a worker from another business. When the delivery driver left, the claimant exited his office to talk with the worker from the other business. He then went to re-enter the building and realized he locked himself out. He also left his cell phone inside as well. The claimant testified he needed to get back to his desk because his employer had several jobs going on that he needed to coordinate. He testified he would get dozens of calls daily regarding jobs from people in the field requiring his assistance, and if he failed to do so it

would leave workers and materials hanging in the field, and would cause delays in job completions. The claimant testified he was able to enter an indoor stairwell/hallway area of the building, but not his employer's offices. The claimant found a chair on the loading dock, put it by a wall, stood on the back of the chair, moved ceiling tiles out of the way and pulled himself up and over the wall partition. He then lowered himself onto a "lookout," a wood structure jutting out from the wall inside the offices, and then jumped down about eight feet to the floor, injuring his left foot. The claimant was diagnosed with a calcaneal fracture and underwent surgery. The employer offered photos and testimony suggesting the claimant could not have squeezed himself into the space above the ceiling tiles. The Commission noted the claimant's accident description was questionable; however, for purposes of deciding the matter, the Commission elected to assume the claimant's accident description was accurate. Based on the allegations, the Commission found that claimant's actions constituted an "unreasonable, reckless and hazardous activity." Relying on *Dodson vs. Industrial Comm'n*, the Commission determined the accident did not arise out of the employment. The claimant argued that the purpose of this dangerous act was only to further the interests of his employer; however, the Commission found that the claimant had "overstated his need to return to the office immediately in seeking to push the case to the side of compensability." A claimant's decision to perform a dangerous act may be found compensable where there exists a true emergency or urgency; however, that was not the situation in *Geyer vs. Aardvark Builders* and that is not the situation in the present matter before us.

More recently, in *Purcell v. Illinois Workers' Compensation Comm'n*, 2021 IL App (4th) 200359WC, cited above, the claimant took the bus to the university campus where she was employed and arrived at approximately 8:20 a.m. After exiting the bus, the claimant intended to walk to the personnel services building to drop off her time card, which she was required to do as a temporary employee. As she walked in the direction of the personnel services building, the claimant encountered a chain barrier/fence and attempted to "hop" over it. The heel of her shoe got caught and she fell onto her right elbow. *Id.* at P5. Approximately 10 to 15 feet to the left of where she fell was an area without a fence. The claimant admitted that there were no obstructions or anything else that would have prevented her from taking a route that would have allowed her to avoid the chain fence. *Id*. at P6. The Commission found that the claimant failed to prove her accident arose out of her employment. *Id*. at P12. On appeal, the claimant argued that her act of hopping over a chain barrier along the sidewalk was an act that the university might reasonably expect her to perform to fulfill her duties given her status as a temporary worker required to drop off her time card. *Id.* at P22. The Court disagreed, finding that the Commission correctly applied the legal reasoning articulated in *Dodson v. Industrial Comm'n*. Applying the *Dodson* holding to the facts, the Court noted the claimant voluntarily hopped over the chain fence and "exposed herself to an unnecessary danger entirely separate from her employment responsibilities." *Id*. at PP 23-24. The Court further noted that the claimant's decision not to use the walkway, which she testified would have been safer and only taken an extra few seconds, was for her own benefit and not to the benefit of the university. *Id*. The *Purcell* court then reiterated the general rule that "[a]n injury does not arise out of employment where an employee voluntarily exposes herself to an unnecessary personal danger solely for her own convenience." *Id.* at P24

Additionally, Petitioner's testimony describing the area outside the transit center as dangerous was unpersuasive. Viewing the video, Petitioner appeared unconcerned with her surroundings. She walked slowly and casually and never glanced around to see if other persons were in the vicinity. Petitioner's behavior was seemingly inconsistent for someone thinking she was in a dangerous area. Furthermore, Petitioner did not introduce any evidence of prior crimes committed at the transit center or any crime data to show this area posed any risks associated with crime. Compare *Restaurant Development Group v. Hee Suk Oh*, 392 Ill. App. 3d 415, 421-422, 910 N.E.2d 718 (2009), where a bartender injured by a stray bullet introduced crime data showing that the restaurant was located in a police district whose crime rates for violent crimes and shootings placed it in the top 25% to 33% of all police districts in the City of Chicago. Based on this lack of evidence and Petitioner's observable behavior seen in the video, I find Petitioner overstated the alleged danger of the area.

For the above reasons, I dissent from the majority's opinion and would reverse the Arbitrator's decision and find Petitioner failed to prove her injury arose out of or in the course of her employment.

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC031900
Case Name	Rocio Cruz-Andrade v. Rockford Mass Transit District
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	James Gesmer
Respondent Attorney	Glenn Blackmon

DATE FILED: 9/12/2023

/s/ Paul Seal, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 12, 2023 5.30%

STATE OF ILLINOIS)
)SS.
COUNTY OF WINNEBAGO)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

ROCIO CRUZ-ANDRADE
Employee/Petitioner

v.

ROCKFORD MASS TRANSIT DISTRICT
Employer/Respondent

Case # **21 WC 031900**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Seal**, Arbitrator of the Commission, in the city of **Rockford**, on June 20, 2023. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. **X** Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. **X** Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. **X** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. **X** What temporary benefits are in dispute?
☐ TPD ☐ Maintenance **X** TTD
L. **X** 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 ***$45,406.40***; the average weekly wage was ***$873.20***.

On the date of accident, Petitioner was ***62*** years of age, **married** with ***0*** dependent children.

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

Respondent shall be given a credit of ***$0.00*** for TTD and ***$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 credit for ***$3,567.00*** under Section 8(j) of the Act.

ORDER

- Respondent shall pay $23,216.18 for medical services provided in Section 8(A) of the act.
- Respondent shall pay ***$N/A*** in penalties, as provided in Section 19(k) of the Act.
- Respondent shall pay ***$N/A*** in penalties as provided in Section 19(l) of the Act.
- Respondent shall pay ***$N/A*** in Attorney's Fees, as provided in Section 16 of the Act.
- **Respondent shall pay 16 1/7 weeks of TTD benefits, representing the period October 19, 2021, through February 8, 2022, at a weekly rate of $582.13. Respondent is entitled to a credit of $3567.00 under Section 8(j) of the Act.**
- **Respondent shall pay 20% loss of the use of the right hand to Petitioner, pursuant to Section 8(e) of the Act, representing 41 weeks of permanent partial disability benefits at $523.92 per week.**

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

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

Signature of Arbitrator

September 12, 2023

I. FINDINGS OF FACT

Trial Testimony of Petitioner

Petitioner, Rocio Cruz-Andrade, testified that she was employed as a custodian by Respondent, Rockford Mass Transit District, on October 18, 2021. Petitioner also testified that she had never sustained any injuries to her right wrist prior to October 18, 2021, (T 12).

Petitioner further testified that just before 11:40 P.M. on October 18, 2021, she had cleaned a few buses and picked up garbage from the lunchroom and the bathrooms in the Maintenance Center. After doing that, she left the garage area and proceeded to walk to the Transport Center in order to clean some offices. She attempted to enter the Transport Center but was unable to do so because she was locked out and did not have her key (T 15-17, 50). Petitioner further testified that she had never been instructed as to what to do in the event that she was locked out of the Transfer Center (T 23). She additionally testified that there was nobody working at the Maintenance Center who had a key to the Transfer Center (T 45).

Petitioner testified that after realizing that she was locked out of the Transfer Center, she knocked on a door for a couple of minutes and did not see anybody when she looked through a small window. She testified that she then walked towards another window where she could see a woman cleaning the lobby in the Transfer Center. Petitioner also testified that this woman did not see her, even after she waved to her a couple of times. As a result, Petitioner testified that she decided to climb onto a ledge in order get the attention of the dispatcher on duty. Petitioner further testified that she did not have a phone with her during this period of time (T 17-18, 20, 39-40, 42).

Petitioner testified that before she could fully stand up on the ledge to get the attention of the security guard, she fell onto the sidewalk, with her right hand underneath her leg (T 21-22). Petitioner testified that after falling, she felt immediate pain in her right wrist (T 23). After she

fell, Petitioner testified that she sat on a bench outside the Transfer Center for about ten minutes before reporting her accident (T 47).

Petitioner testified that she was seen at the Rockford Memorial Hospital Emergency Department in the early morning hours on October 19, 2021. The October 19, 2021, medical records from Rockford Memorial Hospital indicate that x-rays revealed a closed Colles' Facture of the right radius and a closed fracture of the distal end of the right ulna. The medical records also indicate that Petitioner was prescribed Norco, that a splint was applied to her right hand and wrist and that she was referred to an orthopedic surgeon (PX 1).

Petitioner testified that later in the day on October 19, 2021, she saw Dr. Borchardt at Ortho Illinois, after Respondent made an appointment for her (T 25-26). The October 19, 2021, records from Ortho Illinois indicate that Dr. Borchardt diagnosed Petitioner with a closed intra-articular facture of the distal end of the right radius, that he ordered a CT scan, instructed Petitioner to continue to utilize the splint and apply ice to the right upper extremity. The records also indicate that Dr. Borchardt instructed Petitioner not to use her right upper extremity and to follow-up with Dr. Bear at Ortho Illinois (PX 2).

Petitioner testified that Respondent was not able to accommodate her work restrictions after the October 19, 2021, appointment with Dr. Borchardt. She also testified that the CT scan of her right wrist took place on October 25, 2021 (T 56-57). The CT scan radiology report of October 25, 2021, indicates that Petitioner had sustained a comminuted intra-articular fracture of the distal radius and ulnar styloid (PX 2).

Petitioner testified that she returned to see Dr. Bear on October 28, 2021 (T 27). The medical records from October 28, 2021, indicate that Dr. Bear recommended right wrist surgery (PX 2).

Petitioner testified that she underwent right wrist surgery at the Ortho Illinois Surgery Center on November 3, 2021 (T 27). The November 3, 2021, Operative Report indicates that

Petitioner underwent a right wrist brachioradialis tenotomy, a right wrist first dorsal compartment release and a right open reduction internal fixation of the distal radius fracture (PX 2).

Petitioner testified that on November 16, 2021, she was seen by Clayton Lewis, PA-C, at Ortho Illinois (T 27). The November 16, 2021, chart note indicates that Clayton Lewis removed the surgical sutures, prescribed Norco and stated that Petitioner was incapacitated until further notice (PX 2, 3).

Petitioner testified that she returned to see Clayton Lewis on December 14, 2021 (T 28). The medical records from that date indicate that Clayton Lewis prescribed physical therapy (PX 2). Petitioner also testified that she attended four physical therapy sessions between December 20, 2021, and January 4, 2022 (T 28, PX 2).

Petitioner testified that she returned to see Clayton Lewis on January 11, 2022 (T 28). The medical records from that date indicate that Petitioner was instructed to continue with physical therapy and not to lift more than ten pounds with her right upper extremity (PX 2, 3). Petitioner also testified that Respondent was not able to accommodate this work restriction (T 29). Petitioner further testified that she attended approximately eight physical therapy sessions between January 11, 2022, and February 3, 2022 (T 29, PX 2).

Petitioner testified that she returned to see Dr. Bear on February 8, 2022 (PX 2). The medical records from that date indicate that Dr. Bear released Petitioner for full duty work and told her to return as-needed (PX 2). Petitioner also testified that she returned to work immediately after that date, and that she attended three additional physical therapy sessions between February 10 and February 22, 2022 (T 30, PX 2).

Petitioner testified that she has not sought any medical treatment for her right wrist injury since February 22, 2022, and that she is still working as a custodian for Respondent. She also testified that she did not receive any Temporary Total Disability benefits between October 19, 2021, and February 8, 2022, but that she did receive some benefits during that period of time.

Petitioner further testified that her group health insurance carrier paid some of the medical charges pertaining to her injury (T 30-32).

Petitioner testified that at the present time, she experiences pain and numbness in her right hand and wrist when performing her work duties for Respondent, when she tried to cut vines in her yard and when she plays slot machines. She also testified that she applies ice to her right wrist almost every night, and that she takes over-the-counter Ibuprofen on a daily basis to try to address her pain (T 32-34).

TRIAL TESTIMONY OF DREXEL MCCALVIN

Drexel McCalvin testified that he has been employed for more than two years as the Training and Safety Manager for Respondent (T 53). He also testified that his review of the surveillance video from October 18, 2021, indicates that Petitioner was only near the locked door for a few seconds before she walked past the dispatch area. He further testified that he did not see Petitioner knocking on the locked door when he viewed the surveillance video, but he conceded that it was a little difficult for him to see what she was doing. He testified that he could only assume that Petitioner was knocking on the door or making noise on the door (T 69, 83).

Drexel McCalvin testified that his review of the surveillance video from October 18, 2021, also indicates that when Petitioner was walking down the corridor, he did not see her attempting to get the attention of the woman who was cleaning inside the Transfer Center (T 70-71). He also testified that he did not know what the woman who was cleaning inside the Transfer Center was able to see when Petitioner was walking outside, just prior to her trying to climb the ledge and falling (T 79).

Drexel McCalvin testified that there are three ways to enter the Transfer Center, those being a set of doors on the north end of the building, a set of doors on the south end and the door in the middle (T 72-73). He also testified that the doors on the north and

south ends of the building were locked at the time of Petitioner's fall (T 80-81). He further testified that employees of Respondent have never been instructed to stand on a ledge when locked out of the Transfer Center (T 82).

II. CONCLUSIONS OF LAW

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

With regard to the issue of accident, the Arbitrator finds that Petitioner has met her burden of proof. In support of this finding, the Arbitrator relies on Petitioner's credible testimony, the medical records, the surveillance video of her accident and the relevant case law. To prove that the accidental injuries arose out of Petitioner's employment, she must show that the accident resulted from a risk incidental to the employment. See *Rogers v. Industrial Commission*, 83 Ill.2d 221, 223 (IL S.Ct. 1980). An injury does not arise out of the employment unless the danger causing the injury is peculiar to the work and the exposure to the risk is greater than that for which the general public is exposed. See *Piercy v. Royal Oaks Nissan*, 97 IL.W.C. 9109 (2001); *Kimes v. Illinois Department of Transportation,* 14 W.C. 17750, 16 I.W.C.C. 0473 (July 13, 2016).

The Arbitrator finds that in this case, Petitioner was acting in furtherance of her job duties and performing activities incidental to her job at the time of her accident. The Arbitrator also finds Petitioner's testimony about the events of October 18, 2021, to be credible and finds that she had a legitimate business purpose for attempting to climb onto the ledge to get the attention of the dispatcher. The Arbitrator notes that after realizing that she did not have her key to the Transfer Center, Petitioner attempted, without success, to get somebody's attention to open the middle door so that she could resume her cleaning duties. The Arbitrator also notes that Petitioner testified that she then walked towards a window where she could see a woman

cleaning inside the Transfer Center. Petitioner testified that she waved to this woman, but that the woman did not see her, prompting her to try to climb onto the ledge to get the attention of the dispatcher (T 17-18, 42). The Arbitrator further notes that Petitioner's options as to how to enter the Transfer Center were extremely limited in that the north and south doors were locked and she did not have a phone with which to call for assistance.

The Arbitrator has considered the testimony of Dexter McCalvin that employees of Respondent have received training about what to do if locked out (T 81). However, the Arbitrator notes that Petitioner testified that she has been employed by Respondent for approximately 24 years and had never been told what to do in this type of situation (T 11, 23).

The Arbitrator has also considered Dexter McCalvin's testimony that based upon his review of the surveillance video, Petitioner was only near the locked door for a few seconds before she walked past the dispatch area, and that he did not see Petitioner attempting to get the attention of the woman who was cleaning inside the Transfer Center (T 69, 79, 83). However, the Arbitrator notes that Dexter McCalvin conceded that it was difficult for him to see what Petitioner was doing when she was at the locked door, and that he could only assume that she was knocking on the door or making noise to attract somebody's attention (T 69, 83). The Arbitrator also notes that Dexter McCalvin testified that he did not know what the woman who was cleaning inside the Transfer Center was able to see when Petitioner was walking outside, just prior to her trying to climb the ledge and falling (T 79).

Respondent relies on a series of cases which the Arbitrator has reviewed. The Arbitrator finds that the case law cited by Respondent does not square factually with the facts of this instant case. Petitioner testified that she did try other manner of entry into the area that she needed to clean. That she could or might have done more or differently and might not have does not take her out of her employment. The Arbitrator finds that Petitioner's actions were not unreasonable.

Based upon the credible testimony of Petitioner, a review of the surveillance video (RX 2), a review of the medical records and the applicable case law, the Arbitrator concludes that Petitioner sustained an accident that arose out of and in the course of Petitioner's employment by Respondent.

(F) Is Petitioner's Current Condition of Ill-being Causally related To the injury?

In support of the Arbitrator's decision relating to (F) whether Petitioner's present condition of ill-being is causally related to the injury of October 18, 2021, the Arbitrator finds the following facts: The Arbitrator notes that Counsel for Respondent only disputed causal connection as it relates to the issue of accident and subject to proof, factual and legal.

The Arbitrator, having found that Petitioner sustained an accident that arose out of and in the course of Petitioner's employment by Respondent, finds that the treatment records are consistent with Petitioner's testimony about the specifics of her work accident of October 18, 2021. The Arbitrator also viewed the surveillance video depicting Petitioner's accident and is therefore satisfied that there is overwhelming evidence to support a finding of causal connection between the accident of October 18, 2021, the treatment rendered to Petitioner and her current condition of ill-being.

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

Having found in favor of Petitioner as to the issues of accident and causal connection, the Arbitrator finds that Respondent is liable for the following medical bills, totaling $23,216.28, pursuant to the Workers' Compensation Fee Schedule:

1. Ortho Illinois (PX 2) $ 183.18

2. Ortho Illinois Surgery Center (PX 5) $23,033.00

The Arbitrator finds that the above medical bills relate to services rendered to Petitioner that were causally related to her work accident of October 18, 2021. Accordingly, based upon the Arbitrator's findings on the issues of accident and causal connection, the Arbitrator further finds that Respondent shall pay reasonable and necessary medical expenses incurred in the care of treatment for her causally related conditions pursuant to Sections 8 and 8.2 of the Act.

(K) What temporary benefits are in dispute?

In support of the Arbitrator's decision related to (K) what amount of compensation is due for temporary total disability, the Arbitrator finds the following facts: the Arbitrator heard testimony from Petitioner setting forth the dates that Dr. Borchardt and Clayton Lewis, PA-C, placed work restrictions upon her after her work accident on October 18, 2021, as well as the dates that Clayton Lewis, PA-C, ordered her not to work following her November 3, 2021, surgery. The Arbitrator also heard testimony from Petitioner that Respondent was not able to accommodate the work restrictions that were placed upon her between October 19, 2021, and February 8, 2022. The Arbitrator notes that the medical records corroborate Petitioner's testimony about her work status during the aforementioned period of time (PX 2, 3). The Arbitrator also notes that Respondent presented no evidence to refute Petitioner's testimony that Respondent was unable to accommodate her work restrictions during the aforementioned period of time.

Based upon the credible testimony of Petitioner and the treatment records of Dr. Borchardt and Clayton Lewis, PA-C, the Arbitrator finds that Petitioner is entitled to be paid temporary total disability benefits for the period of time from October 19, 2021, through February 8, 2022, representing 16 1/7 weeks at a weekly rate of $582.13.

The Arbitrator also finds that Respondent is entitled to a credit of $3567.00 under Section

8(j) of the Act, pertaining to non-occupational disability benefits paid to Petitioner between October 19, 2021, and February 8, 2022.

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

In support of the Arbitrator's decision relating to (L) what is the nature and extent of the Injury, consistent with 820 ILCS 305/8.1b, permanent partial disability shall be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of 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. The Arbitrator notes that no single enumerated factor shall be the sole determinant of disability.

With respect to Subsection (i) of Section 8.1b(b), the Arbitrator notes that neither party submitted an AMA rating. The Arbitrator places no weight on this factor when making the permanency determination.

With respect to Subsection (ii) of Section 8.1b(b), the Arbitrator notes that Petitioner testified that she continues to work her regular work duties for Respondent. The Arbitrator places greater weight on this factor when making the permanency determination.

With respect to Subsection (iii) of Section 8.1b(b), Petitioner was 63 years old on her date of accident. Given the age of Petitioner and the fact that her treating physician has placed her under no permanent work restrictions, the Arbitrator places lesser weight on this factor when making the permanency determination.

With respect to Subsection (iv) of Section 8.1b(b), the Arbitrator notes that following the conclusion of the medical treatment for her work injury, Petitioner has continued to work for Respondent. As there is no evidence of reduced earning capacity contained in the record, the Arbitrator places lesser weight on this factor when making the permanency determination.

With respect to Subsection (v) of Section 8.1b(b), the Arbitrator notes that Petitioner testified that she experiences pain and numbness in her right hand and wrist when performing her work duties for Respondent, when she tried to cut vines in her yard and when she plays slot machines. She also testified that she applies ice to her right wrist almost every night, and that she takes over-the-counter Ibuprofen on a daily basis to try to address her pain (T 32-34). The Arbitrator also notes that when Petitioner last saw Dr. Bear, on February 8, 2022, his examination findings included 4/5 grip strength in the right hand and wrist and near full distal range of motion (PX 2).

Based upon the above factors and the medical records in their entirety, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 20% loss of the use of the right hand, as provided in Section 8(e) of the Act, representing a total of 41 weeks at $523.92 per week.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC021484
Case Name	Murchael Turner v. South Suburban Council
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0055
Number of Pages of Decision	15
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	James McHargue
Respondent Attorney	Timothy Alberts

DATE FILED: 2/5/2025

/s/Carolyn Doherty,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MURCHAEL TURNER,

Petitioner,

vs. NO: 23 WC 21484

SOUTH SUBURBAN COUNCIL,

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 26, 2024 is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $42,300.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

February 5, 2025

O: 01/30/25
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC021484
Case Name	Murchael Turner v. South Suburban Council
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	James McHargue
Respondent Attorney	Timothy Alberts

DATE FILED: 6/26/2024

/s/ Jeffrey Huebsch, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 25, 2024 5.14%

M. Turner v. South Suburban Council, 23 WC 021434

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)

MURCHAEL TURNER Case # **23** WC **021484**
Employee/Petitioner

v.

SOUTH SUBURBAN COUNCIL
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **JEFFREY HUEBSCH**, Arbitrator of the Commission, in the city of **CHICAGO, IL**, on **APRIL 22, 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, **4/14/2023**, 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, in part,*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**10,682.00**; the average weekly wage was $**562.50**.

On the date of accident, Petitioner was **54** years of age, ***married*** with **2** dependent children.

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

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

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

ORDER

Respondent shall pay reasonable and necessary medical services of $23,836.66, pursuant to the Medical Fee Schedule and as provided in Sections 8(a) and 8.2 of the Act, and as is set forth below.

Respondent shall pay Petitioner temporary total disability benefits of $508.04/week for 36-1/7 weeks, commencing 8/142023 through 4/22/2024, as provided in Section 8(b) of the Act.

Respondent shall authorize and pay for the right shoulder surgery as recommended by Dr. Poepping, along with all related services, in accordance with 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

June 26, 2024

FINDINGS OF FACT

On April 14, 2023, Petitioner was employed by Respondent, an inpatient and outpatient facility dedicated to addiction recovery, as a Recovery Coach. (T. 11). He was hired in January 2023. His job responsibilities included administering medication, maintaining contact with recovery clients, accompanying them to group sessions, etc. (T. 12). He testified he was paid either $15.00 or $18.00 per hour, and worked 37.5 hours per week. (T. 13).

Petitioner testified that on April 14, 2023, he was married, although he was not married as of the date of trial. (T. 10). He was originally married on June 24, 2011. As of April 14, 2023, Petitioner also had two dependent children - Okasha and Miles Turner. (T.10). He testified to their dates of birth, which would place both of them under the age of eighteen on April 14, 2023. No cross examination was made on these points.

Petitioner testified that on April 14, 2023, at around 6:00 pm, he was instructed by Miss Rose (a fellow recovery coach) to take a group of clients outside and accompany them on a walk. Around sixteen clients wanted to go on the walk. He testified that this was a regular occurrence, and the walks happened most days at the discretion of the counselors. The walks usually lasted between 45 minutes and an hour. (T. 14-15).

Prior to starting the walk, Petitioner engaged in conversation with a particular client who mentioned that he wanted a cigarette. Petitioner counseled the client against this. (T. 16). The two began talking about football, which they had both played in college. (T. 17). Petitioner encouraged the client to maintain good physical health and avoid activities like smoking and drinking. As the group went outside, Petitioner began discussing football exercises and drills with the client. He testified that he told the client, "You know, you can't get into that kind of shape if you're constantly…smoking those cigarettes and/or doing drugs." (T. 17). Petitioner testified that he and the client then engaged in a football drill that involved Petitioner running backwards, and the client running forwards. Petitioner slipped on gravel and fell to the ground. A video of the accident was introduced into evidence as Joint Exhibit 1. The video shows a group of approximately ten people in an alley or street. Petitioner and the client are shown running backwards, like in a pass defense drill. As they turn to run forwards, Petitioner falls and lands on his right arm. The client immediately picks Petitioner up off the ground. Petitioner moves his right arm in a manner suggesting injury - he does not appear to move his elbow out of a flexed position and it does look like he has suffered an anterior dislocation of the shoulder. (JT X 1). Petitioner testified that the client was facing him and running forward towards him. (T. 20).

Petitioner testified that after falling, he had pain in his forearm, shoulder, and palm, all on the right side. He couldn't move his shoulder. (T. 20-21). He testified that the purpose of the activity was to "encourage [the client] on his road to sobriety." (T. 21). He explained that this was a way to connect with another former athlete on that level. (T. 21). Petitioner acknowledged his employer had a rule forbidding physical contact with clients. (T. 22). As seen from the video, Petitioner initiated no physical contact with a client. The only contact was initiated by the client, who helped pick Petitioner up off the ground. (JT X 1). Petitioner testified that there was no prohibition on engaging in physical activity with a client that did not involve contact, such as jogging or running next to each other. (T. 22-23).

Petitioner finished the walk with the clients, which lasted approximately forty-five minutes. (T. 23). Upon returning to Respondent's facility, Petitioner spoke with Miss Rose and then was taken by ambulance to Advocate South Suburban Hospital. (T. 23).

The Advocate South Suburban Hospital ER records indicate an arrival time of 1928 (7:28pm) on April 14, consistent with Petitioner's testimony. (PX 1, 14). The history is consistent with Petitioner's testimony and the video, stating, "He states he was running football drills on the concrete when he fell." (PX 1, 16).

Petitioner has a history of prior shoulder dislocations. He also was said to have right sided radiculopathy "and is supposed to have surgery." (PX 1, 16). Petitioner complained of right shoulder pain and numbness and tingling. He had mild right wrist pain and an abrasion of the wrist, which was said to be not significant. Neck pain was denied. (PX 1, 22). X-rays indicated a right anterior shoulder dislocation with possible avulsion fracture of the lateral greater tuberosity, with a probable Hill-Sachs lesion with impaction fracture. (PX 1, 20). The shoulder was reduced in clinic (twice) (PX1, 21-25). The discharge note indicated, "he will most likely need surgery for his recurrent dislocations and unstable shoulder." (PX 1, 21). The final diagnoses were dislocation of right shoulder joint, right wrist pain, and Hills-Sachs fracture of right humerus, closed. (PX 1, 21). The right wrist X-Ray was negative for fracture and the right wrist pain had diminished at the time of discharge. (PX 1, 22, 28). Orthopedic follow-up was recommended for the shoulder. (PX 1, 30). No off work instructions are noted in PX 1.

Petitioner was next seen on April 28, 2023, by Dr. Ram Aribindi of Southland Orthopaedics. (PX 2, 11). Petitioner testified he was referred to Dr. Aribindi by Respondent's Director of Human Resources, Ms. Shay Johnson. (T. 25). Dr. Aribindi noted a consistent history of accident and documented Petitioner's denial of prior right shoulder injuries and denial of prior right shoulder pain. Petitioner was said to be right handed. He reported a history of cervical radiculopathy in the past. (PX 2, 11). Range of motion was limited. Sensation was intact. (PX 2, 11). Dr. Aribindi recommended physical therapy and an MRI of the right shoulder. (PX 2, 12). He issued restrictions of no lifting or carrying weights overhead, and no throwing with the right upper extremity. (PX 2, 12). In follow-up on May 12, 2023, Dr. Aribindi noted some improvement in right shoulder pain, with the MRI scheduled for the following week. Work restrictions were continued. (PX 2, 13-14). On June 7, 2023, Dr. Aribindi reviewed the MRI. He noted "massive rotator cuff tears" of the supraspinatus and infraspinatus. He recommended right shoulder arthroscopy with rotator cuff reconstruction. (PX 2, 15-16). At the final follow-up on June 21, 2023, Dr. Aribindi noted that Petitioner was awaiting preoperative cardiology clearance for surgery. (PX 2, 19).

Petitioner testified no work with Respondent was available within the light duty restrictions; one of his supervisors told him to wait until he can be cleared and finished with his injury. (T. 26-27).

On August 14, 2023, Petitioner saw Dr. Thomas Poepping at Illinois Orthopedic Network ("ION"). (PX 3). Petitioner gave a history of no prior problems with his right shoulder. (PX 3, 3-4). Dr. Poepping recommended the same surgery as Dr. Aribindi, based on the MRI images. He noted the Hill-Sachs lesion and severe atrophy of Petitioner's right hand. (PX 3, 3-4). An EMG was ordered to review right hand atrophy. Dr. Poepping took Petitioner off work. (PX 3, 4). The ION records indicate that through the date of trial, Petitioner had ongoing right shoulder complaints and right hand atrophy. The EMG study was completed March 20, 2024 and was consistent with a brachial plexopathy. (PX 3, 24-25). On March 28, 2024, Dr. Irvin Wiesman of ION reviewed the EMG and referred Petitioner, STAT, to Dr. Cohen at Northwestern for review of the brachial plexopathy. Dr. Wiesman noted also noted clinical findings consistent with carpal tunnel syndrome and cubital tunnel syndrome. (PX 3, 27-28).

Petitioner has been off work pending shoulder surgery and evaluation by Dr. Cohen, as of the date of trial. Petitioner wishes to undergo the recommended right shoulder surgery. (T. 28). He also testified that he did not have any issues with his right arm or right shoulder before the accident. (T. 28).

Petitioner testified the ultimate goal of his employer for clients is to promote a mind-set of sober thinking and sober judgment, and to allow them to discover what a sober life is all about. (T. 29). Petitioner testified that his job required him to be in recovery from addiction himself, which he believed was because it would help him relate to clients on a personal level. (T. 32).

On cross-examination, Petitioner agreed that no one at Respondent ordered him or required him to engage in physical activity with a client on April 14, 2023, and that this was a personal choice he made. (T. 34). Petitioner agreed that this activity would not be part of the client's treatment plan. (T. 35). Petitioner agreed his job description did not specifically instruct him to engage in football drills with clients. (T. 36). Petitioner agreed that he was trained by Respondent to perform his job, and that he received training materials. (T. 38). Petitioner said that he was not aware that there was a sign at his workplace on the second floor containing a list of explicitly prohibited activities for recovery coaches. (T. 40).

On redirect examination, Petitioner identified Respondent's Code of Ethics. (RX 4, T. 42-43). He read Point 6, which states, "At all times I shall maintain a professional relationship with all patients." Petitioner agreed that he maintained a professional relationship with all his clients. He described the relationship as professional, not personal. (T. 43). He read Point 7, and acknowledged that he had not physically or verbally abused any patients, counselors, or other professionals or employees during his time with Respondent. (T. 43). He also read Point 8 and acknowledged that he did not engage in a romantic or sexual relationship with a client at any point. (T. 44). Finally, he testified that at no point did anyone at Respondent specifically prohibit him from engaging in football drills or running next to a client. (T. 44).

Respondent submitted the testimony of Shay Johnson in its case in chief. (T. 47). Ms. Johnson is the Human Resources Director for Respondent, and has been so employed for a little over one year. She was a Human Resources Manager on April 14, 2023. She testified that the South Suburban Council is a 90 bed inpatient and outpatient recovery home. (T. 48). Her job duties include recruiting, hiring, training, and payroll, among other activities. (T. 49). She identified RX 1, the Job Description for a Recovery Coach. (T. 50). She did not author this job description, but did have input as to its contents. She testified that a coach's job duties and responsibilities can go further than just what is in the written job description. (T. 51).

Ms. Johnson was made aware of Petitioner's accident via an incident report and from communication with two staff members, as well as communication with Petitioner directly. (T. 53). She agreed that Petitioner has not been back to work since the incident. She testified Mr. Turner earned $15.00 per hour, 37.5 hours per week, with some occasional overtime. (T. 53).

Ms. Johnson testified that "horseplay" by recovery coaches was prohibited. (T. 56). She gave an example of a clinical supervisor named Mickey, who wanted to play basketball. Mickey was apparently told that it was 100% prohibited and Mickey was instructed to advise all of his staff that basketball was prohibited. (T. 56). Ms. Johnson testified that Petitioner, and all recovery coaches, were prohibited from building relationships with clients outside of their responsibilities as recovery coaches. (T. 58). When asked why this was, she stated, "Basically for compliance, the safety of both the patients and the recovery coach. And it is – yeah, it's basically for sexual harassment purposes." (T. 58). She testified this prohibition was on a bulletin board in each department, and on the second floor of the facility. (T. 59). She testified there was a specific prohibition on physical activity by recovery coaches beyond walking. Ms. Johnson did not provide any evidence of this prohibition beyond her testimony. (T. 59-60). She testified it would also be the responsibility of the supervisor, Mickey, to communicate this to Petitioner, but could not say for certain whether or not Mickey did communicate this. (T. 60). When asked if Mickey did so, Ms. Johnson answered, "I would like to think so, yes." (T. 60).

Ms. Johnson testified that Petitioner was not explicitly instructed to run with a client or engage in any other physical activity with a client on April 14, 2023. (T. 62). He was not explicitly instructed to foster a relationship with his client or use his own discretion or judgment to facilitate a relationship with a client. (T. 63). Ms. Johnson stated that while all these activities are prohibited, Petitioner was never disciplined or sanctioned for his alleged violation of these policies and procedures. (T. 67). Ms. Johnson acknowledged receipt

of Petitioner's work restrictions and stated that an offer of light duty work was made to Petitioner by AmTrust. (T. 68).

On cross-examination, Ms. Johnson testified that she became aware of the subject accident on April 17, 2023. (T. 73). She acknowledged that the job description identified as RX 1 became effective on April 17, 2023, the same day she became aware of Petitioner's accident. She completed the job description before becoming aware of the accident. (T. 75). She acknowledged that this job description, (RX 1), was not in effect on the date of Petitioner's accident. (T. 76). She testified she was not present when Mickey told his subordinates that playing basketball was not allowed, though Mickey reported to her that he did so. (T. 77).

Ms. Johnson testified that the difference between professional and unprofessional fraternization would be doing things outside the job description, such as giving a client a cigarette, smoking with a client, becoming friends with a client, exchanging phone numbers with a client. Id. at 78. Ms. Johnson agreed at this point that a recovery coach's goal, among other things, is to prevent his clients from smoking cigarettes. Id. at 78.

Ms. Johnson testified that there is a new job at South Suburban Council called a Peer Support Specialist that was created in January 2024. (T. 91). This job does specifically call for the employee to establish a rapport with individuals facing addiction challenges. Ms. Johnson testified that this was a new job, and this responsibility was not a part of Petitioner's job. (T. 93). Ms. Johnson later acknowledged that when the job of Peer Support Specialist was created, a lot of the description and responsibilities were taken from the Recovery Coach job description, and that the Recovery Coach position no longer required the applicant to have a history of personal addiction, as of January 2024. (T. 94-95). Johnson agreed a recovery coach in 2023 would have a lot of the same responsibilities and rules as a peer support specialist would have, as of the date of trial. (T. 95).

Respondent submitted the §12 report of Dr. William Vitello, who examined Petitioner and medical records on January 8, 2024 (referencing an examination of 1/8/2023 (sic)). (RX 2). Dr. Vitello concurred with the diagnosis on the shoulder (massive rotator cuff tear with Bankart lesion, proximal biceps subluxation, and contracture), as well as diagnosing compression of the right median and ulnar nerves regarding Petitioner's right hand/wrist. He felt the compressive neuropathy or radiculopathy regarding the right hand was preexisting. Marked atrophy and weakness of the hand was noted shortly after the accident, which would not develop that rapidly. He noted the history of prior shoulder dislocations given at South Suburban, and the subsequent denial of prior shoulder injuries to him, Dr. Aribindi and Dr. Poepping, along with the histories of prior cervical radiculopathy given to Dr. Aribindi and South Suburban. He opined that all treatment to date had been reasonable, necessary, and causally related to the work accident. He agreed the described mechanism of injury was a "reasonable culpable mechanism" (reasonably competent mechanism?) to result in a rotator cuff tear and Bankart lesion. Limited PT has resulted in marked contracture of the shoulder joint and decreased passive range of motion. Surgery was recommended to address the rotator cuff tear. (RX 2).

CONCLUSIONS OF LAW

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

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

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

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

The Arbitrator finds the testimony of Petitioner to be credible, for the most part. Petitioner was a cooperative witness and he appeared to be trying to give honest answers.

Petitioner's answer to the question about issues with his right shoulder "before this accident" can be taken in more than one way. He answered: "No, I did not." If he meant to deny any prior right shoulder problems/injuries, then he is a faker. He gave a history of prior shoulder dislocations at South Suburban Hospital. Further, the diagnostic films show a Hill-Sachs lesion. The Arbitrator notes that a Hill-Sachs Lesion is defined by Steadman's Medical Dictionary as: "an irregularity seen in the head of the humerus following dislocation of the shoulder; caused by impaction of the head of the humerus against the edge of the glenoid." Steadman's was cited by the Workers' Compensation Division of the Appellate Court in Will County Forest Preserve District a/k/a Forest Preserve District of Will County v. Illinois Workers' Compensation Commission, et al., 2012 IL App (3d) 11077 WC, so it must be considered authoritative. The Hill-Sachs lesion confirms prior dislocations (i.e.: prior right shoulder injuries), which Petitioner denied to Drs. Aribindi and Poepping. If you dislocate your shoulder, you know it and you tell your orthopedist about it. If, in so answering the question, Petitioner meant that he was not experiencing problems with the shoulder close to the time of the accident, then he has given an apparently honest answer (there do not appear to be any deficits in Petitioner's right shoulder in the video prior to the fall).

Having observed Petitioner's demeanor as he testified, and considering all of the evidence adduced, the Arbitrator does not believe that Petitioner's answer to the question about issues with his shoulder before the accident and the histories given to the treating orthopedists are significant enough to find the entirety of Petitioner's testimony to be not credible and deny the claim.

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?, THE ARBITRATOR FINDS:

Petitioner sustained accidental injuries which arose out of and in the course of his employment by Respondent on April 14, 2023.

The video certainly documents that an accident occurred and an injury to Petitioner's right shoulder occurred.

As stated above, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(d); McAllister v. Illinois Worker's Compensation Comm'n, 2020 IL 124848, ¶32; Sisbro v. Industrial Comm'n, 207 Ill. 2d 193, 203 (2003).

Petitioner's accident occurred in the course of his employment by Respondent. He was at work, taking clients on a walk, part of his expected duties as a recovery coach. McAllister, ¶33.

As to the issue of arising out of, the testimony of Petitioner and Ms. Johnson differs to an extent as to whether or not Petitioner should have been engaging in the activity of running a football drill with a client.

Petitioner testified that the purpose of his actions was to build rapport with the client, and to prevent the client from smoking a cigarette. He was trying to promote a mind-set of sober thinking and sober judgment. The Arbitrator believes this testimony. Petitioner was trying to act as a recovery coach to benefit the client and Respondent.

Further, Petitioner's action in simulating a football drill was not violative of Respondent's Code of Ethics. (RX 4). As Petitioner testified, Respondent's Code of Ethics Point 6, states: "At all times I shall maintain a professional relationship with all patients." Petitioner stated that he maintained a professional relationship with all his clients. He described the relationship as professional, not personal. He read Point 7, and stated that he had not physically or verbally abused any patients, counselors, or other professionals or employees during his time with Respondent. He also read Point 8 and acknowledged that he did not engage in a romantic or sexual relationship with a client at any point.

Petitioner's unrebutted testimony that he was not aware of a sign posted on Respondent's second floor, containing a list of explicitly prohibited activities for recovery coaches was unrebutted. Also unrebutted was his testimony that Respondent had not specifically prohibit him from engaging in a football drill or running next to a client.

Ms. Johnson testified that "horseplay" by recovery coaches was prohibited. While she testified that a supervisor named Mickey was told that playing basketball with clients was not allowed and that she instructed Mickey to so advise all his staff, Johnson could not say for sure that Mickey told this to Petitioner. Johnson testified that recovery coaches were prohibited from building relationships with clients outside of their responsibilities as a recovery coach. The Arbitrator believes that this is to prevent personal interaction that interferes with the recovery process (and to prevent sexual harassment, as Johnson stated) and does not believe that Petitioner' actions in the present case stooped to that level. Johnson's testimony that there was a specific prohibition on physical activities beyond walking was not supported by a copy of this prohibition or of the prohibitions that were posted on the bulletin boards and on the second floor of Respondent's building. The Arbitrator believes Johnson's testimony that Petitioner was not instructed to run with a client or to foster a relationship with a client or to use his judgment or discretion to facilitate a relationship with a client.

Petitioner's action in simulating a pass drill with a client while on a walk is just not unreasonable, outrageous or unforeseeable, so as to take him out of the course of employment, prohibited by a rule, or not. The goal of his conduct was not for personal gain, but for the gain of his client, and, thus, furthering the interests of Respondent. Petitioner's activities were in furtherance of the *ultimate goal* of Respondent - assisting individuals in addiction recovery.

Petitioner's actions were related to his job as a recovery coach. In finding that Petitioner's injury arose out of his employment by Respondent, the Arbitrator finds that the risk of injury of an accident as Petitioner suffered in the present is a risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. Sisbro v. Industrial Comm'n, 207 Ill. 2d 193, 203 (2003). If you simulate a pass drill in an alley, you may slip on gravel when you change from backpedaling to running. The purpose of the simulated pass drill was to further Respondent's interests, as set forth above. The risk of injury was not a personal risk to Petitioner, and not a neutral risk, both of which would have required a McAllister analysis, which is not required here.

Finally, the Arbitrator finds persuasive and follows the Decision of the Commission in Barbara Anderson v. Community Unit School District #200, 14 IWCC 0430. In that case, the claimant was a third-grade teacher who was picking up her students from gym glass. The students had been performing gymnastics exercises on a balance beam. The claimant was a former gymnast and volunteered to demonstrate a foot dip on the balance beam. Her foot was caught on the end of the balance beam, causing a knee injury. The employer argued that this activity was not part of the claimant's job description and would have been prohibited if permission had been sought. The Commission found that this activity was not unreasonably dangerous (as eight- and nine-year old students had been using the balance beam for class). The Commission further found that the claimant's conduct "was in furtherance of Respondent's interests" in demonstrating a gymnastics move for students. The Commission thus affirmed the Arbitrator's award of benefits. Of note, the Commission's decision was affirmed by the Appellate Court under Rule 23, and, thus, the Appellate Court order is not itself cited. 2015 IL App (2d) 141153WC-U.

In summary, regardless of whether or not such a rule existed that prohibited Petitioner's interactions with a client as shown on the video and as testified to, Petitioner's conduct did not constitute an unreasonable risk, and was undertaken in furtherance of Respondent's "ultimate work." Thus, the Arbitrator finds that Petitioner suffered a compensable injury and proved that he sustained accidental injuries arising out of and in the course of his employment by Respondent on April 14, 2023.

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

Petitioner's current condition of ill being regarding his right shoulder is causally related to the injury.

The Arbitrator bases this finding on his finding above on the issue of accident, the testimony of Petitioner, the video, the medical records and the report of Dr. Vitello. Petitioner certainly had prior right shoulder dislocations, but there is no evidence of his prior treatment and no evidence that he was under active treatment for his right shoulder immediately prior to the accident.

The Arbitrator finds that any condition of ill-being that Petitioner has related to the possible compressive neuropathies in his right upper extremity (brachial plexopathy. carpal tunnel syndrome and cubital tunnel syndrome) are not causally related to the work injury. The medical records and Petitioner's testimony do not support causation. Further, Petitioner's history of right sided radiculopathy "and is supposed to have surgery", given at South Suburban Hospital, was not explained. Dr. Vitello and the other orthopedists noted significant atrophy. Dr. Vitello persuasively opined that this was long-standing and not the result of the work-related fall. Given the evidence adduced, endorsing causation to these conditions would amount to speculation or conjecture, which the Arbitrator declines to engage in.

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

Petitioner alleged an Average Weekly Wage of $666.00.

Petitioner testified that he worked 37.5 hours per week and the pay rate was "I don't remember, either $15.00 or $18.00 an hour." (T. 13).

Ms. Johnson testified that Petitioner was paid $15.00 per hour and worked 37.5 hours per week.

Neither Party submitted a wage audit.

Given the above, The Arbitrator finds that Petitioner's Average Weekly Wage was $562.50.

WITH RESPECT TO ISSUES (H) and (I), AGE, MARITAL STATUS AND DEPENDENTS, THE ARBITRATOR FINDS:

Respondent submitted no evidence on these issues.

Petitioner's unrebutted testimony was that he was married and had two dependent children under the age of 18 on the date of accident. This is the Arbitrator's finding regarding the issues of marital status and dependents.

The medical records document that Petitioner's date of birth is March 1, 1969, making him 54 years old on the date of accident. This is the Arbitrator's finding on the issue of Petitioner's age.

Petitioner's compensation rate, based on the AWW of $562.50, the accident date of April 14, 2023 and his marital status and number of dependents is $508.04.

WITH RESPECT TO ISSUE (J), 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:

Based upon the Arbitrator's findings on the above issues of accident and causation, Petitioner's testimony, the medical records and the opinion of Dr. Vitello that the treatment rendered to Petitioner was reasonable and necessary, Petitioner's claimed medical bills are awarded.

Respondent shall pay the following incurred medical expen ses:

South Suburban Hospital – (PX 1):	$5,292.00
Southland Orthopedics – (PX 2):	$1,136.00
Illinois Orthopedic Network – (PX 3):	$8,283.37
Midwest Specialty Pharmacy – (PX 3):	$5,262.63
Premium Healthcare Services – (PX 4):	$3,463.66
Victory Enterprises II – (PX 5):	$399.00
TOTAL:	**$23,836.66**

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

Petitioner is entitled to prospective medical care regarding his right shoulder. This finding is based upon the Arbitrator's findings above on the issues of accident and causation, the testimony of Petitioner, the medical records and the opinions of Dr. Vitello.

Based upon the Arbitrator's finding above on the issue of causation, Petitioner is not entitled to any prospective medical care regarding the possible compressive neuropathies in his right upper extremity (brachial plexopathy. carpal tunnel syndrome and cubital tunnel syndrome).

Accordingly, Respondent shall authorize and pay for the right shoulder surgery as recommended by Dr. Poepping, along with all related services, in accordance with Sections 8(a) and 8.2 of the Act.

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

Petitioner claims to be entitled to TTD benefits from April 15, 2023 through April 22, 2024, the date of trial. Respondent denied liability for all TTD. (ArbX 1).

No work restrictions were issued by South Suburban Hospital.

Dr. Aribindi issued light duty restrictions beginning April 28, 2023. Petitioner testified that he talked to a supervisor foundation?), and the supervisor told him to wait until he can be cleared and finished with his injury. Ms. Johnson acknowledged receipt of Petitioner's work restrictions and stated that an offer of light duty work was made to Petitioner by AmTrust. No other proof of a job offer was offered. No rebuttal testimony regarding any light duty job offer was offered.

Dr. Poeeping took Petitioner off work, pending surgery, effective August 14, 2023.

Dr. Vitello opined that Petitioner was capable of sedentary work with lifting, pushing, or pulling no greater than 5-10 pounds, as of the date of his report, January 8, 2024. No proof of a job offer within the restrictions endorsed by Dr. Vitello was submitted.

Given the above, and the Arbitrator's findings on the issues of accident, causation and prospective medical, the Arbitrator awards TTD benefits from August 14, 2023 (the date that Dr. Poepping took Petitioner completely off work) through April 22, 2024, the date of trial.

Accordingly, Respondent shall pay Petitioner TTD benefits of $508.04/week for 36-1/7 weeks, commencing August 14, 2023 through April 22, 2024.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC005343
Case Name	Victor Zepeda v. Kodiak Drywall
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0056
Number of Pages of Decision	15
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Jason Esmond
Respondent Attorney	Francis O'Byrne

DATE FILED: 2/6/2025

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Victor Zepeda,

Petitioner,

vs. NO. 22WC 05343

Kodiak Drywall,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, Petitioner's request for continuance of trial, 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 September 3, 2024, is hereby affirmed and adopted.

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

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.

February 6, 2025

SJM/sj
o-1.29.25
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/s/*Stephen J. Mathis*
Stephen J. Mathis

/s/ *Deborah L. Simpson*
Deborah L. Simpson

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC005343
Case Name	Victor Zepeda v. Kodiak Drywall
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	Jason Esmond
Respondent Attorney	Francis O'Byrne

DATE FILED: 9/3/2024

/s/Maureen Pulia, Arbitrator
Signature

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

STATE OF ILLINOIS)
)
COUNTY OF **ROCK ISLAND**)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

VICTOR ZEPEDA,
Employee/Petitioner

v.

KODIAK DRYWALL,
Employer/Respondent

Case # **22** WC **5343**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Rock Island**, on **8/12/24**. 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 **Petitioner's request for continuance of trial.**

FINDINGS

On **2/17/20**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was not*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**37,440.00**; the average weekly wage was $**720.00**.

On the date of accident, Petitioner was **30** 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 $**00.00** for TTD, $**00.00** for TPD, $**00.00** for maintenance, and $**00.00** for other benefits, for a total credit of $**00.00**.

Respondent is entitled to a credit of $**00.00** under Section 8(j) of the Act.

ORDER

Having found petitioner has failed to prove by preponderance of the credible evidence that he sustained an accidental injury that arose out of and in the course of his employment by respondent on 2/17/20, the arbitrator finds the petitioner's claim for compensation is denied.

Respondent shall pay no reasonable and necessary medical services as provided in Sections 8(a) and 8.2 of the Act, because the petitioner's claim for compensation has been denied.

Respondent shall pay Petitioner no temporary total disability benefits as provided in Section 8(b) of the Act, because the petitioner's claim for compensation is denied.

Respondent shall pay Petitioner no permanent partial disability benefits because the petitioner's claim for compensation is denied.

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

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

Signature of Arbitrator

September 3, 2024

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 30 year old drywall finisher, alleges he sustained an accidental injury to his right hand/wrist that arose out of and in the course of his employment by respondent on 2/17/20. When petitioner filed his initial Application for Adjustment of Claim on 2/28/22 he alleged an accident date of 3/1/20. Petitioner did not amend the date of accident to 2/17/20 until right before the trial started in Rock Island on 8/12/24.

Prior to the start of trial petitioner requested a continuance. The reason for the request was that he was still attempting to secure additional evidence regarding his alleged injury. Respondent's attorney Francis O'Byrne noted that the case is 4 years old, and that respondent had motioned this case up numerous times before, namely in September of 2023, January of 2024, April of 2024, and July of 2024. O'Byrne also noted that a pretrial was held on this matter in July 2024, at which time the trial date of 8/12/24 was set. O'Byrne stated that the only records he has received from petitioner were the subpoenaed records petitioner's attorney got from the only place petitioner treated with, which was Great River Family Chiropractic. O'Byrne claims respondent has been very diligent in trying to move this case, and petitioner has not been diligent in getting the records he claims are missing.

Petitioner's attorney Jason Esmond from the Law Office of Black and Jones, stated that the subpoena for records from Great River Family Chiropractic was sent out shortly after the case was filed in 2022. He further stated that he informed petitioner that the records he received did not include an x-ray of his hand/wrist, which petitioner claimed should be in the records. Petitioner testified that when he first presented to Great River Family Chiropractic, he underwent an x-ray that showed a fracture/dislocation to his right wrist. Esmond stated that since he received the subpoenaed records from Great River Family Chiropractic, petitioner has told him that he has been trying to secure the missing records. As of trial, petitioner had not secured any additional records from the chiropractor. Esmond stated that after he received the petitioner's records from Great River Family Chiropractic, and petitioner told him an x-ray was missing, he called the office and was told that what they sent was petitioner's entire record.

Petitioner testified that on 2/17/20 he arrived at the job site and began unloading material and tools for the job. This included unloading stilts and a box. Petitioner stated that the stilts were wrapped, and the box held paper tape. Petitioner testified that as he was walking up the stairs carrying the stilts and the box, he slipped, and as he tried to catch himself, he stuck his right hand out, and landed on his right wrist. He reported immediate pain, but completed the work day. The next day his right wrist was swollen and pretty bad. Petitioner testified that it was the next day that he initially sought treatment.

Petitioner testified that he reported the injury to Carmen, his supervisor, on 2/17/20, the alleged date of injury. Petitioner stated that Carmen was the foreman on the job site. After, reporting the injury to Carmen, petitioner testified that he reported the injury to Allen Seabloom, his boss, the day after the injury. Petitioner stated that he told Seabloom that was not going to show up the next day because he injured himself.

On 3/6/20 petitioner presented to Great River Family Chiropractic. Petitioner completed an "Application for Care at Great River Family Chiropractic." He reported pain in his hand/wrist. He noted that the problem began "3 wks", and it was its worse in the AM, PM, mid-day, and late PM. He also noted that the pain was both constant, and on and off during the day. He denied any prior treatment for his hand/wrist. He reported that the injury occurred when he fell. He rated his wrist (primary complaint) as a 10 on a scale of 10; his pain (secondary complaint) as an 8 out of 10; his hand (third complaint) as a 6 and 8 out of 10; and, although he did not enter a fourth complaint, he rated it as an 8 out of 10. (PX1)

On 3/10/20 Dr. Alex Arguello, D.C., completed "Your Workers Compensation Health Ticket" for petitioner. It indicated that petitioner could sit, stand and walk without limit, and never carry, lift or push/pull with his injured hand. The date of petitioner's injury was identified as 2/17/20. (PX1)

Included at part of PX1 is a report that shows petitioner's initial visit was on 3/6/20, and that petitioner underwent adjustments on 3/9/20, 3/11/20, and 3/13/20. No treatment records for these dates of adjustment were included in the subpoenaed records. It also showed that there was a call to the office, or talk in the office on 2/4/22.

Petitioner testified that when he presented to Dr. Arguello on 3/6/20, an x-ray of his wrist was performed that showed a fracture and dislocation in his wrist.

Petitioner testified that he was off work for two weeks while he was seeing the chiropractor, and then was returned to work with restrictions. Petitioner testified that he worked with restriction, but also testified that he had no choice but to return to work and perform his full duty job because he is a full-time parent (mom and dad) to his son. He testified that he had to work to make sure his son was taken care of.

Petitioner testified that following the alleged injury he worked for respondent for about a year and a half. He testified that since the alleged injury his right hand/wrist has not been the same. He stated that he is not able to run automatic tools like he did while working for respondent.

Petitioner testified that he still has pain in his right hand/wrist, and cannot bend it as far as he used to. He testified that his pain comes and goes, and is most present when there is a little humidity or "rainish kind of thing". He reported that it bothers him when he wakes up in the morning. He also

reported that it hurts when he picks up his son or swings a bat. He reported some issues lifting heavy things. Sometimes he is able to lift things up, and other times he cannot.

Petitioner denied any treatment for his wrist other than the treatment he received at Great River Family Chiropractor on 3/6/20, 3/9/20, 3/11/20, and 3/13/20. Petitioner testified that the only medication he takes is ibuprofen twice a week for inflammation.

Petitioner testified that he is working as a painter because the tools are lighter. He stated that he can no longer do drywall finisher work because the tools are too heavy for his wrist.

On cross examination petitioner testified that his attorney subpoenaed the records from Great River Family Chiropractic after 2/28/22, and once received, shared them with him. Petitioner testified that he signed the original Application for Adjustment of Claim 2/28/22, which listed a date of accident as 3/1/20. (ARB X2) Petitioner testified that he still believed the date of accident was 3/1/20; that the date of 3/1/20 was the date he consulted with his attorneys; that he consulted with his attorney in March of 2020, but was injured in February of 2020; that he contacted his attorney in March of 2020; and, that 3/1/20 could be the day he received chiropractic treatment.

Petitioner testified that after he signed a representation agreement with the Law Office of Black and Jones, he went into Great River Family Chiropractic and told them to send any records they have with respect to him to the Law Office of Black and Jones. On recross examination, petitioner testified that it was on 2/4/22 that he went into Great River Family Chiropractic and told them to send his records to his attorneys at the Law Office of Black and Jones.

On redirect examination, petitioner testified that when he presented to the Law Office of Black and Jones 2 years after his alleged injury, he knew he had an accident, but may have been mistaken as to the date of injury. Petitioner testified that it was his understanding that when he met with Esmond that his injury was around 3/1/20. Then, on 8/12/24, right before the beginning of his trial, petitioner reviewed the records from Great River Family Chiropractic and "remembered" that his accident was on 2/17/20, not 3/1/20, and amended the date of injury on his Application for Adjustment of Claim.

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?

Petitioner alleges that he sustained an accidental injury to his right hand/wrist that arose out of and in the course of his employment by respondent on 2/17/20. Respondent disputes.

Petitioner testified that on 2/17/20 he arrived at the job site and began unloading material and tools for the job. This included unloading wrapped stilts and a box that held paper tape. Petitioner testified that as he was walking up the stairs carrying the stilts and box, he slipped, and as he tried to catch himself, he stuck his right hand out, and landed on his right wrist. He reported immediate pain, but completed the work day.

Petitioner testified that the next day, 2/18/20, his right wrist was swollen and pretty bad, and on the day after that, 2/19/20, he initially sought treatment. Given that the only treatment petitioner received was from Great River Family Chiropractic, petitioner's timeline for treatment does not synch with the records from Great River Family Chiropractic that show petitioner did not seek treatment until 3/6/20. Based on the records from Great River Family Chiropractic, and petitioner's own testimony that he sought treatment 2 days after the injury, the arbitrator finds petitioner's alleged accident would have occurred on 3/4/20. However, 3/4/20 is not an accident date petitioner is alleging.

When petitioner presented to Great River Family Chiropractic on 3/6/20, he alleged an injury to his hand/wrist due to a fall. However, the Application for Care at Great River Family Chiropractic does not include any reference to what hand was injured, or any history of an accident at work. It also indicates that the problem began "3 wks", which would the put the alleged accident on 2/14/20.

The arbitrator finds it significant that the records from Great River Family Chiropractic do not include any treating records that include a history of injury, any assessment of petitioner, any diagnostic tests, any description of the treatment performed, or any treatment plan. Although it is indicated that petitioner underwent adjustments on 3/9/20, 3/11/20 and 3/13/20, there are no treatment records for those dates included in the subpoenaed records petitioner's attorneys got from Great River Family Chiropractic. Following his treatment on 3/13/20, petitioner sought no further treatment for his alleged injury.

It was not until about two years later on 2/28/22, that petitioner presented to the Law Office of Black and Jones regarding representation for an alleged injury to his right upper extremity that occurred while he was working on 3/1/20. The Application of Adjustment of Claim was filed based on the information petitioner provided. It did not include a specific accident history, or body part injured other than upper right extremity.

Petitioner testified that after securing the representation of the Law Office of Black and Jones, he presented to Great River Family Chiropractic and told them to send all his records to the Law Office of Black and Jones, and provided them with their information. However, the arbitrator finds it significant

that the records from Great River Family Chiropractic show that the only time petitioner either called in, or went into their facility, was on 2/4/22. This was weeks before he sought the representation of the Law Office of Black and Jones. Based on this evidence, the arbitrator finds no credible evidence to support a finding that petitioner contacted Great River Family Chiropractic after he secured the representation of the Law Office of Black and Jones on 2/28/22.

The arbitrator also finds it significant that at no time after petitioner's attorney subpoenaed the records from Great River Family Chiropractic, did petitioner ever contact his attorneys to change the date of accident from 3/1/20 to 2/17/20. It was not until right before the beginning of the trial on 8/12/24, after reviewing the medical records of Great River Family Chiropractic, that petitioner amend his Application for Adjustment of Claim to reflect a date of injury of 2/17/20. The arbitrator notes that this was the injury date noted on the "Your Workers Compensation Health Ticket" completed by Dr. Arguello on 3/10/20. The arbitrator notes that this is the only reference to any alleged injury date in the medical records.

Lastly, the arbitrator notes that when questioned regarding the original date of accident on the Application for Adjustment of Claim of 3/1/20, the petitioner provided a multitude of reasons why he selected that date, most of which were inconsistent with each other. The petitioner first testified that he believed the date of accident was 3/1/20; then he stated that the date of 3/1/20 was the date he consulted with his attorneys; next he stated that it was in March of 2020 that he contacted his attorney; and, lastly he testified that 3/1/20 could have been the day he received chiropractic treatment. In summary, the arbitrator finds the petitioner could not recall why he initially selected an accident date of 3/1/20 when he presented to Black and Jones on 2/28/22.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner has failed to prove by preponderance of the credible evidence that he sustained an accidental injury to his right hand/wrist that arose out of and in the course of his employment by respondent on 2/17/20. The arbitrator bases this finding on the fact that the petitioner's testimony was less than persuasive; that the credible record contains at least 4 different dates of accident, namely 2/14/20, 2/17/20, 3/1/20, and 3/4/20; that the credible record contains at least 5 days on which petitioner testified he first sought treatment for his injuries, namely 2/18/20, 2/19/20, 3/1/20, 3/4/20, and 3/6/20; and, that the credible medical record do not include any history of any work accident, which hand was actually injured, or what actual treatment petitioner received for his alleged injury.

The only reference to an injury date of 2/17/20 was on Dr. Arguello's "Your Workers Compensation Health Ticket" completed on 3/10/20. The arbitrator finds it significant that the

Application for Adjustment of Claim filed 2/28/22 has an alleged accident date of 3/1/20 that petitioner used when he completed the initial Request for Hearing on 8/12/24. It was not until after petitioner reviewed the medical records from Great River Family Chiropractic right before trial on 8/12/24, and saw Dr. Arguello's date of injury on the "Your Workers Compensation Health Ticket," that he amended the date of injury on the Request for Hearing from 3/1/20 to 2/17/20.

Based on the above, as well as the credible evidence the arbitrator finds the petitioner has failed to prove by a preponderance of the credible evidence what was his date of accident.

E. WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO RESPONDENT?

Given the fact that petitioner did not identify the alleged date of his injury as 2/17/20 until right before the start of trial on 8/12/24, the arbitrator finds the petitioner did not provide respondent with timely notice of the date of accident. The arbitrator finds that although petitioner testified that he reported the injury to his supervisor Carmen on the alleged date of injury, and to his boss Allen Seabloom, the day after the alleged injury, the petitioner presented no credible evidence to support this claim. Given that prior to the date of trial on 8/12/24 petitioner was alleging an accident date of 3/1/20, and then changed it to 2/17/20 right before the trial began, the arbitrator finds the credible record does not contain any credible evidence to support a finding that petitioner reported the alleged injury to Carmen on 2/17/20 or 3/1/20, or to Allen Seabloom on 2/18/20 or 3/2/20. The arbitrator further finds the only evidence to support the petitioner's claim is his own testimony, which the arbitrator finds was less than persuasive given his continually changing testimony as it relates to the date of the alleged injury and subsequent treatment.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJUR?

Having found the petitioner has failed to prove by a preponderance of the credible evidence that he sustained an accidental injury that arose out of and in the course of his employment by respondent on 2/17/20, the arbitrator also finds the petitioner has failed to prove by a preponderance of the credible evidence that his current condition of ill-being is causally related to the alleged injury on 2/17/20. In support of this finding the arbitrator notes that the treatment records from Great River Family Chiropractor do not contain any history of a work related accident; do not indicate which hand petitioner allegedly injured; do not contain any treatment records for the dates petitioner was seen at the facility; and, do not contain any opinion from Dr. Arguello that petitioner's alleged injury is causally related to the alleged injury on 2/17/20.

J. WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY? HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES?

Having found the petitioner has failed to prove by a preponderance of the credible evidence that he sustained an accidental injury that arose out of and in the course of his employment by respondent on 2/17/20, the arbitrator also finds the petitioner has also failed to prove by a preponderance of the credible evidence that the medical services that were provided to him were reasonable and necessary. In support of this, the arbitrator finds that the only medical records petitioner offered into evidence were the records from Great River Family Chiropractic. Although these records indicate that petitioner underwent services on 3/6/20, 3/9/20, 3/11/20, and 3/13/20, the records contain no actual treatment records for any of these dates. With no treatment records to review, the arbitrator finds any alleged treatment was not reasonable and necessary, and respondent's refusal to pay the bill from Great River Family Chiropractic for the alleged services from 3/6/20 through 3/13/20 was appropriate. The arbitrator finds the petitioner is not entitled to any payment of any medical bills by respondent for his alleged injury on 2/17/20.

K. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

Petitioner claims he is entitled to temporary total disability benefits from 2/20/20-3/5/20. Having found the petitioner has failed to prove by a preponderance of the credible evidence that he sustained an accidental injury that arose out of and in the course of his employment by respondent on 2/17/20, the arbitrator finds the petitioner is not entitled to any temporary total disability benefits. The arbitrator further finds it significant that petitioner failed to offer into evidence any off work authorizations from his medical providers for this period of time.

L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?

Having found the petitioner has failed to prove by a preponderance of the credible evidence that he sustained an accidental injury that arose out of and in the course of his employment by respondent on 2/17/20, or that his current condition of ill-being is causally related to the alleged injury on 2/17/20, the arbitrator finds this issue moot.

O. WAS THE PETITIONER'S REQUEST FOR A CONTINUANCE REASONABLE?

At the beginning of trial petitioner made a request for a continuance in order to obtain additional medical records. The arbitrator notes that shortly after petitioner secured representation from the Law Office of Black and Jones on 2/28/22, his attorneys subpoenaed the records from Great River Family Chiropractic, the only facility petitioner testified that he treated at following his alleged injury on 2/17/20.

Although petitioner testified at trial that he wanted additional time to get the x-ray report from Great River Family Chiropractic that shows he sustained a fracture/dislocation of his right wrist at that time, the petitioner testified that he has never done this in the 2 ½ years since he filed his claim. Petitioner testified that after he hired his attorneys, he went to Great River Family Chiropractic and requested that they send his attorneys a copy of his records. However, the only record that petitioner either called or went into Great River Family Chiropractic was on 2/4/22, which was over 3 weeks prior to him securing the representation of the Law Office of Black and Jones on 2/28/22. There is no credible evidence to support a finding that he contacted Great River Family Chiropractic after 2/28/22.

The arbitrator notes that since 2/28/22, petitioner has had approximately 2 ½ years to get the records from Great River Family Chiropractic that he believes are missing, but never did. Furthermore, the arbitrator finds it significant that petitioner's attorney Esmond stated that the subpoenaed records he offered into evidence from Great River Family Chiropractic were all the records they had regarding petitioner's treatment with them.

The arbitrator also finds it significant that since January of 2024, respondent has filed Requests for Hearing at each Rock Island docket call on 1/2/24, 4/22/24, and 7/1/24. Respondent also filed a Motion to Dismiss for Want of Prosecution on 1/2/24. The parties even had a pretrial on this matter on 5/28/24. The parties were asked to attempt settlement, but reached no resolution. Therefore, when the matter was set for pretrial on 7/5/24, the arbitrator set the case for trial in Rock Island on 8/12/24.

From at least 1/2/24, the petitioner was aware that this case was above the redline, that there were multiple Requests for Hearing filed, as well as a Motion to Dismiss for Want of Prosecution, and that it was set to proceed to trial on 8/12/24. Despite all these Motions, a pretrial on 5/28/24 and 7/5/24, as well as the case being set for trial on 8/12/24, petitioner testified that he made no effort to secure the records from Great River Family Chiropractic that he alleged were missing.

The arbitrator also notes that petitioner's request for a continuance was made verbally before the start of the trial on 8/12/24. The Arbitrator notes that such a request for continuance is not consistent with what is required pursuant to Sections 9020.60 and 9020.70 of the Rules Governing Practice before the Illinois Workers' Compensation Commission. These Sections require petitioner to file a proper and timely Motion for Continuance, which petitioner did not do.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner has not exercised due diligence in pursuing his case before the Commission. The arbitrator finds it significant that petitioner had over 2 ½ years to secure the records he believed were missing, but made no effort to

do so. Therefore, the arbitrator finds the petitioner's verbal request for a continuance prior to the start of his trial on 8/12/24 was not timely or consistent with the Rules Governing Practice before the Illinois Workers' Compensation Commission, and was therefore denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC021447
Case Name	Patricia Tobias v. Heartland Bank
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0057
Number of Pages of Decision	17
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Matthew Brewer
Respondent Attorney	John Hillock

DATE FILED: 2/6/2025

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF McLEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Patricia Tobias,

Petitioner,

vs. NO. 19WC 21447

Heartland Bank,

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 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 June 9, 2023, is hereby affirmed and adopted.

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

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

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

February 6, 2025

SJM/sj
o-1.15.25
44

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

/s/ *Deborah L. Simpson*
Deborah L. Simpson

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC021447
Case Name	Patricia Tobias v. Heartland Bank
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	Matthew Brewer
Respondent Attorney	James Holecek

DATE FILED: 6/9/2023

THE INTEREST RATE FOR THE WEEK OF JUNE 6, 2023 5.25%

/s/ Adam Hinrichs, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF McLean)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Patricia Tobias
Employee/Petitioner
v.
Heartland Bank
Employer/Respondent

Case # **19** WC **21447**

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 **Bloomington**, on **4/27/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **7/5/19**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**61,632.48**; the average weekly wage was $**1,185.24**.

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 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 $**16,552.40** under Section 8(j) of the Act.

ORDER

Respondent shall pay all reasonable and necessary medical services as set forth in Petitioner's exhibits, as provided in Sections 8(a) and 8.2 of the Act. The Arbitrator orders the Respondent to reimburse Petitioner for her out-of-pocket expenses for causally related medical treatment as set forth in Petitioner's exhibits 7 and 9. 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 pay Petitioner temporary total disability benefits of $790.16/week for 3 and 3/7 weeks, commencing July 6, 2019 through July 30,2019, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner temporary partial disability benefits totaling $5,440.15, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $711.14/week for a total of 101.75 weeks, because the injuries sustained caused the 40% loss of use of the left leg, 5% loss of use of the right leg, and 1% loss to her body as a whole, as provided in Sections 8(e) and 8(d)2 of the Act, respectively. Respondent shall pay Petitioner compensation that has accrued from **December 28, 2022** through **April 27, 2023**, and shall pay the remainder of the award, if any, in weekly payments.

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

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

Signature of Arbitrator

JUNE 9, 2023

FINDINGS OF FACT

Patricia Tobias ("Petitioner") was born on October 14, 1956. She received a bachelor's degree from Illinois State University in office technology with a concentration on information systems. She is single and lives in Morton, IL, where she has lived for the last 28 years. (AT 10-11)

The Petitioner was employed on July 5, 2019 by Heartland Bank ("Respondent") in tech support. As of July 2019, the Petitioner had held that position for approximately 12 years. Petitioner described her primary responsibilities as answering phones and helping internal staff with technology issues. She would also order for the department, as well as take care of phone bills by consolidating telecommunications and approving the bills. (AT 11-12)

On July 5, 2019, the Petitioner received a phone call late in the morning from a co-worker indicating that a delivery person was at the East door trying to deliver a server on a pallet. The Petitioner asked her coworkers if the delivery was for their department, they said that it was not, but that it might be for the core processing manager. The Petitioner called the core processing manager on the phone but could not get him, so she went to the door where the delivery person was and noticed the name on the pallet was not one of Respondent's employees. So, the Petitioner went to find the processing manager who would know where to send the delivery. The Petitioner went from the East door to the South end of the building, where there is a transition strip between an area of the floor which separates the carpet and the linoleum. Petitioner was looking into one of the nearby offices to see if the processing manager was there, and when she turned to go back, she testified that the sole of her shoe hit the transition strip causing her to fall. The Petitioner testified she tried to grab ahold of whatever was available to stop herself from falling, but could not stop her fall and fell onto her left side, landing on her left hip. (AT 13-14)

The Petitioner testified that the pictures admitted in Respondent's Group Exhibit 1 show, in general, the area where the accident occurred. The Petitioner testified that she was in the Respondent's building and working at the time this occurred. The Petitioner was not on a lunch break, headed to lunch, or engaged in any other sort of personal requirement. (AT 14-15)

The Petitioner testified that checking on a delivery is something that is considered part of her job duties. The Petitioner regularly orders for her department and occasionally, when something is delivered, she will assist. The Petitioner testified that Respondent has what they call A+ core values, which is customer focused and results oriented. The Petitioner testified that as part of their core values, the Respondent emphasizes team building and working as a unit. The Petitioner testified that she has checked on deliveries like this in the past. Petitioner testified that helping out another employee with a delivery is something she has done before, and it is part of the Respondent's core value approach. Petitioner testified that helping her coworkers is something she normally does as part of her job. The Petitioner had never been told not to check on deliveries. Petitioner testified that at the time of this accident, while checking on the delivery, she was moving with haste as the delivery driver wanted to leave. (AT 13-18)

Petitioner testified that at the time of the fall she was not sure what the cause of her fall was. At hearing, the Petitioner testified that the sole of her shoe caught the transition strip as she was in the process of turning. The Petitioner testified that at first sight she did not notice any issues with the transition strip but when she returned to the office a couple months later, she testified to having a panic attack when she noticed ripples in the

transition strip. (AT 19) On cross-examination, Petitioner testified that she was wearing flip-flops for shoes that day as it was a "relaxed" Friday. (AT 45). Petitioner further testified that when she inspected the transition strip that she believed caused her fall, there was "bubbling" on the transition strip from the left wall. (AT 44). Petitioner testified that the bubbling on the strip was ¼ to ½ of an inch. (AT 46). Petitioner testified that wheels on hand trucks that are used for intra-office deliveries had trouble with the strips and mats had to be placed over the strips for the hand trucks to pass more easily. (AT 46-47).

The Petitioner testified that the area where she fell is not open to the general public. Non-employees cannot get into the building without being buzzed in or having a fob to get in. The Petitioner does not have any history of epileptic seizures and did not have a seizure at the time of the accident. The Petitioner does not have a history of fainting, and did not faint at the time of the accident. The Petitioner testified that she did not have any sort of health condition or weakened state that caused her fall. The Petitioner testified that she does not have a history of falls or similar falls prior to this accident. The Petitioner testified that at the time she fell she was doing something in the furtherance of her employment with Respondent. (AT 19-21)

The Petitioner testified that she landed on her left side and that the surface she landed on was hard. The Petitioner testified that she screamed in pain after the accident. The Petitioner noticed significant pain in her left hip and left upper leg. The Petitioner recalled that Kelly, Diana and Frank, all co-workers, were with her after her fall, and prior to the fire department arriving. (AT 21-23)

After the Petitioner's fall, a call was made to the Bloomington Fire Department ("BFD"). The Petitioner reported a trip and fall with an injury to her left hip to the BFD, and was taken by the BFD to OSF St. Joseph Medical Center. (PX 2, p. 4)

The Petitioner presented to the emergency room at OSF St. Joseph Medical Center ("OSF") on July 5, 2019. The Petitioner described sustaining a fall at work after "picking something up and fell twisting her left hip." The Petitioner was brought in by EMS and was given Fentanyl in route to the emergency room. X-rays of the left hip revealed an acute left hip fracture, mildly displaced with marked degenerative changes in the left hip. The orthopedic consult for Petitioner confirmed the diagnoses of a displaced intertrochanteric left hip fracture, and she was scheduled to have surgery the next day. The Petitioner gave two more histories at OSF of a fall at work which was noted as follows: "she was in a bit of a hurry and does [sic] remember why she fell, but she did," and "she stumbled and twisted her left leg and fell with the weight of her body on her left hip." Petitioner was admitted to the hospital overnight for her scheduled surgery. (PX 3, p. 8-12, 18, 21)

On July 6, 2019, the Petitioner underwent surgery with Dr. Robert Seidl. Both pre-operative and post-operative diagnosis were a left intertrochanteric hip/femur fracture. Dr. Seidl performed a reduction, intramedullary rod fixation, left intertrochanteric hip/femur fracture, with an intraoperative Lombardi block. (PX 3, p. 22-23)

The Petitioner remained in-patient at OSF through July 11, 2019. During the Petitioner's stay at OSF she participated in physical therapy ("PT"), as well as occupational therapy ("OT"). (PX 3, p. 125-169)

The Petitioner was discharged from the hospital at OSF on July 11, 2019. The Petitioner was discharged to Snyder Village, a skilled care facility for further evaluation and therapy. (PX 3, p. 13-17). Petitioner stayed at Snyder Village from July 11, 2019 through July 29, 2019. During that time, the Petitioner participated in PT, undergoing various therapeutic modalities. The Petitioner was off of work during this time. (PX 4)

The Petitioner followed up with Dr. Seidl's office postoperatively on July 19, 2019. The Petitioner informed Dr. Seidl's office that she was receiving PT on a daily basis at Snyder Village and was doing very well overall.

Petitioner was to progress to returning home when both PT and the Petitioner agreed that she was able to live independently. (PX 5, p. 10). The Petitioner returned to Snyder Village and was discharged on July 29, 2019. (PX 6, p. 16-25)

On July 30, 2019, the Petitioner followed up with Dr. Seidl. The Petitioner reported doing well overall, but would get a burning sensation on occasion. Dr. Seidl recommended continued PT and allowed the Petitioner to work from home. (PX 5, p. 26-28)

On July 31, 2019, Petitioner presented at Professional Therapy Services ("PFT") for an initial evaluation. PFT reported that, "Pt presents to PT after falling and breaking her L hip on July 5th while at work after thinking she tripped on something." (PX6, pg. 51) They noted that Petitioner had pain through the front of the hip, back of the hip, or the knee. Has pain when turning her hip. Pt does have some burning along the lateral aspect of the hip and thigh. States generally that she has little pain. (PX6, pg.51)

On August 27, 2019, the Petitioner followed up with Dr. Seidl, noting improvement but complained of a dull ache in the left hip. She believed that she was walking better and her range of motion and strength were improving. It was noted the Petitioner was still using a walker for ambulation. The Petitioner was to transition into the use of cane and continue to take aspirin twice a day. Dr. Seidl recommended that the Petitioner work from home for three hours a day and to follow up in one month. (PX 5, p. 24-26)

On October 3, 2019, Dr. Seidl noted that Petitioner's fracture was healing well. The Petitioner was to continue to progress with weight bearing, and follow up in three months. It was noted that the Petitioner had transitioned to a cane. The Petitioner continued to complain of a dull ache in her left hip. (PX 5, p. 22-24)

On January 7, 2020, Petitioner returned to Dr. Seidl. X-rays were taken showing the left intertrochanteric fracture was well healed, and the hardware was well positioned. Petitioner was six months status post-surgery and was doing well in regard to pain and strength. Given Petitioner's positive progression, Dr. Seidl allowed the Petitioner to return to work 8 hours per day as tolerated. (PX 5, p. 20-22)

On July 7, 2020, the Petitioner followed up with Dr. Seidl. Petitioner was one year postoperative at this time. Petitioner reported that she was doing well, although she believed she was very weak. The Petitioner was still using a cane and noticed weakness when going from sitting to standing. The Petitioner noticed that she fatigued quickly. The Petitioner continued to take Tylenol daily. Dr. Seidl noted the fracture was healed but that the Petitioner had arthritis of the hip. Petitioner also complained of low back pain and was recommended to have PT for the low back and left hip girdle. Dr. Seidl restricted the Petitioner to no lifting over 5 pounds. (PX 5, p. 40-43)

On October 8, 2020, Petitioner followed up with Dr. Seidl, reporting 70% improvement. The Petitioner continued to ambulate with a limp and was using a cane. The Petitioner was to continue PT and follow up in three months. (PX 5, p. 38-40)

Petitioner last saw Dr. Seidl on January 7, 2021. Petitioner had muscular aches, but no back or joint pain, and no difficulty walking. Petitioner stated she believed she was getting stronger and was working on building endurance. Petitioner reported that her pain was 1/10 on a bad day, and 0/10 on a good day. X-rays revealed the previous fracture was well healed and the hardware had good alignment but severe arthrosis was noted bilaterally. Dr. Seidl released the Petitioner from care and instructed her to follow up as needed. Dr. Seidl also noted that he discussed that the Petitioner would benefit from a total hip replacement and taking meloxicam. (PX 5, p. 35-37). Petitioner testified that she did not find Meloxicam helpful. (AT 32)

The Petitioner testified that she later developed some issues in her right hip. Petitioner testified that she has a hard time trusting her left hip given the hardware. As a result of not trusting the left hip, she started compensating by relying heavily on the right hip, which gradually began to bother her.

On June 20, 2022, Petitioner returned to PFT for an evaluation and PT for her right hip. Petitioner presented with a two-wheeled walker which she had started using around April 2022. Petitioner reported that it was due to stress. Petitioner reported trying to do some exercises at home to figure out if it is the muscle or joint, and has been walking a lot and "pushing the envelope". Petitioner reported that her overall mobility has decreased over the past 3 years since breaking her L hip due to a fall. Petitioner reported that her pain level was 1/10, with it being at worst 2/10. (PX6, pg. 150) Petitioner identified right hip limitations including decreased ROM, decreased strength, gait abnormalities and balance deficits associated with her right hip osteoarthritis. (PX6, pg. 152) Petitioner had 46 visits at PFT, the last being December 28, 2022. Upon release, Petitioner was much improved in her right swing phase, though she continued to lack foot clearance. Petitioner exhibited improved ability to shift weight laterally and improved speed with straight path navigation. (PX6, pg. 281) Petitioner testified that the additional PT for her right hip, provided her with greater confidence in her left leg. (AT 32-33).

The Petitioner was using a walker at the time of trial and testified that she uses it all the time. The Petitioner does not leave home without her walker. The Petitioner testified that most of the time her left hip feels great, but there are times when she rolls over in bed and feels like there is something there. Petitioner does have ongoing pain in her left hip which wakes her up once or twice a night, leading her to change sleep positions. Petitioner testified that her sister has to get her groceries for her. She notices increased symptomatology in her left hip when she tries to do cleaning around her house, whether that is running the sweeper or cleaning the toilet. Petitioner notices that because of her left hip she gets worn out much easier. Simple tasks such as cooking take a toll on her. The Petitioner used to go for walks, which she testified she no longer has the stamina to do. The Petitioner believes that she could probably walk 1000 feet before she has to stop. Petitioner testified that she missed family events, like her nieces and nephew's graduations, school programs and sporting events. Petitioner testified that she did not have any issues regarding her bilateral hips prior to this accident. (AT 33-36)

On January 8, 2020, the Petitioner returned back to work full time. The Petitioner continues to work for the Respondent in the same job as the day she was injured. (AT 37-39)

Prior to the Petitioner's July 5, 2019 accident, Petitioner had never sought any medical care, taken any prescription medications, or been issued any work restrictions in regard to her left hip. Further, the Petitioner testified that she had never had problems with her right hip prior to this accident. (AT 39)

The Petitioner testified that she paid a large portion of her medical bills from this accident out of her pocket. Petitioner offered a spreadsheet as Petitioner's Exhibit 9, showing her out-of-pocket expenses for the medical care related to her injury. The Petitioner testified that Petitioner's Exhibit 9 accurately reflects the out-of-pocket expenses made by her for her treatment needed after the accident. The Petitioner testified that Blue Cross Blue Shield, her group health insurance through her employer, paid a portion of her bills related to this accident. (AT 39-41)

Petitioner testified she has not received any off-work benefits from the workers' compensation carrier in this case. The workers' compensation carrier has not paid any medical benefits in this case. Petitioner was also denied short term disability by the Respondent's short term disability carrier. (AT 41-42)

The Petitioner testified that she would occasionally limp prior to the accident in question. However, the Petitioner testified that any pre-accident limping was only a result of being seating for an extended period of time. The Petitioner testified that most of her work days would be spent in her chair and when she would get out of her chair at work, she would briefly limp as she would be stiff following the period of extended sitting. (AT 52)

Testimony of Frank Fletcher

Respondent called Frank Fletcher as a witness. Mr. Fletcher is the tech support supervisor for the Respondent. He has worked for the Respondent for 25 years. Mr. Fletcher testified that the Petitioner is a good co-worker. Mr. Fletcher testified that his desk is 10 to 15 feet away from the Petitioner in their office. Mr. Fletcher noticed that before the accident, on occasion, Petitioner would get up slowly from her chair. Mr. Fletcher testified that he felt the Petitioner had "a hitch in her giddy up" before the accident. (AT 55-58)

Mr. Fletcher testified that he did see the Petitioner shortly after her fall, and he sat with her until the fire department came. Mr. Fletcher testified that Petitioner told him that she tried to steady herself on a door frame when she missed it with her hand and flipped around, landing on her back. Mr. Fletcher testified that he did not believe there were any defects in the area where Petitioner's fall occurred. Mr. Fletcher also testified that the pictures admitted as Respondent's Group Exhibit 1 accurately depict the area and the condition of the area where the Petitioner fell on the date of the accident. (AT 64-69, 145)

On cross-examination Mr. Fletcher testified that the Petitioner is an honest person and a hard worker. (AT 69-70)

Mr. Fletcher testified that he did not know what the cause of Petitioner's "hitch in her giddy up" was before the accident. Mr. Fletcher was not aware of the Petitioner having any left hip issues before this accident. Mr. Fletcher confirmed that the Petitioner never complained of any left hip issues to him before the accident. Mr. Fletcher confirmed that he had never witnessed the Petitioner fall before the accident. (AT 70-72)

Mr. Fletcher also confirmed that any inspection he did in the area where the Petitioner fell was brief and not a close inspection. Mr. Fletcher testified that there are two different transition strips depicted in the photographs admitted by the Respondent. There is one at the end of the hallway and one that is more of a doorway that leads into an office. Mr. Fletcher was of the understanding that the transition strip the Petitioner tripped on was the one that was in the doorway leading into the office which is depicted in RX1-B, C, D and E. (AT 73-74, 77-78)

Mr. Fletcher testified that checking on deliveries, talking to other people and communicating with others in the building would be one of her responsibilities in her position. Mr. Fletcher knows this because he is Petitioner's direct supervisor. Mr. Fletcher testified that the Petitioner trying to track down who a delivery recipient and helping a coworker would be something that he would reasonably expect her to do as part of her daily job duties. Mr. Fletcher testified that the area where the Petitioner fell is not open to the general public. Mr. Fletcher confirmed that the Petitioner does make orders as a part of her job. (AT 75-76)

Testimony of Kelly Kaiser

Respondent called Kelly Kaiser as a witness. Ms. Kaiser is the Respondent's Core Banking Manager. Ms. Kaiser testified the Petitioner was a good co-worker. (AT 81)

Ms. Kaiser testified that prior to the accident Petitioner had what she called a "hitch" when she walked. Ms. Kaiser did not notice any defects in the area where the Petitioner fell. (AT 82-84)

On cross-examination, Ms. Kaiser confirmed that prior to the accident Petitioner was able to do her normal job and was a full-time employee. Ms. Kaiser testified that she was not aware of the Petitioner having any falls prior to her accident. Ms. Kaiser also testified that she believed the transition strip the Petitioner fell on was depicted in RX1-B, which is the transition strip at the doorway going into the offices. (AT 85-88)

Testimony of Diana Witte

The Respondent called Diana Witte as a witness. Ms. Witte is employed by the Respondent as a Core Banking Analyst. Ms. Witte testified that that the Petitioner is a good co-worker. Ms. Witte testified that she noticed before the accident the Petitioner had kind of a "hitch in her gait". (AT 89-91) Ms. Witte testified that Petitioner had never mentioned having any problems with her left hip before the accident. Ms. Witte did not know what caused the Petitioner to fall and she was not present at the fall. Ms. Witte did not notice any defects in the area where the Petitioner fell. Ms. Witte marked the area where they found the Petitioner laying after she fell, which is depicted in RX1-B. (AT 89-95)

On cross-examination, Ms. Witte testified that the Petitioner was a truthful and honest person. Ms. Witte confirmed that the Petitioner never complained of any hip issues to her prior to the accident. Ms. Witte was not aware of the Petitioner having any falls before this accident. Ms. Witte did not examine the area where the Petitioner fell after the accident. Ms. Witte did not see the Petitioner fall at the time of her accident. Ms. Witte confirmed that she did not know exactly where the Petitioner fell, but saw where she was lying after the fall had occurred. (AT 95-99)

Testimony of Gayle Goss

The Respondent called Gayle Goss as a witness. Ms. Goss is the Facility Supervisor for the Respondent. Ms. Goss was on vacation the week Petitioner's accident occurred. When she returned from vacation, Ms. Goss testified that she inspected the area where the accident occurred and did not notice any defects. Ms. Goss testified that before the accident she noticed that the Petitioner had a little bit of a "hitch in her get along". (AT 103-107)

On cross-examination, Ms. Goss testified that the Petitioner is a good co-worker, and a truthful and honest person. Ms. Goss was not aware of the Petitioner having any falls before the accident. Ms. Goss confirmed that the area that she examined when she returned from vacation is the area and the transition strip depicted in picture RX1-B. (AT 109-111)

Testimony of Chad Carr

The Respondent called Chad Carr as a witness. Mr. Carr is the IT Infrastructure Manager with the Respondent. Mr. Carr testified that the Petitioner is a good co-worker. Mr. Carr testified that he noticed a slight "hitch" in the Petitioner's walk before the accident, and that he knew she received massages, but he was not sure why she got massages. Mr. Carr testified that he did not know exactly what caused the Petitioner to fall. Mr. Carr did not

notice any defects in the area where the Petitioner fell. Mr. Carr testified that at the time of the accident, Petitioner told him "I tripped and I missed catching myself on the doorway." (AT 112-120)

On cross-examination, Mr. Carr confirmed that the Petitioner was helping a coworker at the time of the accident. Mr. Carr confirmed that helping a coworker and checking on the delivery, as Petitioner was doing at the time of the accident, is something that she would be reasonably be expected to do as part of her job duties in any given work day. Mr. Carr confirmed that the area where the Petitioner fell is not open to the general public. (AT 120-122)

Testimony of Julie Olson

The Respondent called Julie Olson as a witness. Ms. Olson is the Benefits Analyst in Human Resources for Respondent. Ms. Olson testified that the Petitioner is a good co-worker. Ms. Olson does not work in the same building as the Petitioner and rarely sees her. Ms. Olson testified that she coordinates benefits for people which includes short term disability, long term disability, as well as group medical insurance. Ms. Olson testified that the Petitioner's short-term disability was denied "because…she had not originally applied for short term disability because it was reported as workers' compensation." (AT 124-127)

On cross-examination, Ms. Olson testified that the Petitioner's short-term disability was denied because the short-term disability carrier believed that this was a workers' compensation injury. Ms. Olson testified that the Petitioner is a truthful and honest person. Ms. Olson did not see the Petitioner fall. (AT 134-135)

Rebuttal Testimony & Witness Credibility

Petitioner was called to testify in rebuttal. The Petitioner testified that the pictures admitted by the Respondent show two different transition strips. One transition strip shows the picture of the end of a hallway where it goes from carpet to linoleum and then you see doors leading outside, as depicted in RX1-A. The second transition strip, which is the doorway leading into an office, is depicted in RX1-B, C, D and E.

All of Respondent's witnesses testified that it was their understanding that the transition strip the Petitioner tripped on was the one depicted in RX1-B, C, D and E. The Petitioner testified that the transition strip that had the ripples that she had tripped on is the transition strip depicted in RX1-A. (AT 139-140) The Petitioner testified that when she landed, she was located at the transition strip which is depicted in RX1- B, C, D and E. (AT 140)

Respondent recalled Frank Fletcher, Gayle Goss, and Kelly Kaiser in rebuttal. Frank Fletcher confirmed his prior testimony that Petitioner told him that she tried to steady herself on the door frame in RX1-B, not RX1-A, she missed it, and flipped around and fell on her back. Mr. Fletcher confirmed that he has walked over both thresholds, did not notice any defects, but had not inspected either closely. (AT 144-146, 151)

Respondent recalled Gayle Goss. Ms. Goss testified that the transition strips depicted in all the photos are raised slightly with a beveled edge. (AT 159). Ms. Goss testified that the transition strip in RX1-A was not reported to be defective, and she felt in her capacity as facility supervisor that the transitions strips could not be made safer. (AT 156-158).

Respondent recalled Kelly Kaiser as their final rebuttal witness. Ms. Kaiser testified that she never noticed a defect on the transition strip depicted in RX1-A or B, and neither transition strip has been changed since the accident. (AT 161, 164).

The Arbitrator notes that all of the witnesses at hearing are long-standing employees of Respondent, and genuinely appear to have good inter-personal and working relationships. All of the witnesses testified that they trusted each other, and found their co-workers to be honest and truthful. The hearing room reflected the trust the witnesses have in each other. This is a positive reflection on both parties, and all of the witnesses.

CONCLUSIONS OF LAW

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 threshold question in this matter is accident. There is no dispute that the Petitioner's accident on July 5, 2019, occurred "in the course of" her employment with the Respondent. The words "in the course of" refer to the time, place and circumstances of an incident. It is clear that Petitioner was at her place of employment and working at the time of the accident. The question is whether the Petitioner's accident "arose out of" her employment with the Respondent. The Arbitrator finds that the Petitioner has met her burden, and has proven by a preponderance of the evidence, that her accident arose out of and in the course of her employment by the Respondent.

The "arising out of" component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Sisbro Inc. v. Industrial Commission*, 207 Ill. 2d 193 (2003) 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." *Illinois Institute of Technology Research Institute v. Industrial Commission,* 314 Ill. App. 3d 149 (2000)

The Arbitrator finds that Petitioner was exposed to a risk distinctly associated with her employment with Respondent. 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. *Caterpillar Tractor v. Industrial Commission*, 129 Ill. 2d 52 (1989) Injuries resulting from a risk distinctly associated with employment are deemed to arise out of the claimant's employment and are compensable under the Act.

The Arbitrator finds that Petitioner has met the first and third prong under the *Caterpillar* analysis for establishing that she was exposed to a risk distinctly associated with her employment. The Petitioner testified that checking on deliveries was part of her job duties. The Petitioner testified that checking on a delivery is something that the employer reasonably expects her to do as part of her job. Petitioner testified she was helping a co-worker, and this is something she would reasonably be expected to do as part of her job. Petitioner had helped check on deliveries in the past. Petitioner had never been told not to help with or check on deliveries. Respondent's witnesses confirmed Petitioner's testimony in this regard.

Moreover, Petitioner testified that at the time of the accident she was moving with more haste as the delivery driver wanted to leave the Respondent's premises. In hustling to find the person who could properly direct the delivery at Respondent's office, Petitioner tripped and fell. Mr. Carr's testimony confirmed Petitioner's testimony, that she tripped and fell. The initial medical histories confirm Petitioner's testimony as well, that she was picking up a delivery, was doing so with alacrity, and tripped and fell. Mr. Fletcher's testimony, however, is not consistent with Petitioner's, Mr. Carr's, or the initial medical histories in one regard, that Petitioner tripping caused her to fall.

It is unrebutted that Petitioner helping with a delivery was an act which the Petitioner was reasonably expected to perform as part of her assigned job duties. Moreover, the preponderance of the evidence supports Petitioner's testimony that in performing an act she was reasonably expected to perform as part of her job, Petitioner was hurrying, tripped and fell. Therefore, the Arbitrator finds the Petitioner has met her burden of proof on the issue of accident, as Petitioner established that she was performing an act that was incidental to her employment with Respondent. *McAllister v. IWCC*, 2020 IL 124848.

The Arbitrator notes there is no evidence that the accident occurred from a risk personal to the Petitioner. The only testimony that exists in the record indicates that the Petitioner was performing an act at the time of the accident that she was instructed to do by her employer and that her employer would reasonably expect her to do as part of her assigned job duties. Therefore, the Arbitrator finds this accident stemmed from a risk distinctly associated with the Petitioner's employment and is compensable under the Act.

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

The Arbitrator finds that the Petitioner has met her burden of proof regarding causal connection. The Petitioner has met this burden under a chain of events analysis. The Petitioner testified that at no time prior to her accident did she have any problems with her left hip. Although the Respondents witnesses all described a "hitch" in Petitioners gait, there is no medical evidence in the record to rebut Petitioner's testimony, or disputing causation.

Petitioner sustained a compensable work accident. Following the accident, the Petitioner had immediate symptoms, and was transported to the OSF ER where she underwent surgery less than 24 hours later, and was taken off work. Petitioner was working full duty with no left hip problems when she arrived for work on July 5, 2019. The mechanism of injury, a hard fall on the left hip, clearly caused the fracture noted in Petitioner's left hip after the accident, and Petitioner was unable to work following the fall at work. Given this undisputed chain of events, the Arbitrator finds the Petitioner has met her burden of proof on the issue of causation for her left hip.

Further, the Petitioner credibly testified that due to her altered gait following the accident she began to have low back pain. Petitioner underwent conservative care for her low back, and recovered to her baseline. Petitioner also testified the due to her concern over the stability of her left hip that she began to favor her right side and subsequently developed right hip complaints. The Petitioner underwent PT for her right hip, and recovered to her baseline. Petitioner's testimony that her low back and right hip complaints stemmed from her altered gait and over-compensating for her work-related left hip injury is unrebutted, credible, and supported by the record. Therefore, the Arbitrator finds that Petitioner's low back and right hip complaints were a temporary aggravation post-accident, requiring only conservative care to return to her baseline, and are casually connected to her work-related 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:

Based upon the Arbitrator's above findings on the issues of accident and causal connection, the medical services provided to Petitioner for treatment of her left hip, low back, and right hip were reasonable and necessary. The Respondent has not paid all appropriate charges for these reasonable and necessary medical services.

The Arbitrator orders the Respondent to pay all reasonable and necessary medical services as set forth in Petitioner's exhibits, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. The Arbitrator orders the Respondent to reimburse Petitioner for her out-of-pocket expenses for causally related medical treatment as set forth in Petitioner's Exhibits 7 and 9. 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 is entitled to a full credit of $16,522.40 for payments made through its group health insurance carrier, and shall hold Petitioner harmless for said payments.

Issue (K): What temporary benefits are in dispute? TTD & TPD. The Arbitrator finds as follows:

Temporary Total Disability

Based upon the Arbitrator's above findings on the issues of accident and causal connection, the Petitioner is entitled to temporary total disability benefits for her off work period. The Petitioner was off work for this injury from July 6, 2019 to July 30, 2019. The Arbitrator awards temporary total disability benefits for this period, representing 3 and 3/7 weeks.

Temporary Partial Disability

The Petitioner worked reduced hours for the Respondent from July 31, 2019 to January 7, 2020. As of January 8, 2020, the Petitioner was released to return to work full time. The Petitioner earned $23,153.81 from July 31, 2019 to January 7, 2020. (PX 10) At the Petitioner's average weekly wage of $1,185.24, she would have earned $31,314.04 from July 31, 2019 to January 7, 2020. Therefore, the Arbitrator orders the Respondent to pay the Petitioner temporary partial disability benefits during this period totaling $5,440.15, as:

	$31,314.04
-	$23,153.81
	$ 8,160.23
x	2/3
	$ 5,440.15

Issue (L): What is the nature and extent of the injury? The Arbitrator finds as follows:

After reviewing the five factors enumerated in Section 8.1b, the Arbitrator finds the nature and extent of the injury to be as follows:

With regard to subsection (i) of §8.1b(b), 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 record reveals that Petitioner was employed in tech support at the time of the accident. The Petitioner was able to return to her full duty position in tech support. The Arbitrator gives some weight to the factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 62 years old at the time of the accident. Petitioner continues to work full duty for Respondent four years after the accident. The Arbitrator gives some weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that the Petitioner did not suffer a loss of future earnings capacity. The Arbitrator gives some weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that the Petitioner's testimony at the time of trial is consistent with the records contained in Petitioner's exhibits regarding the Petitioner's subjective complaints and the ongoing issues she has experienced since the accident. The Arbitrator therefore gives greater weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 40% loss of use of the left leg, 5% loss of use of the right leg, and 1% loss of use of her body as a whole.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC020413
Case Name	Glenn Mirabile v. City of Chicago - CDOT
Consolidated Cases	21WC015322; 22WC032970;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0058
Number of Pages of Decision	28
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Jason M. Whiteside
Respondent Attorney	Scott Webber

DATE FILED: 2/6/2025

/s/Amylee Simonovich,Commissioner

Signature

25IWCC0058

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Glenn Mirabile,

Petitioner,

vs. NO: 20 WC 020413

City of Chicago - CDOT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under Sections 19(b) and 8(a) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical care, and permanent partial disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980).

The Commission strikes the second paragraph of the Order under "MEDICAL".

The Commission modifies the third paragraph on page 1 of the Attachment to Arbitration Decision (hereinafter "Decision"), striking "20WC015322" and replacing it with "21WC015322".

The Commission modifies page 11 of the Decision, striking everything after the first two sentences of the fifth paragraph. On the same page, the Commission also modifies the sixth paragraph, striking the word, "Moreover".

The Commission modifies the last three paragraphs on page 13 of the Decision, striking them in their entirety.

The Commission modifies page 15 of the Decision, striking the word "not" in the last sentence of the fifth paragraph. On the same page, the Commission also strikes the second sentence of the second to last paragraph.

The Commission modifies the first full paragraph on page 16, striking it and replacing it with, "Dr. Freedburg disagreed with Dr. Shadid's characterization of the Petitioner as a malingerer. Dr. Freedburg noted that Petitioner continued to work after the accident. Dr. Sompalli also disagreed with Dr. Shadid's assertion that Petitioner's condition following the crash would have immediately disabled him to the point it would have been noted in the emergency room record." On the same page, the Commission strikes the second to last paragraph.

The Commission modifies page 17 of the Decision, striking the last two sentences of the fifth paragraph. On the same page, the Commission strikes the last paragraph, which continues onto page 18 of the Decision.

Finally, the Commission modifies the first and second full paragraphs on page 18 of the Decision, striking them in their entirety. On the same page, under Issue (J), the Commission strikes the last sentence of the first paragraph.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on February 8, 2024, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the Petitioner reasonable and necessary medical services pursuant to the Medical Fee Schedule, as provided in Section 8(a) of the Act, as follows: Rush University Health System/Rush Oak Park Hospital in the amount of $5,391.50; Illinois Orthopedic Network in the amount of $7,558.07; ILBJ - Hinsdale Orthopedics in the amount of $1,303.96; Midwest Specialty Pharmacy in the amount of $16, 416.04; Preferred MRI in the amount of $4,500.00; Total Rehab, P.C. Garfield Ridge in the amount of $5,018.18; Concentra in the amount of $422.55; Suburban Orthopedics for services rendered from 6/8/2021 to 3/23/2023 with a balance of $2,243.04; Northwestern Medicine in the amount of $12,667.50; Bright Light Medical Imaging in the amount of $500.00; Elite Orthopaedics and Sports Medicine, LLC in the amount of $621.48.

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 Respondent shall provide and pay for the prescribed right total knee surgery and related care.

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.

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

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

February 6, 2025
O: 12/10/24
AHS/kjj
051

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

/s/ *Maria E. Portela*
Maria E. Portela

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

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Commission Decision Number	
Number of Pages of Decision	24
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Jason M. Whiteside
Respondent Attorney	Scott Webber

DATE FILED: 2/8/2024

/s/Joseph Amarilio, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 6, 2024 5.045%

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

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

GLENN MIRABILE Case # **20** WC **020413**
Employee/Petitioner

v.

CITY OF CHICAGO - CDOT
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joseph Amarilio**, Arbitrator of the Commission, in the city of **Chicago** on **9/26/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **8/6/2020**, the 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 $**101,197.72**; the average weekly wage was $**1,946.11**.

On the date of accident, Petitioner was **52** years of age, ***married*** with **no** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

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

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

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

ORDER

MEDICAL Respondent shall pay the Petitioner reasonable and necessary medical services pursuant to the Medical Fee Schedule, as provided in Section 8(a) of the Act, as follows: Rush University Health System/Rush Oak Park Hospital in the amount of $5,391.50; Illinois Orthopedic Network in the amount of $7,558.07; ILBJ - Hinsdale Orthopedics in the amount of $1,303.96; Midwest Specialty Pharmacy in the amount of $16, 416.04; Preferred MRI in the amount of $4,500.00; Total Rehab, P.C. Garfield Ridge in the amount of $5,018.18; Concentra in the amount of $422.55;Suburban Orthopedics for services rendered from 6/8/2021 to 3/23/2023 with a balance of $2,243.04; Northwestern Medicine in the amount of $12,667.50; Bright Light Medical Imaging in the amount of $500.00; Elite Orthopaedics and Sports Medicine, LLC in the amount of $621.48. (*See* Section J of the Attachment to the Arbitration Decision).

Respondent shall hold Petitioner harmless from any claims by any providers of the services that have been paid by Petitioner's group health insurance. 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 paid to date.

PROSPECTIVE MEDICAL: Respondent shall authorize and pay for the prescribed right total knee surgery and related care.

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

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

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

/s/ *Joseph D. Amarilio*

Signature of Arbitrator Joseph D. Amarilio

February 8, 2024

ATTACHMENT TO ARBITRATION DECISION
19 (b)/8(a)

Glenn Mirabile
Employee/Petitioner

Case # **20** WC **020413**

Consolidated cases: 21 WC 015322
22 WC 032970

v.

City of Chicago - CDOT
Employer/Respondent

FINDINGS OF FACT OF FACT AND CONCLUSIONS OF LAW

I. PROCEDURAL HISTORY

Mr. Glenn Mirabile ("Petitioner"), by and through his attorney, filed three (3) Applications for Adjustment of Claim for benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.*) (West 2014)). Petitioner sustained three (3) separate accidents that arose out of and in the course of his employment while working for the City of Chicago/The Chicago Department of Transportation (CDOT) ("Respondent').

(1). Under case number 20 WC 020413, Petitioner alleged that on August 6, 2020, he sustained an accidental injury resulting from a motor vehicle collision.

(2) Under case number 20 WC 015322, Petitioner alleged that on June 1, 2021, he sustained an accidental injury from a fall.

(3) Under case number 22 WC 032970, Petitioner alleged that January 13, 2022 he sustained an accidental injury while carrying a ladder up a flight of stairs.

The parties stipulated that all three accidents arose out of and in the course of Petitioner's employment by Respondent. (ARB X1; X2; X3).

The three claims were consolidated and a hearing was held on September 26, 2023 on the following three (3) disputed issues: 1. Whether Petitioner's current condition of ill-being to his right knee is causally connected to his injury; 2. Whether Respondent is liable for unpaid medical bills; and 3. Whether Petitioner is entitled to prospective medical care for his right knee. The same three issues were in dispute for each claim. The parties mutually requested a written decision, including findings of fact and conclusions of law. (ARB X1; X2; X3).

Petitioner testified in support of his claim as well as Petitioner's treating orthopedic physicians, Dr. Howard Freedberg and Dr. Chandrasekhar Sompalli, both of whom testified by evidence deposition. Dr. Hythem Shadid, Respondent's retained Section 12 orthopedic physician, testified by evidence deposition at Respondent's request.

Accident and notice of accident are not in dispute in the three claims for benefits. All three accidents were witnessed. The pivotal issue in dispute is whether Petitioner' right knee condition of ill-being is causally related to one or more of the three claims. The need for a total knee surgery is not in dispute. Rather, Respondent disputes that the necessity for surgery is causally related to one or more of the three accidents or none.

Background

Petitioner testified that he resides in the Garfield Ridge area of Chicago with his wife and three children. (T14). He had been working for Respondent as a carpenter since July 16, 1993. *Id*. He still is employed by the Department of Transportation of the City of Chicago. (T15). His primary duties involved using an emergency truck to maintain bridges throughout the City of Chicago. (T16). He also works on vaulted sidewalks, under the city sidewalks, where he would work on demolitions and construct and maintain forms, footings and foundations. (T 17). He works on his knees using knee pads when working on flooring. (T55). Simply stated, Petitioner performs the duties of a rough carpenter.

Prior to becoming a carpenter, Petitioner graduated high school and then obtained a diploma in carpentry after a four-year apprenticeship at Washburne Trade School. (T17-18). Before the first injury on August 6, 2020, he enjoyed good health. (T18). He denied any preexisting problems with his right shoulder, right elbow, low back or right knee. *Id*. He filed one prior worker's compensation claim 13 years ago for a thumb injury. (T19). Otherwise, he was never off work for any work-related injuries nor was he on medication for any injuries. *Id*. Outside of work he does not participate in any physical activity that requires running. (T19-20).

August 6, 2020 Injury (20 WC 020413) [MVA]

On August 6, 2020, Petitioner started work at 7:00 o'clock in the morning. (T20). He proceeded to his job sites in a City work van. *Id*. On the way back to the shop day's end, he was involved in a motor vehicle collision. He was making a left hand turn from a full stop when a SUV ran through the stop sign and struck his van head-on which he described as T-boned (sic.) *Id*. The van sustained front end damage, more so on the right side. He testified that he went flying and the air bags deployed. (T21). Petitioner explained that his height was 5'5" and the console in the van was positioned on his right side. (T23). He was twisted inside the van by the impact and he felt his right shoulder, right elbow and lower back were bothering him from hitting the dashboard and center console. The driver side and passenger side air bags were deployed. (T27). It appears that the van was not equipped with knee air bags.

Petitioner identified a series of photographs shown in Petitioner's Exhibit 13, which showed the front-end damage, greater to the front right passenger side of Petitioner's van. Also, photographs showing the interior passenger seat where his partner Dan Bracken was seated and which also showed deployed passenger side air bag. (T23-25). He asked his partner, Mr. Bracken, how he was feeling. Mr Bracken described his "problems" with Petitioner. Afterward, the police and his supervisor arrived at the scene. Then, a City of Chicago truck towed Petitioner, Mr. Bracken and the damaged work van back to 31st and Sacramento. (T26- 27).

After providing a urine sample at 31st and Sacramento, Petitioner presented to Rush University Medical Center. (T29;28). The Rush University Medical Center emergency room records show that Petitioner complained of right elbow, right wrist and right flank pain following the collision earlier that day. (PX2). After examination and x-rays, he was sent home. (T28). He testified that at the emergency room, he did not recall doing any full range of motion testing on his extremities. His testimony is corroborated by the records (T87-88). The Arbitrator notes that while the right shoulder, elbow, wrist and hands were examined, his left side were not; nor were his lower extremities. Petitioner did not complain of right knee pain or of a right knee injury. (PX2). Nor did the Petitioner testify that experienced right knee pain on the day of the accident.

Petitioner testified to experiencing right knee pain the next morning. Petitioner testified that he next morning, he came to work to drop off paperwork and coworkers noticed he was limping. Petitioner testified he was off work three days after his accident. (T30-31). Petitioner ordered a knee brace, or his kids obtained a knee brace for him. (T31). After talking to some people at work, he was given some suggestions on where to seek treatment. (T32).

Petitioner testified he hired an attorney approximately five days after his accident. (Tr. 64). Petitioner testified he told his attorney the facts of his motor vehicle accident including what body parts were injured. (Tr. 65). Petitioner was shown respondent's Exhibit 5 which Petitioner identified as the Illinois Workers' Compensation Commission Application for Adjustment of Claim. Petitioner testified his signature was located at the bottom of the document. (Tr. 66). Petitioner testified he did not recall filling out the Application but did sign the document. (Tr. 67). Petitioner testified that the body parts listed included the right rib, right elbow, right shoulder, and MAW. (Tr. 67). Petitioner testified he did not personally fill out the Application for Benefits, but his attorney filled it out on his behalf based on what he told them. (Tr. 67-68). Petitioner admitted that nowhere on the Application for Benefits does the document indicate he sustained a right knee or lower body injury. (Tr. 68). Petitioner further testified that he did not know what "MAW" means. (Tr. 88).

Petitioner's first post emergency room medical visit occurred thirty-five (35) days after the accident. On September 10, 2020, Petitioner presented to an ION where he started treating his elbow, back and neck. (T 32-32). He also reported right knee pain, and he was sent for a MRI. (T32).

The records from ION show that on September 10, 2020 he was seen Ronnie Mandal, MD. He reported the mechanism of injury being the auto accident on August 6th, and had since had pain in his right shoulder, right wrist, right knee and low back, with the wrist pain having resolved since. (PX3). At his next visit he is sent for an MRI of the right knee. (PX3). The knee MRI indicated fluid within the suprapatellar bursa, prominent diffuse chondromalacia patella, articular cartilage thinning more severely affecting the medial compartment with full-thickness cartilage loss involving the medial femoral condyle with subchondral edema, and a horizontal tear of the medial meniscus, with tricompartmental osteoarthritis. (PX3; PX6).

Petitioner recalled going somewhere in Hinsdale for a shot in his back, possibly his elbow, and knee. (T33). The records show a visit to Illinois Bone and Joint / Hinsdale Orthopedics, where on October 15, 2020, he received an injection in the elbow. (PX4). Afterward, he started physical therapy at Total Rehab near his home. (T33). Between September 16, 2020 to February 5, 2021, Petitioner underwent therapy at Total Rehab for his low back, right elbow and right knee. (PX7). Petitioner testified that after therapy, he his right shoulder, elbow and low back had resolved around the Spring of 2021. (T34). At the time, his right knee was still problematic as he was having a hard time walking. (T35). He recalled it clicking and being swollen. *Id*. At that point, the plan for treatment for his right knee was surgery. *Id.* Petitioner testified he does want to have surgery. *Id*. He later noted that his shoulder, elbow and back condition resolved prior to his second injury date. (T52).

On January 27, 2021, Dr. Freedberg saw Petitioner at ION. (PX3). Petitioner reported that walking was painful, and a recent injection only gave him one day of relief. *Id*. He was in constant pain at work. *Id*. Dr. Freedberg noted full range of motion and good strength, but some boggy swelling with tenderness at the lateral and posterolateral aspects. *Id*. He was diagnosed with right knee post-traumatic medial femoral chondral osteochondral lesion with medial compartment degenerative change and a horizontal medial meniscus tear. *Id*. At that point, Dr. Freedberg recommended a right knee arthroplasty that would allow him to return to work. *Id* at p. 15. Dr. Freedberg's assessment and plan was unchanged until the IME appointment. *Id*. He did not return to Dr. Freedberg until after his second injury. *Id*.

Petitioner then recalled attending for an examination with Dr. Shadid around March 2021. (T36). It took Dr. Shadid two and a half hours to see him and when he did he asked some questions and might have touched his knee. *Id*. He recalled being there for 10-15 minutes. *Id*. [Dr. Shadid testified that he examined the Petitioner far longer than his patients. See below]

June 1, 2021 Injury (20 WC 015322) [Fall]

On June 1, 2021, Petitioner was working on a vaulted sidewalk under the ground. (T37). He was setting up some ladders and boards so he could tear apart framing when one of the boards cracked and he fell about two feet onto his knees. Petitioner described the area as having pipes for plumbing and gas, and it was cramped. (T39). Petitioner identified several photographs as Petitioner's Exhibit 17 that showed his workspace, the pipes, the ladders, and broken board he was using as a scaffolding between ladders. (T40-44; PX17).

Afterward, he went to the Concentra Occupational Clinic where he was told to return to his doctor, Dr. Freedberg. (T45). The records show that he reported an event at work where he struck both knees, but by the time he arrived at the clinic his left knee was better. (PX8). He was diagnosed with a contusion to his right knee and directed to follow up with his orthopedic specialist. *Id*.

On June 8, 2021, he presented to Dr. Freedberg with Suburban Orthopaedics where he reported the first work occurrence and event on June 1, 2021 when a plank he was standing on cracked causing him to fall on his knees. (PX9). Dr. Freedberg advised there was nothing he could do for him, he needed surgery. (T46). He was, however, prescribed pain and muscle relaxer medication.

(T47). Petitioner continued to return with the same recommendation for treatment every time. (PX9).

On August 18, 2021, Dr. Freedberg reviewed the two Section 12 reports of Dr. Shadid with Petitioner, who told Dr. Freedberg that he had to wait from 3:00 p.m. with his vehicle so he could take a drug test, and that he was not able to go to the ER until 9:00 p.m. *Id*. At that time, he was concerned about his right arm and low back as it was stiff and in shock. *Id*. He left the ER at 2:30 a.m. and just wanted to go home and sleep for work the next day. *Id*. He reported to work the next day but had to leave after an hour due to knee pain. *Id*. Petitioner continued to follow up with Dr. Freedberg with no change in the assessment and plan until January 5, 2022, when Dr. Freedberg added that it appears his tricompartmental pain is getting worse and suggested the possibility of a total knee arthroplasty operation. *Id*.

January 13, 2022 Injury (22 WC 032970) [While carrying ladder up flight of stairs]

On January 13, 2022, Petitioner was working with his partner Helen Iwanicki. (T48). A different trade had borrowed one of his ladders at the State and Wacker bridge house. (T49). He went to the basement to grab the ladder and carried it nearly to the top of the stairs when his knee buckled and gave in. *Id*. He fell to the ground and dropped the ladder. His partner called an ambulance. *Id*.

Petitioner was transported by ambulance to Northwestern Hospital where he was bandaged up and sent on his way with a recommendation to see his doctor, Dr. Freedberg. (T50). The records indicate he reported carrying a ladder upstairs when he felt his right knee pop out and back in causing him to lose his balance and fall down and strike his head on a wall. (PX10). He was discharged and directed to follow up with his specialist. *Id*. Petitioner returned to Dr. Freedberg to report the new event, but added that now he felt his knee slip out and back in. (PX9). The possibility of total knee replacement was again suggested by Dr. Freedberg. *Id*.

After the amended operation suggestion, Dr. Freedberg previously waiving between a partial and total knee, but inclined to a total knee, Petitioner was sent for a repeat Section 12 examination with Dr. Shadid. (RX2). Dr. Shadid's opinions remained unchanged regarding causation. *Id*.

At his next visit with Dr. Freedberg, Dr. Freedberg again disagreed with Dr. Shadid's position. (PX9). Dr. Freedberg again recommended surgery, but this time Petitioner got a second opinion near his home named Chandrasekhar Sompalli, M.D. (T51).

Petitioner presented to Dr. Sompalli on April 4, 2022, when he reported all three events to him, along with the two examinations before Dr, Shadid he attended. (PX12). After an x-ray was taken, Dr. Sompalli concurred in the diagnosis in line with Dr. Freedberg and Dr. Shadid but recommended a total knee replacement. (T51; PX12).

After that appointment, Petitioner recalled possibly receiving another shot with Dr. Freedberg. (T52). Petitioner continued to return to Dr. Freedberg once a month but there was no change in the assessment or treatment plan. *Id*.

Petitioner testified that his therapy, injections and medication were helpful. (T54). As for his continuing work, he said he has no choice. *Id*. His job requires him to be on his knees to do flooring so it is difficult, tough and painful, but he has to tough it out. (T55). He works with knee pads and a knee brace which he wears all the time but continues to have pain with all daily life activities. *Id*. He has never had any problems with his left knee. *Id*.

Petitioner did recall seeing Dr. Shadid for a second time, but this time Dr. Shadid did not conduct a physical examination was done on him. (T56). Rather, Dr. Shadid recognized him and looked at some paperwork and he never heard back from him. (T56-57).

On cross-examination, Respondent asked questions about the initial application for adjustment of benefits filed August 26, 2020, which listed injuries to rib, right elbow, right shoulder and MAW. (T67; PX16). Petitioner does not know what "MAW" means. (T88). Petitioner acknowledged there was no record of a right knee complaint until his treatment at ION. (T70-71). Petitioner's application for adjustment of benefits was later amended to state injuries to "Person as a whole-multiple parts." (PX16). Petitioner also disagreed with the statement that he described having full range of motion in his right knee on November 11, 2020. (T72). As he testified, Petitioner says he still feels ten out of ten pain in his right knee. (T83).

Evidence Deposition of Dr. Howard Freedberg – July 12, 2022 (PX 14)

On July 12, 2023, Dr. Freedberg testified that he is an orthopaedic surgeon licensed to practice medicine in Illinois since 1982. (PX14. p.7-8;10). He has forte in using an arthroscope and testified that he is a master instructor of arthroscopic surgery. *Id*. at 8. He has a specialty in sports medicine and reconstructive surgery and does about 500 operations a year. *Id*. He had an independent recollection of Petitioner and could pick him out of a line-up. Dr. Freedberg agreed to and stated that any opinions he renders during the course of his evidence deposition will be made within a reasonable degree of medical and surgical certainty He first saw Petitioner at the Illinois Orthopedic Network on November 11, 2020. After January 27, 2021, he started seeing Petitioner at his own facility. *Id*. at 10-11.

Dr. Freedberg testified that he took a history from Petitioner, which included information about a motor vehicle accident on August 6, 2020, where he was making a left turn and another vehicle ran a stop sign and struck the front of Petitioner's vehicle, which produced pain complaints in the right elbow, right wrist, right knee and low back. *Id*. At the time he saw Dr. Freedberg, the issue was with the knee as he was limping and complained of pain walking and going up and down stairs. *Id*.

After a review of the MRI from September 17, 2020, he diagnosed him with right knee post-traumatic medial femoral condyle osteochondral lesion associated with tricompartmental osteoarthritis and a horizontal medial meniscal tear. *Id*. at 12. He opined that the accident of August 6, 2020 accelerated, exacerbated, aggravated or otherwise contributed to Petitioner's condition and need for treatment. *Id*. According to Dr. Freedberg, surgery is medically necessary to address Petitioner's ongoing symptoms and condition. *Id*. at 13.

He recalled there being two other occurrences after the first auto accident that also contributed to his condition. He opined that all three accidents dovetail together. *Id*. at 14. There was an occurrence on June 1, 2021 when Petitioner fell through some boards at work, and another on January 13, 2022 when he was walking upstairs with a ladder when his knee gave out. *Id*. at 14-15. Dr. Freedberg opined that the first accident made him more susceptible to injury. And, in dovetailing, the second accident made him more susceptible to injury from the third accident. *Id*. at 14.

Dr. Freedberg had recommended a total knee arthroplasty or possibly a partial knee. He was leaning toward a total knee procedure versus a partial. *Id*. at 15. His reason was that he preferred to do an operation that would last Petitioner for 20 years versus one that might last for 5 years and then need more treatment. *Id*. at 17. Dr. Freedberg had not heard of any left knee complaints over the course of treatment. *Id*. at 15. On cross examination, Dr. Freedberg testified that he initially recommended a partial knee, but after time, after the other two injuries, he prescribed a total knee. Id. At 40.

Dr. Freedberg disagreed with the opinions of the Respondent's Section 12 examiner, Dr. Shadid. *Id*. at 17-19. He testified that he has seen multiple IME reports authored by Dr. Shadid. *Id*. at 18. He said that Petitioner did not have any knee problems before these occurrences, did have arthritis, but never had symptoms and did not received treatment. *Id*.

Dr. Freedberg took offense that Dr. Shadid called Petitioner a malingerer because he knew Petitioner well enough that there was nothing else in Petitioner's mind other than working hard and doing well. *Id*. at 18-19. He noted that this is evident by Petitioner continuing to work despite having a knee that is miserable for him. *Id*. He recalled that at the ER, Petitioner took a drug test, was concerned and in shock. *Id*. at 20. Petitioner went home but when he went to work the next day and he could only work an hour the next day because his knee was bothering him. *Id*. Petitioner's one day delay in reporting symptoms does not change his opinion. He also disagreed with Dr. Shadid's statement that any exacerbation or aggravation of Petitioner's preexisting conditions would have been immediately disabling and be a primary concern at the ER. *Id*. at 49. He also added that he's never seen an IME report from Dr. Shadid that found causation for the Petitioner and estimated that he read about 20 from Dr. Shadid. *Id*. at 55-56.

Dr. Freedberg explained homeostatic balance, in that it is the ability of the joint of the body to adapt to the stresses applied to it, and that is what happens when you have an arthritic knee that becomes symptomatic after an accident, because something happens where the body loses the ability to maintain the balance or ability to respond normally to stress applied to it. *Id*. at 21. You cannot always see it in an MRI but in this case, there is an MRI finding early on where Petitioner had full thickness cartilage loss to the medial femoral condyle chondromalacia patellae. *Id*. at 23. He later supported his opinion on Petitioner's condition being post-traumatic by pointing to the MRI which showed bony signal, which usually but not always represents post-traumatic injury. *Id*. at 33-34. Other than the surgical recommendation, Dr. Freedberg advised that Petitioner continue with the medication prescribed, primarily the Celebrex, which is a non-steroidal anti-inflammatory. *Id*. at 38.

Evidence Deposition of Dr. Chandrasekhar Sompalli – April 7, 2023 (PX 15)

On April 7, 2023 Dr. Sompalli testified that he is a board-certified orthopedic surgeon licensed to practice medicine in Illinois, and works at his solo practice at Elite Orthopedics. After graduating from Loyola Stritch School of Medicine, he did a year of research in transplant surgery and a year of research in orthopedic surgery. He then completed his residency in orthopedic surgery at Loyola Medical Center in Maywood, Illinois and graduated in 2009. (PX15, p.7-8).

He performs about 300 operations a year, with about 150 for the knee. *Id*. at 9. Dr. Sompalli stated that he his testimony regarding his findings and opinion would be within a reasonable degree of medical and surgical certainty. *Id*. at 11.

He first saw Petitioner on April 4, 2022 at the referral from Illinois Orthopedic Network. *Id*. He obtained an MRI of Petitioner's right knee and obtained a history of the auto accident on August 6, 2020, along with the subsequent injuries of July 3, 2021 and January 13, 2022. *Id*. at 12-13. He recalled that Petitioner initially went to the emergency room, completed therapy with no improvement, was currently taking Celebrex, and had instability with problems performing his daily life activities. *Id*. at 13-14. Petitioner told him that he never had right knee pain prior to these events. *Id*. at 14.

After an examination and review of radiology records, Dr. Sompalli diagnosed him with right knee arthritis in all three of the knee compartments with a medial meniscus tear. *Id*. at 15. He ordered an x-ray that he hoped would show the true amount of arthritis in the knee. *Id*. At his next appointment, the x-ray films did indicate to Dr. Sompalli that arthritis was present in all compartments.

Based on Petitioner's history and lack of treatment for the right knee prior to the work events, Dr. Sompalli opined that Petitioner had a pre-existing condition of arthritis that was caused to become symptomatic. *Id*. at 17. At this point, synovitis injections would not be helpful and therefore, his recommendation was a total knee replacement. *Id*. at 17-18.

With regard to the two subsequent work events, these events just contributed to his condition. *Id*. at 18. They made his knee condition worse. When referring to the third event carrying a ladder up the stairs, Dr. Sompalli said a knee can give out because of a meniscal tear or because of the severity of pain. *Id*. He added that a total knee would allow him more stability in the knee, because right now he is bone on bone. *Id*. at 19-20.

As for the time in which Petitioner complained of his knee condition, he felt it was possible to not feel the effects for several days and added that without a fracture the idea that one would have immediate pain and not be able to walk is untrue. *Id*. at 20.

Dr. Sompalli referred to an abstract that was included with his records, which explained when you have pre-existing arthritis and there's a traumatic injury to that knee, these patients get rapid progression of the arthritis to the point where all kinds of cellular-level changes occur and inflammatory changes occur where the arthritis that would have normally progressed slowly then progresses super rapid and they end up needing surgical intervention. *Id*. at 22.

Dr. Sompalli said the car crash was an aggravating cause that accelerated his condition. *Id*. at 23. With regard to future treatment, he recommended a total knee replacement with follow up treatment after about six to eight months after surgery. *Id*. at 24. During that time the patient would need therapy and work conditioning to allow him to return to work. *Id*.

Dr. Sompalli also disagreed with Dr. Shadid's assertion that Petitioner's condition following the crash would have immediately disabled him to the point it would have been noted in the emergency room record. *Id*. at 36-37. Respondent later questioned whether Petitioner's obesity could add to his arthritis, but on redirect it was identified that Petitioner was Five foot Five, 184 pounds, with a body mass index was 30.6, and the obesity marker starts at BMI 30, so he was just borderline obese. *Id*. at 42-43; 50. Finally, when asked about the emergency room records, he opined that emergency room staff does not go through every body part and ask if there's an injury to that part; rather, they concentrate on the chief complaint. *Id*. at 53. It was reasonable to assume that Petitioner just did not mention it at the emergency room, not that it was tested and deemed to have no pain. *Id*. at 53-54.

Evidence Deposition of Dr. Hythem Shadid - August 7, 2022 (RX 3)

Dr. Shadid testified on August 7, 2022 that he has an orthopedic practice with a focus on knees and shoulders and is a board certified orthopedic surgeon. (RX3, p.6). Forty to forty-five percent of his surgeries are on the knee. *Id*. at 7. On direct examination, Dr. Shadid testified consistent with his reports of April 22, 2021 and of February 14, 2022. (RX 1, RX 2)

Prior to his independent medical examinations, he reviewed records and then examined Petitioner, whose chief complaint was the right knee. *Id*. at 10. During his first examination, he obtained the mechanism of injury being the August 6, 2020 collision. *Id*. at 10-11. Dr. Shadid said that based on the emergency room records, Petitioner denied upper and lower extremity weakness. *Id*. at 11. Dr. Shadid testified that the emergency room "…medical records show that he [Mr. Mirabile] was smiling in comfortable position while ambulating well before being discharged jn a stable position." *Id*. at 12-13.

During his examination, Dr. Shadid said Petitioner had a normal gait when walking, there were no gross deformities and no unusual swelling. *Id*. at 13. The knee moved without clicking or popping and his range of motion was 120 degrees of flexion both actively and passively. *Id*. His strength was also 5 out of 5 flexion and extension. *Id*. The ligament examination showed that all ligaments were intact and the meniscal examination and patellofemoral examinations were negative. *Id*.

He then noted that the MRI showed an effusion, small amount of fluid, with tricompartmental osteoarthritis and a horizontal tear of the body of the meniscus. In his opinion there was no knee condition as a result of the accident. *Id*. at 15. He said the osteoarthritis was a pre-existing condition there before and after the accident. *Id*. He added there was no evidence that the crash aggravated his condition, and that an aggravation would have been immediately debilitating. *Id*. Also, there was no evidence of a mechanism of injury where there was trauma to the knee. *Id*. at 15-16. He then said you cannot aggravate osteoarthritis from a sitting position in a car where you are restrained, and airbags deploy. *Id*. at 17. He said there would have been some subchondral edema shown on the first MRI if there was some inflammatory reaction to the injury. *Id*. at 18.

However, irrespective of causation, the knee replacement surgery would be reasonable and necessary. *Id*.

Dr. Shadid, in connection with his April 2021 report (RX 1), concluded Petitioner did not experience any right knee injury as a result of the motor vehicle accident. He based his opinion on his review of the diagnostic images, the lack of initial complaints of right knee pain following a motor vehicle accident, as well as his assessment as to whether or not petitioner could have experienced any right knee injury as a result of the motor vehicle accident.

In connection with his February 2022 examination, Dr. Shadid concluded that Petitioner's two subsequent accidents did not permanently aggravate or accelerate his underlying right knee condition. Dr. Shadid noted that petitioner already had a referral for a right knee replacement on direct examination and that recommendation did not change following petitioner's two subsequent accidents. He confirmed that the two subsequent accidents did not lead to any kind of material aggravation or acceleration of petitioner's underlying right knee condition necessitating surgery.

On cross-examination, Dr. Shadid acknowledged that petitioner's MRI confirmed a meniscal tear. He testified that his February 2022 report was not silent with respect to the January 13, 2022 accident. He noted petitioner had a diagnosis of osteoarthritis, which is pre-existing. Dr. Shadid acknowledged that he was not aware of any pre-accident treatment on the part of the petitioner.

Dr. Shadid disagreed with Petitioner's attorney who argued that adrenaline may have caused petitioner to not report any right knee symptoms. He noted petitioner reported relatively minor complaints at the emergency room but did not complain at all as to his right knee. He noted Petitioner did not become symptomatic immediately following the August 6, 2020 accident based on his review of the medical records. He noted petitioner did not initially complain of right knee pain following the accident. Dr. Shadid disagreed that the MRI findings revealed any acute findings. He noted petitioner had some fluid in his knee, but that this would be consistent with Petitioner having a severe pre-existing osteoarthritic condition.

Dr. Shadid testified that he spent a significant amount of time with the Petitioner during both of his examinations, and that he actually spent more time with the Petitioner than he would with his own patients. [Petitioner disagreed as to the second visit. Petitioner denied being examination.]

Dr. Shadid testified that he believed that Petitioner could work full duty. He agreed that many individuals who have osteoarthritis in their knee are asymptomatic. However, he noted that symptoms from osteoarthritis are activity based, and this was consistent with Petitioner having symptoms when performing work activities.

On cross-examination, he accused Petitioner of symptom magnification and/or secondary gain if not malingering based on the subjective complaints and diagnostic imaging, and that there was a recurrence of work-related incidents. *Id*. at 24-25. On redirect, he testified that the ladder event did not increase the urgency of needing a knee replacement. *Id*. at 41.

III. CONCLUSIONS OF LAW

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

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

Credibility Findings: In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him be a credible witness. Petitioner was forthright when answering questions from his attorney and Respondent's attorney. His testimony is corroborated by the medical records. His testimony was internally consistent, and the history provided to the medical providers were also consistent. Petitioner presented at trial as being unsophisticated. The Arbitrator finds that any inconsistencies in his testimony were not made with the intent to deceive or for secondary gain. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

The Arbitrator read the evidence depositions of Dr. Howard Freedberg and Dr. Chandrasekhar Sompalli and compared their testimony with the evidence submitted and found their testimony persuasive. The Arbitrator finds that the testimony of Dr. Howard Freedberg and Dr. Chandrasekhar Sompalli was straight forward, candid, non-evasive and consistent with the evidence.

The Arbitrator also read evidence deposition of Dr. Hythem P. Shadid taken on August 17, 2022. The Arbitrator is not persuaded by the findings and opinions of Dr. Shadid. The Arbitrator finds that Dr. Hythem Shadid at best confused Petitioner's claim with another case or relied upon unsupported evidence to support his opinions. For example, Dr. Shadid testified that the emergency room "…medical records show that he [Mr. Mirabile] was smiling in comfortable position while ambulating well before being discharged in a stable position." (RX3, pp. 12-13) The emergency room records of Rush Medical Center do not support Dr. Shadid's allegation. But, even if he did, smiling in an emergency room is not inconsistent with the evidence.

Moreover, Dr. Shadid's claim that Petitioner is a malinger is not supported by the evidence and contradicted by the other medical providers as well as the course of conduct of Petitioner. In conclusion, this Arbitrator is not persuaded by the findings and opinions of Dr. Shadid.

The Arbitrator finds that Dr. Sompalli's and Dr. Freedberg's version of the facts more probable and more consistent with the evidence than those of Dr. Shadid. The Arbitrator finds inconsistencies in Dr. Shadid's testimony and in his responses to opposing counsel's cross examination, the combination of which has caused the Arbitrator to question the reliability of his opinions. The Arbitrator finds that Dr. Shadid testimony was consistently inconsistent with the record as a whole.

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

It is well-established that an accident need not be the sole or primary cause-as long as employment is a cause-of a claimant's condition. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill.2nd 193, 205 (2003). Furthermore, an employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill.App.3d 882, 888 (2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill.2d 30, 36 (1986). Where an accident accelerates the need for surgery, a claimant may recover under the Act. *Id. at 36*. Thus, even if the claimant had a pre-existing 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. *Sibro, Inc. v. Industrial. Comm'n* 207 Ill.2d 193, 205 (2005). 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. *Mason & Dixon Lines, Inc. v. Industrial Comm'n,* 99 Ill. 2d 174, 181 (1983*); Azzarelli Construction Co. v. Industrial Comm'n,* 84 Ill. 2d 262, 266 (1981*).* 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, 63 (1994). Prior good health followed by a change immediately following an accident allows an inference that subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Comm'n* 315 Ill.App.3d 1197, 1205 (2000). The rational justifying the use of the "chain of events" analysis to demonstrate the existence of an injury would also support its use to demonstrate an aggravation of a preexisting injury. *Patrick Szvmanski v. J Ave Development, Inc.,* 23IWCC0390, 7-8 (2003).

It is also well established that the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401 (1984); *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675 (2009); 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). Not only may the Commission decide which medical view is to be accepted, it may attach greater weight to the opinion of the treating physician. *International Vermiculite Co. v. Industrial Comm'n*, 77 Ill.2d 1, 3 (1979); *ARA Services, Inc. v. Industrial Comm'n*, 226 Ill. App. 3d 225 (1992). However, expert medical evidence is not essential to support the Commission's conclusion that a causal relationship exists between a claimant's work duties and his condition of ill-being. *International Harvester v. Industrial Comm'n, 93 Ill. 2d 59,*

63, (1982). A chain of events suggesting a causal connection may suffice to prove causation. *Consolidation Coal Co. v. Industrial Comm'n,* 265 Ill. App. 3d 830, 839 (1994*)*

Respondent does not dispute accident. The parties stipulated that Petitioner sustained an accident that arouse out of and in the course of his employment on all three accidents. The Arbitrator notes that all three accidents were witnessed by a co-employee. The Arbitrator further notes that Petitioner's work van had to be towed from the scene of the August 6, 2020 accident.

Here there is no conflict between Petitioner's testimony and the medical records. Petitioner admitted that on the day of accident he did not experience knee pain. He first experienced knee pain and was limping the next day. His testimony was unrebutted and consistent.

Neither party introduced into evidence the accident report for the first, second or third accident. Neither party produced any witnesses to support or refute Petitioner's testimony that he experienced knee pain the day after the first accident of August 6, 2020. No evidence was submitted as when the accident report for the August 6, 2020 accident was completed.

The Arbitrator is mindful finds that the accident report and testimony of the co-employees of Petitioner is the same evidence that either party could have presented at trial to corroborate or rebut Petitioner's testimony regarding the knee pain resulting from the accident of August 6, 20202. Respondent could have offered evidence from witnesses to rebut Petitioner's claim that he sustained a right knee injury from a work-related accident. This evidence, if available and no evidence was introduced that it was not, was within Respondent's custody and control. The Arbitrator having found that Petitioner's testimony was credible, finds that Petitioner made a prima facie case of a work-related condition of ill-being to his right knee.

The failure of a litigant to call a witness within the control of such litigant is a proper subject of comment. When neither party calls an available witness, whatever presumption will be indulged in from the failure to call such witness will be against the party to whose interest such witness would most likely incline, and failure to produce such witness is, in such case, a proper subject of comment. *Nakis v. Amabile*, 103 Ill. App 3d 840 (1981).

The Arbitrator finds that Respondent failed to present persuasive evidence to establish that Petitioner's August 6, 2020 accidental injury to his right knee is not compensable under the Act after Petitioner presented a *prima facie* case. In support of this finding the Arbitrator cites *Dollison v. Chicago, Rock Island & Pacific Railroad Co.*, 42 Ill.App.3d 267 (1st Dist. 1976), wherein the appellate court held that once a *prima facie* case is established by a plaintiff, the trier of fact may infer that available evidence which is not produced would be unfavorable to the defendant. As previously set forth, Respondent failed to submit the initial injury report and the testimony of Petitioner's co-employees or supervisor into evidence. However, this inference is not pivotal to the Arborator's finding that the Petitioner proved by a preponderance of the evidence that his right knee pain and need for surgery is causally related to his work accident of August 6, 2020. This finding is based on the totality of the evidence.

No evidence was introduced that an intervening event occurred between August 6, 2020 and September 10, 2020, the first day Petitioner sought medical treatment after being in the emergency room.

The unrebutted evidence is that prior to his August 6, 2020, Petitioner engaged in a physical demanding job and no evidence was introduced that Petitioner was unable to perform his duties before the accident nor that he performed his duties with pain.

The unrebutted persuasive evidence is that after the accident, Petitioner worked in pain. And, that only after his knee brace purchased post-accident did not help enough, he sought medical treatment on September 10, 2020.

To establish causation under the Act, a claimant must show by a preponderance of the evidence that some act or phase of her employment was a causative factor in her ensuing injury. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill.App.3d 582, 592 (2d Dist. 2005), citing Illinois Supreme Court case *Sibro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193 (2003). An accidental 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. *Id.* It is axiomatic that when the injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment. *Caterpillar, Inc. v. Industrial Comm'n*., 228 Ill. App. 3d 288 (3d Dist. 1992).

Here, it is undisputed that the work events of August 6, 2020, June 1, 2021, and January 13, 2022 arose out of and in the course of Petitioner's employment. The only question is whether Petitioner's knee condition is causally related to any of these events. Petitioner credibly testified that prior to the first accident, he enjoyed good health and did not have any problems with his right knee. No records or any rebuttal evidence was submitted in opposition to that testimony other that the Application not specifically listing a right knee injury. While the initial emergency room records do not show that Petitioner complained of immediate right knee pain following the event, Petitioner testified that did have problems the next day. When he went to work the next day, he was limping. One or more of his co-workers offered suggestions on where to go have his knee checked out. The first mention of right knee pain was at Petitioner's first post emergency room medical visit on September 10, 2020.

On September 10, 2020, Petitioner was seen by Dr. Mandal about his knee condition. His MRI showed degenerative changes throughout the knee, in addition to a torn meniscus.

As for medical testimony, Petitioner's surgeon, Dr. Freedberg, testified within a reasonable degree of medical certainty that he believed the accident accelerated, exacerbated, aggravated or otherwise contributed to Petitioner's condition. Dr. Freedberg explained homeostatic balance, in that it is the ability of the joint of the body to adapt to the stresses applied to it, and that is what happens when you have an arthritic knee that becomes symptomatic after an accident, because something happens where the body loses the ability to maintain the balance or ability to respond normally to stress applied to it. It cannot always be seen in an MRI but in this case there is an MRI finding early on where Petitioner had full thickness cartilage loss to the medial femoral condyle chondromalacia patellae. He supported his opinion on Petitioner's condition being post-

traumatic by pointing to the MRI which showed bony signal which is usually, but not always, consistent with post-traumatic injury.

As for the subsequent work events, he opined the other two events also contributed to his condition. After the first occurrence, Dr. Freedberg said that put him in a susceptible position of having other issues happen. He recommended a partial knee arthroplasty or partial knee but was leaning toward a total knee procedure versus a partial after Petitioner continued to have work-related issues, and it became apparent he would knee a total knee replacement in the near future. Dr. Freedberg had not heard of any left knee complaints over the course of treatment. *Id*. at 15.

Additionally, Petitioner sought a second opinion with Dr. Sompalli. Based on Petitioner's history and lack of treatment for the right knee prior to the work events, Dr. Sompalli opined within a reasonable degree of medical certainty that Petitioner had a pre-existing condition of arthritis that was caused to become symptomatic. With regard to the two subsequent work events, these events just contributed to his condition. When referring to the third event carrying a ladder up the stairs, Dr. Sompalli said a knee can give out because of a meniscal tear or because of the severity of pain.

As for the time in which Petitioner felt knee pain, he testified that it was possible to not feel the effects for several days and added that without a fracture the idea that one would have immediate pain and not be able to walk is untrue.

Dr. Sompalli referred to a medical abstract that was included with his records, which explained that when you have pre-existing arthritis and there is a traumatic injury to that knee, these patients get rapid progression of the arthritis to the point where cellular-level changes occur and inflammatory changes occur where the arthritis that would have normally progressed slowly then progresses rapidly and they end up needing surgical intervention.

Dr. Hythem Shadid testified that he performed two independent medical examinations on Petitioner and opined that Petitioner's right knee condition was not causally related to any of the work events. He based his opinion largely on there being no mention of right knee pain in the emergency room records, or rather, according to him he said Petitioner denied upper and lower extremity weakness. Dr. Sompalli addressed this in his testimony when he said that emergency room staff do not go through every body part; rather, they concentrate on the chief complaints. It was reasonable to assume that since Petitioner just did not mention knee pain while in the emergency room, would evaluate or examine body parts for lacking pain, complaints or symptoms. The records do not show that lower extremities were tested; rather, there is simply no indication of complaints to the right knee.

Dr. Shadid also said the emergency medical records showed him smiling in a comfortable position while ambulating before being discharged. This is not indicated anywhere in the emergency room records.

Dr Shadid finding that Petitioner is a malinger is not corroborated by any of the medical providers, including the company clinic nor by any lay witness. Petitioner working in pain is inconsistent with being a malinger. The Arbitrator notes in the 27 years he was working as a carpenter before the August 2020 accident, Petitioner had one thumb injury claim 13 years prior; conduct

inconsistent with the accusation of being a malinger or being motivated for undeserved financial gain.

At first, it appeared that Dr. Freedberg was being an advocate for the Petitioner. However, it became clear that Dr. Freedberg thinks well of his patient. He admired his stoicism and work ethic. Frankly, it is nice to see a treating physician stand up for his patient when the physician believes that the patient has been inappropriately treated. Dr. Freedberg was critical of Dr. Shadid as a Section 12 examiner. He testified that he has seen multiple IMEs from him, and to his knowledge has never seen a report that found causation for the Petitioner. He took offense that Dr. Shadid called Petitioner a malingerer because he knew Petitioner well enough that there was nothing else in Petitioner's mind than working hard and doing well. He noted that this is evident by Petitioner continuing to work despite having a knee that is miserable for him. Dr. Freedberg's finding is supported also by Petitioner's own testimony. It appears Petitioner just wants to get better and continue working without pain. As noted earlier, Dr. Sompalli also disagreed with Dr. Shadid's assertion that Petitioner's condition following the crash would have immediately disabled him to the point it would have been noted in the emergency room record and for the reasons previously stated.

Respondent later questioned whether Petitioner's obesity could add to his arthritis, but on redirect it was identified that Petitioner was Five foot Five, 184 pounds, with a body mass index was 30.6, and the obesity marker starts at BMI 30, so he was just borderline obese. By the naked eye, or even reflecting on the photographs of Petitioner holding his knee submitted by Petitioner, Petitioner does not appear as "obese" in layperson terms. Petitioner presented at trial as well developed and muscular. Overweight, yes, medically obese, yes. Morbidly obese, no. Overall, Petitioner testified credibly and did not appear to have any secondary financial gains in mind.

While the Respondent pointed out the lack of right knee complaints immediately after the first work event, it is apparent that the motor vehicle collision did bring about injuries to the right side of the body.

The Arbitrator is allowed to apply common sense and the basic laws of physics in rendering decisions. The Arbitrator notes that impact at the right front bumper and front quarter panel is consistent with Petitioner body moving toward the point of impact based on Newtonian physics. [Newton's third law states that for every action (force) in nature there is an equal and opposite reaction. If object A exerts a force on object B, object B also exerts an equal and opposite force on object A. In other words, forces result from interactions.] Thus, Petitioner right leg and right side of his body coming into contact with center console and dashboard is consistent with basic physics.

The evidence establishes that it was not Petitioner's intention to miss any work due to injury as he arrived the next day, when his knee began to hurt. Despite the degenerative condition of his right knee, he has had no complaints or treatment prior to this event, and while an accidental 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, it will be found to be casually related. The Arbitrator finds in addition to the causal opinions of Dr. Freedberg and Dr. Sompalli, Petitioner has proven causal connection of his knee injury by the chain of events.

Respondent also pointed out that Petitioner retained counsel five days after the accident and signed an Application for Adjustment of Claim that did not specifically mention a right knee injury, although the Application was subsequently amended. Respondent places great weight on the initial Application failing to list the right knee. And, yet Petitioner credibly testified that the next morning he had knee pain and was limping at work; limping enough that co-employees noticed that he was limping and suggested that he seek medical care. Petitioner testified that he attempted to self-treat and deal with the injury with a knee brace most likely procured for him by his family. The Arbitrator is mindful of this inconsistency but also notes that the Application included MAW, an acronym unknown to Petitioner and unknown to Dr. Sompalli. Moreover, it is undisputed that Petitioner knee pain was medically documented well within 45 days at Petitioner's first post emergency room medical visit.

The Application's failure to mention the knee is at first blush troubling but not when viewed with the totality of the evidence. The Arbitrator is mindful that omissions in Applications are not fatal to a claim for benefits. The Arbitrator is bound to follow Commission precedent and cites *Ruffolo v. City of Chicago*, 19 IWCC 0567 wherein the Commission reversed the arbitrator's finding of no causal for cervical injury where the Application filed one month after the accident mentioned the low back injury only and not the cervical spine injury.

Petitioner temporally injured his left knee after falling in his second accident but did not have issues or symptoms with his left knee before the first and second accident nor after the third accident. The lack persistent left knee pain supports Petitioner's testimony that he injured his right knee after the first accident and that right his knee pain was constant without abating thereafter. Petitioner fell on both knees after the second accident and yet his left knee pain was short lived.

The Arbitrator considered the unrebutted evidence that Petitioner denied experiencing right knee pain or undergoing any right knee treatment prior to the accident of August 6, 2020. No evidence was introduced that he had problems performing his regular work in a physically demanding job as a rough carpenter, including working on his knees with knee pads, before the accident of August 6, 2020. No evidence was introduced that Petitioner was limping due to an arthritic right knee prior to his motor vehicle accident nor that he missed time off work because of preexisting right knee pain nor that he requested any reasonable accommodation because of right knee pain.

Neither parity introduced into evidence an accident report for any of the accidents. Moreover, neither party presented Petitioner's supervisor or co-workers to corroborate or dispute Petitioner's testimony that he was limping due to right knee pain when he appeared at work the next morning. This claim was vigorously, ably and skillfully defended by highly competent Respondent's counsel. And, yet the accident report regarding the August 6, 2020 accident was not introduced into evidence nor evidence introduced when it was completed nor any explanation why it was not available.

The failure of a litigant to call a witness within the control of such litigant is a proper subject of comment. When neither party calls an available witness, whatever presumption will be indulged in from the failure to call such witness will be against the party to whose interest such witness

would most likely incline, and failure to produce such witness is, in such case, a proper subject of comment. *Nakis v. Amabile*, 103 Ill. App 3d 840 (1981).

In the case at bar, the Arbitrator finds that Petitioner presented a *prima facie* case that his right knee injury was casually related to the accident of August 6, 2020. Thus, the Arbitrator finds that it would have been more in Respondent's interest to submit the accident report into evidence and produce witnesses, if any existed, that Petitioner did not complain of knee pain weeks after the August 6, 2002 accident. Respondent did not do so. The Arbitrator, therefore, draws the inference that Respondent did not do so because to do so was not in Respondent's interest and would have been helpful to Petitioner. The Arbitrator draws the inference that such evidence would corroborate Petitioner's testimony that he was limping the morning after the accident.

In support of this finding the Arbitrator cites *Dollison v. Chicago, Rock Island & Pacific Railroad Co*., 42 Ill.App.3d 267 (1976) wherein the appellate court held that once a *prima facie* case is established by a plaintiff, as in the trier of fact may infer that available evidence which is not produced would be unfavorable to the defendant. As previously set forth, Respondent failed to submit the initial injury report or rebuttal witnesses into evidence. Although, without this inference, the Arbitrator still finds in favor of Petitioner on causal, but the negative inferences from the failure of proof supports this finding of causal based on the totality of the persuasive evidence.

Therefore, the Arbitrator finds that Petitioner's current condition of ill-being and need for knee surgery is causally related to the work event on August 6, 2020, but also that the work events of June 1, 2021 and January 13, 2022 contributed in a dovetail manner to his current condition of ill-being to his right knee.

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 mandates that the Respondent shall provide and pay for all the necessary surgical services which are reasonably required to cure or relieve from the effects of the accidental injury. Section 8(a) 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…" 820 ILCS 305/8(a). Medical care under Section 8(a) is continuous as long as such care is required to relieve the effects of the injury. *Freeman United Coal Mining Co. v. Industrial Commission*, 81 Ill.2d 335 (1980). Here, there is no contest as to the treatment provided to Petitioner for the non-right-knee-related care and therefore, the Arbitrator concludes that treatment to be reasonable and necessary and thus, charges for said treatment must be paid by the Respondent.

As for the right knee, Dr. Freedberg and Dr. Sompalli are of the opinion that past treatment has been reasonable and necessary. Petitioner underwent conservative care in the form of physical therapy and injection treatment prior to receiving the surgical recommendation. Dr. Shadid, while

refusing to causally relate the knee condition to Petitioner's work events, did agree that the next step would be a knee replacement.

Based on the medical opinions rendered, the Arbitrator finds that all claimed medical services provided to Petitioner were reasonable and necessary, and further finds that the Petitioner is entitled to have Respondent pay the following medical expenses:

Rush University Health System/Rush Oak Park Hospital for services rendered from 8/06/2020 to 8/07/2020 in the amount of $5,391.50.

Illinois Orthopedic Network for services rendered from 9/10/2020 to 12/3/2020 in the amount of $7,558.07

ILBJ - Hinsdale Orthopedics for services rendered on 10/15/2020 in the amount of $1,303.96.

Midwest Specialty Pharmacy for services rendered from 9/10/2020 to 3/23/2023 in the amount of $16, 416.04.

Preferred MRI for services rendered from 9/19/2020 to 11/10/2020 in the amount of $4,500.00.

Total Rehab, P.C. Garfield Ridge for services rendered from 9/16/2020 to 2/5/2021 in the amount of $5,018.18.

Concentra for services rendered from 6/1/2021 to 6/3/2021 in the amount of $422.55.

Suburban Orthopedics for services rendered from 6/8/2021 to 3/23/2023 with a balance of $2,243.04.

Northwestern Medicine for services rendered from 6/8/2021 to 3/23/2023 in the amount of $12,667.50.

Bright Light Medical Imaging for services rendered on 4/6/2022 in the amount of $500.00.

Elite Orthopaedics and Sports Medicine, LLC for services rendered from 4/4/2022 and 4/8/2022 in the amount of $621.48.

The Arbitrator awards medical expenses as evidenced by the billing records contained in Petitioner's Exhibit 2 through 12 and as listed above in accordance with Section 8 of the Act. Respondent is entitled to credit for medical bills previously paid under the Act. Respondent stipulated that it did not pay any medical bills for which it would be entitled to 8(j) credit, and, thus, none are awarded.

WITH RESPECT TO ISSUE (K), WHETHER PETITIONER ENTITLED TO PROSECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

Having found that Petitioner's condition to his knee is causally related to his work injury of August 6, 2020, and because he has not completed his medical care nor reached maximum medical improvement for his knee, Petitioner is entitled to prospective e medical care.

Specific procedures or treatments that have been prescribed by a medical service provider are "incurred within the meaning of section 8(a) even if they have not been performed or paid for. *Bennett Auto Rebuilders v. Industrial Comm'n*, 306 Ill. App. 3d 650, 655-56 (1999). The claimant bears the burden of proving, by a preponderance of the evidence, his or her entitlement to an award of medical care under section 8(a). *Westin Hotel v. Industrial Comm'n*, 372 Ill.App. 3d 527, 546 (2007). Questions regarding entitlement to prospective medical care under section 8(a) are factual inquiries for the Commission to resolve. *Max Shepard, Inc. v. Industrial Comm'n*, 348 Ill.App. 3d 893, 903 (2004). Section 8(a) of the Act entitles 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. *Certified Testing v. Industrial Comm'n*, 367 Ill.App.3d 938 (2006). It is within the Commission's province to weigh and to judge witness credibility, to resolve conflicts in medical testimony, and to choose among conflicting inferences therefrom. *Bennett Auto Rebuilders v. Industrial Comm'n*, 306 Ill.App.3d 650, 655 (1999).

Here, Petitioner testified he wants to proceed with the total right surgery recommended by Dr. Sompalli and by Dr. Freedberg. Dr. Shadid also agreed that a right total knee surgery was reasonable and necessary. Based on the Arbitrator's findings above with regard to causation, the Arbitrator further finds that Petitioner has proven by a preponderance of the evidence the reasonableness and necessity of a right total knee surgery. Accordingly, Respondent is hereby ordered to authorize and pay for the total right knee surgery and any treatment that is reasonable and necessary to make it so, including but not limited to the diagnostic x-rays recommended by Dr. Freedberg.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC015322
Case Name	Glenn Mirabile v. City of Chicago - CDOT
Consolidated Cases	20WC020413; 22WC032970;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0059
Number of Pages of Decision	27
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Jason M. Whiteside
Respondent Attorney	Scott Webber

DATE FILED: 2/6/2025

/s/Amylee Simonovich,Commissioner

Signature

25IWCC0059

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Glenn Mirabile,

Petitioner,

vs. NO: 21 WC 015322

City of Chicago - CDOT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under Sections 19(b) and 8(a) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical care, and permanent partial disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980).

The Commission modifies the third paragraph on page 1 of the Attachment to Arbitration Decision (hereinafter "Decision"), striking "20WC015322" and replacing it with "21WC015322".

The Commission modifies page 11 of the Decision, striking everything after the first two sentences of the fifth paragraph. On the same page, the Commission also modifies the sixth paragraph, striking the word, "Moreover".

The Commission modifies the last three paragraphs on page 13 of the Decision, striking them in their entirety.

The Commission modifies page 15 of the Decision, striking the word "not" in the last sentence of the fifth paragraph. On the same page, the Commission also strikes the second sentence of the second to last paragraph.

The Commission modifies the first full paragraph on page 16, striking it and replacing it with, "Dr. Freedburg disagreed with Dr. Shadid's characterization of the Petitioner as a malingerer.

Dr. Freedburg noted that Petitioner continued to work after the accident. Dr. Sompalli also disagreed with Dr. Shadid's assertion that Petitioner's condition following the crash would have immediately disabled him to the point it would have been noted in the emergency room record." On the same page, the Commission strikes the second to last paragraph.

The Commission modifies page 17 of the Decision, striking the last two sentences of the fifth paragraph. On the same page, the Commission strikes the last paragraph, which continues onto page 18 of the Decision.

Finally, the Commission modifies the first and second full paragraphs on page 18 of the Decision, striking them in their entirety. On the same page, under Issue (J), the Commission strikes the last sentence of the first paragraph.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on February 8, 2024, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay for reasonable and necessary services rendered by Concentra from 6/1/2021 to 6/3/2021 in the amount of $422.55.

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

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

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

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

February 6, 2025

O: 12/10/24
AHS/kjj
051

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

/s/ *Maria E. Portela*
Maria E. Portela

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC015322
Case Name	Glenn Mirabile v. City of Chicago-CDOT
Consolidated Cases	20WC020413; 22WC032970;
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	23
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Jason M. Whiteside
Respondent Attorney	Scott Webber

DATE FILED: 2/8/2024

/s/ Joseph Amarilio, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 6, 2024 5.045%

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

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

GLENN MIRABILE Case # **21** WC **015322**
Employee/Petitioner

v.

CITY OF CHICAGO - CDOT
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joseph Amarilio**, Arbitrator of the Commission, in the city of **Chicago** on **9/26/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **6/1/2021**, the 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 $**101,197.72**; the average weekly wage was $**1,946.11**.

On the date of accident, Petitioner was **53** years of age, ***married*** with **no** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $**0.00** for TTD paid, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**0.00.** Respondent is entitled to a credit of $**0.00** under Section 8(j) of the Act.

ORDER

The Arbitrator finds that Petitioner's current condition of ill-being, need for medical care and future medical care are attributable to his injury in the companion case 20 WC 020413. And, that accident in this matter was a temporary aggravation of the injury sustained in 20 WC 020413

Respondent is liable for Concentra for services rendered from 6/1/2021 to 6/3/2021 in the amount of $422.55.

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

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

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

/s/ *Joseph D. Amarilio*

Signature of Arbitrator Joseph D. Amarilio

February 8, 2024

ATTACHMENT TO ARBITRATION DECISION
19 (b)/8(a)

Glenn Mirabile
Employee/Petitioner

Case # **20** WC **020413**

Consolidated cases: 21 WC 015322
22 WC 032970

v.

City of Chicago - CDOT
Employer/Respondent

FINDINGS OF FACT OF FACT AND CONCLUSIONS OF LAW

I. PROCEDURAL HISTORY

Mr. Glenn Mirabile ("Petitioner"), by and through his attorney, filed three (3) Applications for Adjustment of Claim for benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.*) (West 2014)). Petitioner sustained three (3) separate accidents that arose out of and in the course of his employment while working for the City of Chicago/The Chicago Department of Transportation (CDOT) ("Respondent').

(1). Under case number 20 WC 020413, Petitioner alleged that on August 6, 2020, he sustained an accidental injury resulting from a motor vehicle collision.

(2) Under case number 20 WC 015322, Petitioner alleged that on June 1, 2021, he sustained an accidental injury from a fall.

(3) Under case number 22 WC 032970, Petitioner alleged that January 13, 2022 he sustained an accidental injury while carrying a ladder up a flight of stairs.

The parties stipulated that all three accidents arose out of and in the course of Petitioner's employment by Respondent. (ARB X1; X2; X3).

The three claims were consolidated and a hearing was held on September 26, 2023 on the following three (3) disputed issues: 1. Whether Petitioner's current condition of ill-being to his right knee is causally connected to his injury; 2. Whether Respondent is liable for unpaid medical bills; and 3. Whether Petitioner is entitled to prospective medical care for his right knee. The same three issues were in dispute for each claim. The parties mutually requested a written decision, including findings of fact and conclusions of law. (ARB X1; X2; X3).

Petitioner testified in support of his claim as well as Petitioner's treating orthopedic physicians, Dr. Howard Freedberg and Dr. Chandrasekhar Sompalli, both of whom testified by evidence deposition. Dr. Hythem Shadid, Respondent's retained Section 12 orthopedic physician, testified by evidence deposition at Respondent's request.

Accident and notice of accident are not in dispute in the three claims for benefits. All three accidents were witnessed. The pivotal issue in dispute is whether Petitioner' right knee condition of ill-being is causally related to one or more of the three claims. The need for a total knee surgery is not in dispute. Rather, Respondent disputes that the necessity for surgery is causally related to one or more of the three accidents or none.

Background

Petitioner testified that he resides in the Garfield Ridge area of Chicago with his wife and three children. (T14). He had been working for Respondent as a carpenter since July 16, 1993. *Id*. He still is employed by the Department of Transportation of the City of Chicago. (T15). His primary duties involved using an emergency truck to maintain bridges throughout the City of Chicago. (T16). He also works on vaulted sidewalks, under the city sidewalks, where he would work on demolitions and construct and maintain forms, footings and foundations. (T 17). He works on his knees using knee pads when working on flooring. (T55). Simply stated, Petitioner performs the duties of a rough carpenter.

Prior to becoming a carpenter, Petitioner graduated high school and then obtained a diploma in carpentry after a four-year apprenticeship at Washburne Trade School. (T17-18). Before the first injury on August 6, 2020, he enjoyed good health. (T18). He denied any preexisting problems with his right shoulder, right elbow, low back or right knee. *Id*. He filed one prior worker's compensation claim 13 years ago for a thumb injury. (T19). Otherwise, he was never off work for any work-related injuries nor was he on medication for any injuries. *Id*. Outside of work he does not participate in any physical activity that requires running. (T19-20).

August 6, 2020 Injury (20 WC 020413) [MVA]

On August 6, 2020, Petitioner started work at 7:00 o'clock in the morning. (T20). He proceeded to his job sites in a City work van. *Id*. On the way back to the shop day's end, he was involved in a motor vehicle collision. He was making a left hand turn from a full stop when a SUV ran through the stop sign and struck his van head-on which he described as T-boned (sic.) *Id*. The van sustained front end damage, more so on the right side. He testified that he went flying and the air bags deployed. (T21). Petitioner explained that his height was 5'5" and the console in the van was positioned on his right side. (T23). He was twisted inside the van by the impact and he felt his right shoulder, right elbow and lower back were bothering him from hitting the dashboard and center console. The driver side and passenger side air bags were deployed. (T27). It appears that the van was not equipped with knee air bags.

Petitioner identified a series of photographs shown in Petitioner's Exhibit 13, which showed the front-end damage, greater to the front right passenger side of Petitioner's van. Also, photographs showing the interior passenger seat where his partner Dan Bracken was seated and which also showed deployed passenger side air bag. (T23-25). He asked his partner, Mr. Bracken, how he was feeling. Mr Bracken described his "problems" with Petitioner. Afterward, the police and his supervisor arrived at the scene. Then, a City of Chicago truck towed Petitioner, Mr. Bracken and the damaged work van back to 31st and Sacramento. (T26- 27).

After providing a urine sample at 31st and Sacramento, Petitioner presented to Rush University Medical Center. (T29;28). The Rush University Medical Center emergency room records show that Petitioner complained of right elbow, right wrist and right flank pain following the collision earlier that day. (PX2). After examination and x-rays, he was sent home. (T28). He testified that at the emergency room, he did not recall doing any full range of motion testing on his extremities. His testimony is corroborated by the records (T87-88). The Arbitrator notes that while the right shoulder, elbow, wrist and hands were examined, his left side were not; nor were his lower extremities. Petitioner did not complain of right knee pain or of a right knee injury. (PX2). Nor did the Petitioner testify that experienced right knee pain on the day of the accident.

Petitioner testified to experiencing right knee pain the next morning. Petitioner testified that he next morning, he came to work to drop off paperwork and coworkers noticed he was limping. Petitioner testified he was off work three days after his accident. (T30-31). Petitioner ordered a knee brace, or his kids obtained a knee brace for him. (T31). After talking to some people at work, he was given some suggestions on where to seek treatment. (T32).

Petitioner testified he hired an attorney approximately five days after his accident. (Tr. 64). Petitioner testified he told his attorney the facts of his motor vehicle accident including what body parts were injured. (Tr. 65). Petitioner was shown respondent's Exhibit 5 which Petitioner identified as the Illinois Workers' Compensation Commission Application for Adjustment of Claim. Petitioner testified his signature was located at the bottom of the document. (Tr. 66). Petitioner testified he did not recall filling out the Application but did sign the document. (Tr. 67). Petitioner testified that the body parts listed included the right rib, right elbow, right shoulder, and MAW. (Tr. 67). Petitioner testified he did not personally fill out the Application for Benefits, but his attorney filled it out on his behalf based on what he told them. (Tr. 67-68). Petitioner admitted that nowhere on the Application for Benefits does the document indicate he sustained a right knee or lower body injury. (Tr. 68). Petitioner further testified that he did not know what "MAW" means. (Tr. 88).

Petitioner's first post emergency room medical visit occurred thirty-five (35) days after the accident. On September 10, 2020, Petitioner presented to an ION where he started treating his elbow, back and neck. (T 32-32). He also reported right knee pain, and he was sent for a MRI. (T32).

The records from ION show that on September 10, 2020 he was seen Ronnie Mandal, MD. He reported the mechanism of injury being the auto accident on August 6th, and had since had pain in his right shoulder, right wrist, right knee and low back, with the wrist pain having resolved since. (PX3). At his next visit he is sent for an MRI of the right knee. (PX3). The knee MRI indicated fluid within the suprapatellar bursa, prominent diffuse chondromalacia patella, articular cartilage thinning more severely affecting the medial compartment with full-thickness cartilage loss involving the medial femoral condyle with subchondral edema, and a horizontal tear of the medial meniscus, with tricompartmental osteoarthritis. (PX3; PX6).

Petitioner recalled going somewhere in Hinsdale for a shot in his back, possibly his elbow, and knee. (T33). The records show a visit to Illinois Bone and Joint / Hinsdale Orthopedics, where on October 15, 2020, he received an injection in the elbow. (PX4). Afterward, he started physical therapy at Total Rehab near his home. (T33). Between September 16, 2020 to February 5, 2021, Petitioner underwent therapy at Total Rehab for his low back, right elbow and right knee. (PX7). Petitioner testified that after therapy, he his right shoulder, elbow and low back had resolved around the Spring of 2021. (T34). At the time, his right knee was still problematic as he was having a hard time walking. (T35). He recalled it clicking and being swollen. *Id*. At that point, the plan for treatment for his right knee was surgery. *Id.* Petitioner testified he does want to have surgery. *Id*. He later noted that his shoulder, elbow and back condition resolved prior to his second injury date. (T52).

On January 27, 2021, Dr. Freedberg saw Petitioner at ION. (PX3). Petitioner reported that walking was painful, and a recent injection only gave him one day of relief. *Id*. He was in constant pain at work. *Id*. Dr. Freedberg noted full range of motion and good strength, but some boggy swelling with tenderness at the lateral and posterolateral aspects. *Id*. He was diagnosed with right knee post-traumatic medial femoral chondral osteochondral lesion with medial compartment degenerative change and a horizontal medial meniscus tear. *Id*. At that point, Dr. Freedberg recommended a right knee arthroplasty that would allow him to return to work. *Id* at p. 15. Dr. Freedberg's assessment and plan was unchanged until the IME appointment. *Id*. He did not return to Dr. Freedberg until after his second injury. *Id*.

Petitioner then recalled attending for an examination with Dr. Shadid around March 2021. (T36). It took Dr. Shadid two and a half hours to see him and when he did he asked some questions and might have touched his knee. *Id*. He recalled being there for 10-15 minutes. *Id*. [Dr. Shadid testified that he examined the Petitioner far longer than his patients. See below]

June 1, 2021 Injury (20 WC 015322) [Fall]

On June 1, 2021, Petitioner was working on a vaulted sidewalk under the ground. (T37). He was setting up some ladders and boards so he could tear apart framing when one of the boards cracked and he fell about two feet onto his knees. Petitioner described the area as having pipes for plumbing and gas, and it was cramped. (T39). Petitioner identified several photographs as Petitioner's Exhibit 17 that showed his workspace, the pipes, the ladders, and broken board he was using as a scaffolding between ladders. (T40-44; PX17).

Afterward, he went to the Concentra Occupational Clinic where he was told to return to his doctor, Dr. Freedberg. (T45). The records show that he reported an event at work where he struck both knees, but by the time he arrived at the clinic his left knee was better. (PX8). He was diagnosed with a contusion to his right knee and directed to follow up with his orthopedic specialist. *Id*.

On June 8, 2021, he presented to Dr. Freedberg with Suburban Orthopaedics where he reported the first work occurrence and event on June 1, 2021 when a plank he was standing on cracked causing him to fall on his knees. (PX9). Dr. Freedberg advised there was nothing he could do for him, he needed surgery. (T46). He was, however, prescribed pain and muscle relaxer medication.

(T47). Petitioner continued to return with the same recommendation for treatment every time. (PX9).

On August 18, 2021, Dr. Freedberg reviewed the two Section 12 reports of Dr. Shadid with Petitioner, who told Dr. Freedberg that he had to wait from 3:00 p.m. with his vehicle so he could take a drug test, and that he was not able to go to the ER until 9:00 p.m. *Id*. At that time, he was concerned about his right arm and low back as it was stiff and in shock. *Id*. He left the ER at 2:30 a.m. and just wanted to go home and sleep for work the next day. *Id*. He reported to work the next day but had to leave after an hour due to knee pain. *Id*. Petitioner continued to follow up with Dr. Freedberg with no change in the assessment and plan until January 5, 2022, when Dr. Freedberg added that it appears his tricompartmental pain is getting worse and suggested the possibility of a total knee arthroplasty operation. *Id*.

January 13, 2022 Injury (22 WC 032970) [While carrying ladder up flight of stairs]

On January 13, 2022, Petitioner was working with his partner Helen Iwanicki. (T48). A different trade had borrowed one of his ladders at the State and Wacker bridge house. (T49). He went to the basement to grab the ladder and carried it nearly to the top of the stairs when his knee buckled and gave in. *Id*. He fell to the ground and dropped the ladder. His partner called an ambulance. *Id*.

Petitioner was transported by ambulance to Northwestern Hospital where he was bandaged up and sent on his way with a recommendation to see his doctor, Dr. Freedberg. (T50). The records indicate he reported carrying a ladder upstairs when he felt his right knee pop out and back in causing him to lose his balance and fall down and strike his head on a wall. (PX10). He was discharged and directed to follow up with his specialist. *Id*. Petitioner returned to Dr. Freedberg to report the new event, but added that now he felt his knee slip out and back in. (PX9). The possibility of total knee replacement was again suggested by Dr. Freedberg. *Id*.

After the amended operation suggestion, Dr. Freedberg previously waiving between a partial and total knee, but inclined to a total knee, Petitioner was sent for a repeat Section 12 examination with Dr. Shadid. (RX2). Dr. Shadid's opinions remained unchanged regarding causation. *Id*.

At his next visit with Dr. Freedberg, Dr. Freedberg again disagreed with Dr. Shadid's position. (PX9). Dr. Freedberg again recommended surgery, but this time Petitioner got a second opinion near his home named Chandrasekhar Sompalli, M.D. (T51).

Petitioner presented to Dr. Sompalli on April 4, 2022, when he reported all three events to him, along with the two examinations before Dr, Shadid he attended. (PX12). After an x-ray was taken, Dr. Sompalli concurred in the diagnosis in line with Dr. Freedberg and Dr. Shadid but recommended a total knee replacement. (T51; PX12).

After that appointment, Petitioner recalled possibly receiving another shot with Dr. Freedberg. (T52). Petitioner continued to return to Dr. Freedberg once a month but there was no change in the assessment or treatment plan. *Id*.

Petitioner testified that his therapy, injections and medication were helpful. (T54). As for his continuing work, he said he has no choice. *Id*. His job requires him to be on his knees to do flooring so it is difficult, tough and painful, but he has to tough it out. (T55). He works with knee pads and a knee brace which he wears all the time but continues to have pain with all daily life activities. *Id*. He has never had any problems with his left knee. *Id*.

Petitioner did recall seeing Dr. Shadid for a second time, but this time Dr. Shadid did not conduct a physical examination was done on him. (T56). Rather, Dr. Shadid recognized him and looked at some paperwork and he never heard back from him. (T56-57).

On cross-examination, Respondent asked questions about the initial application for adjustment of benefits filed August 26, 2020, which listed injuries to rib, right elbow, right shoulder and MAW. (T67; PX16). Petitioner does not know what "MAW" means. (T88). Petitioner acknowledged there was no record of a right knee complaint until his treatment at ION. (T70-71). Petitioner's application for adjustment of benefits was later amended to state injuries to "Person as a whole-multiple parts." (PX16). Petitioner also disagreed with the statement that he described having full range of motion in his right knee on November 11, 2020. (T72). As he testified, Petitioner says he still feels ten out of ten pain in his right knee. (T83).

Evidence Deposition of Dr. Howard Freedberg – July 12, 2022 (PX 14)

On July 12, 2023, Dr. Freedberg testified that he is an orthopaedic surgeon licensed to practice medicine in Illinois since 1982. (PX14. p.7-8;10). He has forte in using an arthroscope and testified that he is a master instructor of arthroscopic surgery. *Id*. at 8. He has a specialty in sports medicine and reconstructive surgery and does about 500 operations a year. *Id*. He had an independent recollection of Petitioner and could pick him out of a line-up. Dr. Freedberg agreed to and stated that any opinions he renders during the course of his evidence deposition will be made within a reasonable degree of medical and surgical certainty He first saw Petitioner at the Illinois Orthopedic Network on November 11, 2020. After January 27, 2021, he started seeing Petitioner at his own facility. *Id*. at 10-11.

Dr. Freedberg testified that he took a history from Petitioner, which included information about a motor vehicle accident on August 6, 2020, where he was making a left turn and another vehicle ran a stop sign and struck the front of Petitioner's vehicle, which produced pain complaints in the right elbow, right wrist, right knee and low back. *Id*. At the time he saw Dr. Freedberg, the issue was with the knee as he was limping and complained of pain walking and going up and down stairs. *Id*.

After a review of the MRI from September 17, 2020, he diagnosed him with right knee post-traumatic medial femoral condyle osteochondral lesion associated with tricompartmental osteoarthritis and a horizontal medial meniscal tear. *Id*. at 12. He opined that the accident of August 6, 2020 accelerated, exacerbated, aggravated or otherwise contributed to Petitioner's condition and need for treatment. *Id*. According to Dr. Freedberg, surgery is medically necessary to address Petitioner's ongoing symptoms and condition. *Id*. at 13.

He recalled there being two other occurrences after the first auto accident that also contributed to his condition. He opined that all three accidents dovetail together. *Id*. at 14. There was an occurrence on June 1, 2021 when Petitioner fell through some boards at work, and another on January 13, 2022 when he was walking upstairs with a ladder when his knee gave out. *Id*. at 14-15. Dr. Freedberg opined that the first accident made him more susceptible to injury. And, in dovetailing, the second accident made him more susceptible to injury from the third accident. *Id*. at 14.

Dr. Freedberg had recommended a total knee arthroplasty or possibly a partial knee. He was leaning toward a total knee procedure versus a partial. *Id*. at 15. His reason was that he preferred to do an operation that would last Petitioner for 20 years versus one that might last for 5 years and then need more treatment. *Id*. at 17. Dr. Freedberg had not heard of any left knee complaints over the course of treatment. *Id*. at 15. On cross examination, Dr. Freedberg testified that he initially recommended a partial knee, but after time, after the other two injuries, he prescribed a total knee. Id. At 40.

Dr. Freedberg disagreed with the opinions of the Respondent's Section 12 examiner, Dr. Shadid. *Id*. at 17-19. He testified that he has seen multiple IME reports authored by Dr. Shadid. *Id*. at 18. He said that Petitioner did not have any knee problems before these occurrences, did have arthritis, but never had symptoms and did not received treatment. *Id*.

Dr. Freedberg took offense that Dr. Shadid called Petitioner a malingerer because he knew Petitioner well enough that there was nothing else in Petitioner's mind other than working hard and doing well. *Id*. at 18-19. He noted that this is evident by Petitioner continuing to work despite having a knee that is miserable for him. *Id*. He recalled that at the ER, Petitioner took a drug test, was concerned and in shock. *Id*. at 20. Petitioner went home but when he went to work the next day and he could only work an hour the next day because his knee was bothering him. *Id*. Petitioner's one day delay in reporting symptoms does not change his opinion. He also disagreed with Dr. Shadid's statement that any exacerbation or aggravation of Petitioner's preexisting conditions would have been immediately disabling and be a primary concern at the ER. *Id*. at 49. He also added that he's never seen an IME report from Dr. Shadid that found causation for the Petitioner and estimated that he read about 20 from Dr. Shadid. *Id*. at 55-56.

Dr. Freedberg explained homeostatic balance, in that it is the ability of the joint of the body to adapt to the stresses applied to it, and that is what happens when you have an arthritic knee that becomes symptomatic after an accident, because something happens where the body loses the ability to maintain the balance or ability to respond normally to stress applied to it. *Id*. at 21. You cannot always see it in an MRI but in this case, there is an MRI finding early on where Petitioner had full thickness cartilage loss to the medial femoral condyle chondromalacia patellae. *Id*. at 23. He later supported his opinion on Petitioner's condition being post-traumatic by pointing to the MRI which showed bony signal, which usually but not always represents post-traumatic injury. *Id*. at 33-34. Other than the surgical recommendation, Dr. Freedberg advised that Petitioner continue with the medication prescribed, primarily the Celebrex, which is a non-steroidal anti-inflammatory. *Id*. at 38.

Evidence Deposition of Dr. Chandrasekhar Sompalli – April 7, 2023 (PX 15)

On April 7, 2023 Dr. Sompalli testified that he is a board-certified orthopedic surgeon licensed to practice medicine in Illinois, and works at his solo practice at Elite Orthopedics. After graduating from Loyola Stritch School of Medicine, he did a year of research in transplant surgery and a year of research in orthopedic surgery. He then completed his residency in orthopedic surgery at Loyola Medical Center in Maywood, Illinois and graduated in 2009. (PX15, p.7-8).

He performs about 300 operations a year, with about 150 for the knee. *Id*. at 9. Dr. Sompalli stated that he his testimony regarding his findings and opinion would be within a reasonable degree of medical and surgical certainty. *Id*. at 11.

He first saw Petitioner on April 4, 2022 at the referral from Illinois Orthopedic Network. *Id*. He obtained an MRI of Petitioner's right knee and obtained a history of the auto accident on August 6, 2020, along with the subsequent injuries of July 3, 2021 and January 13, 2022. *Id*. at 12-13. He recalled that Petitioner initially went to the emergency room, completed therapy with no improvement, was currently taking Celebrex, and had instability with problems performing his daily life activities. *Id*. at 13-14. Petitioner told him that he never had right knee pain prior to these events. *Id*. at 14.

After an examination and review of radiology records, Dr. Sompalli diagnosed him with right knee arthritis in all three of the knee compartments with a medial meniscus tear. *Id*. at 15. He ordered an x-ray that he hoped would show the true amount of arthritis in the knee. *Id*. At his next appointment, the x-ray films did indicate to Dr. Sompalli that arthritis was present in all compartments.

Based on Petitioner's history and lack of treatment for the right knee prior to the work events, Dr. Sompalli opined that Petitioner had a pre-existing condition of arthritis that was caused to become symptomatic. *Id*. at 17. At this point, synovitis injections would not be helpful and therefore, his recommendation was a total knee replacement. *Id*. at 17-18.

With regard to the two subsequent work events, these events just contributed to his condition. *Id*. at 18. They made his knee condition worse. When referring to the third event carrying a ladder up the stairs, Dr. Sompalli said a knee can give out because of a meniscal tear or because of the severity of pain. *Id*. He added that a total knee would allow him more stability in the knee, because right now he is bone on bone. *Id*. at 19-20.

As for the time in which Petitioner complained of his knee condition, he felt it was possible to not feel the effects for several days and added that without a fracture the idea that one would have immediate pain and not be able to walk is untrue. *Id*. at 20.

Dr. Sompalli referred to an abstract that was included with his records, which explained when you have pre-existing arthritis and there's a traumatic injury to that knee, these patients get rapid progression of the arthritis to the point where all kinds of cellular-level changes occur and inflammatory changes occur where the arthritis that would have normally progressed slowly then progresses super rapid and they end up needing surgical intervention. *Id*. at 22.

Dr. Sompalli said the car crash was an aggravating cause that accelerated his condition. *Id*. at 23. With regard to future treatment, he recommended a total knee replacement with follow up treatment after about six to eight months after surgery. *Id*. at 24. During that time the patient would need therapy and work conditioning to allow him to return to work. *Id*.

Dr. Sompalli also disagreed with Dr. Shadid's assertion that Petitioner's condition following the crash would have immediately disabled him to the point it would have been noted in the emergency room record. *Id*. at 36-37. Respondent later questioned whether Petitioner's obesity could add to his arthritis, but on redirect it was identified that Petitioner was Five foot Five, 184 pounds, with a body mass index was 30.6, and the obesity marker starts at BMI 30, so he was just borderline obese. *Id*. at 42-43; 50. Finally, when asked about the emergency room records, he opined that emergency room staff does not go through every body part and ask if there's an injury to that part; rather, they concentrate on the chief complaint. *Id*. at 53. It was reasonable to assume that Petitioner just did not mention it at the emergency room, not that it was tested and deemed to have no pain. *Id*. at 53-54.

Evidence Deposition of Dr. Hythem Shadid - August 7, 2022 (RX 3)

Dr. Shadid testified on August 7, 2022 that he has an orthopedic practice with a focus on knees and shoulders and is a board certified orthopedic surgeon. (RX3, p.6). Forty to forty-five percent of his surgeries are on the knee. *Id*. at 7. On direct examination, Dr. Shadid testified consistent with his reports of April 22, 2021 and of February 14, 2022. (RX 1, RX 2)

Prior to his independent medical examinations, he reviewed records and then examined Petitioner, whose chief complaint was the right knee. *Id*. at 10. During his first examination, he obtained the mechanism of injury being the August 6, 2020 collision. *Id*. at 10-11. Dr. Shadid said that based on the emergency room records, Petitioner denied upper and lower extremity weakness. *Id*. at 11. Dr. Shadid testified that the emergency room "…medical records show that he [Mr. Mirabile] was smiling in comfortable position while ambulating well before being discharged jn a stable position." *Id*. at 12-13.

During his examination, Dr. Shadid said Petitioner had a normal gait when walking, there were no gross deformities and no unusual swelling. *Id*. at 13. The knee moved without clicking or popping and his range of motion was 120 degrees of flexion both actively and passively. *Id*. His strength was also 5 out of 5 flexion and extension. *Id*. The ligament examination showed that all ligaments were intact and the meniscal examination and patellofemoral examinations were negative. *Id*.

He then noted that the MRI showed an effusion, small amount of fluid, with tricompartmental osteoarthritis and a horizontal tear of the body of the meniscus. In his opinion there was no knee condition as a result of the accident. *Id*. at 15. He said the osteoarthritis was a pre-existing condition there before and after the accident. *Id*. He added there was no evidence that the crash aggravated his condition, and that an aggravation would have been immediately debilitating. *Id*. Also, there was no evidence of a mechanism of injury where there was trauma to the knee. *Id*. at 15-16. He then said you cannot aggravate osteoarthritis from a sitting position in a car where you are restrained, and airbags deploy. *Id*. at 17. He said there would have been some subchondral edema shown on the first MRI if there was some inflammatory reaction to the injury. *Id*. at 18.

However, irrespective of causation, the knee replacement surgery would be reasonable and necessary. *Id*.

Dr. Shadid, in connection with his April 2021 report (RX 1), concluded Petitioner did not experience any right knee injury as a result of the motor vehicle accident. He based his opinion on his review of the diagnostic images, the lack of initial complaints of right knee pain following a motor vehicle accident, as well as his assessment as to whether or not petitioner could have experienced any right knee injury as a result of the motor vehicle accident.

In connection with his February 2022 examination, Dr. Shadid concluded that Petitioner's two subsequent accidents did not permanently aggravate or accelerate his underlying right knee condition. Dr. Shadid noted that petitioner already had a referral for a right knee replacement on direct examination and that recommendation did not change following petitioner's two subsequent accidents. He confirmed that the two subsequent accidents did not lead to any kind of material aggravation or acceleration of petitioner's underlying right knee condition necessitating surgery.

On cross-examination, Dr. Shadid acknowledged that petitioner's MRI confirmed a meniscal tear. He testified that his February 2022 report was not silent with respect to the January 13, 2022 accident. He noted petitioner had a diagnosis of osteoarthritis, which is pre-existing. Dr. Shadid acknowledged that he was not aware of any pre-accident treatment on the part of the petitioner.

Dr. Shadid disagreed with Petitioner's attorney who argued that adrenaline may have caused petitioner to not report any right knee symptoms. He noted petitioner reported relatively minor complaints at the emergency room but did not complain at all as to his right knee. He noted Petitioner did not become symptomatic immediately following the August 6, 2020 accident based on his review of the medical records. He noted petitioner did not initially complain of right knee pain following the accident. Dr. Shadid disagreed that the MRI findings revealed any acute findings. He noted petitioner had some fluid in his knee, but that this would be consistent with Petitioner having a severe pre-existing osteoarthritic condition.

Dr. Shadid testified that he spent a significant amount of time with the Petitioner during both of his examinations, and that he actually spent more time with the Petitioner than he would with his own patients. [Petitioner disagreed as to the second visit. Petitioner denied being examination.]

Dr. Shadid testified that he believed that Petitioner could work full duty. He agreed that many individuals who have osteoarthritis in their knee are asymptomatic. However, he noted that symptoms from osteoarthritis are activity based, and this was consistent with Petitioner having symptoms when performing work activities.

On cross-examination, he accused Petitioner of symptom magnification and/or secondary gain if not malingering based on the subjective complaints and diagnostic imaging, and that there was a recurrence of work-related incidents. *Id*. at 24-25. On redirect, he testified that the ladder event did not increase the urgency of needing a knee replacement. *Id*. at 41.

III. CONCLUSIONS OF LAW

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

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

Credibility Findings: In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him be a credible witness. Petitioner was forthright when answering questions from his attorney and Respondent's attorney. His testimony is corroborated by the medical records. His testimony was internally consistent, and the history provided to the medical providers were also consistent. Petitioner presented at trial as being unsophisticated. The Arbitrator finds that any inconsistencies in his testimony were not made with the intent to deceive or for secondary gain. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

The Arbitrator read the evidence depositions of Dr. Howard Freedberg and Dr. Chandrasekhar Sompalli and compared their testimony with the evidence submitted and found their testimony persuasive. The Arbitrator finds that the testimony of Dr. Howard Freedberg and Dr. Chandrasekhar Sompalli was straight forward, candid, non-evasive and consistent with the evidence.

The Arbitrator also read evidence deposition of Dr. Hythem P. Shadid taken on August 17, 2022. The Arbitrator is not persuaded by the findings and opinions of Dr. Shadid. The Arbitrator finds that Dr. Hythem Shadid at best confused Petitioner's claim with another case or relied upon unsupported evidence to support his opinions. For example, Dr. Shadid testified that the emergency room "…medical records show that he [Mr. Mirabile] was smiling in comfortable position while ambulating well before being discharged in a stable position." (RX3, pp. 12-13) The emergency room records of Rush Medical Center do not support Dr. Shadid's allegation. But, even if he did, smiling in an emergency room is not inconsistent with the evidence.

Moreover, Dr. Shadid's claim that Petitioner is a malinger is not supported by the evidence and contradicted by the other medical providers as well as the course of conduct of Petitioner. In conclusion, this Arbitrator is not persuaded by the findings and opinions of Dr. Shadid.

The Arbitrator finds that Dr. Sompalli's and Dr. Freedberg's version of the facts more probable and more consistent with the evidence than those of Dr. Shadid. The Arbitrator finds inconsistencies in Dr. Shadid's testimony and in his responses to opposing counsel's cross examination, the combination of which has caused the Arbitrator to question the reliability of his opinions. The Arbitrator finds that Dr. Shadid testimony was consistently inconsistent with the record as a whole.

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

It is well-established that an accident need not be the sole or primary cause-as long as employment is a cause-of a claimant's condition. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill.2nd 193, 205 (2003). Furthermore, an employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill.App.3d 882, 888 (2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill.2d 30, 36 (1986). Where an accident accelerates the need for surgery, a claimant may recover under the Act. *Id. at 36*. Thus, even if the claimant had a pre-existing 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. *Sibro, Inc. v. Industrial. Comm'n* 207 Ill.2d 193, 205 (2005). 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. *Mason & Dixon Lines, Inc. v. Industrial Comm'n,* 99 Ill. 2d 174, 181 (1983*); Azzarelli Construction Co. v. Industrial Comm'n,* 84 Ill. 2d 262, 266 (1981*).* 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, 63 (1994). Prior good health followed by a change immediately following an accident allows an inference that subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Comm'n* 315 Ill.App.3d 1197, 1205 (2000). The rational justifying the use of the "chain of events" analysis to demonstrate the existence of an injury would also support its use to demonstrate an aggravation of a preexisting injury. *Patrick Szvmanski v. J Ave Development, Inc.,* 23IWCC0390, 7-8 (2003).

It is also well established that the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401 (1984); *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675 (2009); 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). Not only may the Commission decide which medical view is to be accepted, it may attach greater weight to the opinion of the treating physician. *International Vermiculite Co. v. Industrial Comm'n*, 77 Ill.2d 1, 3 (1979); *ARA Services, Inc. v. Industrial Comm'n*, 226 Ill. App. 3d 225 (1992). However, expert medical evidence is not essential to support the Commission's conclusion that a causal relationship exists between a claimant's work duties and his condition of ill-being. *International Harvester v. Industrial Comm'n, 93 Ill. 2d 59,*

63, (1982). A chain of events suggesting a causal connection may suffice to prove causation. *Consolidation Coal Co. v. Industrial Comm'n,* 265 Ill. App. 3d 830, 839 (1994*)*

Respondent does not dispute accident. The parties stipulated that Petitioner sustained an accident that arouse out of and in the course of his employment on all three accidents. The Arbitrator notes that all three accidents were witnessed by a co-employee. The Arbitrator further notes that Petitioner's work van had to be towed from the scene of the August 6, 2020 accident.

Here there is no conflict between Petitioner's testimony and the medical records. Petitioner admitted that on the day of accident he did not experience knee pain. He first experienced knee pain and was limping the next day. His testimony was unrebutted and consistent.

Neither party introduced into evidence the accident report for the first, second or third accident. Neither party produced any witnesses to support or refute Petitioner's testimony that he experienced knee pain the day after the first accident of August 6, 2020. No evidence was submitted as when the accident report for the August 6, 2020 accident was completed.

The Arbitrator is mindful finds that the accident report and testimony of the co-employees of Petitioner is the same evidence that either party could have presented at trial to corroborate or rebut Petitioner's testimony regarding the knee pain resulting from the accident of August 6, 20202. Respondent could have offered evidence from witnesses to rebut Petitioner's claim that he sustained a right knee injury from a work-related accident. This evidence, if available and no evidence was introduced that it was not, was within Respondent's custody and control. The Arbitrator having found that Petitioner's testimony was credible, finds that Petitioner made a prima facie case of a work-related condition of ill-being to his right knee.

The failure of a litigant to call a witness within the control of such litigant is a proper subject of comment. When neither party calls an available witness, whatever presumption will be indulged in from the failure to call such witness will be against the party to whose interest such witness would most likely incline, and failure to produce such witness is, in such case, a proper subject of comment. *Nakis v. Amabile*, 103 Ill. App 3d 840 (1981).

The Arbitrator finds that Respondent failed to present persuasive evidence to establish that Petitioner's August 6, 2020 accidental injury to his right knee is not compensable under the Act after Petitioner presented a *prima facie* case. In support of this finding the Arbitrator cites *Dollison v. Chicago, Rock Island & Pacific Railroad Co.*, 42 Ill.App.3d 267 (1st Dist. 1976), wherein the appellate court held that once a *prima facie* case is established by a plaintiff, the trier of fact may infer that available evidence which is not produced would be unfavorable to the defendant. As previously set forth, Respondent failed to submit the initial injury report and the testimony of Petitioner's co-employees or supervisor into evidence. However, this inference is not pivotal to the Arborator's finding that the Petitioner proved by a preponderance of the evidence that his right knee pain and need for surgery is causally related to his work accident of August 6, 2020. This finding is based on the totality of the evidence.

No evidence was introduced that an intervening event occurred between August 6, 2020 and September 10, 2020, the first day Petitioner sought medical treatment after being in the emergency room.

The unrebutted evidence is that prior to his August 6, 2020, Petitioner engaged in a physical demanding job and no evidence was introduced that Petitioner was unable to perform his duties before the accident nor that he performed his duties with pain.

The unrebutted persuasive evidence is that after the accident, Petitioner worked in pain. And, that only after his knee brace purchased post-accident did not help enough, he sought medical treatment on September 10, 2020.

To establish causation under the Act, a claimant must show by a preponderance of the evidence that some act or phase of her employment was a causative factor in her ensuing injury. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill.App.3d 582, 592 (2d Dist. 2005), citing Illinois Supreme Court case *Sibro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193 (2003). An accidental 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. *Id.* It is axiomatic that when the injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment. *Caterpillar, Inc. v. Industrial Comm'n*., 228 Ill. App. 3d 288 (3d Dist. 1992).

Here, it is undisputed that the work events of August 6, 2020, June 1, 2021, and January 13, 2022 arose out of and in the course of Petitioner's employment. The only question is whether Petitioner's knee condition is causally related to any of these events. Petitioner credibly testified that prior to the first accident, he enjoyed good health and did not have any problems with his right knee. No records or any rebuttal evidence was submitted in opposition to that testimony other that the Application not specifically listing a right knee injury. While the initial emergency room records do not show that Petitioner complained of immediate right knee pain following the event, Petitioner testified that did have problems the next day. When he went to work the next day, he was limping. One or more of his co-workers offered suggestions on where to go have his knee checked out. The first mention of right knee pain was at Petitioner's first post emergency room medical visit on September 10, 2020.

On September 10, 2020, Petitioner was seen by Dr. Mandal about his knee condition. His MRI showed degenerative changes throughout the knee, in addition to a torn meniscus.

As for medical testimony, Petitioner's surgeon, Dr. Freedberg, testified within a reasonable degree of medical certainty that he believed the accident accelerated, exacerbated, aggravated or otherwise contributed to Petitioner's condition. Dr. Freedberg explained homeostatic balance, in that it is the ability of the joint of the body to adapt to the stresses applied to it, and that is what happens when you have an arthritic knee that becomes symptomatic after an accident, because something happens where the body loses the ability to maintain the balance or ability to respond normally to stress applied to it. It cannot always be seen in an MRI but in this case there is an MRI finding early on where Petitioner had full thickness cartilage loss to the medial femoral condyle chondromalacia patellae. He supported his opinion on Petitioner's condition being post-

traumatic by pointing to the MRI which showed bony signal which is usually, but not always, consistent with post-traumatic injury.

As for the subsequent work events, he opined the other two events also contributed to his condition. After the first occurrence, Dr. Freedberg said that put him in a susceptible position of having other issues happen. He recommended a partial knee arthroplasty or partial knee but was leaning toward a total knee procedure versus a partial after Petitioner continued to have work-related issues, and it became apparent he would knee a total knee replacement in the near future. Dr. Freedberg had not heard of any left knee complaints over the course of treatment. *Id*. at 15.

Additionally, Petitioner sought a second opinion with Dr. Sompalli. Based on Petitioner's history and lack of treatment for the right knee prior to the work events, Dr. Sompalli opined within a reasonable degree of medical certainty that Petitioner had a pre-existing condition of arthritis that was caused to become symptomatic. With regard to the two subsequent work events, these events just contributed to his condition. When referring to the third event carrying a ladder up the stairs, Dr. Sompalli said a knee can give out because of a meniscal tear or because of the severity of pain.

As for the time in which Petitioner felt knee pain, he testified that it was possible to not feel the effects for several days and added that without a fracture the idea that one would have immediate pain and not be able to walk is untrue.

Dr. Sompalli referred to a medical abstract that was included with his records, which explained that when you have pre-existing arthritis and there is a traumatic injury to that knee, these patients get rapid progression of the arthritis to the point where cellular-level changes occur and inflammatory changes occur where the arthritis that would have normally progressed slowly then progresses rapidly and they end up needing surgical intervention.

Dr. Hythem Shadid testified that he performed two independent medical examinations on Petitioner and opined that Petitioner's right knee condition was not causally related to any of the work events. He based his opinion largely on there being no mention of right knee pain in the emergency room records, or rather, according to him he said Petitioner denied upper and lower extremity weakness. Dr. Sompalli addressed this in his testimony when he said that emergency room staff do not go through every body part; rather, they concentrate on the chief complaints. It was reasonable to assume that since Petitioner just did not mention knee pain while in the emergency room, would evaluate or examine body parts for lacking pain, complaints or symptoms. The records do not show that lower extremities were tested; rather, there is simply no indication of complaints to the right knee.

Dr. Shadid also said the emergency medical records showed him smiling in a comfortable position while ambulating before being discharged. This is not indicated anywhere in the emergency room records.

Dr Shadid finding that Petitioner is a malinger is not corroborated by any of the medical providers, including the company clinic nor by any lay witness. Petitioner working in pain is inconsistent with being a malinger. The Arbitrator notes in the 27 years he was working as a carpenter before the August 2020 accident, Petitioner had one thumb injury claim 13 years prior; conduct

inconsistent with the accusation of being a malinger or being motivated for undeserved financial gain.

At first, it appeared that Dr. Freedberg was being an advocate for the Petitioner. However, it became clear that Dr. Freedberg thinks well of his patient. He admired his stoicism and work ethic. Frankly, it is nice to see a treating physician stand up for his patient when the physician believes that the patient has been inappropriately treated. Dr. Freedberg was critical of Dr. Shadid as a Section 12 examiner. He testified that he has seen multiple IMEs from him, and to his knowledge has never seen a report that found causation for the Petitioner. He took offense that Dr. Shadid called Petitioner a malingerer because he knew Petitioner well enough that there was nothing else in Petitioner's mind than working hard and doing well. He noted that this is evident by Petitioner continuing to work despite having a knee that is miserable for him. Dr. Freedberg's finding is supported also by Petitioner's own testimony. It appears Petitioner just wants to get better and continue working without pain. As noted earlier, Dr. Sompalli also disagreed with Dr. Shadid's assertion that Petitioner's condition following the crash would have immediately disabled him to the point it would have been noted in the emergency room record and for the reasons previously stated.

Respondent later questioned whether Petitioner's obesity could add to his arthritis, but on redirect it was identified that Petitioner was Five foot Five, 184 pounds, with a body mass index was 30.6, and the obesity marker starts at BMI 30, so he was just borderline obese. By the naked eye, or even reflecting on the photographs of Petitioner holding his knee submitted by Petitioner, Petitioner does not appear as "obese" in layperson terms. Petitioner presented at trial as well developed and muscular. Overweight, yes, medically obese, yes. Morbidly obese, no. Overall, Petitioner testified credibly and did not appear to have any secondary financial gains in mind.

While the Respondent pointed out the lack of right knee complaints immediately after the first work event, it is apparent that the motor vehicle collision did bring about injuries to the right side of the body.

The Arbitrator is allowed to apply common sense and the basic laws of physics in rendering decisions. The Arbitrator notes that impact at the right front bumper and front quarter panel is consistent with Petitioner body moving toward the point of impact based on Newtonian physics. [Newton's third law states that for every action (force) in nature there is an equal and opposite reaction. If object A exerts a force on object B, object B also exerts an equal and opposite force on object A. In other words, forces result from interactions.] Thus, Petitioner right leg and right side of his body coming into contact with center console and dashboard is consistent with basic physics.

The evidence establishes that it was not Petitioner's intention to miss any work due to injury as he arrived the next day, when his knee began to hurt. Despite the degenerative condition of his right knee, he has had no complaints or treatment prior to this event, and while an accidental 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, it will be found to be casually related. The Arbitrator finds in addition to the causal opinions of Dr. Freedberg and Dr. Sompalli, Petitioner has proven causal connection of his knee injury by the chain of events.

Respondent also pointed out that Petitioner retained counsel five days after the accident and signed an Application for Adjustment of Claim that did not specifically mention a right knee injury, although the Application was subsequently amended. Respondent places great weight on the initial Application failing to list the right knee. And, yet Petitioner credibly testified that the next morning he had knee pain and was limping at work; limping enough that co-employees noticed that he was limping and suggested that he seek medical care. Petitioner testified that he attempted to self-treat and deal with the injury with a knee brace most likely procured for him by his family. The Arbitrator is mindful of this inconsistency but also notes that the Application included MAW, an acronym unknown to Petitioner and unknown to Dr. Sompalli. Moreover, it is undisputed that Petitioner knee pain was medically documented well within 45 days at Petitioner's first post emergency room medical visit.

The Application's failure to mention the knee is at first blush troubling but not when viewed with the totality of the evidence. The Arbitrator is mindful that omissions in Applications are not fatal to a claim for benefits. The Arbitrator is bound to follow Commission precedent and cites *Ruffolo v. City of Chicago*, 19 IWCC 0567 wherein the Commission reversed the arbitrator's finding of no causal for cervical injury where the Application filed one month after the accident mentioned the low back injury only and not the cervical spine injury.

Petitioner temporally injured his left knee after falling in his second accident but did not have issues or symptoms with his left knee before the first and second accident nor after the third accident. The lack persistent left knee pain supports Petitioner's testimony that he injured his right knee after the first accident and that right his knee pain was constant without abating thereafter. Petitioner fell on both knees after the second accident and yet his left knee pain was short lived.

The Arbitrator considered the unrebutted evidence that Petitioner denied experiencing right knee pain or undergoing any right knee treatment prior to the accident of August 6, 2020. No evidence was introduced that he had problems performing his regular work in a physically demanding job as a rough carpenter, including working on his knees with knee pads, before the accident of August 6, 2020. No evidence was introduced that Petitioner was limping due to an arthritic right knee prior to his motor vehicle accident nor that he missed time off work because of preexisting right knee pain nor that he requested any reasonable accommodation because of right knee pain.

Neither parity introduced into evidence an accident report for any of the accidents. Moreover, neither party presented Petitioner's supervisor or co-workers to corroborate or dispute Petitioner's testimony that he was limping due to right knee pain when he appeared at work the next morning. This claim was vigorously, ably and skillfully defended by highly competent Respondent's counsel. And, yet the accident report regarding the August 6, 2020 accident was not introduced into evidence nor evidence introduced when it was completed nor any explanation why it was not available.

The failure of a litigant to call a witness within the control of such litigant is a proper subject of comment. When neither party calls an available witness, whatever presumption will be indulged in from the failure to call such witness will be against the party to whose interest such witness

would most likely incline, and failure to produce such witness is, in such case, a proper subject of comment. *Nakis v. Amabile*, 103 Ill. App 3d 840 (1981).

In the case at bar, the Arbitrator finds that Petitioner presented a *prima facie* case that his right knee injury was casually related to the accident of August 6, 2020. Thus, the Arbitrator finds that it would have been more in Respondent's interest to submit the accident report into evidence and produce witnesses, if any existed, that Petitioner did not complain of knee pain weeks after the August 6, 2002 accident. Respondent did not do so. The Arbitrator, therefore, draws the inference that Respondent did not do so because to do so was not in Respondent's interest and would have been helpful to Petitioner. The Arbitrator draws the inference that such evidence would corroborate Petitioner's testimony that he was limping the morning after the accident.

In support of this finding the Arbitrator cites *Dollison v. Chicago, Rock Island & Pacific Railroad Co*., 42 Ill.App.3d 267 (1976) wherein the appellate court held that once a *prima facie* case is established by a plaintiff, as in the trier of fact may infer that available evidence which is not produced would be unfavorable to the defendant. As previously set forth, Respondent failed to submit the initial injury report or rebuttal witnesses into evidence. Although, without this inference, the Arbitrator still finds in favor of Petitioner on causal, but the negative inferences from the failure of proof supports this finding of causal based on the totality of the persuasive evidence.

Therefore, the Arbitrator finds that Petitioner's current condition of ill-being and need for knee surgery is causally related to the work event on August 6, 2020, but also that the work events of June 1, 2021 and January 13, 2022 contributed in a dovetail manner to his current condition of ill-being to his right knee.

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 mandates that the Respondent shall provide and pay for all the necessary surgical services which are reasonably required to cure or relieve from the effects of the accidental injury. Section 8(a) 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…" 820 ILCS 305/8(a). Medical care under Section 8(a) is continuous as long as such care is required to relieve the effects of the injury. *Freeman United Coal Mining Co. v. Industrial Commission*, 81 Ill.2d 335 (1980). Here, there is no contest as to the treatment provided to Petitioner for the non-right-knee-related care and therefore, the Arbitrator concludes that treatment to be reasonable and necessary and thus, charges for said treatment must be paid by the Respondent.

As for the right knee, Dr. Freedberg and Dr. Sompalli are of the opinion that past treatment has been reasonable and necessary. Petitioner underwent conservative care in the form of physical therapy and injection treatment prior to receiving the surgical recommendation. Dr. Shadid, while

refusing to causally relate the knee condition to Petitioner's work events, did agree that the next step would be a knee replacement.

Based on the medical opinions rendered, the Arbitrator finds that all claimed medical services provided to Petitioner were reasonable and necessary, and further finds that the Petitioner is entitled to have Respondent pay the following medical expenses:

Rush University Health System/Rush Oak Park Hospital for services rendered from 8/06/2020 to 8/07/2020 in the amount of $5,391.50.

Illinois Orthopedic Network for services rendered from 9/10/2020 to 12/3/2020 in the amount of $7,558.07

ILBJ - Hinsdale Orthopedics for services rendered on 10/15/2020 in the amount of $1,303.96.

Midwest Specialty Pharmacy for services rendered from 9/10/2020 to 3/23/2023 in the amount of $16, 416.04.

Preferred MRI for services rendered from 9/19/2020 to 11/10/2020 in the amount of $4,500.00.

Total Rehab, P.C. Garfield Ridge for services rendered from 9/16/2020 to 2/5/2021 in the amount of $5,018.18.

Concentra for services rendered from 6/1/2021 to 6/3/2021 in the amount of $422.55.

Suburban Orthopedics for services rendered from 6/8/2021 to 3/23/2023 with a balance of $2,243.04.

Northwestern Medicine for services rendered from 6/8/2021 to 3/23/2023 in the amount of $12,667.50.

Bright Light Medical Imaging for services rendered on 4/6/2022 in the amount of $500.00.

Elite Orthopaedics and Sports Medicine, LLC for services rendered from 4/4/2022 and 4/8/2022 in the amount of $621.48.

The Arbitrator awards medical expenses as evidenced by the billing records contained in Petitioner's Exhibit 2 through 12 and as listed above in accordance with Section 8 of the Act. Respondent is entitled to credit for medical bills previously paid under the Act. Respondent stipulated that it did not pay any medical bills for which it would be entitled to 8(j) credit, and, thus, none are awarded.

WITH RESPECT TO ISSUE (K), WHETHER PETITIONER ENTITLED TO PROSECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

Having found that Petitioner's condition to his knee is causally related to his work injury of August 6, 2020, and because he has not completed his medical care nor reached maximum medical improvement for his knee, Petitioner is entitled to prospective e medical care.

Specific procedures or treatments that have been prescribed by a medical service provider are "incurred within the meaning of section 8(a) even if they have not been performed or paid for. *Bennett Auto Rebuilders v. Industrial Comm'n*, 306 Ill. App. 3d 650, 655-56 (1999). The claimant bears the burden of proving, by a preponderance of the evidence, his or her entitlement to an award of medical care under section 8(a). *Westin Hotel v. Industrial Comm'n*, 372 Ill.App. 3d 527, 546 (2007). Questions regarding entitlement to prospective medical care under section 8(a) are factual inquiries for the Commission to resolve. *Max Shepard, Inc. v. Industrial Comm'n*, 348 Ill.App. 3d 893, 903 (2004). Section 8(a) of the Act entitles 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. *Certified Testing v. Industrial Comm'n*, 367 Ill.App.3d 938 (2006). It is within the Commission's province to weigh and to judge witness credibility, to resolve conflicts in medical testimony, and to choose among conflicting inferences therefrom. *Bennett Auto Rebuilders v. Industrial Comm'n*, 306 Ill.App.3d 650, 655 (1999).

Here, Petitioner testified he wants to proceed with the total right surgery recommended by Dr. Sompalli and by Dr. Freedberg. Dr. Shadid also agreed that a right total knee surgery was reasonable and necessary. Based on the Arbitrator's findings above with regard to causation, the Arbitrator further finds that Petitioner has proven by a preponderance of the evidence the reasonableness and necessity of a right total knee surgery. Accordingly, Respondent is hereby ordered to authorize and pay for the total right knee surgery and any treatment that is reasonable and necessary to make it so, including but not limited to the diagnostic x-rays recommended by Dr. Freedberg.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC032970
Case Name	Glenn Mirabile v. City of Chicago - CDOT
Consolidated Cases	20WC020413; 21WC015322;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0060
Number of Pages of Decision	27
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Jason M. Whiteside
Respondent Attorney	Scott Webber

DATE FILED: 2/6/2025

/s/Amylee Simonovich,Commissioner

Signature

25IWCC0060

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Glenn Mirabile,

Petitioner,

vs. NO: 22 WC 032970

City of Chicago - CDOT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under Sections 19(b) and 8(a) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical care, and permanent partial disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980).

The Commission modifies the third paragraph on page 1 of the Attachment to Arbitration Decision (hereinafter "Decision"), striking "20WC015322" and replacing it with "21WC015322".

The Commission modifies page 11 of the Decision, striking everything after the first two sentences of the fifth paragraph. On the same page, the Commission also modifies the sixth paragraph, striking the word, "Moreover".

The Commission modifies the last three paragraphs on page 13 of the Decision, striking them in their entirety.

The Commission modifies page 15 of the Decision, striking the word "not" in the last sentence of the fifth paragraph. On the same page, the Commission also strikes the second sentence of the second to last paragraph.

The Commission modifies the first full paragraph on page 16, striking it and replacing it with, "Dr. Freedburg disagreed with Dr. Shadid's characterization of the Petitioner as a malingerer.

Dr. Freedburg noted that Petitioner continued to work after the accident. Dr. Sompalli also disagreed with Dr. Shadid's assertion that Petitioner's condition following the crash would have immediately disabled him to the point it would have been noted in the emergency room record." On the same page, the Commission strikes the second to last paragraph.

The Commission modifies page 17 of the Decision, striking the last two sentences of the fifth paragraph. On the same page, the Commission strikes the last paragraph, which continues onto page 18 of the Decision.

Finally, the Commission modifies the first and second full paragraphs on page 18 of the Decision, striking them in their entirety. On the same page, under Issue (J), the Commission strikes the last sentence of the first paragraph.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on February 8, 2024, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay for the reasonable and necessary medical emergency room services at Northwestern Hospital from January 13, 2022 pursuant to Sections 8(a) and 8.2 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 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.

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

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

February 6, 2025

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

O: 12/10/24
AHS/kjj
051

/s/ *Maria E. Portela*
Maria E. Portela

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC032970
Case Name	Glenn Mirabile v. City of Chicago - CDOT
Consolidated Cases	20WC020413; 21WC015322;
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	23
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Jason M. Whiteside
Respondent Attorney	Scott Webber

DATE FILED: 2/8/2024

/s/Joseph Amarilio, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 6, 2024 5.045%

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

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

GLENN MIRABILE Case # **22** WC **032970**
Employee/Petitioner

v.

CITY OF CHICAGO - CDOT
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joseph Amarilio**, Arbitrator of the Commission, in the city of **Chicago** on **9/26/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

B. ☐ Was there an employee-employer relationship?

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

D. ☐ What was the date of the accident?

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

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

G. ☐ What were Petitioner's earnings?

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

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

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

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

FINDINGS

On **1/13/2022**, the 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 $**101,197.72**; the average weekly wage was $**1,946.11**.

On the date of accident, Petitioner was **54** years of age, ***married*** with **no** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $**0.00** for TTD paid, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**0.00.** Respondent is entitled to a credit of $**0.00** under Section 8(j) of the Act.

ORDER

The Arbitrator finds that Petitioner's current condition of ill-being, need for medical care and future medical care are attributable to his injury in the companion case 20 WC 020413. And, that accident in this matter was a temporary aggravation of the injury sustained in 20 WC 020413. However, Respondent is liable to pay for the emergency room services a Northwestern Memorial Hospital. See attachment.

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

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

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

/s/ *Joseph D. Amarilio*

Signature of Arbitrator Joseph D. Amarilio

February 8, 2024

ATTACHMENT TO ARBITRATION DECISION
19 (b)/8(a)

Glenn Mirabile
Employee/Petitioner

Case # **20** WC **020413**

Consolidated cases: 21 WC 015322
22 WC 032970

v.

City of Chicago - CDOT
Employer/Respondent

FINDINGS OF FACT OF FACT AND CONCLUSIONS OF LAW

I. PROCEDURAL HISTORY

Mr. Glenn Mirabile ("Petitioner"), by and through his attorney, filed three (3) Applications for Adjustment of Claim for benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.*) (West 2014)). Petitioner sustained three (3) separate accidents that arose out of and in the course of his employment while working for the City of Chicago/The Chicago Department of Transportation (CDOT) ("Respondent').

(1). Under case number 20 WC 020413, Petitioner alleged that on August 6, 2020, he sustained an accidental injury resulting from a motor vehicle collision.

(2) Under case number 20 WC 015322, Petitioner alleged that on June 1, 2021, he sustained an accidental injury from a fall.

(3) Under case number 22 WC 032970, Petitioner alleged that January 13, 2022 he sustained an accidental injury while carrying a ladder up a flight of stairs.

The parties stipulated that all three accidents arose out of and in the course of Petitioner's employment by Respondent. (ARB X1; X2; X3).

The three claims were consolidated and a hearing was held on September 26, 2023 on the following three (3) disputed issues: 1. Whether Petitioner's current condition of ill-being to his right knee is causally connected to his injury; 2. Whether Respondent is liable for unpaid medical bills; and 3. Whether Petitioner is entitled to prospective medical care for his right knee. The same three issues were in dispute for each claim. The parties mutually requested a written decision, including findings of fact and conclusions of law. (ARB X1; X2; X3).

Petitioner testified in support of his claim as well as Petitioner's treating orthopedic physicians, Dr. Howard Freedberg and Dr. Chandrasekhar Sompalli, both of whom testified by evidence deposition. Dr. Hythem Shadid, Respondent's retained Section 12 orthopedic physician, testified by evidence deposition at Respondent's request.

Accident and notice of accident are not in dispute in the three claims for benefits. All three accidents were witnessed. The pivotal issue in dispute is whether Petitioner' right knee condition of ill-being is causally related to one or more of the three claims. The need for a total knee surgery is not in dispute. Rather, Respondent disputes that the necessity for surgery is causally related to one or more of the three accidents or none.

Background

Petitioner testified that he resides in the Garfield Ridge area of Chicago with his wife and three children. (T14). He had been working for Respondent as a carpenter since July 16, 1993. *Id*. He still is employed by the Department of Transportation of the City of Chicago. (T15). His primary duties involved using an emergency truck to maintain bridges throughout the City of Chicago. (T16). He also works on vaulted sidewalks, under the city sidewalks, where he would work on demolitions and construct and maintain forms, footings and foundations. (T 17). He works on his knees using knee pads when working on flooring. (T55). Simply stated, Petitioner performs the duties of a rough carpenter.

Prior to becoming a carpenter, Petitioner graduated high school and then obtained a diploma in carpentry after a four-year apprenticeship at Washburne Trade School. (T17-18). Before the first injury on August 6, 2020, he enjoyed good health. (T18). He denied any preexisting problems with his right shoulder, right elbow, low back or right knee. *Id*. He filed one prior worker's compensation claim 13 years ago for a thumb injury. (T19). Otherwise, he was never off work for any work-related injuries nor was he on medication for any injuries. *Id*. Outside of work he does not participate in any physical activity that requires running. (T19-20).

August 6, 2020 Injury (20 WC 020413) [MVA]

On August 6, 2020, Petitioner started work at 7:00 o'clock in the morning. (T20). He proceeded to his job sites in a City work van. *Id*. On the way back to the shop day's end, he was involved in a motor vehicle collision. He was making a left hand turn from a full stop when a SUV ran through the stop sign and struck his van head-on which he described as T-boned (sic.) *Id*. The van sustained front end damage, more so on the right side. He testified that he went flying and the air bags deployed. (T21). Petitioner explained that his height was 5'5" and the console in the van was positioned on his right side. (T23). He was twisted inside the van by the impact and he felt his right shoulder, right elbow and lower back were bothering him from hitting the dashboard and center console. The driver side and passenger side air bags were deployed. (T27). It appears that the van was not equipped with knee air bags.

Petitioner identified a series of photographs shown in Petitioner's Exhibit 13, which showed the front-end damage, greater to the front right passenger side of Petitioner's van. Also, photographs showing the interior passenger seat where his partner Dan Bracken was seated and which also showed deployed passenger side air bag. (T23-25). He asked his partner, Mr. Bracken, how he was feeling. Mr Bracken described his "problems" with Petitioner. Afterward, the police and his supervisor arrived at the scene. Then, a City of Chicago truck towed Petitioner, Mr. Bracken and the damaged work van back to 31st and Sacramento. (T26- 27).

After providing a urine sample at 31st and Sacramento, Petitioner presented to Rush University Medical Center. (T29;28). The Rush University Medical Center emergency room records show that Petitioner complained of right elbow, right wrist and right flank pain following the collision earlier that day. (PX2). After examination and x-rays, he was sent home. (T28). He testified that at the emergency room, he did not recall doing any full range of motion testing on his extremities. His testimony is corroborated by the records (T87-88). The Arbitrator notes that while the right shoulder, elbow, wrist and hands were examined, his left side were not; nor were his lower extremities. Petitioner did not complain of right knee pain or of a right knee injury. (PX2). Nor did the Petitioner testify that experienced right knee pain on the day of the accident.

Petitioner testified to experiencing right knee pain the next morning. Petitioner testified that he next morning, he came to work to drop off paperwork and coworkers noticed he was limping. Petitioner testified he was off work three days after his accident. (T30-31). Petitioner ordered a knee brace, or his kids obtained a knee brace for him. (T31). After talking to some people at work, he was given some suggestions on where to seek treatment. (T32).

Petitioner testified he hired an attorney approximately five days after his accident. (Tr. 64). Petitioner testified he told his attorney the facts of his motor vehicle accident including what body parts were injured. (Tr. 65). Petitioner was shown respondent's Exhibit 5 which Petitioner identified as the Illinois Workers' Compensation Commission Application for Adjustment of Claim. Petitioner testified his signature was located at the bottom of the document. (Tr. 66). Petitioner testified he did not recall filling out the Application but did sign the document. (Tr. 67). Petitioner testified that the body parts listed included the right rib, right elbow, right shoulder, and MAW. (Tr. 67). Petitioner testified he did not personally fill out the Application for Benefits, but his attorney filled it out on his behalf based on what he told them. (Tr. 67-68). Petitioner admitted that nowhere on the Application for Benefits does the document indicate he sustained a right knee or lower body injury. (Tr. 68). Petitioner further testified that he did not know what "MAW" means. (Tr. 88).

Petitioner's first post emergency room medical visit occurred thirty-five (35) days after the accident. On September 10, 2020, Petitioner presented to an ION where he started treating his elbow, back and neck. (T 32-32). He also reported right knee pain, and he was sent for a MRI. (T32).

The records from ION show that on September 10, 2020 he was seen Ronnie Mandal, MD. He reported the mechanism of injury being the auto accident on August 6th, and had since had pain in his right shoulder, right wrist, right knee and low back, with the wrist pain having resolved since. (PX3). At his next visit he is sent for an MRI of the right knee. (PX3). The knee MRI indicated fluid within the suprapatellar bursa, prominent diffuse chondromalacia patella, articular cartilage thinning more severely affecting the medial compartment with full-thickness cartilage loss involving the medial femoral condyle with subchondral edema, and a horizontal tear of the medial meniscus, with tricompartmental osteoarthritis. (PX3; PX6).

Petitioner recalled going somewhere in Hinsdale for a shot in his back, possibly his elbow, and knee. (T33). The records show a visit to Illinois Bone and Joint / Hinsdale Orthopedics, where on October 15, 2020, he received an injection in the elbow. (PX4). Afterward, he started physical therapy at Total Rehab near his home. (T33). Between September 16, 2020 to February 5, 2021, Petitioner underwent therapy at Total Rehab for his low back, right elbow and right knee. (PX7). Petitioner testified that after therapy, he his right shoulder, elbow and low back had resolved around the Spring of 2021. (T34). At the time, his right knee was still problematic as he was having a hard time walking. (T35). He recalled it clicking and being swollen. *Id*. At that point, the plan for treatment for his right knee was surgery. *Id.* Petitioner testified he does want to have surgery. *Id*. He later noted that his shoulder, elbow and back condition resolved prior to his second injury date. (T52).

On January 27, 2021, Dr. Freedberg saw Petitioner at ION. (PX3). Petitioner reported that walking was painful, and a recent injection only gave him one day of relief. *Id*. He was in constant pain at work. *Id*. Dr. Freedberg noted full range of motion and good strength, but some boggy swelling with tenderness at the lateral and posterolateral aspects. *Id*. He was diagnosed with right knee post-traumatic medial femoral chondral osteochondral lesion with medial compartment degenerative change and a horizontal medial meniscus tear. *Id*. At that point, Dr. Freedberg recommended a right knee arthroplasty that would allow him to return to work. *Id* at p. 15. Dr. Freedberg's assessment and plan was unchanged until the IME appointment. *Id*. He did not return to Dr. Freedberg until after his second injury. *Id*.

Petitioner then recalled attending for an examination with Dr. Shadid around March 2021. (T36). It took Dr. Shadid two and a half hours to see him and when he did he asked some questions and might have touched his knee. *Id*. He recalled being there for 10-15 minutes. *Id*. [Dr. Shadid testified that he examined the Petitioner far longer than his patients. See below]

June 1, 2021 Injury (20 WC 015322) [Fall]

On June 1, 2021, Petitioner was working on a vaulted sidewalk under the ground. (T37). He was setting up some ladders and boards so he could tear apart framing when one of the boards cracked and he fell about two feet onto his knees. Petitioner described the area as having pipes for plumbing and gas, and it was cramped. (T39). Petitioner identified several photographs as Petitioner's Exhibit 17 that showed his workspace, the pipes, the ladders, and broken board he was using as a scaffolding between ladders. (T40-44; PX17).

Afterward, he went to the Concentra Occupational Clinic where he was told to return to his doctor, Dr. Freedberg. (T45). The records show that he reported an event at work where he struck both knees, but by the time he arrived at the clinic his left knee was better. (PX8). He was diagnosed with a contusion to his right knee and directed to follow up with his orthopedic specialist. *Id*.

On June 8, 2021, he presented to Dr. Freedberg with Suburban Orthopaedics where he reported the first work occurrence and event on June 1, 2021 when a plank he was standing on cracked causing him to fall on his knees. (PX9). Dr. Freedberg advised there was nothing he could do for him, he needed surgery. (T46). He was, however, prescribed pain and muscle relaxer medication.

(T47). Petitioner continued to return with the same recommendation for treatment every time. (PX9).

On August 18, 2021, Dr. Freedberg reviewed the two Section 12 reports of Dr. Shadid with Petitioner, who told Dr. Freedberg that he had to wait from 3:00 p.m. with his vehicle so he could take a drug test, and that he was not able to go to the ER until 9:00 p.m. *Id*. At that time, he was concerned about his right arm and low back as it was stiff and in shock. *Id*. He left the ER at 2:30 a.m. and just wanted to go home and sleep for work the next day. *Id*. He reported to work the next day but had to leave after an hour due to knee pain. *Id*. Petitioner continued to follow up with Dr. Freedberg with no change in the assessment and plan until January 5, 2022, when Dr. Freedberg added that it appears his tricompartmental pain is getting worse and suggested the possibility of a total knee arthroplasty operation. *Id*.

January 13, 2022 Injury (22 WC 032970) [While carrying ladder up flight of stairs]

On January 13, 2022, Petitioner was working with his partner Helen Iwanicki. (T48). A different trade had borrowed one of his ladders at the State and Wacker bridge house. (T49). He went to the basement to grab the ladder and carried it nearly to the top of the stairs when his knee buckled and gave in. *Id*. He fell to the ground and dropped the ladder. His partner called an ambulance. *Id*.

Petitioner was transported by ambulance to Northwestern Hospital where he was bandaged up and sent on his way with a recommendation to see his doctor, Dr. Freedberg. (T50). The records indicate he reported carrying a ladder upstairs when he felt his right knee pop out and back in causing him to lose his balance and fall down and strike his head on a wall. (PX10). He was discharged and directed to follow up with his specialist. *Id*. Petitioner returned to Dr. Freedberg to report the new event, but added that now he felt his knee slip out and back in. (PX9). The possibility of total knee replacement was again suggested by Dr. Freedberg. *Id*.

After the amended operation suggestion, Dr. Freedberg previously waiving between a partial and total knee, but inclined to a total knee, Petitioner was sent for a repeat Section 12 examination with Dr. Shadid. (RX2). Dr. Shadid's opinions remained unchanged regarding causation. *Id*.

At his next visit with Dr. Freedberg, Dr. Freedberg again disagreed with Dr. Shadid's position. (PX9). Dr. Freedberg again recommended surgery, but this time Petitioner got a second opinion near his home named Chandrasekhar Sompalli, M.D. (T51).

Petitioner presented to Dr. Sompalli on April 4, 2022, when he reported all three events to him, along with the two examinations before Dr, Shadid he attended. (PX12). After an x-ray was taken, Dr. Sompalli concurred in the diagnosis in line with Dr. Freedberg and Dr. Shadid but recommended a total knee replacement. (T51; PX12).

After that appointment, Petitioner recalled possibly receiving another shot with Dr. Freedberg. (T52). Petitioner continued to return to Dr. Freedberg once a month but there was no change in the assessment or treatment plan. *Id*.

Petitioner testified that his therapy, injections and medication were helpful. (T54). As for his continuing work, he said he has no choice. *Id*. His job requires him to be on his knees to do flooring so it is difficult, tough and painful, but he has to tough it out. (T55). He works with knee pads and a knee brace which he wears all the time but continues to have pain with all daily life activities. *Id*. He has never had any problems with his left knee. *Id*.

Petitioner did recall seeing Dr. Shadid for a second time, but this time Dr. Shadid did not conduct a physical examination was done on him. (T56). Rather, Dr. Shadid recognized him and looked at some paperwork and he never heard back from him. (T56-57).

On cross-examination, Respondent asked questions about the initial application for adjustment of benefits filed August 26, 2020, which listed injuries to rib, right elbow, right shoulder and MAW. (T67; PX16). Petitioner does not know what "MAW" means. (T88). Petitioner acknowledged there was no record of a right knee complaint until his treatment at ION. (T70-71). Petitioner's application for adjustment of benefits was later amended to state injuries to "Person as a whole-multiple parts." (PX16). Petitioner also disagreed with the statement that he described having full range of motion in his right knee on November 11, 2020. (T72). As he testified, Petitioner says he still feels ten out of ten pain in his right knee. (T83).

Evidence Deposition of Dr. Howard Freedberg – July 12, 2022 (PX 14)

On July 12, 2023, Dr. Freedberg testified that he is an orthopaedic surgeon licensed to practice medicine in Illinois since 1982. (PX14. p.7-8;10). He has forte in using an arthroscope and testified that he is a master instructor of arthroscopic surgery. *Id*. at 8. He has a specialty in sports medicine and reconstructive surgery and does about 500 operations a year. *Id*. He had an independent recollection of Petitioner and could pick him out of a line-up. Dr. Freedberg agreed to and stated that any opinions he renders during the course of his evidence deposition will be made within a reasonable degree of medical and surgical certainty He first saw Petitioner at the Illinois Orthopedic Network on November 11, 2020. After January 27, 2021, he started seeing Petitioner at his own facility. *Id*. at 10-11.

Dr. Freedberg testified that he took a history from Petitioner, which included information about a motor vehicle accident on August 6, 2020, where he was making a left turn and another vehicle ran a stop sign and struck the front of Petitioner's vehicle, which produced pain complaints in the right elbow, right wrist, right knee and low back. *Id*. At the time he saw Dr. Freedberg, the issue was with the knee as he was limping and complained of pain walking and going up and down stairs. *Id*.

After a review of the MRI from September 17, 2020, he diagnosed him with right knee post-traumatic medial femoral condyle osteochondral lesion associated with tricompartmental osteoarthritis and a horizontal medial meniscal tear. *Id*. at 12. He opined that the accident of August 6, 2020 accelerated, exacerbated, aggravated or otherwise contributed to Petitioner's condition and need for treatment. *Id*. According to Dr. Freedberg, surgery is medically necessary to address Petitioner's ongoing symptoms and condition. *Id*. at 13.

He recalled there being two other occurrences after the first auto accident that also contributed to his condition. He opined that all three accidents dovetail together. *Id*. at 14. There was an occurrence on June 1, 2021 when Petitioner fell through some boards at work, and another on January 13, 2022 when he was walking upstairs with a ladder when his knee gave out. *Id*. at 14-15. Dr. Freedberg opined that the first accident made him more susceptible to injury. And, in dovetailing, the second accident made him more susceptible to injury from the third accident. *Id*. at 14.

Dr. Freedberg had recommended a total knee arthroplasty or possibly a partial knee. He was leaning toward a total knee procedure versus a partial. *Id*. at 15. His reason was that he preferred to do an operation that would last Petitioner for 20 years versus one that might last for 5 years and then need more treatment. *Id*. at 17. Dr. Freedberg had not heard of any left knee complaints over the course of treatment. *Id*. at 15. On cross examination, Dr. Freedberg testified that he initially recommended a partial knee, but after time, after the other two injuries, he prescribed a total knee. Id. At 40.

Dr. Freedberg disagreed with the opinions of the Respondent's Section 12 examiner, Dr. Shadid. *Id*. at 17-19. He testified that he has seen multiple IME reports authored by Dr. Shadid. *Id*. at 18. He said that Petitioner did not have any knee problems before these occurrences, did have arthritis, but never had symptoms and did not received treatment. *Id*.

Dr. Freedberg took offense that Dr. Shadid called Petitioner a malingerer because he knew Petitioner well enough that there was nothing else in Petitioner's mind other than working hard and doing well. *Id*. at 18-19. He noted that this is evident by Petitioner continuing to work despite having a knee that is miserable for him. *Id*. He recalled that at the ER, Petitioner took a drug test, was concerned and in shock. *Id*. at 20. Petitioner went home but when he went to work the next day and he could only work an hour the next day because his knee was bothering him. *Id*. Petitioner's one day delay in reporting symptoms does not change his opinion. He also disagreed with Dr. Shadid's statement that any exacerbation or aggravation of Petitioner's preexisting conditions would have been immediately disabling and be a primary concern at the ER. *Id*. at 49. He also added that he's never seen an IME report from Dr. Shadid that found causation for the Petitioner and estimated that he read about 20 from Dr. Shadid. *Id*. at 55-56.

Dr. Freedberg explained homeostatic balance, in that it is the ability of the joint of the body to adapt to the stresses applied to it, and that is what happens when you have an arthritic knee that becomes symptomatic after an accident, because something happens where the body loses the ability to maintain the balance or ability to respond normally to stress applied to it. *Id*. at 21. You cannot always see it in an MRI but in this case, there is an MRI finding early on where Petitioner had full thickness cartilage loss to the medial femoral condyle chondromalacia patellae. *Id*. at 23. He later supported his opinion on Petitioner's condition being post-traumatic by pointing to the MRI which showed bony signal, which usually but not always represents post-traumatic injury. *Id*. at 33-34. Other than the surgical recommendation, Dr. Freedberg advised that Petitioner continue with the medication prescribed, primarily the Celebrex, which is a non-steroidal anti-inflammatory. *Id*. at 38.

Evidence Deposition of Dr. Chandrasekhar Sompalli – April 7, 2023 (PX 15)

On April 7, 2023 Dr. Sompalli testified that he is a board-certified orthopedic surgeon licensed to practice medicine in Illinois, and works at his solo practice at Elite Orthopedics. After graduating from Loyola Stritch School of Medicine, he did a year of research in transplant surgery and a year of research in orthopedic surgery. He then completed his residency in orthopedic surgery at Loyola Medical Center in Maywood, Illinois and graduated in 2009. (PX15, p.7-8).

He performs about 300 operations a year, with about 150 for the knee. *Id*. at 9. Dr. Sompalli stated that he his testimony regarding his findings and opinion would be within a reasonable degree of medical and surgical certainty. *Id*. at 11.

He first saw Petitioner on April 4, 2022 at the referral from Illinois Orthopedic Network. *Id*. He obtained an MRI of Petitioner's right knee and obtained a history of the auto accident on August 6, 2020, along with the subsequent injuries of July 3, 2021 and January 13, 2022. *Id*. at 12-13. He recalled that Petitioner initially went to the emergency room, completed therapy with no improvement, was currently taking Celebrex, and had instability with problems performing his daily life activities. *Id*. at 13-14. Petitioner told him that he never had right knee pain prior to these events. *Id*. at 14.

After an examination and review of radiology records, Dr. Sompalli diagnosed him with right knee arthritis in all three of the knee compartments with a medial meniscus tear. *Id*. at 15. He ordered an x-ray that he hoped would show the true amount of arthritis in the knee. *Id*. At his next appointment, the x-ray films did indicate to Dr. Sompalli that arthritis was present in all compartments.

Based on Petitioner's history and lack of treatment for the right knee prior to the work events, Dr. Sompalli opined that Petitioner had a pre-existing condition of arthritis that was caused to become symptomatic. *Id*. at 17. At this point, synovitis injections would not be helpful and therefore, his recommendation was a total knee replacement. *Id*. at 17-18.

With regard to the two subsequent work events, these events just contributed to his condition. *Id*. at 18. They made his knee condition worse. When referring to the third event carrying a ladder up the stairs, Dr. Sompalli said a knee can give out because of a meniscal tear or because of the severity of pain. *Id*. He added that a total knee would allow him more stability in the knee, because right now he is bone on bone. *Id*. at 19-20.

As for the time in which Petitioner complained of his knee condition, he felt it was possible to not feel the effects for several days and added that without a fracture the idea that one would have immediate pain and not be able to walk is untrue. *Id*. at 20.

Dr. Sompalli referred to an abstract that was included with his records, which explained when you have pre-existing arthritis and there's a traumatic injury to that knee, these patients get rapid progression of the arthritis to the point where all kinds of cellular-level changes occur and inflammatory changes occur where the arthritis that would have normally progressed slowly then progresses super rapid and they end up needing surgical intervention. *Id*. at 22.

Dr. Sompalli said the car crash was an aggravating cause that accelerated his condition. *Id*. at 23. With regard to future treatment, he recommended a total knee replacement with follow up treatment after about six to eight months after surgery. *Id*. at 24. During that time the patient would need therapy and work conditioning to allow him to return to work. *Id*.

Dr. Sompalli also disagreed with Dr. Shadid's assertion that Petitioner's condition following the crash would have immediately disabled him to the point it would have been noted in the emergency room record. *Id*. at 36-37. Respondent later questioned whether Petitioner's obesity could add to his arthritis, but on redirect it was identified that Petitioner was Five foot Five, 184 pounds, with a body mass index was 30.6, and the obesity marker starts at BMI 30, so he was just borderline obese. *Id*. at 42-43; 50. Finally, when asked about the emergency room records, he opined that emergency room staff does not go through every body part and ask if there's an injury to that part; rather, they concentrate on the chief complaint. *Id*. at 53. It was reasonable to assume that Petitioner just did not mention it at the emergency room, not that it was tested and deemed to have no pain. *Id*. at 53-54.

Evidence Deposition of Dr. Hythem Shadid - August 7, 2022 (RX 3)

Dr. Shadid testified on August 7, 2022 that he has an orthopedic practice with a focus on knees and shoulders and is a board certified orthopedic surgeon. (RX3, p.6). Forty to forty-five percent of his surgeries are on the knee. *Id*. at 7. On direct examination, Dr. Shadid testified consistent with his reports of April 22, 2021 and of February 14, 2022. (RX 1, RX 2)

Prior to his independent medical examinations, he reviewed records and then examined Petitioner, whose chief complaint was the right knee. *Id*. at 10. During his first examination, he obtained the mechanism of injury being the August 6, 2020 collision. *Id*. at 10-11. Dr. Shadid said that based on the emergency room records, Petitioner denied upper and lower extremity weakness. *Id*. at 11. Dr. Shadid testified that the emergency room "…medical records show that he [Mr. Mirabile] was smiling in comfortable position while ambulating well before being discharged jn a stable position." *Id*. at 12-13.

During his examination, Dr. Shadid said Petitioner had a normal gait when walking, there were no gross deformities and no unusual swelling. *Id*. at 13. The knee moved without clicking or popping and his range of motion was 120 degrees of flexion both actively and passively. *Id*. His strength was also 5 out of 5 flexion and extension. *Id*. The ligament examination showed that all ligaments were intact and the meniscal examination and patellofemoral examinations were negative. *Id*.

He then noted that the MRI showed an effusion, small amount of fluid, with tricompartmental osteoarthritis and a horizontal tear of the body of the meniscus. In his opinion there was no knee condition as a result of the accident. *Id*. at 15. He said the osteoarthritis was a pre-existing condition there before and after the accident. *Id*. He added there was no evidence that the crash aggravated his condition, and that an aggravation would have been immediately debilitating. *Id*. Also, there was no evidence of a mechanism of injury where there was trauma to the knee. *Id*. at 15-16. He then said you cannot aggravate osteoarthritis from a sitting position in a car where you are restrained, and airbags deploy. *Id*. at 17. He said there would have been some subchondral edema shown on the first MRI if there was some inflammatory reaction to the injury. *Id*. at 18.

However, irrespective of causation, the knee replacement surgery would be reasonable and necessary. *Id*.

Dr. Shadid, in connection with his April 2021 report (RX 1), concluded Petitioner did not experience any right knee injury as a result of the motor vehicle accident. He based his opinion on his review of the diagnostic images, the lack of initial complaints of right knee pain following a motor vehicle accident, as well as his assessment as to whether or not petitioner could have experienced any right knee injury as a result of the motor vehicle accident.

In connection with his February 2022 examination, Dr. Shadid concluded that Petitioner's two subsequent accidents did not permanently aggravate or accelerate his underlying right knee condition. Dr. Shadid noted that petitioner already had a referral for a right knee replacement on direct examination and that recommendation did not change following petitioner's two subsequent accidents. He confirmed that the two subsequent accidents did not lead to any kind of material aggravation or acceleration of petitioner's underlying right knee condition necessitating surgery.

On cross-examination, Dr. Shadid acknowledged that petitioner's MRI confirmed a meniscal tear. He testified that his February 2022 report was not silent with respect to the January 13, 2022 accident. He noted petitioner had a diagnosis of osteoarthritis, which is pre-existing. Dr. Shadid acknowledged that he was not aware of any pre-accident treatment on the part of the petitioner.

Dr. Shadid disagreed with Petitioner's attorney who argued that adrenaline may have caused petitioner to not report any right knee symptoms. He noted petitioner reported relatively minor complaints at the emergency room but did not complain at all as to his right knee. He noted Petitioner did not become symptomatic immediately following the August 6, 2020 accident based on his review of the medical records. He noted petitioner did not initially complain of right knee pain following the accident. Dr. Shadid disagreed that the MRI findings revealed any acute findings. He noted petitioner had some fluid in his knee, but that this would be consistent with Petitioner having a severe pre-existing osteoarthritic condition.

Dr. Shadid testified that he spent a significant amount of time with the Petitioner during both of his examinations, and that he actually spent more time with the Petitioner than he would with his own patients. [Petitioner disagreed as to the second visit. Petitioner denied being examination.]

Dr. Shadid testified that he believed that Petitioner could work full duty. He agreed that many individuals who have osteoarthritis in their knee are asymptomatic. However, he noted that symptoms from osteoarthritis are activity based, and this was consistent with Petitioner having symptoms when performing work activities.

On cross-examination, he accused Petitioner of symptom magnification and/or secondary gain if not malingering based on the subjective complaints and diagnostic imaging, and that there was a recurrence of work-related incidents. *Id*. at 24-25. On redirect, he testified that the ladder event did not increase the urgency of needing a knee replacement. *Id*. at 41.

III. CONCLUSIONS OF LAW

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

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

Credibility Findings: In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him be a credible witness. Petitioner was forthright when answering questions from his attorney and Respondent's attorney. His testimony is corroborated by the medical records. His testimony was internally consistent, and the history provided to the medical providers were also consistent. Petitioner presented at trial as being unsophisticated. The Arbitrator finds that any inconsistencies in his testimony were not made with the intent to deceive or for secondary gain. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

The Arbitrator read the evidence depositions of Dr. Howard Freedberg and Dr. Chandrasekhar Sompalli and compared their testimony with the evidence submitted and found their testimony persuasive. The Arbitrator finds that the testimony of Dr. Howard Freedberg and Dr. Chandrasekhar Sompalli was straight forward, candid, non-evasive and consistent with the evidence.

The Arbitrator also read evidence deposition of Dr. Hythem P. Shadid taken on August 17, 2022. The Arbitrator is not persuaded by the findings and opinions of Dr. Shadid. The Arbitrator finds that Dr. Hythem Shadid at best confused Petitioner's claim with another case or relied upon unsupported evidence to support his opinions. For example, Dr. Shadid testified that the emergency room "…medical records show that he [Mr. Mirabile] was smiling in comfortable position while ambulating well before being discharged in a stable position." (RX3, pp. 12-13) The emergency room records of Rush Medical Center do not support Dr. Shadid's allegation. But, even if he did, smiling in an emergency room is not inconsistent with the evidence.

Moreover, Dr. Shadid's claim that Petitioner is a malinger is not supported by the evidence and contradicted by the other medical providers as well as the course of conduct of Petitioner. In conclusion, this Arbitrator is not persuaded by the findings and opinions of Dr. Shadid.

The Arbitrator finds that Dr. Sompalli's and Dr. Freedberg's version of the facts more probable and more consistent with the evidence than those of Dr. Shadid. The Arbitrator finds inconsistencies in Dr. Shadid's testimony and in his responses to opposing counsel's cross examination, the combination of which has caused the Arbitrator to question the reliability of his opinions. The Arbitrator finds that Dr. Shadid testimony was consistently inconsistent with the record as a whole.

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

It is well-established that an accident need not be the sole or primary cause-as long as employment is a cause-of a claimant's condition. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill.2nd 193, 205 (2003). Furthermore, an employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill.App.3d 882, 888 (2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill.2d 30, 36 (1986). Where an accident accelerates the need for surgery, a claimant may recover under the Act. *Id. at 36*. Thus, even if the claimant had a pre-existing 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. *Sibro, Inc. v. Industrial. Comm'n* 207 Ill.2d 193, 205 (2005). 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. *Mason & Dixon Lines, Inc. v. Industrial Comm'n,* 99 Ill. 2d 174, 181 (1983*); Azzarelli Construction Co. v. Industrial Comm'n,* 84 Ill. 2d 262, 266 (1981*).* 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, 63 (1994). Prior good health followed by a change immediately following an accident allows an inference that subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Comm'n* 315 Ill.App.3d 1197, 1205 (2000). The rational justifying the use of the "chain of events" analysis to demonstrate the existence of an injury would also support its use to demonstrate an aggravation of a preexisting injury. *Patrick Szvmanski v. J Ave Development, Inc.,* 23IWCC0390, 7-8 (2003).

It is also well established that the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401 (1984); *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675 (2009); 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). Not only may the Commission decide which medical view is to be accepted, it may attach greater weight to the opinion of the treating physician. *International Vermiculite Co. v. Industrial Comm'n*, 77 Ill.2d 1, 3 (1979); *ARA Services, Inc. v. Industrial Comm'n*, 226 Ill. App. 3d 225 (1992). However, expert medical evidence is not essential to support the Commission's conclusion that a causal relationship exists between a claimant's work duties and his condition of ill-being. *International Harvester v. Industrial Comm'n, 93 Ill. 2d 59,*

63, (1982). A chain of events suggesting a causal connection may suffice to prove causation. *Consolidation Coal Co. v. Industrial Comm'n,* 265 Ill. App. 3d 830, 839 (1994*)*

Respondent does not dispute accident. The parties stipulated that Petitioner sustained an accident that arouse out of and in the course of his employment on all three accidents. The Arbitrator notes that all three accidents were witnessed by a co-employee. The Arbitrator further notes that Petitioner's work van had to be towed from the scene of the August 6, 2020 accident.

Here there is no conflict between Petitioner's testimony and the medical records. Petitioner admitted that on the day of accident he did not experience knee pain. He first experienced knee pain and was limping the next day. His testimony was unrebutted and consistent.

Neither party introduced into evidence the accident report for the first, second or third accident. Neither party produced any witnesses to support or refute Petitioner's testimony that he experienced knee pain the day after the first accident of August 6, 2020. No evidence was submitted as when the accident report for the August 6, 2020 accident was completed.

The Arbitrator is mindful finds that the accident report and testimony of the co-employees of Petitioner is the same evidence that either party could have presented at trial to corroborate or rebut Petitioner's testimony regarding the knee pain resulting from the accident of August 6, 20202. Respondent could have offered evidence from witnesses to rebut Petitioner's claim that he sustained a right knee injury from a work-related accident. This evidence, if available and no evidence was introduced that it was not, was within Respondent's custody and control. The Arbitrator having found that Petitioner's testimony was credible, finds that Petitioner made a prima facie case of a work-related condition of ill-being to his right knee.

The failure of a litigant to call a witness within the control of such litigant is a proper subject of comment. When neither party calls an available witness, whatever presumption will be indulged in from the failure to call such witness will be against the party to whose interest such witness would most likely incline, and failure to produce such witness is, in such case, a proper subject of comment. *Nakis v. Amabile*, 103 Ill. App 3d 840 (1981).

The Arbitrator finds that Respondent failed to present persuasive evidence to establish that Petitioner's August 6, 2020 accidental injury to his right knee is not compensable under the Act after Petitioner presented a *prima facie* case. In support of this finding the Arbitrator cites *Dollison v. Chicago, Rock Island & Pacific Railroad Co.*, 42 Ill.App.3d 267 (1st Dist. 1976), wherein the appellate court held that once a *prima facie* case is established by a plaintiff, the trier of fact may infer that available evidence which is not produced would be unfavorable to the defendant. As previously set forth, Respondent failed to submit the initial injury report and the testimony of Petitioner's co-employees or supervisor into evidence. However, this inference is not pivotal to the Arborator's finding that the Petitioner proved by a preponderance of the evidence that his right knee pain and need for surgery is causally related to his work accident of August 6, 2020. This finding is based on the totality of the evidence.

No evidence was introduced that an intervening event occurred between August 6, 2020 and September 10, 2020, the first day Petitioner sought medical treatment after being in the emergency room.

The unrebutted evidence is that prior to his August 6, 2020, Petitioner engaged in a physical demanding job and no evidence was introduced that Petitioner was unable to perform his duties before the accident nor that he performed his duties with pain.

The unrebutted persuasive evidence is that after the accident, Petitioner worked in pain. And, that only after his knee brace purchased post-accident did not help enough, he sought medical treatment on September 10, 2020.

To establish causation under the Act, a claimant must show by a preponderance of the evidence that some act or phase of her employment was a causative factor in her ensuing injury. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill.App.3d 582, 592 (2d Dist. 2005), citing Illinois Supreme Court case *Sibro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193 (2003). An accidental 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. *Id.* It is axiomatic that when the injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment. *Caterpillar, Inc. v. Industrial Comm'n*., 228 Ill. App. 3d 288 (3d Dist. 1992).

Here, it is undisputed that the work events of August 6, 2020, June 1, 2021, and January 13, 2022 arose out of and in the course of Petitioner's employment. The only question is whether Petitioner's knee condition is causally related to any of these events. Petitioner credibly testified that prior to the first accident, he enjoyed good health and did not have any problems with his right knee. No records or any rebuttal evidence was submitted in opposition to that testimony other that the Application not specifically listing a right knee injury. While the initial emergency room records do not show that Petitioner complained of immediate right knee pain following the event, Petitioner testified that did have problems the next day. When he went to work the next day, he was limping. One or more of his co-workers offered suggestions on where to go have his knee checked out. The first mention of right knee pain was at Petitioner's first post emergency room medical visit on September 10, 2020.

On September 10, 2020, Petitioner was seen by Dr. Mandal about his knee condition. His MRI showed degenerative changes throughout the knee, in addition to a torn meniscus.

As for medical testimony, Petitioner's surgeon, Dr. Freedberg, testified within a reasonable degree of medical certainty that he believed the accident accelerated, exacerbated, aggravated or otherwise contributed to Petitioner's condition. Dr. Freedberg explained homeostatic balance, in that it is the ability of the joint of the body to adapt to the stresses applied to it, and that is what happens when you have an arthritic knee that becomes symptomatic after an accident, because something happens where the body loses the ability to maintain the balance or ability to respond normally to stress applied to it. It cannot always be seen in an MRI but in this case there is an MRI finding early on where Petitioner had full thickness cartilage loss to the medial femoral condyle chondromalacia patellae. He supported his opinion on Petitioner's condition being post-

traumatic by pointing to the MRI which showed bony signal which is usually, but not always, consistent with post-traumatic injury.

As for the subsequent work events, he opined the other two events also contributed to his condition. After the first occurrence, Dr. Freedberg said that put him in a susceptible position of having other issues happen. He recommended a partial knee arthroplasty or partial knee but was leaning toward a total knee procedure versus a partial after Petitioner continued to have work-related issues, and it became apparent he would knee a total knee replacement in the near future. Dr. Freedberg had not heard of any left knee complaints over the course of treatment. *Id*. at 15.

Additionally, Petitioner sought a second opinion with Dr. Sompalli. Based on Petitioner's history and lack of treatment for the right knee prior to the work events, Dr. Sompalli opined within a reasonable degree of medical certainty that Petitioner had a pre-existing condition of arthritis that was caused to become symptomatic. With regard to the two subsequent work events, these events just contributed to his condition. When referring to the third event carrying a ladder up the stairs, Dr. Sompalli said a knee can give out because of a meniscal tear or because of the severity of pain.

As for the time in which Petitioner felt knee pain, he testified that it was possible to not feel the effects for several days and added that without a fracture the idea that one would have immediate pain and not be able to walk is untrue.

Dr. Sompalli referred to a medical abstract that was included with his records, which explained that when you have pre-existing arthritis and there is a traumatic injury to that knee, these patients get rapid progression of the arthritis to the point where cellular-level changes occur and inflammatory changes occur where the arthritis that would have normally progressed slowly then progresses rapidly and they end up needing surgical intervention.

Dr. Hythem Shadid testified that he performed two independent medical examinations on Petitioner and opined that Petitioner's right knee condition was not causally related to any of the work events. He based his opinion largely on there being no mention of right knee pain in the emergency room records, or rather, according to him he said Petitioner denied upper and lower extremity weakness. Dr. Sompalli addressed this in his testimony when he said that emergency room staff do not go through every body part; rather, they concentrate on the chief complaints. It was reasonable to assume that since Petitioner just did not mention knee pain while in the emergency room, would evaluate or examine body parts for lacking pain, complaints or symptoms. The records do not show that lower extremities were tested; rather, there is simply no indication of complaints to the right knee.

Dr. Shadid also said the emergency medical records showed him smiling in a comfortable position while ambulating before being discharged. This is not indicated anywhere in the emergency room records.

Dr Shadid finding that Petitioner is a malinger is not corroborated by any of the medical providers, including the company clinic nor by any lay witness. Petitioner working in pain is inconsistent with being a malinger. The Arbitrator notes in the 27 years he was working as a carpenter before the August 2020 accident, Petitioner had one thumb injury claim 13 years prior; conduct

inconsistent with the accusation of being a malinger or being motivated for undeserved financial gain.

At first, it appeared that Dr. Freedberg was being an advocate for the Petitioner. However, it became clear that Dr. Freedberg thinks well of his patient. He admired his stoicism and work ethic. Frankly, it is nice to see a treating physician stand up for his patient when the physician believes that the patient has been inappropriately treated. Dr. Freedberg was critical of Dr. Shadid as a Section 12 examiner. He testified that he has seen multiple IMEs from him, and to his knowledge has never seen a report that found causation for the Petitioner. He took offense that Dr. Shadid called Petitioner a malingerer because he knew Petitioner well enough that there was nothing else in Petitioner's mind than working hard and doing well. He noted that this is evident by Petitioner continuing to work despite having a knee that is miserable for him. Dr. Freedberg's finding is supported also by Petitioner's own testimony. It appears Petitioner just wants to get better and continue working without pain. As noted earlier, Dr. Sompalli also disagreed with Dr. Shadid's assertion that Petitioner's condition following the crash would have immediately disabled him to the point it would have been noted in the emergency room record and for the reasons previously stated.

Respondent later questioned whether Petitioner's obesity could add to his arthritis, but on redirect it was identified that Petitioner was Five foot Five, 184 pounds, with a body mass index was 30.6, and the obesity marker starts at BMI 30, so he was just borderline obese. By the naked eye, or even reflecting on the photographs of Petitioner holding his knee submitted by Petitioner, Petitioner does not appear as "obese" in layperson terms. Petitioner presented at trial as well developed and muscular. Overweight, yes, medically obese, yes. Morbidly obese, no. Overall, Petitioner testified credibly and did not appear to have any secondary financial gains in mind.

While the Respondent pointed out the lack of right knee complaints immediately after the first work event, it is apparent that the motor vehicle collision did bring about injuries to the right side of the body.

The Arbitrator is allowed to apply common sense and the basic laws of physics in rendering decisions. The Arbitrator notes that impact at the right front bumper and front quarter panel is consistent with Petitioner body moving toward the point of impact based on Newtonian physics. [Newton's third law states that for every action (force) in nature there is an equal and opposite reaction. If object A exerts a force on object B, object B also exerts an equal and opposite force on object A. In other words, forces result from interactions.] Thus, Petitioner right leg and right side of his body coming into contact with center console and dashboard is consistent with basic physics.

The evidence establishes that it was not Petitioner's intention to miss any work due to injury as he arrived the next day, when his knee began to hurt. Despite the degenerative condition of his right knee, he has had no complaints or treatment prior to this event, and while an accidental 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, it will be found to be casually related. The Arbitrator finds in addition to the causal opinions of Dr. Freedberg and Dr. Sompalli, Petitioner has proven causal connection of his knee injury by the chain of events.

Respondent also pointed out that Petitioner retained counsel five days after the accident and signed an Application for Adjustment of Claim that did not specifically mention a right knee injury, although the Application was subsequently amended. Respondent places great weight on the initial Application failing to list the right knee. And, yet Petitioner credibly testified that the next morning he had knee pain and was limping at work; limping enough that co-employees noticed that he was limping and suggested that he seek medical care. Petitioner testified that he attempted to self-treat and deal with the injury with a knee brace most likely procured for him by his family. The Arbitrator is mindful of this inconsistency but also notes that the Application included MAW, an acronym unknown to Petitioner and unknown to Dr. Sompalli. Moreover, it is undisputed that Petitioner knee pain was medically documented well within 45 days at Petitioner's first post emergency room medical visit.

The Application's failure to mention the knee is at first blush troubling but not when viewed with the totality of the evidence. The Arbitrator is mindful that omissions in Applications are not fatal to a claim for benefits. The Arbitrator is bound to follow Commission precedent and cites *Ruffolo v. City of Chicago*, 19 IWCC 0567 wherein the Commission reversed the arbitrator's finding of no causal for cervical injury where the Application filed one month after the accident mentioned the low back injury only and not the cervical spine injury.

Petitioner temporally injured his left knee after falling in his second accident but did not have issues or symptoms with his left knee before the first and second accident nor after the third accident. The lack persistent left knee pain supports Petitioner's testimony that he injured his right knee after the first accident and that right his knee pain was constant without abating thereafter. Petitioner fell on both knees after the second accident and yet his left knee pain was short lived.

The Arbitrator considered the unrebutted evidence that Petitioner denied experiencing right knee pain or undergoing any right knee treatment prior to the accident of August 6, 2020. No evidence was introduced that he had problems performing his regular work in a physically demanding job as a rough carpenter, including working on his knees with knee pads, before the accident of August 6, 2020. No evidence was introduced that Petitioner was limping due to an arthritic right knee prior to his motor vehicle accident nor that he missed time off work because of preexisting right knee pain nor that he requested any reasonable accommodation because of right knee pain.

Neither parity introduced into evidence an accident report for any of the accidents. Moreover, neither party presented Petitioner's supervisor or co-workers to corroborate or dispute Petitioner's testimony that he was limping due to right knee pain when he appeared at work the next morning. This claim was vigorously, ably and skillfully defended by highly competent Respondent's counsel. And, yet the accident report regarding the August 6, 2020 accident was not introduced into evidence nor evidence introduced when it was completed nor any explanation why it was not available.

The failure of a litigant to call a witness within the control of such litigant is a proper subject of comment. When neither party calls an available witness, whatever presumption will be indulged in from the failure to call such witness will be against the party to whose interest such witness

would most likely incline, and failure to produce such witness is, in such case, a proper subject of comment. *Nakis v. Amabile*, 103 Ill. App 3d 840 (1981).

In the case at bar, the Arbitrator finds that Petitioner presented a *prima facie* case that his right knee injury was casually related to the accident of August 6, 2020. Thus, the Arbitrator finds that it would have been more in Respondent's interest to submit the accident report into evidence and produce witnesses, if any existed, that Petitioner did not complain of knee pain weeks after the August 6, 2002 accident. Respondent did not do so. The Arbitrator, therefore, draws the inference that Respondent did not do so because to do so was not in Respondent's interest and would have been helpful to Petitioner. The Arbitrator draws the inference that such evidence would corroborate Petitioner's testimony that he was limping the morning after the accident.

In support of this finding the Arbitrator cites *Dollison v. Chicago, Rock Island & Pacific Railroad Co*., 42 Ill.App.3d 267 (1976) wherein the appellate court held that once a *prima facie* case is established by a plaintiff, as in the trier of fact may infer that available evidence which is not produced would be unfavorable to the defendant. As previously set forth, Respondent failed to submit the initial injury report or rebuttal witnesses into evidence. Although, without this inference, the Arbitrator still finds in favor of Petitioner on causal, but the negative inferences from the failure of proof supports this finding of causal based on the totality of the persuasive evidence.

Therefore, the Arbitrator finds that Petitioner's current condition of ill-being and need for knee surgery is causally related to the work event on August 6, 2020, but also that the work events of June 1, 2021 and January 13, 2022 contributed in a dovetail manner to his current condition of ill-being to his right knee.

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 mandates that the Respondent shall provide and pay for all the necessary surgical services which are reasonably required to cure or relieve from the effects of the accidental injury. Section 8(a) 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…" 820 ILCS 305/8(a). Medical care under Section 8(a) is continuous as long as such care is required to relieve the effects of the injury. *Freeman United Coal Mining Co. v. Industrial Commission*, 81 Ill.2d 335 (1980). Here, there is no contest as to the treatment provided to Petitioner for the non-right-knee-related care and therefore, the Arbitrator concludes that treatment to be reasonable and necessary and thus, charges for said treatment must be paid by the Respondent.

As for the right knee, Dr. Freedberg and Dr. Sompalli are of the opinion that past treatment has been reasonable and necessary. Petitioner underwent conservative care in the form of physical therapy and injection treatment prior to receiving the surgical recommendation. Dr. Shadid, while

refusing to causally relate the knee condition to Petitioner's work events, did agree that the next step would be a knee replacement.

Based on the medical opinions rendered, the Arbitrator finds that all claimed medical services provided to Petitioner were reasonable and necessary, and further finds that the Petitioner is entitled to have Respondent pay the following medical expenses:

Rush University Health System/Rush Oak Park Hospital for services rendered from 8/06/2020 to 8/07/2020 in the amount of $5,391.50.

Illinois Orthopedic Network for services rendered from 9/10/2020 to 12/3/2020 in the amount of $7,558.07

ILBJ - Hinsdale Orthopedics for services rendered on 10/15/2020 in the amount of $1,303.96.

Midwest Specialty Pharmacy for services rendered from 9/10/2020 to 3/23/2023 in the amount of $16, 416.04.

Preferred MRI for services rendered from 9/19/2020 to 11/10/2020 in the amount of $4,500.00.

Total Rehab, P.C. Garfield Ridge for services rendered from 9/16/2020 to 2/5/2021 in the amount of $5,018.18.

Concentra for services rendered from 6/1/2021 to 6/3/2021 in the amount of $422.55.

Suburban Orthopedics for services rendered from 6/8/2021 to 3/23/2023 with a balance of $2,243.04.

Northwestern Medicine for services rendered from 6/8/2021 to 3/23/2023 in the amount of $12,667.50.

Bright Light Medical Imaging for services rendered on 4/6/2022 in the amount of $500.00.

Elite Orthopaedics and Sports Medicine, LLC for services rendered from 4/4/2022 and 4/8/2022 in the amount of $621.48.

The Arbitrator awards medical expenses as evidenced by the billing records contained in Petitioner's Exhibit 2 through 12 and as listed above in accordance with Section 8 of the Act. Respondent is entitled to credit for medical bills previously paid under the Act. Respondent stipulated that it did not pay any medical bills for which it would be entitled to 8(j) credit, and, thus, none are awarded.

WITH RESPECT TO ISSUE (K), WHETHER PETITIONER ENTITLED TO PROSECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

Having found that Petitioner's condition to his knee is causally related to his work injury of August 6, 2020, and because he has not completed his medical care nor reached maximum medical improvement for his knee, Petitioner is entitled to prospective e medical care.

Specific procedures or treatments that have been prescribed by a medical service provider are "incurred within the meaning of section 8(a) even if they have not been performed or paid for. *Bennett Auto Rebuilders v. Industrial Comm'n*, 306 Ill. App. 3d 650, 655-56 (1999). The claimant bears the burden of proving, by a preponderance of the evidence, his or her entitlement to an award of medical care under section 8(a). *Westin Hotel v. Industrial Comm'n*, 372 Ill.App. 3d 527, 546 (2007). Questions regarding entitlement to prospective medical care under section 8(a) are factual inquiries for the Commission to resolve. *Max Shepard, Inc. v. Industrial Comm'n*, 348 Ill.App. 3d 893, 903 (2004). Section 8(a) of the Act entitles 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. *Certified Testing v. Industrial Comm'n*, 367 Ill.App.3d 938 (2006). It is within the Commission's province to weigh and to judge witness credibility, to resolve conflicts in medical testimony, and to choose among conflicting inferences therefrom. *Bennett Auto Rebuilders v. Industrial Comm'n*, 306 Ill.App.3d 650, 655 (1999).

Here, Petitioner testified he wants to proceed with the total right surgery recommended by Dr. Sompalli and by Dr. Freedberg. Dr. Shadid also agreed that a right total knee surgery was reasonable and necessary. Based on the Arbitrator's findings above with regard to causation, the Arbitrator further finds that Petitioner has proven by a preponderance of the evidence the reasonableness and necessity of a right total knee surgery. Accordingly, Respondent is hereby ordered to authorize and pay for the total right knee surgery and any treatment that is reasonable and necessary to make it so, including but not limited to the diagnostic x-rays recommended by Dr. Freedberg.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC012377
Case Name	Larry Dale Sanders v. Williamson County Highway IL 37
Consolidated Cases	
Proceeding Type	8(a)/19(h) Petition
Decision Type	Commission Decision
Commission Decision Number	25IWCC0061
Number of Pages of Decision	6
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Michael Bantz

DATE FILED: 2/6/2025

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Larry Dale Sanders,

Petitioner,

vs. No. 19 WC 012377

Williamson County Highway Dept.,

Respondent.

DECISION AND OPINION ON REVIEW PURSUANT TO §8(a)

This matter comes before the Commission on Petitioner's §8(a) Petition for Review of the Arbitrator's October 21, 2020, decision, seeking additional medical expenses and prospective medical care for his cervical spine condition. Specifically, Petitioner seeks to undergo a single level cervical disc replacement at C6-7 as recommended by Dr. Matthew Gornet and requests that Respondent authorize and pay for the recommended treatment.

Petitioner's case was originally tried before the Arbitrator on August 13, 2020, for cervical spine and right shoulder injuries resulting from a work accident of March 26, 2019. Accident and causation were not disputed, and the case was heard on nature and extent only. The Arbitrator awarded Petitioner 35% loss of use of the person-as-a-whole under §8(d)2 of the Act, representing 15% for the right shoulder and 20% for the cervical spine.

Petitioner's current §8(a) Petition was filed on March 22, 2024, and seeks additional benefits due to the alleged worsening of his cervical injury sustained in his March 26, 2019, accident. On November 19, 2024 a hearing on this Petition was held by Commissioner Parker.

Findings of Fact:

On March 26, 2019, Petitioner, a machine operator for Williamson County Highway Department, injured his right shoulder and neck when a tree fell and struck Petitioner, causing him to roll backwards down a bank. On July 2, 2019, Dr. Matthew Gornet performed disc replacement surgery at C3-4, C4-5, and C5-6. On July 13, 2020, Dr. Gornet found Petitioner to be at maximum medical improvement for his cervical injury and released him to full duty work. Petitioner testified he has not had any further accidents, injuries, or trauma to his neck since his March 26, 2019 incident.

At the November 19, 2024 review hearing, Petitioner testified he had not missed any work because of the injuries he sustained in 2019. He testified his neck did well for approximately three years but then his neck became painful until he could no longer tolerate it and he returned to Dr. Gornet on September 11, 2023. Dr. Gornet ordered a new cervical MRI, which showed Petitioner's C6-7-disc herniation was possibly worse. Petitioner was prescribed a steroid injection on the right at C6-7 with Dr. Blake on September 20, 2023. Dr. Gornet also prescribed physical therapy. On February 8, 2024, Dr. Gornet recommended disc replacement at C6-7. Petitioner testified he now wishes to undergo that surgery.

At the November 19, 2024 hearing, Respondent offered into evidence the June 6, 2024 deposition testimony of its Section 12 orthopedic surgeon, Dr. Donald DeGrange. Dr. DeGrange diagnosed Petitioner with disc replacements at C3-4, C4-5 and C5-6 and intervertebral degeneration with facet arthritis at C2-3 and C6-7. Dr. DeGrange disagreed with Dr. Gornet that Petitioner's current complaint, pathology and treatment were aggravated by the March 26, 2019 work accident. Dr. DeGrange opined Petitioner's pathology on the 2019 and 2023 cervical MRIs were identical. He further opined Petitioner suffered from age-appropriate natural degeneration of his spine. Regardless of causation, Dr. Degrange did not agree with Dr. Gornet's surgical recommendation.

At the November 19, 2024 hearing, Petitioner offered into evidence the records and the September 12, 2024 deposition testimony of Petitioner's treating surgeon, Dr. Gornet. Dr. Gornet testified as part of his original treatment, he performed multilevel cervical disc replacements at C3-4, 4-5, and 5-6. Dr. Gornet testified Petitioner also had pathology at C6-7 in 2019, but he chose not to operate at that level. He testified he advised Petitioner there was a possibility for future treatment at C6-7. Dr. Gornet testified Petitioner did well following the surgery and was placed at MMI on July 13, 2020. Petitioner returned for a follow-up on September 11, 2023, with complaints of worsening neck pain, more to the right trapezius and right shoulder. Dr. Gornet testified he ordered and reviewed a new cervical MRI, which showed increased disc protrusion to the right at C6-7, when compared with the previous MRI. Dr. Gornet recommended physical therapy and injections, which did not provide significant relief. At Petitioner's appointment on August 2, 2024, Dr. Gornet recommended cervical disc replacement at C6-7.

Petitioner also offered into evidence the records of Dr. Helen Blake, MRI report from September 11, 2023, CT report from February 8, 2024, physical therapy records, and pre-operative labs from SIH Memorial Hospital of Carbondale. Dr. Blake administered right C6-7 ILESI on September 20, 2023 without significant relief.

Conclusions of Law:

Pursuant to §8(a) of the Act, Petitioner is entitled to any and all necessary care to cure or relieve the effects of his work-related injuries. 820 ILCS 305/8(a). Upon establishment of a causal nexus between the injury and 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).

While Petitioner's multilevel disc replacements in 2019 improved his condition, his C6-7 pathology subsequently worsened after his MMI release in 2020. By 2023, Petitioner returned to Dr Gornet with increased right sided trapezius and shoulder symptoms. Dr. Gornet initially prescribed conservative treatment, which did not provide significant relief, and later recommended a C6-7-disc replacement. He opined the need for surgery was related to Petitioner's original work injury and a progression of his problem at C6-7.

The Commission finds the opinions of Dr. Gornet more persuasive than those of Dr. DeGrange. As Petitioner's treating provider, Dr. Gornet is more familiar with Petitioner's overall condition compared with Dr. DeGrange, who only evaluated Petitioner one time. Additionally, Dr. Gornet has performed numerous disc replacements and published several peer reviewed studies on the long-term aspects of three to four level cervical disc replacements in injured workers, contrasted with Dr. DeGrange, who does not perform cervical disc replacements. As Dr. Gornet has more experience with cervical disc replacements, the Commission relies on his opinion.

The Commission agrees with Dr. Gornet's opinion Petitioner's C6-7 pathology is causally related to the original accident. The Commission notes there was no evidence of an intervening accident between 2020 and 2023. Petitioner's updated MRI showed progression of his C6-7 right sided protrusion, which correlated with his increased right sided complains. Dr. Gornet testified Petitioner had C6-7 pathology in 2019 but Dr. Gornet chose not to operate at that level because he did not feel the benefits outweighed the risks at that time. However, he did advise Petitioner of the possibility of future treatment at that level. Although Petitioner significantly improved and was able to return to full duty work for several years, Gornet testified the multilevel adjacent prostheses put some stress on the already injured C6-7 until it became symptomatic. Dr. Gornet attempted to manage Petitioner's increased symptoms with conservative care, but it did not provide significant

relief and he ultimately recommended surgery. Dr. Gornet opined Petitioner's pathology and complaints were consistent with his original work injury and therefore causally related.

The Commission is not persuaded by Dr. DeGrange's opinion Petitioner's increased symptoms were caused by degeneration, age, and fatigue. Altogether, we find Dr. DeGrange's testimony inconsistent and lacking consideration of Petitioner's increased right sided symptoms. On the one hand, Dr. DeGrange testified there were essentially no changes from the 2019 and 2023 MRI, while on the other hand testifying the changes on the updated MRI were solely from degeneration. DeGrange further testified if Petitioner had significant C6-7 pathology in 2019, Dr. Gornet would have operated at that level. Moreover, he did not believe Petitioner's pathology would have progressed from the adjacent multilevel prothesis because disc replacements, unlike fusions, were designed to improve motion and remove all stress on the adjacent levels. Although Dr. Gornet agreed that disc replacements did improve overall motion over fusions, therefore lessening the risk of adjacent level failure, he testified there was still some risk. Moreover, he disagreed with DeGranges's opinion he would have operated at C6-7 if there was significant pathology for the reasons stated above. Accordingly, we are not persuaded by Dr. DeGrange's opinion.

At the November 19, 2024 hearing, Petitioner offered into evidence medical bills incurred following the August 13, 2020 hearing. Respondent objected to the reasonableness, necessity, and causal relationship of those bills, specifically, the preoperative cardiac evaluation outlined in Petitioner's Exhibit 10. The Commission finds 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 March 26, 2019, 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 Respondent shall authorize and pay for the C6-7-disc replacement surgery recommended by Dr. Gornet, as well as all reasonable and necessary attendant care.

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.

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.

February 6, 2025

MP/nns
r-11/19/24
068

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC015243
Case Name	David Steele v. Village of Schaumburg
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0062
Number of Pages of Decision	20
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Patrick Serowka
Respondent Attorney	Michael Manseau

DATE FILED: 2/7/2025

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DAVID STEELE,

Petitioner,

vs. NO: 22 WC 15243

VILLAGE OF SCHAUMBURG,

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 and permanent partial disability (PPD) benefits, and being advised of the facts and applicable law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator which is attached hereto and made a part hereof.

The Commission notes the Arbitrator's award of the medical bills provided in Petitioner's Exhibit 6 and clarifies for the record that the correct amount due Alexian Brothers Medical Center is $2,192.00. Respondent shall pay this amount together with the remaining medical bills comprising Petitioner's Exhibit 6. Said payments shall also be made pursuant to Sections 8(a) and 8.2 of the Act. The Commission further finds that Respondent is entitled to credit for medical payments previously made as evidenced by Respondent's Exhibit 4, its medical payments ledger.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 10, 2024 is hereby modified as stated and otherwise 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 other 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.

February 7, 2025

CAH/pm
O: 1/30/25
052

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC015243
Case Name	David Steele v. Village of Schaumburg
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Jennifer Bae, Arbitrator

Petitioner Attorney	Patrick Serowka
Respondent Attorney	Michael Manseau

DATE FILED: 4/10/2024

/s/Jennifer Bae, Arbitrator
Signature

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

STATE OF ILLINOIS)
)SS.
COUNTY OF)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

David Steele
Employee/Petitioner

Case # 22WC015243

v.
Village of Schaumburg
Employer/Respondent

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Arbitrator Jennifer Bae**, Arbitrator of the Commission, in the city of **Chicago**, on **2/9/24**. 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 **June 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 ***$107,166.09***; the average weekly wage was ***$2,060.88***.

On the date of accident, Petitioner was ***30*** years of age, ***married***, with ***2*** dependent children.

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

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

ORDER

Medical Bills

Respondent shall pay reasonable and necessary medical services of $24,039.00 listed in PX 6: Alexian $6,576.00 (unpaid), Grayslake Rehabilitation $17,064.00 (unpaid), Elk Grove Radiology $69.00 (unpaid), and Illinois Bone & Joint Institute $330.00 (unpaid), as provided in Section 8(a) of the Act per the Illinois Medical Fee Schedule.

Permanent Partial Disability

Respondent shall pay Petitioner permanent partial disability benefits of $937.11/week for 90 weeks, because the injuries sustained caused 18% loss of the person-as-a-whole, as provided in Section 8(d)2 of the Act.

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

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

Jennifer E Bae

Signature of arbitrator

April 10, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

DAVID STEELE,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 22 WC 015243
VILLAGE OF SCHAUMBURG,	)	
	)	
	)	
Respondent.	)	

MEMORANDUM OF DECISION OF ARBITRATOR

I. PROCEDURAL HISTORY

Mr. David Steele ("Petitioner"), by and through his attorney, filed an Application for Adjustment of Claim for benefits under the Worker's Compensation Act ("Act"). *820 ILCS 305/1 et seq. (West 2014)* Petitioner alleged that he sustained an accidental injury on June 12, 2022 while employed by Village of Schaumburg ("Respondent"). A hearing was held on February 9, 2024 on the following disputed issues: causation, average weekly wage, medical expenses, and nature and extent. (AX 1)

Petitioner testified in support of his claim. Dr. Troy Karlsson, Respondent's Section 12 orthopedic examiner, was called to testify by evidence deposition on January 22, 2024. (RX 5) In addition to his testimony, Dr. Karlsson generated two reports addressing the disputed issues. (RX 5, attached Exhibits 2, 3) 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 employed by the Village of Schaumburg as a firefighter/paramedic. (T. 10) He has been so employed since December of 2015. (T. 10, 27) He testified that his job duties and responsibilities included responding to ambulance calls to provide emergency medical services. (T. 11) His firefighting duties included responding to locations with fire or other problems, including rescuing people. (T. 11) If there was a live fire, he made entry into the structure, searched for victims, and put out the fire with hoses that were 1-3/4 inch or 2-1/2 inches in diameter. (T. 11) When the hoses were charged with water, he must move them around buildings and advance them upstairs, down hallways and around corners. (T. 11-12) He explained that dry hoses were 100 feet long, weighed 50 pounds, but could weigh a couple hundred pounds when

charged with water. (T. 11-12) These activities required a lot of force. (T. 12) He also used a variety of hand tools and power tools, such as 40–50-pound hydraulic spreaders, cutters, and Rams. (T. 14)

Petitioner identified RX 1 as his written job description and confirmed that it was fair and accurate. (T. 28) According to RX 1, Petitioner was required to perform hazardous tasks under emergency conditions, which may require strenuous exertion under such handicaps as smoke, heat, and confined spaces. (RX 1) As to his essential job functions, Petitioner was required to respond to fire alarms, lead out hose lines, operate nozzles, direct water streams, raise and climb ladders, use portable extinguishers, along with various pieces of equipment and hand tools. (RX 1)

As to his work schedule, Petitioner testified he worked one day (24 hours) on and two days off. (T. 28) He testified that he usually worked out when he was at the fire station. (T. 28-29) One of his job requirements was to maintain an appropriate level of fitness that was achieved by lifting weights and exercising. (T. 29) He explained that this helped him perform all the heavy-duty physical tasks he was required to perform. (T. 29) When he worked out at the fire station, he sometimes performed heavy lifting. (T. 30)

Petitioner testified that he was performing all his firefighting duties in a full capacity in May of 2022. (T. 15) Prior to June 12, 2022, Petitioner testified he never suffered an injury to his right shoulder or pectoral muscles, nor received any treatment to these body parts. (T. 15) Further, he testified he had never been physically limited as a firefighter due to a right shoulder or pectoral condition prior to the accident. (T. 15)

Accident

Petitioner testified that on June 12, 2022, he was working out at the gym in Station 53, when he heard a pop and felt pain in his right shoulder. (T. 15-16) He was on his second set of bench-pressing 275 pounds, when his symptoms began. (T. 16) He explained the weight was at the bottom of his chest, as he was descending towards it when he was being spotted by a co-worker. (T. 17, 30-31)

Petitioner testified he wrote out a statement regarding how the accident occurred. (T. 48-50, PX 1, RX 3B) The Arbitrator notes that witness statements of Lieutenant Jim Sheehan and Firefighter Daniel Miller corroborate the details of the accident. (RX 3C, RX 3D)

Summary of Medical Evidence

Petitioner initially sought medical care and treatment at Alexian Brothers Medical Center on June 12, 2022, at which time he presented to ER with right pectoral pain and anterior shoulder pain. (T. 17, PX 2, p. 6) He reported an onset of a popping sensation in his pectoral muscle when bench pressing 275 pounds with no prior pain. (T. 17-18, PX 2, pp. 6-7)

According to the ER records, Petitioner's physical examination revealed swelling over the anterior upper corner of the pectoral muscle, tenderness to palpation, ecchymosis and bruising into the right bicep, and tenderness to palpation over the long and short head, as well as the body of the biceps.

(PX 2, p. 7) Petitioner had limited range of motion in the right shoulder. (PX 2, p. 7) He was diagnosed with a possible pectoral bicep partial tear. (PX 2, pp. 7-8) He was given work restrictions and advised to follow up with orthopedics for further evaluation. (PX 2, p. 8) He was discharged in stable condition. (PX 2, p. 8) Petitioner testified that he received work restrictions because he could not perform all firefighting duties. (T. 31-32)

On June 13, 2022, Petitioner was seen at Illinois Bone & Joint Institute ("IBJI"). (PX 5) He told Physician's Assistant ("PA") Alyssa Scanlon he was bench pressing at work and felt a pop in the anterior shoulder, after which he noticed bruising and deformity along the pectoral muscle with pain and weakness. (T. 18, PX 5, p. 141) On examination, Petitioner had moderate ecchymosis to the right pectoralis major, associated deformity and some tenderness, and a full range of motion in all places. (PX 5, p. 141) However, Petitioner had a significant weakness with pectoralis muscle tension. (PX 5, pp. 141-143) Petitioner did not have any positive provocative tests involving the rotator cuff. (PX 5, p. 142) He had a positive O'Brien's test and a positive Speed's test, along with clicking and popping. (PX 5, p. 142) There was no evidence of any instability. (PX 5, p. 143) PA Scanlon diagnosed Petitioner with a rupture of the pectoralis major muscle. (PX 5, p. 143) PA Scanlon ordered MRIs for the shoulder and chest. (PX 5, p. 143) Petitioner testified he was limited to desk duty and was accommodated. (T. 18-19)

On June 16, 2022, Petitioner underwent MRI of the right shoulder and right chest through IBJI. (PX 5, pp. 126-139) As to the right shoulder, the clinical indication was noted to be persistent shoulder and chest wall pain post popping sensation while weightlifting five days earlier. (PX5, p. 127) Medical Assistant Stephanie Arvizu noted an abnormal appearance of the anterior aspect of the inferior labrum that was suspicious for a labral tear, an abnormal appearance of the right pectoralis major muscle, myotendon junction, tendon and surrounding soft tissues/fascial planes. (PX 5, pp. 132-133) Further, there was subacromial encroachment secondary to acromioclavicular (AC) joint degenerative changes with mild anterior down sloping acromion. (PX 5, p. 133) As to the MRI of the chest, MRI revealed an avulsion of the pectoralis major tendon from its humeral insertion with four centimeters of retraction into the muscle and myotendon junction. (PX 5, p. 128) There was also a moderate grade strain/partial thickness tear of the pectoralis muscle and myotendon junction. (PX 5, p. 128) Additionally, there was a seven-centimeter intramuscular and perimuscular right pectoralis major hematoma. (PX 5, p. 128)

Petitioner testified that his MRI results revealed a pectoral tendon rupture and a Bankart tear of the labrum of the shoulder. (T. 19, PX 5, p. 115) According to his recollection, the MRI of the chest showed the tendon was separated from the humeral insertion and retracted about 4-centimeters. (T. 19) He testified that there was also 7-millimeter intramuscular hematoma, along with a labral tear of the anterior aspect of the inferior labrum. (T. 20, PX 5, p. 115) Petitioner was diagnosed with a glenoid labrum tear, pectoralis tendon rupture, and osteoarthritis of the right AC joint. (PX 5, p. 116) He testified it was his understanding that, based on the MRI findings, he would need surgery. (T. 32, PX 5, p. 116)

Petitioner had surgery with Dr. Roger Chams of IBJI on July 6, 2022, which involved six different procedures. (T. 20, PX 2) The surgery was completed at Hawthorn Surgery Center. (T. 21, PX 2) He testified the surgery was done on an outpatient basis and he did not need to stay at the hospital for overnight recovery. (T. 33, PX 2)

In his operative report, Dr. Chams noted that he performed an examination under anesthesia, along with a right shoulder arthroscopy, SLAP reconstruction, Bankart reconstruction, reverse Bankart reconstruction, and open pectoralis tendon repair. (PX 2) The preoperative and postoperative diagnoses were a right shoulder SLAP tear, Bankart tear, reverse Bankart tear, as well as a pectoralis tendon rupture. (PX 2) Petitioner tolerated the procedure well without any complications. (PX 2)

After the surgery, Petitioner was seen at IBJI on July 18, 2022. He was taken off work and physical therapy was recommended. (T. 22, PX 5, p. 87) While he was off work, he was paid workers' compensation benefits. (T. 22)

Petitioner started physical therapy at Grayslake Rehabilitation on July 21, 2022. (T. 22, PX 4) The therapist noted that Petitioner demonstrated good healing of his incisions without any signs of infections but still had some swelling. He demonstrated forward posture with standing. He had decreased scapular mobility in his bilateral upper extremities and marked muscle tightness in his bicep, and pectoralis, and scapular musculature. The therapist noted that they were unable to assess Petitioner's range of motion due to the restrictions with his rehabilitation protocol. Further, Petitioner was significantly limited in his ability to perform daily tasks, self-care, and perform his work duties. He would be off work until his upcoming appointment on August 15, 2022. The therapist recommended one session of physical therapy for four to six weeks. (PX 4)

Petitioner testified that when he began physical therapy, his therapist established goals, which included restoring strength, motion and reducing pain levels. (T. 37-38, PX 4) He testified that IBJI recommended physical therapy, work conditioning and work hardening from July 2022 to January 2023. (T. 22-23)

Per Respondent's request, Petitioner saw Dr. Troy Karlsson for a Section 12 examination on August 14, 2023. (T. 44-45) He testified that Dr. Karlsson asked about his medical history. (T. 45) Petitioner testified he could not recall any of the specific questions that were asked but he did cooperate with Dr. Karlsson's examination. (T. 45-46)

On August 15, 2022, Petitioner returned to IBJI and was seen by APN Alesia Whitt. (PX 5, p. 77) He was at six weeks post-surgery and attending physical therapy. Additional six weeks of physical therapy was recommended. APN Whitt imposed light duty restrictions, which included desk duty. Petitioner was also precluded from using his right arm except for fine manipulation. He was not allowed to reach, lift, push, pull or overhead use of the right arm. A following up with Dr. Chams was scheduled in six weeks or by September 26, 2022. (PX 5, p. 78)

Petitioner testified that he was released to light-duty desk with no use of the right arm and other restrictions as of August 15, 2022 (T. 23) He went back to work on August 16, 2022 and his restrictions were accommodated and he continued working in this capacity until he was released to full duty on January 19, 2023. (T. 23, 33) During this period, he received his full pay. (T. 23)

On August 30, 2022, Petitioner had a therapy progress visit at Grayslake Rehabilitation. He had met both of his short-term goals and was progressing towards his long-term goals. He had

successfully progressed from the sling and demonstrated good healing of his incisions. He continued to report minimal pain since surgery and remained compliant with all restrictions and his home exercise program. He also displayed improvement with range of motion and his scapular strength was progressing. The therapist felt that Petitioner would benefit from skilled physical therapy interventions to address his ongoing deficits, including muscle tightness scapular mobility and healing in the right upper extremity. The therapist also felt that Petitioner should be given upper extremity strengthening protocol to prove his strength to return to work in full duty. An additional two to three sessions per week was recommended. (PX 4)

By September 23, 2022, Petitioner had another progress visit at Grayslake Rehabilitation. He demonstrated increased range of motion in all directions and increased glenohumeral strength. He also had increased scapular control in mechanics with all reaching. Additionally, he had made improvements with joint mobility and decreased tightness in his rotator cuff scapular muscles. However, he still had decreased shoulder range of motion in all directions, decreased functional reach in the right upper extremity, weakness in the right upper extremity, scapular stabilizers as well as decreased endurance with weight bearing and rhythmic stability exercises. The therapist noted that Petitioner would progress to the next basis of rehabilitation protocol in the next one to two weeks and would begin pectorals strengthening as allowed. An additional four to six weeks of therapy consisting of two to three sessions per week was recommended. (PX 4)

On September 26, 2022, Petitioner was seen by Dr. Chams. (PX 5, p. 61) Dr. Chams noted that Petitioner was working desk duty and he was 12 weeks post-surgery. (PX 5, p. 61) He was continuing with physical therapy but did have some ongoing tightness and discomfort in the right shoulder. (PX 5, p. 61) On examination of the cervical spine, Petitioner had full range of motion without tenderness. (PX 5, p. 61) He did have decreased forward flexion, internal rotation, and external rotation in the right shoulder. He had no tenderness to the AC joint or the clavicle. (PX 5, pp. 61-62) His rotator cuff examination revealed no tenderness. (PX 5, p. 61-62) However, he had positive Neer's and Hawkins' tests. (PX 5, p. 62) Lastly, he did have some decreased strength with forward flexion. (PX 5, p. 62) Dr. Chams noted that Petitioner would continue with his sedentary work restrictions. (PX 5, p. 62) He would continue with therapy for the next six weeks and would progress with range of motion and strength exercises. (PX 5, p. 65)

On November 3, 2022, Petitioner had another progress visit at Grayslake Rehabilitation. (PX 4) He reported increased strength with some minor tightness with reaching behind his back. He felt that he was not feeling strong enough to return to work or begin work conditioning. Despite his progression with strengthening and range of motion, the therapist believed that additional therapy would be beneficial to further improve scapular stability, overhead stability, and pectoral strength, which would all facilitate a transition to work conditioning. The therapist recommended additional four to six weeks of therapy consisting of two to three sessions per week. (PX 4)

Petitioner returned to Dr. Chams on November 7, 2022. (PX 5, p. 35) He was at 18 weeks post-surgery. (PX 5, p. 35) He was doing well with physical therapy and was still working desk duty. (PX 5, p. 35) Compared to the prior examination, Petitioner's forward flexion, internal rotation, and external rotation had improved. (PX 5, pp. 35-36) He had no positive impingement testing or any tenderness in the shoulder musculature. (PX 5, pp. 35-36) His strength with forward flexion was still decreased. It appeared that he had slightly decreased strength with abduction. (PX 5, pp.

35-36) Dr. Chams recommended Petitioner to continue with physical therapy for strengthening. (PX 5, pp. 35-36) He would follow up again in two months, at which time they would discuss work conditioning. (PX 5, pp. 35-36) Petitioner's restrictions were advanced to five-pound lifting with the right shoulder. (PX 5, p. 38)

By December 20, 2022, Petitioner had completed 49 sessions of therapy. (PX 4) He reported no pain but felt some tightness in the front of the shoulder when reaching behind his back. He reported increased strength in his right upper extremity and felt more confident with pushing and lifting items overhead. He was apprehensive about returning to bench pressing but felt that he was ready to return to his full work duties. Petitioner reported significant improvement in mobility, strength, and functional capacity of his right upper extremity. The therapist noted that his reassessment demonstrated improved posture, increased range of motion and functional reach, as well as increased right shoulder and rotator cuff strength. The therapist concluded that Petitioner could transition to work conditioning at this time. (PX 4)

Petitioner testified he met all his therapy goals by December 28, 2022 and then transitioned to work conditioning by January 2023. (T. 38-39)

Petitioner was next seen at IBJI on January 3, 2023 by PA Uyenishi. (PX 5, p. 26) He was at six months post-surgery. He was attending physical therapy and was doing well. He had worked on strengthening. He had been compliant with his restrictions and limitations. He was still doing light duty work. On examination, Petitioner had no tenderness. He had slightly decreased range of motion at all planes with normal strength. He had no positive provocative testing. (PX 5, p. 26) Petitioner was to follow up after work conditioning, at which time a maximum medical improvement (MMI) determination could be made by Dr. Chams. In the interim, Petitioner was advanced to 10-pound restrictions for his right shoulder. (PX 5, p. 26)

On January 17, 2023, Petitioner had a work conditioning progress visit at Grayslake Rehabilitation. (PX 4) He reported a little bit of tightness and end range of motion when stretching overhead, but it was very mild and did not impact any function. He stated that he felt stronger and believed work conditioning prepared him to perform all his work-related activities. Petitioner's physical examination was unremarkable. He had normal range of motion in all planes, normal upper extremity strength, and no tenderness to palpation. The therapist noted that Petitioner was able to lift at least 100 pounds overhead and was able to carry at least 75 pounds in his bilateral upper extremities, which was greater than his work demanded. The therapist concluded that Petitioner demonstrated significant improvement in functional capacity and safe to return to work full duty. (PX 4)

Petitioner testified that he last saw Dr. Chams on January 19, 2023. He reported to Dr. Chams that he did not have any feeling of weakness. (T. 34) He also indicated that his strength was fully restored, and his range of motion was nearly fully restored. (T. 34) According to the IBJI records, Dr. Chams found no tenderness, crepitus, or ecchymosis. His range of motion was nearly normal, normal strength without any pain, and no positive provocative testing. Dr. Chams placed petitioner at MMI and gave him a full duty release. He was advised to follow up as needed. (PX 5, p. 8)

Petitioner's Current Condition

Petitioner testified that he is not under any doctor's care for his right shoulder or right chest currently. (T. 35-36) He said he is not taking any prescription pain medications nor had any additional diagnostic testing, injections, or surgeries since being discharged by Dr. Chams. (T. 35-36) He has not had any additional physical therapy since being discharged on December 28, 2022 nor has he had any additional work conditioning since January 17, 2023. (T. 36)

Petitioner testified he had been working full duty since his release, or about 13 months. (T. 24-25) Petitioner testified he noticed a slight limit in his range of motion with overhead reaching. (T. 25) He favored his left arm when picking up tools and equipment because he does not trust his right arm. (T. 25) However, he is not doing a lot of lifting or carrying away from the body at the shoulder or chest level. (T. 26) He admitted to never missing work for any kind of pain or dysfunction due to his right shoulder or right pectoralis. (T. 35) He said he did not have any specific restrictions from any doctor indicating he should favor his left arm versus right arm. (T. 47) Petitioner is left-hand dominant but throws a football or swings a bat right-handed. (T. 26)

Outside of work, Petitioner testified his hobbies and activities of recreation or leisure include fishing, camping, and playing with his children. He testified he has no difficulty engaging in any of these activities. (T. 42) Further, he testified he has no difficulty performing his regular activities of daily living. (T. 43)

After being released to full duty, Petitioner has been continuing with regular workouts at the fire station. (T. 41) He stated that he does not bench press the same amount of weight as he did at the time of the accident. (T. 41) He explained that he does not bench press with an Olympic barbell and instead he presses 70-pound dumbbells on each arm. (T. 57)

Petitioner testified his annual salary in 2022 was approximately $107,000.00. (T. 43) As part of the contract, he had a variety of paid work reduction days, in which he was not working. (T. 14) Petitioner testified his salary has increased since 2022. (T. 43) Besides the time lost while recovering from surgery, he testified that the accident has not caused any decrease in his earning capacity, his eligibility to apply for a promotion, or his physical ability to apply for a different position or promotion. (T. 43-44)

Section 12 Examiner – Dr. Troy Karlsson

Dr. Karlsson testified on behalf of Respondent via evidence deposition on January 22, 2024. (RX 5) He testified he is a board-certified orthopedic surgeon with Duly Health and Care, treating patients with knee, shoulder, and hip conditions. (RX 5, pp. 4-5)

Dr. Karlsson testified he performed an independent medical examination of Petitioner on August 14, 2023. (RX 5, pp. 11-12) He testified about the history of injury and course of treatment, which was consistent with Petitioner's testimony and the medical records. (RX 5, pp. 13-14) Dr. Karlsson testified that, at the time of his examination, Petitioner reported no pain but some pain when laying on his side with his arm above his head. (RX 5, p. 15) He testified that Petitioner also reported some tightness with overhead reaching or behind his back. Further, he testified Petitioner was not

having symptoms of instability to his shoulder. (RX 5, p. 15) According to Dr. Karlsson, Petitioner's symptoms were consistent with his injury and course of treatment. (RX 5, p. 16)

Dr. Karlsson testified he examined both shoulders and found no swelling, atrophy, or deformity.(RX 5, p. 16) He testified Petitioner had full range of motion in all planes. (RX 5, pp. 16-17) He testified Petitioner had no tenderness, normal strength, sensation, and no signs of any instability. (RX 5, pp. 16-17) According to Dr. Karlsson, Petitioner had a normal physical examination with respect to both shoulders. (RX 5, p. 17) He explained that there was no appreciable difference between the shoulders in terms of strength, motion, and stability. (RX 5, p. 17) Dr. Karlsson testified that Petitioner had an excellent result with his surgery and had regained all his motion. (RX 5, p. 18)

Dr. Karlsson testified he reviewed the imaging and reports from the June 16, 2022 MRI scans. (RX 5, p. 20) He testified that there was some degeneration at the AC joint with inferior spurring. (RX 5, pp. 20) Additionally, he testified there were paralabral cysts, but no obvious labral tearing. (RX 5, p. 20) He testified that the rotator cuff was intact, but there was an avulsed pectoralis tendon from the humerus. (RX 5, pp. 20-21) According to Dr. Karlsson, the avulsion was an acute finding. (RX 5, p. 21) The AC joint arthritis and inferior spurs were chronic and degenerative in nature. (RX 5, p. 21) The cysts seen adjacent to the labrum were chronic in nature, as they take six months or more to develop after changes or tears to the labrum. (RX 5, pp. 21-22)

Dr. Karlsson testified that he reviewed the July 6, 2022 operative report of Dr. Chams but would only attribute that pectoralis tendon rupture and open pectoralis tendon repair to Petitioner's work accident. (RX 5, p. 23) He explained that the treatment of the labrum with the arthroscopy, SLAP reconstruction, Bankart reconstruction, and reverse Bankart reconstruction were not related to the accident. (RX 5, pp. 23-24) Dr. Karlsson testified there was no evidence of any aggravation of the pre-existing conditions in the MRI films or the operative report. (RX 5, pp. 23-24) According to Dr. Karlsson, Petitioner had labral tears, but no instability on examination under anesthesia. (RX 5, p. 24) Petitioner's main complaint was relative to the pop with the pectoralis tendon rupture while bench pressing, which would be a typical mechanism for said injury. (RX 5, p. 24) Dr. Karlsson testified that a labral tear is not something that would occur simply from bench pressing because it is usually results from a sudden force on the shoulder and not a sustained force. (RX 5, p. 26)

Dr. Karlsson testified Petitioner did not require any further medical treatment at the time of his IME exam because he had an intact pectoralis tendon, excellent shoulder function, no shoulder atrophy, full range of motion and was back to his work duties without difficulty. (RX 5, p. 28) Dr. Karlsson testified Petitioner could continue working full duty without restrictions as a firefighter/paramedic. (RX 5, pp. 28-29) Further, he testified that he concurred with Dr. Chams that Petitioner had reached MMI as of January 19, 2023. (RX 5, p. 29)

Dr. Karlsson testified he performed an AMA impairment rating in his case. (RX 5, p. 30, Exhibit 3) In support thereof, he testified he relied on the history, review of the medical records, and a QuickDASH. (RX 5, p. 31) According to Dr. Karlsson, Petitioner completed the QuickDASH, which indicated he had no significant ongoing shoulder issues. He explained that this was consistent with him physical examination. (RX 5, p. 34) Dr. Karlsson offered detailed testimony

as to how he formulated his impairment rating, which ultimately was zero percent impairment to the whole person. (RX 5, pp. 36-37) He explained that this was due to the objective findings, which included no tenderness, no loss of strength, and no loss of motion. Petitioner had also reported excellent ability to do activities with very minimal problems. (RX 5, p. 38)

On cross-examination, Dr. Karlsson agreed the clinical examinations and finding on testing would be very important in diagnosing an orthopedic condition. (RX 5, p. 42) Dr Karlsson agreed that he only examined Petitioner's post-operative state, a year and 5 weeks following the operation. (RX 5, p. 43) With respect to Dr Karlsson's opinion that the labral tear was degenerative and not acute, he was shown the Radiology report of the MRI of the right shoulder from June 16, 2022. In the report the radiologist stated that the collection of parallel cysts strongly suggested a labral tear and Dr. Karlsson agreed that the presence of cysts suggested a labral tear. (RX 5, p. 47) Dr Karlsson also agreed that there was a labral tear found during surgery. (RX 5, p. 48) Dr Karlsson agreed that correcting instability is one of the goals of the Bankart repair. (RX 5, p. 49) Dr Karlsson also agreed that if one has a Bankart and reverse Bankart lesion there is a likelihood of instability of the shoulder. (RX 5, p. 50) He further agreed he saw no medical records prior to the work injury reflecting any symptomatic labral lesion or shoulder problems. (RX 5, p. 50) He agreed that bench pressing of 275 pounds creates a backward force of the humerus vis a vis the glenoid and causes some translation of the humeral head posteriorly. (RX 5, pp. 52-53) Further, he agreed with the literature that reflected this type of injury can occur with an activity of performing bench press.(RX 5, p. 52) He agreed that if you get to the end of an eccentric range of motion with 275 pounds, it might require a great deal of explosive force that could be a competent mechanism of damage to the posterior labrum. (RX 5, pp. 54-55)

Dr. Karlsson testified that when he operates on a shoulder with a constellation of pathologies, he would perform all surgical procedures necessary to restore the function of the shoulder, not just repair what might be causally related. (RX 5, p. 55) Dr. Karlsson testified that Dr. Chams properly elected to fix the other pathologies in the shoulder at the time of surgery. (RX 5, p. 56)

With respect to the AMA rating in his report he agreed he acknowledged a SLAP care and a pectoralis tendon rupture but still had zero percent impairment of the upper extremity. (RX 5, p. 58) Dr. Karlsson agreed that the AMA rating does not provide an intrinsic impairment just because a person had a surgery. (RX 5, p. 62) Dr. Karlsson agreed that even though Petitioner had a reconstruction of the superior labrum from anterior to posterior, a Bankart reconstruction, a reverse Bankart construction, and three anchors to the glenoid capsule and fiber wire, he was afforded zero impairment under the AMA rating system because he had a good outcome. (RX 5, p. 62) Dr. Karlsson testified if there are no objective findings, there is no impairment. (RX 5, pp. 61-62) He explained that this would be despite having a big surgery, going through lots of therapy, and taking time off work. (RX 5, p. 61) In other words, impairment does not equal disability. (RX 5, p. 62) He explained that if one had surgery with an excellent outcome with no objective findings, by definition, there is no impairment. (RX 5, p. 65)

III. CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).*

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

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. The Arbitrator finds Petitioner's testimony to be straight forward, truthful, and consistent with the records without any exaggeration regarding his injury, symptoms, treatment, and current condition. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find material contradiction that would deem the witness unreliable.

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

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003).* "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).*

Notwithstanding, the Commission's determination of whether a pre-exiting condition was aggravated concerns primarily medical questions, not legal ones. *Schroeder v. IWCC, 2017 IL App (4th) 160192WC, Section 26.* In other words, "is a claimant in a certain condition, an accident occurs, the 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." *Id.*

It is clear from the record that the parties agree that Petitioner sustained an accidental injury that occurred on June 12, 2022. (Ax 1) Respondent, however, qualified the causal issue as "partially disputed." (Ax 1) Based on Respondent's Section 12 IME physician, Dr. Karlsson, Respondent's position is that Petitioner's need for surgery for his acute right pectoralis rupture is causally related to the work accident, but the work accident did not cause, contribute, aggravate, or accelerate the need for surgery to correct the labral findings and AC arthritis on the Petitioner's right shoulder. This Arbitrator disagrees with Respondent's position.

First, Petitioner is a 30-year-old firefight/paramedic with good health. He testified that he was performing all the firefighting duties in a full capacity prior to the accident without any physical limits. (T. 15) Prior to the accident that occurred on June 12, 2022, Petitioner testified that he never suffered an injury to his right shoulder or pectoral muscles, nor received any treatment to these body parts. (T. 15) Petitioner's testimony was corroborated by the medical record including the history and treatment he received. (PX 2, 3, 4, 5)

Second, none of the medical records indicated that the treatment Petitioner received were not related to the accident that occurred on June 12, 2022. Following the accident, Petitioner sought medical care and treatment at Alexian Brothers Medical Center. (T. 17, PX 2) After examination, Petitioner was diagnosed with a possible pectoral bicep partial tear. (PX 2) After MRIs, Dr. Chams diagnosed Petitioner with tendon rupture, glenoid labrum tear, Osteoarthritis of acromioclavicular joint. (RX 5, p. 116) Dr. Chams noted that surgical treatments were discussed due to "failed traumatic injury, and persistent pain, dysfunction, limitation with [activities of daily living], and weakness." (RX 5, p. 116) On July 6, 2022, Dr. Chams performed surgery to repair right shoulder SLAP tear, Bankart tear, reverse Bankart tear, and pectoralis tendon rupture. (RX 5, pp. 100-110) Petitioner had physical therapy from July 21, 2022 to December 28, 2022. (PX 4) On January 17, 2023, at his work conditioning progress, Petitioner was able to demonstrate that he was able to return to work full duty. (PX 4) On January 19, 2023, Dr. Chams indicated that Petitioner had normal strength without pain, discharged him from his care, and placed him at MMI. (PX 5, p. 8) Petitioner testified that his strength was fully restored, and his range of motion was nearly fully restored. (T. 34)

Third, the Respondent's Section 12 IME physician, Dr. Karlsson actually supported Petitioner's position. According to Dr. Karlsson, the open pectoralis tendon repair was causally related to Petitioner's work accident. (RX 5, p. 23) However, Dr. Karlsson believed that the other diagnosis of AC joint arthritis and labral tear were pre-existing, degenerative, and incidental findings that were not aggravated or accelerated by Petitioner's work injury and therefore, the need for surgery of the labrum with the arthroscopy, SLAP reconstruction, Bankart reconstruction, and reverse Bankart reconstruction were not related to the work accident. (RX 5, pp. 23-28) Dr. Karlsson explained that a labral tear is not something that would occur simply from benching pressing because it is a result from a sudden force and not a sustained force on the shoulder. (RX 5, P. 26) But on cross-examination, he admitted that bench pressing 275 pounds might require a great deal of explosive force that could be a competent mechanism of damage to the posterior labrum if done in high repetition of weightlifting. (RX 5, pp. 53-55) Dr. Karlsson believed that labral tear was

chronic in nature because the MRI revealed cysts adjacent to the labrum which takes six months or more to develop after changes or tears to the labrum. (RX 5, pp. 21-22) He also believed that the AC joint arthritis was chronic and degenerative because the MRI revealed inferior bone spurs. (RX 5, pp. 21-22) Accepting Dr. Karlsson's opinion that Petitioner had degenerative conditions of AC joint arthritis and labral tear, it is clear that the accident deteriorated Petitioner's conditions. Following the accident, Petitioner had persistent pain, limitation with activities of daily living, and weakness which he did not have prior to the accident. In fact, he was healthy enough to bench press 275 pounds. It is plainly inferable that the accident caused the deterioration of Petitioner's degenerative conditions.

Based on Petitioner's testimony, the medical records and findings and opinions of Dr. Chams and Dr. Karlsson, the Arbitrator finds Petitioner has proven by a preponderance of the evidence that his current condition of ill-being with respect to his right shoulder and chest is causally related to the accident that occurred on June 12, 2022.

Issue G, Petitioner's earnings, the Arbitrator finds as follows:

Section 10 of the Act states that average weekly wage means "the actual earnings of the employee in the employment in which he was working at the time of the injury during the period of 52 weeks ending with the last day the employee's last full pay period immediately ceding the date of his injury, illness, or disablement **excluding overtime, and bonus divided by 52** …" *820 ILCS 305/10 (West 2000) (emphasis added).*

The parties agree that Petitioner's earnings in the year before the accident were $107,166.08. (Ax 1) Petitioner testified that his salary in 2022 was approximately $107,000.00. (T. 43) Based upon AX 1 and Petitioner's testimony, the Arbitrator concludes that Petitioner's average weekly wage is $2,060.88. (AX 1)

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).*

Overall, the Arbitrator finds Petitioner's treatment to be reasonable and necessary. In fact, Respondent's Section 12 examiner, Dr. Karlsson also believed that all treatment that Petitioner received was reasonable and necessary. (RX 5, p. 28) As such, the Arbitrator orders Respondent

to pay for the following outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act:

According to PX 6, the following items are listed as unpaid medical bills:

Alexian	$ 6,576.00
Grayslake Rehabilitation	$17,064.00
Elk Grove Radiology	$ 69.00
Illinois Bone & Joint Inst	$ 330.00
Total	**$24,039.00**

Issue L, the nature and extent of the injury, the Arbitrator finds as follows:

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); *Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n, 2016 IL App (1st) 152576WC, ¶ 22, 67 N.E.3d 959.* "No single enumerated factor shall be the sole determinant of disability." *820 ILCS 305/8.1b(b).*

Under Section 8.1b(b)(i), the Arbitrator notes that Dr. Karlsson offered testimony regarding his impairment rating, which was zero percent. (RX 5, attached Exhibit 3) Dr. Karlsson acknowledged that Petitioner suffered a labrum tear, a Bankart tear, a reverse Bankart tear, and an avulsion tear of pectoralis tendon of the right bicep. Petitioner required a reconstruction of the superior labrum from anterior to posterior, a Bankart reconstruction, a reverse Bankart construction, placed with three anchors to the glenoid capsule fiber wire and three additional anchors tendon, and an open pectoralis tendon repair. Dr. Karlsson stated that AMA system does not have a rating for an avulsion of the pectoralis tendon. He assigned zero for no positive objective findings on his exam 13 months post-surgery of the right shoulder. He explained that since Petitioner has no instability post-surgery, the AMA affords no impairment. He further explained that Petitioner's pre-surgical condition had no value under the AMA rating system. He said that impairment did not equal to disability since Petitioner had a successful outcome from the surgery. The Arbitrator gives minimum weight to this factor.

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes that Petitioner worked as a firefight/paramedic for the Village of Schaumburg since December of 2015. Based on Petitioner's job description and Petitioner's testimony, the Arbitrator notes that Petitioner's job is physically demanding and strenuous in nature. The Arbitrator give greater weight to this factor.

Under Section 8.1b(b)(iii), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 30 years old at the time of the accident. Due to his younger age and the number of years that he will live with the condition of ill-being, i.e., a slight limit in his range of motion

of the right shoulder, slight limit in reaching overhead on the right side and favoring his left side, the Arbitrator gives moderate weight to this factor.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes that Petitioner testified that the accident did not cause any decrease in his future capacity, nor did it have any impact on his eligibility to apply for a promotion. Furthermore, Petitioner testified that his salary has increased since the accident. Accordingly, the Arbitrator gives no weight to this factor.

With respect to Subsection (v) of Section 8.1(b), evidence of disability corroborated by treating medical records, the Arbitrator finds that Petitioner developed immediate pain and felt a pop in his right shoulder at the time of the accident, which was witnessed and timely reported. Following the accident, Petitioner sought medical care and treatment at Alexian Brothers Medical Center. (T. 17, PX 2) After examination, Petitioner was diagnosed with a possible pectoral bicep partial tear. (PX 2) After MRIs, Dr. Chams diagnosed Petitioner with tendon rupture, glenoid labrum tear, Osteoarthritis of acromioclavicular joint. (RX 5, p. 116) Dr. Chams noted that surgical treatments were discussed due to "failed traumatic injury, and persistent pain, dysfunction, limitation with [activities of daily living], and weakness." (RX 5, p. 116) On July 6, 2022, Dr. Chams performed surgery to repair of right shoulder SLAP tear, Bankart tear, reverse Bankart tear, and pectoralis tendon rupture. (RX 5, pp. 100-110) Petitioner had physical therapy from July 21, 2022 to December 28, 2022. (PX 4) On January 17, 2023, at his work conditioning progress, Petitioner was able to demonstrate that he was able to return to work full duty. (PX 4) The work conditioning progress notes from Grayslake Rehab reflected tightness overhead with range of motion but the Petitioner felt he was ready for work. (PX 4, pp. 6-7) On January 19, 2023, Dr. Chams indicated that Petitioner had normal strength without pain, discharged him from his care, and placed him at MMI. (PX 5, p. 8) Petitioner testified that his strength was fully restored, and his range of motion was nearly fully restored. (T. 34) No FCE was conducted. Dr. Karlsson noted in his IME report that Petitioner had a slight limit in his range of motion of the right shoulder, reaching overhead on the right side and he favors his left side. (RX 5, Exhibit 2) The Arbitrator notes that Petitioner testified that he is not actively treating with any medical doctor, is not taking any pain medications, does not need additional physical therapy or surgery, and has not missed any work since returning to full-duty work. The Arbitrator gives greater weight to this factor.

After considering the above five factors and the entirety of the evidence, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 18% loss of use of his person-as-a-whole, pursuant to Section 8(d)2 of the Act which corresponds to 90 weeks of permanent partial disability benefits at the maximum weekly rate of $937.11.

It is so ordered:

Jennifer E Bae

Arbitrator Jennifer E. Bae

April 10, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC019698
Case Name	Willie Flowers v. Cedar Park Cemetery
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0063
Number of Pages of Decision	29
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Michael Trybalski, Ronald Sklare
Respondent Attorney	Victor Herrera

DATE FILED: 2/7/2025

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

WILLIE FLOWERS,

Petitioner,

vs. NO: 22 WC 019698

CEDAR PARK CEMETERY,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission affirms and adopts the Arbitrator's Statement of Facts, however, under the Arbitrator's Conclusions of Law, modifies the issues of causal connection, prospective medical care, medical expenses and temporary total disability (TTD), and further, reverses one of the Arbitrator's evidentiary rulings, as detailed below.

Conclusions of Law

Issue F, whether Petitioner's current condition of ill-being is causally related to the injury.

The Commission affirms and adopts the Arbitrator's first five paragraphs under Issue F, but modifies the last sentence in the sixth paragraph of this section by striking the last three words, "which later occurred" so the sentence now reads, "Dr. Xavier Simcock was also of the opinion that Petitioner required further physical therapy, potentially a ganglion block, and evaluation for CRPS with a specialist." (PX19)

In the seventh paragraph in this section, on page 10, the Commission strikes the words after "May of 2023" in the last sentence, and substitutes "via telehealth" so the sentence now reads, "Despite Respondent's termination of benefits in April of 2023 Petitioner was examined by Dr. Glaser in May of 2023 via telehealth."

The Commission further strikes the last paragraph on page 11, beginning with "Regarding" and ending with "Block" and substitutes the following: "The Commission finds that it is premature to conclude that Petitioner has CRPS, as Dr. Glaser's evaluation was performed via a telehealth video conference. Pursuant to Dr. Simcock, Petitioner should be referred for an evaluation with a CRPS specialist."

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 Commission affirms and adopts the Arbitrator's first five paragraphs under *Issue J,* but modifies the award of medical expenses by adding the following after the list of outstanding bills to be paid on page 13 and before the last paragraph:

The Commission gives Respondent credit for payments made pursuant to RX2.

The Commission affirms the medical expenses awarded, with the following clarification. Respondent argues that the Explanation of Bill Review submitted in RX6 shows that all charges for MidAmerica Orthopedics were satisfied in accordance with permitted negotiated rates and fee schedule limits, except for services on April 24, 2023, in the amount of $165.00.

The Commission disagrees with this characterization of RX6. For example, the reason given on the Explanation of Bill Review for nonpayment of the outstanding charge of $1,470.00 for services on 7/26/22, is listed as "16 – claim/service lacks information or has submission/billing error(s)" and "206 – Additional documentation is needed to clarify necessity for this procedure." Similar reasons were listed for the unpaid charges incurred on 11/11/22, including "N179 – Additional information has been requested from the member. The charges will be reconsidered upon receipt of that information."

> Therefore, RX6 does not stand for Respondent's position that these charges have all been satisfied pursuant to the fee schedule, but that Respondent's carrier is in need of further information to complete its fee schedule review. The Commission finds the medical treatment resulting in the charges to be reasonable and necessary. The medical provider submitted charges of $10,643.00 for costs of medically necessary care. The extent of Respondent's liability for these charges, per Section 8.2, has yet to be determined as it appears the bill review process is incomplete.

Issue K, whether Petitioner is entitled to any prospective medical care.

The Commission affirms and adopts the Arbitrator's first paragraph but modifies this section by striking the last two sentences in the second paragraph on page 13, beginning with the word, "Respondent" and ending with the word "block" and substituting, "However, Dr. Glaser did not perform an in-person examination of Petitioner, as the evaluation was conducted virtually."

The Commission further strikes the second and third sentences in the last paragraph on page 13 in this section, beginning with the word, "The" and ending with the word "diagnosis" and replaces those sentences with, "Respondent shall authorize an evaluation with a CRPS specialist."

Evidentiary Ruling

Finally, the Commission reverses the Arbitrator's evidentiary ruling admitting Petitioner's Exhibit 20 into evidence over Respondent's objection. The Commission finds Petitioner's Exhibit 20 contains multiple hearsay statements and is stricken from the record.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on May 7, 2024, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of CRPS treatment, including the left-hand stellate ganglion block, is vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's Exhibit 20 is stricken from the record.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $373.37 per week for a period of 70-2/7 weeks, commencing July 27, 2022, through November 30, 2023, (second trial date), that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any. Respondent shall be given a credit of $12,763.04 for TTD benefits already issued.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner and Petitioner's counsel reasonable and necessary medical services, pursuant to the medical fee schedule for MidAmerica Orthopaedics $10,643.00, PTSIR Industrial Rehabilitation $1,345.00, Homer Glen Open MRI $1,500.00, Pain Specialists of Greater Chicago $475.00, and Advanced Physical Medicine (APM) $2,031.93, as provided in Sections 8(a) and 8.2 of the Act. See Petitioner's Exhibits: 6, 10, 12, 14 and 17. Respondent shall receive credit for all medical bills paid pursuant to Sections 8(a) and 8.2 of the Act itemized in Respondent's Exhibit 2. Respondent shall pay Petitioner and Petitioner's counsel directly for the above medical bills pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for medical benefits that have already been paid and shall hold Petitioner harmless for 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 authorize and pay for further medical treatment pursuant to Section 8(a), per the recommendations of the treating physicians, for the left hand, right hand and left leg/knee. The approved medical treatment includes the following:
-Contracture Release Surgery of the left hand and any preoperative or post operative care, such as therapy, as recommended by treating surgeon Dr. Fakhouri;
- an evaluation with a CRPS specialist;
-Further treatment and evaluation of left leg/knee injury and right-hand injury per the treating doctors.

IT IS FURTHER ORDERED BY THE COMMISSION that the Petitioner has not yet reached maximum medical improvement and requires additional medical care as ordered above. No PPD award is therefore awarded.

IT IS FURTHER ORDERED BY THE COMMISSION that the petition for penalties and fees is denied. Respondent shall pay no penalties to Petitioner under Section 19(k), Section 19(l) and Section 16 of the Act. See Rider to Arbitrator's Decision.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $29,575.00. 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.

February 7, 2025
O121624
KAH/bsd
42

/s/*Kathryn A. Doerries*
Kathryn A Doerries

/s/*Maria E. Portela*
Maria E. Portela

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC019698
Case Name	Willie Flowers v. Cedar Park Cemetery
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	23
Decision Issued By	Jacqueline Hickey, Arbitrator

Petitioner Attorney	Ronald Sklare, Michael Trybalski
Respondent Attorney	Victor Herrera

DATE FILED: 5/7/2024

/s/ Jacqueline Hickey, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF MAY 7, 2024 5.155%

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)

Willie Flowers
Employee/Petitioner

v.

Cedar Park Cemetery
Employer/Respondent

Case # **22** WC **19698**

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, IL**, on **9/28/23 and 11/30/23 (proofs closed)**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☒ Is Respondent due any credit?
O. ☒ Other **1. Further 8(a) medical benefits, 2. Medicaid reimbursement/subrogation, 3. 19(d) injurious practices/suspension of benefits for noncompliance, 4. Credits for TTD/medical paid for unrelated body parts, 5. Balance billing/duplicate billing MidAmerica Ortho, 6. Bifurcation of trial, 7. Credits for all medical payments made, 8. Penalties/fees filed and Respondent's response, 9. PPD advance/credit owed $1,512.12**

FINDINGS

On **7/26/22**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Petitioner's current condition of ill-being for the left hand, right hand and left leg/knee ***is*** causally related to the accident. Petitioner's back condition ***is not*** causally related to the accident,

In the year preceding the injury, Petitioner earned $**26,210.34**; the average weekly wage was $**560.06**.

On the date of accident, Petitioner was **45** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**12,763.04** for TTD, $**0** for TPD, $**0** for maintenance, and $0 for other benefits for a total credit of $**12,763.04**.

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

ORDER

Medical Benefits
Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of MidAmerica Orthopaedics $10,643.00 PTSIR Industrial Rehabilitation $1,345.00, Homer Glen Open MRI $1,500.00, Pain Specialists of Greater Chicago $475.00, and Advanced Physical Medicine (APM) $2,031.93, as provided in Sections 8(A) and 8.2 of the Act. See Petitioner's Exhibits: 6, 10, 12, 14 and 17. Respondent shall pay Petitioner and Petitioner's counsel directly for the above medical bills. Respondent shall be given a credit for medical benefits that have already been paid and shall hold Petitioner harmless for any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Prospective Medical Care
Respondent shall authorize and pay for further medical treatment pursuant to section 8(a), per the recommendations of the treating physicians, for the left hand, right hand and left leg/knee. The approved medical treatment includes the following:
-Contracture Release Surgery of the left hand and any preoperative or post operative care, such as therapy, as recommended by treating surgeon Dr. Fakhouri
-CRPS treatment and evaluation with Dr. Glaser, including the left-hand stellate ganglion block.
-Further treatment and evaluation of left leg/knee injury and right-hand injury per the treating doctors

Temporary Total Disability
Respondent shall pay to Petitioner and Petitioner's counsel, the temporary total disability benefits of $373.37/ week for 70 2/7 weeks, commencing 7/26/22 through 11/30/23 (second trial date), as provided in Section 8(b) of the Act. Respondent shall be given a credit of $12,763.04 for TTD benefits already issued.

Permanent Partial Disability
The Arbitrator finds Petitioner has not yet reached maximum medical improvement and requires additional medical care as ordered above. No PPD award is therefore awarded.

Penalties and Fees
The petitioner for penalties and fees is denied. Respondent shall pay no penalties to Petitioner under Section 19(k), Section 19(l) and Section 16 of the Act. See Rider to Decision.

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

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

Jacqueline C. Hickey

Signature of Arbitrator

May 7, 2024

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

Willie Flowers,	)	
	)	
Petitioner,	)	Case No.: 22 WC 19698
	)	
v.	)	
	)	Arbitrator: Jaqueline Hickey
Cedar Park Cemetery,	)	
	)	
Respondent.	)	Hearing Date: 9/28/23 & 11/30/23

RIDER TO DECISION

This matter proceeded to hearing on September 28, 2023 and November 30, 2023 in Chicago, Illinois before Arbitrator Jacqueline Hickey on Petitioner's Petition for Immediate Hearing under Section 19(b)/8(a). Issues in dispute include causation, medical bills, temporary total disability, fees/penalties, prospective medical treatment, Respondent TTD and nonoccupational disability benefits credit and nature & extent. The parties also listed the following additional issues under 13) Other: 1. Further 8(a) medical benefits, 2. Medicaid reimbursement/subrogation, 3. 19(d) injurious practices/suspension of benefits for noncompliance, 4. Credits for TTD and medical paid for unrelated body parts 5. Balance billing/duplicative bill with MidAmerica 6. Bifurcation of trials 7. Credits for all medical payments made 8. Penalties/fees filed and respondent response 9. PPD advance and credit owed of $1,512.12 (issued 10/5/23). *See* Arbitrator's Exhibit "Ax" 1.

The record relating to matter 22 WC 19698 consists of: one (1) exhibit offered by Arbitrator Jacqueline Hickey (Herein after, Ax1), nine (9) exhibits offered by Respondent (Herein after, Rx.1 – Rx. 9), and twenty (20) exhibits offered by Petitioner (Herein after, Px.1 – Px.20).

The Arbitrator notes that the parties stipulated to the following: (Ax1)

A.) As of July 26, 2022 (7/26/22) Petitioner and Respondent were operating under and subject to the Illinois Workers' Compensation or Occupational Disease Act,

B.) The relationship of Petitioner and Respondent on 7/26/22 was one of employee and employer.

C.) An accident occurred which arose out of and in the course of Petitioner's employment by Respondent.

D.) The date of the alleged accident was 7/26/22.

E.) Timely notice of the alleged accident was provided to the Respondent.
G.) Petitioner earned $26,210.34 in the year preceding this incident, with an average weekly wage amount of $560.06.
H.) On 7/26/22 Petitioner was 45 years old.
I.) On 7/26/22 Petitioner was unmarried with zero (0) minor dependents.

FINDINGS OF FACT

Background
Mr. Willie Flowers (herein after Petitioner) testified, and the parties agree, that as of 7/26/22 Petitioner was employed as a groundskeeper by Cedar Park Cemetery (herein after Respondent) (T. 26-27). Petitioner testified that he had begun working in this position approximately 90 days/3 months prior (T. 30), and that after the 90-day period he was to be hired on in a permanent capacity (T. 31).

Job duties & history
Petitioner testified that as part of his job duties he was required to "cut the grass, landscape, make sure the grounds was clean; and if we had any burials, we would lay the deceased to rest" (T. 27). Petitioner testified that he had not worked as a groundskeeper or in a similar role prior to beginning work for the Respondent (T. 30). Petitioner's prior work-history included employment at a warehouse and a candy store (T. 30-31).

Accident
Petitioner testified that he was working on 7/26/22 and that while using a riding lawn mower he was struck from behind by a vehicle (T. 28). Petitioner testified that the vehicle "ran through the gate" of the cemetery and struck the rear of the lawnmower (T. 28). Petitioner recalled that the lawnmower was dragged by the vehicle and that he "was in the air flying down and wind up under the car" (T. 29). Petitioner testified that the vehicle came to a stop because it was on fire and that the driver of the vehicle had run away from the scene (T. 30).

Petitioner noted that a co-worker came to his assistance and helped Petitioner get away from the flaming vehicle. Petitioner testified that he felt pain immediately in his left leg (T. 29). Petitioner testified that "when I took off my gloves to check my leg, I discovered my fingers was in my glove" (T. 29). Petitioner added further that "two of my fingers was in my glove – in the inside of my glove. The third was hanging – my pinky finger was hanging off" (T. 30).

Medical Treatment (Petitioner testimony)
Petitioner testified that an ambulance was called to the scene at that time (T. 32). Petitioner testified that the ambulance was called by his supervisor, co-workers, and people on the street (T. 32). Petitioner offered testimony as to the medical treatment he has received, including recommendations made for further care. Specifically, Petitioner testified that he has had three surgeries on his left hand thus far and that a recommendation has been made for a fourth surgery (T. 34). Petitioner testified that the recommendation for a fourth surgery was made by Dr. Fakhouri in March or April of 2023 (T. 34). Petitioner testified that at the hearing that he was continuing to have symptoms/pain in his left hand.

Petitioner testified that Dr. Fakhouri had also made the recommendation for further physical therapy treatment, but that Petitioner had been unable to proceed with that treatment due to a prescription issue and the workers' compensation insurance carrier not authorizing it (T. 37-38).

Petitioner testified further that Dr. DeFrino of Parkview Orthopaedic Group had previously made the recommendation for further left knee treatment (T. 40). Petitioner testified that as of the time of trial he was continuing to have pain/other symptoms in his left knee (T. 40).

Petitioner testified that as of the time of trial he was still having issues with his back, left leg/knee, and left hand (T. 43). When asked "if further treatment of those body parts were to be authorized by work comp, would you want to pursue that?" Petitioner responded "yes" (T. 43).

With regard to TTD benefits, Petitioner testified that he has not received benefits since April of 2023 (T. 39). Petitioner denied working in any capacity for Respondent or any other employer since his benefits were terminated in April of 2023 (T. 39).

Summary of Medical Treatment & Records

An ambulance with the Calumet Park Fire Department was the first medical treatment Petitioner obtained following this incident (Px. 1). Emergency personnel were called to the scene just before 10:00 AM on 7/26/22 (Px. 1, pg. 6). Upon arrival Petitioner was found to be guarding his left hand. Emergency personnel notated injuries to the left hand and left leg (Px. 1, pg. 6). Petitioner was taken to the emergency room at Advocate Christ Medical Center for further care (Px. 1, pg. 6).

Petitioner arrived at the Advocate Christ Medical Center ER around 10:30 AM on 7/26/22 (Px. 3, pg. 1). With regard to his left hand, emergency room staff noted several diagnoses including: "traumatic amputation of the left middle and ring finger, opened distal phalanx fracture of the left small finger, possible digital nerve injury to the small finger, and partial laceration of flexor digitorum profundus of the small finger" (Px. 3, pg. 35). With regard to his left knee/leg, Petitioner complained of pain in the area and was diagnosed with left posterior knee pain (Px. 3, pg. 75).

To date Petitioner has undergone three surgeries on his left hand, with a fourth being recommended but not completed. All three surgeries, and the recommendation for a fourth surgery have come from Dr. Fakhouri.

The first surgery was performed by Dr. Fakhouri at Advocate Christ Medical Center the same day Petitioner's injuries occurred (Px. 3, pg. 35). The operative notes indicate that the procedures included "irrigation and debridement of stump at the level of the distal phalanx of the left ring finger open distal phalanx fracture of the left small finger and the stump of the middle finger, open reduction and internal fixation of the distal phalanx fracture of the small finger, volar flap closure of the small finger, cross-finger flap from the left small finger to the ring finger, full-thickness skin graft from the palmar wrist to the left small finger, and advancement of dorsal flap and revision amputation of the middle finger" (Px. 3, pg. 35, Px. 5, pg. 19-20). Petitioner remained in the hospital, recovering from surgery, before being released on 7/28/22 (Px. 3).

On 8/9/22 Petitioner was seen by Dr. Paul DeFrino of Parkview Orthopaedic Group regarding his left knee (Px. 7, pg. 3-4). Dr. DeFrino noted the presence of "abrasions on the posterior aspect of the knee and a small, superficial open wound" (Px. 7, pg. 3). X-rays of Petitioner's left knee were obtained which showed no evidence of dislocation or fracture. Dr. Defino diagnosed Petitioner with a left knee contusion with soft tissue injury. Petitioner was advised that "once therapy begins on his hand, we can also start working on his left knee" (Px. 7, pg. 3). Petitioner was advised to return in three weeks (Px. 7, pg. 3).

Petitioner was seen by Dr. Fakhouri for a follow up visit on 9/20/22 (Px. 5, pg. 11-12). At that time Dr. Fakhouri noted that Petitioner "still has challenges with transportation. He is supposed to go to therapy 4-5 times a week, but he is limited, as they do not have transportation. I would suggest to the workmen's compensation carrier that they provide transportation for Mr. Flowers to attend therapy. If he develops contracture that requires contracture release, that will set him back significantly and will require even more therapy" (Px. 5, pg. 11).

The second surgery on Petitioner's hand was completed by Dr. Fakhouri on 8/19/22 at Palos Hills Surgery Center. Operative notes indicate that the procedures completed included: Removal of retained hardware of the left hand, Division of flap between the middle and ring finger and inset of the flap, Surgical preparation of the wound, Advancement flap, wound closure left ring finger, and Wound closure left ring finger and left small finger (Px. 5, pg. 17-18).

On 10/11/22 Dr. Fakhouri saw Petitioner for a follow up examination (Px. 5, pg. 9-10). Dr. Fakhouri again noted that Petitioner was unable to attend therapy because of a lack of transportation (Px. 5, pg. 9). Dr. Fakhouri continued on, "I would ask that he is provided transportation so that he can attend therapy." (Px. 5, pg. 9).

On 10/26/22 Petitioner was seen at PTSIR Industrial Rehabilitation for an initial occupational therapy examination (Px. 9, pg. 207). At that time Petitioner completed a pain diagram on which he noted pain in his left hand, back, and left knee (Px. 9, pg. 198). Paperwork completed by Petitioner indicates that Petitioner's main complaint at the time of his initial examination was "hand, back" (Px. 9, pg. 197).

The third surgery on Petitioner's left hand was completed on 11/11/22 by Dr. Fakhouri at Palos Hills Surgery Center (Px. 5, pg. 15-16). The operative report indicates the procedures completed included: Removal of hardware left small finger, Closed manipulation of the MCP, PIP, and DIP joint left index finger, Closed manipulation of the MCP, and PIP joint left middle finger, Closed manipulation of the MCP, PIP, and DIP joint left ring finger, Closed manipulation of the MCP, PIP, and DIP joint left small finger (Px. 5, pg. 15-16).

On 11/25/22 Petitioner was discharged from therapy at PTSIR, having completed only the initial examination and no further sessions since then (Px. 9, pg. 191).

On 12/13/22 Dr. Fakhouri again noted that Petitioner "has not attended therapy because he does not have transportation" (Px. 5, pg. 7). Dr. Fakhouri continued Petitioner "requires therapy on a daily basis, but he also requires a CPM and he is still awaiting the approval of his workmen's compensation to obtain a CPM. Both the transportation and the CPM and therapy 5 days a week

are medically necessary" (Px. 5, pg. 7). Moreover, it was Dr. Fakhouri's opinion that "if he does not get transportation and he does not attend therapy and does not get CPM, he will simply have reoccurrence of his contracture. It is not in anyone's best interest including Willie's best interest, to have a reoccurrence of his contracture which may necessitate a lengthy operation consisting of a contracture release of his digits. In which case he would need even more extensive therapy thereafter" (Px. 5, pg. 7).

On 12/21/22 Petitioner returned to PTSIR to being therapy (Px. 9, pg. 179-180). It was noted at that time that Petitioner reported "not having therapy until this time secondary to not having transportation" (Px. 9, pg. 179).

Therapy notes indicate that Petitioner attended twenty-seven (27) therapy sessions between the reexamination date of 12/21/22 and his discharge on 5/3/23 (Px. 9, pg. 15). Several sessions were missed during this time period. Many appointments were missed due to transportation issues – for example on 12/27/22 it was noted that Petitioner could not obtain transportation (Px. 9, pg. 166). On 12/28/22 Petitioner reported to PTSIR that transportation did not come get him the day before (Px. 9, pg. 164). On 12/30/22 Petitioner noted that "transportation cancelled his pick up and then rescheduled and cancelled again" (Px. 9, pg. 161). Petitioner also missed appointments due to illness (see for e.g. Px. 9, pg. 122, noting that Petitioner "had canceled or been a no show for his scheduled appointments secondary to either illness or transportation issues" (Px. 9, pg. 122).

On 3/6/23 Dr. Fakhouri cleared Petitioner to return to modified work duties, including "no lifting, carrying, pulling or pushing greater than 5-10 pounds" (Px. 5, pg. 5). Petitioner was encouraged to continue therapy and to return for a follow up in one month's time (Px. 5, pg. 5).

Regarding Petitioner's right hand, there has been treatment related to that with PTSIR (Px. 9). Notes from 4/12/23 state "please note that the right hand grip and functional pinch has decreased 50% since his last progress note" (Px. 9, pg. 47). Moreover, "regarding his right hand function and strength, he demonstrates significant loss of strength and continues to complain of pain" (Px. 9, pg. 47).

On 4/24/23 Petitioner was seen for a follow up visit with Dr. Fakhouri (Px. 5, pg. 3). At that time Dr. Fakhouri noted that Petitioner's options included "leaving it alone and living with it" while he continues a home exercise program, or alternatively, "consideration towards a contracture release, what is otherwise called capsulectomy and flexor extensor tenolysis digits of the middle, ring and small finger" (Px. 5, pg. 3). Dr. Fakhouri noted that Petitioner was not able of returning to his usual work duties as a grave digger, but that he could probably perform some sedentary type of work which involved "limited or no use of the left hand" (Px. 5, pg. 4). It was noted that post-operatively Petitioner would need to be off work entirely for a period of 3-4 weeks after surgery and then consideration could be considered towards light duty return to work (Px. 5, pg. 4). Petitioner was advised to continue occupational therapy and a home exercise program in the meantime (Px. 5, pg. 4).

At the time of his last therapy appointment with PTSIR on 5/3/23 Petitioner noted ongoing left hand pain and issues relating to both wrists (Px. 9, pg. 15). That same day, Petitioner transferred

his physical therapy treatment to Advanced Physical Medicine in Matteson IL (Px. 16, pg. 12). Petitioner completed a pain diagram during his initial visit on which he indicated pain in his left hand, right hand, back, and left knee (Px. 16, pg. 8).

Petitioner was also seen by Dr. Aleksandr Goldvehkt at Advanced Physical Medicine on 5/3/23 (Px. 16, pg. 21). Dr. Goldvehkt referred Petitioner to see Dr. Glaser, a pain specialist (Px. 16, pg. 21). Dr. Goldvehkt noted that Petitioner was unable to work in any capacity at that time (Px. 16, pg. 22). Petitioner was to return for a follow up on 6/2/23 (Px. 16, pg. 24).

Petitioner completed several sessions of physical therapy at Advanced Physical Medicine in May of 2023 (Px. 16, pg. 25-27).

MRI imaging of Petitioner's left knee and lumbar spine were obtained by Homer Glen Imaging on 5/26/23 (Px. 11). Regarding Petitioner's lumbar spine, the MRI images evidenced "circumferential bulge at L2-3 and L3-4 causing variable bilateral neural foraminal stenosis" and "circumferential bulge with broad based posterior herniation at L4-5 causing several bilateral neural foraminal stenosis (Px. 11, pg. 5-6). As to Petitioner's left knee, the MRI imaging showed the presence of a "small amount of fluid within the suprapatellar bursa" and a "grade 1 sprain of the anterior cruciate ligament" (Px. 11, pg. 7-8).

On 5/31/23 Petitioner was referred to Dr. Scott Glaser of Pain Specialists of Greater Chicago by APM for an initial examination (Px. 13, pg. 5-6). At that time Petitioner noted left hand pain, left upper extremity pain, and pain which radiated into the neck, left arm, and right arm (Px. 13, pg. 5). Petitioner gave the doctor detail descriptions of the accident and his injuries as well as accurately explained his left hand surgical history. Petitioner reported that he had severe nerve type pain since the accident…described sensitivity…frequent swelling…burning shooting pain…tremors…etc. Petitioner also reported he did not want anything touching his left hand and he guards it. He started the hand was very painful during the cold and causes severe insomnia. He reported he was not currently on prescription medicine. At the time of the exam, the doctor noted petitioner cannot voluntarily open his left hand. Dr. Glaser then diagnosed Petitioner with "Complex regional pain syndrome Type 1, left arm" (Px. 13, pg. 7). Dr. Glaser recommended Petitioner proceed with a "Left Stellate Ganglion Block" (Px. 13, pg. 7).

Respondent Section 12 Examiner: Dr. Simcock

Petitioner was seen by Dr. Xavier Simcock of Midwest Orthopedics at Rush for an IME on 2/28/23 (Px. 19, pg. 71). Dr. Simcock opined that all treatment to date had been reasonable and necessary, that Petitioner required further treatment in the form of physical therapy and potentially a ganglion block (Px. 18, pg. 75). Dr. Fakhouri further opined that Petitioner should be seen for evaluation of CRPS by a specialist (Px. 18, pg. 75). Dr. Simcock noted that Petitioner could not return to work full duty, but could potentially do light duty work which only required use of his right hand (Px. 18, pg. 76).

Respondent's counsel subsequently sought an updated IME report from Dr. Simcock on 10/30/23 (Px. 18, pg. 58). Dr. Simcock, also finds that treating records do not support an injury to the right hand. (RX. 5 at 4). Given the latent presentation of right-hand symptoms, Dr. Simcock opined

symptoms could be associated with the natural progression of an age-appropriate condition. (RX. 5 at 4). Dr. Simcock did not find medical care for the right hand to be causally related to the work-related accident. (RX. 5 at 4). He further found the claimant was able to return to work full duty without restrictions relative to the right hand. (RX. 5 at 4) Regarding the left hand, Dr. Simcock opined the claimant's lack of compliance with care, including physical therapy, CPM machine use, and HEP, resulted in permanent contracture of his left hand, which would not likely improve with further surgical intervention. (RX. 5 at 5). Dr. Simcock added that by removing the small finger from the CPM unit, the claimant "ensured that he would not see progress made with CPM activity of his small finger." (RX. 5 at 5). Dr. Simcock opined that the claimant's noncompliance with care severed causal connection between the claimant's left-hand condition and the July 26, 2023 work-related accident. (RX. 5 at 6). Dr. Simcock found the claimant reached MMI on or about May 24, 2023 and requires no further medical care for his left hand condition. (RX. 5 at 6). Dr. Simcock found the claimant was capable of returning to work full duty without restrictions. (RX. 5 at 6).

Respondent Records Review & Section 12 Examiner: Dr. Noren

On 9/14/23 Respondent's counsel requested a record review report from Dr. Richard Noren (Px. 18). Dr. Noren opined that "treatment regarding his left hand, including occupational therapy, CPM machine, and treatment from Dr. Fakhouri appears reasonable and appropriate along with the prescribed medications for his injury and attempts to treat his subsequent contractures" (Px. 18, pg. 23). Dr. Noren concluded that "indications for further surgery regarding his hand are outside the scope of my practice" (Px. 18, pg. 23). According to the job description provided, Dr. Noren opined that Petitioner was not able to return to his usual job duties at that time (Px. 18, pg. 23-24). Dr. Noren did not agree with Dr. Glaser or Dr. Simcock that Petitioner had CRPS (Px. 18, pg. 24). With respect to the alleged injury to the right hand, Dr. Noren found that medical records documented 80 pounds of grip strength of the right hand with no signs of weakness of the right arm. (RX. 3 at 5). Due to a lack of reported injury to the right hand on the date of accident, lack of documented complaints in medical records until early 2023, Dr. Noren opined the right-hand condition is not work-related. (RX. 3 at 5).

Regarding the lower back condition, Dr. Noren personally reviewed the MRI of the lumbar spine and impressed "no evidence of any acute injury." (RX. 5 at 5). Based on his record review and lack of lower back complaints, he opined there is no causation between the claimant's alleged back condition and the work accident. (RX 5. at 5). Dr. Noren further opined the claimant was able to return to work full duty without restrictions for his alleged back condition. (RX. 5 at 5). Regarding the left knee, Dr. Noren reviewed MRI imaging and impressed a mild strain at the ACL, which was not acute and would not result in permanent impairment. (RX. 3 at 5). Based on his review of records and imaging, Dr. Noren opined there was no indication for an MRI of the left knee. (RX. 3 at 5). Dr. Noren finds medical care for the left knee after Dr. DeFrino's August 9, 2022 appointment was unrelated to the work accident and not indicated. (RX. 3 at 5). According to Dr. Noren, the claimant was capable of returning to work full duty without restrictions for his left leg condition as of his last evaluation with Dr. DeFrino. (RX. 3 at 5-6).

Regarding the left hand, Dr. Noren opined that the claimant's lack of compliance with medical care for his left-hand condition, including physical therapy, CPM machine use, and HEP, severed causal connection between his current condition of ill-being of his left hand and the work-related

accident. (RX. 3 at 6). Regarding the CRPS, Dr. Noren found that the medical records lacked documentation of swelling or showed reduced swelling over time. (RX. 3 at 7). Furthermore, Dr. Noren noted alleged hypersensitivity resolved with distraction. (RX. 3 at 7). He also opined that the treating records did not support findings of skin dystrophy, temperature changes, or other objective findings to support a diagnosis of CRPS. (RX. 3 at 7).

CONCLUSIONS OF LAW

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

To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980) including that there is some causal relationship between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989) It is well established that the Act is a humane law of remedial nature and is to be liberally construed to effect the purpose of the Act - that the burdens of caring for the casualties of industry should be borne by industry and not by the individuals whose misfortunes arise out of the industry, nor by the public. *Shell Oil v. Industrial Comm'n,* 2 Ill.2nd 590, 603 (1954).

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

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. The Arbitrator finds Petitioner's testimony to be straight forward, truthful, and generally consistent with the records as a whole. None of the physicians who treated him or section 12 physicians who examined him noted any symptom magnification that the Arbitrator noted. Petitioner does not appear to be a sophisticated individual and any inconsistencies in his testimony are not attributed to be an attempt to deceive the finder of fact.

The Arbitrator has reviewed the treating physician medical records as well as the IME reports and records review. Overall, the Arbitrator relies on the opinions and recommendations made by the treating physicians and is not persuaded by the Section 12 Examiners' reports as it pertains to the left hand, right hand and left leg/knee, as further explained below. However, the Arbitrator finds Dr. Noren's opinions regarding the alleged back injury to be persuasive.

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

The Arbitrator incorporates the above-referenced findings of fact and conclusions of laws as is fully restated herein.

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. 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).

"Every natural consequence that flows from an injury that arose out of and in the course of one's employment is compensable under the Act absent the occurrence of an independent intervening accident that breaks the chain of causation between the work-related injury and an ensuing disability or injury." *Dunteman v. Illinois Workers' Comp. Comm'n*, 2016 IL App (4th) 150543WC, ¶ 42. The fact that the employee had a preexisting condition, even though the same result may not have occurred had the employee been in normal health, does not preclude a finding that the employment was a causative factor. *Id.* The question is whether the evidence supports an inference that the accident aggravated or accelerated the process which led to the employee's current condition of ill-being. *Id.* A work-related injury "need not be the sole causative factor, nor even the primary causative factor, as long as it was a causative factor in the resulting condition of ill-being." *Id.* ¶ 43. "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

The Arbitrator finds that Petitioner's condition of ill-being is causally related to the work incident of 7/26/22. In reaching this determination, the Arbitrator relies on the medical records submitted at trial, Petitioner's testimony and the opinion of Dr. Noren relating to the back. Specifically, Petitioner claims injuries to his left hand, left leg/ knee, right hand and back, and the Arbitrator finds all <u>but</u> the back injury to be causally related to the work accident.

There is no dispute as to accident and the Arbitrator relies Petitioner's testimony. Petitioner sustained traumatic injuries when a street vehicle entered the cemetery and struck the lawn mower he was riding on. He was flung through the air and dragged as the vehicle caught fire, and it is not surprising to the Arbitrator that Petitioner sustained multiple injuries from this dramatic

incident. The left hand appeared to be the initial focus in the ER due to numerous traumatic amputations (fingers found in the glove), but it is clear from a review all records that Petitioner has additional pains and injuries. The Arbitrator notes that a chain of events causation applies to this case in that Petitioner was working full duty without issue before this traumatic accident took place, was immediately injured and taken to the ER, and was taken off of work. He has not worked since the incident and continues to require treatment to fully recover from his work-related injuries. The left hand and left leg were reported as injured at the ER. The Arbitrator however, does not find the back injury to be related due to the delay in reporting any injury to the back, a delay in treatment to the back and based on the MRI and opinions of Dr. Noren regarding the back.

The Arbitrator finds that the current condition of ill-being for Petitioner's left hand is causally related to the incident of 7/26/22. Petitioner's left hand was extensively injured during this incident with several fingers being fully or partially amputated. Petitioner's treatment of his left hand began immediately following this incident. To date Dr. Fakhouri has performed three surgeries on Petitioner's left hand. It is Dr. Fakhouri who is making the recommendation for a fourth surgery. The Arbitrator also notes that Respondent's section 12 doctor, Dr. Simcock opined in his initial report of 2/28/23 that the treatment of Petitioner's left hand had been reasonable and causally related to the incident of 7/26/22 (Px. 19, pg. 10). Dr. Xavier Simcock was also of the opinion that Petitioner required further physical therapy, potentially a ganglion block, and evaluation for CRPS with a specialist (Px. 19), which later occurred.

Respondent's other medical opinion, a records review opinion (and later IME) performed by Dr. Noren declined to offer any opinion on Dr. Fakhouri's recommendation for a fourth surgery on Petitioner's left hand, noting that such a decision would be "outside the scope" of Dr. Noren's practice (Px. 18, pg. 23). Dr. Noren seemed to focus on the CRPS diagnosis and other injuries Petitioner's reported. Regarding the CRPS diagnosis, it was Respondent's IME doctor who first noted the need for Petitioner to be examined by a specialist (Px. 18). Per the record, it appears Petitioner made good faith attempts to move forward with this treatment, including having to find a CRPS provider. Despite Respondent's termination of benefits in April of 2023 Petitioner was examined by Dr. Glaser in May of 2023 at which time CRPS diagnosis was given and the recommendation was made for a ganglion nerve block.

Nothing in the records suggests that the conditions of ill-being currently claimed by Petitioner: the left hand, right hand and left knee, are related to any prior injury/accident other than the 7/26/22 incident. The Arbitrator is not aware of evidence of any significant injury to or recent medical treatment for any of those body parts prior to date of accident, 7/26/22. Moreover, the argument from Respondent that Petitioner's condition of ill-being is due to his alleged non-compliance with treatment does not persuade the Arbitrator. The record contains email correspondence between the parties regarding the transportation issue to/from therapy. Moreover, Petitioner testified that he did not have a car of his own. Even if Petitioner did have a car of his own, the medical notes make clear that Petitioner had very limited use/strength due to the severe injuries to the left hand, which the Arbitrator acknowledges could make driving difficult. Based on the record and Petitioner's testimony, the Arbitrator acknowledges that miscommunication, delay and/or breakdown in the parties' communication, led to the delay of therapy/treatment and transportation to get to therapy. Further, whether the doctor's office

required preapproval or post approval, this process was also factor in delay of therapy/treatment for Petitioner and cannot solely be attributed to Petitioner, Respondent or the doctor's office. The Arbitrator does not find that causation has been severed due to some treatment delay and the Arbitrator further rejects the argument that Petitioner was the sole cause or reason for noncompliance of therapy/treatment, based on the evidence presented. The Arbitrator relies on the opinions of the treating surgeon and all the reasonable and necessary treatment he has successfully provided thus far. Petitioner has not yet completed treatment for his left hand and his ongoing left hand injury.

As it relates to the right hand, the Arbitrator notes that the physical therapy records contain references to the right hand and pain/issues with the right hand. The Arbitrator notes that the loss of use of Petitioner's left hand would necessitate an increased use of, and reliance on, his right hand. Thus, it is very possible that right hand conditions/issues would present themselves at some point after the fact, as they have here. Further, Petitioner has amputation of multiple fingers and cannot voluntarily open his left hand. He is right hand dominant and would be expected to likely solely use the right hand. Petitioner reported pain to APM doctors and the right hand may require further evaluation. The Arbitrator finds this to be reasonable and that the right hand would also be related to the work accident.

With regards to the left knee, the left leg pain was reported at the ER, despite not being worked up with further treatment until an MRI was done in May 2023. The MRI imaging showed the presence of a "small amount of fluid within the suprapatellar bursa" and a "grade 1 sprain of the anterior cruciate ligament" (Px. 11, pg. 7-8). While the extent of the left leg/knee injury has not been fully evaluated other than the MRI impression, the Arbitrator finds that the injury is causally related to the work accident. It appears Petitioner is following up with APM and was last undergoing physical therapy. This is reasonable to the Arbitrator.

Regarding the lower back condition, Dr. Noren reviewed the MRI of the lumbar spine and impressed "no evidence of any acute injury." (RX. 5 at 5). Based on his record review and lack of lower back complaints, he opined there is no causation between the claimant's alleged back condition and the work accident. (RX 5. at 5). Dr. Noren further opined the claimant was able to return to work full duty without restrictions for his alleged back condition. (RX. 5 at 5). Regarding Petitioner's lumbar spine, the MRI images evidenced "circumferential bulge at L2-3 and L3-4 causing variable bilateral neural foraminal stenosis" and "circumferential bulge with broad based posterior herniation at L4-5 causing several bilateral neural foraminal stenosis (Px. 11, pg. 5-6). It appears the back injury is not reported until May 2023 when Petitioner treats with APM. A back injury is not initially reported at the ER or any other doctors for months. No prior back treatment or evaluation is performed from the DOA to May 2023. Therefore, the Arbitrator does not find the back injury to be related due to the delay in reporting any injury to the back, no treatment to the back and based on the MRI and opinions of Dr. Noren regarding the back.

Regarding the CRPS diagnosis, the Arbitrator finds Dr. Glaser's diagnosis and recommendations to be reasonable based on Petitioner's history and the records as a whole. Dr. Glaser diagnosed Petitioner with "Complex regional pain syndrome Type 1, left arm" (Px. 13, pg. 7). Dr. Glaser recommended Petitioner proceed with a "Left Stellate Ganglion Block" (Px. 13, pg. 7).

For those reasons discussed above the Arbitrator finds that Petitioner has satisfied his burden with respect to the issue of causation and the condition of ill being present in his left hand, right hand and left leg/knee. However, the Arbitrator finds that Petitioner has not met his burden is showing the back injury is causally related to the work accident.

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 incorporates the above-referenced findings of fact and conclusions of laws as is fully restated herein, and finds that the medical services which were provided to Petitioner were both reasonable and necessary. The Arbitrator further finds that the Respondent has not paid for all of the reasonable and necessary medical services. In so finding, the Arbitrator relies on the medical records and itemized billing statements offered at trial.

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).

Under Section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of a claimant's injury. The claimant has the burden of proving that the medical services were necessary, and the expenses incurred were reasonable. *City of Chicago v. Illinois Workers' Compensation Comm'n* 409 Ill. App. 3d 258, 267 (1st Dist., 2011).

Based upon the Arbitrator's finding with respect to casual connection, Petitioner's medical treatment to the left hand, right hand and left leg/knee is found to be reasonable and necessary and would be casually related. The Arbitrator notes that Respondent has stipulated that an accident occurred, and some treatment rendered (per the IME reports) is causally related to the work accident. The Arbitrator further relies on the treating physician medical records.

All medical treatment incurred thus far and provided by Petitioner's treating physicians for the left hand, right hand and left leg/knee must be paid by Respondent. Medical bills (if any) for the back are not awarded. Specifically, Respondent shall satisfy those medical charges outlined in Petitioner's Exhibits: 6, 10, 12, 14, & 17 as said charges were for the reasonable and necessary medical treatment of Petitioner's 7/26/22 work-related injuries.

Pursuant to the medical fee schedule and as provided in Sections 8(a) and 8.2 of the Act, the outstanding bills to be paid:

2.	Calumet Park Fire Department	$0
4.	Advocate Christ Medical Center	$0
6.	MidAmerica Orthopaedics	$10,643.00 (total outstanding)
8.	Parkview Orthopaedics	$0
10.	PTSIR Industrial Rehabilitation	$1,345.00 (total outstanding)
12.	Homer Glen Open MRI	$1,500.00 (total outstanding for left leg MRI only)
14.	Pain Specialists of Greater Chicago	$475.00 (total outstanding)
17.	Advanced Physical Medicine	$2,031.93 (total outstanding)

Further analysis regarding MidAmerica Orthopaedics bill is discussed under Issue O (other) #5 below, as well. Regarding the outstanding charges totaling $15,994.93, Respondent shall issue funds directly to Petitioner's Counsel on behalf of petitioner, who will then satisfy balances with each of the medical service providers/facilities.

Issue K, whether Petitioner is entitled to any prospective medical care, the Arbitrator finds as follows:

The Arbitrator adopts the findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein. The Arbitrator awards Petitioner the prospective medical care he seeks for the left hand, right hand and left leg/knee. The Arbitrator further finds that Petitioner is entitled to further 8(a) medical benefits/treatment for the left hand, right hand and left leg. In so finding, the Arbitrator relies upon the medical records submitted at trial.

On 4/24/23 Dr. Fakhouri recommended a fourth surgery on Petitioner's left hand, including: contracture release flexor and extensor tenolysis, possible pinning left middle finger, left ring finger, left small finger. Dr. Fakhouri has also recommended the need for ongoing physical therapy. IME Dr. Simcock made the recommendation in February of 2023 that Petitioner be sent for evaluation by pain specialist regarding a potential CRPS diagnosis. Dr. Simcock had also recommended a ganglion block followed by 6 weeks of physical therapy. Petitioner sought out treatment with APM and was referred to Dr. Glaser who diagnosed Petitioner with "Complex regional pain syndrome Type 1, left arm" (Px. 13, pg. 7). Dr. Glaser recommended Petitioner proceed with a "Left Stellate Ganglion Block" (Px. 13, pg. 7). Respondent terminated Petitioner's treatment in April of 2023, as such Petitioner has been unable to proceed with much of the recommended treatment. When Petitioner saw Dr. Glaser in May of 2023 Dr. Glaser made the recommendation for a left stellate ganglion block.

The Arbitrator has already found causation for the current condition of ill being as it relates to the left hand and right hand, as well as left leg/knee. **The Arbitrator finds that the recommendations for treatment of Petitioner's hands, left leg, and CRPS are all reasonable, necessary, and related to the injuries sustained on 7/26/22. Respondent shall authorize the ganglion block recommended by Dr. Glaser and any further follow up care with him regarding the CRPS diagnosis. Respondent shall also authorize the contracture release surgery and post-operative therapy/treatment recommended by Dr. Fakhouri.**

The Arbitrator further finds it reasonable for Respondent to provide the necessary medical transportation to/from these appointments IF petitioner is found by his doctors to be restricted from driving due to his injuries. As surgery is recommended for the left hand, it is more than likely that Petitioner will not be able to drive himself and require transportation for his appointments. This would be related to his work-related injuries as described above, however the Arbitrator does not formally order payment of the transportation at this time without further documentation from the treating physicians that it is needed or Petitioner is restricted from driving

Issue L, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

The Arbitrator incorporates the above-referenced findings of fact and conclusions of laws as is fully restated herein, and finds that Petitioner is entitled to additional TTD benefits in connection with the injuries sustained on 7/26/22. In so reaching this determination, the Arbitrator relies on Petitioner's testimony and the medical records admitted at trial.

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).

To be entitled to TTD benefits, it is the claimant's burden to prove not only that he did not work but also that he was unable to work. *Holocker v. Illinois Workers' Compensation Comm'n,* 2017 IL App (3d) 16036WC, P35 (3rd Dist., 2017). The fundamental purpose of the Act is to provide injured workers with financial protection until they can return to the work force. *Id.* When determining whether an employee is entitled to TTD benefits, the test is whether the employee remains temporarily totally disable as a result of a work-related injury and whether the employee is capable of returning to the work force. *Id.* The touchstone for determining whether claimant is entitled to TTD is whether the claimant's conditions had stabilized to the extent that they are able to reenter the workforce. *Id.* at 40.

Respondent terminated TTD benefits and medical treatment in April of 2023. However, at that time Petitioner was still actively seeking treatment and had not been cleared to return to work full duty. Petitioner's last appointment with Dr. Fakhouri was on 4/24/23. At that time Dr. Fakhouri opined that Petitioner was not capable of returning to his usual work duties as a grave digger, but that he could probably perform some sedentary type of work which involved "limited or no use of the left hand" (Px. 5, pg. 4). There has been no evidence offered to the Arbitrator to suggest that any light duty or accommodating work was ever offered. Petitioner testified that he could not perform his job using just one hand as he had to operate outdoor tools and move heavy items.

When Petitioner was seen by Dr. Aleksandr Goldvehkt of Advanced Physical Medicine on 5/3/23 Dr. Goldvehkt noted that Petitioner was unable to work in any capacity and that Petitioner was to return for a follow up on 6/2/23 (Px. 16, pg. 24). On 5/31/23 Dr. Glaser examined Petitioner and noted the need for ongoing care. There was no finding that Petitioner was capable of returning to work at that time. On 9/14/23 Respondent's records review expert, Dr. Noren opined that, according to the job description he had been provided, Petitioner was not able to return to his usual job duties at that time (Px. 18, pg. 23-24).

Having found Petitioner sustained a compensable condition of ill-being arising out of in in the course and scope of his employment and that his condition of ill-being for the left hand, right hand and left leg/knee, is causally related to his work injury on 7/26/22, any periods of temporary total disability incurred would be the responsibility of Respondent. The Arbitrator notes that Respondent has stipulated that Petitioner would be owed temporary total disability and that Respondent did in fact pay Petitioner TTD from 7/27/22-4/10/23.

Therefore, the Arbitrator finds Respondent shall pay Petitioner temporary total disability benefits of **$373.37 per week for 70 & 2/7 weeks**, commencing **7/26/22 through 11/30/23** (2nd hearing date/proofs closed) as provided in Section 8(b) of the Act. Respondent shall be given a credit of $12,763.04 for temporary total disability benefits already issued.

Issue L (in the alternative), what is the nature and extent of petitioner's injuries, the Arbitrator finds as follows:

The Arbitrator incorporates the above-referenced findings of fact and conclusions of laws as is fully restated herein, and finds that a determination of the nature and extent of petitioner's injuries is premature at this time as Petitioner is still actively engaged in, and seeking further, medical treatment. The Arbitrator finds Petitioner has not yet reached maximum medical improvement and requires additional medical care as ordered above. **No PPD award is therefore awarded.**

Issue M, whether penalties or fees should be imposed upon Respondent, the Arbitrator finds as follows:

The Arbitrator incorporates the above-referenced findings of fact and conclusions of laws as is fully restated herein.

The imposition of Section 19(l) penalties requires the Petitioner to make a written demand or payment of benefits under Section 8(a) or Section 8(b). It also requires the Respondent to fail, neglect, refuse, or unreasonably delay the payment of benefits without good and just cause. See *820 ILCS 305/19(l).*

Regarding the imposition of Section 19(k) penalties and Section 16 attorney fees, the Courts have confirmed that the imposition of these penalties is where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose. These penalties are appropriate when the delay was vexatious, intentional, or merely frivolous. These penalties and fees require a higher standard of proof. See *McMahon v. Industrial Commission*, 183 Ill.2d 499, 515(1998).

When the Respondent acts in reliance upon reasonable medical opinion or where there are conflicting medical opinions penalties are not ordinarily awarded. *USF Holland, Inc. v. Industrial Comm'n*, 357 Ill.App.3d 798, 805 (2005).

Sections 19(k) and 16, in pertinent part, both refer to instances where the position taken "does not present a real controversy" and is "frivolous." Section 16 refers to this language found in section 19(k) as well. See 820 ILCS 305/16, 19(k) (West 2012). These penalties and fees address deliberate conduct or actions undertaken in bad faith.

Overall, the Arbitrator finds that petitioner is not entitled to penalties and fees under Sections 19(k), 19(l) and Section 16 because respondent's nonpayment of benefits was neither unreasonable nor vexatious. Respondent's conduct does not demonstrate bad faith or improper purpose. See below for further analysis. The Arbitrator finds that respondent's nonpayment of benefits was not unreasonable or vexatious at the time benefits were denied or were not paid. Respondent presented a bona fide dispute on the causation issue. Respondent retained two expert physicians and relied on their opinions. Accordingly, nonpayment of benefits following the IME examinations and reports, as well as records review, appears neither unreasonable nor vexatious. The Arbitrator understands and acknowledges the defense(s) Respondent made to this case at the time benefits were terminated but does not agree with them after review of all of the evidence, as they pertain to the left hand (4th surgery and CRPS diagnosis, right hand and left leg/knee). Despite awarding Petitioner the left hand surgery, CRPS treatment and additional treatment he seeks for the right hand and left leg/knee, in addition to the TTD benefits per this Decision, the Arbitrator acknowledges there were legitimate disputes between the parties at trial.

Consequently, the Arbitrator finds that Respondent's denial of benefits was not evidence of improper purpose or in bad faith. The Arbitrator also finds that denial of benefits was not unreasonable given the ongoing disputes at the time of denial. The Arbitrator accordingly finds that respondent's conduct does not amount to bad faith, such that penalties should be awarded.

The Arbitrator denies payment of penalties and fees under Sections 19(k), 19(l) and Section 16 for the reasons previously stated above.

Issue N, whether Respondent is due any credit?

The Arbitrator incorporates the above-referenced findings of fact and conclusions of laws as is fully restated herein. The parties appeared to have stipulated to the TTD paid by Respondent which totals $12,763.04. The parties also acknowledged payments made by Respondent for some medical bills and the Arbitrator accordingly awards credit for medical payments already made per the WC ledger. See Rx2 for the bills and TTD/indemnity ledger. However, the Arbitrator finds that Respondent has failed to produce clear evidence of the specific statutory amputation payments that were allegedly made for the middle finger, ring finger and pinky finger. The Arbitrator notes that the majority of WC Ledger (Rx2) contains pages where no dollar amount is provided as well as no page numbers. It is unclear if a complete record of Respondent payments was submitted to the Arbitrator. There are a few pages where the "CheckNameAddress" is provided as well as the "CheckAmount" but it is not clear for some entries what the check was for. There are no checks that the Arbitrator could find that list statutory payments. The

"TransactionDescription" is merely listed as medical or indemnity. The Arbitrator notes that there is one indemnity entry for a larger sum, "34,014.59" paid to Ronald Sklare, Petitioner's attorney firm. It is unclear if this is the statutory payment that Respondent claims it paid 100% of the middle finger, 50% of the ring finger and 50% of the pink for left hand. There was no further evidence submitted that clarified what was allegedly paid for each finger and when it was paid. While it is more than likely that the $34,014.59 covered some portion of the statutory amputation payments, because Rx2 is not clear and there was no additional information provided by Respondent, **a specific credit for alleged statutory payments cannot and is not awarded as a part of this decision.** However, if further evidence was provided at a subsequent hearing clarifying what was paid, the Arbitrator would award the appropriate credit for any statutory payment made for the amputated fingers.

Despite the above discussion, the Arbitrator finds that those alleged statutory payments made regarding Petitioner's left middle, index, and pinky finger would not reduce any award made herein. The statutory payments would be a separate award or credit.

Issue O (other): 1. Further 8(a) Medical Benefits:
The Arbitrator incorporates the above-referenced findings of fact and conclusions of laws as if fully restated herein. The prospective medical issue was already addressed in section K. See above.

Issue O (other): 2. Medicaid - Is Respondent liable for reimbursement of the subrogation interest asserted by the Illinois Department of Healthcare and Family Services?
The Arbitrator incorporates the above-referenced findings of fact and conclusions of laws as is fully restated herein, and has already found that Petitioner is entitled to further 8(a) medical benefits/treatment for the left hand, right hand and left leg/knee. In so finding, the Arbitrator relies upon the medical records submitted at trial.

The Arbitrator has reviewed Px15, the IHFS/Medicaid Subrogation notice. There is no dollar amount provided by Medicaid as to the alleged lien, however the Arbitrator acknowledges that any subrogation from DOA to present would be the responsibility of Respondent, if any. Having found causation for the left hand, right hand and left leg/ knee, as well as finding Petitioner not to be at MMI, if Medicaid has paid for any causally related care, Respondent should reimburse them. **At this time however, there is no evidence of the specific lien/payments made (if any) and therefore the Arbitrator does not formally award payment of the lien as the amount is unknown.** The Arbitrator recommends that the parties obtain the specific amounts of benefits/payments issued. Thereafter the matter can be further discussed/evaluated.

Issue O (other): 3. Respondent's 19(d) injurious practices/ suspension of benefits for noncompliance:
The Arbitrator incorporates the above-referenced findings of fact and conclusions of laws as is fully restated herein. The Arbitrator has already found for Petitioner on the issue of causation for his left hand, right hand and left leg/knee and **rejects the defense asserted by Respondent under section 19(d) regarding the claim that Petitioner's condition of ill-being is the result of his non-compliance with care.**

The party correspondence shown in Px. 20 makes it clear that the transportation issue was previously raised with Respondent's counsel and was a significant factor in Petitioner missing appointments. Respondent was further advised that treatment with a CRPS specialist was scheduled for May 2023 – despite this Respondent terminated treatment in April of 2023. Moreover, Respondent was advised in writing of the need to preauthorize an appointment with Dr. Fakhouri so that a new referral/script for physical therapy could be issued – as was being required by the physical therapist's office. While this is a requirement by the doctor's office, it is not required by the Act. The end result was petitioner was delayed in care and treatment, and the Arbitrator does not fault Petitioner. The delay can be attributed to both parties and the doctor's office and the Arbitrator further does not agree with the suspension of benefits on Respondent's part due to alleged noncompliance. Petitioner appeared to make reasonable, best efforts to attend appointments and comply with care.

Issue O (other): 4. Respondent's claim for TTD/Medical benefits credit regarding unrelated body parts

The Arbitrator incorporates the above-referenced findings of fact and conclusions of laws as is fully restated herein, and has already found for Petitioner on Causation and further 8(a) medical benefits/treatment for the left hand, right hand and left leg/knee only. The Arbitrator did not find that Petitioner met his burden in proving his back condition was causally related to the work accident. It appears the therapy treated and addressed all alleged injuries (was not specified only for the back) and therefore should still be paid, however the MRI bill for the lumbar spine was not awarded. The Arbitrator did not find any specific medical bills for the back alone, other than the MRI bill, however that was paid by Respondent.

The Arbitrator finds Respondent would be entitled to a credit for medical bills paid for the back alone, if any. There is no further TTD credit awarded as all TTD incurred thus far pertains to the causally related injuries- left hand, right hand and left leg/knee.

Issue O (other): 5. Respondent's claim regarding MidAmerica Orthopaedics balance billing /duplicate billing

The Arbitrator has reviewed the MidAmerica Orthopaedics bills contained in Px. 6 and did not find evidence of balance billing. While the bills themselves reflect numerous charges reflected for the date of service of 11/11/22, it is clear there is a billing charge for the closed manipulation per each joint per Dr. Fakhouri's operative report on pg. 15 of Px5. The surgeon operated on 11 joints of the left hand on 11/11/22 as evidenced by the operative report; specifically: index finger MCP/PIP/DIP, middle finger MCP & PIP, ring finger MCP/PIP/DIP, and small finger MCP/PIP/DIP. All of charges have not been paid by Respondent. Moreover, these charges are not duplicative of any other charges which Respondent has produced or shown payment of. There is currently $10,643.00 outstanding from MidAmerica Orthopaedics for DOS 7/26/22, 9/20/22, 10/11/22, 11/11/22, 3/6/23 and 4/24/23. The same has already been awarded by the Arbitrator. The remaining outstanding charges are for 7/26/22 Debridement of Bone, Muscle &Fascia Dx Code 11044, 9/20/22 Therapy Dx Code 77110, Office/outpatient visit Dx code 99213 on 10/11/22, 3/6/23 and 4/24/23 and Manipulation Finger Joint under Anesthesia Each Joint Dx code 26340 on 11/11/22 (7 charges remain unpaid from this DOS).

Issue O (other): 6. Respondent's Request for Bifurcation of trial
This issue is moot as the Arbitrator notes that the motion to bifurcate was previously granted and proofs were closed at the second hearing on 11/30/23.

Issue O (other): 7. Respondent's claim for credits for all medical payments made:
The Arbitrator has addressed credits due to Respondent previously in this Rider to Decision and acknowledges that Respondent has made medical payments for causally related treatment, per Rx2. Therefore, payments made thus far are for causally related injuries and treatment and there would not be any credit against any award contained herein. Respondent did not overpay with regards to the medical bills and does not appear to have paid any medical bills for the unrelated back injury. All other claimed injuries were found to be causally related.

Issue O (other): 8. Penalties/Fees Filed and Respondent's response to Petitioner's petition for penalties and fees
The Arbitrator notes that Respondent filed a response to Petitioner's petition for penalties and fees. This response was filed on 11/30/23, the second day of hearing. The Arbitrator has already addressed the issue of penalties and fees in Section M above. The Arbitrator declined to award penalties and fees and therefore there is nothing further to address.

Issue O (other): 9. Respondent's claim for a PPD advance/credit of $1,512.12
The Arbitrator finds that any PPD advance paid prior to hearing would be applied towards a PPD settlement or award. The Arbitrator acknowledges the advance was paid as a part of Respondent's request for bifurcation of the trial. However, at this time, there is no PPD award made by the Arbitrator as Petitioner is not yet at MMI as he requires further medical care. Therefore, this issue is premature to discuss at this time and can be addressed once Petitioner is at MMI and permanent partial disability is evaluated.

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

May 7, 2024
Date
May 7, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC021743
Case Name	Penelope Montoya v. Chicago Cubs
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0064
Number of Pages of Decision	18
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Haris Huskic
Respondent Attorney	Elaine Newquist

DATE FILED: 2/7/2025

/s/Marc Parker,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Penelope Montoya,

Petitioner,

vs. NO: 23 WC 021743

Chicago Cubs,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, and medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 8, 2024, is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $31,400.00. 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.

February 7, 2025

MP:yl
o 1/30/25
68

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC021743
Case Name	Penelope Montoya v. Chicago Cubs
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Haris Huskic
Respondent Attorney	Elaine Newquist

DATE FILED: 8/8/2024

/s/Ana Vazquez, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF AUGUST 6, 2024 4.70%

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)

Penelope Montoya
Employee/Petitioner

v.

Chicago Cubs
Employer/Respondent

Case # **23** WC **021743**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Ana Vazquez**, Arbitrator of the Commission, in the city of **Chicago**, on **June 3, 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, **July 19, 2023**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***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 $**16,362.84**; the average weekly wage was $**314.67**.

On the date of accident, Petitioner was **21** 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

The Arbitrator finds that Petitioner proved by a preponderance of the evidence that she sustained an accidental injury that arose out of and in the course of her employment by Respondent on July 19, 2023.

The Arbitrator finds that Petitioner proved by a preponderance of the evidence that her current right ankle condition of ill-being is causally related to the July 19, 2023 injury. The Arbitrator further finds that Petitioner proved by a preponderance of the evidence that her left ankle condition of ill-being is related to the July 19, 2023 injury through February 20, 2024.

Respondent shall pay for the reasonable and necessary medical services, as provided in Px7, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses. The Arbitrator cannot make a monetary award for the right ankle surgery performed on March 18, 2024 or for any postoperative care rendered after February 20, 2024 through June 3, 2024, the date of hearing, because the Arbitrator was not provided with the operative report, postoperative care records, or bills for any medical services rendered after February 20, 2024.

While the Arbitrator finds that the right ankle surgery recommended by Dr. Kadakia is reasonable and necessary, the Arbitrator cannot make an award for prospective medical care because Petitioner has already undergone the surgery recommended by Dr. Kadakia and no records of treatment after February 20, 2024 were offered.

Respondent shall pay Petitioner temporary total disability benefits of **$314.67/week** for **40 1/7 weeks**, commencing **August 28, 2023** through **June 3, 2024**, the date of hearing, 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.

Ana Vazquez

Signature of Arbitrator

August 8, 2024

ICArbDec19(b)

PROCEDURAL HISTORY

This matter proceeded to hearing on June 3, 2024 before Arbitrator Ana Vazquez in Chicago, Illinois pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act ("the Act."). The issues in dispute include (1) accident, (2) causal connection, (3) unpaid medical bills, (4) prospective medical treatment, and (5) temporary total disability ("TTD") benefits. Arbitrator's Exhibit ("Ax") 1. All other issues have been stipulated. Ax1.

FINDINGS OF FACT

Petitioner testified that at the time of hearing she was 22 years of age, held an honor's associate degree in arts, and was pursuing a bachelor's degree in finance at DePaul University. Transcript of Proceedings on Arbitration ("Tr.") at 11-12.

Petitioner testified that she began working as a security services ambassador at Respondent in April 2021. Tr. at 12, 28. On July 19, 2023, Petitioner was employed by Respondent as a security services ambassador supervisor. Tr. at 12, 29. Petitioner was promoted to a security services ambassador supervisor on July 15, 2023, and was in training for that position on July 19, 2023. Tr. at 12.

Petitioner testified that she did not have any issues with and did not seek treatment for her right ankle prior to July 19, 2023. Tr. at 19. Petitioner testified that she was working full duty and without any issues at Respondent prior to July 19, 2023. Tr. at 19.

Job Duties

Petitioner testified that her duties, while training, included ensuring the safety of fans, associates, guests, and players, as well as running up and down ramps or on uneven ground when called and assisting guests and fans up and down stairs. Tr. at 12-13, 31. Petitioner testified that the stairs were steep and concrete, and that there were between 10 and 14 stairs in a flight. Tr. at 13. Petitioner testified that whether there was a railing to hold onto depended on where you were at in the ballpark. Tr. at 13-14. Petitioner testified that she would go up and down flights of stairs 10 times during a regular shift. Tr. at 14. Petitioner testified that she would occasionally carry a bin containing radios and paperwork when she would go up and down the stairs. Tr. at 14. Petitioner testified that she worked on game days and on non-game days at events such as concerts. Tr. at 13. Petitioner was required to report to work about two hours before a game time or event time. Tr. at 29. Once at the ballpark, she would be assigned a location within the ballpark to go to for the day. Tr. at 29. Petitioner agreed that she was not required to bring anything with her to work and that she did not have any equipment that she had to wear. Tr. at 31-32, 40.

Petitioner testified that during training, she had to attend a work meeting any time there was a game or an event at the ballpark. Tr. at 15. The work meetings were held in the W Club. Tr. at 16. Petitioner explained that after ascending stairs to the concourse level from the basement after clocking in, there is a walkway towards the W Club, and stairs going down into the W Club. Tr. at 16, 29. The W Club is located along the third base line at the ballpark. Tr. at 34. The stairs to the W Club are concrete and there are green painted railings on each side. Tr. at 36.

Accident

Petitioner testified that there was a game on July 19, 2023 that began at 6:20 p.m. or 6:30 p.m., then later agreed that the game began at 7:05 p.m. Tr. at Tr. at 15, 33-34. Petitioner testified that the accident occurred on July

19, 2023 at around 4 p.m. Tr. at 15-17. Petitioner clocked in at 4:05 p.m. Tr. at 34. Petitioner testified that after she clocked in for work, she made her way down the stairs into the W Club because she was scheduled for a work meeting. Tr. at 17. The meeting was in the dining area of the W Club. Tr. at 36. The Petitioner testified that at the time of the accident, the W Club was not open to the public, and that it opens to the public when the gates open. Tr. at 16, 34-35. Petitioner testified that as she descended the stairs, she slipped and fell down the stairs and sustained a right ankle injury. Tr. at 17. Petitioner testified that upper management called for medical attention and that she was transported from the ballpark to Illinois Masonic Hospital via ambulance. Tr. at 17.

Petitioner testified that she was "just walking" when she slipped. Tr. at 17. Petitioner testified that the stairs were "a little bit slippery." Tr. at 17. Petitioner testified that she was walking at a moderate pace to the meeting. Tr. at 18. Petitioner had a cup of coffee in her hands, which she purchased outside of the ballpark for her own consumption. Tr. at 18-19, 41. On cross examination, Petitioner agreed that as she was walking down the stairs to the W Club, she was checking the time on the watch on her right wrist while at the second to last stair. Tr. at 41. Petitioner testified that she "possibly" missed the second to last step completely as she was putting her right foot down onto it, and that is what caused her to fall. Tr. at 42. Petitioner agreed that she missed the second to last step and she fell forward onto her knees. Tr. at 43. Petitioner did not know exactly how she twisted her ankle but felt a huge amount of pain shoot to her ankle. Tr. at 43. When asked if her ankle gave out causing her to fall or if she just missed the step when she was going down the stairs, Petitioner responded "My ankle gave out." Tr. at 43.

On cross examination, Petitioner was shown Respondent's Exhibit ("Rx") 1, and she agreed that the photo looked like the stairs going down into the W Club and the green railings. Tr. at 36. Petitioner agreed that the stairs were about four and a half feet to five feet wide. Tr. at 37. Petitioner did not recall where on the stairs she fell. Tr. at 37. Regarding the lighting of the stairs, Petitioner testified "I mean it is pretty dark when you do go down there a little bit. It's more tinted down there." Tr. at 37. Petitioner agreed that the lighting in Rx1 looked "about so" like the lighting when she walked down the stairs. Tr. at 37. On redirect examination, Petitioner testified that the lighting was more dimmed in between the stairs than depicted in Rx1. Tr. at 61. On recross examination, Petitioner agreed that the dimness she described was at the center landing of the stairs and not at the bottom of the staircase where she fell. Tr. at 63. Petitioner was aware that a camera recorded her fall on July 19, 2023. Tr. at 38. Petitioner agreed that she was about 25 minutes early to the meeting and was not running late. Tr. at 39. Petitioner had not been cited for being late to meetings. Tr. at 39. Petitioner testified that there was "not essentially" a need to be rushing to the meeting, and that she was in training and wanted to be on time so that she would know her assignment for the day. Tr. at 39-40. Petitioner testified that she was just trying to get to her work meeting when she fell. Tr. at 43.

On redirect examination, Petitioner testified that the stairs depicted in Rx1 are the only stairs to access the W Club, and that there is no other way to access the W Club. Tr. at 59-60. Petitioner testified that as a security services ambassador supervisor, she was at the W Club every time there was a game or concert. Tr. at 60. Petitioner testified that if you were a premier, you would have to go up and down the stairs between four and six times throughout a shift, but if you were not a premier, you would go up and down the stairs once or twice per shift. Tr. at 60-61. Petitioner testified that she was instructed to wear gym shoes while at work. Tr. at 61.

On recross examination, Petitioner agreed that she was going to the W Club for meetings, and that she worked home games on July 15, 16, 17, 18, and 19, 2024. Tr. at 62. Petitioner did not recall if she was required to wear nonskid shoes. Tr. at 62-63.

Medical Records Summary

On July 19, 2023, Petitioner presented at the Emergency Department of Advocate Illinois Masonic Medical Center for a chief complaint of ankle pain, secondary to fall. Px1 at 33-41, 45, 47. Petitioner arrived via ambulance. The Triage Note reflects that Petitioner presented with complaints of right ankle pain and swelling after she twisted it when she missed a step at work. X-rays of Petitioner's right ankle were obtained and demonstrated anterior and lateral soft tissue swelling. Petitioner's diagnosis was sprain of right ankle, unspecified ligament. Petitioner was instructed to use Tylenol or ibuprofen as needed for pain, ice application to decrease inflammation, and crutches. Petitioner was also instructed to follow up with her primary care provider. On cross examination, Petitioner testified that she worked with restrictions for the next month following the July 19, 2023 visit, then testified that she was off work for two weeks. Tr. at 48. Petitioner testified that about 12 days after the July 19, 2023 visit, she was allowed to return to work with an ankle brace. Tr. at 49.

On cross examination, Petitioner testified regarding a July 31, 2023 visit at Advocate Medical Group. This record was not offered. Petitioner testified that when she was seen at Advocate Medical Group on July 31, 2023, she told them that she glanced at her watch and missed a step and fell. Tr. at 46. Petitioner testified that her manager, Israel Ramirez, told her that she could go to Advocate Medical Group for treatment. Tr. at 52.

Petitioner followed up with Dr. Philip F. Skiba at Advocate Illinois Masonic Medical Center on August 16, 2023. Px1 at 10-15. Petitioner reported improved symptoms. Petitioner's diagnoses were (1) sprain of anterior talofibular ligament of right ankle and (2) sprain of calcaneofibular ligament of right ankle. It was noted that Petitioner was recovering well from her ankle sprain and that she could start transitioning off the brace since her stability was good. Petitioner was instructed to continue physical therapy.

Petitioner testified that her sports medicine doctor had her on restrictions including no ambulating for more than 10 minutes at a time and breaks as needed. Tr. at 49. Petitioner testified that she worked 11 home games with restrictions through August 20, 2023. Tr. at 49. Petitioner testified that she also worked the Bruce Springsteen concerts on August 9, 2023 and August 11, 2023, as well as the P!nk concert on August 12, 2023. Tr. at 50. Petitioner did not recall if she worked the Guns N' Roses concert on August 24, 2023. Tr. at 50. Petitioner testified that Respondent accommodated the restrictions given to her by her sports medicine doctor during this time. Tr. at 50.

Petitioner attended approximately four sessions of physical therapy at Advocate Medical Group from August 10, 2023 through August 24, 2023. Px2.

On August 28, 2023, Petitioner was seen by Dr. Mehal Patel at Associated Medical Centers of Illinois ("AMCI"). Px3 at 88-89. Dr. Patel noted that Petitioner presented with primary complaints of right ankle and foot pain following a motor vehicle accident on July 19, 2023, but then noted a consistent accident history of walking down the stairs, missing a step, and falling down the stairs. Dr. Patel noted that Petitioner's symptoms had persisted and that she had been working with the restriction of no standing more than 10 minutes at a time with difficulty. Dr. Patel's diagnoses were right ankle and foot sprains. Petitioner was referred to Dr. Alexander Goldvekht for a pain management consultation, treatment, and work recommendations. Physical therapy was recommended. Petitioner was kept off work. Petitioner testified that she went to Dr. Patel on her own for a second opinion. Tr. at 52.

Petitioner saw Dr. Alexander Goldvekht at AMCI on August 30, 2023. Px3 at 91-92. Dr. Goldvekht's diagnoses were right ankle and foot sprains. Dr. Goldvekht recommended physical therapy and prescribed Meloxicam for inflammation and mild to moderate pain if Tylenol was not adequate, esomeprazole for GI protection with

NSAID use, and lidocaine topical medication for trial use. Dr. Goldvekht noted that additional imaging would be obtained as needed. Petitioner was kept off work.

Petitioner underwent an MRI of the right ankle at Preferred Imaging Centers on September 11, 2023, which demonstrated (1) a nondisplaced fracture of the tip of the lateral malleolus with marrow edema, (2) contusion pattern of the medial malleolus with possible small avulsion fracture, (3) osteochondral contusion of the medial margin of the talus, (4) mild contusion pattern about the subtalar joint, (5) moderate to high grade ATFL injury with diffuse and focal abnormality, (6) moderate grade CFL and mild PTFL sprain, (7) moderate grade partial tear of the deltoid ligament, and (8) associated tendinosis and tenosynovitis. Px4.

Petitioner returned to Dr. Goldvekht on September 27, 2023. Px3 at 100-102. Dr. Goldvekht noted that the right ankle and foot pain remained bothersome with prolonged standing, walking, and going up/down stairs. Dr. Goldvekht noted that Petitioner had improved tolerance to daily activities, but limitations remained. Dr. Goldvekht reviewed the MRI findings. Dr. Goldvekht's diagnoses were right ankle and foot sprains, nondisplaced fracture of lateral malleolus of the right fibula, displaced fracture of medial malleolus of the right tibia, and synovitis and tenosynovitis of the right ankle. Dr. Goldvekht noted that Petitioner's right ankle and foot symptoms, as well as clinical findings persisted. Dr. Goldvekht noted a podiatry consultation was indicated. Dr. Goldvekht recommended physical therapy as needed on a fading frequency of once to twice a week for four weeks, as well as continued use of the previously prescribed medications. Petitioner was kept off work.

On October 10, 2023, Petitioner saw Dr. Anish R. Kadakia at Northwestern Orthopedics for evaluation of right ankle pain. Px5[1] at 270-271. Dr. Kadakia noted that Petitioner sustained an ankle sprain on July 19, 2023 when she missed a couple stairs walking to a meeting at work. Petitioner reported that she was about 30-percent better than when the injury was most severe. Dr. Kadakia noted that Petitioner continued to have pain with daily activity, such as walking on uneven surfaces and going up and down hills on campus. Dr. Kadakia reviewed the right ankle MRI of September 11, 2023 and noted that it demonstrated a complete tear of the ATFL, an ankle effusion, and edema about the medial talus and CFL. Dr. Kadakia noted that Petitioner sustained a right low ankle sprain on July 19, 2023, and that she had been doing okay with nonoperative management. Dr. Kadakia noted that Petitioner was in physical therapy and was wearing a lace-up brace. Dr. Kadakia recommended continued nonoperative treatment consisting of an ankle brace and physical therapy. Petitioner testified that she was kept off work by Dr. Kadakia following this visit. Tr. at 24.

Petitioner attended approximately seven sessions of physical therapy at AMCI from September 12, 2023 through October 24, 2023. Px3.

Petitioner next saw Dr. Goldvekht on October 25, 2023, at which time he noted that there had been some reduction in medication use and in frequency of care, as well as improvement in range of motion, flexibility, strength or endurance. Px3 at 110-112. Dr. Goldvekht also noted that Petitioner had progressed with increased active interventions and that there had been some improvement in tolerance to daily activities of living. Dr. Goldvekht's diagnoses were unchanged. Dr. Goldvekht noted that foot inserts were indicated for chronic ankle pain, and that Dr. Kadakia had recommended additional physical therapy. Petitioner was casted for bilateral foot orthoses, and an ankle orthosis was fitted and provided to Petitioner due to the old brace ripping and was no longer safe or offering full support. Petitioner was discharged from Dr. Goldvekht's care.

Petitioner returned to Dr. Kadakia on November 21, 2023. Px5 at 233-234. Dr. Kadakia noted that Petitioner was attending physical therapy and was wearing a lace-up ankle brace for the right ankle sprain. Dr. Kadakia

[1] The records of Northwestern Medicine were admitted as Px5 but are labeled as Px6.

noted that on November 12, 2023, Petitioner was at a school event, and she inverted her left ankle while walking to her car. Dr. Kadakia noted that Petitioner reported that she was compensating on the left side due to the right ankle injury and that her left side had been taking on the brunt of her weightbearing. Petitioner reported that she was seen at Urgent Care the following day, had x-rays, was told that there was no fracture, and was immobilized in a boot.[2] Petitioner reported that the pain was significant and that she was managing it with over-the-counter pain medications, but that the pain was limiting her ability to walk any distance even with the boot. Dr. Kadakia's impressions were acute left high ankle sprain and follow up right ankle sprain. Dr. Kadakia noted that because Petitioner was compensating for her right side, she had overused her left side which caused some weakness and increased her chances for inverting the left side. Dr. Kadakia recommended continued boot immobilization, RICE protocol, and gentle therapy for the left ankle. Dr. Kadakia ordered a left ankle MRI. Regarding the right ankle, Dr. Kadakia noted that a right ankle MRI had also been ordered, and that the right ankle would continue to be managed nonoperatively with physical therapy and a lace up ankle brace. Surgical reconstruction of the lateral ankle ligaments would need to be considered if Petitioner had persistent symptoms in six to eight weeks. Petitioner testified that because she was putting so much weight on her left ankle because of the pain in her right ankle, she sprained her left ankle after a school meeting on November 12, 2023. Tr. at 25. Petitioner testified that she then could not bear weight on the left or right ankles and that she had to use a wheelchair for about a month because she could not really walk. Tr. at 25, 44. Petitioner testified that she was kept off work by Dr. Kadakia following the November 21, 2023 visit. Tr. at 25. On cross examination, Petitioner testified that she was walking and wearing gym shoes and was wearing an ankle brace on the right ankle, when she sprained her left ankle. Tr. at 44-45, 57.

Petitioner followed up with Dr. Kadakia on December 12, 2023. Px5 at 218-219. Dr. Kadakia noted that Petitioner presented to discuss the left ankle MRI results, as well as treatment options for her right ankle. Dr. Kadakia noted that the left ankle MRI demonstrated a grade 2 versus grade 3 sprain of the AITFL, but no obvious injuries to the chondral surface.[3] Dr. Kadakia noted that given the varus instability of her right ankle and persistent pain, surgical intervention had previously been discussed. Dr. Kadakia noted that surgical intervention would likely consist of a Brostrom procedure, gutter debridement, and evaluation of the chondral surface with possible OCD fixation. Dr. Kadakia noted that because Petitioner had two extremities with limited function, he advised Petitioner that he would wait until the left ankle had recovered before proceeding with surgical intervention of the right ankle because she would need to be non-weightbearing on the right side in the immediate postoperative setting. Petitioner was given lace-up ankle braces for each ankle, and a physical therapy referral to work on strengthening and range of motion of the bilateral ankles. Dr. Kadakia noted that Petitioner was provided with a work note.

Petitioner again saw Dr. Kadakia on January 9, 2024 for bilateral ankle pain. Px5 at 182-183. Dr. Kadakia noted that Petitioner's right ankle pain was secondary to a work-related injury that occurred in July 2023, and that her left ankle pain was secondary to an injury sustained while recovering from her right ankle injury. Dr. Kadakia noted that at the previous appointment, Petitioner had been referred for physical therapy of the left ankle to rehab it enough such that Petitioner was able to undergo surgical intervention for the right ankle. Petitioner reported that she was making improvement with physical therapy. Dr. Kadakia noted that the pain in the bilateral ankles was improving, however it was still at a baseline state of discomfort secondary to Petitioner's original injury. Dr. Kadakia noted that Petitioner would return in six weeks in hopes that her left ankle had improved enough to treat her right ankle in the form of a Brostrom deltoid ligament repair and possible syndesmosis ORIF. Dr. Kadakia noted that Petitioner was provided with a work note.

[2] Records of a November 13, 2023 Urgent Care visit were not offered.
[3] Records of a left ankle MRI were not offered.

On February 9, 2024, A Patient Message was sent from Danielle N. Walker, MA, of Northwestern Medicine Orthopedics, to Petitioner informing Petitioner that surgery was scheduled for March 18, 2024 and that a two-week postoperative visit was scheduled with Brett Wassink on April 1, 2024. Px5 at 151-162. The Patient Message also included preoperative and postoperative information for foot and ankle surgery.

Petitioner followed up with Dr. Kadakia on February 20, 2024 for bilateral ankle pain. Px5 at 138. Dr. Kadakia noted that the left ankle was better, while the right ankle still hurt. Dr. Kadakia continued to recommend a Brostrom procedure for the right ankle. Petitioner was kept off work until surgery. Dr. Kadakia noted that they would try to get Petitioner back to work three to four months after surgery, and that Petitioner would be weightbearing as tolerated, but should have crutches and a knee scooter. Records of treatment after February 20, 2024 were not offered.

Petitioner testified that she underwent the surgery recommended by Dr. Kadakia on March 18, 2024. Tr. at 26. Petitioner testified that she was still undergoing physical therapy at the time of hearing. Tr. at 18. Petitioner testified that she had an ankle reconstruction surgery and has artificial ligaments in her right ankle. Tr. at 26. Records of the March 18, 2024 surgical procedure and of any postoperative care, including physical therapy records, were not offered.

Current Condition

Petitioner testified that if she had been working at the time, her work season would have ended with the last home game, which was on September 24, 2023. Tr. at 53. Petitioner testified that she was contacted by Israel Ramirez to work events during the remainder of 2023, but that she could not work those events. Tr. at 53.

Petitioner testified that following surgery, she still has swelling and pain in her right ankle. Tr. at 26. Petitioner testified that she has issues walking and maneuvering because she is still healing and getting used to using the ankle with the new ankle ligaments. Tr. at 27. Petitioner testified that she is attending physical therapy two to three times per week. Tr. at 27. Petitioner testified that she had a physical therapy visit scheduled on Wednesday, June 5, 2024. Tr. at 27, 57. Petitioner testified that at the time of hearing, she was not experiencing pain "at that moment." Tr. at 27. Petitioner testified that she feels like the surgery helped because she is able to move around a little bit more, whereas before she had no stability in the ankle. Tr. at 28. Petitioner testified that she is now more stable and can walk longer. Tr. at 28. Petitioner testified that she does not have any issues with her left ankle. Tr. at 27. Petitioner testified that she has not reinjured her right ankle since the accident. Tr. at 28.

Petitioner testified that she was a full-time student at DePaul University's downtown campus and started in September 2023. Tr. at 54. Petitioner testified that she attended classes four days a week, and that she took an Uber or the train to and from school. Tr. at 54. Petitioner testified that most times she would order a Lyft or an Uber to school. Tr. at 55. Petitioner testified that she would take the Red Line when she took the train to school, and that she would get off at the Jackson stop, and the school was "literally right there." Tr. at 55. Petitioner testified that she was enrolled in school full time in 2023, but was not going to school in 2024 because she had surgery and had to defer two of her quarters to heal. Tr. at 56. Petitioner testified that her doctor ordered a left ankle MRI, and that surgery had not been ordered for her left ankle. Tr. at 57. Petitioner testified that physical therapy has been recommended for her right ankle. Tr. at 57. Petitioner testified that she is attending physical therapy two to three times per week. Tr. at 58. Petitioner testified that her next follow up appointment with her doctor was at the end of June 2024. Tr. at 58-59. Petitioner testified that her medical bills are being paid by her family's Blue Cross Blue Shield policy. Tr. at 59.

Testimony of Israel Ramirez

Respondent called Mr. Israel Ramirez as its witness. Tr. at 64. Mr. Ramirez is the manager of event security operations for Respondent, and he oversees all of the in-house security service ambassadors and third-party partners, including canine units, armed officers, neighborhood crime officers, and third-party security contractors. Tr. at 64-65.

Mr. Ramirez is familiar with Petitioner, and she is one of his employees. Tr. at 65. Mr. Ramirez agreed that Petitioner had been promoted from a security services ambassador to a security services supervisor about four days prior to the July 19, 2023 work injury. Tr. at 66. Mr. Ramirez testified regarding the requirements for reporting to work and assignments for a security services ambassador. Tr. at 66-67. Mr. Ramirez agreed that Petitioner would be primarily standing and walking and going up and down ramps and stairs while on ballpark premises. Tr. at 67.

Mr. Ramirez is familiar with the W Club. Tr. at 68. Mr. Ramirez was shown Rx1, and he agreed that it was an accurate depiction of the W Club stairway. Tr. at 68. Mr. Ramirez testified that there is also an elevator down to the same level as the W Club. Tr. at 69. Mr. Ramirez agreed that the W Club staircase is open to and used by the general public when the ballpark and/or the W Club is open. Tr. at 69. Mr. Ramirez has gone up and down the W Club stairs many times. Tr. at 69. He described the stairs as smooth, tactile, and easy to get up and down. Tr. at 69. Mr. Ramirez testified that he would not term the stairs slippery. Tr. at 69. Mr. Ramirez agreed that there are handrails on each side of the stairway and described the lighting as bright. Tr. at 69. Mr. Ramirez testified that he would not consider the stairs steep or dangerous. Tr. at 69-70. Mr. Ramirez testified that in his capacity with security, he was not aware of any employees or patrons falling on the stairs. Tr. at 70.

Mr. Ramirez agreed that the July 19, 2023 game was a night game and that the supervisor's meeting was at 4:45 p.m. in the dining area of the W Club, which is at the base of the stairs and to the right. Tr. at 71. Mr. Ramirez viewed the video of Petitioner's July 19, 2023 accident and agreed that Petitioner was coming down the stairs about 25 minutes before the meeting was scheduled to start. Tr. at 71. Mr. Ramirez testified that Petitioner was "very early" to the meeting, and that at that point in training, she was not required to bring anything with her to the meeting. Tr. at 72. Mr. Ramirez testified that there had not been any prior issues with Petitioner being late for work or for meetings. Tr. at 72. Mr. Ramirez was in the dining area of the W Club speaking with other supervisors when Petitioner fell. Tr. at 72. He was not standing at the base of the stairs. Tr. at 73. Mr. Ramirez testified that another supervisor reported Petitioner's fall to him. Tr. at 73. Mr. Ramirez agreed that Petitioner was taken via ambulance to an emergency room. Tr. at 73. He did not have immediate communications with Petitioner and communicated with Petitioner afterward via text messages. Tr. 73-74. Mr. Ramirez agreed that Petitioner was off work while on crutches and that she was allowed to return to work with restrictions when she was taken off the crutches. Tr. at 74. Petitioner was provided a chair if she needed to sit. Tr. at 74. Petitioner had to walk to get to her assigned area and had to be on her feet a little bit of the time while she was at work. Tr. at 74. Petitioner did not report any problems or issues while she was working with restrictions. Tr. at 75. Mr. Ramirez did not have any communications with Petitioner regarding her return to work after the regular season ended. Tr. at 75. Mr. Ramirez testified that he had communications with Petitioner regarding the 2024 season via email where Petitioner notified him that she was not returning to work due to physical therapy. Tr. at 75-76.

On cross examination, Mr. Ramirez testified that the supervisor's meetings are always in the W Club. Tr. at 77. Mr. Ramirez testified that he worked for Respondent for six seasons, and that he did not see anyone fall or injure themselves on the stairs during those six seasons. Tr. at 77. Mr. Ramirez was not aware of any incident reports being made for an injury on the stairs. Tr. at 77. Employees are not required to wear watches at work. Tr. at 77. Employees and the general public can use the elevator to the W Club and employees are told that they can use either stairs or the elevator during the ballpark tour. Tr. at 77-78.

Respondent's Exhibit 3

Respondent offered Rx3, video of the July 19, 2023 accident, which was admitted without objection. The video is approximately 7 minutes and 13 seconds in duration and begins at 4:19:01. The top portion of the first flight of stairs is obstructed. The center landing of the staircase is partially obstructed.

At approximately 4:19:17, an individual is seen going up the stairs. At approximately 4:19:55, another individual is seen going down the stairs. At approximately 4:20:30, Petitioner comes into view. She is descending the stairs on the left side, while another individual is descending a few steps in front of Petitioner on the right side. Petitioner is seen descending the stairs at a normal pace. At approximately 4:20:34, Petitioner looks at her watch, which is on her right wrist, while descending the stairs. At approximately 4:20:37, as Petitioner continues looking at her watch, she goes to step onto the last step with her right foot and misses the step, stepping onto the ground floor instead. When viewed in slow motion, Petitioner misses the step and steps onto the ground with the front of her right foot and her right ankle and foot invert. Petitioner then falls forward and lands onto her knees. Petitioner is seen holding a cup in her right hand as she falls, and she sets the cup on the ground after landing on her knees. Petitioner then gets up off the ground by putting her right foot onto the ground and then pushing herself up off the ground with her left lower extremity. Petitioner then takes a step forward towards a small counter with her left foot and keeps her right foot off the ground. Petitioner sets the cup on the counter and then grabs her right ankle. Multiple individuals then check on Petitioner. One of the individuals then appears to be using a cell phone. This same individual, along with another individual, bring Petitioner two chairs. Petitioner sits on one of the chairs. The individual on the cell phone appears to comfort Petitioner while she sits in the chair.

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

Having considered all the evidence, the Arbitrator finds that Petitioner proved by a preponderance of the evidence that she sustained an accidental injury that arose out of and in the course of her employment by Respondent on July 19, 2023.

In order for a claimant to be entitled to benefits under the Act, a claimant must prove by a preponderance of the evidence that she suffered an injury that arose out of and in the course of her employment. *McAllister v. Ill. Workers' Comp. Comm'n, 2020 IL 124848*, ¶32 (2020) citing *Sisbro, Inc. v. Industrial Comm'n.*, 207 Ill. 2d 193, 203 (2003). The "in the course of" element, refers to the time, place, and circumstances under which the injury occurred. *Id.* at ¶34 citing *Scheffer Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 366-67 (1977). A compensable injury occurs "in the course of" when it is sustained while a claimant performs reasonable activities in conjunction with her employment. *Id*. An injury "arises out of" a claimant's employment if it has its origin in some risk connected with or incidental to the employment so as to create a causal connection between the employment and injury. *Id*. at ¶36 citing *Sisbro*, 207 Ill. 2d at 203. To determine whether a claimant's injury arose out of her employment, the risks to which the claimant was exposed must be categorized. *Id*. "The three categories of risks are: '(1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics.'" *Id.* at ¶38 citing *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 162 (2000). A risk is distinctly associated with a claimant's employment if, at the time of occurrence, the employee was performing (1) acts she was instructed to perform by the employer, (2) acts that she had a common-law or statutory duty to perform, or (3) acts that she might reasonably be expected to perform incident to her assigned duties. *Id*. at ¶46 citing *Caterpillar Tractor*, 129 Ill. 2d 52, 58 (1989). In analyzing whether an injury resulting from an everyday activity "arises out of" a claimant's employment, it must first be determined whether the employee was injured performing one of the three categories of employment-related risks. *Id.* at ¶60-¶64. Once it is established that the risk of injury falls within one of the three categories of employment-related risks, then it is established that the injury "arose out of" the employment. *Id.* at ¶61. Once it is established that the injury "arose out of" the employment, a claimant is not required to present additional evidence for work-related injuries that are caused by routine everyday activities. *Id.* at ¶64.

Overall, the evidence demonstrates that Petitioner's accident arose out of and in the course of her employment by Respondent, where the accident occurred on Respondent's premises during regular work hours while Petitioner was performing an act that she might reasonably be expected to perform incident to her assigned duties as a security services ambassador supervisor. Petitioner credibly testified that on July 19, 2023, she was employed by Respondent as a security services ambassador supervisor, and that as a security services ambassador supervisor, she was required to attend supervisor's meetings. The supervisor's meetings were always held in the dining area of the W Club, at the beginning of every shift. Petitioner and Respondent's witness, Mr. Ramirez, agreed that Rx1 depicted the stairs to the W Club. Mr. Ramirez testified that there was also elevator access to the same level as the W Club. Petitioner, however, was not required to access the W Club by elevator and was told that she could access the W Club by stairs or elevator during the ballpark tour. Petitioner testified that on July 19, 2023, she fell while descending the stairs to the W Club to attend the supervisor's meeting and sustained a right ankle injury. Petitioner's testimony is unrebutted, and Mr. Ramirez's testimony is consistent with Petitioner's testimony.

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

Having considered all the evidence, the Arbitrator finds (1) that Petitioner's current right ankle condition of ill-being is causally related to the July 19, 2023 injury and (2) that Petitioner's left ankle condition of ill-being is causally related to the July 19, 2023 accident through February 20, 2024. The Arbitrator relies on the following in support of her findings: (1) the records of Advocate Illinois Masonic Center, (2) the records of Advocate Medical Group, (3) the records of Associated Medical Centers of Illinois, (4) the records of Preferred Imaging Center, (5) the records of Northwestern Orthopedics, (6) the fact that none of the records in evidence reflect that Petitioner was actively treating for a right ankle or left ankle condition prior to July 19, 2023, (7) Petitioner's credible testimony that she has not had any issues with or sought treatment for her right ankle prior to July 19, 2023, and (8) Petitioner's credible testimony regarding the mechanism of injury and the abrupt onset of symptoms following the injury. The Arbitrator notes that the evidence demonstrates that Petitioner was in condition of good health and able to work full duty and without restrictions immediately prior to the work accident and consistent complaints and symptoms of the right ankle following the work accident. Further, the medical evidence regarding Petitioner's right ankle condition of ill-being is unrebutted, and there is no evidence of any reinjury or other intervening event that would sever the chain of causation.

Regarding Petitioner's left ankle condition of ill-being, the Arbitrator notes that on November 21, 2023, Petitioner reported that she inverted her left ankle while walking to her car after a school event on November 12, 2023 and that she had been compensating on the left side due to the right ankle injury. Dr. Kadakia diagnosed Petitioner with an acute left high ankle sprain and noted that because Petitioner was compensating for her right side, Petitioner had overused her left side which caused some weakness and increased her chances for inverting the left side. On December 12, 2023, Dr. Kadakia noted that because Petitioner had two extremities with limited function, they would wait until the left ankle had recovered before proceeding with surgical intervention of the right ankle. On February 20, 2024, Dr. Kadakia noted that Petitioner's left ankle was improved. The Arbitrator notes that the medical evidence regarding Petitioner's left ankle condition of ill-being is unrebutted.

In resolving the issue of causation, the Arbitrator finds that Petitioner is not at MMI for her right ankle condition of ill-being and that she was at MMI for her left ankle condition of ill-being as of February 20, 2024, the date that Dr. Kadakia noted that her left ankle condition had improved. The Arbitrator notes that Petitioner testified that at the time of hearing, she did not have any issues with her left ankle.

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, and Issue K, whether Petitioner is entitled to any prospective medical care, the Arbitrator finds as follows:

Consistent with the Arbitrator's prior findings regarding the issues of accident and causal connection, the Arbitrator finds that Petitioner is entitled to reasonable and necessary medical expenses. Dr. Kadakia opined that Petitioner's right ankle and left ankle conditions were causally related to the July 19, 2023 accident, which required treatment, including surgery for the right ankle. The medical evidence offered is unrebutted. Therefore, the Arbitrator further finds that the medical services that were provided to Petitioner were reasonable and necessary, and that Respondent has not paid all appropriate charges.

Respondent shall pay the medical expenses, as provided in Px7, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. The Arbitrator notes that Px7 does not include billing for any medical services provided to Petitioner after February 20, 2024, including billing for surgical treatment or postoperative care. While the Arbitrator finds that the right ankle surgery, as recommended by Dr. Kadakia, is reasonable and

necessary, the Arbitrator cannot make a monetary award for the surgery or any postoperative care because the Arbitrator was not provided with the operative report, postoperative care records, or bills for any medical services rendered after February 20, 2024 through June 3, 2024, the date of hearing. Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses.

The Arbitrator notes that Petitioner seeks prospective medical care for the right ankle, as Dr. Kadakia continued to recommend a right Brostrom procedure as of February 20, 2024. The Arbitrator notes, however, that Petitioner credibly testified that she underwent the right ankle surgery on March 18, 2024 and was attending postoperative physical therapy at the time of hearing. While the Arbitrator finds that the right ankle surgery recommended by Dr. Kadakia is reasonable and necessary, the Arbitrator cannot make an award for prospective care because Petitioner has already undergone the surgery she seeks prospectively and no records of treatment after February 20, 2024 were offered.

Issue L, whether Petitioner is entitled to temporary total disability, the Arbitrator finds as follows:

Petitioner claims that she is entitled to TTD benefits from August 25, 2023 to June 3, 2024, the date of hearing. Ax1 at No. 8. Respondent disputes Petitioner's claim and claims "no compensable lost time." Ax1 at No. 8.

Consistent with the Arbitrator's prior findings, the Arbitrator finds that Petitioner is entitled to TTD benefits. The Arbitrator notes that the evidence demonstrates that Petitioner was taken off work by Dr. Patel beginning on August 28, 2023, and has been maintained on an off-work status by Dr. Kadakia as of February 20, 2024. On February 20, 2024, Dr. Kadakia noted that Petitioner was to remain off work until surgery and that they would try to get Petitioner back to work three to four months after surgery. As previously noted, Petitioner credibly testified that she underwent the right ankle surgery on March 18, 2024. Accordingly, the Arbitrator finds that Petitioner is entitled to TTD benefits from August 28, 2023 through June 3, 2024, the date of arbitration.

ANA VAZQUEZ, ARBITRATOR

August 8, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC004558
Case Name	Debbie Faulhaber v. Northshore University Healthcare System
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0065
Number of Pages of Decision	19
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Christopher Jarchow

DATE FILED: 2/7/2025

/s/Raychel Wesley,Commissioner

Signature

25IWCC0065

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 Expenses, Temporary Disability	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DEBBIE FAULHABER,

Petitioner,

vs. NO: 22 WC 004558

NORTHSHORE UNIVERSITY
HEALTHCARE SYSTEM,

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 temporary total disability, permanent partial disability, penalties and fees, and credit for medical expenses paid, and being advised of the facts and law, modifies the Decision of the Arbitrator as set forth below, but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

FINDINGS OF FACT

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

CONCLUSIONS OF LAW

I. Temporary Total Disability

The issue surrounding Temporary Total Disability ("TTD") is the determination of the appropriate termination date. A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent

character of his injury will permit. *Westin Hotel v. Industrial Commission*, 372 Ill App. 3d 527, 542 (1st Dist. 2007). In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized, *i.e.*, whether the claimant has reached maximum medical improvement, and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Commission*, 236 Ill. 2d 132, 142, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Industrial Commission*, 138 Ill. 2d 107, 118 (1990).

Here, after the stipulated accident, Petitioner last worked on August 28, 2021. She was subsequently diagnosed with a complete tear of the right rotator cuff and underwent surgery November 9, 2021. Post-operatively, Petitioner underwent physical therapy and follow-up appointments. At deposition, treating surgeon Dr. Levin testified that Petitioner had reached maximum medical improvement ("MMI") during her appointment with him in September of 2022. *Deposition Dr. Levin, p.23-24*. However, the Arbitrator noted that the only medical record from September of 2022 was on the 28th, during which Dr. Levin recommended Petitioner remain off work until undergoing a functional capacity evaluation ("FCE"). The Arbitrator noted that the FCE did not occur until June 20, 2023—nearly nine months after Dr. Levin's recommendation—with no explanation for this delay. After reviewing the FCE results on July 7, 2023, Dr. Levin released Petitioner to work in accordance with the FCE restrictions. However, due to the delay in undergoing the FCE, as well as Dr. Levin's testimony, the Arbitrator found it appropriate to terminate TTD benefits as of September 28, 2022.

Based on the record as a whole, the Commission views the evidence differently than the Arbitrator and recommends a modification of the TTD termination date. While our Supreme Court has held that the dispositive inquiry for TTD benefits is whether the claimant has reached MMI, and whether she is capable of a return to the workforce, there are three recognized exceptions to this rule, the relevant one in the instant case being: (1) Petitioner refuses to submit to medical treatment essential to her recovery. *Interstate Scaffolding, Inc.*, 236 Ill. 2d at 146-47 (2010). While the Arbitrator found no explanation for the delay of the FCE, we find otherwise.

In Petitioner's brief, Petitioner's counsel explains that there were multiple pre-trial hearings regarding the authorization of the FCE, and that Respondent's refusal to authorize was the cause of the delay. Petitioner's counsel is the only remaining party from those hearings, as the pre-trial Arbitrator was Nina Mariano, while the Arbitrator at the hearing was Arbitrator Jennifer Bae. Further, Respondent's current counsel (Hennessy & Roach, P.C.) substituted in for their prior counsel (Keefe Campbell, Biery & Associates, LLC) on December 14, 2023—approximately six weeks prior to trial. See *Stipulation to Substitute Attorneys*.

We find the affirmative recitation of facts surrounding the FCE made by Petitioner's counsel to be significant, as all practicing attorneys are bound by Rule 3.3 of the Illinois Rules of Professional Conduct, which provides: A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer. *Ill. R. Prof. Cond. 3.3(a)(1)*. Petitioner's counsel is an officer of the court, and the Commission can accept his attestations regarding his attempts at procuring FCE authorization as truthful. Doing so provides an explanation for the delay of the FCE.

Respondent argues that any reference to an off-the-record pretrial hearing, of which neither the current Arbitrator nor Respondent's current counsel was present, is inappropriate. However, Respondent cites no case law nor offers any further reasoning as to why the mention of a pretrial hearing that was not ex parte would be inappropriate. Respondent does not allege that the hearing contained an offer or acceptance of consideration in an attempt to compromise Petitioner's claim, nor that the hearing contained conduct or statements made in compromise negotiations. See *Ill. R. Evid. 408*.

We find that the delay in the performance of the FCE was caused by Respondent's refusal to authorize the evaluation, rather than Petitioner's refusal to submit to the same. Accordingly, no exception to the rule for granting TTD benefits applies, and we decline to terminate TTD benefits as of September 28, 2022. Petitioner was unable to return to the workforce on that date, based on Dr. Levin's medical opinion. Petitioner's entitlement to TTD benefits shall be extended to July 7, 2023, when Dr. Levin agreed with the FCE opinion that Petitioner could return to work full duty.

In the alternative, even if the Commission was not persuaded by the attestations made by Petitioner's counsel regarding pre-trial discussions, we believe the same conclusion would be reached regarding the termination date for TTD benefits. We find that even though there is no explanation for the delay in the performance of the FCE, there is also no evidence that the delay was born out of any bad faith on Petitioner's part. In this case, the objective evidence reveals that on September 28, 2022, Dr. Levin restricted Petitioner from returning to work, and did not adjust this recommendation until July 7, 2023—after reviewing the FCE results. The Commission concludes that medical evidence supports the modification and extension of TTD benefits through July 7, 2023.

II. Medical Expenses

The Arbitrator awarded medical expenses to Petitioner in the amount of $91,880.50 pursuant to the fee schedule, and as provided in §8(a) and §8.2 of the Act, minus any amount already paid as listed in Petitioner's Exhibit 11. Petitioner argues that this blanket credit for amounts already paid gives rise to an illegal credit for Respondent, as Petitioner's Exhibit 11 also encompasses payments made by Petitioner's Medicare and Medicare plus insurance. For the purposes of clarity, the Commission modifies the medical expenses award to clarify that Respondent is not entitled to any §8(j) credit for these Medicare and Medicare plus payments, and these payments shall not be included in the calculation of the amount already paid in Petitioner's Exhibit 11.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 20, 2024, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $536.00 per week for a period of 96 & 6/7ths weeks, representing August 29, 2021

through July 7, 2023, that being the period of temporary total incapacity for work under §8(b) of the Act. Respondent shall have a credit of $5,103.00 for TTD benefits already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay reasonable and necessary medical expenses in the amount of $91,880.50 per the medical fee schedule, and as provided in §8(a) and §8.2 of the Act. Respondent shall be given a credit for medical expenses that have been paid, but shall not receive §8(j) credit for payments made by Petitioner's Medicare and Medicare plus insurance in Petitioner's Exhibit 11. Respondent shall also reimburse Petitioner $880.00 for out-of-pocket medical expenses paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $482.40 per week for a period of 100 weeks, as provided in §8(d)2 of the Act, for the reason that the shoulder injury sustained caused a 20% loss of use of Petitioner's person as a whole. Respondent shall receive credit in the amount of $5,000.00 for PPD already paid.

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

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

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

February 7, 2025

RAW/wde

O: 12/11/24

43

/s/ *Raychel A. Wesley*

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC004558
Case Name	Debbie Faulhaber v. Northshore University Healthcare System
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Jennifer Bae, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Christopher Jarchow

DATE FILED: 3/20/2024

/s/Jennifer Bae, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF MARCH 19, 2024 5.13%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

DEBBIE FAULHABER
Employee/Petitioner

v.

NORTHSHORE UNIVERSITY HEALTHCARE SYSTEM
Employer/Respondent

Case # **22** WC **004558**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jennifer Bae**, Arbitrator of the Commission, in the city of **Chicago IL**, on **1/26/24**. 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 **8/14/2021**, 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 $**41,808**; the average weekly wage was $**804.00**.

On the date of accident, Petitioner was **66** 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 credit for $5,103.00 TTD, $5,000.00 PPD, and any medical bills that have been paid.

ORDER

Medical Bills
Respondent shall pay reasonable and necessary medical services which total $91,880.50 per the Illinois fee schedule, and as provided in Sections 8(a) and 8.2 of the Act minus any amount already paid as listed in Px 11. Respondent shall also reimburse Petitioner for $880.00 out of pocket medical expenses as listed in Px 11.

Temporary Total Disability
Respondent shall pay Petitioner temporary total disability benefits of $536.00/week for 56 4/7 weeks, commencing 8/29/2021 through 9/28/2022, as provided in Section 8(b) of the Act. Respondent shall be given a credit of $5,103.00 for TTD already paid.

Permanent Partial Disability
Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 20% loss of use of the person-as-a-whole, pursuant to §8(d)(2) of the Act which corresponds to 100 weeks at a weekly rate of $482.40. Respondent shall be given a credit of $5,000.00 for PPD already paid.

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

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

Jennifer E Bae
Signature of Arbitrator

March 20, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

DEBBIE FAULHABER,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 22WC004558
NORTHSHORE UNIVERSITY	)	
HEALTHCARE SYSTEM,	)	
	)	
	)	
Respondent.	)	

MEMORANDUM OF DECISION OF ARBITRATOR

I. PROCEDURAL HISTORY

Ms. Debbie Faulhaber ("Petitioner"), by and through her attorney, filed an Application for Adjustment of Claim for benefits under the Illinois Workers' Compensation Act ("Act"). *820 ILCS 305/1 et seq. (West 2014).* Petitioner alleged that she sustained accidental injury on August 14, 2021, while employed by Northshore University Healthcare System ("Respondent"). A hearing was held on January 26, 2024 on the following disputed issues: causal connection, reasonable and necessary medical expenses, temporary disability benefits, nature and extent of the injury, and attorney's fees and penalties.

Petitioner testified in support of her claim. Mr. Roland Bejm testified on behalf of Respondent. Dr. Steven Levin, the treating orthopedic surgeon, was called by Petitioner to testify by evidence deposition on April 13, 2023. (Px 1) Dr. Hythem Shadid, Respondent's Section 12 orthopedic surgeon, was called to testify by evidence deposition on September 21, 2022 and December 6, 2023. (Rx 3, Rx 5) In addition to his testimony, Dr. Shadid generated two (2) reports addressing the disputed issues dated October 27, 2021 and October 17, 2023. (Rx 2, Rx 4) The parties requested a written decision, including findings of fact and conclusions of law pursuant to the Act. (Ax 1)

II. FINDINGS OF FACT

Job Duties

Petitioner testified that she worked for Respondent as a radiology technologist for thirty-nine (39) years. (T. 12) She has an associate degree in radiography. (T. 45) She worked Friday and Saturday nightshifts on a part-time basis. (T. 13, 42-43) The nightshifts normally ran from 10:30 pm to 9:00

am. (T. 45) Her duties included taking stationary x-rays and portable x-rays for patients that were unable to come to her department. (T. 15) When performing portable x-rays, Petitioner utilized imaging boards that came in two (2) sizes – 14X17 and 17X17, weighting approximately eight (8) to ten (10) pounds. (T. 31, 35) Petitioner explained that she would have to lift the board above her shoulder level because she was short (5 feet 1 inch tall). (T. 41, 59) Petitioner further explained that some of the patients could not move so she would have to hold the board above their heads and slide the board down behind their backs for chest x-rays. (T. 31) When patients are wired or tubed up, she would have to be extra careful not to detach the tubes while taking portable x-rays. (T. 32) Her job required her to lift, move, and transport patients that were in wheelchairs or carts. (T. 37, 41) Sometimes, the patients that needed oxygen, she would have to hook them up to the oxygen tank on the wall that required her to lift the oxygen tank. (T. 62) Petitioner explained that there were two (2) technologists available during the nightshifts and three (3) technologists available during the dayshifts. (T. 15, 18-19)

Accident

On August 14, 2021, Petitioner testified that she was taking portable x-rays in the intensive care unit ("ICU") between 6:00 am to 6:30 am. (T. 15) The ICU beds have pockets in the middle of the mattresses where an imaging board can be slide into for taking x-rays. (T. 70-71) She said she slid an imaging board underneath a patient to take the first picture of the patient's chest, as she was adjusting the board to take the second, she felt a pop and swish in her arm and shoulder. (T. 15, 35) She immediately felt extreme pain. (T. 16) She testified that she had never injured her right shoulder prior to this accident. (T. 16) She then reported to Respondent and completed an accident report. (T. 17, Px 5)

Petitioner worked August 15, 2021 and called in sick the following weekend hoping that her arm and shoulder would improve. (T. 22-23) Petitioner testified that August 28, 2021 was the last day she worked for Respondent. (T. 24)

Mr. Bejm testified on behalf of Respondent. He was employed by Endeavor Health, previously Northshore University Health System. (T. 82) Mr. Bejm testified that he was the manager of the radiology department at Skokie Hospital for approximately three (3) years. (T. 82) Prior to that, he was an assistant manager for twelve (12) years. (T. 83) His job duties included overseeing multiple departments including radiology, ultrasound, MRI, CAT scan. (T. 83) His daily duties included overseeing personnel, staffing, and budget. (T. 83) Mr. Bejm testified he was familiar with the job requirements of an x-ray technologist. (T. 84) Mr. Bejm testified that although he worked at Skokie Hospital, the job requirements of an x-ray technologist are the same throughout the entire Endeavor Health System. (T. 84-85) Mr. Bejm testified he was a radiology technologist himself and he supervised multiple radiology technologists. (T. 86)

Mr. Bejm testified he worked with Petitioner at Evanston Hospital as an x-ray technologist. (T. 87) Mr. Bejm said that the main job of an x-ray technologist was to produce radiological exams, specifically x-rays. (T. 87) Mr. Bejm explained that the x-ray machines were both stationary and mobile. (T. 88) Mr. Bejm testified that an x-ray technologist was required to lift a cassette, pull, push patients from the department to other parts of the hospital. (T. 88) He explained that a cassette weighed about ten (10) pounds, and it would be placed behind the body part of patients to take x-

rays. (T. 88-89) Mr. Bejm further explained that a cassette was commonly referred to as a "board." (T. 88-89)

Mr. Bejm testified that when using a portable (mobile) machine, a technologist would need to drive the machine that had a small motor to the patient's room or emergency department. (T. 89) Mr. Bejm testified that an x-ray technologist would not need to lift a ten-pound cassette board over their shoulder. (T. 90) He stated that an x-ray technologist would not have to lift an oxygen tank above their shoulder. (T. 90) Mr. Bejm testified that should Petitioner have to reach over her shoulder for shelving or cabinets, she would not be lifting anything greater than a few pounds. (T. 91)

Summary of Medical Records

On August 31, 2021, Petitioner reported having pain in her neck and right shoulder. (Px 6, page 3) X-rays were taken of her spine cervical and right shoulder in Evanston. (Px 6) The images of spine cervical showed no acute fracture, moderate degenerative changes, and a slight anterolisthesis at C3-C4 and C4-C5. (Px 6, page 5) The images of the right shoulder showed no acute fracture and mild to moderate degenerative changes. (Px 6, page 6)

On September 7, 2021, Petitioner followed up with Dr. Raji Kumar Verma. (Px 3) She informed Dr. Verma that on August 14, 2021, while inserting a board under a patient's mattress in ICU, she heard a loud pop sound from her right shoulder followed by a sharp pain in her right shoulder and upper arm. (Px 3, page 5) She did not seek immediate medical care but self-medicated at home with Tylenol, aspirin, over the counter pain cream, and ice. (Px 3, page5) She informed Dr. Verma that she called in sick on August 20 and August 21, 2021 due to pain and feeling she may drop work-related items. (Px 3, page 5) She returned to work on August 28, 2021 but felt burning sensation in her right shoulder. (Px 3, page 5) She said that the pain had not improved and aggravated with movement and spasm. (Px 3, page 5) Dr. Verma diagnosed Petitioner with possible full-thickness tear of the supraspinatus and infraspinatus. (Px 3, page 7) He ordered MRIs of the right shoulder for further evaluation. (Px 3, page 5)

On September 13, 2021, Petitioner underwent an MRI of the right shoulder. (Px 2, page 156) The radiologist interpreted these MRIs as showing a full thickness rotator cuff tear involving the supraspinatus with tendon retraction and mild fatty muscle atrophy. (Px 2, page 156) Dr. Verma referred Petitioner to Dr. Levin for further treatment (Px 1, page 7) Dr. Levin is a board-certified orthopedic surgeon, specializing in shoulder and knee treatment. (Px 1, page 5)

On September 20, 2021, Petitioner presented herself to Dr. Levin. (Px 2, pages 151-196) After reviewing the x-rays and MRIs, Dr. Levin conducted an exam. (Px 2, page 154-157) Dr. Levin recommended a rotator cuff repair, subacromial decompression, rotator cuff repair with allograft, biceps tenodesis, excision distal clavicle and synovectomy. (Px 2, page 156; Px 1, pages 7-8)

On October 27, 2021, per Respondent's request, Petitioner underwent an independent medical examination ("IME") with Dr. Shadid. (Rx 2)

On November 9, 2021, Dr. Levin performed a surgery - debridement, subacromial decompression, excision of the distal clavicle and repaired the rotator cuff with graft augmentation. (Px 1, page 8) Petitioner returned to Dr. Levin on November 11, 2021 and was kept off work. (Px 4, page 10)

Petitioner continued to follow-up with Dr. Levin monthly. On February 17, 2022, she was allowed to return to work with restriction – desk duty only. (Px 2) The restriction was confirmed again on March 24, 2022 and April 21, 2022. (Px 2, pages 66-96) By July 21, 2022, Petitioner reported doing well but had some issues. (Px 1, page 9) Her pain levels were 3/10 on the visual analog scale. (Px 1, page 10)

Regarding causation, Dr. Levin explained that there was no doubt that Petitioner hurt her shoulder and was found to have a massive rotator cuff tear. (Px 1, page 17) Patients commonly have pre-existing tears and the tendon continued to tear over a long period of time. (Px 1, page 17) Patients become aware that they have a shoulder problem when an "inciting event breaks the camel's back" and leads them to seek medical attention. (Px 1, page 17) He did not know if the massive tear resulted from the work accident. (Px 1, pages 17-18) However, Dr. Levin thought that the accident caused an exacerbation to an underlying condition. (Px 1, page 20) He stated that "clearly, all of us know that she was doing fine until this incident." (Px 1, page 20) Dr. Levin explained that the surgery he performed was done to address the limitations which suddenly onset with the August 14, 2021 accident. (Px 1, page 21) The work restrictions Dr. Levin placed on Petitioner were also a result of the injury on August 14, 2021. (Px 1, page 21) Further, Petitioner's need for the FCE was also related to the accident. (Px 1, page 22) Dr. Levin opined that Petitioner reached MMI at eight (8) or nine (9) months post-operation. (Px 1, page 23-24) Given the pre-existing findings on the MRI, he could not tell for certain whether the accident tore the tendon or simply exacerbated the underlying condition, but he thought that the exacerbation was more likely. (Px 1, page 27)

On August 15, 2022, Petitioner was kept on the same restrictions but cleared to perform exercises that would strengthen her shoulder. (Px 2, page 17) On September 28, 2022, Dr. Levin placed Petitioner on no work until FCE was completed and a follow-up visit with him. (Px 2, page 8) Dr. Levin testified that Petitioner reached MMI around August or September 2022. (Px 1, pages 23-24).

On June 20, 2023, Petitioner underwent FCE at ATI Physical Therapy. (Px 9) The FCE noted that Petitioner's occupational as a radiologic technologist fell within the light physical demand level requiring the lifting of eleven (11) to twenty (20) pounds. (Px 9) Under "Capabilities," the FCE report stated, "the client's capabilities meet the level stated by the Dictionary of Occupational Titles ("DOT") but fall below the clients self-stated level." (Px 9)

On July 7, 2023, Dr Levin last saw Petitioner. He returned her back to work with restrictions based on FCE. (Px 8, pages 41-46) It was noted in Dr. Levin's medical records that "Patient had recent FCE 6/23" but "has not been seen since 9/22." (Px 8, page 44)

On October 17, 2023, per Respondent's request, Petitioner underwent reevaluation of IME with Dr. Shadid. (Rx 4)

Section 12 Examiner – Dr. Hythem Shadid

On October 27, 2021, Petitioner underwent an IME with Dr. Shadid per Respondent's request. (Rx 2) Dr. Shadid diagnosed Petitioner with a chronic right rotator cuff tear, right shoulder glenohumeral osteoarthritis, right acromioclavicular joint osteoarthritis, right cervical radiculopathy, and obesity. (Rx 2, page 8) Dr. Shadid concluded that Petitioner's condition was not related to the events of August 14, 2021 but related to natural progression of her degenerative shoulder conditions. (Rx 2, page 10) Dr. Shadid explained that based on the MRIs and mechanism of injury, Petitioner could have sustained a right shoulder strain, or at most, a temporary exacerbation of her infraspinatus tendinopathy. (Rx 2, page 10) Dr. Shadid indicated that any work restrictions requested by Petitioner would be based on her pre-existing rotator cuff tearing and degenerative changes. (Rx 2, page 11) Dr. Shadid opined that Petitioner reached MMI as of October 27, 2021. (Rx 2, page 11)

October 17, 2023, Petitioner underwent a repeat IME per Respondent's request. (Rx 4) Dr. Shadid was able to review all medical records including the surgery performed by Dr. Levin and the transcript of Dr. Levin's evidence deposition from April 13, 2023. (Rx 4) Dr. Shadid reported that he and Dr. Levin agreed that Petitioner more likely than not had a pre-existing and degenerative massive rotator cuff tear. (Rx 4, page 10) Also, they both agree that it was reasonable to conclude that Petitioner sustained either a strain or an exacerbation of her pre-existing condition. (Rx 4, page 10) However, Dr. Shadid believed that Petitioner's conditions were temporary in nature. (Rx 4, page 10) The difference between the opinions of Dr. Levin and Dr. Shadid was whether the surgery that was performed by Dr. Levin was due to the accident that occurred on August 14, 2021 or the pre-existing condition. (Rx 4, page 10) Dr. Shadid opined that there was no medical evidence that the surgery was to address the limitations which suddenly onset with August 14, 2021 accident. (Rx 4, pages 10-11) Based on his review of the job description, his examination, and the restrictions outlined in the FCE, Dr. Shadid believed that Petitioner could returned to work as an x-ray technologist. (Rx 4, page 12) He again believed that Petitioner was at MMI on October 27, 2021. (Rx 4, page 13)

Petitioner's Current Condition

Petitioner testified that she is not looking for employment. (T. 30) Petitioner described that while using her right arm above her head or reaching, she would have pain causing her to drop what she was holding. (T. 30) Petitioner testified that she would not be able to do her job safely because it sometimes required her to lift patients out of wheelchairs. (T. 41) Currently, she is 5-foot 1 inch tall and sixty-nine (69) years old. (T. 41) She is still taking aspirins and Tylenol for her right shoulder. (T. 68) She has no plan to return for additional treatment at this point. (T. 68)

Petitioner testified that she has seven (7) grandchildren, and she watches them at least two (2) days per week and other kids as needed. (T. 51) Sometimes, she travels six (6) hours to babysit the grandchildren. (T. 50-51) Petitioner had worked this babysitting schedule prior to her injury. (T. 52) During covid, she was unable to watch her grandchildren. (T. 53-55)

Per Respondent's attorney, Respondent is unable to accommodate Petitioner's left-handed medium physical demand level and right-handed light physical demand level restrictions.

III. CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. *820 ILCS 305/1.1(e).* Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).*

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

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her to be a credible witness. Petitioner was honest, frank, forthcoming, and consistent with the record. 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. Respondent's witnesses' testimonies and exhibits, via Mr. Bejm and Dr. Shadid, among other evidence and exhibits, for reasons stated below did not persuade the Arbitrator. The Arbitrator finds Dr. Levin to be more credible and persuasive regarding the causation of Petitioner's right shoulder injury, and Dr. Shadid agreed that it was reasonable to conclude that Petitioner sustained either a strain or an exacerbation of her pre-existing condition from the accident.

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

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

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003).* "A chain of events which demonstrates a previous condition of good health,

an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).*

The Arbitrator notes that there appears to be no dispute that Petitioner had a pre-existing and degenerative massive rotator cuff tear. (Rx 4, page 10) Both Dr. Levin and Dr. Shadid agree that Petitioner had this condition, as demonstrated in MRIs. (Px 2, Rx 4) Furthermore, both Dr. Levin and Dr. Shadid agree that Petitioner sustained either a strain or an exacerbation of her pre-existing condition from the accident that occurred on August 14, 2021. (Rx 4, page 10) However, Dr. Shadid believed that Petitioner's conditions were temporary in nature. (Rx 4, page 10) Dr. Shadid opined that Petitioner was at her baseline status as of October 27, 2021. (Rx 2) The difference between the opinions of Dr. Levin and Dr. Shadid was whether the surgery that was performed by Dr. Levin was due to the accident that occurred on August 14, 2021 or Petitioner's pre-existing condition. (Rx 4, page 10)

Petitioner testified that she had never injured her right shoulder prior to this accident (T. 16) As she was adjusting an imaging board underneath a patient, she felt a pop and swish in her arm and shoulder. (T. 15, 35) After reviewing the MRIs, both Drs. Verma and Levin along with the radiologist found that Petitioner had a full thickness rotator cuff tear involving the supraspinatus with tendon retraction and mild fatty muscle atrophy. (Px 2) Dr. Verma believed that Petitioner would benefit from a shoulder arthroscopy rotator cuff repair, subacromial decompression and rotator cuff repair with allograph biceps tenodesis, excision distal clavicle and synovectomy. (Px 2) Dr. Verma sent Petitioner to Dr. Levin for surgery. (Px 1, page 7) Dr. Levin performed the surgery on November 9, 2021. (Px 1, page 7-8) Dr. Levin believed that the surgery he performed was done to address the limitations which suddenly onset with the August 14, 2021 accident. (Px 1, page 21)

The Arbitrator, after reviewing the evidence depositions of Dr. Levin and Dr. Shadid, finds the testimony of Dr. Levin to be more persuasive. His answers were direct, non-evasive and made sense. Whereas Dr. Shadid's answers were argumentative and at times non-responsive. Dr. Levin did not exaggerate his testimony or the condition of Petitioner. He opined that the accident that occurred on August 14, 2021 probably would not have cause the massive tear but would have caused an exacerbation to an underlying condition. (Px 1, page 20)

After review of the medical records, witnesses testimonies and record as a whole, the Arbitrator finds no inconsistent history, nor any evidence of any intervening cause for the Petitioner's current right shoulder. Further, the Section 12 examiner's opinions did not persuade the Arbitrator, therefore, the Arbitrator concludes that Petitioner's current condition of ill-being to her right shoulder is causally related to the Petitioner's work-related injury that occurred on August 14, 2021.

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).*

Overall, the Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for all of the said treatment. Dr. Levin testified that the medical treatment Petitioner received was reasonable, necessary, and causally related to the accident. Petitioner introduced into evidence as Petitioner's Exhibit 11, a list of medical bills in the amount of $91,880.50:

Provider	Balance	Dates
Dr., Steven Levin	$ 1,628.00	9/20/21 & 2/17/22-9/28/22
Northshore Skokie Hosp	$59,958.30	11/9/21
Evanston Hosp	$ 1,184.00	8/31/21
Glenbrook Hosp	$ 4,159.00	12/23/20
Northshore University	$24,951.20	various dates (See Px 11)
TOTAL:	**$91,880.50**	

Respondent shall pay reasonable and necessary medical services which total $91,880.50 per the Illinois fee schedule, and as provided in Sections 8(a) and 8.2 of the Act minus any amount already paid as listed in Px 11. Respondent shall also reimburse Petitioner for $880.00 out of pocket medical expenses as listed in Px 11.

Issue L, whether Petitioner is entitled to TTD and maintenance benefits, the Arbitrator finds as follows:

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

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).*

Petitioner's last day of work was August 28, 2021. (T. 24) Once, Petitioner reported her accident, she was sent for treatment. (Px 2, Px 3, Px 8) X-rays and MRIs were taken on August 31, 2021 and September 13, 2021. After reviewing the x-rays and MRIs, Dr. Verma referred Petitioner to Dr. Levin for further treatment. (Px 1, page 7) On November 9, 2021, Dr. Levin performed surgery – a debridement, subacromial decompression, excision of the distal clavicle and repaired the rotator cuff with graft augmentation. (Px 1, page 8) The Arbitrator notes that Dr. Levin testified that Petitioner reached MMI at eight (8) or nine (9) months post-op, around August or September of 2022. (Px 1, pages 23-24)

The Arbitrator notes that on September 28, 2022, Petitioner was to "remain off work until FCE completed and follow up." (Px 2, page 8) Petitioner did not have that FCE until June 20, 2023, nearly nine (9) months later. (Px 9) The Arbitrator notes that Petitioner provided no explanation as to why there was such a significant delay between the September 28, 2022 recommendation, and the June 20, 2023 FCE and the July 7, 2023 follow-up with Dr. Levin.

For the reasons stated above, the Arbitrator finds Petitioner is entitled to TTD up until the date of September 28, 2022, the date Dr. Levin recommended FCE, and the date Petitioner reached MMI according to Dr. Levin's testimony. (Px 1) The Arbitrator awards TTD for the period of August 29, 2021 through September 28, 2022 or 56 4/7 weeks at a rate of $536.00. Respondent is entitled to credit of $5,103.00 for TTD benefits paid prior to the trial.

Issue L, the nature and extent of the injury, the Arbitrator finds as follows:

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

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); *Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n, 2016 IL App (1st) 152576WC, ¶ 22, 67 N.E.3d 959.* "No single enumerated factor shall be the sole determinant of disability." *820 ILCS 305/8.1b(b).*

Under Section 8.1b(b)(i), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The statute does not require the claimant to submit an impairment rating. It only requires that the Commission consider such a report if in evidence and regardless of which party submitted it. *See Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n, 2015 IL App (5th) 140445WC, ¶ 17, 43 N.E.3d 556.* Therefore, the Arbitrator gives no weight to this factor.

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes that Petitioner was employed as an x-ray technologist for thirty-nine (39) years. Petitioner worked in a part-time capacity. FCE indicated that an x-ray technologist was a light to medium physical demand level with lifting restrictions of up to twenty (20) pounds for which Petitioner was able to perform. The Arbitrator therefore gives little 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 sixty-six (66) 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 notes Petitioner is towards the end of her career and did in fact testified that she was prepared to retire around the age of seventy (70). The Arbitrator gives moderate weight to this factor.

Under Section 8.1b(b)(iv), the employee's future earning capacity, The parties stipulated to an average weekly wage of $804.00. Petitioner testified that she is not currently working nor is looking for work. The Arbitrator notes that Petitioner appears to have shifted her priority to care for her grandchildren. The Arbitrator gives little weight to this factor.

Under Section 8.1b(b)(iv), evidence of disability corroborated by the treating medical records. Petitioner was diagnosed with a rotator cuff tear, a pre-existing condition. Dr. Levin believed that the accident that occurred on August 14, 2021 exacerbated Petitioner's pre-existing condition. FCE confirmed that Petitioner can return to work within the parameters of the DOT. Specifically, Petitioner's job required eleven (11) to twenty (20) pound lifting requirement. Petitioner was found to have the ability to work within the DOT's parameters according to FCE. However, Petitioner's self-stated requirements indicated that she had to lift twenty-eight (28) to fifty (50) pounds over the shoulder. The Arbitrator finds no evidence in support for this. Petitioner testified that an imaging board only weighted eight (8) to ten (10) pounds. She did not testify to any other items that she needed to lift above the shoulder. Petitioner did testify that she might need to lift an oxygen tank but did not know the weight of the oxygen tank, and this requirement was disputed by Respondent's witness, Mr. Bejm. Based on Petitioner's testimony and FCE, there is no indication that Petitioner is unable to return to work for Respondent.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 20% loss of use of the person-as-a-whole, pursuant to §8(d)2 of the Act which corresponds to 100 weeks of permanent partial disability benefits at a weekly rate of $482.40. Respondent is entitled to credit of $5,000.00 for PPD benefits paid prior to the trial.

Issue M, whether penalties or fees should be imposed upon Respondent, the Arbitrator finds as follows:

The Arbitrator adopts the above findings of fact and conclusions of law and incorporates them by reference as though fully set forth herein.

The imposition of Section 19(l) penalties requires the Petitioner to make a written demand or payment of benefits under Section 8(a) or Section 8(b). It also requires the Respondent to fail, neglect, refuse, or unreasonably delay the payment of benefits without good and just cause. *See 820 ILCS 305/19(l).*

Regarding the imposition of Section 19(k) penalties and Section 16 attorney fees, the Courts have confirmed that the imposition of these penalties is where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose. These penalties are appropriate when the delay was vexatious, intentional, or merely frivolous. These penalties and fees require a higher standard of proof. *See McMahon v. Industrial Commission, 183 Ill.2d 499, 515(1998).* When the Respondent acts in reliance upon reasonable medical opinion or where there are conflicting medical opinions, penalties are not ordinarily awarded. *USF Holland, Inc. v. Industrial Comm'n*, *357 Ill.App.3d 798, 805 (2005).*

Sections 19(k) and 16, in pertinent part, both refer to instances where the position taken "does not present a real controversy" and is "frivolous." Section 16 refers to this language found in Section 19(k) as well. *See 820 ILCS 305/16, 19(k) (West 2012).* These penalties and fees address deliberate conduct or actions undertaken in bad faith.

The Arbitrator finds that respondent's nonpayment of benefits was not unreasonable or vexatious at the time benefits were denied or were not paid. Respondent presented a bona fide dispute on causation issue. While petitioner contends that denial was unreasonable, vexatious, and not in good faith, the evidence presented at the trial indicates otherwise. The parties presented opinions of two doctors: the treating physician/surgeon, Dr. Levin and the IME, Dr. Shadid, both of which underwent cross examination and redirect examination to address injury to the right shoulder. The Arbitrator finds that Respondent's reliance on Dr. Shadid's medical opinion was reasonable despite the fact that it conflicted with Dr. Levin's opinion. The employer's reliance was objectively reasonable under the circumstances. *Reynolds v. Illinois Workers' Comp. Comm'n., 395 Ill. App. 3d 966, 971, 916 N.E 2d 1099, 1102-3 (3d Dist. 2009); Electro-Motive Division v. Industrial Comm'n., 250 Ill. App. 3d 432, 436, 621 N.E. 2d 145, 148 (1993).* Here, Dr. Shadid testified that Petitioner's condition was not related to the event of August 14, 2021 because her condition was related to pre-existing degenerative findings as noted on MRIs. Dr. Shadid opined that Petitioner sustained right shoulder strain or at most a temporary exacerbation of her infraspinatus tendinopathy giver her alleged mechanism of injury. Dr. Shadid is a board-certified orthopedic surgeon who within a reasonable degree of medical certainty, found no causal connection. While the Arbitrator does not find Dr. Shadid's opinions to be as credible and persuasive as Dr. Levin, it was not unreasonable for Respondent to rely on these opinions as the basis for their denials at that time.

Therefore, the Arbitrator declines to award either penalties under Sections 19(k) and 19(l), or fees under Section 16. Accordingly, nonpayment of benefits was neither unreasonable nor vexatious. For the reasons stated above, Petitioner is entitled to an award of benefits under The Illinois Workers' Compensation Act consistent with the findings herein.

It is so ordered:

Jennifer E Bae

Arbitrator Jennifer E. Bae

March 20, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC027949
Case Name	Mary Eihausen v. Assurance Brokers Ltd
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0066
Number of Pages of Decision	15
Decision Issued By	Christopher Harris, Commissioner, Marc Parker, Commissioner

Petitioner Attorney	John Winterscheidt
Respondent Attorney	James Jannisch

DATE FILED: 2/11/2025

/s/Marc Parker,Commissioner
Signature

DISSENT: /s/Christopher Harris,Commissioner
Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mary Eihausen,

Petitioner,

vs. No. 23 WC 027949

Assurance Brokers, LTD,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission agrees with the Arbitrator's ultimate finding of accident but writes additionally on the issue. It is well-established that in cases of unexplained falls, it is the province of the Commission to draw inferences from the facts. *Chicago Tribune Co. v. Industrial Com. of Illinois,* 136 Ill. App. 3d 260, 264 (1985) (citing *Sears, Roebuck & Co. v. Indus. Comm'n*, 78 Ill. 2d 231 (1980)). The Commission is entitled to draw reasonable inferences from both direct and circumstantial evidence. *E.g.*, *Sears*, 78 Ill. 2d at 234. For example, in *Chicago Tribune Co.*, the Appellate court confirmed that the Commission could have drawn the inference from testimony that it was a wet, snowy day and that snow would be tracked into the employer's premises leaving ice and water on the floor, even though this was denied by a security officer. *Chicago Tribune Co.,* 136 Ill. App. 3d at 264.

In this case, Petitioner testified that one of her sandals stuck to the floor of the office breakroom causing her to fall. Although she did not see any substances on the new-looking linoleum floor, and admitted she did not know what exactly caused her sandal to stick to the floor, she was clear that her sandal became stuck to something on the floor, and that was the cause of her fall. The Commission finds persuasive the fact that Petitioner's accident occurred in a kitchen breakroom of a 13-employee office. The kitchen contained a refrigerator. The evidence indicates that food such as nachos were consumed there. Petitioner fell at lunchtime. Given the number of people in the office who had access to the breakroom, the time of day, and the fact that food and drinks were prepared or consumed in the breakroom, we find it reasonable to infer that there was a sticky substance on the floor which caused Petitioner's sandal to stick and Petitioner to trip and fall over her own feet. The Commission therefore concludes that Petitioner's injury was the result of an unexplained fall which arose out of and in the course of her employment.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 28, 2024, is affirmed and adopted, in accordance with the supplemental discussion stated herein.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $68,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

February 11, 2025

/s/ *Marc Parker*
Marc Parker

MP/mcp
o-01/16/25
068

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

DISSENT

The Majority correctly cites to the principles laid out in *Chicago Tribune Co.* with respect to the Commission's authority regarding inferences. However, the Majority fails to address the more recent case of *First Cash Fin. Servs. v. Indus. Comm'n*, 367 Ill. App. 3d 102 (2006) which provided further guidance when drawing inferences. Both cases involved unexplained falls on the employer's premises.

In *Chicago Tribune Co.*, the claimant slipped while walking through the employer's lobby. The floor was linoleum but the claimant did not recall if it was wet or dry and she did not know what caused her to fall. She stated that she did not faint or trip over her feet. 136 Ill. App. 3d 260, 262 (1985). The Appellate Court noted the testimony of two security officers with one stating that sometimes when it was snowy or wet outside, people would track snow and water onto the floor. The security officer stated that on the date of accident, the floor was level and clear of debris, ice, snow and water. *Id.* at 263. The Court found that there was no evidence that the claimant's fall was idiopathic in nature. The Court then stated that from the evidence, the Commission could have drawn the inference that there might have been ice and water on the floor even though the security officer denied this (DOA was 2/5/1979). The Court found this inference sufficient to hold that the claimant sustained an unexplained fall on the employer's premises and that she proved accident. *Id.* at 264.

In *First Cash Fin. Servs.*, the claimant slipped on a bathroom ceramic tile floor. She also stated that she did not know what caused her to slip and fall and she did not observe anything on the floor. She also did not faint or blackout. 367 Ill. App. 3d 102, 103 (2006). The claimant's co-workers testified as to the general condition of the bathroom floor. They had not observed any debris or water on the bathroom floor on the date of accident, but testified that sometimes there was hair on the floor. *Id.* at 103-04. The Commission affirmed the Arbitrator's decision finding that the claimant sustained a compensable unexplained fall on the employer's premises. *Id.* at 104. The Appellate Court reversed, first noting that there was no direct evidence explaining the cause of her fall. *Id.* at 106. The Court then struck down the claimant's argument that the record contained sufficient circumstantial evidence from which it could be inferred that the bathroom floor was dirty on the accident date and that this was the cause of her fall. *Id.*

The Appellate Court found that photographs submitted into evidence were taken three months after the accident date and were too speculative to support that the floor was dirty on the accident date. Further, the witnesses testified that they did not observe anything on the floor that day and could not remember when the bathroom was last cleaned. *Id.* at 107. Based on this, the Court found that the Commission's inference in favor of the claimant and that she had proven accident was unreasonable. The Court stated that the claimant was unable to show more than a mere possibility that the floor was dirty. *Id.* "[C]ircumstantial evidence can only support an inference which is reasonable and probable, not merely possible. (Citation omitted). Where the evidence allows for the inference of the nonexistence of a fact to be just as probable as its existence,

the conclusion that the fact exists is a matter of speculation, surmise, and conjecture, and the inference cannot reasonably be drawn." *Id.* at 106.

Turning to the case at bar, there is no direct evidence establishing the cause of Petitioner's fall but the Majority agrees with the Arbitrator's inference that with 13 employees using the kitchen/breakroom to eat their lunch and snacks, that there was a likelihood that something sticky had fallen or spilled by 12:15 pm when Petitioner fell. I disagree. Two co-workers present on the accident date, and who had helped Petitioner after she fell, testified that Petitioner had simply told them that she had tripped over her own feet. One of the co-workers, Rebecca Martin, stated that she had also passed through the area before lunch on the accident date and did not notice anything on the floor. Ms. Martin additionally confirmed that she had taken photos of the kitchen on the same day as Petitioner's fall. She stated that other than sweeping the nachos that Petitioner had dropped while falling, the condition of the kitchen was consistent with the photos. Ms. Martin further denied noticing anything else on the floor after cleaning up the spilled nachos. The photos were labeled as Respondent's Exhibit 2 and showed that the kitchen was clean, uncluttered and free from any defect, food or spilled beverage.

The present case is distinguishable from *Chicago Tribune Co.*, wherein the claimant in that case did not know what caused her to fall, which made drawing inferences from the evidence less challenging so long as it was reasonably supported. However, we have two issues in this case. The first is that according to witness testimony, Petitioner had told them on the accident date that she had tripped over her own feet. This contradicted Petitioner's position at arbitration that she fell because her sandal became stuck on the floor. Petitioner also admitted at arbitration to telling her co-workers that she just tripped over her own feet and did not seek to clarify further. Second, the evidence as to the condition of Respondent's kitchen floor does not support Petitioner's claim. In line with *First Cash Fin. Servs.*, while the notion is possible that the employer's premises could have been dirty, or sticky during lunchtime, it was also possible that it was not according to the facts herein. There is no reasonable certainty that Petitioner's injury was the result of any defective condition on Respondent's kitchen floor and the Court in *First Cash Fin. Servs.* indicated that to infer and conclude otherwise is speculative and unreasonable. For these reasons, I dissent.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC027949
Case Name	Mary Eihausen v. Assurance Brokers Ltd
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	Bradley Gillespie, Arbitrator

Petitioner Attorney	John Winterscheidt
Respondent Attorney	James Jannisch

DATE FILED: 2/28/2024

/s/Bradley Gillespie, Arbitrator
Signature

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Mary Eihausen
Employee/Petitioner

v.

Assurance Brokers, LTD
Employer/Respondent

Case # **23** WC **027949**

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 **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Collinsville**, on **February 6, 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, **10/10/23**, 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 $**55,266.64**; the average weekly wage was $**1,062.82**.

On the date of accident, Petitioner was **63** years of age, ***married*** with **0** dependent children.

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

Respondent shall be given a credit of $**5,000.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of **$0.00**.

Respondent is entitled to a credit **for all medical bills paid by employer sponsored medical insurance** under Section 8(j) of the Act.

ORDER

Medical benefits

Respondent shall pay directly to the medical providers amounts pursuant to Sections 8(a) and 8.2 of the Act, for reasonable and necessary medical services referenced herein. Respondent is entitled to a credit for amounts paid by its employer sponsored medical insurance.

Prospective Medical Treatment

Respondent shall authorize and pay for treatment of Petitioner's injuries by Dr. Bret Grebing, and authorize and pay for all diagnostic testing, therapy and treatment attendant thereto, until Petitioner reaches maximum medical improvement from her 10/10/23 accident.

Temporary Total Disability

Respondent shall pay Petitioner the sum of **$708.55**/week for a period of **16 6/7** weeks, commencing **10/11/23 through 002/06/24**, 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.

Bradley D. Gillespie
Signature of Arbitrator
February 28, 2024

ICArbDec19(b)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARY EIHAUSEN,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No.: 22WC004225**
	)	
ASSURANCE BROKERS LTD,	)	
	)	
Respondent.	)	

19(b) DECISION OF ARBITRATOR

On or about October 20, 2023, Mary Eihausen [hereinafter "Petitioner"] filed an Application for Adjustment of Claim alleging injuries to her left hip and body as a whole when her shoe stuck to the floor and she fell on October 10, 2023, while working for Assurance Brokers, Ltd [hereinafter "Respondent"]. (Arb. Ex. #2) This matter proceeded to hearing on February 6, 2024, in Collinsville, Illinois. (Arb. Ex. #1) The following issues were in dispute in the instant case at arbitration:

- Accident;
- Causation;
- Medical Bills;
- TTD; and
- Prospective Medical Care.

FINDINGS OF FACT

Petitioner is sixty-three years old and was employed by Respondent at all times relevant herein as an accounting person or bookkeeper since November 2008. (Tr. pp. 34-5) Respondent is an insurance agency and the Edwardsville, Illinois office in which Petitioner worked accommodated thirteen employees and included a kitchen/break room on the premises. (Tr. pp. 35-6)

On October 10, 2023, at approximately 12:15 p.m., Petitioner, wearing slip-on, slide-type sandals (RX 1), walked from her desk where she had been eating nachos, to the kitchen/breakroom (RX 2) to throw away trash. While in the kitchen/breakroom, her left foot stuck to the floor, her foot came out of the sandal, she lost her balance and "fell over [her] own feet," hit a table and fell to the floor landing on her left hip. (Tr. p. 36)

The kitchen/breakroom floor was "relatively new" laminate and Petitioner does not know specifically what caused her shoe to stick to the floor, causing her fall. (Tr. pp. 50-1)

Rebecca Martin, Respondent's customer service representative, described the kitchen/breakroom, with a microwave, stove, and refrigerator, as a place where employees would have their lunch or make snacks. (Tr. pp. 11-12) Ms. Martin was working but was not present in

the kitchen when Petitioner fell. (Tr. p. 12) When she heard the fall, Ms. Martin found Petitioner on the floor in obvious pain, in contrast to when she had seen Petitioner earlier in the day in no distress. (Tr. p. 13) Ms. Martin testified that while on the floor, Petitioner told her she tripped over her feet. (Tr. p. 15) Thereafter, she called an ambulance and sent a text message Respondent's owner to report the accident. (Tr. p. 14)

While waiting for the ambulance to arrive, Ms. Martin took photographs of Petitioner's legs and feet, including the sandals she was wearing. (Tr. p. 16; RX 1) (see above). Ms. Martin further testified that she "went through" the kitchen/breakroom "earlier that day," approximately forty-five minutes to an hour fifteen minutes before Petitioner fell and did not notice anything on the floor at that time. (Tr. p. 22)

Ms. Martin also took photos of the breakroom/kitchen after she had straightened out the table and charrs that had been displaced by Petitioner's fall and after she had swept up the nachos Petitioner dropped when she fell. (Tr. pp. 21-22) One of the photographs taken was entered in evidence and depicts a wide view of a large room with at least four tables and thirteen chairs, a refrigerator and bottled water. (RX 2). Ms. Martin testified that she does not know where Petitioner was standing when she fell but testified that she did not notice anything sticky on the floor in the area where the nacho remnants were swept up after the fall. (Tr. p. 26)

Co-worker, Kristin Lawrence testified that she too heard Petitioner fall and likewise entered the kitchen/breakroom shortly thereafter. (Tr. p. 32) She likewise found Petitioner on the floor but does not know where Petitioner was standing when she fell. *Id.* She too heard Petitioner say that she tripped over her feet. (Tr. p. 33)

Petitioner felt immediate pain and while on the floor, testified that her coworkers referenced above came to her aide. (Tr. 38) When the ambulance arrived, she was taken to Anderson Hospital's emergency room where a history that Petitioner tripped and fell at work today when her "toe caught other leg and she fell on her left hip" was taken. (PX 2). Following X-rays of the hip and a CT scan, Petitioner was diagnosed with a displaced, left femoral neck fracture and admitted to the hospital where she was kept for three days. (PX 2).

While there, Dr. Bret Grebing performed surgery, consisting of reattaching the femoral neck and head with three pins. Upon her release from the hospital, Petitioner was instructed not to drive and to use a walker. Home healthcare and narcotic pain medication were prescribed. (PX 2).

Before Petitioner was released from the hospital, she created a handwritten account of her accident on the back of a form given to her by hospital personnel. That document states in pertinent part, "10/10/23 @12:15 (Tues) walked into kitchen, had sandals on. As I was walking to trash can and my sandal stuck, lost balance fell. Hit table then floor." (PX 1).

Petitioner received home health care and therapy from October 6, 2023, through December 14, while she underwent follow-up care with Dr. Grebing. (PX 3, 5). The October 17, 2023, Anderson Hospital Home Health Care records documents, "Patient works as an accountant for insurance company and her foot got caught on the floor and she fell." (PX 5).

Petitioner transitioned from home healthcare to out-patient physical therapy. Petitioner last saw Dr. Grebing on November 28, 2023, at which time he continued to excuse Petitioner

from work. (PX 3, 4). She had a follow-up appointment with Dr. Grebbing, but the doctor would not see her because Respondent refused to authorize his treatment, nor the physical therapy he prescribed. She was next scheduled to see Dr. Grebing the day after this Hearing.

Secondary to the medical care Petitioner received for her injuries, bills in the amount of $56,518.52 were generated by the providers referenced above and remain unpaid. (PX 6).

Petitioner, who ambulates with the assistance of a cane, testified that she remains in significant pain and does not have strength in her left leg. (Tr. p. 45) She sleeps poorly because of the pain because she cannot rest on the left side of her body. *Id.* She can stand for approximately 10 minutes at a time. (Tr. p. 46) Petitioner has not worked in any capacity since the date of her accident. *Id.*

CONCLUSIONS OF LAW

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

To obtain compensation under the Act, an injury must "arise out of" and "in the course of" employment. 820 ILCS 305/1(d). Both elements must be present at the time of the accidental injury to justify compensation. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38 44-45, 109 Ill.Dec. 166, 509 N.E.2d 1005 (1978); *Illinois Bell Telephone v. Industrial Comm'n*, 131 Ill.2d 478, 483, 137 Ill.Dec. 658, 646 N.E.2d 603 (1989); *Fire King Oil Co. v. Industrial Comm'n*, 62 Ill.2d 293, 294, 342 N.E.2d 1 (1976); *Wise v. Industrial Comm'n*, 54 Ill.2d 138, 142, 295 N.E.2d 459 (1973). Therefore, to obtain compensation under the Act, Petitioner bears the burden of proving two elements by a preponderance of the evidence: First, that the injury occurred in the course of her employment; Second, that the injury arose out of her employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 278 Ill.Dec. 70, 797 N.E.2d 665 (2003).

The phrase "in the course of employment" refers to the time, place and circumstances of the injury. *Scheffler Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill.2d 361, 366-67, 5 Ill.Dec. 854, 362 N.E.2d 35 (1977). "A compensable injury occurs 'in the course of' employment when it is sustained while a claimant is at work or while [s]he performs reasonable activities in conjunction with [her] employment." *Wise*, 54 Ill.2d at 142, 295 N.E.2d 459. Here, the record is clear that Petitioner was at work when she sustained accidental injuries.

The fact that Petitioner was in the kitchen/breakroom to throw away the remnants of her nachos does not take her out of the course and scope of her employment. The Personal Comfort doctrine provides that an employee, while engaged in work, may do things that are necessary and reasonable to her health and comfort and remain in the course of employment. This applies even if the act is personal in nature and done only for the benefit of the employee. *Illinois Consol. Tel. Co. v. Industrial Comm'n*, 314 ILL. App,3d, 347, 247 Ill.Dec. 333, 732 N.E.2d 49 (5th Dist. 2000). The course of employment is not broken by these personal acts. *Eagle Discount Supermarkets v. Industrial Comm'n*, 82 Ill.2d

331, 421 N.E.2d 492 (1980). Petitioner's trip to the kitchen/breakroom falls squarely into the Personal Comfort doctrine.

An injury arises out of one's employment if its origin is in a risk connected with or incidental to the employment so that there is a causal relationship between the employment and the accidental injury. *Orsini v. Industrial Comm'n,* 117 Ill.2d 38, 109 Ill. Dec. 166, 509 N.E.2d 1005 (1978). To meet this burden, a claimant must prove that the risk if injury is peculiar to the work ***or*** that she is exposed to the risk of injury to a greater degree than the general public. *Id*. Specifically, the Court has acknowledged the existence of three categories of risks: (1) risks distinctly associated with employment; (2) personal risks, and; (3) neutral risks which have no particular employment or personal characteristics. *Springfield Urban League v. Illinois Workers' Compensation Comm'n*, 2013 Il.App. (4th) 120219WC, 990 N.E.2d 284, 290 (4th Dist. 2013).

The first category involves risks that are distinctly associated with employment. "Employment risks include the obvious kinds of industrial injuries and occupational diseases and are universally compensable." *Illinois Institute of Technology Research Institute*, 314 Ill.App. 3d at 162, 247 Ill.Dec. 22, 731 N.E.2d 795. 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 tasks which contributes to the risk of falling." *First Cash Financial Services*, 367 Ill. App. 3d at 106, 304 Ill. Dec. 722, 853 N.E.2d 799.

"Personal risks" generally do not arise out of employment. *Illinois Institute of Technology Research institute v. Industrial Comm'n,* 314 Ill. App. 3d 149, 731 N.E.2d 795 (2000).

The third category, "neutral risks" generally do not arise out of employment and are compensable only where the employee was exposed to the risk to a greater degree than the general public. This increased risk may be qualitative, such as some aspect of employment that contributes to the risk, or qualitative, such as the number of times they are required to encounter the risk. *Springfield*, 2013 Il.App. (4th) 120219WC, 990 N.E.2d 284, 290 (4th Dist. 2013).

Here, Petitioner's left sandal stuck to something sticky on the kitchen/breakroom floor, causing her foot to come out of the sandal. She thereafter lost her balance and "fell over [her] own feet." There is no evidence to contradict this testimony and the testimony is consistent with the testimony of co-workers Martin and Lawrence that Petitioner told them she tripped over her feet.

Petitioner's sandal sticking to the kitchen/breakroom fall fits squarely into the *First Cash* Court's first category of risk that involve those distinctly associated with employment, that include "tripping on a defect at the employer's premises or falling on uneven or slippery ground at the work site. 314 Ill. App. 3d 149, 731 N.E.2d 795 (2000). With thirteen employees using the kitchen/breakroom to eat their lunch and snacks, the likelihood that something sticky has fallen or spilled on the floor by 12:15 p.m. when Petitioner fell is a reasonable inference to be drawn from this evidence.

For the above-stated reasons, the Arbitrator finds and concludes that Petitioner's October 10, 2023, accident arose out of and in the course and scope of her employment with Respondent.

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

There is no legitimate dispute that Petitioner fractured her left hip when she fell on October 10, 2023. There is no evidence of pre-existing hip problems and co-worker Martin testified that she had seen Petitioner earlier in the day in no distress. She thereafter found Petitioner on the floor in obvious pain after hearing her fall and called an ambulance.

Circumstantial evidence, especially when entirely in favor of the petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill. 2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n,* 260 Ill.App.3d 92, 96-97, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 442 N.E.2d 908 (1982).

In the case at bar, Petitioner worked her regular job in no distress until she fell, after which she was taken by ambulance to the emergency room and underwent hip surgery that same day. The Anderson Hospital records not only record a detailed history of Petitioner's work accident, but also reflect X-ray and CT scan confirmation of an acute, nondisplaced left femoral subcapital fracture.

Considering the objective and subjective evidence, the Arbitrator finds and concludes that Petitioner's current condition of ill-being is causally related to her accident of October 10, 2023, based upon a "chain of events" analysis. *Pulliam*, 77 Ill. 2d 469, 397 N.E.2d 834 (1979); *Gano,* 260 Ill.App.3d 92, 631 N.E.2d 724 (1994); *International Harvester*, 93 Ill.2d 59, 442 N.E.2d 908 (1982).

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

The right to be compensated for medical costs associated with work-related injuries is at the very heart of the Workers' Compensation Act. *Hagene v. Derek Polling Center*, 388 Ill. App. 3d 390, 902 N.E. 2d 1269 (5th Dist. 2009). The purpose of the Act is to place on industry the burdens of caring for the casualties of industry instead of placing this burden on the public or on the individuals whose misfortunes arise out of the industry. *Shell Oil v. Industrial Commission*, 2 Ill. 2d 590, 119 N.E. 2d 224 (1954).

There is no evidence of unreasonable or unnecessary medical treatment found in the record. Based upon the above findings regarding accident and causal connection, the Arbitrator finds and concludes that the medical treatment provided to Petitioner for her work-related injury was reasonable and necessary to cure and/or relieve the effects of that injury, and that Respondent is liable for payment of the medical services incurred therewith.

Therefore, Respondent shall pay amounts pursuant to Sections 8(a) and 8.2 of the Act, to the medical providers listed on Petitioner's Exhibit 6, for reasonable and necessary medical services referenced herein. Respondent shall be given a credit for amounts it has previously paid to the providers referenced herein.

K. Is Petitioner entitled to any prospective medical care?

There is nothing in the record to contradict Dr. Grebing's recommended treatment for Petitioner's fractured left hip. Physical therapy has been recommended, Petitioner has a follow-up visit scheduled and remains excused from work by her treating surgeon. Petitioner, who uses a cane to ambulate, has clearly not reached maximum medical improvement from her injuries. Her condition has not stabilized. Respondent is hereby ordered to authorize and pay for Dr. Grebing's recommended treatment and all diagnostic testing and treatment referrals referable to Petitioner's injuries described herein, until she reaches maximum medical improvement from her October 10, 2023, accident.

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

Petitioner claims entitlement to temporary total disability benefits from the day after her accident through the date of Hearing. She has been either hospitalized or excused from work by her treating surgeon, Dr. Grebing during that entire period. There is no evidence in the record to contradict this period of temporary, total incapacity.

In light of the above, the Arbitrator finds and concludes that Petitioner was temporarily and totally disabled from October 11, 2023 through February 6, 2024 a period of 16 6/7 weeks. Respondent is therefore ordered to pay Petitioner the sum of $708.55 per week for 16 6/7 weeks. Respondent is entitled to a credit of $5,000.00 for benefits previously paid to Petitioner.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC002218
Case Name	Jorge Oliva v. City Drywall Inc
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0067
Number of Pages of Decision	14
Decision Issued By	Marc Parker, Commissioner, Carolyn Doherty, Commissioner

Petitioner Attorney	David Froylan
Respondent Attorney	Todd Severns

DATE FILED: 2/11/2025

/s/Carolyn Doherty,Commissioner
Signature

DISSENT: /s/Marc Parker,Commissioner
Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JORGE OLIVA,

Petitioner,

vs. NO: 24 WC 2218

CITY DRYWALL, INC.,

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under Section 19(b) of the Act by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident and employment relationship, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 2, 2024 is hereby affirmed and adopted.

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

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

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

February 11, 2025

o: 01/30/25
CMD/kcb
045

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

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

DISSENT

I respectfully dissent from the Decision of the Majority. I would have found that the Petitioner was an employee of the Respondent. Therefore, I respectfully dissent.

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC002218
Case Name	Jorge Oliva v. City Drywall Inc
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Crystal Caison, Arbitrator

Petitioner Attorney	David Froylan
Respondent Attorney	Todd Severns

DATE FILED: 8/2/2024

/s/Crystal Caison, Arbitrator
Signature

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

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)

Jorge Oliva
Employee/Petitioner

v.

City Drywall, Inc.
Employer/Respondent

Case # **24** WC **002218**

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 **Crystal L. Caison**, Arbitrator of the Commission, in the city of **Chicago**, on **May 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. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☐ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Prospective medical**

FINDINGS

On **1/8/2024**, Respondent ***was not*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did not*** exist between Petitioner and Respondent.

ORDER

The Arbitrator finds that the Petitioner failed to meet his burden of proving by a preponderance of credible evidence that an employee/employer relationship existed on **1/8/24.**

The Arbitrator finds the issues of accident, earnings, medical bills, temporary total disability, and prospective medical moot.

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

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

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

Crystal L. Caison

Signature of Arbitrator

August 2, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
(19b)

Jorge Oliva	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. **24WC002218**
City Drywall Inc.	)	
	)	Setting: **Chicago**
	)	
Respondent.	)	

PROCEDURAL HISTORY

This matter proceeded to hearing on May 8, 2024 before Arbitrator Crystal L. Caison. The issues in dispute include employer/employee relationship, accident, earnings, medical bills, temporary total disability benefits (TTD) benefits and prospective medical. (AX 1)

THE ARBITRATOR MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner's Testimony

Petitioner, Jorge Oliva, testified that on January 8, 2024, he was 53 years old and that he was employed by Juan Soto (herein "Respondent") who was the owner of City Drywall Inc. (Tr. 17) Petitioner testified that he was doing "taping." (Tr. at 17). Taping consists of using plaster to tape the seams of drywall that is being installed. (Tr. at 17-18). Petitioner testified that he works only when Juan calls him, when he calls me to tell me that he needs me to go help. (Tr. 18)

Petitioner was on his stilts when he tripped on panels of drywall left over from the installation. (Tr. at 23, 28). Stilts are a tool that are tied to your legs and you walk on to reach up to the ceiling. (Tr. at 23). The stilts belonged to Petitioner and that he used them so that he can

reach the ceiling. *Id*. He also said that Respondent has tools that he would be able to use. Petitioner testified that he was working at 1508 North State Parkway, when he suffered an accident that led to injuries to his neck, back, and right ankle. (Tr. at 29, 46) Petitioner testified that on the date of the accident he was using his own tools. Petitioner testified that he had only been work at this location for a week, five days before the January 8, 2024 accident.

Samuel was present at the time of injury. (Tr. at 28). Samuel helped Petitioner remove the stilts and helped him up. *Id*. Petitioner alleges Samuel is an employee of Respondent.

Petitioner alleged that he called Respondent that day, and over the following days, continued to call and text Respondent. (Tr. at 28-29). Petitioner testified that he did not receive a response from Respondent. *Id*.

After the accident, Petitioner went home and took medications. (Tr. at 28-29). On January 9, 2024, Petitioner did not go to work due to pain. (Tr. at 29). On January 10, 2024, Petitioner sought emergency care at Gottlieb Memorial Hospital. (Tr. at 30).

Petitioner testified that he did not receive a W-2 or 1099 from Respondent, but he kept a notebook to record his earnings. (Tr. at 40) He takes the notebook at the end of the year to his accountant.

On cross examination, Petitioner testified that he did not receive any training from City Drywall or any of their employees because he knows his work. He stated that I do not hang drywall, I only tape it. (Tr. 47). Petitioner testified that he has been in the drywall business for 30 years.

Petitioner testified that when Respondent is not calling him for a job, he works for other companies that call him because he has to pay bills. (Tr. 49-50) Petitioner testified that City Drywall is not taking any withholdings, including retirement, vacation, or insurance from his check. (Tr. 57)

Petitioner testified that Respondent was on vacation in Mexico on January 8, 2024 and that he was not coming to check on Petitioner's work. Petitioner said that he and Samuel were able to go about their business of taping drywall without Respondent being present. (Tr. 60)

Respondent/Juan Soto (Owner of City Drywall, Inc.)- Testimony

Respondent testified that Mr. Oliva came to work on the 1508 North State Parkway because he called and asked Respondent for work. Respondent testified that he could not

remember if he called Petitioner or Petitioner called him for a "little job" in December. (Tr. 69-70). Respondent testified that Petitioner is not a W-2 employee of City Drywall. *Id.* at 70.

Respondent testified that Dennis provided the drywall that was being taped. Dennis ordered all the materials. Dennis brings all the materials from the suppliers. The supply company, they bring the material inside of the building; and we do just the labor work. (Tr. 74).

Respondent testified that he was out of town from December 16, 2023 until around January 22, 2024. While he was out of town, he testified that Petitioner supervised his own work. He said that Dennis was on site daily and is the supervisor for the building.

Respondent testified that besides City Drywall, there were subcontractors (electricians, plumbers, and carpenters) on site at 1508 North State Parkway. (Tr. 76). Respondent was asked about Samuel Roke but explained that he did not know this guy and that Petitioner had his own crew. (Tr. 77)

Respondent testified that he never hired Petitioner and if he didn't have work for Petitioner, there would no compensation him. (Tr. 80) Respondent testified that Petitioner provided his own tools. (Tr. 85)

On cross examination, Respondent was shown Petitioner's Exhibit 8. (Tr. 92). First check dated 11/28/23 for $1500 signed by Respondent's daughter, Nadia Soto. (Tr. 92). Second check dated 12/2/23 for $830. Third check dated 1/18/24 which Petitioner picked up at Respondent's house. (Tr. 37-38) None of the checks show the dates/hours actually worked by Petitioner or how the check amount was arrived at.

Respondent conceded that he did not send Petitioner a 1099 tax form or a W-2. Respondent testified that he has 8 to 10 employees that he does send W-2s to at the end of the year. Respondent testified that he did not know he was required to send Petitioner a 1099 tax form. (Tr. 94)

Respondent testified that he paid Petitioner by the sheet of drywall completed. (Tr. 99) Respondent testified that Petitioner received two $3000 checks related to the location where petitioner sustained injuries (Tr. 101)

Respondent denies receiving notice of the accident, and alleges the first time he received notice was when he received a letter from Petitioner's attorney sometime at the end of January, early February 2024 (Tr. at 83)

Medical

On January 10, 2024, Petitioner sought emergency care at Gottlieb Memorial Hospital. (Tr. at 30).

At Gottlieb Memorial Hospital, Petitioner stated he had fallen at work on Monday [January 8, 2024]. Petitioner complained of pain in his back, neck, and right ankle, however, medication he had taken reduced his pain to 4/10. (PX 1 at 20). Petitioner underwent x-rays for his right ankle and lumbar spine. (PX 1 at 25). X-rays were negative for fractures. *Id*. The hospital diagnosed Petitioner with acute cervical myofascial strain, acute myofascial strain of the lumbar region and contusion of the right ankle. (PX 1 at 53). The hospital prescribed Tylenol, Flexeril and Motrin. (PX 1 at 54). Petitioner was advised to follow up with his primary care physician in one week. (PX 1 at 53; Tr. at 31).

On January 11, 2024. Petitioner sought care at Swan Primary Care in Bloomingdale. (PX 1 at 64). Petitioner was diagnosed with back muscle spasms and referred to physical therapy. *Id*.

On or about January 17, 2024, Petitioner followed up at La Clinica for physical therapy and complained of neck, back and right ankle pain. (PX 2 at 6). The history of illness taken by Dr. Gattas states while he was working and walking on stilts, he tripped and fell. *Id*. A co-worker helped him. *Id*. Dr. Gattas diagnosed Petitioner with cervical spine radiculopathy, lumbosacral radiculopathy, right ankle pain and muscle spasms. (PX 2 at 8). Dr. Gattas agreed to treat Petitioner with therapy three times per week for four weeks. (PX 2 at 9). Petitioner underwent therapy through March 15, 2024. (PX 2 at 32). On January 17, 2024, Dr Gattas removed Petitioner from work until "deemed by specialists." (PX 2 at 53). In addition, Dr. Gattas opined that to a reasonable degree of chiropractic and medical certainty the Petitioner's condition/injury is directly related to the patient's work accident. (PX 2 at 9).

On January 24, 2024, Dr. Gattas referred Petitioner to American Diagnostic MRI for a CT of his cervical and lumbar spine without contrast. (PX 3 at 7-10). Following the CT scan, Dr. Gattas referred Petitioner to Dr. Erickson and Dr. Mazzarella (PX 2 at 56-57).

On February 7, 2024, Petitioner followed up with Dr. Mazzarella. (PX 2 at 69). Dr. Mazzarella removed Petitioner from work until March 12, 2024. On March 12, 2024, Dr. Mazzarella kept Petitioner off work until April 23, 2024. (PX 2 at 80).

On February 12, 2024, Petitioner followed up with Dr. Erickson. (PX 4 at 6). Dr. Erickson noted a history of falling backward on boards of construction debris. (PX 4 at 6). Dr. Erickson reviewed the CT scans from American Diagnostic noting some narrowing at C4-5 with bilateral stenosis, worse on left side and disc protrusions and retrolisthesis at L4-5. (PX 4 at 7). He ordered lumbar and cervical MRI's of Petitioner. (PX 4 at 8).

On February 23, 2024, Petitioner underwent said MRI's at Lakeshore Open MRI. (PX 5 at 4-9). April 8, 2024 Petitioner followed up with Dr. Erickson to review the MRI's. (PX 4 at 9). Dr. Erickson noted (1) disc herniation at C4-5 with anterolisthesis and left lateral stenosis and (2) L3-4 and L4-5 with moderate lateral recess stenosis. *Id*. Dr. Erickson recommended an epidural injection at C4-5 and an epidural injection and/or medial branch blockade for the lumbar spine. (PX 4 at 10). On April 11, 2024, Petitioner underwent a cervical epidural injection. (PX 6 at 7).

Petitioner remains off work and under medical care. (Tr. at 43-44). Petitioner is currently waiting on approval of injections recommended by Dr. Erickson. *Id*.

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.

The Arbitrator also observed Respondent during the hearing and finds him to be credible.

Issue B, whether there was an employee-employer relationship, the Arbitrator finds as follows:

To determine whether a claimant is an employee or an independent contractor, several factors are considered. "The single most important factor is whether the purported employer has a right to control the actions of the employee. Also, of great significance is the nature of the work performed by the alleged employee in relation to the general business of the employer. Additional factors to consider are the method of payment, the right to discharge, the skill the work requires, which party provides the needed instrumentalities, and whether income tax has been withheld. Finally, a factor of lesser weight is the label the parties place upon their relationship. The term "employee," for purposes of the Act, should be broadly construed." Ware v. Indus. Comm'n, 318 Ill. App. 3d 1117, 1122 (2000); see Roberson v. Indus. Comm'n (P.I. & I. Motor Express, Inc.), 225 Ill. 2d 159, 174-176 (2007).

In this case, Petitioner has 30 years' experience in the business of dry walling with a focus on taping. On January 8, 2024, Petitioner was performing taping work at 1508 North State Parkway, when he suffered an accident that led to injuries to his neck, back, and right ankle. There is no credible evidence that Respondent exercised control of how Petitioner executed his taping work. In fact, the evidence supports that Respondent was in Mexico on vacation on January 8, 2024 and that he was not coming to check on Petitioner's work. Petitioner said that he and Samuel were able to go about their business of taping drywall without Respondent being present.

Respondent testified that Petitioner used his own tools, including the stilts worn on the day of the accident. Petitioner testified that he did not receive a W-2 or 1099 from Respondent, but he kept a notebook to record his earnings. He takes the notebook at the end of the year to his accountant.

On cross examination, Petitioner testified that he did not receive any training from City Drywall or any of their employees because he knows his work. He stated that I do not hang drywall, I only tape it.

Petitioner testified that when Respondent is not calling him for a job, he works for other companies that call him because he has to pay bills. Petitioner testified that City Drywall is not

taking any withholdings, including retirement, vacation, or insurance from his check. Both Petitioner and Respondent testified that there was no W-2 or 1099 issued to Petitioner. However, Respondent testified that he has 8 to 10 employees that he does send W-2s to at the end of the year. Respondent testified that he did not know he was required to send Petitioner a 1099 tax form.

Respondent testified that besides City Drywall, there were subcontractors (electricians, plumbers, and carpenters) on site at 1508 North State Parkway. Respondent was asked about Samuel Roke but explained that he did not know this guy and that Petitioner had his own crew.

Respondent testified that he never hired Petitioner and if he didn't have work for Petitioner, there would no compensation him. Respondent testified that Petitioner provided his own tools. On cross examination, Respondent was shown Petitioner's Exhibit 8. First check dated 11/28/23 for $1500 signed by Respondent's daughter, Nadia Soto. Second check dated 12/2/23 for $830. Third check dated 1/18/24 which Petitioner picked up at Respondent's house. None of the checks show the dates/hours actually worked by Petitioner or how the check amount was arrived at. Respondent testified that besides City Drywall, there were subcontractors (electricians, plumbers, and carpenters) on site at 1508 North State Parkway. Respondent was asked about Samuel Roke but explained that he did not know this guy and that Petitioner had his own crew.

On cross examination, Respondent was shown Petitioner's Exhibit 8. First check dated 11/28/23 for $1500 signed by Respondent's daughter, Nadia Soto. Second check dated 12/2/23 for $830. Third check dated 1/18/24 which Petitioner picked up at Respondent's house. None of the checks show the dates/hours actually worked by Petitioner or how the check amount was arrived at.

Based upon the record as a whole, the Arbitrator finds that the Petitioner failed to meet his burden of proving by a preponderance of credible evidence that an employee/employer relationship existed on January 8, 2024.

Therefore, the Arbitrator finds the issues of accident, earnings, medical bills, temporary total disability, and prospective medical moot.

Issue E, whether timely notice of the accident was given to Respondent, the Arbitrator finds as follows:

Issue E is moot.

Issue G, Petitioner's earnings, the Arbitrator finds as follows:

Issue G is moot.

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:

Issue J is moot.

Issue K, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

Issue K is moot.

Issue O, whether Petitioner is entitled to prospective medical, the Arbitrator finds as follows:

Issue O is moot.

It is so ordered:

Crystal L. Caison

Arbitrator Crystal L. Caison

August 2, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC017496
Case Name	Theresa Smith v. OSF St. Francis Medical Center
Consolidated Cases	
Proceeding Type	
Decision Type	Commission Decision
Commission Decision Number	25IWCC0068
Number of Pages of Decision	16
Decision Issued By	Marc Parker, Commissioner, Christopher Harris, Commissioner

Petitioner Attorney	Hania Sohail
Respondent Attorney	D. Renee Schroeder

DATE FILED: 2/13/2025

/s/Marc Parker,Commissioner
Signature

DISSENT: /s/Christopher Harris,Commissioner
Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Theresa Smith,

Petitioner,

vs. No. 19 WC 017496

OSF St. Francis Medical Center,

Respondent.

DECISION AND OPINION ON REVIEW

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

FINDINGS OF FACT:

On June 3, 2019, Petitioner, a 53-year-old maintenance worker, slipped on a puddle of water on the hallway floor, injuring her right knee. She testified, and informed her doctors, that she "did the splits" with her legs but did not fall to the floor because she was holding onto her cleaning cart. A video of Petitioner's accident showed she was not holding onto her cart or anything else when she slipped.

Petitioner had a prior history of right knee injury and treatment. In high school in 1985, she sustained a complete rupture of her right ACL, and had been scheduled to undergo surgery to reconstruct it, though that surgery was cancelled and never rescheduled. In September 2010, Petitioner underwent a different procedure – a right knee arthroscopy with partial meniscectomies and debridement of an ACL tear.

Following Petitioner's June 3, 2019 accident, a knee x-ray showed moderate to severe right knee tricompartmental arthritis with near complete joint space loss. On June 12, 2019, Petitioner

began treating with Dr. Rhode, who provided work restrictions. On June 19, 2019, he took her completely off work after reviewing her MRI which showed the ACL tear, a medial meniscus tear, and chondral loss to all three compartments. When an intra-articular steroid injection failed to provide lasting relief, Dr. Rhode recommended a right total knee replacement, which he performed on December 6, 2019.

Dr. Rhode reviewed Petitioner's accident video and testified that it appeared to show that when Petitioner slipped, she pivoted on her knee. Although he acknowledged his primary reason for performing knee replacement surgery was because of the preexisting chondral loss in Petitioner's knee, he opined that her June 3, 2019 mechanism of injury aggravated her underlying condition, necessitating the total knee replacement.

On August 5, 2020, Dr. Rhode released Petitioner to full duty, but on September 2, 2020 he gave her permanent work restrictions of limited use of stairs, and no squatting, kneeling, or crawling. Petitioner performed an unsuccessful, self-directed job search beginning January 13, 2021, but admitted she only looked for work through May 28, 2021. Petitioner subsequently found full-time employment as a caregiver for her three grandchildren, for which she is being paid by Childcare Connection.

On August 5, 2019, Petitioner underwent a Section 12 examination by Dr. Hennessy. Petitioner told Dr. Hennessy that she slipped on water, did the splits, and went down with her bottom being about 8-12 inches above the ground. After Dr. Hennessy viewed Petitioner's accident video, he believed that it completely refuted her claimed mechanism of injury. Dr. Hennessy also reviewed Petitioner's 2010 medical records which showed she had already developed complete cartilage loss and had bone-on-bone in some parts of her knee. Dr. Hennessy opined that as a result of Petitioner's June 3, 2019 accident, she suffered, at most, a mild strain or sprain which would have reached MMI by June 12, 2019. He further opined that Petitioner's knee replacement surgery would have been needed irrespective of her mild slip on June 3, 2019, due to her end-stage osteoarthritis.

The Arbitrator found that Petitioner proved a compensable accident and gave timely notice, but denied that Petitioner's knee replacement surgery was causally related to her June 3, 2019 accident. The Arbitrator found Dr. Hennessy's opinion – that Petitioner's accident caused only a minor knee strain/sprain resulting in no permanency – was more persuasive than Dr. Rhode's causation opinion. The Arbitrator found Dr. Rhode's opinions unconvincing because Petitioner did not accurately describe her mechanism of injury to him or provide her full medical history when she first saw him. The Arbitrator also noted that Dr. Rhode did not review any x-rays, MRIs, or the 2010 operative report before providing his causation opinion. The Arbitrator found Dr. Rhode's opinion that Petitioner's right knee "pivoted during her slip" was unsupported by the accident video, in which Petitioner's right knee could not be seen.

CONCLUSIONS OF LAW:

The Commission views the evidence differently than the Arbitrator, and finds that Petitioner's current right knee condition of ill-being and her right knee arthroplasty were causally related to her June 3, 2019 accident.

Causal Connection:

In finding that Petitioner's current right knee condition and need for a total knee replacement were causally related to her June 3, 2019 accident, the Commission finds the opinions of Dr. Rhode more persuasive than those of Dr. Hennessy. While Petitioner was mistaken in testifying she held onto her cart at the time she slipped, the accident video clearly shows that she slipped. After Dr. Rhode viewed Petitioner's video, he explained that Petitioner's pivot maneuver during her slip disarticulated her femur from her tibia, spinning it and shifting it to the joint sufficiently enough to tear the meniscus and aggravate Petitioner's preexisting condition. Dr. Rhode opined that Petitioner's June 3, 2019 accident caused her asymptomatic right osteoarthritic knee to become completely symptomatic, requiring a total knee replacement.

The Commission is less persuaded by Dr. Hennessy's opinions. He only saw Petitioner once. He never compared Petitioner's preinjury diagnostic studies with her postinjury diagnostic studies. He never reviewed Petitioner's actual films taken in 2008 and 2010, or Dr. Rhode's operative report. Dr. Hennessy did not examine Petitioner after her knee replacement surgery. He acknowledged Petitioner's report of having no problems with her right knee from 2010 through 2019. During that period, Petitioner had no difficulty performing her full work duties which included squatting, kneeling, and crawling. Dr. Hennessy admitted that prior to Dr. Rhode's recommendation for a knee replacement, no doctors had ever given Petitioner such a recommendation.

The Commission therefore modifies the Arbitrator's Decision and finds Petitioner's June 3, 2019 accident accelerated the need for her knee replacement. The Commission further modifies the Arbitrator's Decision to find that Petitioner's current right knee condition of ill-being and her need for a total knee replacement are causally related to her June 3, 2019 work accident. The Commission further modifies the Arbitrator's Decision by finding that Respondent does have liability to Petitioner under the Act for her medical expenses, TTD, maintenance, and permanency as discussed below.

Medical Expenses:

Having found that Petitioner's current right knee condition was causally related to her accident, the Commission relies on the testimony of Dr. Rhode that all of the treatment he performed on Petitioner's right knee, including two surgeries, physical therapy, and injections, was reasonable and necessary. Respondent's expert, Dr. Hennessy, also opined the knee replacement surgery Dr. Rhode performed was appropriate, though he disagreed it was causally related.

Petitioner's medical bills listed in Petitioner's Exhibit 13 show an outstanding balance of $136,642.78. Respondent offered no argument that the treatment in question was not reasonable or necessary. Therefore, the Commission finds Respondent responsible for paying Petitioner the outstanding reasonable and necessary medical expenses summarized in PX13 which were incurred in treating Petitioner's right knee condition between June 3, 2019 and January 31, 2021, pursuant to §8(a) and §8.2 of the Act.

Temporary Total Disability:

Petitioner last worked for Respondent on June 3, 2019, the day of her accident. The following day, she was given restrictions from Occupational Health which Respondent did not accommodate. When Petitioner began treating with Dr. Rhode on June 12, 2019, he continued her restrictions through December 6, 2019, the date of her knee replacement surgery, at which time he took her totally off work. Dr. Rhode released Petitioner to full duty work on August 5, 2020. Although on September 2, 2020 Dr. Rhode released Petitioner at MMI with medium duty restrictions, Petitioner admitted she did not immediately begin a job search.

In light of the above, the Commission finds Petitioner was temporary totally disabled from June 4, 2019 through August 5, 2020, and finds Respondent responsible for paying Petitioner the sum of $348.02 per week for 61-2/7 weeks, commencing June 4, 2019 through August 5, 2020, that being the period of temporary total incapacity from work, under §8(b) of the Act. Respondent is entitled to a credit of $3,529.92 for TTD benefits previously paid to Petitioner.

Maintenance Benefits:

Petitioner testified she did not begin a job search until January 13, 2021. She admitted she stopped looking for work after May 28, 2021. The Commission also notes that on the Request for Hearing form, both parties stipulated that Petitioner was entitled to *19-2/7* weeks (sic) of maintenance benefits for the period of January 13, 2021 through May 28, 2021, which conforms with the evidence presented.

In light of the above, the Commission finds Respondent responsible for paying Petitioner the sum of $348.02 per week for *19-3/7* weeks, for the period of January 13, 2021 through May 28, 2021, that being the period Petitioner was entitled to maintenance benefits, under §8(a) of the Act.

Permanent Partial Disability:

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 is to be established using the following criteria: (i) the reported level of impairment from a physician; (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). The Commission considers these factors as follows:

(i) **Disability impairment rating:** *no weight,* because neither party submitted an AMA impairment rating from a physician.

(ii) **Employee's occupation:** *significant weight,* because at the time of her accident, Petitioner was a maintenance worker, but the permanent restrictions she received as a result of her accident prevent her from returning to that line of work. Petitioner did, however, find alternative work as a child caregiver.

(iii) **Employee's age:** *moderate weight,* because Petitioner was 53 years old at the time of her accident, and still has a significant work life expectancy during which she will be required to manage the effects of her injury.

(iv) **Future earning capacity:** *little weight,* because no evidence was presented to show Petitioner suffered any loss of future earning capacity.

(v) **Evidence of disability corroborated by the treating records:** *significant weight,* because Petitioner underwent a total right knee replacement. At her last visit with Dr. Rhode, he documented her difficulty with stairs and her inability to squat and kneel. Petitioner testified she can no longer perform activities she could do before her accident, like jogging and gardening. Her knee swells if she stands for too long. She still experiences a lot of aches and pains, and at times she needs to take pain medication at night. Petitioner now has permanent medium duty restrictions of limited use of stairs, and no squatting, kneeling, crawling or climbing ladders.

Based upon the above numerated factors as well as the record as a whole, the Commission finds Petitioner has suffered a loss of trade. The Commission therefore awards Petitioner permanent partial disability benefits of $313.22 per week for 150 weeks, because the injury sustained caused the 30% loss of person as a whole, under §8(d)2 of the Act.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's current right knee condition is found to be causally related to her June 3, 2019 accident.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner the outstanding reasonable and necessary medical expenses itemized in Petitioner's Exhibit 13 which were incurred in treating Petitioner's right knee condition between June 3, 2019 and January 31, 2021, pursuant to §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner the sum of $348.02 per week for 61-2/7 weeks, commencing June 4, 2019 through August 5, 2020, that being the period of temporary total incapacity from work, under §8(b) of the Act. Respondent is entitled to a credit of $3,529.92 for TTD benefits previously paid to Petitioner.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner the sum of $348.02 per week for 19-3/7 weeks, for the period of January 13, 2021 through May 28, 2021, that being the period Petitioner was entitled to maintenance benefits, under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner the sum of $313.22 per week for 150 weeks, because the injury sustained caused the 30% loss of person as a whole, under §8(d)2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit of $21,160.82, under §8(j) of the Act.

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.

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 the Circuit Court.

February 13, 2025

/s/ *Marc Parker*
Marc Parker

MP/mcp
o-01/16/25
068

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

DISSENT

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC017496
Case Name	Theresa Smith v. OSF St. Francis Medical Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Hania Sohail
Respondent Attorney	D. Renee Schroeder

DATE FILED: 1/19/2024

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

/s/Kurt Carlson, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Theresa Smith
Employee/Petitioner
v.
OSF St. Francis Medical Center
Employer/Respondent

Case # **19** WC **017496**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Peoria**, on **December 5, 2023**. After reviewing all the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **June 3, 2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**27,145.56**; the average weekly wage was $**522.03**.

On the date of accident, Petitioner was **53** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**3,529.92** for TTD, $**0** for TPD, $**0** for maintenance, and $**3,366.34 medical paid by work comp in addition to the 8(j) credit listed below** for other benefits, for a total credit of $**28,057.08**.

Respondent is entitled to a credit of $**21,160.82** under Section 8(j) of the Act.

ORDER

After reviewing the evidence presented, the Arbitrator hereby finds that the Petitioner failed to establish that her total knee replacement was causal connected to the work accident on June 3, 2019. As a result, Respondent has no liability under the Act for TTD, maintenance, medical bills or permanency.

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

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

Kurt A. Carlson **JANUARY 19, 2024**

Signature of Arbitrator

FINDINGS OF FACT

It is undisputed that on June 3, 2019, the petitioner, Theresa Smith, while employed in the housekeeping department with OSF, slipped in some water on the floor in the hallway between the double doors immediately to the right of the elevator on the sixth floor of the Ortho unit. The actual accident itself was caught on surveillance video which was submitted into evidence at the time of trial (Respondent's Ex. 1). The video is two minutes and four seconds in duration. The video depicts the petitioner entering the camera's view from the right pushing her cleaning cart. She then does a 180 degree turn from her cart with her back completely to the cart and it appears on her third step away from the cart, her right foot contacts a puddle of water on the floor and sustains a minor slip. It appears she may have slipped an inch or 2. Her hands raise up slightly, she immediately regains her footing, and she then walks off camera. She subsequently reappears and is not limping. At no time does she grab her leg, rub her leg or her knee or in any manner indicate an injury occurred to the right knee other than an initial few steps where she limps taken immediately after the slip. The video itself contrasts with the petitioner's testimony. The petitioner was inconsistent as to the mechanism of injury during her testimony at trial. She testified on multiple occasions that she slipped and fell on June 3, 2019. She also testified on multiple occasions during her trial testimony that she did not fall to the ground and the sole reason that she did not fall to the ground was the fact that she grabbed on to her cleaning card to prevent her from falling all the way to the floor. The video refutes this statement. The petitioner maintains that it is only due to a poor camera angle that her grabbing onto the cleaning cart to prevent her from falling is not depicted on the video. The arbitrator specifically finds a different angle would not have depicted her grabbing onto her cart as her cart is behind her and her hands are visible during the slip.

The incident in question occurred right in front of a patient waiting area. The video clearly shows a few people seated in the waiting area immediately adjacent to where the petitioner sustained the slip. The incident was of such a minor consequence, it failed to draw the attention of any of the people visible on the video that were seated within a few feet of the slip.

The petitioner's testimony that she fell to the floor as well as her modified testimony that she grabbed onto the cart to prevent her from falling despite the video clearly refuting her testimony together with other testimony of the petitioner at trial which was impeached such as her wearing her knee brace "at all times," has led the arbitrator to find the petitioner's testimony at times to be remarkably inconsistent. The Arbitrator is not attributing any ill will to the testimony of the petitioner as it may be the petitioner simply does not remember the events clearly, but the fact remains the petitioner's testimony was impeached on a several key issues.

The petitioner testified that she was provided with a KO adjustable knee brace that was specifically fitted for her. The petitioner was fitted for the brace on her initial visit with Dr. Rhode on June 12, 2019. When seen on June 26, 2019, by Dr. Rhode the petitioner reported that she was in severe pain and had been in severe pain since the accident on June 3, 2019 which is inconsistent with prior medical records which document that she only had pain when walking which was controlled with Ibuprofen or Aleve. The petitioner testified when seen on June 26, 2019, she was always wearing her brace. She further testified she wore it every day and at night until it started bothering her at which time, she would take it off and place her knee on a pillow while in bed. She testified she wore the brace every single day until she had her surgery. (Tr. 107).

The petitioner reported to Dr. Rhode on July 11, 2019, and testified that as of July 11, 2019 she was not able to walk more than a block, that she had difficulty with stairs where she had to scoot down the stairs specifically testifying she would lower herself down on her buttocks and scoot down the steps. She further testified that she was not able to ascend and descend stairs upright. Again this testimony is refuted by video surveillance taken

of the petitioner on July 16, 20 and 21, 2019 where the petitioner is clearly seen ambulating without a limp, getting into and out of her vehicle without issue, standing/walking/shopping for 15 minutes at a time without evidencing any pain or discomfort, she is also seen ascending and descending stairs in an upright position without assistance of any kind including the fact she did not use a handrail, and finally in none of the videos is she wearing the brace which again contradicts the petitioner's testimony. The video surveillance footage also contradicts the subjective complaints reported to Dr. Rhode.

By the third visit with Dr. Rhode which was July 11, 2019, Dr. Rhode recommended surgery consisting of a total knee replacement and the petitioner agreed. No less invasive treatments were ever considered, and this is because the petitioner had bone on bone arthritis. The Arbitrator finds the fact the petitioner refused ACL reconstruction despite stipulating to decades of pain significant when she then based on her testimony agrees to a knee replacement a mere 5 weeks after her slip which per her testimony is the first day, she had pain. The Arbitrator finds the testimony that she had no pain in the right knee between 2011 and June 3, 2019, to be not credible.

The arbitrator finds the testimony of Sandra Ann Shettleworth to be non-persuasive and the video of the actual accident to be the most probative as to the accident itself. Miss Shettleworth testified that there was some water by a garbage can, and she saw the petitioner slide and fall. She further testifies that she saw the petitioner grab onto something to hold herself to keep her from going all the way down. Miss Shettleworth testified at least three different times that the petitioner grabbed onto her cleaning cart to prevent falling to the floor. Respondent's Ex. 1 was then played for Miss Shettleworth. She was specifically asked after viewing the video surveillance footage if that is what she recalled seeing to which she responded. "I don't remember that." She further asked after seeing the video surveillance footage "Is that the same day? I don't remember all those people there." Additionally, she testified that she walked over and asked the petitioner if she was okay. The video surveillance does not show any such interaction. Later in her testimony she was asked if she talked to the petitioner after the accident to which she replied, "No."

While Miss Shettleworth testified that she did not speak to the petitioner or Miss Sohail prior to giving her testimony, it seemed that clear her sworn testimony mirrored that of the petitioner, especially the bit "about grabbing onto her cleaning cart to prevent her falling to the ground," since the video surveillance footage clearly refutes that ever occurring. While I believe that Miss Shettleworth was seated in the waiting area, again I find her memory to be inconsistent with the facts as the video surveillance which the petitioner admits depicts the slip in question clearly refutes the petitioner grabbing onto her cart. It reflects that her back was turned to the cart at the time of the slip and that further she did not reach out for anything to prevent her from falling to the ground.

It is unrefuted that when the petitioner was in high school, she sustained a complete rupture of her ACL in approximately 1985. The petitioner had been scheduled to have the ACL surgically reconstructed however the petitioner had consumed liquid or food prior to the scheduled surgery and it was cancelled and never rescheduled. The medical records thereafter document and the petitioner stipulated to the fact that the petitioner had ongoing chronic pain to the right knee because of the completely ruptured ACL. The petitioner was referred to Dr. Rhode by her lawyers and chose to treat with Dr. Rhode even though she was referred to Dr. Below by OSF Occupational Health. The Occupation health records note that the referral was made as Dr. Below would have been in the best position to ascertain if a new injury had occurred to the knee as he had performed right knee surgery in 2010. The petitioner testified that she did not believe Dr. Below did a good job on her surgery yet on direct examination testified that she had no issues following the 2010 surgery. The Arbitrator finds the testimony as to why she did not return to Dr. Below not credible. If indeed the petitioner had no pain and no symptoms with respect to the right knee from 2011 – 2019 as she testified on direct, then why would she have believed that Dr. Below had performed poorly on the surgery? It doesn't add up. The

petitioner later conceded on cross that she did have right knee pain off and on from 2011 – 2019 but no new injury during that time.

The medical records reveal that the petitioner had an x-ray of the right knee on March 17, 2008, at which time it was the impression of the reading radiologist that the petitioner had mild to moderate osteoarthritic changes of the right knee. The x-ray report specifically documents the presence of patellofemoral joint arthritis.

On June 16, 2010, the petitioner was seen by Dr. Joan Golemon reporting that she had had right knee pain off and on for years because of an injury in high school. She reported right knee pain off and on ever since. She further reported that she had no swelling, but it hurt at night, it woke her up, she limped, she had no catching or locking but she reported that sometimes she felt like it gives when she walks down the stairs, however, she had never fallen.

A MRI performed on June 17, 2010 a full nine years before the accident at issue revealed (1) palpable abnormality corresponding to a large parameniscal cyst related to extensive tearing within the lateral meniscus; (2) tearing of the free edge of the body and posterior horn of the medial meniscus; (3) osteoarthritic changes most pronounced within the lateral compartment where there are small full thickness cartilage defects; and (4) chronic full thickness tear of the anterior cruciate ligament. Records from July 14, 2010, indicates the petitioner was 5'6" and weighed 194 lbs. On said date operative and non-operative treatment options were discussed with the petitioner who expressed she did not want to go through the vigorous rehab for an ACL reconstruction and opted to not have the ACL repaired.

On September 28, 2010 Dr. Steven Below performed right knee arthroscopy with right knee exam under anesthesia revealing a +3 anterior drawer, +3 Lachman's and +3 pivot shift, a right knee partial medial meniscectomy, right knee partial lateral meniscectomy, right knee chondroplasty of the lateral femoral condyle with firming of cartilage to good firm borders; right knee chondroplasty of the patella with firming of cartilage to good firm borders, right knee debridement of lateral parameniscal cyst and right knee debridement of chronic ACL tear. The post operative diagnosis as of September 28, 2010 by Dr. Below was (1) right knee chondromalacia, grade I to II at the patella apex; (2) right knee chondromalacia, grade III and IV changes of the lateral femoral condyle; (3) right knee complex tear of the anterior horn, posterior horn and body of the lateral meniscus; (4) right knee complex tear of the posterior horn of the medial meniscus; (5) right knee lateral parameniscal cyst; and (6) right knee chronic anterior cruciate ligament tear.

The petitioner was subsequently involved in a motor vehicle accident and presented to the emergency room on October 4, 2010, at which time x-rays were again taken of the right knee. The x-rays were compared to the March 8, 2010, x-rays which would have been pre surgery with the reading radiologist noting the impression of mild degenerative change even during that seven month period. Also, small effusion was noted.

On October 13, 2010, the medical records of Dr. Below document that Dr. Below discussed the fact with the petitioner that she had minimal to moderate degenerative changes in the lateral compartment of the knee as well as her chronic ACL deficiency. Dr. Below's records further indicate that the petitioner fully understood that her ACL remained torn and unrepaired AFTER the September 28, 2010, surgery.

Medical records provided document the petitioner being clinically obese throughout the period at issue.

While the petitioner testified on direct examination that she had no pain in the right knee following 2011 on cross examination she admitted that she had aches and pains which she treated with Tylenol and other over the counter medications.

Following the June 3, 2019, occurrence the petitioner did not immediately present to Prompt Care as she testified, but rather presented four hours later as documented by the medical records. The medical records indicate that the petitioner was complaining of anterior right knee pain. Findings of the x-rays performed on said date were negative for acute fracture, dislocation, or joint effusion, and noted atherosclerosis, tri-compartmental right knee osteoarthritis, moderate to severe in the medial compartment with near complete joint space loss. The petitioner also requested an off work slip on June 3, 2019, stating she knew it would be worse the next day. If indeed the petitioner had been asymptomatic prior to the June 3, 2019, incident there would have been no basis to request the off work slip or make the comment she did.

An MRI of the right knee performed on June 12, 2019 revealed extensive degenerative changes to the knee in addition to the ruptured ACL reading as follows:

Medial Meniscus: Complex tear involving the posterior horn/body medial meniscus with extension to involve the meniscal root. Borderline medial extrusion of the meniscal body.
Lateral Meniscus: Small radial tear involving the posterior horn lateral meniscus. Horizontal degenerative tear involving the lateral meniscal body, with extension to the femoral articular surface.
Ligaments: ACL: The ACL is not identified compatible with full-thickness tear, likely chronic. There is resultant anterior tibial translation measuring 15 mm.

PCL: Degeneration/partial tear of the PCL fibers at the femoral attachment.
LCL: Thickening of the proximal fibular collateral ligament compatible with grade 1 sprain.
MCL: Medial bowing of the intact MCL fibers.

Extensor mechanism:

Quadriceps and patellar tendons: Normal.

Flexor mechanism
Semitendinosus/membranosis, biceps femoris and popliteus tendons: Normal

Effusion: Small.
Loose Bodies: None.

Articular Cartilage: Moderate diffuse chondral loss involving the lateral compartment with **full-thickness chondral loss involving the central and posterior weightbearing portions of the lateral femoral condyle**, with minimal edema/cystic changes. Moderate diffuse chondral loss involving the medial compartment with **full-thickness chondral loss involving the weightbearing portion of the medial femoral condyle**. Moderate chondral loss involving the patellofemoral compartment, without underlying subchondral edema.

Bone: No evidence for acute fracture. Subcortical edema within the intercondylar region of the right tibia and along the medial aspect of the medial tibial plateau, likely degenerative. Tricompartmental degenerative arthritis right knee, with large hypertrophic marginal osteophytes.

IMPRESSION:

1. No acute fracture.
2. Moderate to advanced degenerative arthritis right knee as detailed above.
3. Bilateral meniscal tears
4. Chronic full-thickness ACL tear. Degeneration/partial-thickness PCL tear.

5. Grade 1 LCL sprain.
6. Small knee joint effusion.

Both Dr. Rhode and Dr. Hennessy agree that the x-rays and MRI taken after the June 3, 2019, occurrence reveal bone on bone arthritis of the right knee which was not caused by the slip. Dr. Hennessy testified to a reasonable degree of medical certainty that cartilage has no nerve endings while bone does and once a joint becomes bone on bone, it would be painful.

The petitioner was seen by Prompt Care, Occupational Health, Dr. Rhode, and her own primary care physician, Dr. Hawkins. Additionally, she was examined by Dr. Ryon Hennessy. The petitioner gave somewhat inconsistent histories to each of these medical providers. She advised Dr. Rhode initially that she had fallen. It is also worth noting that the petitioner's intake form with Dr. Rhode lists no prior surgeries other than a hysterectomy.

Both Dr. Rhode and Dr. Hennessy were deposed, with the arbitrator specifically finding the testimony of Dr. Hennessy persuasive and more credible in this case. Dr. Rhode testified that the need for the right knee replacement ultimately underwent by the petitioner was a result of the June 3, 2019, pivoting of the right knee which aggravated the previously asymptomatic osteoarthritis that existed within the petitioner's right knee. From the video shown, there is no way in which it can be definitively established that the petitioner's right knee pivoted, and the burden of proof lies with the petitioner.

Dr. Hennessy testified that the petitioner had clearly existing pre-existing arthritic changes documented by x-ray as early as 2008. Also noted in the records is the petitioner's obesity which was present in 2010 and persisted through 2019. The arthroscopic exam by Dr. Below in September 2010 revealed a grossly unstable right knee and found near complete cartilage loss in the lateral compartment and lesser loss in the patella surface almost nine years prior to the incident in question. 2013 medical records documented obesity with a BMI of 33.6. These are like the 2019 numbers for the petitioner. Additionally, Dr. Hawkins in the pre-op examination notes the petitioner attributed the need for the total right knee replacement to the high school injury and nowhere is Dr. Hawkins advised of the slip on June 3, 2019.

It is the opinion of Dr. Hennessy which I find persuasive that the petitioner's right knee replacement performed on December 6, 2019, was attributable to the natural progression of her previously existing and previously symptomatic osteoarthritis stemming originally from her high school untreated right knee ACL rupture, and accelerated by her obesity in adulthood. I do not find that the June 3, 2019, incident as captured on video accelerated the petitioner's need for the right knee replacement.

The Arbitrator specifically finds that the petitioner was released for full duty work by Dr. Rhode as of August 5, 2020. The petitioner thereafter had restrictions imposed and the petitioner was released at MMI with modified medium duty restrictions imposed by Dr. Rhode as of September 2, 2020.

The petitioner admitted she did not begin to seek employment even though she had been terminated by OSF in accordance with its attendance policy on January 6, 2020, until January 13, 2021, a full year after being terminated and 5 months after being released to return to work by Dr. Rhode. The petitioner testified she sought employment from January 13, 2021, through May 28, 2021. The Arbitrator specifically finds that the efforts made by the petitioner specifically the 95 contacts made within the noted period did not constitute a diligent job search as no potential employer had posted a job opening. The petitioner testified that she did not apply for a single position with an opening while searching for employment.

As to the issue of causal connection, the Arbitrator specifically finds the testimony of Dr. Ryon Hennessy persuasive. Dr. Hennessy in his testimony specifically noted the fact that the medical records document no swelling or bruising that day, the day after, or the week following the occurrence. He also pointed out the fact that the petitioner was not limping a minute or so after the accident as depicted on the video surveillance footage of the occurrence. Dr. Hennessy was also the only physician rendering an opinion in this case who reviewed the pre-accident x-ray reports, MRI reports, the September 2010 operative report and compared those records to the actual x-rays and MRI actual films taken after the June 3, 2019, accident. In his deposition, Dr. Hennessy testified that the examination under anesthesia performed by Dr. Below during the September 28, 2010, surgery documented severe instability of the right knee as evidenced by the fact the petitioner had a +3 LACHMAN maneuver, a +3 pivot shift and +3 anterior drawer maneuvers. Dr. Hennessy also testified that the operative report from 2010 revealed some bone-on-bone arthritis already existing in 2010, nine years prior to the instant injury. He further described in detail the anatomy of the knee and how the unrepaired completely ruptured ACL contributed to the need for the total knee replacement.

Dr. Hennessy also testified to the progression of the degenerative condition of the petitioner's right knee which would have occurred between the September 2010 operation and the June 3, 2019, accident date. Dr. Hennessy further testified based upon a reasonable degree of medical certainty that the petitioner's bone on bone arthritis would have been producing symptoms prior to the June 3, 2019, date of loss. The Arbitrator finds the testimony of Dr. Hennessy convincing in this regard.

The Arbitrator further finds that the opinions of Dr. Rhode are not convincing as Dr. Rhode did not have the opportunity to review any x-rays or MRIs or the 2010 operative report prior to rendering his opinions. Additionally, the petitioner did not provide him with a full medical history, nor did she accurately describe the mechanism of injury when she was initially seen by Dr Rhode. Finally, the opinion of Dr. Rhode that the petitioner's right knee pivoted during the slip is not supported by the video footage as the right knee is not visible on the video surveillance footage.

Based upon the foregoing, the Arbitrator specifically finds that the petitioner sustained a compensable accident on June 3, 2019, which consisted of a minor strain/sprain resulting in no permanency. The initial medical treatment with Prompt Care and OSF Occupational Health on June 3 and 4, 2019 are deemed to be work related and the respondent has paid for the same.

The Arbitrator specifically finds the petitioner is not entitled to any additional TTD, maintenance, medical benefits or permanency under the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC014061
Case Name	Catherine Griffin-Malone v. Tootsie Roll Industries
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0069
Number of Pages of Decision	6
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Jim Vainikos
Respondent Attorney	Amy Bilton

DATE FILED: 2/13/2025

/s/Christopher Harris,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CATHERINE GRIFFIN-MALONE,

Petitioner,

vs.

NO: 22 WC 14061

TOOTSIE ROLL INDUSTRIES,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of accident/occupational disease, causal connection, medical expenses, temporary total disability benefits (TTD) and permanent partial disability (PPD) benefits, and being advised of the facts and applicable law, reverses the decision of the Arbitrator and finds that Petitioner failed to prove that her COVID-19 illness arose out of a work-related exposure while in the course of her employment with Respondent. Accordingly, all other issues are moot and the Arbitrator's award of workers' compensation benefits and credit is hereby vacated.

FINDINGS OF FACT

Petitioner was employed by Respondent as a machine operator on the second shift. (T.8-10; T.22). She testified that Respondent required its employees to wear masks and engage in social distancing, and although she admitted to having difficulty social distancing while performing her job duties, she did wear a mask, and sometimes two, every day at work. (T.23-24; T.38; T.40).

Petitioner usually took her breaks in the main lunchroom which she described as a big, open space with about 20 tables spread approximately three to four feet apart, and with Plexiglass dividers. (T.24-25; T.27-28; RX6). She testified that there would be about 15-20 people eating in the cafeteria at one time and they were allowed to remove their masks to eat. (T.28).

Petitioner testified that she began experiencing symptoms of COVID-19 on December 1, 2020 and she tested positive for the virus on December 4, 2020 while at the hospital. She further testified that she had worked at Respondent's plant in the 14-day period prior to her COVID-19 diagnosis except from November 21, 2020 through November 29, 2020, when Respondent's plant

shut down for Thanksgiving break. There is no testimony as to Petitioner's activities or contacts during the break. (T.22; T.43-48; PX3).

The December 4, 2020 emergency department records documented that Petitioner reported having symptoms of COVID-19 for five days and that she had been exposed to COVID-19 at work. (T.28-29; PX3). At arbitration, Petitioner testified that she may have had symptoms for less than five days. (T.46-47). Petitioner then followed-up with her primary care physician, Dr. Sreerama, on December 15, 2020. The visit note similarly indicated that Petitioner had been exposed to COVID-19 at work and that her symptoms started on December 1, 2020. (T.29; PX2). Petitioner had also completed an Employee Statement for short-term disability benefits on December 15, 2020 which indicated that her COVID-19 illness was due to her employment. Dr. Sreerama completed a short-term disability benefit form as well, dated December 16, 2020, but marked that it was unknown if Petitioner's condition arose out of her employment. (T.150-151; RX9). Petitioner received no further treatment for COVID-19 after December 2020 and was released to her regular duties. (T.52).

Petitioner called Arthur Green to testify at arbitration. (T.57). Mr. Green worked for Respondent in sanitation and he testified regarding the various measures Respondent had in place to mitigate the spread of COVID-19 prior to December 2020. (T.58-63; T.86-95). He also worked the second shift and testified that he would have lunch with Petitioner during his shift. (T.59). Mr. Green testified that he contracted COVID-19 a week before Thanksgiving in November 2020. (T.63). Petitioner's attorney then asked: "Q: Were you working with Catherine Griffin-Malone at that point? A. We was in the lunchroom together." (T.64). He further testified that he took off work for COVID-19 on the Friday before the Thanksgiving break, or November 20, 2020, and that during the break, he had called Petitioner to inform her he had COVID-19. (T.64; T.73-74). Mr. Green added that his presence in the cafeteria could have been to "[e]at with them or be cleaning up at the same time." (T.76-77).

Respondent called two witnesses to testify at arbitration. The first witness was Pete LeBron, Respondent's human resources and safety manager. (T.96-97). He also testified regarding Respondent's COVID-19 protocols at the plant, adding that lunch tables were at least six feet apart. Mr. LeBron further acknowledged that there had been other employees at the plant who had tested positive for COVID-19 around the end of November 2020. (T.98-103; T.107-116; T.123-128; RX5-RX7; RX11). Respondent's second witness, occupational health nurse Nancy Trejo, similarly testified that six other people from the second shift had tested positive for COVID-19 in the two weeks prior to Petitioner's diagnosis, but that no one from Petitioner's specific department had tested positive for COVID-19 in December 2020. (T.132-133; T.144-147; T.149; RX7).

Nurse Trejo further testified to having telephonically interviewed Petitioner for purposes of contact tracing and completion of a COVID-19 questionnaire. (T.138-139; RX8). The questionnaire, dated December 6, 2020, stated that Petitioner last worked on December 2, 2020, that she wore a mask, sometimes two, that she practiced social distancing at work and in public, that she wore a mask outside of work, and that she believed she had contracted the virus from the "air in cafeteria." (T.48-49; T.51-52; T.139-140; RX8). The questionnaire also indicated that Petitioner did not know where at work she had been exposed to COVID-19 or by whom, she did not travel in the last month and she had not been to a public event. The questionnaire additionally

stated "meet up in lunchroom mask off & talking" and that Petitioner believed Earling McCrary may have exposed her to the virus. Petitioner denied living with someone currently in quarantine or that had COVID-19. She also denied living or caring for someone who had recovered from a positive case of COVID-19. (T.140-141; RX8). Nurse Trejo testified that to the best of her knowledge, Ms. McCrary did not have COVID-19. (T.141-143).

Petitioner clarified her testimony during further examination and stated that she told Nurse Trejo that she had been exposed to Arthur Green and a James Ruth, and not Earling McCrary, and that they were all in the lunchroom together. Mr. Green's and Mr. Ruth's names were not listed on Respondent's questionnaire, only Ms. McCrary's name. (T.51-52; T.155-157; RX8). After more questioning, Petitioner agreed that she had first indicated on direct examination that she had been exposed to Ray, a mechanic she sometimes worked with, but was now claiming exposure to Mr. Green and Mr. Ruth. (T.56-57; T.157). Respondent recalled Nurse Trejo to testify. She testified that Mr. Ruth worked in the palletizing department which was not the same as Petitioner's Tootsie Wrap department nor close to it. (T.158-159). Mr. Ruth had tested positive for COVID-19 on November 23, 2020 during the Thanksgiving break. (T.159).

CONCLUSIONS OF LAW

The Arbitrator determined that Petitioner proved a work-related exposure to COVID-19 and found that notwithstanding any discrepancy as to who Petitioner told Nurse Trejo she was exposed to at work, the evidence showed that Arthur Green had tested positive for COVID-19 and ate lunch with Petitioner at work. The Commission is not bound by the Arbitrator's findings and states as follow:

By their Briefs, the parties did not dispute that Petitioner met the requirements for the rebuttable presumption in Section 1(g)(1) of the Illinois Workers' Occupational Diseases Act (OD Act) to apply. *820 ILCS 310/1(g)(1), (4) and (6)*. The parties also did not dispute that Respondent offered sufficient evidence to rebut the presumption. Respondent utilized the second of three methods to demonstrate that it engaged in, applied to the fullest extent possible, and enforced to the best of its ability various practices in order to mitigate the spread of COVID-19 in accordance with the Centers for Disease Control and Prevention (CDC) and the Illinois Department of Public Health (IDPH). *820 ILCS 310/1(g)(3)(B)*. With the COVID-19 rebuttable presumption no longer operative, the issue of whether Petitioner's COVID-19 illness arose out of a work-related exposure while in the course of her employment will be determined based on the evidence at arbitration as if no presumption had ever existed. *Johnston v. Ill. Workers' Comp. Comm'n*, 2017 IL App (2d) 160010WC, ¶ 36.

From the outset, the Commission acknowledges that other employees at Respondent's plant had tested positive for COVID-19, with six employees from the second shift testing positive in November and December 2020. Petitioner claims exposure to the virus some time during this period while in the cafeteria/lunchroom where masks could be removed to eat. Notwithstanding, the Commission finds that the testimony and evidence in this case do not sufficiently support Petitioner's theory, nor does the Commission conclude that simply because other employees had tested positive for the virus at Respondent's workplace that Petitioner's COVID-19 illness was necessarily due to an exposure at work.

Petitioner testified on direct examination that she had worked in the 14 days before her positive COVID-19 test, but only on cross-examination did she admit to not working nine of those 14 days. Again, there is no testimony as to Petitioner's activities or contacts during her period off work. The majority of the testimony at arbitration pertained to events leading up to the Thanksgiving break. Petitioner was inconsistent as to who exposed her to the virus but she ultimately testified that either Mr. Green or Mr. Ruth exposed her to COVID-19 because they were in the lunchroom together. Mr. Green testified that his presence in the cafeteria could have been to eat or clean, perhaps both at the same time. The Commission finds his testimony vague. Petitioner's testimony regarding Mr. Ruth also had the same shortcomings insofar as Petitioner testified that she and Mr. Ruth were in the lunchroom together – nothing more. The testimony overall does not provide the Commission with sufficient basis from which to draw reasonable and probable, and not just merely possible, inferences to support Petitioner's claim. The testimony offered was too broad and altogether inadequate. There is also no medical opinion or evidence in the record explaining whether an exposure on or about November 20, 2020 can cause symptoms 11 days later, or whether an exposure upon Petitioner's return to work on November 30, 2020 can result in symptoms the next day.

The contemporaneous evidence following the onset of Petitioner's COVID-19 symptoms was likewise insufficient to support Petitioner's alleged work-related exposure. Petitioner had indicated on the December 6, 2020 COVID-19 questionnaire that she believed Earling McCrary may have exposed her to the virus. However, there is no evidence in the record indicating that Ms. McCrary had been positive with COVID-19. The questionnaire also did not corroborate Petitioner's testimony that she had believed or reported that Mr. Green (or Mr. Ruth) exposed her to the virus. It is incredulous that Petitioner would be told of a potential exposure from a work colleague (Mr. Green) and would then subsequently fail to mention such exposure when questioned by Nurse Trejo and also fail to note this on the various reports she herself helped to complete.

Given the noted deficiencies, the Commission cannot state that it is more likely than not that Petitioner's COVID-19 illness was the result of a work-related exposure as alleged. The Commission therefore finds that Petitioner failed to successfully satisfy her burden of proof in this claim.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on February 14, 2024 is hereby reversed for the reasons stated above. All remaining issues are moot.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of workers' compensation benefits and any corresponding credit is hereby vacated.

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.

The bond requirement in Section 19(f)(2) of the Act is applicable only when "the Commission shall have rendered an award for the payment of money." *820 ILCS 305/19(f)(2)*. Based upon the denial of compensation herein, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

February 13, 2025

CAH/pm
O: 12/19/24
052

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC027972
Case Name	Rachel Finley v. State of Illinois - Southwestern Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0070
Number of Pages of Decision	15
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Caitlin Fiello

DATE FILED: 2/13/2025

/s/Deborah Simpson,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rachel Finley,
Petitioner,

vs. NO: 21 WC 27972

State of Illinois-Southwestern 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, permanent disability and temporary disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 30, 2023, is hereby affirmed and adopted.

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

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

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

February 13, 2025

o: 1/15/25
DLS/rm
046

/s/*Deborah L. Simpson*
Deborah L. Simpson

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC027972
Case Name	Rachel Finley v. Southwestern Correctional Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Caitlin Fiello

DATE FILED: 10/30/2023

THE INTEREST RATE FOR THE WEEK OF OCTOBER 24, 2023 5.32%

/s/ Edward Lee, Arbitrator
Signature

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

October 30, 2023

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

RACHEL FINLEY
Employee/Petitioner

v.

SOUTHWESTERN CORRECTIONL CENTER
Employer/Respondent

Case # **21** WC **027972**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Collinsville**, on **September 27, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **August 24, 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 $**61,749.64**; the average weekly wage was $**1,187.49**.

On the date of accident, Petitioner was **26** 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 **ALL PAID** for TTD, $**-** for TPD, $**-** for maintenance, and - for other benefits, for a total credit of **ALL PAID**.

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

ORDER

Respondent shall pay the reasonable and necessary medical services of outlined in Petitioner's group exhibit related to the treatment of the injury, as provided in § 8(a) of the Act.

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

Respondent shall pay Petitioner permanent partial disability benefits of $**712.49**/week for **23.75** weeks, because the injuries sustained caused the **12.5% loss of the right hand** as provided in § 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

OCTOBER 30, 2023

FINDINGS OF FACT

Background

Petitioner is a 28 year-old Correctional Officer for Respondent. (T.7; AX1) She filed a claim for injuries to her right hand and wrist as a result of repetitive trauma from her job duties. (AX2) Respondent disputes accident, causal connection, liability for medical expenses, and the nature and extent of the injuries. (AX1)

Petitioner has been employed by Respondent as a Correctional Officer for eight years. (T.7) Prior to her employment, Petitioner joined the United States Air Force and received an honorable discharge for medical reasons unrelated to her right hand and wrist. (T.7-8) Following her service in the military, Petitioner worked as a direct support person for Kaskaskia Workshop taking care of developmentally disabled adults. (T.8) Following that position, she was hired by Respondent. *Id.* Petitioner testified she prepared a job description listing her duties as a Correctional Officer. (T.8-9; PX7) Petitioner's job duties included lifting property boxes, pushing and pulling carts stacked with food, property boxes, and cleaning supplies, bending and stooping to search property boxes and refill supplies, and reaching above shoulder level for equipment and supplies on shelves as well as searching top bunks and taller individuals. (PX7)

Petitioner testified that over the course of her employment with Respondent, she began noticing weakness and pain in her right hand and began dropping items. (T.9) Petitioner is right hand dominant. *Id.* She testified that almost all of her work at the correctional center was completed with her right hand. (T.9-10) Petitioner testified that following March of 2020, and the start of the COVID pandemic, her work duties doubled. (T.10) She stated that they did not have individual custody porters to perform certain tasks so she had to pass trays, open chuckholes, open doors, escort individuals, and cuff and uncuff more than before the pandemic. *Id.* She testified that her job duties with regard to her right hand increased exponentially. (T.10-11)

On cross-examination, Petitioner testified that she started her career in the Department of Corrections at Pinckneyville Correctional Center and transferred to Southwestern Correctional Center in 2020. (T.17) Petitioner began to notice her symptoms in her right wrist while working at Southwestern Correctional Center. *Id.* When questioned further about her job duties with Respondent at Southwestern Correctional Center, Petitioner stated,

> Well, that's a big question. My job title could be anything from running the armory, which is issuing out keys and equipment and carrying bags filled with equipment and issuing out weapons or it could be running a housing unit where I'm dealing with the individuals in custody, locking and unlocking doors. It could be running the yard and supervising yard time, it could be working dietary and issuing out food and scanning feeds. (T.18)

Petitioner testified that her longest assignment was in dietary. (T.19) Her job duties included signing individuals in and out of custody, passing dietary trays, locking and unlocking cabinets to retrieve equipment, watching line movements, and preventing fights. *Id.*

When Petitioner was assigned to property, she would have to lift items ranging from five (5) to 45 pounds up to 42 times per day. (T. 20-21). During the pandemic, she pushed food carts and carried trays up and down stairs every day. (T. 22) Petitioner testified that her job duties increased during the pandemic and they had not yet returned to normal levels, as the facility is still severely understaffed. (T.23) She testified that she had to perform the work load of two officers due to understaffing. *Id.* Petitioner candidly admitted on cross-examination that she smoked approximately one pack of cigarettes per week. (T.23-24)

On re-direct examination, Petitioner testified that when she worked in dietary, she had to secure everything, so anytime she wanted to get out one utensil, she unlocked the lock, took out the utensil, wrote it down, and locked the door. (T.24-25) She stated it was very repetitive. (T.25)

Medical Treatment

On August 24, 2021, Petitioner underwent an EMG/NCS at Memorial Hospital of Belleville at the recommendation of her primary care physician, Dr. Cristopher Schenewerk. (PX4) It was noted that Petitioner had intermittent pain, numbness, and tingling in her right hand and fingers for about one year. *Id.* She had no history of diabetes, thyroid conditions, or recent trauma. *Id.* The studies showed evidence of mild right median motor sensory neuropathy at the wrist, which could represent right carpal tunnel syndrome. *Id.* The following day, Petitioner was contacted by her primary care physician's office to go over her results. (PX3, 8/25/21) The nerve conduction study revealed mild carpal tunnel syndrome in the right wrist. *Id.* It was recommended that Petitioner wear a brace at night and she was referred to an orthopedic surgeon. *Id.*

On September 14, 2021, Petitioner returned to BJC Medical Group. (PX3, 9/14/21) Petitioner reported that she was filing for worker's compensation for the carpal tunnel in her right hand, as her job requires a lot of typing and working with keys. *Id.* Petitioner reported continued hand pain. *Id.* She was encouraged to seek further treatment with an orthopedist for her carpal tunnel syndrome. *Id.*

On October 18, 2021, Petitioner was evaluated by Dr. Matthew Bradley. (PX5, 10/18/21) She presented with complaints of increasing burning, tingling, and numbness in her right hand over the last year. *Id.* She reported that at first her symptoms were intermittent and related to activity, but since then they have become more chronic. *Id.* She noticed mild weakness over the last few months. *Id.* She was utilizing a night brace and Tylenol with anti-inflammatories which were no longer providing significant relief. *Id.* Petitioner denied any history of numbness, tingling, or burning in her hands prior to beginning her work as a correctional officer. *Id.* She denied any repetitive hobbies and did not have diabetes or thyroid disease. *Id.* Dr. Bradley's physical examination was positive for numbness and tingling over the median nerve distribution, with positive Phalen's and Tinnel's signs. *Id.* Dr. Bradley reviewed her EMG/NCS and noted mild to moderate compressive neuropathy across the median nerve on the right. *Id.* Dr. Bradley diagnosed Petitioner with right carpal tunnel syndrome. *Id.* He noted that she had tried and failed non-operative treatment. *Id.* Her symptoms had become chronic and she was now reporting grip weakness in her hand. *Id.* Dr. Bradley recommended a right open carpal tunnel release. *Id.* He

suggested she take Tylenol, Ibuprofen, or Aleve as needed, continue using her brace, continue her home exercise program, and be weightbearing as tolerated. *Id.*

On December 22, 2021, Dr. Bradley performed a right open carpal tunnel release. (PX5, 12/22/21; PX6) Intraoperatively, Dr. Bradley noted the carpal tunnel was thickened and the nerve had a flattened appearance. *Id.*

Petitioner returned to Dr. Bradley on January 6, 2022, for follow up. (PX5, 1/6/22) At that time, she reported she had significantly improved. *Id.* Dr. Bradley noted Petitioner's work history at this visit. *Id.* He noted she worked as a correctional officer and her job duties included writing reports, repetitive locking and unlocking of large heavy doors as well as the repetitive applying and removing of restraints. *Id.* She reported reaching, pushing, pulling, twisting, and turning, as well as occasional use of tools. *Id.* She reported continuous repetitive use of her hands throughout the day. *Id.* Dr. Bradley found Petitioner was doing exceptionally well overall. *Id.* She was currently taking Tylenol and ibuprofen as needed. *Id.* She was to continue following her home exercise program. *Id.* She could return to work in the desk work only capacity for one week then could advance to full unrestricted duty. *Id.* She was to follow up in four to six weeks. *Id.*

On January 24, 2022, Petitioner returned to Dr. Bradley. (PX5, 1/24/22) She reported significant improvement of her symptoms and continued improvement of her strength. *Id.* Dr. Bradley believed it was safe for her to work full duty without restrictions and placed her at maximum medical improvement at that time. *Id.* He recommended she continue to take ibuprofen as needed. *Id.*

Despite the improvement Petitioner received from treatment, she testified that she continues to have some symptoms. (T.15) Her symptoms presented after a long day of using her right hand. *Id.* She testified she still has weakness and occasional discomfort in her hand. (T.15-16) Petitioner reported she was substantially improved and was glad she had surgery. *Id.*

Opinion of Dr. Patrick Stewart

Respondent had Petitioner examined by Dr. Patrick Stewart, who testified by way of deposition. (RX5) Dr. Stewart acknowledged that 95 percent of his independent medical evaluations are at the request of the State of Illinois. *Id*. at 17-18. He charges $2,500 per IME and $1,500 per deposition. *Id*. at 19.

Dr. Stewart noted that Petitioner's records reflected that she reported numbness, tingling, and burning that had occurred over a one year prior to her presentation to Dr. Bradley. *Id.* at 11-12. Dr. Stewart noted some of the intrinsic risk factors with regard to carpal tunnel including female sex, advancing age, increasing BMI, diabetes, thyroid conditions, hypertension, smoking, being peri- or post-menopausal. *Id.* at 13. Dr. Stewart admitted Petitioner's only true risk factors were her gender and her previous smoking history. *Id.* at 14. Dr. Stewart did not believe Petitioner's carpal tunnel syndrome was related to her work duties as he did not believe she performed any activities at work that put her at an increased risk. *Id.* at 14-15.

On cross-examination, Dr. Stewart testified that he believed Petitioner was a credible historian and cooperated with his exam. *Id.* at 19-20. He stated that he relied on both the job

description provided by the defense as well as Petitioner's description of her job duties. *Id.* at 20. Regardless of causation, Dr. Stewart testified that the treatment Dr. Bradley provided was appropriate. *Id.* at 21.

Dr. Stewart testified that while Petitioner's only risk factors were her female sex and smoking history, he could say with 100% certainty that her right-sided carpal tunnel syndrome had nothing to do with her work activities as a correctional officer. *Id.* Dr. Stewart did not know how often she smoked or for how long. *Id.* at 22. He testified the answer to that question would not change his opinion on whether smoking was a risk factor. *Id.* Dr. Stewart went on to say that up to 50% of compression neuropathies/carpal tunnel do not have a distinct risk factor and smoking is not as strong a risk factor as having thyroid conditions, diabetes, or an inflammatory condition like rheumatoid arthritis. *Id.* at 23. He believed Petitioner's condition was idiopathic. *Id.* He agreed Petitioner had no history of diabetes or hypothyroidism. *Id.*

When asked whether he questioned Petitioner on whether her job duties had changed or increased at all as a result of the COVID-19 pandemic, he stated "I allowed her to speak freely about her job duty" and came to the conclusion that her job duties would have been diminished because the number of people in custody took up 25% of the capacity for the institution. *Id.* He testified that Petitioner did not indicate whether there was a change in security at correctional center during the pandemic. *Id.*

Dr. Stewart was not aware Petitioner was involved in searching property in areas where she had to lift anywhere from five (5) to 45 pounds. *Id.* 24-25. He was not aware she had to push and pull carts stacked with food, property boxes, and cleaning supplies on a daily basis. *Id.* at 25. He was not aware whether she had to perform any repetitive reaching in conjunction with property searches. *Id.* When asked if he was aware whether she had to repetitively lock and unlock any areas, he stated he was only aware she had to lock and unlock a log book every 30 minutes. *Id.* at 25-26.

Dr. Stewart was questioned about a previous Southwestern correctional officer for whom he performed an independent medical examination regarding the Petitioner's compression neuropathies. *Id.* at 26; PX9. He testified he was aware the Arbitrator found the Petitioner's job duties as a correctional officer at Southwestern Correctional Center were causally related to his condition. *Id.* at 27; PX9.

Dr. Stewart did not believe Petitioner's previous employment at Pinckneyville Correctional Center was relevant to her condition. *Id.* at 28. He did not believe her past employment was relevant to her condition. *Id.* at 29.

Opinion of Dr. Matthew Bradley

Dr. Bradley also testified by way of deposition. (PX8) He testified that he is a board certified orthopedic surgeon who treats disorders of the musculoskeletal system, bones, tendons, and muscles, specifically of the arms and legs. *Id.* at 4-5. Dr. Bradley testified that he performs a number of surgeries and specifically performs carpal and cubital tunnel releases on a weekly basis.

Id. at 6. He has treated numerous employees of the various State correctional facilities in Southern Illinois. *Id.*

Dr. Bradley reviewed Petitioner's handwritten work history timeline, job description, and his standard patient intake questionnaire in addition to taking a personal history from her in clinic. *Id.* at 8-9. He noted Petitioner's history as a Correctional Officer for the last six years which included multiple hand intensive tasks, including handwriting reports, applying and removing restraints, locking and unlocking doors, searching inmates, searching inmate's rooms, and pushing and pulling carts stacked with food, property boxes, and cleaning supplies. *Id.* at 9. He noted she was right-handed and a younger individual as she was born in 1995. *Id.* When asked about risk factors for carpal tunnel syndrome, Dr. Bradley explained:

> Yeah, so the medical literature is pretty robust on risk factors, or what we call comorbidities, conditions that the patients have that put them at a higher risk.
>
> The more common ones are a female over the age of 40 or over the age of 50, hyperthyroidism, diabetes. You'll see sleep apnea is one of the newer conditions we have recently been talking a lot about. Obesity will contribute to it. History of radiation treatment or chemotherapy treatment. Those would be the big ones. *Id.* at 9-10.

Dr. Bradley noted Petitioner did not have any of the risk factors he listed. *Id.* at 10. He stated she was under 30 and her BMI was under the cut off for obesity as well. *Id.* Dr. Bradley noted she had quit smoking, but her history as a smoker may be a minor risk factor. *Id.*

Dr. Bradley noted at her initial visit she had numbness and tingling over the carpal tunnel and positive Phalen's and Tinel's sings. *Id.* at 11. He reviewed her EMG/NCS at her initial visit which showed mild to moderate carpal tunnel syndrome in her right hand. *Id.* Dr. Bradley testified that her physical examination and report of her symptoms were consistent with carpal tunnel syndrome. *Id.* Dr. Bradley ultimately performed surgery to address her ongoing symptoms. *Id.* at 12. He noted that Petitioner's surgical outcome was "fantastic." *Id.* at 13.

It was Dr. Bradley's opinion that Petitioner's six year history of working as a correctional officer for the Illinois Department of Corrections contributed to her carpal tunnel syndrome. *Id.* at 14. Dr. Bradley was aware that her job duties increased exponentially during the COVID pandemic as he was advised by Petitioner as well as other correctional officer patients. *Id.* He stated further:

> It varied a little bit from facility to facility, but in general there has been a significant increase in the amount of keying, opening doors, opening locks, handcuffs.
>
> The inmates were not able to participate in as many of the activities that they used to, so a lot more of the food service, the handling, the moving of the food trays, and of the daily jobs around the facilities that the inmates would participate in, they were unable to do.

So basically all of the job duties that the correctional officers did were significantly increased. *Id.* at 15.

Dr. Bradley believed Petitioner's repetitive use of her right hand over the course of her six years with the Illinois Department of Corrections was a contributing factor in the development of her carpal tunnel syndrome. *Id.* at 16. Dr. Bradley did not believe Petitioner had any outside activities that could have been consistent with the development of carpal tunnel syndrome. *Id.* at 13.

On cross-examination, Dr. Bradley testified that while he had not visited Southwestern Correctional Center, he had a few different patients who worked at the facility. *Id.* at 18. Dr. Bradley was unaware of whether Petitioner handled food trays, but he was aware that she would load, push, and pull carts stacked with food, property boxes, and cleaning supplies. *Id.* at 20.

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?

In a repetitive trauma case, issues of accident and causation are intertwined. *Elizabeth Boettcher v. Spectrum Property Group and First Merit Venture,* 99 I.I.C. 0961. In order to better define "repetitive trauma" the Commission has stated:

The term "repetitive trauma" should not be measured by the frequency and duration of a single work activity, but by the totality of work activity that requires a specific movement that is associated with the development of a condition. Thus, the variance in job duties is not as important as the specific force, flexion and vibratory movements requisite in Petitioner's job. *Craig Briley v. Pinckneyville Corr. Ctr.*, 13 I.W.C.C. 0519 (2013).

"[I]n no way can quantitative proof be held as the *sine qua non* of a repetitive trauma case." *Christopher Parker v. IDOT*, 15 I.W.C.C. 0302 (2015). Despite this clear precedent, the Arbitrator cited defunct precedent and found that Petitioner did not meet his burden of proof because his treating physician "failed to detail what repetitive motions the petitioner engaged in and the frequency of the motions."

The Appellate Court's decision in *Edward Hines Precision Components v. Indus. Comm'n* further highlights that there is no standard threshold which a claimant must meet in order for his or her job to classify as sufficiently "repetitive" to establish causal connection. *Edward Hines*, 365 Ill.App.3d 186, 825 N.E.2d 773, 292 Ill.Dec. 185 (Ill.App.2d Dist. 2005). In fact, the Court expressly stated, "There is no legal requirement that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma." *Id.* at N.E.2d 780. Similarly, the Commission recently noted in *Dorhesca Randell v. St. Alexius Medical Center*, 13 I.W.C.C. 0135 (2013), a repetitive trauma claim, a claimant must show that work activities are a cause of his or

her condition; the claimant does not have to establish that the work activities are the sole or primary cause, and there is no requirement that a claimant must spend a certain amount of time each day on a specific task before a finding of repetitive trauma can be made. *Randell* citing *All Steel, Inc. v. Indus. Comm'n*, 582 N.E.2d 240 (1991) and *Edward Hines supra.*

The Appellate Court in *Darling v. Indus. Comm'n* even stipulated that quantitative evidence of the exact nature of repetitive work duties is not required to establish repetitive trauma injury in reversing a denial of benefits, stating that demanding such evidence was improper. *Darling v. Industrial Comm'n*, 176 Ill.App.3d 186, 195, 530 N.E.2d 1135, 1142 (1st Dist. 1988). The Appellate Court found that requiring specific quantitative evidence of amount, time, duration, exposure or "dosage" (which in Petitioner's case would be force) would expand the requirements for proving causal connection by demanding more specific proof requirements, and the Appellate Court refused to do so. *Darling,* N.E.2d at 1143. The Court further noted, "To demand proof of 'the effort required' or the 'exertion needed' . . . would be meaningless" in a case where such evidence is neither dispositive nor the basis of the claim of repetitive trauma." *Id.* at 1142. Additionally, the Court noted that such information "***may***" carry great weight "only where the work duty complained of is a common movement made by the general public." *Id.* at 1142. The evidence shows that Petitioner's job duties involve the performance of tasks distinctly related to his employment as a State correctional facility, many of which are not activities that are even performed by the general public, let alone ones to which the public would be equally exposed.

In *City of Springfield v. Illinois Workers' Comp. Comm'n*, the Appellate Court issued a favorable decision in a repetitive case to a claimant in which the claimant's work was "varied" but also "repetitive" or "intensive" in that he used his hands, albeit for different task, for at least five (5) hours out of an eight (8) hour work day. *City of Springfield v. Illinois Workers' Comp. Comm'n*, 388 Ill.App.3d 297, 901 N.E.2d 1066, 327 Ill.Dec. 333 (Ill.App. 4th Dist., 2009). As was noted by the Commission and reiterated in the Appellate Court decision in *City of Springfield v. Illinois Workers' Compensation Comm'n*, "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.*

The Commission has also recognized that a claimant's employment may not be the only factor in his or her development of a repetitive compressive peripheral neuropathy. The Commission awarded benefits in a case where the claimant was involved in martial arts activity outside of his employment (*see Samuel Burns v. Pinckneyville Corr. Ctr.*, 14 I.W.C.C. 0482 (2014)), and in another case where the claimant was involved in weight lifting outside of his employment. *See Kent Brookman v. State of Illinois/Menard Corr. Ctr.*, 15 I.W.C.C. 0707 (2015). In the repetitive trauma case of *Fierke*, the Appellate Court specifically held that non-employment related factors that contribute to a compensable injury do not break the causal connection between the employment and a claimant's condition of ill-

being. *Id*. at N.E.2d at 849. The Court stated, "The fact that other incidents, whether work related or not, may have aggravated a claimant's condition is irrelevant." *Id*.

Under Illinois law an injury need not be the sole factor, or even the primary factor of an injury, as long as it is **a** causative factor. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193, 205 (Ill. 2003) [Emphasis added]. Even when other non-occupational factors contribute to the condition of ill-being, "[*A*] Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Indus. Comm'n*, 309 Ill.App.3d 1037 (3rd Dist. 2000). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Indus. Comm'n*, 834 N.E.2d 583 (2d Dist. 2005). Employers are to take their employees as they find them. *A.C.& S. v. Industrial Comm'n*, 710 N.E.2d 837 (Ill. App. 1st Dist. 1999) citing *General Electric Co. v. Industrial Comm'n*, 433 N.E.2d 671, 672 (1982). The Supreme Court in *Durand v. Indus. Comm'n* noted that the purpose of the Illinois Workers' Compensation Act is best served by allowing compensation where an injury is gradual but linked to the employee's work. *Durand v. Indus. Comm'n*, 862 N.E.2d 918, 925 (Ill. 2006).

Based upon the above standard and the totality of the evidence in the record, the Arbitrator finds that Petitioner sustained her burden in proving that her repetitive job duties caused accidental repetitive injuries which were causally connected to her condition of ill-being. The Arbitrator finds Petitioner a credible witness on her own behalf.

The Arbitrator also finds the causation opinion of Dr. Bradley more credible than that of Dr. Stewart. The Arbitrator specifically notes that Dr. Stewart completely disregarded Petitioner's work history for Respondent prior to her station at Southwestern Correctional Center. Dr. Stewart knew of no difference or change in Petitioner's duties brought about by the COVID-19 pandemic. Dr. Stewart did not ask Petitioner whether her work duties had increased or changed in anyway, but, instead, he simply assumed her activities decreased or relaxed. As repetitive trauma injuries are cumulative, the law requires that a claimant's entire work history be considered.

The Appellate Court held in *PPG Indus. v. Illinois Workers' Comp. Comm'n*, that work history that extends well beyond the 3-year statute of limitations and a claimant's alleged manifestation date is clearly relevant because "a repetitive-trauma injury is one which "has been shown to be caused by the performance of the claimant's job and has developed gradually over a period of time, without requiring complete dysfunction. [Citations]. ('By their very nature, repetitive-trauma injuries may take years to develop to a point of severity precluding the employee from performing in the workplace.'). It stands to reason that a claimant's work history may be necessary and relevant to determining whether she sustained such a work-related, gradual injury." *PPG Indus. v. Illinois Workers' Comp. Comm'n*, 2014 IL App (4th) 130698WC, ¶ 19, 22 N.E.3d 48, 53. The Court also cited a number of instructive Appellate and Supreme Court cases relying on a lengthy work history, one involving over 30 years, to support a finding of repetitive trauma:

> It stands to reason that a claimant's work history may be necessary and relevant to determining whether she sustained such a work-related, gradual injury. As noted

> by the arbitrator and the Commission, case law establishes that a claimant's work history has been routinely considered in repetitive-trauma cases, including work history that extended beyond three years prior to an alleged manifestation date. See *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). *Id.*

In contrast to Dr. Stewart, Dr. Bradley reviewed Petitioner's handwritten work history timeline and job description in addition to taking a personal history from Petitioner. He took note of Petitioner's history as a Correctional Officer and noted how her duties changed as a result of the pandemic. He found that Petitioner engaged in repetitive activities throughout her job duties and job stations throughout the facility. He further testified that he has treated numerous correctional staff from Respondent's facility and was thus familiar with Petitioner's job duties. *Id.* at 13-15. Based upon the evidence he reviewed, he believed that Petitioner's condition and need for treatment was causally related to her work duties with the Department of Corrections. Even Dr. Stewart acknowledged that Petitioner had no risk factors for the development of carpal tunnel syndrome other than her gender and the limited time she smoked tobacco. (RX6, p.30-31)

The Arbitrator also notes that the Commission has previously determined that the duties of a Southwestern Correctional Officer contributed to the development of compression neuropathy. *Miller v. SOI/Southwestern Corr. Ctr.*, 18 I.W.C.C. 37950 (PX9). As such, the Arbitrator relies on the above law and the credible opinion of Dr. Bradley to conclude that Petitioner met her burden of proof in establishing that she sustained accidental repetitive injuries that arose out of and in the course of her employment with Respondent which are causally connected to her current condition of ill-being.

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

Upon a claimant's establishment of a causal nexus between injury and illness, employers are responsible for the employees' medical care reasonably required in order to diagnose, relieve, or cure the effects of the claimant's injury. *Plantation Mfg. Co. v. Indus. Comm'n,* 294 Ill.App.3d 705, 691 N.E.2d 13 (2000); *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill.App.3d 527, 758 N.E.2d 18 (1st Dist. 2001). Based upon the above law and evidence establishing that Petitioner met her burden of proof on the issues of accident and causal connection, the Arbitrator finds he is entitled to medical benefits. Based upon the severity and duration of complaints, the Arbitrator finds Dr. Bradley's opinion regarding the reasonableness and necessity of Petitioner's medical treatment, including but not limited to surgery, persuasive.

Respondent is therefore ordered to pay the medical expenses contained in Petitioner's group exhibit and shall have credit for any amounts 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 (L): What is the nature and extent of the injury?

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, are to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

(i) **Level of Impairment**: Neither party submitted an AMA rating. Therefore, the Arbitrator gives no weight to this factor.

(ii) **Occupation**: Petitioner continues to work as a Correctional Officer for Respondent. Petitioner continues to have symptoms in her right hand and continues to perform the same job duties. It is reasonable to conclude her lasting symptoms will cause difficulty for Petitioner in completing her job duties in the future. The Arbitrator places greater weight on this factor.

(iii) **Age**: Petitioner was 26 years old at the time of her injury. She is a younger individual and must live and work with her disability for an extended period of time. Pursuant to *Jones v. Southwest Airlines*, 16 I.W.C.C. 0137 (2016) (wherein the Commission concluded that greater weight should have been given to the fact that Petitioner was younger [46 years of age] and would have to work with his disability for an extended period of time).The Arbitrator places greater weight on this factor.

(iv) **Earning Capacity**: There is no evidence of reduced earning capacity. Consequently, the Arbitrator places no weight on this factor.

(v) **Disability**: As a result of his repetitive job duties, Petitioner developed right sided carpal tunnel syndrome, which required surgical intervention. Petitioner testified that despite the improvement resulting from surgery, she continues to have weakness, discomfort, and symptoms provoked by increased levels of activity. (T.15) She stated she noticed her symptoms after a long day of using her right hand. (T.15-16) The Arbitrator therefore places greater weight on this factor.

Based upon the foregoing, the Arbitrator finds that Petitioner suffered serious and permanent injuries that resulted in the 12.5% loss of the right hand.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC023985
Case Name	Theresa Hazel v. The Oberweis Group, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0071
Number of Pages of Decision	16
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Steven Saks
Respondent Attorney	Adam Cox

DATE FILED: 2/14/2025

/s/Christopher Harris,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

THERESA HAZEL,

Petitioner,

vs. NO: 23 WC 23985

THE OBERWEIS GROUP, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, the reasonableness and necessity of the medical treatment and expenses, temporary total disability ("TTD") benefits, and prospective medical treatment, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

For reasons stated below, the Commission modifies the Arbitrator's decision and finds that the Petitioner established that her low back condition is causally related to the work-related accident on February 2, 2023. As the Petitioner established causal connection, the Commission further finds that the Petitioner was temporarily and totally disabled from February 6, 2023 through the hearing date of April 3, 2024 and is entitled to outstanding medical expenses as well as prospective medical treatment, including a kyphoplasty as recommended by Dr. Aghia.

The Arbitrator found the Petitioner sustained a work-related lumbar sprain or strain on February 2, 2023 but concluded that the compression fractures at L1 and L5 were not caused by

the work-related accident. The Arbitrator based his decision on the Petitioner's testimony that the injury began with a general onset of soreness over a couple of days, rather than a single traumatic event. Since the injury did not occur from a single traumatic event, the Arbitrator found that medical opinion evidence was required to establish a causal connection between the repetitive trauma and the Petitioner's work duties; she could not rely on her own testimony. As such, the Arbitrator relied on Dr. Colman's opinion to find that the Petitioner failed to prove causal connection. The Commission, however, disagrees with this assessment.

In order to be entitled to recovery under the Act, a claimant must prove, by a preponderance of the evidence, all elements necessary to justify an award. *Quality Wood Products Corp. v. Industrial Comm'n*, 97 Ill. 2d 417, 423, 454 N.E.2d 668, 73 Ill. Dec. 571 (1983). Whether he is basing his claim upon an acute injury or repetitive trauma, the burden of proof is the same: that the claimant suffered an injury that arose out of and in the course of his employment. *Durand v. Indus. Comm'n (RLI Ins. Co.)*, 224 Ill. 2d 53, 64, 862 N.E.2d 918 (2006). In cases involving an acute-trauma injury, the claimant must show that the injury is traceable to a definite time, place, and work-related cause. See *Majercin v. Industrial Comm'n*, 167 Ill. App. 3d 894, 900, 522 N.E.2d 263, 118 Ill. Dec. 808 (1988); *Darling v. Industrial Comm'n*, 176 Ill. App. 3d 186, 192-93, 530 N.E.2d 1135, 125 Ill. Dec. 726 (1988). In repetitive-trauma cases, the claimant must identify the date on which the injury manifested itself. *Darling*, 176 Ill. App. 3d at 191. Repetitive-trauma injury is one that is not "traceable to a definite time, place and cause." *Peoria County Belwood Nursing Home v. Industrial Comm's,* 115 Ill. 2d 524, 505 N.E.2d 1026, 106 Ill. Dec. 235 (1987).

The Petitioner filed her Application for Adjustment of Claim alleging injury to her lumbar spine on February 2, 2023. At hearing, the Respondent stipulated that the accident occurred on February 2, 2023. Additionally, the Petitioner testified that she was assigned new job duties on February 2, 2023, specifically lifting and draining milk crates weighing 30 pounds. It was while performing these duties that she began to experience low back pain. Based on this, the Commission finds that the injury was caused by a specific task that the Petitioner performed on February 2, 2023, rather than a repetitive trauma. Therefore, the Arbitrator's finding that medical opinion evidence was required is incorrect, as this is an acute injury claim.

To recover compensation under the Act, an employee must prove by a preponderance of the evidence all elements of his or her claim, including that a causal connection exists between the employee's condition of ill-being and his or her work accident. *Boyd Electric v. Dee*, 356 Ill. App. 3d 851, 860, 826 N.E.2d 493, 292 Ill. Dec. 352 (2005). Medical evidence, however, is not essential to support a finding that a causal relationship exists between an employee's work duties and his or her condition of ill-being. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63, 442 N.E.2d 908, 66 Ill. Dec. 347 (1982). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester*, 93 Ill. 2d at 63-64.

Dr. Colman believed that the compression fractures, as shown on the June 8, 2023 MRI, were acute and occurred closer to the MRI date, rather than on February 2, 2023. He explained that if the fractures had occurred on February 2, 2023, there would have been evidence of healing of the bony edema observed in the MRI, but no such signs were present. Dr. Colman also noted that Petitioner would have experienced a pop, crack or an acute onset of pain if the fractures occurred on that date. Since the Petitioner did not hear such sounds, he concluded that the fractures did not occur on February 2, 2023. While Dr. Colman opined that the compression fractures were not related to the work injury, the evidence from his deposition testimony weakens the persuasiveness of his opinion.

During cross-examination, Dr. Colman admitted that he was unaware that Petitioner was lifting crates from the floor level to a six foot high pallet. He explained that spine flexion and extension creates axial force, which can lead to compression fractures. Dr. Colman acknowledged that lifting crates full of milk, twisting, bending, and dumping--tasks the Petitioner was performing on February 2, 2023--could generate enough force to cause compression fractures. Further, while Dr. Colman found the absence of a pop significant, he conceded that the Petitioner reported pain on February 2, 2023. He also acknowledged that the intensity, quality, and location of her pain remained constant since the injury, and her complaints were similar to the complaints of individuals who experience compression fractures. Additionally, Dr. Colman noted that the radiologist read the fractures as chronic, suggesting they could have occurred in February 2023. Based on the evidence, the Commission agrees with the radiologist's interpretation of the June 8, 2023 MRI that indicated the compression fractures were chronic, which is consistent with having occurred on February 2, 2023. Therefore, the Commission concludes that the Petitioner sustained an acute trauma on February 2, 2023, resulting in the compression fractures.

There is no persuasive evidence that the compression fractures were pre-existing and there is no evidence that she was symptomatic prior to the accident. Her symptoms and treatment only began after the work accident. It was at that point an MRI was recommended and later performed, confirming the presence of fractures that were read as chronic, thereby linking them to the work accident. Based on the credible evidence, the Commission therefore finds that the Petitioner's compression fractures at L1 and L5 are causally related to her February 2, 2023 accident.

The Commission finds that the Petitioner is entitled to TTD benefits and payment of outstanding medical expenses. The Respondent contested these issues on the basis of there being no liability. The evidence shows that Dr. Aghia kept Petitioner off work due to her injuries. As a result, the Commission awards TTD benefits from February 6, 2023 through April 3, 2024, representing 60-3/7 weeks, along with outstanding medical expenses totaling $1,965.17. Finally, the Commission finds that the Petitioner is entitled to prospective medical treatment. While Dr. Colman disagreed that the compression fractures were related (a position the Commission does not adopt), he agreed with Dr. Aghia's recommendation that a kyphoplasty is warranted. As the Petitioner established causal connection, the Commission finds that the Petitioner is entitled to a kyphoplasty as recommended by Dr. Aghia. All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 2, 2024 is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $658.25 per week for a period of 60-3/7 weeks, February 6, 2023 through April 3, 2024, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act. This award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,965.17 for medical expenses under §8(a) of the Act and subject to the medical fee schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that the Petitioner is entitled to prospective medical treatment consisting of a kyphoplasty as recommended by Dr. Aghia.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $22,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

February 14, 2025

CAH/tdm
O: 1/30/25
052

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC023985
Case Name	Theresa Hazel v. The Oberweis Group, Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Steven Saks
Respondent Attorney	Adam Cox

DATE FILED: 5/2/2024

/s/ Paul Seal, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF APRIL 30, 2024 5.165%

STATE OF ILLINOIS)
)SS.
COUNTY OF KANE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Theresa Hazel
Employee/Petitioner

v.

The Oberweis Group, Inc.
Employer/Respondent

Case # **23** WC **023985**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Seal**, Arbitrator of the Commission, in the city of **Wheaton**, on **April 3, 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 2, 2023**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**19,747.40**; the average weekly wage was $**987.37**.

On the date of accident, Petitioner was **61** 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 $**19,232.55** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**19,232.55**.

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

ORDER

The Arbitrator finds that after August 25, 2023 Petitioner's condition of ill-being is not related to her work accident of February 2, 2023. All claims for benefits except permanency are denied after that date. Specifically, claims for prospective medical treatment, including kyphoplasty surgery, are denied. All claims for temporary total disability benefits are denied after August 25, 2023.

Respondent shall pay Petitioner temporary partial disability benefits of $658.25/week for 28-1/7ths weeks, commencing February 10, 2023 through August 25, 2023, as provided in Section 8(a) of the Act. Respondent shall be given a credit of $19,232.55 for temporary total disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical services incurred through August 25, 2023, subject to limitations as set forth in Sections 8(a) and 8.2 of the Act.

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

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

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

Signature of Arbitrator

May 2, 2024

FINDINGS OF FACTS

A. Background

Petitioner is a now 62-year-old small bottle lead for Respondent (61 at the time of her undisputed accident). (Tr. pp.10, 12) Her associated work duties included running a bottling line that filled and sealed small plastic bottles for packaging. (Tr. pp.12-13) She began working for Respondent on September 12, 2022. (Tr. p.12)

Prior to her employment with Respondent, she worked for O'Reilly Auto Parts for 23 years as an operations manager, and for the last ten years in its Naperville distribution center (Tr. p.10) She retired from O'Reilly at age 57 in June of 2019 (Tr. pp.43, 45) Following retirement she did not look for a new job or work anywhere for pay. (Tr. pp.44, 47) During the first few months of 2022 she began looking for paid work due to financial pressures, leading to a friend suggesting she apply with Respondent, and subsequently securing her position as a small bottle lead. (Tr. pp.11, 45) Between jobs she volunteered with non-profit organization. (Tr. pp.11) Petitioner expected that organically it would turn into a paid job, but it did not. (Tr. p.46)

Petitioner testified that until one passed recently in late 2023, she took care of her two large dogs, weighing between 60 and 100 pounds. (Tr. pp.31-32, 48-49) This included letting them in and out, as well as feeding them from large bags of dog food. (Tr. p.32)

B. Accident

The parties do not dispute that Petitioner sustained a work accident on February 2, 2023. (Arbx1) On February 2, 2023, Respondent asked Petitioner to perform other duties that were not her regular job. (Tr. p.15) More specifically, she was dumping metal crates that contained six half-gallon glass bottles of spoiled milk into a floor drain. (Tr. pp.15-16). This involved removing a crate from a pallet, sliding a metal bar between the crate handles, removing the bottle caps, and then flipping the crate so the contents entered the drain. (Tr. pp.16-17). Petitioner estimated each crate weighed 30 pounds and performed this task for seven and a half hours that day. (Tr. p.17)

While performing the crate dumping on February 2, 2023, Petitioner felt a gradual onset of discomfort but was able to continue working. (Tr. pp.17-18) Petitioner testified at that time she felt "full body hurt." (Tr. p.18) Although Petitioner had some apprehension continuing the crate dumping duties the following day on February 3, 2023 (a Friday), she continued that work for another five-and-a-half hours. (Tr. p.18) She estimated she dumped about a third of what she had the previous day. (Tr. p.19)

After returning home on February 3, 2023, Petitioner testified she felt "exhausted and hurting, but I was still mobile. I didn't really think there was anything wrong with me" (Tr. p.19) She testified that her discomfort was "tolerable" on February 2nd and February 3rd, and that she didn't ask for help with her work on those days (Tr. pp.47-48). When she woke the next morning on Saturday, she felt "excruciating" low back pain, "literally screamed," and struggled getting out of

bed. (Tr.pp.19, 35-36, *see also* Px1 p.287) Petitioner testified that the discomfort she felt on February 4, 2023 was "absolutely" much worse than on February 2, 2023. (Tr. pp.36-37)

Petitioner testified on cross examination that at no time on either February 2, 2023 or February 3, 2023 did she experience any cracks or pops in her back while working. (Tr. p.38) She further testified that she was not injured as a result of a single event, but rather had a gradual onset of general soreness. (Tr. pp.38-39)

For Petitioner's next scheduled work shift on Monday, February 6, 2023, she called Respondent to notify them she couldn't work because she was hurting and that began the previous week. (Tr. p.20) She went in later that week to discuss her injury, and was sent to Advocate Occupational Health (Tr. p.21, Rx2)

C. Medical Treatment

The earliest medical records for Petitioner are from Advocate Medical Group, dated February 10, 2023. (Rx2) On that date, Petitioner complained of low back pain that she reported began repetitively lifting and pulling out glass bottles at work on February 2, 2023 and February 3, 2023. (Rx2, p.5) The history section of the report further states:

> "There was no direct traumatic injury or any fall…After the first day she did feel pain along her thoracolumbar back region and rested at home. Next day she felt improvement but still residual back discomfort that was somewhat irritated by similar work. The next morning on 2/4 she awoke with moderate to severe low back pain that has persisted, prompting her to call off work several days this week." (Rx2, p.5)

Petitioner described moderate to severe pain at rest at the middle and low back areas, along with occasional neck pain without radiation. (Rx2, p.6) She reported previous low back pain "after a motor vehicle accident on 10 4, but no chronic back pain or problems since that time." *Id*. Following a physical Petitioner was diagnosed with lumbar and thoracic spine strains, thoracolumbar back pain, and spasm of back muscles. *Id.* No diagnostic imaging was ordered, and medications prescribed. *Id.* For work, she was taken off the next two days and to return to modified duty with positional restrictions and a ten-pound weight limitation. (Rx2, p.7)

The Arbitrator notes that Petitioner testified to being involved in a motor vehicle accident in Houston in 2004, when broadsided on the passenger side by a driver who ran a red light. (Tr. p.14) Petitioner testified she was not injured from the event. *Id.*

Petitioner next sought treatment with Dr. George Aghia, her primary physician, starting on February 14, 2023. (Tr. pp.22,35, Px1, pp.283-310) Physical examination revealed limited range of motion in the low back with palpable bilateral spasm and tenderness. (Px1, p.290) Dr. Aghia assessed Petitioner with acute bilateral low back pain without sciatica, suspecting muscle spasm. (Px1, p.291) Dr. Aghia prescribed a muscle relaxer, cyclobenzaprine to be taken as needed for more severe pain, and tramadol as needed for her most severe pain. *Id.* Physical therapy would

be considered if Petitioner did not improve, and an order was given for lumbar spine x-rays. *Id.* Dr. Aghia restricted Petitioner entirely from work for two weeks. (Px1, pp.295, 302, 310)

Petitioner returned to Dr. Aghia on February 27, 2023. (Px1, pp.257-282). Physical examination findings were unchanged. (Px1, pp.264, 290) She reported some improvement with medications and was instructed to start physical therapy. (Px1, pp.261, 265, 268)

Physical therapy began on March 13, 2023. (Px2, pp.182-207). Petitioner gave a history of symptom onset consistent with her testimony. She also states that about twenty years earlier "she had back pain after MVA but recovered painfree [sic] afterward." (Px2, p.186) At that time Petitioner rated her pain as 2/10 at best, and 6/10 at worst. (Px2, p.186) During the second physical therapy session on March 15, 2023, Petitioner reported her pain level as 8/10. (Px2, p.172)

At the follow up with Dr. Aghia on March 20, 2023, Petitioner reported continued but improved low back pain, with "good or bad days with no rhyme or reason," and that she recently began physical therapy. (Px1, p.231) She reported taking tramadol less frequently and cyclobenzaprine was refilled (Tramadol was not). (Px1, pp.235-236) Dr. Aghia's orders were to remain off work and continue physical therapy with medications as needed. (Px1, pp.237-238, 245)

Petitioner continued to follow up with Dr. Aghia. On April 18, 2023, she reported improved pain since starting physical therapy with "hands on" therapies, and less when using equipment. (Px1, p.205) Dr. Aghia assessed her with slow continued improvement, but found she was not ready to resume work yet. (Px1, p.209)

At her physical therapy session on April 20, 2023, the therapist noted that Petitioner reported she "can do a lot of daily activities a bit better. Walking is a bit better and a bit faster. Does not have to hold herself up as much." (Px2, p.95) Modest improvements were noted with objective measurements, and Petitioner felt she made some improvements with everyday activities. (Px2, p.96)

On May 12, 2023, therapy was placed on hold due to a lack of progress due to continued low back pain and hyper irritability. (Px2, p.50) The reported pain rating listed was 3.5/10, and varied throughout the day, presumably within that range. *Id.* Ten of sixteen approved sessions had been completed. *Id.*

When Petitioner returned to Dr. Aghia on May 16, 2023, she reported continued low back pain that came and went, and worse with unspecified certain movements. (Px1, p.178) Dr. Aghia continued to keep her off work and ordered an MRI of the lumbar spine. (Px1, p.182)

On June 8, 2023, an MRI of Petitioner's lumbar spine revealed wedge compression fractures of the L1 and L5 vertebral bodies with approximately 50% height loss. (Px2, pp.35-36) Additionally, the radiologist noted STIR signal intensity within each of the affected vertebrae that could represent microtrabecular fractures superimposed upon chronic vertebral body injuries, or potentially Schmorl's nodes. *Id.*

Petitioner returned to Dr. Aghia on June 19, 2023. (Px1, pp.148-173) Dr. Aghia incorporated the compression fractures identified on the recent MRI into her diagnosis and modified the prior diagnosis to chronic bilateral low back pain. (Px1, pp.152, 156) She was to be seen in the pain clinic the following day. *Id.* Dr. Aghia added a diagnosis of osteopenia at multiple sites "given the compression fractures" and ordered a DEXA scan to assess Petitioner's bone density. (Px1, pp.156-157)

Petitioner was examined by Ryan McSchane Enger, PA on June 20, 2023. (Px1, pp.103-147). Mr. Enger noted the MRI findings and discussed the possibility of kyphoplasty at L1 and L5. (Px1, p.116). In the meantime, a TLSO back brace was ordered. *Id.*

On July 15, 2023, Petitioner underwent a DEXA test, which revealed bone mineral density values compatible with osteoporosis. (Px2, pp.19-20)

Petitioner eventually returned to Dr. Aghia for continued complaints of low back pain on November 1, 2023. (Px1, pp.76-102) Dr. Aghia noted that the order for the back brace ordered in June was not received "by pharmacy." (Px1, p.80) Dr. Aghia sent Petitioner back to the pain clinic with a request to resend the back brace order, and instruction for her to continue medications and follow up in January. (Px1, p.87) Petitioner returned to Mr. Enger on December 19, 2023, expressing interest in proceeding with kyphoplasty. (Px1, pp.50-75, and specifically p.58). She was told that due to the MRI being six months old and possibility of fusion a new MRI would be needed and to return after the study is done. (Px1, p.58)

Petitioner last saw Dr. Aghia for a routine wellness visit on January 23, 2024. (Px1, pp.12-49, and specifically p.16) Dr. Aghia also addressed her low back, reporting that a repeat MRI showed chronic appearing compression fractures which were less amenable to kyphoplasty (The Arbitrator notes only the 6/8/23 MRI was submitted into evidence). (Px1, p.17) Dr. Aghia issued several orders. As it concerns Petitioner's low back, Dr. Aghia kept her off work and ordered three months of physical therapy. *Id.* Petitioner testified at the time of hearing she had not yet attended physical therapy, but a first session was scheduled for the following week. (Tr. pp.39-40, 50)

D. Dr. Colman's Section 12 Examination and Testimony

At the request of Respondent, Petitioner was examined by Dr. Matthew Colman, a board-certified orthopedic spine surgeon, specializing in spine and spine oncology, on August 1, 2023. (Rx1, pp.4, 5, 10). Dr. Colman's testimony was taken via evidence deposition on December 5, 2023, and the transcript admitted into evidence as Respondent's Exhibit 1. In addition to his clinical duties, Dr. Colman performs about 500 surgeries a year, teaches medical students, does research, and is a frequent presenter and widely published author (100 peer-reviewed journal articles and 11 book chapters) in the field of spine medicine, with credentials at several outpatient facilities. (Tr. pp.5-6, 8, Rx1 Ex. A)

After taking histories from Petitioner, reviewing her medical records and diagnostic imaging, Dr. Colman diagnosed Petitioner with two compression fractures at L1 and L5, and that it was reasonable to conclude she also sustained a lumbar sprain or strain. (Rx1, pp.12-16, 26) However, Dr. Colman found that while the soft tissue sprain or strain was related to her work duties on February 2nd and February 3rd, he did not believe the compression fractures were causally related to her work on those dates. (Rx1, pp.16-17, 37)

In support of Dr. Colman's opinion that the compression fractures were not work-related, the doctor found significant that over the two days in February Petitioner didn't have a specific incident like a crack or a pop, nor an acute onset of pain. (Rx1, pp.17, 53). Dr. Colman added she was able to continue working both days, albeit with claims of pain. *Id.* Dr. Colman further noted that Petitioner "obviously has osteoporosis" and "osteoporotic compression fractures often happen spontaneously and without any specific trauma." (Rx1, pp.17-18) Dr. Colman testified that he did not find a reason to believe that Petitioner's occupational incidents on February 2-3, 2023 could cause a compression fracture any more than her daily life activities after those dates. (Rx1, pp.18, 23)

For further support of his belief on causation Dr. Colman noted the June 2023 MRI revealed acute edema. (Rx1, p.18) Dr. Colman testified that *if* the compression fractures occurred on February 2, 2023 and/or February 3, 2023, that the edema would have healed and resolved within six to eight weeks and certainly during the four-month interval between then and when the MRI was completed. (Rx1, pp.18, 59, emphasis supplied) Dr. Colman believed that that the compression fractures likely happened spontaneously, closer to June 2023 when the MRI was done. *Id.*

Dr. Colman added that the distance between the fractures at L1 and L5 outside the same zone was more indicative of severe osteoporosis as the cause rather than a specific point of injury in the back. (Rx1, p.18) Dr. Colman testified that the worse the osteoporosis is, the higher the risk for compression fractures. (Rx1, pp.20-21)

Concerning treatment, Dr. Colman testified that in very rare cases a kyphoplasty surgery is needed for patients with compression fractures in their spine, and if Petitioner failed conservative treatment, she could be a kyphoplasty candidate. (Rx1. p.22, 25) Regarding work status, Dr. Colman opined that Petitioner was capable of sedentary duty. (Rx1, pp.23-25)

During cross examination, Dr. Colman was asked a series of questions, primarily focused on the issue of causation. Starting with the interpretation of the MRI, Dr. Colman disagreed with the radiologist that Petitioner had chronic fractures upon which microtrabecular fractures (similar to bone bruises) were superimposed. (Rx1, pp.33-34) For Dr. Colman, the entire vertebral bodies were "kind of lit up," and the magnitude of that STIR signal from the edema led him to conclude the fractures observed were new. (Rx1, pp.34, 50-51) Dr. Colman was asked as series of questions about possibilities that could fit Petitioner's narrative of causation as "possibilities," leading to testimony that the reported lifting crates full of milk, and twisting, bending and dumping them

out on one day for seven and a half hours and five hours the next potentially could be significant enough to cause a compression fracture. (Rx1, pp.39, 41)

On re-direct examination, Dr. Colman testified that Petitioner's clinical presentation early in treatment would be consistent with merely a lumbar sprain or strain. (Rx1, p.48) Concerning whether a compression fracture could occur by heavy loading for an individual with osteoporosis, Dr. Colman testified, "If the vertebral body fails all at once due to an application of a heavy load, typically the patient will experience some sort of crack or pop and they will have a dramatic increase in pain all at once." (Rx1, pp.48-49)

Following cross examination, and questions about several possible causes for Petitioner's compression fractures and the edema observed on the MRI, at the end of his testimony Dr. Colman testified that his conclusions, to a reasonable degree of medical and surgical certainty, remained unchanged. (Rx1, pp.23, 60)

E. Post Dr. Colman's Section 12 Exam

Petitioner testified that she was tendered Dr. Colman's report from his examination by Respondent's carrier on August 25, 2023, and advised that no further lost time or medical benefits would be paid. (Tr. pp.27-28, 41-42)

CONCLUSIONS OF LAW

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

The Arbitrator finds Petitioner's current condition of ill-being in her lumbar spine is not related to her work accident of February 2, 2023. The Arbitrator finds Petitioner sustained a work-related lumbar sprain or strain on that date, and her compression fractures at L1 and L5 are not related to her work. As a consequence, the Arbitrator finds Petitioner's condition of ill being related to her work accident of February 2, 2023, ended when Dr. Colman's Section 12 report finding no work injury was tendered to her on August 25, 2023.

In so concluding the Arbitrator notes that Dr. Colman was the lone physician who testified in this matter, the lone orthopedic surgeon who specializes in spine treatment involved with this claim, and also the only doctor who gave an opinion about causation. The Arbitrator notes that Petitioner admits she did not sustain an injury from a singular event or trauma, but more of an onset of general soreness over a couple days that she admitted was tolerable while she was working. It was not until she awoke the following day that her symptoms sharply increased.

More importantly, Petitioner concedes she did not experience a pop or crack in her spine, which Dr. Colman testified would be expected if her work duties and heavy loads and/or positioning would have caused or contributed to her compression fractures at L1 and L5.

It is well established that it is a Petitioner's burden to prove each and every element of her claim, including causal connection for her condition of ill-being to her work.

Where there is evidence of a preexisting degenerative condition, medical opinion evidence is necessary to establish a causal connection between the repetitive trauma injury and the claimant's work duties. *Johnson v. Industrial Com.*, 89 Ill. 2d 438 (1982).

The Arbitrator finds instructive the Illinois Appellate Court's decision in *University of Illinois v. Illinois Workers' Compensation Comm'n*, 2021 IL App (4th) 210236WC-U. In that case, the only evidence the claimant presented connecting his injuries to his employment was his own testimony regarding the repetitive work duties he performed leading up to his injury. *Id.* at ¶44 The question of whether an injury sustained by a claimant was the result of (or accelerated by) work activities and not merely the natural progression of his preexisting conditions is a medical question that is not within the common knowledge of a layman, necessitating medical expert evidence. *Id.* at ¶45

In the present case, Petitioner presents only her own testimony in support of a "chain of events" injury theory. That is insufficient and inappropriate for this claim since there was not a single traumatic episode that Petitioner can identify as a cause of her compression fractures. (*see also Abramson v. Presence Saint Joseph Hospital*, 23 IWCC 0398, 2023 Ill. Wrk. Comp LEXIS 515 (2023), finding a Petitioner's testimony alone insufficient to establish causal connection when a singular

work incident did not occur). As a consequence, the Arbitrator finds Petitioner failed to meet the evidentiary threshold to contemplate finding a causal connection for her compression fractures at L1 and L5.

Dr. Colman's testimony and opinions were given within a reasonable degree of medical and surgical certainty, and when the doctor could not be certain, he said so in his testimony. Dr. Colman's factual support for his opinions is well-reasoned and accepted by the Arbitrator.

Therefore, the Arbitrator finds Petitioner sustained a causally related soft tissue, low back strain or sprain as a result of her work accident on February 2, 2023. That resolved no later than when Dr. Colman's opinions were tendered to Petitioner on August 25, 2023. The Arbitrator further finds that Petitioner's compression fractures discovered at L1 and L5 are unrelated to her work accident of February 2, 2023.

In regards to the issue of (J), Were 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:

In light of the Arbitrator's conclusion on the issue of causal connection, the Arbitrator finds Respondent liable for medical expenses incurred by Petitioner only through August 25, 2023, that were submitted into evidence in Petitioner's Exhibits 1-3, but subject to limitations as set forth in Sections 8(a) and 8.2 of the Act. The Arbitrator further finds that the treatment Petitioner received through August 25, 2023 was reasonable and medically necessary pursuant to Section 8(a) of the Act. Respondent shall not be liable for any medical expenses incurred after August 25, 2023, because no causal relationship to the work accident exists after that date.

In regards to the issue of (K), Is Petitioner entitled to any prospective medical care?, the Arbitrator finds as follows:

In light of the Arbitrator's conclusion on the issue of causal connection, the Arbitrator denies Petitioner's request for prospective medical care, and specifically kyphoplasty surgery.

In regards to the issue of (L), temporary benefits in dispute (TTD), the Arbitrator finds as follows:

In light of the Arbitrator's conclusion on the issue of causal connection and the medical evidence, the Arbitrator finds Petitioner restricted from work and temporarily totally disabled from February 10, 2023 through August 25, 2023 for her related soft tissue, sprain or strain in her low back, a period of 28-1/7ths weeks, at her weekly benefit rate of $658.25. Since that condition resolved by the time Dr. Colman's Section 12 report was tendered to Petitioner, liability for temporarily total disability benefits ends on August 25, 2023.

Pursuant to the stipulation of the parties, Respondent shall receive a credit in the amount of $19,232.55 for temporary total disability benefits it already paid Petitioner.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC030806
Case Name	Anne Giglio v. State of Illinois - Illinois Dept of Transportation
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0072
Number of Pages of Decision	35
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Alexander Pino
Respondent Attorney	Drew Dierkes

DATE FILED: 2/14/2025

/s/Carolyn Doherty,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANNE GIGLIO (Estate of James Giglio),

Petitioner,

vs. NO: 17 WC 30806

STATE OF ILLINOIS –
ILLINOIS DEPARTMENT
OF TRANSPORTATION,

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 accident, and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below.

I. FINDINGS OF FACT

A. Background

James Giglio, the original Petitioner, passed away of unrelated causes following the close of proofs in this case. Accordingly, James Giglio is referred to as Decedent in this Decision and Opinion on Review.[1]

Decedent testified that as on September 20, 2017, he had been employed with Respondent for approximately five years as an Executive Tech 5, retitled as an Operations Supervisor 2. He stated that he oversaw an IDOT maintenance region encompassing 17 to 30 communities. He described his job duties as including supervising daily attendance, discipline, ordering supplies, picking up supplies, and maintaining trucks. According to Decedent,

[1] Per the request and agreement of the parties, Petitioner sought and received an order from the Circuit Court of Will County naming Anne Giglio as Independent Executor of the Estate of James Giglio. The Commission subsequently granted Anne Giglio leave to file an Amended Application for Adjustment of Claim substituting herself as Petitioner in her capacity as executor.

depending on the season, he supervised between 24 and 52 employees. Decedent would perform job duties outside of the office on a nearly daily basis. He stated that his morning routine would be to sit with his lead foreman to determine which jobs needed to be completed that day, setting up crews and checking to make sure they had the proper materials.

Decedent testified that sometimes he was required to purchase supplies for the workplace. He stated that he would purchase smaller supplies from the Menards store in Dolton. He also stated that he had purchasing authority at Menards though a state account and would travel to Menards in a state vehicle with a state license plate. He explained that he would get an FPA or PO sheet from his storekeeper. According to Decedent, he would provide Menards with the state account number as well as identification. He testified that he and the storekeeper were the only two employees in the maintenance yard with purchasing authority. The parties agreed that on September 20, 2017, Decedent was 59 years old.

B. Accident

Decedent testified that on September 20, 2017, he and the foreman agreed that he needed to purchase supplies at the Dolton Menards. Decedent stated that he was at the Menards, standing in the cashier line with a cart, behind another customer as the cashier processed another customer. He stated that his left hand was knocked off his cart by someone walking past him. The Decision of the Arbitrator identifies this person as Individual 1. According to Decedent, that person turned almost immediately towards him and began cursing him as a "mother-f***er" and "effing gringo," as did the other customer who had been standing in front of him. The Decision of the Arbitrator refers to this customer as Individual 2. Decedent stated that the man next to his cart took a can, perhaps of spray paint, and held it in his left hand. Decedent also described the other man coming around his cart, screaming with an angry look. Decedent testified that he extended his left hand and stated, "Hey, I'm disabled," and "I don't want any trouble." According to Decedent, the person who had knocked his hand off the cart threw a punch, striking him and running him backwards through a display rack. Decedent denied striking, threatening, or making any threatening gestures toward the other person. He later stated that he may have said "Hey," or "Excuse me" when his hand was knocked from the cart. He denied using any racial epithets or connotations.

Decedent testified that as they were on the ground, he was restraining the other person, when the third person grabbed Decedent to try and pull his arms away. He stated that he yelled for the person to get off him and for help. He stated that after quite a while, the altercation ended, and a security guard arrived. Decedent testified that he was able to obtain security recordings of the incident through a FOIA request of the Dolton Police Department and provided the recordings to his attorney. These recordings were played during the hearing and are discussed below. Decedent testified that an ambulance arrived after the incident, but he did not use it because he needed access to his own vehicle for reasons regarding his spouse's health.

On cross-examination, Decedent testified that he had never had a similar incident while shopping at Menards in Homewood or Dolton in the approximately 15 times he had been to these locations. He stated that he did not wear a uniform because he was field staff. He opined that a great majority of his team section is violent, towns with high crime rates and that he grew up in

the area. However, he stated that he had no idea that any sort of incident could happen and he had not been looking for trouble.

Mario Silva, a retired Chicago Police officer, testified for Respondent. Mr. Silva is the third person involved in the incident, identified in the Decision of the Arbitrator as "Individual 2." He stated that on September 20, 2017, he was at a cash register at Menards, purchasing some items with his ex-wife's nephew, who is mentally challenged. According to Mr. Silva, the next thing he knew, he heard Decedent screaming and yelling. He stated that he turned around and saw Decedent grab his nephew and throw him into the aisle where the candy was. According to Mr. Silva, Decedent was yelling that his nephew had bumped into him, using profanity and acting belligerent. He stated that Decedent wrapped his arms around his nephew, so he asked Decedent to let his nephew go, which he did. He also stated that Decedent used profanity and racial epithets toward his nephew, the cashier, and the security guard. He further testified that after he finished with the cashier, he walked out to the parking lot and saw Petitioner taking pictures of his truck. Mr. Silva added that is obvious his nephew is mentally challenged and Decedent was directing abusive language toward a "little kid." According to Mr. Silva, his nephew was 18 or 19 years old, 5'2" tall and approximately 160 pounds.

Pearl Cotton McGrew testified for Respondent that on September 20, 2017, she worked for ISM Security at the Dolton, Illinois Menards as a door guard. Ms. Cotton testified that she was called down by a cashier due to the confrontation. She stated that she saw that Decedent and another man had fallen over on the floor and that Decedent had the other person in an almost chokehold. Ms. McGrew testified that as she tried to help Decedent stand, he told her to shoot the other person. She stated that she saw Decedent chase the other person out of the store. According to Ms. McGrew, Decedent re-entered the store and was upset that she had not arrested the other person, which she was not allowed to do because her job description did not allow her to touch anyone. She acknowledged that she did not see what caused the altercation.

Michael Varlotta, Respondent's Director of Labor and Employment Law, testified that Decedent received a five-day suspension as a result of the incident at Menards on September 20, 2017. He stated that he was aware of many complaints of verbal altercations between IDOT employees and members of the public but was not aware of any other physical altercations.

C. Incident Video Recordings

Petitioner submitted a collection of three surveillance videos of different angles of the incident. The recordings lack audio.

The first recording, identified as Traffic 1, depicts the checkout counters at the Dolton Menards. At 9:11 a.m., from the left side of the screen, a man in a white hat (identified as Mr. Silva and by the Arbitrator as Individual 2) enters the checkout lane and approaches the cashier, followed a couple of yards by Decedent, wearing a red shirt and pushing a cart, followed closely by a man in a brown shirt (identified as Mr. Silva's ex-wife's nephew and by the Arbitrator as Individual 1). Individual 1 walks around Decedent, making contact with Decedent's left arm. Petitioner and Individual 1 immediately begin to have a verbal exchange. Individual 2 turns and appears to begin talking to and extending his arm toward Individual 1. Individual 2 is also

holding an object in the hand of the extended arm and may also be speaking to Decedent. Decedent appears to lift his left arm, though this is largely obscured by Decedent's body given the camera angle.

As Decedent lowers his arm, to his side, Individual 1 slightly rotates and swings his left arm at Decedent, grabs Decedent's left arm with his own right arm and pushes him backwards onto the metal display racks, which collapse, causing Individual 1 to fall on top of Decedent in an aisle area. Decedent and Individual 1 struggle on the floor as Individual 2 leaves the aisle where all three had been and circles to the area where the other men are, though his path to them is blocked by the collapsed display rack. Individual 2 steps over and through the debris and briefly bends over, perhaps attempting to separate the others, before stepping away through the debris as a security guard approaches from the other direction. The guard assists Individual 1 to his feet. Decedent, sitting on the floor, appears to be speaking to the guard and Individual 2 while raising his left arm. Individual 1 walks perhaps a yard away, as Individual 2 circles back to the original aisle, walking through the aisle and back toward the area where the guard and another store employee stands between Decedent and Individual 1. Decedent Individual 1 and Individual 2 all appear to be speaking. A store employee extends his arm between Decedent and Individual 2. Decedent begins pointing at Individual 1 and a store employee stands between them. All three begin walking toward the store exit, though it appears that Individual 2 circles back to the original aisle and briefly interacts with the cashier. By 9:14 a.m., store employees begin cleaning up the collapsed display rack.

The second recording, identified as Traffic 2, depicts the incident from the opposite angle, placing Decedent and Individuals 1 and 2 at the top right of the screen. The view is partially cut off and also somewhat obscured by display racks. However, this recording clearly shows Decedent extending his left arm and hand at 9:11:34 a.m.

The third video, identified as Reg 3-4, shows a reverse angle of the first two recording, looking from the presumed exit of area of the store but higher above the cashier. Individual 2 approaches the cashier, followed by Petitioner's cart, and then Individual 1 can be seen passing him. However, the view is cut off at the top such that Petitioner cannot be seen. This recording does show that the object held by Individual 2 was handed to him by Individual 1.

D. Prior Medical Condition

Decedent testified that he was a Stage 4 lung cancer patient and had just defeated his sixth brain tumor, having finished chemotherapy two months prior. Decedent also testified that he had a back injury in 2013. He further stated that during brain surgery in 2016, he experienced a hemiparesis stroke, but returned to work at IDOT in a full-duty capacity prior to the date of accident of September 20, 2017.

E. Medical Treatment

On September 20, 2017, Decedent presented to the emergency department at Advocate South Suburban Hospital reporting right-sided head and ear pain, right elbow pain, right-sided neck pain, right shoulder pain, right-sided lower back pain and right ankle pain after an

altercation attacked at Menards. Imaging of the head and spine was normal aside from mild anterolisthesis of L4 on L5. Decedent was diagnosed with a contusion and closed head injury, prescribed medications for pain and muscle spasms, and was instructed to follow with his primary care physician, Dr. Jerome Daly.

On September 22, 2017, Decedent saw Dr. Daly, who diagnosed Decedent with a lumbar strain, bruising of upper limb, traumatic avulsion of nail plate of left ring finger, and recent head trauma. Dr. Daly referred Decedent to an orthopedic specialist.

On September 26, 2017, Decedent saw Dr. Daniel Troy of Advance Orthopaedic & Spine Care, complaining of low back pain, neck pain, and pain radiating down his right arm, which he stated was new since the incident. Dr. Troy diagnosed Decedent with lumbar radiculopathy, cervicalgia, and spinal disc degeneration. He ordered cervical and lumbar MRI scans. He kept Decedent off work.

On October 24, 2017, Decedent underwent a lumbar MRI at DAC Imaging, with the radiologist's impressions being of spondylosis and spondylolisthesis changes most marked at L4-L5 with a right posterior disc protrusion with slight upward extrusion. Decedent's cervical MRI was interpreted as showing mild spinal stenosis at C6-C7, T1-T2, and T2-T3.

On November 3, 2017, Dr. Troy reviewed the lumbar MRI results, noting no "traumatically induced changes," but that Decedent continued to demonstrate chronic findings of moderate severe spinal stenosis greatest at L4-L5, as well as mild multilevel spinal canal stenosis of the cervical spine. Dr. Troy prescribed physical therapy and kept the Petitioner off work.

On December 14, 2017, Decedent saw Dr. Eric Ericson on referral from Dr. Daly. Decedent reported right shoulder weakness and upper arm paresthesia, shoulder pain, neck pain and low back pain following an assault at Menards. Dr. Ericson diagnosed a right arm nerve injury, opined that Decedent's shoulder asymmetry does raise concern for a rotator cuff tear and referred Decedent to an orthopedic shoulder specialist. He also recommended an EMG/NCV test of the right arm. On December 19, 2017, Dr. Ericson performed these tests, finding the results unremarkable.

On December 20, 2017, Decedent presented to Dr. Venkat Seshadri of Premier Orthopaedic and Hand Center, complaining of right shoulder pain and numbness on the back of the arm and shoulder blade. Dr. Seshadri ordered a right shoulder MRI.

On January 8, 2018, Petitioner underwent a right shoulder MRI at Advocate South Suburban Hospital. The interpreting radiologist's impressions were of: (1) mild tendinosis of the supraspinatus; (2) mild type III acromial morphology and prominent acromial; (3) moderate AC joint arthrosis; (4) degenerative fraying of the superior labrum with partial thickness chondral labral separation; and (5) mild osteoarthrosis of the glenohumeral joint. No partial or full-thickness rotator cuff tears were detected.

On January 12, 2018, Dr. Seshadri reviewed the right shoulder MRI results and diagnosed right shoulder pain and a superior glenoid labrum lesion, with mild arthritic changes

in the shoulder but no full-thickness rotator cuff tears. Dr. Seshadri administered a subacromial injection of the right bursa and referred Decedent for physical therapy. Decedent periodically followed up with Dr. Shedari to monitor his progress in therapy.

On February 9, 2018, Decedent complained to Dr. Troy of continued neck pain and residual right shoulder pain, with intermittent tingling into his right arm. Dr. Troy referred Petitioner for a possible cervical injection and recommended physical therapy.

On March 20, 2018, Petitioner presented at the emergency room at Advocate South Suburban Hospital complaining of weakness in his right arm and leg. A cervical MRI was read as indicating stable multilevel degenerative disc disease. On March 21, 2018, Decedent followed up with Dr. Troy, complaining of an inability to control his right arm with symptoms also going down his right leg. Dr. Troy read the cervical MRI scan as showing mild to moderate foraminal stenosis but no central canal stenosis and "nothing to truly explain his symptomatology." He opined that these symptoms were pointing more to a central nervous system or brain issue, and referred Decedent to another physician and to follow up with him on an as needed basis in the future.

On April 10, 2018, Decedent returned to Dr. Daly, complaining of low back pain and neck pain radiating into his shoulders after bending over to pick up a stapler at work. Following an examination Dr. Daly told Decedent that he should not be doing any work and minimal driving.

On May 4, 2018, Dr. Troy recommended lumbar epidural steroid injections at L4-L5. Beginning May 20, 2018, Decedent underwent a series of injections, and by October 19, 2018, He reported 50% improvement, with the pain that previously radiated into his right leg having resolved.

On February 4, 2019, and September 27, 2019, Dr. Seshadri administered additional subacromial injections of the right shoulder.

On June 12, 2019, Decedent returned to see Dr. Troy, who diagnosed Grade I L4-L5 degenerative spondylolisthesis with secondary spinal stenosis. Dr. Troy noted that Decedent needed a spinal fusion, but Decedent wanted to proceed with repeat epidural steroid injections. Between July 21, 2019, and July 16, 2020, Decedent underwent another series of lumbar epidural steroid injections.

On August 20, 2020, Dr. Troy performed: a complex L4-L5 posterior spinal fusion: partial inferior laminectomy at L4; partial superior laminectomy at L5; bilateral L4-L5 partial facetectomies; and bilateral L4-L5 foraminotomies. On September 2, 2020, Decedent began follow-up with Dr. Troy's office, reporting improvement in his back pain without lower extremity radiculopathy. Decedent was advised to maintain restrictions of no bending, twisting, pushing, pulling, or lifting greater than 10 pounds for the next four weeks. By November 11, 2020, Decedent reported no pain in the low back area and no recurrence of radiculopathy, though he had suffered multiple falls because of weakness to the right lower extremity. Dr. Troy prescribed physical therapy and activity limitations/modifications. On December 15, 2020,

Decedent reported to Dr. Troy's assistant that over the prior two weeks, his symptoms significantly improved, with his pain stabilizing. Decedent rated his pain at 5/10.

On January 12, 2021, Dr. Seshadri administered another right shoulder injection.

On April 14, 2021, Decedent returned to Dr. Troy, who noted Petitioner had developed a right foot drop following a stroke, but otherwise was doing well following the surgery, with no back pain and no pain down the left lower extremity.

On December 1, 2021, Dr. Troyo noted Decedent was doing very well after posterior spinal fusion, with good strength in the left lower extremity and diffusely nontender to palpation of the lumbar spine, with diffuse achiness. Decedent was discharged from care and advised to return as needed.

On December 3, 2021, Decedent presented to Dr. Blair Rhode complaining of right shoulder pain. Dr. Rhode noted that Decedent's pre-altercation MRI did not demonstrate any significant pathology, while the post-altercation MRI demonstrated rotator cuff and labral pathology. He noted that Decedent had undergone a series of injections and surgery was ultimately recommended, but delayed to determine whether Decedent would survive his lung cancer. Following an examination, which disclosed a positive impingement sign, Dr. Rhode diagnosed an incomplete rotator cuff tear or rupture of the right shoulder, ordered a new MRI, and advised Decedent to remain off duty.

On September 19, 2022, Decedent returned to Dr. Rhode, who ordered a functional capacity evaluation (FCE) and kept the Petitioner off work.

On October 28, 2022, Decedent underwent an FCE at Orland Park Orthopedics. The FCE report indicates Petitioner put forth full effort and demonstrated an ability to perform at a light physical demand level.

On November 7, 2022, Dr. Rhode noted the FCE result and found Decedent had reached maximum medical improvement (MMI). Dr. Rhode imposed a permanent light duty restriction with no overhead lifting. Decedent was directed to follow up as needed.

F. Deposition Testimony by Dr. Daniel Troy

On September 12, 2018, Dr. Troy, a board-certified orthopedic surgeon, testified by deposition for Petitioner. Dr. Troy generally testified consistently with his treatment records, which included treatment prior to the altercation. Dr. Troy opined that Decedent's chronic lumbar findings became symptomatic as a result of the incident on September 20, 2017, based on the fact that Decedent was last seen in 2015, there was a two-year delay in treatment, and he then returned six days after the assault for treatment. He opined that Decedent had suffered an exacerbation of his preexisting degenerative changes. Dr. Troy testified that he reviewed a recording of the September 20, 2017, incident and testified that his opinion regarding causation was unchanged. He also opined that the cause of the pain in the Decedent's neck and shoulder was secondary to the aggravation of the preexisting degenerative changes in the neck. He did

not have an opinion regarding Decedent's shoulder. Dr. Troy testified the next step would be surgery, including a two-level lumbar fusion.

G. Deposition Testimony by Dr. Venkat Seshadri

On November 12, 2019, Dr. Seshadri, a board-certified orthopedic surgeon, testified by deposition for Petitioner. He testified with assistance from his treatment records. He testified that he was shown a recording of the incident. Based on the chain of events, he opined that the incident caused the Decedent's shoulder problems. He stated that if Decedent had asked for work restrictions, he would have imposed restrictions of no lifting over 5 to 10 pounds, no over the shoulder use, and no repetitive pushing and pulling. Dr. Seshadri also opined that the arthritis in Decedent's shoulder was permanent, but his right shoulder impingement and labral tear could be addressed. He further opined that these conditions were probably pre-existing and became symptomatic because of the incident. Dr. Seshadri added that Decedent could be a surgical candidate if his pain does not resolve and if he is still having dysfunction. He explained that he would recommend an arthroscopic procedure to remove a bone spur to address the impingement and a biceps tenodesis to address the labral tear.

H. Surveillance Testimony by Carlos Rodriguez

Carlos Rodriguez, who owns the detective agency Total Protection Consultants, testified for Respondent. He stated that he was hired by Respondent to conduct surveillance of Decedent, which he memorialized in a report. He stated that he first conducted surveillance on November 3, 2017. According to Mr. Rodriguez, he was asked by Respondent to not check in with the Mokena Police Department before starting surveillance because Decedent had a lot of contacts within the Mokena Police Department, which could jeopardize the integrity of the investigation. He testified that while surveilling, Decedent drove his vehicle toward him. Mr. Rodriguez testified that as he attempted to leave the area, Decedent rolled down his vehicle's window, started shouting obscenities, and stating that he knew who Mr. Rodriguez was and that his friends had run his license plates. He stated that Decedent's vehicle prevented him from leaving the area. He further stated that he was able to de-escalate the situation. Mr. Rodriguez testified that Respondent advised him to file a report with Tinley Park Police Department. He stated that he had conducted thousands of investigations but had never had an incident like this.

I. Labor Market Survey and Deposition Testimony by Sonya Sims

On August 14, 2023, Sonya Sims, a Certified Rehabilitation Counselor and Case Manager for Paradigm, prepared a labor market survey regarding Decedent based on a records review for Respondent. She reviewed Decedent's job requirements and light-duty work capabilities. She identified Decedent's vocational goals as including a crew transport driver, van/school bus driver, driver advocate, dispatcher, and shuttle driver. She contacted four potential employers in these categories calculating that his median wage would represent a 55% wage replacement.

On September 13, 2023, Ms. Sims testified by deposition for Respondent. Her testimony was generally consistent with her report. She testified that she was certified in Louisiana,

Georgia, and Tennessee. She acknowledged that she was not being certified in Illinois. She believed her experience and expertise in the field allowed her to find appropriate jobs in Illinois. Ms. Sims acknowledged that she did not make any contact with Decedent as part of her preparation of the labor market survey. She agreed that if she were hired to perform vocational assistance to a client she would meet with the client and interview him at length, determine his likes and interests, determine details about his work history, determine the nuances of his condition, and conduct a full medical history.

J. Additional Information

Regarding his current condition, Decedent testified that he has constant pain in his right shoulder and has limited use and strength in that arm. He described the pain as daily and almost constant. He stated that he could not maintain a position sleeping for more than 90 minutes before his arm went numb. He stated that the pain would run into his neck and that he still had tremors. He testified that he uses heating pads and ice packs to provide relief.

Decedent also testified that he has lower back pain that shoots into his right leg. He described the pain as horrible and daily. He described his paraspinal muscles cramping. He stated that he cannot walk without assistance and used a cane, rolling walker, and wheelchair. He later added that he could walk approximately 50 feet using his cane. Decedent stated that his knee would give out from the pain, but acknowledged his knee condition was not related to the work accident. He also stated that his home exercise program was becoming less effective.

II. CONCLUSIONS OF LAW

The sole issue on review is whether Decedent, who was assaulted by Individual 1 while purchasing supplies at Menards for Respondent IDOT, suffered an accident arising out of and in the course of his employment. The Commission initially notes that Petitioner was in the course of his employment for IDOT when the assault occurred as he was purchasing supplies at Menards which he was occasionally told to do as part of his duties. The question is whether the assault during which Petitioner was injured arose out of his employment with IDOT. The Commission finds that it did not.

Initially, the Commission notes that injuries suffered by employees resulting from assaults are not compensable if there was evidence to sustain a finding by the Commission that the motive was personal to the victim, rather than work-related, or if the claimant could not demonstrate a reason for the assault. *Schultheis v. Industrial Comm'n*, 96 Ill. 2d 340, 346-47 (1983). In assault cases, the injured employee has the burden of showing that the assault was work-related to be entitled to benefits under the Act. *Greene v. Industrial Comm'n*, 87 Ill. 2d 1, 5 (1981).

The record in this case supports the conclusion that Decedent was injured during an assault which was purely personal in nature. Decedent testified that he was not wearing an IDOT uniform inside Menards and there is no evidence that Individual 1 had observed Decedent arrive in a state vehicle. As demonstrated in the video, Individual 1 knocked Decedent's arm from the shopping cart while walking around that cart to join Mr. Silva near the cashier, which

had nothing to do with Decedent's employment beyond the assertion that he was at Menards as part of his workday. Decedent and Mr. Silva offered differing accounts of the verbal exchange which followed but neither witness testified that the verbal exchange was in any way related to Decedent's employment.

The Commission acknowledges that "where the street becomes the milieu of the employee's work, he is exposed to all street hazards to a greater degree than the general public." *C. A. Dunham Co. v. Industrial Comm'n*, 16 Ill. 2d 102, 111 (1959). In such a case, "the unusualness or infrequency of the accident does not preclude it from arising out of the employment, so long as it is possible as one of the risks of the employee's work; and that no distinction has been made as to whether the accident is due to mechanical failure, human negligence or felonious acts, provided the employment exposes the employee to the risk, *and the injury is not inflicted for personal reasons*." (Emphasis added, citations omitted.) *Id.* at 112; see *Potenzo v. Illinois Workers' Compensation Comm'n*, 378 Ill. App. 3d 113, 118-119 (2007). In this case, there is no evidence to support any finding other than the assault and Decedent's resulting injury were inflicted for entirely personal reasons.

Moreover, the Commission also considers whether the injury arose out of the employment based on whether the employee's work environment, created an elevated risk of injury. For example, in *Heath v. Industrial Comm'n*, 256 Ill. App. 3d 1008, 1009-10 (1993), the claimant was a stock clerk who was shot by an unknown assailant after the store closed. The Illinois Appellate Court affirmed the Commission's determination that the injuries did not arise out of the claimant's employment, stating that the question was not whether the facts established that the claimant's work environment increased his risk but whether this was the only reasonable inference. *Id*. at 1014. The court concluded that that there was no evidence that the store was a risky environment or that the attack was motivated by something related to claimant's employment, or that showed the neighborhood was dangerous or the location lent itself to criminal activity, or that there was an increased risk of attack because the store was closed. *Id*. at 1015. Similarly, in *Potenzo*, where the parties offered conflicting testimony on the safety of the neighborhood where the claimant delivery driver was assaulted, the Illinois Appellate Court did not overturn the Commission's determination that the claimant failed to establish that the area in which he was working when attacked was a high crime area or a dangerous neighborhood. *Potenzo*, 378 Ill. App. 3d at 118.

In contrast, in those cases where courts have found the employee was subject to an elevated risk of injury, the employee introduced evidence sufficient to support that conclusion. For instance, in *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149 (2000), the employee was killed when he was struck by a stray bullet while inside his place of employment, 20 feet behind floor-to-ceiling glass windows. *Id*., at 152, 165. The employee introduced the testimony of a detective with knowledge of area crime rates who testified to recent increases in criminal activity in the area surrounding the job site. *Id*. There was also testimony that bullets had previously struck and entered the building where the employee worked. *Id*. at 153, 165. Similarly, in *Restaurant Development Group v. Hee Suk Oh*, 392 Ill. App. 3d 415 (2009), the employee was injured by a stray bullet while standing next to the bar in the restaurant where he worked. *Id*. at 417. The employee presented evidence of a police sergeant who was familiar with crime in the area where the restaurant was located. A

police sergeant testified that the district in which the restaurant was located had a large collection of multiple gangs and that violent crimes increased in the area during the hours in which the restaurant was open. *Id*. at 418-19, 421.

In this case, while Decedent generally stated that most of his team section includes towns with high crime rates, he also testified that his maintenance region encompassed 17 to 30 communities. Decedent did not testify that Dolton was unusually dangerous, let alone that the neighborhood where the Menards was located was dangerous. To the contrary, Decedent testified that he had previously shopped at the Menards in Dolton without incident, and had no idea that anything could happen. Decedent produced no testimony or evidence of the sort which supported finding an elevated risk in *Illinois Institute of Technology Research* or *Restaurant Development Group.*

In sum, following a review of the totality of the record in this case, the Commission concludes that Decedent was injured in an assault stemming from a purely personal dispute unrelated to his employment. The Commission also concludes that Decedent was not exposed to the risk of assault at the Menards store to a degree greater than the general public. Lastly, the Commission notes that although the Arbitrator found a compensable accident based on the "traveling employee" doctrine, the Commission concludes that Decedent acted in the course of his employment but failed to establish that the assault arose out of his employment as opposed to personal reasons.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed on April 4, 2024, is reversed for the reasons stated above.

IT IS THEREFORE FOUND BY THE COMMISSION that Decedent did not sustain an accident on September 20, 2017 that arose out of and occurred in the course of employment.

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.

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

February 14, 2025

o: 01/30/25
CMD/kcb
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC030806
Case Name	James Giglio v. State of Illinois - Illinois Department of Transportation
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	22
Decision Issued By	Jacqueline Hickey, Arbitrator

Petitioner Attorney	Alexander Pino
Respondent Attorney	Drew Dierkes

DATE FILED: 4/4/2024

/s/Jacqueline Hickey,Arbitrator

Signature

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

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

April 4, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

James Giglio
Employee/Petitioner

v.

Illinois Department of Transportation
Employer/Respondent

Case # **17** WC **030806**

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 **September 28, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **9/20/2017**, 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 $**79,207.44**; the average weekly wage was $**1,523.22**.

On the date of accident, Petitioner was **59** 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 $**8,124.24** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**8,124.24**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $**1,015.48**/week for **245-4/7** weeks, commencing **9/26/2017** through **11/20/2017**, and **4/10/2018** through **10/28/2022**, as provided in Section 8(b) of the Act

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $**26,873.60**, as detailed in the Arbitrator's findings with respect to Medical herein, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall also reimburse Petitioner $**270.00** for out-of-pocket medical expenses.

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, if any.

Respondent shall pay Petitioner permanent partial disability benefits of $**790.64**/week for **250** weeks, because the injuries sustained caused the **50**% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

The Arbitrator awards $0 in penalties pursuant to Sections 16, 19(k) and 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.

Jacqueline C. Hickey

Signature of Arbitrator

April 4, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

JAMES GIGLIO,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 17 WC 030806
	)	
ILLINOIS DEPARTMENT OF TRANSPORTATION,	)	
	)	
Respondent.	)	

RIDER TO DECISION

This matter proceeded to hearing on September 28, 2023, in Chicago, Illinois before Arbitrator Jacqueline Hickey on Petitioner's Request for Hearing. Issues in dispute include whether the accidental injuries arose out of and in the course of employment, causal connection, medical bills, temporary total disability, the nature and extent of the injury, and whether Petitioner is entitled to penalties/attorney's fees. (Arbitrator's Exhibit "AX" 1)

FINDINGS OF FACT

Job Duties

Petitioner testified that as of September 20, 2017, he had been employed with Respondent for five years. (T. 12) Petitioner worked as an Executive Tech 5/Operations Supervisor 2. (T. 12) He was in charge of an IDOT maintenance area which included 17 to 30 communities. He was in charge of everything from the daily attendance, ordering supplies, picking up supplies, and maintenance of trucks. Petitioner's job duties also included the management of up to 52 employees. (T. 12-13) Petitioner would sometimes be required to purchase supplies for the workplace. Petitioner had purchasing authority at Menards though a state account and would travel to Menards to make purchases from time to time. (T. 13)

Petitioner would perform job duties outside of the office on a nearly daily basis pursuant to his responsibilities in maintaining the state roads in 28 different communities. If smaller quantities of supplies were needed, Petitioner would purchase them from the Menards store in Dolton. (T. 15) In order to make a purchase at Menards, Petitioner would get an FPA or PO sheet from his storekeeper. The storekeeper would fill this out. To make the purchase, Petitioner would provide Menards with the state account number as well as identification. Petitioner and the storekeeper were the only two employees in the maintenance yard who had authority to make such purchases. (T. 16)

Prior Medical Condition

Petitioner testified that he was, at the time of hearing, a Stage 4 lung cancer patient and that he had just defeated his sixth brain tumor and had just finished chemotherapy two months prior. (T. 16) Petitioner also testified that he had a back injury in 2013 and was a survivor of a hemiparesis stroke, during which he lost all use of his right side but was able to return to work at IDOT in a full-duty capacity prior to the date of accident of September 20, 2017. (T. 17)

Accident

The Petitioner testified his typical morning routine would be to sit with his lead foreman to determine which jobs needed to be completed that day, setting up crews and checking to make sure they had the proper materials. (T. 18) On September 20, 2017, it was determined he would need to take a trip to Dolton Menards to purchase materials. (*Id.*)

Petitioner's account of the physical altercation at Menards is as follows: at the Menards, he was standing in line with a cart behind another customer when his hand was knocked off the cart by someone walking past him. (T. 18) That person turned almost immediately towards him and began cursing him, as did the other customer who had been standing in front of him. (T. 19) Petitioner testified that in response, he extended his left hand and stated, "Hey, I'm disabled," and "I don't want any trouble." (T. 20) He testified that the next thing he knew, the person who had knocked his hand off the cart threw a punch and ran him backwards through a display rack. (*Id.*) Petitioner denies striking the person, threatening the person or making any threatening gestures toward him. (*Id.*)

As the two were on the ground, Petitioner was holding the other person to keep him from striking him more, and the other person came over and grabbed Petitioner to try and pull his arms off the alleged assailant. (T. 21) Petitioner was yelling for the assailant to get off him and was also screaming for help. (*Id.*) After quite a while, the assailant got off him and a security guard showed up. (*Id.*)

Petitioner testified that there were security cameras directly above where the attack occurred. Petitioner testified that he was able to obtain this security footage through a FOIA request of the Dolton Police Department and that he provided the footage to his attorney. (T. 22)

Surveillance Video- Px16

Petitioner's Exhibit 16 is a collection of three surveillance videos of different angles of the incident. The Arbitrator notes that none of which have audio. The first video, identified as Traffic 1, showed a man in a brown shirt (hereinafter "Individual 1") walk by Petitioner making contact. Petitioner and Individual 1 began to have a verbal exchange. A man in a white hat (hereinafter "Individual 2") who was with Individual 1 also began talking to Petitioner. Individual 1 moved closer to Petitioner who extended his hand. Individual 1 swung his hand at Petitioner and then pushed Petitioner backwards onto the metal display racks and Individual 1 fell on top of him. A security guard from Menards arrived and Individual 1 and Petitioner were separated.

The second video, identified as Traffic 2, shows Petitioner and Individual 2 going to the checkout line simultaneously and Individual 1 following behind. Individual 2 enters the line first, followed by Petitioner. Individual 1 then passes by Petitioner on the left and the aforementioned events occur.

The third video, identified as Reg 3-4, shows a reverse angle of the first two videos. In it the cashier can be seen at the register as Individual 2 approaches, followed by Petitioner, and then Individual 1 can be seen passing him on the left and the aforementioned events occur, however the Arbitrator notes that most of the incident is out of the frame.

Marco Silva- respondent witness

Respondent called Mario Silva as a witness. Mr. Silva was a retired Chicago Police officer who worked for the Chicago Police Department for 30 years and for the Cook County Circuit Clerk for 10 years after leaving the police department. (T. 82) He testified that on September 20, 2017, he was at a cash register at Menards, purchasing some items with his ex-wife's nephew, who is mentally challenged. (T. 83) The next thing he knew, he heard a man (who he identified as Petitioner) "screaming, yelling real loud." (*Id.*) He then saw the Petitioner grab his nephew and throw him into the aisle where the candy was. (*Id.*) According to Mr. Silva, the Petitioner was upset that his nephew had bumped into him, using profanity and acting belligerent toward him. (T. 85) The Petitioner had his arms wrapped around his nephew, so he asked him to let his nephew go, and Petitioner did so. (T. 86) The Arbitrator notes Mr. Silva is "Individual 2" (man in white hat) and his nephew is "Individual 1" (man in brown shirt) in the videos described above.

Mr. Silva testified that during this incident, Petitioner was very belligerent and using profanity and racial epithets, toward his nephew, the cashier and the security guard. (T. 87) After finishing with the cashier, he walked out of the store and into the parking lot, at which time he saw Petitioner taking pictures of his truck. (*Id.*) According to Mr. Silva, it is obvious his nephew is mentally challenged, and Petitioner was directing belligerent abusive language toward this "little kid." (T. 88) At the time of the incident, his nephew was 18 or 19 years old, 5'2" tall and approximately 160 pounds. (T. 89)

Pearl Cotton McGrew- respondent witness

The Respondent also called Pearl Cotton McGrew as a witness. Ms. Cotton McGrew ("Cotton") currently works for Jackson Park Hospital. (T. 93) She previously worked for ISM Security, starting in 2014. (T. 93-94) She was assigned to work at the Menards in Dolton. (*Id.*)

On September 20, 2017, Cotton was working for ISM Security at the Dolton, Illinois Menards as a door guard. Cotton did not see the beginning of the altercation and does not know who initiated it. (T. 100) Cotton was called down by a cashier due to the confrontation. (T. 95) When Cotton arrived, she testified she saw two men who had fallen over laying parallel to one another and that Petitioner had Individual 1 in an almost chokehold. (T. 97) After they were separated, Cotton tried to help Petitioner and Petitioner told her to shoot Individual 1. (T. 99) She then watched as Petitioner chased Individual 1 out the door. (*Id.*) When Petitioner came back in the store, Petitioner was mad and irritated that Cotton didn't arrest the person "or whatever the case may

be," which she is not allowed to do as her job description did not allow her to touch anyone. (T. 99)

Michael Varlotta- IDOT Director of Labor and Employment Law

The Respondent also called Michael Varlotta as a witness. Mr. Varlotta works as the Director of Labor and Employment Law for Respondent. (T. 105) In that position, he acts as the department's representative in collective bargaining negotiations and oversees discipline and employee behavior and conduct. (*Id.*) According to Mr. Varlotta, the Petitioner received a five-day suspension as a result of the incident at Menards on September 20, 2017. (T. 114) While he is aware of "tons and tons" of complaints of verbal altercations between IDOT employees and members of the public, he is not aware of any other physical altercations. (T. 117)

Summary of Medical Records

Petitioner testified that after the attack an ambulance arrived at the Menards, but he did not leave in the ambulance. (T. 43) Petitioner testified that he refused to be transported by the paramedics because he needed transportation that day because his wife was at home for the first time in three weeks after having an aortic valve replacement and that he could not leave without being able to get home if something went wrong. He would not be able to use his vehicle to attend to his wife if he was transported in the ambulance. (*Id.*)

Petitioner testified that he did go directly to the emergency room after calling his bureau chief to report the attack. (T. 44) Petitioner presented to the emergency department at Advocate South Suburban Hospital on September 20, 2017, reporting right-sided head and ear pain, right elbow pain, right-sided neck pain, right shoulder pain, right-sided lower back pain and right ankle pain. Petitioner reported that he was attacked at Menards. (PX 1, p. 31) Imaging of the right shoulder, right elbow, right ankle, lumbar spine, cervical spine and head was performed. *Id.* Imaging was normal aside from mild anterolisthesis of L4 on L5, multilevel marginal osteophyte and facet hypertrophy, and mild disc space narrowing at L5-S1. (*Id.,* p. 50-53) Petitioner was prescribed medications for pain and muscle spasms and was instructed to follow with his primary care physician, Dr. Jerome Daly. (*Id.*, p. 35)

Petitioner presented to the office of Dr. Jerome Daly of Advocate Medical Group on September 22, 2017, providing a history of being accosted by a stranger while checking out of the Menards store in Dolton. (PX 2) He was diagnosed with a lumbar strain, bruising of upper limb, traumatic avulsion of nail plate of left ring finger, and recent head trauma. (*Id.*) Dr. Daly ordered a new prescription for his pain medications and referred Petitioner for an evaluation with an orthopedic specialist. (PX 2).

Petitioner presented to the office of Dr. Daniel Troy of Advance Orthopaedic & Spine Care, with whom Petitioner had treated with in the past, on September 26, 2017. Petitioner provided a history of being assaulted while shopping at Menards for work. (PX 3) He complained of low back pain, neck pain, and pain radiating down his right arm, which he states is new since the incident. (*Id.*) Dr. Troy noted his history of stage 4 lung cancer with brain metastases as well as a stroke. He

was diagnosed with lumbar radiculopathy and cervicalgia and he was referred for MRI scans of his lumbar and cervical spine. (*Id.*) He was also told to remain off work.

The cervical MRI taken on October 24, 2017, showed mild spinal stenosis at C6-7, T1-2, and T2-3. The lumbar MRI taken the same day showed spondylosis and spondylolisthesis changes most marked at L4-5 with a right posterior disc protrusion with slight upward extrusion. (PX 3)

Dr. Troy reviewed the lumbar imaging on November 3, 2017, and noted they showed no "traumatically induced changes," but that Petitioner continued to demonstrate chronic findings of moderate severe spinal stenosis greatest at L4-5, as well as mild multilevel spinal canal stenosis of the cervical spine. (PX 3) Dr. Troy diagnosed Petitioner with low back pain, lumbar radiculopathy and lumbar disc degeneration, as well as cervicalgia and cervical disc degeneration. (*Id.*) He prescribed physical therapy and kept the Petitioner off work. (*Id.*)

Petitioner was referred to the office of Dr. Eric Ericson and saw him on December 14, 2017, complaining of right shoulder weakness and upper arm paresthesia, shoulder pain, neck pain and low back pain sustained during an assault at Menards. (PX 4) Dr. Ericson opined that the shoulder asymmetry does raise concern for a rotator cuff tear and he referred Petitioner to see an orthopedic shoulder specialist. (*Id.*) He also prescribed an EMG/NCV test of the right arm, which was performed on December 19, 2017; the results were unremarkable and offered no evidence for proximal neuropathy. (*Id.*)

On December 20, 2017, Petitioner was seen by Dr. Venkat Seshadri of Premier Orthopaedic and Hand Center for his right shoulder, complaining of right shoulder pain and numbness on the back of the arm and shoulder blade. Dr. Seshadri ordered an MRI scan of the right shoulder. (PX 5)

The MRI of the right shoulder was performed at Advocate South Suburban Hospital on January 8, 2018, and showed mild tendinosis of the supraspinatus, mild type III acromial morphology and prominent acromial, moderate AC joint arthrosis, degenerative fraying of the superior labrum with partial thickness chondral labral separation, and mild osteoarthrosis of the glenohumeral joint, but no partial or full-thickness rotator cuff tears were detected. (PX 1)

The Petitioner followed up with Dr. Seshadri on January 12, 2018. Based on his examination of Petitioner review of the MRI scan of the right shoulder, Dr. Seshadri diagnosed right shoulder pain and a superior glenoid labrum lesion, with mild arthritic changes in the shoulder but no full thickness rotator cuff tears. (PX 5) Dr. Seshadri performed a subacromial injection of the right bursa and referred Petitioner for physical therapy of the right shoulder. (*Id.*)

On February 9, 2018, he returned to Dr. Troy with continued neck pain and residual right shoulder pain, with intermittent tingling into his right upper extremity. (PX 3) Dr. Troy referred Petitioner for a possible cervical injection due to the numbness and paresthesia at the right C5-6 level, and also recommended physical therapy. (*Id.*)

On March 20, 2018, Petitioner went to the emergency room at Advocate South Suburban Hospital complaining of weakness in his right arm and leg. (PX 1) A cervical MRI redemonstrated stable multilevel degenerative disc disease. (*Id.*)

The Petitioner returned to see Dr. Troy on March 21, 2018, complaining of an inability to control his right arm with symptoms going down his right leg as well. (PX 3) Dr. Troy noted the MRI scan of the cervical spine demonstrated mild to moderate foraminal stenosis but no central canal stenosis and "nothing to truly explain his symptomatology." (*Id.*) In his opinion, the symptoms were pointing more to a central nervous system or brain issue, so he ordered a CT scan and MRI scan of the brain. (*Id.*) Dr. Troy told petitioner to follow up with another physician (Dr. Leslie Schaffer) for the brain and neck conditions, and to follow up with him on an as needed basis in the future. (*Id.*)

The Petitioner was seen again by Dr. Daly on April 10, 2018, complaining of low back pain and neck pain radiating into his shoulders after bending over to pick up a stapler from the floor at work. (PX 2) The examination showed pain with any range of motion on the right side of the lumbar spine and sacroiliac area, with difficulty forward flexing and extending, as well as pain in legs and decreased range of motion of the cervical spine. (*Id.*) Dr. Daly told Petitioner "He should not be doing any work and minimal driving" and ordered x-rays of the sacrum and lumbar spine. (*Id.*)

On May 4, 2018, Dr. Troy recommended lumbar epidural steroid injections at L4-5, the first of which was performed on May 20, 2018. (PX 3). On June 6, 2018, he reported his pain was much improved. *Id.* On August 22, 2018, he returned to Dr. Troy who recommended another injection which was performed on September 16, 2018. *Id*. On October 19, 2018, he reported 50% improvement from the injection, with the pain that previously radiated into his right lower extremity having resolved. *Id.*

On February 4, 2019, Petitioner saw Dr. Seshadri for his right shoulder, who performed a subacromial injection. (PX 5)

On June 12, 2019, he saw Dr. Troy who diagnosed Grade I L4-5 degenerative spondylolisthesis with secondary spinal stenosis and recommended a spinal fusion, but Petitioner opted for repeat epidural steroid injections, the first of which was performed on July 21, 2019. (PX 3)

On September 27, 2019, Dr. Seshadri performed another subacromial injection on the right shoulder. (PX 5) Petitioner had additional lumbar epidural steroid injections on October 13, 2019, December 29, 2019, March 29, 2020, May 21, 2020, and July 16, 2020. (PX 3)

On August 20, 2020, Dr. Troy performed spinal surgery, specifically complex L4-5 posterior spinal fusion, partial laminectomies at L4-5 and bilateral facetectomies and foraminotomies. (PX 3) The Petitioner followed-up with Dr. Troy on September 2, 2020, reporting improvement in his back pain without lower extremity radiculopathy. (*Id.*) He was advised to maintain restrictions of no bending, twisting, pushing, pulling or lifting greater than 10 pounds for the next 4 weeks. (*Id.*)

The Petitioner presented to the emergency department of Advocate South Suburban Hospital on November 4, 2020, complaining of right lower extremity weakness. (PX 8, pp. 42-43) It was determined the source of this weakness was the condition of Petitioner's lumbar spine. (*Id.*, p. 43)

Petitioner continued to follow up with Dr. Troy post-operatively and on November 11, 2020, reported no pain in the low back area and no recurrence of radiculopathy, but he had suffered multiple falls because of weakness to the right lower extremity. (PX 3) Dr. Troy prescribed physical therapy and activity limitations/modifications. (*id.*)

On January 12, 2021, Petitioner saw Dr. Seshadri and was given a right shoulder cortisone injection. (PX 5)

On April 14, 2021, he returned to Dr. Troy who noted Petitioner had developed a foot drop to the right lower extremity as a result of a stroke. (PX 3) Otherwise, Petitioner was doing well following the spinal fusion, with no back pain and no pain down the left lower extremity. (*Id.*) He was to return for a follow up visit in 8 months. (*Id.*)

Petitioner's last visit to Dr. Troy was on December 1, 2021, at which time it was noted he was doing very well from his posterior spinal fusion, with good strength in the left lower extremity and diffusely nontender to palpation of the lumbar spine, with diffuse achiness. (PX 3) He was discharged from care and advised to return on an as needed basis. (*Id.*)

Petitioner presented to the office of Dr. Blair Rhode on December 3, 2021, complaining of right shoulder pain. Dr. Rhode noted that Petitioner had undergone an MRI scan of the right shoulder approximately one year prior to his work-related injury secondary to a stroke he had suffered, and that this MRI scan did not demonstrate any significant pathology. Dr. Rhode opined that the post-assault MRI scan demonstrated rotator cuff and labral pathology. Dr. Rhode referred Petitioner for a repeat MRI scan of the right shoulder, but no repeat MRI scan report was submitted into evidence. The examination of the right shoulder showed a positive impingement sign, specifically with external rotation, representing the anterior (supraspinatus) rotator cuff, but no pain with palpation over the AC joint. Dr. Rhode diagnosed incomplete rotator cuff tear or rupture of the right shoulder with pain and advised the Petitioner to remain off duty. (PX 9).

On September 19, 2022, Petitioner returned to Dr. Rhode for follow-up of his right shoulder pain. The physical examination of the right shoulder was unchanged from the previous exam (positive impingement sign), as was the diagnosis (incomplete rotator cuff tear or rupture of the right shoulder). Dr. Rhode ordered a functional capacity evaluation and kept the Petitioner off work. (PX 9)

Petitioner presented to the office of Kerwin Yenter P.T. on October 28, 2022, to undergo a WorkWell Functional Capacity Evaluation ("FCE"). The FCE report indicates Petitioner put forth full effort and demonstrated an ability to perform at a light physical demand level. (PX 10)

On November 7, 2022, Petitioner returned to Dr. Rhode who noted the Petitioner had reached maximum medical improvement and placed him at a permanent light demand level with no overhead lifting. The Petitioner was directed to follow up as needed. (PX 9)

Petitioner's Current Condition

Petitioner testified that he has constant pain in his right shoulder and has limited use and strength in that arm, as well as numbness with tremors. (T. 58) Petitioner has lower back pain that shoots into his right leg. (*Id.*) Petitioner's knee will give out from the pain, but Petitioner noted the knee was not related to the work accident. (*Id.*) Petitioner uses a heating pad every morning, takes medication, uses an ice pack and rests to alleviate pain. (T. 60)

He also experiences "horrible" low back pain on a daily basis (T. 60), although he does admit the spinal fusion did improve his condition, such that his pain went from a ten to a four or five (on a ten-point scale). (T. 76) He rests and uses heat and cold to alleviate the pain, and his wife will use a massager to loosen the spasms in his back. (T. 61) He also utilizes the home exercises he learned in physical therapy, but they are becoming less effective. (*Id.*) He can't walk without assistance and uses a cane, rolling walker, and a wheelchair as necessary. (T. 60)

Testimony of Dr. Daniel Troy- treating physician

The parties took the evidence deposition of Dr. Daniel Troy on September 12, 2018. (PX 12) The doctor testified he initially saw the Petitioner for treatment on August 20, 2014, concerning pain in the neck and back as a result of a work injury. (*Id.,* p. 7) The diagnosis at that time was herniation in the lumbar spine with a longstanding preexisting instability (spondylolisthesis). (*Id.*) The doctor prescribed conservative treatment, including an extensive amount of physical therapy and medications. (*Id.*) The Petitioner was discharged from care on April 29, 2015. (*Id.,* p. 8)
The doctor next saw Petitioner on July 1, 2015, for a follow-up visit after the Petitioner had returned to work fully duty. (PX 12, p. 8) It was noted that he was doing well with minimal pain and he was at maximal medical improvement. (*Id.*)

The Petitioner returned to see Dr. Troy on September 26, 2017, complaining of low back and neck pain following the altercation at Menards on September 20, 2017. (PX 12, pp. 8-9) The assessment at that time was low back pain and the doctor ordered MRI scans of the neck and low back. (*Id.*, p. 10) The doctor noted the findings on the cervical MRI were degenerative in nature. (*Id.,* p. 11) The MRI of the lumbar spine showed long-standing arthritic changes. (*Id.*, p. 12) According to Dr. Troy, the MRI of the lumbar spine was very similar to the 2014 MRI scan, with possibly slight further degeneration of the spine over the years. (*Id.*, p. 13)

When asked as to whether the chronic lumbar findings became symptomatic as a result of the assault on September 20, 2017, Dr. Troy testified that in his opinion there was a causal connection, due to the fact the patient was last seen in 2015, there was a two-year delay in treatment, and he then returned six days after the assault for treatment. (PX 12, p. 14) His diagnosis was exacerbation of preexisting degenerative changes. (*Id.*)

Dr. Troy reviewed the video of the September 20, 2017, incident and testified that the video did not change his opinion regarding causation. (PX 12, p. 16) He also opined that the cause of the pain in the Petitioner's neck and shoulder was secondary to the aggravation of the preexisting degenerative changes in the neck. (*Id.*, p. 17)

Dr. Troy testified that when the Petitioner presented to him on March 21, 2018, his symptoms were markedly different and included episodes of losing control of his arm, as well as symptoms in his leg. (PX 12, p. 20) According to Dr. Troy, the MRI of the Petitioner's brain showed a recurrence of a tumor on the left front part of the brain, unrelated to assault on September 20, 2017. (*Id.*, p. 21) He also opined the increased motor deficits exhibited by Petitioner in his right upper and lower extremities were also unrelated to the work incident. (*Id.*, p. 23)

As for future treatment, Dr. Troy testified the next step would be surgery, based on the Petitioner's subjective complaints of pain. (PX 12, p. 26) From the standpoint of the low back, the surgery would be a single of two-level fusion of the back. (*Id.,* p. 27) As for whether the need for such surgery would be causally related to the work injury, Dr. Troy testified the Petitioner was already at risk for requiring a fusion, due to the preexisting instability in his back, but there was a two-year break in treatment from 2015 to 2017 and there was an exacerbation of symptomatology from the assault. (*Id.*)

Evidence Deposition of Dr. Venkat Seshadri – treating physician

The parties took the evidence deposition of Dr. Venkat Seshadri on November 12, 2019. (PX 13) He initially saw the Petitioner for treatment on December 20, 2017, at which time Petitioner was complaining of shoulder pain in the back of the arm and shoulder blade, following the assault at Menards on September 20, 2017. (PX 13, pp. 7-8) He did not know whether the Petitioner had any prior symptoms or history of right shoulder injury before this incident. (*Id.*, p. 8) Based his review of the video of the assault at Menards, as well as the Petitioner's report of no shoulder symptoms prior to that incident, and the presence of symptoms after the incident, Dr. Seshadri opined the accident caused the Petitioner's shoulder problems. (*Id.*, p. 18)

Regarding the Petitioner's ability to work, he testified the Petitioner never asked for any work restrictions, but if he had, he would have put him on restrictions of no lifting over five to ten pounds, no over the shoulder use and no repetitive pushing and pulling. (PX 13, p. 21)

He also testified the arthritis in the Petitioner's shoulder is permanent, but the right shoulder impingement and labral tear can be addressed. (PX 13, p. 22) He also opined these conditions were probably present before the Menards incident and became symptomatic because of it. (*Id.*, p. 23) As for treatment, he testified the Petitioner may be a surgical candidate, if his pain does not resolve and if he is still having dysfunction. (*Id.*) The proposed surgery would be an arthroscopic procedure to remove a bone spur to address the impingement and perform a biceps tenodesis to address the labral tear. (*Id.*, pp. 23-24) The decision on whether to perform the surgery would be based on his response to the conservative measures (cortisone shots, physical therapy, home exercises), specifically if he were still experiencing symptoms. (*Id.*, pp. 24-25)

Carlos Rodriguez- Respondent surveillance witness

Respondent called Carlos Rodriguez, who owns the detective agency Total Protection Consultants, as a witness. Mr. Rodriguez was hired by Respondent to conduct surveillance of Petitioner and was given information regarding his medical restrictions. Mr. Rodriguez previously worked in law enforcement for 25 years and has operated Total Protection Consultants for the

past six years. (T. 120) Mr. Rodriguez authored the report regarding his surveillance that was admitted into evidence as Respondent's Exhibit 3. (T. 121) Mr. Rodriguez first conducted surveillance on November 3, 2017. (T. 122) He was asked by Respondent to not check in with the Mokena Police Department before starting surveillance because Petitioner had a lot of contacts within the Mokena Police Department, including the chief of police, and there was a concern it could jeopardize the integrity of the investigation. (T. 123) When Mr. Rodriguez first saw Petitioner, he was using an assistive device to walk. (T. 124) When he later observed him at a medical appointment in Tinley Park, Illinois, Petitioner was not using an assistive device. (*Id.*) Mr. Rodriguez concluded that at least on one occasion, Petitioner did not utilize a cane to walk. (T. 135)

After leaving, Petitioner began driving on side streets and through strip malls. (T. 125) Mr. Rodriguez decided to take up a position across the street after which Petitioner began driving his vehicle toward him. (T. 126) Mr. Rodriguez felt like he had been identified so he started to leave. (*Id.*) However, Petitioner prevented him from leaving and rolled down his window and started yelling obscenities at him. (*Id.*) Mr. Rodriguez attempted to leave and to maneuver around Petitioner's vehicle, but Petitioner moved his vehicle forward and pitted him in. Petitioner continued yelling obscenities at Mr. Rodriguez. (*Id.*) The situation eventually de-escalated, and Respondent advised Rodriguez to file a report with Tinley Park Police Department. (T. 128) Mr. Rodriguez testified he had done thousands of surveillance investigations in his career but had never had an incident like this occur. (T. 129)

Sonya Sims- Respondent - Labor Market Survey

Respondent called Sonya Sims as an expert vocational witness, and Ms. Sims testified via evidence deposition. (RX 5) Ms. Sims has worked in vocational rehabilitation counseling for 30 years. (RX 5, p. 5). She received a bachelor's degree from LSU and a master's degree from Louisiana Tech. (*Id.*) Ms. Sims works as a vocational case manager with Paradigm. (*Id.*) She is certified in Louisiana, Georgia, and Tennessee. (*Id.* at 13). Despite not being certified in Illinois, Ms. Sims' believes her experience and expertise in the field allows her to find appropriate jobs in Illinois. (*Id.* at 41).

Ms. Sims was retained by Respondent to prepare a labor market survey regarding Petitioner and authored a labor market survey report dated August 14, 2023. (RX 5, p. 8). Ms. Sims was provided with a job description of Petitioner's position and also provided a medical report with his work restrictions. (*Id.* at 9-10) Ms. Sims was able to locate four potential occupations with wages ranging from $16.00-$28.85 per hour with a median range of $20.89 per hour based on the information provided to her. (*Id.* at 10-11)

Ms. Sims testified on cross-examination that she did not make any contact with Petitioner as part of her preparation of the labor market survey. (RX 5, p. 18) She admitted that if she were hired to perform vocational assistance to a client she would meet with the client and interview him at length, determine his likes and interests, determine details about his work history, determine the nuances of his condition, and conduct a full medical history. (*Id.,* p.16)

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

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

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

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable. However, the Arbitrator was not persuaded by the witnesses called to testified by Respondent. The Arbitrator also finds petitioner's treating physicians to be both credible and persuasive in their medical opinions.

With regard to Issue C, whether the accident arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

"Injuries sustained by employees away from the workplace … are, generally, not compensable. However, there is an exception to this general rule for employees whose employment duties require travel away from the work site. Injuries to such employees occur in the course of employment if the employee's conduct, at the time of the accident, was reasonable and the risk of injury was foreseeable." *Lee v. Indus. Comm'n*, 167 Ill. 2d 77, 81, 656 N.E.2d 1084, 1086 (1995). The test for determining whether an injury to a traveling employee arose out of and in the course of his employment is the reasonableness of the conduct in which he was engaged and whether the conduct might be normally anticipated or foreseen by the employer. *Cox v. Illinois Workers' Compensation Commission*, 406 Ill.App.3d 541, 545, 941 N.E.2d 961, 965 (1st Dist., 2010).

"In *Greene v. Industrial Comm'n.,* 87 Ill. 2d 1, 428 N.E.2d 476, 56 Ill. Dec. 884 (1981), the supreme court held that, in assault cases, the injured employee has the burden of showing that the assault was work related in order to be entitled to benefits under the Act. *Greene,* 87 Ill. 2d at 5. Injuries sustained by an employee resulting from his exposure to a neutral risk such as an assault arise out of his employment if the employee was exposed to the risk to a greater degree than members of the general public." *Illinois Institute of Technology Research Institute,* 314 Ill. App. 3d at 163.; *Springfield School Dist. No. 186 v. Industrial Comm'n.,* 293 Ill. App. 3d 226, 229, 687 N.E.2d 334, 227 Ill. Dec. 260 (1997); see also *Brady,* 143 Ill. 2d at 550." *Potenzo v. Ill. Workers' Comp. Comm'n,* 378 Ill. App. 3d 113, 118, 881 N.E.2d 523, 528, 2007 Ill. App. LEXIS 1296, *12, 317 Ill. Dec. 355*, 360* (2007).

"In *C.A. Dunham Co. v. Industrial Comm'n.,* 16 Ill. 2d 102, 156 N.E.2d 560, 156 N.E.2d 929 (1959), the supreme court concluded that, 'where the street becomes the milieu of the employee's work, he is exposed to all street hazards to a greater degree than the general public.' *C.A. Dunham Co.,* 16 Ill. 2d at 111. In such a case, 'the unusualness or infrequency of the accident does not preclude it from arising out of the employment *** [and] no distinction has been made as to whether the accident is due to mechanical failure, human negligence or felonious acts.' *C.A. Dunham Co.,* 16 Ill. 2d at 112." *Potenzo v. Ill. Workers' Comp. Comm'n*, 378 Ill. App. 3d 113, 118-119, 881 N.E.2d 523, 528, 2007 Ill. App. LEXIS 1296, *12-13, 317 Ill. Dec. 355, 360 (2007)

Petitioner was employed by Respondent as an Operations Supervisor. In that position, he was required to make sure that his crews had all materials needed for the maintenance of state roads within the 28 communities he is responsible for. On September 20, 2017, he was making a purchase for the benefit of his employer at Menards using an account which the state had maintained for this exact purpose. There is no question Petitioner was "in the course of" his employment as a traveling employee for Respondent at the time of the incident on September 20, 2017.

While Petitioner was waiting in the cashier line with his cart, his left arm was knocked off the cart handle by a man walking past. The man turned to Petitioner almost immediately and according to Petitioner, directed profanities and racial slurs toward him. Petitioner testified that he raised his left hand and said, "Hey, I'm disabled" and "I don't want any trouble." Petitioner testified that the man threw a punch that hit him and then the man pushed him backwards through the display rack. Petitioner testified that he did not at any time strike the man, he did not threaten the man, he did not make any threatening gestures toward the man, nor did he ever say any derogatory comments to the man.

Respondent offered the testimony of Mario Silva, the assailant's uncle, in order to establish that Petitioner was at fault or the aggressor in this incident. Mr. Silva testified that Petitioner began yelling profanity and was acting belligerent toward his nephew (Individual 1), and thereafter grabbed his nephew and threw him "into the aisle where the candy was." However the videos submitted into evidence by Petitioner (Px16), which portray the actual incident/altercation, do not contain any audio. Therefore the Arbitrator must rely on the testimony of the witnesses and determine credibility of these witnesses, to determine who said what at the time of the occurence. According to Petitioner, after Individual 1 brushed past him in line and knocked his hand off his cart, Individual 1 turned and began cursing him. According to Petitioner, he did not respond to

the man with profanity or threats, but rather raised his hand and stated that he was disabled and "didn't want any trouble." This is in direct contradiction to the testimony of Mr. Silva. The Arbitrator notes that Respondent did not call Individual 1, the alleged aggressor, as a witness to provide his account of the incident.

The Arbitrator finds the Petitioner to be more credible in this regard than Mr. Silva. The video confirms Petitioner's account that Individual 1 initiated contact with Petitioner when he brushed past him in the check-out line at Menards. The video also confirms that Individual 1 turned toward Petitioner and engaged in a conversation with him, while Petitioner raised his left hand (palm up). Petitioner is not seen on the video making any threatening gestures toward Individual 1. Shortly thereafter, Individual 1 is clearly shown throwing a punch toward Petitioner and knocks him over and through the display rack into the next check-out lane. The video contradicts and rebuts the testimony of Mr. Silva and for that reason, the Arbitrator does not find Mr. Silva to be credible and cannot rely on his testimony. The other witnesses that testified were not witnesses to the initial altercation, specifically the security only after came upon Petitioner and individual 1 on the ground. Therefore the Arbitrator does not give much weight to their testimony regarding the

The Arbitrator further finds that as a traveling employee, the street (or in this case, the Menards) became the "milieu" of his work and thus he became exposed to the risk of an assault to a greater degree than the general public. As stated by the supreme court in the *C.A. Dunham Co.* case, "the unusualness or infrequency of the accident does not preclude it from arising out of the employment *** [and] no distinction has been made as to whether the accident is due to mechanical failure, human negligence or felonious acts." 16 Ill. 2d at 112.

Based on the above, the Arbitrator finds Petitioner sustained an accident arising out of and in the course of his employment with Respondent.

With regard to Issue (F) Is Petitioner's current condition of ill-being 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).

The Arbitrator has reviewed and considered all medical evidence along with all the witness testimony.

Regarding Petitioner's lumbar condition, the Arbitrator finds Petitioner proved by the preponderance of the credible evidence that his lumbar injury and subsequent treatment (including the lumbar fusion) is causally related to his work injury of September 20, 2017, as set forth below.

Petitioner testified and the medical records support that Petitioner was not experiencing lower back symptoms prior to his work accident of September 20, 2017. Dr. Troy testified that the post-accident lumbar MRI from October 24, 2017, demonstrated multilevel degenerative changes in the lumbar spine at the L4-5 level, moderate to severe spinal stenosis, disc protrusions as well as an extrusion. Dr. Troy further opined that these chronic findings become symptomatic due to the assault that Petitioner experienced on September 20, 2017. The basis for Dr. Troy's opinion was that Petitioner had not been seen for treatment for his back during the two years prior to the assault and subsequently returned with symptoms 6 days after the assault. Dr. Troy opined the need for treatment to the low back after the assault, including the need for a lumbar fusion, was causally related to the work accident on September 20, 2017.

The Arbitrator finds the causation opinion of Dr. Troy persuasive and unrebutted, as Respondent presented no medical evidence or Section 12 report regarding the lumbar injury.

Regarding Petitioner's right shoulder condition, the Arbitrator finds Petitioner proved by the preponderance of the credible evidence that his shoulder condition is causally related to his work injury of September 20, 2017, as set forth below.

Dr. Seshadri opined that the diagnosis of Petitioner's right shoulder condition was causally related to the incident of September 20, 2017. Dr. Seshadri explained that he reviewed the actual video footage of the incident and given that the patient did not complain of any of these symptoms before this but complained of symptoms after this incident, he does believe that this incident is causally related to the diagnosis of Petitioner's right shoulder condition. Dr. Seshadri opined that Petitioner had underlying conditions that were present before the September 20, 2017, incident and became symptomatic because of the incident. Dr. Seshadri further opined he had already undergone three injections and that if his pain did not resolve and he was still having dysfunction the next step would be to do arthroscopic surgery (PX 13). Dr. Seshadri also opined right shoulder surgery may be necessary in the future.

Petitioner presented to the office of Dr. Rhode on December 3, 2021, complaining of right shoulder pain. Dr. Rhode noted that Petitioner had undergone an MRI of the right shoulder approximately one year prior to his work-related injury secondary to a stroke he had suffered, and this MRI did not demonstrate any significant pathology. Dr. Rhode opined that the post-assault MRI demonstrated rotator cuff and labral pathology.

The Arbitrator finds the causation opinions of Dr. Seshadri and Dr. Rhode persuasive and unrebutted, as Respondent presented no medical evidence or Section 12 report.

Based upon Petitioner's credible testimony as well as the medical records and opinions of the treating physicians, the Arbitrator finds there is a causal relationship between Petitioner's current condition of ill-being and the work injury on September 20, 2017.

With regard 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:

8(a) of the Act states a Respondent is responsible "… for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury…" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. See *Gallentine v. Industrial Comm'n*, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

Respondent disputed liability for Petitioner's injuries based on accident, and therefore also disputed the medical expenses but did not present any medical evidence or Section 12 evidence to rebut the causation opinions of Petitioner's treating doctors.

The parties stipulated that some medical charges have been paid by Petitioner's group health insurance obtained through his employment with Respondent, and that Respondent is entitled to Section 8(j) credit "to be determined" for such payments. (Ax1) Petitioner submitted a list of medical bills which includes the amounts charged for treatment to Petitioner's lumbar spine and right shoulder (along with the actual bills), amounts paid by Respondent through workers' compensation and group insurance coverage, and adjustments per negotiated rate. (PX 11) Respondent submitted a list of payments made to the providers by its TPA for workers' compensation coverage. (RX 2)

Overall, the Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has paid for some but not all of said treatment. As per PX 11, the charges, payments/adjustments and balances due for such bills appear to be as follows:

Medical Provider	Charges	Payments/Adjustments	Balance Due
Advanced Midwest Radiology	$1,040.00	$0.00	$1,040.00
Advocate Christ Medical Center	$138,199.00	$138,199.00	$0.00
Advocate Medical Group	$5,987.00	$5,987.00	$0.00
Advocate South Suburban Hosp.	$5,240.00	$5,240.00	$0.00
Advanced Ortho. & Spine (Dr. Troy)	$122,585.25	$122,585.25	$0.00
EM Strategies, Ltd.	$1,386.00	$0.00	$1,386.00
High Tech Medical Park	$1,125.00	$0.00	$1,125.00
Integrated Imaging Consultants	$375.00	$0.00	$375.00
Neurology Consultants, SC	$1,360.00	$1,360.00	$0.00
Orland Park Orthopedics	$3,917.60	$0.00	$3,917.60
Premier Orthopaedic Hand Surgery	$1,055.00	$1,055.00	$0.00
Silver Cross Hospital	$19,030.00	$0.00	$19,030.00
Totals:	$301,299.85	$274,426.25	$26,873.60

PX 11 also sets forth payments by Petitioner in the amount of $270.00 for the above treatment, for which he is entitled to reimbursement.

Based on the above, the Arbitrator finds that Respondent shall pay reasonable and necessary medical services, adjusted pursuant to the medical fee schedule, of $26,873.60, the balance due for medical expenses as detailed above, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall also pay as reimbursement of $270.00 to the Petitioner for out-of-pocket medical payments.

Respondent is entitled to Section 8 (j) credit for any medical benefits that have been paid, and Respondent shall hold the Petitioner harmless for any subrogation or reimbursement claim by or on behalf of the group health insurance carrier.

With regard to Issue (K), whether Petitioner is entitled to receipt of 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).

The medical records indicate Petitioner was taken off work by Dr. Troy on September 26, 2017. Dr. Troy continued to recommend that Petitioner remain off work at each subsequent appointment thereafter. Petitioner returned to work at IDOT due to financial difficulties on November 21, 2017, and worked until taken off work again by Dr. Daly on April 10, 2018.

The FCE of October 28, 2022, established Petitioner's ability to return to work at a light physical demand level. Respondent disputed liability for TTD benefits based upon accident and causation but offered no medical evidence to rebut the opinions of the treating physicians regarding Petitioner's inability to return to work during the course of his medical treatment.

Based on the above, the Arbitrator finds Petitioner is entitled to the receipt of TTD benefits from September 26, 2017, through November 20, 2017, and again from April 10, 2018, through October 28, 2022. He is therefore entitled to $1,015.48 per week for a total of 245-4/7 weeks.

The Arbitrator also finds that Respondent paid a total of $8,124.24 in TTD benefits, for which it is entitled to a credit against the award of TTD benefits as set forth above.

With regard to Issue (L), what is 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). "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.

Under Section 8.1b(b)(i), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The statute does not require the claimant to submit an impairment rating. It only requires that the Commission consider such a report if in evidence and regardless of which party submitted it. *See Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n*, 2015 IL App (5th) 140445WC, ¶ 17, 43 N.E.3d 556. Therefore, the Arbitrator gives no weight to this factor.

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes that Petitioner was employed as an Operations Supervisor 2 for the Respondent and has not returned to this occupation. This job, if available and Petitioner was able to return to it in an accommodated fashion, requires daily travel between job sites. 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 59 years old at the time of the accident. The Arbitrator gives some weight to this factor.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes that due to Petitioner's current permanent light duty restrictions, and as evidenced by the labor market survey submitted by Respondent, the Petitioner has suffered a loss of future earning capacity as a result of this work accident. The Arbitrator gives significant weight to this factor.

Under Section 8.1b(b)(iv), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner underwent a lumbar fusion at the level L4-5 and continues to complain of significant symptoms in his lumbar spine, requiring various conservative measures to relieve his pain. At the time of trial, Petitioner reported that he currently experiences many continuing symptoms that are greatly detrimental to his ability to perform a wide range of activities of daily living. Petitioner testified that due to his low back condition, he cannot walk without assistance and uses a cane. Petitioner testified that to help his back pain he uses rest,

heating, cooling, and massages. He also does home exercise. Petitioner also sustained an injury to his right shoulder, which required multiple injections and for which surgery has been recommended but not performed, due to Petitioner's reluctance to undergo another invasive procedure. As a result of these injuries, Petitioner has permanent light duty restrictions, pursuant to a valid FCE. 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 50% disability to the person as a whole, pursuant to §8(d)2 of the Act which corresponds to 250 weeks of permanent partial disability benefits at a weekly rate of $790.64.

With regard to Issue (M), should penalties or fees be imposed upon Respondent, the Arbitrator finds as follows:

The imposition of Section 19(l) penalties requires the Petitioner to make a written demand for payment of benefits under Section 8(a) or Section 8(b). It also requires the Respondent to fail, neglect, refuse, or unreasonably delay the payment of benefits without good and just cause. See *820 ILCS 305/19(l).*

Regarding the imposition of Section 19(k) penalties and Section 16 attorney fees, the Courts have confirmed that the imposition of these penalties is where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose. These penalties are appropriate when the delay was vexatious, intentional, or merely frivolous. These penalties and fees require a higher standard of proof. See *McMahon v. Industrial Commission*, 183 Ill.2d 499, 515 (1998).

Sections 19(k) and 16, in pertinent part, both refer to instances where the position taken "does not present a real controversy" and is "frivolous." Section 16 refers to this language found in section 19(k) as well. See 820 ILCS 305/16, 19(k) (West 2012). These penalties and fees address deliberate conduct or actions undertaken in bad faith.

For the case at hand, the Respondent disputed whether the incident on September 20, 2017, arose out of the Petitioner's employment. Further, there was a question as to whether Petitioner was the aggressor in the altercation at issue or whether it was reasonably foreseeable that Petitioner would become involved in an altercation during a trip to Menards. There were many witnesses involved at trial. There was also video footage shown of the incident. It was clear to the Arbitrator that multiple witnesses had not seen the incident footage prior to trial as their testimony did not match what is shown.

It is also not clear when the video became available to the parties (and specifically when Petitioner, who obtained the video, provided a copy to Respondent). The accounts from and later testimony of the various witnesses called by Respondent likely raised a question as to who was the aggressor, during the pendency of this case before trial. Having already found Petitioner to be credible, the Arbitrator acknowledges that after viewing the video, what transpired during this altercation is clear: Petitioner was in the course of his employment purchasing materials for IDOT and was not the aggressor. It was not unreasonable for respondent to investigate this incident and rely on the various witness accounts in its denial of benefits. Respondent also relied on its

investigator and labor market survey. There were defenses to this case presented even though the Arbitrator is not persuaded by them or Respondent's witnesses, based on the above prior analysis. There is no medical evidence put forth by Respondent in the form of a Section 12 Exam, however, it is clear that Respondent denied this claim based on accident as well.

The Arbitrator therefore finds that under the circumstances, the Respondent did not unreasonably delay the payment of benefits without good cause, or that its dispute of the claim was vexatious or frivolous. For these reasons, the Arbitrator declines to award penalties under Sections 19(k) and 19(l), nor award attorney's fees under Section 16.

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

April 4, 2024
Date

April 4, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC018397
Case Name	Liana Carrion v. Stratas Foods
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0073
Number of Pages of Decision	21
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Martin Haxel
Respondent Attorney	Jessica Bell

DATE FILED: 2/14/2025

/s/Deborah Simpson,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Liana Carrion,
Petitioner,

vs. NO: 21WC 18397

Stratas Foods,
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, permanent disability and temporary disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 28, 2023, is hereby affirmed and adopted.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $40,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

February 14, 2025

o: 1/15/25
DLS/rm
046

/s/*Deborah L. Simpson*
Deborah L. Simpson

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC018397
Case Name	Liana Carrion v. Stratas Foods
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Dennis OBrien, Arbitrator

Petitioner Attorney	Martin Haxel
Respondent Attorney	Jessica Bell

DATE FILED: 8/28/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 22, 2023 5.29%

/s/ Dennis OBrien, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

LIANA CARRION
Employee/Petitioner

v.

STRATAS FOODS
Employer/Respondent

Case # **21** WC **018397**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Dennis O'Brien**, Arbitrator of the Commission, in the city of **Springfield**, on **July 21, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **October 30, 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.

In the year preceding the injury, Petitioner earned $**56,160.00**; the average weekly wage was $**1,080.00**.

On the date of accident, Petitioner was **37** years of age, ***married*** with **4** 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 $**0.00** for other benefits, for a total credit of $**0.00**.

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

ORDER

Petitioner's medical conditions, chronic left heel pain, plantar fascia strain, and equinus, resulting in left gastrocnemius recession, are causally related to the accident of October 30, 2020.

Petitioner was temporarily totally disabled as a result of the accident on July 8, 2021, and from the date of her surgery, September 18, 2021, for a period of six weeks, to October 29, 2021, for a total period of 6 1/7 weeks of temporary total disability, to be paid at $720.00 per week.

All of the bills introduced into evidence in Petitioner Exhibit 2 are related to Petitioner's chronic left heel pain, plantar fascia strain, and equinus injuries, are reasonable and were necessitated to treat or cure Petitioner's injuries suffered in this accident with the exception of the following unrelated treatments:

- **Page 9 – medical charges of July 9, 2020, for which there is no supporting medical record and which appears to be for ECG testing**
- **Page 9 – medical charges for January 6, 2021, for which there is no supporting medical record**
- **Page 14 – medical charges for July 14 and 28, 2020, August 4, 2020, November 24, 2020, and April 14 and 19, 2021, for which there is no supporting medical record**

Said charges are to be paid by Respondent pursuant to the limitations set out in the Medical Fee Schedule.

Petitioner sustained permanent partial disability to the extent of 15% loss of use of the left leg pursuant to §8(e) of the Act, 32.35 weeks of permanent partial disability, to be paid at $648.00 per week.

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.

AUGUST 28, 2023

Signature of Arbitrator

FINDINGS OF FACT:

TESTIMONY AT ARBITRATION

Petitioner

Petitioner testified that in 2020 and 2021 she was employed by Respondent as a laboratory technician, and her duties included checking lines to ensure that no metal was in the cooking oil. She would walk around testing the oil samples using a number of tests on the oil, so it could be distributed. She said to do this she had to be on her feet a lot, approximately six hours during a workday.

She said she was working for Respondent on October 30, 2020, and she and a co-worker, Ali Colbert, went up some stairs to get some red buckets. While coming back down the stairs she had five or six empty buckets in one hand and was holding the guard rail with her other hand. She said while doing this she fell down. She said there was oil on the stairs, her right hand was still on the guardrail, so her right arm went to the right and upwards, towards her outside, while her body went downwards onto the stairs, landing on her left side. She said her left foot stopped her from going down further as it got caught on a step, stopping her.

Petitioner said she notified her supervisor of the injury and was taken for medical treatment at HSHS Medical Group, Respondent's doctors, by McKenzie Rueger, part of Respondent's safety department. She believed x-rays were taken. After being seen there on the date of this accident Petitioner said she was able to return to work that same day. About a week later she returned to that facility by herself, and she saw a different person for treatment. She said after that visit she was scheduled for a third visit. She testified that the day before she was to be seen for a third time she spoke with McKenzie and McKenzie told her she was going to be released from the doctor. She said she went to see the doctor the next day, by herself. She said the medical record for that date, November 20, 2020, was incorrect, as it stated she had told them she was not having pain anywhere, when she was having pain in her back, her left foot, and her knee on that date. She said she had been working her regular job up to that date, and this was the last time she was seen at HSHS.

Petitioner testified that as time passed her knee seemed to be doing fine, but her foot would cause shooting pain in her back and kept getting worse and worse. She said while her foot always hurt, over time it got to the point where she could not walk. She said she told McKenzie about her ongoing foot pain. She said she also spoke with her direct supervisor, Chelsea, and told her that she needed to go back to the doctor. Chelsea said she would speak to McKenzie about setting that up, but Petitioner said she was never able to go back to the doctor, though she said she requested to return to see the doctor on a number of occasions. She said she was able to continue working, despite the foot pain, by taking breaks, propping her foot up, and standing on one foot. She demonstrated how she would stand, with all of her weight on the right foot and the left foot just touching the ground. Petitioner said she would walk on the balls of her left foot, as putting the heel down was very painful. She said she eventually told Chelsea that she was going to go to her own doctor, as she needed medical treatment. Chelsea said that would be an unexcused absence and she would "get a point for it," which she explained could lead to disciplinary action. Petitioner said another worker, Victor, came to work for

Respondent doing the same work she did, and they often worked the same days and hours and would see each other.

Petitioner said she saw her primary care physician's physician assistant, Ms. Albers, on June 23, 2021, and x-rays were taken. She said she eventually saw Dr. Stevens at Springfield Clinic, on July 8, 2021. She said she told both PA Albers and Dr. Stevens that her left foot injury was caused by her falling down the stairs at Respondent's plant. She said Dr. Stevens sent her for two or three months of physical therapy, and he eventually performed surgery on her left foot on September 17, 2021.

Petitioner said she was kept off work for a number of weeks after the surgery, but she was not working for Respondent at that time as Respondent had terminated her in mid-July, due to a no-call, no-show for a day they said she was scheduled to work.

Petitioner said she had never injured her left foot prior to her fall on the steps at work, nor had she done anything to injure that foot after the date of accident.

Petitioner testified that she saw Dr. Stevens once or twice after her surgery, last seeing him in February of 2023. She said she saw him then because her foot was hurting, and he injected the bottom of her left foot. She said she had not seen any medical provider for her left foot since that last visit with Dr. Stevens, nor was any additional medical treatment scheduled.

Petitioner testified that for the nine to ten months after the surgery she did very well, but as of the date of arbitration she was only 50 percent better, she cannot run or jump, but the condition is manageable. She said that she can walk, but if she was in Walmart for a couple of hours she would be limping when she left Walmart. She said she wore Slides, a brand of shoes with a hard sole, while mowing her yard, as wearing tennis shoes hurt her feet. She said the left foot did not prevent her from performing her current job duties as she is able to stand and sit. She said she takes Tylenol almost daily, but takes no prescription pain medication.

Petitioner said she did not know which medical bills had been paid, or who had paid them. She said she was on Meridian Medicaid for a period of time as she had lost her insurance. She did not believe workers' compensation had paid any of the bills.

Petitioner noted that the day before the arbitration hearing she had shopped for an hour at Target and 40 minutes at Walmart, but had to stop as her foot was bothering her.

On cross examination Petitioner said she was currently working as a production supervisor in Ohio, doing scheduling, looking at drawings, making sure different departments are doing what they are to do, work that had her sitting about 70 percent of the time. She said that she had put on a sizeable amount of weight, that she was not as active as she used to be.

Petitioner said she did not miss any work due to this injury between November of 2020 and June of 2021, nor did she see a doctor during that period of time. She said she believed she had an x-ray taken of her foot during her initial visit at Occupational Medicine.

Petitioner reiterated that she felt the medical record of November 6, 2020 was wrong if it said she had no pain. She said Dr. Stevens was the doctor who told her plantar fasciitis is the result of an acute injury. Petitioner

said her left foot pain has never completely gone away, even when she was off work. Petitioner said that if workers' compensation paid for her first three visits with Occupational Medicine, she was not aware of it.

Petitioner said it was probably the middle of December 2020 when she told Chelsea that her foot was bothering her and she was going to go to her personal doctor, but she did not go immediately as what Chelsea told her about it being unexcused and getting a point made her hesitate to do so. She said the foot pain go worse, so six or seven months later she went to the doctor. She said no doctor told her to mow her grass wearing slides.

In response to questions posed by the arbitrator, Petitioner said that as of the date of arbitration she was working for a manufacturing company, Prosipant, with the job title of production supervisor. She said she had been working for that company for nearly three years, since she was released by her doctor. She said her salary with that company was $72,000.00 plus bonuses, so she is currently making more money than she was at the time of the accident. She said this job allowed her to sit or stand, and she had no restrictions she had not advised this employer of any restrictions.

On re-cross examination Petitioner said she had originally worked for Propisant and they had paid for her to transfer to Ohio.

Victor Escalante

Mr. Escalante was called as a witness by Petitioner. He was called as a subpoenaed witness by Petitioner. He testified that in 2021 he worked as a lab technician for Respondent, basically performing the same job Petitioner performed. He said he would work 50 to 60 hours per week, depending on the shifts, and he had the opportunity to observe Petitioner on almost a daily basis. He said he observed Petitioner to walk in a weird manner, and at a slow pace. He said Petitioner would talk about how her foot hurt with standing, so she would sit at a computer desk and put her foot on another chair. He said she was like this the entire time he worked with her, that she would have him and another employee go get things they had to work with, perform quality checks, etc. He said he did not recall her foot complaints ever improving while he worked with her.

On cross examination Mr. Escalante said he worked for Respondent from March of 2021 until late June or early July of that year, when he got a different job.

Alicia Colbert

Ms. Colbert was called as a witness for Respondent. She testified that she was an employee of Respondent, having worked for the company for 13 years. She started as a Lab Tech I, but had been working as a Lab Tech II for quite some time, at least prior to October of 2020. She noted that the Lab Tech II position dealt with many of the same duties as Lab Tech I, but also included repairing equipment, and the position paid more as it was a promotion. She said she knew Petitioner, she had trained her during COVID, sometime in 2020. She had never been Petitioner's supervisor. She said she witnessed Petitioner's accident, and that Petitioner was acting in a safe manner when the accident occurred.

Ms. Colbert said that after the accident she prepared a written statement, Respondent Exhibit 2, emailing it to Chelsea Sisson and Nick Webb, the lab supervisors. Ms. Colbert said she first learned of Petitioner's foot complaints after Petitioner had been trained and was working second shift. She said she could not remember the timeline of when Petitioner told her that her foot was hurting, just that Petitioner was already working second shift, she was done with her six to eight weeks of training, the accident having occurred during her training.

Ms. Colbert said she was a first shift employee, and they would see each other daily during the overlap between their shifts. She said Petitioner worked her regular job between the date of the accident in November 2020 until sometime in June of 2021. She said the lab techs rotate duties, working the floor for a week checking lines, walking 7 to 8 miles per day checking the four lines, and then going into the lab to test oil. The worker would then rotate to a different set of duties in the pit, getting samples from rail cars and tank wagons. After doing that assignment they would again go back to working the floor for a week. She said lab techs are able to sit as needed.

Ms. Colbert said she and Petitioner would talk, in passing, as they were not on the same shift together. She said she wrote her statement and emailed it on July 20. She said she did not recall observing Petitioner walking with a limp until right before Petitioner ceased working for Respondent, in June or July of 2021. She did not recall seeing Petitioner walking on her tip toes in her steel toed boots.

On cross examination Ms. Colbert said Respondent had procedures to follow when a person got hurt on the job, including witnesses to a work injury immediately filling out a statement that they had witnessed the accident. She did not recall filling out such a statement at the time of the accident. She said this was the only accident she had been around. She said Chelsea was her boss, as well as Petitioner's boss, and Nick was Chelsea's boss. She said she was contacted by the two of them on or about July 20, 2021, to prepare her statement. She said she was told Petitioner was saying her foot was hurting from her fall down the stairs, so they needed a statement from her. Ms. Colbert said she questioned Petitioner's foot hurting from the stair incident as it had been so long. She agreed that since they worked different shifts, she did not work with Petitioner most days.

McKenzie Rueger

Ms. Rueger was called as a witness by Respondent. She testified that she became employed with Respondent in June of 2020 as a health, safety and environmental coordinator, which included health and safety of the employees, incident investigations, and reporting and claims work for workers' compensation. She said that since June of 2021 she has been corporate environmental manager, with current duties being the EPA compliance expert for the organization, doing permitting, doing sustainability initiatives, and, at times, acting as a substitute for the corporate safety manager. Ms. Rueger said that when an employee reports an injury during normal hours, 8 to 5, she would take them to the Occupational Clinic on the day of the injury or in the days following the injury. She would report the injury using ESIS software to fill out a Form 45, with the information she was aware of, and it would then be handled by others. She said she almost always accompanied the employee to the Occupational Clinic.

Ms. Rueger said she was familiar with Petitioner, as she was a lab tech for Respondent, and Ms. Rueger gave her introductory training. She said she was never Petitioner's direct supervisor. She said both she and Petitioner's supervisor, Chelsea Sisson, reported to the plant manager.

Ms. Rueger said she was advised of Petitioner's accident almost immediately by Ms. Sisson. She said she, using her own vehicle, took Petitioner for medical care. She said she believed Petitioner was complaining of her left buttock and knee. She believed she attended all of Petitioner's follow up appointments at the clinic, as she typically did that. She said Petitioner was released from care in November, after the incident, after several visits at the clinic. In November, Ms. Simmons came to Ms. Rueger and said reported that Petitioner wanted to be discharged from care as she was feeling fine and did not want to waste any more company time going to the doctor. She said Petitioner did not request any additional medical care due to this injury until June of 2021. She said Petitioner ceased working for Respondent in June or July of 2021, due to attendance. She said she was not very familiar with how Respondent's point system worked. She did know that a certain number of points resulted in termination.

Ms. Rueger said she first learned that Petitioner was complaining of foot pain and relating it to her October accident in about June of 2021, having been advised of it by Ms. Simmons. Ms. Rueger said she was taken aback by that as she did not remember foot pain being complained of in the months after the incident. She said if an employee came to her months after an accident and said their foot had been bothering them since the accident, she would have taken the employee to the occupational clinic. She said that as far as she knew, Petitioner had not asked for medical care for her foot prior to June of 2021 when she went to see her primary care provider. She acknowledged receiving Ms. Simmons's email of June 24, 2021, Respondent Exhibit 3. She said she also spoke with Ms. Simmons in regard to Petitioner's restrictions and accommodating those restrictions.

Ms. Rueger said that when she was in her prior job with Respondent, she would on occasion communicate with the occupational doctor's office about what their findings were and if they were being released. She said she was not qualified to say whether a person should be released and she did not tell the doctor to release a person, the doctor makes that recommendation. Ms. Rueger said Petitioner advised her that she did not want to follow up with Occupational Medicine, but she did return to that doctor as Ms. Rueger insisted she have a documented discharge from the doctor. She said Petitioner had not lost any time from work due to this injury from November 2020 through June of 2021.

On cross examination Ms. Rueger said when working as health and safety coordinator, Respondent had approximately 250 employees, and she would always accompany injured workers to the occupational medicine appointments. She said she remembered going to at least two of Petitioner's visits, the first and third visits. She said she would fill out the Form 45 report in a timely manner, and other people were to fill out their paperwork in a timely manner. She agreed that Ms. Colbert's preparing a memorandum nine or ten months later would not be timely. She said employees were not required to go to Respondent's occupational medicine doctors, they could elect to go to their own physician. She said when the incident takes place they go to occupational medicine, and if they had time off they had to return there to be released. She agreed that it was her job to direct everybody to go to Occupational Medicine, which is why she accompanied injured workers there. She said Respondent preferred that everyone to go to Occupational Medicine. She said that Respondent was a subsidiary

of Archer Daniels Midland (ADM), but that ADM did not contact Respondent about numbers of work injuries or of time missed from work.

On redirect examination Ms. Rauger said Petitioner was never given restrictions from Occupational Medicine. She said employees she took to Occupational Medicine were sometimes given restrictions there, and were sometimes taken off of work. She said that if down the road an employee claimed a work injury, she would then do her investigation and document her file, which could include reaching out to witnesses and getting written statements.

Petitioner - recalled

Petitioner was recalled as a witness. She was questioned about Respondent Exhibit 2, and said she had not been involved in an altercation with anyone in the spring of 2020 and had not drank too much and injured her foot, saying the last time she was drunk was October 19, 2019, that she had not been intoxicated since she got her kids in October of 2019. She said she was not going through a divorce in the spring or summer of 2021, though she got divorced in February of 2022. She said her shift overlapped with Ms. Colbert's shift for an hour to an hour-and-a-half, and she would speak to her about her dogs and her kids was all she talked to her about, not about divorce or drinking. She said she completely denied getting in an altercation or getting drunk and hurting her left foot.

On cross examination, Petitioner said her divorce was finalized in August of 2022, then she said it was finalized in January or February of 2022, offering to look it up on her phone, with Respondent attorney saying she did not need to look it up. She said the divorce occurred after her employment with Respondent, that she had filed for divorce in 2022. She said her marital problems were the result of possible activities by her wife while Petitioner was out of town for work. She said her children were actually her great niece and great nephew, who she got custody of through DCFS. She said she got them in October of 2019 when her great niece was three months old.

On redirect examination Petitioner said her out-of-town trip had been to Chicago, for work for her new employer, who she began working for in late November 2021, after she had ceased working for Respondent. She said her divorce was finalized in August or September of 2022.

Victor Escalante - recalled

Mr. Escalante was recalled as a witness for Petitioner. He again noted that he worked for Respondent from March through June or July of 2021, on the same shift as Petitioner. He said while working with Petitioner she spoke about a divorce and she spoke about her children a lot. He said she never mentioned getting into a fight with anyone, of getting drunk, or of doing anything other than her incident at work to injure her foot..

On re-cross examination Mr. Escalante said Petitioner did mention her divorce to him during the period of time he worked for Respondent, March 2021 through June of 2021. When asked if he knew what body parts Petitioner injured during the work accident, Mr. Escalante said Ms. Colbert and other workers mention her injuring her foot, but Petitioner did not tell him what body parts she injured.

MEDICAL EVIDENCE

Petitioner was seen by Nurse Practitioner (NP) Blanchetti at HSHS Medical Group Occupational Health & Wellness on October 30, 2020. Petitioner's description recorded at that time was, "Patient states that today, 10-30-2020, she was walking down the steps and slipped and fell down 4 or 5 steps landing on her left side back and her Left knee hit and turned Left knee and Left foot." The recorded complaints of pain were of her left side back and Left side buttock area hurt and she can't sit right. Patient states, "that her Left knee hurts a little but not as much as her back." The second portion of the record then recorded a history consistent with the above, but further stated, that Petitioner, "fell down 4-5 steps landing on her left side and hitting her knee and ankle. She rates her pain 7-8/10." She advised NP Blanchetti that she had taken some aspirin for pain, and Petitioner "felt her ankle was fine." While a physical examination was performed of the head and cervical spine, which Petitioner never complained of or mentioned as being involved in her accident, there is no record of a physical examination of the lower left leg, left ankle, or foot, the latter two of which having been mentioned as being involved. X-rays were performed of the left knee and lumbar spine, which revealed no evidence of acute fractures, subluxations or dislocations. No x-ray was made of the left foot or ankle. The diagnosis at that time was "Pain in left knee," and "Contusion of lower back and pelvis." Petitioner was released to regular work. (Joint X 1, p.3-6)

Petitioner was next seen at the same facility on November 6, 2020, by NP Pate. The record appears to have copied the patient description of accident verbatim, as it reads, "Patient states that today, 10-30-2020," she fell down the steps at work. Petitioner's complaints on this date were recorded as "She states she is some better. Her left knee she rates as 2/10 and low back 5/10 with sharp pain at times. She states her pain is not constant and when she steps a certain way she will get a sharp pain in her left buttock into her low back." Physical examination on this date indicated pain on examination of the lumbar spine, both to palpation and during range of motion testing, pain in the gluteal area with motion and on palpation, with bruising present, a normal examination of the left knee, and bruising being present in the left lower leg. No physical examination was apparently performed of the left foot or ankle, just the notation of observing bruising. The diagnosis remained the same. Petitioner was again released to regular duty. (Joint X 1, p.8)

Petitioner was seen for a third time at that same facility on November 20, 2020, again by NP Pate. The record again just copies the description of accident verbatim from the October 30, 2020 note, referring to its happening "today, 10-30-2020." The record states that Petitioner said she had no pain in her lower back and was ready for discharge. It notes that Petitioner said she was not having any pain, anywhere, and was taking no pain medication. Physical examination was restricted to the lower back and was simply noted as being normal. The diagnosis did not change, it was still pain in the left knee and contusion of lower back and pelvis. She was again allowed to work regular duty and was discharged from care. (Joint X 1, p.11)

Petitioner was seen by Physician Assistant (PA) Albers at SIU Medicine on June 23, 2021.Petitioner's complaint at that time was of left foot pain as a result of falling down some stairs at work in October, stating she had experienced pain and problems since that time. She noted she had been told that it would get better and heal eventually, but it had not done so completely. She noted she had difficulty putting weight on it in the morning but was eventually able to walk on her toes. She said putting her weight mostly on her ride side caused back and right leg pain. She said she had extreme pain on her left heel. Physical examination on that date revealed

bilateral antalgic gait, tenderness to palpation to the left heel and plantar fascia, and normal muscle strength. X-rays taken that day of the left ankle and foot showed small inferior and posterior calcaneal spurs and a protuberant medial navicular. She was given an excuse for the day of the examination and a sitting as needed work restriction. (Joint X 2, p.2,4,5,9,10)

Dr. Stevens initially saw Petitioner on July 8, 2021. She gave him a consistent history of her left foot pain starting on October 30, 2020 with a fall down stairs at work. As of this date she said her pain was 7/10 at best and 10/10 at worst. She said that despite conservative measures including icing, rest, stretching, orthotics and pain medication she had no relief. X-rays on that date were negative. Dr. Stevens's assessment was chronic left heel pain, likely plantar fascia strain, and equinus, the limited upward bending motion of the ankle joint. Petitioner was given instructions on conservative treatment of the foot, and physical therapy and an MRI were ordered. Petitioner was excused from work that day by Dr. Stevens, and a restriction of one ten minute break every hour due to foot pain was given. (Joint X 3, p.3,4,8,10)

Petitioner received physical therapy at Taylorville Memorial Hospital Rehab from July 14, 2021 through August 6, 2021. During that period of time, she reported that she had gotten better at putting weight on the left food, though doing so caused her to have nerve pain at times. She noted on the last date of treatment that she had been able to mow her entire yard a few days earlier, but it hurt afterwards. She said she was doing her home exercise program stretches, and they were helpful. On August 6, 2021, she reported functional problems included running or jogging, riding a bicycle, and walking with her foot flat for a long duration. She had attended eight out of eight therapy session. The therapists noted that she had decreased pain intensity, improved ankle range of motion, improved soft tissue sensitivity, improved ability to walk with her foot flat and improved function. Petitioner was discharged from physical therapy on that date. (Joint X 4)

Petitioner was seen by Dr. Stevens again on August 19, 2021. She advised him that physical therapy had helped, but pain returned when she stopped doing stretches. He MRI had been denied. After examining Petitioner Dr. Stevens's assessment remained the same. Left gastrocnemius recession surgery was discussed on this date. (Joint X 3, p. 13)

Petitioner was next seen on September 7, 2021, on this occasion by Dr. Krus-Johnston of SIU Medicine, for a pre-operative physical examination. (Joint X 2, p.6-8)

On September 17, 2021 Dr. Stevens performed left gastrocnemius recession surgery on Petitioner, along with a left heel cortisone injection. (Joint X 3, p. 18,19)

Petitioner saw Dr. Stevens in follow up on November 2, 2021. Petitioner advised him that her heel pain had improved significantly, though she continued to have occasional discomfort on the lateral side of her left foot. Dr. Stevens's physical examination found Petitioner was objectively normal. Petitioner was advised she could stop wearing her boot at night and could continue doing physical therapy as tolerated. (Joint X 3, p.21,27)

On December 14, 2021 Petitioner was seen by Dr. Stevens, and he noted she was doing well in the office, but reported pain over her incision. She denied heel pain. Physical examination was normal. She was advised that her complaints of pain, swelling and stiffness were normal and would likely improve over the next 3 to 4 weeks. She was again told she could perform physical activity as tolerated. (Joint X 3, p.24,27,28)

Respondent introduced a records review report from Dr. Krause dated February 17, 2022. Dr. Krause reviewed the medical records noted above. His assessment was "History of a fall from a ladder with left knee strain and low back pain," and "reported history of plantar fasciitis and ankle equinus, status post gastric recession." He did not feel the existence of the plantar fasciitis and the gastric equinus was clear from the records, or why Petitioner had gastric recession surgery. He felt a knee and back injury was clear, but there was no documentation of an injury to the foot or heel, and he did not feel the records supported a causal relationship between the plantar faciitis and the gastric recession and this injury. He did not believe she needed the treatment to her left foot from the October 30, 2020 injury. He felt the gastric recession was "somewhat premature," that it was "not reasonable or necessary regarding her left foot injury dated 10/30/20." He felt there were symptoms of symptom magnification. (RX 1, p.1-3)

On May 18, 2023, Dr. Stevens authored a letter and stated that he had treated Petitioner for conditions consistent with her description of her work injury, and her injuries warranted the treatment he provided, including her surgery. He noted that her chronic heel pain, whether traumatic or non-traumatic, improved with her gastrocnemius recession surgery. He said he instructed her to be off work and in a walking boot for two weeks and to allow healing for a total of six weeks. He noted he was aware of Dr. Krause's opinion, but that the orthopedic literature warranted the surgery performed on Petitioner. (PX 1)

DOCUMENTARY EVIDENCE

Respondent Exhibit 2 is an email from Ms. Colbert dated July 20, 2021. It does not note to whom it is addressed. In her testimony Ms. Colbert had indicated she had sent it to Chelsea Sisson and Nick Webb, the lab supervisors. In the email she reported that after the injury nearly nine months prior to this email, Petitioner only talked about "the bruise on her butt. She never said anything about her foot hurting." She noted that in May or June Petitioner spoke of an altercation with her wife and of divorcing her. She also wrote of Petitioner reporting on one occasion of getting drunk, and that not too long after that Petitioner told her that her foot was hurting. Ms. Colbert also noted that she tried to dissuade Petitioner from pursuing workers' compensation benefits for the foot complaints. Ms. Colbert also wrote that "If there is something wrong with her foot, it is from something she has done outside of work (from her and her wife, or her drunk weekend) not from her fall that happened more than six months ago." (RX 2)

Respondent Exhibit 3 is an email from Ms. Sisson to Ms. Rueger, with copies to others, noting Petitioner had seen a doctor the day before and had a letter from her doctor, had missed three days work and they could let her sit as needed in the lab. Attached to that email was a letter from PA Albers noting Petitioner had continued left foot and heel pain from her injury in October 2020, and that she should be allowed to sit as needed at work. (RX 3)

Respondent Exhibit 4 is an email from Ms. Sisson to three other individuals at Respondent noting another doctor appointment Petitioner had scheduled, with an orthopedist, and of all the points she had received for seeing doctors, and of Petitioner's being convinced she will not be allowed to return to work after seeing her doctor. (RX 4)

ARBITRATOR CREDIBILITY ASSESSMENT

Petitioner appeared to answer all questions in a straightforward, non-argumentative manner, and did not appear to be exaggerating her current complaints. She did appear to be confused as to when she had marital problems and began or concluded divorce proceedings, but that did not appear to be of great relevance in regard to this injury, and she readily admitted her difficulty in remembering those dates. The Arbitrator notes that the immediate medical records tend to be consistent with Petitioner making left foot complaints and of bruising in the lower leg, and the lack of physical examination findings being recorded is beyond the control of Petitioner. The Arbitrator finds Petitioner to have been a credible witness.

Mr. Escalante was subpoenaed by Petitioner to testify. He limited his testimony to matters within his personal knowledge, and answered questions from both attorneys in a straightforward, respectful manner. His testimony only contradicted Petitioner in regard to when she was having marital problems, which the Arbitrator finds to be of little relevance in this case, other than to contradict Petitioner's memory of dates, and it is consistent with Petitioner's testimony in regard to physical problems she was having. As opposed to Ms. Colbert, Mr. Escalante worked on the same shift as Petitioner, with far greater occasion to speak with and observe her than Ms. Colbert or Ms. Rueger would have had, at least from March through June of 2021, when Petitioner sought additional medical treatment.

Ms. Colbert's testimony was accurate to the extent that she was verified as having emailed her remembrances to Ms. Sisson and Mr. Webb, and it may have been accurate in regard to when Petitioner's marriage problems and divorce proceedings occurred, but her report reference the accident was not concurrent with the accident and was only issued when her superiors requested it numerous months later, when it appeared Petitioner would be seeking workers' compensation benefits. Ms. Colbert did not limit her report to what occurred on the date of the accident and what areas of her body Petitioner complained of, it included comments in regard to Petitioner and her wife, to marital discord and to a reported occasion when Petitioner over imbibed alcohol. She even noted she had told Petitioner not to pursue workers' compensation benefits and included conjecture on multiple ways Petitioner could have hurt her ankle, with no actual evidence any such intervening event had occurred. Petitioner testified she had not had such discussions with Ms. Colbert. Mr. Escalante's testimony about Petitioner's complaints and problems walking due to her foot also contradict Ms. Colbert's testimony. Ms. Colbert appeared to have a dislike for Petitioner, and, as noted above, she had clear opinions as to whether Petitioner should receive workers' compensation benefits. The Arbitrator finds Ms. Colbert to not have been a credible witness.

Ms. Rueger was also straightforward in her testimony. She did not attempt to evade questions which were posed to her by the attorneys, and she was not hesitant to note the limits of her knowledge, whether it be due to facts or events not in her area of work or due to her non-presence when events occurred. Her testimony was contradicted by Petitioner in regard to whether she reported ongoing problems with her left foot, and Petitioner's testimony was supported by the testimony of Mr. Escalante in that regard. The Arbitrator finds Ms. Rueger to have been a somewhat credible witness, the sole non-credible testimony being in regard to Petitioner's ongoing complaints..

CONCLUSIONS OF LAW:

In support of the Arbitrator's decision relating to whether Petitioner's current condition of ill-being, chronic left heel pain, plantar fascia strain, and equinus, resulting in left gastrocnemius recession, is causally related to the accident of October 30, 2020, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and documentary evidence, above, are incorporated herein.

The witness credibility findings, above, are incorporated herein.

Petitioner suffered a traumatic injury on October 30, 2020, when she slipped on oily stairs while carrying several empty buckets. She fell onto her left side and traveled down several stairs on her left side, with her left foot getting caught on a step, stopping her from going down additional stairs. She was transported by Ms. Rueger to Respondent's occupational medicine provider, HSHS Medical Group. Petitioner was seen by a nurse practitioner on that date. Petitioner's description recorded at that time was, "Patient states that today, 10-30-2020, she was walking down the steps and slipped and fell down 4 or 5 steps landing on her left side back and her Left knee hit and turned Left knee and Left foot." The recorded complaints of pain were of her left side back and Left side buttock area hurt and she could not sit right. Patient states, "that her Left knee hurts a little but not as much as her back." The second portion of the record then recorded a history consistent with the above, but further stated, that Petitioner, "fell down 4-5 steps landing on her left side and hitting her knee and ankle." Petitioner advised the nurse practitioner that she had taken aspirin for pain and she felt her ankle was fine. The medical record of that date does not indicate any physical examination was done of the lower left leg, left ankle, or foot, despite Petitioner having mentioned they were involved in the accident. The nurse practitioner's diagnoses were limited to only pain in the left knee and contusion of lower back and pelvis. When next seen on November 6, 2020, a different nurse practitioner merely copied portions of the initial report, as shown by the misstatement of the accident as having occurred "today, 10-30-2020," with the same exact history as before, including the left foot getting caught on a step. It is noted that Petitioner said that when she stepped a certain way she would get sharp pain in her buttock and low back. While the nurse practitioner noted observing bruising in the left lower leg, no physical examination was apparently performed. Petitioner did not complain to NP Pate of any pain on November 20, 2020, and the physical examination at that time was limited to the low back.

While Petitioner testified that she received no medical care between November 20, 2020, and June 23, 2021, she testified that her left knee improved but she was having left foot and ankle pain and she complained of this to Ms. Rueger. She said she was able to continue to work by taking breaks and propping her foot up. Ms. Rueger denied knowing of any problem Petitioner might have been having, Petitioner's ongoing complaints during that period of time were confirmed by Mr. Escalante, who said Ms. Colbert and other workers had mentioned Petitioner had injured her foot. He said he observed Petitioner on almost a daily basis, and he saw her walk at a slow pace, she talked about how her foot hurt with standing, and she would put her foot on another chair when sitting at a computer desk. He said this was true the entire time he worked with her, which would have begun in March of 2021, months prior to her seeking additional care in June of 2021.

Petitioner gave consistent histories to PA Albers on June 23, 2021, and to Dr. Stevens on July 8, 2021. After numerous physical therapy sessions Dr. Stevens performed a left gastrocnemius recession on September 17, 2021. Petitioner' physical examinations and pain complaints both improved subsequent to that surgery.

Dr. Krause did a record review for Respondent in February of 2022. He did not examine Petitioner either prior to or subsequent to her surgery. He did not believe the medical records supported a causation finding, and, without ever examining Petitioner, he felt the records showed symptom magnification. He did not believe Dr. Stevens's surgery was necessary or reasonable.

Dr. Stevens in a letter of May 18, 2023, stated that Petitioner's conditions were consistent with her described work injury and warranted the treatment he provided, which he said was warranted per orthopedic literature. He noted her chronic heel pain had improved with his gastrocnemius recession surgery.

The Arbitrator finds that Petitioner's medical conditions, chronic left heel pain, plantar fascia strain, and equinus, resulting in left gastrocnemius recession, are causally related to the accident of October 30, 2020. This finding is based upon Petitioner's testimony, which the Arbitrator finds credible, including her unrebutted testimony that she had no prior injury or problems relating to her left foot and ankle and no subsequent injuries to her left foot or ankle. The Arbitrator gives no weight to Ms. Colbert's testimony in this regard. The Arbitrator further bases this finding on the contemporaneous medical records which indicate Petitioner did complain of foot and ankle involvement, bruising in the area of her left lower leg, and what is felt to be incomplete or insufficient physical examinations of Petitioner's left lower leg, ankle and foot by physician assistants. Petitioner was taken to Respondent's occupational health medical providers, never seen by a medical doctor on or near the date of the injury, and does not appear to have received adequate examinations to an area of her body she reported had been injured. The Arbitrator gives greater weight to the opinions and records of Dr. Stevens, especially since Petitioner improved after the surgery he performed. The Arbitrator gives lesser weight to the opinions of Dr. Krause, who did not see Petitioner at any time, including immediately prior to her surgery and after her surgery.

The Arbitrator further finds that the chain-of-events also support a finding of causal connection. This finding is based upon Petitioner's unrebutted testimony to a pre-accident state of asymptomatic good health in the left foot and ankle, her having an accident on October 30, 2020, and her immediately after said accident having sudden pain, immediate medical treatment and new diagnoses based on physical examinations. Certi-Serve, Inc. vs. Industrial Commission, 101 Ill.2d 236,244 (1984)

In support of the Arbitrator's decision relating to what temporary benefits Petitioner is entitled to as a result of the accident of October 30, 2020, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and documentary evidence, above, are incorporated herein.

The witness credibility findings, above, are incorporated herein.

The findings in regard to causal connection, above, are incorporated herein.

Petitioner in the Request for Hearing, Arbitrator Exhibit 1, claimed to be totally disabled on July 8, 2021and from September 17, 2021 through November 2, 2021.

Dr. Stevens's office note of July 8, 2021 notes Petitioner was excused from work that day.

Petitioner testified that after this accident she had restrictions from medical providers, but while employed by Respondent those restrictions were honored by her employer.

Dr. Stevens in his letter of May 18, 2023, Petitioner Exhibit 1, noted that following her surgery he had instructed Petitioner to remain off work, wear a walking boot for two weeks, and to allow healing for a total of six weeks.

The Arbitrator finds that Petitioner was temporarily totally disabled as a result of the accident on July 8, 2021, and from the date of her surgery, September 18, 2021, for a period of six weeks, to October 29, 2021, for a total period of 6 1/7 weeks. This finding is based upon the medical records of Dr. Stevens and Dr. Stevens's letter of May 18, 2023. The Arbitrator gives no weight to the opinions of Dr. Krause in this regard for the same reasons stated in regard to causal connection, above.

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 October 30, 2020, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and documentary evidence, above, are incorporated herein.

The witness credibility findings, above, are incorporated herein.

The findings in regard to causal connection and temporary total disability, above, are incorporated herein.

The Arbitrator finds that all of the bills introduced into evidence in Petitioner Exhibit 2 are related to Petitioner's chronic left heel pain, plantar fascia strain, and equinus injuries, are reasonable and were necessitated to treat or cure Petitioner's injuries suffered in this accident with the exception of the following unrelated treatments:

- **Page 9 – medical charges of July 9, 2020, for which there is no supporting medical record and which appears to be for ECG testing**
- **Page 9 – medical charges for January 6, 2021, for which there is no supporting medical record**
- **Page 14 – medical charges for July 14 and 28, 2020, August 4, 2020, November 24, 2020, and April 14 and 19, 2021, for which there is no supporting medical record**

Said charges are to be paid by Respondent pursuant to the limitations set out in the Medical Fee Schedule. This finding is based upon the medical records introduced into evidence, the testimony of Petitioner,

and the May 18, 2023 letter of Dr. Stevens. The Arbitrator gives no weight to the opinions of Dr. Krause in this regard for the same reasons stated in regard to causal connection, 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 documentary evidence, above, are incorporated herein.

The witness credibility findings, above, are incorporated herein.

The findings in regard to causal connection, and temporary total disability, 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 laboratory technician at the time of the accident and that she *is* able to return to work in his prior capacity as a result of said injury. The Arbitrator notes Petitioner was terminated by REspondent prior to her surgery and, subsequent to her surgery obtained employment of a supervisory nature with another employer. Because of Petitioner's obtaining better, less physically stressing employment , the Arbitrator therefore gives *lesser* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 37 years old at the time of the accident. Because of her many years of anticipated work, the Arbitrator therefore gives *moderate* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that as of the date of arbitration Petitioner was working for a manufacturing company with the job title of production supervisor and a salary of $72,000 per year, plus bonuses, an amount in excess of what she earned while working for Respondent. Because of her increased income, the Arbitrator therefore gives *no* weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes the complaints and medical findings in the medical records leading up to and immediately following her surgery by Dr. Stevens. Petitioner made several subjective complaints at arbitration, saying that while she did very well for nine to ten months following the surgery, she was only 50 percent improved as of the date of arbitraton, she could not run or jump, that she would limp if she walked for a couple of hours, and she took Tylenol daily. Petitioner did not, however, introduce any medical records to corroborate those ongoing complaints. Because of the actual surgical treatment Petitioner received but the lack of corroborating medical records for her current complaints, 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 left leg pursuant to §8(e) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	11WC006367
Case Name	Violet Jaksich v. City of Chicago Dept of Streets & Sanitation
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0074
Number of Pages of Decision	34
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	James Nawrocki
Respondent Attorney	Derrick Lloyd

DATE FILED: 2/14/2025

/s/Deborah Simpson,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with explanation	☒ 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

Violet Jaksich,

Petitioner,

vs. NO: 11 WC 6367

City of Chicago Department of Streets and Sanitation,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of whether the Arbitrator abused his discretion in reopening proofs, whether the evidence and testimony entered during the January 25, 2024 hearing should be excluded, the award of medical expenses, the award of temporary disability benefits, the award of permanent total disability benefits, and the denial of the imposition of penalties and fees, and being advised of the facts and law, explains the Decision of the Arbitrator as noted below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Proofs were closed after the initial hearing on July 25, 2023. In October of 2023, while the Decision was still pending before the Arbitrator, Respondent offered Petitioner a job as traffic enforcement technician, the job she had when she was initially injured in 2011. After consultation with her lawyer, Petitioner attempted to return to that job on November 13, 2023. On November 21, 2023, Petitioner filed a Petition for Immediate Hearing Under §§8(a)/19(b) of the Act. Pursuant to that petition, the Arbitrator re-opened proofs and had a supplemental hearing where on January 25, 2024 in which additional testimony was educed and evidence submitted. The Arbitrator noted that Respondent's offer of the job to Petitioner in itself was sufficient basis upon which to re-open proofs. At the subsequent hearing Petitioner testified she was only able to work for a couple of hours a day for a week because of the aggravation of pain.

Respondent argued at the hearing and on review that the Arbitrator's re-opening of proof was an abuse of discretion. It stresses that the motion had to be filed in a timely manner. Here, Petitioner never even filed a motion and proofs were re-opened six months after arbitration. It argues the failure of the Arbitrator to even require Petitioner to file a motion "robbed Respondent of an opportunity to evaluate the claimed legal basis for that motion and make any proper objections. The Arbitrator's unilateral decision to grant a motion that was never filed robbed Respondent of their due process rights."

The Commission finds that the Arbitrator did not abuse his discretion in re-opening proofs and holding a subsequent hearing. First, Respondent was aware of Petitioner's intention to reopen proofs and was able to object to it at the beginning of the hearing on January 25, 2023. Therefore, despite the Petitioner's failure to specifically file a Motion to Re-Open Proofs, Respondent was not "robbed of their due process rights" and was not prejudiced by the failure of Petitioner to file a specific motion. Finally, and most importantly, the Commission agrees with the Arbitrator that the re-opening of proof was necessitated by Respondent's offer of employment to Petitioner after proofs were closed, her acceptance of that offer, her attempt to return to work at that job, and her alleged failure to be able to perform that job. Those facts clearly became relevant to the issue of the nature and extent of Petitioner's disability. Therefore the re-opening of proofs was not an abuse of discretion.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 13, 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 pay the petitioner the sum of $820.40/week for life, commencing November 20, 2023, as provided in Section 8(f) of the Act, because the injury caused the permanent and total disability of the petitioner.

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

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

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.

February 14, 2025

O: 1/29/25
DLS/dw
046

/s/*Deborah L. Simpson*
Deborah L. Simpson

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	11WC006367
Case Name	Violet Jaksich v. City of Chicago Department of Streets & Sanitation
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	31
Decision Issued By	Charles Watts, Arbitrator

Petitioner Attorney	James Nawrocki
Respondent Attorney	Derrick Lloyd

DATE FILED: 5/13/2024

/s/Charles Watts, Arbitrator

Signature

INTEREST RATE WEEK OF MAY 7, 2024 5.155%

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

Violet Jaksich
Employee/Petitioner

v.

City of Chicago-Department of Streets and Sanitation
Employer/Respondent

Case # **11** WC **006367**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Charles Watts**, Arbitrator of the Commission, in the city of **Chicago**, on **07/25/2023** and **1/25/2024**. 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
2024

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 **02/07/2011**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**63,991.20**; the average weekly wage was $**1,230.60**.

On the date of accident, Petitioner was **45** years of age, ***single*** with **0** dependent children.

Petitioner **has not** received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $**273,541.58** for TTD, $**0** for TPD, $**233,824.76** for maintenance, and $**0** for other benefits, for a total credit of $**507,366.34.** This amount represents all temporary benefits paid since the inception of this case. All benefits paid until 11/20/2023. There is neither a credit nor an overpayment, until 11/20/2023.

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

ORDER

- Respondent shall be given a credit of $**273,541.58** for TTD, $**0** for TPD, and $**233,824.76** for maintenance benefits, for a total credit of $**507,366.34**.This amount represents all temporary benefits paid since the inception of the case. All benefits paid. There is neither a credit nor an overpayment.
- Respondent shall pay reasonable and necessary medical services of $**7,298.40**, as provided in Section 8(a) of the Act. Respondent shall pay Petitioner permanent and total disability benefits of $**820.40**/week for life, commencing **11/20/2023**, as provided in Section 8(f) of the Act and commencing.

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

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

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

Signature of Arbitrator **MAY 13 2024**

STATE OF ILLINOIS)
)
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION
OF THE STATE OF ILLINOIS

VIOLET JAKSICH,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 11 WC 006367
	)	
CITY OF CHICAGO-	)	
DEPARTMENT OF STREETS AND SANITATION,	)	
	)	
Respondent.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Preface

On 02/07/2011, Petitioner injured her low back while engaged in an act of personal comfort. Previously, in 2003, Petitioner had injured her low back while working for Respondent for which she resulted in a laminectomy and microdiscectomy. (Px 1, p. 8). Ultimately, Respondent accommodated Petitioner to a position at 2352 S. Ashland Avenue, where the instant work accident took place.

Following this injury, Petitioner again sought treatment, primarily with, Dr. Edward Goldberg and Dr. Robinson. (Px 1, p. 4). The subsequent medical treatment is detailed in the 10/12/2015 Arbitration Decision. (Px 1).

Following an inconsistent 2012 FCE, Petitioner was released to sedentary-light work. Initially Petitioner found work in a Beauty Salon and the Petitioner was offered a full-time job within her restrictions as a traffic control enforcement technician with Respondent (Px 1, p.7). This job was sedentary in nature, but sitting for long periods aggravated the pain in her low back. Standing and walking around helped alleviate her back pain, but she was admonished by her Supervisors that other than bathroom breaks, she was to remain in her cubicle, as she had a quota of 100 films per hour to review (Px , p.13).

During this time Petitioner's back pain became elevated which Dr. Goldberg diagnosed as discogenic pain and was taken off work (Px 1, p. 15). Respondent then sent Petitioner to be examined by Dr. Jesse Butler, MD, who opined Petitioner was at MMI (04/30/2015). Dr. Goldberg, however, opined that Petitioner sustained a new herniated disc (HNP) at L4-L5 and an aggravation of degenerative disc disease as a result of the 02/07/2011 fall. (Px 1, p. 13)

In a decision entered on 12/21/2015, Arbitrator Bocanegra found on behalf of Petitioner as to all contested issues: accident, causal connection, TTD, and prospective medical care (Px1).

The Arbitrator's decision was appealed by Respondent, but the appeal was not perfected, and was dismissed making the Arbitrator's award final. The Arbitrator's Decision was introduced into evidence as Petitioner's exhibit number 1 and forms as the basis of the law of the case as to certain facts and findings in the current hearing. Under the doctrine of the law of the case, "where an issue has been litigated and decided, a court's unreversed decision on that question of law or fact settles that question for all subsequent stages of the suit" *Pekin Insurance Co. v. Pulte Home Corp.,* 344 I11. App. 3d 64, 69 (2003), quoting *Norton v. City of Chicago,* 293 I11. App. 3d 620, 624 (1997).

The hearing held on 07/25/2023, therefore, only dealt with events from 10/14/2015 to present. Proofs were reopened for reasons that will be discussed in the decision, SURPA on 01/25/2024 citation to the 07/25/2023 hearing will be as a "T." and to the 01/25/2024 hearing as "01/25/2024 T."

Facts

Petitioner introduced Px2, (pgs. 19-24), a chronology of Petitioner extensive care and treatment from 06/25/2015 to 08/28/2022. Petitioner testified, without contradiction, that this was an accurate chronology (T 8 – 9). This chronology, is therefore adopted by the Arbitrator repeated below, with only the word "Petitioner" substituted for "Patient":

> On 06/25/2015, Dr. Goldberg provided a letter describing his visits with the Petitioner. He believed the mechanism of her fall in February /2011 could result in a new disc herniation and aggravation of degenerative disc disease. Dr. Goldberg believed the current discogenic back back pain from the February 2015 visit was in part due to the accident of 02/07/2011. She sustained a new disc herniation at L4-5. She had preexisting degenerative disc disease, but she reported it increased after the February 2011 accident. He said a referral to the pain center was appropriate due to her symptoms.
>
> On 03/14/2016, the Petitioner returned to Dr. Cohen with left hand pain. She said on 02/10/2016, she was at home tripped hitting her left ulnar hand against the wall. X-rays were reviewed. She had a left small finger metacarpal minimally displaced fracture. Conservative treatment was recommended.
>
> On 03/21/2016, the Petitioner returned to Dr. Goldberg with continued significant low back pain and difficulty with sitting. She also continued withy left lower extremity numbness and tingling into the lateral aspect of the leg and less on the right. She recently had her left foot give out and she fractured the left hand. She was referred to the Rush Pain Center for consideration of injections. She was off work. They discussed discography.

On 04/25/2016, the Petitioner presented to Dr. Jaycox as referred by Dr. Goldberg for evaluation of low back pain and bilateral lower extremity pain. It started in the mid and low back and wrapped around to the groin and into the anterior thigh. On exam, lumbar extension was 10 degrees and flexion 80 degrees. Straight leg raise was positive on the right at 45 degrees and equivocal on the left. Left dorsiflexion was 3-4/5. She was assessed with lumbar radiculopathy, osteoarthritis of the spine with radiculopathy, failed back syndrome, and lumbar degenerative disc disease. The plan was for bilateral TFESI targeted at the L4 levels.

On 05/27/2016, Dr. Jaycox administered a lumbar epidural steroid injection at L4.

On 06/17/2016, Dr. Jaycox administered bilateral transforaminal epidural steroid at L4.

On 08/19/2016, Dr. Jaycox administrated a lumbar epidural steroid injection at L4-5.

On 09/12/2016, the Petitioner returned to Dr. Jaycox after 3 lumbar epidural injections. She reported minimal relief overall with pain relief after the first injections. She had lumbar back pain that radiated numbness into the left leg. She was referred back to Dr. Goldberg for consideration of discography.

On 09/19/2016, the Petitioner followed up with Dr. Goldberg. She had a caudal epidural steroid injection that provided 8 days of relief. The next two injections provided mild to no relief. The pain was located in the in the bilateral low back and radiated into the left groin, lateral thigh, posterior calf and numbness into the foot. She had difficulty walking on heels and toes on the left side, normal on the right. Lumbar flexion was 45 degrees and extension 15 degrees, both with pain. There was decreased sensation in the left L5 distribution. Straight leg raise test elicited left L4-5 radiculopathy. The recommendation was for a lumbar provocative discography L2-3, L3-4, L4-5 and L5-S1 with L2-3 as a controlled level. She was referred to Dr. Fetzer for this.

On 11/29/2016, CT of the lumbar spine showed multilevel degenerative changes with internal disc disruption demonstrated on the post discogram CT. No high-grade spinal canal stenosis. At L3-4, mild spinal canal stenosis with mild narrowing of the right lateral recess and mild bilateral foraminal stenosis. At L4-5, mild narrowing of both lateral recesses, slightly more pronounced on the left and mild bilateral foraminal stenosis. Left hemilaminotomy defect was noted L4-5. Discography was performed and results showed positive provocation at L4-5, L5-S1 with moderately degenerative nucleograms. Moderately degenerative nucleogram at L3-4.

On 12/05/2016, the Petitioner to Dr. Goldberg with continued significant back pain and intermittent bilateral lower extremity radicular symptoms. Flexion was 45 degrees with significant pain extension was 15 degrees. Left EHL was 2/5 and tibialis anterior was 4/5. The discography results were reviewed. The recommendation was for transforminal lumbar fusion at L4-5 and L5-S1. Other levels were discussed.

On 01/12/2017, the MRI of the lumbar spine showed interval mild progression of multilevel degenerative process, The extent of mild multilevel spinal canal and foraminal narrowing remained stable. Changes due to prior L3-4 right and L4-5 and L5-S1 level left hemilaminotomy. No high grade spinal canal or foraminal narrowing.

On 04/25/2017, the Petitioner presented to Dr. Hanak for preoperative history and physical.

On 05/02/2017, Dr. Goldberg and Dr. Paul performed laminectomy fusion posterior lumbar/thoracic TLIF/PSF at L-5 and L5-S1. She participated in therapy during her stay. Dr. Butos in Internal Medicine consulted and the Petitioner told him that she had new right foot numbness. She was discharged on 05/05/2017.

On 05/19/2017, the Petitioner returned to Dr. Goldberg for the first postoperative visit after L4-S1 fusion on 05/02/2017. She had a left foot drop from 2003. After the recent surgery, she had right foot weakness, numbness, burning and swelling. Gait was unstable and she experienced hip and occasionally back pain. On exam, there was hypersensitivity to pinprick in the distal right foot. There was 1+ pedal edema in the right foot but no tenderness or discoloration. Lumbar x-rays were negative for complication. A cane was recommended for stability. Her medication was adjusted. They discussed an AFO brace. She was off work.

On 06/08/2017, the Petitioner presented to physical therapy for an initial evaluation. She presented with decreased range of motion, strength, balance, and other deficits as well as increased pain. She was currently at the sedentary physical demand lever and the desired level was sedentary to light. She worked as a Traffic Enforcement Tech. Skilled therapy was recommended 3 times per week for 6 weeks.

On 06/30/2017, the Petitioner returned to Dr. Goldberg and said physical therapy aggravated her back with certain exercises. On exam, left dorsiflexion was 4/5, right dorsiflexion 3+/5, right EHL 3+/5 and decreased sensation to pinprick throughout the right lower extremity medial and lateral. Straight leg raise was negative. X-rays showed the fusion was consolidating in the posterolateral space. She was assessed with status post TLIF L4-S1 with neuropraxia of right L4-5 nerve, improved compared to the last visit. She was now able to dorsiflex and lift the big toe against gravity. It was still quite weak. She was to continue with the AFO and physical therapy to focus on core and back strengthening.

On 07/11/2017, the Petitioner presented to a different physical therapy facility for an initial evaluation. She said she was unable to work due to the right leg pain and overall lower back stiffness. She had hip pain and was unable to sit more than 20 minutes. She reported numbness in both legs with left side drop foot. She said the right side felt dead with limited movements, lumbar range of motion was limited by 50% in all motions due to pain. She had not worked since 2015. There was decreased right lower extremity weakness compared to the left. She was very guarded with all mobility and ambulated with a straight cane with very rigid posture. physical therapy was recommended 2 times per week for 6 weeks.

On 08/02/2017, the Petitioner was reevaluated at physical therapy after 8 visits and showed progress with lumbar mobility. She continued to ambulate with assistive device. She was advised to continue.

On 08/25/2017, the Petitioner returned to Dr. Goldberg and reported intermittent left groin pain. She said the left leg would give out and had 10 episodes of this yesterday. She used a wheelchair to get to the office today. She continued with right foot, weakness and a ski boot sensation / heaviness. She had low back pain and stiffness with prolonged sitting. She said the sharp groin pain increased after new physical therapy exercises. She was healing well since surgery. She was assessed today with left hip flexor tendonitis. Her medication was adjusted and she was advised to continue physical therapy 2-3 times per week for 6 weeks.

On 09/11/2017, the Petitioner was reevaluated at physical therapy after 17 visits. Lumbar range of motion was limited by 25% throughout due to guarding. The right leg numbness continued to require physical therapy to address functional mobility, gait, balance, and core strengthening. She was to continue 2 times per week for 6 weeks.

On 09/27/2017, the Petitioner was reevaluated at physical therapy after 22 visits. She rated her current pain 7/10. Lumbar range of motion was unchanged. She was very guarded after reporting loss of balance at home. She said the right leg felt week and that it was unable to support her. Her overall progress was limited by pain and a recent fall at home on September 25th. Continued therapy was recommended 2 times per week for 6 weeks.

On 10/25/2017, the patient was reevaluated at physical therapy after 30 visits. She said medication made her worse and she was not having a good day today. Her progression was noted as worse. She ambulated with a cane with decreased right heel strike. Her progress was limited by flare ups and certain push-pull activities were removed from her program. Her last 2 sessions were with ice and stim. She was advised to continue therapy 2 times per week for 6 weeks.

On 10/27/2017, the Petitioner returned to Dr. Goldberg and said she continued with a sandpaper sensation in the right lateral leg and the dorsum of the foot. She

had difficulty ambulating and said her foot flapped. The right groin and hip would give way. Straight leg raise was to 30 degrees on the right. X-rays showed good bone formation in the interbody cages. An EMG/NVC was recommended due to subjective weakness complaints and altered sensation of the right foot. She also stated she was unable to lift the leg, however this was noted as not coming from l4-5 and L5-S1, but would be upper lumbar nerve roots. She was to continue physical therapy and remain off with.

On 11/27/2017, the Petitioner was reevaluated at physical therapy after 37 visits. She said she was sick and coughing a lot, which increased the path and spasm in the low mid back. She rated her current pain 9/10. Lumbar range of motion was restricted in all planes. EMG results were pending. She was advised to continue therapy to progress functional activities as tolerated.

On 11/28/2017, the Petitioner underwent EMG/NVC testing with Dr. Fetzer with abnormal results. There was electrodiagnostic evidence of severe right acute L5 radiculopathy. There were characteristics of ongoing denervation. Moderate left peroneal neuropathy with the characteristics of ongoing denervation. The decreased bilateral sural responses were suggestive of potential polyneuropathy or may be technical. There was no evidence of right common peroneal neuropathy, bilateral tibial neuropathy or left lumbar radiculopathy.

On 12/04/2017, the Petitioner returned to Dr. Goldberg to discuss the EMG results. She continued with right foot burning with tingling sensation. She had numbness from the right shin down to the foot. The back pain increased after EMG. She did not feel her strength changed in either foot and she had difficulty wearing shoes as it increased her symptoms. The EMG showed severe right acute L5 radiculopathy, which was consistent with right L5 pain, numbness, and weakness. She was advised to wait up to 1 year to determine the permanence of symptoms. She was to remain off work and continue physical therapy 2 times per week for 6 weeks.

On 12/06/2017, the Petitioner returned to physical therapy and completed her 39th visit. She said she was not doing very well and rated the pain 7/10. She suffered from significant lumbar dysfunction in joints and muscles and demonstrated movement patterns to compensate. She had worsening radicular symptoms of undetermined etlology.

On 01/15/2018, the Petitioner completed 50 visits of physical therapy and felt unable to do any prolonged activity without spasms or pain. Lumbar range of motion was flexion 50%, extension and right sidebending 75%, left sidebending 90%, right rotation 50%, and left rotation 65%. Straight leg raise was positive. The low back musculature was significantly deconditioned. Core strength improved, but still needed additional strengthening.

On 01/17/2018, CT of the lumbar spine showed posterior instrumented fusion and transforminal lumbar interbody fusion of L4 through S1. A few bony bridges were seen across these disc spaces without evidence of complete union at this time. Posterior fusion hardware was intact with no evidence of loosening or fracture. There was minimal retrolisthesis and disk bulge at L3-4 causing mild right foraminal stenosis as before. Mild bilateral foraminal stenosis at L4-5 and L5-S1. The Petitioner returned to Dr. Goldberg to review the CT findings. Her low back pain increased lately. She also had right leg pain and bilateral foot weakness. She said physical therapy was helpful. The fusion was consolidated well with no evidence of pseudoarthrosis or hardware misalignment. She was to continue physical therapy and medication, She was off work.

On 02/27/2018, the Petitioner completed 63 visits at physical therapy. Lumbar flexion, extension and bilateral rotation were 75% and bilateral side-bending was 90%. Soft tissue continued to spasm. Strength was involving. She continued to be limited by nerve pain and seemed to have plateaued in regaining range of motion due to limitation from fusion. Continued skilled therapy was recommended 2 times per week for 6 weeks.

On 02/28/2019, the Petitioner returned to Dr. Goldberg with continued right foot pain and burning with weakness, low back pain, and chronic left foot weakness. She stopped taking a pain reliever a week ago. X-rays showed the fusion healing appropriately. She was advised to continue physical therapy for another 6 weeks followed by a functional capacity evaluation.

On 04/12/2018, the Petitioner completed 75 visits at physical therapy. She reported pain across the low back bilaterally with “lightning bolts” in the right lower extremity. She said exercises were helpful, but the pain always returned. She said the lower extremity pain was unchanged. She rated her current pain 8/10. Lumbar range of motion was flexion and extension 75% and all other ranges 90%. She made significant gains in the hip strength and core activation/strength in static positions. She was limited by the fusion, right hip pain and foot/ankle dysfunction due to weakness. She was advised to continue therapy.

On 04/16/2018, the Petitioner returned to Dr. Jaycox and was last seen in September 2016. She said her surgery in May 2017 relieved the back pain, but brought on new symptoms of right lower extremity weakness and pain in the right foot and lateral calf, and inward rotation. Straight leg raise was positive on the right at 45 degrees. There was slight diminished sensation to pinprick and light touching L5 distribution. She was assessed with L5 radiculitis and some element of sacroiliac pain and trochanteric bursitis on that side. She endorsed right foot drop but the physical exam did not show this. It was suspected it was merely altered sensation. The plan was for a caudal epidural steroid injection at right L5. Her medication was adjusted for failed back surgical syndrome. X-ray of the right hip showed osteoarthritis in both hips.

On 04/20/2018, the Petitioner returned to Dr. Goldberg and said about one month ago, she injured the loft shoulder while doing the home exercises for her lumbar spine. She saw Dr. Alland who performed an injection and recommended physical therapy. She said the shoulder pain resolved. Today, she complained of right sided buttock/hip pain, radiating right leg pain and continued tightness and weakness in the right foot. She had chronic left foot weakness. She did not complete the FCE due to the shoulder issue. Faber was positive on the right with tenderness and right SI joint pain, The plan was to proceed with the FCE. She was to continue to follow with Dr. Jaycox for pain management.

On 04/26/2018, the Petitioner presented for a functional capacity evaluation but self-terminated before a physical demand level could be assessed. She terminated at the beginning of material handling phase due to severe increase in lumbar pain. Pain appeared to be her primary limiting factor. The location of pain was in both feet and the right lumbar and right lower extremity.

On 05/02/2018, the Petitioner returned to Dr. Goldberg with unchanged exam. She demonstrated 75% consistency during the FCE, She was unable to return to her previous position as the FCE stated she was able to sit only occasionally and her job required sitting all day. She was released to work with permanent restrictions. She reach maximum medical improvement from a spine surgical standpoint.

On 05/11/2018, the Petitioner underwent caudal epidural steroid injection as performed by Dr. Jaycox.

On 06/18/2018, the Petitioner returned to Dr. Jaycox and reported no relief with the injection. Prior to being seen in the clinic, she had a large outburst due to clinic being delayed and that she was in pain. She had a poorly controlled anxious state. Her medication adjusted. They discussed a spinal cord stimulator.

On 07/18/2018, the Petitioner presented Dr. Merriman for a psychological evaluation for spinal cord stimulator trial. There were no psychosocial contraindications moving forward with the stimulator trial. On the same date, the Petitioner followed up with Dr. Jaycox with unchanged pain.

On 07/31/2018, the Petitioner presented to Dr. Candido for an independent medical evaluation. Her prior records were reviewed and the patient described her injury. On exam, straight leg raise was negative bilaterally. Faber test was negative. Lumbar flexion was 80 degrees, extension 30, and bilateral sidebending was up to 20 degrees. There were hypesthesias in the bilateral L4 dermatomal distributions, right lower extremity worse than left. She said she was unable to balance on the right foot without a cane. She was diagnosed with chronic low back pain; status post lumbar spinal fusion surgery; right sided sacroiliac joint pain; post laminectomy syndrome, lumbar spine; lumbar spondylosis; and symptom magnification (submaximal effort on FCE). It was noted the cause of

her current symptomatology was due to degenerative lumbar spondylosis, chronic deconditioning, scar tissue and due to failure of the fusion procedure to ameliorate her pain. Her altered gait mechanics and posture contributed to the development of right sided SI joint pain. There was no radicular type pain at present. Dr. Candido's report stated she did not wish to pursue a spinal cord stimulator. She could benefit from up to two right SI joint injections. It was noted the bigger issue was why she failed the FCE. Dr. Candido felt she was employable and qualified to return to work at a light-medium type of work. She had full range of motion and no overt sensory deficits and no motor deficits.

On 08/20/2018, the Petitioner returned to Dr. Jaycox with medication side effects. They discussed the spinal cord stimulator.

On 10/12/2018, Dr. Jaycox performed placement of dual thoracic epidural electrodes for trail spinal cord stimulation.

On 11/16/2018, Dr. Jaycox performed placement of dual thoracic epidural electrodes for permanent spinal cord stimulation.

On 11/26/2018, the Petitioner returned to Dr. Jaycox and was doing well. She reported about 40% pain relief with current program settings of the SCS implant. Staples were removed and the implant was reprogrammed.

On 12/17/2018, the Petitioner returned to Dr. Jaycox and reported more than 90% pain relief on the left lower extremity and most of the right lower extremity except for the right foot and right hip regions. The settings were readjusted today. She had some wound dehiscence that was treated with medication.

On 12/20/2018, the Petitioner returned to Dr. Jaycox for revision of generator pocket wound due to wound dehiscence.

On 01/03/2019, the Petitioner returned to Dr. Jaycox and endorsed about 90% pain relief on the left lower extremity with exception of the right foot and right hip regions. The SCS settings were readjusted today.

On 01/10/2019, the Petitioner presented to Dr. Lubenow for a wound check. She continued with approximately 90% relief.

On 01/24/2019, the Petitioner returned to Dr. Jaycox with eschar and chronically non-healing wound. Lab tests were ordered to assess for metal allergy.

On 02/06/2019, the Petitioner presented to Dr. Nash for evaluation of non-healing incision of left flank wound. The wound was described today. The Petitioner followed up five times through 03/13/2019, for wound care and debridement. During this time, on 03/08/2019, the Petitioner presented to Dr. Buvanendran with complaints of low back and right leg radiating pain down to the right foot. She

presented again for a wound check and it was healing well. She endorsed 40% coverage of low back pain, 100% coverage of the left lower extremity, and no coverage of the right lower extremity. It was completely healed by 03/13/2019. On 03/25/2019, the Petitioner returned to Dr. Jaycox for wound check and it was healing well. She reported no coverage of the low back pain or the right lower extremity, but 100% of the left lower extremity. The stimulator was reprogrammed.

On 03/28/2019, x-ray of the right ankle was negative for fracture.

On 04/08/2019, the Petitioner returned to Dr. Jaycox and reported almost no relief since the SCS reprogramming in regard to low back and right lower extremity pain. She had 50% relief at the left lower extremity. The plan was for an x-ray to check for lead migration. X-ray of the thoracic spine showed appropriate position of leads.

On 04/15/2019, CT of the lumbar spine demonstrated status post fusion of the L4-S1 vertebral bodies with no significant abnormality in the hardware. No pseudoarthrosis or loosing seen. Multilevel spondylosis, suggestion of endplate spurring / residual disc osteophyte complexes.

On 04/29/2019, the Petitioner returned to Dr. Jaycox with unchanged pain since her visit 3 weeks ago. CT of the right hip was ordered to assess for ligament tear. She was referred to Dr. Dugan for persistent right hip and pelvic pain. A caudal epidural steroid injection was scheduled for the right lower extremity pain.

On 05/07/2019, CT of the right hip showed degenerative osteoarthritis, right hip.

On 05/14/2019, the Petitioner returned to Dr. Candido for an independent medical re-evaluation. There was tenderness over the right sacroiliac joint and at the site of battery implantation. Straight leg raise was negative bilaterally. Faber test was also negative on the right for pain to the sacroiliac joint, but it was positive for right hip pain. Flexion was 75 degrees, extension 30 degrees and bilateral side bending 20 degrees, without complaints of pain in the legs or low back. There were hypesthesias noted at the right L5 dermatome and bilateral L4 dermatomes. There was no tendering over the right hip area, specifically the acetabulum. She used a cane to assist with ambulation. Dr. Candido stated the Petitioner reached maximum medical improvement. The SCS placement was successful for some but not all pain areas. Her pain scores on average at rest and with activity were unchanged from the last evaluation on 07/31/2018. Her pain at rest was around 7/10 on average and the same before the SCS device. It was 10/10 with activity, and it was 9/10 before July 2018. It was noted she told one physician that she on average 40% improved with pain, but today her pain scores were unchanged since implantation. She was unchanged with strength and functionality. There was no additional treatment that would likely return her to a low level of pain and improve what appeared to Dr. Candido to be full functionality. She was neither

improved nor worse since the last examination. She reached MMI status from an interventional pain perspective. Dr. Candido stated she could benefit from a rigorous FCE assess validity and motivation. He felt she was employable at present and qualified to return to a light-medium type of work capacity.

On 06/13/2019, a right SI joint injection was administered by Dr. Jaycox.

On 07/08/2019, the Petitioner presented to Dr. Jaycox and there was a small pinhole sized opening visualized at the center of the surgical scar with positive serous drainage expressed concerning for fistulous tract to battery pocket. She presented Dr. Suvar with wound drainage and possible hardware infection. She was admitted with serous drainage from a surgical scar. The plan was for ultrasound of the generator site to assess fluid pocket; consult to IR for ultrasound guided aspiration; lab tests. Dr. Jaycox performed wound exploration. Findings showed infected spinal cord stimulator. Dr. Jaycox performed explantation of spinal cord stimulator array and implantable pulse generator, wound washout. She was provided multiple medications and discharged on 07/12/2019.

On 07/22/2019, the Petitioner returned to Dr. Jaycox and the wound was healing well with no drainage. She was to finish antibiotics. They did not plan to reimplant the SCS until at least 10 weeks elapsed.

On 08/05/2019, the Petitioner returned to Dr. Jaycox and said her pain worsened significantly, particularly in the left lower extremity, since explanation. She had difficulty lifting the left leg due to shooting pains down the thigh. She rated her pain 08/10. Strength was 4/5 in both lower extremities with hip flexion and leg flexion/extension. She had 2/5 left dorsiflexion and 3/5 on the right. She was to continue her current pain regimen.

On 09/05/2019, the Petitioner returned to Dr. Jaycox with continued pain. She said she was improving with the SCS with about 60% pain relief and increased mobility. The plan was to re-implant the SCS after 10/10/2019. She had worsening left leg symptoms with weakness. Physical therapy was ordered 2 times per week for 4 weeks.

On 09/16/2019, the Petitioner presented to physical therapy with a diagnosis of failed back surgery syndrome, loss of mobility and lower extremity weakness. She presented with decreased range of motion, strength, balance, sensation, increased pain, and other deficits. Skilled therapy was recommended 2 times per week for 4 weeks.

On 10/07/2019, the Petitioner returned to Dr. Jaycox with complaints of whole body pain, She complained 7/10 pain starting in the back and wrapping around the anterior surface of the leg with burning in the lower leg. She said the leg gave out multiple times per day. The pain reliever brought the pain down to 4/10. She was unable to dorsiflex the left foot. The plan was to reimplant the SCS on

11/02/2019. On the same date, the Petitioner was discharged from physical therapy after 6 sessions. The Petitioner planned to have the pain stimulator placed.

On 10/21/2019, the Petitioner returned to Dr. Jaycox with questions regarding her scheduled SCS implantation.

On 11/01/2019, the Petitioner returned to Dr. Jaycox performed placement of dural thoracic epidural electrodes for permanent spinal cord stimulation; placement of implantable pulse generator.

On 11/15/2019, the Petitioner returned to Dr. Buvanendran for suture removal after placement of the SCS.

On 11/25/2019, the Petitioner returned to Dr. Jaycox and reported no pain relief. She complained of pain in the lower back, bilateral buttocks, and right lower extremity worse than the left with majority of the pain in the foot. The plan was for reprogramming.

On 12/09/2019, the Petitioner returned to Dr. Jaycox and reported no improvement in coverage. She reported a spark type pain around the IPG site that occurred sporadically with bending left or right. She was concerned whether the incision area was healing properly. The SCS was reprogrammed.

On 12/16/2019, the Petitioner returned to Dr. Jaycox with low-grade fever and pain at the surgical site. She complained of severe pain at the right flank IPG site for one week. On exam of the site, there was no focal fluid collection to suggest abscess formation. Ultrasound of the IPG site was negative for fluid collection, Lad tests were normal. She was discharged with low possibility of infection.

On 12/30/2019, the Petitioner returned to Dr. Jaycox with continued chills and pain from the battery site. She felt pain as shocking or a spark feeling that radiated in all directions. She turned off the stimulator ten days ago because of the pain. She was advised to follow up in one week and keep the stimulator off until then.

On 01/06/2020, the Petitioner returned to Dr. Jaycox and the wound appeared the same since last week. The plan was to keep the SCS off for one more week.

On 01/16/2020, the Petitioner presented to Dr. Lubenow ahead of her scheduled appointment due to concern for infection. She turned the SCS on Sunday and she has some discharge on Monday. It was now turned off and she was to keep it off until follow up with the SCS rep. CT of the abdomen and lumbar spine was ordered.

On 01/17/2022, CT of the abdomen was performed due to concern for infection. Findings were negative. CT of the lumbar spine was performed to assess for

infection. Findings showed nonspecific edema adjacent to the spinal stimulator in the paraspinal soft tissue.

On 01/20/2020, the Petitioner was admitted due to complaints of leakage from the SCS site. She reported 1-2 months of low-grade fevers, chills, and overall malaise. Metal sensitivity testing was negative. She was started on medication and the pain pump. X-ray of the chest was performed due to shortness of breath with negative findings. The SCS electrode arrays and pulse generator were explanted on 01/21/2020, by Dr. Jaycox. She developed whole body rash and other side effects after starting vancomycin. Her medication was adjusted out of concern for allergy. It was then noted that the rash had resolved. After the SCS was removed, she had some improvement. Frank purulence and necrotic material was found atop the device and the leads and wound grew Group G Strep. She was provided IV antibiotics and advised to treat with 4 weeks of IV antibiotics followed by 2 weeks of oral antibiotics. She had a low-grade temperature of 100.6 on 01/23/2020. The held off on placing a midline for now. The plan was for discharge to home after the midline placement on January 24. The Petitioner was set up with home health for IV antibiotics. She was discharged on 01/24/2020.

On 01/30/2020, the Petitioner returned to Dr. Jaycox as a follow up from hospitalization for infected SCS status post removal. She was recovering well and was not a candidate for any other implants.

On 02/17/2020, the Petitioner returned to Dr. Jaycox and was still taking IV antibiotics. She complained of new onset bilateral anterior thigh pain that started after she was discharged from the hospital. She reported electrical sensations down the lateral aspect of the right leg. It was noted she was discharged from her PCO due to abrasive interaction. On exam, there was some pain with pelvic compression. Faber was positive on the right. Her medication was adjusted.

On 02/18/2020, the Petitioner presented to Dr. Abri as a follow up to the hospital stay. She was doing well. She was due for the last dose of ABx this morning. The incision site was healing appropriately. PICC line was removed after the last dose today.

On 05/18/2020, the Petitioner returned to Dr. Jaycox via telephone visit. She said the right lower extremity pain was rated 7/10 and was worsening. She had burning and shooting pain with numbness. She reported coolness of the foot with swelling. She said her current pain regimen reduced the pain by about 50%. She planned to have an IME with Dr. Candido on June 16th. Her medication was refiled.

On 05/26/2020, the Petitioner presented to Dr. Merriman via telephone visit to asses her current psychological status and coping. She was advised to schedule an appointment with a psychiatrist.

On 07/06/2020, the Petitioner returned to Dr. Candido and said the back and right lower extremity pain were stable since the last visit. She rated her pain 07/10 on average. She felt 40% improvement in pain with medication. The following day, drug screening was performed.

On 09/09/2020, the Petitioner returned to Dr. Jaycox with worsening back pain that radiated from the right hip to the right lower extremity, rated 8/10. Lumbar flexion was 60 degrees and extension 10 degrees with pain. Bilateral sidebending was 10 degrees. Straight leg raise was positive on the right at 30 degrees. She was to continue medication.

On 10/05/2022, the Petitioner returned to Dr. Jaycox and her medication was refilled. The plan was for a functional capacity evaluation.

On 12/14/2020, the Petitioner returned to Dr. Jaycox with complaints of buckling of the right hip and leg resulting in falls. She had severe pain in the right hip. An MRI of the lumbar spine and right hip was ordered. She was advised to complete the FCE.

On 12/21/2020, the MRI of the lumbar spine showed post-surgical changes of posterior spinal fusion at L4-S1 and right L4-5 and L5-S1 decompressive laminectomy, heterogeneous enhancement with high T2/STIR signal in the paraspinal soft tissues posteriorly at the right hemi-aspect from L4-S1 with a few locules of well-defined fluid in this region suspected. At least moderate bilateral foraminal stenosis at L4-4 and L5-S1. The MRI of the right hip showed hip osteoarthritis; degeneration or tearing of the anterior superior labrum; findings that could be compatible with clinical trochanteric bursitis; incompletely visualized degenerative changes of the left hip join.

On 12/28/2020, the Petitioner returned to Dr. Jaycox with no changes in complaints with continued 7/10 pain. She was referred for evaluation of the right hip and also referred for evaluation of persistent spinal stenosis.

On 03/10/2021, the Petitioner presented to Dr. Nho with right hip pain since 2017. A large joint steroid injection was administered. She was assessed with hip pain consistent with osteoarthritis.

On 03/23/2021, the Petitioner returned to Dr. Nho with no improvement after the injection. The exam was unchanged. She was at MMU for the right hip.

On 05/17/2021, the Petitioner returned to Dr. Jaycox for medication refill. Her pain was unchanged. Drug was performed.

On 05/21/2021, the Petitioner returned to Dr. Goldberg with complaints of low back pain. She had burning in the right lower extremity below the knee to the foot. Lumbar flexion was 60 degrees and extension 20 degrees, both with pain.

She had diminished sensation L4-S1 on the right and in the left L5 distribution to pinprick. Straight leg raise was negative. It was not felt that she required any further spine surgery. She was advised to continue to treat with Dr. Jaycox for maintenance medications.

On 08/16/2021, the Petitioner returned to Dr. Jaycox with complaints of bilateral foot pain. Medication was refilled.

On 11/15/2021, the Petitioner returned to Dr. Jaycox with complaints of bilateral burning foot pain and bilateral tingling hand pin with numbness. She continued to have bilateral foot drop. She had poor pain control and wished to adjust her medication. She reached MMI and was not capable of working. Drug screening was performed.

On 02/21/2022, the Petitioner returned to Dr. Jaycox with the same complaints. Medication was refilled. Drug screening was performed.

On 05/23/2022, the Petitioner returned to Dr. Jaycox no real changes.

On 08/22/2022, the Petitioner returned to Dr. Jaycox for medication management.

On 08/28/2023, urine drug screening was performed.

The Petitioner was seen by Dr. Butler for an IME evaluation. The Arbitrator notes that Respondent did not introduce this new IME report into evidence.

The Petitioner is currently only treating with Dr. Jaycox for pain every three months.

From an orthopaedic standpoint, Dr. Goldberg explained his interpretation of the 04/26/2018 FCE:

I have been asked to draft a narrative report regarding my interpretation of the functional capacity evaluation regarding my patient was Violet Jaksich-Davis. The Petitioner states that she works with the City of Chicago and her job is sedentary with sitting 8 hours/day. She states she gets an approximately 1-hour lunch and two 15-minute breaks. She states she is not permitted to stand throughout the course of the day. I have reviews the actual FCE and noted that the performance was variable. However, the Waddell's tests are negative. The evaluator does note that the Petitioner did have a very limited tolerance for maintaining any particular position for a prolonged period of time. Although, the examiner feels she may be capable of performing more activity, the Waddell's were negative, regardless, the Petitioner does not meet the sitting requirements of her job. Based upon the FCE, she can sit occasionally, which is up to 3 hours a day. They do note that the maximum amount of sitting during the FCE was 1 hour. This does not allow her to sit up to the 8 hours per day.

> In view of this, I feel the patient can return to work with parameters of the FCE, which indicate that she cannot sit 8 hours during the course of the day. I previously released her to work with permanent restrictions per the FCE. I hope this provides the information you required. (Px 3, p. 230).

The evidence deposition of Dr. Jaycox was taken on 07/20/2022 (Px 5) Dr. Jaycox has been treating Petitioner for pain management since 2018 (Px 5, p. 481). Dr. Jaycox was also the physician who performed the 2 spinal cord implantations that were unsuccessful (Px 3, p. 485). Dr. Jaycox found Petitioner to be at MMI as of 05/18/2020 (Px 3, p. 486).

Dr. Jaycox described Petitioner's limitations and capacity for employability, as follows:

> Q. Okay. I believe that you have made – you indicated that she's at maximum medical improvement. So can you tell the – the judge who will be reading this evidence deposition, in your opinion, to a reasonable degree of medical and surgical certainty, what are her – her physical limitations?
>
> A. Certainly.So I like to start this off with just what – what Violet's dia – primary Diagnosis is failed back surgical syndrome also known as postlaminectomy pain syndrome, Okay?It's the most common pain condition that can occur as an adverse consequence of lumbar decompressive surgery of the kind that – that Dr. Goldberg performed. Incident rates of this particular complication, depending the literature, can be anywhere from 10 to 30 percent, depending on – on the paper, but nonetheless, it's – it's an unfortunate – it's a not unheard of complication and most patients require some treatment of ongoing care. Now, the severity of the symptoms and how disabled an individual is, obviously, like any condition, can vary from person to person. And with and in some cases, the condition can get worse with time. And in my medical opinion, Violet is worse off now than when I first saw her in 2016, and so – in terms of her overall functionality. Okay?
>
> Q. (Nodding.)
>
> A. As far as her – as far as her functional status, as I had indicated in my letter, she has a – a baseline pain score that's in the – typically in the 7 to 8 out of 10 range – wax and wane. She complains of instability and pain when walking and she hurts when sitting. She takes pain medication throughout the day. And so I feel that she is incapable of gainful employment in a meaningful capacity. Could she potentially do sedentary activity? It's hard to say. I pers- -- in my medical opinion, I do not believe so.
>
> (Px 3, pgs. 488-489).

Dr. Jaycox opined that Petitioner's condition is permanent and will need continued medication management (Px 3, pgs. 494, 496). As to the issue of the invalidity of the 04/26/2018 FCE Dr. Jaycox stated:

Q. Doctor, you were talking about functional capacity tests.

A. Yes.

Q. And that – and that – and what is valid and what is invalid in – in your opinion. I was wondering if you could tell me, what is your interpretation of a valid FCE or – or the criteria that you use then?

A. So this – I don't even have to be, you know, vague about it. I teach this to my fellows every year when I'm teaching them how to interpret functional capacity evaluations. The presence of an – of an FCE being valid or invalid has two major implications as I see it. One, it is a tool like any other, just like an MRI or just like a consultation from a colleague or just like a CAT scan or an EMG. It helps guide the Physician's hand, but ultimately the decision is that the physicians has to take all this, including the FCE into his or her auspices and – and make a recommendation. So there are times when I have been more conservative than what an FCE has recommended, and there are times where I have been liberal than what an FCE has recommended, but with regards to your question of what renders an FCE valid or invalid, all that means in the end is if the FCE is invalid, no reasonable recommendations can be made for the patient's functionality on the basis of the FCE. It neither implies nor proves that the malingering or – or magnification was taking place. The petitioner could have fatigued out. It's pain – pain magnification and malingering are one potential cause of invalid FCE, but the reverse is not true. Okay? And similarly, concurrently, a valid FCE means that under the finite circumstances and condition under which that test was carried out, the Petitioner in the modalities that were tested, demonstrated a consistent effort and a reasonable recommendation as to functionality can be made does not have to be made, but can be made. It's ultimately, again, the physician's responsibility to take all that information; and, you know, reasonable physicians can – and reasonable people can disagree on is whether or not the test was valid. That's just – they did not do the test, but they can disagree on what clinically is appropriate in order to implement their treatment on the basis of that test. So in this case Dr. Goldberg's and my difference of opinion as to what Violet could do, that's – that's all it is, it's a difference of opinion. His opinion is based upon this vast experience in orthopedic surgery and his knowledge of his patient, and my mine is based upon my knowledge of pain management and what I feel, based on this, that Violet is capable of; simple as that.

Between 2018 – 2023, Respondent sought 4 IME evaluations of Petitioner with Dr. Kenneth Candido, MD, of the Chicago Anesthesia Pain Specialists. (Rx 5-8). In the 04/17/2023 report, Dr. Candido opines that Petitioner was at MMI either in 2012 or in May 2019, that medical treatment after 06/16/2020 was not reasonable, necessary, or casually related to the

02/11/2011 work accident, and that Petitioner was capable of working with a 25lb restriction (and in particular capable of working as a "Traffic Enforcement Technician"). (Px 8, pgs. 56-58). Dr. Candido also went on to opine that implantation of the spinal cord stimulators was not indicated because of Petitioner's "refusal to have it done" (Rx8, p.58). The Arbitrator notes that this was contrary to the testimony of Petitioner (T.16) and Dr. Jaycox (Px 3, pgs. 506-508).

Respondent initiated vocational rehabilitation for Petitioner around December 2021 (T.18). Petitioner has worked with a series of vocational counselors, and as the date of the 07/25/2023 hearing, has made over 1600 job searches (T. 18-21 and Px 7). Petitioner's vocational counselor was Mr. Patrick Conway (T. 19). Mr. Conway's vocational reports were introduced as Px 7 and Rx 14. These reports indicate that petitioner is engaged in an active good faith effort to find employment and has been unable to be hired through no fault of her own; Mr. Conway states Petitioner is "doing her best." (Px 7, P. 663).

Respondent introduced stipulations of expected testimony for Mr. John Paul-Jael and Mr. Conway (Rx15-16). Mr. Paul-Jael is the deputy of citation administration which is the division in which a traffic enforcement technician operates and that he is intimately familiar with the physical requirements and job duties of this position. Mr. Paul-Jael believes that the job of traffic enforcement technician is within the work restrictions provided by Dr. Goldberg and Dr. Candido.

Mr. Conway's stipulations stated that he has knowledge of the work restrictions given by Drs. Candido, Goldberg, and Jaycox and is familiar with Petitioner's educational and work history and her transferrable skills and that based on his 31 years of experience Petitioner could earn $18.15 / hour as a customer service representative, $18.01 / hour as an office clerk, or $17.61 doing data entry. (Respondent also introduced the job description of a traffic enforcement technician as Rx 4). As of 07/25/2023, Respondent had not offered Petitioner reemployment in this position. (T. 22)

At trial Petitioner was asked what a typical day is like and to describe her current symptomology, and testified as follows:

> Q. Thank you. I would like for you to describe to the judge what a current day in your life is like.
>
> **A.** It's hard. I'm a – I could go to bed at 11:00, 3:00 in the morning, 6:00 in the morning with pain. I'll get zappings every 30 seconds to the ankle and to the foot, and I just take extra gabapentin per Dr. Jaycox. That happens every several months. Besides that, it's just not being able to get into any position. So I bought a therapeutic bed, one that goes up in the back and the legs that go up. Anything – it's in the old-fashioned way of me knowing the Williams Method to get any type of stress off the lower back. I ice, I do exercise, I heat. I've done everything to try and help myself as best as I can. I will get up in the morning, I'll have coffee, I'll lean to the right – I have a pillow right between my couch and the arm of the couch and I lean and I have my legs up, and it kind of gives me some

comfort. If I had anywhere to go, it's like I have to do this for a couple hours. I call it the hips have to open up. I just make up my own name as I go along. I have had great days. I've had bad days. There's more bad then there is good. Nights are rough, days are hard. Within all this time zone, I wish I would have journaled my life. I've played with my nephew. I've gone to weddings. I've gone to funerals, Where I have to be, I have to be. Other than that, I have a dear friend that was always my shopper, and we'd be in the all the stores together. Now, if I have to get something, say around Christmastime, we walk to the back of the store, get the sheets, go maybe sit, have lunch, and I'm done. I know my limitations of when – where I'm at and how long it would take me to get home. Again I ice.

Q. Okay. When do you have an opportunity to do your job searches?

A. I have to do them throughout the day. I'll go to the library daily. It's a lot of work. A lot of reading, a lot of work. In between, I'll print them from the library, I'll bring them home. I'll be up in bed and reading about the jobs just in case somebody wanted to call, and have the descriptions and everything ready to go for them. I have received some phone calls, very kind people, or I'm just told when I call, check e-mail or we'll call you. And that's –

Q. Okay. Now, unless you inhabit another person's body, we have no idea what you feel as a result of this accident. Can you tell the judge what your symptoms are? When you talk about pain or disability, what are you experiencing?

A. I live in 24 hours of pain. Percocets, nothing helps anymore and takes the edge off. I would get little edges at times. Nothing. It's all the way around my lower back and into my groin. It's sciatic, and then it's heaviness to the legs. If I use my arms too much, I will fall to the ground. I mean, sciatic pain, yes. Hip pain – pain, legs, ankles, joints. (T 23-25).

On 07/25/2023, this case then proceeded to trial on the issues of casual connection, medical bills, TTD/maintenance, and nature & extent of the injury (T.4). Both parties then submitted proposed decisions and the Arbitrator took this matter under advisement.

Thereafter, Petitioner continued with job search, supervised by Mr. Conway. (Px 9 and 10, pgs.993-1056). In fact, Petitioner completed another 222 job searches as indicated by Mr. Conway's reports. (Px 9). Petitioner continued to have periodic checkups with Dr. Jaycox. (Px 14).

On 10/25/2023, Respondent's counsel emailed Petitioner's counsel, because the Respondent's committee on finance wanted to contact Petitioner about returning to work. (Px 11) Petitioner was offered her prior position as a traffic enforcement technician, the same job that was offered to Petitioner in 2015 and for which Arbitrator Bocanegra found she was physically incapable of performing. (01/25/2024, T. 28).

Benefits were terminated as of 11/12/2023 as Petitioner was expected to report to work on 11/13/2023 (Px 12). Petitioner did report for work on 11/13/2023 (01/25/2024 T. 27). Initially, Petitioner worked seated, however, a modification was made to allow Petitioner to work standing, with a raised desk, but it made no difference (01/25/2024, T. 31). Petitioner only lasted 2-3 hours before having to go home, due to back and sciatic pain. (01/25/2024. T. 29).

Petitioner was seen by Dr. Jaycox, on an emergency basis, on 11/20/2023, and he again, opined that Petitioner is completely disabled and unable to work (Px 14, p.1079), Dr. Jaycox found that upon physical exam (on 11/20/2023) a worsening of her symptomology from previous visits, with a higher baseline pain scale. Dr. Jaycox attributed this to her return to work (Px 16, p.1095). Dr. Jaycox also authorized 2 disability notes (Px 16, Exas. 2 and 3, pgs.1162-1164).

On 11/21/2023 Petitioner's counsel filed a 19b motion and contacted the Arbitrator and defense counsel informing them of the situation and requested proofs be reopened (Px 13). (The Arbitrator does consider the 11/20/2023 note of Dr. Jaycox, attached to the email as evidence as it was introduced as deposition exhibit #2 at Dr. Jaycox's 01/09/2024 evidence deposition (Px 16) where a proper foundation was laid and defense counsel had an opportunity to cross examine. The Arbitrator finds that once that occurred, any hearsay objection is moot.

The Arbitrator then set the matter for a Webex conference on 12/08/2023. After hearing both sides on 12/08/2023, the Arbitrator excised his discretion, as he still retained jurisdiction, that the interests of justice required reopening of proofs. The Arbitrator found that Respondent created new facts bearing direct relevance to the ultimate issues to be decided in this case. Respondent counsel objected to this, most vehemently and demanded the evidence deposition as he would not waive his hearsay objection to Dr. Jaycox's 2, 11/20/2023 notes. Respondent's counsel was advised that all his objections could be made for the record when proofs were reopened. Accordingly, the Arbitrator set 01/25/2024 as the day to reopen proofs.

Dr. Jaycox's evidence deposition was taken on 01/09/2024 and the deposition proceeded via zoom. A reading of Dr. Jaycox's second deposition indicated that he again reiterated his opinions that Petitioner is incapable of any employment. Dr. Jaycox testified he is not familiar with all aspects of working as a traffic enforcement technician. He testified his 11/20/2023 physical exam indicated that Petitioner was "quite a bit worse off" compared to the 08/07/2023-11/06/2023 visits (3 in total). (Px 16).

Proofs were then reopened on 01/25/2024. Respondent's counsel was allowed to state his objections to reopening proofs. However, the Arbitrator overruled those objections, as he found Respondent's own actions of offering Petitioner a job and her attempting to work created additional relevant facts to be considered. (01/25/2024, T. 7-19)

Petitioner was called to testify about her job searches until October 2023, her current physical condition, and her efforts to work as a traffic enforcement technician between November 13-17 and the symptoms she experienced.

After Petitioner rested (except for the introduction of documentary evidence). Respondent counsel then disclosed that he would be submitting additional exhibits numbered 17 through 24. #17 was a payment log and 18 through 24 were a series of video surveillance films taken of Petitioner between 01/04/2024 and 01/21/2024 (Rx 19-24) and one showing Mr. Paul-Jael performing the job of a traffic enforcement technician, in a cubicle, for a few minutes.

Respondent called Ms. Camella Nanquil, an investigator for Allied Universal, who was a personwho conducted video surveillance on Petitioner (01/25/2024, T. 81). In her foundation testimony, Ms. Nanquil testified she observed Petitioner entering her vehicle (a Honda Mini-SUV), followed her to an auto dealership smoking and talking on a cell phone and driving to a nearby currency exchange.

Ms. Nanquil was asked by defense counsel.

> Q. So were you able to observe her more than what you were actually able to get on film?
>
> A. No. Most observation I had of her was videotaped. (01/25/2024, T. 85).

At this point, Petitioner's counsel interjected that Petitioner would stipulate to all films, and thus obviate the need for a number of foundation witnessed to testify if he and Petitioner could get a look at the films, especially any surveillance that defense counsel felt was outcome dispositive, so that Petitioner could view it, and explain her behavior, if she needed to. This exchange then ensued between defense counsel and the Arbitrator:

> Mr. Lloyd: We had testimony that Ms. Jaksich, and she reported to her own doctor, that she can only stand for longer than 10 minutes. We have her at a bar well over a couple of hours standing the entire time without any obvious discomfort and in a jovial mood. Again, that also shows her drinking despite the fact that Dr. Jaycox—
>
> Ms. Jaksich: My brother's retirement party.
>
> Mr. Lloyd: In his own deposition indicated that she wasn't supposed to be drinking.
>
> Ms. Jaksich: I did go out.
>
> The Arbitrator: Again, Mr. Lloyd, when asked that questions about alcohol specifically, and this was about 20 minutes ago, she said no, and –
>
> (01/25/2024, T, 88-89).

A short recess then took place to allow Petitioner and her attorney to view the surveillance tapes in an empty adjacent hearing room. After about 10 minutes the parties returned and the trial began anew. Ms. Nanquil resumed the stand and testified that one of the tapes involved surveillance from 01/05/2024 where she watched Petitioner drive to and then enter a local bar called "The Crowbar". Ms. Nanquil ultimately went into the bar and was there for 25 minutes before Petitioner departed. Ms. Nanquil claimed to have only seen Petitioner standing during this time, taking a swig from a beer bottle, and talking to numerous people. (01/25/2024, T. 99).

This is contrary to her earlier testimony which said she did not observe more than what was videotaped. Ms. Nanquil offered no explanation of why she only had 30 seconds of tape inside the Crowbar.

Petitioner testified she went to the Crowbar because it was her brother's retirement party and besides standing she sat and talked with other guests she knew (01/25/2024, T. 106). Petitioner also testified that she did shake out a throw rug, carried a ¾ empty bottle of windshield washer fluid and did some sweeping.

Petitioner also introduced an updated bill/lien balance which superseded the previous exhibit (Px 8) in the amount of $7,298.40 which were incurred as a result of the 02/11/2011 work injury (Px 17) (See 01/25/2024, T. 34)

Proofs were then closed a second time. The Arbitrator has reviewed the video surveillance of Petitioner and Mr. Paul-Jael demonstrating the duties of a traffic enforcement technician for 3 ½ minutes.

The surveillance of Petitioner begins on 01/03/2024 and shows her getting into her Honda Mini-SUV driving to a muffler shop standing, but mostly leaning for support on a window ledge, smoking. On 01/04/2024, Petitioner is observed again getting in to her Honda Mini-SUV. On 01/05/2024 Petitioner is observed walking to her vehicle and then briefly speaking with someone outside and then about 30 seconds of her either holding a bar chair for support or leaning against the bar while talking with some of the people there.

On, 01/14/2024 Petitioner is seen walking to a nearby house, sweeping her porch For 30 seconds and whiping the back window of her vehicle. On 01/20/2024, Petitioner is seen walking to her Honda Mini-SUV and a gas station her front lights and taillights with cleaning fluid.

CONCLUSIONS OF LAW

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

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

305/1(b)3(d). To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of 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).

Petitioner testified in open hearing twice before the Arbitrator who viewed her demeanor under direct examination and under cross-examination. Petitioner's manner of speech, body language, and flow of answers to questions was, overall, indicative of sincerity. She answered questions in a consistent manner and pace. There were times when she appeared physically uncomfortable but this did not change whether on direct or cross examination. The Arbitrator did not observe any body language that seemed exaggerated or contrived. Her testimony is believed.

The credibility of other witnesses is discussed below.

In support of the Arbitrator's decision regarding (F), whether Petitioner's current condition of ill-being is causally related to the 02/07/2011 work accident, the Arbitrator finds the following:

In 2015, Arb. Bocengra found Petitioner sustained a compensable work injury on 02/07/2011. Since then, all medical records, medical reports, and credible testimony established that Petitioner's current condition of ill-being was proximately caused by the 02/07/2011 work accident. Any references to reports authored by Dr. Jesse Butler (in Dr. Candido's IME reports) are mooted by Arb. Bocanegra's decision. Dr. Candido does not contest causation. He only states that he found Petitioner to be at MMI on May 2019 (p. 56, Rx 8).

Respondent introduced no credible additional evidence to dispute this issue when proofs were reopened on 01/25/2024. Accordingly, the Arbitrator finds that Petitioner's current condition of ill-being is casually related to the 02/07/2011 work injury, to wit: failed back syndrome.

In support of the Arbitrator's decision regarding (J), whether the medical services provided to Petitioner were reasonable and necessary, and whether Respondent and has paid all appropriate charges for reasonable and necessary medical services, the Arbitrator finds the following:

As a threshold issue, the Arbitrator finds that the implantations of the 2 spinal cord stimulators was reasonably necessary to try and cure Petitioner's acute low back pain. The Arbitrator rejects Dr. Candido's contentions that the implantations were done against Petitioner's wishes. First, no person can have not one, but two, implantations done against their will. Second, Dr. Candido's contentions are contradicted by the credible testimony of Petitioner and Dr. Jaycox.

At the 01/25/2024 reopened hearing, Petitioner claimed $7,298.40 (Px 17). This was modification from the $6,404.40 initially claimed on 07/25/2023 due to additional incurred charges between 07/26/2023 and 01/25/2024.

Petitioner testified without contradiction that there charges were incurred as a result of her 02/07/2011 work injury. Accordingly, Petitioner is entitled to have and receive the sum of $7,298.40 pursuant to Section 8(a) of the Act.

In support of the Arbitrator's decision regarding (k), what temporary benefits are in dispute, the Arbitrator finds the following:

Petitioner has been under doctor's care since her date of injury. All TTD/maintenance issues prior to 10/13/2015 were addressed in Arb, Bocanegra's 12/21/2015 decision. Since October 2015, Petitioner has been total disabled from working by Dr. Jaycox. She has undergone spine surgery, physical therapy, and attempted implantation of 2 spinal cord stimulators, and continued to be on prescribed pain medication.

From December 2021, until the reoffer of the traffic enforcement technician job, and termination of vocational assistance on 10/27/2023 (Px 9, p.1003) Petitioner engaged in a good faith job search under the direction of a number of vocational specialists.

All TTD benefits were paid through 10/13/2015 by virtue of the previous 19b hearing as to this present hearing. The Petitioner is entitled to receive the sum of $820.40 for 420 6/7 weeks (10/14/2015-11/12/2023). There is no issue of TTD over payment or credit between those dates. Respondent is entitled to a credit of $273,541.50 for TTD previously paid and $233,824.76 in maintenance previously paid however, these payment credits reflect ALL monies paid in benefits since 02/07/2011 and not just since October 2015 (T.5-6).

In support of the Arbitrator's decision regarding (L), what is the nature and extent of the injury, the Arbitrator finds the following:

Based upon a review of all the evidence, documentary, testimonial, and visual the Arbitrator finds Petitioner to be permanently and totally disabled (PTD). The Arbitrator finds Dr. Jaycox's opinions on disability to be more persuasive than those of Dr. Candido, as Dr. Jaycox has been her treating physician for over 6 years and is intimately familiar with her medical condition. The Arbitrator is aware that Mr. Conway, in his stipulation of expected testimony, opined that Petitioner is capable of obtaining employment within Dr, Candidio's restrictions. However, this opinion is belied by the fact that Petitioner has engaged in a good faith job search (See Px 5,6, 10 and Rx 14}, and that since December 2021 Petitioner has had over 1,800 job contacts without being hired, by any of these prospective employers. And in spite of 1,800 + job contacts, all done under the supervision of a vocational counselor selected by Respondent, and done without a trace of non-cooperation or insincerity, the only job Respondent believes Petitioner is capable of performing is the exact same one she could not perform in 2015. The Arbitrator notes that in 2015, Petitioner had yet to undergo a spinal fusion and 2 failed spial cord stimulator implantations. On 07/25/2023 Respondent offered the stipulations of expected testimony of Messrs. Conway and Paul-Jael that Petitioner was capable of working full time as a traffic enforcement technician.

Respondent, however made no actual job offer. Such an offer only took place approximately 3 ½ months after proofs were closed. And when offered the job of traffic enforcement technician, the Arbitrator finds that Petitioner did make a good faith attempt to work in that position. But, as in 2015, Petitioner could only tolerate 2-3 hours/day before her pain levels caused her to leave early for home. Dr. Jaycox's 11/20/2023 physical exam documents increased symptomology.

Respondent offered a number of videos, which the Arbitrator has reviewed, in an attempt to prove Petitioner's physical condition is inconsistent with her testimony and Dr. Jaycox. Contrary to the assertions made by Respondent there was no video surveillance of Petitioner "at a bar for well over a couple of hours standing and in a jovial mood" and "drinking alcohol". The video of the inside of the "Crowbar" lasted 30 seconds and showed Petitioner leaning on the bar or a chair talking to some people at her brother's retirement party. In other videos, Petitioner is shown to be leaning on a window ledge smoking, shaking a light rug with her arms while remaining straight, walking, driving short distances, and cleaning her auto's back window and lights with fluid.

As noted INFRA, on 07/25/2023 Petitioner testified, in part:

> If I had anywhere to go, it's like I have to do this for a couple hours. I call it the hips have to open up. I just make up my own name as I go along. I have had great days. I've had bad days. There's more bad then there is good. Nights are rough, days are hard. Within all this time zone, I wish I would have journaled my life. I've played with my nephew. I've gone to weddings. I've gone to funerals, Where I have to be, I have to be. Other than that, I have a dear friend that was always my shopper,

> and we'd be in the all the stores together. Now, if I have to get something, say around Christmastime, we walk to the back of the store, get the sheets, go maybe sit, have lunch, and I'm done. I know my limitations of when – where I'm at and how long it would take me to get home. Again I ice.
>
> (T. 23-25).

In sum, Petitioner has never made a claim of total infirmity, and there was nothing in the video surveillance, offered in to evidence, which is inconsistent with Petitioner's testimony. The Arbitrator witnessed Petitioner's discomfort, having to often stand, sit, and change position in the hearing room. The issue, at bar, is whether Petitioner can sit/stand for 7-8 hours per day reviewing red light camera films, and as in 2015, with a different Arbitrator, this Arbitrator finds Petitioner cannot.

In *ABB Services v. Industrial commission,* 316 I11.App.3d 745, 737 N.E.2d 682, 250 I11.*Dec. 60* (5th district. 2000), the court provided an analytical framework for determining how to prove a PTD claim, The Petitioner sustained an injury that aggravated a preexisting condition of spinal stenosis, requiring three surgeries. A functional capacity evaluation demonstrated he could perform at the medium-heavy physical demand level. The treating physician did not believe this was an accurate representation of the Petitioner's work ability. The Petitioner was taking narcotic medications for pain that made his reflexes slower, affected his speech and made him drowsy or depressed. The Petitioner's treating physician testified he was "100% disabled" for his type of work and suggested pain management or vocational rehabilitation. 737 N.E.2d at 684.

In *IBB*, the Petitioner was examined by a vocational counselor who testified that he was not a candidate for vocational rehabilitation and that a stable job market did not exist for his services. The Arbitrator discounted videotape evidence of the Petitioner's activities and concluded he was permanently and totally disabled. The Commission affirmed and adopted the decision of the Arbitrator. The appellate court, citing *Valley Mould & Iron v. Industrial Commission,* 84 I11.2d 538, 419 N.E.2d 1159 (1981), *established* three ways to prove a total, permanent disability:

1. The Petitioner can prove PTD by a preponderance of the medical evidence. The "medical" permanent total is proved when Petitioner's medical condition makes him or her obviously unemployable.

2. If the Petitioner's disability is limited in nature so that he or she is not obviously unemployable, or if there is no medical evidence to support a claim of total disability, the burden is on the Petitioner to establish the unavailability of employment to a person in his or her circumstances. However, once the employer establishes that he or she falls into this odd-lot category, the burden of proof shifts to the employer to show that some kind of suitable work is available on a regular and continuous basis.

3. If the Petitioner fails to make out of prima facie case of odd-lot total permanent disability, then the Petitioner must demonstrate that given his or her condition and in

> light of his or her age, training, experience, and education, he or she is permanently and totally disabled. This can be accomplished by a showing of diligent but successful attempts to find work or by proof that, because of age, education, training, and work experience, the Petitioner is unfit to perform any but the most menial tasks for which no stable labor market exists.

In summary, the three ways by which a Petitioner can demonstrate permanent and total disability are (1) by preponderance of the medical evidence, (2) by showing a diligent but successful job search, or (3) by showing that because of age, training, education, experience, and condition, no jobs are available to a person in the Petitioner's circumstances.

As this case Petitioner has met her burden that she is permanently and totally disabled through the medical records and Dr. Jaycox's credible testimony which established the condition of a failed back syndrome. Petitioner's own credible testimony establishes there are only limited she can do during the day due to her continuous back and leg pain. The video surveillance does nothing to contradict this.

The Arbitrator agrees with the medical opinions of Drs. Goldberg and Jaycox in not giving much weight to invalid 04/26/2018 FCE when determining Petitioner's level of disability. The evidence shows that the exam was considered invalid because it was self-terminated due to pain before a physical demand level could be assessed, and not considered invalid because of malingering or manipulative behavior.

In addition, Petitioner has established that she has established odd-lot permanent and total disability by virtue of the fact she has engaged in a good faith job search to find regular and continuous employment since December 2021.

The Arbitrator finds that Mr. Conway's opinion on employability does not trump the 1800+ job contacts over the past 21months, the observed physical condition of Petitioner by Dr. Jaycox, and the experience Petitioner had when failing to complete more than a quarter of a shift on the exact job Respondent alleges Petitioner to be capable of performing. Respondent's video evidence has no probative value, and Petitioner is unable to work as a traffic enforcement technician on a full-time basis. Respondent did not establish by a preponderance of credible evidence, that suitable work is available to Petitioner is a stable labor market.

Accordingly, Respondent shall pay Petitioner permanent and total disability benefits for life commencing on 11/20/2023 as provided in section 8(f) of the ACT.

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

Pursuant to Section 16(B) of the Act, the law firm of GWC Injury Lawyers, LLC is entitled to have receive every fifth $820.40 payment for 364 weeks, once this award becomes final.

In support of the Arbitrator's decision regarding (m), what sort of penalties or fees be imposed upon Respondent, the Arbitrator finds the following:

The Arbitrator does not award penalties or fees because Respondent relied, in good faith, on the opinions of Dr. Candido and Mr. Conway.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC007125
Case Name	Blanca Miranda v. Hy-Vee, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0075
Number of Pages of Decision	14
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Mark Wilson
Respondent Attorney	Christopher Crawford

DATE FILED: 2/18/2025

/s/Maria Portela,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANKAKEE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BLANCA MIRANDA,

Petitioner,

vs. NO: 22 WC 7125

HY-VEE,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission affirms and adopts the Decision of the Arbitrator, however corrects the scrivener's error to complete the sentence on the top of page 10 of the Arbitrator's Decision. The Commission amends the phrase that reads "Accordingly, the Arbitrator" to read "Accordingly, the Arbitrator finds that Respondent shall authorize and pay for the prospective left knee treatment recommended by Dr. Paul Perona including physical therapy and left knee revision surgery."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 21, 2024 is hereby affirmed and adopted.

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

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

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

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

February 18, 2025
MEP/dmm
O: 011425
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/s/ *Maria E. Portela*
Maria E. Portela

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

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC007125
Case Name	Blanca Miranda v. Hy-Vee, Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	Mark Wilson
Respondent Attorney	Christopher Crawford

DATE FILED: 2/21/2024

/s/ Jessica Hegarty, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 21, 2024 5.10%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Blanca Miranda
Employee/Petitioner

v.

Hy-Vee
Employer/Respondent

Case # **22** WC **007125**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jessica A. Hegarty**, Arbitrator of the Commission, in the city of **Kankakee**, on **12/18/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **12/18/23**, 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 $**27,475.24**; the average weekly wage was $**528.37**.

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 $**11,074.80** for TTD, $**1,809.30** & $**2,346.64 (PPD Advance); $3,418.44 (net non-occupational disability)** for other benefits, for a total credit of $**18,649.18**.

Respondent shall be given a credit of $**16,342.43** 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.

ORDER

1. **Respondent shall pay Petitioner temporary total disability benefits of $352.25/week for 96 & 4/7 weeks, commencing March 4, 2021, through May 16, 2021; June 28, 2021, through August 22, 2021; and June 28, 2022, through December 18, 2023, as provided in Section 8(b) of the Act.**

2. **Respondent shall pay Petitioner temporary partial disability benefits of $1,809.30 for 13 & 5/7 weeks, commencing May 17, 2021, through June 27, 2021 and August 23, 2021, through October 17, 2021, as provided in Section 8(b) of the Act.**

3. **Respondent shall pay the following reasonable and necessary medical services, pursuant to the medical fee schedule: $438.50 (Peru Volunteer Ambulance); $2,827.00 (St. Margaret's Health Peru); $135.00 (Central Illinois Radiology); $2,146.00 (Family Orthopedics); $44,788.80 (St. Margaret's Hospital); $1,045.00 (Anesthesia Associates); $384.00 (Morris Orthopedics); $9292.00 (Morris Hospital) as provided in Sections 8(a) and 8.2 of the Act.**

4. **Respondent shall authorize and pay for the prospective left knee treatment recommended by Dr. Paul Perona including physical therapy and left knee revision surgery.**

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

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

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

Signature of Arbitrator

February 21, 2024

ICArbDec19(b)

ADDENDUM TO THE DECISION OF THE ARBITRATOR

FINDINGS OF FACT

On March 4, 2021, Petitioner, then 71 years old, was employed by Respondent as a customer service clerk and had been so employed since June 2000. (Transcript "TX" p. 7-8) Petitioner's job duties required her to process a variety of customer transactions including the payment of utility bills, postage, and Western Union transactions. Petitioner testified she was on her feet for her entire shift. (TX p. 8)

Petitioner underwent left total knee replacement surgery on June 10, 2020, followed by a course of post-operative physical therapy. Petitioner was released to return to her full-duty job for Respondent on December 14, 2020. Petitioner testified that she returned to work for Respondent on that date and in the months leading up to her March 4, 2021, trip and fall accident, she had no pain or difficulties with her left knee and was able to perform her normal work duties. (Id., pp. 7- 12)

Respondent does not dispute that on March 4, 2021, Petitioner sustained accidental injuries that arose out of her employment. (Arbitrator's Exhibit "Arb" 1)

Regarding her accident, Petitioner testified she was waiting on a customer when she tripped over an electric cord and fell onto the ground. (TX pp. 8-10) Petitioner testified she was in excruciating pain following the fall and was unable to get up off the ground as she could not bear weight on her left leg. (Id.) She was transported from her workplace to the ER at Illinois Valley Community Hospital ("IVCH") via ambulance. (Id.)

The March 4, 2021, records from IVCH note that Petitioner was transported by ambulance to the ER with complaints of left knee, left groin, left shoulder, and left arm pain after tripping on a cord at work and falling onto her left side. (Petitioner's Exhibit "PX" 2) An abrasion to her left knee, the size of a quarter, was noted. X-rays of Petitioner's left knee showed a total knee arthroplasty in place, a suspected small joint effusion, and subtle lucency at the metal-bone interface around the tibial component that was likely normal but could be a reflection of minimal loosening. (Id.) Petitioner reportedly underwent left knee replacement surgery 6 months prior with Dr. Perona. (Id.) X-rays of Petitioner's left femur, left shoulder, and left humerus were negative for fracture. (Id.) Petitioner was diagnosed with a left knee contusion, placed in a knee immobilizer, taken off work, and referred to Occupational Health. (Id.)

On March 8, 2021, St. Margaret's Occupational Health noted that Petitioner had difficulty walking and was limping. On exam, decreased left knee flexion and swelling were noted. Petitioner was restricted to seated work and referred to Dr. Perona, who performed her prior left knee surgery. (Id.)

Petitioner testified that Respondent was unable to accommodate her restrictions. (TX p. 11)

On March 11, 2021, Petitioner presented to Dr. Perona's office, Family Orthopedics, where Carrie Lopez, a physician's assistant, noted that Petitioner had undergone a left total knee arthroplasty on June 10, 2020, with Dr. Perona. Petitioner reported that one week prior she tripped over a cord at work and landed on the lateral side of her left knee. She complained of sharp left knee pain at a 9/10 with activity and 1-2/10 with rest. (PX3) Petitioner reported difficulty getting up from a seated position and increased pain with weight-bearing. Tylenol 3 and rest helped with her pain. On exam, an abrasion was noted on the lateral portion of the knee along with effusion and grade 1 medial laxity with a good endpoint and full extension. A diagnosis of a left knee injury, contusion, and pain was noted. Petitioner was to remain off work while she rested and iced her knee. (Id.)

On April 1, 2021, Dr. Perona noted that Petitioner presented one month following her fall at work with complaints of pain, now in the anterior aspect, of her left knee. She reported difficulty flexing her knee, walking more than 1-2 blocks, standing, and traversing stairs. On exam, tenderness in the anterior portion and generalized swelling was noted along with full extension, and flexion of 80 degrees. Dr. Perona recommended a course of physical therapy, three times per week, for 2-3 weeks. (Id.)

On May 6, 2021, Dr. Perona noted Petitioner's report that physical therapy was helping, and she requested more therapy sessions. Petitioner rated her medial knee pain at a 1/10 and described it as more of an "ache". Standing for extended periods exacerbated her pain. On exam, the doctor noted decreased left knee swelling, active full extension, and flexion at 90 degrees. (Id.) Petitioner was instructed to continue physical therapy and return to work, as tolerated, with breaks when necessary. (Id.)

As of May 17, 2021, Petitioner returned to work and was paid temporary partial disability ("TPD") benefits by Respondent. (RX 7)

On June 3, 2021, Dr. Perona noted Petitioner's complaints of left knee swelling and increased pain with activity. (PX3) Dr. Perona noted that the March 4, 2021, fall set Petitioner's knee condition back resulting in fibroarthrosis. The doctor recommended a left knee manipulation under anesthesia. Petitioner indicated a willingness to proceed with that procedure, pending approval from Respondent's carrier. Her prior work restrictions were continued. (Id.)

Petitioner continued to work under these restrictions and received TPD benefits from Respondent until June 27, 2021. (RX7)

On June 28, 2021, Petitioner underwent left knee manipulation under anesthesia, performed by Dr. Perona. (Id.) The doctor's operative report noted that he was able to "break up adhesions at about 80-90 degrees of flexion" resulting in improved flexion at about 115 degrees (Id.).

Petitioner testified she was taken off work following the procedure. (TX. p. 14)

On June 29, 2021, Petitioner returned to physical therapy. (PX4)

On August 5, 2021, Dr. Perona noted that Petitioner had completed her last session of physical therapy and was performing a home exercise program. (PX3) Petitioner rated her pain at a 4-5/10 with activity and 0/10 at rest. Petitioner complained of throbbing pain in the anterior aspect of her left knee, increased swelling with activity, pain traversing stairs, and pain with increased walking. On exam, the doctor noted full extension, flexion at 95 degrees, and minimal swelling. Dr. Perona recommended another month of physical therapy and released her to return to work in two weeks, no more than 15 hours per week. (Id.)

Petitioner testified that Respondent accommodated her restrictions and paid TPD benefits to supplement her light-duty work income. (TX. p. 14; RX7) She further testified that she was paid TTD benefits for the period that she was off work following her accident. (TX., pp. 15-16)

On September 9, 2021, Dr. Perona noted Petitioner's report that her left anterior medial knee pain was 0/10 at rest and 3/10 with activity. The doctor ordered another month of physical therapy and continued her prior restrictions noting she should work no more than 5 hours per shift, 3 days a week. (PX 3)

On October 14, 2021, Dr. Perona noted that Petitioner had six more weeks of physical therapy scheduled. Petitioner reported her left knee pain at a 1-4/10 and that physical therapy and overuse exacerbated her pain. (Id.) On exam, full extension and flexion at 95 degrees was noted. The doctor instructed Petitioner to finish her remaining physical therapy sessions, followed by a home exercise program. Dr. Perona released her to return to regular work duties effective October 18, 2021, and to follow up on an as-needed basis. (Id.)

Petitioner testified that upon her return to full-duty work, her left knee pain and swelling persisted and she continued taking pain medication that Dr. Perona provided. (TX. p. 17) She sought treatment with Dr. Perona regarding her persistent left knee pain and swelling. (Id., pp. 17-18)

On June 28, 2022, Dr. Perona noted that Petitioner presented with a history of swelling in her lateral left knee that had increased to a 9/10 with activity and a 5/10 at rest. (PX3) Petitioner reported sharp pressure and increased pain with flexion and palpation. On exam, full extension was noted along with some swelling and a posterior lag of the left knee as compared with the right. Petitioner reported that her workload had decreased to two days on, two days off, due to her increased symptoms. Dr. Perona diagnosed a possible posterior cruciate ligament ("PCL") tear and recommended another course of physical therapy and, if no improvement was appreciated, a possible future surgical revision. (Id.) Petitioner was taken off work. (Id.)

On September 9, 2022, Petitioner attended a Section 12 examination with Dr. Joseph Newcomer at the request of Respondent. (RX 3, Ex. 2) The doctor reviewed Petitioner's medical records noting Dr. Perona's concern that Petitioner had injured her posterior cruciate ligament as her original knee replacement surgery was a cruciate-retaining total knee arthroplasty using MAKO. Petitioner reported to Dr. Newcomer that she was doing relatively well and was back at work until June 29, 2022, when she was taken off work and prescribed physical therapy due to increased swelling and pain in her left knee. (Id.). Petitioner complained to Dr. Newcomer of occasional left knee swelling and pain at work after 3 to 4 hours. Further, she reported having to climb stairs one at a time. On exam, Dr. Newcomer noted, "She does have full extension and good quad control, but I am only able to flex only to 90 degrees, possibly to 95 degrees with a firmer endpoint, and that did bring a tear to her eye." (Id.) Dr. Newcomer noted that Petitioner gave a consistent effort throughout the examination noting, "At no time did I feel she was exaggerating symptoms or displaying secondary gain behaviors." (Id.) The doctor diagnosed persistent left knee stiffness and arthrofibrosis despite manipulation under anesthesia. He opined that Petitioner sustained a knee contusion from the slip-and-fall accident. The manipulation under anesthesia was the result of ongoing arthrofibrosis and loss of range of motion, unrelated to her work accident. He further opined, "I do not believe she suffered any impairment as a result of the incident that occurred at work, but I also believe she continues to have significant stiffness in the knee and may require further management as it relates to that stiffness." (Id.) The doctor further noted, "She seemed to be happy returning to work with the amount of flexion she had in December 2020, so I do think at some point they can get her back to baseline where she will have no further sequelae as a result of this fall." He noted Petitioner could work "with frequent breaks" and the ability to get off her feet as needed ifs she is developing swelling." (Id.)

Petitioner testified that shortly after her appointment with Dr. Newcomer her benefits were terminated. (TX. p. 20) She was paid non-occupational disability benefits from September 20, 2022, to December 20, 2022. (RX5)

On October 11, 2022, Dr. Perona noted that Petitioner had finished with physical therapy. She reported throbbing medial left knee pain and pain at the top of the left knee exacerbated by activity. On exam, the doctor noted left quad atrophy and posterior sag on the left as opposed to the right and a positive drawer test. (PX 3) The doctor noted a possible PCL tear from a twisting injury. He recommended an additional month of physical therapy and discussed surgery consisting of a possible conversion of the left knee total arthroplasty to a "PS or TS liner". Petitioner was to remain off work and continue in physical therapy. (Id)

Petitioner underwent additional physical therapy and was taken off work by Dr. Perona on July 29, 2022, through March 26, 2023. (PX8)

On January 5, 2023, Dr. Perona noted Petitioner's persistent complaints of throbbing lateral left knee pain she rated at a 4/10 with activity, 0/10 with rest. On exam, Petitioner's left knee had grade 1 medial and lateral laxity. The doctor continued Petitioner's physical therapy and kept Petitioner off work. (PX 3)

On February 7, 2023, Dr. Perona noted Petitioner's complaints of throbbing pain in her lateral left knee that was about the same as last month. Petitioner reported increased pain after walking long distances and waking up from sleep due to pain. The doctor noted Petitioner should continue in physical therapy. (Id.)

On March 14, 2023, Dr. Perona noted Petitioner's report that she had been unable to do physical therapy due to insurance. She had been riding a stationary bike at home and felt she had improved 50% although her complaints of throbbing lateral knee pain persisted. Dr. Perona released Petitioner to return to sit-down work as of March 27, 2023, for 5-hour shifts with a 15-minute break every 1½ hours. (PX 3) Petitioner testified that Respondent did not accommodate those restrictions. (TX. pp. 20-21)

Petitioner testified that she underwent her last round of physical therapy on October 17, 2023. (Id., p. 22) Although the therapy improved her ability to bend her knee, the relief was temporary. (Id., p. 22-23)

The records from Petitioner's physical therapy provider note that she was discharged from treatment on October 17, 2023, with a diagnosis of left knee pain, stiffness, weakness, and effusion. Petitioner complained of left knee pain, stiffness, and difficulty walking. (PX7) The therapist noted that Petitioner's left knee flexion had improved, and she demonstrated the ability to step down from a step. (Id.)
Petitioner followed up with Dr. Perona on May 11, 2023, with lateral and posterior left knee complaints of throbbing burning pain. Petitioner was doing sit-down work.

Petitioner's last appointment with Dr. Perona, prior to the hearing in this matter, was on November 1, 2023, at which time she reported her anterior left knee pain was at a 4/10 and that overuse exacerbated her pain. (Id.) Dr. Perona released her to return to work part-time with no weight-bearing and the ability to take a break as needed. (PX8)

Petitioner testified that Respondent was unable to accommodate those restrictions. (TX. pp.21-22)

Regarding her current condition, Petitioner testified that her left knee pain is constant. She experiences persistent swelling and is limited in her ability to traverse stairs. (TX. p. 23) She testified that in the months before her March 4, 2021, trip and fall accident, she was able to cut the grass, rake leaves, and go for walks without pain. (TX. pp. 23-24)

She testified that she would like to undergo surgery if recommended in the future. (TX. pp.24-26)

On cross-examination, Petitioner was questioned regarding an employee wage verification form indicating gross wages paid to Petitioner during the periods she was off work and receiving workers' compensation benefits. (RX1; TX. pp. 31-39) Petitioner testified that she was receiving vacation pay and flex time when she was off work. (TX. pp. 32-34) On re-direct, Petitioner testified regarding her paystubs from August 27, 2021, July 3, 2022, and July 15, 2022, indicated she was paid vacation pay on these dates which are indicated on the employee wage verification form as gross wages. (PX 13; PX 14; RX 1)

Testimony of Dr. Perona

On February 21, 2023, Dr. Perona testified via evidence deposition. (PX9) Dr. Perona is a board-certified orthopedic surgeon. (Id., pp. 4-5) He viewed the video of the slip and fall accident in question. (Id., p. 12) He further testified that the slip and fall resulted in fibroarthrosis, a condition where the soft tissues scar down and result in significant loss of motion and pain. (Id., p. 11) The doctor based his opinion on the mechanism of injury which was a fall with a twisting type injury and contusion to the knee. Dr. Perona testified that Petitioner had no significant left knee pain and an increased range of motion before the fall, whereas after the fall, she exhibited limitations in her range of motion and increased pain and swelling. (Id., p.12)

Dr. Perona testified that he performed manipulation of Petitioner's left knee under anesthesia to treat fibroarthrosis. (Id.) Dr. Perona diagnosed a possible posterior cruciate ligament ("PCL") tear based on a posterior sag test that compared Petitioner's left knee to her right knee. (Id., p. 21) He opined that Petitioner's left knee fibroarthrosis and possible PCL tear were related to the slip and fall accident at work noting the chain of events showed increased symptoms and disability following the slip and fall accident. (Id., p. 26) He recommended that Petitioner undergo conservative treatment and if no improvement was noted, a revision surgery which would entail removing the femoral and tibial component which would then be converted to either a total stabilized or posterior stabilized cruciate replacement implant. (Id., pp. 20) Dr. Perona further testified that Petitioner could not return to her pre-accident full duty although she could return to work in a sedentary capacity. (Id., pp. 28-29)

On cross-examination, Dr. Perona acknowledged that Petitioner had fibroarthrosis in November 2020. (Id., p.34) The doctor agreed that upon his release of Petitioner to full-duty work, in December 2020, she had 70 degrees of flexion in her left knee. (Id., pp. 42-43) He testified that he was not comfortable returning her to work now because the Petitioner said she could not return to work. (Id., p.43)

On re-direct, Dr. Perona opined, given Petitioner's pre-accident fibroarthrosis, that the slip and fall accident aggravated Petitioner's preexisting fibroarthrosis which necessitated the treatment he provided and the treatment he is currently recommending. (Id., pp. 45-48) He reiterated his opinion that Petitioner's current condition of ill-being is causally related to the March 4, 2021 fall. (Id., p. 48) He further testified he found Petitioner's pain symptom complaints to be sincere throughout his treatment. (Id., p. 48)

Testimony of Dr. Newcomer

The evidence deposition of Respondent's Section 12 physician, Dr. Newcomer, was taken on May 12, 2023. (RX3) Dr. Newcomer is board-certified in orthopedic surgery. (Id., pp.4-5) He testified Petitioner's arthrofibrosis was associated with her pre-accident knee replacement surgery because she was diagnosed with that condition during her post-operative course of treatment. (Id., p. 12) After a knee replacement procedure, stiffness and/or a decreased range of motion is expected. (Id., p. 13) Dr. Newcomer did not believe the symptoms Petitioner was experiencing at the IME were connected to Petitioner's slip and fall accident because Petitioner experienced stiffness before her work accident. (Id., p. 16)

Dr. Newcomer did not think the accident aggravated a pre-existing condition, noting that Petitioner exhibited no new symptoms that resulted from the fall. (Id.) He further testified that any left knee surgery was unrelated to Petitioner's work accident. (Id., pp. 17-18) The doctor testified his prognosis for Petitioner was guarded because of the stiffness in her knee. (Id., p.18) He thought Petitioner was okay to work, but recommended she have the option to sit every couple of hours. (Id.) After viewing the video of the slip and fall accident, none of Dr. Newcomer's opinions changed. (Id., p.20)

On cross-examination, Dr. Newcomer agreed that the Petitioner gave a consistent effort throughout his examination of her, and at no time did he feel she was exaggerating symptoms or displaying secondary gain behaviors. (Id., p.22) He agreed that she came across as honest and credible. (Id.) He did not see any evidence in the medical records that Petitioner was exaggerating her symptoms. (Id., p. 23) He agreed the sit-down work-only restrictions given by Dr. Perona as of March 14, 2023, were reasonable. (Id., pp. 27-28) He has no qualms with the treatment Dr. Perona provided to Petitioner. (Id., p.28)

CONCLUSIONS OF LAW

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

The Arbitrator found Petitioner's testimony at the hearing credible. She presented herself as an honest, sincere, individual. There are no allegations of malingering or secondary gain contained in the record. Dr. Perona testified he found her pain symptom complaints to be sincere throughout the course of his treatment of her. (PX9, pp.48-49) Likewise, Respondent's Section 12 physician, Dr. Newcomer, agreed that the Petitioner gave a consistent effort throughout his IME examination and at no time thought she was exaggerating her symptoms or displaying secondary gain behaviors. (RX3, p.22) Her testimony regarding the condition of her left knee and her ability to perform her regular customer service clerk duties in the few months preceding the March 4, 2021 fall is unrebutted.

It is uncontested that before her March 4, 2021, trip and fall accident, Petitioner had recovered from left total knee replacement surgery, was released by her surgeon without restrictions, and was working her normal four-day, full-duty job as a customer service clerk for Respondent which required her to be on her feet for her entire shift. It is also uncontested that Petitioner sustained acute trauma to her left knee when she tripped on a cord and fell onto her left side and left knee and was unable to get up off the ground as she couldn't bear any weight on her left leg.

She was transported via ambulance to the ER at IVCH where a quarter-sized, left knee contusion was noted along with Petitioner's complaints of left knee pain. X-rays of Petitioner's left knee noted a suspected small joint effusion, and subtle lucency at the metal-bone interface around the tibial component of Petitioner's intact, left arthroplasty, that was likely normal but could be a reflection of minimal loosening. (Id.)

Thereafter, the medical records in evidence document her consistent complaints of left knee pain and disability. Petitioner was restricted from working and Dr. Perona initiated a new course of left knee treatment that included physical therapy, varying work restrictions, and left knee manipulation under anesthesia. Dr. Perona later diagnosed a possible PCL tear for which he recommended another course of physical therapy and, if no improvement was appreciated, a possible surgical left knee revision.

Regarding the competing medical opinions in evidence, the Arbitrator found the opinions of Dr. Perona credible, persuasive, and substantiated by the treating medical records in evidence and the chain of events in this case.

The Arbitrator found no credible evidence in the record that Petitioner's preexisting left knee condition alone caused her resultant disability.

Regarding Respondent's IME, Dr. Newcomer, the Arbitrator found little factual support in the record for his opinions denying causation in this case.

Respondent does not dispute that Petitioner sustained a trip and fall accident in this case. Petitioner's testimony regarding the acute left knee trauma she sustained from the accident is unrebutted. Dr. Newcomer does not dispute that Petitioner's left knee condition declined following her accident. On exam, he noted that Petitioner exhibited diminished left knee flexion and he was "only" able to bring her left knee "to 90 degrees, possibly to 95 degrees" which brought a tear to Petitioner's eye.

Significantly, Dr. Newcomer conceded at the end of his September 9, 2022, IME report, that Petitioner's current, below baseline, left knee condition was a consequence of the trip and fall accident noting "at some point they can get her back to baseline where she will have no further sequelae as a result of this fall."

The Arbitrator finds that the preponderance of credible evidence contained in the record supports a finding that Petitioner's current condition of ill-being in her left knee is causally related to the accident of March 4, 2021.

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?

After examining the disputed medical bills in evidence and the corresponding treatment, the Arbitrator finds the following medical bills represent reasonable and necessary left knee treatment related to her May 4, 2021, work-related accident:

Peru Volunteer Ambulance	$438.50
St. Margaret's Health Peru	$2,827.00
Central Illinois Radiology	$135.00
Family Orthopedics	$2,146.00
St. Margaret's Hospital	$44,788.80
Anesthesia Associates	$1,045.00
Morris Orthopedics	$384.00
Morris Hospital	$9,292.00

The Arbitrator finds that Respondent is liable for the above-mentioned bills, subject to the limitations of the Medical Fee Schedule provided for in the Act.

The records indicate that workers' compensation has paid $16,813.00, group health insurance paid $474.65, Medicare paid $2,200.72; insurance discounts of $34,194.00 were applied; and Petitioner paid $35.68.

$7,339.42 remains unpaid.

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

Petitioner has established that the current condition of ill-being in her left knee is causally related to her work-related accident on March 4, 2021. The treating records and testimony of Dr. Perona reflect that he is recommending further conservative treatment, including physical therapy, and if no improvement is

appreciated, left knee revision surgery. Petitioner indicated a willingness to proceed with Dr. Perona's recommended course of treatment for her left knee condition. Accordingly, the Arbitrator

Issue (L): What temporary benefits are due?

The Arbitrator finds the preponderance of credible evidence contained in the record supports that Petitioner is entitled to temporary total disability benefits from March 4, 2021, to May 16, 2021; June 28, 2021, to August 22, 2021; and June 28, 2022, to December 18, 2023, a period of 96 and 4/7 weeks. Further, Petitioner is entitled to temporary partial disability benefits from May 17, 2021, to June 27, 2021, and August 23, 2021, to October 17, 2021, a period of 13 and 5/7 weeks.
In support, the Arbitrator notes that Petitioner was taken off work on March 4, 2021, by staff at IVCH Hospital emergency room. On March 8, 2021, Respondent's occupational health provider restricted Petitioner to seated work. Petitioner testified these restrictions were not accommodated.

On March 11, 2021, Dr. Perona took Petitioner off work. On May 6, 2021, Dr. Perona released Petitioner to return to work as tolerated, allowing her to take breaks as needed. As of May 17, 2021, Respondent accommodated those restrictions and Petitioner was paid TPD benefits. (RX7)

On June 28, 2021, Petitioner underwent left knee manipulation under anesthesia and was taken off work by Dr. Perona. On August 23, 2021, Dr. Perona released Petitioner to return to work with restrictions of no more than 15 hours of work week. Petitioner testified that these restrictions were accommodated, and she received TPD benefits to supplement her reduced income.

On October 18, 2021, Petitioner was released by Dr. Perona to return to full duty work.

On June 28, 2022, Petitioner was taken off work by Dr. Perona. From June 28, 2022, to the arbitration hearing on December 18, 2023, Petitioner was either off work or on light duty work restrictions, per Dr. Perona, that Respondent did not accommodate. This testimony was unrebutted.

Regarding Respondent's assertion that, per the Employee Wage Verification form (RX1), Petitioner was receiving gross wages from Respondent during the periods she was off work and receiving work comp benefits, the Arbitrator notes Petitioner testified that during the period in question, she received vacation pay and flex time. Petitioner presented paystubs dated 8/27/21, 7/3/22, and 7/15/22 that showed she was paid vacation pay on the corresponding dates shown on the Employee Wage Verification form as gross wages. (PX13; PX14; RX1) Accordingly, the Arbitrator finds the Employee Wage Verification form inaccurate.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC018188
Case Name	Amanda Pozniak (Individually and as Guardian of Dependent Children Addison Pozniak and Ashley Lawton, and as Ind. Adm. of the Estate of Charles Lawton, Deceased) v. Pactiv Corporation.
Consolidated Cases	16WC018189;
Proceeding Type	Remand from the Circuit Court of Cook County
Decision Type	Commission Decision
Commission Decision Number	25IWCC0076
Number of Pages of Decision	61
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Matthew Rokusek

DATE FILED: 2/20/2025

/s/Carolyn Doherty,Commissioner

Signature

25IWCC0076

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

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

AMANDA POZNIAK, as Independent Administrator of the Estate of Charles Lawton, deceased, et al.,

Petitioner,

vs.

NO: 16 WC 18188 and 16 WC 18189
2024 L 050047

PACTIV CORPORATION and AEROTEK,

Respondents.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the Circuit Court of Cook County. In accordance with the Circuit Court Order filed on January 27, 2025, the Commission on remand considers the issues of accident, earnings/benefit rates, marital status and dependents, medical expenses, temporary benefits, nature and extent, death benefits pursuant to 820 ILCS 305/7(a) and 305/7(f), and Pactiv's Motion to Dismiss.

I. PROCEDURAL BACKGROUND

Petitioner, as an Independent Administrator of the Estate of Charles Lawton (deceased), filed two claims for benefits under the Illinois Workers' Compensation Act against the Respondents, Pactiv Corporation and Aerotek, for the fatal injuries Mr. Lawton sustained a result of an accident on June 13, 2013. The first Application for Adjustment, case number 16 WC 18188, was filed against Pactiv Corporation. The second Application for Adjustment, case number 16 WC 18189 was filed against Aerotek. The Circuit Court's Order acknowledges in a foot note that "[i]t was stipulated that the Respondents, Aerotek and Pactiv, had a borrowing-lending relationship with regard to Lawton's employment." The Applications were consolidated before trial. After trial, the Arbitrator issued a decision on July 27, 2023 concluding that Mr. Lawton had not

sustained an accident arising out of and in the course of his employment and no benefits were awarded under either case number.

The Commission notes that no finding under Section 1(a)4 of the Act, covering borrowing and lending employers, was made by the Arbitrator in either decision. In case number 16WC18188, the Arbitrator granted Respondent Pactiv's Motion to Dismiss. As his basis for dismissal, the Arbitrator relied upon a written indemnity agreement and the stipulation entered into at trial between Respondent's Pactiv and Aerotek, whereby if any benefits are awarded to Petitioner, that Aerotek retains full liability for any and all benefits, including but not limited to medical benefits, TTD benefits, death benefits, funeral expenses, penalties and fees, and permanency. Because benefits were denied, the stipulation and indemnity agreement were not given effect.

Petitioner then filed timely Petitions for Review before the Illinois Workers' Compensation Commission. The Commission agreed that Petitioner failed to prove an accident that arose out of and in the course of his employment. On review of case 16 WC 18188 filed against Pactiv, the Commission vacated the portion of the Arbitrator's Order granting Pactiv's Motion to Dismiss in case number 16 WC 18188 on procedural grounds while affirming and adopting the remainder of the Arbitrator's Decision in Case 16 WC 18188. On review, the Commission affirmed and adopted the Arbitrator's Decision in Case 16 WC 18189 filed against Respondent Aerotek.

Petitioner then sought administrative review in the Circuit Court of Cook County on both matters. On January 27, 2025, the Circuit Court issued one Order for both cases stating, "[t]he court finds the Arbitrator's analysis with regard to compensability of the accident, as adopted by the Commission, to have been contrary to law." Accordingly, the court ordered "that the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O," "[t]hat the Commission's Decisions and Opinions on Review dated January 19, 2024 are CONFIRMED as to Disputed Issue M, the court finding no penalties warranted given the good faith dispute as to liability," and "[t]hat the Commission's Decision and Opinion on Review is CONFIRMED with regard to vacating the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss—any dispute regarding contractual liability between the borrowing and lending employers to be resolved by way of separate motion or proceeding following payment of any award." The Order also directs"[t]hat, on remand, the Commission shall make whatever additional findings deemed necessary to determine the issues disputed by the parties at the arbitration of this matter including Disputed Issues C, G, I, J, K, L and O and the extent of any death benefits due pursuant to 820 ILCS 307/7(a) and 820 ILCs 305/7(f)."

The Commission finds the entirety of the record sufficient to comply with Order and instructions given on remand.

II. FINDINGS OF FACT

The Commission hereby incorporates by reference the "Findings of Facts" and findings included in the "Conclusions of Law" contained in the Arbitrator's Decisions filed on July 27, 2023, attached hereto and made a part hereof, to the extent they do not conflict with the

Commission's Decisions and Opinions filed on January 19, 2024, which are attached hereto and made a part hereof, to the extent these decisions do not conflict with the Circuit Court of Cook County's Order filed on January 27, 2025. The Commission also incorporates by reference the January 27, 2025, Circuit Court Order, attached hereto and made a part hereof. Finally, any additional facts from the record that are relied on by the Commission in order to comply with the remand and instructions of the Circuit Court are cited below and incorporated.

III. CONCLUSIONS OF LAW

In an effort to comply with the Circuit Court order on remand, the Commission is charged with following the court's order. *See Noonan v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 152300WC, ¶ 11. The Commission initially observes that a reviewing court's mandate vests a lower court with jurisdiction only to take action that complies with the reviewing court's mandate. *See Fleming v. Moswin*, 2012 IL App (1st) 103475-B, ¶ 28. On remand, the Commission lacks the authority to exceed the scope of the mandate and must follow the court's precise and unambiguous directions. *Id*. If the direction is to proceed in conformity with the opinion, then, of course, the content of the opinion is significant. *Id*.

In this case, on January 27, 2025, the Circuit Court found and ordered:

"The court finds the Arbitrator's analysis with regard to the compensability of the accident, as adopted by the Commission, to have been contrary to law. However, the court finds the parties' dispute concerning compensability of the claim to have been in good faith and confirms the denial of penalties."

"The court also set aside the findings made by the Arbitrator unnecessary for the determination that the accident was non-compensable, including the findings as to Lawton's average weekly wage, the identity of his minor dependents, whether medical services were reasonable and necessary and the duration of any temporary total disability to which he was entitled. (Disputed Issues G, I, J and K)."

"The court confirms the Commission's Decision and Opinion on Review with regard to vacating the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss—any dispute regarding the contractual liability between the borrowing and lending employers to be resolved by way of separate motion or proceeding following payment of any award. See *Chaney v. Yetter Manufacturing Co*., 315 Ill.App.3d 823, 826-27 (2000)("[*Lachona v. Industrial Commission,* 87 Ill.2d 208 (1981)]does not hold that a borrowing employer can escape workers' compensation liability (*vis a vis* the employee) through an indemnification agreement with the loaning employer.")."

Accordingly, the Circuit Court ultimately ordered:

"That the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O;"

"That the Commission's Decisions and Opinions on Review dated January 19, 2024 are

CONFIRMED as to the Disputed Issue M, the court finding no penalties warranted given the good faith dispute as to liability;"

"That the Commission's Decision and Opinion on Review is CONFIRMED with regard to vacating the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss;"

"That, on remand, the Commission shall make whatever additional findings deemed necessary to determine the issues disputed by the parties at the arbitration of this matter including Disputed Issues C, G, I, J, K, L and O and the extent of any death benefits due pursuant to 820 ILCS 307/7(a) and 820 ILCs 305/7(f)."

C. Accident:

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue C—Accident.

The Commission observes the Circuit Court Order stating "[t]he court finds the Arbitrator's analysis with regard to the compensability of the accident, as adopted by the Commission, to have been contrary to the law." The Commission observes that in the Order, the court's accident discussion and finding focuses on the "hero/emergency doctrine" as argued by Petitioner, citing *Dragovich v. Iroquois Co*., 269 Ill. 478 (1915), *Baum v. Indus. Com.,* 288 Ill. 516 (1919), and *Metropolitan Water Reclamation District of Greater Chicago v. Industrial Comm'n*, 272 Ill. App. 3d 372 (1995). Therefore, on remand, the Commission concludes that Mr. Lawton's accident on June 13, 2013, which resulted in fatal injuries, is compensable pursuant to the "hero/emergency doctrine" and pursuant to the Remand Order of the Circuit Court dated January 27, 2025.

G. Earnings/Average Weekly Wage

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue G—Earnings/Average Weekly Wage.

The Commission observes that on the Request for Hearing Forms, AX 1 and AX 2, Petitioner claimed an AWW of $823.75 and Respondent claimed an AWW of $780.04. *See* AX 1 and AX 2.

The Commission notes that Aerotek RX 1, the payroll register, provides only the "check dates" and not the actual days, dates, or time periods worked by Mr. Lawton. It appears Mr. Lawton was paid weekly and was paid $21.00 per hour. The first check date listed is November 8, 2012 and the last two check dates listed are June 20, 2013 and July 2, 2013. The last check date of July 2, 2013 should not be included in the weeks and parts thereof calculation as it appears be payment for something other than work actual hours worked before the accident. The check date of June 20th is presumably for work performed the previous week, which is the week the accident

occurred. The accident occurred on Thursday, July 13, 2013 and the register indicates 32 hours were worked that week. The decedent did not return to work after the accident; thus, it can be reasonably presumed he worked only 4 days that week and not a full week. However, given the lack of information provided on the register, it is difficult to determine for the other weeks of less than 40 hours worked, what days were worked in order to determine the parts thereof.

At trial, Petitioner's claimed average weekly wage of $823.75, which included overtime hours. *See* AX 1 and AX 2; *see also* Aerotek RX 1. However, in this case, there was no testimony or evidence provided as to whether overtime was mandatory or a condition of employment. In addition, RX 1, the payroll register shows that overtime hours were not a set number of hours worked consistently each week. Therefore, pursuant to *Airborne*, overtime wages should not be included in this case. Airborne Express, Inc. v. Illinois Workers' Compensation, 372 III. App. 3d 549, 554-555 (1st Dist. 2007)(stating "[o]vertime includes those hours in excess of an employee's regular weekly hours of employment that he or she is not required to work as a condition of his or her employment or which are not part of a set number of hours consistently worked each week).

After review of Aerotek RX 1, the payroll register, the Commission finds that Mr. Lawton worked 27 and 4/7 weeks prior to the accident. Pursuant to Section 10 of the Act, the Commission uses the weeks and parts thereof method to calculate AWW. The Commission notes that the total earnings for the check dates of 11/8/12 through 06/20/13 were $21,261.00, not including $84.00 of overtime wages (4 hours x $21/hour). The total earnings of $21,261.00 divided by 27-4/7 weeks or 27.571 computes to an average weekly wage of $771.14.

Nevertheless, the Commission is unable to utilize the average weekly wage of $771.14 as the Commission is bound by the *Walker* case. Walker v. Industrial Comm'n, 345 Ill.App.3d 1084 at 1088 (4th Dist. 2004) (holding it has been held that the language of section 7030.40, now 9030.40, provides that the request for hearing is binding on the parties as to the claims made therein). Therefore, the Commission finds the average weekly wage to be $780.04 as claimed by Respondent. *See* AX 1 and AX 2.

I. Marital Status and Number of Dependents

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue I—Marital Status and Number of Dependents.

Regarding marital status, the Commission observes that Petitioner, Amanda Pozniak testified that Mr. Lawton was her boyfriend at the time of the incident on June 13, 2013. They had lived together for about one year. Therefore, the Commission concludes that at the time of the incident on June 13, 2013, Mr. Lawton was single and not married.

Regarding dependents, the Commission notes that Petitioner, Amanda Pozniak testified that PX 17 was an order entered on June 9, 2015, declaring heirship for Mr. Lawton's children. The Commission observes that the "Order Declaring Heirship" was entered in the Circuit Court on June 9, 2015 and while instructive, is not binding on the Commission. The first child listed is

Elaina Lawton, born on 02/11/1997. The second child listed is Ashley Lawton, born on 07/14/2002. Petitioner testified that Elaina and Ashley were sisters and children from Mr. Lawton's previous marriage. The third child listed on the on the order was Grace Orstadt, born on 01/08/2001. Petitioner testified that Grace was also Mr. Lawton's child, "but she was adopted at a way earlier time" and she never lived with Petitioner and Mr. Lawton. The Commission notes there was no documentation or proof of legal adoption entered into evidence nor was there evidence or testimony regarding any dependency of Grace Orstadt on Lawson. The fourth child listed on the order is Addison Pozniak, born on 05/19/13. Petitioner testified that she and Mr. Lawton are the biological parents of Addison. Petitioner testified that Addison requires an IEP at school and has been diagnosed with ADHD, ODD (oppositional defiance disorder), and sensory concerns. Ms. Pozniak also testified that while Addison is under a doctor's care for her various diagnoses, there is no medical opinion outlining how long the diagnoses will be in effect or if they will continue into adulthood.

Accordingly, the Commission concludes that at the time of the accident on June 13, 2013, Mr. Lawton had 3 dependent children, Elaina Lawton, Ashley Lawton and Addison Pozniak.

J. Medical Expenses

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue J—Medical Expenses.

Having found the June 13, 2013 incident compensable pursuant to the Circuit Court remand order, the Commission also finds the medical expenses in PX 14 to be related, reasonable and necessary. The Commission observes that in AX 1 and AX 2, the parties agreed that there is no credit pursuant to Section 8(j) of the Act.

The Commission further notes that Section 8(a) of the Act provides that employers are obligated to provide and pay "the negotiated rate, if applicable, or the lesser of the health care provider's actual charges or according to a fee schedule, subject to Section 8.2, in effect at the time the service was rendered 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 necessary to cure or relieve from effects of the accidental injury." 820 ILCS 305/8(a) (West 2006); *see also Tower Auto. v. Ill. Workers' Comp. Comm'n,* 407 Ill. App. 3d 427, 438-39, 347 Ill. Dec. 863, 873-74, 943 N.E.2d 153, 163-64 (2011). "By limiting an employer's obligation under section 8(a) of the Act to the amount actually paid to the providers of the first aid, medical, surgical, and hospital services necessary to cure or relieve an injured employee from the effects of an accidental injury, the purpose of the Act has been satisfied." *Tower Auto. v. Ill. Workers' Comp. Comm'n*, 407 Ill. App. 3d 427, 438 (2011). Accordingly, the Commission awards the medical bills pursuant to Sections 8(a) and 8.2 of the Act.

K. Temporary Benefits

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the

Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue K—Temporary Benefits.

Having concluded that the June 13, 2013 incident is compensable, the Commission awards temporary total disability benefits in the amount of $520.03 per week for the period of June 13, 2013 to July 13, 2013, representing 4 and 2/7ths weeks. *See* AX 1 and AX 2.

L. Nature and Extent

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue L—Nature and Extent.

Having concluded that the June 13, 2013 incident is compensable, the Commission finds that as a result of the incident, Mr. Lawton sustained injuries that resulted in his death on July 13, 2013. Accordingly, on remand the Commission concludes that Petitioner is entitled to death benefits pursuant to Section 7(a) and 7(f) of the Act.

O. Death Benefits pursuant to Section 7(a) and 7(f)

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue O—Death Benefits pursuant to Section 7(a) and 7(f).

Pursuant to the Circuit Court Order, on remand, the Commission concludes that Mr. Lawton sustained fatal injuries as a result of an incident that arose out of and in the course of his employment. Mr. Lawton was injured on June 13, 2013 and died on July 13, 2013. Therefore, the Commission awards sum of $8,000.00 for burial expenses as mandated by Section 7(f).

Accordingly, pursuant to Section 7(a), the Commission finds that weekly benefits in the amount of $520.03 shall be split evenly amongst the three surviving children. The Commission finds that Ashley Lawton was 11 years old at the time of her father's death and concludes that Ashley Lawton is entitled to $174.34/week for the period of July 14, 2013 through July 14, 2020, the date in which she turned 18 years old. Elaina Lawton was 16 years old at the time of her father's death and would have reached age 18 on February 11, 2015. However, pursuant to the Section 7(a) of the Act, the Commission finds Elaina Lawton is entitled to $174.33/week for minimum of 6 years, from July 14, 2013 until July 14, 2019. Finally, the Commission finds that Addison Pozniak is entitled to 1/3 of the weekly benefits, or $174.34/week, beginning July 14, 2013 until she reaches the age of 18 on May 13, 2031, or the age of 25, if she enrolls as a full time student in any accredited educational institution, or in the event that she "shall be physically or mentally incapacitated, the payments shall continue for the duration of such incapacity."

Other: Pactiv's Motion to Dismiss

In affirming the Commission's decision to vacate the Arbitrator's dismissal of Pactiv, the Circuit Court on remand states "[t]he court confirms the Commission's Decision and Opinion on Review with regard to vacating the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss—any dispute regarding the contractual liability between the borrowing and lending employers to be resolved by way of separate motion or proceeding following payment of any award. See *Chaney v. Yetter Manufacturing Co*., 315 Ill.App.3d 823, 826-27 (2000)("[*Lachona v. Industrial Commission,* 87 Ill.2d 208 (1981)] does not hold that a borrowing employer can escape workers' compensation liability (*vis a vis* the employee) through an indemnification agreement with the loaning employer.")." The Circuit Court further ordered the Commission to "make whatever additional findings deemed necessary to determine the issues disputed by the parties at the arbitration of this matter including Disputed Issues C, G, I, J, K, L and O." In an effort to comply with the Circuit Court remand order, the Commission makes the following additional findings on the issue of borrowing/lending under section 1(a)4 the Act based on the record.

The Commission initially notes that based on the foregoing facts and conclusions, the Arbitrator made no findings in his decisions specific to the issue of the borrowing/lending relationship between the Respondents Pactiv and Aerotek pursuant to Section 1(a)4. Rather, the Arbitrator granted Pactiv's motion to dismiss in reliance on the trial stipulation between the parties indicating that Aerotek assumed any liability as well as the indemnification agreement between the parties, thereby releasing Pactiv from liability. On Review, the Commission vacated the dismissal of Pactiv on procedural grounds in that such motions are not provided for under the Act.

The Commission now further finds that the trial record is sufficient to support a finding under 1(a)4. Specifically, the issue of borrowing/lending was in fact presented to the Arbitrator on the Request for Hearing form for case number 18 WC 18188, wherein the Parties stated and stipulated to the fact that Pactiv was the borrowing employer and Aerotek was the lending employer pursuant Section 1(a)4. *See* AX 1. Further, on the Request for Hearing form for case number 16 WC 118189, Aerotek and Petitioner agree that the relationship between Petitioner and Respondent "was one of employee and employer." *See* AX 2. Moreover, the trial record and Request for Hearing Forms are void of any objections raised by Petitioner as to the status of Aerotek being the lending employer and thus responsible for liability. In addition, the Commission relies on Aerotek's contractual assumption of liability in Aerotek RX 2, the indemnity agreement with Pactiv, that was admitted without objection for the purpose of determining Aerotek's sole responsibility for payment of worker's compensation benefits. Lastly, the Commission relies on Pactiv and Aerotek's oral agreement and stipulation at trial that Aerotek would be responsible for the payment of all awarded benefits should an award have been made and Petitioner's counsel had no objection to the agreement at trial, which was further consistent with the stipulation on the Requestion for Hearing Forms and the indemnity agreement. (T.19-22)

As discussed above, on remand and pursuant to the Circuit Court Order, the Commission concludes that Mr. Lawton's accident on June 13, 2013, which resulted in fatal injuries, is compensable pursuant to the "hero/emergency doctrine." Accordingly, in an effort to comply with the Circuit Court remand Order and with the language of the Act, the Commission finds Respondent Aerotek liable for the benefits now awarded to Petitioner, having concluded that

Aerotek is the lending employer pursuant to Section 1(a)4 of the Act, the trial stipulations and indemnity agreements presented. AX 1, AX2, RX2.

In all other respects, the Commission affirms and adopts the Circuit Court Order on Remand.

IT IS THEREFORE FOUND BY THE COMMISSION that Charles Lawton ("Decedent") sustained an accident on June 13, 2013 that arose out of and in the course of employment. As a result of the accident, Mr. Lawton sustained injuries which resulted in his death on July 13, 2013.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decedent's average weekly wage is $780.04.

IT IS THEREFORE ORDERED BY THE COMMISSION that at the time of the June 13, 2013 accident, Decedent was single with 3 dependents.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent, Aerotek is liable for payment of all awarded benefits pursuant to the parties' stipulation at trial.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent, Aerotek shall pay to the Estate of Charles Lawton, temporary total disability benefits in the amount of $2,228.33 for the period of 4-2/7ths weeks at $520.03/week commencing June 13, 2013 to July 13, 2013.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent, Aerotek shall pay to the Estate of Charles Lawton the medical expenses in PX 14 pursuant to Sections 8(a) and 8.2 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent, Aerotek shall pay death benefits, commencing on July 14, 2013, of $174.34/ week to Amanda Pozniak, on behalf of minor child, Addison Pozniak, born on 05/19/2013 as provided in Section 7(a) of the Act, for the reason that the injuries sustained caused the death of Decedent on July 13, 2013. Respondent shall pay the sum of $174.34/ week until Addison Pozniak reaches the age of 18 on May 13, 2031, or the age of 25, if she enrolls as a full-time student in any accredited educational institution, or in the event that she "shall be physically or mentally incapacitated, the payments shall continue for the duration of such incapacity."

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent, Aerotek shall pay death benefits, for the period of July 14, 2013 to July 14, 2020, of $174.34/week to the Estate of Charles Lawton, on behalf of surviving child Ashley Lawton, born on 07/14/2002 and turned 18 year old as of July 14, 2020, as provided in Section 7(a) of the Act, for the reason that the injuries sustained caused the death of Decedent on July 13, 2013.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent, Aerotek shall pay death benefits, for the period of July 14, 2013 to July 14, 2019, of $174.34/week to the Estate of Charles Lawton, on behalf of surviving child Elaina Lawton, born on 02/11/1997 and turned 18 year old as of February 11, 2015, as provided in Section 7(a) of the Act, for the reason that the

injuries sustained caused the death of Decedent on July 13, 2013.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent, Aerotek shall pay $8,000.00 for burial expenses to the person (s) incurring the burial expenses, as provided in Section 7(f) of the Act.

IT IS FURTHER ORDRED BY THE COMMISSION that commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the *Rate Adjustment Fund*, as provided in Section 8(g) of the Act.

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

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

February 20, 2025
d: 01/30/25
CMD/jjm
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC018188
Case Name	Amanda Pozniak, individually and as guardian of dependent children Addison Pozniak and Ashley Lawton, and as Ind. Adm. of the Estate of Charles Lawton, deceased, v. Pactiv Corporation.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Steven Fruth, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Candice Drew

DATE FILED: 7/27/2023

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

/s/Steven Fruth, Arbitrator

Signature

STATE OF ILLINOIS)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

AMANDA POZNIAK, individually and as guardian of dependent children Addison Pozniak and Ashley Lawton, and as Ind.Adm. of the Estate of CHARLES LAWTON, deceased,
Employee/Petitioner

Case # **16 WC 18188**

v.

PACTIV CORPORATION.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Steven Fruth**, Arbitrator of the Commission, in the city of **Chicago**, on **June 22, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☒ What was Petitioner's marital status at the time of the accident? How many dependent children did Petitioner have?
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: Is Petitioner entitled to statutory funeral expenses?

FINDINGS

On **6/13/2013**, Respondent ***was*** operating under and subject to the provisions of the Act.

On **6/13/2013**, an employee-employer relationship ***did*** exist between Petitioner and Respondent Pactiv. Pactiv was the borrowing employer for purposes of §1(a)4. Aerotek is the lending employer and is the Respondent in case 16 WC 18189. Per the written agreement between Pactiv and Aerotek, Aerotek agrees to indemnify Pactiv for any liability for any benefits under the Act.

On **6/13/2013**, Charles Lawton ***did not*** sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned $20,281.00; the average weekly wage was $**780.04**.

On the date of accident, Petitioner was 35 years of age, ***single*** with **3** dependent children.

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

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

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

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

ORDER

Petitioner's Application for Benefits is denied.

The Arbitrator grants Respondent Pactiv's Motion to Dismiss.

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

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

_____ **JULY 27, 2023**

Signature of Arbitrator

Amanda Pozniak individually and as guardian for dependent children Addison Pozniak and Ashley Pozniak, and Independent Administrator of the Estate of Charles Lawton, Jr., deceased v. Pactiv Corporation

16 WC 18188

consolidated with

Amanda Pozniak individually and as guardian for dependent children Addison Pozniak and Ashley Pozniak, and Independent Administrator of the Estate of Charles Lawton, Jr., deceased v. Aerotek

16 WC 18189

INTRODUCTION

This matter proceeded to hearing before Arbitrator Steven Fruth. The disputed issues were:

16 WC 18188(Pactiv): ***C:*** Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***G:*** What were Petitioner's earnings?; ***H:*** Whether the deceased had any dependent children**.;** ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Whether Petitioner is entitled to statutory funeral expenses.

16 WC 18189 (Aerotek): ***C:*** Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***G:*** What were Petitioner's earnings?; ***H:*** Whether the deceased had any dependent children**.;** ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Whether Petitioner is entitled to statutory funeral expenses.

Petitioner claim's Charles Lawton's average weekly wage was $823.75, which Respondents dispute. Respondents claim the average weekly was $780.04.

Petitioner's oral motion to continue the hearing to allow for obtaining evidence from an additional witness was denied for failure to present an offer of proof as to what evidence that witness would provide.

FACTUAL BACKGROUND

Charles Lawton, Jr. was employed by Respondent Pactiv Corp. (borrowing employer) on June 13, 2013 [AerotekX #2]. Mr. Lawton was employed through an Agreement for Temporary Employment Services between Pactiv and Respondent Aerotek (loaning employer) [PactivX #2]. Mr. Lawton was working for Pactiv on June 13, 2013 when he was injured in an incident at or near Pactiv's plant in Bedford Park, IL. Mr. Lawton died on July 13, 2013 from the injuries he sustained on June 13.

STATEMENT OF FACTS

Petitioner displayed video recordings from security cameras capturing the events at the issue (PX #16). The videos recorded a dark SUV entering Pactiv's parking lot and park next to a white van. The SUV then drove off the parking lot and parked on Mason street. Two individuals got out of the SUV and walked onto Pactiv's parking lot. After a time, an individual runs past a second person (presumably Charles Lawton) who began running also. A third person followed close behind the first two. The first 2 individuals ran onto Mason Street where they were followed by the 3 pursuers onto Mason Street. The video does not depict the actual trauma sustained by Mr. Lawton.

Amanda Pozniak testified that she was the girlfriend of Charles Lawton in June 2013. They lived together for a year before the incident at issue. Ms. Pozniak testified Mr. Lawton was sent to work at Pactiv by Aerotek. She identified PX #17, Order Declaring Heirship entered June 9, 2015 in the 18th Judicial Circuit, DuPage County. Ms. Pozniak explained that Elaina Lawton was born February 11, 1997. Elaina lived with her mother at the time in question, but Mr. Lawton " provided for her". Ms. Pozniak also testified that Mr. Lawton provided support for his daughter Ashley Lawton, Elaina 's sister, who was born July 14, 2002. Grace (Ortstadt), born January 8, 2001, is Mr. Lawton's natural child but was adopted. Grace was not living with Ms. Pozniak and Mr. Lawton.

Ms. Pozniak testified that Addison Pozniak is her daughter by Mr. Lawton (PX #5). Ms. Pozniak and Addison were living with Mr. Lawton at the time at issue. She testified that Mr. Lawton was providing support for her and Addison.

Ms. Pozniak testified Addison was in second grade even though she was supposed to be in third grade. She had struggled with meeting milestones ever since she was born. She was in the 50% range for her peers and was the oldest in the class. An Individualized Education Plan ("IEP") had been adopted for Addison (PX #12) The purpose of the IEP was to moderate the standards Addison had to satisfy so she did not have to be held to the higher standards other children were being held to. Addison's formal diagnoses included attention deficit hyperactivity disorder (ADHD) and oppositional defiant disorder (ODD). An adult has to sit with her at lunch to prevent her from choking. Addison also had a

vestibular movement swing in her room at home which settles her mind and to help her focus better.

Ms. Pozniak identified PX #20, the Order appointing her Independent Administrator of the Estate of Charles Lawton deceased, 2015 P 540, 18th Judicial Circuit, DuPage County.

On cross-examination Ms. Pozniak testified that she does not know whether Addison's diagnoses and other problems will continue into adulthood.

Testimony of Gabriel Ybarra (PX #7)

Mr. Ybarra testified by evidence deposition on August 24, 2020 (PX #7). He described the general layout of Pactiv's property. Four buildings were located in the area, three belonging to Pactiv. The two buildings to the west were Pactiv buildings and the northeast building was also Pactiv. He testified Pactiv had its employees take breaks in the parking lot area adjacent to the buildings to the west.

Ybarra took his break at Pactiv's southwest building. He saw Lawton and Brookhouse running across Pactiv's parking lot after two other people. Ybarra testified he joined the pursuit to see what was going on. Lawton and Brookhouse did not ask Ybarra to join them, he just saw them running and followed them. The people they were following got into a Jeep and ran over Lawton.

Ybarra testified he was behind Brookhouse and did not see the people who got into the Jeep. He heard screaming but could not make out any words. Ybarra testified the Jeep was not parked on Pactiv's property. He did not know what the area was used for. Ybarra did not characterize that area as an alleyway as it was a paved area. He did not know whether Pactiv parked its trailers in that area.

Ybarra was not aware of any Pactiv policy which prevented coworkers from helping other coworkers who were in trouble. He was not disciplined or terminated for his involvement in the incident. Pactiv had no fencing to keep non-Pactiv people from accessing the parking lots. There were no security guards to monitor Pactiv's lots. Pactiv hired a security firm to patrol their property after Lawton's incident.

Testimony of John Brookhouse (PX #8)

Mr. Brookhouse testified by evidence deposition on September 28, 2020 (PX #8). Brookhouse knew Mr. Lawton from work, noting that Mr. Lawton helped him out a lot at work by showing him how to do stuff. He and Mr. Lawton were taking a smoking break by Pactiv's 7600 building. Pactiv restricted smoking to a bench area and that is where they took their break. He got halfway through a cigarette when they saw two guys busting up car windows in Pactiv's lot. He did not know whose car it was.

Brookhouse heard windows being smashed and started yelling at the guys who were busting the windows. They started running back across Mason and Brookhouse, Lawton, and Gabe (Ybarra) chased after them. Lawton got in front of the car, and "they ran him over", dragging him through the parking lot.

Brookhouse explained that it was a natural response to follow the guys as he wanted them to get caught for what they were doing. He never intended to beat up the guys. Lawton did not express any interest in doing that either. Brookhouse and Gabriel stopped behind the vehicle. Lawton went to the front of the Jeep with his cellphone out, telling the occupants to "stop man" and that he was "calling the cops." That is when the accident happened.

Mr. Brookhouse testified he had seen this driver in Pactiv's lot during his 7:00 pm break. The driver was sitting in his Jeep in the parking lot. Brookhouse knew the man had no business being there but did not report it to anyone. He did not believe that Pactiv had a system in place to receive such reports about strangers in the lots. Pactiv had no rule which prohibited workers from going to the aid of fellow workers. Pactiv had no fences or security measures other than key fob access to the buildings. Pactiv did not hire security for its lot until Lawton was hurt. Pactiv did not protect its lots with gates, chain link fences or walls. Pactiv did not provide training on what to do when criminal events occurred on its property. Brookhouse testified Pactiv left it up to the employees as to how they should deal with criminal events outside the buildings.

After Mr. Lawton's accident, no supervisor told Brookhouse that he should not have joined Lawton in following the vandals. Brookhouse was not disciplined for assisting Lawton. He did not know if the roadway area where the accident happened was Pactiv property, but he believed it was because Pactiv parked its slip trucks at that location. Pactiv also had big tanks of stuff in that area.

Brookhouse testified Pactiv did not allow its workers to park in that roadway where the accident happened. Pactiv workers had to park in the Pactiv lot to the west. On cross-examination, Brookhouse admitted he did not know what the property lines were between the businesses. Brookhouse clarified that he had walked to his own car and got into it for a brief moment before the guys started breaking out the windows in the other car. He got out of his jumped out to join Lawton and Gabe at that point. He testified about the accident and details were clearer in his mind when it happened.

Brookhouse reiterated he was not going to physically apprehend the vandals, but only make sure they were held responsible for what they had done. Lawton just had time to tell the Jeep occupants "I'm calling the police" as he pulled his phone from his pocket before the Jeep ran over him. 30 to 40 seconds passed from the time Lawton stood in front of the Jeep to when it ran him over. He testified that there was nothing about the

vandals before the event that caused him to feel any need to call the police. He is unaware of any prior incident of vandalism in Pactiv's lot.

Slip trucks are parked in that area where the trucks that Pactiv used in the building he worked out of in the building west of Mason. Those trucks were parked in the alley area. There was no Pactiv policy requiring him to report strangers in the parking lot to supervisors. Pactiv's workers did not wear distinctive uniforms and there were always new people coming to work through staffing companies.

Brookhouse said when he saw the Jeep driver during the earlier shift, he did not think it was something to report to management. Pactiv's slip trucks were parked another 30 feet beyond where the Jeep was located at the time of the accident.

Testimony of Bedford Park Police Sergeant Andrew Smuskiewicz (PX #9)

Sergeant Smuskiewicz testified by evidence deposition on July 21, 2021 (PX #9). He was a Bedford Park police department detective at the time of Lawton's accident on June 13, 2013.

Sergeant Smuskiewicz was called out to Pactiv on the night of the incident. He explained the process of his investigation. where he interviewed a number of witnesses. Respondent Aerotek objected to the testimony on hearsay grounds, which was overruled. Much of Smuskiewicz' s account does consist of hearsay and Aerotek's running objection is well founded, striking this witness's testimony from the case to the extent it was based on what he was told. Aerotek also objected to the Bedford Park police report, which was not offered in evidence. The witness refreshed his memory from the report.

From his investigation, Sergeant Smuskiewicz learned that Lawton was part of a group of people who were trying to stop the crime from taking place and trying to get the offenders to stop so they could be arrested. He found no evidence that Lawton or his companions knew Garcia before the accident.

Respondent Aerotek renewed and reserved its objections to hearsay when it began cross-examination. Sergeant Smuskiewicz testified he never investigated whether Garcia and Ms. Fernandez had an affair. He testified that Bedford Park officers had been called out to Pactiv both before and after Lawton's incident for other incidents. Those calls involved disturbances among employees and supervisors. There was never a call involving an outsider coming onto the property.

Based on what he observed, Sergeant Smuskiewicz understood that that the vehicle involved did not enter Pactiv property after the incident. He agreed that civilians should stay out of police issues and just call 9-1-1. He advised people to not jeopardize their own safety.

Testimony of Jose Gasco Garcia (PX #10)

Jose Garcia testified by evidence deposition on March 28, 2022 (PX #10). He was one of the persons damaging the car in Pactiv's lot and was the driver who ran over Lawton. He testified from prison where he was serving time for Lawton's death.

Garcia had worked at Pactiv for years before the accident and he was still working at Pactiv on the weekends in June 2013. His wife Maria also worked at Pactiv. Garcia did not know Lawton, although he had seen him at work in the past. They worked in different Pactiv buildings.

Garcia identified DepX #1, a daylight photo of the area where he parked the Jeep between the buildings. Garcia parked where the red mark was located on the photo. DepX #2 is an overhead view of the same roadway area. Garcia parked his Jeep where the red X is located on DepX #2. The building at the top of this photo is Pactiv's building and the building at the bottom was some other business. Garcia testified he worked in the building at the top left of the photo with the white roof.

Garcia was not working at Pactiv the night of the accident. He came to Pactiv's property to make sure his wife was at work and to check her car. He parked his Jeep in a dark roadway to make sure that no one got his license plate. He backed his Jeep down the roadway between the buildings with his headlights off. He planned to damage Guadalupe Fernandez's car. He was not going after Lawton's car, and he had no intent to harm Lawton in any way. He was going after Fernandez for bothering his wife and getting involved in their family life.

Garcia testified another Pactiv employee came to assist Garcia that night. Garcia's wife and Fernandez were both working that evening. Fernandez had been harassing Garcia's wife for a long time. Fernandez did this with all the women at the plant. Female workers in that building had been complaining of Fernandez's sexual harassment for years before the accident. Garcia had damaged Fernandez's car on earlier occasions before Lawton's incident.

Garcia knew that Pactiv did not have security guards patrolling its lots before June 2013. He knew there were no security fences which would have stopped him from accessing Fernandez's car. Any person could access the lots, whether they worked there or not. There were no guards in place at Pactiv to keep strangers off the property.

Garcia testified he did not see Lawton in front of his Jeep before accelerating away. He did not intend to run Lawton over. He had nothing against Lawton. He felt something under his vehicle, but he thought it was a piece of concrete which was sometimes in Pactiv's parking lots. Mr. Garcia testified he was trying to get away from the people chasing him and did not see Mr. Lawton standing in front of his car when he drove away.

Garcia testified that during the eight years he worked at Pactiv, Pactiv had no training programs to explain what workers should do about sexual harassers in the plant. He was never told what he was supposed to do when a coworker kept sexually harassing his wife in the plant. Garcia did not intend to hurt anyone when he came to Pactiv on June 13, 2013. He said Lawton's injury was a pure accident.

On cross-examination, Garcia admitted he chose the location where he parked the Jeep because it was dark. There were no lights on the non-Pactiv building to his south. Pactiv had some lights on its building to the north, but not where he parked. He did not park in Pactiv's parking lots to the west because of Pactiv's cameras. He knew Pactiv had cameras on the buildings and did not park there for that reason.

Garcia testified he stopped vandalizing Fernandez's car after he finished what he wanted to do. He and his companion started walking back across Mason and then started to run when people started chasing.

On redirect examination, Garcia admitted that he had also worked in Pactiv's northeast building with the loading docks, shown at the top of DepX #2 with the dark roof. Pactiv used the trailers parked near that building to get the plates out of Pactiv's building. He saw those trailers pulling away from Pactiv's building onto Mason Street many times during the years he worked at Pactiv.

Testimony of Lawrence Liva (PX #19)

Mr. Liva testified by evidence deposition on June 13, 2022 (PX #19). He was a machine shop manager for Pactiv on June 13, 2013. He received a call at home that something had happened to a temporary employee at Pactiv, and that he needed to come into work. Liva did not recall whether he authored the Occupational Incident Report, a diagram, or investigative notes.

Liva testified that if an employee was involved in a major accident, he would meet with Dennis Davidson, Pactiv's Director of Engineering, and Davidson would tell him what to do or who to call. Liva worked the day shift, but he directly supervised Charlie Lawton, John Brookhouse and Gabriel Ybarra. If an incident happened, he would probably handwrite a report, but did not recall much about those reports.

On cross-examination Liva testified Pactiv operated three buildings at that campus, arranged in a L formation: one to the southwest, one to the northwest, and one to the northeast. The building to the southeast had nothing to do with Pactiv. (PX19 p.17) Between that building and the Pactiv building to its north, there was a roadway or a parking area.

Liva was shown the overhead view of the area (Garcia DepX #2). Liva confirmed that the trailers on the photo ran in and out of Pactiv's operations. To access the area where the trailers were, Pactiv would have to use the exit onto Mason. To the right of the

red "X" on Garcia DepX # 2, Liva saw a yellow barrier across the roadway but did not know whether that barrier delineated Pactiv's area of operation from the unrelated business in the south building.

Liva testified he did not know where the property lines were. He also did not know if Mason was a public rather than private road.

Liva did not recall giving Lawton new employee orientation. He did not handle the orientations, but he thought Pactiv's HR would orient new temp employees. He did not recall there being a written handbook of job rules for temporary employees. Liva had never seen a written or oral rule prohibiting workers from going to the aid of other workers who were in peril. He would never have discussed discouraging workers from going to the help of a coworker. In the years he was working at Pactiv, he did not recall there being any kind of rules which prohibited workers from going to the assistance of their coworkers.

Liva testified Brookhouse and Ybarra were not disciplined, written up, or even chastised for joining Lawton in addressing the emergency. He knew of no managers claiming that these workers should not have followed the people who were damaging property in the lot. The police came to him to look at camera footage from the cameras on his building. He saw no photos or video showing what happened down the roadway where Lawton was hurt.

Liva did not recall Pactiv providing training for temp employees as to how they were to address sexual harassment in the plant.

Liva identified the ground level view of the roadway between the buildings from July 2011, Garcia DepX #1. The photo shows pavement running from Pactiv's building on the left to the brick wall of the non-Pactiv building on the right. Liva walked the area a couple of days after the accident but could not recall what he saw.

Liva was asked about the Occupational Incident Report ("OIR"). The OIR listed him as the person receiving notice of Lawton's incident. Pactiv used these OIR forms for various types of incidents. Liva did not prepare this OIR, he would not have typed it up or phrased things the way they were written on the OIR. Brookhouse and Ybarra were both listed as witnesses on the OIR, and they were both reported as having given statements.

Liva was not aware of prior incidents like what happened to Lawton so he did not know who would take the statements or write the report. Even though the OIR said he was a machinist, Lawton did hand finishing work. The OIR said that "Supervisor/Team Lead should complete front page and top of the back of second page." Liva admitted he was Lawton's supervisor at the time, but different leads or supervisors may have completed the report. A box marked "Contributing Factors" was located at the bottom of

the first page. Liva did not know enough about the details of the event to determine who was at fault for the injury.

Liva reiterated that he was not aware of any Pactiv rules which prohibited workers to going to each other's aid to address sudden emergencies on Pactiv property. If something happened inside the building, he would hope that someone called 911. But he did not remember anything happening outside the building before Lawton's injury. Liva also did not author the Investigative Notes document. He had no idea whether other vehicles had been damaged prior to June 13, 2913. at night in Pactiv's lot. OIR forms should be filled out promptly after an event.

Pactiv's workers were given two breaks and a lunch break. Pactiv did require workers in the southwest building to take their breaks at the north end of the building. Workers were not prohibited from taking breaks in their cars. If Lawton and Brookhouse were in the north end of the building during their breaks, that is where the company expected them to be. Lawton was also allowed to take breaks with coworkers. Breaks were not scheduled for exact times. Workers did not have to clock out or notify the supervisor when going to break, but workers did clock out for lunchbreaks.

Testimony of Guadalupe Fernandez (AerotekX #3)

Guadalupe Fernandez testified at Jose Garcia's criminal trial August 28, 2017, People of the State of Illinois vs. Jose Garcia, 13 CR 1552. Mr. Fernandez identified photos of his car showing broken windows and a gang sign scratched into the car. Later, on June 13, 2013 he recognized "Jose" from a picture on TV and called the police about Garcia. Fernandez had worked with Garcia at Pactiv for 3 years before this night. Fernandez was confronted by Garcia in the canteen 2 months before the attack. Garcia said something to him about calling Garcia's wife or girlfriend, which Fernandez said was a lie. Garcia told him to watch his back.

Fernandez admitted he did not know if Garcia damaged his car because he was inside working. Fernandez went to the police station on June 20, 2013 and identified Garcia in a photo array. He also identified Garcia in a physical lineup at the Sheriff's office in Maywood, as well as in open court. During an interview with police, Fernandez talked about the disagreement he had with Garcia. Fernandez admitted he had had disagreements with other people at work.

Medical Records

Mr. Lawton was transported by Bedford Park Fire Department ambulance to Advocate Christ Hospital ("Christ") in Oak Lawn (PX #2). The EMS record identified multiple injuries (PX #1). The Christ trauma notes document significant deep tissue injuries. Procedures performed at Christ included washout of his right face, left upper extremity, right shoulder, and debridement of wounds.

Christ transferred Lawton to the Loyola University Medical Center ("Loyola"), where he was admitted to the burn unit on June 17, 2013 in an intubated and sedated state. He was hemodynamically stable at that point (PX #3). Loyola healthcare providers noted extensive degloving of the right side of the head, amputation of the right ear, right mastoid fracture with complete fracture and disarticulation of the zygomatic arch, fracture and exposure of the temporomandibular joint, and extensive exposure of deep facial muscles in the right side of the face and clavicle fractures. The left upper chest and shoulder also suffered degloving with exposure of muscle and soft tissue. The right upper extremity had dorsum degloving of hand down to the bone and deep muscle. The left upper extremity was extensively degloved from the shoulder down to the wrist, with a brachial artery bypass being done at Advocate. He had deep partial thickness/full thickness burns to his chest. Three surgical procedures were performed at Loyola, during which he remained sedated with mechanical ventilation while undergoing antibiotic treatment and dialysis for acute renal failure.

Mr. Lawton never regained consciousness or function and treatment ultimately failed. Lawton died on July 13, 2013. Loyola records included photos of Lawton's injuries.

Mr. Lawton's Death Certificate was admitted as PX #4.

Pactiv Occupational Incident Report was admitted as PX #18.

Respondent Pactiv's Motion to Dismiss was admitted as PactivX #1.

The temporary employment agreement between Pactiv and Aerotek was admitted as PactivX #2.

Respondent Aerotek's wage statement was admitted as AerotekX #1.

Respondent Aerotek's employment agreement was admitted as AerotekX #2.

The trial testimony of Guadalupe Fernandez was admitted as AerotekX #3.

CONCLUSIONS OF LAW

Respondent Pactiv filed a Motion to Dismiss, citing the written agreement between Pactiv and Respondent Aerotek, PactivX #2. The agreement states in pertinent part:

- [Aerotek] will, at its own expense, provide and keep in full force and effect during the term of this Agreement…Workers' compensation statutory coverage as required by the laws of the jurisdiction in which the Services are performed.
- [Aerotek] will indemnify, defend and hold Pactiv and its subsidiaries, affiliates, directors, officers, employees and agents from and against all demands, claims, actions, suits, losses, damages (including, but not limited to, property damage, bodily injury and wrongful death), judgments, costs

> and expenses…imposed upon or incurred by Pactiv arising out of…[a]ny claim of any nature asserted against Pactiv or workers compensation carriers by any [Aerotek] employee or agent of [Aerotek], or, in the event of death, by their personal representatives.

The facts here are similar to those in *Lachona v. Industrial Commission*, 87 Ill.2d 208, 427 N.E.2d 858 (1981), where a similar agreement was upheld. The Arbitrator finds that Pactiv is a borrowing employer and Aerotek is a loaning employer in accord with §1(a)4 of the Act. The Arbitrator also notes the stipulation at trial between Respondents Pactiv and Aerotek, whereby if any benefits are awarded to Petitioner as a result of the June 13, 2013 incident, that Aerotek retains full liability for any and all benefits, including, but not limited to, medical benefits, TTD benefits, death benefits, funeral expenses, penalties and fees, and permanency.

Respondent Pactiv's Motion to Dismiss is granted.

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

The Arbitrator finds that Petitioner failed to prove that an accident arose out of and in the course of the decedent's employment by Respondents Pactiv Corp. or Aerotek.

Charles Lawton, Jr. was employed by Respondent Pactiv Corp. on June 13, 2013. Mr. Lawton was employed as a temporary CNC Machinist through referral from Respondent Aerotek. On the evening of June 13 Mr. Lawton was taking a break with coworkers in an area abutting Pactiv's employee parking lot. Mr. Lawton and the others heard the sound of breaking glass and went to investigate. They discovered two individuals vandalizing a coworker's car. Jose Garcia was one of the individuals vandalizing the car. Mr. Lawton and coworkers John Brookhouse and Gabriel Ybarra gave chase of Mr. Garcia and the other vandal across the parking lot and onto Mason street which was the public way. Mr. Lawton placed himself in front of a Jeep operated by Mr. Garcia. In an effort to get away Mr. Garcia ran over and dragged Mr. Lawton down the roadway, causing fatal injuries to Mr. Lawton. Mr. Garcia was criminally charged and convicted for his actions.

An injury arises out of one's employment if its origin is from a risk connected with or incidental to employment activities. "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.

An injury occurs "in the course of" of employment if it refers to the time, place, and circumstances of the accident. If an employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties, a resulting injury will not be within the course of employment unless the employer had knowledge or acquiesced in such unreasonable conduct.

Charles Lawton was employed by Pactiv as a machinist. There was no evidence that he was charged with any responsibilities relating to security of the workplace, of his employer's property or equipment, or of his coworkers. Pursuing criminals who had vandalized hey coworkers private vehicle Was not part of the duties of a machinist or incidental to the duties of a machinist. Mr. Lawton, along with Mr. Brookhouse and Ybarra, We're not engaged in protecting the property or equipment of Pactiv or protecting a coworker from harm. The risks associated with chasing the offenders off Pactiv's property and standing in front of their fleeing vehicle was a risk that was assumed solely by Mr. Lawton and was in no way connected to his employment with Respondents. Mr. Lawton voluntarily exposed himself to a risk that was outside of his job duties. There is no evidence that his employer had knowledge or acquiesced to the decedent assuming this type of risk. There was no evidence that Aerotek or Pactiv expected, required, or encouraged its employees or temporary employees to stop any sort of criminal activity that occurred on company property.

The Arbitrator finds that Mr. Lawton took himself outside the scope of his employment as a machinist not only when he chased the offenders off Pactiv's property and across Mason Street, but also when he placed himself in front of Mr. Garcia's vehicle in an attempt to stop the offenders from fleeing. If an employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties, as here, the resultant injury is not within the course of the employment.

Also, the Arbitrator does not find the Good Samaritan doctrine applicable to this case. In determining whether an accident is compensable under the Good Samaritan Doctrine, courts have focused on whether the conduct is reasonably foreseeable. It was not reasonably foreseeable by Respondents that Mr. Lawton what put himself in harm's way when a criminal act did not involve damage to the employers property or equipment or harm to a coworker.

The Arbitrator does not find the alleged relationship and/or harassment between Mr. Garcia, Mr. Garcia's wife, and Guadalupe Fernandez relevant because it did not involve Mr. Lawton whatsoever.

The Arbitrator also does not find it relevant that Pactiv placed security in the parking lot after the June 13, 2013 incident. There was no evidence that Bedford Park is a high crime area or that there was a pattern of vandalism or other criminal acts in the Pactiv parking lot. On the contrary, this incident appears to be isolated to the issues between Mr. Garcia and Mr. Fernandez.

G: *What were Petitioner's earnings?*

Petitioner's wage statement, PX #11, shows Mr. Lawton's earnings from November 8, 2012 through June 13, 2013. During that time, the decedent had regular earnings of $20,013.00 and $84.00 of overtime earnings at straight time pay, for a total of $20,097.00. Using the weeks and parts thereof method, Mr. Lawton worked a total of 130 days during that period, or 26 weeks. This computes to an average weekly wage of $772.96.

Respondent Aerotek wage statement, AerotekX #1, showed earnings of $20,281.00. and the Petitioner's average weekly wage, calculated pursuant to section 10 of the Act was $780.04. Using the weeks and parts thereof method, Mr. Lawton worked a total of 130 days during that period, or 26 weeks. This computes to an average weekly wage of $780.04.

The Arbitrator adopts the average weekly wage computation of Respondent Aerotek, $780.04.

H: *Whether the deceased had any dependent children***.**

The evidence established that Mr. Lawton was not married at the time of the incident at issue. According to the June 8, 2015 Order of Heirship, PX #17, the decedent had the following minor dependents at the time of his death: Addison Pozniak (DOB May 19, 2013), Ashley Lawton (DOB July 14, 2002), and Elaina Lawton (DOB February 11, 1997). Elaina Lawton was emancipated by age on February 11, 2015. There was evidence that Grace Orsatdt, decedent's natural child, had been adopted but there was no evidence of when the adoption took place and, therefore, no evidence of whether Grace was a minor dependent at the time of Mister Lawton 's death.

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 has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Notwithstanding the Arbitrator's finding that the incident at issue did not result in a compensable injury, it appears the medical services provided to Mr. Lawton were reasonable and necessary and there is no evidence to the contrary.

K: *What temporary benefits are in dispute? TTD*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Notwithstanding the Arbitrator's finding that the incident at issue did not result in a compensable injury, it appears the correct disputed period of TTD would be from June 14, 2013 through July 13, 2013, or a period of 4 & 2/7 weeks.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

M: *Should penalties be imposed upon Respondent?*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Notwithstanding the Arbitrator's finding that the incident at issue did not result in a compensable injury, Respondents had good faith bases for denying benefits. It was neither vexatious nor frivolous to deny Petitioner's claim for benefits when Mr. Lawton exposed himself to a personal risk of harm that was outside the scope of his employment.

O: *Whether Petitioner is entitled to statutory funeral expenses.*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Steven J. Fruth, Arbitrator

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC018188
Case Name	Amanda Pozniak (Individually and as Guardian of Dependent Children Addison Pozniak and Ashley Lawton, and as Ind. Adm. of the Estate of Charles Lawton, Deceased) v. Pactiv Corporation.
Consolidated Cases	16WC018189;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0026
Number of Pages of Decision	22
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Matthew Rokusek

DATE FILED: 1/19/2024

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

AMANDA POZNIAK, individually
And as guardian of dependent children
Addison Pozniak and Ashley Lawton,
and as Ind. Adm. of the ESTATE of
CHARLES LAWTON, deceased,
Petitioner,

vs. NO: 16 WC 18188

PACTIV CORPORATION,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, employment, jurisdiction, causal connection, benefit rates, temporary total disability, medical expenses, prospective medical care, permanent partial disability, penalties and fees and "Other: procedural violations by IWCC" and being advised of the facts and law, affirms, and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, with the changes stated as follows.

While affirming and adopting the Decision of the Arbitrator, the Commission writes additionally to address the Motion to Dismiss filed by Respondent, Pactiv Corporation. The Commission notes the Arbitrator granted the Motion to Dismiss in favor of Respondent and so ruled in the Arbitration Decision. The Commission writes to vacate that ruling in that a Motion to Dismiss is not a procedure available under the Illinois Workers' Compensation Act. As such, the Commission vacates the portion of the Arbitrator's order granting Pactiv's Motion to Dismiss, while affirming the Arbitrator's denial of the claims against Respondent Pactiv Corporation.

Accordingly, the Commission vacates the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss.

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 July 27, 2023 is hereby affirmed and adopted.

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

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

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

January 19, 2024

o: 12/21/23
CMD/jjm
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC018188
Case Name	Amanda Pozniak, individually and as guardian of dependent children Addison Pozniak and Ashley Lawton, and as Ind. Adm. of the Estate of Charles Lawton, deceased, v. Pactiv Corporation.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Steven Fruth, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Candice Drew

DATE FILED: 7/27/2023

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

/s/Steven Fruth, Arbitrator

Signature

STATE OF ILLINOIS

)SS.

COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

AMANDA POZNIAK, individually and as guardian of dependent children Addison Pozniak and Ashley Lawton, and as Ind.Adm. of the Estate of CHARLES LAWTON, deceased,
Employee/Petitioner

Case # **16 WC 18188**

v.

PACTIV CORPORATION.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Steven Fruth**, Arbitrator of the Commission, in the city of **Chicago**, on **June 22, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☒ What was Petitioner's marital status at the time of the accident? How many dependent children did Petitioner have?
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: Is Petitioner entitled to statutory funeral expenses?

FINDINGS

On **6/13/2013**, Respondent ***was*** operating under and subject to the provisions of the Act.

On **6/13/2013**, an employee-employer relationship ***did*** exist between Petitioner and Respondent Pactiv. Pactiv was the borrowing employer for purposes of §1(a)4. Aerotek is the lending employer and is the Respondent in case 16 WC 18189. Per the written agreement between Pactiv and Aerotek, Aerotek agrees to indemnify Pactiv for any liability for any benefits under the Act.

On **6/13/2013**, Charles Lawton ***did not*** sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned $20,281.00; the average weekly wage was $**780.04**.

On the date of accident, Petitioner was 35 years of age, ***single*** with **3** dependent children.

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

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

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

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

ORDER

Petitioner's Application for Benefits is denied.

The Arbitrator grants Respondent Pactiv's Motion to Dismiss.

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

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

_____ **JULY 27, 2023**

Signature of Arbitrator

Amanda Pozniak individually and as guardian for dependent children Addison Pozniak and Ashley Pozniak, and Independent Administrator of the Estate of Charles Lawton, Jr., deceased v. Pactiv Corporation

16 WC 18188

consolidated with

Amanda Pozniak individually and as guardian for dependent children Addison Pozniak and Ashley Pozniak, and Independent Administrator of the Estate of Charles Lawton, Jr., deceased v. Aerotek

16 WC 18189

INTRODUCTION

This matter proceeded to hearing before Arbitrator Steven Fruth. The disputed issues were:

16 WC 18188(Pactiv): ***C:*** Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***G:*** What were Petitioner's earnings?; ***H:*** Whether the deceased had any dependent children**.;** ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Whether Petitioner is entitled to statutory funeral expenses.

16 WC 18189 (Aerotek): ***C:*** Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***G:*** What were Petitioner's earnings?; ***H:*** Whether the deceased had any dependent children**.;** ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Whether Petitioner is entitled to statutory funeral expenses.

Petitioner claim's Charles Lawton's average weekly wage was $823.75, which Respondents dispute. Respondents claim the average weekly was $780.04.

Petitioner's oral motion to continue the hearing to allow for obtaining evidence from an additional witness was denied for failure to present an offer of proof as to what evidence that witness would provide.

FACTUAL BACKGROUND

Charles Lawton, Jr. was employed by Respondent Pactiv Corp. (borrowing employer) on June 13, 2013 [AerotekX #2]. Mr. Lawton was employed through an Agreement for Temporary Employment Services between Pactiv and Respondent Aerotek (loaning employer) [PactivX #2]. Mr. Lawton was working for Pactiv on June 13, 2013 when he was injured in an incident at or near Pactiv's plant in Bedford Park, IL. Mr. Lawton died on July 13, 2013 from the injuries he sustained on June 13.

STATEMENT OF FACTS

Petitioner displayed video recordings from security cameras capturing the events at the issue (PX #16). The videos recorded a dark SUV entering Pactiv's parking lot and park next to a white van. The SUV then drove off the parking lot and parked on Mason street. Two individuals got out of the SUV and walked onto Pactiv's parking lot. After a time, an individual runs past a second person (presumably Charles Lawton) who began running also. A third person followed close behind the first two. The first 2 individuals ran onto Mason Street where they were followed by the 3 pursuers onto Mason Street. The video does not depict the actual trauma sustained by Mr. Lawton.

Amanda Pozniak testified that she was the girlfriend of Charles Lawton in June 2013. They lived together for a year before the incident at issue. Ms. Pozniak testified Mr. Lawton was sent to work at Pactiv by Aerotek. She identified PX #17, Order Declaring Heirship entered June 9, 2015 in the 18th Judicial Circuit, DuPage County. Ms. Pozniak explained that Elaina Lawton was born February 11, 1997. Elaina lived with her mother at the time in question, but Mr. Lawton " provided for her". Ms. Pozniak also testified that Mr. Lawton provided support for his daughter Ashley Lawton, Elaina 's sister, who was born July 14, 2002. Grace (Ortstadt), born January 8, 2001, is Mr. Lawton's natural child but was adopted. Grace was not living with Ms. Pozniak and Mr. Lawton.

Ms. Pozniak testified that Addison Pozniak is her daughter by Mr. Lawton (PX #5). Ms. Pozniak and Addison were living with Mr. Lawton at the time at issue. She testified that Mr. Lawton was providing support for her and Addison.

Ms. Pozniak testified Addison was in second grade even though she was supposed to be in third grade. She had struggled with meeting milestones ever since she was born. She was in the 50% range for her peers and was the oldest in the class. An Individualized Education Plan ("IEP") had been adopted for Addison (PX #12) The purpose of the IEP was to moderate the standards Addison had to satisfy so she did not have to be held to the higher standards other children were being held to. Addison's formal diagnoses included attention deficit hyperactivity disorder (ADHD) and oppositional defiant disorder (ODD). An adult has to sit with her at lunch to prevent her from choking. Addison also had a

vestibular movement swing in her room at home which settles her mind and to help her focus better.

Ms. Pozniak identified PX #20, the Order appointing her Independent Administrator of the Estate of Charles Lawton deceased, 2015 P 540, 18th Judicial Circuit, DuPage County.

On cross-examination Ms. Pozniak testified that she does not know whether Addison's diagnoses and other problems will continue into adulthood.

Testimony of Gabriel Ybarra (PX #7)

Mr. Ybarra testified by evidence deposition on August 24, 2020 (PX #7). He described the general layout of Pactiv's property. Four buildings were located in the area, three belonging to Pactiv. The two buildings to the west were Pactiv buildings and the northeast building was also Pactiv. He testified Pactiv had its employees take breaks in the parking lot area adjacent to the buildings to the west.

Ybarra took his break at Pactiv's southwest building. He saw Lawton and Brookhouse running across Pactiv's parking lot after two other people. Ybarra testified he joined the pursuit to see what was going on. Lawton and Brookhouse did not ask Ybarra to join them, he just saw them running and followed them. The people they were following got into a Jeep and ran over Lawton.

Ybarra testified he was behind Brookhouse and did not see the people who got into the Jeep. He heard screaming but could not make out any words. Ybarra testified the Jeep was not parked on Pactiv's property. He did not know what the area was used for. Ybarra did not characterize that area as an alleyway as it was a paved area. He did not know whether Pactiv parked its trailers in that area.

Ybarra was not aware of any Pactiv policy which prevented coworkers from helping other coworkers who were in trouble. He was not disciplined or terminated for his involvement in the incident. Pactiv had no fencing to keep non-Pactiv people from accessing the parking lots. There were no security guards to monitor Pactiv's lots. Pactiv hired a security firm to patrol their property after Lawton's incident.

Testimony of John Brookhouse (PX #8)

Mr. Brookhouse testified by evidence deposition on September 28, 2020 (PX #8). Brookhouse knew Mr. Lawton from work, noting that Mr. Lawton helped him out a lot at work by showing him how to do stuff. He and Mr. Lawton were taking a smoking break by Pactiv's 7600 building. Pactiv restricted smoking to a bench area and that is where they took their break. He got halfway through a cigarette when they saw two guys busting up car windows in Pactiv's lot. He did not know whose car it was.

Brookhouse heard windows being smashed and started yelling at the guys who were busting the windows. They started running back across Mason and Brookhouse, Lawton, and Gabe (Ybarra) chased after them. Lawton got in front of the car, and "they ran him over", dragging him through the parking lot.

Brookhouse explained that it was a natural response to follow the guys as he wanted them to get caught for what they were doing. He never intended to beat up the guys. Lawton did not express any interest in doing that either. Brookhouse and Gabriel stopped behind the vehicle. Lawton went to the front of the Jeep with his cellphone out, telling the occupants to "stop man" and that he was "calling the cops." That is when the accident happened.

Mr. Brookhouse testified he had seen this driver in Pactiv's lot during his 7:00 pm break. The driver was sitting in his Jeep in the parking lot. Brookhouse knew the man had no business being there but did not report it to anyone. He did not believe that Pactiv had a system in place to receive such reports about strangers in the lots. Pactiv had no rule which prohibited workers from going to the aid of fellow workers. Pactiv had no fences or security measures other than key fob access to the buildings. Pactiv did not hire security for its lot until Lawton was hurt. Pactiv did not protect its lots with gates, chain link fences or walls. Pactiv did not provide training on what to do when criminal events occurred on its property. Brookhouse testified Pactiv left it up to the employees as to how they should deal with criminal events outside the buildings.

After Mr. Lawton's accident, no supervisor told Brookhouse that he should not have joined Lawton in following the vandals. Brookhouse was not disciplined for assisting Lawton. He did not know if the roadway area where the accident happened was Pactiv property, but he believed it was because Pactiv parked its slip trucks at that location. Pactiv also had big tanks of stuff in that area.

Brookhouse testified Pactiv did not allow its workers to park in that roadway where the accident happened. Pactiv workers had to park in the Pactiv lot to the west. On cross-examination, Brookhouse admitted he did not know what the property lines were between the businesses. Brookhouse clarified that he had walked to his own car and got into it for a brief moment before the guys started breaking out the windows in the other car. He got out of his jumped out to join Lawton and Gabe at that point. He testified about the accident and details were clearer in his mind when it happened.

Brookhouse reiterated he was not going to physically apprehend the vandals, but only make sure they were held responsible for what they had done. Lawton just had time to tell the Jeep occupants "I'm calling the police" as he pulled his phone from his pocket before the Jeep ran over him. 30 to 40 seconds passed from the time Lawton stood in front of the Jeep to when it ran him over. He testified that there was nothing about the

vandals before the event that caused him to feel any need to call the police. He is unaware of any prior incident of vandalism in Pactiv's lot.

Slip trucks are parked in that area where the trucks that Pactiv used in the building he worked out of in the building west of Mason. Those trucks were parked in the alley area. There was no Pactiv policy requiring him to report strangers in the parking lot to supervisors. Pactiv's workers did not wear distinctive uniforms and there were always new people coming to work through staffing companies.

Brookhouse said when he saw the Jeep driver during the earlier shift, he did not think it was something to report to management. Pactiv's slip trucks were parked another 30 feet beyond where the Jeep was located at the time of the accident.

Testimony of Bedford Park Police Sergeant Andrew Smuskiewicz (PX #9)

Sergeant Smuskiewicz testified by evidence deposition on July 21, 2021 (PX #9). He was a Bedford Park police department detective at the time of Lawton's accident on June 13, 2013.

Sergeant Smuskiewicz was called out to Pactiv on the night of the incident. He explained the process of his investigation. where he interviewed a number of witnesses. Respondent Aerotek objected to the testimony on hearsay grounds, which was overruled. Much of Smuskiewicz' s account does consist of hearsay and Aerotek's running objection is well founded, striking this witness's testimony from the case to the extent it was based on what he was told. Aerotek also objected to the Bedford Park police report, which was not offered in evidence. The witness refreshed his memory from the report.

From his investigation, Sergeant Smuskiewicz learned that Lawton was part of a group of people who were trying to stop the crime from taking place and trying to get the offenders to stop so they could be arrested. He found no evidence that Lawton or his companions knew Garcia before the accident.

Respondent Aerotek renewed and reserved its objections to hearsay when it began cross-examination. Sergeant Smuskiewicz testified he never investigated whether Garcia and Ms. Fernandez had an affair. He testified that Bedford Park officers had been called out to Pactiv both before and after Lawton's incident for other incidents. Those calls involved disturbances among employees and supervisors. There was never a call involving an outsider coming onto the property.

Based on what he observed, Sergeant Smuskiewicz understood that that the vehicle involved did not enter Pactiv property after the incident. He agreed that civilians should stay out of police issues and just call 9-1-1. He advised people to not jeopardize their own safety.

Testimony of Jose Gasco Garcia (PX #10)

Jose Garcia testified by evidence deposition on March 28, 2022 (PX #10). He was one of the persons damaging the car in Pactiv's lot and was the driver who ran over Lawton. He testified from prison where he was serving time for Lawton's death.

Garcia had worked at Pactiv for years before the accident and he was still working at Pactiv on the weekends in June 2013. His wife Maria also worked at Pactiv. Garcia did not know Lawton, although he had seen him at work in the past. They worked in different Pactiv buildings.

Garcia identified DepX #1, a daylight photo of the area where he parked the Jeep between the buildings. Garcia parked where the red mark was located on the photo. DepX #2 is an overhead view of the same roadway area. Garcia parked his Jeep where the red X is located on DepX #2. The building at the top of this photo is Pactiv's building and the building at the bottom was some other business. Garcia testified he worked in the building at the top left of the photo with the white roof.

Garcia was not working at Pactiv the night of the accident. He came to Pactiv's property to make sure his wife was at work and to check her car. He parked his Jeep in a dark roadway to make sure that no one got his license plate. He backed his Jeep down the roadway between the buildings with his headlights off. He planned to damage Guadalupe Fernandez's car. He was not going after Lawton's car, and he had no intent to harm Lawton in any way. He was going after Fernandez for bothering his wife and getting involved in their family life.

Garcia testified another Pactiv employee came to assist Garcia that night. Garcia's wife and Fernandez were both working that evening. Fernandez had been harassing Garcia's wife for a long time. Fernandez did this with all the women at the plant. Female workers in that building had been complaining of Fernandez's sexual harassment for years before the accident. Garcia had damaged Fernandez's car on earlier occasions before Lawton's incident.

Garcia knew that Pactiv did not have security guards patrolling its lots before June 2013. He knew there were no security fences which would have stopped him from accessing Fernandez's car. Any person could access the lots, whether they worked there or not. There were no guards in place at Pactiv to keep strangers off the property.

Garcia testified he did not see Lawton in front of his Jeep before accelerating away. He did not intend to run Lawton over. He had nothing against Lawton. He felt something under his vehicle, but he thought it was a piece of concrete which was sometimes in Pactiv's parking lots. Mr. Garcia testified he was trying to get away from the people chasing him and did not see Mr. Lawton standing in front of his car when he drove away.

Garcia testified that during the eight years he worked at Pactiv, Pactiv had no training programs to explain what workers should do about sexual harassers in the plant. He was never told what he was supposed to do when a coworker kept sexually harassing his wife in the plant. Garcia did not intend to hurt anyone when he came to Pactiv on June 13, 2013. He said Lawton's injury was a pure accident.

On cross-examination, Garcia admitted he chose the location where he parked the Jeep because it was dark. There were no lights on the non-Pactiv building to his south. Pactiv had some lights on its building to the north, but not where he parked. He did not park in Pactiv's parking lots to the west because of Pactiv's cameras. He knew Pactiv had cameras on the buildings and did not park there for that reason.

Garcia testified he stopped vandalizing Fernandez's car after he finished what he wanted to do. He and his companion started walking back across Mason and then started to run when people started chasing.

On redirect examination, Garcia admitted that he had also worked in Pactiv's northeast building with the loading docks, shown at the top of DepX #2 with the dark roof. Pactiv used the trailers parked near that building to get the plates out of Pactiv's building. He saw those trailers pulling away from Pactiv's building onto Mason Street many times during the years he worked at Pactiv.

Testimony of Lawrence Liva (PX #19)

Mr. Liva testified by evidence deposition on June 13, 2022 (PX #19). He was a machine shop manager for Pactiv on June 13, 2013. He received a call at home that something had happened to a temporary employee at Pactiv, and that he needed to come into work. Liva did not recall whether he authored the Occupational Incident Report, a diagram, or investigative notes.

Liva testified that if an employee was involved in a major accident, he would meet with Dennis Davidson, Pactiv's Director of Engineering, and Davidson would tell him what to do or who to call. Liva worked the day shift, but he directly supervised Charlie Lawton, John Brookhouse and Gabriel Ybarra. If an incident happened, he would probably handwrite a report, but did not recall much about those reports.

On cross-examination Liva testified Pactiv operated three buildings at that campus, arranged in a L formation: one to the southwest, one to the northwest, and one to the northeast. The building to the southeast had nothing to do with Pactiv. (PX19 p.17) Between that building and the Pactiv building to its north, there was a roadway or a parking area.

Liva was shown the overhead view of the area (Garcia DepX #2). Liva confirmed that the trailers on the photo ran in and out of Pactiv's operations. To access the area where the trailers were, Pactiv would have to use the exit onto Mason. To the right of the

red "X" on Garcia DepX # 2, Liva saw a yellow barrier across the roadway but did not know whether that barrier delineated Pactiv's area of operation from the unrelated business in the south building.

Liva testified he did not know where the property lines were. He also did not know if Mason was a public rather than private road.

Liva did not recall giving Lawton new employee orientation. He did not handle the orientations, but he thought Pactiv's HR would orient new temp employees. He did not recall there being a written handbook of job rules for temporary employees. Liva had never seen a written or oral rule prohibiting workers from going to the aid of other workers who were in peril. He would never have discussed discouraging workers from going to the help of a coworker. In the years he was working at Pactiv, he did not recall there being any kind of rules which prohibited workers from going to the assistance of their coworkers.

Liva testified Brookhouse and Ybarra were not disciplined, written up, or even chastised for joining Lawton in addressing the emergency. He knew of no managers claiming that these workers should not have followed the people who were damaging property in the lot. The police came to him to look at camera footage from the cameras on his building. He saw no photos or video showing what happened down the roadway where Lawton was hurt.

Liva did not recall Pactiv providing training for temp employees as to how they were to address sexual harassment in the plant.

Liva identified the ground level view of the roadway between the buildings from July 2011, Garcia DepX #1. The photo shows pavement running from Pactiv's building on the left to the brick wall of the non-Pactiv building on the right. Liva walked the area a couple of days after the accident but could not recall what he saw.

Liva was asked about the Occupational Incident Report ("OIR"). The OIR listed him as the person receiving notice of Lawton's incident. Pactiv used these OIR forms for various types of incidents. Liva did not prepare this OIR, he would not have typed it up or phrased things the way they were written on the OIR. Brookhouse and Ybarra were both listed as witnesses on the OIR, and they were both reported as having given statements.

Liva was not aware of prior incidents like what happened to Lawton so he did not know who would take the statements or write the report. Even though the OIR said he was a machinist, Lawton did hand finishing work. The OIR said that "Supervisor/Team Lead should complete front page and top of the back of second page." Liva admitted he was Lawton's supervisor at the time, but different leads or supervisors may have completed the report. A box marked "Contributing Factors" was located at the bottom of

the first page. Liva did not know enough about the details of the event to determine who was at fault for the injury.

Liva reiterated that he was not aware of any Pactiv rules which prohibited workers to going to each other's aid to address sudden emergencies on Pactiv property. If something happened inside the building, he would hope that someone called 911. But he did not remember anything happening outside the building before Lawton's injury. Liva also did not author the Investigative Notes document. He had no idea whether other vehicles had been damaged prior to June 13, 2913. at night in Pactiv's lot. OIR forms should be filled out promptly after an event.

Pactiv's workers were given two breaks and a lunch break. Pactiv did require workers in the southwest building to take their breaks at the north end of the building. Workers were not prohibited from taking breaks in their cars. If Lawton and Brookhouse were in the north end of the building during their breaks, that is where the company expected them to be. Lawton was also allowed to take breaks with coworkers. Breaks were not scheduled for exact times. Workers did not have to clock out or notify the supervisor when going to break, but workers did clock out for lunchbreaks.

Testimony of Guadalupe Fernandez (AerotekX #3)

Guadalupe Fernandez testified at Jose Garcia's criminal trial August 28, 2017, People of the State of Illinois vs. Jose Garcia, 13 CR 1552. Mr. Fernandez identified photos of his car showing broken windows and a gang sign scratched into the car. Later, on June 13, 2013 he recognized "Jose" from a picture on TV and called the police about Garcia. Fernandez had worked with Garcia at Pactiv for 3 years before this night. Fernandez was confronted by Garcia in the canteen 2 months before the attack. Garcia said something to him about calling Garcia's wife or girlfriend, which Fernandez said was a lie. Garcia told him to watch his back.

Fernandez admitted he did not know if Garcia damaged his car because he was inside working. Fernandez went to the police station on June 20, 2013 and identified Garcia in a photo array. He also identified Garcia in a physical lineup at the Sheriff's office in Maywood, as well as in open court. During an interview with police, Fernandez talked about the disagreement he had with Garcia. Fernandez admitted he had had disagreements with other people at work.

Medical Records

Mr. Lawton was transported by Bedford Park Fire Department ambulance to Advocate Christ Hospital ("Christ") in Oak Lawn (PX #2). The EMS record identified multiple injuries (PX #1). The Christ trauma notes document significant deep tissue injuries. Procedures performed at Christ included washout of his right face, left upper extremity, right shoulder, and debridement of wounds.

Christ transferred Lawton to the Loyola University Medical Center ("Loyola"), where he was admitted to the burn unit on June 17, 2013 in an intubated and sedated state. He was hemodynamically stable at that point (PX #3). Loyola healthcare providers noted extensive degloving of the right side of the head, amputation of the right ear, right mastoid fracture with complete fracture and disarticulation of the zygomatic arch, fracture and exposure of the temporomandibular joint, and extensive exposure of deep facial muscles in the right side of the face and clavicle fractures. The left upper chest and shoulder also suffered degloving with exposure of muscle and soft tissue. The right upper extremity had dorsum degloving of hand down to the bone and deep muscle. The left upper extremity was extensively degloved from the shoulder down to the wrist, with a brachial artery bypass being done at Advocate. He had deep partial thickness/full thickness burns to his chest. Three surgical procedures were performed at Loyola, during which he remained sedated with mechanical ventilation while undergoing antibiotic treatment and dialysis for acute renal failure.

Mr. Lawton never regained consciousness or function and treatment ultimately failed. Lawton died on July 13, 2013. Loyola records included photos of Lawton's injuries.

Mr. Lawton's Death Certificate was admitted as PX #4.

Pactiv Occupational Incident Report was admitted as PX #18.

Respondent Pactiv's Motion to Dismiss was admitted as PactivX #1.

The temporary employment agreement between Pactiv and Aerotek was admitted as PactivX #2.

Respondent Aerotek's wage statement was admitted as AerotekX #1.

Respondent Aerotek's employment agreement was admitted as AerotekX #2.

The trial testimony of Guadalupe Fernandez was admitted as AerotekX #3.

CONCLUSIONS OF LAW

Respondent Pactiv filed a Motion to Dismiss, citing the written agreement between Pactiv and Respondent Aerotek, PactivX #2. The agreement states in pertinent part:

- [Aerotek] will, at its own expense, provide and keep in full force and effect during the term of this Agreement…Workers' compensation statutory coverage as required by the laws of the jurisdiction in which the Services are performed.
- [Aerotek] will indemnify, defend and hold Pactiv and its subsidiaries, affiliates, directors, officers, employees and agents from and against all demands, claims, actions, suits, losses, damages (including, but not limited to, property damage, bodily injury and wrongful death), judgments, costs

> and expenses…imposed upon or incurred by Pactiv arising out of…[a]ny claim of any nature asserted against Pactiv or workers compensation carriers by any [Aerotek] employee or agent of [Aerotek], or, in the event of death, by their personal representatives.

The facts here are similar to those in *Lachona v. Industrial Commission*, 87 Ill.2d 208, 427 N.E.2d 858 (1981), where a similar agreement was upheld. The Arbitrator finds that Pactiv is a borrowing employer and Aerotek is a loaning employer in accord with §1(a)4 of the Act. The Arbitrator also notes the stipulation at trial between Respondents Pactiv and Aerotek, whereby if any benefits are awarded to Petitioner as a result of the June 13, 2013 incident, that Aerotek retains full liability for any and all benefits, including, but not limited to, medical benefits, TTD benefits, death benefits, funeral expenses, penalties and fees, and permanency.

Respondent Pactiv's Motion to Dismiss is granted.

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

The Arbitrator finds that Petitioner failed to prove that an accident arose out of and in the course of the decedent's employment by Respondents Pactiv Corp. or Aerotek.

Charles Lawton, Jr. was employed by Respondent Pactiv Corp. on June 13, 2013. Mr. Lawton was employed as a temporary CNC Machinist through referral from Respondent Aerotek. On the evening of June 13 Mr. Lawton was taking a break with coworkers in an area abutting Pactiv's employee parking lot. Mr. Lawton and the others heard the sound of breaking glass and went to investigate. They discovered two individuals vandalizing a coworker's car. Jose Garcia was one of the individuals vandalizing the car. Mr. Lawton and coworkers John Brookhouse and Gabriel Ybarra gave chase of Mr. Garcia and the other vandal across the parking lot and onto Mason street which was the public way. Mr. Lawton placed himself in front of a Jeep operated by Mr. Garcia. In an effort to get away Mr. Garcia ran over and dragged Mr. Lawton down the roadway, causing fatal injuries to Mr. Lawton. Mr. Garcia was criminally charged and convicted for his actions.

An injury arises out of one's employment if its origin is from a risk connected with or incidental to employment activities. "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.

An injury occurs "in the course of" of employment if it refers to the time, place, and circumstances of the accident. If an employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties, a resulting injury will not be within the course of employment unless the employer had knowledge or acquiesced in such unreasonable conduct.

Charles Lawton was employed by Pactiv as a machinist. There was no evidence that he was charged with any responsibilities relating to security of the workplace, of his employer's property or equipment, or of his coworkers. Pursuing criminals who had vandalized hey coworkers private vehicle Was not part of the duties of a machinist or incidental to the duties of a machinist. Mr. Lawton, along with Mr. Brookhouse and Ybarra, We're not engaged in protecting the property or equipment of Pactiv or protecting a coworker from harm. The risks associated with chasing the offenders off Pactiv's property and standing in front of their fleeing vehicle was a risk that was assumed solely by Mr. Lawton and was in no way connected to his employment with Respondents. Mr. Lawton voluntarily exposed himself to a risk that was outside of his job duties. There is no evidence that his employer had knowledge or acquiesced to the decedent assuming this type of risk. There was no evidence that Aerotek or Pactiv expected, required, or encouraged its employees or temporary employees to stop any sort of criminal activity that occurred on company property.

The Arbitrator finds that Mr. Lawton took himself outside the scope of his employment as a machinist not only when he chased the offenders off Pactiv's property and across Mason Street, but also when he placed himself in front of Mr. Garcia's vehicle in an attempt to stop the offenders from fleeing. If an employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties, as here, the resultant injury is not within the course of the employment.

Also, the Arbitrator does not find the Good Samaritan doctrine applicable to this case. In determining whether an accident is compensable under the Good Samaritan Doctrine, courts have focused on whether the conduct is reasonably foreseeable. It was not reasonably foreseeable by Respondents that Mr. Lawton what put himself in harm's way when a criminal act did not involve damage to the employers property or equipment or harm to a coworker.

The Arbitrator does not find the alleged relationship and/or harassment between Mr. Garcia, Mr. Garcia's wife, and Guadalupe Fernandez relevant because it did not involve Mr. Lawton whatsoever.

The Arbitrator also does not find it relevant that Pactiv placed security in the parking lot after the June 13, 2013 incident. There was no evidence that Bedford Park is a high crime area or that there was a pattern of vandalism or other criminal acts in the Pactiv parking lot. On the contrary, this incident appears to be isolated to the issues between Mr. Garcia and Mr. Fernandez.

G: *What were Petitioner's earnings?*

Petitioner's wage statement, PX #11, shows Mr. Lawton's earnings from November 8, 2012 through June 13, 2013. During that time, the decedent had regular earnings of $20,013.00 and $84.00 of overtime earnings at straight time pay, for a total of $20,097.00. Using the weeks and parts thereof method, Mr. Lawton worked a total of 130 days during that period, or 26 weeks. This computes to an average weekly wage of $772.96.

Respondent Aerotek wage statement, AerotekX #1, showed earnings of $20,281.00. and the Petitioner's average weekly wage, calculated pursuant to section 10 of the Act was $780.04. Using the weeks and parts thereof method, Mr. Lawton worked a total of 130 days during that period, or 26 weeks. This computes to an average weekly wage of $780.04.

The Arbitrator adopts the average weekly wage computation of Respondent Aerotek, $780.04.

H: *Whether the deceased had any dependent children***.**

The evidence established that Mr. Lawton was not married at the time of the incident at issue. According to the June 8, 2015 Order of Heirship, PX #17, the decedent had the following minor dependents at the time of his death: Addison Pozniak (DOB May 19, 2013), Ashley Lawton (DOB July 14, 2002), and Elaina Lawton (DOB February 11, 1997). Elaina Lawton was emancipated by age on February 11, 2015. There was evidence that Grace Orsatdt, decedent's natural child, had been adopted but there was no evidence of when the adoption took place and, therefore, no evidence of whether Grace was a minor dependent at the time of Mister Lawton 's death.

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 has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Notwithstanding the Arbitrator's finding that the incident at issue did not result in a compensable injury, it appears the medical services provided to Mr. Lawton were reasonable and necessary and there is no evidence to the contrary.

K: *What temporary benefits are in dispute? TTD*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Notwithstanding the Arbitrator's finding that the incident at issue did not result in a compensable injury, it appears the correct disputed period of TTD would be from June 14, 2013 through July 13, 2013, or a period of 4 & 2/7 weeks.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

M: *Should penalties be imposed upon Respondent?*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Notwithstanding the Arbitrator's finding that the incident at issue did not result in a compensable injury, Respondents had good faith bases for denying benefits. It was neither vexatious nor frivolous to deny Petitioner's claim for benefits when Mr. Lawton exposed himself to a personal risk of harm that was outside the scope of his employment.

O: *Whether Petitioner is entitled to statutory funeral expenses.*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

_____ _____

Steven J. Fruth, Arbitrator Date

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

AMANDA POZNIAK, as Independent Administrator of the Estate of Charles Lawton, deceased, et al., **Plaintiffs,** **v.** **PACTIV CORPORATION, et al.,** **Defendants.**	**Case No.: 2024L050047**

ORDER

Charles Lawton witnessed a car being vandalized while outside in the employee parking lot on a break from work. Lawton chased the vandals, who fled back to their own car, which had been parked just off-property. He stood in front of the vandals' car in an effort to prevent their escape. The vandals – who, it later turned out, were fellow employees, off-duty, seeking to avenge a grievance with the vandalized car's owner – drove over Lawton and dragged him under the car, critically injuring him. Lawton would later die of his injuries. The driver, Jose Garcia, was subsequently apprehended and imprisoned for Lawton's death.

Amanda Pozniak, the mother of one of Lawton's children and the administrator of his estate, filed a claim against his employers[1] under the Workers' Compensation Act on behalf of the estate and Lawton's minor children. The claim proceeded to arbitration, following which the Arbitrator determined that the Lawton's death was non-compensable:

> Charles Lawton was employed by Pactiv as a machinist. There was no evidence that he was charged with any responsibilities relating to security of the workplace, of his employer's property or equipment, or of his coworkers. Pursuing criminals who had vandalized [their] coworker[r's] private vehicle was not part of the duties of a machinist or incidental to the duties of a machinist. Mr. Lawton, along with Mr. Brookhouse and Ybarra, [were] not engaged in protecting the property or equipment of Pactiv or protecting a coworker from harm. The risks associated with chasing the offenders off Pactiv's property and standing in front of their fleeing vehicle was a risk that was assumed solely by Mr. Lawton and was in no way connected to his

[1] It was stipulated that the Respondents, Aerotek and Pactiv, had a borrowing-lending relationship with regard to Lawton's employment. The two Respondents are referenced throughout as the "employer" or "employers" for simplicity's sake.

> employment with Respondents. Mr. Lawton voluntarily exposed himself to a risk that was outside of his job duties.

The principle of law applicable to the circumstances of Lawton's death, according to the Arbitrator, dictates that an injury is not considered to have occurred in the course of employment "if an employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties . . ."

The Commission affirmed and adopted the Arbitrator's Decision.

Pozniak has filed a Petition for Review arguing, in the main, that the accident should be found compensable under the "hero/emergency doctrine."

To be compensable under the Workers' Compensation Act, the injury complained of must be one "arising out of and in the course of the employment." 820 ILCS 305/2. An injury "arises out of one's employment if its origin is in some risk connected with or incidental to the employment, so that there is a causal connection between the employment and the accidental injury. *Parro v. Industrial Comm'n*, 167 Ill. 2d 385, 393 (1995). An injury occurs "'in the course of employment [if] it occurs within a period of employment, at a place where the worker may reasonably be in the performance of his duties, and while he is fulfilling those duties or engaged in something incidental thereto.'" *Parro*, 167 Ill. 2d at 393 (quoting *Scheffler Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 367 (1977)).

Whether an injury arose out of and in the course of employment are questions of fact for the Commission and may not be set aside unless against the manifest weight of the evidence. *Litchfield Healthcare Ctr. v. Indus. Comm'n*, 349 Ill. App. 3d 486 (5th Dist. 2004). In applying a manifest weight of the evidence standard, courts of review should be "reluctant to set aside the Commission's decision on a factual question," but "should not hesitate to do so when the clearly evident, plain, and indisputable weight of the evidence compels an opposite conclusion." *Montgomery Elevator Co. v. Industrial Comm'n*, 244 Ill. App. 3d 563, 567 (1993); See also *Roberson v. Indus. Comm'n*, 225 Ill. 2d 159, 173 (2007) ("A reviewing court will not set aside the Commission's decision unless its analysis is contrary to law or its factual determinations are against the manifest weight of the evidence.")

The principle of law relied upon by the Arbitrator and adopted by the Commission has been referenced by courts of review as the "unnecessary personal risk doctrine."

Application of the "unnecessary personal risk" doctrine seems to have generally been limited, by Illinois courts of review, to three circumstances. The first involve situations in which the claimant is injured while engaged in "performing an act of a personal nature solely for his own convenience." The second centers around cases involving a claimant who "voluntarily exposes himself to a known hazard." And the third category of cases concern injuries that occur

during the course of an employee "minister[ing] to his personal comfort" in an unreasonable or unforeseeable manner.

Orsini v. Industrial Comm'n, 117 Ill. 2d 38 (1987), illustrates the first type. There, the claimant was adjusting the carburetor on his own car at the Texaco where he worked when it lurched forward and pinned him against a workbench, breaking his legs. The Supreme Court held that the injury was non-compensable because it did not "arise from" the claimant's employment, framing the doctrine of "unnecessary personal risk" as involving a "danger entirely separate from the activities and responsibilities of [the employee's] job":

> [U]nder the terms of his employment, Orsini was not required to work on his personal automobile during working hours, and Wilmette Texaco could just as well have permitted him to do nothing while he was waiting for the additional brake parts needed to complete the job he was performing for his employer. . . . Orsini's car served no purpose relative to his employment duties at Wilmette Texaco. Thus, we find here that Orsini voluntarily exposed himself to an unnecessary danger entirely separate from the activities and responsibilities of his job, and was performing an act of a personal nature solely for his own convenience, an act outside of any risk connected with his employment. Clearly, there is no evidence here of a causal connection between Orsini's employment at Wilmette Texaco and the accidental injury.

Orsini, 117 Ill. 2d at 47; See also *Sekora v. Indus. Com*., 198 Ill. App. 3d 584, (1990) (employee injured while riding dealership ATV in a field after work); *Curtis v. Indus. Comm'n*, 158 Ill. App. 3d 344 (1987) (claimant burned transferring gasoline to container for his personal use); *Segler v. Indus. Com*., 81 Ill. 2d 125 (1980) (claimant injured by conveyer while attempting to heat his lunch in industrial oven); *Yost v. Indus. Com.*, 76 Ill. 2d 548, 550 (1979) (claimant injured attempting to pry lid off candy tin).

This, first type, of "unnecessary personal risk" centers on the "personal" aspect of the risk – and the "arising out of" prong of analysis. Courts of review assign particular significance to whether, as in *Orsini,* the claimant was "performing an act of a personal nature solely for his own convenience" at the time of his injury. See e.g. *Fisher Body Division, General Motors Corp. v. Industrial Com*., 40 Ill.2d 514 (1968) (employee injured by car battery explosion while re-charging in employee parking lot); *Mazursky v. Industrial Com.,* 364 Ill. 445 (1936) (employee injured while attempting to repair wheel of his car on employer's premises).

The second type of case in which the "unnecessary personal risk" doctrine has been applied are cases that involve employees injured while voluntarily confronting known hazards for their own convenience – typically by taking a "shortcut" on the way to or from work. See e.g., *Purcell v. Illinois Workers' Compensation Comm'n*, 2021 IL App (4th) 200359WC, ¶ 23 (claimant injured while attempting to hop over barrier); *Hatfill v. Industrial Comm'n,* 202 Ill.

App. 3d 547 (1990) (jumping over a ditch *en* route to parking deck); *General Steel Castings Corp. v. Industrial Comm 'n*, 388 Ill. 66 (1944) (crossing railroad tracks instead of using pedestrian tunnel on way to employee parking lot); *Terminal R. Ass'n v. Indus. Com.*, 309 Ill. 203 (1923) (attempting to crawl under a freight train to get to work station in railroad roundhouse).

Courts confronted with these cases typically focus on the "unnecessary" aspect of the activity and the "in the course of employment" prong of the analysis. Injuries that occur while employees are engaged in confronting a known hazard, like operating train tracks, are said to be acting for their own personal convenience – rather than acting with some interest of the employer in mind – and, consequently, acting outside the course of employment.

The third category of cases concern limitations on employees seeking "personal comfort." As set out by the Supreme Court, "the course of employment is not considered broken by certain acts relating to the personal comfort of the employee," but, "if the employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties, the resultant injury will not be deemed to have occurred within the course of the employment." *Eagle Discount Supermarket v. Industrial Comm'n*, 82 Ill.2d 331, 339-40 (1980); See also *Union Starch v. Industrial Comm'n*, 56 Ill.2d 272, 277 (1974) ("Our courts have found that incidental, or nonessential acts of the employment, such as seeking personal comfort, may not be within the course of employment if done in an unusual, unreasonable, or unexpected manner")[2]

The facts at issue here fall outside each of the three circumstances in which Illinois courts of review have applied the "unnecessary personal risk" doctrine. This wasn't a case that involved Lawton's personal interest. It wasn't *his* car that was being vandalized. Neither was this a circumstance involving Lawton confronting a known risk for his personal convenience – nor a case concerning the limits of the "personal comfort doctrine." While Lawton was on break, he was doing nothing to advance his own interest, convenience or comfort in confronting the vandals in the employee parking lot.[3]

Petitioner argues that the case is one that is controlled by the "hero/emergency doctrine" citing *Dragovich v. Iroquois Iron Co.*, 269 Ill. 478 (1915), *Baum v. Indus. Com.*, 288 Ill. 516 (1919), *Metropolitan Water Reclamation District of Greater Chicago v. Industrial Comm'n*, 272 Ill. App. 3d 732 (1995), and other cases.

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[2] Other states have adopted constructs requiring employee "misconduct" to be "unusual or extraordinary" or "unconventional and perilous" to be disqualifying. See 3 Larson's Workers' Compensation Law § 32.02D (collecting cases).

[3] See e.g. *Chicago Extruded Metals v. Indus. Comm'n*, 77 Ill. 2d 81, 85 (1979) (killing an insect in the employer's shower facility considered to be an act in the employer's interest).

In *Dragovich*, Frank Markusic, working on Christmas Eve 1912, was burned to death in scalding water after he fell into an open hole on the factory floor while coming to the aid of a fellow employee who was screaming for help – having fallen into a different part of the same hole, himself. Construing "arising out of and in the course of the employment" of the newly enacted Workers' Compensation Act for the first time, the Illinois Supreme Court found that an employee's duties at work extend to attempts to save the lives of his fellow employees:

> Section 1 of the act requires that compensation may be had for accidental injuries sustained by any employee "arising out of and in the course of the employment," etc. From the facts already stated, counsel for appellant argues that it was not shown that the accident arose out of and in the course of deceased's employment. This provision of the statute has never been construed by this court but somewhat similar acts have been construed by the courts in other jurisdictions. Under these authorities it is clear that it is the duty of an employer to save the lives of his employees, if possible, when they are in danger while in his employment, and therefore it is the duty of a workman in his employ, when occasion presents itself, to do what he can to save the lives of his fellow-employees when all are at the time working in the line of their employment. Any other rule of law would be not only inhuman but unreasonable and uneconomical, and would, in the end, result in financial loss to employers on account of injuries to their employees. From every point of view it was the duty of the deceased, as a fellow-employee, in the line of his duty to his employer, to attempt to save the life of his fellow-employee under the circumstances here shown. That he failed in his attempt does not in the slightest degree change the legal situation.

Dragovich, 269 Ill. at 484.

In *Baum*, striking workers from the International Garment Workers' Union stormed the Nora Shirtwaist Company, a non-union shop owned by Simon Baum. Edward Tomczyk, an "assistant cutter" and one of only a few male employees, attempted to stop the strikers from advancing onto the factory floor and was stabbed to death. The Supreme Court, affirming an award of workers' compensation benefits, found that Tomczyk's stabbing arose out of his employment because he was performing a voluntary act during an emergency that he believed to be in the interest of his employer:

> While there must be some causal relation between the employment and the injury, it is not necessary that the injury be one which ought to have been foreseen or expected. It must, however, be one which after the event may be seen to have had its origin in the nature of the employment. . . . Where a workman voluntarily performs an act during an emergency which he has

> reason to believe is in the interest of his employer and is injured thereby, he is not acting beyond the scope of his employment.

Baum, 288 Ill. at 518-19.

Metropolitan Water Reclamation District involved a lockmaster, who – while waiting to be relieved from working in the station house where the Chicago River meets Lake Michigan – suffered a heart attack after assisting in rescuing a man who had fallen into the lake from an adjacent property. Affirming the Commission's finding that the injury was compensable, the Appellate Court determined that – despite the rescue taking place after the lockmaster's shift and off property – the fact the lockmaster's actions were in response to a "sudden emergency" brought it within the course of his employment:

> [C]laimant had signed out, but was not supposed to leave until his replacement arrived. After hearing a commotion in the parking lot, claimant went there to make sure his replacement was not in danger. At that point, claimant was still on the respondent's time and premises. Once in the parking lot, claimant heard a woman's call for help and proceeded to the adjacent property in response to the "sudden emergency" to rescue a stranger. Giving aid as claimant did is natural and expected and did not remove him from the course of his employment.

Metropolitan Water Reclamation District, 272 Ill. App. 3d at 735-36 (citing *Puttkammer v. Industrial Comm'n*, 371 Ill. 497, 501 (1939) ("If a servant in the course of his master's business has to pass along a public street, whether it be on foot or on a bicycle or on an omnibus or car, and he sustains an accident by reason of the risks incidental to the streets, the accident arises out of as well as in the course of his employment." (quoting *Dennis v. A.J. White and Co*. 15 N.C.C.A. 294)).

Dragovich, *Baum* and *Metropolitan Water Reclamation District* stand for three general principles: (1) "in the course of employment" is not constrained to an employee's job duties for purposes of the emergency doctrine; (2) voluntary acts performed in the interest of the employer during an emergency "arise from" the employment; and (3) as long as the act is "in the course of" and "arising from" the employment, it is irrelevant if the act occurs on or off the employer's premises.

Professor Larson summarizes the rule, which he calls the "General Rescue Rule," as extending to emergencies involving both life and property: [4]

> Under familiar doctrines in the law relating to emergencies generally, the scope of an employee's employment is impliedly extended in an emergency to include the performance of any act designed to save life or property in which the employer has an interest. . . . It is too obvious for discussion that emergency efforts to save the employer's property from fire, theft, runaway horses, destruction by strikers, or other hazards are within the course of employment.

3 Larson's Workers' Compensation Law § 28.01 (citing, among other cases, *Deutsch v. Heritage Automotive Enters*., 939 So.2d 259 (Fla. Dist. Ct. App. 2006) (employee awarded benefits after chasing thief and being run over by her car)).

If Jose Garcia, the offender in this case, had – upon being confronted in his act of vandalizing the car – pulled out a gun and shot Lawton in the employee parking lot, there would be no question that the incident would be considered to have "arisen out of" and "in the course of the employment." See *Rodriguez v. Frankie's Beef/Pasta & Catering*, 2012 IL App (1st) 113155 (employee shot to death by fellow employee over dispute over promotion covered by exclusivity provisions of Workers' Compensation Act); *Price v. Lunan Roberts, Inc*., 2023 IL App (1st) 220742 (employee stabbed to death by fellow employee while at work for unknown reasons covered by exclusivity provisions of the Workers' Compensation Act).[5]

Significant to the analysis would be the fact that Garcia was, himself, an employee of Pactiv Corporation, rather than a stranger. Significant, too, would be the fact that the vandalism stemmed from a work-related dispute: the harassment of Garcia's wife (and other employees) by the car's owner while at work. And it would not have mattered if the shooting occurred after Lawton pursued Garcia across the street from the employee parking lot.

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[4] Respondents cite *Pearson v. Industrial Comm'n*, 318 Ill. App. 3d 932 (2001), for the proposition that the "emergency doctrine" is limited to "life-threatening" circumstances. The "emergency doctrine" discussed in *Pearson*, however, is a doctrine differing from that at issue and pertains to extending "employment" status to non-employees during a life-threatening emergency. See *Wolverine Insurance Co. v. Jockish*, 83 Ill.App.3d 411, 38 Ill. Dec. 686, 403 N.E.2d 1290 (1980). See also *Conveyors' Corp. of America v. Industrial Comm'n*, 200 Wis. 512, 228 N.W. 118 (1929); *Tipper v. Great Lakes Chemical Co.* 281 So.2d 10 (Fla. 1973).

[5] See also *Hooks v. Cee Bee Mfg. Corp*., 80 A.D.2d 687 (NY 1981) (workers' compensation coverage found under New York's version of workers' compensation law for claimant shot and killed after confronting vandals in employee parking lot).

The compensability or non-compensability of the claim cannot hinge on the fact that Garcia killed Lawton with a car instead of a gun.

As Petitioner points out, the Arbitrator here improperly injected elements of contributory negligence and assumption of the risk into the analysis. Construing the "emergency doctrine" in a manner that would include such negligence concepts would bring the doctrine into stark conflict with the public policy objectives underlying the Workers' Compensation Act:

> It has long been recognized that one of the [Illinois Workers' Compensation Act's] objectives was to do away with defenses of contributory negligence or assumed risk. Recklessly doing something persons are employed to do which is incidental to their work differs considerably from doing something totally unconnected to the work. It matters not how negligently the employee acted, if at the time he was injured he was still within the sphere of his employment and if the accident arose out of it.

Gerald D. Hines Interests v. Industrial Comm'n, 191 Ill. App. 3d 913, 917 (1989) (citations omitted).

The court finds the Arbitrator's analysis with regard to the compensability of the accident, as adopted by the Commission, to have been contrary to law. However, the court finds the parties' dispute concerning the compensability of the claim to have been in good faith and confirms the denial of penalties.

The court also sets aside the findings made by the Arbitrator unnecessary for the determination that the accident was non-compensable, including the findings as to Lawton's average weekly wage, the identity of his minor dependents, whether medical services were reasonable and necessary and the duration of any temporary total disability to which he was entitled. (Disputed Issues G, I, J and K).

The court confirms the Commission's Decision and Opinion on Review with regard to vacating the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss – any dispute regarding the contractual liability between the borrowing and lending employers to be resolved by way of separate motion or proceeding following payment of any award. See *Chaney v. Yetter Manufacturing Co.*, 315 Ill.App.3d 823, 826-27 (2000) ("[*Lachona v. Industrial Commission*, 87 Ill.2d 208 (1981)] does not hold that a borrowing employer can escape workers' compensation liability (*vis a vis* the employee) through an indemnification agreement with the loaning employer.")

IT IS THEREFORE ORDERED:

That the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O;

That the Commission's Decisions and Opinions on Review dated January 19, 2024 are CONFIRMED as to Disputed Issue M, the court finding no penalties warranted given the good faith dispute as to liability;

That the Commission's Decision and Opinion on Review is CONFIRMED with regard to vacating the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss;

That, on remand, the Commission shall make whatever additional findings deemed necessary to determine the issues disputed by the parties at the arbitration of this matter including Disputed Issues C, G, I, J, K, L and O and the extent of any death benefits due pursuant to 820 ILCS 305/7(a) and 820 ILCS 305/7(f);

That the Commission is authorized to conduct further hearings, remand the matter further for such hearings, or employ whatever methods it deems necessary to comply with this order;

That the matter is disposed. See *Kudla v. Indus. Comm'n*, 336 Ill. 279, 282 (1929) (holding that, following review, the circuit court exhausts its statutorily-conferred jurisdiction and any "attempt to retain further jurisdiction [is] void.")

Judge Daniel P. Duffy
JAN 27 2025
Circuit Court - 2103

Hon. Daniel P. Duffy
Circuit Court of Cook County
Law Division -
Tax and Miscellaneous Section
50 West Washington, Room 2505
Chicago, Illinois 60602

Enter:_____

_____
Judge Judge's No.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC018189
Case Name	Amanda Pozniak (Individually and as Guardian of Dependent Children Addison Pozniak and Ashley Lawton, and as Ind. Adm. of the Estate of Charles Lawton, deceased) v. Aeortek
Consolidated Cases	16WC018188;
Proceeding Type	Remand from the Circuit Court of Cook County
Decision Type	Commission Decision
Commission Decision Number	25IWCC0077
Number of Pages of Decision	61
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Anthony Gattuso

DATE FILED: 2/20/2025

/s/Carolyn Doherty, Commissioner

Signature

25IWCC0077

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

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

AMANDA POZNIAK, as Independent Administrator of the Estate of Charles Lawton, deceased, et al.,

Petitioner,

vs.

NO: 16 WC 18188 and 16 WC 18189
2024 L 050047

PACTIV CORPORATION and AEROTEK,

Respondents.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the Circuit Court of Cook County. In accordance with the Circuit Court Order filed on January 27, 2025, the Commission on remand considers the issues of accident, earnings/benefit rates, marital status and dependents, medical expenses, temporary benefits, nature and extent, death benefits pursuant to 820 ILCS 305/7(a) and 305/7(f), and Pactiv's Motion to Dismiss.

I. PROCEDURAL BACKGROUND

Petitioner, as an Independent Administrator of the Estate of Charles Lawton (deceased), filed two claims for benefits under the Illinois Workers' Compensation Act against the Respondents, Pactiv Corporation and Aerotek, for the fatal injuries Mr. Lawton sustained a result of an accident on June 13, 2013. The first Application for Adjustment, case number 16 WC 18188, was filed against Pactiv Corporation. The second Application for Adjustment, case number 16 WC 18189 was filed against Aerotek. The Circuit Court's Order acknowledges in a foot note that "[i]t was stipulated that the Respondents, Aerotek and Pactiv, had a borrowing-lending relationship with regard to Lawton's employment." The Applications were consolidated before trial. After trial, the Arbitrator issued a decision on July 27, 2023 concluding that Mr. Lawton had not

sustained an accident arising out of and in the course of his employment and no benefits were awarded under either case number.

The Commission notes that no finding under Section 1(a)4 of the Act, covering borrowing and lending employers, was made by the Arbitrator in either decision. In case number 16WC18188, the Arbitrator granted Respondent Pactiv's Motion to Dismiss. As his basis for dismissal, the Arbitrator relied upon a written indemnity agreement and the stipulation entered into at trial between Respondent's Pactiv and Aerotek, whereby if any benefits are awarded to Petitioner, that Aerotek retains full liability for any and all benefits, including but not limited to medical benefits, TTD benefits, death benefits, funeral expenses, penalties and fees, and permanency. Because benefits were denied, the stipulation and indemnity agreement were not given effect.

Petitioner then filed timely Petitions for Review before the Illinois Workers' Compensation Commission. The Commission agreed that Petitioner failed to prove an accident that arose out of and in the course of his employment. On review of case 16 WC 18188 filed against Pactiv, the Commission vacated the portion of the Arbitrator's Order granting Pactiv's Motion to Dismiss in case number 16 WC 18188 on procedural grounds while affirming and adopting the remainder of the Arbitrator's Decision in Case 16 WC 18188. On review, the Commission affirmed and adopted the Arbitrator's Decision in Case 16 WC 18189 filed against Respondent Aerotek.

Petitioner then sought administrative review in the Circuit Court of Cook County on both matters. On January 27, 2025, the Circuit Court issued one Order for both cases stating, "[t]he court finds the Arbitrator's analysis with regard to compensability of the accident, as adopted by the Commission, to have been contrary to law." Accordingly, the court ordered "that the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O," "[t]hat the Commission's Decisions and Opinions on Review dated January 19, 2024 are CONFIRMED as to Disputed Issue M, the court finding no penalties warranted given the good faith dispute as to liability," and "[t]hat the Commission's Decision and Opinion on Review is CONFIRMED with regard to vacating the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss—any dispute regarding contractual liability between the borrowing and lending employers to be resolved by way of separate motion or proceeding following payment of any award." The Order also directs"[t]hat, on remand, the Commission shall make whatever additional findings deemed necessary to determine the issues disputed by the parties at the arbitration of this matter including Disputed Issues C, G, I, J, K, L and O and the extent of any death benefits due pursuant to 820 ILCS 307/7(a) and 820 ILCs 305/7(f)."

The Commission finds the entirety of the record sufficient to comply with Order and instructions given on remand.

II. FINDINGS OF FACT

The Commission hereby incorporates by reference the "Findings of Facts" and findings included in the "Conclusions of Law" contained in the Arbitrator's Decisions filed on July 27, 2023, attached hereto and made a part hereof, to the extent they do not conflict with the

Commission's Decisions and Opinions filed on January 19, 2024, which are attached hereto and made a part hereof, to the extent these decisions do not conflict with the Circuit Court of Cook County's Order filed on January 27, 2025. The Commission also incorporates by reference the January 27, 2025, Circuit Court Order, attached hereto and made a part hereof. Finally, any additional facts from the record that are relied on by the Commission in order to comply with the remand and instructions of the Circuit Court are cited below and incorporated.

III. CONCLUSIONS OF LAW

In an effort to comply with the Circuit Court order on remand, the Commission is charged with following the court's order. *See Noonan v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 152300WC, ¶ 11. The Commission initially observes that a reviewing court's mandate vests a lower court with jurisdiction only to take action that complies with the reviewing court's mandate. *See Fleming v. Moswin*, 2012 IL App (1st) 103475-B, ¶ 28. On remand, the Commission lacks the authority to exceed the scope of the mandate and must follow the court's precise and unambiguous directions. *Id*. If the direction is to proceed in conformity with the opinion, then, of course, the content of the opinion is significant. *Id*.

In this case, on January 27, 2025, the Circuit Court found and ordered:

"The court finds the Arbitrator's analysis with regard to the compensability of the accident, as adopted by the Commission, to have been contrary to law. However, the court finds the parties' dispute concerning compensability of the claim to have been in good faith and confirms the denial of penalties."

"The court also set aside the findings made by the Arbitrator unnecessary for the determination that the accident was non-compensable, including the findings as to Lawton's average weekly wage, the identity of his minor dependents, whether medical services were reasonable and necessary and the duration of any temporary total disability to which he was entitled. (Disputed Issues G, I, J and K)."

"The court confirms the Commission's Decision and Opinion on Review with regard to vacating the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss—any dispute regarding the contractual liability between the borrowing and lending employers to be resolved by way of separate motion or proceeding following payment of any award. See *Chaney v. Yetter Manufacturing Co*., 315 Ill.App.3d 823, 826-27 (2000)("[*Lachona v. Industrial Commission,* 87 Ill.2d 208 (1981)]does not hold that a borrowing employer can escape workers' compensation liability (*vis a vis* the employee) through an indemnification agreement with the loaning employer.")."

Accordingly, the Circuit Court ultimately ordered:

"That the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O;"

"That the Commission's Decisions and Opinions on Review dated January 19, 2024 are

CONFIRMED as to the Disputed Issue M, the court finding no penalties warranted given the good faith dispute as to liability;"

"That the Commission's Decision and Opinion on Review is CONFIRMED with regard to vacating the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss;"

"That, on remand, the Commission shall make whatever additional findings deemed necessary to determine the issues disputed by the parties at the arbitration of this matter including Disputed Issues C, G, I, J, K, L and O and the extent of any death benefits due pursuant to 820 ILCS 307/7(a) and 820 ILCs 305/7(f)."

C. Accident:

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue C—Accident.

The Commission observes the Circuit Court Order stating "[t]he court finds the Arbitrator's analysis with regard to the compensability of the accident, as adopted by the Commission, to have been contrary to the law." The Commission observes that in the Order, the court's accident discussion and finding focuses on the "hero/emergency doctrine" as argued by Petitioner, citing *Dragovich v. Iroquois Co*., 269 Ill. 478 (1915), *Baum v. Indus. Com.,* 288 Ill. 516 (1919), and *Metropolitan Water Reclamation District of Greater Chicago v. Industrial Comm'n*, 272 Ill. App. 3d 372 (1995). Therefore, on remand, the Commission concludes that Mr. Lawton's accident on June 13, 2013, which resulted in fatal injuries, is compensable pursuant to the "hero/emergency doctrine" and pursuant to the Remand Order of the Circuit Court dated January 27, 2025.

G. Earnings/Average Weekly Wage

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue G—Earnings/Average Weekly Wage.

The Commission observes that on the Request for Hearing Forms, AX 1 and AX 2, Petitioner claimed an AWW of $823.75 and Respondent claimed an AWW of $780.04. *See* AX 1 and AX 2.

The Commission notes that Aerotek RX 1, the payroll register, provides only the "check dates" and not the actual days, dates, or time periods worked by Mr. Lawton. It appears Mr. Lawton was paid weekly and was paid $21.00 per hour. The first check date listed is November 8, 2012 and the last two check dates listed are June 20, 2013 and July 2, 2013. The last check date of July 2, 2013 should not be included in the weeks and parts thereof calculation as it appears be payment for something other than work actual hours worked before the accident. The check date of June 20th is presumably for work performed the previous week, which is the week the accident

occurred. The accident occurred on Thursday, July 13, 2013 and the register indicates 32 hours were worked that week. The decedent did not return to work after the accident; thus, it can be reasonably presumed he worked only 4 days that week and not a full week. However, given the lack of information provided on the register, it is difficult to determine for the other weeks of less than 40 hours worked, what days were worked in order to determine the parts thereof.

At trial, Petitioner's claimed average weekly wage of $823.75, which included overtime hours. *See* AX 1 and AX 2; *see also* Aerotek RX 1. However, in this case, there was no testimony or evidence provided as to whether overtime was mandatory or a condition of employment. In addition, RX 1, the payroll register shows that overtime hours were not a set number of hours worked consistently each week. Therefore, pursuant to *Airborne*, overtime wages should not be included in this case. Airborne Express, Inc. v. Illinois Workers' Compensation, 372 III. App. 3d 549, 554-555 (1st Dist. 2007)(stating "[o]vertime includes those hours in excess of an employee's regular weekly hours of employment that he or she is not required to work as a condition of his or her employment or which are not part of a set number of hours consistently worked each week).

After review of Aerotek RX 1, the payroll register, the Commission finds that Mr. Lawton worked 27 and 4/7 weeks prior to the accident. Pursuant to Section 10 of the Act, the Commission uses the weeks and parts thereof method to calculate AWW. The Commission notes that the total earnings for the check dates of 11/8/12 through 06/20/13 were $21,261.00, not including $84.00 of overtime wages (4 hours x $21/hour). The total earnings of $21,261.00 divided by 27-4/7 weeks or 27.571 computes to an average weekly wage of $771.14.

Nevertheless, the Commission is unable to utilize the average weekly wage of $771.14 as the Commission is bound by the *Walker* case. Walker v. Industrial Comm'n, 345 Ill.App.3d 1084 at 1088 (4th Dist. 2004) (holding it has been held that the language of section 7030.40, now 9030.40, provides that the request for hearing is binding on the parties as to the claims made therein). Therefore, the Commission finds the average weekly wage to be $780.04 as claimed by Respondent. *See* AX 1 and AX 2.

I. Marital Status and Number of Dependents

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue I—Marital Status and Number of Dependents.

Regarding marital status, the Commission observes that Petitioner, Amanda Pozniak testified that Mr. Lawton was her boyfriend at the time of the incident on June 13, 2013. They had lived together for about one year. Therefore, the Commission concludes that at the time of the incident on June 13, 2013, Mr. Lawton was single and not married.

Regarding dependents, the Commission notes that Petitioner, Amanda Pozniak testified that PX 17 was an order entered on June 9, 2015, declaring heirship for Mr. Lawton's children. The Commission observes that the "Order Declaring Heirship" was entered in the Circuit Court on June 9, 2015 and while instructive, is not binding on the Commission. The first child listed is

Elaina Lawton, born on 02/11/1997. The second child listed is Ashley Lawton, born on 07/14/2002. Petitioner testified that Elaina and Ashley were sisters and children from Mr. Lawton's previous marriage. The third child listed on the on the order was Grace Orstadt, born on 01/08/2001. Petitioner testified that Grace was also Mr. Lawton's child, "but she was adopted at a way earlier time" and she never lived with Petitioner and Mr. Lawton. The Commission notes there was no documentation or proof of legal adoption entered into evidence nor was there evidence or testimony regarding any dependency of Grace Orstadt on Lawson. The fourth child listed on the order is Addison Pozniak, born on 05/19/13. Petitioner testified that she and Mr. Lawton are the biological parents of Addison. Petitioner testified that Addison requires an IEP at school and has been diagnosed with ADHD, ODD (oppositional defiance disorder), and sensory concerns. Ms. Pozniak also testified that while Addison is under a doctor's care for her various diagnoses, there is no medical opinion outlining how long the diagnoses will be in effect or if they will continue into adulthood.

Accordingly, the Commission concludes that at the time of the accident on June 13, 2013, Mr. Lawton had 3 dependent children, Elaina Lawton, Ashley Lawton and Addison Pozniak.

J. Medical Expenses

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue J—Medical Expenses.

Having found the June 13, 2013 incident compensable pursuant to the Circuit Court remand order, the Commission also finds the medical expenses in PX 14 to be related, reasonable and necessary. The Commission observes that in AX 1 and AX 2, the parties agreed that there is no credit pursuant to Section 8(j) of the Act.

The Commission further notes that Section 8(a) of the Act provides that employers are obligated to provide and pay "the negotiated rate, if applicable, or the lesser of the health care provider's actual charges or according to a fee schedule, subject to Section 8.2, in effect at the time the service was rendered 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 necessary to cure or relieve from effects of the accidental injury." 820 ILCS 305/8(a) (West 2006); *see also Tower Auto. v. Ill. Workers' Comp. Comm'n,* 407 Ill. App. 3d 427, 438-39, 347 Ill. Dec. 863, 873-74, 943 N.E.2d 153, 163-64 (2011). "By limiting an employer's obligation under section 8(a) of the Act to the amount actually paid to the providers of the first aid, medical, surgical, and hospital services necessary to cure or relieve an injured employee from the effects of an accidental injury, the purpose of the Act has been satisfied." *Tower Auto. v. Ill. Workers' Comp. Comm'n*, 407 Ill. App. 3d 427, 438 (2011). Accordingly, the Commission awards the medical bills pursuant to Sections 8(a) and 8.2 of the Act.

K. Temporary Benefits

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the

Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue K—Temporary Benefits.

Having concluded that the June 13, 2013 incident is compensable, the Commission awards temporary total disability benefits in the amount of $520.03 per week for the period of June 13, 2013 to July 13, 2013, representing 4 and 2/7ths weeks. *See* AX 1 and AX 2.

L. Nature and Extent

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue L—Nature and Extent.

Having concluded that the June 13, 2013 incident is compensable, the Commission finds that as a result of the incident, Mr. Lawton sustained injuries that resulted in his death on July 13, 2013. Accordingly, on remand the Commission concludes that Petitioner is entitled to death benefits pursuant to Section 7(a) and 7(f) of the Act.

O. Death Benefits pursuant to Section 7(a) and 7(f)

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue O—Death Benefits pursuant to Section 7(a) and 7(f).

Pursuant to the Circuit Court Order, on remand, the Commission concludes that Mr. Lawton sustained fatal injuries as a result of an incident that arose out of and in the course of his employment. Mr. Lawton was injured on June 13, 2013 and died on July 13, 2013. Therefore, the Commission awards sum of $8,000.00 for burial expenses as mandated by Section 7(f).

Accordingly, pursuant to Section 7(a), the Commission finds that weekly benefits in the amount of $520.03 shall be split evenly amongst the three surviving children. The Commission finds that Ashley Lawton was 11 years old at the time of her father's death and concludes that Ashley Lawton is entitled to $174.34/week for the period of July 14, 2013 through July 14, 2020, the date in which she turned 18 years old. Elaina Lawton was 16 years old at the time of her father's death and would have reached age 18 on February 11, 2015. However, pursuant to the Section 7(a) of the Act, the Commission finds Elaina Lawton is entitled to $174.33/week for minimum of 6 years, from July 14, 2013 until July 14, 2019. Finally, the Commission finds that Addison Pozniak is entitled to 1/3 of the weekly benefits, or $174.34/week, beginning July 14, 2013 until she reaches the age of 18 on May 13, 2031, or the age of 25, if she enrolls as a full time student in any accredited educational institution, or in the event that she "shall be physically or mentally incapacitated, the payments shall continue for the duration of such incapacity."

Other: Pactiv's Motion to Dismiss

In affirming the Commission's decision to vacate the Arbitrator's dismissal of Pactiv, the Circuit Court on remand states "[t]he court confirms the Commission's Decision and Opinion on Review with regard to vacating the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss—any dispute regarding the contractual liability between the borrowing and lending employers to be resolved by way of separate motion or proceeding following payment of any award. See *Chaney v. Yetter Manufacturing Co*., 315 Ill.App.3d 823, 826-27 (2000)("[*Lachona v. Industrial Commission,* 87 Ill.2d 208 (1981)] does not hold that a borrowing employer can escape workers' compensation liability (*vis a vis* the employee) through an indemnification agreement with the loaning employer.")." The Circuit Court further ordered the Commission to "make whatever additional findings deemed necessary to determine the issues disputed by the parties at the arbitration of this matter including Disputed Issues C, G, I, J, K, L and O." In an effort to comply with the Circuit Court remand order, the Commission makes the following additional findings on the issue of borrowing/lending under section 1(a)4 the Act based on the record.

The Commission initially notes that based on the foregoing facts and conclusions, the Arbitrator made no findings in his decisions specific to the issue of the borrowing/lending relationship between the Respondents Pactiv and Aerotek pursuant to Section 1(a)4. Rather, the Arbitrator granted Pactiv's motion to dismiss in reliance on the trial stipulation between the parties indicating that Aerotek assumed any liability as well as the indemnification agreement between the parties, thereby releasing Pactiv from liability. On Review, the Commission vacated the dismissal of Pactiv on procedural grounds in that such motions are not provided for under the Act.

The Commission now further finds that the trial record is sufficient to support a finding under 1(a)4. Specifically, the issue of borrowing/lending was in fact presented to the Arbitrator on the Request for Hearing form for case number 18 WC 18188, wherein the Parties stated and stipulated to the fact that Pactiv was the borrowing employer and Aerotek was the lending employer pursuant Section 1(a)4. *See* AX 1. Further, on the Request for Hearing form for case number 16 WC 118189, Aerotek and Petitioner agree that the relationship between Petitioner and Respondent "was one of employee and employer." *See* AX 2. Moreover, the trial record and Request for Hearing Forms are void of any objections raised by Petitioner as to the status of Aerotek being the lending employer and thus responsible for liability. In addition, the Commission relies on Aerotek's contractual assumption of liability in Aerotek RX 2, the indemnity agreement with Pactiv, that was admitted without objection for the purpose of determining Aerotek's sole responsibility for payment of worker's compensation benefits. Lastly, the Commission relies on Pactiv and Aerotek's oral agreement and stipulation at trial that Aerotek would be responsible for the payment of all awarded benefits should an award have been made and Petitioner's counsel had no objection to the agreement at trial, which was further consistent with the stipulation on the Requestion for Hearing Forms and the indemnity agreement. (T.19-22)

As discussed above, on remand and pursuant to the Circuit Court Order, the Commission concludes that Mr. Lawton's accident on June 13, 2013, which resulted in fatal injuries, is compensable pursuant to the "hero/emergency doctrine." Accordingly, in an effort to comply with the Circuit Court remand Order and with the language of the Act, the Commission finds Respondent Aerotek liable for the benefits now awarded to Petitioner, having concluded that

Aerotek is the lending employer pursuant to Section 1(a)4 of the Act, the trial stipulations and indemnity agreements presented. AX 1, AX2, RX2.

In all other respects, the Commission affirms and adopts the Circuit Court Order on Remand.

IT IS THEREFORE FOUND BY THE COMMISSION that Charles Lawton ("Decedent") sustained an accident on June 13, 2013 that arose out of and in the course of employment. As a result of the accident, Mr. Lawton sustained injuries which resulted in his death on July 13, 2013.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decedent's average weekly wage is $780.04.

IT IS THEREFORE ORDERED BY THE COMMISSION that at the time of the June 13, 2013 accident, Decedent was single with 3 dependents.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent, Aerotek is liable for payment of all awarded benefits pursuant to the parties' stipulation at trial.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent, Aerotek shall pay to the Estate of Charles Lawton, temporary total disability benefits in the amount of $2,228.33 for the period of 4-2/7ths weeks at $520.03/week commencing June 13, 2013 to July 13, 2013.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent, Aerotek shall pay to the Estate of Charles Lawton the medical expenses in PX 14 pursuant to Sections 8(a) and 8.2 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent, Aerotek shall pay death benefits, commencing on July 14, 2013, of $174.34/ week to Amanda Pozniak, on behalf of minor child, Addison Pozniak, born on 05/19/2013 as provided in Section 7(a) of the Act, for the reason that the injuries sustained caused the death of Decedent on July 13, 2013. Respondent shall pay the sum of $174.34/ week until Addison Pozniak reaches the age of 18 on May 13, 2031, or the age of 25, if she enrolls as a full-time student in any accredited educational institution, or in the event that she "shall be physically or mentally incapacitated, the payments shall continue for the duration of such incapacity."

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent, Aerotek shall pay death benefits, for the period of July 14, 2013 to July 14, 2020, of $174.34/week to the Estate of Charles Lawton, on behalf of surviving child Ashley Lawton, born on 07/14/2002 and turned 18 year old as of July 14, 2020, as provided in Section 7(a) of the Act, for the reason that the injuries sustained caused the death of Decedent on July 13, 2013.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent, Aerotek shall pay death benefits, for the period of July 14, 2013 to July 14, 2019, of $174.34/week to the Estate of Charles Lawton, on behalf of surviving child Elaina Lawton, born on 02/11/1997 and turned 18 year old as of February 11, 2015, as provided in Section 7(a) of the Act, for the reason that the

injuries sustained caused the death of Decedent on July 13, 2013.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent, Aerotek shall pay $8,000.00 for burial expenses to the person (s) incurring the burial expenses, as provided in Section 7(f) of the Act.

IT IS FURTHER ORDRED BY THE COMMISSION that commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the *Rate Adjustment Fund*, as provided in Section 8(g) of the Act.

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

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

February 20, 2025
d: 01/30/25
CMD/jjm
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC018189
Case Name	Amanda Pozniak, individually and as guardian of dependent children Addison Pozniak and Ashley Lawton, and as Ind. Adm. of the Estate of Charles Lawton, deceased, v. Aeortek
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Steven Fruth, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Anthony Gattuso

DATE FILED: 7/27/2023

THE INTEREST RATE FOR THE WEEK OF JULY 27, 2023 5.27%

/s/Steven Fruth, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

AMANDA POZNIAK, individually and as guardian of dependent children Addison Pozniak and Ashley Lawton, and as Ind. Adm. of the Estate of CHARLES LAWTON, deceased,
Employee/Petitioner

Case # **16 WC 18189**

v.

AEROTEK
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Steven Fruth**, Arbitrator of the Commission, in the city of **Chicago**, on **June 22, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☒ What was Petitioner's marital status at the time of the accident? How many dependent children did deceased Petitioner have?
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: Is Petitioner entitled to statutory funeral expenses?

FINDINGS

On **6/13/2013**, Respondent ***was*** operating under and subject to the provisions of the Act.

On **6/13/2013**, an employee-employer relationship ***did*** exist between Petitioner and Respondent Pactiv. Pactiv was the borrowing employer for purposes of §1(a)4. Aerotek is the lending employer and is the Respondent in case 16 WC 18189. Per the written agreement between Pactiv and Aerotek, Aerotek agrees to indemnify Pactiv for any liability for any benefits under the Act.

On **6/13/2013**, Charles Lawton ***did not*** sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned $20,281.00; the average weekly wage was $**780.04**.

On the date of accident, Petitioner was 35 years of age, ***single*** with **3** dependent children.

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

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

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

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

ORDER

Petitioner's Application for Benefits is denied.

The Arbitrator grants Respondent Pactiv's Motion to Dismiss.

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

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

_____ **JULY 27, 2023**

Signature of Arbitrator

Amanda Pozniak individually and as guardian for dependent children Addison Pozniak and Ashley Pozniak, and Independent Administrator of the Estate of Charles Lawton, Jr., deceased v. Pactiv Corporation

16 WC 18188

consolidated with

Amanda Pozniak individually and as guardian for dependent children Addison Pozniak and Ashley Pozniak, and Independent Administrator of the Estate of Charles Lawton, Jr., deceased v. Aerotek

16 WC 18189

INTRODUCTION

This matter proceeded to hearing before Arbitrator Steven Fruth. The disputed issues were:

16 WC 18188(Pactiv): ***C:*** Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***G:*** What were Petitioner's earnings?; ***H:*** Whether the deceased had any dependent children**.;** ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Whether Petitioner is entitled to statutory funeral expenses.

16 WC 18189 (Aerotek): ***C:*** Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***G:*** What were Petitioner's earnings?; ***H:*** Whether the deceased had any dependent children**.;** ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Whether Petitioner is entitled to statutory funeral expenses.

Petitioner claim's Charles Lawton's average weekly wage was $823.75, which Respondents dispute. Respondents claim the average weekly was $780.04.

Petitioner's oral motion to continue the hearing to allow for obtaining evidence from an additional witness was denied for failure to present an offer of proof as to what evidence that witness would provide.

FACTUAL BACKGROUND

Charles Lawton, Jr. was employed by Respondent Pactiv Corp. (borrowing employer) on June 13, 2013 [AerotekX #2]. Mr. Lawton was employed through an Agreement for Temporary Employment Services between Pactiv and Respondent Aerotek (loaning employer) [PactivX #2]. Mr. Lawton was working for Pactiv on June 13, 2013 when he was injured in an incident at or near Pactiv's plant in Bedford Park, IL. Mr. Lawton died on July 13, 2013 from the injuries he sustained on June 13.

STATEMENT OF FACTS

Petitioner displayed video recordings from security cameras capturing the events at the issue (PX #16). The videos recorded a dark SUV entering Pactiv's parking lot and park next to a white van. The SUV then drove off the parking lot and parked on Mason street. Two individuals got out of the SUV and walked onto Pactiv's parking lot. After a time, an individual runs past a second person (presumably Charles Lawton) who began running also. A third person followed close behind the first two. The first 2 individuals ran onto Mason Street where they were followed by the 3 pursuers onto Mason Street. The video does not depict the actual trauma sustained by Mr. Lawton.

Amanda Pozniak testified that she was the girlfriend of Charles Lawton in June 2013. They lived together for a year before the incident at issue. Ms. Pozniak testified Mr. Lawton was sent to work at Pactiv by Aerotek. She identified PX #17, Order Declaring Heirship entered June 9, 2015 in the 18th Judicial Circuit, DuPage County. Ms. Pozniak explained that Elaina Lawton was born February 11, 1997. Elaina lived with her mother at the time in question, but Mr. Lawton " provided for her". Ms. Pozniak also testified that Mr. Lawton provided support for his daughter Ashley Lawton, Elaina 's sister, who was born July 14, 2002. Grace (Ortstadt), born January 8, 2001, is Mr. Lawton's natural child but was adopted. Grace was not living with Ms. Pozniak and Mr. Lawton.

Ms. Pozniak testified that Addison Pozniak is her daughter by Mr. Lawton (PX #5). Ms. Pozniak and Addison were living with Mr. Lawton at the time at issue. She testified that Mr. Lawton was providing support for her and Addison.

Ms. Pozniak testified Addison was in second grade even though she was supposed to be in third grade. She had struggled with meeting milestones ever since she was born. She was in the 50% range for her peers and was the oldest in the class. An Individualized Education Plan ("IEP") had been adopted for Addison (PX #12) The purpose of the IEP was to moderate the standards Addison had to satisfy so she did not have to be held to the higher standards other children were being held to. Addison's formal diagnoses included attention deficit hyperactivity disorder (ADHD) and oppositional defiant disorder (ODD). An adult has to sit with her at lunch to prevent her from choking. Addison also had a

vestibular movement swing in her room at home which settles her mind and to help her focus better.

Ms. Pozniak identified PX #20, the Order appointing her Independent Administrator of the Estate of Charles Lawton deceased, 2015 P 540, 18th Judicial Circuit, DuPage County.

On cross-examination Ms. Pozniak testified that she does not know whether Addison's diagnoses and other problems will continue into adulthood.

Testimony of Gabriel Ybarra (PX #7)

Mr. Ybarra testified by evidence deposition on August 24, 2020 (PX #7). He described the general layout of Pactiv's property. Four buildings were located in the area, three belonging to Pactiv. The two buildings to the west were Pactiv buildings and the northeast building was also Pactiv. He testified Pactiv had its employees take breaks in the parking lot area adjacent to the buildings to the west.

Ybarra took his break at Pactiv's southwest building. He saw Lawton and Brookhouse running across Pactiv's parking lot after two other people. Ybarra testified he joined the pursuit to see what was going on. Lawton and Brookhouse did not ask Ybarra to join them, he just saw them running and followed them. The people they were following got into a Jeep and ran over Lawton.

Ybarra testified he was behind Brookhouse and did not see the people who got into the Jeep. He heard screaming but could not make out any words. Ybarra testified the Jeep was not parked on Pactiv's property. He did not know what the area was used for. Ybarra did not characterize that area as an alleyway as it was a paved area. He did not know whether Pactiv parked its trailers in that area.

Ybarra was not aware of any Pactiv policy which prevented coworkers from helping other coworkers who were in trouble. He was not disciplined or terminated for his involvement in the incident. Pactiv had no fencing to keep non-Pactiv people from accessing the parking lots. There were no security guards to monitor Pactiv's lots. Pactiv hired a security firm to patrol their property after Lawton's incident.

Testimony of John Brookhouse (PX #8)

Mr. Brookhouse testified by evidence deposition on September 28, 2020 (PX #8). Brookhouse knew Mr. Lawton from work, noting that Mr. Lawton helped him out a lot at work by showing him how to do stuff. He and Mr. Lawton were taking a smoking break by Pactiv's 7600 building. Pactiv restricted smoking to a bench area and that is where they took their break. He got halfway through a cigarette when they saw two guys busting up car windows in Pactiv's lot. He did not know whose car it was.

Brookhouse heard windows being smashed and started yelling at the guys who were busting the windows. They started running back across Mason and Brookhouse, Lawton, and Gabe (Ybarra) chased after them. Lawton got in front of the car, and "they ran him over", dragging him through the parking lot.

Brookhouse explained that it was a natural response to follow the guys as he wanted them to get caught for what they were doing. He never intended to beat up the guys. Lawton did not express any interest in doing that either. Brookhouse and Gabriel stopped behind the vehicle. Lawton went to the front of the Jeep with his cellphone out, telling the occupants to "stop man" and that he was "calling the cops." That is when the accident happened.

Mr. Brookhouse testified he had seen this driver in Pactiv's lot during his 7:00 pm break. The driver was sitting in his Jeep in the parking lot. Brookhouse knew the man had no business being there but did not report it to anyone. He did not believe that Pactiv had a system in place to receive such reports about strangers in the lots. Pactiv had no rule which prohibited workers from going to the aid of fellow workers. Pactiv had no fences or security measures other than key fob access to the buildings. Pactiv did not hire security for its lot until Lawton was hurt. Pactiv did not protect its lots with gates, chain link fences or walls. Pactiv did not provide training on what to do when criminal events occurred on its property. Brookhouse testified Pactiv left it up to the employees as to how they should deal with criminal events outside the buildings.

After Mr. Lawton's accident, no supervisor told Brookhouse that he should not have joined Lawton in following the vandals. Brookhouse was not disciplined for assisting Lawton. He did not know if the roadway area where the accident happened was Pactiv property, but he believed it was because Pactiv parked its slip trucks at that location. Pactiv also had big tanks of stuff in that area.

Brookhouse testified Pactiv did not allow its workers to park in that roadway where the accident happened. Pactiv workers had to park in the Pactiv lot to the west. On cross-examination, Brookhouse admitted he did not know what the property lines were between the businesses. Brookhouse clarified that he had walked to his own car and got into it for a brief moment before the guys started breaking out the windows in the other car. He got out of his jumped out to join Lawton and Gabe at that point. He testified about the accident and details were clearer in his mind when it happened.

Brookhouse reiterated he was not going to physically apprehend the vandals, but only make sure they were held responsible for what they had done. Lawton just had time to tell the Jeep occupants "I'm calling the police" as he pulled his phone from his pocket before the Jeep ran over him. 30 to 40 seconds passed from the time Lawton stood in front of the Jeep to when it ran him over. He testified that there was nothing about the

vandals before the event that caused him to feel any need to call the police. He is unaware of any prior incident of vandalism in Pactiv's lot.

Slip trucks are parked in that area where the trucks that Pactiv used in the building he worked out of in the building west of Mason. Those trucks were parked in the alley area. There was no Pactiv policy requiring him to report strangers in the parking lot to supervisors. Pactiv's workers did not wear distinctive uniforms and there were always new people coming to work through staffing companies.

Brookhouse said when he saw the Jeep driver during the earlier shift, he did not think it was something to report to management. Pactiv's slip trucks were parked another 30 feet beyond where the Jeep was located at the time of the accident.

Testimony of Bedford Park Police Sergeant Andrew Smuskiewicz (PX #9)

Sergeant Smuskiewicz testified by evidence deposition on July 21, 2021 (PX #9). He was a Bedford Park police department detective at the time of Lawton's accident on June 13, 2013.

Sergeant Smuskiewicz was called out to Pactiv on the night of the incident. He explained the process of his investigation. where he interviewed a number of witnesses. Respondent Aerotek objected to the testimony on hearsay grounds, which was overruled. Much of Smuskiewicz' s account does consist of hearsay and Aerotek's running objection is well founded, striking this witness's testimony from the case to the extent it was based on what he was told. Aerotek also objected to the Bedford Park police report, which was not offered in evidence. The witness refreshed his memory from the report.

From his investigation, Sergeant Smuskiewicz learned that Lawton was part of a group of people who were trying to stop the crime from taking place and trying to get the offenders to stop so they could be arrested. He found no evidence that Lawton or his companions knew Garcia before the accident.

Respondent Aerotek renewed and reserved its objections to hearsay when it began cross-examination. Sergeant Smuskiewicz testified he never investigated whether Garcia and Ms. Fernandez had an affair. He testified that Bedford Park officers had been called out to Pactiv both before and after Lawton's incident for other incidents. Those calls involved disturbances among employees and supervisors. There was never a call involving an outsider coming onto the property.

Based on what he observed, Sergeant Smuskiewicz understood that that the vehicle involved did not enter Pactiv property after the incident. He agreed that civilians should stay out of police issues and just call 9-1-1. He advised people to not jeopardize their own safety.

Testimony of Jose Gasco Garcia (PX #10)

Jose Garcia testified by evidence deposition on March 28, 2022 (PX #10). He was one of the persons damaging the car in Pactiv's lot and was the driver who ran over Lawton. He testified from prison where he was serving time for Lawton's death.

Garcia had worked at Pactiv for years before the accident and he was still working at Pactiv on the weekends in June 2013. His wife Maria also worked at Pactiv. Garcia did not know Lawton, although he had seen him at work in the past. They worked in different Pactiv buildings.

Garcia identified DepX #1, a daylight photo of the area where he parked the Jeep between the buildings. Garcia parked where the red mark was located on the photo. DepX #2 is an overhead view of the same roadway area. Garcia parked his Jeep where the red X is located on DepX #2. The building at the top of this photo is Pactiv's building and the building at the bottom was some other business. Garcia testified he worked in the building at the top left of the photo with the white roof.

Garcia was not working at Pactiv the night of the accident. He came to Pactiv's property to make sure his wife was at work and to check her car. He parked his Jeep in a dark roadway to make sure that no one got his license plate. He backed his Jeep down the roadway between the buildings with his headlights off. He planned to damage Guadalupe Fernandez's car. He was not going after Lawton's car, and he had no intent to harm Lawton in any way. He was going after Fernandez for bothering his wife and getting involved in their family life.

Garcia testified another Pactiv employee came to assist Garcia that night. Garcia's wife and Fernandez were both working that evening. Fernandez had been harassing Garcia's wife for a long time. Fernandez did this with all the women at the plant. Female workers in that building had been complaining of Fernandez's sexual harassment for years before the accident. Garcia had damaged Fernandez's car on earlier occasions before Lawton's incident.

Garcia knew that Pactiv did not have security guards patrolling its lots before June 2013. He knew there were no security fences which would have stopped him from accessing Fernandez's car. Any person could access the lots, whether they worked there or not. There were no guards in place at Pactiv to keep strangers off the property.

Garcia testified he did not see Lawton in front of his Jeep before accelerating away. He did not intend to run Lawton over. He had nothing against Lawton. He felt something under his vehicle, but he thought it was a piece of concrete which was sometimes in Pactiv's parking lots. Mr. Garcia testified he was trying to get away from the people chasing him and did not see Mr. Lawton standing in front of his car when he drove away.

Garcia testified that during the eight years he worked at Pactiv, Pactiv had no training programs to explain what workers should do about sexual harassers in the plant. He was never told what he was supposed to do when a coworker kept sexually harassing his wife in the plant. Garcia did not intend to hurt anyone when he came to Pactiv on June 13, 2013. He said Lawton's injury was a pure accident.

On cross-examination, Garcia admitted he chose the location where he parked the Jeep because it was dark. There were no lights on the non-Pactiv building to his south. Pactiv had some lights on its building to the north, but not where he parked. He did not park in Pactiv's parking lots to the west because of Pactiv's cameras. He knew Pactiv had cameras on the buildings and did not park there for that reason.

Garcia testified he stopped vandalizing Fernandez's car after he finished what he wanted to do. He and his companion started walking back across Mason and then started to run when people started chasing.

On redirect examination, Garcia admitted that he had also worked in Pactiv's northeast building with the loading docks, shown at the top of DepX #2 with the dark roof. Pactiv used the trailers parked near that building to get the plates out of Pactiv's building. He saw those trailers pulling away from Pactiv's building onto Mason Street many times during the years he worked at Pactiv.

Testimony of Lawrence Liva (PX #19)

Mr. Liva testified by evidence deposition on June 13, 2022 (PX #19). He was a machine shop manager for Pactiv on June 13, 2013. He received a call at home that something had happened to a temporary employee at Pactiv, and that he needed to come into work. Liva did not recall whether he authored the Occupational Incident Report, a diagram, or investigative notes.

Liva testified that if an employee was involved in a major accident, he would meet with Dennis Davidson, Pactiv's Director of Engineering, and Davidson would tell him what to do or who to call. Liva worked the day shift, but he directly supervised Charlie Lawton, John Brookhouse and Gabriel Ybarra. If an incident happened, he would probably handwrite a report, but did not recall much about those reports.

On cross-examination Liva testified Pactiv operated three buildings at that campus, arranged in a L formation: one to the southwest, one to the northwest, and one to the northeast. The building to the southeast had nothing to do with Pactiv. (PX19 p.17) Between that building and the Pactiv building to its north, there was a roadway or a parking area.

Liva was shown the overhead view of the area (Garcia DepX #2). Liva confirmed that the trailers on the photo ran in and out of Pactiv's operations. To access the area where the trailers were, Pactiv would have to use the exit onto Mason. To the right of the

red "X" on Garcia DepX # 2, Liva saw a yellow barrier across the roadway but did not know whether that barrier delineated Pactiv's area of operation from the unrelated business in the south building.

Liva testified he did not know where the property lines were. He also did not know if Mason was a public rather than private road.

Liva did not recall giving Lawton new employee orientation. He did not handle the orientations, but he thought Pactiv's HR would orient new temp employees. He did not recall there being a written handbook of job rules for temporary employees. Liva had never seen a written or oral rule prohibiting workers from going to the aid of other workers who were in peril. He would never have discussed discouraging workers from going to the help of a coworker. In the years he was working at Pactiv, he did not recall there being any kind of rules which prohibited workers from going to the assistance of their coworkers.

Liva testified Brookhouse and Ybarra were not disciplined, written up, or even chastised for joining Lawton in addressing the emergency. He knew of no managers claiming that these workers should not have followed the people who were damaging property in the lot. The police came to him to look at camera footage from the cameras on his building. He saw no photos or video showing what happened down the roadway where Lawton was hurt.

Liva did not recall Pactiv providing training for temp employees as to how they were to address sexual harassment in the plant.

Liva identified the ground level view of the roadway between the buildings from July 2011, Garcia DepX #1. The photo shows pavement running from Pactiv's building on the left to the brick wall of the non-Pactiv building on the right. Liva walked the area a couple of days after the accident but could not recall what he saw.

Liva was asked about the Occupational Incident Report ("OIR"). The OIR listed him as the person receiving notice of Lawton's incident. Pactiv used these OIR forms for various types of incidents. Liva did not prepare this OIR, he would not have typed it up or phrased things the way they were written on the OIR. Brookhouse and Ybarra were both listed as witnesses on the OIR, and they were both reported as having given statements.

Liva was not aware of prior incidents like what happened to Lawton so he did not know who would take the statements or write the report. Even though the OIR said he was a machinist, Lawton did hand finishing work. The OIR said that "Supervisor/Team Lead should complete front page and top of the back of second page." Liva admitted he was Lawton's supervisor at the time, but different leads or supervisors may have completed the report. A box marked "Contributing Factors" was located at the bottom of

the first page. Liva did not know enough about the details of the event to determine who was at fault for the injury.

Liva reiterated that he was not aware of any Pactiv rules which prohibited workers to going to each other's aid to address sudden emergencies on Pactiv property. If something happened inside the building, he would hope that someone called 911. But he did not remember anything happening outside the building before Lawton's injury. Liva also did not author the Investigative Notes document. He had no idea whether other vehicles had been damaged prior to June 13, 2913. at night in Pactiv's lot. OIR forms should be filled out promptly after an event.

Pactiv's workers were given two breaks and a lunch break. Pactiv did require workers in the southwest building to take their breaks at the north end of the building. Workers were not prohibited from taking breaks in their cars. If Lawton and Brookhouse were in the north end of the building during their breaks, that is where the company expected them to be. Lawton was also allowed to take breaks with coworkers. Breaks were not scheduled for exact times. Workers did not have to clock out or notify the supervisor when going to break, but workers did clock out for lunchbreaks.

Testimony of Guadalupe Fernandez (AerotekX #3)

Guadalupe Fernandez testified at Jose Garcia's criminal trial August 28, 2017, People of the State of Illinois vs. Jose Garcia, 13 CR 1552. Mr. Fernandez identified photos of his car showing broken windows and a gang sign scratched into the car. Later, on June 13, 2013 he recognized "Jose" from a picture on TV and called the police about Garcia. Fernandez had worked with Garcia at Pactiv for 3 years before this night. Fernandez was confronted by Garcia in the canteen 2 months before the attack. Garcia said something to him about calling Garcia's wife or girlfriend, which Fernandez said was a lie. Garcia told him to watch his back.

Fernandez admitted he did not know if Garcia damaged his car because he was inside working. Fernandez went to the police station on June 20, 2013 and identified Garcia in a photo array. He also identified Garcia in a physical lineup at the Sheriff's office in Maywood, as well as in open court. During an interview with police, Fernandez talked about the disagreement he had with Garcia. Fernandez admitted he had had disagreements with other people at work.

Medical Records

Mr. Lawton was transported by Bedford Park Fire Department ambulance to Advocate Christ Hospital ("Christ") in Oak Lawn (PX #2). The EMS record identified multiple injuries (PX #1). The Christ trauma notes document significant deep tissue injuries. Procedures performed at Christ included washout of his right face, left upper extremity, right shoulder, and debridement of wounds.

Christ transferred Lawton to the Loyola University Medical Center ("Loyola"), where he was admitted to the burn unit on June 17, 2013 in an intubated and sedated state. He was hemodynamically stable at that point (PX #3). Loyola healthcare providers noted extensive degloving of the right side of the head, amputation of the right ear, right mastoid fracture with complete fracture and disarticulation of the zygomatic arch, fracture and exposure of the temporomandibular joint, and extensive exposure of deep facial muscles in the right side of the face and clavicle fractures. The left upper chest and shoulder also suffered degloving with exposure of muscle and soft tissue. The right upper extremity had dorsum degloving of hand down to the bone and deep muscle. The left upper extremity was extensively degloved from the shoulder down to the wrist, with a brachial artery bypass being done at Advocate. He had deep partial thickness/full thickness burns to his chest. Three surgical procedures were performed at Loyola, during which he remained sedated with mechanical ventilation while undergoing antibiotic treatment and dialysis for acute renal failure.

Mr. Lawton never regained consciousness or function and treatment ultimately failed. Lawton died on July 13, 2013. Loyola records included photos of Lawton's injuries.

Mr. Lawton's Death Certificate was admitted as PX #4.

Pactiv Occupational Incident Report was admitted as PX #18.

Respondent Pactiv's Motion to Dismiss was admitted as PactivX #1.

The temporary employment agreement between Pactiv and Aerotek was admitted as PactivX #2.

Respondent Aerotek's wage statement was admitted as AerotekX #1.

Respondent Aerotek's employment agreement was admitted as AerotekX #2.

The trial testimony of Guadalupe Fernandez was admitted as AerotekX #3.

CONCLUSIONS OF LAW

Respondent Pactiv filed a Motion to Dismiss, citing the written agreement between Pactiv and Respondent Aerotek, PactivX #2. The agreement states in pertinent part:

- [Aerotek] will, at its own expense, provide and keep in full force and effect during the term of this Agreement…Workers' compensation statutory coverage as required by the laws of the jurisdiction in which the Services are performed.
- [Aerotek] will indemnify, defend and hold Pactiv and its subsidiaries, affiliates, directors, officers, employees and agents from and against all demands, claims, actions, suits, losses, damages (including, but not limited to, property damage, bodily injury and wrongful death), judgments, costs

> and expenses…imposed upon or incurred by Pactiv arising out of…[a]ny claim of any nature asserted against Pactiv or workers compensation carriers by any [Aerotek] employee or agent of [Aerotek], or, in the event of death, by their personal representatives.

The facts here are similar to those in *Lachona v. Industrial Commission*, 87 Ill.2d 208, 427 N.E.2d 858 (1981), where a similar agreement was upheld. The Arbitrator finds that Pactiv is a borrowing employer and Aerotek is a loaning employer in accord with §1(a)4 of the Act. The Arbitrator also notes the stipulation at trial between Respondents Pactiv and Aerotek, whereby if any benefits are awarded to Petitioner as a result of the June 13, 2013 incident, that Aerotek retains full liability for any and all benefits, including, but not limited to, medical benefits, TTD benefits, death benefits, funeral expenses, penalties and fees, and permanency.

Respondent Pactiv's Motion to Dismiss is granted.

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

The Arbitrator finds that Petitioner failed to prove that an accident arose out of and in the course of the decedent's employment by Respondents Pactiv Corp. or Aerotek.

Charles Lawton, Jr. was employed by Respondent Pactiv Corp. on June 13, 2013. Mr. Lawton was employed as a temporary CNC Machinist through referral from Respondent Aerotek. On the evening of June 13 Mr. Lawton was taking a break with coworkers in an area abutting Pactiv's employee parking lot. Mr. Lawton and the others heard the sound of breaking glass and went to investigate. They discovered two individuals vandalizing a coworker's car. Jose Garcia was one of the individuals vandalizing the car. Mr. Lawton and coworkers John Brookhouse and Gabriel Ybarra gave chase of Mr. Garcia and the other vandal across the parking lot and onto Mason street which was the public way. Mr. Lawton placed himself in front of a Jeep operated by Mr. Garcia. In an effort to get away Mr. Garcia ran over and dragged Mr. Lawton down the roadway, causing fatal injuries to Mr. Lawton. Mr. Garcia was criminally charged and convicted for his actions.

An injury arises out of one's employment if its origin is from a risk connected with or incidental to employment activities. "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.

An injury occurs "in the course of" of employment if it refers to the time, place, and circumstances of the accident. If an employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties, a resulting injury will not be within the course of employment unless the employer had knowledge or acquiesced in such unreasonable conduct.

Charles Lawton was employed by Pactiv as a machinist. There was no evidence that he was charged with any responsibilities relating to security of the workplace, of his employer's property or equipment, or of his coworkers. Pursuing criminals who had vandalized hey coworkers private vehicle Was not part of the duties of a machinist or incidental to the duties of a machinist. Mr. Lawton, along with Mr. Brookhouse and Ybarra, We're not engaged in protecting the property or equipment of Pactiv or protecting a coworker from harm. The risks associated with chasing the offenders off Pactiv's property and standing in front of their fleeing vehicle was a risk that was assumed solely by Mr. Lawton and was in no way connected to his employment with Respondents. Mr. Lawton voluntarily exposed himself to a risk that was outside of his job duties. There is no evidence that his employer had knowledge or acquiesced to the decedent assuming this type of risk. There was no evidence that Aerotek or Pactiv expected, required, or encouraged its employees or temporary employees to stop any sort of criminal activity that occurred on company property.

The Arbitrator finds that Mr. Lawton took himself outside the scope of his employment as a machinist not only when he chased the offenders off Pactiv's property and across Mason Street, but also when he placed himself in front of Mr. Garcia's vehicle in an attempt to stop the offenders from fleeing. If an employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties, as here, the resultant injury is not within the course of the employment.

Also, the Arbitrator does not find the Good Samaritan doctrine applicable to this case. In determining whether an accident is compensable under the Good Samaritan Doctrine, courts have focused on whether the conduct is reasonably foreseeable. It was not reasonably foreseeable by Respondents that Mr. Lawton what put himself in harm's way when a criminal act did not involve damage to the employers property or equipment or harm to a coworker.

The Arbitrator does not find the alleged relationship and/or harassment between Mr. Garcia, Mr. Garcia's wife, and Guadalupe Fernandez relevant because it did not involve Mr. Lawton whatsoever.

The Arbitrator also does not find it relevant that Pactiv placed security in the parking lot after the June 13, 2013 incident. There was no evidence that Bedford Park is a high crime area or that there was a pattern of vandalism or other criminal acts in the Pactiv parking lot. On the contrary, this incident appears to be isolated to the issues between Mr. Garcia and Mr. Fernandez.

G: *What were Petitioner's earnings?*

Petitioner's wage statement, PX #11, shows Mr. Lawton's earnings from November 8, 2012 through June 13, 2013. During that time, the decedent had regular earnings of $20,013.00 and $84.00 of overtime earnings at straight time pay, for a total of $20,097.00. Using the weeks and parts thereof method, Mr. Lawton worked a total of 130 days during that period, or 26 weeks. This computes to an average weekly wage of $772.96.

Respondent Aerotek wage statement, AerotekX #1, showed earnings of $20,281.00. and the Petitioner's average weekly wage, calculated pursuant to section 10 of the Act was $780.04. Using the weeks and parts thereof method, Mr. Lawton worked a total of 130 days during that period, or 26 weeks. This computes to an average weekly wage of $780.04.

The Arbitrator adopts the average weekly wage computation of Respondent Aerotek, $780.04.

H: *Whether the deceased had any dependent children***.**

The evidence established that Mr. Lawton was not married at the time of the incident at issue. According to the June 8, 2015 Order of Heirship, PX #17, the decedent had the following minor dependents at the time of his death: Addison Pozniak (DOB May 19, 2013), Ashley Lawton (DOB July 14, 2002), and Elaina Lawton (DOB February 11, 1997). Elaina Lawton was emancipated by age on February 11, 2015. There was evidence that Grace Orsatdt, decedent's natural child, had been adopted but there was no evidence of when the adoption took place and, therefore, no evidence of whether Grace was a minor dependent at the time of Mister Lawton 's death.

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 has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Notwithstanding the Arbitrator's finding that the incident at issue did not result in a compensable injury, it appears the medical services provided to Mr. Lawton were reasonable and necessary and there is no evidence to the contrary.

K: *What temporary benefits are in dispute? TTD*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Notwithstanding the Arbitrator's finding that the incident at issue did not result in a compensable injury, it appears the correct disputed period of TTD would be from June 14, 2013 through July 13, 2013, or a period of 4 & 2/7 weeks.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

M: *Should penalties be imposed upon Respondent?*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Notwithstanding the Arbitrator's finding that the incident at issue did not result in a compensable injury, Respondents had good faith bases for denying benefits. It was neither vexatious nor frivolous to deny Petitioner's claim for benefits when Mr. Lawton exposed himself to a personal risk of harm that was outside the scope of his employment.

O: *Whether Petitioner is entitled to statutory funeral expenses.*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Steven J. Fruth, Arbitrator

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC018189
Case Name	Amanda Pozniak (Individually and as Guardian of Dependent Children Addison Pozniak and Ashley Lawton, and as Ind. Adm. of the Estate of Charles Lawton, deceased) v. Aeortek
Consolidated Cases	16WC018188;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0027
Number of Pages of Decision	22
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Anthony Gattuso

DATE FILED: 1/19/2024

/s/Carolyn Doherty, Commissioner

Signature

25IWCC0077
24IWCC0027

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

AMANDA POZNIAK, individually and as guardian of dependent children Addison Pozniak and Ashley Lawton, and as Ind. Adm. of the ESTATE of CHARLES LAWTON, deceased,

Petitioner,

vs. NO: 16 WC 18189

AEROTEK,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, employment, jurisdiction, causal connection, benefit rates, temporary total disability, medical expenses, prospective medical care, permanent partial disability, penalties and fees and "Other: procedural violations by IWCC" and being advised of the facts and law, affirms, and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 27, 2023 is hereby affirmed and adopted.

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

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

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

25IWCC0077
24IWCC0027

January 19, 2024

o: 12/21/23
CMD/jjm
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC018189
Case Name	Amanda Pozniak, individually and as guardian of dependent children Addison Pozniak and Ashley Lawton, and as Ind. Adm. of the Estate of Charles Lawton, deceased, v. Aeortek
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Steven Fruth, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Anthony Gattuso

DATE FILED: 7/27/2023

THE INTEREST RATE FOR THE WEEK OF JULY 27, 2023 5.27%

/s/Steven Fruth, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

AMANDA POZNIAK, individually and as guardian of dependent children Addison Pozniak and Ashley Lawton, and as Ind. Adm. of the Estate of CHARLES LAWTON, deceased,
Employee/Petitioner

Case # **16 WC 18189**

v.

AEROTEK
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Steven Fruth**, Arbitrator of the Commission, in the city of **Chicago**, on **June 22, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☒ What was Petitioner's marital status at the time of the accident? How many dependent children did deceased Petitioner have?
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: Is Petitioner entitled to statutory funeral expenses?

FINDINGS

On **6/13/2013**, Respondent ***was*** operating under and subject to the provisions of the Act.

On **6/13/2013**, an employee-employer relationship ***did*** exist between Petitioner and Respondent Pactiv. Pactiv was the borrowing employer for purposes of §1(a)4. Aerotek is the lending employer and is the Respondent in case 16 WC 18189. Per the written agreement between Pactiv and Aerotek, Aerotek agrees to indemnify Pactiv for any liability for any benefits under the Act.

On **6/13/2013**, Charles Lawton ***did not*** sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned $20,281.00; the average weekly wage was $**780.04**.

On the date of accident, Petitioner was 35 years of age, ***single*** with **3** dependent children.

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

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

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

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

ORDER

Petitioner's Application for Benefits is denied.

The Arbitrator grants Respondent Pactiv's Motion to Dismiss.

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

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

_____ **JULY 27, 2023**

Signature of Arbitrator

Amanda Pozniak individually and as guardian for dependent children Addison Pozniak and Ashley Pozniak, and Independent Administrator of the Estate of Charles Lawton, Jr., deceased v. Pactiv Corporation

16 WC 18188

consolidated with

Amanda Pozniak individually and as guardian for dependent children Addison Pozniak and Ashley Pozniak, and Independent Administrator of the Estate of Charles Lawton, Jr., deceased v. Aerotek

16 WC 18189

INTRODUCTION

This matter proceeded to hearing before Arbitrator Steven Fruth. The disputed issues were:

16 WC 18188(Pactiv): ***C:*** Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***G:*** What were Petitioner's earnings?; ***H:*** Whether the deceased had any dependent children**.;** ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Whether Petitioner is entitled to statutory funeral expenses.

16 WC 18189 (Aerotek): ***C:*** Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***G:*** What were Petitioner's earnings?; ***H:*** Whether the deceased had any dependent children**.;** ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Whether Petitioner is entitled to statutory funeral expenses.

Petitioner claim's Charles Lawton's average weekly wage was $823.75, which Respondents dispute. Respondents claim the average weekly was $780.04.

Petitioner's oral motion to continue the hearing to allow for obtaining evidence from an additional witness was denied for failure to present an offer of proof as to what evidence that witness would provide.

FACTUAL BACKGROUND

Charles Lawton, Jr. was employed by Respondent Pactiv Corp. (borrowing employer) on June 13, 2013 [AerotekX #2]. Mr. Lawton was employed through an Agreement for Temporary Employment Services between Pactiv and Respondent Aerotek (loaning employer) [PactivX #2]. Mr. Lawton was working for Pactiv on June 13, 2013 when he was injured in an incident at or near Pactiv's plant in Bedford Park, IL. Mr. Lawton died on July 13, 2013 from the injuries he sustained on June 13.

STATEMENT OF FACTS

Petitioner displayed video recordings from security cameras capturing the events at the issue (PX #16). The videos recorded a dark SUV entering Pactiv's parking lot and park next to a white van. The SUV then drove off the parking lot and parked on Mason street. Two individuals got out of the SUV and walked onto Pactiv's parking lot. After a time, an individual runs past a second person (presumably Charles Lawton) who began running also. A third person followed close behind the first two. The first 2 individuals ran onto Mason Street where they were followed by the 3 pursuers onto Mason Street. The video does not depict the actual trauma sustained by Mr. Lawton.

Amanda Pozniak testified that she was the girlfriend of Charles Lawton in June 2013. They lived together for a year before the incident at issue. Ms. Pozniak testified Mr. Lawton was sent to work at Pactiv by Aerotek. She identified PX #17, Order Declaring Heirship entered June 9, 2015 in the 18th Judicial Circuit, DuPage County. Ms. Pozniak explained that Elaina Lawton was born February 11, 1997. Elaina lived with her mother at the time in question, but Mr. Lawton " provided for her". Ms. Pozniak also testified that Mr. Lawton provided support for his daughter Ashley Lawton, Elaina 's sister, who was born July 14, 2002. Grace (Ortstadt), born January 8, 2001, is Mr. Lawton's natural child but was adopted. Grace was not living with Ms. Pozniak and Mr. Lawton.

Ms. Pozniak testified that Addison Pozniak is her daughter by Mr. Lawton (PX #5). Ms. Pozniak and Addison were living with Mr. Lawton at the time at issue. She testified that Mr. Lawton was providing support for her and Addison.

Ms. Pozniak testified Addison was in second grade even though she was supposed to be in third grade. She had struggled with meeting milestones ever since she was born. She was in the 50% range for her peers and was the oldest in the class. An Individualized Education Plan ("IEP") had been adopted for Addison (PX #12) The purpose of the IEP was to moderate the standards Addison had to satisfy so she did not have to be held to the higher standards other children were being held to. Addison's formal diagnoses included attention deficit hyperactivity disorder (ADHD) and oppositional defiant disorder (ODD). An adult has to sit with her at lunch to prevent her from choking. Addison also had a

vestibular movement swing in her room at home which settles her mind and to help her focus better.

Ms. Pozniak identified PX #20, the Order appointing her Independent Administrator of the Estate of Charles Lawton deceased, 2015 P 540, 18th Judicial Circuit, DuPage County.

On cross-examination Ms. Pozniak testified that she does not know whether Addison's diagnoses and other problems will continue into adulthood.

Testimony of Gabriel Ybarra (PX #7)

Mr. Ybarra testified by evidence deposition on August 24, 2020 (PX #7). He described the general layout of Pactiv's property. Four buildings were located in the area, three belonging to Pactiv. The two buildings to the west were Pactiv buildings and the northeast building was also Pactiv. He testified Pactiv had its employees take breaks in the parking lot area adjacent to the buildings to the west.

Ybarra took his break at Pactiv's southwest building. He saw Lawton and Brookhouse running across Pactiv's parking lot after two other people. Ybarra testified he joined the pursuit to see what was going on. Lawton and Brookhouse did not ask Ybarra to join them, he just saw them running and followed them. The people they were following got into a Jeep and ran over Lawton.

Ybarra testified he was behind Brookhouse and did not see the people who got into the Jeep. He heard screaming but could not make out any words. Ybarra testified the Jeep was not parked on Pactiv's property. He did not know what the area was used for. Ybarra did not characterize that area as an alleyway as it was a paved area. He did not know whether Pactiv parked its trailers in that area.

Ybarra was not aware of any Pactiv policy which prevented coworkers from helping other coworkers who were in trouble. He was not disciplined or terminated for his involvement in the incident. Pactiv had no fencing to keep non-Pactiv people from accessing the parking lots. There were no security guards to monitor Pactiv's lots. Pactiv hired a security firm to patrol their property after Lawton's incident.

Testimony of John Brookhouse (PX #8)

Mr. Brookhouse testified by evidence deposition on September 28, 2020 (PX #8). Brookhouse knew Mr. Lawton from work, noting that Mr. Lawton helped him out a lot at work by showing him how to do stuff. He and Mr. Lawton were taking a smoking break by Pactiv's 7600 building. Pactiv restricted smoking to a bench area and that is where they took their break. He got halfway through a cigarette when they saw two guys busting up car windows in Pactiv's lot. He did not know whose car it was.

Brookhouse heard windows being smashed and started yelling at the guys who were busting the windows. They started running back across Mason and Brookhouse, Lawton, and Gabe (Ybarra) chased after them. Lawton got in front of the car, and "they ran him over", dragging him through the parking lot.

Brookhouse explained that it was a natural response to follow the guys as he wanted them to get caught for what they were doing. He never intended to beat up the guys. Lawton did not express any interest in doing that either. Brookhouse and Gabriel stopped behind the vehicle. Lawton went to the front of the Jeep with his cellphone out, telling the occupants to "stop man" and that he was "calling the cops." That is when the accident happened.

Mr. Brookhouse testified he had seen this driver in Pactiv's lot during his 7:00 pm break. The driver was sitting in his Jeep in the parking lot. Brookhouse knew the man had no business being there but did not report it to anyone. He did not believe that Pactiv had a system in place to receive such reports about strangers in the lots. Pactiv had no rule which prohibited workers from going to the aid of fellow workers. Pactiv had no fences or security measures other than key fob access to the buildings. Pactiv did not hire security for its lot until Lawton was hurt. Pactiv did not protect its lots with gates, chain link fences or walls. Pactiv did not provide training on what to do when criminal events occurred on its property. Brookhouse testified Pactiv left it up to the employees as to how they should deal with criminal events outside the buildings.

After Mr. Lawton's accident, no supervisor told Brookhouse that he should not have joined Lawton in following the vandals. Brookhouse was not disciplined for assisting Lawton. He did not know if the roadway area where the accident happened was Pactiv property, but he believed it was because Pactiv parked its slip trucks at that location. Pactiv also had big tanks of stuff in that area.

Brookhouse testified Pactiv did not allow its workers to park in that roadway where the accident happened. Pactiv workers had to park in the Pactiv lot to the west. On cross-examination, Brookhouse admitted he did not know what the property lines were between the businesses. Brookhouse clarified that he had walked to his own car and got into it for a brief moment before the guys started breaking out the windows in the other car. He got out of his jumped out to join Lawton and Gabe at that point. He testified about the accident and details were clearer in his mind when it happened.

Brookhouse reiterated he was not going to physically apprehend the vandals, but only make sure they were held responsible for what they had done. Lawton just had time to tell the Jeep occupants "I'm calling the police" as he pulled his phone from his pocket before the Jeep ran over him. 30 to 40 seconds passed from the time Lawton stood in front of the Jeep to when it ran him over. He testified that there was nothing about the

vandals before the event that caused him to feel any need to call the police. He is unaware of any prior incident of vandalism in Pactiv's lot.

Slip trucks are parked in that area where the trucks that Pactiv used in the building he worked out of in the building west of Mason. Those trucks were parked in the alley area. There was no Pactiv policy requiring him to report strangers in the parking lot to supervisors. Pactiv's workers did not wear distinctive uniforms and there were always new people coming to work through staffing companies.

Brookhouse said when he saw the Jeep driver during the earlier shift, he did not think it was something to report to management. Pactiv's slip trucks were parked another 30 feet beyond where the Jeep was located at the time of the accident.

Testimony of Bedford Park Police Sergeant Andrew Smuskiewicz (PX #9)

Sergeant Smuskiewicz testified by evidence deposition on July 21, 2021 (PX #9). He was a Bedford Park police department detective at the time of Lawton's accident on June 13, 2013.

Sergeant Smuskiewicz was called out to Pactiv on the night of the incident. He explained the process of his investigation. where he interviewed a number of witnesses. Respondent Aerotek objected to the testimony on hearsay grounds, which was overruled. Much of Smuskiewicz' s account does consist of hearsay and Aerotek's running objection is well founded, striking this witness's testimony from the case to the extent it was based on what he was told. Aerotek also objected to the Bedford Park police report, which was not offered in evidence. The witness refreshed his memory from the report.

From his investigation, Sergeant Smuskiewicz learned that Lawton was part of a group of people who were trying to stop the crime from taking place and trying to get the offenders to stop so they could be arrested. He found no evidence that Lawton or his companions knew Garcia before the accident.

Respondent Aerotek renewed and reserved its objections to hearsay when it began cross-examination. Sergeant Smuskiewicz testified he never investigated whether Garcia and Ms. Fernandez had an affair. He testified that Bedford Park officers had been called out to Pactiv both before and after Lawton's incident for other incidents. Those calls involved disturbances among employees and supervisors. There was never a call involving an outsider coming onto the property.

Based on what he observed, Sergeant Smuskiewicz understood that that the vehicle involved did not enter Pactiv property after the incident. He agreed that civilians should stay out of police issues and just call 9-1-1. He advised people to not jeopardize their own safety.

Testimony of Jose Gasco Garcia (PX #10)

Jose Garcia testified by evidence deposition on March 28, 2022 (PX #10). He was one of the persons damaging the car in Pactiv's lot and was the driver who ran over Lawton. He testified from prison where he was serving time for Lawton's death.

Garcia had worked at Pactiv for years before the accident and he was still working at Pactiv on the weekends in June 2013. His wife Maria also worked at Pactiv. Garcia did not know Lawton, although he had seen him at work in the past. They worked in different Pactiv buildings.

Garcia identified DepX #1, a daylight photo of the area where he parked the Jeep between the buildings. Garcia parked where the red mark was located on the photo. DepX #2 is an overhead view of the same roadway area. Garcia parked his Jeep where the red X is located on DepX #2. The building at the top of this photo is Pactiv's building and the building at the bottom was some other business. Garcia testified he worked in the building at the top left of the photo with the white roof.

Garcia was not working at Pactiv the night of the accident. He came to Pactiv's property to make sure his wife was at work and to check her car. He parked his Jeep in a dark roadway to make sure that no one got his license plate. He backed his Jeep down the roadway between the buildings with his headlights off. He planned to damage Guadalupe Fernandez's car. He was not going after Lawton's car, and he had no intent to harm Lawton in any way. He was going after Fernandez for bothering his wife and getting involved in their family life.

Garcia testified another Pactiv employee came to assist Garcia that night. Garcia's wife and Fernandez were both working that evening. Fernandez had been harassing Garcia's wife for a long time. Fernandez did this with all the women at the plant. Female workers in that building had been complaining of Fernandez's sexual harassment for years before the accident. Garcia had damaged Fernandez's car on earlier occasions before Lawton's incident.

Garcia knew that Pactiv did not have security guards patrolling its lots before June 2013. He knew there were no security fences which would have stopped him from accessing Fernandez's car. Any person could access the lots, whether they worked there or not. There were no guards in place at Pactiv to keep strangers off the property.

Garcia testified he did not see Lawton in front of his Jeep before accelerating away. He did not intend to run Lawton over. He had nothing against Lawton. He felt something under his vehicle, but he thought it was a piece of concrete which was sometimes in Pactiv's parking lots. Mr. Garcia testified he was trying to get away from the people chasing him and did not see Mr. Lawton standing in front of his car when he drove away.

Garcia testified that during the eight years he worked at Pactiv, Pactiv had no training programs to explain what workers should do about sexual harassers in the plant. He was never told what he was supposed to do when a coworker kept sexually harassing his wife in the plant. Garcia did not intend to hurt anyone when he came to Pactiv on June 13, 2013. He said Lawton's injury was a pure accident.

On cross-examination, Garcia admitted he chose the location where he parked the Jeep because it was dark. There were no lights on the non-Pactiv building to his south. Pactiv had some lights on its building to the north, but not where he parked. He did not park in Pactiv's parking lots to the west because of Pactiv's cameras. He knew Pactiv had cameras on the buildings and did not park there for that reason.

Garcia testified he stopped vandalizing Fernandez's car after he finished what he wanted to do. He and his companion started walking back across Mason and then started to run when people started chasing.

On redirect examination, Garcia admitted that he had also worked in Pactiv's northeast building with the loading docks, shown at the top of DepX #2 with the dark roof. Pactiv used the trailers parked near that building to get the plates out of Pactiv's building. He saw those trailers pulling away from Pactiv's building onto Mason Street many times during the years he worked at Pactiv.

Testimony of Lawrence Liva (PX #19)

Mr. Liva testified by evidence deposition on June 13, 2022 (PX #19). He was a machine shop manager for Pactiv on June 13, 2013. He received a call at home that something had happened to a temporary employee at Pactiv, and that he needed to come into work. Liva did not recall whether he authored the Occupational Incident Report, a diagram, or investigative notes.

Liva testified that if an employee was involved in a major accident, he would meet with Dennis Davidson, Pactiv's Director of Engineering, and Davidson would tell him what to do or who to call. Liva worked the day shift, but he directly supervised Charlie Lawton, John Brookhouse and Gabriel Ybarra. If an incident happened, he would probably handwrite a report, but did not recall much about those reports.

On cross-examination Liva testified Pactiv operated three buildings at that campus, arranged in a L formation: one to the southwest, one to the northwest, and one to the northeast. The building to the southeast had nothing to do with Pactiv. (PX19 p.17) Between that building and the Pactiv building to its north, there was a roadway or a parking area.

Liva was shown the overhead view of the area (Garcia DepX #2). Liva confirmed that the trailers on the photo ran in and out of Pactiv's operations. To access the area where the trailers were, Pactiv would have to use the exit onto Mason. To the right of the

red "X" on Garcia DepX # 2, Liva saw a yellow barrier across the roadway but did not know whether that barrier delineated Pactiv's area of operation from the unrelated business in the south building.

Liva testified he did not know where the property lines were. He also did not know if Mason was a public rather than private road.

Liva did not recall giving Lawton new employee orientation. He did not handle the orientations, but he thought Pactiv's HR would orient new temp employees. He did not recall there being a written handbook of job rules for temporary employees. Liva had never seen a written or oral rule prohibiting workers from going to the aid of other workers who were in peril. He would never have discussed discouraging workers from going to the help of a coworker. In the years he was working at Pactiv, he did not recall there being any kind of rules which prohibited workers from going to the assistance of their coworkers.

Liva testified Brookhouse and Ybarra were not disciplined, written up, or even chastised for joining Lawton in addressing the emergency. He knew of no managers claiming that these workers should not have followed the people who were damaging property in the lot. The police came to him to look at camera footage from the cameras on his building. He saw no photos or video showing what happened down the roadway where Lawton was hurt.

Liva did not recall Pactiv providing training for temp employees as to how they were to address sexual harassment in the plant.

Liva identified the ground level view of the roadway between the buildings from July 2011, Garcia DepX #1. The photo shows pavement running from Pactiv's building on the left to the brick wall of the non-Pactiv building on the right. Liva walked the area a couple of days after the accident but could not recall what he saw.

Liva was asked about the Occupational Incident Report ("OIR"). The OIR listed him as the person receiving notice of Lawton's incident. Pactiv used these OIR forms for various types of incidents. Liva did not prepare this OIR, he would not have typed it up or phrased things the way they were written on the OIR. Brookhouse and Ybarra were both listed as witnesses on the OIR, and they were both reported as having given statements.

Liva was not aware of prior incidents like what happened to Lawton so he did not know who would take the statements or write the report. Even though the OIR said he was a machinist, Lawton did hand finishing work. The OIR said that "Supervisor/Team Lead should complete front page and top of the back of second page." Liva admitted he was Lawton's supervisor at the time, but different leads or supervisors may have completed the report. A box marked "Contributing Factors" was located at the bottom of

the first page. Liva did not know enough about the details of the event to determine who was at fault for the injury.

Liva reiterated that he was not aware of any Pactiv rules which prohibited workers to going to each other's aid to address sudden emergencies on Pactiv property. If something happened inside the building, he would hope that someone called 911. But he did not remember anything happening outside the building before Lawton's injury. Liva also did not author the Investigative Notes document. He had no idea whether other vehicles had been damaged prior to June 13, 2913. at night in Pactiv's lot. OIR forms should be filled out promptly after an event.

Pactiv's workers were given two breaks and a lunch break. Pactiv did require workers in the southwest building to take their breaks at the north end of the building. Workers were not prohibited from taking breaks in their cars. If Lawton and Brookhouse were in the north end of the building during their breaks, that is where the company expected them to be. Lawton was also allowed to take breaks with coworkers. Breaks were not scheduled for exact times. Workers did not have to clock out or notify the supervisor when going to break, but workers did clock out for lunchbreaks.

Testimony of Guadalupe Fernandez (AerotekX #3)

Guadalupe Fernandez testified at Jose Garcia's criminal trial August 28, 2017, People of the State of Illinois vs. Jose Garcia, 13 CR 1552. Mr. Fernandez identified photos of his car showing broken windows and a gang sign scratched into the car. Later, on June 13, 2013 he recognized "Jose" from a picture on TV and called the police about Garcia. Fernandez had worked with Garcia at Pactiv for 3 years before this night. Fernandez was confronted by Garcia in the canteen 2 months before the attack. Garcia said something to him about calling Garcia's wife or girlfriend, which Fernandez said was a lie. Garcia told him to watch his back.

Fernandez admitted he did not know if Garcia damaged his car because he was inside working. Fernandez went to the police station on June 20, 2013 and identified Garcia in a photo array. He also identified Garcia in a physical lineup at the Sheriff's office in Maywood, as well as in open court. During an interview with police, Fernandez talked about the disagreement he had with Garcia. Fernandez admitted he had had disagreements with other people at work.

Medical Records

Mr. Lawton was transported by Bedford Park Fire Department ambulance to Advocate Christ Hospital ("Christ") in Oak Lawn (PX #2). The EMS record identified multiple injuries (PX #1). The Christ trauma notes document significant deep tissue injuries. Procedures performed at Christ included washout of his right face, left upper extremity, right shoulder, and debridement of wounds.

Christ transferred Lawton to the Loyola University Medical Center ("Loyola"), where he was admitted to the burn unit on June 17, 2013 in an intubated and sedated state. He was hemodynamically stable at that point (PX #3). Loyola healthcare providers noted extensive degloving of the right side of the head, amputation of the right ear, right mastoid fracture with complete fracture and disarticulation of the zygomatic arch, fracture and exposure of the temporomandibular joint, and extensive exposure of deep facial muscles in the right side of the face and clavicle fractures. The left upper chest and shoulder also suffered degloving with exposure of muscle and soft tissue. The right upper extremity had dorsum degloving of hand down to the bone and deep muscle. The left upper extremity was extensively degloved from the shoulder down to the wrist, with a brachial artery bypass being done at Advocate. He had deep partial thickness/full thickness burns to his chest. Three surgical procedures were performed at Loyola, during which he remained sedated with mechanical ventilation while undergoing antibiotic treatment and dialysis for acute renal failure.

Mr. Lawton never regained consciousness or function and treatment ultimately failed. Lawton died on July 13, 2013. Loyola records included photos of Lawton's injuries.

Mr. Lawton's Death Certificate was admitted as PX #4.

Pactiv Occupational Incident Report was admitted as PX #18.

Respondent Pactiv's Motion to Dismiss was admitted as PactivX #1.

The temporary employment agreement between Pactiv and Aerotek was admitted as PactivX #2.

Respondent Aerotek's wage statement was admitted as AerotekX #1.

Respondent Aerotek's employment agreement was admitted as AerotekX #2.

The trial testimony of Guadalupe Fernandez was admitted as AerotekX #3.

CONCLUSIONS OF LAW

Respondent Pactiv filed a Motion to Dismiss, citing the written agreement between Pactiv and Respondent Aerotek, PactivX #2. The agreement states in pertinent part:

- [Aerotek] will, at its own expense, provide and keep in full force and effect during the term of this Agreement…Workers' compensation statutory coverage as required by the laws of the jurisdiction in which the Services are performed.
- [Aerotek] will indemnify, defend and hold Pactiv and its subsidiaries, affiliates, directors, officers, employees and agents from and against all demands, claims, actions, suits, losses, damages (including, but not limited to, property damage, bodily injury and wrongful death), judgments, costs

> and expenses…imposed upon or incurred by Pactiv arising out of…[a]ny claim of any nature asserted against Pactiv or workers compensation carriers by any [Aerotek] employee or agent of [Aerotek], or, in the event of death, by their personal representatives.

The facts here are similar to those in *Lachona v. Industrial Commission*, 87 Ill.2d 208, 427 N.E.2d 858 (1981), where a similar agreement was upheld. The Arbitrator finds that Pactiv is a borrowing employer and Aerotek is a loaning employer in accord with §1(a)4 of the Act. The Arbitrator also notes the stipulation at trial between Respondents Pactiv and Aerotek, whereby if any benefits are awarded to Petitioner as a result of the June 13, 2013 incident, that Aerotek retains full liability for any and all benefits, including, but not limited to, medical benefits, TTD benefits, death benefits, funeral expenses, penalties and fees, and permanency.

Respondent Pactiv's Motion to Dismiss is granted.

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

The Arbitrator finds that Petitioner failed to prove that an accident arose out of and in the course of the decedent's employment by Respondents Pactiv Corp. or Aerotek.

Charles Lawton, Jr. was employed by Respondent Pactiv Corp. on June 13, 2013. Mr. Lawton was employed as a temporary CNC Machinist through referral from Respondent Aerotek. On the evening of June 13 Mr. Lawton was taking a break with coworkers in an area abutting Pactiv's employee parking lot. Mr. Lawton and the others heard the sound of breaking glass and went to investigate. They discovered two individuals vandalizing a coworker's car. Jose Garcia was one of the individuals vandalizing the car. Mr. Lawton and coworkers John Brookhouse and Gabriel Ybarra gave chase of Mr. Garcia and the other vandal across the parking lot and onto Mason street which was the public way. Mr. Lawton placed himself in front of a Jeep operated by Mr. Garcia. In an effort to get away Mr. Garcia ran over and dragged Mr. Lawton down the roadway, causing fatal injuries to Mr. Lawton. Mr. Garcia was criminally charged and convicted for his actions.

An injury arises out of one's employment if its origin is from a risk connected with or incidental to employment activities. "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.

An injury occurs "in the course of" of employment if it refers to the time, place, and circumstances of the accident. If an employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties, a resulting injury will not be within the course of employment unless the employer had knowledge or acquiesced in such unreasonable conduct.

Charles Lawton was employed by Pactiv as a machinist. There was no evidence that he was charged with any responsibilities relating to security of the workplace, of his employer's property or equipment, or of his coworkers. Pursuing criminals who had vandalized hey coworkers private vehicle Was not part of the duties of a machinist or incidental to the duties of a machinist. Mr. Lawton, along with Mr. Brookhouse and Ybarra, We're not engaged in protecting the property or equipment of Pactiv or protecting a coworker from harm. The risks associated with chasing the offenders off Pactiv's property and standing in front of their fleeing vehicle was a risk that was assumed solely by Mr. Lawton and was in no way connected to his employment with Respondents. Mr. Lawton voluntarily exposed himself to a risk that was outside of his job duties. There is no evidence that his employer had knowledge or acquiesced to the decedent assuming this type of risk. There was no evidence that Aerotek or Pactiv expected, required, or encouraged its employees or temporary employees to stop any sort of criminal activity that occurred on company property.

The Arbitrator finds that Mr. Lawton took himself outside the scope of his employment as a machinist not only when he chased the offenders off Pactiv's property and across Mason Street, but also when he placed himself in front of Mr. Garcia's vehicle in an attempt to stop the offenders from fleeing. If an employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties, as here, the resultant injury is not within the course of the employment.

Also, the Arbitrator does not find the Good Samaritan doctrine applicable to this case. In determining whether an accident is compensable under the Good Samaritan Doctrine, courts have focused on whether the conduct is reasonably foreseeable. It was not reasonably foreseeable by Respondents that Mr. Lawton what put himself in harm's way when a criminal act did not involve damage to the employers property or equipment or harm to a coworker.

The Arbitrator does not find the alleged relationship and/or harassment between Mr. Garcia, Mr. Garcia's wife, and Guadalupe Fernandez relevant because it did not involve Mr. Lawton whatsoever.

The Arbitrator also does not find it relevant that Pactiv placed security in the parking lot after the June 13, 2013 incident. There was no evidence that Bedford Park is a high crime area or that there was a pattern of vandalism or other criminal acts in the Pactiv parking lot. On the contrary, this incident appears to be isolated to the issues between Mr. Garcia and Mr. Fernandez.

G: *What were Petitioner's earnings?*

Petitioner's wage statement, PX #11, shows Mr. Lawton's earnings from November 8, 2012 through June 13, 2013. During that time, the decedent had regular earnings of $20,013.00 and $84.00 of overtime earnings at straight time pay, for a total of $20,097.00. Using the weeks and parts thereof method, Mr. Lawton worked a total of 130 days during that period, or 26 weeks. This computes to an average weekly wage of $772.96.

Respondent Aerotek wage statement, AerotekX #1, showed earnings of $20,281.00. and the Petitioner's average weekly wage, calculated pursuant to section 10 of the Act was $780.04. Using the weeks and parts thereof method, Mr. Lawton worked a total of 130 days during that period, or 26 weeks. This computes to an average weekly wage of $780.04.

The Arbitrator adopts the average weekly wage computation of Respondent Aerotek, $780.04.

H: *Whether the deceased had any dependent children***.**

The evidence established that Mr. Lawton was not married at the time of the incident at issue. According to the June 8, 2015 Order of Heirship, PX #17, the decedent had the following minor dependents at the time of his death: Addison Pozniak (DOB May 19, 2013), Ashley Lawton (DOB July 14, 2002), and Elaina Lawton (DOB February 11, 1997). Elaina Lawton was emancipated by age on February 11, 2015. There was evidence that Grace Orsatdt, decedent's natural child, had been adopted but there was no evidence of when the adoption took place and, therefore, no evidence of whether Grace was a minor dependent at the time of Mister Lawton 's death.

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 has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Notwithstanding the Arbitrator's finding that the incident at issue did not result in a compensable injury, it appears the medical services provided to Mr. Lawton were reasonable and necessary and there is no evidence to the contrary.

K: *What temporary benefits are in dispute? TTD*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Notwithstanding the Arbitrator's finding that the incident at issue did not result in a compensable injury, it appears the correct disputed period of TTD would be from June 14, 2013 through July 13, 2013, or a period of 4 & 2/7 weeks.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

M: *Should penalties be imposed upon Respondent?*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Notwithstanding the Arbitrator's finding that the incident at issue did not result in a compensable injury, Respondents had good faith bases for denying benefits. It was neither vexatious nor frivolous to deny Petitioner's claim for benefits when Mr. Lawton exposed himself to a personal risk of harm that was outside the scope of his employment.

O: *Whether Petitioner is entitled to statutory funeral expenses.*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

_____ _____

Steven J. Fruth, Arbitrator Date

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

AMANDA POZNIAK, as Independent Administrator of the Estate of Charles Lawton, deceased, et al., **Plaintiffs,** **v.** **PACTIV CORPORATION, et al.,** **Defendants.**	**Case No.: 2024L050047**

ORDER

Charles Lawton witnessed a car being vandalized while outside in the employee parking lot on a break from work. Lawton chased the vandals, who fled back to their own car, which had been parked just off-property. He stood in front of the vandals' car in an effort to prevent their escape. The vandals – who, it later turned out, were fellow employees, off-duty, seeking to avenge a grievance with the vandalized car's owner – drove over Lawton and dragged him under the car, critically injuring him. Lawton would later die of his injuries. The driver, Jose Garcia, was subsequently apprehended and imprisoned for Lawton's death.

Amanda Pozniak, the mother of one of Lawton's children and the administrator of his estate, filed a claim against his employers[1] under the Workers' Compensation Act on behalf of the estate and Lawton's minor children. The claim proceeded to arbitration, following which the Arbitrator determined that the Lawton's death was non-compensable:

> Charles Lawton was employed by Pactiv as a machinist. There was no evidence that he was charged with any responsibilities relating to security of the workplace, of his employer's property or equipment, or of his coworkers. Pursuing criminals who had vandalized [their] coworker[r's] private vehicle was not part of the duties of a machinist or incidental to the duties of a machinist. Mr. Lawton, along with Mr. Brookhouse and Ybarra, [were] not engaged in protecting the property or equipment of Pactiv or protecting a coworker from harm. The risks associated with chasing the offenders off Pactiv's property and standing in front of their fleeing vehicle was a risk that was assumed solely by Mr. Lawton and was in no way connected to his

[1] It was stipulated that the Respondents, Aerotek and Pactiv, had a borrowing-lending relationship with regard to Lawton's employment. The two Respondents are referenced throughout as the "employer" or "employers" for simplicity's sake.

> employment with Respondents. Mr. Lawton voluntarily exposed himself to a risk that was outside of his job duties.

The principle of law applicable to the circumstances of Lawton's death, according to the Arbitrator, dictates that an injury is not considered to have occurred in the course of employment "if an employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties . . ."

The Commission affirmed and adopted the Arbitrator's Decision.

Pozniak has filed a Petition for Review arguing, in the main, that the accident should be found compensable under the "hero/emergency doctrine."

To be compensable under the Workers' Compensation Act, the injury complained of must be one "arising out of and in the course of the employment." 820 ILCS 305/2. An injury "arises out of one's employment if its origin is in some risk connected with or incidental to the employment, so that there is a causal connection between the employment and the accidental injury. *Parro v. Industrial Comm'n*, 167 Ill. 2d 385, 393 (1995). An injury occurs "'in the course of employment [if] it occurs within a period of employment, at a place where the worker may reasonably be in the performance of his duties, and while he is fulfilling those duties or engaged in something incidental thereto.'" *Parro*, 167 Ill. 2d at 393 (quoting *Scheffler Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 367 (1977)).

Whether an injury arose out of and in the course of employment are questions of fact for the Commission and may not be set aside unless against the manifest weight of the evidence. *Litchfield Healthcare Ctr. v. Indus. Comm'n*, 349 Ill. App. 3d 486 (5th Dist. 2004). In applying a manifest weight of the evidence standard, courts of review should be "reluctant to set aside the Commission's decision on a factual question," but "should not hesitate to do so when the clearly evident, plain, and indisputable weight of the evidence compels an opposite conclusion." *Montgomery Elevator Co. v. Industrial Comm'n*, 244 Ill. App. 3d 563, 567 (1993); See also *Roberson v. Indus. Comm'n*, 225 Ill. 2d 159, 173 (2007) ("A reviewing court will not set aside the Commission's decision unless its analysis is contrary to law or its factual determinations are against the manifest weight of the evidence.")

The principle of law relied upon by the Arbitrator and adopted by the Commission has been referenced by courts of review as the "unnecessary personal risk doctrine."

Application of the "unnecessary personal risk" doctrine seems to have generally been limited, by Illinois courts of review, to three circumstances. The first involve situations in which the claimant is injured while engaged in "performing an act of a personal nature solely for his own convenience." The second centers around cases involving a claimant who "voluntarily exposes himself to a known hazard." And the third category of cases concern injuries that occur

during the course of an employee "minister[ing] to his personal comfort" in an unreasonable or unforeseeable manner.

Orsini v. Industrial Comm'n, 117 Ill. 2d 38 (1987), illustrates the first type. There, the claimant was adjusting the carburetor on his own car at the Texaco where he worked when it lurched forward and pinned him against a workbench, breaking his legs. The Supreme Court held that the injury was non-compensable because it did not "arise from" the claimant's employment, framing the doctrine of "unnecessary personal risk" as involving a "danger entirely separate from the activities and responsibilities of [the employee's] job":

> [U]nder the terms of his employment, Orsini was not required to work on his personal automobile during working hours, and Wilmette Texaco could just as well have permitted him to do nothing while he was waiting for the additional brake parts needed to complete the job he was performing for his employer. . . . Orsini's car served no purpose relative to his employment duties at Wilmette Texaco. Thus, we find here that Orsini voluntarily exposed himself to an unnecessary danger entirely separate from the activities and responsibilities of his job, and was performing an act of a personal nature solely for his own convenience, an act outside of any risk connected with his employment. Clearly, there is no evidence here of a causal connection between Orsini's employment at Wilmette Texaco and the accidental injury.

Orsini, 117 Ill. 2d at 47; See also *Sekora v. Indus. Com*., 198 Ill. App. 3d 584, (1990) (employee injured while riding dealership ATV in a field after work); *Curtis v. Indus. Comm'n*, 158 Ill. App. 3d 344 (1987) (claimant burned transferring gasoline to container for his personal use); *Segler v. Indus. Com*., 81 Ill. 2d 125 (1980) (claimant injured by conveyer while attempting to heat his lunch in industrial oven); *Yost v. Indus. Com.*, 76 Ill. 2d 548, 550 (1979) (claimant injured attempting to pry lid off candy tin).

This, first type, of "unnecessary personal risk" centers on the "personal" aspect of the risk – and the "arising out of" prong of analysis. Courts of review assign particular significance to whether, as in *Orsini,* the claimant was "performing an act of a personal nature solely for his own convenience" at the time of his injury. See e.g. *Fisher Body Division, General Motors Corp. v. Industrial Com*., 40 Ill.2d 514 (1968) (employee injured by car battery explosion while re-charging in employee parking lot); *Mazursky v. Industrial Com.,* 364 Ill. 445 (1936) (employee injured while attempting to repair wheel of his car on employer's premises).

The second type of case in which the "unnecessary personal risk" doctrine has been applied are cases that involve employees injured while voluntarily confronting known hazards for their own convenience – typically by taking a "shortcut" on the way to or from work. See e.g., *Purcell v. Illinois Workers' Compensation Comm'n*, 2021 IL App (4th) 200359WC, ¶ 23 (claimant injured while attempting to hop over barrier); *Hatfill v. Industrial Comm'n,* 202 Ill.

App. 3d 547 (1990) (jumping over a ditch *en* route to parking deck); *General Steel Castings Corp. v. Industrial Comm 'n*, 388 Ill. 66 (1944) (crossing railroad tracks instead of using pedestrian tunnel on way to employee parking lot); *Terminal R. Ass'n v. Indus. Com.*, 309 Ill. 203 (1923) (attempting to crawl under a freight train to get to work station in railroad roundhouse).

Courts confronted with these cases typically focus on the "unnecessary" aspect of the activity and the "in the course of employment" prong of the analysis. Injuries that occur while employees are engaged in confronting a known hazard, like operating train tracks, are said to be acting for their own personal convenience – rather than acting with some interest of the employer in mind – and, consequently, acting outside the course of employment.

The third category of cases concern limitations on employees seeking "personal comfort." As set out by the Supreme Court, "the course of employment is not considered broken by certain acts relating to the personal comfort of the employee," but, "if the employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties, the resultant injury will not be deemed to have occurred within the course of the employment." *Eagle Discount Supermarket v. Industrial Comm'n*, 82 Ill.2d 331, 339-40 (1980); See also *Union Starch v. Industrial Comm'n*, 56 Ill.2d 272, 277 (1974) ("Our courts have found that incidental, or nonessential acts of the employment, such as seeking personal comfort, may not be within the course of employment if done in an unusual, unreasonable, or unexpected manner")[2]

The facts at issue here fall outside each of the three circumstances in which Illinois courts of review have applied the "unnecessary personal risk" doctrine. This wasn't a case that involved Lawton's personal interest. It wasn't *his* car that was being vandalized. Neither was this a circumstance involving Lawton confronting a known risk for his personal convenience – nor a case concerning the limits of the "personal comfort doctrine." While Lawton was on break, he was doing nothing to advance his own interest, convenience or comfort in confronting the vandals in the employee parking lot.[3]

Petitioner argues that the case is one that is controlled by the "hero/emergency doctrine" citing *Dragovich v. Iroquois Iron Co.*, 269 Ill. 478 (1915), *Baum v. Indus. Com.*, 288 Ill. 516 (1919), *Metropolitan Water Reclamation District of Greater Chicago v. Industrial Comm'n*, 272 Ill. App. 3d 732 (1995), and other cases.

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[2] Other states have adopted constructs requiring employee "misconduct" to be "unusual or extraordinary" or "unconventional and perilous" to be disqualifying. See 3 Larson's Workers' Compensation Law § 32.02D (collecting cases).

[3] See e.g. *Chicago Extruded Metals v. Indus. Comm'n*, 77 Ill. 2d 81, 85 (1979) (killing an insect in the employer's shower facility considered to be an act in the employer's interest).

In *Dragovich*, Frank Markusic, working on Christmas Eve 1912, was burned to death in scalding water after he fell into an open hole on the factory floor while coming to the aid of a fellow employee who was screaming for help – having fallen into a different part of the same hole, himself. Construing "arising out of and in the course of the employment" of the newly enacted Workers' Compensation Act for the first time, the Illinois Supreme Court found that an employee's duties at work extend to attempts to save the lives of his fellow employees:

> Section 1 of the act requires that compensation may be had for accidental injuries sustained by any employee "arising out of and in the course of the employment," etc. From the facts already stated, counsel for appellant argues that it was not shown that the accident arose out of and in the course of deceased's employment. This provision of the statute has never been construed by this court but somewhat similar acts have been construed by the courts in other jurisdictions. Under these authorities it is clear that it is the duty of an employer to save the lives of his employees, if possible, when they are in danger while in his employment, and therefore it is the duty of a workman in his employ, when occasion presents itself, to do what he can to save the lives of his fellow-employees when all are at the time working in the line of their employment. Any other rule of law would be not only inhuman but unreasonable and uneconomical, and would, in the end, result in financial loss to employers on account of injuries to their employees. From every point of view it was the duty of the deceased, as a fellow-employee, in the line of his duty to his employer, to attempt to save the life of his fellow-employee under the circumstances here shown. That he failed in his attempt does not in the slightest degree change the legal situation.

Dragovich, 269 Ill. at 484.

In *Baum*, striking workers from the International Garment Workers' Union stormed the Nora Shirtwaist Company, a non-union shop owned by Simon Baum. Edward Tomczyk, an "assistant cutter" and one of only a few male employees, attempted to stop the strikers from advancing onto the factory floor and was stabbed to death. The Supreme Court, affirming an award of workers' compensation benefits, found that Tomczyk's stabbing arose out of his employment because he was performing a voluntary act during an emergency that he believed to be in the interest of his employer:

> While there must be some causal relation between the employment and the injury, it is not necessary that the injury be one which ought to have been foreseen or expected. It must, however, be one which after the event may be seen to have had its origin in the nature of the employment. . . . Where a workman voluntarily performs an act during an emergency which he has

> reason to believe is in the interest of his employer and is injured thereby, he is not acting beyond the scope of his employment.

Baum, 288 Ill. at 518-19.

Metropolitan Water Reclamation District involved a lockmaster, who – while waiting to be relieved from working in the station house where the Chicago River meets Lake Michigan – suffered a heart attack after assisting in rescuing a man who had fallen into the lake from an adjacent property. Affirming the Commission's finding that the injury was compensable, the Appellate Court determined that – despite the rescue taking place after the lockmaster's shift and off property – the fact the lockmaster's actions were in response to a "sudden emergency" brought it within the course of his employment:

> [C]laimant had signed out, but was not supposed to leave until his replacement arrived. After hearing a commotion in the parking lot, claimant went there to make sure his replacement was not in danger. At that point, claimant was still on the respondent's time and premises. Once in the parking lot, claimant heard a woman's call for help and proceeded to the adjacent property in response to the "sudden emergency" to rescue a stranger. Giving aid as claimant did is natural and expected and did not remove him from the course of his employment.

Metropolitan Water Reclamation District, 272 Ill. App. 3d at 735-36 (citing *Puttkammer v. Industrial Comm'n*, 371 Ill. 497, 501 (1939) ("If a servant in the course of his master's business has to pass along a public street, whether it be on foot or on a bicycle or on an omnibus or car, and he sustains an accident by reason of the risks incidental to the streets, the accident arises out of as well as in the course of his employment." (quoting *Dennis v. A.J. White and Co*. 15 N.C.C.A. 294)).

Dragovich, *Baum* and *Metropolitan Water Reclamation District* stand for three general principles: (1) "in the course of employment" is not constrained to an employee's job duties for purposes of the emergency doctrine; (2) voluntary acts performed in the interest of the employer during an emergency "arise from" the employment; and (3) as long as the act is "in the course of" and "arising from" the employment, it is irrelevant if the act occurs on or off the employer's premises.

Professor Larson summarizes the rule, which he calls the "General Rescue Rule," as extending to emergencies involving both life and property: [4]

> Under familiar doctrines in the law relating to emergencies generally, the scope of an employee's employment is impliedly extended in an emergency to include the performance of any act designed to save life or property in which the employer has an interest. . . . It is too obvious for discussion that emergency efforts to save the employer's property from fire, theft, runaway horses, destruction by strikers, or other hazards are within the course of employment.

3 Larson's Workers' Compensation Law § 28.01 (citing, among other cases, *Deutsch v. Heritage Automotive Enters*., 939 So.2d 259 (Fla. Dist. Ct. App. 2006) (employee awarded benefits after chasing thief and being run over by her car)).

If Jose Garcia, the offender in this case, had – upon being confronted in his act of vandalizing the car – pulled out a gun and shot Lawton in the employee parking lot, there would be no question that the incident would be considered to have "arisen out of" and "in the course of the employment." See *Rodriguez v. Frankie's Beef/Pasta & Catering*, 2012 IL App (1st) 113155 (employee shot to death by fellow employee over dispute over promotion covered by exclusivity provisions of Workers' Compensation Act); *Price v. Lunan Roberts, Inc*., 2023 IL App (1st) 220742 (employee stabbed to death by fellow employee while at work for unknown reasons covered by exclusivity provisions of the Workers' Compensation Act).[5]

Significant to the analysis would be the fact that Garcia was, himself, an employee of Pactiv Corporation, rather than a stranger. Significant, too, would be the fact that the vandalism stemmed from a work-related dispute: the harassment of Garcia's wife (and other employees) by the car's owner while at work. And it would not have mattered if the shooting occurred after Lawton pursued Garcia across the street from the employee parking lot.

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[4] Respondents cite *Pearson v. Industrial Comm'n*, 318 Ill. App. 3d 932 (2001), for the proposition that the "emergency doctrine" is limited to "life-threatening" circumstances. The "emergency doctrine" discussed in *Pearson*, however, is a doctrine differing from that at issue and pertains to extending "employment" status to non-employees during a life-threatening emergency. See *Wolverine Insurance Co. v. Jockish*, 83 Ill.App.3d 411, 38 Ill. Dec. 686, 403 N.E.2d 1290 (1980). See also *Conveyors' Corp. of America v. Industrial Comm'n*, 200 Wis. 512, 228 N.W. 118 (1929); *Tipper v. Great Lakes Chemical Co.* 281 So.2d 10 (Fla. 1973).

[5] See also *Hooks v. Cee Bee Mfg. Corp*., 80 A.D.2d 687 (NY 1981) (workers' compensation coverage found under New York's version of workers' compensation law for claimant shot and killed after confronting vandals in employee parking lot).

The compensability or non-compensability of the claim cannot hinge on the fact that Garcia killed Lawton with a car instead of a gun.

As Petitioner points out, the Arbitrator here improperly injected elements of contributory negligence and assumption of the risk into the analysis. Construing the "emergency doctrine" in a manner that would include such negligence concepts would bring the doctrine into stark conflict with the public policy objectives underlying the Workers' Compensation Act:

> It has long been recognized that one of the [Illinois Workers' Compensation Act's] objectives was to do away with defenses of contributory negligence or assumed risk. Recklessly doing something persons are employed to do which is incidental to their work differs considerably from doing something totally unconnected to the work. It matters not how negligently the employee acted, if at the time he was injured he was still within the sphere of his employment and if the accident arose out of it.

Gerald D. Hines Interests v. Industrial Comm'n, 191 Ill. App. 3d 913, 917 (1989) (citations omitted).

The court finds the Arbitrator's analysis with regard to the compensability of the accident, as adopted by the Commission, to have been contrary to law. However, the court finds the parties' dispute concerning the compensability of the claim to have been in good faith and confirms the denial of penalties.

The court also sets aside the findings made by the Arbitrator unnecessary for the determination that the accident was non-compensable, including the findings as to Lawton's average weekly wage, the identity of his minor dependents, whether medical services were reasonable and necessary and the duration of any temporary total disability to which he was entitled. (Disputed Issues G, I, J and K).

The court confirms the Commission's Decision and Opinion on Review with regard to vacating the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss – any dispute regarding the contractual liability between the borrowing and lending employers to be resolved by way of separate motion or proceeding following payment of any award. See *Chaney v. Yetter Manufacturing Co.*, 315 Ill.App.3d 823, 826-27 (2000) ("[*Lachona v. Industrial Commission*, 87 Ill.2d 208 (1981)] does not hold that a borrowing employer can escape workers' compensation liability (*vis a vis* the employee) through an indemnification agreement with the loaning employer.")

IT IS THEREFORE ORDERED:

That the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O;

That the Commission's Decisions and Opinions on Review dated January 19, 2024 are CONFIRMED as to Disputed Issue M, the court finding no penalties warranted given the good faith dispute as to liability;

That the Commission's Decision and Opinion on Review is CONFIRMED with regard to vacating the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss;

That, on remand, the Commission shall make whatever additional findings deemed necessary to determine the issues disputed by the parties at the arbitration of this matter including Disputed Issues C, G, I, J, K, L and O and the extent of any death benefits due pursuant to 820 ILCS 305/7(a) and 820 ILCS 305/7(f);

That the Commission is authorized to conduct further hearings, remand the matter further for such hearings, or employ whatever methods it deems necessary to comply with this order;

That the matter is disposed. See *Kudla v. Indus. Comm'n*, 336 Ill. 279, 282 (1929) (holding that, following review, the circuit court exhausts its statutorily-conferred jurisdiction and any "attempt to retain further jurisdiction [is] void.")

Judge Daniel P. Duffy
JAN 27 2025
Circuit Court - 2103

Hon. Daniel P. Duffy
Circuit Court of Cook County
Law Division -
Tax and Miscellaneous Section
50 West Washington, Room 2505
Chicago, Illinois 60602

Enter:_____

_____
Judge Judge's No.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC033619
Case Name	Brandon Engelkins v. Continental Tire
Consolidated Cases	
Proceeding Type	8(a)/19(h) Petition
Decision Type	Commission Decision
Commission Decision Number	25IWCC0078
Number of Pages of Decision	5
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Andrew Keefe

DATE FILED: 2/20/2025

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Brandon Engelkins,

Petitioner,

vs. No. 22 WC 33619

Continental Tire,

Respondents.

DECISION AND OPINION ON REVIEW PURSUANT TO §19(h) and §8(a)

This matter comes before the Commission on Petitioner's §19(h) and §8(a) Petition, seeking additional medical expenses, prospective medical care, and additional permanent partial disability benefits for his right hand condition, allegedly due to a material increase in his disability since the Arbitrator's June 3, 2024 decision. In that decision, the Arbitrator awarded Petitioner 7½% loss of use of the left hand (based upon 190 weeks), 12½% loss of use of the right hand (based upon 190 weeks), and 35% loss of use of the right hand (based upon 205 weeks), as provided in §8(e) of the Act. On July 9, 2024, Petitioner filed a timely Petition for Review under §19(h) and §8(a) of the Act. A hearing on that Petition was held before Commissioner Parker on January 14, 2025. At that hearing, the parties stipulated that the only remaining issue to be decided was to what extent the Petitioner's disability may have increased under §19(h).

Findings of Fact:

At the time of his original accident on May 12, 2022, Petitioner was 46-year-old tire builder at Respondent who developed pain in both wrists and hands from repetitive work activities. Petitioner underwent right and left carpal tunnel releases by Dr. Brown on June 14, 2022 and July 28, 2022, respectively. Thereafter, Dr. Brown performed two additional procedures to Petitioner's right hand. On November 3, 2022, Dr. Brown performed an open scapholunate ligament reconstruction with tape and anchors. When that procedure failed to provide adequate relief of

Petitioner's symptoms Dr. Brown performed, on April 11, 2023, a right wrist scaphoidectomy and 4-corner fusion.

Petitioner saw hand surgeon, Dr. Shawn Kutnik, for a second opinion. On August 2, 2023, Petitioner complained to Dr. Kutnik of pain and numbness in his right hand, and a reduced range of motion in his right wrist. Dr. Kutnik recommended a CT scan of Petitioner's wrist which, on August 11, 2023, indicated a failed fusion. On August 31, 2023, Dr. Kutnik performed a revision of the 4-corner fusion and removed the hardware from Petitioner's right wrist. While this surgery reduced Petitioner's pain, he was still left with substantial stiffness of his wrist and fingers. On January 10, 2024, after an FCE which placed Petitioner at a medium duty physical level, Dr. Kutnik released Petitioner at MMI. At that time, Dr. Kutnik reported Petitioner's right hand, "shows no significant motion to the wrist," and he also reported that Petitioner had, "contractures significant to the index [more] than other digits." By this time, Petitioner had returned to work in a supervisory role at Respondent, which was consistent with the permanent restrictions of his FCE. On January 10, 2024, Dr. Kutnik wrote about Petitioner, "in his current position, patient requires no restrictions or accommodations and is able to work in a full-duty capacity."

At the arbitration hearing on April 23, 2024, the only disputed issue was the nature and extent of Petitioner's injury. Then, Petitioner testified his left hand was "good," and was, "back to normal," though he still complained of many symptoms in his right hand. Petitioner testified that he had no mobility of his right wrist, either up and down, or left and right. He testified it was impossible for him to pick up things from flat surfaces. He could no longer ride motorcycles, deer hunt with a gun, or exercise. He testified it was impossible to play with his grandkids. Petitioner also expressed difficulty with activities of daily living, including doing laundry, using steak knives, eating, opening tight jars, showering, and doing yard work. Petitioner testified he took at least one Ibuprofen a day.

At the January 14, 2025 hearing, Petitioner testified that since arbitration, he has continued to experience pain and limitations to his right hand. He saw Dr. Kutnik on June 17, 2024, to discuss possible treatment options for that hand. Dr. Kutnik noted Petitioner still had decreased strength, and minimal to no motion to his wrist. Although Dr. Kutnik reported Petitioner had made excellent gains to the 4th and 5th digits of his right hand, he noted Petitioner had residual extensor contractures of his 2nd and 3rd digits. Dr. Kutnik recommended surgical release of those contractures to help improve Petitioner's overall function and grip strength. On July 25, 2024, Dr. Kutnik performed those procedures.

Following that surgery, Petitioner underwent physical therapy for his right hand and fingers through October 15, 2024. On that date, his physical therapist reported Petitioner's pain was reduced 50% since Petitioner began therapy, though some pain and stiffness persisted. Petitioner felt he had progressed with therapy, but had plateaued at that time. On October 25, 2024, Dr. Kutnik reported Petitioner's long finger had improved quite reasonably, although his index finger was more stiff. Dr. Kutnik agreed that Petitioner had probably plateaued in therapy, and he again released him from care at MMI.

At the review hearing on January 14, 2025, Petitioner testified that when he saw Dr. Kutnik in June 2024, he still had pain in his hand and his right wrist didn't move much at all. He testified that the contraction release surgery Dr. Kutnik performed to his right index and middle fingers on July 25, 2024 improved his condition, but only for one month, after which, "it went back to the same thing." Petitioner acknowledged that the therapy he attended after his July 2024 surgery helped a lot while he was in therapy. He testified he now has the same symptoms, if not worse, than he had at arbitration: his right wrist doesn't move up and down or left and right; he has trouble gripping things; and it is "almost impossible" for him to pick up small items. Petitioner testified he still takes Ibuprofen, though more than he was taking at arbitration. He testified he is not able to do yard work, he cannot ride motorcycles, and he has difficulty playing with his grandkids. He doesn't play sports or perform really physical activities.

On cross examination, however, Petitioner admitted that at arbitration on April 23, 2024, he was still having triggering of his index and long fingers. He testified his that his right index and long fingers were no better than they were before surgery. He acknowledged that he is still working the same full time supervisory job as he had been working at time of arbitration. He testified he told his doctor that his symptoms have worsened since arbitration on April 23, 2024.

Conclusions of Law:

Section 19(h) seeks to redress changes in circumstances after the entry of an award, and is particularly remedial in nature. It should be construed liberally so as to allow review of alleged changes in circumstances. *Hardin Sign Co. v. Industrial Comm'n*, 154 Ill. App. 3d 386, 389-90 (1987). To obtain an increase in the permanent partial disability award under §19(h), the Petitioner herein must show that his disability at the time of his initial arbitration hearing on April 23, 2024 had increased by the January 14, 2025 review hearing, and that the increase was material. *Gay v. Industrial Comm'n,* 178 Ill. App 3d 129, 132 (1989); *Motor Wheel Corp. v. Industrial Comm'n*, 75 Ill. 2d 230, 236 (1979). In order to determine whether Petitioner's condition materially deteriorated from the time of the Arbitrator's award to the present, it is necessary to compare his condition at those two relevant times. *Howard v. Industrial Comm'n,* 89 Ill. 2d 428, 430-31 (1982).

At arbitration, Petitioner testified he still has "many" symptoms in his right hand and wrist. He testified, "there's no mobility of the wrist itself up and down or left and right. Grip strength is very minimal. Picking up things, flat surfaces are almost impossible. I had several things that he once loved that he can't perform whatsoever, anymore." He testified that his symptoms at that time affected his work, including that he could not use mobile equipment to go places, and was not permitted to move machines. He testified that his ability to ride motorcycles, go hunting, and play sports had been limited because of his injuries. He stated it was impossible to play with his six grandchildren a lot. He testified he was limited with performing home activities, doing yard work, and showering. He testified his injuries affected his ability to do laundry, eat, use a steak knife, and open jars. After comparing Petitioner's condition at arbitration and at the review hearing, the Commission finds his limitations and condition at both were essentially the same.

Although Petitioner claimed his right index and middle fingers were no better than before the July 25, 2024 surgery, his medical records do not support that testimony. On September 27, 2024, Dr. Kutnik reported, "He is doing okay overall. Pain is reasonably controlled. He does note there has been progress with therapy, and he is pleased with his current OT," and, "Motion has improved considerably both to the long and index fingers… Still some limitations on active flexion but clearly better." At Petitioner's last therapy appointment on October 15, 2024, the therapist wrote, "Overall pt. feels he initially progressed with OT services but now he is plateaued," and, "pt. feels frequency of pain has reduced by 50% since starting therapy." On October 25, 2024, Dr, Kutnik reviewed Petitioner's therapy note and stated, "it does sound as though he has attained upwards of more than 80 degrees flexion to the MPs of the second and third digits which is improved and I would agree." Dr. Kutnik placed Petitioner at MMI with the same permanent restrictions as before.

Although since arbitration Petitioner has undergone surgery to his right index and long fingers, he has the same symptoms and limitations now as he had at arbitration. He is working the same job, with the same restrictions. None of these factors have materially changed. Based upon the above and the record as a whole, the Commission finds that while Petitioner's condition remains causally related to his accident, he has not, at this time, proven a material increase in his disability between the April 23, 2024 arbitration hearing and the January 14, 2025 §19(h) review hearing. Therefore, Petitioner's request for increased permanent partial benefits pursuant to §19(h) is denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's §19(h) Petition is denied.

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.

February 20, 2025

MP/mcp
r-01/14/25
068

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC002356
Case Name	Glenda Jean Myrick v. Danville Metal Stamping
Consolidated Cases	
Proceeding Type	***Remand from the Circuit Court of Vermilion County***
Decision Type	Commission Decision
Commission Decision Number	25IWCC0079
Number of Pages of Decision	58
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Gary Stokes
Respondent Attorney	John Sturmanis

DATE FILED: 2/25/2025

/s/Carolyn Doherty,Commissioner

Signature

25IWCC0079

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)
☐ Modify	☐ PTD/Fatal denied
☒ ON REMAND FROM CIRCUIT COURT	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

GLENDA JEAN MYRICK,

Petitioner,

vs. NO: 18 WC 002356
24 IWCC 0335

DANVILLE METAL STAMPING,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the Circuit Court of Vermilion County. In accordance with the opinion of the circuit court filed on January 29, 2025, the Commission considers the issue of permanent total disability, and being advised of the facts and law, denies the claim for permanent total disability benefits for the reasons stated below.

I. PROCEDURAL BACKGROUND

Petitioner initially filed a claim for benefits under the Act against the Respondent for ~~a~~ injuries she sustained on November 6, 2017. Following a hearing, the Arbitrator issued a decision on November 17, 2023, concluding that Petitioner's condition of ill-being after June 29, 2018 was not causally connected to the accident, relying on the Section 12 examiner's opinion to find that her current condition was a natural progression of Petitioner's pre-existing degenerative disc disease. The Arbitrator awarded temporary total disability benefits, medical expenses through June 29, 2018, and permanent partial disability benefits representing 45% of the person as a whole, after rejecting a claim for permanent total disability benefits. Petitioner sought review. On July 18, 2024, the Commission modified the arbitration decision to find a continuing causal connection between the work accident and Petitioner's current condition of ill-being and awarded permanent partial disability benefits representing a 60% loss of the person as a whole.

Both parties sought administrative review in the Circuit Court of Vermilion County. On January 29, 2025, the circuit court entered an order confirming the Commission's finding regarding the causal connection between the work accident and Petitioner's current condition of

ill-being. However, the court remanded this case to the Commission for a determination of whether Petitioner proved that she was permanently and totally disabled, as the Commission did not expressly reject the claim in its decision to find permanency appropriate under Section 8(d)(2) of the Act.

II. FINDINGS OF FACT

The Commission hereby incorporates by reference the "Findings of Facts" and findings included in the "Conclusions of Law" contained in the Arbitrator's Decision filed on November 17, 2023, attached hereto and made a part hereof, to the extent that they do not conflict with the Commission's Decision and Opinion on Review filed on July 18, 2024, attached hereto and made a part hereof. The Commission also incorporates by reference the January 29, 2025, circuit court order, attached hereto and made a part hereof. The Commission makes any further findings of fact below as necessary.

III. CONCLUSIONS OF LAW

Pursuant to the circuit court order, the Commission expressly considers Petitioner's claim of permanent total disability (PTD), which was implicitly rejected by the Commission when it awarded increased permanent partial disability benefits under Section 8(d)(2) on review. Petitioner objected that the Arbitrator should have awarded PTD benefits under the "odd lot" theory. Petitioner argued that she was released to work with restrictions which the Arbitrator found would render her unable to return to her prior job with Respondent. She also relied on the assessment by Mr. Patsavas that a viable and stable labor market did not exist for Petitioner, and she would not be a candidate for vocational rehabilitation services.

An employee is totally and permanently disabled when she is unable to make some contribution to industry sufficient to justify the payment of wages. *A.M.T.C. of Illinois v. Industrial Comm'n*, 77 Ill. 2d 482, 487 (1979). If a claimant's disability is of such a nature that she is not obviously unemployable, or there is no medical evidence to support a claim of total disability, the burden is upon the claimant to prove that she fits into an "odd lot" category; that being an individual who, although not altogether incapacitated, is so handicapped that she is not regularly employable in any well-known branch of the labor market. *Valley Mold & Iron Co. v. Industrial Comm'n*, 84 Ill. 2d 538, 546-47 (1981).

A claimant seeking "odd lot" status must establish it by a preponderance of the evidence. *City of Chicago v. Illinois Workers' Compensation Comm'n*, 373 Ill. App. 3d 1080, 1091 (2007). A claimant ordinarily satisfies her burden in one of two ways: (1) by showing diligent but unsuccessful attempts to find work, or (2) by showing that, because of her age, skills, training, and work history, she will not be regularly employed in a well-known branch of the labor market. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 544 (2007). Once a claimant establishes that she falls within an "odd lot" category, the burden shifts to the employer to prove that the claimant is employable in a stable labor market and that such a market exists. *Id*. However, an employee seeking "odd lot" status must do more than make a *prima facie* case to shift the burden to the employer; she must initially establish by a preponderance of the evidence that she falls within the "odd lot" category. *City of Chicago*, 373 Ill. App. 3d at 1091.

Petitioner did not submit any medical opinion that Petitioner was medically permanently totally disabled. The Arbitrator correctly noted that the treating physician, Dr. Huler, did not find the Petitioner was incapable of any gainful employment and did not order a functional capacity evaluation. Petitioner did not engage in a job search, so there is no evidence of diligent but unsuccessful attempts to find work. Respondent correctly noted that Mr. Patsavas, Petitioner's retained vocational counselor, did not conduct a labor market study, which is a basis for rejecting a claim for PTD benefits. See, *e.g.*, *Hane v. United Airlines*, Ill. Workers' Comp. Comm'n, No. 06 WC 12752, 11 IWCC 0127 (Dec. 8, 2011); *Dankowski v. J.K. Manufacturing*, Ill. Workers' Comp. Comm'n, No. 08 WC 38679, 10 IWCC 0986 (Oct. 5, 2010). The lack of a labor market study undermines the credibility of the opinion proffered by Mr. Patsavas that a viable and stable labor market did not exist for Petitioner. Moreover, while Petitioner spent her work life in a factory setting, Mr. Patsavas noted that Petitioner had basic computer skills and software experience and possibly could perform sedentary work. Given the lack of a medical finding of permanent total disability, the lack of a labor market study, and the evidence that Petitioner has basic computer skills and possibly could perform sedentary work, Petitioner failed to prove that, because of her age, skills, training, and work history, she could not be regularly employed in a well-known branch of the labor market. Petitioner also relied on her Social Security disability determination, but the standards for that determination differ from those for determining permanent total disability under Section 8(f) of the Act. *E.g.*, *Carpenter v. Snelling Personnel Services & RPG Manufacturing*, Ill. Workers' Comp. Comm'n, No. 04 WC 31927, 18 IWCC 244 (Apr. 18, 2018). Given this record, the Commission expressly concludes that Petitioner failed to prove by a preponderance of the credible evidence that she was entitled to PTD benefits based on the "odd lot" theory.

On remand, Petitioner also submitted a written request for special findings regarding the "odd lot" issue. However, the rules governing practice before the Commission provide that a party may request special findings concerning issues raised by "the Review" and that interrogatories shall be filed at the same time as the parties' Statement of Exceptions. 50 Ill. Admin. Code 9040.40 (2016). This matter currently is before the Commission not on initial review, but on remand from the Circuit Court, rendering the rule regarding special findings inapplicable in this context. Moreover, a reviewing court's mandate vests a lower the Commission with jurisdiction only to take action that complies with that mandate. Cf. *Fleming v. Moswin*, 2012 IL App (1st) 103475-B, ¶ 28. On remand, the Commission lacks the authority to exceed the scope of the mandate and must follow the court's precise and unambiguous directions. *Id*. The Circuit Court ordered that this matter was remanded "for further proceedings to determine and to opine whether Plaintiff Employee has, by way of odd-lot analysis of her ability to return to work, sufficiently demonstrated she is permanently and totally disabled." The Commission has done so. Nevertheless, the Commission also observes that this decision on remand directly addresses the questions raised in Petitioner's request for special findings.

In all other respects, the Commission reaffirms and adopts the Commission's Decision and Opinion on Review filed on July 18, 2024.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner failed to prove that she is permanently and totally disabled.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission's Decision and Opinion on Review filed on July 18, 2024, is hereby affirmed and adopted as modified herein.

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

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

Bond for the removal of this cause to the Circuit Court remains 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.

February 25, 2025

d: 2/20/25
CMD/kcb
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC002356
Case Name	Glenda Jean Myrick v. Danville Metal Stamping
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	22
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Gary Stokes
Respondent Attorney	John Sturmanis

DATE FILED: 11/17/2023

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 14, 2023 5.27%

/s/ Jeanne AuBuchon, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

GLENDA JEAN MYRICK
Employee/Petitioner

v.

DANVILLE METAL STAMPING
Employer/Respondent

Case # **18** WC **002356**

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 **Urbana**, on **September 13, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **November 6, 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 arising on or before June 29, 2018, ***is*** causally related to the accident. Those conditions arising thereafter are not.

In the year preceding the injury, Petitioner earned $**32,962.76**; the average weekly wage was $**646.33**.

On the date of accident, Petitioner was **57** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**6,762.74** for TTD, $**0** for TPD, $**0** for maintenance, $**6,000.00** for nonoccupational indemnity disability benefits and $**336.60** for other benefits, for a total credit of $**13,099.34**.

Respondent is entitled to a credit for all group health insurance payments on charges reflected in Petitioner's Exhibits 32 – 38, under Section 8(j) of the Act.

ORDER

Respondent is ordered to pay medical expenses listed in Petitioner's Exhibits 32, 33, 34, 35 and 36 that were incurred on or before June 29, 2018, pursuant to Section 8(a) of the Act and in accordance with applicable medical fee schedules. 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 temporary total disability benefits of $430.89/week for 33 and 4/7 weeks, commencing November 7, 2017, through June 29, 2018, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $387.80/week for 225 weeks to the extent of 45% loss of a Person as a Whole pursuant to §8(d)2 of the Act.

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

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

Jeanne L. AuBuchon

Signature of Arbitrator

NOVEMBER 17, 2023

PROCEDURAL HISTORY

This matter proceeded to trial on February 23, 2023, on all disputed issues. 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 ??? condition; 3) the Petitioner's average weekly wage (AWW); 4) payment of medical bills; 5) entitlement to temporary total disability benefits (TTD) from November 7, 2017, through June 29, 2018; and 6) the nature and extent of the Petitioner's injuries. The Petitioner is seeking permanent total disability (PTD) benefits pursuant to Section 8(f) of the Act.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 57 years old and employed by the Respondent as a parts marker – bending over to get a cast-iron part weighing 12-15 pounds, taking it to her work station, using a machine to mark the part and taking it to a drop area about 15 feet away. (AX1, T. 14-19) She said she handled about 200 parts per day. (T. 19)

The Petitioner acknowledged that she had two back surgeries prior to her work accident. (T. 20) In 2005, she underwent a laminectomy (removal of vertebral bone) (RX7) The Petitioner was placed on permanent restrictions of no lifting more than five pounds that could be increased to 20 pounds occasionally and 10 pounds frequently, no high force or frequency repetitive job tasks, no repetitive waist bending and no constant overhead activities. (T. 52, RX7)

On July 29, 2014, the Petitioner was diagnosed as having sciatica caused by extraforaminal disc herniation at L4-5 (herniation of the disc where the nerve exits the spine) by Dr. Robert Huler, a spine surgeon at OrthoIndy. (RX 9) On August 8, 2014, Dr. Huler performed an extraforaminal discectomy (removal of the damaged part of a disc) at L3-4 on the left side. (RX12) He released

the Petitioner to full duty work starting August 15, 2014. (Id.) The Petitioner testified that the outcome of that surgery was "great." (T. 21)

The Petitioner testified she did great over the next three years but had occasional flare-ups for which she would see Dr. Gary Page, a chiropractor at the Back Pain Clinic of Danville. (T. 22) She said she had no left leg complaints after the 2014 surgery and returned to her job for three years at a full-duty pace. (T. 73-74) Dr. Page's records show the Petitioner treated with him for: acute lumbosacral sprain/strain and acute lumbar myofascitis (a local manifestation of a toxic condition of the blood evidenced by low-grade inflammation of the muscles and connective tissue) from April through May 2015 and in July 2015; sprain of other parts of the lumbar spine and pelvis in October 2015; sprain of other parts of the lumbar spine and pelvis and cervicocranial syndrome (neurologic syndrome following injury of the spinal sympathetic nerves of the neck that control heart rate, blood pressure, digestion, urination and sweating) from March through May 2016; sprain of other parts of the lumbar spine and pelvis, cervicocranial syndrome and sprain of the cervical spine from September 6, 2017, through October 30, 2017. (RX5) At the October 30, 2017, visit, the Petitioner reported that the pain in her low back was less intense and rated it a 1/10. (Id.) The Petitioner agreed that in 2016 and June 2017, she was on FMLA (Family and Medical Leave Act) for low back pain. (T. 50, RX5)

The Petitioner testified that on November 6, 2017, she was bending over to put a part back in its box on the floor when something popped in her low back and she could not stand up. (T. 23-24) She said she got sick to her stomach, broke out in a sweat and had pain shooting down her left leg and severe back pain. (T. 24) She said a coworker helped her back to her seat. (T. 27) She said she notified her supervisor and had to leave for the day because she could not complete her shift. (Id.) She said the pain radiating down her left leg was new. (T. 28)

The Petitioner saw Dr. Page that day and described the incident consistently with her testimony. (RX5) She rated her low back pain at 9/10. (Id.) Dr. Page diagnosed sprain of the ligaments of the lumbar spine and strain of the muscle fascia and tendons of the lower back. (Id.) Dr. Page performed massage therapy, manipulation and interferential therapy (electrotherapy) that day and the following day. (Id.)

The Petitioner testified that the Respondent referred her to Occupational Medicine at Carle Clinic, where she saw Physician Assistant Steve Jacobs on November 7, 2017. (T. 28, PX2) The Petitioner described the accident consistently with her testimony and complained of back pain radiating down to the left posterior thigh region. (PX2) PA Jacobs observed swelling in the paraspinal muscles with spasm, restricted her from work and provided Therma care, ice and a TENS unit as well as prescribing pain medication and ordering the Petitioner off work. (Id.) Petitioner returned the next day with little to no improvement. (Id.) PA Jacobs diagnosed a possible herniated disk, prescribed another pain medication. (Id.)

The MRI was performed on November 20, 2017, and showed a left central disc protrusion at L3-L4 with left greater than right bilateral neural foraminal stenosis (narrowing of the area where the nerves exit the spine) and osteophyte (bone spur) formation with disc bulge and moderate left neural foraminal stenosis at L4-5. (PX3). On November 21, 2017, PA Jacobs referred the Petitioner to an orthopedic surgeon. (PX2)

The Petitioner saw Dr. Huler on December 8, 2017. (PX5) He read the MRI as showing extraforaminal disc herniation at L4-L5 left with L4 nerve compression. (Id.) He recommended a left-sided laminectomy (removal of part or all of the vertebral bone) with extension into the lateral margin to remove the extraforaminal material. (Id.)

On February 14, 2018, the Petitioner underwent a Section 12 examination by Dr. Timothy VanFleet, an orthopedic spine surgeon at the Orthopedic Center of Illinois. (RX1) She described the accident consistently with her testimony. (Id.) Dr. VanFleet reviewed the November 20, 2017, MRI and found lateral recess stenosis (narrowing of the area where the nerve starts to exit the spinal canal) bilaterally at L4-5 and L3-4 with left-sided disc protrusion at L3-4 and multilevel degenerative disc disease. (Id.) He diagnosed lumbar degenerative disc disease and lumbar spinal stenosis and found an exacerbation but no aggravation of the Petitioner's pre-existing condition. (Id.) He said the medical care provided so far was reasonable and necessary and suggested an evaluation by an interventional pain specialist for consideration of epidural injections and at least six weeks of physical therapy. (Id.) He said the Petitioner was not a surgical candidate at that time and recommended restrictions of no lifting more than 15 pounds, and no repetitive bending or twisting.

The Petitioner testified that her workers' compensation benefits were terminated in March 2018. (T 31) Patricia Stanwich, human resources specialist for the Respondent, testified at arbitration that after receiving Dr. VanFleet's report, she offered the Petitioner a light-duty position marking smaller parts that was within Dr. VanFleet's restrictions. (T. 78-80) She did not know how many parts were handled in the position being offered nor whether bending was involved in putting the parts in boxes or lifting them up from boxes. (T. 81) She said she did not consider those activities because Dr. VanFleet's restriction only was for lifting more than 15 pounds. (T. 81-82)

On March 3, 2018, the Petitioner saw Dr. Hyunchul Jung, a pain medicine specialist at Carle Clinic, who believed the Petitioner's pain was more likely coming from L5-S1 foraminal stenosis because her pain was radiating down the backs of her legs, she was hurting on the lateral

aspect of the foot, and she had numbness and tingling sensation in that area as well. (PX6) He prescribed pain medication and recommended epidural steroid injections. (PX6) His recommendations were not approved by the Respondent's insurer. (Id.)

Dr. Huler performed an extraforaminal discectomy of the left lumbar L4-5 disc on May 16, 2018. (PX9) At a follow-up with Dr. Huler on May 25, 2018, the Petitioner reported back pain at the surgical incision and left buttock, and the left leg pain was about 70 percent improved. (PX5) The Petitioner had discontinued narcotic medication and was walking two miles per day. (Id.) A straight-leg test was negative, and the footdrop on the left leg was gone completely. (Id.) Dr. Huler stated that because the Petitioner had been off work for so long, there was probably a less than 20 percent chance she would return to her same type of occupation. (Id.)

Dr. Huler authored a letter to the Petitioner's attorney on December 3, 2018, in which he said the lumbar disc herniation at L4-5 for which he treated the Petitioner resulted from repetitive bending, twisting on or about November 7, 2017, that required surgery. (PX30)

The Petitioner testified that she never returned to work. (T. 31) She acknowledged receiving holiday pay for 2018, 2019 and 2020. (T. 67) The Respondent submitted a check/deposit register summary for November 7, 2017, through December 31, 2019, purportedly showing short-term disability and holiday pay. (RX17)

The Petitioner said that after the surgery, she had back pain radiating down the left leg and both of her hips. (T. 32) She has been on Social Security disability since the surgery. (T. 33) She said she did not look for work and was unaware of an offer by the Respondent for a light-duty job. (T. 60-61) She did recall being offered a job outside her restrictions. (T. 72)

On June 29, 2018, the Petitioner reported that her left leg pain was better, and she no longer had radicular pain or weakness, but her left hip hurt. (Id.) Dr. Huler found her to be at maximum

medical improvement and gave permanent work restrictions of no lifting over 10 pounds and no repetitive lifting, twisting or bending. (Id.) He did not recommend a functional capacity evaluation because he thought there was too much risk of an injury. (Id.) He rated the Petitioner as having a whole-body impairment of 7 percent of the person based on lumbar disc surgery. (Id.) As to the hip issues, Dr. Huler diagnosed new onset of trochanteric bursitis (irritation of the tissues over the outside of the hip bone) of the left lateral. (Id.) He recommended that the Petitioner close out her workers' compensation claim to pursue treatment of the hip with physiatry evaluation and injections. (Id.)

On July 13, 2018, the Petitioner saw Dr. Nicholas Jasper, a pain management specialist and physiatrist at OrthoIndy, regarding left lateral hip pain that started in May 2018. (PX10) She rated her pain at 5-7/10 and described it as aching and sharp. (Id.) Dr. Jasper diagnosed trochanteric bursitis and low back pain, performed a steroid injection and recommended an anti-inflammatory. (Id.)

Dr. VanFleet testified consistently with his report on August 8, 2018. (RX2) He did not characterize any of the findings on the November 20, 2017, MRI as acute. (Id.) He said his examination was concerning for a great deal of exaggeration. (Id.) Dr. VanFleet testified that he reviewed an MRI from June 2014. (Id.) The Petitioner's counsel objected to this testimony because no opinion regarding the MRI was disclosed prior to the testimony. (Id.) This objection is addressed below. Dr. VanFleet testified that the January 2017 MRI was very similar to the June 2014 MRI and his review of the June 2014 MRI did not change his causation opinion but supported it. (Id.)

In explaining his causation opinion, Dr. VanFleet stated that the Petitioner had an established history of a back problem, two surgeries, multilevel degenerative disc disease and no

evidence of acute findings on the MRI, which would be consistent with the pre-existing condition that happened to be exacerbated on a temporary basis. (Id.) He said an aggravation is a condition whereby a state within the spine or somewhere in the body has been changed and essentially accelerated, while an exacerbation is a condition whereby it resorts back to its previous condition. (Id.) Dr. VanFleet did not feel the Petitioner was an appropriate surgical candidate because she was not treated non-operatively to any meaningful extent and because of his concern about exaggeration. (Id.) As to the MRI findings of a disc herniation at L4-L5 with left L4 nerve compression, Dr. VanFleet testified that these were not consistent with the Petitioner's complaints of pain down her buttocks and the posterior leg to her ankle because the L4 distribution does not give pain in the ankle but into the knee anteromedial leg. (Id.) He believed clumps of disc material outside the disc space – as Dr. Huler indicated – was consistent with a herniated disc. (Id.)

On cross-examination, Dr. VanFleet acknowledged that the June 2014 MRI preceded the August 8, 2014, surgery. (Id.) He did not recall seeing a note by Dr. Huler from August 26, 2014, stating that he was very pleased with the results of the surgery and released the Petitioner to full-duty work. (Id.) He also did not recall seeing a complaint of left lower extremity pain from after the 2014 surgery until the work accident. (Id.) He agreed that the symptoms the Petitioner described to her treating physicians – swelling, spasms, 10/10 low back pain and pain radiating down the left lower extremity – were consistent with an acute injury. (Id.)

On August 16, 2018, the Petitioner followed up with Dr. Jasper and reported 70 percent improvement after the injection, rating her pain at 4-6/10. (PX10) She denied radicular symptoms. (Id.) Dr. Jasper discussed performing a left sacroiliac (SI joint – joint linking the pelvis and lower spine) injection if her symptoms worsened. (Id.) On November 7, 2018, the Petitioner reported worsening symptoms in the low back and radiating into the bilateral buttocks and posterior thigh.

(Id.) Dr. Jasper diagnosed low back pain, lumbar spondylosis (age-related degeneration of the vertebrae and discs of the low back), lumbar foraminal stenosis and lumbar radiculitis (inflammation of a nerve root in the low back). (Id.) He prescribed oral steroids and recommended an epidural steroid injection. (Id.) The Petitioner continued to treat with Dr. Jasper, who prescribed nerve and pain medications. (Id.)

An MRI of the lumbar spine on November 20, 2018, showed: stable left L5-S1 discectomy without recurrent herniation or S1 impingement; foraminal narrowing at L4-5 with contact of the exiting left L4 nerve root; mild canal stenosis at L3-4 appearing stable without descending impingement; and multilevel annular bulge with no new herniation or focal impingement. (PX11)

The Petitioner underwent an L5 transforaminal epidural steroid injections on November 21, 2018, and December 19, 2018. (PX12) On January 4, 2019, Dr. Jasper referred her to a spine surgeon for a second opinion regarding possible surgical treatment options. (PX10) He performed another transforaminal epidural steroid injection on January 16, 2019, and left L4 selective nerve root block on January 30, 2019. (PX12) The Petitioner testified that the injections and oral steroid helped temporarily. (T. 32)

On January 25, 2019, the Petitioner saw Dr. Gregory Poulter, a spine surgeon at OrthoIndy, who voiced concern about the chronicity of the Petitioner's symptoms and her lack of desire to return to work. (PX13) He found mild to moderate stenosis in the lumbar spine that was not of a level where he could explain the Petitioner's symptoms. (Id.) He recommended nerve studies. (Id.) On February 7, 2019, Dr. Jasper performed electromyography and nerve conduction velocity tests (EMG/NCV) that suggested remote nerve injury but were otherwise normal. (PX10) On February 22, 2019, Dr. Poulter found the Petitioner was not a surgical candidate and referred her to a neurologist. (Id.)

The Petitioner saw Dr. Chad Meshberger, a neurologist at Witham Health Services, who diagnosed lumbar spondylosis, failed back surgical syndrome and chronic pain associated with significant psychosocial dysfunction. (PX14) He agreed with Dr. Poulter that the Petitioner's pain was incongruent with the mechanism of injury and limited anatomical pathology on recent imaging. (Id.) He did not see her as being a great surgical candidate and suspected a spinal cord stimulator would be her next likely step for pain control. (Id.) He wanted to get a myelogram (diagnostic imaging test using contract dye to look for problems in the spinal canal). (Id.) said drastic lifestyle choices were needed to train the Petitioner's brain to better modulate pain and would involve diligent mobility and physical exercise. (Id.)

The myelogram was performed on April 19, 2019, and showed multilevel disc degeneration and facet arthrosis, atherosclerotic calcifications, SI joint degenerative joint disease and multilevel formal narrowing. (PX15)

The Petitioner next saw Dr. Vinayak Belamkar, a pain management specialist at Witham Health Services, on May 1, 2019. (PX16) He diagnosed sacroiliitis (inflammation of the SI joint), chronic pain associated with significant psychosocial dysfunction, failed back surgical syndrome and neural foraminal stenosis of the lumbosacral spine. (Id.) He prescribed a nerve medication and recommended a psychological evaluation and a spinal cord stimulator (SCS) trial or intrathecal pump (surgically implanted device that delivers medication directly to the fluid surrounding the spinal cord). (Id.) The Petitioner received bilateral SI joint injections on May 9, 2019. (PX17) An SCS was implanted on July 17, 2019. (PX18)

Following a week with the SCS, the Petitioner reported 60-65 percent relief in the lower back and no tingling or sharp pains, but she still had numbness, constant ache in both buttocks radiating down to the right knee and left side of the back muscle, leg and outside of the shin.

(PX16) On July 24, 2019, Dr. Belamkar recommended a permanent SCS implant, which was performed on August 30, 2019. (PX16, PX19) On October 21, 2019, the Petitioner reported to Dr. Belamkar that the SCS was helping moderately but was having pain in both hips. (PX16) She received steroid injections to both hips. (Id) Dr. Belamkar performed right and left gluteal tenotomies (cutting or removal of tendon tissue) on December 9, 2019, and December 16, 2019. (PX20, PX21) Dr. Belamkar referred the Petitioner to rheumatology for further evaluation and continued prescribing oral steroids and pain and nerve medications through July 7, 2021. (PX16)

On June 9, 2020, the Petitioner saw Dr. Tehniat Haider, a rheumatologist at Witham Health Services, who diagnosed trochanteric bursitis of both hips and lumbar spondylosis and recommended physical therapy. (PX24) The Petitioner underwent physical therapy at Carle Health from June 24, 2020, through July 29, 2020, for a total of six visits. (PX25) The Petitioner testified that the physical therapy made her pain worse. (T. 36) She made the same report to Dr. Haider and her therapist. (PX24, PX25)

Upon referral by Dr. Belmakar, the Petitioner underwent another rheumatology evaluation on September 17, 2021, by Dr. Artur Kaluta at Indiana University Health. (PX29) He diagnosed fibromyalgia, depression, chronic back pain with no evidence of rheumatologic condition, chronic lumbar radiculopathy with no signs or symptoms suggestive of inflammatory myopathy and osteoarthritis of the hand. (Id.) He gave treatment options of exercise and psychotherapy. (Id.)

The Petitioner underwent another lumbar MRI on October 16, 2020, that showed multilevel degenerative changes most pronounced at L3-4 with moderate spinal canal stenosis and mild bilateral neural foraminal stenosis. (PX26)

On April 6, 2021, the Petitioner saw Dr. Paul Plattner, an orthopedic surgeon at Carle Health, diagnosed the Petitioner with chronic back pain with lumbar degenerative disc disease and

left sciatica/post-laminectomy syndrome. (PX27) He gave treatment options of medications, injections, a home exercise program, physical therapy and lifestyle changes. (Id.)

On May 31, 2023, Dr. VanFleet performed another Section 12 examination. (RX3) He reviewed updated medical records from Dr. Huler, Dr. Jasper, Dr. Poulter, Dr. Meshberger and Dr. Belamkar and the EMG studies and the myelogram. (Id.) He said the Petitioner's condition at that time was failed back syndrome with persistent spinal pain syndrome and was "by no means" related to the work accident. (Id.) He opined that the Petitioner's current hip condition was neither caused nor aggravated by the work accident. (Id.) He said the May 16, 2018, surgery, spinal cord stimulator and November 6, 2017, hip tenotomy were not reasonable, necessary or related to the accident, stating they were of no benefit to the Petitioner. (Id.) He said the Petitioner was at maximum medical improvement and thought a 15-pound restriction was reasonable because of her deconditioning over the past several years rather than the work injury. (Id.) Dr. VanFleet did not testify regarding this report.

None of the Petitioner's treating physicians testified.

The Petitioner underwent a vocational assessment. (PX39) She met with consultant David Patsavas on September 27, 2018, and January 25, 2023. (Id.) Mr. Patsavas reviewed medical records from November 7, 2018, through September 27, 2021, and the Petitioner's employment history. (Id.) Based on Dr. Huler's restrictions, Mr. Patsavas opined that the Petitioner's would be in a physical demands category of sedentary or less than sedentary. (Id.) Based on his records review, he stated that since his first meeting with the Petitioner, her medical condition had gotten worse. (Id.) Based on all of the above, Mr. Patsavas opined that a viable and stable labor market did not exist for the Petitioner, and she would not be a candidate for vocational rehabilitation services. (Id.)

The Petitioner testified that at the time of arbitration, she had no change in her lower back and lower extremity condition since 2021 and remains on the spinal cord stimulator and hydrocodone. (T. 28) She said her pain increased after activities from 4-5/10, to 10/10, and she has to take pain pills or lie down. (T. 38) She said she gardens by crawling, does not vacuum, cooks while sitting down, goes grocery shopping with her husband but has to have a cart to lean on. (T. 62) She said she was still treating with her family physician, from whom she was receiving medication for the back and leg pain. (T. 42)

For the 52 weeks preceding the work accident, the Petitioner earned straight time (including vacation pay but not including overtime) totaling $32,962.76. (RX14) During that time, the Petitioner missed seven days of work that was not paid as vacation time. (Id.)

CONCLUSIONS OF LAW

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

As a preliminary matter, the Petitioner objected to testimony of Dr. VanFleet as to the prior MRI that he reviewed after having authored his written opinion for failure to disclose failure to disclose an expert opinion at least 48 hours prior to hearing. As to disclosure of opinions, the Appellate Court has found that the 48-hour rule in Section 12 applies to the opinions of treating physicians. *Ghere v. Industrial Comm'n*, 278 Ill.App.3d 840, 845, 663 N.E.2d 1046, 215 Ill. Dec. 532 (4th Dist. 1996). In *Ghere*, the Court agreed with the Arbitrator that the opinion of a treating physician regarding causal connection between the accident and the claimant's condition was inadmissible for failure to properly disclose the opinion. (*Id*. at 846) If an undisclosed opinion is a natural continuation of a disclosed opinion, it is admissible. *Certified Testing v. Indus. Comm'n*, 367 Ill. App. 3d 938, 856 N.E.2d 602, 305 Ill. Dec. 797 (4th Dist. 2006). In this case, Dr. VanFleet's

statement that the prior MRI did not change his opinion is a natural continuation of his disclosed opinion. Therefore, the Arbitrator overrules the objection.

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

If an accident occurred how the Petitioner said it did, it would meet the criteria for arising out of an in the course of employment as set forth in *McAllister v. Ill. Workers' Comp. Com'n*, 2020 IL 12484. The Petitioner's testimony and reports to her medical providers were consistent. There was no contrary evidence. Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that the Petitioner's low back 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?

An accident need not be the sole or primary cause as long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Indus. Comm'n,* 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill.Dec. 70 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hosp. v. Workers' Comp. Comm'n,* 371 Ill.App.3d 882, 888, 864 N.E.2d 266, 309 Ill.Dec. 400 (5th Dist. 2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm.,* 92 Ill. 2d 30, 36, 440 N.E.2d 861, 65 Ill.Dec. 6 (1982).

When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury

and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital*, 371 Ill.App.3d at 888.

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

The Petitioner had a pre-existing low-back condition. Dr. VanFleet acknowledged that the Petitioner sustained an injury in the accident but classified it as a temporary exacerbation of her pre-existing condition. He admitted that the Petitioner's symptoms – both subjective and objective – were consistent with an acute injury.

The appellate courts have relied on Sisbro in affirming Commission decisions where doctors have opined that work accidents have exacerbated pre-existing conditions – especially when circumstantial evidence showed that a claimant was able to perform work duties before an accident but was unable to afterwards. E.g. *Corn Belt Energy Corp. v. Ill. Workers' Comp. Comm'n*, 2016 IL App (3d) 150311WC, ¶36-37, 56 N.E.3d 1101, 404 Ill. Dec. 688; *Boyd Elec. v. Dee*, 356 Ill. App. 3d 851, 861-862, 826 N.E.2d 493, 292 Ill. Dec. 352 (1st Dist. 2005); and *St. Elizabeth's Hosp. v. Workers' Comp. Comm'n*, 371 Ill. App. 3d 882, 889, 864 N.E.2d 266, 309 Ill. Dec. 400 (5th Dist. 2007).

The circumstantial evidence in this case supports a causation finding. Following her surgery of 2014, the Petitioner had been released to full duty. Aside from flare-ups treated with

chiropractic therapies, she was able to perform her job duties. After the accident, she had worsening symptoms plus pain radiating into her leg and was unable to perform her job duties.

The Arbitrator gives little weight to Dr. VanFleet's opinion that the Petitioner's injury was a "temporary" exacerbation. Despite surgery, her condition did not improve to the extent that she could return to her job.

As to the Petitioner's back, hip and leg complaints that developed after her surgery, there was no evidence that these resulted from the work accident, as opposed to the natural progression of her degenerative spine condition. None of the Petitioner's treating physicians testified, and there were no causation findings in their records, aside the letter from Dr. Huler linking the Petitioner's back condition that he treated to the work accident. Dr. VanFleet opined in his second report that the Petitioner's subsequent complaints were not related to the accident.

Based on all the above, the Arbitrator finds that the Petitioner's low back condition that resulted in surgery and permanent restrictions is causally related to the work accident on November 6, 2017. However, the Arbitrator finds that the Petitioner has not proved by a preponderance of the evidence that any of her conditions that arose after June 29, 2018, were causally related to the work accident.

Issue G: **What were the Petitioner's earnings?**

Section 10 of the Act provides that the earnings in the 52-week period preceding the date of injury, shall be divided by 52 ". . . but if the injured employee lost 5 or more calendar days during such periods, whether or not in the same week, then the earnings for the remainder of such 52 weeks shall be divided by the number of weeks and parts thereof remaining after the time so lost has been deducted" (820 ILCS 305/10).

For the 52 weeks preceding the work accident, the Petitioner earned straight time (including vacation pay but not including overtime) totaling $32,962.76. During that time, she missed seven days of work that was not paid as vacation time. Dividing the total straight-time and vacation earnings by 51 weeks results in an AWW of $646.33.

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

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

Based on the findings above regarding causation, the Arbitrator finds that the medical services provided through June 29, 2018, were reasonable and necessary. The Arbitrator orders the Respondent to pay the medical expenses in Petitioner's Exhibits 32, 33, 34, 35 and 36 that were incurred on or before June 29, 2018. The Respondent shall receive credit for any amounts of those expenses it paid.

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

The parties dispute temporary total disability benefits from November 7, 2017, through June 29, 2018. 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). The ability to do light or restricted work does not preclude a finding of temporary total disability. *Id.* at 121.

The Petitioner was taken off work for that period of time. Based on the causation findings above, the Petitioner is entitled to temporary total disability benefits pursuant to Section 8(b) of the Act for 33 and 4/7 weeks from November 7, 2017, through June 29, 2018. By agreement of the parties, the Respondent shall have credit for $6,762.74 for TTD paid, $6,000.00 for nonoccupational indemnity disability benefits paid and $336.60 for a permanent partial disability (PPD) advance – totaling $13,099.34.

As to the disputed holiday pay, the entries on check/deposit register summary for November 7, 2017, through December 31, 2019, clearly showed the short-term disability pay. However, it is unclear as to which of the other entries were "holiday" pay. There was no testimony explaining these entries. Therefore, the Arbitrator finds that the Respondent has not proven entitlement to this credit.

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

The Petitioner contends she is permanently and totally disabled. The Illinois Supreme Court has frequently held that an employee is totally and permanently disabled when he or she "is unable to make some contribution to the work force sufficient to justify the payment of wages." *Ceco Corp. v. Industrial Comm'n,* 95 Ill.2d 278, 286, 47 N.E.2d 842, 69 Ill.Dec. 407 (1985). However, an employee need not be reduced to total physical incapacity to be entitled to PTD benefits. *Id*. Rather, a person is totally disabled when he or she is incapable of performing services except those for which there is no reasonably stable market. *Id*. at 286-287. Conversely, an employee is not entitled to total and permanent disability compensation if he is qualified for and capable of obtaining gainful employment without serious risk to his health or life. *Id*. at 287.

If an employee's disability is limited so that it is not obvious that the employee is unemployable, or if there is no medical evidence to support a claim of total disability, the burden

is upon the claimant to establish the unavailability of employment to a person in his circumstances. *Id*. If the employee initially establishes obvious unemployability or presents medical evidence of such, he falls in what has been termed the "odd lot" category, and the burden shifts to the employer to show that some kind of suitable work is regularly and continuously available. *Id*.

From a medical standpoint, Dr. Huler expressed serious doubts that the Petitioner would be able to return to her job, stating that because the Petitioner had been off work for so long, there was probably a less than 20 percent chance she would return to her same type of occupation. However, Dr. Huler did not find the Petitioner was incapable of any gainful employment. The Petitioner did not undergo a functional capacity evaluation and did not look for work. There was a vocational assessment in which Mr. Patsavas found no stable labor market for the Petitioner. However, this opinion was based in part on medical records for treatment of conditions that the Arbitrator has found to not be proven as causally related to the work accident. There were also no attempts to help the Petitioner find work within Dr. Huler's restrictions. Therefore Mr. Patsavas's opinions are given little to no weight.

For these reasons, the Arbitrator finds the did not establish obvious unemployability nor present medical evidence of such. Therefore, the Arbitrator finds that the Petitioner is not entitled to PTD benefits and awards PPD benefits instead.

Pursuant to Section 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b.

The Act provides that, "No single enumerated factor shall be the sole determinant of disability." *Id.*

(i) **Level of Impairment.** Dr. Huler provided an AMA impairment rating of 7 percent of the person as a whole. The Arbitrator places some weight on this factor.

(ii) **Occupation.** The Petitioner cannot work at her previous job due to the permanent restrictions from Dr. Huler. She is unemployed. The Arbitrator finds she has suffered a loss of occupation and places significant weight on this factor.

(iii) **Age.** The Petitioner was 57 years old at the time of the injury. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity.** The Petitioner's current earning capacity is unknown. She is now collecting Social Security disability benefits. The Arbitrator places some weight on this factor.

(v) **Disability.** Due to the permanent restrictions from Dr. Huler, the Petitioner has been unable to return to her former job. When Dr. Huler released her after surgery, her leg pain had improved by 70 percent. The Petitioner said there had been no change in her lower back and lower extremity condition since 2021, and she remains on the spinal cord stimulator and pain medication. She testified to inability to perform several activities of daily living. As to how much of this is due to the work accident as opposed to the subsequent deterioration of her degenerative spine condition is difficult to determine precisely. The Arbitrator puts some weight on this factor.

Therefore, the Arbitrator finds the Petitioner's permanent partial disability to be 45 percent of the person as a whole as it relates to her low back condition.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC002356
Case Name	Glenda Jean Myrick v. Danville Metal Stamping
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0335
Number of Pages of Decision	27
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Gary Stokes
Respondent Attorney	John Sturmanis

DATE FILED: 7/18/2024

/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

GLENDA JEAN MYRICK,

Petitioner,

vs. NO: 18 WC 2356

DANVILLE METAL STAMPING,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, permanent partial disability, and a *Ghere* objection, 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 writes additionally on the issues of causal connection, medical expenses, and permanent partial disability.

I. Causal Connection

Regarding causal connection, the Arbitrator found that the Petitioner's low back condition, which resulted in surgery and permanent restrictions, was causally related to the November 6, 2017, accident, but also that Petitioner failed to prove that any of her conditions which arose after June 29, 2018, were causally related to the accident, as opposed to the natural progression of her degenerative spine condition. The Commission disagrees with the latter finding and concludes that Petitioner's current condition of ill-being is causally connected to the work accident.

In this case, following Petitioner's May 16, 2018, lumbar discectomy, her left leg pain was about 70% improved, a straight-leg test was negative, and the footdrop on her left leg was

gone completely. Accordingly, the Commission focuses on Petitioner's post-surgical treatment and the continued causal connection for Petitioner's continued complaints and symptomology.

When determining causal connection, "[e]very natural consequence that flows from an injury that arose out of and in the course of one's employment is compensable under the Act absent the occurrence of an independent intervening accident that breaks the chain of causation between the work-related injury and an ensuing disability or injury." *National Freight Industries v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, ¶ 26. Moreover, a work-related injury need only be *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003).

In this case, the Commission finds that Petitioner's post-surgical treatment records clearly support a finding that Petitioner's current condition is causally related to the work accident. Dr. Huler found that Petitioner had reached MMI for her pre-surgical symptoms, but he also referred Petitioner to Dr. Jasper for treatment of pain which arose almost immediately after the surgery. After a series of injections failed to provide relief, Dr. Jasper diagnosed Petitioner with lumbar foraminal stenosis and lumbar radiculitis. On January 25, 2019, Dr. Poulter ordered an EMG/NCS, which was an abnormal study with evidence of chronic bilateral L5-S1 radiculopathy and evidence to suggest remote nerve injury. Petitioner was then referred to a neurologist, Dr. Meshberger, who agreed with Dr. Poulter that Petitioner's pain was not congruent with the mechanism of injury of the initial accident. Instead, Dr. Meshberger diagnosed Petitioner with failed back surgical syndrome and chronic pain associated with significant psychosocial dysfunction. Dr. Belamkar also diagnosed Petitioner with failed back syndrome. Dr. Plattner diagnosed post-laminectomy syndrome, but also related Petitioner's symptoms to Petitioner's chronic back problem. The Section 12 examiner, Dr. VanFleet, initially diagnosed Petitioner with lumbar degenerative disc disease and lumbar spinal stenosis, opining that her current condition was "by no means" related to the work accident. However, he explained that Petitioner had degenerative disc disease and her condition progressively worsened secondary to her multiple failed surgeries. The Commission notes that Dr. VanFleet later agreed with the diagnosis of failed back syndrome with persistent spinal pain syndrome.

In short, after considering every natural consequence that flows from Petitioner's injury, the preponderance of the evidence establishes that the work accident resulted in surgery which in turn resulted in failed back syndrome and its sequelae. Accordingly, the Commission modifies the Decision of the Arbitrator to find a continuing causal connection between the work accident and Petitioner's current condition of ill-being.

II. Medical Expenses

Given that Petitioner's current condition of ill-being is causally connected to the accident, Respondent is ordered to pay Petitioner's necessary and reasonable medical expenses as set forth in Petitioner's Exhibits 32 through 38, pursuant to Sections 8(a) and 8.2 of the Act and the statutory fee schedule. Respondent shall be given a credit for medical benefits that have been paid. Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act and agreed by the parties in the Request for Hearing.

III. Permanent Partial Disability

The Arbitrator ordered Respondent to pay Petitioner permanent partial disability (PPD) benefits of $387.80 per week for 225 weeks, representing a 45% loss of the person as a whole. As the Commission has found that Petitioner's current condition of ill-being is causally related to the accident, we modify the Arbitrator's award of permanent partial disability (PPD) benefits. When considering PPD, the Commission considers the following factors: (i) the level of impairment contained within a permanent partial disability impairment report; (ii) the claimant's occupation; (iii) the claimant's age at the time of injury; (iv) the claimant's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. See 820 ILCS 305/8.1b(b) (West 2022). However, "[n]o single enumerated factor shall be the sole determinant of disability." *Id*. § 305/8.1b(b)(v).

Regarding factor (i), Petitioner's level of impairment, Dr. Huler provided an AMA impairment rating of 7% of the person as a whole. Given that Dr. Huler's rating reflects Petitioner's immediate post-surgical condition, not Petitioner's current condition of ill-being, the Commission places slight weight on this factor.

Regarding factor (ii), Petitioner's occupation, the Arbitrator correctly found that Petitioner cannot work at her previous job due to the permanent restrictions from Dr. Huler and is unemployed. The Commission finds that Petitioner has suffered a loss of occupation and places great weight on this factor.

Regarding factor (iii), Petitioner's age was 57 years old at the time of the injury and thus her work life has been cut short by nearly a decade. The Commission places some weight on this factor.

Regarding factor (iv), Petitioner's current earning capacity is unknown, though she is collecting Social Security disability benefits. Given the lack of specific evidence on the record, the Commission places slight weight on this factor.

Regarding factor (v), Petitioner's disability as reflected by the treatment records, the diagnoses of the physicians in this case, including the Section 12 examiner, generally indicate that Petitioner suffers from some form of failed back syndrome. Her work restrictions render her unable to return to her former job. Petitioner testified without rebuttal that she had no change in her lower back and lower extremity condition since 2021 and remains on the SCS and hydrocodone. She rated her pain as 4-5/10, increasing to 10/10, at which point she must take pain pills or lie down with her knees pulled up to her chest. Petitioner continues to treat for the back and leg pain, as well as fibromyalgia. She testified that her current condition limits her daily activities of life. Her testimony generally finds support in the treatment records indicating that she is not a candidate for further surgery and can only consider more conservative treatment for her ongoing condition. The Commission places great weight on this factor.

In sum, based on the above factors, and the record taken as a whole, the Commission finds that Petitioner sustained permanent partial disability to the extent of a 60% loss of the person as a whole, pursuant to Section 8(d)(2) of the Act.

25IWCC0079
24IWCC0335

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 November 17, 2023, is hereby modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner established a causal connection between the November 6, 2017 accident and her current condition of ill-being, *i.e.*, her failed back syndrome and its sequelae.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner's necessary and reasonable medical expenses as set forth in Petitioner's Exhibits 32 through 38, pursuant to Sections 8(a) and 8.2 of the Act and the statutory fee schedule. Respondent shall be given a credit for medical benefits that have been paid. Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act and agreed by the parties in the Request for Hearing.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner permanent partial disability benefits of $387.80 per week for 300 weeks representing 60% person as a whole under Section 8(d)(2) 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.

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

July 18, 2024

o: 7/11/24
CMD/kcb
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC002356
Case Name	Glenda Jean Myrick v. Danville Metal Stamping
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	22
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Gary Stokes
Respondent Attorney	John Sturmanis

DATE FILED: 11/17/2023

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 14, 2023 5.27%

/s/ Jeanne AuBuchon, Arbitrator

Signature

25IWCC0079

24IWCC0335

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

GLENDA JEAN MYRICK
Employee/Petitioner

v.

DANVILLE METAL STAMPING
Employer/Respondent

Case # **18** WC **002356**

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 **Urbana**, on **September 13, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **November 6, 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 arising on or before June 29, 2018, ***is*** causally related to the accident. Those conditions arising thereafter are not.

In the year preceding the injury, Petitioner earned $**32,962.76**; the average weekly wage was $**646.33**.

On the date of accident, Petitioner was **57** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**6,762.74** for TTD, $**0** for TPD, $**0** for maintenance, $**6,000.00** for nonoccupational indemnity disability benefits and $**336.60** for other benefits, for a total credit of $**13,099.34**.

Respondent is entitled to a credit for all group health insurance payments on charges reflected in Petitioner's Exhibits 32 – 38, under Section 8(j) of the Act.

ORDER

Respondent is ordered to pay medical expenses listed in Petitioner's Exhibits 32, 33, 34, 35 and 36 that were incurred on or before June 29, 2018, pursuant to Section 8(a) of the Act and in accordance with applicable medical fee schedules. 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 temporary total disability benefits of $430.89/week for 33 and 4/7 weeks, commencing November 7, 2017, through June 29, 2018, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $387.80/week for 225 weeks to the extent of 45% loss of a Person as a Whole pursuant to §8(d)2 of the Act.

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

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

Jeanne L. AuBuchon
Signature of Arbitrator

NOVEMBER 17, 2023

PROCEDURAL HISTORY

This matter proceeded to trial on February 23, 2023, on all disputed issues. 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 ??? condition; 3) the Petitioner's average weekly wage (AWW); 4) payment of medical bills; 5) entitlement to temporary total disability benefits (TTD) from November 7, 2017, through June 29, 2018; and 6) the nature and extent of the Petitioner's injuries. The Petitioner is seeking permanent total disability (PTD) benefits pursuant to Section 8(f) of the Act.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 57 years old and employed by the Respondent as a parts marker – bending over to get a cast-iron part weighing 12-15 pounds, taking it to her work station, using a machine to mark the part and taking it to a drop area about 15 feet away. (AX1, T. 14-19) She said she handled about 200 parts per day. (T. 19)

The Petitioner acknowledged that she had two back surgeries prior to her work accident. (T. 20) In 2005, she underwent a laminectomy (removal of vertebral bone) (RX7) The Petitioner was placed on permanent restrictions of no lifting more than five pounds that could be increased to 20 pounds occasionally and 10 pounds frequently, no high force or frequency repetitive job tasks, no repetitive waist bending and no constant overhead activities. (T. 52, RX7)

On July 29, 2014, the Petitioner was diagnosed as having sciatica caused by extraforaminal disc herniation at L4-5 (herniation of the disc where the nerve exits the spine) by Dr. Robert Huler, a spine surgeon at OrthoIndy. (RX 9) On August 8, 2014, Dr. Huler performed an extraforaminal discectomy (removal of the damaged part of a disc) at L3-4 on the left side. (RX12) He released

the Petitioner to full duty work starting August 15, 2014. (Id.) The Petitioner testified that the outcome of that surgery was "great." (T. 21)

The Petitioner testified she did great over the next three years but had occasional flare-ups for which she would see Dr. Gary Page, a chiropractor at the Back Pain Clinic of Danville. (T. 22) She said she had no left leg complaints after the 2014 surgery and returned to her job for three years at a full-duty pace. (T. 73-74) Dr. Page's records show the Petitioner treated with him for: acute lumbosacral sprain/strain and acute lumbar myofascitis (a local manifestation of a toxic condition of the blood evidenced by low-grade inflammation of the muscles and connective tissue) from April through May 2015 and in July 2015; sprain of other parts of the lumbar spine and pelvis in October 2015; sprain of other parts of the lumbar spine and pelvis and cervicocranial syndrome (neurologic syndrome following injury of the spinal sympathetic nerves of the neck that control heart rate, blood pressure, digestion, urination and sweating) from March through May 2016; sprain of other parts of the lumbar spine and pelvis, cervicocranial syndrome and sprain of the cervical spine from September 6, 2017, through October 30, 2017. (RX5) At the October 30, 2017, visit, the Petitioner reported that the pain in her low back was less intense and rated it a 1/10. (Id.) The Petitioner agreed that in 2016 and June 2017, she was on FMLA (Family and Medical Leave Act) for low back pain. (T. 50, RX5)

The Petitioner testified that on November 6, 2017, she was bending over to put a part back in its box on the floor when something popped in her low back and she could not stand up. (T. 23-24) She said she got sick to her stomach, broke out in a sweat and had pain shooting down her left leg and severe back pain. (T. 24) She said a coworker helped her back to her seat. (T. 27) She said she notified her supervisor and had to leave for the day because she could not complete her shift. (Id.) She said the pain radiating down her left leg was new. (T. 28)

The Petitioner saw Dr. Page that day and described the incident consistently with her testimony. (RX5) She rated her low back pain at 9/10. (Id.) Dr. Page diagnosed sprain of the ligaments of the lumbar spine and strain of the muscle fascia and tendons of the lower back. (Id.) Dr. Page performed massage therapy, manipulation and interferential therapy (electrotherapy) that day and the following day. (Id.)

The Petitioner testified that the Respondent referred her to Occupational Medicine at Carle Clinic, where she saw Physician Assistant Steve Jacobs on November 7, 2017. (T. 28, PX2) The Petitioner described the accident consistently with her testimony and complained of back pain radiating down to the left posterior thigh region. (PX2) PA Jacobs observed swelling in the paraspinal muscles with spasm, restricted her from work and provided Therma care, ice and a TENS unit as well as prescribing pain medication and ordering the Petitioner off work. (Id.) Petitioner returned the next day with little to no improvement. (Id.) PA Jacobs diagnosed a possible herniated disk, prescribed another pain medication. (Id.)

The MRI was performed on November 20, 2017, and showed a left central disc protrusion at L3-L4 with left greater than right bilateral neural foraminal stenosis (narrowing of the area where the nerves exit the spine) and osteophyte (bone spur) formation with disc bulge and moderate left neural foraminal stenosis at L4-5. (PX3). On November 21, 2017, PA Jacobs referred the Petitioner to an orthopedic surgeon. (PX2)

The Petitioner saw Dr. Huler on December 8, 2017. (PX5) He read the MRI as showing extraforaminal disc herniation at L4-L5 left with L4 nerve compression. (Id.) He recommended a left-sided laminectomy (removal of part or all of the vertebral bone) with extension into the lateral margin to remove the extraforaminal material. (Id.)

On February 14, 2018, the Petitioner underwent a Section 12 examination by Dr. Timothy VanFleet, an orthopedic spine surgeon at the Orthopedic Center of Illinois. (RX1) She described the accident consistently with her testimony. (Id.) Dr. VanFleet reviewed the November 20, 2017, MRI and found lateral recess stenosis (narrowing of the area where the nerve starts to exit the spinal canal) bilaterally at L4-5 and L3-4 with left-sided disc protrusion at L3-4 and multilevel degenerative disc disease. (Id.) He diagnosed lumbar degenerative disc disease and lumbar spinal stenosis and found an exacerbation but no aggravation of the Petitioner's pre-existing condition. (Id.) He said the medical care provided so far was reasonable and necessary and suggested an evaluation by an interventional pain specialist for consideration of epidural injections and at least six weeks of physical therapy. (Id.) He said the Petitioner was not a surgical candidate at that time and recommended restrictions of no lifting more than 15 pounds, and no repetitive bending or twisting.

The Petitioner testified that her workers' compensation benefits were terminated in March 2018. (T 31) Patricia Stanwich, human resources specialist for the Respondent, testified at arbitration that after receiving Dr. VanFleet's report, she offered the Petitioner a light-duty position marking smaller parts that was within Dr. VanFleet's restrictions. (T. 78-80) She did not know how many parts were handled in the position being offered nor whether bending was involved in putting the parts in boxes or lifting them up from boxes. (T. 81) She said she did not consider those activities because Dr. VanFleet's restriction only was for lifting more than 15 pounds. (T. 81-82)

On March 3, 2018, the Petitioner saw Dr. Hyunchul Jung, a pain medicine specialist at Carle Clinic, who believed the Petitioner's pain was more likely coming from L5-S1 foraminal stenosis because her pain was radiating down the backs of her legs, she was hurting on the lateral

aspect of the foot, and she had numbness and tingling sensation in that area as well. (PX6) He prescribed pain medication and recommended epidural steroid injections. (PX6) His recommendations were not approved by the Respondent's insurer. (Id.)

Dr. Huler performed an extraforaminal discectomy of the left lumbar L4-5 disc on May 16, 2018. (PX9) At a follow-up with Dr. Huler on May 25, 2018, the Petitioner reported back pain at the surgical incision and left buttock, and the left leg pain was about 70 percent improved. (PX5) The Petitioner had discontinued narcotic medication and was walking two miles per day. (Id.) A straight-leg test was negative, and the footdrop on the left leg was gone completely. (Id.) Dr. Huler stated that because the Petitioner had been off work for so long, there was probably a less than 20 percent chance she would return to her same type of occupation. (Id.)

Dr. Huler authored a letter to the Petitioner's attorney on December 3, 2018, in which he said the lumbar disc herniation at L4-5 for which he treated the Petitioner resulted from repetitive bending, twisting on or about November 7, 2017, that required surgery. (PX30)

The Petitioner testified that she never returned to work. (T. 31) She acknowledged receiving holiday pay for 2018, 2019 and 2020. (T. 67) The Respondent submitted a check/deposit register summary for November 7, 2017, through December 31, 2019, purportedly showing short-term disability and holiday pay. (RX17)

The Petitioner said that after the surgery, she had back pain radiating down the left leg and both of her hips. (T. 32) She has been on Social Security disability since the surgery. (T. 33) She said she did not look for work and was unaware of an offer by the Respondent for a light-duty job. (T. 60-61) She did recall being offered a job outside her restrictions. (T. 72)

On June 29, 2018, the Petitioner reported that her left leg pain was better, and she no longer had radicular pain or weakness, but her left hip hurt. (Id.) Dr. Huler found her to be at maximum

medical improvement and gave permanent work restrictions of no lifting over 10 pounds and no repetitive lifting, twisting or bending. (Id.) He did not recommend a functional capacity evaluation because he thought there was too much risk of an injury. (Id.) He rated the Petitioner as having a whole-body impairment of 7 percent of the person based on lumbar disc surgery. (Id.) As to the hip issues, Dr. Huler diagnosed new onset of trochanteric bursitis (irritation of the tissues over the outside of the hip bone) of the left lateral. (Id.) He recommended that the Petitioner close out her workers' compensation claim to pursue treatment of the hip with physiatry evaluation and injections. (Id.)

On July 13, 2018, the Petitioner saw Dr. Nicholas Jasper, a pain management specialist and physiatrist at OrthoIndy, regarding left lateral hip pain that started in May 2018. (PX10) She rated her pain at 5-7/10 and described it as aching and sharp. (Id.) Dr. Jasper diagnosed trochanteric bursitis and low back pain, performed a steroid injection and recommended an anti-inflammatory. (Id.)

Dr. VanFleet testified consistently with his report on August 8, 2018. (RX2) He did not characterize any of the findings on the November 20, 2017, MRI as acute. (Id.) He said his examination was concerning for a great deal of exaggeration. (Id.) Dr. VanFleet testified that he reviewed an MRI from June 2014. (Id.) The Petitioner's counsel objected to this testimony because no opinion regarding the MRI was disclosed prior to the testimony. (Id.) This objection is addressed below. Dr. VanFleet testified that the January 2017 MRI was very similar to the June 2014 MRI and his review of the June 2014 MRI did not change his causation opinion but supported it. (Id.)

In explaining his causation opinion, Dr. VanFleet stated that the Petitioner had an established history of a back problem, two surgeries, multilevel degenerative disc disease and no

evidence of acute findings on the MRI, which would be consistent with the pre-existing condition that happened to be exacerbated on a temporary basis. (Id.) He said an aggravation is a condition whereby a state within the spine or somewhere in the body has been changed and essentially accelerated, while an exacerbation is a condition whereby it resorts back to its previous condition. (Id.) Dr. VanFleet did not feel the Petitioner was an appropriate surgical candidate because she was not treated non-operatively to any meaningful extent and because of his concern about exaggeration. (Id.) As to the MRI findings of a disc herniation at L4-L5 with left L4 nerve compression, Dr. VanFleet testified that these were not consistent with the Petitioner's complaints of pain down her buttocks and the posterior leg to her ankle because the L4 distribution does not give pain in the ankle but into the knee anteromedial leg. (Id.) He believed clumps of disc material outside the disc space – as Dr. Huler indicated – was consistent with a herniated disc. (Id.)

On cross-examination, Dr. VanFleet acknowledged that the June 2014 MRI preceded the August 8, 2014, surgery. (Id.) He did not recall seeing a note by Dr. Huler from August 26, 2014, stating that he was very pleased with the results of the surgery and released the Petitioner to full-duty work. (Id.) He also did not recall seeing a complaint of left lower extremity pain from after the 2014 surgery until the work accident. (Id.) He agreed that the symptoms the Petitioner described to her treating physicians – swelling, spasms, 10/10 low back pain and pain radiating down the left lower extremity – were consistent with an acute injury. (Id.)

On August 16, 2018, the Petitioner followed up with Dr. Jasper and reported 70 percent improvement after the injection, rating her pain at 4-6/10. (PX10) She denied radicular symptoms. (Id.) Dr. Jasper discussed performing a left sacroiliac (SI joint – joint linking the pelvis and lower spine) injection if her symptoms worsened. (Id.) On November 7, 2018, the Petitioner reported worsening symptoms in the low back and radiating into the bilateral buttocks and posterior thigh.

(Id.) Dr. Jasper diagnosed low back pain, lumbar spondylosis (age-related degeneration of the vertebrae and discs of the low back), lumbar foraminal stenosis and lumbar radiculitis (inflammation of a nerve root in the low back). (Id.) He prescribed oral steroids and recommended an epidural steroid injection. (Id.) The Petitioner continued to treat with Dr. Jasper, who prescribed nerve and pain medications. (Id.)

An MRI of the lumbar spine on November 20, 2018, showed: stable left L5-S1 discectomy without recurrent herniation or S1 impingement; foraminal narrowing at L4-5 with contact of the exiting left L4 nerve root; mild canal stenosis at L3-4 appearing stable without descending impingement; and multilevel annular bulge with no new herniation or focal impingement. (PX11)

The Petitioner underwent an L5 transforaminal epidural steroid injections on November 21, 2018, and December 19, 2018. (PX12) On January 4, 2019, Dr. Jasper referred her to a spine surgeon for a second opinion regarding possible surgical treatment options. (PX10) He performed another transforaminal epidural steroid injection on January 16, 2019, and left L4 selective nerve root block on January 30, 2019. (PX12) The Petitioner testified that the injections and oral steroid helped temporarily. (T. 32)

On January 25, 2019, the Petitioner saw Dr. Gregory Poulter, a spine surgeon at OrthoIndy, who voiced concern about the chronicity of the Petitioner's symptoms and her lack of desire to return to work. (PX13) He found mild to moderate stenosis in the lumbar spine that was not of a level where he could explain the Petitioner's symptoms. (Id.) He recommended nerve studies. (Id.) On February 7, 2019, Dr. Jasper performed electromyography and nerve conduction velocity tests (EMG/NCV) that suggested remote nerve injury but were otherwise normal. (PX10) On February 22, 2019, Dr. Poulter found the Petitioner was not a surgical candidate and referred her to a neurologist. (Id.)

The Petitioner saw Dr. Chad Meshberger, a neurologist at Witham Health Services, who diagnosed lumbar spondylosis, failed back surgical syndrome and chronic pain associated with significant psychosocial dysfunction. (PX14) He agreed with Dr. Poulter that the Petitioner's pain was incongruent with the mechanism of injury and limited anatomical pathology on recent imaging. (Id.) He did not see her as being a great surgical candidate and suspected a spinal cord stimulator would be her next likely step for pain control. (Id.) He wanted to get a myelogram (diagnostic imaging test using contract dye to look for problems in the spinal canal). (Id.) said drastic lifestyle choices were needed to train the Petitioner's brain to better modulate pain and would involve diligent mobility and physical exercise. (Id.)

The myelogram was performed on April 19, 2019, and showed multilevel disc degeneration and facet arthrosis, atherosclerotic calcifications, SI joint degenerative joint disease and multilevel formal narrowing. (PX15)

The Petitioner next saw Dr. Vinayak Belamkar, a pain management specialist at Witham Health Services, on May 1, 2019. (PX16) He diagnosed sacroiliitis (inflammation of the SI joint), chronic pain associated with significant psychosocial dysfunction, failed back surgical syndrome and neural foraminal stenosis of the lumbosacral spine. (Id.) He prescribed a nerve medication and recommended a psychological evaluation and a spinal cord stimulator (SCS) trial or intrathecal pump (surgically implanted device that delivers medication directly to the fluid surrounding the spinal cord). (Id.) The Petitioner received bilateral SI joint injections on May 9, 2019. (PX17) An SCS was implanted on July 17, 2019. (PX18)

Following a week with the SCS, the Petitioner reported 60-65 percent relief in the lower back and no tingling or sharp pains, but she still had numbness, constant ache in both buttocks radiating down to the right knee and left side of the back muscle, leg and outside of the shin.

(PX16) On July 24, 2019, Dr. Belamkar recommended a permanent SCS implant, which was performed on August 30, 2019. (PX16, PX19) On October 21, 2019, the Petitioner reported to Dr. Belamkar that the SCS was helping moderately but was having pain in both hips. (PX16) She received steroid injections to both hips. (Id) Dr. Belamkar performed right and left gluteal tenotomies (cutting or removal of tendon tissue) on December 9, 2019, and December 16, 2019. (PX20, PX21) Dr. Belamkar referred the Petitioner to rheumatology for further evaluation and continued prescribing oral steroids and pain and nerve medications through July 7, 2021. (PX16)

On June 9, 2020, the Petitioner saw Dr. Tehniat Haider, a rheumatologist at Witham Health Services, who diagnosed trochanteric bursitis of both hips and lumbar spondylosis and recommended physical therapy. (PX24) The Petitioner underwent physical therapy at Carle Health from June 24, 2020, through July 29, 2020, for a total of six visits. (PX25) The Petitioner testified that the physical therapy made her pain worse. (T. 36) She made the same report to Dr. Haider and her therapist. (PX24, PX25)

Upon referral by Dr. Belmakar, the Petitioner underwent another rheumatology evaluation on September 17, 2021, by Dr. Artur Kaluta at Indiana University Health. (PX29) He diagnosed fibromyalgia, depression, chronic back pain with no evidence of rheumatologic condition, chronic lumbar radiculopathy with no signs or symptoms suggestive of inflammatory myopathy and osteoarthritis of the hand. (Id.) He gave treatment options of exercise and psychotherapy. (Id.)

The Petitioner underwent another lumbar MRI on October 16, 2020, that showed multilevel degenerative changes most pronounced at L3-4 with moderate spinal canal stenosis and mild bilateral neural foraminal stenosis. (PX26)

On April 6, 2021, the Petitioner saw Dr. Paul Plattner, an orthopedic surgeon at Carle Health, diagnosed the Petitioner with chronic back pain with lumbar degenerative disc disease and

left sciatica/post-laminectomy syndrome. (PX27) He gave treatment options of medications, injections, a home exercise program, physical therapy and lifestyle changes. (Id.)

On May 31, 2023, Dr. VanFleet performed another Section 12 examination. (RX3) He reviewed updated medical records from Dr. Huler, Dr. Jasper, Dr. Poulter, Dr. Meshberger and Dr. Belamkar and the EMG studies and the myelogram. (Id.) He said the Petitioner's condition at that time was failed back syndrome with persistent spinal pain syndrome and was "by no means" related to the work accident. (Id.) He opined that the Petitioner's current hip condition was neither caused nor aggravated by the work accident. (Id.) He said the May 16, 2018, surgery, spinal cord stimulator and November 6, 2017, hip tenotomy were not reasonable, necessary or related to the accident, stating they were of no benefit to the Petitioner. (Id.) He said the Petitioner was at maximum medical improvement and thought a 15-pound restriction was reasonable because of her deconditioning over the past several years rather than the work injury. (Id.) Dr. VanFleet did not testify regarding this report.

None of the Petitioner's treating physicians testified.

The Petitioner underwent a vocational assessment. (PX39) She met with consultant David Patsavas on September 27, 2018, and January 25, 2023. (Id.) Mr. Patsavas reviewed medical records from November 7, 2018, through September 27, 2021, and the Petitioner's employment history. (Id.) Based on Dr. Huler's restrictions, Mr. Patsavas opined that the Petitioner's would be in a physical demands category of sedentary or less than sedentary. (Id.) Based on his records review, he stated that since his first meeting with the Petitioner, her medical condition had gotten worse. (Id.) Based on all of the above, Mr. Patsavas opined that a viable and stable labor market did not exist for the Petitioner, and she would not be a candidate for vocational rehabilitation services. (Id.)

The Petitioner testified that at the time of arbitration, she had no change in her lower back and lower extremity condition since 2021 and remains on the spinal cord stimulator and hydrocodone. (T. 28) She said her pain increased after activities from 4-5/10, to 10/10, and she has to take pain pills or lie down. (T. 38) She said she gardens by crawling, does not vacuum, cooks while sitting down, goes grocery shopping with her husband but has to have a cart to lean on. (T. 62) She said she was still treating with her family physician, from whom she was receiving medication for the back and leg pain. (T. 42)

For the 52 weeks preceding the work accident, the Petitioner earned straight time (including vacation pay but not including overtime) totaling $32,962.76. (RX14) During that time, the Petitioner missed seven days of work that was not paid as vacation time. (Id.)

CONCLUSIONS OF LAW

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

As a preliminary matter, the Petitioner objected to testimony of Dr. VanFleet as to the prior MRI that he reviewed after having authored his written opinion for failure to disclose failure to disclose an expert opinion at least 48 hours prior to hearing. As to disclosure of opinions, the Appellate Court has found that the 48-hour rule in Section 12 applies to the opinions of treating physicians. *Ghere v. Industrial Comm'n*, 278 Ill.App.3d 840, 845, 663 N.E.2d 1046, 215 Ill. Dec. 532 (4th Dist. 1996). In *Ghere*, the Court agreed with the Arbitrator that the opinion of a treating physician regarding causal connection between the accident and the claimant's condition was inadmissible for failure to properly disclose the opinion. (*Id*. at 846) If an undisclosed opinion is a natural continuation of a disclosed opinion, it is admissible. *Certified Testing v. Indus. Comm'n*, 367 Ill. App. 3d 938, 856 N.E.2d 602, 305 Ill. Dec. 797 (4th Dist. 2006). In this case, Dr. VanFleet's

statement that the prior MRI did not change his opinion is a natural continuation of his disclosed opinion. Therefore, the Arbitrator overrules the objection.

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

If an accident occurred how the Petitioner said it did, it would meet the criteria for arising out of an in the course of employment as set forth in *McAllister v. Ill. Workers' Comp. Com'n*, 2020 IL 12484. The Petitioner's testimony and reports to her medical providers were consistent. There was no contrary evidence. Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that the Petitioner's low back 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?

An accident need not be the sole or primary cause as long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Indus. Comm'n,* 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill.Dec. 70 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hosp. v. Workers' Comp. Comm'n,* 371 Ill.App.3d 882, 888, 864 N.E.2d 266, 309 Ill.Dec. 400 (5th Dist. 2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm.,* 92 Ill. 2d 30, 36, 440 N.E.2d 861, 65 Ill.Dec. 6 (1982).

When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury

and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital*, 371 Ill.App.3d at 888.

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

The Petitioner had a pre-existing low-back condition. Dr. VanFleet acknowledged that the Petitioner sustained an injury in the accident but classified it as a temporary exacerbation of her pre-existing condition. He admitted that the Petitioner's symptoms – both subjective and objective – were consistent with an acute injury.

The appellate courts have relied on Sisbro in affirming Commission decisions where doctors have opined that work accidents have exacerbated pre-existing conditions – especially when circumstantial evidence showed that a claimant was able to perform work duties before an accident but was unable to afterwards. E.g. *Corn Belt Energy Corp. v. Ill. Workers' Comp. Comm'n*, 2016 IL App (3d) 150311WC, ¶36-37, 56 N.E.3d 1101, 404 Ill. Dec. 688; *Boyd Elec. v. Dee*, 356 Ill. App. 3d 851, 861-862, 826 N.E.2d 493, 292 Ill. Dec. 352 (1st Dist. 2005); and *St. Elizabeth's Hosp. v. Workers' Comp. Comm'n*, 371 Ill. App. 3d 882, 889, 864 N.E.2d 266, 309 Ill. Dec. 400 (5th Dist. 2007).

The circumstantial evidence in this case supports a causation finding. Following her surgery of 2014, the Petitioner had been released to full duty. Aside from flare-ups treated with

chiropractic therapies, she was able to perform her job duties. After the accident, she had worsening symptoms plus pain radiating into her leg and was unable to perform her job duties.

The Arbitrator gives little weight to Dr. VanFleet's opinion that the Petitioner's injury was a "temporary" exacerbation. Despite surgery, her condition did not improve to the extent that she could return to her job.

As to the Petitioner's back, hip and leg complaints that developed after her surgery, there was no evidence that these resulted from the work accident, as opposed to the natural progression of her degenerative spine condition. None of the Petitioner's treating physicians testified, and there were no causation findings in their records, aside the letter from Dr. Huler linking the Petitioner's back condition that he treated to the work accident. Dr. VanFleet opined in his second report that the Petitioner's subsequent complaints were not related to the accident.

Based on all the above, the Arbitrator finds that the Petitioner's low back condition that resulted in surgery and permanent restrictions is causally related to the work accident on November 6, 2017. However, the Arbitrator finds that the Petitioner has not proved by a preponderance of the evidence that any of her conditions that arose after June 29, 2018, were causally related to the work accident.

Issue G: **What were the Petitioner's earnings?**

Section 10 of the Act provides that the earnings in the 52-week period preceding the date of injury, shall be divided by 52 ". . . but if the injured employee lost 5 or more calendar days during such periods, whether or not in the same week, then the earnings for the remainder of such 52 weeks shall be divided by the number of weeks and parts thereof remaining after the time so lost has been deducted" (820 ILCS 305/10).

For the 52 weeks preceding the work accident, the Petitioner earned straight time (including vacation pay but not including overtime) totaling $32,962.76. During that time, she missed seven days of work that was not paid as vacation time. Dividing the total straight-time and vacation earnings by 51 weeks results in an AWW of $646.33.

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

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

Based on the findings above regarding causation, the Arbitrator finds that the medical services provided through June 29, 2018, were reasonable and necessary. The Arbitrator orders the Respondent to pay the medical expenses in Petitioner's Exhibits 32, 33, 34, 35 and 36 that were incurred on or before June 29, 2018. The Respondent shall receive credit for any amounts of those expenses it paid.

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

The parties dispute temporary total disability benefits from November 7, 2017, through June 29, 2018. 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). The ability to do light or restricted work does not preclude a finding of temporary total disability. *Id.* at 121.

The Petitioner was taken off work for that period of time. Based on the causation findings above, the Petitioner is entitled to temporary total disability benefits pursuant to Section 8(b) of the Act for 33 and 4/7 weeks from November 7, 2017, through June 29, 2018. By agreement of the parties, the Respondent shall have credit for $6,762.74 for TTD paid, $6,000.00 for nonoccupational indemnity disability benefits paid and $336.60 for a permanent partial disability (PPD) advance – totaling $13,099.34.

As to the disputed holiday pay, the entries on check/deposit register summary for November 7, 2017, through December 31, 2019, clearly showed the short-term disability pay. However, it is unclear as to which of the other entries were "holiday" pay. There was no testimony explaining these entries. Therefore, the Arbitrator finds that the Respondent has not proven entitlement to this credit.

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

The Petitioner contends she is permanently and totally disabled. The Illinois Supreme Court has frequently held that an employee is totally and permanently disabled when he or she "is unable to make some contribution to the work force sufficient to justify the payment of wages." *Ceco Corp. v. Industrial Comm'n,* 95 Ill.2d 278, 286, 47 N.E.2d 842, 69 Ill.Dec. 407 (1985). However, an employee need not be reduced to total physical incapacity to be entitled to PTD benefits. *Id*. Rather, a person is totally disabled when he or she is incapable of performing services except those for which there is no reasonably stable market. *Id*. at 286-287. Conversely, an employee is not entitled to total and permanent disability compensation if he is qualified for and capable of obtaining gainful employment without serious risk to his health or life. *Id*. at 287.

If an employee's disability is limited so that it is not obvious that the employee is unemployable, or if there is no medical evidence to support a claim of total disability, the burden

is upon the claimant to establish the unavailability of employment to a person in his circumstances. *Id*. If the employee initially establishes obvious unemployability or presents medical evidence of such, he falls in what has been termed the "odd lot" category, and the burden shifts to the employer to show that some kind of suitable work is regularly and continuously available. *Id*.

From a medical standpoint, Dr. Huler expressed serious doubts that the Petitioner would be able to return to her job, stating that because the Petitioner had been off work for so long, there was probably a less than 20 percent chance she would return to her same type of occupation. However, Dr. Huler did not find the Petitioner was incapable of any gainful employment. The Petitioner did not undergo a functional capacity evaluation and did not look for work. There was a vocational assessment in which Mr. Patsavas found no stable labor market for the Petitioner. However, this opinion was based in part on medical records for treatment of conditions that the Arbitrator has found to not be proven as causally related to the work accident. There were also no attempts to help the Petitioner find work within Dr. Huler's restrictions. Therefore Mr. Patsavas's opinions are given little to no weight.

For these reasons, the Arbitrator finds the did not establish obvious unemployability nor present medical evidence of such. Therefore, the Arbitrator finds that the Petitioner is not entitled to PTD benefits and awards PPD benefits instead.

Pursuant to Section 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b.

The Act provides that, "No single enumerated factor shall be the sole determinant of disability." *Id.*

(i) **Level of Impairment.** Dr. Huler provided an AMA impairment rating of 7 percent of the person as a whole. The Arbitrator places some weight on this factor.

(ii) **Occupation.** The Petitioner cannot work at her previous job due to the permanent restrictions from Dr. Huler. She is unemployed. The Arbitrator finds she has suffered a loss of occupation and places significant weight on this factor.

(iii) **Age.** The Petitioner was 57 years old at the time of the injury. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity.** The Petitioner's current earning capacity is unknown. She is now collecting Social Security disability benefits. The Arbitrator places some weight on this factor.

(v) **Disability.** Due to the permanent restrictions from Dr. Huler, the Petitioner has been unable to return to her former job. When Dr. Huler released her after surgery, her leg pain had improved by 70 percent. The Petitioner said there had been no change in her lower back and lower extremity condition since 2021, and she remains on the spinal cord stimulator and pain medication. She testified to inability to perform several activities of daily living. As to how much of this is due to the work accident as opposed to the subsequent deterioration of her degenerative spine condition is difficult to determine precisely. The Arbitrator puts some weight on this factor.

Therefore, the Arbitrator finds the Petitioner's permanent partial disability to be 45 percent of the person as a whole as it relates to her low back condition.

GLENDA JEAN MYRICK, Plaintiff vs. DANVILLE METAL STAMPING and THE ILLINOIS WORKERS' COMPENSATION COMMISSION, Defendants	)	24 MR 52
DANVILLE METAL STAMPING, Counter-Plaintiff, vs. GLENDA JEAN MYRICK and the ILLINOIS WORKERS' COMPENSATION COMMISSON, Counter-Defendants	)	

OPINION AND ORDER

GLENDA JEAN MYRICK claims to have suffered a work-related lower back injury on November 6, 2017, while in the employ of Danville Metal Stamping, the Employer. She presented her claim to an Arbitrator September 13, 2023. She underwent surgery in May of 2018. The Arbitrator found the injury to be work-related; however, once she was released from the care of the surgeon her illness continued. She was treated for various conditions, described as failed back syndrome, failed back surgery syndrome and persistent spinal pain syndrome found by the Arbitrator to be unrelated to the work injury but rather a result of natural progression of her degenerative spine condition.

The Industrial Commission on review found that there was a continuing causal connection between the work accident and Petitioner's current condition of ill-being and awarded permanent partial disability to the extent of a 60% loss of the person as a whole. The Commission's opinion then states "In all other respects, the Commission affirms and adopts the Decision of the Arbitrator."

Plaintiff, seemingly having prevailed before the Commission, nevertheless appealed its decision to this Court, contending she is entitled to further benefits because the Commission ought to have engaged in "odd-lot" analysis to determine whether Plaintiff would be entitled to permanent and total disability. Instead, by implication, the Commission affirmed the decision of the Arbitrator in "all other respects," affirming the Arbitrator's denial of the claim for permanent total disability.

Defendant DANVILLE METAL STAMPING, the Employer, also appeals the Commission's finding, suggesting it is against the manifest weight of the evidence concerning the relationship between Plaintiff's current condition and the work injury. As to the Plaintiff's claim for permanent and total disability, the Employer suggests the Commission implicitly denied that claim by having affirmed the Arbitrator's decision in that respect.

STANDARDS OF REVIEW

The standard of review of factual issues in this Court is deferential; in order to overturn the findings of the Commission, the Court must determine the Commission's findings to be against the manifest weight of the evidence. As to questions of law, the standard of review is *de novo*.

The standard of review relating to the appeal from the decision of the Arbitrator to the Commission, however, does not require such deference by the Commission to the findings of the Arbitrator. In *Cushing v. Industrial Commission*, 50 Ill.2d 179, 277 N.E.2d 838 (1971) the Court held that the primary responsibility to resolve disputed questions of fact is that of the Industrial Commission; a court will only disturb the Commission's finding if it is against the manifest weight of the evidence even when, as in *Cushing*, the Commission overrules the Arbitrator, stating "The commission is not bound by findings made by the arbitrator." 44 Ill.2d at 182, 277 N.E.2d at 840 [Citation omitted]. In the case before

the Court, the Arbitrator heard the testimony of two live witnesses: the Plaintiff and an employee of Defendant who testified as to the availability of work for Plaintiff at a facility of the Employer. The medical issues were presented through reports, medical records and deposition transcripts, making the Commission equally competent as the Arbitrator in determining witness credibility and making factual findings.

Thiis Court finds the testimony conflicting as to the work-relatedness of the Plaintiff's current condition. The greatest support for the Employer's position is the testimony of Doctor VanFleet, who opined that her current condition was in no way related to her work but who did agree with failed back syndrome. In the opinion of this Court the Commission was in an equal position as the Arbitrator to make the factual determination that Plaintiff's current condition was work-related and that there is sufficient support in the record for its decision that the Court may not reverse the Commission's findings.

With respect to the "odd-lot" determination of permanent total disability, however, the Court is unable to determine what the Commission decided. Plaintiff's counsel accurately points out that the Arbitrator found such analysis unnecessary as he found the condition leading to possible permanent total disability to be unrelated to Plaintiff's employment. If, however, the condition as of the hearing date is work-related, this Court is not in a position to determine whether a finding of permanent total disability is warranted without the Commission's analysis. Plaintiff offered the report of an expert witness opining that her condition warranted a determination of permanent total disability. The Commission's decision does not address this claim explicitly. If the Commission's decision were final then of course its affirmance of those portions of the Arbitrator's decision not reversed would preclude any further inquiry. However, as the case is here on judicial review, the statute applicable to judicial review permits the Court to remand the case to the Commission for further proceedings; 820 ILCS 305/19.

THEREFORE, IT IS THE COURT'S ORDER that this cause be and is hereby remanded to the Industrial Commission for further proceedings to determine and to opine whether Plaintiff Employee has, by way of odd-lot analysis of her ability to return to work, sufficiently demonstrated she is permanently and totally disabled.

So Ordered

ENTER: January 29, 2025

Robert E. McIntire
Circuit Judge

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC032086
Case Name	Patricia Gerdes v. Dr. John M. Damas DDS, Ltd.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0080
Number of Pages of Decision	17
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Matthew Heinlen
Respondent Attorney	Robert Harrington

DATE FILED: 2/25/2025

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Patricia Gerdes,

Petitioner,

vs. No. 21 WC 32086

Dr. John M. Damas, DDS, Ltd,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) and §8(a) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, medical expenses, and prospective medical care, and being advised of the facts and law, affirms the Decision of the Arbitrator with the changes discussed below, and otherwise affirms and adopts the Decision of the Arbitrator which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission,* 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

While affirming the Arbitrator's ultimate finding of compensability, the Commission writes to find that Petitioner sustained repetitive trauma injuries which manifested on July 22, 2021.

Petitioner testified that since 1981 she has worked as a full-time orthodontic assistant and lab assistant for Dr. Damas, for all but three years in the late 1980's. She testified regarding the instruments and tools she used daily on a repetitive basis to clean and polish patients' teeth, apply braces, and make retainers and models of teeth. Petitioner testified that on July 22, 2021, she

informed Dr. Damas that her hands and wrists were hurting, and she requested and was given the phone number to report a workers' compensation claim. On that date, Petitioner also saw her primary physician, Dr. Danaher, for her upper extremity symptoms. Dr. Damas testified at arbitration, and confirmed the activities in Petitioner's job description which she was required to perform.

Petitioner was examined by orthopedic surgeon, Dr. John Fernandez, on October 28, 2021. At that time, she complained of bilateral hand and arm symptoms: pain, numbness, tingling, and cramping. Dr. Fernandez diagnosed Petitioner with bilateral carpal tunnel syndrome, bilateral thumb CMC arthritis, bilateral Dupuytren's fibromatosis, and bilateral epicondylitis. At his deposition, Dr. Fernandez opined that the type of activities Petitioner performed at her job, and the number of years she had performed those activities, caused or aggravated her bilateral carpal tunnel syndrome and bilateral thumb CMC joint arthritis to the point that treatment for those conditions, including surgery, was recommended.

The Commission finds the opinions of Dr. Fernandez more persuasive than those of Dr. Biafora, Respondent's Section 12 examiner, who opined Petitioner did not have right carpal tunnel syndrome because her EMG was negative on that side. However, Dr. Biafora acknowledged that Petitioner did have complaints of numbness and tingling in her right hand, and he admitted that a negative EMG does not rule out the existence of carpal tunnel syndrome. Dr. Biafora opined Petitioner's left carpal tunnel syndrome was not causally related because she only used her left hand to stabilize patients' heads. However, that activity required her to repetitively flex her left hand and push against the work she was performing with her right hand which, Dr. Fernandez testified, created a risk for developing left carpal tunnel. Petitioner also used her left hand repetitively while working in patients' mouths and making retainers.

The Commission therefore finds Petitioner's repetitive work activities which included the use of small vibratory tools, were at least aggravating factors in the development or worsening of her bilateral carpal tunnel syndrome and thumb CMC joint arthritis. We also find July 22, 2021 to be an appropriate manifestation date. That was the date Petitioner reported her injuries to Dr. Damas, asked him for the phone number to report a workers' compensation claim, and saw her primary physician. July 22, 2021 was the date on which the fact of the injury and the causal relationship of the injury to Petitioner's employment became plainly apparent. The Commission affirms all else in the Arbitrator's Decision.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 6, 2024, is hereby affirmed and adopted, with the changes noted above.

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

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $1,900.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

February 25, 2025

/s/ *Marc Parker*
Marc Parker

MP/mcp
o-01/30/25
068

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC032086
Case Name	Patricia Gerdes v. Dr. John M. Damas DDS, Ltd.
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	Rachael Sinnen, Arbitrator

Petitioner Attorney	Matthew Heinlen
Respondent Attorney	Robert Harrington

DATE FILED: 5/6/2024

/s/ Rachael Sinnen, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF APRIL 30, 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
19(b)

Patricia Gerdes
Employee/Petitioner

v.

Dr. John M. Damas, DDS
Employer/Respondent

Case # **21** WC **32086**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Rachael Sinnen**, Arbitrator of the Commission, in the city of **Chicago**, on **3.6.24**. 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, **7.22.21**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**54,821.91**; the average weekly wage was $**1,058.49.**

On the date of accident, Petitioner was **58** years of age, ***single*** with **0** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

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 to pay Petitioner directly for the outstanding medical services itemized in PX 9, pursuant to Sections 8(a) and 8.2 of the Act.

Respondent shall approve and pay for the bilateral carpal tunnel release, a right thumb basilar joint arthroplasty, and necessary pre-and post-operative care as prescribed by Dr. Fernandez as provided in Section 8(a) and 8.2 of the Act.

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

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

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

Signature of Arbitrator

May 6, 2024

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Patricia Gerdes,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 21WC32086
Dr. John M. Damas, DDS,	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on December 5, 2023, in Chicago, Illinois before Arbitrator Rachael Sinnen on Petitioner's Request for Hearing pursuant to Section 8a under the Illinois Workers' Compensation Act "Act." Issues in dispute include accident, notice, causation, unpaid medical bills, and prospective medical treatment. Arbitrator's Exhibit "Ax" 1.

Petitioner's Job Duties

On July 22, 2021, the then 58-year-old, right hand dominant Petitioner was working for Respondent as an Orthodontic Assistant and Laboratory Technician. (T. 12, 15, 96).

Petitioner testified her job responsibilities as an Orthodontic Assistant included preparing teeth for procedures, taking x-rays of teeth, and taking molds of teeth. (T. 15-16). She testified she also helped prepare patients for braces application, although Dr. Damas placed the braces. (T. 19). She testified this included preparing, cleaning, and polishing each of the patient's teeth using a motorized slow speed handpiece with her right hand while holding the patient's mouth back with her left hand. (T. 26-27, 36). The device would turn on via pushing a pedal down with the foot. (T. 28). Petitioner testified this was a vibratory device which she would lightly press into the teeth. (T. 28).

Petitioner testified that she also put lip holders in the patient's mouth, prepared the teeth for bonding of the bracket (one brace), put adhesives on the back of each bracket via a syringe, and prepared the bracket holders for braces application. (T. 15-16, 19-21). More specifically, she testified she would hold the bracket with her left hand using a pliers-type bracket holder tool and use her right hand to apply adhesive on the back of the bracket with a syringe. (T. 21-24). Then, she would place the brackets with her hands onto the tray. (T. 26). Then, Dr. Damas would place the braces and she would assist him by handing each bracket to Dr. Damas, along with any tools he required for application. (T. 20). Each patient generally got twelve to fourteen brackets. (T. 22).

Petitioner testified that after Dr. Damas cured the braces onto the teeth, she would place wires on the patient's teeth. (T. 29). She testified this involved using a wire cutter to cut the wires to fit the brackets. (T. 30-31) The force used would depend on the wire. (T. 31). Then, she testified she would put the wires in using a jarabak tool with her right hand, which was described as a pointy tool that opened and closed, using the tool to hold the wire to place it. (T. 30-32) Petitioner demonstrated with a pinching motion using her thumb and the rest of her fingers to open and close the tool. (T. 32). Then, she testified she would tie each individual bracket with an elastic piece using a hemostat, described to be similar to a clamp. (T. 30, 33). This involved opening and closing the tool for each tooth to hold the wire in place over the brace. (T. 30, 34). Petitioner demonstrated the motion as clamping her right thumb against the rest of her hand, requiring using her thumb. (T. 34-35). Petitioner testified the wire application process would take approximately ten minutes. (T. 43). Each patient would get the wires replaced approximately five times over the two-year course of treatment (T. 44).

When removing braces, Petitioner testified she took off each brace with a tool, then used a slow speed handpiece with her right hand and held the patient's lip back with her left hand, to take off the adhesive. (T. 44-46; RX2-H). Petitioner testified this would take twenty to thirty minutes total. (T. 46) She mentioned the assistants would take turns to ensure no assistant performed this task consecutively. (T. 46, 117-118). Dr. Damas also performed this task. (T. 118).

These were not Petitioner's only job responsibilities, as up to 40% of her day involved not working with patients or tools. (T. 144). Petitioner's other job responsibilities included walking patients to their chairs, instructing patients on oral hygiene, cleaning orthodontic instruments, and filling out paperwork. (T. 113-114, 127; RX1). These were her job responsibilities during the entirety of her employment with Dr. Damas. (T. 16).

Petitioner worked eight hours a day for four days per week. (T. 48, 129). On cross-examination, Petitioner clarified she did not work with patients for the entirety of the eight hours, as she often got to work early to prepare during the first hour. (T. 113). Moreover, during the summer, the office hours and shifts were shortened. (T. 130). Petitioner testified she would take breaks between patients as well. (T. 116).

Dr. Damas testified on Respondent's behalf as he was the owner of John M. Damas DDS, LTD up until he sold the practice to Orland Park Orthodontics on October 5, 2022. Dr. Damas was familiar with Petitioner who worked with him for almost 30 years and was familiar with her job duties. (T. 105). Dr. Damas was present for the Petitioner's testimony and testified that the tools Petitioner worked with and the manner in which she used such tools did not require much force. (T. 144). He testified that on occasion, she would use a tool that required some force, such as bending or cutting thicker wires. (T. 145). Moreover, Dr. Damas testified her job responsibilities varied from day-to-day and that Petitioner was not performing the same actions with the same tools repetitively. (T. 149-150). Dr. Damas testified that over the last fifteen years, the average number of patients per day was approximately twenty-five to forty patients. (T. 146). In 2021, there were four other assistants employed at Dr. Damas' office. (T. 17).

Petitioner also testified that she performed lab technician responsibilities, which involved creating molds of patients' teeth, usually in the form of a retainer. (T. 48-49). These job responsibilities were recorded via videos that Petitioner took of herself after the sale of Dr. Damas' practice and which were published at trial. (T. 50-51, 108).

The first step in the process showed Petitioner holding a container containing powder and water to a machine that mixed the contents. (T. 51; PX8). Petitioner testified she would need to hold this with both hands and that this required "some" pressure. (T. 51).

Petitioner testified she would next trim the model to ensure it was workable. (T. 52-53; PX7). The video depicts Petitioner using the spinning grit paper on the machine to trim the mold with both hands. (T. 53-55). She testified this entire process took approximately 30 seconds. (T. 56).

Petitioner testified she used a Biostar machine to make the retainers. (T. 57; PX4). The sole action she would need to take was pulling the handle of the machine closed and flipping it back open. *Id*. She testified this required "some pressure" with her hands. (T. 57). While waiting for the machine to finish, she testified she would cut acrylic away from the mold with scissors to prepare for trimming. (T. 58).

Petitioner testified she would then use a Dremel tool with her left hand, while holding the mold in her right hand, to cut away extraneous material and then slim the model down. (T. 59-60; PX5). Although Petitioner initially described the Dremel as a vibratory tool, she acknowledged this was actually a rotary tool that "vibrates" due to the top rotating. (T. 109-110).

Dr. Damas testified the Dremel is a rotary tool that does not shake but that one can feel the motor rotating. (T. 142). Moreover, Petitioner testified the video showed her working with a splint, rather than a retainer, which is a thicker material than a typical retainer. (T. 60). Dr. Damas testified a splint was quite rare, made approximately once every five hundred times. (T. 146-147). Thus, the two minutes and thirty seconds it took to complete this process in the video was for the harder-type splint. (T. 61). Also, Petitioner testified if she were working with a retainer, she would use her right hand to hold the Dremel and her left hand to hold the model, unlike the video. (T. 63).

Petitioner testified she would cut the retainer's acrylic. (T. 65; PX6). She testified she held the retainer in her right hand and used the Dremel with her left hand to soften the edges of the retainer. (T. 66). She stated this process would take approximately three minutes and thirty seconds. (T. 67). Petitioner did not provide the average number of retainers she made in a workweek. (T. 70). The closest quantification she provided was that she sometimes made more than one retainer a day. (T. 75). She was also unable to provide the average hours per day she spent in the lab performing this type of work. (T. 73-74).

Petitioner testified that since Dr. Damas sold his practice in October 2022, she continued working for the new employer through the date of trial. (T.105-106). Petitioner testified that she now works with more doctors than before, her lab work increased, and she is making more retainers as she is now making retainers for more than one practice. (T. 106-108).

Date of Accident and Notice

Petitioner testified that prior to July of 2021 her hands and wrists had bothered her for years, but she continued to work. (T. 89-90). Petitioner testified that she noticed that work made her symptoms worse day to day. (T. 91). Petitioner testified that while she mentioned pain to her general practitioner, Dr. Danaher, she was never taken off work nor did she report that she could no longer work. (T. 90). Petitioner testified that she saw Dr. Danaher around July 2021 about her hands/wrists, and he told her to see an orthopedic. (T.79). She testified that on or around July 22, 2021, she asked Dr. Damas for the workers' compensation phone number because her hands were hurting. (T. 75-77). Petitioner testified that she started a workers compensation claim because she "couldn't take it anymore" and wanted treatment. (T. 90).

Petitioner was shown a first report of injury form that she signed and filled out indicating that this was "a repetitive injury that started ten years ago." (T. 95).

Summary of Medical Treatment

On October 28, 2021, Petitioner saw Dr. John Fernandez at Midwest Orthopaedics at Rush complaining of problems with her hands. (PX 1, p. 22). Petitioner noted that she had bilateral hand complaints, right greater than left, including numbness, and tingling and "cramping". She also developed "cords" with stiffness and pain in her palms. *Id.* at 23. At this visit, Petitioner attributed her complaints to her work activities as an orthodontic assistant for the last 30 years. She described using small tools and instrumentation, pushing, and pulling with force, using a grinder and Dremel which vibrate and aggravated her symptoms. During his physical examination, Dr. Fernandez noted subjective paresthesia bilaterally, right greater than left, and positive bilateral Tinel's, Phelen's, and median nerve compression tests. *Id.* at 24. Dr. Fernandez recommended that Petitioner wear carpal tunnel splints, undergo an EMG, and referred her to Dr. Simcock for treatment of the Dupuytren's fibromatosis. Dr. Fernandez felt that Petitioner was able to continue working full duty. *Id.* at 26.

On February 21, 2022, Petitioner underwent an EMG. That test showed carpal tunnel syndrome of the left wrist but did not reveal any confirmatory findings as it related to the right wrist. (PX 1, p. 16-17).

On March 23, 2022, Petitioner followed up with Dr. Fernandez. Dr. Fernandez reviewed the EMG and, despite the negative finding as it related to the right side, diagnosed Petitioner with Dupuytren's disease of the palm and bilateral carpal tunnel syndrome. Dr. Fernandez recommended a left carpal tunnel release. *Id.* at 11-13.

On May 25, 2023, Petitioner returned to Dr. Fernandez. (PX 1, p. 6-10). Her complaints had not changed. Dr. Fernandez recommended a right thumb CMC arthroplasty and right carpal tunnel release.

Respondent's Section 12 Examiner, Dr. Biafora

On January 13, 2023, Respondent's physician, Dr. Sam Biafora, conducted a Section 12 examination. (RX3). Dr. Biafora is an orthopedic surgeon specializing in hand and upper extremity surgery. (RX4, p. 5). Petitioner reported symptoms in her bilateral hands and wrists for approximately ten years. (RX3). She reported mentioning this to her primary care physician over some time. *Id*. On this day, she complained of achiness in both wrists and hands with a pulling sensation in her palms. *Id.* At rest, she complained of numbness in the bilateral wrists. *Id.*

Dr. Biafora obtained detailed information pertaining to Petitioner's specific job duties. (RX3). She described job activities such as placing and removing wires for braces, taking impressions of teeth, holding molds in patients' mouths, mixing material to hold the mold, making retainers, cutting retainer material with a vibrating device, and removing adhesive from teeth using a vibratory Dremel device. *Id.* She also described the tools she used to perform such activities, such as small pliers, wire cutters, the vibratory Dremel, needle nose pliers type device, and scanners. *Id.* Dr. Biafora also examined multiple-colored photographs of the same tools Petitioner described, as well as photographs of the position she treated patients. *Id.*

Dr. Biafora examined Petitioner's bilateral elbows, wrists, and thumbs. (RX3). The only notable findings were mild prominence at the bilateral thumb carpometacarpal joints, equivocal carpal tunnel Tinel's bilaterally, and a bilateral positive median nerve compression test. *Id.* He also obtained x-rays of the bilateral hands, including the wrists. *Id.* On the right, the x-rays revealed mild arthritis at the thumb carpometacarpal joint, possible mild arthritis at the triscaphoid joint, ulnar neutral variance, an intraosseous cyst at the distal radial corner of the lunate, and no carpal diastasis. *Id*. On the left, there was ulnar neutral variance, no carpal diastasis, mild thumb carpometacarpal arthritis, and no other abnormalities. *Id*.

Dr. Biafora reviewed Petitioner's medical records, including the February 21, 2022, EMG. (RX3). Afterwards, Dr. Biafora opined Petitioner had no elbow diagnoses. *Id*. Regarding the bilateral hands, Dr. Biafora opined a diagnosis of mild Dupuytren's disease with bilateral palmar cords without significant associated contractures. *Id.* He opined no causal connection as this is a condition that occurs idiopathically with genetic predisposition as a risk factor. *Id.* He diagnosed only left carpal tunnel syndrome, given the right side was negative in the EMG. (*Id.*; RX4, p. 17). However, Dr. Biafora opined no causal connection given Petitioner does not perform a significant amount of use of the tools with her left hand. *Id.* Further, Dr. Biafora noted stabilizing a person's head (the majority of her left-hand usage) would not cause or contribute to carpal tunnel syndrome. *Id.* Dr. Biafora stated carpal tunnel syndrome is very common and most commonly occurs idiopathically, without a known cause. *Id.* Lastly, he opined a diagnosis of mildly symptomatic right thumb carpometacarpal arthritis. *Id.* Dr. Biafora opined causal connection for the right carpometacarpal thumb arthritis in the form of an aggravation and recommended a steroid injection. *Id.*

Petitioner's Treating Surgeon, Dr. Fernandez

Dr. John Fernandez testified that he is board certified in orthopedic surgery since 1998 with certifications in hand and microvascular surgery. (PX 2 at 6-7). Dr. Fernandez testified that his

specialties are hand, wrist, and elbow orthopedic conditions and that he was the person you see if you have a nerve that requires reconstruction. He estimated that he sees approximately 5,000 to 6,000 patients and performs approximately 1,200 surgeries each year. *Id.* at 8-9.

Dr. Fernandez testified that he first saw Petitioner on October 28, 2021. He testified consistent with the history noted above. Dr. Fernandez testified that the Tinel's test is a provocative test where he taps over the nerve trying to elicit if or when the nerve becomes irritable. If it is at the level of the wrist, it is a positive sign or positive finding toward carpal tunnel syndrome. Dr. Fernandez explained that the Phelan's test is a test where the wrist is flexed to pinch the nerve on purpose to see whether it makes the sensation worse. The median nerve compression test puts pressure over the nerve to see whether there is a positive response. In Petitioner's case, all three tests were positive. Based on the history, physical examination, and diagnostic testing, Dr. Fernandez diagnosed Petitioner with bilateral wrist carpal tunnel syndrome, bilateral Dupuytren's fibromatosis with mild contracture, bilateral thumb CMC joint degeneration and bilateral elbow lateral epicondylitis. (PX 2 at 15).

Dr. Fernandez testified that the Dupuytren diagnosis was not related to her work activities. (PX 2 at 20). Similarly, Dr. Fernandez testified that any findings of bilateral elbow lateral epicondylitis were unrelated to her work activities. *Id.* at 31. Dr. Fernandez testified that Petitioner's other diagnoses were caused or aggravated by her work activities. *Id.* at 28. He testified that there is a higher incidence of carpal tunnel syndrome and CMC joint arthritis in the dental industry. *Id.* He attributed that to the frequent constant pinching or grabbing of instruments, applying traction using pliers or other devices, and even those who just do teeth cleanings have a higher incidence of those conditions than in other industries. *Id.* Dr. Fernandez further testified that people with carpal tunnel syndrome do not have a higher incidence of diagnosis on their dominant side and that the incidence rate is the same on both sides. *Id.* at 40. In this instance, Dr. Fernandez explained that even if the Petitioner were using a grinder and bur with her right, dominant hand, she would be pushing the grinder into or against a product being held in the left hand which would need to counteract the device. *Id.* at 39-40. He also felt that in the dental industry there is hand flexion while working on patient's mouths that provide a positional risk factor to carpal tunnel syndrome. *Id.* at 43.

Dr. Fernandez testified that the positive EMG test on the left, in conjunction with her symptoms and physical exam findings, support a diagnosis for left carpal tunnel syndrome. (PX 2 at 25). He further testified that the fact that the right sided EMG was negative does not preclude a diagnosis of carpal tunnel. *Id*. He testified that up to 20% of EMG testing is falsely negative, and that if you were to give the same EMG test week to week, the results can vary. *Id.* at 26. Dr. Fernandez testified that the positive EMG on the left side supports the fact that she likely has carpal tunnel syndrome on the right even though the EMG is negative. He testified that he bases that opinion on the fact that her symptoms and physical exam findings are mirror images on each side. *Id.*

Dr. Fernandez testified that he last saw the Petitioner on May 25, 2023, and that his diagnoses had not changed. (PX 2 at 27). Dr. Fernandez felt that Petitioner had exhausted conservative treatment and recommended a right CMC thumb arthroplasty and right carpal tunnel release. *Id* at 32. He testified that conservative treatment for carpal tunnel syndrome in his practice typically involves splinting and anti-inflammatory medications. *Id.* at 35. He testified that he would not inject the thumb for the CMC arthritis because he found in his practice that the results were worse than

without injecting and that conservative treatment for that condition is splints, anti-inflammatories and modifying activities. *Id.* at 36. He further opined that he anticipates that he will perform a left carpal tunnel release but felt it was likely that Petitioner would not need surgery on her left thumb. *Id.*

CONCLUSIONS OF LAW

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

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

Petitioner testified extensively about her job duties with Respondent as an Orthodontic Assistant and Laboratory Technician with little refute from Dr. Damas. It is evident that Petitioner's use of dental instruments and equipment were reasonable activities in conjunction with her employment and she was exposed to a risk distinctly associated with the employment. See McAllister v. Illinois Workers' Compensation Comm'n, 2020 IL 124848, ¶ 34-46.

The Arbitrator finds that the accident **did** arise out of and in the course of Petitioner's employment by Respondent.

Issue E, whether timely notice of the accident was given to Respondent, the Arbitrator finds as follows:

Petitioner alleges a manifestation date of July 22, 2021, which reflects the day Petitioner "couldn't take it [the pain in her hands/wrists] anymore," desired medical treatment, and asked Dr. Damas for the phone number of Respondent's workers' compensation insurance carrier. (T. 90) Petitioner confirmed that in signing and filling out a first report of injury form she indicated that this was "a repetitive injury that started ten years ago." (T. 95) Petitioner denied ever receiving any medical treatment or being placed off work for her hand/wrist pain prior to July 2021. While Respondent contested accident and notice, it did not put the statute of limitations at issue nor specifically contest the manifestation date. See Ax 1. Regardless, the manifestation date of July 22, 2021, is in line with Illinois law. See Durand v. Industrial Comm'n (RLI Insurance Co.), 224 Ill. 2d 53, 72, 862 N.E.2d 918, 929 (2006); Three "D" Discount Store v. Industrial Com., 198 Ill. App. 3d 43, 556 N.E.2d 261 (4th Dist. 1989); Oscar Mayer & Co. v. Industrial Com., 176 Ill. App. 3d 607, 531 N.E.2d 174 (4th Dist. 1988); Peoria County Belwood Nursing Home v. Industrial Com., 115 Ill. 2d 524, 505 N.E.2d 1026 (1987).

Relying on Petitioner's credible testimony, the Arbitrator finds that Petitioner gave timely notice to Respondent and Dr. Damas was apprised that the injury was work related when Petitioner asked him for the information to contact the workers' compensation insurance carrier.

The Arbitrator finds that timely notice of the accident **was** given to Respondent.

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

An employee who alleges an injury based on a repetitive trauma theory 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 Com., 115 Ill. 2d 524, 530, 505 N.E.2d 1026, 1028 (1987). The claimant need only prove that some act or phase of employment was a causative factor of the resulting injury. Three "D" Discount Store v. Industrial Com., 198 Ill. App. 3d 43, 49, 556 N.E.2d 261, 265 (4th Dist. 1989). 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 claimant's work activities caused the condition complained of. Nunn v. Industrial Com., 157 Ill. App. 3d 470, 477-78, 510 N.E.2d 502, 506-07 (4th Dist. 1987) The Commission may find a causal relationship based on a medical expert's opinion that the injury "could have" or "might have" been caused by an accident. Mason & Dixon Lines, Inc. v. Industrial Comm'n, 99 Ill 2d 174, 182, 457 N.E.2d 1222, 1226, 75 Ill. Dec. 663 (1983).

Petitioner's treater, Dr. Fernandez, diagnosed Petitioner with bilateral wrist carpal tunnel syndrome, bilateral Dupuytren's fibromatosis with mild contracture, bilateral thumb CMC joint degeneration and bilateral elbow lateral epicondylitis. (See PX 2 at 15). Dr. Fernandez testified that the Dupuytren diagnosis as well as the bilateral elbow lateral epicondylitis were unrelated to her work activities. (PX 2 at 20, 31). As a result, the Arbitrator finds that Dr. Fernandez' diagnosis of bilateral Dupuytren's fibromatosis with mild contracture and bilateral elbow lateral epicondylitis are not causally related to Petitioner's work activities based on Dr. Fernandez' own testimony. Dr. Fernandez opined that Petitioner's bilateral wrist carpal tunnel syndrome and bilateral thumb CMC joint degeneration were caused or aggravated by Petitioner's work activities. (PX 2 at 28).

Respondent's Section 12 examiner, Dr. Biafora, agreed with Dr. Fernandez' diagnosis of left carpal tunnel syndrome although disputed causal since Petitioner does not spend significant time using the instruments with her left hand. Dr. Biafora disagreed that Petitioner had right carpal tunnel syndrome since the EMG was negative for the right side. Dr. Biafora agreed with the diagnosis of right thumb carpometacarpal arthritis and agreed that it was aggravated by her work activities. While Dr. Biafora recommended a steroid injection to the right thumb, Dr. Fernandez advised against it.

With regards to the disputed diagnosis of right carpal tunnel syndrome, the Arbitrator finds that Petitioner has bilateral carpal tunnel syndrome. Dr. Fernandez testified that an EMG can be negative at the early stage of the disease. (PX 2, p. 25). Similarly, Dr. Biafora testified that a negative nerve study doesn't necessarily rule out carpal tunnel syndrome especially when patients have a very mild case. (RX 4, p. 17). Dr. Fernandez explained his physical examination revealed positive bilateral test results (Tinel's test, Phelan's test, and median nerve compression test) all of which support a diagnosis of bilateral carpal tunnel syndrome. (PX 2, pp. 14-15, 25). During his Section 12 examination, Dr. Biafora noted a positive median nerve compression test and a positive Tinel's test bilaterally. Phelan's test was not noted. (RX 3). Dr. Fernandez noted that the fact that

Petitioner has a positive EMG on the left side supports the diagnosis for the right despite the negative EMG because Petitioner's physical examination findings are equal on both sides. (PX 2, p. 26).

On the issue of causation, although unable to cite a specific study or article, Dr. Fernandez mentioned medical literature that suggests those working in the dental industry are at a higher incidence of carpal tunnel syndrome and CMC joint arthritis because of the constant pinching and grabbing. (PX 2, p. 28). Even though Petitioner is right hand dominate, Dr. Fernandez explained that hand dominance does not play a significant role in conditions like carpal tunnel syndrome or thumb degeneration. (PX 2, pp. 30, 40). Further, Dr. Fernandez explained that in the dental profession, although one hand might be used to hold an instrument, the other hand is also being used to hold an object. (PX 2, p. 42). Dr. Fernandez explained that it is not the vibration of a tool alone that is a risk factor, but "there is something about the fact that they [the dental industry] are using both hands in that weird way that exhibits that risk factor." (PX 2, p. 42). Dr. Fernandez goes on to explain that "…someone who is working in the dental industry, there is a commonality to them that then creates commonality into their risk exposure whether its repetition, force, posture, the type of tool that they use, etc." (PX 2, p. 55). Dr. Fernandez commented that it is not necessarily the force used in the dental industry but the awkwardness of how tools are used. (PX 2, p. 55). Dr. Biafora, unaware of any medical literature on the issue, maintained that using the left hand to stabilize a patient's head would not cause or aggravate carpal tunnel syndrome. (RX 4, p. 16). He testified that *if* Petitioner did have right carpal tunnel syndrome, then her work activities would have contributed to her diagnosis. (RX 4, p. 22). Other than her age and sex, both doctors agree that Petitioner does not have any other risk factors for carpal tunnel syndrome such as obesity, diabetes, etc.

The Arbitrator finds Dr. Biafora's understanding of Petitioner's job duties (specifically the use of her left hand) to be limiting and, thus, finds his opinions on causation to be less persuasive than those of Dr. Fernandez. Petitioner testified extensively and provided videos of various tasks that involved both hands. While Petitioner's tasks varied throughout the workday, the basic mechanics of pinching and grabbing with both hands were repetitive which is in line with Dr. Fernandez' deposition testimony. When comparing the testimony of Petitioner and Dr. Damas, there are few material contradictions. Dr. Damas testified that some tasks didn't require a lot of force *for him* and Dr. Damas' testimony, as a whole, did not negate Petitioner's claim. Taking into consideration the entire record as a whole, the Arbitrator finds the Petitioner has met her burden of proof by a preponderance of the evidence that "some act or phase" of her job was *a* causative factor in her current condition of ill-being. See Three "D" Discount Store, 198 Ill. App. 3d at 49.

The Arbitrator finds that Petitioner's current condition of ill-being (bilateral carpal tunnel syndrome and bilateral thumb CMC joint degeneration) **is** causally related to the injury.

Issue J, whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

Having found Petitioner's bilateral carpal tunnel syndrome and bilateral thumb CMC joint degeneration to be causal related to the injury, the Arbitrator further relies on the opinions of Dr.

Fernandez, the treatment records and Petitioner's testimony in determining the reasonableness and necessity of past medical services rendered.

Petitioner submitted medical bills from OrthoMidwest PPLC (PX 9) showing unpaid charges from Dr. Fernandez' office from October 28, 2021, through May 25, 2023, in the amount of $1,712.96. Respondent disputes liability based on its defenses of accident, notice and causal connection. See AX 1.

Having found for Petitioner on the issues of accident, notice and causal connection, the Arbitrator further finds that Petitioner's treatment **has** been reasonable and necessary and Respondent **has not** paid for said treatment. As such, the Arbitrator orders Respondent to pay Petitioner directly for the outstanding medical services itemized in PX 9, pursuant to Sections 8(a) and 8.2 of the Act.

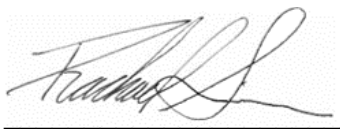
Issue K, whether Petitioner is entitled to any prospective medical care, the Arbitrator finds as follows:

At her last appointment with Dr. Fernandez on March 25, 2023, Petitioner's complaints of pain continued to be greater on the right versus left. Dr. Fernandez recommended a right carpal tunnel release and a right thumb basilar joint arthroplasty. (PX 1, p. 9). In his deposition testimony on October 30, 2023, when asked about Petitioner's left hand and thumb, Dr. Fernandez opinioned that Petitioner would need a left carpal tunnel release but was unsure if Petitioner's left thumb would need surgical intervention at the time of his deposition. (PX 2, p. 33). When asked about Dr. Biafora recommendation for a steroid injection into the right thumb, Dr. Fernandez advised against it and indicated that in his practice he has seen worse results with the injection. (PX 2, pp. 35-36).

Relying on the medical opinions of Dr. Fernandez over those of Dr. Biafora and taking into consideration the record as a whole, the Arbitrator finds that Petitioner **is** entitled to prospective medical care.

Respondent shall approve and pay for the bilateral carpal tunnel release, a right thumb basilar joint arthroplasty, and necessary pre-and post-operative care as prescribed by Dr. Fernandez as provided in Section 8(a) and 8.2 of the Act.

It is so ordered:



Arbitrator Rachael Sinnen

May 6, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC005555
Case Name	Misty Straight v. State of Illinois - Chester Mental Health Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0081
Number of Pages of Decision	9
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Jason Coffey
Respondent Attorney	Kenton Owens

DATE FILED: 2/25/2025

/s/Christopher Harris,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MISTY STRAIGHT,

Petitioner,

vs. NO: 24 WC 5555

STATE OF ILLINOIS,
CHESTER MENTAL HEALTH 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 nature and extent of Petitioner's injury, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 7, 2024 is hereby affirmed and adopted.

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

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

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

February 25, 2025

CAH/tdm
d: 2/20/25
052

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC005555
Case Name	Misty Straight v. State of Illinois - Chester Mental Health Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Jason Coffey
Respondent Attorney	Kenton Owens

DATE FILED: 8/7/2024

/s/Bradley Gillespie, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF AUGUST 6, 2024 4.70%

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

August 7, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Misty Straight
Employee/Petitioner

v.

SOI/Chester Mental Health Center
Employer/Respondent

Case # **24** WC **005555**

Consolidated cases: **None**

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Herrin**, on **07/10/2024**. By stipulation, the parties agree:

On the date of accident, **02/13/2024**, 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 $**71,413.02**, and the average weekly wage was $**1,373.21**.

At the time of injury, Petitioner was **46** years of age, ***married*** with **1** dependent children.

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 the sum of $**823.93**/week for a further period of **25** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused **5% loss of use to the body as a whole**.

Respondent shall pay Petitioner compensation that has accrued from **05/23/2023** through **07/10/2024**, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay reasonable and necessary medical services as listed in Petitioner's Group Exhibit #4, as provided in Sections 8(a) and 8.2 of the Act. The bills to be paid were stipulated to by the parties and will be paid pursuant to the fee schedule directly to the providers.

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.

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

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

Bradley D. Gillespie

Signature of Arbitrator

August 7, 2024

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MISTY STRAIGHT,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No.: 24WC005555**
	)	
STATE OF ILLINOIS/CHESTER MENTAL HEALTH CENTER,	)	
	)	
	)	
Respondent.	)	

DECSION OF ARBITRATOR
NATURE & EXTENT

FINDINGS OF FACT

Misty Straight [hereinafter "Petitioner"] filed an Application for Adjustment of Claim on February 27, 2024, alleging injuries to her right shoulder while attempting to restrain a violent mental health patient while working at Chester Mental Health Center [hereinafter "Respondent"] occurring on February 13, 2024. The parties proceeded to arbitration on July 10, 2024. The only issue in dispute was the nature and extent of the Petitioner's injury.

Petitioner testified at arbitration. Petitioner is a forty-six-year-old Security Therapy Aide 1 at Chester Mental Health Center. (Tr. pp. 11-12) Security Therapy Aides are guards at a maximum-security mental health facility. (Tr. p. 12) They monitor the patients and assist them. *Id.* Security Therapy Aides are responsible for restraining patients in physical holds if they become too aggressive. *Id.*

Petitioner was injured on February 13, 2024, while escorting a patient to the restraint room for aggressive behavior. (Tr. pp. 12-13) While the Petitioner was holding onto the patient, the patient jerked away from her, and she felt a pop in her right shoulder. (Tr. p. 13) Petitioner is right-hand dominant. *Id.* Petitioner sought medical treatment initially from the emergency department at Chester Memorial Hospital on the date of injury. (Tr. p. 14) She provided a consistent history of accident to emergency room personnel. (Tr. p. 14; PX #1 p. 1) She was evaluated, underwent X-rays, and was instructed to follow up with her primary-care physician. (PX #1 p. 4) She was diagnosed with a separation of her AC joint. *Id.* Petitioner then saw Dr. Molnar at Chester Clinic. (Tr. p. 15) Dr. Molnar evaluated the Petitioner and referred Petitioner to an orthopedic surgeon, Dr. Matthew Bradley. *Id.* Petitioner knew Dr. Bradley prior to this referral. Dr. Bradley had treated her in 2021 with respect to her left shoulder. *Id.* Dr. Bradley evaluated Petitioner and recommended an MRI. (PX #2 pp. 4-5) The MRI showed no rotator cuff pathology, unremarkable long head of the biceps tendon, the glenoid labrum was intact, thickening and increased signal involving the inferior glenohumeral ligament was seen in adhesive capsulitis and an unremarkable acromioclavicular joint. (PX #3 p. 1) Petitioner returned to Dr. Bradley on April 4, 2024, for review of the MRI. (PC #2 pp. 6-7) Dr. Bradley diagnosed her with subacromial impingement with a shoulder strain. (PX #2 p. 7) He injected

Petitioner's right shoulder with corticosteroid and recommended physical therapy at Chester Memorial Hospital. *Id.*

On May 23, 2024, Petitioner returned to Dr. Bradley. (PX #2 pp. 8-9) Petitioner reported that she obtained relief from the steroid injection and physical therapy. (PX #2 p. 8) Petitioner was instructed to continue physical therapy for the next two weeks and allowed to return to work full duty on June 4, 2024. (PX #2 p. 9) He pronounced her to be at MMI on or about May 23, 2024. *Id.*

Petitioner had never suffered any trauma or injury to her right shoulder prior to her work injury on February 13, 2024. (Tr. pp. 15-16) Since returning to work and being released to MMI, Petitioner does not feel she has full range of motion. (Tr. pp. 17-18) She notices pain with daily hygiene practices which require full range of motion of her dominant arm. (Tr. p. 18)

Petitioner is not eligible to retire for many years. (Tr. p. 18) She has no plans to leave her employment and will continue to work for Respondent for many years to come. *Id.*

On cross-examination, Petitioner testified she trusted the opinions of Dr. Bradley. (Tr. p. 19) Petitioner was asked about Dr. Bradley's notes in which he stated Petitioner had subacromial impingement with a shoulder strain. *Id.* She said it was her understanding that she had a shoulder separation and frozen shoulder. *Id.* Respondent's counsel asked Petitioner whether Dr. Bradley said she had a little bit of a frozen shoulder, and an injection should improve that condition. (Tr. pp. 19-20) She indicated that was her understanding and that she might have to come back. (Tr. p. 20) Petitioner confirmed that the last time she saw Dr. Bradley was in May 2024. *Id.*

CONCLUSIONS OF LAW

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 Security Therapy Aide I at the time of the accident and that she was able to return to work in her prior capacity following treatment for her injury. The Arbitrator notes the position requires initiating physical holds of mental health patients. Because of the physical nature of the position and potential danger, the Arbitrator therefore gives greater weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 46 years old at the time of the accident. Because of the Petitioner's relatively young age and testimony she will be working for many more years in this environment, 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 the Petitioner did not lose any potential future earnings. Because of there being no evidence of loss of future earnings, the Arbitrator gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Dr. Bradley stated Petitioner's range of motion may get better over time. Because of the uncontroverted testimony by Petitioner that she has not regained full range of motion in her dominant arm, the Arbitrator therefore gives greater weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 5% loss of use of the person as a whole pursuant to §8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC031669
Case Name	James Snevely v. Recycled Rubber Products
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0082
Number of Pages of Decision	19
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Luis J. Magaña
Respondent Attorney	Andrew (AJ) Sheehan

DATE FILED: 2/25/2025

/s/Kathryn Doerries,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LaSALLE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JAMES SNEVELY,

Petitioner,

vs. NO: 23 WC 031669

RECYCLED RUBBER PRODUCTS,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 26, 2024, is hereby affirmed and adopted.

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

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

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

The 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)*. As there are no monies due and owing, there is no bond set by the Commission for the removal of this cause to the Circuit Court by Respondent. 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.

February 25, 2025
O021825
KAD/bsd
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/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Maria E. Portela*
Maria E. Portela

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC031669
Case Name	James Snevely v. Recycled Rubber Products
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Luis J. Magaña
Respondent Attorney	Andrew (AJ) Sheehan

DATE FILED: 9/26/2024

/s/Frank Soto; Arbitrator
Signature

INTEREST RATE WEEK OF SEPTEMBER 24 2024 4.27%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

James Snevely
Employee/Petitioner

v.

Recycled Rubber Products
Employer/Respondent

Case # **23** WC **031669**

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 **Ottawa**, on **July 26, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **October 25, 2023**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is not causally related to the accident.

In the year preceding the injury, Petitioner earned $**58,539.00**; the average weekly wage was $**1,125.75**.

On the date of accident, Petitioner was **59** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of $**18,762.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**0.00**.

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

ORDER

Petitioner failed to prove by the preponderance of the evidence that his current right knee condition is causally related to his work accident of October 25, 2023, as set forth in the Conclusions of law attached hereto.

Respondent shall pay reasonable and necessary medical expenses incurred from October 25, 2023 through November 13, 2023, as identified in Petitioner's Exhibits 2, 3, and 4, pursuant to Sections 8(a) and 8.2 of the Act, as set forth in the Conclusions of law attached hereto.

Petitioner is not entitled to TTD benefits, as set forth in the Conclusions of law attached hereto.

Petitioner is not entitled to prospective medical treatment, as set forth in the Conclusions of law attached hereto.

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

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

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

By: /o/ Frank J. Soto **SEPTEMBER 26 2024**
Arbitrator

Procedural History

This case proceeded to trial pursuant to Sections 19(b) and 8(a) of the Act. The disputed issues involve causation, medical expenses, TTD benefits and prospective medical treatment. (Arb. Ex. #1). One of the disputes in this case centers upon whether Petitioner sustained an intervening accident.

Findings of Fact

Testimony of Petitioner

On October 25, 2023 Petitioner sustained a work-related injury to his right knee. (Arb. Ex. 1). Petitioner, who worked as a mechanic, was on his knees repairing hydraulic lines on a Bobcat when a forklift backed over his right leg. (T.17-18). Petitioner testified his right leg twisted underneath the forklift and that he was pushed forward by the forklift. (T.18). Petitioner acknowledged the wheels of the forklift did not run over his right leg. (T.57).

After the incident, Petitioner was taken to E-Mediate Care. (T.19). Petitioner testified he was experiencing difficulties walking and his right knee was swollen and his back was bruised. (T.21). Petitioner testified he did not work the following day but he returned to full duty work the next day. (T.22). Petitioner testified upon returning to work, his right knee would swell and that it was hard to bend or kneel. (T.22).

On November 1, 2023, Petitioner sought additional medical treatment from Dr. Khan, his family physician, at Morris Hospital. (T.22). Petitioner testified Dr. Khan told him to stay home for a few days but, at some point, he returned to work after a few days. (T.24-25). On November 7, 202, Petitioner returned to Dr. Khan reporting his symptoms were unchanged and, at that time, he received a right knee injection. (*Id*.). Petitioner testified the injection helped but he continued to experience pain. (T.26).

On November 13, 2023, Petitioner followed up with Dr. Khan reporting he was feeling better but that his symptoms were not completely gone. (T.26). Petitioner denied telling Dr. Khan he was doing well and that his symptoms were completely alleviated. (T.26-27). At that time, Petitioner was released to return to full duty work. (T.27).

The next day, November 14, 2023, Petitioner was involved in an automobile accident when he struck a deer with his truck. (T.28). Petitioner testified the deer struck the right front of his vehicle. (*Id.*). Petitioner denied striking or twisting his right knee during the automobile accident. (T.30). Petitioner testified, after the accident, he drove home and reported the accident to his supervisor because he wasn't going to make it to work on time. (T.31). Petitioner did not

work that day. (*Id.*). Petitioner testified he returned to work on November 15, 2023 and that he experienced problems bending and kneeling. (T.32). Petitioner also testified that he did not work from November 15, 2023 through November 30, 2023 because he was hurting. (T.35). Petitioner testified his symptoms worsened between November 15, 2023 and November 30, 2023. (T.36).

On November 20, 2023, Petitioner returned to Dr. Khan. Petitioner testified, at that time, he was referred to an orthopedic surgeon. (T.35). Petitioner testified he did not report the motor vehicle accident to Dr. Khan because he wasn't injured. (T.35).

Petitioner testified to seeing Dr. Burt on November 30. 2023. (*Id.*). Petitioner acknowledged not reporting the November 14, 2023 motor vehicle accident to Dr. Burt. (*Id.*). At that time, Petitioner was placed on light duty restrictions. Petitioner testified to not returning to work because, he believed, Respondent didn't want him to work in the office. (T.37). Petitioner testified his symptoms worsened and Dr. Burt recommended right knee surgery. (T.39).

Petitioner testified to undergoing an independent medical examination with Dr. Bare on October 25, 2023. (T.38). Petitioner acknowledged not reporting the November 14, 2023 motor vehicle accident to Dr. Bare stating that "*he didn't ask any of those questions*." (T.38).

Testimony of Brett Evans, Witness for Respondent

Brett Evans testified on behalf of Respondent. He works as a supervisor for Respondent (T.61). Mr. Evans was in the office on October 25, 2023. (T.62). Mr. Evans testified his understanding of the work accident was based upon video footage and discussions with witnesses. Mr. Evans testified a forklift reversed over Petitioner's right leg equivalent to a car bumper and the space beneath it, before pushing Petitioner forward. (T.65). Mr. Evens testified the forklift wheels did not go over Petitioner's right leg or knee. (*Id.*). Following the work accident, Mr. Evans completed the Supervisor's Report of Injury (Rx2). Mr. Evans testified after the work accident Petitioner initially declined medical treatment. (T.66).

Petitioner's Medical Treatment

On October 25, 2023, Petitioner sought medical treated at E-Mediate Cure. (R.5). At that visit, Petitioner reported he was kneeling on his hands and knees when a co-worker was driving a forklift backed into him striking him on his right lower back/hip area with the counterweight portion of the forklift which caused him to twist such that he ended up sitting with his legs under the forklift. (*Id.*). The examination of the right knee showed no swelling, no erythema, or masses. Petitioner's right knee had full range of motion but tenderness was noted along the medial and

lateral joint line. The McMurray, Lachman, Posterior and Anterior Draw tests were all negative[1]. (*Id.*). Petitioner was assessed with right knee pain and he was prescribed Cyclobenzaprine. (*Id.*).

On November 1, 2023 Petitioner sought treatment with Dr. Khan of Morris Hospital. (Px.4). At that time, Petitioner reported feeling no pain. The examination noted no pedal edema, very minimal discoloration, normal range of motion with some mild tenderness. Petitioner's right knee was found to be stable[2]. Petitioner was assessed with a right knee sprain. Petitioner was prescribed Meloxicam and allowed to return to work as of November 6, 2023. (*Id.*).

On November 7, 2023, Petitioner returned to Morris Hospital reporting swelling and increased pain levels. The examination of the right knee noted mild swelling, painful range of motion, and difficulty walking. At that time, Petitioner was given a right knee injection and he was taken off work for one week. (*Id.*).

Petitioner returned to Dr. Khan on November 13, 2023, reporting he was feeling much better. (Px.4). Petitioner's right knee was examined and found to be normal[3]. Petitioner was released to return to full duty work and issued a prescribed Naprosyn to take as needed.[4] (*Id.*).

On November 27, 2023 Petitioner returned to Dr. Khan reporting he was not getting any better and that his right knee was popping. (Px.4). Petitioner rated his pain level as 8 out of 10. The examination noted swelling and pain with range of motion. The medical records indicate Petitioner reported that his knee was swollen from working as mechanic which required him to walk, climb stairs and kneel.[5] X-rays were taken which showed a slight flattening of the articular surface of the medical femoral condyle on the frontal projection which may indicate focal osteochondral. At that time, Petitioner received a right knee injection and was taken off work and referred to an orthopedic physician. (Px.4).

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[1] A review of the medical records does not show any injury to the patella nor diagnosis of a patella contusion or possible tears of the meniscus. The medical records do not indicate Petitioner reported any popping of the right knee.

[2] A review of the medical records does not show any injury to the patella nor diagnosis of a patella contusion or possible tears of the meniscus. The medical records do not indicate Petitioner reported any popping of the right knee.

[3] A review of the medical records does not show any injury to the patella nor diagnosis of a patella contusion or possible tears of the meniscus. The medical records do not indicate Petitioner reported any popping of the right knee.

[4] Petitioner was involved in a motor vehicle accident on November 14, 2024.

[5] Petitioner testified he did not work for Respondent from November 15, 2023 through November 30, 2023. Petitioner also testified his symptoms worsened between November 15, 2023 and November 30, 2023. (T.35-36).

On November 30, 2023, Petitioner presented to Dr. Burt for an orthopedic evaluation. (Px.3). At that time, Petitioner reported sustaining a direct blow to his right knee at work on November 1, 2023 when a forklift backed into him causing his right leg to go under the forklift and his knee twisted and popped. Petitioner also reported that he has been unable to work since his accident. Dr. Burt noted Petitioner complained of patella and medial pain. Petitioner indicated that his pain occurred intermittently but was worsening. Petitioner reported popping, decreased mobility, joint tenderness, locking, swelling and weakness. The examination noted mild swelling, right medial joint line tenderness and a positive McMurry sign. X-rays were taken and found to be normal. Dr. Burt assessed a possible medial meniscus tear and right knee contusion. Dr. Burt ordered an MRI. (*Id)*.

Petitioner underwent an MRI on December 19, 2023 at American Diagnostic MRI. (Px.5). The MRI impression reflected a contusion pattern in the patella with no discrete fracture, a low grand partial tear of the vastus medialis contribution of the quadriceps tendon, partial tear of the medial retinaculum origin from the patella with strain of the vastus medialis myotendinous junction, mild medial patellofemoral ligament sprain, mild lateral retinacular sprain, mild reropatellar chondromalacia. The report also found evidence of a tear of the posterior horn of the medical meniscus and chronic appearing attenuation of the cruciate ligaments. (*Id.*).

Petitioner returned to Dr. Burt on December 21, 2023 reporting moderate patella, medial, superior pain. (Px. 3). Petitioner also reported his knee felt unsteady. Dr. Burt indicated the MRI showed chondromalacia of the patella, contusion to the peri-patellar structures without any critical injury. Dr. Burt also indicated the MRI showed a few areas of mild signal change of the medial and lateral menisci without any displaced tears. (*Id.*). Dr. Burt assessed a contusion of the right knee, possible tear of the medial meniscus, and chondromalacia patellae. Dr. Burt administered an injection into Petitioner's right knee. The medical records indicate Petitioner could possibly have a meniscal injury or patella articular injury as part of his work accident. (*Id.*).

On January 4, 2024, Petitioner returned to Dr. Burt reporting no relief from the injection and he was experiencing right knee medial pain with locking and popping. Dr. Burt assessed right knee pain and chondromalacia patellae. In the medical records, Dr. Burt referenced a possible medial meniscus tear with underlying chondromalacia. At that time, Dr. Burt

recommended surgery consisting of a diagnostic arthroscopy and meniscectomy or repair with a chondroplasty. (*Id.*).

Petitioner returned to Dr. Burt on April 4, 2024 reporting deep sharp medial pain with popping multiple times per day. The examination showed mild effusion, antalgic gain, 4/5 strength, medial joint line tenderness and a positive McMurray's test. Dr. Burt assessed chondromalacia patellae, right knee pain, and possible tear of the medial meniscus. Dr. Burt renewed his diagnostic arthroscopy and meniscectomy recommendation. (*Id.*).

Testimony of Dr. Aaron Bare, Respondent's Section 12 Examiner

Dr. Aaron Bare, a board certified in orthopedic surgeon, examined Petitioner on February 28, 2024 pursuant to Section 12 of the Act. (Rx1). At that visit, Petitioner provided a history of being on his knees when a forklift backed into him. (Rx.1, p. 9). Dr. Bare testified Petitioner did not mention being involved in a motor vehicle accident on October 25, 2023. (Rx.1, p. 11).

The examination of the right knee revealed good range of motion, normal appearance, no swelling, and no instability. (Rx.1, p. 12). The examination noted a little tenderness to touch in the front of the knee. (Rx.1, p.13). Dr. Bare reviewed the December 19, 2023 MRI, which, he opined, showed a little age appropriate wear and tear of cartilage underneath the knee cap and plica. (*Id.*). Dr. Bare testified the major structures of Petitioner's knee and meniscus were fine. (*Id.*).

Dr. Bare testified he disagreed with Dr. Burt's opinion that the MRI showed tears of the meniscus. Dr. Bare testified the MRI showed age-appropriate degenerative signals. (*Id.*). Dr. Bare testified some doctors believe a little loss of water content in an MRI is a tear when, in fact, it is only an age-appropriate finding. (Rx.1, p. 14).

Dr. Bare initially diagnosed tendonitis connected to Petitioner's work injury. (Rx.1, p.15). Dr. Bare opined Petitioner was not a surgical candidate because the MRI did not show a meniscus tear and that Petitioner was not complaining of pain over the meniscus. (Rx.1, p. 16).

Dr. Bare issued an addendum report after finding about Petitioner's motor vehicle accident. Dr. Bare opined any medical treatment Petitioner underwent after the middle of November of 2023 was directly and almost solely related to the motor vehicle accident. (Rx.1, p. 20). Dr. Bare testified Petitioner was doing well and had been released to return to full duty work using a knee brace. (Rx.1, p.18). Dr. Bare further testified that, after the motor vehicle accident, Petitioner's condition significantly deteriorated. (Rx.1, p. 20). Dr. Bare opined

Petitioner was essentially fully recovered after his work accident when he was released to return to full duty work and that Petitioner's subsequent work restrictions were related to Petitioner's motor vehicle accident. (Rx.1, p.21).

Dr. Bare testified, regardless of the motor vehicle accident, Petitioner is not a surgical candidate because the recommended surgery is a diagnostic meniscectomy which is exploratory surgery and not a repair. (Rx.1, p. 27). Dr. Bare disagrees with Dr. Burt's surgical recommendation based upon the lack of MRI findings and that Petitioner doesn't have pain over the meniscus. (Rx.1. p.16). Dr. Bare testified he would not perform surgery on a patient who does not have pain over an area where it is thought to have pathology. (*Id.*).

Testimony of Dr. David Burt, the Treating Physician

Dr. David Burt is board certified in orthopedic surgery and sports medicine. (Px.6, p. 5-6). Dr. Burt initially examined Petitioner on November 30, 2023. At that visit, Petitioner reported being on his knees when forklift backed up into him and that somewhat trapped his foot underneath and twisted his knee. (Px.6, p.6). Dr. Burt testified Petitioner thought his knee twisted and popped when the injury happened. (Px.6, p. 7).

Dr. Burt testified his examination noted a little bit of swelling, tenderness on the medical joint line, and a positive McMurray's sign. (Px.6, p. 8). Dr. Burt reviewed the MRI which, he believed, showed a strain of the soft tissues around the patella, chondromalacia of the patella, and some changes suspicious for meniscus tearing both medial and lateral. (Px.6, p. 9). Dr. Burt diagnosed an injury to the patella and meniscus. (*Id.*).

On January 4, 2024, Petitioner returned to Dr. Burt reporting sharp medial pain with locking and popping in the knee. (Px.6, p. 11). At that time, Dr. Burt recommended arthroscopy surgery. Dr. Burt testified he recommended surgery because Petitioner was not improving and he displays signs of a meniscus tear. (*Id.*). Dr. Burt testified Petitioner returned on April 4, 2024 reporting his pain has worsened and, at that time, he renewed his surgical recommendation. (*Id.*).

Dr. Burt reviewed the report from Dr. Bare disagreeing with his surgical recommendation. (Px.6, p.11). Dr. Burt testified that he disagrees with Dr. Bare's opinion because Petitioner has an unresolved clinical scenario with pain and symptoms consistent with a meniscus tear. (Px.6, p.14). Dr. Burt opined Petitioner's work accident caused or aggravated his knee condition. (Px.6, p.16). In support of his opinion, Dr. Burt testified Petitioner sustained a significant injury based upon the Petitioner reporting having his leg pinned underneath a forklift

and twisted which, he said, was a significant mechanism of injury. (*Id.*). Dr. Burt opined the medical treatment Petitioner received was reasonable and necessary. (Px.6, p.18).

Dr. Burt acknowledged Petitioner never mentioned the motor vehicle accident to him but that he disagrees with Dr. Bare's causal connection opinion. (Px.6, pgs. 14-15). Dr. Burt opined the car accident did not have anything to do with Petitioner's knee pain. (Px.6, p.17). In support of his opinion, Dr. Burt testified the forklift backing into Petitioner causing his knee to be caught underneath the forklift resulting in his knee twisting and popping was a significant injury. (Px.6, p.15). Dr. Burt acknowledged it is difficult to say whether the motor vehicle accident caused Petitioner's knee pain because he wasn't aware of any medical reports or treatment Petitioner received for that accident. (Px.6, p. 15).

On cross examination Dr. Burt was asked if an individual sustains a subsequent accident which impacts the same body part previously injured could that subsequent accident play any role in his causation opinions and he responded, "*Absolutely not*". (Px.6, p. 22). Dr. Burt acknowledged Petitioner initially told him that he had been unable to work since his work accident. (Px.6, p.22). Dr. Burt also acknowledged that Petitioner never mentioned the motor vehicle accident. (Px.6, p.23). Dr. Burt further acknowledged that the MRI only showed signal changes which could be consistent with tearing which could be either acute or wear and tear over time. (Px.6, p. 29).

Petitioner's Testimony as to his Current Condition and Credibility Determination

As to his current condition, Petitioner testified his right knee swells and hurts while bending. (T.39). Petitioner testified his right knee symptoms including pain, swelling and trouble walking. (T.42). Petitioner takes aspirin to address his symptoms. (*Id.*). Petitioner testified his symptoms worsened after his October 25, 2023 work accident. (*Id.*). Petitioner testified his symptoms never went completely away after his work accident. (*Id.*). Petitioner testified he would like Dr. Burt to fix his knee. (T.40).

Petitioner testified he was paid benefits from the date of accident through May 20, 2024. (T.42). Petitioner acknowledged working for Keffer Automotive as a mechanic during the period he was not working for Respondent but receiving benefits. (*Id.*). Petitioner testified, during this period, he was paid cash by Keffer Automotive totaling $1,500.00. Petitioner claims he only performed diagnostic work while working for Keffer Automotive. (T.41-42).

The Arbitrator finds Petitioner to be a poor historian. Petitioner never told Drs. Kahn, Burt and Bare about the November 14, 2023 motor vehicle accident. Petitioner testified that he didn't report the motor vehicle accident to the doctors because he wasn't injured. Contrary to his testimony that he did not injury his right knee in the motor vehicle accident, Petitioner testified his symptoms worsened between November 15, 2023 and November 30, 2023. (T.36). The medical records show that Petitioner's right knee condition significantly changed after the motor vehicle accident. After the motor vehicle accident Petitioner was diagnosed with a patella contusion and possible meniscus tears. Prior to the motor vehicle accident, no such conditions were identified in the medical records. Additionally, it was only after the motor vehicle accident did Petitioner report popping, decreased mobility, locking, and weakness to any doctors.

Petitioner also provided Dr. Burt a medical history inconsistent with the history Petitioner provided to Drs. Kahn and Bare and to the initial medical provider, E-Mediate Care. Petitioner told Dr. Burt that his knee popped when the forklift backed into him but he did not report this fact to any of the other medical providers. Petitioner also told Dr. Burt that he had been experiencing right knee popping since his work accident but the first time Petitioner reported right knee popping occurred on November 21, 2023, after the motor vehicle accident. Additionally, Petitioner told Dr. Burt he had been unable to work since his work accident but Petitioner was working as a mechanic for Keffer Automotive.

Conclusions of Law

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

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

In pre-existing condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the pre-existing disease such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of a pre-existing condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill.2d 30, 36-37. When a worker's physical structures, diseased or not, give way under the stress of their usual tasks, the law views

it as an accident arising out of and in the course of employment. *General Electric Co. v. Industrial Comm'n,* 89 Ill.2d 432, 60 Ill. Dec. 629, 433 N.E.2d 671 (1982). When an employee with a preexisting condition is injured in the course and of his employment the Commission must decide whether there was an accidental injury which arose out of the employment, whether the accidental injury aggravated or accelerated the preexisting condition or whether the preexisting condition alone was the cause of the injury. *Sisbro, Inc. Industrial Comm'n*, 207 Ill.2d 193, 278 Ill. Dec. 70,797 N.E.2d 665, (2003). Even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Caterpillar Tractor Co. v. Industrial Comm'n,* 129 Ill.2d 52, 133 Ill. Dec. 454, 541 N.E.2d 665 (1989).

Courts have consistently held that for an employer to be relieved of liability by virtue of an intervening cause, the intervening cause must completely break the causal chain between the original work-related injury and the ensuing condition. *See Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 787 (2d. Dist. 2005). An aggravation injury does not break the causal connection between the original work injury and the present condition when: (a) the original injury has not resolved, and (b) "but for" the work injury, the aggravation injury would have been tolerated. *Vogal,* 354 Ill. App. 3d at 788 (2d. Dist. 2005). Likewise, the fact that other incidents, whether work related or not, may aggravate a condition further are irrelevant as long as they do not constitute intervening causes. *Mendota Township Hight School v. Industrial Comm'n*, 243 Ill. App. 3d. 834, 837 (4th Dist. 1993). A claimant need only prove that some act or phase of his or her employment was "a" causative factor in the ensuring injury in order to recover benefits under the Act. (*Id*.). A claimant need not prove it was the sole causative factor, nor even that it was the principal causative factor for his injury. (*Id*.). A nonemployment-related factor which is a contributing cause with the compensable injury is an ensuring injury or disability does not constitute an intervening cause sufficient to break the causal connection between the employment and claimant's condition of ill-being. (*Id*.).

The Arbitrator has carefully reviewed and considered all medical evidence along with all testimony. The Arbitrator concludes Petitioner failed to prove by the preponderance of the evidence that his current right knee condition is causally connected to his work injury of October 25, 2023, as set forth more fully below.

The Arbitrator finds Petitioner sustained a right knee strain and/or insertional quadriceps tendonitis of the right knee as a result of his work accident which resolved by November 13, 2023, when Petitioner was released to return to work full duty. The Arbitrator finds the opinions of Dr. Bare persuasive. Dr. Bare reviewed the MRI and opined it did not show a meniscus tear. Dr. Bare testified the MRI showed a little bit of water content loss which was an age-appropriate degenerative signal and not a tear. Dr. Bare opined Petitioner sustained insertional quadriceps tendonitis of the right knee which essentially resolved by November 13, 2023 when Petitioner was released to return to full duty work using a brace. (Rx.1, p. 18-21).

Based upon the significant change in Petitioner's symptoms and significant change in his right knee condition, which involved a patella contusion and possible medial meniscus tears, it is reasonable to infer the motor vehicle accident was an intervening cause of his current condition which completely broke the causal chain from the original work accident. The day before the motor vehicle accident, Petitioner was released to return to full duty work. Petitioner's right knee was examined on November 13, 2023 and found to be normal. (Px.4). At that time, Petitioner reported that he was feeling much better. The examination noted no swelling, no antalgic gait, no patella contusion, no popping symptoms, no loss of strength and no positive McMurray's signs. (Px.4).

After the motor vehicle accident, on November 21,203, Petitioner's right knee was swollen. Petitioner reported, for the first time, his knee was popping. (Px.4). The examination noted swelling of the right knee and pain during range of motion. At that time, Petitioner was taken off work and referred to an orthopedic surgeon. (Rx. 4). On November 30, 2023, Petitioner was examined by Dr. Burt. At that visit, Petitioner complained of patella and medial pain, decreased mobility, joint locking, joint tenderness, popping, and weakness. (Px.3). Dr. Burt's examination noted antalgic gait, positive McMurray's sign, reduced range of motion, and loss of strength. (Px.3). At that time, Petitioner was assessed with a contusion of the patella and possible tears of the medial meniscus. (Px. 3).

The Arbitrator does not find Dr. Burt's causation opinion persuasive. Petitioner provided Dr. Burt inaccurate information regarding the onset of symptoms, work status, mechanism of injury and he also failed to inform Dr. Burt about the motor vehicle accident and the change of his symptoms immediately after the motor vehicle accident. It is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what

weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 406-07, 459 N.E.2d 963, 76 Ill. Dec. 828 (1984); *Hosteny v. Illinois Workers' Compensation Comm'n,* 397 Ill. App. 3d 665, 675, 928 N.E.2d 474, 340 Ill. Dec. 475 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041, 721 N.E.2d 1165, 242 Ill. Dec. 634 (1999). Expert testimony shall be weighed like other evidence with its weight determined by the character, capacity, skill and opportunities for observation, as well as the state of mind of the expert and the nature of the case and its facts. *Madison Mining Company v. Industrial Commission*, 309 Ill. 91, 138 N.E. 211 (1923). The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Gross v. Illinois Workers' Compensation Comm'n,* 2011 IL App (4th) 100615WC, 960 N.E.2d 587, 355 Ill. Dec. 705. If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. Expert opinions must be supported by facts and are only as valid as the facts underlying them. *In re Joseph S.*, 339 Ill. App. 3d 599, 607, 791 N.E.2d 80, 87, 274 Ill. Dec. 284 (2003).

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 incorporates the Conclusions of Law in Section F into this Section. Section 8(a) of the Act states a Respondent is responsible "…*for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury…*" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. See *Gallentine v. Industrial Comm'n*, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

The Arbitrator finds Petitioner proved by the preponderance of the evidence the treatment received prior to November 14, 2023, were reasonable and necessary and related to Petitioner's October 25, 2023 work accident. As such, Respondent shall pay the reasonable and necessary medical expenses incurred from October 25, 2023 through November 13, 2023, as identified in Petitioner's Exhibits 2, 3, 4, pursuant to Sections 8(a) and 8.2 of the Act.

As stated above, the Arbitrator found that Petitioner's condition stabilized on November 13, 2023 and that the November 14, 2023 motor vehicle accident was an intervening accident. As such, the Arbitrator the medical bills for medical treatment related to the right knee, incurred

after November 14, 2023, are causally related to the intervening motor vehicle accident. As such, the Arbitrator finds Petitioner failed to prove by the preponderance of the evidence the medical treatment after November 14, 2023 was causally related to his October 25, 2023 work accident.

With respect to issue (K) whether Petitioner entitled to prospective medical care, the Arbitrator finds as follows:

The Arbitrator incorporates the Conclusions of Law in Sections F and J into this Section. The Arbitrator finds Petitioner failed to prove by the preponderance of the evidence he is entitled to prospective medical treatment as a result of the October 25, 2023 work accident. The Arbitrator finds the recommended surgery is related to the intervening motor vehicle accident of November 14, 2023 and not Petitioner's October 25, 2023 work accident.

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).

Assuming the November 14, 2023 motor vehicle accident was not an intervening accident, the Arbitrator finds that Petitioner failed to prove by the preponderance of the evidence that the recommended surgery consisting of a diagnostic arthroscopy and meniscectomy or repair along with a chondroplasty is medically necessary. Dr. Bare opined Petitioner is not a surgical candidate based upon the physical examination findings and MRI findings. The MRI did not identify any meniscus tears nor does Petitioner have pain over the area of the meniscus. Dr. Bare testified he would not perform surgery on a patient who does not have pain over an area where there is thought to be pathology. (Rx.1, p.16).

With respect to issue (L) whether Petitioner is entitled to TTD benefits, the Arbitrator finds as follows:

The Arbitrator incorporates the Conclusions of Law in Sections F, J and K into this Section. "The period of temporary total disability encompasses the time from which the injury incapacitates the claimant until such time as the claimant has recovered as much as the character of the injury will permit, "*i.e.,* until the condition has stabilized." *Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 886 (2nd Dist. 1990). The dispositive test is whether the claimant's condition has stabilized, *i.e*., reached M.M.I. *Sunny Hill of Will County v. Ill. Workers' Comp. Comm'n*, 2014 IL App (3d) 130028WC at 28 (June 26, 2014, Opinion Filed); *Mechanical Devices v. Industrial*

Comm'n, 344 Ill. App. 3d 752, 760 (4th Dist. 2003). To show entitlement to temporary total disability benefits, a claimant must prove not only that he did not work, but also that he was unable to work. *Gallentine*, 201 Ill. App. 3d at 887; *see also City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d 1087, 1090 (5th Dist. 1996).

Petitioner claims that he is entitled to TTD benefits from October 25, 2023 through July 26, 2024. (Arb. Ex. #1). Petitioner testified Respondent continued to pay him his full salary from October 25, 2024, the date of the accident, through November 21, 2023. Petitioner also stipulated to being paid TTD benefits totaling $18,762.50. (Arb. Ex. 1).

As stated above, the Arbitrator found Petitioner condition stabilized as of November 13, 2023, the date Petitioner was released to return to full duty work by his doctor. As such, the Arbitrator finds Petitioner proved by the preponderance of the evidence that he was only entitled to TTD benefits from October 26, 2023 through and including November 13, 2023 but Petitioner was paid the equitant of his full salary during that period, no TTD benefits are due and owning. The Arbitrator further finds Petitioner failed to prove by the preponderance of the evidence that he is entitled to TTD benefits after November 14, 2023 since his condition had stabilized by November 13, 2023 and because his current right knee condition is causally related to the intervening automobile accident of November 14, 2023.

By: /s/ Frank J. Soto
Arbitrator

September 26, 2024
Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC005121
Case Name	Travis Sullivan v. State of Illinois - Pontiac Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0083
Number of Pages of Decision	9
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Alexis Ferracuti
Respondent Attorney	Bradley Defreitas

DATE FILED: 2/25/2025

/s/Carolyn Doherty,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Travis Sullivan,

Petitioner,

vs. NO: 22 WC 5121

State of Illinois - Pontiac Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the 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 October 4, 2024 is hereby affirmed and adopted.

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

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

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

February 25, 2025

O: 02/20/25
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC005121
Case Name	Travis Sullivan v. State of Illinois - Pontiac Correctional Center
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	Alexis Ferracuti
Respondent Attorney	Bradley Defreitas

DATE FILED: 10/4/2024

/s/Maureen Pulia, Arbitrator

Signature

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

INTEREST RATE WEEK OF OCTOBER 1 2024 4.215%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

TRAVIS SULLIVAN,
Employee/Petitioner

v.

Case # **22** WC **5121**

Consolidated cases: _____

STATE OF ILLINOIS-PONTIAC CORRECTIONAL CENTER,
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 **Maureen Pulia**, Arbitrator of the Commission, in the city of **Bloomington**, on **9/16/24**. By stipulation, the parties agree:

On the date of accident, **12/28/21**, 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 $**80,152.65**, and the average weekly wage was $**1,541.40**.

At the time of injury, Petitioner was **45** years of age, ***married*** with **one** dependent children.

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

Respondent shall be given a credit of $**00.00** for TTD, $**00.00** for TPD, $**00.00** for maintenance, and $**00.00** for other benefits, for a total credit of $**00.00**.

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 $**924.84**/week for a further period of **53.75** weeks, as provided in Section **8(e)11** of the Act, because the injuries sustained caused **petitioner a 25% loss of use of his left foot**.

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.

Maureen H Pulia **OCTOBER 4 2024**

Signature of Arbitrator

ICArbDecN&E p.2

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 45 year old Correctional Maintenance Craftsman, sustained an injury to his left foot that arose out of and in the course of his employment by respondent on 12/28/21. Petitioner denied any problems with his left ankle prior to 12/28/21.

On 12/28/21 petitioner was in the lowest level of the east cell house subtunnel. He testified to get down there he had to go down a ladder. At the bottom of the ladder was a three inch hose. As petitioner stepped off the ladder he stepped on the hose with his left foot and rolled his left ankle. He stated that he heard a pop and could not stand on his left foot. Petitioner then climbed back up 2 ladders to exit the subtunnel and get out of the building. Petitioner complained of pain in his left ankle.

Petitioner presented to the emergency department at OSF Saint James that same day. Petitioner provided a consistent history of the accident. Petitioner noted that he rolled his left ankle after climbing down from a ladder. He did not fall to the ground or hit his head. His primary pain was over the lateral malleolus. He denied any numbness or tingling. Following an x-ray that revealed no acute findings and an examination, petitioner was diagnosed with a sprain of the left ankle. He was placed in a boot and given crutches. He was told to follow up with his primary care physician.

On 1/5/22 petitioner presented to OSF Occupational Health-Pontiac. He gave a consistent history of the accident and his treatment to date. He reported that his pain had declined since the accident. An examination revealed bruising and swelling. He was diagnosed with a strain of the muscles and tendons in the left ankle; pain in the left ankle and joints; an ankle sprain and strain; and, pain the ankle and foot joint. Petitioner was given an ankle stabilizer (lace-up) brace. He was also given restrictions of weight bearing as tolerated; sit down work only; and, crutches as needed. Petitioner was referred to Dr. Leonard.

On 3/2/22 petitioner presented to Dr. Marc Leonard, a podiatrist at OSF Glen Park. Petitioner complained of ongoing left ankle pain since the injury. He rated it at a 2/10. He reported that his only treatment had been a boot walker and a brace. He stated that he felt better in a boot walker. He noted that he was taking some anti-inflammatories. X-rays of the left ankle showed severe lateral soft tissue swelling with some joint effusion, but no acute fracture or subluxation in the left ankle. Dr. Leonard prescribed Naprosyn, and sent petitioner for a course of physical therapy. He also ordered an MRI, and restricted petitioner to sedentary work.

Petitioner returned to Dr. Leonard on 4/6/22 still wearing the boot walker. He reported that the anti-inflammatories were helping, and he had 35% improvement overall. Following an examination, Dr. Leonard assessed improved left ankle pain. He continued petitioner in physical therapy.

Petitioner followed-up with Dr. Leonard on 4/13/22 for his ongoing left ankle pain. Dr. Leonard reviewed the MRI with petitioner. He discussed the injury to the anterior talofib and the calcaneal fibular ligament; injury to the peroneal retinaculum; and, some tenosynovitis to both the peroneal tendons and the tibialis posterior tendon. Dr. Leonard assessed ongoing left ankle pain, a tear of the anterior talofib, and a partial tear of the calcaneal fib ligament. He thought it was a little early for surgery. He continued petitioner in physical therapy, and told him he could return to work in the boot, and work as tolerated.

On 10/11/22 petitioner present to Dr. Michael Pinzur at Loyola Medicine for a second opinion. Petitioner reported no lasting improvement in his left ankle since the injury. Dr. Pinzur examined petitioner and noted swelling and fullness in the left peroneal tendons, with full ankle and hindfoot motion. Dr. Pinzur reviewed the x-rays and MRI of the left foot. Dr. Pinzur suspected that petitioner very likely had a peroneal tendon rupture.

On 10/26/22 Dr. Pinzur reviewed the MRI films and noted that it demonstrated signal changes within both the peroneous longus and brevis, consistent with a peroneal tendon rupture. He recommended surgery.

On 2/1/23 petitioner underwent a peroneus longus and brevis tendon repair performed by Dr. Pinzur. Petitioner followed-up post-operatively with Dr. Pinzur.

Petitioner followed-up with Dr. Pinzur post-operatively on 2/14/23, 3/21/23, 4/25/23 and 6/13/23. On 3/21/23 he was walking better in the boot, but continued to have pain when he was weightbearing without the boot. Dr. Pinzur ordered a course of physical therapy. On 6/13/23 Dr. Pinzur noted that the physical therapy had not yet been approved. Petitioner reported some progress. He stated that he was not falling, but did have some episodes where the ankle gives way. He reported improved pain. Dr. Pinzur again ordered a course of physical therapy.

Petitioner underwent a course of physical therapy at ATI from 7/10/23 through 8/25/23.

Petitioner followed up with Dr. Pinzur on 7/25/23. However, the page with the specific details of that exhibit was missing from PX3. It would have been on page 100.

On 8/25/23 petitioner was discharged from physical therapy. Petitioner had no complaints with respect to his left ankle. He also reported that he was performing at his prior level of function. He rated his pain at a 0/10. He stated that he takes ibuprofen and Voltaran at least 1 time a day.

Petitioner last followed-up with Dr. Pinzur on 9/5/23. He reported that he had finished physical therapy and felt like he was capable of attempting to return to work. Petitioner noted that he would attempt to return to full duty work on 9/18/23. Dr. Pinzur released him from care on an as needed basis. He noted that if petitioner had any further issues, he could perform an FCE before letting him return to work.

Petitioner testified that at work he is required to lift over 100 pounds and walk the entire property. Petitioner testified that he can walk and can perform all his daily work activities. However, he noted that the more he uses his left ankle, the more it hurts. He testified that the weather affects it, and the scar itches all the time. He also noted that it swells up. Petitioner testified that he has anti-inflammatory and pain medications that he takes daily.

Petitioner reported that the pain levels in his left ankle depend on his level of activity and the shoes he is wearing. Petitioner stated that he bought taller boots for more support in the left ankle area, to make up for his lack of stability. Petitioner testified that he can climb ladders and run, but noted some difficulty walking on uneven surfaces and squatting. He also noted that stairs can be more difficult. Petitioner noted that he has numbness often in his left ankle, especially if he is crouching. He also reported tingling daily. He stated that does stretches every day to help with the motion of his foot.

Petitioner testified that he is able to perform his activities of daily living, and makes adjustments as needed. Petitioner worries he might take a wrong step and reinjure his foot. Petitioner has resumed racing and riding motorcycles.

With regard to the nature and extent of the injury, the Arbitrator makes the following conclusions of law. In support of this conclusion, the Arbitrator notes the following:

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of §8.1b of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act further provides that "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

With regard to subsection (i) of §8.1b(b), the arbitrator notes that neither party submitted an impairment rating. Therefore, no weight is given to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the arbitrator notes petitioner was a Correctional Maintenance Craftsman on 12/28/21, and was able to return to his regular duty job 9/18/23. Petitioner testified that he bought taller boots for more support in the left ankle area to make up for his lack of stability. Petitioner testified that he can perform all his daily work activities, including climbing ladders. However, he noted that the more he uses his left ankle, the more it hurts. For these reasons, the arbitrator gives greater weight to this factor.

With regard to subsection (iii) of §8.1b(b), the age of the employee, the arbitrator notes petitioner was 45 years old on the date of injury. Given his age, the arbitrator finds the petitioner probably has about 15 years of gainful employment remaining. For this reason, the Arbitrator gives greater weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earning capacity, the arbitrator notes that petitioner testified that he makes more money now than he did on 12/28/21. For this reason, the Arbitrator gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the arbitrator notes that as a result of the injury petitioner sustained left ankle pain, a tear of the anterior talofib, and a partial tear of the calcaneal fib ligament. As a result of this injury, petitioner initially underwent a course of conservative treatment that included physical therapy.

Following this course of failed conservative treatment, on 2/1/23 petitioner underwent a peroneus longus and brevis tendon repair performed by Dr. Pinzur. Post-operatively petitioner underwent a course of physical therapy that concluded on 8/25/23. Petitioner returned to full duty work on 9/18/23.

Petitioner testified that he can walk and perform all his daily work activities. However, he noted that the more he uses his left ankle, the more it hurts. He testified that the weather also affects it, and the scar itches all the time. He also noted that it swells up. Petitioner testified that he has anti-inflammatory and pain medications that he takes daily.

Petitioner reported that the pain levels in his left ankle depends on his level of activity and the shoes he is wearing. Petitioner stated that he bought taller boots for more support in the left ankle area to make up for his lack of stability. Petitioner testified that he can climb ladders and run, but noted some difficulty walking on uneven surfaces, and difficulty squatting. He also noted that stairs can be more difficult. Petitioner noted that he has numbness in his left ankle often, especially if he is crouching. He also reported tingling daily.

Petitioner testified that he is able to perform his activities of daily living, and makes adjustments as needed. Petitioner worries he might take a wrong step and reinjure his foot. Petitioner has resumed racing and riding motorcycles.

For these reasons, the arbitrator gives greater weight to this factor.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner sustained a 25% loss of use of the left foot pursuant to Section 8(e)11 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC017383
Case Name	Emence Julian v. Univ. of Chicago - Ingalls Hospital
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0084
Number of Pages of Decision	16
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Nancy Shepard
Respondent Attorney	Karen Haarsgaard

DATE FILED: 2/26/2025

/s/Carolyn Doherty,Commissioner
Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Emence Julian,

Petitioner,

vs. NO: 23 WC 17383

University of Chicago - Ingalls Hospital,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 16, 2024 is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $33,700.00. 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.

February 26, 2025

O: 02/20/25
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC017383
Case Name	Emence Julian v. Univ. of Chicago - Ingalls Hospital
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Rachael Sinnen, Arbitrator

Petitioner Attorney	Nancy Shepard
Respondent Attorney	Karen Haarsgaard

DATE FILED: 9/16/2024

/s/ Rachael Sinnen, Arbitrator

Signature

INTEREST RATE WEEK OF SEPTEMBER 10, 2024 4.53%

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)

Emence Julian
Employee/Petitioner

v.

University of Chicago – Ingalls Hospital
Employer/Respondent

Case # **23** WC **17383**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Rachael Sinnen**, Arbitrator of the Commission, in the city of **Chicago**, on **7.2.24**. 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, **6.27.23**, 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 $**82,227.60**; the average weekly wage was $**1,581.30**.

On the date of accident, Petitioner was ***52*** 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 **$19,870.30** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$0.00** for other benefits, for a total credit of **$19,870.30.**

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $1,054.20/week for 24 2/7 weeks, commencing June 28, 2023 through August 13, 2023 and September 12, 2023 through January 12, 2024 as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner temporary partial disability benefits of $587.53/week for 1 6/7 weeks, commencing August 30, 2023 through September 11, 2023 as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner directly for outstanding medical services itemized in Petitioner's Exhibits 2 (except dates of service December 28, 2023, January 19, 2024, and February 29, 2024), 3, 5 and 6, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

Respondent shall approve and pay for injection to the lumbar spine and surgery for the cervical spine with necessary post-operative care prescribed by Dr. Mekhail as provided in Section 8(a) and 8.2 of the Act.

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

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

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

Signature of Arbitrator **SEPTEMBER 16, 2024**

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Emence Julian,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 23WC17383
University of Chicago-Ingalls Hospital,	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on July 2, 2024 in Chicago, Illinois before Arbitrator Rachael Sinnen on Petitioner's Request for Hearing pursuant to Section 19b/8a under the Illinois Workers' Compensation Act "Act." Issues in dispute include unpaid medical bills, temporary total disability "TTD" benefits, temporary partial disability "TPD" benefits, Respondent's credit, and future medical treatment. Arbitrator's Exhibit "Ax" 1

Petitioner's Work Accident of June 27, 2023

Emence Julian, Petitioner, was employed by University of Chicago – Ingalls Hospital, Respondent, on June 27, 2023. (T. 12). She worked in Hospice Care as a hospice field nurse and had been there for about a year. (T. 12-13). As a field nurse, her job duties included visiting patients in their homes or in nursing homes, doing wound care, and evaluating medications. (T. 13).

On June 27, 2023, Petitioner was visiting a particular patient that was combative and considered end stage. The patient was confused, and while Petitioner and her daughter were trying to hold her over to do wound care on her back side, she was fighting. Petitioner testified that following this, she began to experience pain in her low back, and later her neck, that progressively got worse as the day went on with other patients. (T. 13- 14). She testified that she notified her assistant director and her director. (T. 14).

Petitioner's Pre-Accident Medical History

Petitioner acknowledged that she had prior work injuries to her low back and neck in 2013, 2020, 2021 and 2022. (T. 16-21). She testified regarding her low back that she had treated previously with physical therapy and medication but never any surgery or injections. (T. 16-17). She believed that her last treatment related to her low back was well over a year or two prior to this injury. She

testified that prior the injury of June 27, 2023, she was working full duty without any pain or restrictions related to her low back. (T. 17-18).

Petitioner testified that regarding her neck, she had a prior injury in 2013 and another sometime more recently in 2021 or 2022. She testified that she had prior treatment to her neck in the form of physical therapy and injections but no surgery. (T. 19). She testified that her injections occurred in 2014 in a series of three. Following these injections, she was able to return to work in a full duty capacity and had not required any injections since that time. She testified that her only treatment for her more recent injury in 2021 or 2022 was physical therapy. Prior to the June 27, 2023 injury, she testified she was working full duty without any pain or restrictions related to her neck. (T. 22).

Petitioner testified that she had one other work-related injury for mental injuries related to a hostage situation in 2014. (T. 43). She testified that she did not have any physical injuries related to that claim and it was not related to her neck or back. (T. 44, 60).

Prior medical records were submitted from University of Chicago, Concentra, Family Christian Health Center, Franciscan Health Olympia Fields, and Advocate Medical Group. (Px. 2, Px. 4, Rx 9, Rx 4, Rx. 5). These records are consistent with Petitioner's testimony of past treatment including consisting of cervical injections in 2013 or 2014 and physical therapy ending in 2022. (Rx. 9; Px. 4).

The only mention of low back or neck pain following her release from Concentra on April 4, 2022 was one visit to the emergency room on December 1, 2022 due to tripping while bringing in her Christmas tree. At that visit, she had left leg pain and back and neck pain. She was given muscle relaxers for pain and to follow up with her PCP if any problems. She did not follow up with her PCP at University of Chicago or Family Christian Health Center following that ER visit though there were office visits during that time. (Px. 2; Rx. 9). Petitioner testified that at the time of her injury on June 27, 2023, she was not having any pain in her low back or her neck. She was not taking any medications and was working full duty. (T. 22-23).

Summary of Medical Treatment and Petitioner's Work Status

Petitioner testified that following her work injury on June 27, 2023, she was advised to go to occupational health. (T. 15). Petitioner saw Dr. Chudgar at Ingalls Occupational Medicine on June 28, 2023. Dr. Chudgar documented a history of injury while positioning a patient that began in Petitioner's low back and was now in her neck and across her shoulders. He noted that she had had similar pain in March of 2022, but it had resolved prior to working for Respondent. He gave her restrictions and prescribed medication. (Rx. 7, pg 7-8).

Petitioner testified that she did not return to work within those restrictions because her pain got worse that night. (T. 16). She testified that she reported the increase in pain to her supervisor, Ms. Eleanor Williams. Petitioner ultimately went to Ingalls Urgent Care on July 2, 2023. She testified that occupational health had advised they would not be able to see her and her pain was so bad that she needed to get in sooner. (T. 23-24). Ingalls Urgent Care documented that she had a back injury with pain in her low back and neck following lifting and taking care of patients. Urgent

Care documented that she was told to return to work but was unable to do so due to pain. They provided medications and advised her to continue with Occupational Health. (Px. 2, pg 892-895).

Petitioner did return to Dr. Chudgar on July 3, 2023. He noted her ongoing pain and recommended an MRI of her cervical and lumbar spine and took her off work. (Rx. 7, pg 10-11). Petitioner underwent both MRIs on July 9, 2023. The MRI of her lumbar spine showed multilevel disc degeneration and spondylosis with moderate spinal stenosis at L4/5 with central disc protrusion and moderate to severe facet arthrosis at L3/4, L4/5, and L5/S1. The MRI of the cervical spine showed a shallow central and slight right paracentral disc protrusion at C6/7. (Px. 2, pg 777, 802).

Petitioner followed up with Dr. Chudgar on July 10, 2023. She had not improved, and her pain was the same. He recommended physical therapy and continued her off work. (Rx. 7, pg 5-6). She began physical therapy at University of Chicago on July 13, 2023. They documented that she had developed pain lifting patients on Jun 27, 2023. They noted that she had prior pain over year ago but no pain prior the events of June 27, 2023. They further noted history of cervical injections in 2014 with resolution of her symptoms at that time. (Px. 2, pg 735).

Petitioner followed up with Dr. Chudgar at Occupational Medicine on July 17, 2023. He recommended that she continue physical therapy and light duty. (Rx. 7, pg 1-2). She testified that on July 19, 2023, she sought treatment with Dr. Mohiuddin at Regenerative Pain and Spine Institute. He noted her work injuries on June 27, 2023, and recommended continued physical therapy but also an epidural steroid injection to C6/7. He continued her off work. (Px. 3, pg 7-11).

Petitioner underwent the injection on August 8, 2023. (Px. 3, pg 14). She testified that she did have relief for a few days but then the pain came back. (T. 27). Petitioner continued in physical therapy at University of Chicago Physical Therapy and followed up with Dr. Mohiuddin on August 11, 2023. He recommended continued physical therapy and medication. (Px. 2; Px. 3, pg 19-22).

Petitioner testified that around this time she resigned from her employment with Respondent. (T. 28; Rx. 3). She testified that she resigned her position because she was offered a job at Elara Caring that was a sit down only position that she felt she could do without risk of re-injury. This job involved calling hospitals and verifying patient's information. (T. 28). She testified that when she changed jobs her pain had not resolved. She testified that ultimately, she was unable to successfully work in that position because she was having increased pain from sitting and being on the phone. (T. 29).

Petitioner followed up with Dr. Mohiuddin on August 30, 2023. (Px. 3, pg 25). She testified that she discussed her new job with him and her symptoms. (T. 29). He recommended restrictions of only working four hours a day. (Px. 3, pg 30). She testified that her new employer accommodated those restrictions. (T. 30). Dr. Mohiuddin further recommended continuing her physical therapy and a second injection. (Px. 3, pg 29). Petitioner testified that she was not able to have that injection. (T. 30).

Petitioner followed up with Dr. Mohiuddin on September 12, 2023. He noted that he continued to recommend the epidural steroid injection. He also recommended continued physical therapy.

He referred her to spine specialist for further work up. He also took her off work altogether. (Px. 3, pg 31-35). Petitioner continued her physical therapy at University of Chicago Physical Therapy but testified that at some point further sessions were denied by workers' compensation. (T. 31, Px. 2).

Petitioner saw Dr. Anis Mekhail at Parkview Orthopedics on October 2, 2023. Dr. Mekhail took a consistent history of accident and also acknowledged Petitioner's prior problems. He noted that she attempted to work restricted duty but was unable to continue and had been taken off work by Dr. Mohiuddin. He reviewed the MRIs and recommended the injections. (Px. 5, pg 11-12). Petitioner followed up with Dr. Mohiuddin and he also continued to recommend the injection and kept her off work. (Px. 3).

Petitioner testified that she went to Stroger Emergency Room on October 12, 2023 for abdominal pain. She testified that she was diagnosed with diverticulitis. (T. 32, Rx. 8).

Petitioner followed up with Dr. Mekhail on October 20, 2023. He noted that she had ongoing pain in her neck and back. He noted that she had not had the injections but that the pain was affecting her quality of life. He recommended a cervical disc replacement surgery as she had a herniated disc with no significant arthritis. He discontinued her NSAIDS due to diverticulitis and recommended a muscle relaxant instead. He continued her off work. (Px. 5, pg 9).

Petitioner followed up with Dr. Mekhail on December 9, 2023. She continued have back pain that was not radicular. He noted a L4/5 tear and recommended injections. Regarding her neck, he diagnosed a right C6/7 disc herniation and continued to recommend surgery. He released to her to return to work with twenty-pound lifting restrictions with the hope she could find a light duty job. (Px. 5, pg 7). Petitioner testified that Dr. Mekhail wanted her to stay off work, but she requested restrictions because her pay was stopped and she needed to find a job. (T. 24).

Petitioner went to University of Chicago Urgent Care on December 2, 2023 due to increases in pain to her lower back, upper back and neck that had worsened over last two weeks when she ran out of tramadol. The records indicate that "patient denies any changes [in] symptoms just reports symptoms are similar to prior to starting tramadol." (Px. 2, pg 296). She was diagnosed with cervical radiculopathy and advised to follow up with neurosurgery. (Px. 2, pg 302).

Petitioner testified that on December 28, 2023, she was in a car accident and went to the University of Chicago Emergency Room. (Px. 2, pg 233). She testified that she was hit from behind while sitting at a light. She indicated that she developed increased pain in her neck and back from this event. She testified that following the emergency room visit, her pain returned to her baseline after approximately a week. (T. 35). The ER documented the car accident and noted that she had prior treatment for these conditions. They advised her to follow up with her doctor. (Px. 2, pg 233-237).

Petitioner testified that she did see her primary care physician, Dr. Ebony Johnson, following this event on January 16, 2024. Dr. Johnson noted that she still had neck and back pain and recommended PT, if pain did not get better, and medication. (Px. 2, pg 34-138). Petitioner did not undergo physical therapy after this event.

Petitioner testified that she was able to find a job within her restrictions with Pediastaff. She began that position on January 13, 2024. (T. 37). She testified that her job duties involved being assigned to a nine-year-old boy. She sits with him while he is in class and follows him to the bathroom. She documents when he has bowel movements and/or vomits. (T. 37). She testified that there was no lifting involved in this job and it is within her restrictions. She testified that she is able to tolerate that position but was no longer in the position as the school year had ended. It was her understanding that it would start up again when the school year started back up. (T. 37). She testified that she is not currently working. (T. 38).

Petitioner testified that she followed up with Dr. Mekhail on May 16, 2024. He had the same treatment recommendations for both her neck and her back. (Px. 5). She testified that she continues have lower back pain if she walks for a long period of time. It will radiate up her back and is going into her tailbone. She testified that her pain is a five out of ten on a daily basis but could go up to ten at its worst. (T. 39). Petitioner testified that regarding her neck she will have pain with lifting certain things and it affects her sleeping at night. She testified that on average her pain is a seven out of ten at night. With medication it can go down to zero out of ten, but at its worst it is a ten out of ten. (T. 41).

Petitioner testified that she wants to undergo the treatment recommendations of Dr. Mekhail including the disc replacement surgery and the injections to her lower back. She testified that following the injury of June 27, 2023, her pain to her neck and her back have never gone away or resolved. (T. 42).

Deposition Testimony of Dr. Mekhail

Dr. Anis Mekhail, also testified via evidence deposition on March 11, 2024. (Px. 9). Dr. Mekhail testified as to his treatment with Petitioner. He noted her history of injury on June 27, 2023 from helping and lifting patients. He noted that she had prior treatment to both body parts in the past. (Px. 9, pg 8). Dr. Mekhail testified that he reviewed the cervical and lumbar MRI films. He noted that she had a C6/7 herniated disc as well as a tear and herniated disc at L4/5. Dr. Mekhail testified that his current recommendation was a cervical spine disc replacement between C6 and C7 due to the neck pain that was going down the right arm. (Px. 9, pg 9-10). He testified he was recommending conservative treatment for the lumbar spine, which include injections related to stenosis. (Px. 9, pg 12).

Dr. Mekhail testified that he reviewed the IME report of Dr. Singh and disagreed with his conclusions. He indicated that he felt Dr. Singh based his opinion on Petitioner's complaints of pain in her whole right arm but then found no evidence of symptom magnification. Dr. Mekhail further noted that Dr. Singh agreed that she had a C6/7 disc protrusion but then felt Petitioner's condition was just a strain despite pain going down the right arm. (Px. 9, pg 15-16). Dr. Mekhail further disagreed with Dr. Singh's opinion that she could return to work full duty. He felt that she was not capable of doing that due to the nature of the LPN position. (Px. 9, pg 17).

Dr. Mekhail testified that it was his opinion that the work injury of June 27, 2023 either caused or aggravated a preexisting herniation in her neck. (Px. 9, pg 18). He testified on cross examination

that he was aware of her prior treatment and symptoms. (Px. 9, pg 19). He felt that if she had continuous pain that was the same prior to the injury as after the injury than the injury did not cause it but based on what Petitioner advised to him, she did not have pain at the time of the injury and was not treating at that time. (Px. 9, pg 20).

Deposition Testimony of Respondent's Section 12 Examiner, Dr. Singh

Petitioner was seen by Dr. Kern Singh at Respondent's request on November 21, 2023 for a Section 12 examination. He issued a report. (Rx. 2). He also testified via evidence deposition on June 4, 2024. (Rx 2).

Dr. Singh took a history from Petitioner, conducted an evaluation, and reviewed the MRI. (Rx. 2, pg 9-10). Dr. Singh noted on evaluation that there were no Waddel findings and no findings of symptom magnification. (Rx. 2, pg 17). Dr. Singh diagnosed Petitioner with a cervical muscular strain and C6/7 disc protrusion. He did not correlate her protrusion with her pain complaints. (Rx. 2, pg 11). Dr. Singh further diagnosed Petitioner with lumbar muscular strain and L4/5 disc herniation. (Rx. 2, pg 12). He did not feel her symptoms correlated to the L4/5 herniation. (Rx. 2, pg 12-13). Dr. Singh testified that he felt his diagnosis of cervical strain and lumbar muscle strain were causally related to her work injury of June 27, 2023. (Rx. 2, pg 17).

Dr. Singh felt that Petitioner was not in need of the surgery recommended by Dr. Mekhail and had reached maximum medical improvement related to her cervical spine. He based that opinion on the fact she had no correlating neurological findings with nonanatomic pain complaints. (Rx. 2, pg 14). He also opined that she had reached maximum medical improvement as it related to her lumbar spine for the same reasons. (Rx. 2, pg 14-15). He felt she had reached maximum medical improvement for both diagnoses "approximately four to six weeks following the date of injury" but could not give an exact date when MMI was reached. (Rx. 2 pg 18). He felt that she could return to work full duty. (Rx. 2, pg 15).

Respondent's Surveillance Footage

Respondent's Exhibit 1 is a CD containing multiple files of dash cam and video footage obtained in April and May of 2024. Respondent presented three separate witnesses from PhotoFax, Inc. (Kenneth Bradshaw, Zach Sutinen, and Alex Logvinovsky) regarding their surveillance efforts.

Each investigator testified that they conducted surveillance for eight hours on each of the dates they were assigned to the case. (T. 76, 81, 85). They each testified that the video submitted included any time they had direct sight of Petitioner. The videos included video of Petitioner walking into and out of store at times carrying small bags. They included video of her driving her car. They further included video of her taking out her garbage, which was composed of one small garbage bag and placing it into her garbage can in her alley. (Rx. 1).

CONCLUSIONS OF LAW

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

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

Petitioner certainly acknowledges and it is confirmed by the medical records that she has had prior medical treatment to both her lumbar spine and cervical spine. Petitioner had injections to her cervical spine approximately 10 years ago following a work injury. She testified and the medical records confirm that these injections resolved her issues and for almost seven years following these injections she did not have any other treatment or ongoing complaints related to her cervical spine. She subsequently did have another work injury involving her cervical spine that resulted in the need for physical therapy, which resolved her complaints. Petitioner has also had physical therapy to her lumbar spine necessitated by another work-related injury. She has had no other treatment to her lumbar spine in the past.

The medical records presented show that Petitioner was released from Concentra on April 22, 2022 related to her most recent work injury following one month of physical therapy. Petitioner testified that following this release she was working full duty with no complaints or symptoms. The Arbitrator notes that Dr. Singh's report references two appointments in May and June of 2023 with Dr. Green but the medical records indicate that this treatment occurred in May and June of 2013 not 2023 and that is simply incorrect in Dr. Singh's report. Even without acknowledging the incorrect dates, Dr. Singh did not relate Petitioner's complaints to a pre-existing condition. He specifically states he did not find a symptomatic pre-existing condition.

The Arbitrator finds that the opinions of Dr. Mekhail are more credible and persuasive then the opinions of Dr. Singh. Dr. Singh found that Petitioner suffered merely a sprain/strain of both her cervical and lumbar spines. He noted the findings on the MRIs but promptly ignored them indicating that her symptoms did not correlate despite finding that she had no signs of symptom magnification or malingering. He declared Petitioner was at MMI and able to return to work full duty while acknowledging all of her pain complaints.

Dr. Mekhail's opinions are more credible, taking into consideration the exam and MRI findings and correlating them to Petitioner's complaints of ongoing pain. He acknowledged that Petitioner had prior history of injury to her lumbar and cervical spines but credibly opines that either the accident caused her herniations or aggravated them to the point she needs the ongoing treatment. There is no evidence that her pain resolved following this injury.

The Arbitrator takes into consideration Respondent's surveillance footage but does not find it significant enough to defeat Petitioner's claim.

Based on the record as a whole, the Arbitrator finds that Petitioner's current condition of ill-being ***is*** causally related to the injury.

Issue J, whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

The Arbitrator finds that the medical services provided to Petitioner have been reasonable and necessary to treat her condition that is related to the injury of June 27, 2023. The Arbitrator relies on the medical records and the opinions of Dr. Mekhail over those of Dr. Singh.

Therefore, relying on the record as a whole, the Arbitrator finds that the Respondent shall pay pursuant to the Illinois Workers' Compensation Fee Schedule, as provided by Section 8(a) and 8.2, the medical bills of:

- University of Chicago Medicine for all dates of service provided in Petitioner's Exhibit 2 but for December 28, 2023 (the unrelated MVA); January 19, 2024 (unrelated blood work), and February 29, 2024 (unrelated eye issues)
- Regenerative Pain & Spine for all dates of service provided in Petitioner's Exhibit 3
- Parkview Orthopedic Group for all dates of service provided in Petitioner's Exhibit 5
- Premier Healthcare Services for all dates of service provided in Petitioner's Exhibit 6

Issue K, whether Petitioner is entitled to any prospective medical care, the Arbitrator finds as follows:

Having found Petitioner's condition of ill-being causally related to the accident, the Arbitrator continues to rely on the opinions of Dr. Mekhail over those of Dr. Singh in finding that Petitioner is entitled to prospective medical care.

Respondent shall approve and pay for injections to the lumbar spine and surgery for the cervical spine with the necessary post-operative care prescribed by Dr. Mekhail as provided in Section 8(a) and 8.2 of the Act.

Issue L, whether Petitioner is entitled to temporary total disability and temporary partial disability benefits, the Arbitrator finds as follows:

Temporary total disability "TTD" benefits

Respondent agrees that Petitioner is entitled to TTD benefits from July 4, 2023 through August 13, 2023. However, Petitioner claims entitlement to TTD benefits for a total of 24 2/7 weeks (July 28, 2023 through August 13, 2023 and September 12, 2023 through January 12, 2024). See Ax 1.

The Arbitrator finds Petitioner is entitled to TTD benefits from June 28, 2023 through August 13, 2023 and then from September 12, 2023 through January 12, 2024. The Arbitrator finds that Petitioner established that she was unable to work due to the injury from June 28, 2023, when she first saw Dr. Chudgar through when she attempted to return to work for Elara Care. The Arbitrator notes that Dr. Chudgar released Petitioner to return to work in a light duty capacity when she first saw him on June 28. However, Petitioner testified that while she was aware that light duty was available, she was unable to work in that capacity due to her pain increasing. She notified her employer that her pain increased and tried to return to Occupational Medicine (Dr. Chudgar) but

they would not be able to see her until Monday. Ultimately, her pain became so severe she went to Urgent Care over the weekend to try and find some relief. Upon her return to Dr. Chudgar on July 3, he took her off work altogether.

Further, Petitioner credibly testified that she attempted to return to work in a lighter capacity with Elara Care following her epidural steroid injection thinking that she would be able to tolerate a sit-down position at that time. Unfortunately, she was not and in attempt to keep her working, Dr. Mohiuddin restricted her to four hours a day only. Her new employer was able to accommodate to those restrictions. (T. 7-8). Unfortunately, Petitioner testified that even the restrictions were not enough as her pain continued to increase, and ultimately, Dr. Mohiuddin took her off work all together on September 12, 2023.

"The determinative inquiry for deciding entitlement to TTD benefits, [is] whether the claimant's condition has stabilized. If the injured worker is able to show that he continues to be temporarily totally disabled as a result of work-related injury, the employee is entitled to TTD benefits." *Interstate Scaffolding v. Illinois Work Comp Com'n,* 236 Ill.2d 132, 150 (2010).

Here, Petitioner attempted to find work that she would be capable of performing within the restrictions of her doctor. She was unable to tolerate the position and was taken off work altogether. Whether or not Respondent had light duty work at that point does not bar Petitioner from receiving TTD benefits. Petitioner was off work and remained disabled per her doctor. Once she was released to be put back on restrictions, she found work within those restrictions starting on January 13, 2024.

Therefore, the Arbitrator finds Respondent liable for 24 2/7 weeks of TTD benefits (June 28, 2023 through August 13, 2023 and September 12, 2023 through January 12, 2024) at a weekly rate of $1,054.20.

The Arbitrator will address Respondent's credit for any TTD paid in Issue N below.

Temporary partial disability "TPD" benefits

Further, Petitioner is entitled to TPD benefits from August 30, 2023 through September 11, 2023 (1 6/7 weeks) when she was working four-hour days. Petitioner provided paychecks from Elara Caring documenting that she was making $35.00 per hour.

At four hours a day, five days a week, this would amount to $700.00 per week. The checks overlap with the period she was working full duty. Therefore, using her average weekly wage of $1581.30 and $700.00 per week. Her TPD rate would $587.53 per week. ($1581.30-$700.00 = $881.30 x 66 2/3% = $587.53).

Therefore, the Arbitrator finds Respondent liable for 1 6/7 weeks of TPD benefits (August 30, 2023 through September 11, 2023) at a weekly rate of $587.53.

The Arbitrator will address Respondent's credit for any TPD paid in Issue N below.

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

The parties agree that Respondent has paid a total of $19,870.30 to Petitioner but could not agree what amount was paid for TTD versus what amount was paid towards TPD benefits. Respondent agrees that Petitioner is entitled to some TTD benefits but disputes all TPD. See Ax 1.

Respondent's Exhibit 10 is a ledger of benefits paid but there is no clear indication that any benefits were designated as TPD.

Therefore, the Arbitrator finds that Respondent is due a credit of **$19,870.30** for TTD benefits paid and **$0.00** for TPD benefits paid.

It is so ordered:

Arbitrator Rachael Sinnen

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC032552
Case Name	Todd Griswold v. NCI Painting & Decorating
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0085
Number of Pages of Decision	9
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Mark Weissburg
Respondent Attorney	Paul Dykstra

DATE FILED: 2/27/2025

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TODD GRISWOLD,

Petitioner,

vs. NO: 19 WC 32552

NCI PAINTING & DECORATING,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under Section 19(b) of the Act by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, medical expenses, temporary benefits, vocational rehabilitation, permanent partial disability (PPD) benefits and penalties and attorney fees, and being advised of the facts and applicable law, reverses the Decision of the Arbitrator. The Commission finds that Petitioner sustained a work-related repetitive trauma injury that manifested on December 6, 2017, and that his current condition of ill-being in the left shoulder is causally connected to said injury. The Commission further finds that Petitioner provided timely notice of his injury to Respondent and he is also entitled to certain workers' compensation benefits as detailed below. This cause shall be remanded 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).

FINDINGS OF FACT

Arbitration Testimony/Job Duties/Injury

Petitioner testified that he began working for Respondent in 2015 or 2016 as a painter. He primarily performed commercial work, painting walls, ceilings, steel beams, steel roofs as well as exteriors, and he used various brushes, rollers and extension poles to perform his work. Petitioner testified that most of his jobs required overhead work for which he would also use a ladder or scaffold. He worked at warehouses and when working at hotels, he would be painting "ceiling after ceiling" all day. (T.7-15). Petitioner further explained that when reaching overhead, he would position his left hand over his head as this was more comfortable and gave him better control. He

is right-handed. (T.13). Petitioner typically worked eight hours a day, five days per week with breaks. (T.12; T.31).

Petitioner testified that his left shoulder had bothered him for years but he just dealt with it until about September or October 2017 when his symptoms began affecting his work. (T.13-15). Around November or December 2017, Petitioner had called and informed Todd Benson, the foreman and superintendent, about his shoulder discomfort and that he would be seeing a doctor. (T.15-16; T.18-19). He further testified that his work for Respondent was seasonal and that after his last day on December 22, 2017, he never returned to work for Respondent again. (T.19; T.45). Petitioner denied any improvement in his left shoulder condition. (T.19-20).

Medical Evidence

Petitioner first sought treatment on November 3, 2017 with Dr. Ryan Pizinger at MK Orthopaedics/Illinois Orthopedic Institute. The visit note indicated that Petitioner had a chronic history of left shoulder pain that began in 1991, but his pain had been worsening over the past number of weeks especially with elevation of the arm. It was further documented that Petitioner had been a professional painter for many years and he had not sustained any injury to the shoulder. Dr. Pizinger ordered an MRI arthrogram which Petitioner completed on November 14, 2017. (T.21-22; T.42; PX1; RX2). Petitioner testified that he reviewed the results of the MRI with Dr. Pizinger on December 6, 2017, and Dr. Pizinger believed he needed a shoulder replacement but wanted Petitioner to wait until his later 50s to have the surgery. (T.23-24; PX1). Petitioner was 46 years old in 2017 (DOB: 9/24/1971).

The next visit note was dated January 4, 2018 and stated that Petitioner had undergone a cortisone injection on December 6, 2017 which did not reduce his pain. (T.24; PX1). The visit note also stated that: "[H]e is a painter and was layed-off [sic] right before Christmas. Is content with that and understands that he needs to find a different career path in order to continue living with his condition." (PX1). Petitioner did not want to pursue further treatment as of January 4, 2018. He had indicated that his pain was bearable and that he was going to try and manage his condition by doing different work. His diagnoses were left shoulder moderately severe degenerative joint disease, SLAP tear and type 3 acromion with impingement. (T.23; PX1). Dr. Pizinger's Nurse Practitioner advised Petitioner to return on an as-needed basis and she prescribed medication for inflammation and pain. (PX1).

Petitioner returned to Dr. Pizinger's office on October 11, 2019 and reported constant aching and sharp left shoulder pain especially when he moved his arms upward. The visit note stated that Petitioner's pain had never really gone completely away and noted Petitioner's 20-plus years as a painter. "During that time, he had progressively worsening pain in the shoulder and has actually switched jobs due to the fact that the shoulder pain was reaching more significant levels." (T.21; PX1). Dr. Pizinger recommended medication and another MRI in order to determine the appropriate surgical intervention. He opined: "I do believe that his job as a painter for 20 plus years is causally related to his current underlying diagnoses and the significant wear and tear on his shoulder specifically including the arthritic change and SLAP tear." (PX1). He continued with: "Given his young age, significant wear and tear on the joint could be causally related to the repetitive activities of a painter. This is based on my clinical experience and opinion." (PX1).

Petitioner had not proceeded with any surgery as of the arbitration date but confirmed that he wanted to proceed with treatment. The last time Petitioner treated for his left shoulder was in October or November 2022. There were no new recommendations. (T.29). Petitioner reiterated that the gap in treatment was due to his attempt to mitigate his shoulder condition "on the work side and that I'm too young for the surgery. So there's - - [Dr. Pizinger] did not recommend physical therapy. So there's really no follow-up." (T.28).

Respondent sent Petitioner for a Section 12 examination on May 3, 2021 with Dr. Michael Bryan Neal, a board-certified orthopedic surgeon. (T.43; RX1, pg. 5). He had prepared two Section 12 reports dated May 10, 2021 and June 3, 2021. The parties took his deposition on March 1, 2022. (RX1, pgs. 18-25; Dep. Exs. 2 and 3). Dr. Neal noted that Petitioner was right-hand dominant and was working without restrictions as a technician inspecting buses. His previous employment included being a motorcycle mechanic and professional painter. (RX1, pgs. 9-10). Petitioner reported having left shoulder arthritis and pain for 10 to 15 years and denied any discrete injury to his shoulder. (RX1, pgs. 10-11). Petitioner believed that his current left shoulder symptoms were due to the number of years he spent performing repetitive activities as a painter. Dr. Neal testified regarding Petitioner's treatment to date and his own physical examination findings. (RX1, pgs. 11-13). He diagnosed Petitioner with severe, advanced, end-stage left shoulder degenerative osteoarthritis or severe bone-on-bone arthritis of the shoulder. (RX1, pg. 13; pg. 45). Dr. Neal noted no acute findings on the November 14, 2017 MRI of the left shoulder. (RX1, pgs. 13-14).

Dr. Neal opined that Petitioner's work as a painter, specifically from August 2017 to November 2017, did not cause nor aggravate his left shoulder osteoarthritis. Dr. Neal testified that Petitioner's arthritis was due to his genetics and any pain that Petitioner had in his left shoulder while painting, especially between August to November 2017, was only a temporary exacerbation of his pre-existing arthritis. (RX1, pgs. 14-15). Dr. Neal also added that if a condition was work-related, "you should expect it to be more often in the dominant arm." (RX1, pgs. 16-17). Dr. Neal did not recommend any work restrictions but believed Petitioner would require treatment for his left shoulder depending on his symptoms. He clarified that any need for treatment would not be related to his activities for Respondent. (RX1, pgs. 17-18).

During cross-examination, Dr. Neal agreed that Petitioner's left shoulder condition had been worsening between August and December 2017. (RX1, pgs. 27-28). He later added: "That is not inconsistent with the natural course of arthritis which can suddenly at the end, as I say, fall off a cliff." (RX1, pg. 49). Dr. Neal also referenced a visit note from Dr. Pizinger's office dated December 6, 2017. He did not agree that Petitioner had impingement but agreed with the other diagnoses of moderate severe degenerative joint disease, a SLAP lesion and type 3 acromion. (RX1, pgs. 28-29). Dr. Neal again indicated that genetics and arthritis played a role in these conditions. (RX1, pgs. 28-31).

Dr. Neal's testimony regarding Petitioner's job activities as a painter was consistent with Petitioner's description at arbitration. (RX1, pgs. 34-35). He conceded to not knowing the frequency in which Petitioner used rollers, brushes or sprayers at work, and he did not know how many times in an hour Petitioner would have to actively flex or extend his left arm while using each tool. (RX1, pg. 35). Notwithstanding, Dr. Neal indicated that he did not require this

information in order to render his causation opinion. (RX1, pg. 36). He also stated that Petitioner's condition would not have been as severe had he had a job that required no use of the left arm, and further admitted that arthritis could wear parts of the joint quicker. Dr. Neal still opined, however, that Petitioner's work as a painter did not aggravate or accelerate his left shoulder condition. (RX1, pgs. 36-37; pgs. 39-44).

The parties also took Dr. Pizinger's deposition on February 24, 2023, and he too is a board-certified orthopedic surgeon. (PX2, pg. 5). He testified consistent with Petitioner's medical records from his office and added that while he agreed that Petitioner had a long-standing, pre-existing condition in his left shoulder, he disagreed that his symptoms were only a temporary manifestation. "I've treated this gentleman for years and it has been a progressive process. The thing that's missing here is the fact that, yes, it's a degenerative condition, but it's a resultant wear and tear on the joint from prolonged heavy use of the shoulder and over his employment." (PX2, pgs. 11-14).

Arbitration Testimony (continued)

Petitioner testified that he obtained a job as a motorcycle mechanic with Conrad's Harley Davidson after he stopped working for Respondent. (T.25-26). He denied experiencing the same type of shoulder strain because the work did not require the frequent motions of rolling or overhead work. (T.26-27). Petitioner earned $20.00 per hour, whereas he earned approximately $45.00 per hour with Respondent. He testified that he would now be earning union scale at $51.25. (T.30-31). As of the arbitration date, Petitioner was working for First Student School Bus as a mechanic. He started working for First Student in March 2021. (T.31-32; T.40). Petitioner testified that this job was also less stressful physically than painting and he did not perform the same motions. He earned $25.75 per hour. (T.32; T.40). Petitioner identified Petitioner's Exhibit 3 and Respondent's Exhibit 3, a spreadsheet of his wages and pay stubs, and confirmed that the information was accurate. (T.33; T.44-45; PX3; RX3). He also verified the accuracy of Petitioner's Exhibit 5, an analysis related to temporary partial disability (TPD) benefits. (T.35; PX5).

Petitioner next identified Respondent's Exhibit 4, the employment application for Conrad's Harley Davidson which he completed and signed on January 23, 2018. (T.45-46; RX4). He confirmed that the information in the application was accurate. (T.46; RX4). The application indicated that from July 2009 to June 2010, Petitioner worked as a service helper at Illinois Harley. (T.46-47; RX4). He then worked as a mechanic at Illinois Central School Bus from August 2011 to August 2015 and next as a journeyman painter from August 2015 through December 2017. (T.47; RX4). Petitioner testified that he worked for Conrad's Harley Davidson for three years. (T.48).

As of the arbitration date, Petitioner's left shoulder felt horrible and he had difficulty applying deodorant, sleeping, lifting, playing with his grandkids, reaching out for light switches, reaching out to close the car door when getting in, washing his hair and taking his shirt off – "anything that elevates my arm is painful." (T.37-38).

Respondent called Amanda Erickson to testify at arbitration. (T.49). She had been the workers' compensation insurance adjuster previously assigned to Petitioner's claim. Following objections by Petitioner's counsel related to attorney-client privilege, Ms. Erickson's testimony

was limited to the fact that she had a conversation with Petitioner regarding his claim in January 2020. (T.50-52; T.58-59; T.61-79).

CONCLUSIONS OF LAW

There was no dispute that Petitioner had a long-standing, pre-existing history of left shoulder pain. He alleged a 20-plus year history as a painter and testified that he just dealt with the pain until his symptoms worsened in 2017 while performing repetitive painting activities for Respondent. By this time, Petitioner had worked for Respondent for 1-2 years. The Arbitrator denied Petitioner's claim based in part on finding that Petitioner was not credible with respect to his lengthy history as a painter and noted that the employment application for Conrad's Harley Davidson failed to corroborate Petitioner in this regard. The Arbitrator also relied on the opinions of Dr. Neal, Respondent's Section 12 examiner, to find that Petitioner did not sustain any permanent aggravation of his underlying degenerative disease. The Commission is not bound by the Arbitrator's findings.

The evidence herein demonstrated that Petitioner was a union, journeyman painter who worked in commercial spaces such as warehouses and hotels. He testified as to the objects he painted, the various tools and equipment he used, as well as the techniques applied when painting, including positioning his left upper extremity over his head for better control. The Commission notes no genuine dispute by Respondent regarding what or how Petitioner painted, nor any dispute relative to the repetitive nature of painting itself as alleged by Petitioner. Therefore, not only does the Commission find that Petitioner's testimony sufficiently demonstrated his skills and expertise as a painter, lending credibility to his claim of working as a professional painter for a longer period than what was indicated in the employment application, but the Commission also finds his testimony unrebutted as to how his painting work involved and affected his left shoulder.

At his first medical appointment with Dr. Pizinger, on November 3, 2017, Petitioner indicated that his pre-existing left shoulder pain had been worsening over the past number of weeks. His work as a professional painter was noted as well. Dr. Pizinger agreed that Petitioner's 20-plus years as a painter was related to his current underlying diagnoses and breakdown of his shoulder. He based his opinion on the history and timeline Petitioner provided to him regarding his left shoulder, which the Commission finds consistent with his testimony at arbitration and the medical evidence. Dr. Pizinger also based his opinion on his treatment of Petitioner over the years. He not only noted a progressive process, but explained that by imaging and examination, the left shoulder showed more significant wear and tear than what he would normally expect given Petitioner's age. Dr. Pizinger attributed this wear and tear on the joint to the prolonged, heavy use of the shoulder while painting.

The Commission finds Dr. Pizinger more persuasive than Dr. Neal who only considered a 3 to 4-month period of painting work for Respondent when he opined that Petitioner's current left shoulder condition was not work-related but due to genetics and arthritis. He later acknowledged that Petitioner's pre-existing condition worsened during this period while working for Respondent, and that this would not be inconsistent with the natural course of arthritis which could suddenly "fall off a cliff." The Commission finds Dr. Neal's testimony contradictory to his ultimate causation opinion and thus unreliable.

In light of the foregoing, the Commission weighs the evidence in favor of Petitioner and finds that the preponderance of the evidence supports his claim of a repetitive trauma injury to his left shoulder which manifested while working for Respondent. There was no testimony or evidence to rebut Petitioner's testimony regarding the repetitive nature of his job as a painter, or how his painting activities involved overhead work and the use of his left upper extremity. The medical evidence further established that Petitioner's painting work was a competent mechanism in the eventual breakdown of his pre-existing left shoulder condition, and that this breakdown occurred while performing such work for Respondent.

The Commission next finds that Petitioner's repetitive trauma injury manifested on December 6, 2017. Again, Petitioner reported to Dr. Pizinger on November 3, 2017 that his chronic shoulder pain had been worsening with no specific injury and that he had been a painter for many years. Dr. Pizinger ordered an MRI of the left shoulder and reviewed the results on December 6, 2017. The MRI helped determine Petitioner's diagnoses and treatment plan, and Petitioner proceeded with a cortisone injection on that same day. The Commission thus finds that by December 6, 2017, both the fact of the injury and the causal relationship of the injury to Petitioner's work activities as a painter would have been plainly apparent to a reasonable person. *Peoria Cnty. Belwood Nursing Home v. Indus. Comm'n*, 115 Ill. 2d 524, 531 (1987).

The Commission additionally concludes that Petitioner provided timely notice of his injury to Respondent. Petitioner's unrebutted testimony was that he had informed Todd Benson, the foreman and superintendent, about his injury in November or December 2017. Although the testimony and evidence regarding notice was somewhat deficient, the Act states that "[n]o 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." *820 ILCS 305/6(c)*. Respondent made no claim that it had suffered prejudice or harm by any alleged defective notice.

With respect to workers' compensation benefits, the Commission notes that Respondent, by its Brief and the Request for Hearing form, disputed liability for any such benefits based on its claim that Petitioner failed to prove the issues of accident and causation. Having determined these issues in favor of Petitioner, the Commission first awards the medical charges detailed in Petitioner's Exhibit 4. These charges pertain to Petitioner's treatment with Dr. Pizinger's office which the Commission finds reasonable, necessary and related to Petitioner's work injury to the left shoulder.

The Commission also finds that Petitioner is not entitled to temporary total disability (TTD) benefits. There is no evidence that Dr. Pizinger or any other physician had taken Petitioner off work for any period as a result of his work-related injury. Petitioner, however, did prove his entitlement to temporary partial disability (TPD) benefits. TPD benefits, under Section 8(a) of the Act, are paid in the event the employee is working light duty on a part-time or full-time basis and is earning less than he or she would be earning if employed in the full capacity of his or her job. *820 ILCS 305/8(a)*. Petitioner testified that he attempted to mitigate any worsening of his condition by finding different work with Conrad's Harley Davidson and First Student School Bus wherein he was not required to perform frequent motions with the left shoulder or overhead work. Even

though there were no work status forms in evidence, the medical records from Dr. Pizinger's office corroborated Petitioner's need to find different work that was less stressful physically than painting, especially for his left upper extremity, in order to continue living with his condition. Petitioner additionally submitted his pay stubs from Conrad's and First Student which reflected his diminished earnings from February 10, 2018 through June 2, 2023. (PX5). Based on this, the Commission finds that Petitioner is entitled to TPD benefits and calculates said benefits according to Section 8(a) of the Act which states:

> Temporary partial disability benefits shall be equal to two-thirds of the difference between the average amount that the employee would be able to earn in the full performance of his or her duties in the occupation in which he or she was engaged at the time of accident and the gross amount which he or she is earning in the modified job provided to the employee by the employer or in any other job that the employee is working. *820 ILCS 305/8(a)*.

The parties stipulated on the Request for Hearing form that Petitioner's average weekly wage (AWW) while working for Respondent was $1,308.00 per week. The Commission further notes Petitioner's testimony that he believed he would be earning $51.25 per hour if he had been working for Respondent as of the arbitration date. However, there was no further testimony or evidence regarding this amount nor any information pertaining to the effective date of this rate. As such, the Commission will use the rate of $1,308.00 per week to calculate TPD benefits from February 10, 2018 through June 2, 2023, as did Petitioner in his Exhibit 5. The Commission's review of Exhibit 5 finds that the figures listed are consistent with the pay stubs in evidence from Conrad's and First Student and follows the calculation provided in Section 8(a) of the Act. In line with this evidence, the Commission finds that Petitioner is entitled to TPD benefits from February 10, 2018 through June 2, 2023 in the amount of $68,652.15. (PX5).

Petitioner had also marked on his Petition for Review that he took exception to the issues of vocational rehabilitation and the nature and extent of his disability. Petitioner offered no discussion or arguments related to these issues in his Brief and neither did Respondent. The Commission declines to address these issues at this time, especially considering that this matter was heard pursuant to Section 19(b) of the Act and any determination regarding the nature and extent of Petitioner's disability would be premature.

Finally, the Commission finds that Petitioner is not entitled to an award against Respondent for penalties and attorney fees. Petitioner failed to advance any argument or proofs as to his entitlement to such an award under Sections 16, 19(k) and 19(l) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on April 15, 2024 is hereby reversed for the reasons stated above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the reasonable, necessary, and related medical bills detailed in Petitioner's Exhibit 4 pursuant to Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary partial disability benefits from February 10, 2018 through June 2, 2023, for a total benefit of $68,652.15, pursuant to Section 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 other amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

IT IS FURTHER ORDERED BY THE COMMISSION that 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 $69,400.00. 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 the Circuit Court.

February 27, 2025

CAH/pm
O: 1/30/25
052

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC030430
Case Name	Joshua Smith v. Keystone Automotive Industries Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0086
Number of Pages of Decision	22
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Jill Wagner
Respondent Attorney	G. Steven Murdock

DATE FILED: 2/27/2025

/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 Evidentiary Ruling, Temporary Disability	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOSHUA SMITH,

Petitioner,

vs. NO: 21 WC 30430

KEYSTONE AUTOMOTIVE INDUSTRIES, 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 the admissibility of Respondent's Exhibit 3, whether Petitioner's condition is causally related to his March 31, 2021 accident, entitlement to Temporary Total Disability benefits, and entitlement to incurred medical expenses as well as prospective medical care, and being advised of the facts and law, modifies the Decision as set forth below but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

CONCLUSIONS OF LAW

I. Admissibility of Respondent's Exhibit 3

The record reflects Respondent obtained a §12 examination and record review by Dr. Troy Karlsson on May 22, 2023, and Dr. Karlsson's evidence deposition was taken on October 30, 2023. At the start of Dr. Karlsson's deposition, Petitioner's Counsel raised a *Ghere* objection:

> The IME was completed after the treating physician's deposition had been completed and another IME already done. This is complete surprise testimony. The opinions could not be properly addressed by the treating physician because the deposition had already been completed. RX3, p. 3.

The matter proceeded to arbitration on February 7, 2024 and exhibits were submitted first. When Respondent offered Dr. Karlsson's deposition, Petitioner's Counsel reiterated a *Ghere* objection and the Arbitrator stated she had sustained the objection prior to going on the record:

> Respondent's Counsel: Respondent offers what's been marked as Respondent's Exhibit 3, which is the October 30, 2023 evidence deposition transcript and exhibits of Dr. Troy Karlsson.
>
> Petitioner's Counsel: Petitioner objects to the submission of the IME report and deposition transcript of Dr. Troy Karlsson based on *Ghere*.
>
> The Arbitrator: All right. And having some preliminary discussions prior to the start of the trial, the Arbitrator has weighed in and has sustained the objection, and so Respondent's No. 3 is not admitted into evidence at this time. T. 12-13.

Respondent's Exhibit 3 was accepted as a rejected exhibit but the Arbitrator did not consider Dr. Karlsson's opinions when analyzing the evidence.

On Review, Respondent argues the exhibit was improperly rejected. In its Statement of Exceptions, Respondent details that during the parties' off-the-record pre-hearing discussion with the Arbitrator, Petitioner's Counsel had raised objections under *Ghere* and *Marks*[1], and the Arbitrator rejected Respondent's Exhibit 3 pursuant to *Ghere*. Under *Ghere*, a physician's opinion testimony can be excluded where the proponent of the testimony does not comply with §12's requirement that the report be disclosed no later than 48 hours prior to the arbitration hearing; the purpose of requiring the physician to send a copy of the written report no later than 48 hours before the hearing is to prevent surprise medical testimony. *Ghere v. Industrial Commission*, 278 Ill. App. 3d 840, 845 (4th Dist. 1996). Respondent claims *Ghere* is inapplicable because Dr. Karlsson's report was timely disclosed to Petitioner's Counsel, therefore Respondent did not violate the procedural requirements of §12 nor did it elicit any surprise medical testimony:

> In this case, the Section 12 examination report of Dr. Karlsson was provided to Petitioner's counsel four months prior to Dr. Karlsson's deposition. Dr. Karlsson testified consistently with his findings, statements and opinions contained within the four corners of his report. There was no surprise testimony by Dr. Karlsson in his deposition on October 30, 2023. Respondent's Statement of Exceptions, p. 9.

Respondent argues there is no valid basis to exclude Respondent's Exhibit 3. The Commission agrees.

Initially, the Commission emphasizes the objection was addressed off-the-record, which hinders our consideration of the specific arguments and responses advanced to the Arbitrator. This

[1] *Marks v. ACME Industries*, 02 IIC 0892, found the "hearing" referred to in §12 is the treating physician's deposition. The Commission observes *Marks* was expressly rejected by the Appellate Court in *City of Chicago v. Illinois Workers' Compensation Commission*, 387 Ill. App. 3d 276, 280 (1st Dist. 2008): "Given this court's prior determination that the purpose of section 12 is to prevent surprise medical testimony at the arbitration hearing, the Commission's ruling in *Marks* that the 'hearing' referred to in §12 is the treating physician's deposition is completely at odds with this court's statement of the purpose of §12." (Emphasis added.)

difficulty notwithstanding, our review of the record reveals *Ghere* is not applicable here. Respondent's Counsel asserts, and Petitioner's Counsel does not dispute, that Dr. Karlsson's report was provided to Petitioner's Counsel four months prior to the deposition; therefore, nothing in the record suggests Respondent violated the 48-hour rule. Moreover, although Petitioner's Response argues there was an objection to the §12 exam, we find no evidence of that in the record; rather, the transcript reflects Petitioner appeared at the exam as scheduled and Dr. Karlsson's deposition was subsequently taken "by agreement of the parties." RX3, p. 3. Further, given the timeline of events, the Commission finds it was reasonable for Respondent to obtain an updated opinion based on the new diagnostics and treatment recommendations:

August 29, 2022, Dr. Hythem Shadid's §12 Examination – the most recent treatment note from Dr. Shane Nho available for Dr. Shadid's review is from July 7, 2022, which is prior to any right hip diagnostic workup (RX2);

September 30, 2022 – Petitioner undergoes MRIs of his right and left hips (PX4);

October 3, 2022 – Dr. Nho diagnoses a right hip acetabular tear (PX6);

January 27, 2023, Deposition of Dr. Nho – Dr. Nho testifies Petitioner may be a surgical candidate for his right hip (PX7);

February 1, 2023 – Petitioner files an Amended Application for Adjustment of Claim adding right hip to the affected body parts; and

May 22, 2023, Dr. Karlsson's §12 Exam.

To be clear, the right hip MRI and surgical recommendation did not occur until after the first §12 examination, and Respondent obtained Dr. Karlsson's opinion shortly after Petitioner amended his Application for Adjustment of Claim to include his right hip. Finally, the Commission is not persuaded by Petitioner's Counsel's contention that Dr. Nho was unable to comment on Dr. Karlsson's opinions. We note this is not an unusual sequence of events in a disputed claim and there are multiple avenues whereby a treating physician can comment on a §12 report.

The Commission finds Respondent's Exhibit 3 was improperly rejected. The Commission admits Respondent's Exhibit 3 into evidence. Given this ruling, a reanalysis of causal connection, incorporating Dr. Karlsson's opinions, is required.

II. Causal Connection

To establish causation under the Act, a claimant must prove only that some act or phase of his or her employment was a causative factor in the ensuing injury. *Land and Lakes Co. v. Industrial Commission*, 359 Ill. App. 3d 582, 592 (2nd Dist. 2005). *See also Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 205 (2003). Resolution of the causation dispute herein requires us to consider the conflicting opinions of Respondent's experts, Dr. Shadid and Dr. Karlsson, and Petitioner's treating surgeon, Dr. Nho. We stress, however, that contrary to Respondent's emphasis on there being "two to one" opinions in its favor, the weight to be accorded medical opinion evidence is not simply a matter of adding up the number of experts. *Cinch Manufacturing Corp. v. Industrial Commission*, 393 Ill. 131, 134 (1946) (holding that the weight

of the evidence in a workers' compensation case does not lie with the party producing a greater number of expert witnesses on its behalf); *ABF Freight System v. Illinois Workers' Compensation Commission*, 2015 IL App (1st) 141306WC, ¶ 22 (holding that the number of witnesses testifying to a particular fact is not controlling). Rather, our analysis focuses on the merits of the individual opinions. With this in mind, we turn to the opinions at issue.

In his August 29, 2022 §12 report, Dr. Shadid opined Petitioner sustained a left gluteus contusion and hematoma that had resolved within six weeks of the accident. RX2. Dr. Shadid believed Petitioner's mechanism of injury was inconsistent with a labral tear to the acetabulum; the doctor instead felt the MRI findings were chronic and Petitioner's complaints were related to his pre-existing degenerative joint disease/osteoarthritis. RX2. Dr. Shadid concluded Petitioner had reached maximum medical improvement as of May 12, 2021. RX2.

In his May 22, 2023 §12 report, Dr. Karlsson likewise denied causal connection. Dr. Karlsson diagnosed osteoarthritis of the bilateral hips. Regarding Petitioner's left hip, Dr. Karlsson did not find the mechanism of injury consistent with a labral tear and instead opined the March 31, 2021 accident only resulted in a contusion and hematoma requiring four to eight weeks of physical therapy. RX3, DepX2. As to Petitioner's right hip, Dr. Karlsson denied the existence of a labral tear: "There is no evidence of labral tear on MRI. He does have femoral acetabular impingement, which is not related to any injury or overuse, but is related to his own anatomy." RX3, DepX2. During his deposition, Dr. Karlsson explained he believed Petitioner's left hip condition and need for surgery was not related to the March 31, 2021 accident because the MRI findings were longstanding:

> …my opinion is that it is not related because of the chronic structures that are there that cause impingement and cause labral tears without trauma. The fact that his MRI, in addition to seeing the cam deformity, also showed that there was a perilabral cyst, which is something that takes a long time to develop, six months or more, usually six months to a year after having a labral tear. RX3, p. 22.

Dr. Karlsson further testified the findings listed on the right hip MRI report were chronic and therefore unrelated to the work accident, and disagreed that Petitioner's right-sided complaints were related to overuse compensating for the left hip injury. RX3, p. 27-29.

Dr. Nho, in turn, concluded Petitioner's condition is causally related to the March 31, 2021 accident. The treating records reflect Dr. Nho first evaluated Petitioner on July 1, 2021; Petitioner complained of left hip pain in the groin/lateral hip since falling out of a truck, hitting a metal hitch, and landing on the ground on March 31, 2021. PX6. On examination, Dr. Nho noted antalgic gait, decreased strength, as well as positive subspine, trochanteric pain sign, FABER, and FADIR tests; on review of the June 8, 2021 left hip MRI images, Dr. Nho identified "acetabular labral tear and reconfirms [femoral acetabular impingement]." PX6. Dr. Nho recommended surgery, which was performed on August 6, 2021. PX6. During his deposition, Dr. Nho testified the left hip surgery was successful, and after an FCE indicated Petitioner was capable of 100 percent of his job duties, he released Petitioner to full duty on March 28, 2022. PX7, p. 14. Dr. Nho then explained, however, Petitioner returned for re-evaluation on May 23, 2022 and reported increased symptoms:

> He says that he started working for about one and a half months and reports that he is still having issues with pain and weakness. He works as a delivery driver. He

> says it bothers him with extended sitting staying the same in severity over the past couple of months. PX7, p. 15.

Dr. Nho recommended a cortisone injection, which was administered on June 13, 2022. PX7, p. 16. When Petitioner followed up on July 7, 2022, he reported the injection briefly improved his pain to 3/10 but it had since returned to 6/10; Petitioner also reported having "a pop last week and had pain." PX7, p. 16. Dr. Nho testified Petitioner reported increased pain and weakness in both hips on August 4, 2022, so he recommended further workup with MRIs. PX7, p. 17. Dr. Nho subsequently reviewed MRIs of the right and left hips, and he explained the right hip scan revealed a hip labral tear and confirmed femoral acetabular impingement. PX7, p. 20. Dr. Nho opined Petitioner's "right hip became symptomatic as a result of overcompensation for ongoing left hip complaints." PX7, p. 21. Dr. Nho provided the basis of his opinion:

> So, you know, again, he has underlying femoral acetabular impingement in both hips. And initially he had been doing well following his left hip surgery until he had returned to work. And at this point it seemed like he was having worsening and ongoing left hip pain. Obviously we try to treat it with conservative measures. And once the pain begins then continues, patients sometimes might develop worsening mechanics, sometimes limping and favoring the opposite side. So in this case if the left side was the problematic side, the right side could then bear more weight, require more strength, require more use of that side in order to go about, like, either occupational demands or even day-to-day demands at home. PX7, p. 22-23.

Dr. Nho confirmed his opinion is Petitioner's left and right hip conditions and need for treatment are causally related to the March 31, 2021 accident. PX7, p. 26-27. Dr. Nho then specifically addressed the contrary conclusions reached by Respondent's expert and explained his disagreement. Dr. Nho detailed that the suggested diagnosis of resolved gluteus contusion and hematoma was negated by Petitioner's ongoing complaints as documented in the medical records: "Generally speaking, those are self-limited and would get better in the order of days or weeks. And clearly he's had persistent pain symptoms since the date of the injury." PX7, p. 27. Dr. Nho further clarified that Petitioner's fall from the truck is one of "a number of different mechanisms" of injury that are competent causes for a left hip labral tear. PX7, p. 28-29. Additionally, Dr. Nho testified overcompensation injuries to the contralateral side are relatively common, occurring in 30-40 percent of patients. PX7, p. 30.

Having considered the competing medical opinions, the Commission finds Dr. Shadid's and Dr. Karlsson's left hip opinions unpersuasive. While both Dr. Shadid and Dr. Karlsson felt Petitioner suffered a minor contusion that resolved within six to eight weeks, the Commission observes the records from Respondent's company clinic establish that at the six-week mark, Petitioner had continuing complaints rated at 7/10; as of May 26, 2021, the clinic treater concluded Petitioner's ongoing symptoms warranted workup with MRIs of the lumbar spine and left hip, and he continued to authorize Petitioner off work. PX3. On review of the June 8, 2021 MRI, Petitioner was referred "for ortho consultation regarding findings on left hip MRI." PX3. Pursuant to that referral, Petitioner was evaluated by Dr. Robert Strugala on June 28, 2021; Dr. Strugala reviewed the MRI, identified "what appears to be a tear of the left hip labrum," and recommended consultation "with a hip specialist for consideration of hip arthroscopy." PX5. Petitioner consulted with Dr. Nho three days later and Dr. Nho echoed the prior MRI interpretations: "MRI reviewed, shows acetabular labral tear." PX6. In the Commission's view, Dr. Shadid's and Dr. Karlsson's

left hip opinions are contradicted by the medical evidence and are not credible.

Turning to Dr. Karlsson's right hip opinions, the Commission again finds the doctor's conclusions lack credibility. The Commission finds it significant that Dr. Karlsson was not provided with the MRI films, but instead reviewed only the reports of the 2021 and 2022 MRIs. RX3, DepX2; RX3, p. 14. While Respondent derides Dr. Nho for being the only doctor to identify a labral tear on the right hip MRI, the Commission emphasizes Dr. Nho is the only orthopedic surgeon to review the 2022 MRI images. As such, we conclude Dr. Nho's independent interpretation of the scans is more persuasive and credible than Dr. Karlsson's mere recitation of the report. The Commission finds Dr. Karlsson's right hip causation opinion is entitled to little weight. *See Sunny Hill of Will County v. Illinois Workers' Compensation Commission*, 2014 IL App (3d) 130028WC, ¶ 36 (Expert opinions must be supported by facts and are only as valid as the facts underlying them.)

The Commission finds Dr. Nho's opinions are credible and corroborated by the medical evidence. As detailed above, our review of the record establishes Petitioner had significant complaints and physical examination findings well beyond the eight-week MMI date alleged by Drs. Shadid and Karlsson. Moreover, while Dr. Nho did release Petitioner on March 28, 2022, the Commission emphasizes that Petitioner returned to Dr. Nho with worsening complaints in under two months, which, in the Commission's view, constitutes a failed return to work. The Commission further notes Dr. Nho is the only physician to review the images from all the diagnostic scans and also have the benefit of a visual inspection intraoperatively; as such, we conclude Dr. Nho's assessment of Petitioner's bilateral hip pathology as well as his determination that Petitioner's right hip deteriorated as a result of overcompensating for the left hip injury are entitled to significant weight and very persuasive.

The Commission finds the preponderance of the credible evidence, including Petitioner's testimony, the treating records, and Dr. Nho's opinions, establishes Petitioner's current hip conditions remain causally related to the accident.

III. Correction

The Commission observes the TTD benefit rate identified in the Decision is incorrect. The Decision awards benefits at $425.33, however Petitioner's stipulated average weekly wage of $562.87 yields a TTD rate of $375.25 ($562.87 / 3 x 2 = $375.25). The Commission corrects the Decision to reflect a TTD rate of $375.25.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 22, 2024, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $375.25 per week for a period of 75 4/7 weeks, representing August 28, 2022 through February 7, 2024, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b), this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of $4,683.70 for medical expenses, as provided in §8(a), subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for hip treatment as recommended by Dr. Shane Nho, 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 $33,200.00. 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.

February 27, 2025

/s/ *Raychel A. Wesley*

RAW/mck

O: 1/29/25

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC030430
Case Name	Joshua Smith v. Keystone Automotive Industries Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Crystal Caison, Arbitrator

Petitioner Attorney	Jill Wagner
Respondent Attorney	G. Steven Murdock

DATE FILED: 5/22/2024

/s/Crystal Caison, Arbitrator
Signature

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Joshua Smith
Employee/Petitioner

v.

Keystone Automotive Industries Inc.
Employer/Respondent

Case # **21** WC **030430**

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 **Crystal L. Caison**, Arbitrator of the Commission, in the city of **Chicago, Illinois**, 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. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

FINDINGS

On the date of accident, **3/31/21**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**29,269.24**; the average weekly wage was $**562.87**.

On the date of accident, Petitioner was **30** 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 $**0.00** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

ORDER

The Arbitrator finds that the Petitioner has met his burden of proving that his current condition of ill-being, as it relates to his right hip, is causally related to the work accident of 3/31/21.

The Arbitrator orders the Respondent to pay reasonable and necessary and related medical charges for treatment, as provided in Sections 8(a) and 8.2 of the Act, and more specifically to:

1. American Diagnostic MRI ($4,500)
2. Midwest Orthopaedics at Rush ($183.70)

Petitioner is entitled to prospective medical, as recommended by Dr. Nho, under Section 8(a) of the Act, and therefore, Respondent is responsible for authorizing and paying for same.

Respondent shall pay Petitioner temporary total disability benefits of $**425.33**/week for **75 4/7** weeks, commencing August 28, 2022 through February 7, 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 — May 22, 2024

Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Joshua Smith	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 21WC030430
Keystone Automotive Industries Inc.	)	
	)	
	)	
Respondent.	)	

PROCEDURAL HISTORY

This matter proceeded to hearing on February 7, 2024 before Arbitrator Crystal L. Caison. Issues in dispute include causal connection, medical bills, prospective medical care and temporary total disability (TTD) benefits, (AX 1).

Petitioner raised a *Ghere* objection to Respondent's Exhibit 3 (RX 3), the deposition transcript of Respondent's Section 12 Examiner, Dr. Troy Karlsson, along with the exhibits attached to that transcript. The Arbitrator sustained that objection and Exhibit RX 3 was rejected but has been included as part of the trial record (RX 3) Respondent reserved the right to respond to the *Ghere* objection on appeal.(T. 13)

THE ARBITRATOR MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner's Testimony

On March 31, 2021, Petitioner, Joshua Smith was a 30-year-old man who worked as a delivery driver for Respondent, Keystone Automotive Industries Inc. (T. 18) Petitioner delivered car parts around Illinois and the surrounding states. (T.19) He was required to drive to the delivery location, lift and unload the products himself, and drive back to complete the delivery. *Id.* He

drove alone and did not have any co-worker help him while driving or delivering the products. (T. 19-20) He worked 30-40 hours per week. (T. 20)

On March 31, 2021, Petitioner was making a delivery with a rental truck because his usual truck was broken down. (T. 21) While making a delivery, he stepped down out of the truck and fell approximately 5-6 feet, hitting the metal hitch on the way down and landing on the concrete, hurting his back and left hip. (T. 22) He immediately called his supervisor, Steve. An ambulance was called. *Id.* He was taken to AMITA Health & St. Mary's Hospital. (T. 22-23)

Petitioner testified that he returned to work full duty with the Respondent and was given longer routes, specifically to Peoria, Springfield, and Iowa. (T. 29) He testified that he was expected to complete his pre-injury duties, including all lifting, and unloading, in addition to the driving. *Id*. While completing his duties for the Respondent, he testified that he experienced extended sitting and driving in order to complete these routes. (T. 31) He said that he would only make minimal stops to use the restroom while completing his driving routes. *Id*. Petitioner testified that after returning to full duty work and completing these duties, his pain returned in his left hip. (T. 33) He testified that there was no intervening accident after he returned to work such as a car accident, an incident at home, or a sports accident as he was not playing sports. (T. 33, 36)

Petitioner testified that the right hip pain began when he was working light duty and "bending down to grab something and felt something…stabbed [him] in the right hip." (T. 34) He further testified he was hesitant with his left hip during and after his treatment and favored his right hip. (T. 36- 37) Petitioner said, "From the beginning, because with so much pain, I always put pressure on my right." *Id*. at 37. He testified that it also affected his gait in that it caused him to walk with a limp since he leaned towards his right. *Id.* He was given crutches following his left hip surgery, and he would lean to the right while using them as well. *Id*. at 37-38. He said that he did this the entire time he was treating for his left hip, including while he was working, and while at home. *Id*. at 37. He testified that he had no other injury to his right hip other than the work injury. *Id*. at 38-39.

Petitioner testified that he never hurt either hip, had treatment to either hip, or had any knowledge of any prior medical condition to either hip before March 31, 2021. (T. 38-39) As of the date of trial, his medical bills have not been paid. (T. 39-40) He initially received off work benefits from the Respondent, but he has not received any off-work benefits since being off of work for the right hip. *Id*. at 40. Petitioner testified that as of the date of trial, his left hip pain has

resolved and his right hip pain continues. (T. 39) If the Arbitrator awarded the recommended surgery, he would get the treatment right away. (T. 40)

He testified that his right hip pain is a throbbing pain that physically affects every aspect of his life. (T. 41) He testified that he can no longer play sports with his three children, participate in activities, or be intimate with his wife. *Id.*

Medical Treatment

3/31/21- Petitioner presented to Amita Health where he relayed the same history of injury and was diagnosed with coccydynia and x-rays were taken of the pelvis, sacrum, and coccyx. (PX 2)

4/5/21- Petitioner then followed up with Work Right Occupational Health and was diagnosed with a contusion of the lower back and pelvis, was ordered pain medications, physical therapy, and was taken off work. (PX 3)

4/7/21-9/8/21-Petitioner completed a course of physical therapy at Work Right Occupational Health and continued to treat here with low back and left hip pain every two weeks. (PX. 3)

5/26/21- A left hip MRI was ordered. (PX 3)

6/8/21- The left hip MRI was completed at American Diagnostic MRI and it revealed high grade chondromalacia along the superior left acetabulum with suspicion for a labral tear. (PX 4)

6/9/21-Petitioner was referred to an orthopedic doctor and was continued for physical therapy and off work restrictions. (PX 3)

6/28/21-Petitioner presented to Midland Orthopaedics with Dr. Robert Strugala. (PX 5) Dr. Strugala indicated that the MRI showed a tear of the left labrum and referred him to a hip specialist for consideration of hip arthroscopy and continued his off-work restrictions. *Id*

7/1/21- Petitioner presented to Dr. Shane Nho at Midwest Orthopaedics at Rush. (PX 6) Dr. Nho diagnosed him with an acetabular labral tear and femoral acetabular impingement and recommended surgery due to failed conservative treatment with time, work restrictions, medications, and physical therapy and continued his off-work restrictions.

8/6/21- Petitioner underwent the left hip arthroscopy, labral repair, acetabular rim trimming, debridement, synovectomy, femoral osteochondroplasty, and capsular plication. (PX 6) Following surgery, Dr. Nho wrote a letter to the insurance company for additional authorization

for his services. (PX 6, 506) In the letter, he noted that during surgery he found no evidence of osteoarthritis. Dr. Nho ordered physical therapy and continued his work restrictions. The Petitioner used crutches following surgery. (PX 6)

9/23/21-1/21/22- Petitioner completed a course of physical therapy at Midwest Orthopaedics at Rush. (PX 6)

12/6/21- Dr. Nho released the Petitioner to light duty work of no lifting over 20 pounds, no pushing / pulling, minimum bending, and no driving over one hour at a time. (PX 6)

2/28/22-3/11/22- Petitioner completed a course of work conditioning at Midwest Orthopaedics at Rush. Dr. Nho then ordered a functional capacity examination. (PX 6)

3/22/22-FCE was completed and indicated Petitioner could return to his job duties as a delivery driver. (PX 6)

3/28/22- Petitioner released to full duty work and placed at MMI by Dr. Nho. (PX 6)

5/23/22- Petitioner returned to Dr. Nho on with complaints of pain and weakness in the left hip after working for approximately one and a half months. (PX 6) Dr. Nho recommended an injection, physical therapy, and light duty restrictions of limited driving to no more than one and a half hours at a time and no lifting, pushing, or pulling over 50 pounds. (PX 6)

6/13/22- Petitioner received the left hip injection. (PX 6)

8/1/22- Petitioner continued to treat with Dr. Nho who also noted right hip pain, at which time he ordered a right hip MRI and took him off of work. (PX 6)

9/19/22- Dr. Nho noted that the Petitioner has ongoing left hip pain since April of 2022 since after his surgery and his right hip pain began around June of 2022, which is believed to be from overcompensating to the left hip. Dr. Nho ordered bilateral hip MRIs. (PX. 6)

9/30/22- Bilateral hip MRIs were completed at American Diagnostic MRI. (PX 4) The left hip MRI showed focal chondral thinning and fissuring at the superolateral aspect of the left hip joint with acetabular subchondral bone plate irregularity and race subjacent marrow signal change and T2 signal hyperintensity in the left anterosuperior labrum, findings in keeping with a tear.

The right hip MRI showed aspherical anterior femoral head-neck junction morphology and superior acetabular retroversion.

10/3/22- Petitioner last saw Dr. Nho at which point the right hip pain was more limiting. (PX. 6) At that time, Dr. Nho diagnosed him with work-related right hip pain, consistent with

femoral acetabular impingement and acetabular labral tear and recommended right hip surgery arthroscopy and placed him off work until he receives the surgery. (PX. 6, 40)

8/29/22- Petitioner presented for two separate Independent Medical Examinations (IMEs) at the request of the Respondent. The first IME was with Dr. Hythem Shadid at Genesis Orthopedics & Sports Medicine. Dr. Shadid noted a consistent history of falling out of a truck striking his left buttock on a hitch with subsequent bilateral hip pain. (RX 2) The history from the Petitioner states that he attempted to return to work in April of 2022, but the "left hip started to hurt again." (RX 2, 2) His right hip pain "started hurting bad months ago after compensation too much [for the left hip] at work." (RX 2, 3) In preparing his report, he reviewed some records, but did not have the complete set of records from Dr. Nho and did not review the right hip MRI or the left hip MRI from September 30, 2022.

Dr. Shadid's opinion was that the Petitioner's diagnosis was a work-related left gluteus contusion and hematoma. He noted that a review of his x-ray taken at the time of his IME showed right hip femoral acetabular impingement. Further, he agreed that the left hip MRI revealed evidence of "high-grade chondromalacia" with a possible superior labral tear with paralabral cyst, but opined that those findings were pre-existing, chronic, and inconsistent with the mechanism of injury.

Dr. Shadid attributed his current complaints to bilateral hip degenerative joint disease. In denying causation, he noted that blunt trauma could not cause a labral tear, there is no scientific basis that a left hip condition can cause a right hip condition, and that the delay in right hip complaints was too long from the date of injury. He further questioned his subjective pain scale rating of 7-9/10 as unbelievable, noted that the there was a lack of correlation between subjective complaints and diagnostic imaging, and questioned his lack of response to treatment since he complained of pain following surgery. He agreed that the treatment to the left hip for anti-inflammatories, activity modification, and physical therapy for 6 weeks was reasonable and necessary treatment. He placed Petitioner at MMI and full duty. (RX 2)

Dr. Nho's Deposition

The evidence deposition of Dr. Nho was taken on January 27, 2023. (PX 7) Dr. Nho testified that his opinion was the right hip became symptomatic from overcompensation from the left hip injury. (PX 7, 23) He explained that the Petitioner was doing well post left hip surgery until he returned to work and began having pain again, at which point "patients sometimes might develop worsening mechanics, sometimes limping, and favoring the opposite side. So in this case, the left side was the more problematic side, the right side could then bear more weight, require more strength, require more use of that side in order to go about, like occupational demands or even day-to-day demands at home." (PX 7, 24) He further explained that extended driving and sitting aggravated the Petitioner's diagnosis. (PX 7, 25)

He disagreed with Dr. Shadid's diagnosis of a contusion as he did not report swelling or bruising and had persistent pain since the injury, which would have resolved if it was a contusion. (PX 7, 28) Next, he disagreed with the opinion that the findings are pre-existing since the Petitioner "had no clinical history of symptoms that pre-dated the work injury…and if the patient had no pain or symptoms then it's unlikely that the patient would have had a symptomatic labral tear." (PX 7, 29) Lastly, he opined that the mechanism of injury was consistent with a labral tear injury and that it is common to see overcompensation injuries in the other hip. (PX 7, 30-31) He sees overcompensation injuries in 30-40% of his patients. *Id.* at 31.

Petitioner also presented to an Independent Medical examination with Dr. Troy Karlsson on May 23, 2023. (RX 3- Rejected)

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.

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).

Here, the left hip injury is not in dispute. Respondent accepted the left hip injury and necessary surgery and treatment as causally related to the work injury on March 31, 2021 and paid TTD through August 28, 2022. The right hip injury is in dispute. Petitioner completed his initial left hip treatment and was returned to full duty work and placed at maximum medical improvement by Dr. Nho on March 28, 2022. Petitioner testified that he returned to work full duty with the Respondent as a delivery driver. He completed all of his usual duties of driving and loading and unloading packages. Petitioner testified that he was given even longer routes after his return to

work and experienced extended sitting and driving. Petitioner testified that he would often have to drive to Peoria, Springfield, and Iowa, with few rest stops in route.

Petitioner testified that after working for approximately a month and a half, his left hip pain returned. Petitioner was treated conservatively for the left hip and placed on light duty work restrictions. The left hip pain has now resolved. Around June of 2022, he began to have right hip pain. Petitioner said that while on light duty, "I was bending down to grab something, and I felt something like, like something stabbed me in my right hip." He further testified that while treating for the left hip, he was favoring his right hip. He would put more pressure on his right hip because he was hesitant with his left and would walk with a limp. He said, "I would lean more to my right or put more pressure on my right to take pressure off the left." He stated he did this while using crutches as well. R. at 38. He favored his right hip like this the entire time he was treating for his left hip, after he returned to work, and in his daily activities at home.

Dr. Nho noted right hip pain complaints and ordered a right hip MRI on August 1, 2022. He reviewed the MRI and diagnosed him with work related right hip femoral acetabular impingement and acetabular labral tear. In his deposition, Dr. Nho testified that his opinion was the right hip became symptomatic from overcompensation from the left hip injury and it was causally related to the work injury. He explained that the Petitioner was doing well post left hip surgery until he returned to work and began having pain again, at which point "patients sometimes might develop worsening mechanics, sometimes limping and favoring the opposite side. So in this case, the left side was the more problematic side, the right side could then bear more weight, require more strength, require more use of that side in order to go about, like occupational demands or even day-to-day demands at home." He further explained that extended driving and sitting also aggravated the Petitioner's diagnosis. Due to his diagnosis, he is now recommending right hip surgery.

Contrary to Dr. Nho's opinion, Dr. Shadid only agreed that Petitioner had a causally related left hip gluteus maximus contusion and only required a few weeks of conservative care. As to the right hip, Dr. Shadid saw the Petitioner at the beginning of his right hip complaints and did not have the full set of his treater's records including the recommendations for surgery, or the right hip MRI to review. He opined that the Petitioner had clear evidence of pre-existing osteoarthritis to both hips, even though he agreed the Petitioner had no prior treatment to either hip before the

March 31, 2021 injury. Dr. Shadid opined that there is no scientific basis that a left hip condition can contribute to a right hip condition.

Dr. Nho disagreed with Dr. Shadid's diagnosis of a contusion as he did not report swelling or bruising and had persistent pain since the injury, which would have resolved if it was a contusion. Next, he disagreed with the opinion that the findings are pre-existing since the Petitioner "had no clinical history of symptoms that pre-dated the work injury…and if the patient had no pain or symptoms then it's unlikely that the patient would have had a symptomatic labral tear." While performing surgery on the left hip, Dr. Nho had the opportunity to observe and determine if the Petitioner had osteoarthritis. He noted in his records that he did not find any evidence of osteoarthritis while performing his surgery. Dr. Nho opined that the mechanism of injury was consistent with a labral tear injury and that it is common to see overcompensation injuries in the other hip.

Dr. Nho's opinion that the right hip is causally related is more persuasive than Dr. Shadid's. Dr. Nho has extensive knowledge and training in the hip specifically and is a leader in the industry as the director of the Hip Preservation Center of Rush University Medical Center. Further, he is the treater and the only doctor who had the complete medical picture of Petitioner's right hip injury, including subjective complaints and objective imaging.

The Petitioner testified credibly that he favored his right hip for an extended period of time following his left hip injury and felt a stabbing pain while lifting something at work, which is supported by Dr. Nho's medical opinions. Dr. Nho documented that the right hip pain was from overcompensation to the left hip immediately and consistently in his records and testified that this is common in his practice. Following his return to work with extended driving and sitting and overcompensation, he then developed pain in his right hip. He testified he did not injure his right hip anywhere other than work. All of the medical records corroborate the right hip pain began as a sequelae and overcompensation to the left hip.

Based on the record as a whole, the Arbitrator finds at Petitioner's current condition of ill-being in connection with his right hip is causally connected to the work-related accident of 3/31/21 through the "chain of events" analysis. Proof of prior good health and change immediately following and continuing after an injury may establish that the impaired condition was due to injury. *Ill. Power Co. v. Indus. Com'n*, 176 Ill.App.3d 317, 530 N.E.2d 617 (4th Dist. 1988).

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 relating to his right hip is causally related to the work accident on 3/31/21, 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 and related medical charges for treatment, as provided in Sections 8(a) and 8.2 of the Act, and more specifically to:

1. American Diagnostic MRI ($4,500)
2. Midwest Orthopaedics at Rush ($183.70)

Issue K, whether Petitioner is entitled to any prospective medical care, the Arbitrator finds as follows:

Consistent with prior findings, the Arbitrator finds that Petitioner is entitled to prospective medical treatment in the form of arthroscopy right hip surgery as recommended by Petitioner's treating physician, by Dr. Nho.

Respondent shall authorize and pay reasonable and necessary medical services associated with said 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).

The Petitioner was initially placed off work for his left hip injury and paid TTD by the Respondent through the IME of Dr. Shadid on August 28, 2022. Following his return to full duty work, he developed left and right hip pain. Dr. Nho initially placed him on light duty from May 23, 2022 through August 1, 2022. Due to his ongoing pain, Dr. Nho took him off work as of August 1, 2022. Dr. Nho is currently recommending right hip surgery and off work until the surgery has been completed.

Consistent with the Arbitrator prior findings, the Arbitrator finds that the Petitioner is entitled to TTD benefits of **$425.33**/week for **75 4/7** weeks from August 28, 2022 through February 7, 2024.

It is so ordered:

Crystal L. Caison

Arbitrator Crystal L. Caison

May 22, 2024

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ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	11WC020027
Case Name	Adam Paler v. State of Illinois - Illinois Dept of Corrections
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0088
Number of Pages of Decision	44
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Tyler Berberich
Respondent Attorney	Danielle Curtiss

DATE FILED: 2/27/2025

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Adam Paler,

Petitioner,

vs. No. 11 WC 20027

State of Illinois/Department of Corrections,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the parties herein and proper notice given, the Commission, after considering the issues of temporary disability, permanent disability, and "8(j) [c]redit and maintenance 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.

Petitioner's application for adjustment of claim alleges that on May 4, 2011, Petitioner sustained work injuries to the person as a whole. On January 29, 2024, the Arbitrator filed a decision addressing three conditions of ill-being: (1) right arm/elbow; (2) lumbar back; and (3) psychological/psychiatric condition. The Arbitrator found all three conditions to be causally related to the undisputed work accident on May 4, 2011 (before the effective date of the 2011 amendments to the Workers' Compensation Act (the Act)). The Commission agrees with the Arbitrator's causation ruling. The Commission modifies the awards of temporary total disability and permanent partial disability benefits. Further, the Commission awards maintenance benefits as stipulated by the parties on review.

Petitioner testified on direct examination that on May 4, 2011, he worked as a correctional officer for Respondent. That day, Petitioner was attacked by an inmate. Petitioner explained: "He jumped on me. He scratched my neck. He got over my back. He ripped my uniform buttons off. I fought him off with my key ring."

After receiving emergency treatment, Petitioner followed up with his psychologist, Dr. Golewale,[1] with whom he had been treating "for some mild issues," "[a]nxiety mostly." Prior to May 4, 2011, Petitioner was under no work restrictions due to his preexisting mental health condition. After the attack, Petitioner was repeatedly replaying the incident in his head; he was hypervigilant; he also "felt down." These symptoms were new. After the attack, Dr. Golewale "increased the tranquilizers" and took Petitioner off work.

Petitioner also treated for the injuries to his lumbar spine and right elbow. Petitioner acknowledged previous lumbar fusion surgery. Post-accident, Petitioner treated with Dr. Orbegozo for the lumbar spine and Dr. Dworsky for the elbow. Dr. Orbegozo performed lumbar injections, with only temporary relief, and Dr. Dworsky operated on the elbow in 2012. In March of 2014, Dr. Dworsky declared Petitioner at maximum medical improvement with respect to his right elbow/arm. However, Petitioner continued to follow up with Dr. Dworsky. Petitioner also continued to see Dr. Orbegozo for pain management. In February of 2015, Petitioner began treating with Dr. Templin for his back. In December of 2015, Dr. Templin performed fusion surgery at L4-L5 and L5-S1. In 2016, Petitioner switched his pain management to Dr. Chang. A functional capacity evaluation (FCE) performed in August of 2016 placed Petitioner at the light physical demand level. In October of 2016, Dr. Templin released Petitioner to return to work within the FCE restrictions. However, Dr. Chang kept Petitioner off work. Petitioner last saw Dr. Templin in January of 2017.

In late 2016, Petitioner switched his psychological care to Dr. Heist. Dr. Heist opined that Petitioner was not ready to return to work. Contemporaneously, Petitioner switched his pain management to Dr. Farag. In early 2017, Petitioner also started seeing Dr. Zhang for his psychological care.[2]

In December of 2016, Petitioner met with Vocational Counselor Blumenthal. Mr. Blumenthal recommended vocational rehabilitation.[3]

Petitioner requested a light duty position with Respondent. His request for light duty was denied. In February of 2017, Petitioner was invited to participate in an alternative job placement program for state workers. Petitioner signed up for the program and was sent some job listings. Petitioner believed he applied for every non-expired job listing, after he updated his address. The jobs were not always within the FCE restrictions and did not account for Petitioner's psychological condition. Petitioner was focused on trying to find a job with the State of Illinois. The job search through the alternative program resulted in one interview and no job offers.

In 2017, Petitioner also began looking at non-State jobs. He kept job search logs. Petitioner looked for an accommodated position. "I got calls and I told them my

[1] Dr. Golewale is a psychiatrist.
[2] Dr. Zhang is a psychiatrist.
[3] This is incorrect. See Petitioner's exhibits 27 and 28.

accommodations and then never called back." Petitioner performed this job search online from November of 2017 through February of 2022. Petitioner was offered three interviews; however, two of the jobs were outside his restrictions and the third job was too far away. Petitioner received no job offers.

In 2017 and 2018, Petitioner continued to receive pain management from Dr. Farag. Dr. Farag transitioned Petitioner from opioids to medical marijuana, Xanax, Soma and gabapentin. Before the medication transition, Petitioner was on oxycodone, OxyContin and fentanyl. Previous weaning attempt was unsuccessful.

In 2019 and 2020, Petitioner continued to follow up with Dr. Farag, Dr. Heist and Dr. Zhang. Petitioner continued to suffer from anxiety and depression, which he attributed to being unemployed and having his workers' compensation benefits cut off.

In 2021, Petitioner began treating with Dr. MacRoy for his psychological care. Petitioner continued to see Dr. Zhang for his psychiatric care and Dr. Farag for pain management. At the time, Petitioner "didn't have the mood [to work]. When I was having mood problems, I was self-harming at the time." Dr. MacRoy opined Petitioner was unable to work.

In October of 2021, Petitioner underwent a psychological evaluation by Dr. Andrise at the request of his attorney.

At the time of the arbitration hearing on April 6 and July 6, 2023, Petitioner continued under the care of Dr. MacRoy and Dr. Farag. Petitioner still suffers from back pain, especially with household chores. He also has intermittent symptoms in his right elbow/arm. Petitioner takes Soma, medical marijuana, gabapentin, Klonopin for "[a]nxiety from the pain," Ambien and Wellbutrin. Asked about his anxiety and depression symptoms, Petitioner responded:

> "I have very low concentration, bad short term memory. I feel like everyone is out to get me, I'm paranoid. I yell at little things, what I feel are slights. Other people think maybe a sarcastic joke and I'll jump down their throat at them.
>
> I'm paralyzed in doing new things from anxieties because I think I'm going to do it wrong. So I end up just thinking about it and ruminating. I ruminate about the past a lot. I am very defensive. I have spoiled many relationships. I have few friends, one and a half I would say.
>
> I'm just very a depressive person because I feel like I have to live in this body and it's the mixture of the pain frustrating me and whatever is going on in my head with anxiety and paranoia and hypervigilance is still there to some degree; not as bad as when the event actually happened but it's still there.

> Yell at my daughter, my wife, my mother, my brother. Not a very pleasant person to be around."

Petitioner continued: "I can't really focus on things for very long. *** [M]y brain will start thinking of something else that doesn't have to do with the task at hand. Dr. MacRoy has touched on this with me. *** I can only concentrate, pure concentration about 10 minutes." Petitioner did not have difficulty concentrating, poor memory or hypervigilance before the work accident.

On cross-examination, Petitioner acknowledged pre-accident treatment for anxiety. His pre-accident medications included Ativan, Klonopin and Xanax. Also, Petitioner took gabapentin and hydrocodone for a preexisting back condition. Petitioner believed his anxiety was mild. Petitioner did not remember being diagnosed with a bipolar disorder before the accident. Shortly after the accident, Petitioner saw his mental health provider, who increased the tranquilizer medication. Petitioner agreed that at the time, he was not diagnosed with posttraumatic stress disorder (PTSD). He then changed his answer to "can't recall." Upon further questioning, Petitioner agreed that he was first diagnosed with PTSD and bipolar disorder in 2021. Petitioner was on opioids until 2018, 2019 or 2020. Petitioner acknowledged taking trips in 2016 through 2020 to visit family, friends and for vacation, both domestically and internationally.

Regarding his job search, Petitioner testified that he held a college degree and was computer literate. Petitioner had applied to over 400 jobs. Asked about any job application follow-up, Petitioner responded: "No. I e-mailed to the job website. So I e-mailed to the job website, expected them to return the interest of favor if they were interested in me." Petitioner then stated that he followed up with some of the jobs, a handful, five out of 400. Petitioner's entire job search was online.

On redirect examination, Petitioner testified that before the accident he was never restricted from work due to his mental health condition. Petitioner agreed he did not know when he was first diagnosed with PTSD. When Petitioner traveled, he coped with the long flights as instructed by Dr. Farag. Petitioner did not take his medical cannabis to the Philippines because it was illegal there. Petitioner rarely drives "[b]ecause of anxiety and anger and very easily set off, road rage type of thing. I have someone drive me around."

On re-cross examination, Petitioner testified that he stopped driving after a car accident in 2017. After the work accident, Respondent paid to Petitioner full salary for one year.

Brandon Singer, a human resources specialist, testified that he worked in the alternative employment program. "It's a program designed for certified State of Illinois employees that are on a leave of absence from their current occupation and have been deemed permanently disabled from return to that position." The maximum period of eligibility is two years. A client might be sent "title recommendations," which "doesn't mean it's a job vacancy." Vacancies, on the other

hand, "are sent out if an agency gets to the point of filling a position that wasn't filled through other means, they can get to alternative employment eligibility." In December of 2018, Petitioner was sent a title recommendation or vacancy for office coordinator at IDHS. "If [the client marked] yes to this position, this box here, returned it to the agency, the agency will correspond with them basically presentation of duties and offer a position to them through AEP." Petitioner did not respond to the letter and was removed from the program. Subsequently, Petitioner's file in the program was reactivated after Petitioner said he did not receive the letter. Petitioner continued in the program until the expiration of the two years of eligibility. "[T]here were other potential offers that may have been sent."

Rob Kinsch, manager of background investigators, testified that his company performed a computer investigation of Petitioner. It was discovered that Petitioner had a Facebook account under the name Chiclito Adams. In the Facebook account, the individual indicated that he traveled to the Philippines, Indonesia, Czech Republic, Germany, Ukraine, Romania and Hawaii. The individual also posted travel videos to YouTube.

The earliest medical record in evidence is a clinical note from Dr. Pulluru, a family practitioner. On August 5, 2009, Petitioner followed up for anxiety. "Still having a hard time at work." "Pt has had anxiety all his life, does not want to be treated." Petitioner stopped taking Xanax after one week. Dr. Pulluru noted the diagnoses of anxiety and bipolar affective disorder. "Recommend Pt follow up with Psych, pt averse to treatment." "Extensively discussed with pt disease and need for chronic therapy. Told pt to consider long term therapy and follow up with Psych because of his history of instability in jobs and relationships."

Next chronologically are the records from Baber Psychiatric Group, spanning the time period from November 11, 2010 (six months before the accident) through March 28, 2013. The records indicate that after a pre-accident back surgery in May of 2010, Petitioner "took up to 240 mg of oxycontin and oxycodone and now he is in withdrawal. He doesn't want to take suboxone." On November 11, 2010, Petitioner was "sweaty, mildly anxious and ha[d] restricted affect." Dr. Golewale started Petitioner on Clonidine and took him off work for a week. On November 15, 2010, Dr. Golewale noted that Petitioner "also took Xanax 1 mg left over from previous provider." Petitioner was disheveled and anxious. Dr. Golewale agreed to continue Xanax. On November 23, 2010, Petitioner appeared "glum, wary, anger." On December 1, 2010, Petitioner reported anxiety. "He is lethargic, low motivation, low energy." Petitioner appeared weary, but otherwise normal. Dr. Golewale increased the Neurontin prescribed for the back and added bupropion (Wellbutrin). On December 22, 2010, Dr. Golewale noted improvement. He also noted a family history of bipolar disorder. Dr. Golewale added Seroquel. After that visit, Petitioner's condition was stable, followed by feeling invincible and reporting risk-taking behaviors. Petitioner stopped taking Neurontin. Dr. Golewale added Lamictal and Ambien. The last pre-accident note is dated March 16, 2011. Dr. Golewale instructed Petitioner to follow up in eight weeks.

Emergency room records from St. Joseph Medical Center show that on May 4, 2011, Petitioner was treated for injuries to the left forehead, right thumb, left arm and low back.

On May 5, 2011, Petitioner followed up at Dreyer Medical Clinic. He saw PA Cuasay/Dr. Johnston in Occupational Health Services. The visit focused on Petitioner's physical injuries, although posttraumatic anxiety was also noted. Petitioner was taken off work. On May 9, 2011, Petitioner followed up with his primary care physician, Dr. Malkani, who noted, in pertinent part, preexisting adjustment disorder with anxiety and "recovering from oxycontin addiction." Petitioner was to follow up with psychiatry.

On May 10, 2011, Petitioner returned to Dr. Golewale, who noted: "Patient is reporting 'paranoia,' GF says he has perseveration over the incidence, appetite is up and down, sleep is disturbed, he is needing to take Xanax daily. *** He is unable to function or return to work at this time." Dr. Golewale recommended: "Get assessed for anxiety IOP program. Take medical leave of absence from work for 6 weeks." Dr. Golewale increased Lamictal and continued Petitioner's other medications.

On May 12, 2011, Petitioner followed up with PA Cuasay/Dr. Johnston. He was diagnosed with "[a]cute stress disorder (posttraumatic) – referred to personal psychiatrist." On May 26, 2011, Petitioner was discharged by Occupational Health Services, "but will continue to be followed by psychiatrist for acute stress disorder and by his spine specialist for his lower back discomfort."

On June 6, 2011, Dr. Golewale noted: "[The patient] was put in Linden Oaks anxiety program. But he couldn't continue the program due to his inability to work with the treatment team." Petitioner was referred to Dr. Dec for individual therapy. Dr. Golewale diagnosed acute stress disorder, increased Lamictal, and started Vistaril. On June 20, 2011, Petitioner reported having dreams where someone was suffocating him and feelings of anger. He stopped taking Xanax. Dr. Golewale increased Lamictal, decreased bupropion, tapered Vistaril, and started Valium.

Dr. Dec, Psy.D., treated Petitioner for PTSD between June 24, 2011 and November 22, 2011.

On June 27, 2011, Petitioner returned to his pre-accident pain management provider, Dr. Orbegozo at the Pain Centers of Chicago, and reported "again having problems." Petitioner also complained of problems with the right elbow.

On July 8, 2011, Petitioner reported anxiety and anger to Dr. Golewale, who opined: "At this time he is able to return to work and still f/u closely with me and see his therapist Dr. Dec." Dr. Golewale added Risperdal. On July 29, 2011, Petitioner reported feeling less angry. Dr. Golewale continued Lamictal, Risperdal, bupropion and Valium.

On August 3, 2011, Petitioner began complaining of "excruciating pain" to Dr. Orbegozo. Dr. Orbegozo's plan was to "increase oxycontin and Roxicodone 15 mg one a day for BT pain, start Soma and cont nabumetone go to 750 mg [b.i.d.] and try a LMBB and possibly RFTC. Very possibly Tru Fuse at the level above [previous surgery]." On August 25, 2011, Petitioner reported: "Meds are working well but oxycontin is not lasting." The new plan was to "decrease the roxicodone and add soma compound bid and oxycodone 5 mg two bid and continue oxycontin. Try a LMBB in the future." Thereafter, Petitioner continued to complain of severe pain, and Dr. Orbegozo increased the dosages of his pain medications.

On August 25, 2011, Petitioner told Dr. Golewale he wanted to stop Risperdal because he thought it affected his sleep. Mental status exam was normal. Dr. Golewale discontinued Risperdal.

On September 8, 2011, Petitioner began treating with Dr. Dworsky at Hinsdale Orthopaedics for his right upper extremity condition.

On October 25, 2011, Petitioner reported to Dr. Golewale anxiety and nightmares. Dr. Golewale changed the diagnosis to mood disorder and kept Petitioner on Lamictal, bupropion and Valium.

On December 14, 2011, Dr. Orbegozo performed lumbar facet blocks. Following the procedure, Petitioner reported no lasting relief. Dr. Orbegozo recommended surgery.

On December 22, 2011, Dr. Golewale noted Petitioner was "glum, and appears frustrated about his stresses. Mood is frustrated." Dr. Golewale revised the diagnosis to mood disorder, pain disorder associated with psychological factors and a medical condition, and anxiety disorder. The medications remained unchanged. On March 20, 2012, Petitioner appeared better. He reported expecting a baby with his girlfriend.

On April 19, 2012, after conservative treatment failed, Dr. Dworsky operated on the right elbow. He performed an open epicondylectomy and extensor tendon release. Eight weeks after the surgery, Petitioner continued to complain of significant pain despite being on Soma, Diazepam, Wellbutrin, lamotrigine, OxyContin and Roxicodone.

On May 8, 2012, Petitioner reported to Dr. Golewale feeling excited and nervous about the birth of his daughter, but there was some conflict with his girlfriend. On June 4, 2012, Petitioner reported caring well for his daughter. Dr. Golewale instructed Petitioner to return in three months or earlier if needed.

On June 8, 2012, Dr. Orbegozo increased the dose of Roxicodone at Petitioner's request. On July 26, 2012, Petitioner underwent another set of lumbar facet injections. In follow-up, Petitioner reported the injections made the symptoms worse. Dr. Orbegozo stated: "He is in worse pain now b/c of PT at this point so we will increase meds for one month accordingly."

Beginning in August of 2012, Petitioner rated his right elbow pain to Dr. Dworsky a 2-3/10. Dr. Dworsky held off work conditioning because of Petitioner's back.

In September of 2012, Petitioner's psychological and psychiatric conditions took a turn for the worse. He was focused on his pain, struggling to sleep because of the baby, and "has been put back on OxyContin, Soma and anti-inflammatory medication." Dr. Golewale continued Petitioner's psychotropic medications.

On October 4, 2012, Dr. Orbegozo's plan again was to "increase meds." Thereafter, Dr. Orbegozo maintained Petitioner on high levels of pain medications.

From November 13, 2012 through May 28, 2013, Petitioner underwent some conservative treatment for his back with Dr. Hersonskey at Provena Neuroscience Institute. Dr. Hersonskey noted Petitioner's medications included Soma with codeine, OxyContin, nabumetone, Valium, lamotrigine and Wellbutrin.

On January 14, 2013, Petitioner reported to Dr. Golewale he stopped taking all his psychiatric medications. He complained of anxiety and conflict with his girlfriend. He was focused on his pain. Dr. Golewale recommended resuming the psychiatric medications.

On February 25, 2013, Petitioner saw Dr. Malkani mainly for his primary care needs. Dr. Malkani noted an ongoing opiate dependency. On March 5, 2013, Petitioner saw Dr. Doud, a pulmonologist, who noted "daytime sleepiness. He had a back injury in 2011, and has been on chronic narcotics since that time. He takes OxyContin and oxycodone, both on multiple occasions throughout the day. *** He also has a significant anxiety disorder and is under the care of a psychiatrist." Dr. Doud attributed Petitioner's lung condition to "his chronic narcotic usage, suppressing respiratory drive."

Also on March 5, 2013, Petitioner saw Dr. Golewale and reported anxiety and stressful relationship with his girlfriend. On March 28, 2013 (last note from Dr. Golewale), Petitioner requested a higher dose of Valium. Dr. Golewale agreed.

On May 22, 2013, Dr. Malkani noted that Petitioner had not reduced the narcotic medications. Dr. Malkani attributed Petitioner's fatigue and sleep problems to the opiates usage. Dr. Malkani advised Petitioner that "combination of opioids and benzos can cause respiratory depression and should be avoided." On July 10, 2013, Petitioner followed up with Dr. Malkani, who noted no change in the narcotics/opiates usage.

On August 21, 2013, Petitioner reported no pain to Dr. Dworsky. Subsequent visits reflect renewed complaints of elbow pain/irritation. Electrodiagnostic studies performed in January of 2014 were "completely normal." On January 20, 2014, Dr. Dworsky instructed

Petitioner to return "only as necessary." However, Petitioner continued to follow up through September 17, 2014.

A letter from the Pain Centers of Chicago dated January 29, 2014, states: "Please be advised that Dr. Mauricio Orbegozo is no longer practicing in the Joliet area as a chronic pain management physician." Petitioner continued to see providers at the Pain Centers of Chicago through September of 2014. The providers tried to taper the pain medications. Petitioner reported doing worse without OxyContin and requested an increase in Duragesic/fentanyl. Petitioner was given an open referral at his request "to see a pain specialist where he lives."

On or about May 23, 2014, Dr. McManus, Psy.D., performed a psychological evaluation of Petitioner at Respondent's request. Petitioner reported anxiety, difficulty with activities of daily living, and addiction to his pain medications. Dr. McManus diagnosed pain disorder associated with general medical condition, and possible opiate dependence. He opined Petitioner was at maximum medical improvement "from a psychological perspective" and was able to work. Evidently, Dr. McManus was unaware of Petitioner's ongoing psychiatric treatment, as he stated: "There is no indication within the medical record that indicated [Petitioner] sought or requested psychological services since 2011."

On or about September 2, 2014, Dr. Patel, a pain management specialist, examined Petitioner at Respondent's request. Dr. Patel diagnosed facet-mediated and discogenic low back pain, as well as elbow pain likely related to chronic postoperative pain and scarring. He recommended lumbar fusion surgery and opined that Petitioner was unable to return to work. Regarding Petitioner's pain medications, Dr. Patel recommended weaning down/off.

From February 10, 2015 through January 20, 2017, Petitioner treated with Dr. Templin at Hinsdale Orthopaedics for his back condition. Dr. Templin noted "reliance on significant amounts of narcotic pain medication." On December 23, 2015, Dr. Templin performed fusion surgery at L4-L5 and L5-S1. After the surgery, Petitioner continued to complain of persistent pain while tapering off his narcotic pain medications. On July 26, 2016, Dr. Templin recommended an FCE. The FCE, performed August 17, 2016, placed Petitioner at the light physical demand level. On October 4, 2016, Dr. Templin released Petitioner to return to work per the FCE. On January 20, 2017, Dr. Templin declared Petitioner at maximum medical improvement and discharged him from care.

In March of 2016, Petitioner switched his pain management provider to Health Benefits Pain Management Services through October of 2016. During the initial visit, the pain management physician noted: "This patient has had a long history of narcotic use dating back to his original work injury where he originally worked as a correctional officer and was assaulted by an inmate in 2011. Upon reviewing his history, he does have monthly prescriptions of fentanyl 50 mcg every three days and oxycodone 30 mg t.i.d. and also does have Soma prescriptions for three times a day. In addition, he is on Xanax. I do not feel that his current dosage is safe and I educated him at length on the dangers of high narcotic dosage including

opioid-induced hyperalgesia and the addiction potential of Soma. He was unable to give a urine screen today, but I did instruct him that I would be happy to treat him with low dose narcotics and through nonnarcotic medications and through possible procedures in the future or physical therapy." During the course of treatment, Petitioner was transitioned from Soma to Flexeril, then to Robaxin, and attempts were made to decrease the dosages of his other pain medications. SI injections were performed, without lasting relief. At the time of the last visit in October of 2016, Petitioner's medications included Xanax, Wellbutrin, Ambien, reduced dose of fentanyl, oxycodone, lamotrigine and Flexeril.

From November of 2016 through June of 2019, Petitioner's pain management provider was Dr. Farag at Midwest Anesthesia and Pain Specialists. Petitioner treated for low back pain. The initial note states: "Regarding pain medications, he is taking oxycodone 30 mg twice a day and has a fentanyl patch 12 mcg every 72 hours which does not provide much relief. On his last visit he decreased the amount of oxycodone from 3 times a day to 2 times a day. This has caused him to have cold sweats and the only way he could get rid of them is with taking another oxycodone. *** He realizes he is addicted, and wants to find a way to be weaned off while being pain free. The patient has also noticed spontaneous back aches with the decrease of oxycodone that were not as frequent when he was taking oxycodone 3 times per day." Petitioner's oxycodone and fentanyl were refilled. Thereafter, Petitioner saw Dr. Farag monthly, complaining of persistent/worsening pain. Additional injection did not provide meaningful relief. Petitioner was kept on oxycodone and fentanyl. Dr. Farag gradually added Ambien, fiorinal with codeine, Soma, and medical cannabis. Contemporaneously, Petitioner was stepped down to lower doses of oxycodone. In late 2018, Dr. Farag discontinued Soma and fentanyl. Regarding Petitioner's ability to work, Dr. Farag offered a list of 12 restrictions and questioned whether Petitioner could sustainably perform at work.

In the meantime, Petitioner came under the care of Dr. Nuyles, a cardiologist, and Dr. Heist, Psy.D. On August 9, 2016, Dr. Nuyles noted: "Weaning off chronic Opiate use." On December 9, 2016, Dr. Nuyles again noted: "Weaning off chronic Opiate use." On February 10, 2017, Dr. Malkani noted: "Opiate use – due to narcotics – he sees pain management." On December 5, 2017, Dr. Nuyles continued to note: "Weaning off chronic Opiate use."

The notes from Dr. Heist span the time period from August of 2016 through June 30, 2020. They reflect the diagnoses of generalized anxiety disorder, depression and bipolar II, and prescriptions at various times for Klonopin, Prozac, Wellbutrin, Risperdal, Ambien, fentanyl, oxycodone, OxyContin, medical cannabis, fiorinal with codeine, acetaminophen with codeine, Soma and gabapentin.

Petitioner's more recent psychiatric records are from Dr. Zhang. The exhibit starts with chart notes from November and December of 2016. Dr. Zhang/staff denied certain medication refills, explaining: "Review of IL controlled substance listing indicates recent (within 2-3 months) fills of alprazolam, ambien, oxycodone, soma and fentanyl. This [provider] is not comfortable filling klonopin given current context." "The pt is welcome to switch his provider

but he needs to understand that his new provider may NOT honor the med regimen from Drs Alvarez, Pankov and Jimenez."[4] "[Refill] [d]enied because the pt is taking Clonazepam 0.5 mg tid with Ambien, not recommended by FDA." "[Refill] [d]enied, because he is taking Ambien, opioid analgesics already. Please inform the pt that taking opioid analgesics with benzodiazepines including Clonazepam could cause lethal consequences per FDA new regulations. He is not a pt of this provider who does not feel comfortable honoring the pt's request due to potential legal liability."

It appears Petitioner was first seen by Dr. Zhang on February 3, 2017. Petitioner confirmed that he previously treated with Drs. Alvarez, Pankov and Jimenez. Petitioner's medications at the time included Seroquel, Wellbutrin, Ativan, fentanyl and oxycodone. Petitioner reported feeling overwhelmed due to multiple stressors, including the work accident, separation from his wife, and legal proceedings related to the work accident and divorce. Petitioner complained of extreme anxiety, as well as mood swings, anger, poor attention, constant worry, insomnia and chronic pain due to degenerative joint disease and the work accident. He claimed his current medications were not working. Dr. Zhang diagnosed "Bipolar II" and polysubstance use/dependence. He recommended therapy/counseling and modified Petitioner's medications, keeping him on clonazepam, Ambien, Wellbutrin and Lamictal. Petitioner requested a second opinion/another provider and was recommended Dr. Bashir.[5]

On April 26, 2017, Petitioner returned to Dr. Zhang, apparently for insurance reasons. He reported seeing Dr. Bashir once, and that Dr. Bashir "didn't modify his med regimen." Petitioner's psychiatric condition did not improve. On June 23, 2017, Dr. Zhang added gabapentin and began to provide psychotherapy in addition to medication management. On July 6, 2017, Dr. Zhang discontinued gabapentin because of side effects. On August 22, 2017, Petitioner reported some improvement. On October 30, 2017, Petitioner's anxiety persisted, and he was in the process of divorce. Dr. Zhang kept Petitioner on Lamictal, Wellbutrin and clonazepam, and added Buspar.

On January 17, 2018, Petitioner complained of persistent anxiety with intrusive and negative thoughts. In addition to the divorce issues, Petitioner reported a dysfunctional relationship with his stepfather. Dr. Zhang believed Petitioner had a borderline and narcissistic personality. On February 13, 2018, Petitioner reported feeling better; however, he felt lethargic. Dr. Zhang replaced Buspar with fluoxetine/Prozac. Shortly thereafter, Dr. Zhang discontinued fluoxetine because of side effects. On February 27, 2018, Petitioner complained of depression, rumination and anxiety. Dr. Zhang added the diagnosis of "cluster B features," "characterized with chronic mood instability, unstable interpersonal relationships, unstable self-esteem, mixed with anxiety with difficulty in anger and impulsivity control." Dr. Zhang restarted fluoxetine. On May 14, 2018, Petitioner reported improvement, but complained of anxiety and mood swings with anger. He reported dysfunctional relationships with his mother, stepfather, wife and six-year-old daughter. He continued to be in the process of divorce. On June 22, 2018, Petitioner

[4] There are no records from Drs. Alvarez, Pankov or Jimenez in evidence.
[5] There are no records from Dr. Bashir in evidence.

reported a recent major depressive episode. He continued to have anxiety with mood swings, anger and frustration. He complained his chronic pain was not well-controlled with oxycodone. "He is informed that he is taking multiple medications that affect his mental status, his cognition and his behavior." On August 16, 2018, Petitioner reported feeling better, although he felt financial pressure. On November 6, 2018, Petitioner reported his usual anxiety and stressors. Dr. Zhang continued Petitioner's medications.

Respondent introduced into evidence a letter dated December 17, 2018, inviting Petitioner to apply for a position of office coordinator at the Department of Human Services/Elgin Mental Health. Follow-up notes indicate Petitioner did not respond.

On February 5, 2019, Dr. Zhang noted that Petitioner's condition was unchanged. On April 23 and May 31, 2019, Petitioner reported feeling better after stopping fluoxetine. He continued to have anxiety and mood swings with anger and poor impulse control. Dr. Zhang continued Wellbutrin, Lamictal and clonazepam, increased citalopram, and added risperidone. On July 30, 2019, Petitioner "said he stopped taking his psychotropic medications including Lamictal, Celexa, Wellbutrin and Risperdal after the episode of 'sickness.' " Another provider had discontinued oxycodone and put Petitioner on suboxone. As a result, Petitioner developed opiate withdrawal symptoms. Petitioner's anxiety, mood swings, irritability and anger increased. Dr. Zhang restarted Petitioner's psychotropic medications. On October 30, 2019, Petitioner reported being calmer and less irritable. However, "[h]e reported apathy with anhedonia with decreased libido." He also reported gaining weight due to "emotional eating" and having "cloudy" thinking. He continued to have chronic back pain. The pain was not well-controlled on oxycodone 35 mg daily. He continued to have family stressors. Dr. Zhang discontinued risperidone and started Latuda. On December 27, 2019, Petitioner reported he stopped taking Wellbutrin because of anxiety and irritability. He continued to have apathy, with anhedonia and decreased libido, as well as emotional eating, cloudy thinking, and poorly controlled chronic back pain. Dr. Zhang increased Latuda.

On March 27, 2020, Petitioner had a telephonic visit with Dr. Zhang and reported feeling ok, same symptoms as during the last visit. He had decreased his dose of Latuda in half. "He said his daughter is hyper, oppositional and disruptive and she shows attention seeking behavior. He said he has been feeling completely overwhelmed because he does not know how to interact with the daughter." On December 18, 2020, Petitioner returned after a change of insurance. He reported fatigue, apathy and mood swings with irritability and agitation. He said he had stopped taking opioid analgesics and still suffered from chronic back pain. He reported family stressors, including his daughter. Dr. Zhang continued clonazepam, increased Latuda and restarted Wellbutrin.

On February 1, 2021, Dr. Zhang noted: "The patient reported that he has been feeling overwhelmed lately. He said he needs to have a behavioral health update to certify that he is still disabled and he cannot function as a probation officer." Petitioner reported anxiety, depression, fatigue, apathy, feeling like a failure to his family, mood swings with irritability and agitation,

and difficulty with concentration and memory. He also reported continuing in his dysfunctional marriage and that his wife hated him. Dr. Zhang kept Petitioner on Latuda and clonazepam, and recommended a neuropsychologic assessment since Petitioner reported cognitive impairment. In a "to whom it may concern letter," Dr. Zhang opined that Petitioner was unable to function occupationally.

On or about April 7, 2021, Dr. Hartman, PhD., examined Petitioner at Respondent's request. Petitioner reported taking Klonopin, and no other medications, because of insurance issues. Dr. Hartman administered neuropsychological and cognitive tests, and interpreted the results as showing personality psychopathology, "depressive symptoms with distorted self-image and levels of insular thought and regressive behavior consistent with a psychotic condition, possibly schizophrenic," anxiety, a somatic disorder, opioid addiction, mild cognitive inefficiencies, impairments of executive function, and a chronic psychiatric disorder (personality, bipolar or schizoaffective), but not PTSD. Dr. Hartman opined Petitioner was at maximum medical improvement from the psychological standpoint. However, Petitioner required further treatment for his psychiatric condition. Prognosis for work return was poor.

The last note from Dr. Zhang is dated April 16, 2021. Petitioner reported "feeling 'very depressed' after he lost his job as a probation officer." Petitioner also complained of anxiety, restlessness, insomnia, obsessing and ruminating thoughts "about his job loss," compulsive thinking about past mistakes, fatigue, apathy, anhedonia, as well as difficulty with concentration, memory and decision-making. He reported that he stopped taking opiate analgesics and medical cannabis. "According to [his] mother, the patient has been irritable and easily getting angry and frustrated. He is not sleeping nor eating and he has been restless and pacing." Dr. Zhang started olanzapine, restarted clonazepam and continued fluoxetine. Dr. Zhang recommended inpatient psychiatric treatment, which Petitioner declined.

From December of 2020 through early 2023, Petitioner treated telephonically with Dr. MacRoy, PhD., at DuPage Psychological Associates. Early in the treatment, Dr. MacRoy opined: "In view of his present psychological symptoms, coupled with his medical issues, it is highly unlikely that [the patient] could, with any consistency, perform in a work situation in a sustainable fashion."

On multiple occasions, Dr. Konowitz examined Petitioner at Respondent's request. Dr. Konowitz kept opining that Petitioner's prognosis was guarded because of his opioid dependence and psychiatric condition. Dr. Konowitz recommended weaning off opioids.

Earlier, in December of 2016, Petitioner was assessed for vocational rehabilitation. In a report dated December 16, 2016, Mr. Blumenthal noted Petitioner's light duty restrictions per the FCE and psychiatric reports from multiple physicians opining Petitioner was unable to work. During the interviews, Petitioner "was observed to occasionally avert his eyes as regards making eye contact, had a flat affect, but also demonstrated agitation and at the second meeting, requested the ability to take his Xanax which he did not have with him. [Petitioner] was also

noted to discuss a number of personal issues in his life above and beyond a specific question asked and experienced difficulty staying on the topic of the conversation. [Petitioner] noted that 'my brain is going so many places at once' and he was concerned about his ability to maintain his concentration." "[Petitioner] reports that he experiences pain of 8-9/10 (ten being the highest level of pain requiring emergency room treatment) which occurs two to three times a week at which point he 'curls up, takes his opioid medication and waits for it to kick in' which takes 30-60 minutes. [Petitioner] reports that otherwise, his pain is at 4-6/10, states that the pain is *continuous*, and is located in the low back with numbness that radiates down the back of both legs. [Petitioner] reports that carrying a back pack, lifting/carrying groceries, and lifting from the floor all cause an increase in his pain. [Petitioner] states that the most comfortable position for him is 'lying down in a contorted position' and reports that he lies down daily 5-6 times a day for an average of 60 minutes." (Emphasis in original.) "[Petitioner] at the date of initial interview reported that [his pain management physician] had prescribed him the following medications: Oxycodone 30 mg. one tablet three times a day; Robaxin (unknown milligram dosage) one tablet three times a day; and a Fentanyl Patch 12 mcg., one patch every three days." "[Petitioner] reports that he is being treated for generalized anxiety disorder and depression. [Petitioner] states that his psychotropic medications include the following: Bupropion 200 mg. one tablet twice a day; Lamictal 150 mg. once a day; and Xanax .5 mg. one tablet up to three times a day. [Petitioner] reports that fluorescent lighting and being around crowds can cause an 'anxiety attack' and he will experience 'being physically hot indoors.' " Regarding his cardiac condition, Petitioner reported an enlarged aorta which could require surgery in the future and he needed to avoid stress.

Petitioner reported he graduated college in 1998 with a degree in Broadcast Communications. In 2008, Petitioner completed a correctional academy prior to becoming a correctional officer. Petitioner's self-reported work history between 1998 and 2008 included two three-year periods of consistent, professional employment, as well as periods of living abroad and back in the US, working odd jobs. The alleged periods of consistent employment in the US overlapped with the alleged periods of living abroad. Mr. Blumenthal so noted: "[I]t was not clear that the dates of employment provided were accurate and dates of employment and job duties are as reported by [Petitioner]." In October of 2016, Petitioner through an attorney applied for SSDI benefits. "[Petitioner] states that he does not feel he can psychologically handle a vocational rehabilitation program due to stresses he is experiencing and stated that he is concerned increased stress will lead to increased blood pressure and potential death from his aorta condition. [Petitioner] reports that he was 'feeling overwhelmed with all of the issues in his life' and stated that 'he can't see how he can work currently when he has fallen into a hole with no ladder to get out' as regards issues he is currently dealing with."

Mr. Blumenthal concluded that Petitioner would need "psychiatric and clinical psychological work releases to participate in vocational rehabilitation training and job placement." "[F]rom a practical and ethical standpoint, I could not move forward with any vocational rehabilitation plan unless all treating physicians had documented that [Petitioner] was capable of working within documented work restrictions. *** [N]o statement can be made with

any certainty that [Petitioner] has both the physical and psychological/psychiatric ability to perform work in the labor market from a vocational rehabilitation standpoint." "[B]ased on what this counselor has observed in two meetings with [Petitioner], his current prognosis for successfully completing a vocational rehabilitation program is poor, and this prognosis will not change unless [Petitioner's] psychological and psychiatric status can be improved with treatment in the coming months."

In a supplemental report dated February 3, 2021, Mr. Blumenthal noted that current records from Dr. MacRoy and Dr. Zhang stated Petitioner could not function occupationally. Mr. Blumenthal therefore reiterated his opinion that Petitioner was not currently a candidate for vocational rehabilitation.

On or about July 9, 2021, Creative Case Management performed a "Vocational Services Review" at Respondent's request. The reviewer concurred with Mr. Blumenthal's opinions.

Petitioner's section 12 examiner, Dr. Andrise, testified by evidence deposition on April 21, 2022. Dr. Andrise, a licensed clinical psychologist with 35 years of experience, testified that her specialty included PTSD, acute stress disorder and chronic pain syndrome. Dr. Andrise examined Petitioner at the request of his attorney on July 30, September 16-17 and October 4, 2021. She interviewed Petitioner, performed neurocognitive and other testing, reviewed records and held a feedback session. "He basically gave me indication that he suffered symptoms associated with PTSD: Anxiety, depression, panic attacks, startle, hypervigilance, flashbacks, nightmares of the attack; and that was one of the reasons why he couldn't return [to his job]." Dr. Andrise continued:

> "He actually described this as a loss. [Petitioner] has a very long history of psychological problems that may have interfered with his work.
>
> He did tell me that he had a hard time keeping a job. He could get jobs, but he had trouble keeping them and had often been dismissed; but his job as a prison guard was something where he said he fit well; that he felt it was a good job for him. He felt he did a good job. He didn't seem to have any problems on the job. It was not my impression that there was any disciplinary actions against him or any complaints against him. He really felt like he finally found his fit; and so the loss of the job, especially under these circumstances, was very upsetting to him."

Dr. Andrise acknowledged: "Primarily [Petitioner] has had long-term, fairly serious psychiatric illness for some time prior to this injury. He had sought counseling. He had sought medication treatment for a while. My understanding is he was in treatment and medicated at the time of the injury and was working to become a better person, to have a better handle on his psychiatric diagnoses."

Dr. Andrise did not think Petitioner received proper treatment for post-accident PTSD. As Petitioner's avoidance and fear became ingrained, "the longer a person is on disability, the harder it is to get them back to work." Regarding the opinions of Dr. Hartman, Dr. Andrise opined that Dr. Hartman's evaluation was invalid and non-interpretable because Petitioner was off his medications when he saw Dr. Hartman. Dr. Andrise opined on Petitioner's diagnosis as follows: "[H]e has a psychiatric diagnosis. I didn't disagree with Dr. Hartman that he has a number of personality *** on that Axis II personality *** a little bit of narcissism, a little bit of dependence. *** [I]n terms of personality I do think he has some issues. He probably is bipolar, as recommended [*sic*] by his psychiatrist; and then *** I do think that he did suffer from PTSD and has what we refer to as chronic PTSD, long-term PTSD. *** [A]nd then it wasn't dealt with in a helpful way; and he never was able to return to work, which I think that has had a significant effect on his overall psychological health." Dr. Andrise continued: "The years have worn on him. Between that incident and not being able to perform at work plus the psychiatric condition, he's pretty severely damaged; and I don't see him returning to work, certainly not as a prison guard; but I don't know that he can do anything. *** [L]ike he has said, he can get jobs. He has trouble holding on to them from the get-go." "I think everything that happened after [the accident] made it impossible for him to go back to work." "And then with the psychiatric problems that he already has and the medical problems, *** he's just kind of given up."

The Commission finds that Petitioner became temporarily totally disabled on May 5, 2011, the day after the accident. On review, the parties stipulate this period of temporary total disability ended on January 4, 2017. Further, in its brief, "Respondent asserts maintenance would be appropriate from January 5, 2017 to May 15, 2021." As to additional temporary total disability benefits after May 15, 2021, the Commission awards benefits from May 16, 2021 through the conclusion of the arbitration hearing on July 6, 2023. Respondent shall be given a credit for the full salary, temporary total disability, maintenance and nonoccupational disability benefits that have been paid.

Turning to the issue of permanent disability, the Commission finds greater disability than the Arbitrator. The Commission increases the permanency award to 75 percent of the person as a whole.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 29, 2024, is hereby modified as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $599.79 per week for a period of 407 5/7 weeks, from May 5, 2011 through January 4, 2017, and from May 16, 2021 through July 6, 2023, those being the periods of temporary total incapacity for work under §8(b) of the Act. Respondent shall be given a credit

for the full salary, temporary total disability and nonoccupational disability benefits that have been paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $599.79 per week for a further period of 227 3/7 weeks, from January 5, 2017 through May 15, 2021, for maintenance benefits. Respondent shall be given a credit for the maintenance and nonoccupational disability benefits that have been paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the medical bills in evidence that are causally related to the work accident on May 4, 2011, pursuant to §§8(a) and 8.2 of the Act and subject to a credit and hold harmless.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $539.81 per week for a period of 375 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the permanent disability to the extent of 75 percent of the person as a whole.

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, there shall be no right of appeal as the State of Illinois is Respondent in this matter.

February 27, 2025
SJM/sk
o-01/29/2025
44

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

/s/ *Deborah L. Simpson*
Deborah L. Simpson

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	11WC020027
Case Name	Adam Paler v. State of Illinois/Illinois Department of Corrections
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	26
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	Tyler Berberich
Respondent Attorney	Danielle Curtiss

DATE FILED: 1/29/2024

THE INTEREST RATE FOR THE WEEK OF JANUARY 23, 2024 5.02%

/s/ Jessica Hegarty, Arbitrator

Signature

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

January 29, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation

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

Adam Paler
Employee/Petitioner
v.
State of Illinois/
Illinois Department of Corrections
Employer/Respondent

Case #**11 WC 020027**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jessica Hegarty,** Arbitrator of the Commission, in the city of **Joliet**, on **April 6, 2023 and July 6, 2023.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **May 4, 2011**, 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 ***$46,783.36*** the average weekly wage was $***899.68.***

On the date of accident, Petitioner was ***37*** 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 $**216,276.96** for TTD, $**0.00** for TPD, $**59,209.61** for maintenance, and $**330,905.53** for other benefits, for a total credit of $**606,392.10.**

ORDER

- Respondent is entitled to a credit for all TTD, maintenance, and extended benefits paid to Petitioner thus far.

- Petitioner is entitled to TTD benefits of **$599.79**/week, commencing **May 12, 2013, through October 14, 2021,** pursuant to §8(a) of the Act.

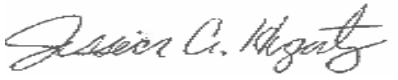
;

- Respondent is liable for all medical bills related to the reasonable and necessary treatment for Petitioner's injuries that are causally related to the work-related assault on May 4, 2011.

- The Respondent shall pay Petitioner permanent partial disability payments of **$539.81**/week for 300 weeks, which represents **60% loss of use of person as a whole pursuant to § 8(d) of the Act**. *(See attached Addendum for the Arbitrator's analysis pursuant to Section 8.1b 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

JANUARY 29, 2024

ICArbDec p. 2

ILLINOIS WORKERS' COMPENSATION COMMISSION

ADDENDUM TO THE DECISION OF THE ARBITRATOR

ADAM PALER	)	
	)	
Employee/Petitioner	)	
v.	)	
	)	Case No. 11WC020027
STATE OF ILLINOIS	)	
ILLINOIS DEPT. OF CORRECTIONS	)	
	)	
Employer/Respondent	)	

FINDINGS OF FACT

Petitioner claims entitlement to workers' compensation benefits for physical injuries to his right elbow, lumbar spine, and current condition of psychological ill-being that were caused/aggravated by an undisputed work-related assault that he sustained on May 4. 2011. Petitioner further alleges that he is permanently and totally disabled due to his current condition of physical and psychological ill-being.

Petitioner was hired by Respondent in 2008 as a correctional officer. In that capacity, Petitioner's responsibilities included the custody and control of inmates incarcerated at Stateville Correctional Center (Transcript "TX" 7).

Respondent does not dispute that on May 4, 2011, Petitioner sustained work-related injuries when he was attacked by an inmate who jumped on top of Petitioner, scratched him, and ripped buttons off Petitioner's uniform (Arbitrators Exhibit "ARB" 1). Petitioner testified that he eventually fought the inmate off using his key ring before a sergeant and various co-workers came to his aid (TX 7-8).

On May 4, 2011, Lockport Emergency Medical Services arrived on the scene at Stateville Correctional Center at which time Petitioner was lying on a stretcher (RX 10). Multiple abrasions were noted on Petitioner's forehead, neck, and arms and Petitioner was transported to the ER at Provena Saint Joseph Medical Center where he complained of pain in his head, neck, right hand, and lower back on a 10/10 scale (PX 1, p. 11; RX 10)

Petitioner reported being assaulted by an inmate who choked, scratched, and punched him in the head (PX 1, p.7). Petitioner reportedly "saw stars" following the attack and was concerned that his leg had been exposed to the inmate's blood (Id.). Multiple abrasions to Petitioner's forehead and neck were noted, including a 4 cm laceration on his forehead (Id., p. 14) X-rays of Petitioner's facial bones and right hand showed no fractures while lumbar spine X-rays showed mild spinal curvature convex to the left, moderate disc space narrowing at L5-S1, and mild facet degenerative changes at the same level (Id.).

A splint was applied to Petitioner's right thumb and a prescription for Norco was issued. Petitioner was diagnosed with a head injury, sprains to his back and right thumb, along with multiple contusions to his head and neck. He was released to light duty work (Id.).

On May 5, 2011, Petitioner presented at the Dreyer Medical Clinic reporting a history of a fight that broke out with an inmate causing multiple abrasions to his right shoulder, right hand, as well as pain to his lumbar spine (PX 3). Petitioner was diagnosed with multiple abrasions, and pain to his right shoulder, right hand, and lumbar back, as well as posttraumatic anxiety (PX. 3).

On May 26, 2011, Petitioner followed up at the Dreyer Medical Clinic with complaints of persistent back pain which disrupted his sleep, despite taking Vicodin (Id). Petitioner's right thumb pain had improved, and his facial abrasions had healed. (Id.). Petitioner was referred to a spine specialist and work restrictions of no prolonged sitting, walking, or lifting over ten pounds were noted. (Id.).

On June 27, 2011, Petitioner presented to Dr. Mauricio Orbegozo at Pain Centers of Chicago with a history of right-sided back pain that radiated down his right leg along with right arm pain when he held his arm in certain positions (PX 13). Dr. Orbegozo noted a diagnosis of lumbosacral spondylosis/facet syndrome for which he recommended a lumbar medial branch block. The doctor also issued prescriptions for Oxycontin and Roxicodone (Id.).

Petitioner followed up with Dr. Orbegozo on August 3, 2011, at which time he reported excruciating pain in his mid-back and right lumbar area (Id.) The doctor ordered MRI's of Petitioner's lumbar back and right elbow which Petitioner underwent on August 17, 2011 (Id.). The radiologist's report noted, at L3-L4, a mild generalized disc protrusion and an annular tear at L4-L5, along with slight posterior displacement to the right S1 nerve root, and some right lateral recess stenosis at L5-S1 (PX 16). Pursuant to Dr. Orbegozo's review, he noted an L3-4 protrusion, annular tears at L4-L5 and L5-S1, along with "new arthropathy" at that level. The doctor recommended that Petitioner undergo a lumbar medial branch block noting that Petitioner was a possible candidate for fusion surgery at L3-4 (PX 13).

Regarding Petitioner's right arm, the MRI report noted the presence of mild joint effusion and mild degenerative changes including degenerative chondrosis (PX 16). Dr. Orbegozo noted the scan indicated the presence of tendinopathy and he referred Petitioner for an orthopedic consult (Id.).

On August 8, 2011, Petitioner presented for initial consult at Hinsdale Orthopedics with Dr. Bradley Dworsky regarding his right arm condition. Based on Petitioner's history and exam, Dr. Dworsky noted a diagnosis of lateral epicondylitis and a right elbow strain. Petitioner underwent conservative treatment including physical therapy and a corticosteroid injection in December 2011 that failed to alleviate his right elbow complaints (Id.).

Based on Petitioner's failed course of conservative treatment, Dr. Dworsky recommended right elbow surgery which he performed on April 19, 2012, consisting of an open epicondylectomy and extensor tendon release (PX 8). Petitioner underwent 30 post-operative physical therapy sessions at ATI which concluded on August 22, 2012 (Id.).

On August 2, 2012, Dr. Dworsky recommended that Petitioner begin work conditioning to get him back to his previous level (PX 8). Dr. Dworsky continued to keep Petitioner off work.

On October 4, 2012, Dr. Dworsky noted Petitioner's elbow improvement had plateaued. The doctor noted he awaited clearance for Petitioner's lumbar conditions before releasing him from treatment (Id.).

On November 13, 2012, Petitioner presented to Dr. Tamir Hersonskey, a neurosurgeon, for a second opinion regarding his lower back condition (PX. 9). Dr. Hersonskey requested additional imaging studies of Petitioner's back which he reviewed on January 15, 2013, at which time he noted L4-L5 facet hypertrophy and L5-S1 facet hypertrophy, in addition to a left-sided disk bulge. Dr. Hersonskey recommended an epidural steroid injection, a facet block to L4-L5, a course of physical therapy, and continued Petitioner's off-work restrictions (PX. 9).

On March 14, 2013, Petitioner underwent a lumbar spine CT that indicated abnormalities at L4-L5 & L5-S1, spinal canal and foraminal stenosis at L4-L5, and a grade 4 Dallas discogram radial tear (PX 8).

Thereafter, Petitioner continued a conservative course of treatment for his lumbar spine including physical therapy at ATI, intra-articular facet injections at L2-L3 and L3-L4, administered by Dr. Dwosrsky, and lumbosacral radiofrequency treatment at St. Joseph Provena Medical Center between April 15 and July 31, 2013. Petitioner's pain continued to be managed with narcotic and opioid medications (PX 13; PX16).

On January 13, 2014, Petitioner presented to Dr. Martini at Comprehensive Pain Care (PX 11). Petitioner reportedly wanted to lower his intake of narcotics although he requested that his narcotic pain patch dosage be increased to 100 mg. Dr. Martini recommended an FCE and detox clinic to wean Petitioner off narcotic medication (Id.).

On March 17, 2016, Dr. Sridhar Vallabhaneni at Health Benefits Pain recommended a reduced dosage of narcotic medication and non-narcotic medication noting that Petitioner's current dosage was unsafe (PX 12).

On March 26, 2014, Dr. Dworsky noted that Petitioner was likely at maximum medical improvement ("MMI") for his right elbow condition. (PX 8).

On April 2014, Petitioner underwent an Independent Medical Examination ("IME") with Dr. Michael Kornblatt who opined that Petitioner's back pain was unrelated to the work accident, that his lumbar spine was at MMI, and that surgery was unnecessary.

On September 2, 2014, Petitioner underwent an IME with Dr. Amish Patel who opined in Petitioner's favor regarding the causal relationship between his back condition and the work-related assault (RX 11). Dr. Patel diagnosed Petitioner with disc bulging, an annular tear, and annular degeneration at L4-L5 and L5-S1, noting that Petitioner's pre-existing degenerative disc disease and facet arthropathy were accelerated and/or aggravated by the work accident. Dr. Patel further testified that Petitioner's current condition necessitated lumbar fusion surgery.

On February 24, 2015, an updated lumbar MRI was significant for L4-L5 disc protrusions, L5-S1 disc deterioration, and mild stress reactions in the left L4 and L5 pedicles (PX 8).

On May 5, 2015, Dr. Cary Templin of Hinsdale Orthopedics, pursuant to Petitioner's history, examination, and diagnostic findings, opined that Petitioner's lumbar degenerative disc disease, facet arthropathy, and intractable low back pain were aggravations caused by the work-related assault. Dr. Templin further opined that Petitioner's current back condition required surgery (PX 25).

On July 7, 2015, Dr. Orbegozo reduced Petitioner's Fentanyl prescription to 50 mg every 72 hours and on August 4, 2015, the doctor administered an L3-L4 transforaminal epidural steroid injection (PX 13).

On December 23, 2015, Dr. Templin performed surgery, consisting of an L4-L5 lateral interbody fusion and a combined transforaminal lumbar interbody and posterior fusion at L5-S1 (PX 8).

Petitioner followed up regularly with Dr. Templin and on March 22, 2016, Dr. Templin ordered Petitioner to begin physical therapy and to remain off work. Petitioner began physical therapy at ATI on March 31, 2016, and completed 50 post-operative physical therapy sessions for his lumbar back between March 31, 2016, and July 25, 2016 (PX 19).

On July 26, 2016, Dr. Templin noted that Petitioner's lumbar fusion appeared solidly fused at both levels. The doctor further noted that Petitioner had plateaued in physical therapy and ordered a Functional Capacity Evaluation ("FCE") to determine work restrictions (PX 8).

On August 11, 2016, Petitioner underwent a bilateral sacroiliac joint steroid injection (PX 12).

On August 17, 2016, Petitioner underwent an FCE, deemed valid by the examining therapist, who concluded that Petitioner was incapable of functioning at his pre-accident, medium-demand level job as a corrections officer. The examining therapist concluded that Petitioner could function at the light-duty physical demand level, capable of above-shoulder lifting of 25.8 pounds, desk-to-chair lifting of 34.6 pounds, chair-to-floor lifting of 17 pounds, carrying with his right arm of 22 pounds, carrying with his left arm of 37 pounds. The examiner further noted that Petitioner demonstrated difficulty with squatting and lifting from the floor and reported weakness in his back and pain in his knees. Squatting was recommended on an occasional basis only (PX. 19).

On January 20, 2017, Dr. Templin opined that Petitioner was at MMI for his lumbar spine (PX 8).

Petitioner continued pain management treatment for his lumbar spine with Dr. Farag (PX 7).

On May 24, 2017, Petitioner underwent an IME with Dr. Konowitz who opined that Petitioner had reached MMI with regard to all work-related injuries (RX 12). The doctor opined that Petitioner needed treatment for his opioid addiction but was capable of medium-duty work. (Id.).

On November 2, 2017, Petitioner underwent a CT of his lumbar spine which revealed a posterior fixation device spanning L4, L5, and S1 vertebrae (PX 23) Moderate hypertrophy of facet joints on both sides causing mild bilateral neural foraminal narrowing was noted as well. (Id.).

On April 11, 2019, and October 14, 2019, Petitioner underwent IME exams with Dr. Konowitz regarding pain management (RX 13, 14). Dr. Konowitz noted that Petitioner had undergone lumbar spine surgery in June 2010, prior to the work-related assault at issue. The doctor opined that Petitioner's medical treatment, thus far, had been reasonable and necessary, except for the recommended spinal cord stimulator. The doctor opined that Petitioner's treatment records documented long-term use of opioid medication which indicated a probable addiction to Oxycontin. The doctor recommended that Petitioner begin the process of weaning off of this medication and further opined that Petitioner was capable of medium-duty work and had reached MMI on October 14, 2019 (Id.).

On February 6, 2020, Dr. Farag at Midwest Anesthesia and Pain Specialists noted that Petitioner was now using Oxycodone 60 mg per day, down from 90 mg, and had discontinued all use of Fentanyl (PX 7). Petitioner reportedly was using medical marijuana and stated that he may move to Hawaii and had plans to travel to Asia on February 16, 2020, for three weeks. Petitioner requested extra pain medication to use on his trip. Dr. Farag recommended that Petitioner continue to wean off of his medications. (*Id.).*

At the hearing in this matter, Petitioner denied taking any medical cannabis or opioids with him to the Philippines (TX. 75).

On March 17, 2020, Petitioner called Dr. Farag reporting that he just returned from South Korea and had used more Oxycodone on the trip since he was unable to take medical marijuana along on the trip. Petitioner continued to treat his lumbar pain with Dr, Farag through June 9, 2020. (PX 6; PX 7).

PETITIONER'S PSYCHOLOGICAL TREATMENT PRIOR TO MAY 2011

Petitioner testified that in 2008, he began treatment with a psychologist for anxiety, at which time, he was prescribed Xanax and Klonopin (TX 53). Petitioner further testified that prior to his work-related assault on May 4, 2011, he was not restricted from working due to anxiety, depression, and/or bipolar disorder (TX 82). He further testified that his activities of daily living were not impaired by anxiety or depression prior to May 4, 2011 (TX 10).

On cross-examination, Petitioner did not recall treatment with Dr. Pulluru, or any issues at work in 2009 (TX 55). Petitioner denied telling Dr. Pulluru that he had a history of instability in relationships and denied any knowledge of being diagnosed with Bipolar Affective Disorder diagnosis in 2009 (TX 56).

Petitioner conceded that he has been prescribed some sort of "benzo," such as Klonopin, since 2009 (TX 58).

The medical records indicate that in 2009, Dr. Soujanya Pulluru noted that Petitioner presented with stress-related complaints at work (RX 4). Petitioner reportedly had experienced anxiety all of his life and a history of instability in jobs and relationships. Dr. Pulluru diagnosed Petitioner with Bipolar Affective Disorder and issued a prescription for Xanax. Dr. Pulluru recommended that Petitioner follow up with "psych" which Petitioner declined (Id.).

On November 11, 2010, Petitioner began treating with Dr. Mazhar Golewale, a psychiatrist, at Baber Psychiatric and Associates (PX 8). Petitioner reportedly was taking up to 240 mg of Oxycontin and Oxycodone per day, and was currently in withdrawal. Dr. Golewale noted Petitioner was sweaty and anxious and recommended that Petitioner take medical leave from his job for one week. (*Id.* at 9).

On December 1, 2010, Dr. Golewale noted Petitioner's report that his anxiety persisted despite being on the medication Catapress. (*Id.* at 12). Petitioner reported lethargy, low motivation, and difficulty getting up to go to work. He reportedly was dating a woman who was not empathetic towards him, which made him more depressed. (*Id.)*

On December 22, 2010, Petitioner followed up with Dr. Golewale at which time he reported persistent lethargy although his low motivation had improved. (*Id at 14).* Petitioner was not sleeping well, and at times felt hopeless but denied suicide ideation. Petitioner reported a history of bipolar disorder in his family, and that a close family member had committed suicide. (*Id.).*

On March 16, 2011, Dr. Golewale noted Petitioner's report that he felt "invincible"(*Id.* at 17). The doctor issued prescriptions for Ambien, Lamictal, and Wellbutrin. (*Id.).*

PETITIONER'S PSYCHOLOGICAL TREATMENT AFTER MAY 2011

Petitioner testified that following his assault on May 4, 2011, he had an out-of-body experience where he had tunnel vision, and felt as if he was floating. (Id., 10). He kept replaying the attack in his head, to figure out what he could have done differently (*Id.).*

The medical records show that on May 4, 2011, Petitioner had a scheduled appointment with Dr. Golewale that he failed to attend (PX 18).

On May 10, 2011, Petitioner presented to his psychiatrist, Dr. Golewale, who noted Petitioner appeared tired, fatigued, withdrawn, anxious, and scared (PX 18). The doctor noted Petitioner had bruises on his neck and small abrasions on his knuckles. Petitioner reportedly was experiencing paranoia following an assault by an

inmate at work (PX 18). Petitioner reported that his girlfriend told him that he was exhibiting "perseveration" over the work assault. Petitioner' reported his appetite was "up and down" and he was experiencing sleep disturbances and "needing to take Xanax daily". Petitioner reportedly "received a blow" to the head during the assault and was treated at the ER in Joliet where x-rays ruled out fracture. Petitioner noted he responded to the attack by "defending initially " and then by tackling the inmate to the ground and punching him a few times. Petitioner brought pictures of his injuries" to show the doctor. Dr. Golewale recommended that Petitioner take a medical leave of absence for six weeks from work and get assessed for an intensive outpatient treatment program for anxiety. The doctor increased Petitioner's prescription for Lamictal, continued prescriptions for Xanax and Bupropion, and started a new prescription for Ambien. (Id.).

On June 6, 2011, Petitioner followed up with Dr. Golewale who noted that Petitioner was placed in the Linden Oaks anxiety program but was released due to his inability to work with the treatment team (PX 18). Petitioner was referred to Dr. Dec for individual psychotherapy. Dr. Golewale diagnosed Petitioner with Acute Stress Disorder, increased his prescription for Lamictal and continued his prescriptions for Xanax, Bupropion, and Vistaril (*Id.).*

On June 20, 2011, Dr. Golewale noted that Petitioner presented complaining of a "surreal" dream involving something suffocating" him (Id.). Dr. Golewale noted Petitioner was feeling "more angry" (with GF, people on the street). The doctor continued his prior diagnosis of Acute Stress Disorder and increased the prescription dosage of Lamictal, decreased the dosage of Bupropion, "tapered" the Visitral dosage, started a prescription for Valium, and discontinued the Ambien and Xanax prescriptions (Id.).

On June 24, 2011, Petitioner presented to Dr. Gary Dec for his initial psychotherapy session to address symptoms of Post-Traumatic Stress Disorder (PX 17). Petitioner reported a history of a work-related assault on May 4, 2011, in which he was choked and scratched by an inmate at Stateville Prison. Petitioner reportedly experienced episodes of anxiety 3 times per day for the past 2 weeks. He also reported paranoia dealing with the workers' compensation carrier. Petitioner reportedly was a "control freak" since the event with increased anger, hypervigilance, emotionally over-reactive, and flashbacks and pictures of the event causing him to "get triggered". The doctor noted "suffocation feelings (inmate choked him)" and "phantom choking (feels hands around the neck)". Dr. Dec noted that Dr. Golewale had extended Petitioner's off-work restrictions until July 7. Petitioner was worried about returning to work and having to open up a cell and dealing with potential conflicts while on a catwalk with a shotgun. Petitioner reportedly was not equipped with handcuffs or pepper spray at work. The doctor noted Petitioner's report of increased back pain and soreness in his right arm (Id.). Petitioner reported a history of back surgery in May 2010 and Oxycontin dependence from May 2010 until October 2010 (Id.).

On July 6, 2011, Dr. Dec noted Petitioner presented and reportedly was "not too good" (Id.). Petitioner complained of insomnia and had reportedly pushed his brother into a cabinet and that he "doesn't feel any control". Petitioner reputedly was having suffocation dreams.

On July 8, 2011, Dr. Golewale noted Petitioner's reports of two incidents where he got angry at his brother and at a motorist. Petitioner reported that Valium was helping with sleep but he was anxious in the daytime. The doctor authorized Petitioner to return to work "and still f/u closely with me and see his therapist Dr. Dec." the doctor maintained the diagnosis of Acute Stress Disorder (*Id.* at 23).

On July 13, 2011, Dr. Dec noted, "Dr. Golewale feels he's done as much as he can" (PX 17). Petitioner reportedly "still feels hands on neck and gets easily startled". Petitioner complained of sleep disruptions, anxiety attacks, and "floating outside his body". Dr. Dec noted, "victim thinking".

On July 20, 2011, Dr. Dec noted, "[W]e discussed his having adopted a victim mentality in reacting to his anxiety symptoms. We need to work toward getting him back in control of his symptoms". Petitioner reportedly felt he was avoiding more aspects of life, isolating in his home. He reportedly was worried that he may overreact again in his interactions with people. Petitioner reported "see[ing] danger everywhere" and that if he left the house "it may happen again". He reported that the suffocation dreams had decreased to twice per week.

Petitioner attended three treatment sessions with Dr. Dec in August 2011 during which Dr. Dec noted Petitioner's report of improved anxiety symptoms, and better sleep although he continued to have dreams of being suffocated and flashbacks to the work-related assault (Id.). On August 19, 2011, Dr. Dec noted that Petitioner reportedly had gone out socially with friends from Stateville prison and noted improvement mentally and emotionally. He reported having suffocation dreams 3 times per week, continued irritability, a quick temper, and anxiety regarding his return to work (Id.).

On September 8, 2011, Dr. Dec noted Petitioner's report that he was beginning to feel the majority of disabling illness was physical, related to his back and elbow pain (Id.) Petitioner reportedly continued having "anxiety dreams" and "recreating the attack" but was beginning to feel that could return to work with manageable anxiety symptoms when eventually released physically to return to work (Id.). Dr. Dec noted he would decrease the frequency of Petitioner's sessions to every 2 weeks (Id.).

On September 20, 2011, Dr. Dec noted Petitioner's report of "feeling a victim" of the whole workers' compensation process/experience. (Id.) Petitioner reportedly had been released to return to light duty work for his right elbow but awaited evaluation of his back pain. Dr. Dec noted, "Psychologically, feels he could RTW, but realizes he will probably have a spike in anxiety when he gets RTW date and encounters" for the first time such things as opening a cell door. Dr. Dec noted the next session would be in 3 weeks (Id.).

On October 11, 2011, Dr. Dec noted Petitioner's report of continued anxiety and the need for Diazepam anti-anxiety medication every night to sleep without nightmares (Id.). Petitioner noted his hypervigilance had decreased but reportedly continued to re-experience trauma – "bad dreams nightmares continue". (Id.). Petitioner felt like a "helpless victim" of the workers' compensation system and while his life was in limbo, he needed to control the things he could and tolerate the things he could not control by keeping a daily journal and gaining insight into his feelings of victimization (Id.).

On October 22, 2011, Petitioner presented to Dr. Dec reporting that no decision had been reached regarding his back surgery or his return to work (Id.). Dr. Dec noted Petitioner suspects a "growing addiction to Oxycontin" and feels pain medication doctor is aware of such addiction. Petitioner reported that his back pain would be unbearable without pain medications. Petitioner reported occasional flashbacks of the assault event that were triggered by retelling the story. Petitioner reportedly experienced periodic spontaneous panic attacks 3 times per week. Petitioner noted Diazepam "seems to be managing them". Dr. Dec noted that Petitioner's PTSD and anxiety symptoms would increase if surgery was planned or upon learning that he was to return to work. This was Petitioner's last session with Dr. Dec.

On October 25, 2011, Petitioner reported to Dr. Golewale that he was anxious because his girlfriend was pregnant, and his mom was pushing for marriage. On this visit, Dr. Golewale changed Petitioner's diagnosis changed to Mood Disorder (PX 18).

On December 22, 2011, Dr. Golewale noted Petitioner's report of day-to-day issues including conflicts with his pregnant girlfriend, getting a parking ticket, and owing the IRS money. The doctor noted a diagnosis of mood, anxiety, and pain disorders due to psychological factors and medical conditions. (*Id.).*

On February 1, 2012, Petitioner began physical therapy at ATI for his migraine headaches and cervicalgia. MRI of Petitioner's brain and cervical spine, performed on February 2, 2012, was unremarkable (PX. 19; PX 24).

On March 20, 2012, Dr. Golewale noted Petitioner's report that he was worried about his back pain and caring for his baby, who was due the following month. (*Id.)* Petitioner reported additional concerns related to child-rearing (*Id.).*

On May 8, 2012, Dr. Golewale noted Petitioner's report that his baby was born a few days ago and that he was having some conflicts with his girlfriend (*Id.).*

On January 14, 2013, Dr. Golewale noted Petitioner's report that he had not been taking his psychiatric medication for six weeks and was feeling anxious.(*Id.).*

On March 28, 2013, Petitioner reportedly was stressed due to issues with his girlfriend. He requested a higher dose of Valium (*Id.* at 45).

On the November 5, 2016, Dr. Golewale noted Petitioner's request for Klonopin, which the doctor refused to prescribe, due to potential legal issues (*Id.)*

From November 7, 2016, to April 16, 2021, Petitioner was treated by Dr. Guoshi Zhang, a psychiatrist at Advocate Medical (PX 4). Dr. Zhang noted that Petitioner wanted to switch psychiatrists because Dreyer would not continue his prior medication regimens (*Id*.).

On February 2, 2017, Dr. Zhang noted Petitioner's report of feeling overwhelmed due to multiple psychosocial stressors, including marital issues with his wife (PX 4). Petitioner reported his anxiety was "out of the roof" and that he had experienced mood swings, anger issues, poor attention, constant worrying, and insomnia (*Id.).* Petitioner reportedly was diagnosed with anxiety in 1997, and depression in 2000. Dr. Zhang diagnosed Petitioner with Bipolar II and polysubstance use/dependence and encouraged Petitioner to begin cognitive behavioral therapy. Dr. Zhang adjusted Petitioner's medications (*Id.).* Petitioner requested a second opinion from a different provider, and Dr. Zhang recommended Dr. Bashir (*Id.).*

On April 26, 2017, Petitioner contacted Dr. Zhang's office noting he was going to terminate treatment with Dr. Zhang and switch to another provider (*Id.).*

On August 2, 2017, Dr. Zhang noted that Petitioner's Wellbutrin dose had been decreased per Petitioner's request. Dr. Zhang noted that Petitioner should not increase his intake of controlled substance medication on his own decision. If Petitioner were to do so, Petitioner would need to find a new provider (*Id*.).

On December 27, 2019, Dr. Zhang diagnosed Petitioner with Bipolar II, cluster B features, anxiety disorder, and opiate dependency (Id.).

On January 17, 2018, Dr. Zhang noted that he discussed borderline and narcissistic personality disorders with the Petitioner (Id.).

On December 18, 2020, Dr. Zhang noted that Petitioner's report of experiencing fatigue, apathy, mood swings, irritability, and agitation. Petitioner further reported continued stress over his work injury and chronic pain.

On December 22, 2020, Dr. Thomas MacRoy initially interviewed Petitioner via telephone and presented for five sessions, via telephone, due to the COVID-19 pandemic. Petitioner presented for five sessions with Dr.

MacRoy over the phone. Dr. MacRoy noted that Petitioner was on long-term disability as a result of a work injury, had undergone two back surgeries, and suffered from chronic pain. Petitioner reported a long history of depression, exacerbated by medical problems and an inability to work. He had been in long-term psychotherapy and recently ended treatment with his treating psychologist due to insurance issues. Petitioner's current symptoms were noted as mood instability, significant difficulty in sustaining concentration and attention, a lack of interest in activities and relationships, and general anhedonia. Dr. MacRoy found, in view of Petitioner's present psychological symptoms and in conjunction with his medical issues, it was highly unlikely that Petitioner could, with any consistency, perform in a work situation sustainably (PX 5).

On January 21, 2021, Dr. MacRoy noted that Petitioner presented reporting chronic pain, and a long history of depression, exacerbated by his medical problems and inability to work (*Id.).* The doctor opined that it was highly unlikely that Petitioner could perform work in any sustainable fashion (*Id.).*

On February 1, 2021, Dr. Zhang noted that Petitioner continued to feel anxious, depressed, and overwhelmed. Petitioner requested another behavioral evaluation. He reported fatigue, apathy, and feeling like a failure to his family. He further reported mood swings, irritability, agitation, and difficulty in concentration and memory. Petitioner further reported issues with chronic back pain, interpersonal relationships, and his work injury. Dr. Zhang kept Petitioner off of work at this time due to mood instability with impairment in concentration, memory, and decision-making. Dr. Zhang believed he was unable to function occupationally. On February 1, 2021, Petitioner returned to Dr. Zhang and reported that he felt anxious and depressed, and as though he was a failure to his family. He reported that he was living with his mother and stepfather, but had chronic conflicts with his stepfather and that his wife hated him. Dr. Zhang noted that Petitioner was still showing mood instability with impairment in concentration, memory, and decision-making, and he was unable to function occupationally (PX 4).

On February 11, 2021, Dr. MacRoy noted that Petitioner's work injury and subsequent disability contributed to his psychological symptoms (PX 5).

On March 26, 2021, Dr. MacRoy noted Petitioner's report that he was required to travel to downtown Chicago for a disability exam (Id.). Petitioner expressed concern over becoming overwhelmed by panic and anxiety because he had not traveled to the city for years and feared that he could not manage the traffic and crowds, and was fearful of Covid (*Id.).* Dr. MacRoy opined that it was probable that his anticipated problems with travel would produce anxiety which would have a negative impact on his ability to safely get to the appointment (*Id.).*

On April 7, 2021, Petitioner underwent an IME with Dr. Hartman who diagnosed Petitioner with bipolar disorder or schizoaffective disorder. Dr. Hartman noted that Petitioner's twice daily use of Klonopin was not useful for the control of psychological symptoms and may be worsening any legitimate perception of cognitive inefficiency. Dr. Hartman opined there was not a credible profile for post-traumatic stress disorder, as his interpersonal, mood, and personality disorders are more severe and broad-based. Dr. Hartman opined that Petitioner's bipolar disorder is unrelated to his work as a correctional officer and that Petitioner was at MMI for any predictable neuropsychological or psychological conditions from the 2011 work injury. Dr. Hartman further opined that Petitioner's prognosis for return to work was poor, as he is not motivated to return to work (RX 16*).*

On April 16, 2021, Dr. Zhang noted that Petitioner presented with his mother for a joint session. Petitioner reportedly had been feeling depressed after losing his job as a probation officer. Petitioner was anxious, restless, and focused on his job loss. He reported insomnia. His mother reported that he was irritable and was not eating. Petitioner reported stress pains in his right chest and shoulder area. He reported relationships, his work injury, and chronic back pain as stressors. Dr. Zhang recommended inpatient psychiatric treatment, but Petitioner declined (PX 4).

On November 6, 2021, Petitioner called Dr. Zhang's office to request a refill of medications (Id.). Dr. Zhang indicated that the Clonazepam prescription was discontinued because a review of the Illinois Controlled Substances listing indicated that Petitioner had had recent prescription fills of Alprazolam, Ambien, Oxycodone, Soma, and Fentanyl. Petitioner requested an in-person visit (*Id.).*

Dr. Templin Narrative Report

Dr. Templin prepared a narrative report on May 8, 2015, noting that Petitioner presented for initial consultation on February 10, 2015, per the recommendation of Dr. Dworsky. Petitioner presented with symptoms of severe lower back pain following a conservative course of treatment. Petitioner was interested in surgical intervention. Dr. Templin reviewed the previous CT diskogram as well as the MRI, which showed degenerative changes at L4-L5 and L5-S1, including facet joints and discs. The provocative portion of the diskogram indicated the most provocative pain was at L5-S1. Dr. Templin considered Petitioner a surgical candidate and recommended a repeat MRI which later showed severe degenerative changes at L5-S1 with Modic endplate change, severe facet arthropathy, and severe disc degeneration to the L4-5 disc with a high-intensity zone, as well as the prior surgery Petitioner underwent. Dr. Templin recommended a fusion as L4-L5 and L5-S1.

Dr. Templin diagnosed Petitioner with lumbar degenerative disc disease, facet arthropathy, and intractable low back pain which was aggravated by the work-related assault suffered by Petitioner on May 4, 2011. The doctor concluded that Petitioner's need for surgery and current condition of ill-being is causally related to the assault at work noting that Petitioner was working his full-time job and was asymptomatic for months prior to May 4, 2011. Following the accident, an exhaustive course of conservative treatment failed to alleviate Petitioner's symptoms.

IME Dr. Frank Phillips

On November 8, 2012, Dr. Frank Phillips authored an IME report where he opined that Petitioner's lumbar back condition and underlying degenerative condition were exacerbated by the May 4, 2011, assault. Dr. Phillips recommended a functional capacity exam noting that Petitioner was unable to perform his full duties as a correctional officer and that Petitioner had plateaued with conservative treatment and may be a candidate for fusion surgery (PX. 25).

IME Report of Dr. Kornblatt

Dr. Michael Kornblatt authored an IME report on April 29, 2014, noting that Petitioner's right elbow symptomatology was "minimal at best," consisting of a feeling of tightness possibly residual of the surgery. Regarding Petitioner's back, Dr. Kornblatt opined that Petitioner's symptomatology was consistent with mechanical low back pain secondary to chronic L5-S1 degenerative disc disease and facet arthritis which he did not believe was a result of the work accident. Dr. Kornblatt believed that Petitioner was not presenting with abnormal objective findings. Dr. Kornblatt did not believe that surgery was necessary and that Petitioner had reached MMI for his lower back. He released Petitioner to full duty for his mid-back but to a medium physical demand level for his lower back. He recommended work conditioning, unrelated to the work injury (RX 9).

IME Report of Dr. McManus

Dr. Timothy McManus authored an IME report on May 23, 2014, regarding his examination of Petitioner, related to Petitioner's psychological condition and capacity to return to work (RX 10). Dr. McManus found that Petitioner's testing was consistent with anxiety and some form of somatoform or depressive disorder. Dr. McManus diagnosed Petitioner with pain disorder, low back pain, anxiety, and/ or mood symptoms secondary

to his pain complaints. He noted Petitioner abused opiates. The doctor concluded that Petitioner had no psychological conditions that would preclude him from working.

IME Report of Dr. Patel

Dr. Amish Patel authored an IME report regarding his examination of Petitioner on September 2, 2014 (RX 11). Dr. Patel noted that Petitioner sustained multiple injuries following a work-related assault by an inmate on May 4, 2011. Dr. Patel diagnosed Petitioner with 1. recurrent low back pain related to facet-mediated pain and discogenic pain, noting clinical complaints of worsening pain worse with sitting and evidence of annular tearing and bulging on MRI; 2. elbow pain related to chronic postoperative pain and scarring; 3. right neck and trapezius pain, myofascial in nature. Regarding causation, Dr. Patel opined that Petitioner's recurrent, degenerative low back pain was accelerated by the May 4, 2011, work injury, as Petitioner had was pain-free for approximately five months prior to the accident. Dr. Patel agreed that spine surgery was a reasonable treatment recommendation, and that Petitioner could not return to his full-duty job due to his current low back condition (Id.)

IME Report of Dr. Konowitz May 25, 2017

Dr. Konowitz authored an IME report dated May 25, 2017, noting Petitioner's pre-existing conditions included lower back pain and an oxycontin addiction. Dr. Konowitz noted Petitioner's complaints of chronic lower back pain with upper back symptoms since the surgical fusion. The doctor diagnosed post-fusion back pain without radiculopathy. Dr. Konowitz did not provide an opinion on causal relationship as he did not review Petitioner's pre-injury records. Dr. Konowitz noted a guarded prognosis due to Petitioner's opioid addiction. He released Petitioner to medium-duty work. Dr. Konowitz also noted he did not agree that a spinal cord stimulator was necessary (Id.)

IME Addendum Report of Dr. Konowitz April 11, 2019

Dr. Konowitz authored an addendum to his original report dated April 11, 2019. When asked whether or not a causal relationship existed between Petitioner's current objective findings and the reported accident he replied, "There is no other identified cause." Dr. Konowitz disagreed with continued opioid prescriptions and recommendations of a spinal cord stimulator. Dr. Konowitz recommended that Petitioner discontinue use of Opioids and Suboxone. He opined that no additional medical treatment is necessary or recommended (RX 13).

IME Addendum Report of Dr. Konowitz October 14, 2019

Dr. Konowitz diagnosed Petitioner with post-back fusion back pain without radiculopathy. He opined a causal relationship exists between the objective findings and the reported accident noting, "There is no other identified cause." All medical treatment was deemed reasonable and necessary other than the long-term opiates and the recommended spinal cord stimulator. Dr. Konowitz further opined that Petitioner had reached MMI, no further treatment was necessary, other than weaning off opiates, and that Petitioner could work at a light-duty capacity (RX. 14).

IME Report of Dr. Hartman

Dr. Hartman authored an IME report on April 7, 2021, noting Petitioner reported a regressed, self-involved level of functioning. Dr. Hartman opined that his neuropsychological evaluation suggested mild cognitive inefficiencies and impairments of executive function. The doctor did not believe that Petitioner suffered a brain injury or significant psychological disorder related to his work accident. Dr. Hartman did not believe Petitioner suffered from PTSD but did suffer from a severe personality disorder. In the doctor's opinion, no causal

relationship existed between Petitioner's current psychological or neuropsychological findings and the work-related assault. Petitioner's personality disorder and probable mood disorder pre-existed the accident. The doctor noted a poor future prognosis noting that Petitioner had regressed and is unwilling and psychiatrically unable to resume competent work and life activities (RX 16).

Deposition of Dr. Andrise

Dr. Andrise is a licensed professional psychologist who works with the Shirley Ryan Ability Lab and as a consultant with Hinsdale Hospital Anesthesia & Pain Clinic to treat psychological conditions that are caused by physical injury or illness. Although she primarily conducts psychological assessments, Dr. Andrise also provides cognitive behavioral, CT recovery, supportive, or insight-oriented psychotherapy treatment. Dr. Andrise specializes in post-traumatic stress disorder and acute stress disorder due to emotional reactions to injuries (PX. 26).

Dr. Andrise evaluated Petitioner, in person, over the course of four sessions between July 30, 2021, and October 4, 2021, in which Petitioner underwent two days of neurocognitive testing and completed various questionnaires followed by a feedback session. Dr. Andrise noted that Petitioner had a long history of psychological dysfunction and maladaptive behavior which predated his May 4, 2011, work-related assault. Following the assault, Petitioner suffered from symptoms associated with PTSD including anxiety, depression, panic attacks, startle, hypervigilance, flashbacks, and nightmares. Petitioner could not return to work and was feeling afraid to return to the prison and interact with coworkers and inmates.

Dr. Andrise noted that Petitioner reportedly felt that his job as a corrections officer was a good fit, the loss of which, had caused significant emotional and financial stress. He described the inability to continue his employment as a 'loss'. Petitioner reportedly felt bad for his inability to complete the FCE at a medium physical demand level and felt that he could have done something differently to return to work, even though his FCE performance was valid (PX26).

Dr. Andrise reviewed Petitioner's prior psychiatric treatment records and found that he suffered from long-term and fairly serious psychiatric illness for which he sought counseling and medication, prior to the accident in this case. Dr. Andrise noted that Petitioner was diagnosed with Acute Stress Disorder following his accident which developed into Post-Traumatic Stress Disorder and major depression. Dr. Andrise testified that due to changing insurance carriers, and therefore practitioners, Petitioner did not receive the care he needed after the work accident. Dr. Andrise described a process where the patient is slowly and cognitively deconditioned in small bits of exposure, which could not happen in Petitioner's case due to changing practitioners (PX 26).

Dr. Andrise testified that Petitioner exhibited no signs of malingering, minimization, or over-exaggeration. The doctor testified that Petitioner exhibited a "really good effort" during the interview and testing process.

Dr. Andrise disagreed with the findings and opinions of Respondent's IME, Dr. Hartman, noting that Petitioner was unmedicated, due to a lack of insurance, during Dr. Hartman's testing process. In the doctor's opinion, the validity of Dr. Hartman's conclusions is questionable due to the fact that Petitioner was assessed without the benefit of his medications. Additionally, Dr. Hartman failed to note Petitioner's pain levels, psychological condition, or medications. Further, Dr. Andrise disagreed with Dr. Hartman's administration and interpretation of several tests aimed at detecting the presence of malingering. Dr. Hartman performed the Word Memory Test and the Structured Interview of Malingered Symptomology, or SIMS. The former looks at how an individual can remember and match up 20 pairs of words. The test is premised on the belief that one should be able to do accomplish this feat but does not account for externalities such as pain or nerves. Dr. Hartman noted that Petitioner's performance on the SIMS test showed several spikes, which aligned with Dr. Andrise's testing of Petitioner in terms of behavior, psychiatric illness, physical illness, and assault however, Dr. Hartman failed to

conduct an item analysis, which, according to Dr. Andrise, invalidates his conclusions.

Dr. Andrise opined that Petitioner suffers from several small personality disorders, including narcissism and dependence. Dr. Andrise agreed that Petitioner is likely bipolar. She further diagnosed Petitioner with chronic or long-term PTSD, which was never dealt with in a meaningful or helpful manner which precluded Petitioner from returning to work and had significantly affected his overall health. According to Dr. Andrise, Petitioner truly felt a sense of belonging in his job as a corrections officer and his inability to return to that job exacerbated his pre-existing anxiety and depression.

Dr. Andrise testified that Petitioner's reaction to the trauma of the assault, additional medical and pain issues, and losing what he considered to be the ideal job, worsened his pre-incident conditions. The doctor testified that Petitioner had felt as though he finally found a fit for employment, which had increased his self-esteem and sense of personal success and financial stability. Petitioner was now shut down and paralyzed to move forward, believing himself to be incompetent. Dr. Andrise testified that while the work accident may not be fully causative of his psychological status, it exacerbated his condition and left him totally and permanently disabled and too emotionally paralyzed to move forward.

During cross-examination, Dr. Andrise testified that it would have been helpful for Petitioner to return to the workforce, but the time for his return to work is not now but 11 years ago. Dr. Andrise agreed that Petitioner's evaluation was focused on post-traumatic stress disorder. Dr. Andrise thought it unnecessary to address Petitioner's bipolar diagnosis (PX 26).

Petitioner's testimony regarding his current condition

According to Petitioner, he experienced a psychological change after his work-related assault, which worsened his anxiety and depression issues (TX. 40). The issues driving his symptoms included loss of income and loss of identity due to his lost job. Prior to the attack, Petitioner felt like he could identify with his job – he liked his job and he was proud of it (TX 41). He felt that his inability to work was isolating (TX. 42). When Petitioner transitioned to his treatment with Dr. MacRoy, he was self-harming (TX. 43). Petitioner testified that Dr. MacRoy told him he didn't have the ability to return to work.

Petitioner testified that his anxiety and depression symptoms manifest in symptoms of low concentration, decreased short-term memory, and paranoia. Petitioner testified he is quick to jump down someone's throat over a remark, feels paralyzed in doing new things, and spends a great deal of time thinking about the past. He further testified he has become defensive, has spoiled many relationships, has few friends, and is an unpleasant person to be around. Before his work injury, Petitioner used to read books, a hobby he no longer engages in due to his inability to retain information contained in the text. He often has issues with forgetting where he put his keys, leaving a burner on, losing his glasses, and losing his wallet (TX. 49-51).

Regarding his lower back today, Petitioner noticed his pain now extends to the middle of his back. Some days are better than others. If Petitioner walks too much in a day, "[he pays] for it at the end of the day". Petitioner can walk approximately a city mile before feeling pain. He experiences pain while lifting and moving things and struggles to do chores. He has attempted to vacuum but experiences back pain that climbs up to his right shoulder (TX. 45-46).

Regarding his right arm, Petitioner testified that as he performed his day-to-day activities, his right arm bothers him periodically as if someone hit his "funny bone". His right arm has a permanent bump on it. When he lifts his right arm, he will sometimes feel a fuzzy pain (TX. 48).

Petitioner testified his current prescription medication includes medical cannabis, Soma, Gabapentin, Ambien, Klonopin, Wellbutrin, Metoprolol, Avistatin, Lipitor, and Omeprazole (TX., 47-48).

On cross-examination, Petitioner testified that his anxiety was a minor issue when he resumed psychiatric treatment in 2008. Prior to the accident, he was taking Xanax (TX. 60). Petitioner recounted a trip to Florida that he took by airplane to visit his mother (TX. 65). He agreed that he was in a car accident where he was rear-ended followed by symptoms of mild whiplash (TX. 68-69).

Regarding his job search, Petitioner agreed that he applied for jobs online and did not follow up in person (TX. 73). Petitioner testified that he does not use social media (T. 74). Petitioner testified that he traveled by airplane to the Philippines, Germany, and Romania to visit friends and family throughout the 2010's (TX. 75-76). He did not take his marijuana or opioids with him to the Philippines (TX. 75-76).

During redirect examination, Petitioner testified that Dr. Farag, his pain management doctor, suggested coping mechanisms when taking longer flights such as walking around the cabin, standing and siting, and taking medication (TX. 83). Petitioner has followed these suggestions (TX. 83). After a long flight, Petitioner testified to feeling "worthless" the following day, especially after use of opioids (Id.). Petitioner clarified that the reason he did not bring his marijuana or opioids to the Philippines was due to his fear of imprisonment related to illegal possession of such drugs (TX. 84).

Vocational Status

Petitioner holds a Bachelor of Arts degree and knows how to "surf" the internet with a computer at home. (Id., 73). Petitioner denies having a Facebook account currently but admits that he had an account in the past. (Id., 74).

In December 2016, Petitioner underwent a Vocational Evaluation with Steven Blumenthal (TX., 31, PX 27). Blumenthal opined that Petitioner had the necessary aptitudes and physical abilities to be an Invoice-Control Clerk, and Clerk- General. (*Id.)* The wages for those jobs range from $11.51 to $14.51 per hour. (*Id.).* Blumenthal noted that Petitioner would need medical clearance from all his medical providers to complete vocational rehabilitation, which was not provided at the date of the interview. (*Id.).*

On December 10, 2018, Petitioner applied for the Alternative Employment Program ("AEP") (PX 34, TX 25). Petitioner testified that he did not look for jobs outside the AEP because he wanted to remain employed through the State of Illinois (TX 27). Petitioner was offered one interview, and never received a callback (Id., 28). Petitioner received two AEP job opportunities after the due date had expired (Id., 29).

Respondent called Brandon Singer, Human Resource Specialist for the Alternative Employment Program ("AEP") to testify in their case-in-chief (Id., 88). Singer testified that the AEP is a program for state employees who are physically unable to return to their prior positions with the state (Id., 89). An employee can be enrolled in the AEP for a maximum of two years but can be discharged early if they decline a job offer (Id., 93). Employees in the program are provided with a copy of the program guidelines. Employees indicate which county or counties they prefer to work in (Id., 92). In this case, Petitioner indicated he preferred to work in Cook and DuPage counties (Id., 95).

Singer testified that on December 17, 2018, Petitioner was sent a job offer for the position of Office Coordinator but failed to reply to the offer within the time allowed by the program and was consequently removed from the program (Id., 98). Singer further testified that Petitioner was allowed back into the program after informing Singer that he never received the AEP paperwork (Id., 99).

From November 2017 to February 2022, Petitioner searched for work online (TX 32, PX 29). Petitioner testified he was offered two jobs: one job was in Springfield, which was too far from Petitioner's home while the second job, was outside of Petitioner's restrictions (TX 37).

Petitioner does not recall why he stopped searching for work in February 2022 (Id., 71).

On February 3, 2021, Blumenthal provided an update to his previous report(PX 27). Blumenthal reviewed the February 1, 2021, off-work note from Dr. Zhang, and again opined that he could not proceed with vocational rehabilitation until Petitioner was cleared by all of his treating doctors (*Id.).*

On July 9, 2021, a Vocational Services Review report was completed by Creative Case Management ("CCM"). (RX 18). CCM reviewed Blumenthal's two reports, in addition to job logs from April 12, 2021, through May 28, 2021 (*Id.).* CCM agreed with Blumenthal that Petitioner was at a light physical demand level. CCM further agreed with Blumenthal that Petitioner had the necessary aptitude to perform jobs such as data entry clerk, invoice-control clerk, and general office clerk.

CCM further agreed with Blumenthal regarding the wage range for available jobs of between $11.51 per hour through $14.51 per hour. CCM reviewed Petitioner's job search logs from April 12, 2021, through May 28, 2021 (PX 29, RX 18). CCM noted that Petitioner applied to all jobs online, and did not follow up with any of them (RX 18). Petitioner was not contacted for any job interviews. CCM opined that Petitioner would be qualified to work in a stable labor market if he obtained the appropriate training and would benefit from computer training.

FRASCO Surveillance

Respondent called Rob Kinsch, Regional Manager at FRASCO Investigative Services, in their case in chief. (TX 106). Kinsch oversees the day-to-day operations of FRASCO Investigative Services' social media investigations. (Id.). Kinsch testified that a social media and background investigation involves running a comprehensive report using the information provided and utilizing their investigative skills to look for online and public content on the subject. (Id., 107-108). FRASCO generated a report for this case on March 4, 2021. (TX 110; RX 20). Pursuant to the social media search, the report notes that Nancy Paler's Facebook account revealed that her husband was the Petitioner and that Nancy Paler and Petitioner had a daughter (TX 110-111).

Kinsch further testified that FRASCO's investigation determined that Petitioner had a Facebook account under the name "Chiclito Adams" (Id., 111; RX 20). Petitioner's Facebook account under the name Chiclito Adams revealed that he traveled to Indonesia, Germany, Ukraine, the Czech Republic, and Hawaii. (TX 115). The account also included a discussion about Petitioner getting into a physical altercation with his brother (Id., 116). This account linked to a YouTube channel that belonged to Petitioner which depicted travel to various destinations (Id.).

CONCLUSIONS OF LAW

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

CAUSAL CONNECTION

Petitioner alleges three separate injuries in this case related to his lumbar spine, right arm/elbow, and his psychological condition.

Right Arm/Elbow

The Arbitrator found no compelling evidence in the record that does not support Petitioner on this issue. The chain of events, in this case, demonstrates that Petitioner was physically capable of performing his full-duty job as a correctional officer for Respondent prior to the work-related assault on May 4, 2011, when an unruly inmate jumped on top of Petitioner, choked him, and punched him about the face and head.

Petitioner was later diagnosed and treated for right lateral epicondylitis by Dr. Dworsky who performed surgery consisting of an open epicondylectomy and extensor tendon release on April 19, 2012, following a course of failed conservative treatment.

Post-operatively, Petitioner underwent 30 post-operative physical therapy sessions at ATI which concluded on August 22, 2012, and on March 26, 2014, Dr. Dworsky noted that Petitioner was likely at MMI for his right elbow condition (Id.).

The Arbitrator finds sufficient evidence in the medical records and chain of events to support a finding in favor of Petitioner.

In addition, the Arbitrator notes that neither of Respondent's IME physicians who addressed this issue, Dr. Kornblatt and Dr. Patel, disputed a causal relationship between the work-related assault on May 4, 2011, and the current condition of Petitioner's right elbow.

Regarding his current condition, Petitioner testified that he experiences periodic pain in his right elbow as if he hit his "funny bone" and will sometimes experience a "fuzzy" pain in his right elbow when he lifts his right arm.

A valid FCE found him capable of working a light duty job.

The Arbitrator finds the preponderance of credible evidence in the record supports a finding that the current condition of ill-being in Petitioner's right elbow is causally related to the work-related assault sustained by Petitioner on May 4, 2011.

Lumbar Back

The Arbitrator found no compelling evidence in the record that does not support Petitioner on this issue. The chain of events, in this case, demonstrates that although Petitioner had a pre-existing back condition and underwent surgery in May or June 2010, and apparently had a good recovery following that procedure, as he returned to his unrestricted job as a corrections officer for Respondent and was physically capable of performing his job duties before the work-related assault on May 4, 2011, when an unruly inmate jumped on top of Petitioner, choked him, and punched him about the face and head.

Following the assault at issue, Petitioner's complaints of lumbar back pain in connection with his work-related assault were consistently documented by his treatment providers, and throughout his course of conservative treatment and prior to his surgery with Dr. Templin on December 23, 2015, which consisted of an L4-L5 lateral interbody fusion and a combined transforaminal lumbar interbody and posterior fusion at L5-S1. Thereafter, Petitioner underwent post-operative therapy and a valid FCE which found him incapable of returning to his pre-accident job for Respondent.

Regarding the expert opinions in evidence, the Arbitrator places significant weight on the opinions of Dr. Templin which are supported by the chain-of-events, clinical history, and diagnostic testing. Respondent's IME physicians, Dr. Phillips, Dr. Konowitz, and Dr. Patel, align with Dr. Templin on the issue of causation.

Regarding the opinions of Dr. Kornblatt, the only physician who did not opine in Petitioner's favor on this issue, the Arbitrator found his opinions unsubstantiated by the preponderance of credible evidence in the record including the chain of events. diagnostic testing, clinical history, and the opinions of the above-mentioned experts.

The Arbitrator finds that Petitioner has established a causal connection between the current condition in his lumbar spine and the work-related assault at issue.

Psychological Condition

The Arbitrator finds that Petitioner has established that his current psychological condition of ill-being is causally related to his work-related assault on May 5, 2011. In support of this finding, the Arbitrator relies on the treating records in evidence, the testimony of Petitioner, and the opinions of Dr. Andrise.

In support, the Arbitrator notes that Petitioner was capable of working his full-duty job for Respondent, with no psychiatric restrictions prior to his work-related assault on May 4, 2011.

Although Petitioner had a history of psychological issues that pre-dated his accident, the records of his psychiatrist, Dr. Golewale, indicate that no psychiatric restrictions were in place on the accident date. At Petitioner's first, post-accident visit with Dr. Golewale, six days following the assault, Petitioner was taken off work, put on a psychiatric leave of absence for six weeks, and ordered to enter an intensive outpatient anxiety program for assessment and treatment of Acute Stress Disorder.

Although Dr. Golewale released Petitioner to return to work on July 8, 2011, the Arbitrator finds little support in the treatment records of Dr. Dec in support of a return to work. In this regard, the Arbitrator found the opinions of Dr. Andrise, who is an expert in PTSD, instructive. Aside from the approximate four-month period that Petitioner received treatment from Dr. Dec for his post-assault PTSD, he received no further treatment following his last visit with Dr. Dec on October 22, 2011.

Dr. Andrise clarified the psychological issues in this case noting that Acute Stress Disorder, diagnosed by Dr. Golweale 6 days following the assault, is simply a precursor to Post Traumatic Stress Disorder. If the symptoms of Acute Stress Disorder do not resolve 3-6 months following the event, the diagnosis becomes PTSD. Based on her review of the records and 4 day-long evaluation of Petitioner, Dr. Andrise opined that Petitioner suffered from Acute Stress Disorder following the accident which progressed to PTSD.

Dr. Andrise's testimony regarding the symptoms of PTSD (i.e. panic attacks, nightmares, flashbacks, hypervigilance, paranoia, and the fear of being killed) are evident in Petitioner's treating records with Dr. Dec that document Petitioner's reports of persistent flashbacks to the assault, "suffocation feelings", recurring nightmares involving suffocation, "phantom choking" episodes where Petitioner experienced an artificial sensation of hands around his neck reminiscent of the work-related assault. Frequent panic/anxiety attacks and hypervigilance are noted in these records which reflect Petitioner's perception of "danger everywhere" outside his home resulting in periods of self-isolation. Petitioner's ongoing concerns about returning to work, having to open up a cell for the first time, dealing with potential conflicts, and not being equipped with defensive devices such as pepper spray or handcuffs are also documented in these records.

After Petitioner's last session with Dr. Dec, there is no evidence of any further specific psychiatric treatment to address Petitioner's ongoing PTSD symptoms. Dr. Andrise testified regarding the necessary treatment to properly address PTSD including a cognitive behavioral deconditioning program that addresses an individual's anxiety and fear associated with the traumatic event. Dr. Andrise noted that such treatment occurs in small steps and "small bits of exposure" which over time, deconditions the individual to the specific issues and

triggers before the patient is ready to advance to the next level of deconditioning. Dr. Andrise's testimony regarding the lack of proper treatment following the assault is corroborated by the records in evidence which indicate that following his last appointment with Dr. Dec in late October 2011, Petitioner received no further treatment to address his symptoms of PTSD.

If Petitioner had received the proper cognitive behavioral deconditioning therapy, according to Dr. Andrise, he might have returned to the prison in a light-duty capacity. Instead, Petitioner was treated by multiple practitioners, due to changing insurance carriers, who provided medication and some treatment, but not the specific treatment required by the Petitioner to process the trauma endured during the assault. Regarding his PTSD treatment, Dr. Andrise noted, "I don't mean to be critical of his practitioners. He was medicated. He had counselors who listened to him, who interpreted to him" but the failure to provide adequate cognitive behavioral deconditioning treatment to address his specific issues, caused Petitioner to "*just kind of spun with those feelings that never got better" and now it's "11 years later" and it's "very hard" to to do that" (Id., p. 26).*

Dr. Andrise further noted, "*We know from the research that the longer a person is on disability, the harder it is to get them back to work… the quicker we get people in, the less avoidance there is, the less fear there is, which can be very traumatic and damaging. You get people back on their feet as soon as possible" (Id.).*

Regarding her opinions on causation, Dr. Andrise acknowledged Petitioner's history of psychological dysfunction and maladaptive behavior predated the assault/injury, however, according to the doctor, Petitioner's reaction to the trauma of the assault, additional medical and pain issues, and losing what he considered to be the ideal job, worsened his pre-accident psychological conditions. Dr. Andrise opined that while the work-related assault may not be fully causative of Petitioner's psychological condition, it exacerbated his condition and left him totally and permanently disabled and too emotionally paralyzed to move forward.

Regarding the weight to be assigned to the respective opinions on the issue of causation, the Arbitrator found that Dr. Andrise provided a thoughtful, thorough, and instructive analysis of Petitioner's condition. Dr. Andrise spent 4 days with Petitioner and is an expert on the relevant psychiatric issue, in this case, PTSD. Accordingly, the Arbitrator attributes significant weight to the opinions of Dr. Andrise.

The Arbitrator places less weight on the opinions of Dr. Hartman, who opined that Petitioner's personality and mood disorders were preexisting and unrelated to the attack at work. The Arbitrator notes that Dr. Hartman did not address the issue of whether Petitioner's personality and mood disorders were aggravated or worsened by the work-related assault nor did Dr. Hartman review the records from Dr. Dec or provide any meaningful analysis on the issue of PTSD.

Further, the Arbitrator questions the validity of Dr. Hartman's examination of Petitioner as Petitioner was unmedicated at the time, as noted by Dr. Andrise. The treating medical records in evidence contain substantial evidence of Petitioner's longstanding use of medications. As of November 6, 2021, Petitioner had filled prescriptions for Alprazolam, Oxycodone, Fentanyl, Ambien, and Soma, according to Dr. Zhang who declined Petitioner's request to refill his Clonazepam.

Given the evidence of Petitioner's long-standing, daily use of multiple medications, including several narcotic medications, the Arbitrator questions the validity of any examination conducted while Petitioner was unmedicated.

The Arbitrator notes that this is a complicated case with over 5,000 pages of documents submitted in evidence by Petitioner alone. The records in evidence demonstrate that Petitioner was treated by various psychiatrists who note multiple issues contributing to his anxiety, depression, PTSD, and other issues related to the work-related assault. The Arbitrator finds the preponderance of credible evidence in the record demonstrates that

Petitioner's mental condition was aggravated and accelerated by his work-related assault, and that he developed significant depression, PTSD, and other issues that required psychological treatment. The Arbitrator found the opinions of Dr. Andrise, regarding the ripple effect of issues following the accident, supported by the treating records which document Petitioner's stress, anxiety, feelings of worthlessness related to his inability to earn an income and return to a job/career that was an important aspect of Petitioner's identity.

Based on a review of the records of Dr. Andrise, and the preponderance of credible evidence contained in the record, it is clear to the Arbitrator that Petitioner's psychological issues were at least, in part, related to his work-related assault, medical conditions, chronic pain, and resulting inability to return to work.

Both parties presented significant evidence that Petitioner had pre-accident and post-accident diagnoses of bipolar disorder, anxiety, and depression. These diagnoses remained consistent throughout the treatment records.

The Arbitrator found sufficient evidence in the record that the trauma related to the physical contact, physical injuries, and disabilities stemming from the May 4, 2011, accident is a causative factor in aggravating and accelerating his longstanding psychological issues which contribute to his current condition of psychological ill-being.

MEDICAL BILLS

Based on a preponderance of the credible evidence contained in the record, the Arbitrator finds Respondent liable for any disputed medical bills for the reasonable and necessary medical treatment underwent by Petitioner following the work-related assault on May 4, 2011.

TTD

Petitioner claims entitlement to temporary total disability ("TTD") benefits from May 5, 2011, through October 14, 2021 (ARB. 1).

Respondent produced evidence that Petitioner received his full salary through extended benefits from May 12, 2011, through May 11, 2012 (RX 19).

The Arbitrator finds that Respondent is entitled to a credit for all TTD, maintenance, and extended benefits paid

Based on the preponderance of credible evidence contained in the record, the Arbitrator finds that the Petitioner has established by a preponderance of the evidence that he is entitled to TTD benefits from May 11, 2012, through October 14, 2021.

NATURE & EXTENT OF THE INJURIES

Based upon the testimony of the Petitioner and other credible evidence, the Arbitrator finds that Petitioner failed to sustain his burden of establishing that he is entitled to permanent total disability benefits.

However, the Arbitrator finds that Petitioner has sustained his burden of proving that he is entitled to a man-as-a-whole award.

Regarding his claim of entitlement to permanent total disability benefits, there are three ways that a claimant can substantiate such a claim 1. showing a diligent but unsuccessful job search; or 2. demonstrating, that, because of his age, training, education, experience, and condition there are no jobs available for a person in her

circumstances. *ABB C-E Servs. v. Indus. Comm'n*, 316 Ill. App. 3d 745, 750 (2000), or by establishing that his current condition of ill-being is of such magnitude that he cannot be employed regularly in any well-known branch of the labor market. *Valley Mould & Iron Co. v. Indus. Comm'n of Illinois*, 84 Ill. 2d 538, 546–47, (1981).

First, the Arbitrator finds insufficient medical evidence in support of a finding that Petitioner is permanently and totally disabled. Petitioner reached MMI with no restrictions related to his right elbow on April 29, 2014, and underwent an FCE on August 17, 2016, at which time he was found to be at a light demand level, with restrictions due to his lumbar spine injury.

Regarding Petitioner's psychological injury, although the Arbitrator has found a causal connection between Petitioner's current psychological condition and the accident at issue, the Arbitrator found no evidence that Petitioner is unable to work due to same.

Regarding Petitioner's job search, there are approximately 2,000 documents in the record that purportedly reflect Petitioner's diligent but unsuccessful job search. The Arbitrator notes these records show that Petitioner performed online job searches on and off from November 6, 2017, through February 11, 2022, and submitted job logs for hundreds of online job applications (PX 29).

Petitioner then stopped his job search in February 2022. (TX 71).

Volume alone is not enough to prove a reasonable and diligent job search (*Kzezevich v. Martin Cement*, 06 IL. W.C. 47051; Ill. Indust. Com'n Aug. 13, 2015).

In this case, Petitioner testified that his job search was restricted to online job searching. There was no evidence that Petitioner went on any job interviews, or followed up on any of the hundreds of job applications submitted into evidence (PX 29). Petitioner received one job offer through AEP, which he failed to respond to. Consequently, the offer expired (RX 17).

After reviewing the job search logs in evidence and considering Petitioner's testimony on this issue and the evidence and testimony related to the AEP program, the Arbitrator finds that Petitioner has failed to establish a diligent but unsuccessful job search.

Furthermore, no expert opinion was submitted in support of Petitioner's assertion regarding a diligent and reasonable job search. Mr. Blumenthal refused to provide vocational services until Petitioner's back condition had resolved. When Petitioner's back condition was deemed at MMI by his treating surgeon, Mr. Blumenthal did not resume vocational services with Petitioner. Further, Mr. Blumenthal opined that Petitioner was capable of work. The Arbitrator finds that Petitioner failed to sustain his burden of proving a diligent but unsuccessful job search and ultimately also failed to prove that he is permanently and totally disabled.

Regarding the question of whether Petitioner has established that he is in the odd-lot category, by establishing that his current condition of ill-being is of such magnitude that he cannot be employed regularly in any well-known branch of the labor market. *Valley Mould & Iron Co. v. Indus. Comm'n of Illinois*, 84 Ill. 2d 538, 546–47, (1981). The most recent cases making an odd-lot determination on this factor have required evidence from a rehabilitation services provider or vocational services that there is no stable market for a person of the claimant's age, skills, training, and employment history. *Westin Hotel v. Indus. Comm'n of Illinois*, 372 Ill. App. 3d 527, 530, 545 (2007).

Petitioner introduced no such evidence in this case. Petitioner holds a Bachelor of Arts degree. (T 73).

Petitioner denies being proficient at Microsoft Office but uses a computer at home to "surf" the internet. (TX 73). Petitioner submitted Vocational Evaluations from December 16, 2016, and February 3, 2021 (PX 27). Mr. Blumenthal opined that Petitioner has the necessary aptitudes and physical abilities to complete the following jobs: Invoice-Control Clerk, and Clerk- General. *Id.* The wages for applicable jobs range from $11.51 per hour through $14.51 per hour. *Id.*

A Vocational Services Review report by CCM reviewed Mr. Blumenthal's two reports, in addition to Petitioner's job logs from April 12, 2021, through May 28, 2021 (RX 18). CCM agreed with Mr. Blumenthal that Petitioner could be placed at a light physical demand level. CCM agreed that Petitioner had the necessary aptitude to perform in jobs such as data entry clerk, invoice-control clerk, and general office clerk. *Id.* CCM agreed with the wage range for available jobs to be between $11.51 per hour through $14.51 per hour. The Arbitrator finds such evidence supports a finding that Petitioner is employable.

As Petitioner failed to prove permanent, total disability under all three options allowed by law, the Arbitrator finds that Petitioner is not entitled to permanent total disability.

Further, Petitioner has failed to meet his burden of proof for a wage differential award. Section 8(d)(1) of the Illinois Workers' Compensation Act states in relevant part "[i]f, … employee … becomes partially incapacitated from pursuing his usual and customary line of employment, he shall . . . receive compensation . . . equal to 66-⅔% of the difference between the average amount which he would be able to earn in the full performance of his duties in the occupation in which he was engaged at the time of the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident." 820 ILCS 305/8(d)(1). To qualify for a wage differential award, a claimant must prove (1) a partial incapacity that prevents him from pursuing his usual and customary line of employment and (2) an impairment of earnings." *Wood Dale Elec. V. Ill. Workers Comp. Comm'n*, 986 N.E.2d 107, 113-14 (Ill. App. 2013). For the calculation of a wage differential award, "the Commission must determine 'the average amount which [the claimant] is able to earn in some suitable employment or business after the accident.'" *Crittenden v. Ill. Workers' Comp. Comm'n*, 73 N.E.3d 654, 660 (Ill. App. 2017) (quoting 820 ILCS 305/8). If they are not working at the time of calculation, "the Commission must rely on functional and vocational expert evidence." *Id.*

In this case, a Vocational Rehabilitation report was completed by Blumenthal on December 16, 2016 (PX 27). Mr. Blumenthal opined that Petitioner has the necessary aptitudes and physical abilities to complete the following jobs: Invoice-Control Clerk, and Clerk- General. *Id.* The wages for applicable jobs range from $11.51 per hour through $14.51 per hour (*Id.).* CCM concurred with this opinion, however, the Arbitrator finds significant evidence that supports a finding that Petitioner did not intend to obtain alternative employment. Mr. Blumenthal noted that Petitioner would need medical clearance from all medical providers to complete vocational rehabilitation, which was not provided on the date of the interview nor was such clearance provided by the date of the hearing in this matter. Petitioner submitted evidence from his mental health providers which demonstrate that Petitioner felt hopeless in the job loss, and, as a result, was unable to work and that he had anxiety going downtown or trying something new however the FRASCO reports and Petitioner's testimony indicates that he was not only capable of but voluntarily and frequently traveled and participated in new experiences. The Arbitrator finds compelling evidence in support of a finding that Petitioner's ability to return to work was underestimated.

Additionally, it would be speculative for the Arbitrator to assume that Petitioner would be limited to employment at between $11.51 per hour through $14.51 per hour. When calculating a wage differential, a range of wages has been found "unacceptable speculation" by the Commission. (*See Beverage v. Illinois Workers' Comp. Comm'n*, 2019 IL App (2d) 180090WC, 34, where the Commission stated that the claimant's reliance on the labor market survey to establish his earnings potential was "unacceptable speculation."

In particular, the Commission noted that the reports were completed in anticipation of litigation, just four months prior the arbitration hearing, and she lacked an understanding regarding the claimant's previous work managing multiple employees, which could have broadened the scope of possible employment opportunities.)

The Arbitrator finds that Petitioner is entitled to an award of permanent partial disability.

As the accident at issue occurred after September 1, 2011, the Arbitrator must analyze the following factors as enumerated in Section 8.1b of the Act:

Regarding the first factor, neither party presented an AMA permanent impairment rating. Thus, the Arbitrator will award any permanent disability after considering the remaining four factors:

Regarding the occupation of the injured employee on the date of accident, Petitioner was employed as a correctional officer for Respondent on the date of the accident. Per the valid FCE conducted on August 17, 2016, Petitioner is incapable of functioning at his pre-accident, medium-demand level required by Respondent. The examining therapist concluded that Petitioner could function at the light-duty physical demand level. Because Petitioner is physically incapable of resuming his pre-accident job, the Arbitrator gives this factor significant weight in favor of an increased level of PPD for Petitioner.

Regarding the third factor, Petitioner's age at the time of his accident, the Arbitrator notes he was 37-years-old and is on the younger side of life and must persist for many years with his current physical and psychological disabilities and chronic pain. Accordingly, the Arbitrator assigns significant weight to this factor in favor of increased PPD.

Regarding the fourth factor, evidence of impaired future earnings, Petitioner is currently unemployed and is unable to resume his pre-accident job for Respondent due to his physical restrictions caused by his work accident. The Arbitrator gives this factor significant weight in favor of Petitioner.

Regarding the final factor, evidence of disability corroborated by the treating medical records, the Arbitrator notes the following:

Petitioner sustained causally related injuries to his right arm/elbow that required an open epicondylectomy and extensor tendon release performed by Dr. Dworsky after which, he underwent 30 post-operative physical therapy sessions at ATI which concluded on August 22, 2012. On October 4, 2012, Dr. Dworsky noted Petitioner's elbow improvement had plateaued and he awaited clearance for Petitioner's lumbar conditions before releasing him from treatment;

Petitioner sustained causally related injuries to his lumbar spine and on December 23, 2015, underwent surgery performed by Dr. Templin, consisting of an L4-L5 lateral interbody fusion and a combined transforaminal lumbar interbody and posterior fusion at L5-S1. Petitioner completed 50 post-operative physical therapy sessions for his lumbar back and underwent a valid FCE on August 17, 2016, which concluded he was incapable of functioning at his pre-accident, medium-demand level job as a corrections officer. The examining therapist concluded that Petitioner could function at the light-duty physical demand level, capable of above-shoulder lifting of 25.8 pounds, desk-to-chair lifting of 34.6 pounds, chair-to-floor lifting of 17 pounds, carrying with his right arm of 22 pounds, carrying with his left arm of 37 pounds. The examiner further noted that Petitioner demonstrated difficulty with squatting and lifting from the floor and reported weakness in his back and pain in his knees. Squatting was recommended on an occasional basis only;

6 days following his work-related assault, Petitioner was diagnosed with Acute Stress Disorder and taken off of work to be evaluated for an intensive outpatient program to deal with anxiety. Although Petitioner was

terminated from the outpatient program at Linden Oaks, he underwent 4 months of psychotherapy treatment with Dr. Dec, whose records indicate that Petitioner manifested the symptoms of PTSD including persistent flashbacks to the assault, "suffocation feelings", recurring nightmares involving suffocation, "phantom choking" episodes where Petitioner experienced an artificial sensation of hands around his neck reminiscent of the work-related assault. Frequent panic/anxiety attacks and hypervigilance are noted in these records which reflect Petitioner's perception of "danger everywhere" outside his home resulting in periods of self-isolation. Petitioner's ongoing concerns about returning to work, having to open up a cell for the first time, dealing with potential conflicts, and not being equipped with defensive devices such as pepper spray or handcuffs are also documented in these records;

Dr. Andrise credibly testified regarding the ripple effect of issues following the work-related assault, which includes PTSD, bipolar disorder, anxiety, depression, stress, anxiety, and feelings of worthlessness related to his inability to earn an income and return to a job/career that was an important aspect of Petitioner's identity;

The Arbitrator notes significant evidence in the record regarding Petitioner's use of and probable addiction to opioid medication. Most recently, the records from Dr. Zhang, on November 6, 2021, noted that Petitioner called Dr. Zhang's office to request a refill of medications. Dr. Zhang noted that Petitioner's Clonazepam prescription was discontinued because a review of the Illinois Controlled Substances listing indicated that Petitioner had had recent prescription fills of Alprazolam, Ambien, Oxycodone, Soma, and Fentanyl.

Based upon the preponderance of credible evidence contained in the record, including an analysis of the above-mentioned factors, the Arbitrator finds that the Respondent shall pay the Petitioner permanent partial disability benefits at $539.81 per week for 300 weeks. **This represents 60% loss of use of man as a whole as provided in section 8(d) of the Act.**