ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC000504
Case Name	Cory Foulk v. State of Illinois - Pontiac Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0001
Number of Pages of Decision	9
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Alexis Ferracuti
Respondent Attorney	Bradley Defreitas

DATE FILED: 1/2/2025

/s/Stephen Mathis, Commissioner

Signature

25IWCC0001

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

Cory Foulk,

Petitioner,

vs. NO. 22WC00504

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 July 15, 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.

Pursuant to §19(f)(1) of the Act, this Decision and Opinion on Review of a claim against the State of Illinois is not subject to judicial review.

January 2, 2025

SJM/sj
o-12.11.24
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC000504
Case Name	Cory Foulk v. State of Illinois - Pontiac Correctional Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Alexis Ferracuti
Respondent Attorney	Bradley Defreitas

DATE FILED: 7/15/2024

/s/Kurt Carlson, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JULY 9, 2024 5.08%

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

July 15, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

Cory Foulk
Employee/Petitioner aferracuti@peterferracutilaw.com
v.
Pontiac Correctional Center
Employer/Respondent Bradley.Defreitas@ilag.gov

Case # **22** WC **000504**

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 **Kurt Carlson**, Arbitrator of the Commission, in the city of **Bloomington**, on **May 30, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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 **December 31, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $ **91,605.77**; the average weekly wage was $**1,761.65**.

On the date of accident, Petitioner was **31** years of age, ***single*** with **0** dependent children.

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

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

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

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

ORDER

RESPONDENT SHALL TTD BENEFITS FROM FEBRUARY 1 THROUGH FEBRUARY 28, 2022.

RESPONDENT SHALL PAY ANY UNPAID BILLS CONTAINED IN PETITIONER'S EXHIBIT 1 PER THE FEE SCHEDULE DIRECTLY TO PETITIONER'S COUNSEL.

RESPONDENT SHALL PAY PERMANENT PARTIAL DISABILITY BENEFITS OF $937.11/WEEK FOR 37.5 WEEKS, BECAUSE THE INJURY SUSTAINED CAUSED THE LOSS OF 7.5% LOSS OF PERSON AS A WHOLE AS PROVIDED IN SECTION 8(d)(2) OF THE ACT.

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

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

Kurt A. Carlson
Arbitrator

July 15, 2024

FINDINGS OF FACT:

TESTIMONY AT ARBITRATION

Petitioner

The petitioner testified that he was injured on December 31, 2021, and at the time of the incident in question he was working an overtime shift. The incident occurred at 8:20 p.m. and the Petitioner testified that he was walking the nurse from her med pass through Two Gallery to the backside of Four Gallery. TX 11-13.

The petitioner testified this would be considered a normal part of his job duties to walk the nurse through the gallery for a med pass. The petitioner testified that he was stabbed in the lower chin and neck area. Petitioner was then taken by emergency vehicle to the OSF St James Hospital in Pontiac, Illinois where he was administered treatment for the .5 cm long cut on his chin and neck. Petitioner was rendered a tetanus shot, given a staple in his face for the cut, and issued medication. TX 15-17.

Petitioner followed up with his primary care at OSF Fort Jesse in Bloomington Illinois on January 13, 2022, for removal of his staple and again on January 31, 2022, at which time he advised her that he was experiencing a lack of sleep and anxiety related to the incident which had occurred. Petitioner was then placed on hydroxyzine and referred to counseling at OSF Medical Group Behavior and Mental Health. Petitioner began treatment with his counselor on February 15, 2022, at which time he was diagnosed with PTSD after reporting to his physician that he was experiencing trauma flashbacks, intrusive thoughts, panic, difficulty trusting others, hypervigilance, and avoiding people. The petitioner was not working at the time of this appointment as he had been taken off work by his APN at OSF Fort Jesse on January 31, 2022. TX 18-19.

Petitioner testified he was off work through the beginning of September 2022. The petitioner testified that he treated with behavioral health throughout that entire time period seeing the counselor regularly for appointments. He avoided leaving the house as he did not feel safe being anywhere else. The petitioner would go to the doctor's office and testified he had to immediately return to his home because he did not feel safe in public. The petitioner described having great difficulty falling asleep and was only sleeping a couple of hours a night throughout the course of his treatment. TX 19-20.

Petitioner testified that though he had seen violent assaults before, Petitioner had never been a part to a violent assault prior to this incident. On February 22, 2022, the Petitioner specifically was ordered to undergo a blood panel to verify the medication he was going to take was not going to cause issues for him. Specifically, Petitioner testified that he was never diabetic before the incident, and that he was not diabetic as of the time of the hearing, and that Petitioner was only evaluated for his A1C at the time of the incident to ensure that the medication did not make his sugar levels elevate. TX 21-23.

Petitioner testified that Dr. Funk, his physician at OSF Behavioral Health, gave him tips on how to cope with the incident in question when panic attacks would set in including altering his thinking or slowing his thinking down in the moment to focus on other things and stop the panic attack. The petitioner testified that he would often focus on different things in the room similar to playing the game "I Spy." Petitioner testified that he continued to follow up with Behavioral Health at least twice a month or every couple of weeks to not only focus on rehabilitation for his mental health conditions to allow him to return to work, but also to focus on getting his

sleep schedule back into rhythm. Petitioner focused on and stuck with a schedule with a "lights out" time every evening to adjust him to a regular day to day sleeping schedule and regular routine. Petitioner was encouraged to get back into public spaces which he continued struggling with as of the date of hearing. He was also encouraged to engage with hobbies and interests that he previously had or that he could manage picking up as of the time of his treatment which included outdoor shooting, spending time with friends, and riding a motorcycle. TX 24-26.

The petitioner additionally testified to the presence of intrusive thoughts which kept him up at night and increased his anxiety during this period. Petitioner reiterated at hearing that he believed the nighttime was worse for him because that is when he was attacked. He also testified that he continues having difficulty with concentration throughout the course of his treatment including sticking to tasks rather than having wandering thoughts. Petitioner had high apprehension about returning to work during this period at Pontiac Correctional Center as a result of being concerned about having to return to segregation houses where offenders go who are on discipline and returning to the floor where this accident occurred. TX 27-30.

Petitioner continued treatment from July-August of 2022 with OSF Medical Group and OSF Behavioral health wherein they began attempting to ease him back into his regular work schedule. Petitioner did return to work in August of 2022 despite having concerns about returning to that environment and protecting himself and others. The petitioner testified that he was concerned that if something were to happen to himself or others, he would potentially freeze when he needed to perform his duties. Petitioner continued to treat twice to three times per month during this period in an attempt to overcome those fears to return to work. Petitioner was additionally diagnosed with situational mixed anxiety and depressive disorder as well as PTSD in July of 2022 at which time he was given medications Lexapro and Fluoxetine in an attempt to aid him in his return to work in August of 2022. The Petitioner testified these were both psych meds which aided his anxiety levels about returning to that work environment. Petitioner returned to Dr. Funk on August 4, 2022, at which time he continued psychiatric treatment through the month of August to aid in his transition back to work. TX 31-33.

The petitioner additionally testified that the prison did ease him back into his assignments including working the visiting room and doing galleries with very few inmates there to get reintroduced to the environment. Petitioner treated with OSF Behavioral Health through August of 2022. The petitioner testified he has never struggled with PTSD, anxiety, or depressive disorder prior to the injury in question and that his first time seeing any sort of behavioral health or psychiatrist was as a result of the incident in question. TX 33-35.

The petitioner testified he no longer struggles with sleep, but he does have flashbacks still every couple of months to the incident in question. Petitioner testified he had flashbacks through the better part of 2022 until the end of 2023 regarding the stabbing in question. The petitioner testified he does not have the same mentality now that he had prior to the incident in question with him being more on edge and less willing to deal with inmates. The petitioner testified he is more snappy or snippy, much more aware of his surroundings than before, and more cautious than before the incident in question taking the extra step to double check, shake down, or perform pat searches. The petitioner described himself now as extra-vigilant for whatever activity is occurring.

The petitioner testified that he is always at work overtime. The petitioner testified that despite this, he is not currently recommended for any future medical for behavioral or psych issues and has not sought any psych treatment since the claim in question. TX 39-41.

On cross-examination, The petitioner testified that he remained employed with Pontiac Correctional Center as of the date of hearing and had no negative work evaluations since his return-to-work full duty. The petitioner did testify he could safely perform all duties required of being a correctional officer despite his mental state. TX 41-42. He further testified that he volunteered for overtime. When asked whether he was required to work overtime he testified, "I always just volunteered…[t]he last mandate I took before was like in 2020." TX 11.

CONCLUSIONS OF LAW:

In support of the Arbitrator's decision relating to the wages earned in the preceding 52 weeks the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.
The summaries of medical evidence and Petitioner's testimony, above, are incorporated herein.

The Act defines average weekly wage as "the actual earning 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…excluding overtime and bonus divided by 52." 820 ILCS 305/10. The act specifically excludes overtime but does not define it and so courts have used the dictionary definition of "working time in excess of a minimum total set for a given period. *Airborne Express, Inc. v. Ill. Workers' Comp. Comm'n*, 372 Ill.App.3d 549, at 553. When no evidence is presented that Petitioner is required to work overtime as a condition of his employment or that he consistently worked a set number of hours each week then it is not proper to include that overtime in the AWW calculation. *Edward Don Co. v. Industrial Comm'n*, 344 Ill.App.3d 643, at 657. When there is no evidence that (1) [employee] required to work overtime as a condition of his employment, (2) [employee] consistently work a set number of hours of overtime each week, (3) the overtime hours were part of his regular hours of employment then the overtime should not be included in the average weekly wage calculation. *Freesen, Inc. v. Industrial Comm'n*, 348 Ill.App.3d 1035, at 1042.

Petitioner testified that while he volunteered for overtime regularly, he would have been *mandated* for overtime had he not volunteered and would not have had control over which shift he worked if he allowed the mandate rather than volunteering his time given the short-staffed nature of the prison itself. The Petitioner testified that he was mandated daily and often worked two eight-hour shifts back-to-back. The Petitioner additionally testified that if he were to refuse overtime when he was mandated, he would have been punished. The wage statement attached as Respondent's Exhibit 1 shows Petitioner made $62,731.60 in regular earnings and an additional $43,311.26 in overtime wages. The Arbitrator notes overtime wages are paid at 1.5 times the regular earnings. As a result, the Arbitrator determines that the Petitioner was paid an additional $28,874.17 in overtime wages which were mandatory or would have been mandatory if the Petitioner had not volunteered for a specific shift period.

The Arbitrator hereby finds that Petitioner's overtime wages as included on Respondent's Exhibit 1 should be included in Petitioner's Average Weekly Wage as calculated under the Act under his straight time rate making the Petitioner's yearly wage $91,605.77 and his average weekly wage $1761.65.

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 Petitioner's testimony, 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 is still employed as a correctional officer and still volunteers to work significant overtime. Therefore, the Arbitrator gives moderate weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 34 years old at the time of the accident. Petitioner denied current issues with work or his mental health but he has a significant amount of time left in the labor force. Therefore, the Arbitrator gives minimal weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, Petitioner is still employed by Respondent and there was no evidence presented that his injury has affected his future earning capacity. Therefore, the Arbitrator gives minimal weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner received 1 staple for the laceration on his face. He then underwent mental health therapy for approximately 8 months where he consistently complained of anxiety and flashbacks in addition to having trouble sleeping. Therefore, the Arbitrator 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 7.5% loss of the left leg pursuant to §8(d)(2) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC030016
Case Name	Scott Wetzler v. State of Illinois - Illinois State Police
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0002
Number of Pages of Decision	42
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Caitlin Fiello

DATE FILED: 1/2/2025

/s/Deborah Simpson,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: Down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SCOTT WETZLER,

Petitioner,

vs. Nos: 18 WC 30016

STATE OF ILLINOIS – ILINOIS STATE POLICE,

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, occupational disease, causation, medical expenses, temporary total disability, and permanent partial disability the Commission modifies the Decision of the Arbitrator, as specified below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made hereof.

Findings of Fact – Testimony

Petitioner testified that he worked for Respondent and had so for about 19 years. Currently, he was assigned to patrol and had been so assigned for four years. Previously, he was a pilot with the Air Operations Bureau for about eight years including on May 11, 2016. On that date, he was involved in a "month long manhunt" which included "quite a few flights" throughout the week" and there were "pop up thunderstorms, a lot of low clouds." "It kind of shook [him] up a little," but he finished the flights. The flights continued for a few days in conditions they should not have flown in.

They "wrapped up the manhunt," and it was Petitioner's "time to fly." He checked the weather and there were pretty significant thunderstorms in the area. He expressed his concerns to his supervisor, Bill Skrobul, and that he wanted to divert around the storms. Mr. Skrobul responded, "like let's just point it toward home and we'll see how it looks." As they traveled, Petitioner renewed his concern and desire to divert, but Mr. Skrobul "kind of took" away his authority to operationally control the plane as pilot. He did as his superior told him.

They received a National Weather Broadcast about the severity of the storms with 60 MPH winds and 2" hail; "it was the kind of stuff that would have just ripped the plane apart" if they encountered it." Mr. Skrobul continued the course, they got closer to the cells, they merged, and they "kind of got caught." At that time they were flying under instrument meteorological conditions, had to have a flight plan, and communicate with air traffic control. However, they were not on a flight plan and were not communicating with air traffic control. He had no idea if there were other aircraft in the area and "the weather started getting worse."

Because of the intensity of the storms their IPADs lost communications with the satellite and could not see where the cells were. They were flying blind. At that time he "just felt like something inside [him] exploded" and he froze. Mr. Skrobul was telling him, to change directions in small increments, but they didn't know where they were. When they landed, the refueler asked "what the fuck are you guys doing, do you have a death wish." Petitioner looked at Mr. Skrobul and said: "yes we do."

Petitioner testified he was never forced to fly in similar unsafe conditions. However, one time there was some light icing on a previous flight, he objected to flying, and Mr. Skrobul thought they could make it. There were no thunderstorms involved. He was given orders to continue flying through the storm, which was contrary to FAA guidelines, which he was required to follow. Not only were they not flying under a fight plan, the FAA recommended at least a 20-mile birth "on storms like that." Prior to the incident he had no history of anxiety, PTSD, or any other mental health issues. Petitioner continued flying.

On December 16, 2016, they were preparing to fly in a homicide-type investigation in conjunction with the DEA. They "were in a winter storm type warning that entire day." They got an airport advisory to expect freezing rain/sleet. Once again, Petitioner told Mr. Skrobul that he did not want to fly in that. Nevertheless, they got the signal from DEA and Mr. Skrobul said they were going to go and he would get them around the ice. Within a couple of hundred feet of takeoff, they "got slammed with a sheet of ice" which affected the performance of the airplane.

Mr. Skrobul continued flying, but was having trouble controlling the airplane. Petitioner was concerned that they might have to perform "deep turns" to keep track of a suspect in surveillance. If they had to do such a maneuver, they would just stall, lose lift, and spiral down. Mr. Skrobul continued despite Petitioner's protests. Petitioner started shutting off the surveillance equipment, and said: "I'm done, take me back."

They landed safely, and shortly thereafter, Petitioner put in for a transfer. Petitioner noted that their aircraft was not rated for icing conditions and flying in ice was prohibited under the operating handbook. He seemed to suggest that this incident was much more serious than the previous one in the thunderstorms. It was very scary, and he texted his wife that he loved her and that he might not make it home.

After the incidents, Petitioner had sleep disturbances. He then began to experience physiological symptoms such as heart palpitations and irregular heartbeat; he thought he was having a heart attack. That was when he put in his request for a transfer. After the first incident, he asked to be transferred to Springfield, which he thought would be a safer assignment noting Mr. Skrobul's criticism of him for not flying. He did not hear anything about that request. After the icing incident, Petitioner put in a request to be transferred out of Air Operations completely and go back to patrol.

After the second incident, Petitioner discussed his situation with his primary care physician, Dr. Reger. They discussed treatment options including therapy and medications. He explained to his doctor that FAA regulations would not allow him to take psychotropic drugs, or anything for "like depression or anything." They decided on Propranolol, to help the heart palpitations/racing and the associated anxiety. Petitioner also saw a Dr. Hinz, a psychologist, who diagnosed PTSD. He recommended psychotherapy, counseling, and advised Petitioner he could no longer fly. He also saw Dr. Chalfant for PTSD. He recommended EMDR therapy and prescribed Prazosin, medication to help his nightmares, night terrors, and sleep disorder.

In August 2018, Petitioner began EMDR therapy with Ms. Johnson, which involves desensitizing eye movement. He continued to treat with Ms. Johnson until her retirement and he began treating with Ms. Ingram. He also had a §12 examination with Dr. Sky on January 15, 2020. He diagnosed Petitioner with PTSD, depressive disorder, and "maybe some generalized anxiety." He had another §12 examination with Dr. Hartman.

Petitioner testified that treatment has helped Petitioner's condition but he still had increased anxiety, sleep disorder, and news about a plane crash triggers nightmares. The nightmares had been reduced to one maybe every few months. The heart palpitations have also reduced. He has also experienced flashbacks. Besides the Propranolol which helps the palpitations, he takes Trintellix which makes him "numb with a lot of emotional *** things." He still struggles with anxiety, increased heart rate, sweaty palms, and profuse sweating.

Petitioner testified he has been deemed unable to fly by the FAA and by his doctors. He has not flown a plane since being diagnosed with PTSD. He wanted to be a state police pilot ever since he was 19 and enjoyed flying his family. He had tried to fly commercial to Florida, had a panic attack, and drove while his family flew. He earned significantly more money as a pilot with Respondent than as a patrolman.

On cross examination, Petitioner reiterated that initially he applied for a lateral transfer to a different location. Once he decided that things were not going to change in operational safety, he applied for a transfer out of aviation completely. He was stationed in Collinsville after he was transferred to patrol as a trooper. Petitioner testified there was little opportunity for advancement as trooper/pilot, and there was none in his current job as trooper, because when you change job assignment, "you're basically starting over."

On redirect examination, Petitioner testified he made the location transfer request "to escape unsafe working conditions in Belleville." Before he made the request, he discussed it with his mentor, a high ranking ISP officer.

William Skrobul was called by Respondent for which he worked as Sergeant. He has been a pilot with ISP for about 21 years. He has flown planes since 1991. The times he flies weekly varies. In summertime, they pretty much fly every workday. It slows down in winter to a couple of days a week or so. They also help law enforcement entities other than Respondent. They generally fly in pairs, the pilot, who concentrates on flying the plane, and the observer, who operates the camera system.

Sgt. Skrobul explained that flying conditions are not always perfect, sunny with clear skies and no turbulence. He was trained by ISP to determine whether the weather conditions were safe to fly in. As a general rule, it up to the pilot to determine whether it was safe to fly. If there is a thunderstorm cell you can't see through you go around it. They don't fly if there is sustained winds of 30 MPH or higher.

Sgt. Skrobul worked with Petitioner for about seven years. Because he was a Sergeant and Petitioner was a Trooper, technically, he was Petitioner's supervisor. They flew together on February 14, 2014 searching for a missing person. Mr. Skrobul was the pilot and Petitioner was the observer. "The weather wasn't great that day but it was good enough to get down there." After a few hours of flying at the surveillance site, the weather worsened in terms of ceiling/visibility. They landed in Carbondale, and noticed "there was a window to get back to Belleville *** by filing IFR plan *** under radar control the whole time." Carbondale to Belleville was about 53 nautical miles which would be about a 25-minute flight.

As they ascended "there was a small amount of trace ice *** a glaze over the leading edges of the wings and struts and stuff like that. As soon as they reached altitude, it was warmer and the "glaze was melting off already." Above the clouds it was sunny and there was no reason not to fly to Belleville. He acknowledged that they did pick up a "little bit of extra ice coming down through the clouds." There was ice directly in front on the windshield, but you could see out the sides and unrestricted out to copilot side, and he was able to land safely. Upon landing, Petitioner laughed, told Sgt. Skrobul "good job," and he thought Petitioner laughed again. It did not appear to him that Petitioner expressed any stress or concern.

Sgt. Skrobul was also involved in a flight with Petitioner on May 11, 2016 in Harrisburg. On the way back, Petitioner was the pilot and he was the passenger, they were just flying back to their base. He did not recall who flew to Harrisburg. It appears that they saw something on radar which "looked like a pretty large cell that was just 10 miles from [them], it wasn't there." They continued their search, and "didn't have any issues." He believed the weather forecast in RX12 came from the St. Louis area, which was not that close to Harrisburg.

The weather was fine for about 80% of the flight. Around Sparta there were some spotty cells, "where you could get through them." They considered landing somewhere to allow the storms to pass, but there were "several gaps in the cells *** it was the end of [their] shift," and they decided to try to get to Belleville. If the airport closed due to the weather, they would deal with it. Petitioner was flying. If Mr. Skrobul were flying he would have flown "straight to the gap that was in the cells that [they] had on" radar.

Petitioner seemed concerned about the cell and flew north, where the weather seemed to be worse. It was also flying 200 miles out of their way. He asked Petitioner why he was flying north and he "finally got back on course," flew through the gap, and there was only heavy rain. They don't fly through cells they cannot see through or in lightning. They didn't pick up lightning on radar. Sgt. Skrobul noted that the radar they use can be deceiving in making cells appear much more dangerous than they are. Once you get there you can get a better picture of the weather.

Sgt. Skrobul was involved in another flight with Petitioner on December 16, 2016. He was the pilot and Petitioner was the observer. It was a surveillance flight and they usually would not do that unless the ceiling is at least 2,000 to 2,500 feet. As they ascended they went "through just like this little misty area," and picked up "a trace off ice on the plane." The ice remained on the plane. He noticed that Petitioner was looking outside and not through the camera system, which was required for successful surveillance.

Sgt. Skrobul explained to Petitioner that although they had some ice, they were clear then, were below the clouds, they were not picking up anything, and if it got worse they could go back and land. Petitioner then "pretty much turned the camera off, said this is stupid, take me back." He tried to explain to Petitioner that if they returned they would have to go back through the area in which they had picked up the ice and it was safer where they were. He replied, "no I'm done." They built up more ice coming through to land in Belleville.

Sgt. Skrobul was shown PX12 which purports to be a picture of the plane after it landed on December 16, 2016. He thought it may be from the February flight because he did not remember that amount of ice in the December flight. The picture showed ice on the co-pilot's side, which unlike the pilot's side, does not have a defroster. The pilot's side was not depicted. At no point during any of these flights did Sgt. Skrobul feel that was "a substantial risk of injury or even death to" himself or Petitioner.

On cross examination, Sgt. Skrobul testified he did not have any issues with Petitioner and considered him a good employee. When asked whether he lost radar signal in the May 11, 2016 flight, Sgt. Skrobul responded he did not remember losing a radar signal on any flight in his over 25 years of flying. He did not lose any signal on that flight. Sgt. Skrobul agreed that they were heading for St. Louis area in the May 11, 2016 flight. He also agreed that he told Petitioner to fly through a gap in the cells. The gap was 16&1/2 miles. He reiterated that Petitioner's flying north was flying them into worse weather and he was concerned about that. He did not remember seeing any lightning. He even had a discussion with Petitioner in the plane that there was no lightning in the cells. Sgt. Skrobul agreed that they do not fly in freezing rain. That is different from the mist he flew through. Their plane does not have de-icing. The picture in PX12 was taken within 30 seconds of landing. He was able to see through the windshield throughout the flight.

Findings of Fact – Medical Records, Documentary Evidence

On April 11, 2017, Petitioner presented to Dr. Reger, for anxiety. He had "issues with public speaking" and "several harrowing experiences while flying for the state as part of his job." Petitioner wondered about switching to a Beta Blocker to help both his Hypertension, ("HTN") and anxiety symptoms. He had palpitations and feelings of stress, but was negative for depressive symptoms, personality changes, difficulty concentrating, recreational drug use, or sleep disturbance. Dr. Reger prescribed Propranolol.

On May 24, 2018, Petitioner returned for HTN and anxiety. He was on a cardiac regimen of a Beta Blocker, Propranolol, an ACE inhibiter, and Lisinopril; his HTN was well controlled. Dr. Reger noted that over the last several years, Petitioner has had anxiety, mainly associated with flying. "He has had several near death experiences." They discussed counseling, but Petitioner was more interested in medications, though the FAA had restrictions. Dr. Reger prescribed Lexapro (Escitalopram Oxalate).

On June 14, 2018, Petitioner presented for follow up for anxiety. He saw a psychologist, Dr. Hinz, who diagnosed Petitioner with PTSD. Dr. Reger continued Lexapro. About six months later, Petitioner returned and noted that his treatment for PTSD was switched to Dr. Chalifant who apparently changed his Lexapro prescription to Zoloft. Dr. Reger noted Petitioner would be treated by Dr. Chalifant for his PTSD.

On June 5, 2018, Petitioner presented to Dr. Hinz, clinical psychologist, for initial psychotherapy intake evaluation. He reported anxiety attacks for the last couple of years and what Dr. Hinz described as "high blood pressure (anxiety caused) and heart palpitations (most likely anxiety caused)." He also had poor sleep and awoke in panic. He has been a pilot with 25 years and currently flew with his supervisor. Over the past two to three years he reported three incidents in which he was flying in dangerous conditions with storms, high winds, and icing. On occasion he did not believe he would make it back. He was still assigned to fly but took vacation/sick time to avoid flying. He did not want to fly anymore.

Petitioner reported his medications were becoming less effective over time. Dr. Hinz diagnosed PTSD, HTN, palpitations, and work stress. His treatment of choice was for "PTSD type anxiety" was EMDR.

Petitioner returned on June 13, 2018 and reported he felt somewhat better knowing his symptoms were anxiety related and not heart related. He had paperwork for his work status. They discussed an immediate opening for six months in Springfield at the Academy in a counselor position. Petitioner was interested in that and he thought that could be a good transition to return to patrol work, which he had not done in 10 years. Respondent also told him he could continue to stay on sick leave until he was able to return to duty. He was scheduled to see Dr. Chalifant, a psychiatrist, on July 24th.

After three more visits with Dr. Hinz, Petitioner saw him a last time on October 1, 2018. Petitioner reported seeing Dr. Chalifant, who adjusted medication, and found a therapist for EMDR treatment. Dr. Hinz released Petitioner from treatment *prn*.

On July 25, 2018, Petitioner presented to Dr. Chalifant, D.O., with the chief complaint of "I've been diagnosed with PTSD." He reported being on three flights that made him very anxious. He did not believe he was going to make it home after at least one of the flights. He became disabled from flying and was doing administrative work at the Academy in Springfield. Petitioner reported no previous psychiatric issues. Dr. Chalifant continued Lexapro, prescribed Prazosin, and noted he would set up EMDR treatment. A month later, he returned and reported he was doing OK. He still had some anxiety about flying, even on a commercial plane. Dr. Chalifant continued medications.

A week later, Petitioner presented to Stephanie Johnson, LCPC, for EMDR therapy. Petitioner reported his anxiety-ridden flights. When asked about any other previous trauma, Petitioner reported some years previously, he stopping a vehicle and a semi came toward him and almost hit him, if he had not jumped into the "suspect's convertible vehicle." Ms. Johnson thought Petitioner was a good candidate for EMDR.

After several visits to Ms. Johnson and Dr. Chalifant, Petitioner reported to Ms. Johnson that he had planned on flying with his family to Florida. However, he had nightmares the previous night, and he drove while his wife and son flew. This is Ms. Johnson's last note, she was retiring and gave Petitioner a list of other providers.

The last treatment note of Dr. Chalifant was dated June 29, 2022. Petitioner reported he was doing well with no panic attacks. He went to Cahokia airport on instruction of his therapists. He had a little chest pain but no nightmares. Dr. Chalifant continued medications and EMDR with Ingram Counseling.

On August 31, 2021, Petitioner presented to Ingram Counseling Services. In his intake form, he reported that he was involved in hazardous flights in which the flight crew nearly lost their lives. Petitioner presented to Ms. Ingram because his prior psychotherapist, Ms. Johnson, had retired. He was also seeing Dr. Chalifant for prescriptions. Petitioner reported he had progressed immensely in psychotherapy, but still had sleep disturbance, intrusive thoughts, occasional panic attacks, and inability to fly in any plane.

Petitioner reported he was seeing his PCP for stress and anxiety before his diagnosis of PTSD, and was seeing a cardiologist for HTN, because he mistakenly thought his panic attacks were heart attacks. His social network consisted of other pilots. His diagnosis of PTSD essentially ended that network. Petitioner reported his EMDR treatment and psychotherapy were beneficial, but he would like to reduce or eliminate his psychotropic drugs. While he had given up on being a pilot, he wanted to be able to fly commercially without severe anxiety.

The last of 28 treatment notes was dated October 19, 2022. Petitioner's symptoms remained panic attacks, hypervigilance, nightmares, intrusive thoughts, and excessive worry about death/dying. Petitioner reported minimal nightmares and none about aviation. A recent plane crash did not bring up a trauma response and his trauma response had decreased overall. He wanted to try flying commercially and wanted to explore health ways of flying again. Ms. Ingram recommended continuation of "current therapeutic focus."

A description of Petitioner's job was submitted into evidence. The pilot-in command is responsible for "the safe conduct of flights" and the co-pilot/observer assists the pilot-in-command, communicate with ground personnel, communicate with the pilot on best areas of observation, operate equipment, and "advise the pilot-in-command of any condition which, in his or her opinion, may adversely affect the safe operation of the aircraft." The exhibit specifies certain technical minimum weather requirements which must be at least the FAA minimum. Flight into known icing was prohibited, as was flying in sustained 30 MPH winds.

On May 11, 2016, at 3:15 p.m., the National Weather Service in St. Louis issued a severe thunderstorm warning effective until 4:00 including the Illinois counties of St. Clair, Randolph, and Monroe. Radar identified 60 MPH wind gusts and quarter-sized hail. It was extended to 4:45 in Southwestern Washington/St. Clair and Northeastern Randolph counties.

Findings of Fact – Doctor Depositions

Dr. Sky testified by deposition on February 17, 2020 that he was a board-certified psychiatrist and neurologist with an added qualification in geriatric psychiatry. He had a normal private psychiatric practice and performed one or two §12 examinations per week. He performed such an examination on Petitioner on January 15, 2020, at the request of his lawyers.

Petitioner reported a "number of very concerning traumatic events that he went through." His symptoms first began in mid-2016 when he flew through severe weather at the insistence of

his supervisor. Dr. Sky then interjected that he was a pilot and his experience/description resonated with him. Petitioner reported having to fly in conditions he normally would not fly in. Dr. Sky would not fly in the conditions Petitioner described. Soon thereafter, Petitioner applied for a transfer, but it was rejected because they had only a skeletal staff.

Petitioner's symptoms "really began" after the incident in May of 2016. By that time he "didn't really want to get near an airplane" no matter what the weather was. His supervisor wanted to fly surveillance despite icing conditions. They had difficulty maintaining altitude even at full power. Petitioner wanted his supervisor to land, but he refused. Petitioner then shut off the surveillance equipment so the supervisor had no choice but to land. Thereafter, his symptoms became more pronounced. He last flew in June of 2018 when he did not pass his medical evaluation. Petitioner flew commercially once since 2018. He reported panic attacks/anxiety both before and during the flight. He still got frequent nightmares, anger/irritability/outbursts, and anxiety. Dr. Sky reviewed Petitioner's medical records, including an IME from Dr. Hartman.

Dr. Sky noted that both he and Dr. Hartman administered psychological tests. However, Dr. Sky noted that he administered two tests for depression, one for anxiety, and another for PTSD. After his review of the medical records, his examination, and administration of psychological testing, Dr. Sky's diagnoses were more prominently PTSD, mild depressive disorder, and generalized anxiety disorder. He noted that Dr. Chalifant also diagnosed Petitioner with PTSD.

Dr. Sky reviewed the report of Dr. Hartman; with which he mostly disagreed. He noted Dr. Hartman diagnosed mood disorder associated with HTN, which did not make any sense. Similarly, the diagnosis of phobic anxiety related to small aircraft did not make sense. He noted that Petitioner had a full blown panic attack on a large aircraft. He also had no idea why Dr. Hartman did not test for PTSD, which seemed to be associated with most of Petitioner's symptoms. He thought "strongly" that Petitioner's condition reached the definition of PTSD and he disagreed with Dr. Hartman's opinion that it did not. Dr. Sky compared Petitioner's experience to a soldier who is the only one to survive from his platoon after a hopeless military engagement.

Dr. Sky opined that the incidents on May 11, 2016 and December 16, 2016 were the cause of Petitioner's current psychiatric symptoms/diagnoses. He explained that these incidents were definitely life-threatening, and "the fact that he survived both of them is *** an aviation miracle." Dr. Sky believed that if he had flown in those conditions as a private pilot, he would have lost his license. Petitioner was no longer medically cleared to fly because of his PTSD and medications.

Dr. Sky opined that the treatment Petitioner received was reasonable and necessary. While he was at MMI, Petitioner would require ongoing psychiatric/psychological treatment he was receiving from Dr. Chalifant/Ms. Johnson and possible psychotherapy. There was no evidence that Petitioner had any prior diagnoses of PTSD, anxiety, or major depressive disorder. He did not get "the remoteness scintilla of" malingering in any of his symptoms. He was confident ion his psychological testing. He did not believe Petitioner would ever fly again. Petitioner's prognosis

was guarded but his prognosis was reasonable if he continued to get the treatment he needed and stayed away from triggers like airplanes.

On cross examination, Dr. Sky testified that he performed §12 examinations for both plaintiffs and defendants. The percentage between plaintiffs and defendants is "roughly 80/20," but it's unclear on which side. He did not recall exactly when Petitioner's commercial flight was. Later, he testified that it was in in December of 2019 and Petitioner had a panic attack seeing a thunderstorm a "huge distance" from the plane.

Dr. Sky agreed that psychological testing is based on a patient's responses about their symptoms. Generally, they "don't do much of anything" for treatment of mild mood disturbance. Psychotherapy "can be" a typical treatment for PTSD or anxiety; it's one of the recommended treatments. There is no hard and fast rule on the duration of treatment for PTSD.

On redirect examination, Dr. Sky testified various medications Petitioner took can be used for HTN and some also treat anxiety/panic attacks. He would not opine on whether Petitioner's HTN was well-controlled on medications.

On February 7, 2020, Dr. Hartman testified by deposition that he was a board certified in clinical and forensic neuropsychology. His practice "is entirely diagnosis related *** to complex cases where there are a number of potential influences on brain and behavior function." He no longer had a therapy treatment practice because the diagnostic aspect became too time consuming. Occasionally, he saw amateur/airline pilots applying for recertification. He estimated 1/3 to ½ of his practice involves "IME-related" cases. He sees quite a few patients who claim PTSD.

Dr. Hartman performed a §12 examination on Petitioner, which took about six hours, reviewed his records, and issued a report. In looking at his medical records, Dr. Hartman noted the history of multiyear uncontrolled HTN, a strong family history of HTN, and his report of significant anxiety/work stress including being "requested to fly" in dangerous conditions. The "constellation of symptoms he has are fairly typical for those expected patterns of individuals *** who have chronic elevated blood pressure. They are known to suffer more from anger and anxiety and non-specific emotional stress." Hypertensive patients "have a lot of adrenaline" which "constricts vasculature." Petitioner reported several episodes in which he was requested to fly in what he described as very dangerous weather. Apparently, he and his supervisor "had an ongoing dispute over" the dangerousness of the conditions Petitioner was asked to fly into.

Dr. Hartman observed that Petitioner did not appear overly depressed, to have any "casually observable mental status changes," and remarkably he was able to discuss his history without becoming unnerved, angry, or anxious. Dr. Hartman noted that Petitioner's anxiety and HTN seemed to become worse over time. He noted that these conditions are considered comorbid, which means they frequently occur together. Petitioner was taking medication that can treat both HTN and anxiety.

On psychological testing, Petitioner showed "some mild/borderline cognitive inefficiencies and some isolated symptoms of anxiety, not enough to be diagnosable as a full blown or disabling syndrome." Dr. Hartman, has frequently seen patients with PTSD, diagnosed it when it occurs, and seen conditions that are called PTSD which are not. He characterized PTSD "as kind of the nuclear bomb of anxiety disorders. It's an extremely severe, extremely mentally disabling anxiety disorder that is produced when a person is exposed to something which is so far beyond the level of normal human experience and so egregious in terms of stress that they never really feel right anymore and their personality kind of loses its cohesion." He related examples of certain such stressors.

Dr. Hartman did not believed Petitioner met the criteria for PTSD. First, he did not believe flying through bad weather would be considered the type of extreme trauma typically associated with PTSD. Second, his symptoms seemed to be related to fear of airplanes/flying, while otherwise being able to cope with his life. If he truly had PTSD, he would not have been able to cope with other aspects of his life as well as he did. Rather, Petitioner developed a specific phobia regarding a very specific object/situation, which is a very treatable condition with usually only four to 12 desensitization therapy sessions.

When asked whether it appeared that Petitioner had a phobic anxiety disorder, Dr. Hartman answered, "he may." He says he has a phobia regarding airplanes, and "it's not implausible" that he just gets too unnerved from flying in bad weather. One should look at his reaction when he was around aircraft.

Dr. Hartman summarized the relationship between chronic untreated HTN and cognitively disabling impairments, including stroke, including advancing small vessel disease. He also related his experience of 10 years as Director of Neuropsychology at Cook County Hospital where he typically used blood pressure as an index of vascular brain function. "People who are hypertensive are angrier, more depressed, more anxious." He takes blood pressure measurements very frequently during interviews.

Dr. Hartman did not believe Petitioner showed indications of a "labile emotional status." Petitioner described "a circumscribed, a specific phobia related to flying." However, his conditions seemed to be "a more diffuse issue," which is "quite common in people with chronic" HTN. Dr. Hartman believed successful treatment of HTN, would likely resolve many of his emotional symptoms.

On cross examination, Dr. Hartman testified that he does not interact with the State of Illinois, he was hired by Tristar, for which between 30% and 50% of his IMEs are performed. His doctorate is in clinical psychology. He last performed psychotherapy about 10 years previously. He agreed that the MMPI 2-RF test showed anxiety, but it was "isolated anxiety symptoms without any clear elevations that would suggest a diagnosable condition." He did not include the actual test results because it has "protected status in the State of Illinois. It's not considered to be part of

the report." He believed Petitioner signed a consent form before the IME. Dr. Hartman was willing to send the test results to a licensed psychologist.

Dr. Hartman agreed that he did not administer a PCL-5. When asked whether that was a "provisional measure for" PTSD, Dr. Hartman answered: "it's a checklist and it doesn't really have differential diagnostic validity." Because it was so subjective in nature, "it doesn't really have good utility for a differential diagnosis. They're mainly used for tracking the symptoms of identified and credible PTSD patients in treatment. So its use would not be appropriate in this circumstance." It's not meant to measure symptoms in the course of treatment not as a means of diagnosis. Dr. Hartman also did not administer Montgomery Asberg Depression Rating Scale, Vex Depression Inventory, or the Hamilton Anxiety Rating Scale tests. Dr. Hartman agreed that Petitioner did not try to exaggerate symptoms and his results were considered valid for interpretation.

Petitioner related that a variety of conditions triggered anxiety or panic. Dr. Hartman noted that a problem a clinician would have is that there isn't any records that would substantiate the claim and pattern of bad weather that he was stating he was flying through. He just reported what Petitioner told him. He agreed that Dr. Hinz and Dr. Chalifant diagnosed Petitioner had PTSD, and the ISP medical evaluation diagnosed Petitioner with PTSD or anxiety. However, in his opinions "they're not using it in a way that is consistent with the DSM labeling. They're using it as a kind of casual descriptive term." Dr. Hartman agreed that he diagnosed anxiety or fear of flying. Petitioner "has a very circumscribed anxiety related to flying, which is diagnosable, but it's not PTSD." He explained that to be diagnosed with PTSD, one can't simply "feel" his/her life was in danger it has to it has to be that your life is "actually" in danger.

Dr. Hartman agreed that he thought Petitioner's chance to return to piloting was low. The FAA would not allow him to fly with his blood pressure numbers. The FAA has its own medical examiners, who issue reports regarding certification of pilots. The FAA is very exact and he would trust their workups. He had no records indicating the FAA medical certification was denied by the medical examiner.

Dr. Hartman reiterated that Petitioner's blood pressure was the main clinical impediment to his returning to flying. PTSD was not the reason for his restriction from flying, because he did not have PTSD. Dr. Hartman was not a pilot, but had examined many of them. He agreed that taking Sertraline made Petitioner ineligible to fly. It is prescribed to patients with various psychiatric disorders, including all disorders in which anxiety is an issue, not just PTSD.

On redirect examination, Dr. Hartman, testified he based his opinion on his clinical interview, his review of the medical records, and his knowledge and experience as a neuropsychologist. His test results showed somebody who did not have disabling PTSD, but circumscribed anxiety which looked like a specific phobia related to flight and some chronic and fluctuating mood problems that one typically sees in patients with HTN. Dr. Hartman explained

that Sertraline, or Zoloft, is one of the most common anti-depressants, used for non-specific depression/anxiety. Dr. Hartman reiterated that the best thing to be done for Petitioner would be to lower his blood pressure.

Conclusions of Law

The Arbitrator found that Petitioner sustained his burden of proving compensable accidents in the May 11, 2016 and December 16, 2016 incidents, both of which caused Petitioner's diagnosis of PTSD. She awarded Petitioner a total of 150 weeks of PPD benefits representing loss of 15% of the person-as-a-whole for each incident. She noted that she found Petitioner credible, and his description of events "were consistent and, on their face, were sufficiently shocking to a reasonable person" to satisfy the *Diaz* standard to prove a mental-mental accident. She found Sgt. Skrobul was "either minimizing the severity of the situations or was oblivious to it." She also found support in the reaction of the refueler about which Petitioner testified, and Dr. Sky's statement that if he had flown into those conditions he would have lost his pilot's license.

Respondent argues the Arbitrator erred in discounting the testimony of Sgt. Skrobul in finding Petitioner's flight experiences to have of such a nature as to cause "sudden and severe shock." It notes Sgt. Skrobul's significantly greater flight experience that Petitioner, he was in a better position to assess actual danger to the pilots, and he did not believe they were in significant danger in the flights. It also asserts that Petitioner "did not stop working in his job position as pilot for ISP for approximately two years after the flights." It also argues Petitioner did not sustain his burden of proving he actually had PTSD.

By separate decision, the Commission affirmed and adopted the Decision of the Arbitrator in 18 WC 30018 regarding the December 16, 2016 incident. We find sufficient evidence to affirm the Arbitrator's determination that the second incident caused Petitioner's diagnosis of PTSD and the resulting PPD award. However, the Commission finds Petitioner did not meet his burden of proving that the first incident caused his diagnosed PTSD. The Commission notes that after the first incident, Petitioner continued flying, though he sought a transfer to another assignment which he through would be safer. In addition, Petitioner was only diagnosed with PTSD after the second incident, the situation in which Petitioner testified he texted his wife about his possible pending death, he was unable to continue flying thereafter, and he immediately transferred to assignment as normal patrolman which resulted in loss of income.

Nevertheless, the Commission finds that Petitioner proved that the initial incident on May 11, 2016 caused him psychological distress, which was a generalized anxiety, and which did not develop into PTSD until the second incident. He was able to continue flying, though he had anxiety over it. On the other hand, he was not able to continue flying only after the second incident. Therefore, the Commission concludes that Petitioner sustained a mental-mental injury on May 11, 2016, which resulted in a generalized anxiety and did not rise to the level of PTSD. Accordingly, the Commission modifies the PPD award from 75 weeks, representing loss of 15% of the person-as-a-whole, to 25 weeks representing loss of 5% of the person-as-a-whole.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner permanent partial disability benefits of $755.22 per week for a total of 15 weeks, because the injuries sustained caused the 5% loss of the person-as-a-whole, pursuant to §8(d)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.

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.

January 2, 2025

DLS/dw
O-11/6/24
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/s/*Deborah L. Simpson*
Deborah L. Simpson

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC030016
Case Name	Scott Wetzler v. State of Illinois - Illinois State Police
Consolidated Cases	18WC030017; 18WC030018;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	27
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Caitlin Fiello

DATE FILED: 3/13/2023

THE INTEREST RATE FOR THE WEEK OF MARCH 7, 2023 4.97%

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

/s/ Jeanne AuBuchon, Arbitrator
Signature

March 13, 2023

/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

SCOTT WETZLER
Employee/Petitioner

v.

STATE OF IL / ILLINOIS STATE POLICE
Employer/Respondent

Case # **18** WC **30016**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **JEANNE L. AuBUCHON**, Arbitrator of the Commission, in the city of **HERRIN, ILLINOIS**, on **OCTOBER 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 _____

FINDINGS

On **May 11, 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 $**94,692.00**; the average weekly wage was $**1,821.00**.

On the date of accident, Petitioner was **44** 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 $**N/A** for TTD, $**-** for TPD, $**-** for maintenance, and $**-** for other benefits, for a total credit of $**N/A**.

Respondent is entitled to a credit of $**-** 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.

Temporary total disability benefits are denied.

Respondent shall pay Petitioner permanent partial disability benefits of $755.22/week for 75 weeks, because the injuries sustained caused the 15% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 1/15/2020 through 10/21/2022, 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. AuBuchon
Signature of Arbitrator

March 13, 2023

PROCEDURAL HISTORY

This matter proceeded to trial on October 21, 2022. 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 mental health conditions; 3) payment of medical bills; 4) entitlement to temporary total disability (TTD) benefits from June 8, 2018, through June 15, 2018; and 5) the nature and extent of the Petitioner's injuries.

This case was consolidated with 18WC30017 and 18WC30018, which allege the same injuries regarding incidents on other dates.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 44 years old and had been employed by the Respondent as a pilot with the Air Operations Bureau for about eight years and was involved in a manhunt in southern Illinois for a suspect that shot a Mahomet, Illinois, police officer. (AX1, T. 12-13) While flying during the manhunt that week, there had been pop-up thunderstorms and a lot of low clouds. (Id.) He testified that that during some of those flights, he got caught up in some weather that shook him up a bit. (T. 13) On May 11, 2016, the Petitioner was flying back to home base at MidAmerica Airport in Mascoutah, Illinois, and had checked the weather and found there were some pretty significant storms moving along his path from west to east. (T. 14-15) The National Weather Service issued a severe thunderstorm warning for Washington, St. Clair and Randolph Counties warning of 60-mph wind gust and quarter-sized hail. (PX13, RX12) The Petitioner said he expressed to his supervisor, Sgt. William Skrobul, who was along on the flight, that he was uneasy and wanted to divert around the thunderstorms. (T. 15) Sgt. Skrobol told him to point the plane towards home and they would reevaluate once they got closer to the storms. (Id.) The Petitioner said that during the flight, the storms intensified, and he told Sgt. Skrobol that

he was going to divert. (Id.) He said that although, as the pilot of that flight, he was supposed to have operational control of the plane and make the decision, Sgt. Skrobul told him to point the plane where he told him. (T. 16) The Petitioner said he did so and pointed the plane between two storm cells that were pretty close together and received a broadcast from headquarters about the storms. (Id.) He said the advice from the national weather broadcast was to the entire district to seek shelter, warning of 60-mph winds and 2-inch hail – the type of weather that would have ripped the plane apart. (T. 17) He said that as they got closer to the storms, they merged on the radar. (Id.) He said they were in instrument metrological conditions (IMC), not on a flight plan and not communicating with traffic control. (T. 18) He said the storm was so intense -- with cloud-to-cloud lightening – that they lost their XM weather radar and used iPads to check the weather, which had a 5-15 minute delay. (T. 18-19) He said they didn't have the weather reports visually in front of them and couldn't see where the storm cells were. (T. 19) He said he didn't have a visual reference because they were in the clouds. (Id.) The Petitioner testified that after losing the weather radar, he felt like something inside him exploded and he froze. (T. 20) He said they made it to the other side of the storm, skies cleared up, they continued on and they landed. (T. 20) He said the refueler – a retired Marine Corps fighter pilot – expressed shock that the pilots flew through the storm and asked if they had a death wish. (T. 21)

While describing the incident, the Petitioner broke down. He testified that he had never before flown in unsafe conditions similar to this incident other than encountering some light ice. (T. 22) He said he did not have a prior history of anxiety, post-traumatic stress disorder (PTSD) or any other mental health issues. (T. 24)

The Petitioner testified that the directions he was given during the incident were contrary to FAA guidelines in that they did not have a flight plan, were not talking to air traffic control and

had no clearance while flying IMC and did not give at least a 20-mile berth when flying near storm cells. (T. 23) He said that after that incident, he put in a voluntary transfer request to transfer to Springfield because he felt the pilots there were more in line with his decision-making process about flying in bad weather. (T. 32-33) He said the request went unanswered. (T. 33)

Another incident occurred on December 16, 2016, when he was called to assist the DEA conducting surveillance of a suspect wanted in the murder of a DEA witness. (T. 25) The Petitioner said there was a winter storm warning that day for freezing rain and sleet and he told Sgt. Skrobul that he did not feel comfortable and did not want to fly in that weather, but Sgt. Skrobul insisted and said they would get around the ice. (T. 26-27) The Petitioner said that no sooner had they taken off, they were slammed with a sheet of ice that covered the plane instantly. (T. 27) He said that although they were at full power, the plane was not climbing as fast. (Id.) He told Sgt. Skrobul that they needed to land, but Sgt. Skrobul said they weren't picking up any more ice and could continue on and re-evaluate when they got to the surveillance site. (T. 28) The Petitioner explained that when doing surveillance, they do steep turns in order to maintain a visual on the target. (Id.) He said that as they continued on the flight, he could see Sgt. Skrobul was having trouble controlling the plane and would lose altitude in turns. (Id.) The Petitioner said he knew that if they encountered one of those deep turns with the amount of ice they had on the aircraft, they would stall, lose lift and spiral down. (T. 29) He said that when Sgt. Skrobul would not turn back, he started shutting of the surveillance equipment and told Sgt. Skrobul that he was done and to take him back. (Id.) They terminated the flight and landed safely, and shortly after the Petitioner put in for a transfer. (Id.)

The Petitioner stated that the aircraft was not rated for icing conditions and the aircraft operating manual specifically said flying in ice was prohibited. (T. 29-30) He said FAA guidelines

say that icy conditions should be avoided if an aircraft is not rated for ice and, if it is encountered it inadvertently the pilot should declare an emergency and request air traffic control assistance in making a landing. (T. 30)

He said the incident was scary for him. (Id.) He said that after both incidents, he experienced sleep disturbances in general, but after the second, he started developing heart palpitations, racing heart, tachycardia and irregular heartbeat. (T. 30-31) He said that after the second incident, he put in an officer action request (OAR) to transfer out of air operations altogether and go back to patrol. (T. 33-34, 54)

Sgt. Skrobul testified for the Respondent to another incident that happened on February 14, 2014, when he was piloting a flight with the Petitioner serving as the observer, looking for a missing college student in the Carbondale area, when they encountered bad weather conditions as far as the ceiling and visibility were concerned. (T. 76-77) On the flight back, they encountered trace ice after takeoff on the edges of the wings and struts that melted once they got into the sunshine above the clouds. (T. 79) In landing at Mid-America, they picked up more ice than he expected coming through the clouds. (T. 80) He said there was ice on the windshield but unrestricted visibility out the sides. (T. 82) He said that the Petitioner expressed no stress or concern and, when they landed, he laughed and told Sgt. Skrobul that he did a good job. (T. 83)

Regarding the May 11, 2016, incident, Sgt. Skrobul testified that the storm cells were about five miles wide, and it would have taken about two or two and a half minutes to get through the other side. (T. 92) He said he would have flown straight through the gap. (Id.) He acknowledged that there was a 5-8 minute delay on the radar. (Id.) He said the Petitioner was showing concern about flying through the cells and was turning to the north, but that did not make sense because the weather was worse to the north. (T. 93) He told the Petitioner to fly through the gap, and a

couple of minutes later they were through the cell. (T. 94) He said there was no lightning in the cells they flew through – just heavy rain. (Id.) He said he did not order the Petitioner to fly through the gap but gave him suggestions on which direction to fly. (T. 95)

Sgt. Skrobul said the rule of thumb for flying in storms or heavy rain is that if you can't see through it, you do not go through it but go around or between storm cells. (T. 72-73) On cross-examination, he said he did not remember losing radar signal during the May 11, 2016, flight, adding that out of 25 years he didn't remember ever losing radar service. (T. 113-114) After having done Google Earth measurements on the radar from that day and determined that the two storm cells were 16½ miles apart. (T. 116)

The Petitioner introduced into evidence an FAA Advisory Circular from February 19, 2013, that stated pilots avoid heavy or extreme weather radar echoes by at least 40 miles (i.e., such echoes should be separated by at least 40 miles before flying between them). (PX13)

Regarding the December 16, 2016, incident, Sgt. Skrobul acknowledged that they when through a trace of ice after takeoff. (T. 99-100) He said the Petitioner was looking out the window instead of the camera and the car they were supposed to be following then turned the camera off and told Sgt. Skrobul to take him back. (T. 102) He tried to convince the Petitioner that if they waited, the cell would move out of the way and they would have a better chance of going back without picking up any more ice. (T. 103) He said they did build up more ice coming through to land but were able to land safely. (Id.) Sgt. Skrobul identified photos of the windshield of the plane from that day and described a defrosted area at eye level on the pilot's side measuring 3-5 inches. (T. 105-109, PX12) He said he could see out of that defrosted area. (T. 19)

Sgt. Skrobul said that during none of the incidents he described did he ever feel there was a substantial risk of injury or death to him or the Petitioner. (T. 110)

What appears to be a manual for the Cessna Model 182S from 1997 was entered into evidence and stated that flight into known icing conditions is prohibited. (PX13) A letter from the FAA Office of the Chief Counsel dated January 16, 2009, informed the manager of regulatory affairs at the Aircraft Owners and Pilots Association that pilots should not expose themselves or others to the risk associated with flying into conditions in which ice is likely to adhere to an aircraft. (Id.) The letter states that if ice is detected or observed along the route of flight, the pilot should have a viable exit strategy and immediately implement hat strategy so that the flight may safely continue to its intended destination or terminate at an alternate landing facility. (Id.)

After the second incident, the Petitioner sought treatment from his primary care physician, Dr. Paul Reger at Rural Family Medicine Associates, and reported suffering from anxiety following several harrowing experiences while piloting an airplane for the Respondent. (T. 35, PX3) Dr. Reger noted that he was positive for palpitations, anxiety and feelings of stress and prescribed propranolol (a heart medicine also used to treat anxiety). (PX3) When the Petitioner returned to Dr. Reger's office on May 5, 2017, he reported that his blood pressure had been running high and he had been experiencing chest tightness and shortness of breath (Id.) On examination, his blood pressure was elevated to 134/97, and an electrocardiogram showed bradycardia. (Id.) The Petitioner was referred to a cardiologist. (Id.)

On May 18, 2017, Petitioner saw Dr. Angela Brown, a cardiologist at the Center for Advanced Medicine. (PX4) Dr. Brown noted that Petitioner had experienced high blood pressure for approximately 10 years, but that it had been maintained on Lisinopril (a blood pressure medication) until around April 2017 when he saw Dr. Reger for anxiety. (Id.) The Petitioner reported chest pain. (Id.) The Petitioner found the change from Lisinopril to Propranolol helped with his tachycardia (fast heartbeat) as well as anxiety. (Id.) Dr. Brown diagnosed hypertension

and chest pain. (Id.) She did not make any changes to Petitioner's medication and instructed him to continue monitoring his blood pressure and to call her office if his chest pain returned. (Id.)

For the next year, the Petitioner had follow-up visits with Dr. Reger and Dr. Brown and reported the medications were helping. (PX3, PX4) On May 24, 2018, the Petitioner saw Dr. Reger and reported increased symptoms of anxiety and stress associated with the flying incidents. (PX3) Dr. Reger found the Petitioner's blood pressure was elevated to 172/99, his demeanor was anxious, and his speech pattern was pressured. (Id.) Dr. Reger diagnosed hypertension and generalized anxiety disorder, for which he prescribed Lexapro (a depression and anxiety medication). (Id.)

On May 30, 2018, Petitioner returned to Dr. Brown and reported that he had been adherent to his medications, but his blood pressure was elevated. (PX4) He expressed concerns that he may not be able to continue flying as a result of being on Lexapro. (Id.) Dr. Brown found Petitioner positive for anxiety and palpitations and continued his current medications, adding Amlodipine (another blood pressure medication) and instructing the Petitioner to follow up with his primary care physician for his anxiety. (Id.)

On June 6, 2018, Petitioner saw Dr. Michael Hinz, a clinical psychologist who performed a medical evaluation for the Respondent and provided psychotherapy for the Petitioner. (PX5) The Petitioner told Dr. Hinz that he had been having anxiety attacks and symptoms for the last couple of years, along with anxiety-caused high blood pressure and heart palpitations. (Id.) His symptoms included fluttering of the heart, racing heart rate, high blood pressure, feeling like he might pass out, shortness of breath, feelings of fear/panic, poor sleep and waking in panic. (Id.) The Petitioner reported his history of the traumatic incidents while flying. (Id.) The Petitioner said he no longer wanted to fly, was fearful of flying, and became anxious even when weather

conditions were normal. (Id.) He felt his anxiety was hindering his own operational safety when flying. (Id.) Dr. Hinz recommended EMDR therapy, which he did not provide, and recommended the Petitioner continue to treat with him until he found a new practitioner who did EMDR. (Id.) In his Medical Evaluation dated June 14, 2018, Dr. Hinz diagnosed the Petitioner with PTSD, found that he was temporarily disabled from his current occupation and restricted him from pilot/flying duties but cleared him for other duties. (Id.) The Petitioner continued to treat with Dr. Hinz through August 1, 2018, by which time he had started treatment with other providers. (Id.)

Also on June 14, 2018, the Petitioner saw Dr. Reger and reported that his anxiety symptoms seemed to be improving with counseling and medication. (PX3) Dr. Reger diagnosed PTSD and hypertension and instructed the Petitioner to continue Lexapro and follow up with his psychologist. (Id.) The Petitioner continued to treat with Dr. Reger and Dr. Brown for cardiac/high blood pressure issues. (Id.)

On July 25, 2018, Petitioner saw psychiatrist Dr. Jeffrey Chalfant at Psychiatric Services of Southern Illinois, who noted the Petitioner had been diagnosed with PTSD and documented the history of the flying incidents that made Petitioner fear for his life. (PX6) The Petitioner reported the same symptoms he reported to his other care providers. (Id.) He reported that the symptoms improved since taking Lexapro, but he still felt on edge. (Id.) Dr. Chalfant diagnosed PTSD, increased the dosage of Lexapro, prescribed Prazosin (another blood-pressure medication also used for PTSD) and recommended scheduling Petitioner for EMDR therapy. (Id.)

On August 29, 2018, the Petitioner saw Stefanie Johnson, a licensed clinical professional counselor in Dr. Chalfant's office. (PX6) Ms. Johnson found the Petitioner had a love for being a pilot, had possessed a pilot's license for 25 years before using it professionally, and felt that it was a privilege to be a pilot for Respondent. (Id.) He described the work incidents and how he

experienced the feeling that he was not going to make it home. (Id.) Ms. Johnson felt that he was an appropriate candidate for EMDR therapy. (Id.) At another visit with Ms. Johnson on September 25, 2018, the Petitioner discussed his trauma timeline and symptoms, which included tightness in his chest, heart palpitations, increased blood pressure, shortness of breath, flashbacks, sleep disturbances, disturbing dreams, hypervigilance, and increased startle responses. (Id.) Ms. Johnson found those were consistent with a PTSD diagnosis. Ms. Johnson educated the Petitioner about the adaptive information processing model and instructed him to keep a journal while having anxiety. (Id.) He continued treating with Ms. Johnson and Dr. Chalfant. (Id.) Dr. Chalfant discontinued the Lexapro and prescribed Zoloft (an antidepressant also used for PTSD). He later instructed Petitioner to taper off Zoloft due to unpleasant side effects and to begin taking Trintellix (a medication for major depressive disorder). (Id.)

At subsequent therapy sessions with Ms. Johnson, the Petitioner reported being frustrated with himself for having PTSD and reflected a sense of powerlessness and helplessness, especially because his efforts to improve safety policies were disregarded by his supervisors. (Id.) His symptoms continued, also including nightmares, panic attacks, intrusive memories, depression, feelings of worthlessness, lack of motivation, lack of self-confidence and lack of enjoyment as well as an increase in irritability, agitation, and anger, which were not part of his usual behavior and had difficulty with focus, memory recall, problem solving and performing tasks, which had not constituted a challenge for him in the past. (Id.) He reported instances where he was unable to fly as a passenger on airplanes because of his anxiety that were consistent with his testimony at arbitration. (Id.)

On September 23, 2019, the Petitioner underwent a Section 12 examination by psychologist Dr. David Hartman at Medical and Forensic Psychology. (RX11, Deposition Exhibit

2) Dr. Hartman administered psychological tests, reviewed medical records and interviewed the Petitioner. (Id.) In the interview, the Petitioner described the storm incident, his symptoms, incidents that triggered his symptoms and his treatment. (Id.) Dr. Hartman reported that the behavioral observations and mental status of the Petitioner during the interview were normal. (Id.)

Intellectual function testing placed the Petitioner in the high average range. (Id.) The Wisconsin Card Sorting Test (WCST) measuring preservation and abstract concept formation suggested somewhat less efficient problem solving than might be expected from an individual of the Petitioner's age and education. (Id.) The Word Memory Test suggested the Petitioner may have been having mild difficulties with verbal memory. (Id.) The Minnesota Multiphasic Personality Inventory (MMPI) showed that the Petitioner's only scale elevation was related to anxiety symptoms. (Id.) All other scales were in the normal range, including those related to stress/worry, anger and behavior-restricting fears. (Id.) On the Personality Assessment Inventory (PAI), the Petitioner showed no marked elevations in scales that might indicate a diagnosable level of psychopathology, suggesting generally normal psychological status. (Id.) Dr. Hartman noted that the Petitioner's profile on this test was somewhat defensive, suggesting that he may have been unwilling to report aspects of his personality that could be viewed as undesirable and resulting in the possibility that the PAI results may not completely describe any psychological problems the Petitioner may have been having. (Id.) This test also rated the Petitioner's temper as normal and fairly well-controlled without difficulty – in contrast to his self-report. (Id.)

Dr. Hartman concluded that the Petitioner's history of chronic hypertension would be the most likely risk factor for observed cognitive inefficiencies, since neurochemical disturbances mediating attention, memory and executive function are found in hypertensive individuals. (Id.) He also said hypertension was the more likely cause of the Petitioner's anxiety, citing a medical

publication that stated the two are co-morbidities. (Id.) Dr. Hartmen said neither the test results nor the Petitioner's experience as described satisfy diagnostic criteria for PTSD of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). (Id.) He explained that the stressor necessary to diagnose PTSD is a "directly experienced traumatic event" rather than one for which possible trauma is inferred. (Id.) He listed examples of direct trauma as: Exposure to war, threatened or actual physical assault, threatened or actual sexual violence, being kidnapped, being taken hostage, terrorist attack, torture, incarceration as a prisoner of war, natural or man-made disasters and severe motor vehicle accidents. (Id.) He stated that while the Petitioner could have become anxious after flying in dangerous weather conditions, DSM-5 does not allow a diagnosis of chronic PTSD from fear that something might happen. (Id.) He said clinicians cannot validly diagnose PTSD because a patient is anxious, without objective corroboration of a directly experienced trauma. (Id.) Dr. Hartman noted that the Petitioner did not develop PTSD from other genuinely life-threatening or horrifying events encountered in his police work, suggesting that he did not typically respond to trauma with PTSD symptoms. (Id.) He said the Petitioner's anxiety about flying would more specifically describe a phobia rather than the more general diagnosis of post-traumatic stress. (Id.) He said it was unlikely that the Petitioner became hypertensive as a result of flight-related stressors because he had a strong family history of cardiovascular illness and displayed multiple hypertensive blood pressure readings over time, including periods when he was not flying. (Id.)

Dr. Hartman diagnosed the Petitioner with phobic anxiety disorder, mood disorder associated with hypertension and mild cognitive impairment. (Id.) He found a causal relationship between the phobic anxiety and the work incidents but said the generalized anxiety, anger and hypertension were unrelated. (Id.) He said medical treatment for hypertension was reasonable

and necessary but not from the standpoint of workplace causation. (Id.) He said psychotherapy was reasonable and necessary related to workplace incidents but said his current treatment was unlikely to help him return to active flight duty. (Id.) He said phobia treatment has a high level of success using desensitization and exposure psychotherapies, but even with successful treatment, the Petitioner could not return to aircraft operation with his history of fluctuating blood pressure and verbal memory and borderline-impaired executive function. (Id.) He said the Petitioner would have to undergo cardiovascular examination and a neurocognitive assessment to be cleared for flying by the FAA. (Id.) Dr. Hartman also said the Petitioner's repeated disputes with his supervisor over flight safety were an additional impediment to returning to work as a pilot. (Id.) He said the Petitioner's psychotherapy involving behavioral anxiety reduction was partially appropriate and the Petitioner would derive more benefit from behavioral desensitization and exposure therapy specific to aircraft operation, rather than EMDR. (Id.)

The Petitioner saw Dr. Chalfant on January 9, 2020, for a medication management appointment and reported that he had seen a doctor with the insurance company who told him that he had a phobia and not PTSD. (PX6) Dr. Chalfant's diagnosis remained PTSD. (Id.) Similarly, the Petitioner reported Dr. Hartman's findings to Dr. Brown on January 16, 2020. (PX4) At that visit, Dr. Brown found Petitioner had been compliant with his medications and low-sodium diet and that his blood pressure had been under excellent control. (Id.) Dr. Brown stated that high blood pressure is generally not the cause of anxiety but a result. (Id.)

At the direction of his attorney, the Petitioner underwent an independent psychiatric evaluation on January 15, 2020, by Dr. Adam Sky, a psychiatrist affiliated with SSM Health. (PX9, Deposition Exhibit 2) He interviewed the Petitioner, reviewed medical records, including Dr. Hartman's report, and performed a mental status examination and psychological testing. (Id.)

The Petitioner described the flying incidents and his symptoms. (Id.) On the Montgomery-Asberg Depression Rating Scale (MADRS – a diagnostic questionnaire to measure the severity of depressive episodes in patients with mood disorders), the Petitioner scored consistent with mild to moderate depression. (Id.) On the Beck's Depression Inventory (BDI – an inventory that measures characteristic attitudes and symptoms of depression), the Petitioner scored consistent with mild mood disturbance. (Id.) On the Hamilton Anxiety Rating Scale (HAM-A – an interview scale that measures the severity of a patient's anxiety), he scored consistent with mild to moderate anxiety. (Id.) On the PCL-5 (a checklist that assesses the 20 DSM-5 symptoms of PTSD), he scored consistent with moderate PTSD with elevated criteria indicative of pronounced symptoms involving intrusion, avoidance, cognitive dysfunction, mood change, arousal and reactivity. (Id.) Dr. Sky also reviewed the tests performed by Dr. Hartman. (Id.)

Dr. Sky diagnosed PTSD, major depressive disorder and generalized anxiety disorder as a result of the work incidents. (Id.) He listed hypertension as a diagnosis possibly related to the work incidents. (Id.) He said the Petitioner's PTSD, major depressive disorder and generalized anxiety disorder were substantiated by his symptoms. (Id.) Dr. Sky opined that the prevailing cause of the Petitioner's psychiatric symptoms and diagnoses were the work incidents, and that the Petitioner had a 30 percent permanent partial psychiatric disability to the body as a whole as a result. (Id.) He said the two events were "definitely" life-threatening and analogous to being shot at or surviving another near-death experience. (Id.) He saw no evidence of any significant pre-existing psychiatric issues that could have exacerbated, accelerated or exaggerated the Petitioner's psychiatric symptoms. (Id.)

Dr. Sky said that while the Petitioner has reached maximum medical improvement, he will require ongoing psychiatric and psychological treatment as has been done by Dr. Chalfant and Ms.

Johnson. (Id.) He said the Petitioner will continue to require such treatment for the indefinite future and may also benefit from specialized psychotherapy performed by someone with a law enforcement or aviation background and experience. (Id.) Dr. Sky added that he is a private pilot with experience in flying in instrument and adverse conditions. (Id.)

Dr. Sky testified consistently with his report at a deposition on February 7, 2020. (PX9) He said that as a pilot, the type of weather the Respondent described was not weather you would want to fly through and if you got caught in it, there was a good chance you're not going to live through it. (Id.) He said icing was a worse situation, and the type of plane the Petitioner was flying was not certified to fly in such weather. (Id.)

Regarding Dr. Hartman's conclusions, Dr. Sky disagreed with the Petitioner having a mood disorder associated with hypertension and a phobic anxiety related to small aircraft said those didn't make any sense. (Id.) Dr. Sky said you don't get depressive disorder as a result of high blood pressure. (Id.) He said there was no evidence of any kind of phobic disorder, and the Petitioner had a panic attack flying on a large aircraft. (Id.) He also "absolutely" disagreed with Dr. Hartman's contention that the Petitioner did not meet DSM-5 criteria and said the Petitioner's symptoms were all classic PTSD symptoms recognized by the DSM. (Id.) He said the Petitioner's flight experiences were enough to trigger PTSD. (Id.) He said the two events were definitely life-threatening. (Id.) He said that if he was to have flown in those conditions and survived, he probably would have lost his pilot's license. (Id.) Dr. Sky also said the treatment from Dr. Chalfant and Ms. Johnson were directed towards PTSD, including EMDR therapy. (Id.) He said the tests Dr. Hartman performed were intelligence and personality tests, and Dr. Hartman did not perform any tests for PTSD. (Id.)

Dr. Sky testified to reading a letter from the FAA before his testimony stating that the Petitioner was no longer licensed to fly because of his PTSD and use of medications. (PX9, PX9 Deposition Exhibit 3, PX13) He agreed with the assessment because of the dulling and visual disturbance effects of the medication and the possibilities of someone with an active psychiatric disorder having a marked reduction in focus, concentration and ability to multitask. (Id.)

Dr. Sky did not believe the Petitioner would be able to fly again because his symptoms were pronounced enough – even if he were off medication, the therapy had tapered out and symptoms were dormant – that it would be very difficult for him to be able to go in a small plane again because it would bring back the PTSD. (Id.)

Dr. Hartman also testified consistently with his report at a deposition on February 7, 2020. (RX11) He said he no longer treats patients. (Id.) He described PTSD as the "nuclear bomb of anxiety disorders" – an extremely severe, extremely mentally destabilizing anxiety disorder produced when a person is exposed to something so far beyond the level of normal human experience and so egregious in terms of stress that the person never really feels right anymore and his personality kind of loses its cohesion. (Id.) He said PTSD is not simply being anxious about what happened, but losing all interest in their lives, losing capacity for good interpersonal relationships with others, withdrawing, not coping well in general, having nightmares and losing who they are as a person. (Id.) Dr. Hartman gave two reasons for finding the Petitioner did not meet the DSM-5 criteria for PTSD – first that flying through bad weather was objectively not sufficient to be considered the sort of extreme trauma under the DSM-5 and second that the symptoms the Petitioner described were primarily related to fear of airplanes and flying but he was able to cope with life in general. (Id.)

Regarding the interplay between hypertension and anxiety, Dr. Hartman said the co-occurrence of these conditions has to do with the hormonal influence on brain function that also produces high blood pressure. (Id.) He said the more adrenaline you pump out, the more stress-related hormones you have that affect the brain directly. (Id.) He said it also affects the vasculature, which affects the brain, and all of those things degrade the emotional status and present as anxiety, anger and sometimes depression. (Id.)

On cross-examination, Dr. Hartman acknowledged that he did not perform a PCL-5 (a checklist that assesses the 20 DSM-5 symptoms of PTSD), which he said doesn't really have good utility for a differential diagnosis but are mainly used for tracking symptoms of identified and credible PTSD patients in treatment. (Id.) He also did not perform a Montgomery Asberg Depression Rating Scale (a diagnostic questionnaire to measure the severity of depressive episodes in patients with mood disorders) because it simply asks someone how depressed they are. (Id.) Nor did he conduct a Hamilton Anxiety Rating Scale (an interview scale that measures the severity of a patient's anxiety). (Id.)

Dr. Hartman testified that the Petitioner made no attempt to exaggerate his symptoms. (Id.) Dr. Hartman balked at saying whether he disputed the Petitioner's reports of flying in dangerous weather conditions, saying he had no external information about the weather conditions. (Id.) He acknowledged that he had no records from prior to September 27, 2016. (Id.) He also acknowledged that other psychologists and a psychiatrist diagnosed the Petitioner with PTSD but said those doctors were using PTSD as a casual descriptive term rather than in a way consistent with DSM labeling. (Id) Dr. Hartman agreed that PTSD can include symptoms of nightmares, intrusive thoughts, flashbacks, general avoidance behavior, hypervigilance, anger, self-blame and guilt. (Id.)

Ms. Johnson retired from practice and referred Petitioner to licensed clinical professional counselor Angela Ingram to continue his treatment. (PX6, PX8) At his initial visit with Ms. Ingram on August 31, 2021, the Petitioner gave a history and reported his symptoms. (PX8) Ms. Ingram's diagnosed him with chronic PTSD with panic attacks, hypervigilance, nightmares about past danger, intrusive thoughts about past dangerous past experiences and excessive worry about death and dying. (Id.) During treatment, Ms. Ingram provided counseling with mindfulness-based cognitive therapy, discussed healthy coping skills for stressors, healthy ways to communicate, ways to manage the effects of past trauma, how to increase self-regulation, use of refocusing techniques and EMDR therapy. (Id.) The Petitioner visited the Cahokia airport to test his tolerance of watching small planes come and go but left due to discomfort in his chest. (Id.) At his last visit with Ms. Ingram on October 19, 2022, Petitioner reported that he had a decreased trauma response overall and hoped to attempt to fly commercially again. (Id.) Ms. Ingram noted that Petitioner was progressing, and her plan was for him to continue the utilization of healthy coping strategies and distraction techniques. (Id.)

The Petitioner testified that the treatment has improved his condition, but he was still experiencing symptoms of anxiety and sleep disorder. (T. 43) He said he still experienced nightmares every few months, where it used to be daily or weekly. (T. 44) He said he is triggered by hearing news about a plane crash – especially one involving a small plane. (Id.) When he is triggered or has intrusive thoughts, he uses therapy and stress management techniques to deal with it before it becomes an issue. (T. 46) He said he still struggles with depression at times – especially as it relates to his ability to fly. (T. 45) He said the medication has helped with his heart palpitations and they are less frequent, but he still struggles with anxiety, increased heart rate, sweaty palms and profuse sweating. (T. 46-47) He said the Trintellix makes him emotionally

even – not experiencing a lot of sadness or a lot of joy. (T. 47) He was also taking Prazocin for sleep disorder and nightmares. (T. 48)

The Petitioner testified that he was still employed with the Respondent but was assigned to patrol. (T. 12) He said he was deemed unable to fly by the FAA and had not flown a plane since being diagnosed with PTSD. (T. 49-50) He said he had wanted to be a state police pilot since he was 19 years old and becoming one was the pinnacle of his career. (T. 50) He said he took a commercial flight since then and experienced a panic attach on that flight, causing him to not fly in a commercial flight again. (Id.) On another occasion, he had booked a trip to Florida but had a panic attack the night before and had to drive while the rest of his family flew. (T. 51) Another time, his family went to Colorado, but he didn't go. (Id.) He said he used to enjoy renting an aircraft and flying with his family. (T. 50) He said his son wants to learn how to fly, and he was looking forward to teaching him. (T. 51) He said he had plans to do something in aviation as a retirement job. (Id.)

The Petitioner said his job changed has affected his pay in that he no longer has the higher pay scale that comes with being an air operations pilot, which also affects what he receives for overtime and retirement. (T. 52) He said the transfer to patrol caused him to have to start over for being in line for promotions. (T. 61)

CONCLUSIONS OF LAW

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

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

To be compensable under the Act, the injury complained of must arise out of and in the course of employment. *Diaz v. Ill. Workers' Comp. Comm'n*, 2013 IL App (2d) 120294WC, ¶24, 989 N.E.2d 233, 370 Ill. Dec. 845, 989 N.E.2d 233, 370 Ill.Dec. 845, citing *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187, 775 N.E.2d 908, 266 Ill.Dec. 866 (2002). In mental-mental cases, a claimant must be engaged in employment at the time and place of the precipitating cause of the injury and must prove that the injury occurred because of a work-related risk or because the employment placed the claimant at risk of exposure exceeding that of the general public. *Id*. In *Diaz*, the claimant – also a police officer – had a gun pulled on him that he later realized was likely a toy gun. *Id*. at ¶25. The Appellate Court found the incident to be compensable.

In the seminal case regarding a mental-mental injury, the Illinois Supreme Court concluded that an employee who suffers a sudden, severe emotional shock traceable to a definite time, place and cause, which causes psychological injury or harm has suffered an accident within the meaning of the Act, though no physical trauma or injury was sustained. *Pathfinder Co. v. Industrial Com*., 62 Ill. 2d 556, 563, 343 N.E.2d 913 (1976). In *Pathfinder*, the Court awarded compensation to an employee who witnessed the severing of a fellow employee's hand in the operation of a punch press. *Id*.

In *General Motors Parts Div. v. Industrial Com*., 168 Ill. App. 3d 678, 522 N.E.2d 1260, 119 Ill. Dec. 401 (1st Dist. 1988), the Appellate Court narrowed *Pathfinder* to being limited to the narrow group of cases in which an employee suffers a sudden, severe emotional shock which results in immediately apparent psychic injury and is precipitated by an uncommon event of significantly greater proportion or dimension than that to which the employee would otherwise be subjected in the normal course of employment. *Id*. at 687. The Court stated that compensation for nontraumatic psychic injury cannot be dependent solely upon the peculiar vicissitudes of the

individual employee as he relates to his general work environment. *Id*. In General Motors, the psychic injury was related to an argument between the claimant and his supervisor. *Id*.

The Court in *Diaz* reconciled the apparent differences between Pathfinder and General Motors. It noted that a strict reading of General Motors would result in the virtual impossibility for a police officer or others involved in dangerous occupations to qualify for a mental-metal claim. *Diaz*, 2013 IL App (2d) 120294WC at ¶32. The Court stated that nothing in *Pathfinder* requires that the "sudden, severe emotional shock" which must be proved should be considered within the context of the claimant's occupation or training, rather the *Pathfinder* Court specifically noted that the shock experienced by the claimant in that case "would be the reaction of a person of normal sensibilities." *Id*. at ¶33. The *Diaz* Court believed that whether a worker has suffered the type of emotional shock sufficient to warrant recovery should be determined by an objective, reasonable-person standard, rather than a subjective standard that takes into account the claimant's occupation and training. *Id*.

In applying Diaz to the instant case, the Arbitrator must contend with the differences in the Petitioner's and Sgt. Skrobul's characterizations of the incidents. The Petitioner's description of the incidents in his testimony and reports to his doctors were consistent and, on their face, were sufficiently shocking to a reasonable person. Sgt. Skrobul's versions of the incidents were much less shocking. The Arbitrator finds the Petitioner to be credible. Sgt. Skrobul was either minimizing the severity of the situations or was oblivious to it. Further support of the Petitioner's testimony is found in the reaction of the refueler to the pilots flying through the storms in the first incident and Dr. Sky's statement that if he was to have flown in those conditions and survived, he probably would have lost his pilot's license. In addition, even Sgt. Skrobul's testimony showed that the flights were contrary the provisions of the Cessna manual and the FAA letter.

Therefore, the Arbitrator finds that the Petitioner was engaged in his employment flying through inclement weather – a risk of exposure exceeding that of the general public – and suffered a sudden, severe emotional shock traceable to a definite time, place and cause.

Pathfinder also requires a finding that the sudden, severe emotional shock causes psychological injury or harm. *Pathfinder*, 62 Ill. 2d at 556. For this inquiry, the Arbitrator turns to the findings of the medical experts.

Drs. Hinz, Reger, Chalfant and Sky diagnosed the Petitioner with PTSD as a result of the flying incidents. The Petitioner's therapists agreed. Dr. Hartman was the only one who did not, instead finding that the Petitioner's high blood pressure was causing his anxiety and the Petitioner was suffering from a phobia of flying. Dr. Brown, the cardiologist treating the Petitioner disagreed with Dr. Hartman's assessment, noting that the Petitioner's blood pressure was under "excellent control." As treating medical providers for the Petitioner, Dr. Hinz, Dr. Reger, Dr. Chalfant, Ms. Johnson and Ms. Ingram had more opportunities to become familiar with the Petitioner and his condition, and their findings deserve greater weight. Dr. Sky pointed out that Dr. Hartman did not test the Petitioner for PTSD. Dr. Sky performed more broad-based testing and assessments geared towards depression, anxiety and PTSD. Another flaw with Dr. Hartman's theory is that he did not review the Petitioner's medical records from before the incidents to determine if the Petitioner's blood pressure was not under control previously. Dr. Sky thoroughly explained the bases for his opinions and his rationale as to why Dr. Hartman's conclusions were not well founded. The Arbitrator gives Dr. Sky's opinions greater weight.

Thus, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that his injuries occurred in the course of and arose out of his employment and the flying incidents caused his PTSD and related psychological conditions.

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 (2009).

Although Dr. Hartman found that EMDR therapy was not reasonable and necessary therapy for what he termed as a phobia, Dr. Sky did. For the reasons stated above, the Arbitrator gives more weight to Dr. Sky's opinions. Based on this and the findings above, the Arbitrator finds the medical expenses listed in Petitioner's Exhibit 1 were reasonable and necessary. Therefore, the Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 1 pursuant to Section 8(a) of the Act and in accordance with medical fee schedules. The Respondent shall have credit for any amounts already paid or paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

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

According to the Request for Hearing (AX1), the Petitioner is seeking temporary total disability benefits for the period of June 8, 2018, through June 15, 2018. Although the Arbitrator notes that the Petitioner was released to work duties other than flying on June 14, 2018, there appeared to be no medical record taking him off work on or about June 8, 2018. Therefore, TTD benefits are denied.

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.** No AMA impairment ratings were produced, therefore the Arbitrator gives this factor no weight.

(ii) **Occupation.** The Petitioner still works for the Respondent but as a patrol officer with a less likelihood of his employment triggering his PTSD because he is no longer flying. However, with Dr. Sky's prognosis that the Petitioner will not be able to pilot a plane in the future, his plans for a post-retirement occupation in aviation are no longer viable. The Arbitrator places some weight on this factor.

(iii) **Age.** The Petitioner was 44 years old at the time of the work incidents. He has many work years left during which time he will need to deal with the effects of his injuries. The Arbitrator places significant weight on this factor.

(iv) **Earning Capacity.** The Petitioner testified that air ops has a higher pay scale than patrol and his base salary has been reduced, as will his estimated pension. The Arbitrator places some weight on this factor.

(v) **Disability.** Due to the incidents, the Petitioner sustained psychiatric injuries and developed PTSD, major depressive disorder and generalized anxiety disorder. He still experiences

anxiety, sleep disorder, nightmares, flashbacks, depression related to his ability to fly and intrusive thoughts that make concentration difficult. His ability to enjoy life outside of work has been affected as well – no longer taking his family up for flights, not being able to teach his son to fly and not being able to fly on vacations with his family. The Arbitrator puts significant weight on this factor.

Based upon the foregoing evidence and factors, the Arbitrator finds that the Petitioner sustained serious and permanent psychological injuries that resulted in the 30% loss of Petitioner's body as a whole, with 15% assigned to the May 11, 2016, incident and 15% assigned to the December 16, 2016, incident.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC030017
Case Name	Scott Wetzler v. State of Illinois - Illinois State Police
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0003
Number of Pages of Decision	29
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Caitlin Fiello

DATE FILED: 1/2/2025

/s/Deborah Simpson,Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Scott Wetzler,
Petitioner,

vs. NO: 18 WC 30017

State of Illinois-Illinois State Police,
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, occupational disease, 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 March 13, 2023, is hereby affirmed and adopted.

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

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

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.

January 2, 2025

o: 11/6/24
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC030017
Case Name	Scott Wetzler v. State of Illinois - Illinois State Police
Consolidated Cases	18WC030016; 18WC030018;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	27
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Caitlin Fiello

DATE FILED: 3/13/2023

THE INTEREST RATE FOR THE WEEK OF MARCH 7, 2023 4.97%

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

/s/ Jeanne AuBuchon, Arbitrator
Signature

March 13, 2023

/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

SCOTT WETZLER
Employee/Petitioner

v.

STATE OF IL / ILLINOIS STATE POLICE
Employer/Respondent

Case # **18** WC **30017**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **JEANNE L. AuBUCHON**, Arbitrator of the Commission, in the city of **HERRIN, ILLINOIS**, on **OCTOBER 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 _____

FINDINGS

On **December 16, 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 $**94,692.00**; the average weekly wage was $**1,821.00**.

On the date of accident, Petitioner was **44** 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 $**N/A** for TTD, $**-** for TPD, $**-** for maintenance, and $**-** for other benefits, for a total credit of $**N/A**.

Respondent is entitled to a credit of $**-** 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.

Temporary total disability benefits are denied.

Respondent shall pay Petitioner permanent partial disability benefits of $755.22/week for 75 weeks, because the injuries sustained caused the 15% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 1/15/2020 through 10/21/2022, 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. AuBuchon
Signature of Arbitrator

March 13, 2023

PROCEDURAL HISTORY

This matter proceeded to trial on October 21, 2022. 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 mental health conditions; 3) payment of medical bills; 4) entitlement to temporary total disability (TTD) benefits from June 8, 2018, through June 15, 2018; and 5) the nature and extent of the Petitioner's injuries.

This case was consolidated with 18WC30016 and 18WC30018, which allege the same injuries regarding incidents on other dates.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 44 years old and had been employed by the Respondent as a pilot with the Air Operations Bureau for about eight years and was involved in a manhunt in southern Illinois for a suspect that shot a Mahomet, Illinois, police officer. (AX1, T. 12-13) While flying during the manhunt that week, there had been pop-up thunderstorms and a lot of low clouds. (Id.) He testified that that during some of those flights, he got caught up in some weather that shook him up a bit. (T. 13) On May 11, 2016, the Petitioner was flying back to home base at MidAmerica Airport in Mascoutah, Illinois, and had checked the weather and found there were some pretty significant storms moving along his path from west to east. (T. 14-15) The National Weather Service issued a severe thunderstorm warning for Washington, St. Clair and Randolph Counties warning of 60-mph wind gust and quarter-sized hail. (PX13, RX12) The Petitioner said he expressed to his supervisor, Sgt. William Skrobul, who was along on the flight, that he was uneasy and wanted to divert around the thunderstorms. (T. 15) Sgt. Skrobol told him to point the plane towards home and they would reevaluate once they got closer to the storms. (Id.) The Petitioner said that during the flight, the storms intensified, and he told Sgt. Skrobol that

he was going to divert. (Id.) He said that although, as the pilot of that flight, he was supposed to have operational control of the plane and make the decision, Sgt. Skrobul told him to point the plane where he told him. (T. 16) The Petitioner said he did so and pointed the plane between two storm cells that were pretty close together and received a broadcast from headquarters about the storms. (Id.) He said the advice from the national weather broadcast was to the entire district to seek shelter, warning of 60-mph winds and 2-inch hail – the type of weather that would have ripped the plane apart. (T. 17) He said that as they got closer to the storms, they merged on the radar. (Id.) He said they were in instrument metrological conditions (IMC), not on a flight plan and not communicating with traffic control. (T. 18) He said the storm was so intense -- with cloud-to-cloud lightening – that they lost their XM weather radar and used iPads to check the weather, which had a 5-15 minute delay. (T. 18-19) He said they didn't have the weather reports visually in front of them and couldn't see where the storm cells were. (T. 19) He said he didn't have a visual reference because they were in the clouds. (Id.) The Petitioner testified that after losing the weather radar, he felt like something inside him exploded and he froze. (T. 20) He said they made it to the other side of the storm, skies cleared up, they continued on and they landed. (T. 20) He said the refueler – a retired Marine Corps fighter pilot – expressed shock that the pilots flew through the storm and asked if they had a death wish. (T. 21)

While describing the incident, the Petitioner broke down. He testified that he had never before flown in unsafe conditions similar to this incident other than encountering some light ice. (T. 22) He said he did not have a prior history of anxiety, post-traumatic stress disorder (PTSD) or any other mental health issues. (T. 24)

The Petitioner testified that the directions he was given during the incident were contrary to FAA guidelines in that they did not have a flight plan, were not talking to air traffic control and

had no clearance while flying IMC and did not give at least a 20-mile berth when flying near storm cells. (T. 23) He said that after that incident, he put in a voluntary transfer request to transfer to Springfield because he felt the pilots there were more in line with his decision-making process about flying in bad weather. (T. 32-33) He said the request went unanswered. (T. 33)

Another incident occurred on December 16, 2016, when he was called to assist the DEA conducting surveillance of a suspect wanted in the murder of a DEA witness. (T. 25) The Petitioner said there was a winter storm warning that day for freezing rain and sleet and he told Sgt. Skrobul that he did not feel comfortable and did not want to fly in that weather, but Sgt. Skrobul insisted and said they would get around the ice. (T. 26-27) The Petitioner said that no sooner had they taken off, they were slammed with a sheet of ice that covered the plane instantly. (T. 27) He said that although they were at full power, the plane was not climbing as fast. (Id.) He told Sgt. Skrobul that they needed to land, but Sgt. Skrobul said they weren't picking up any more ice and could continue on and re-evaluate when they got to the surveillance site. (T. 28) The Petitioner explained that when doing surveillance, they do steep turns in order to maintain a visual on the target. (Id.) He said that as they continued on the flight, he could see Sgt. Skrobul was having trouble controlling the plane and would lose altitude in turns. (Id.) The Petitioner said he knew that if they encountered one of those deep turns with the amount of ice they had on the aircraft, they would stall, lose lift and spiral down. (T. 29) He said that when Sgt. Skrobul would not turn back, he started shutting of the surveillance equipment and told Sgt. Skrobul that he was done and to take him back. (Id.) They terminated the flight and landed safely, and shortly after the Petitioner put in for a transfer. (Id.)

The Petitioner stated that the aircraft was not rated for icing conditions and the aircraft operating manual specifically said flying in ice was prohibited. (T. 29-30) He said FAA guidelines

say that icy conditions should be avoided if an aircraft is not rated for ice and, if it is encountered it inadvertently the pilot should declare an emergency and request air traffic control assistance in making a landing. (T. 30)

He said the incident was scary for him. (Id.) He said that after both incidents, he experienced sleep disturbances in general, but after the second, he started developing heart palpitations, racing heart, tachycardia and irregular heartbeat. (T. 30-31) He said that after the second incident, he put in an officer action request (OAR) to transfer out of air operations altogether and go back to patrol. (T. 33-34, 54)

Sgt. Skrobul testified for the Respondent to another incident that happened on February 14, 2014, when he was piloting a flight with the Petitioner serving as the observer, looking for a missing college student in the Carbondale area, when they encountered bad weather conditions as far as the ceiling and visibility were concerned. (T. 76-77) On the flight back, they encountered trace ice after takeoff on the edges of the wings and struts that melted once they got into the sunshine above the clouds. (T. 79) In landing at Mid-America, they picked up more ice than he expected coming through the clouds. (T. 80) He said there was ice on the windshield but unrestricted visibility out the sides. (T. 82) He said that the Petitioner expressed no stress or concern and, when they landed, he laughed and told Sgt. Skrobul that he did a good job. (T. 83)

Regarding the May 11, 2016, incident, Sgt. Skrobul testified that the storm cells were about five miles wide, and it would have taken about two or two and a half minutes to get through the other side. (T. 92) He said he would have flown straight through the gap. (Id.) He acknowledged that there was a 5-8 minute delay on the radar. (Id.) He said the Petitioner was showing concern about flying through the cells and was turning to the north, but that did not make sense because the weather was worse to the north. (T. 93) He told the Petitioner to fly through the gap, and a

couple of minutes later they were through the cell. (T. 94) He said there was no lightning in the cells they flew through – just heavy rain. (Id.) He said he did not order the Petitioner to fly through the gap but gave him suggestions on which direction to fly. (T. 95)

Sgt. Skrobul said the rule of thumb for flying in storms or heavy rain is that if you can't see through it, you do not go through it but go around or between storm cells. (T. 72-73) On cross-examination, he said he did not remember losing radar signal during the May 11, 2016, flight, adding that out of 25 years he didn't remember ever losing radar service. (T. 113-114) After having done Google Earth measurements on the radar from that day and determined that the two storm cells were 16½ miles apart. (T. 116)

The Petitioner introduced into evidence an FAA Advisory Circular from February 19, 2013, that stated pilots avoid heavy or extreme weather radar echoes by at least 40 miles (i.e., such echoes should be separated by at least 40 miles before flying between them). (PX13)

Regarding the December 16, 2016, incident, Sgt. Skrobul acknowledged that they when through a trace of ice after takeoff. (T. 99-100) He said the Petitioner was looking out the window instead of the camera and the car they were supposed to be following then turned the camera off and told Sgt. Skrobul to take him back. (T. 102) He tried to convince the Petitioner that if they waited, the cell would move out of the way and they would have a better chance of going back without picking up any more ice. (T. 103) He said they did build up more ice coming through to land but were able to land safely. (Id.) Sgt. Skrobul identified photos of the windshield of the plane from that day and described a defrosted area at eye level on the pilot's side measuring 3-5 inches. (T. 105-109, PX12) He said he could see out of that defrosted area. (T. 19)

Sgt. Skrobul said that during none of the incidents he described did he ever feel there was a substantial risk of injury or death to him or the Petitioner. (T. 110)

What appears to be a manual for the Cessna Model 182S from 1997 was entered into evidence and stated that flight into known icing conditions is prohibited. (PX13) A letter from the FAA Office of the Chief Counsel dated January 16, 2009, informed the manager of regulatory affairs at the Aircraft Owners and Pilots Association that pilots should not expose themselves or others to the risk associated with flying into conditions in which ice is likely to adhere to an aircraft. (Id.) The letter states that if ice is detected or observed along the route of flight, the pilot should have a viable exit strategy and immediately implement hat strategy so that the flight may safely continue to its intended destination or terminate at an alternate landing facility. (Id.)

After the second incident, the Petitioner sought treatment from his primary care physician, Dr. Paul Reger at Rural Family Medicine Associates, and reported suffering from anxiety following several harrowing experiences while piloting an airplane for the Respondent. (T. 35, PX3) Dr. Reger noted that he was positive for palpitations, anxiety and feelings of stress and prescribed propranolol (a heart medicine also used to treat anxiety). (PX3) When the Petitioner returned to Dr. Reger's office on May 5, 2017, he reported that his blood pressure had been running high and he had been experiencing chest tightness and shortness of breath (Id.) On examination, his blood pressure was elevated to 134/97, and an electrocardiogram showed bradycardia. (Id.) The Petitioner was referred to a cardiologist. (Id.)

On May 18, 2017, Petitioner saw Dr. Angela Brown, a cardiologist at the Center for Advanced Medicine. (PX4) Dr. Brown noted that Petitioner had experienced high blood pressure for approximately 10 years, but that it had been maintained on Lisinopril (a blood pressure medication) until around April 2017 when he saw Dr. Reger for anxiety. (Id.) The Petitioner reported chest pain. (Id.) The Petitioner found the change from Lisinopril to Propranolol helped with his tachycardia (fast heartbeat) as well as anxiety. (Id.) Dr. Brown diagnosed hypertension

and chest pain. (Id.) She did not make any changes to Petitioner's medication and instructed him to continue monitoring his blood pressure and to call her office if his chest pain returned. (Id.)

For the next year, the Petitioner had follow-up visits with Dr. Reger and Dr. Brown and reported the medications were helping. (PX3, PX4) On May 24, 2018, the Petitioner saw Dr. Reger and reported increased symptoms of anxiety and stress associated with the flying incidents. (PX3) Dr. Reger found the Petitioner's blood pressure was elevated to 172/99, his demeanor was anxious, and his speech pattern was pressured. (Id.) Dr. Reger diagnosed hypertension and generalized anxiety disorder, for which he prescribed Lexapro (a depression and anxiety medication). (Id.)

On May 30, 2018, Petitioner returned to Dr. Brown and reported that he had been adherent to his medications, but his blood pressure was elevated. (PX4) He expressed concerns that he may not be able to continue flying as a result of being on Lexapro. (Id.) Dr. Brown found Petitioner positive for anxiety and palpitations and continued his current medications, adding Amlodipine (another blood pressure medication) and instructing the Petitioner to follow up with his primary care physician for his anxiety. (Id.)

On June 6, 2018, Petitioner saw Dr. Michael Hinz, a clinical psychologist who performed a medical evaluation for the Respondent and provided psychotherapy for the Petitioner. (PX5) The Petitioner told Dr. Hinz that he had been having anxiety attacks and symptoms for the last couple of years, along with anxiety-caused high blood pressure and heart palpitations. (Id.) His symptoms included fluttering of the heart, racing heart rate, high blood pressure, feeling like he might pass out, shortness of breath, feelings of fear/panic, poor sleep and waking in panic. (Id.) The Petitioner reported his history of the traumatic incidents while flying. (Id.) The Petitioner said he no longer wanted to fly, was fearful of flying, and became anxious even when weather

conditions were normal. (Id.) He felt his anxiety was hindering his own operational safety when flying. (Id.) Dr. Hinz recommended EMDR therapy, which he did not provide, and recommended the Petitioner continue to treat with him until he found a new practitioner who did EMDR. (Id.) In his Medical Evaluation dated June 14, 2018, Dr. Hinz diagnosed the Petitioner with PTSD, found that he was temporarily disabled from his current occupation and restricted him from pilot/flying duties but cleared him for other duties. (Id.) The Petitioner continued to treat with Dr. Hinz through August 1, 2018, by which time he had started treatment with other providers. (Id.)

Also on June 14, 2018, the Petitioner saw Dr. Reger and reported that his anxiety symptoms seemed to be improving with counseling and medication. (PX3) Dr. Reger diagnosed PTSD and hypertension and instructed the Petitioner to continue Lexapro and follow up with his psychologist. (Id.) The Petitioner continued to treat with Dr. Reger and Dr. Brown for cardiac/high blood pressure issues. (Id.)

On July 25, 2018, Petitioner saw psychiatrist Dr. Jeffrey Chalfant at Psychiatric Services of Southern Illinois, who noted the Petitioner had been diagnosed with PTSD and documented the history of the flying incidents that made Petitioner fear for his life. (PX6) The Petitioner reported the same symptoms he reported to his other care providers. (Id.) He reported that the symptoms improved since taking Lexapro, but he still felt on edge. (Id.) Dr. Chalfant diagnosed PTSD, increased the dosage of Lexapro, prescribed Prazosin (another blood-pressure medication also used for PTSD) and recommended scheduling Petitioner for EMDR therapy. (Id.)

On August 29, 2018, the Petitioner saw Stefanie Johnson, a licensed clinical professional counselor in Dr. Chalfant's office. (PX6) Ms. Johnson found the Petitioner had a love for being a pilot, had possessed a pilot's license for 25 years before using it professionally, and felt that it was a privilege to be a pilot for Respondent. (Id.) He described the work incidents and how he

experienced the feeling that he was not going to make it home. (Id.) Ms. Johnson felt that he was an appropriate candidate for EMDR therapy. (Id.) At another visit with Ms. Johnson on September 25, 2018, the Petitioner discussed his trauma timeline and symptoms, which included tightness in his chest, heart palpitations, increased blood pressure, shortness of breath, flashbacks, sleep disturbances, disturbing dreams, hypervigilance, and increased startle responses. (Id.) Ms. Johnson found those were consistent with a PTSD diagnosis. Ms. Johnson educated the Petitioner about the adaptive information processing model and instructed him to keep a journal while having anxiety. (Id.) He continued treating with Ms. Johnson and Dr. Chalfant. (Id.) Dr. Chalfant discontinued the Lexapro and prescribed Zoloft (an antidepressant also used for PTSD). He later instructed Petitioner to taper off Zoloft due to unpleasant side effects and to begin taking Trintellix (a medication for major depressive disorder). (Id.)

At subsequent therapy sessions with Ms. Johnson, the Petitioner reported being frustrated with himself for having PTSD and reflected a sense of powerlessness and helplessness, especially because his efforts to improve safety policies were disregarded by his supervisors. (Id.) His symptoms continued, also including nightmares, panic attacks, intrusive memories, depression, feelings of worthlessness, lack of motivation, lack of self-confidence and lack of enjoyment as well as an increase in irritability, agitation, and anger, which were not part of his usual behavior and had difficulty with focus, memory recall, problem solving and performing tasks, which had not constituted a challenge for him in the past. (Id.) He reported instances where he was unable to fly as a passenger on airplanes because of his anxiety that were consistent with his testimony at arbitration. (Id.)

On September 23, 2019, the Petitioner underwent a Section 12 examination by psychologist Dr. David Hartman at Medical and Forensic Psychology. (RX11, Deposition Exhibit

2) Dr. Hartman administered psychological tests, reviewed medical records and interviewed the Petitioner. (Id.) In the interview, the Petitioner described the storm incident, his symptoms, incidents that triggered his symptoms and his treatment. (Id.) Dr. Hartman reported that the behavioral observations and mental status of the Petitioner during the interview were normal. (Id.)

Intellectual function testing placed the Petitioner in the high average range. (Id.) The Wisconsin Card Sorting Test (WCST) measuring preservation and abstract concept formation suggested somewhat less efficient problem solving than might be expected from an individual of the Petitioner's age and education. (Id.) The Word Memory Test suggested the Petitioner may have been having mild difficulties with verbal memory. (Id.) The Minnesota Multiphasic Personality Inventory (MMPI) showed that the Petitioner's only scale elevation was related to anxiety symptoms. (Id.) All other scales were in the normal range, including those related to stress/worry, anger and behavior-restricting fears. (Id.) On the Personality Assessment Inventory (PAI), the Petitioner showed no marked elevations in scales that might indicate a diagnosable level of psychopathology, suggesting generally normal psychological status. (Id.) Dr. Hartman noted that the Petitioner's profile on this test was somewhat defensive, suggesting that he may have been unwilling to report aspects of his personality that could be viewed as undesirable and resulting in the possibility that the PAI results may not completely describe any psychological problems the Petitioner may have been having. (Id.) This test also rated the Petitioner's temper as normal and fairly well-controlled without difficulty – in contrast to his self-report. (Id.)

Dr. Hartman concluded that the Petitioner's history of chronic hypertension would be the most likely risk factor for observed cognitive inefficiencies, since neurochemical disturbances mediating attention, memory and executive function are found in hypertensive individuals. (Id.) He also said hypertension was the more likely cause of the Petitioner's anxiety, citing a medical

publication that stated the two are co-morbidities. (Id.) Dr. Hartmen said neither the test results nor the Petitioner's experience as described satisfy diagnostic criteria for PTSD of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). (Id.) He explained that the stressor necessary to diagnose PTSD is a "directly experienced traumatic event" rather than one for which possible trauma is inferred. (Id.) He listed examples of direct trauma as: Exposure to war, threatened or actual physical assault, threatened or actual sexual violence, being kidnapped, being taken hostage, terrorist attack, torture, incarceration as a prisoner of war, natural or man-made disasters and severe motor vehicle accidents. (Id.) He stated that while the Petitioner could have become anxious after flying in dangerous weather conditions, DSM-5 does not allow a diagnosis of chronic PTSD from fear that something might happen. (Id.) He said clinicians cannot validly diagnose PTSD because a patient is anxious, without objective corroboration of a directly experienced trauma. (Id.) Dr. Hartman noted that the Petitioner did not develop PTSD from other genuinely life-threatening or horrifying events encountered in his police work, suggesting that he did not typically respond to trauma with PTSD symptoms. (Id.) He said the Petitioner's anxiety about flying would more specifically describe a phobia rather than the more general diagnosis of post-traumatic stress. (Id.) He said it was unlikely that the Petitioner became hypertensive as a result of flight-related stressors because he had a strong family history of cardiovascular illness and displayed multiple hypertensive blood pressure readings over time, including periods when he was not flying. (Id.)

Dr. Hartman diagnosed the Petitioner with phobic anxiety disorder, mood disorder associated with hypertension and mild cognitive impairment. (Id.) He found a causal relationship between the phobic anxiety and the work incidents but said the generalized anxiety, anger and hypertension were unrelated. (Id.) He said medical treatment for hypertension was reasonable

and necessary but not from the standpoint of workplace causation. (Id.) He said psychotherapy was reasonable and necessary related to workplace incidents but said his current treatment was unlikely to help him return to active flight duty. (Id.) He said phobia treatment has a high level of success using desensitization and exposure psychotherapies, but even with successful treatment, the Petitioner could not return to aircraft operation with his history of fluctuating blood pressure and verbal memory and borderline-impaired executive function. (Id.) He said the Petitioner would have to undergo cardiovascular examination and a neurocognitive assessment to be cleared for flying by the FAA. (Id.) Dr. Hartman also said the Petitioner's repeated disputes with his supervisor over flight safety were an additional impediment to returning to work as a pilot. (Id.) He said the Petitioner's psychotherapy involving behavioral anxiety reduction was partially appropriate and the Petitioner would derive more benefit from behavioral desensitization and exposure therapy specific to aircraft operation, rather than EMDR. (Id.)

The Petitioner saw Dr. Chalfant on January 9, 2020, for a medication management appointment and reported that he had seen a doctor with the insurance company who told him that he had a phobia and not PTSD. (PX6) Dr. Chalfant's diagnosis remained PTSD. (Id.) Similarly, the Petitioner reported Dr. Hartman's findings to Dr. Brown on January 16, 2020. (PX4) At that visit, Dr. Brown found Petitioner had been compliant with his medications and low-sodium diet and that his blood pressure had been under excellent control. (Id.) Dr. Brown stated that high blood pressure is generally not the cause of anxiety but a result. (Id.)

At the direction of his attorney, the Petitioner underwent an independent psychiatric evaluation on January 15, 2020, by Dr. Adam Sky, a psychiatrist affiliated with SSM Health. (PX9, Deposition Exhibit 2) He interviewed the Petitioner, reviewed medical records, including Dr. Hartman's report, and performed a mental status examination and psychological testing. (Id.)

The Petitioner described the flying incidents and his symptoms. (Id.) On the Montgomery-Asberg Depression Rating Scale (MADRS – a diagnostic questionnaire to measure the severity of depressive episodes in patients with mood disorders), the Petitioner scored consistent with mild to moderate depression. (Id.) On the Beck's Depression Inventory (BDI – an inventory that measures characteristic attitudes and symptoms of depression), the Petitioner scored consistent with mild mood disturbance. (Id.) On the Hamilton Anxiety Rating Scale (HAM-A – an interview scale that measures the severity of a patient's anxiety), he scored consistent with mild to moderate anxiety. (Id.) On the PCL-5 (a checklist that assesses the 20 DSM-5 symptoms of PTSD), he scored consistent with moderate PTSD with elevated criteria indicative of pronounced symptoms involving intrusion, avoidance, cognitive dysfunction, mood change, arousal and reactivity. (Id.) Dr. Sky also reviewed the tests performed by Dr. Hartman. (Id.)

Dr. Sky diagnosed PTSD, major depressive disorder and generalized anxiety disorder as a result of the work incidents. (Id.) He listed hypertension as a diagnosis possibly related to the work incidents. (Id.) He said the Petitioner's PTSD, major depressive disorder and generalized anxiety disorder were substantiated by his symptoms. (Id.) Dr. Sky opined that the prevailing cause of the Petitioner's psychiatric symptoms and diagnoses were the work incidents, and that the Petitioner had a 30 percent permanent partial psychiatric disability to the body as a whole as a result. (Id.) He said the two events were "definitely" life-threatening and analogous to being shot at or surviving another near-death experience. (Id.) He saw no evidence of any significant pre-existing psychiatric issues that could have exacerbated, accelerated or exaggerated the Petitioner's psychiatric symptoms. (Id.)

Dr. Sky said that while the Petitioner has reached maximum medical improvement, he will require ongoing psychiatric and psychological treatment as has been done by Dr. Chalfant and Ms.

Johnson. (Id.) He said the Petitioner will continue to require such treatment for the indefinite future and may also benefit from specialized psychotherapy performed by someone with a law enforcement or aviation background and experience. (Id.) Dr. Sky added that he is a private pilot with experience in flying in instrument and adverse conditions. (Id.)

Dr. Sky testified consistently with his report at a deposition on February 7, 2020. (PX9) He said that as a pilot, the type of weather the Respondent described was not weather you would want to fly through and if you got caught in it, there was a good chance you're not going to live through it. (Id.) He said icing was a worse situation, and the type of plane the Petitioner was flying was not certified to fly in such weather. (Id.)

Regarding Dr. Hartman's conclusions, Dr. Sky disagreed with the Petitioner having a mood disorder associated with hypertension and a phobic anxiety related to small aircraft said those didn't make any sense. (Id.) Dr. Sky said you don't get depressive disorder as a result of high blood pressure. (Id.) He said there was no evidence of any kind of phobic disorder, and the Petitioner had a panic attack flying on a large aircraft. (Id.) He also "absolutely" disagreed with Dr. Hartman's contention that the Petitioner did not meet DSM-5 criteria and said the Petitioner's symptoms were all classic PTSD symptoms recognized by the DSM. (Id.) He said the Petitioner's flight experiences were enough to trigger PTSD. (Id.) He said the two events were definitely life-threatening. (Id.) He said that if he was to have flown in those conditions and survived, he probably would have lost his pilot's license. (Id.) Dr. Sky also said the treatment from Dr. Chalfant and Ms. Johnson were directed towards PTSD, including EMDR therapy. (Id.) He said the tests Dr. Hartman performed were intelligence and personality tests, and Dr. Hartman did not perform any tests for PTSD. (Id.)

Dr. Sky testified to reading a letter from the FAA before his testimony stating that the Petitioner was no longer licensed to fly because of his PTSD and use of medications. (PX9, PX9 Deposition Exhibit 3, PX13) He agreed with the assessment because of the dulling and visual disturbance effects of the medication and the possibilities of someone with an active psychiatric disorder having a marked reduction in focus, concentration and ability to multitask. (Id.)

Dr. Sky did not believe the Petitioner would be able to fly again because his symptoms were pronounced enough – even if he were off medication, the therapy had tapered out and symptoms were dormant – that it would be very difficult for him to be able to go in a small plane again because it would bring back the PTSD. (Id.)

Dr. Hartman also testified consistently with his report at a deposition on February 7, 2020. (RX11) He said he no longer treats patients. (Id.) He described PTSD as the "nuclear bomb of anxiety disorders" – an extremely severe, extremely mentally destabilizing anxiety disorder produced when a person is exposed to something so far beyond the level of normal human experience and so egregious in terms of stress that the person never really feels right anymore and his personality kind of loses its cohesion. (Id.) He said PTSD is not simply being anxious about what happened, but losing all interest in their lives, losing capacity for good interpersonal relationships with others, withdrawing, not coping well in general, having nightmares and losing who they are as a person. (Id.) Dr. Hartman gave two reasons for finding the Petitioner did not meet the DSM-5 criteria for PTSD – first that flying through bad weather was objectively not sufficient to be considered the sort of extreme trauma under the DSM-5 and second that the symptoms the Petitioner described were primarily related to fear of airplanes and flying but he was able to cope with life in general. (Id.)

Regarding the interplay between hypertension and anxiety, Dr. Hartman said the co-occurrence of these conditions has to do with the hormonal influence on brain function that also produces high blood pressure. (Id.) He said the more adrenaline you pump out, the more stress-related hormones you have that affect the brain directly. (Id.) He said it also affects the vasculature, which affects the brain, and all of those things degrade the emotional status and present as anxiety, anger and sometimes depression. (Id.)

On cross-examination, Dr. Hartman acknowledged that he did not perform a PCL-5 (a checklist that assesses the 20 DSM-5 symptoms of PTSD), which he said doesn't really have good utility for a differential diagnosis but are mainly used for tracking symptoms of identified and credible PTSD patients in treatment. (Id.) He also did not perform a Montgomery Asberg Depression Rating Scale (a diagnostic questionnaire to measure the severity of depressive episodes in patients with mood disorders) because it simply asks someone how depressed they are. (Id.) Nor did he conduct a Hamilton Anxiety Rating Scale (an interview scale that measures the severity of a patient's anxiety). (Id.)

Dr. Hartman testified that the Petitioner made no attempt to exaggerate his symptoms. (Id.) Dr. Hartman balked at saying whether he disputed the Petitioner's reports of flying in dangerous weather conditions, saying he had no external information about the weather conditions. (Id.) He acknowledged that he had no records from prior to September 27, 2016. (Id.) He also acknowledged that other psychologists and a psychiatrist diagnosed the Petitioner with PTSD but said those doctors were using PTSD as a casual descriptive term rather than in a way consistent with DSM labeling. (Id) Dr. Hartman agreed that PTSD can include symptoms of nightmares, intrusive thoughts, flashbacks, general avoidance behavior, hypervigilance, anger, self-blame and guilt. (Id.)

Ms. Johnson retired from practice and referred Petitioner to licensed clinical professional counselor Angela Ingram to continue his treatment. (PX6, PX8) At his initial visit with Ms. Ingram on August 31, 2021, the Petitioner gave a history and reported his symptoms. (PX8) Ms. Ingram's diagnosed him with chronic PTSD with panic attacks, hypervigilance, nightmares about past danger, intrusive thoughts about past dangerous past experiences and excessive worry about death and dying. (Id.) During treatment, Ms. Ingram provided counseling with mindfulness-based cognitive therapy, discussed healthy coping skills for stressors, healthy ways to communicate, ways to manage the effects of past trauma, how to increase self-regulation, use of refocusing techniques and EMDR therapy. (Id.) The Petitioner visited the Cahokia airport to test his tolerance of watching small planes come and go but left due to discomfort in his chest. (Id.) At his last visit with Ms. Ingram on October 19, 2022, Petitioner reported that he had a decreased trauma response overall and hoped to attempt to fly commercially again. (Id.) Ms. Ingram noted that Petitioner was progressing, and her plan was for him to continue the utilization of healthy coping strategies and distraction techniques. (Id.)

The Petitioner testified that the treatment has improved his condition, but he was still experiencing symptoms of anxiety and sleep disorder. (T. 43) He said he still experienced nightmares every few months, where it used to be daily or weekly. (T. 44) He said he is triggered by hearing news about a plane crash – especially one involving a small plane. (Id.) When he is triggered or has intrusive thoughts, he uses therapy and stress management techniques to deal with it before it becomes an issue. (T. 46) He said he still struggles with depression at times – especially as it relates to his ability to fly. (T. 45) He said the medication has helped with his heart palpitations and they are less frequent, but he still struggles with anxiety, increased heart rate, sweaty palms and profuse sweating. (T. 46-47) He said the Trintellix makes him emotionally

even – not experiencing a lot of sadness or a lot of joy. (T. 47) He was also taking Prazocin for sleep disorder and nightmares. (T. 48)

The Petitioner testified that he was still employed with the Respondent but was assigned to patrol. (T. 12) He said he was deemed unable to fly by the FAA and had not flown a plane since being diagnosed with PTSD. (T. 49-50) He said he had wanted to be a state police pilot since he was 19 years old and becoming one was the pinnacle of his career. (T. 50) He said he took a commercial flight since then and experienced a panic attach on that flight, causing him to not fly in a commercial flight again. (Id.) On another occasion, he had booked a trip to Florida but had a panic attack the night before and had to drive while the rest of his family flew. (T. 51) Another time, his family went to Colorado, but he didn't go. (Id.) He said he used to enjoy renting an aircraft and flying with his family. (T. 50) He said his son wants to learn how to fly, and he was looking forward to teaching him. (T. 51) He said he had plans to do something in aviation as a retirement job. (Id.)

The Petitioner said his job changed has affected his pay in that he no longer has the higher pay scale that comes with being an air operations pilot, which also affects what he receives for overtime and retirement. (T. 52) He said the transfer to patrol caused him to have to start over for being in line for promotions. (T. 61)

CONCLUSIONS OF LAW

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

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

To be compensable under the Act, the injury complained of must arise out of and in the course of employment. *Diaz v. Ill. Workers' Comp. Comm'n*, 2013 IL App (2d) 120294WC, ¶24, 989 N.E.2d 233, 370 Ill. Dec. 845, 989 N.E.2d 233, 370 Ill.Dec. 845, citing *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187, 775 N.E.2d 908, 266 Ill.Dec. 866 (2002). In mental-mental cases, a claimant must be engaged in employment at the time and place of the precipitating cause of the injury and must prove that the injury occurred because of a work-related risk or because the employment placed the claimant at risk of exposure exceeding that of the general public. *Id*. In *Diaz*, the claimant – also a police officer – had a gun pulled on him that he later realized was likely a toy gun. *Id*. at ¶25. The Appellate Court found the incident to be compensable.

In the seminal case regarding a mental-mental injury, the Illinois Supreme Court concluded that an employee who suffers a sudden, severe emotional shock traceable to a definite time, place and cause, which causes psychological injury or harm has suffered an accident within the meaning of the Act, though no physical trauma or injury was sustained. *Pathfinder Co. v. Industrial Com*., 62 Ill. 2d 556, 563, 343 N.E.2d 913 (1976). In *Pathfinder*, the Court awarded compensation to an employee who witnessed the severing of a fellow employee's hand in the operation of a punch press. *Id*.

In *General Motors Parts Div. v. Industrial Com*., 168 Ill. App. 3d 678, 522 N.E.2d 1260, 119 Ill. Dec. 401 (1st Dist. 1988), the Appellate Court narrowed *Pathfinder* to being limited to the narrow group of cases in which an employee suffers a sudden, severe emotional shock which results in immediately apparent psychic injury and is precipitated by an uncommon event of significantly greater proportion or dimension than that to which the employee would otherwise be subjected in the normal course of employment. *Id*. at 687. The Court stated that compensation for nontraumatic psychic injury cannot be dependent solely upon the peculiar vicissitudes of the

individual employee as he relates to his general work environment. *Id*. In General Motors, the psychic injury was related to an argument between the claimant and his supervisor. *Id*.

The Court in *Diaz* reconciled the apparent differences between Pathfinder and General Motors. It noted that a strict reading of General Motors would result in the virtual impossibility for a police officer or others involved in dangerous occupations to qualify for a mental-metal claim. *Diaz*, 2013 IL App (2d) 120294WC at ¶32. The Court stated that nothing in *Pathfinder* requires that the "sudden, severe emotional shock" which must be proved should be considered within the context of the claimant's occupation or training, rather the *Pathfinder* Court specifically noted that the shock experienced by the claimant in that case "would be the reaction of a person of normal sensibilities." *Id*. at ¶33. The *Diaz* Court believed that whether a worker has suffered the type of emotional shock sufficient to warrant recovery should be determined by an objective, reasonable-person standard, rather than a subjective standard that takes into account the claimant's occupation and training. *Id*.

In applying Diaz to the instant case, the Arbitrator must contend with the differences in the Petitioner's and Sgt. Skrobul's characterizations of the incidents. The Petitioner's description of the incidents in his testimony and reports to his doctors were consistent and, on their face, were sufficiently shocking to a reasonable person. Sgt. Skrobul's versions of the incidents were much less shocking. The Arbitrator finds the Petitioner to be credible. Sgt. Skrobul was either minimizing the severity of the situations or was oblivious to it. Further support of the Petitioner's testimony is found in the reaction of the refueler to the pilots flying through the storms in the first incident and Dr. Sky's statement that if he was to have flown in those conditions and survived, he probably would have lost his pilot's license. In addition, even Sgt. Skrobul's testimony showed that the flights were contrary the provisions of the Cessna manual and the FAA letter.

Therefore, the Arbitrator finds that the Petitioner was engaged in his employment flying through inclement weather – a risk of exposure exceeding that of the general public – and suffered a sudden, severe emotional shock traceable to a definite time, place and cause.

Pathfinder also requires a finding that the sudden, severe emotional shock causes psychological injury or harm. *Pathfinder*, 62 Ill. 2d at 556. For this inquiry, the Arbitrator turns to the findings of the medical experts.

Drs. Hinz, Reger, Chalfant and Sky diagnosed the Petitioner with PTSD as a result of the flying incidents. The Petitioner's therapists agreed. Dr. Hartman was the only one who did not, instead finding that the Petitioner's high blood pressure was causing his anxiety and the Petitioner was suffering from a phobia of flying. Dr. Brown, the cardiologist treating the Petitioner disagreed with Dr. Hartman's assessment, noting that the Petitioner's blood pressure was under "excellent control." As treating medical providers for the Petitioner, Dr. Hinz, Dr. Reger, Dr. Chalfant, Ms. Johnson and Ms. Ingram had more opportunities to become familiar with the Petitioner and his condition, and their findings deserve greater weight. Dr. Sky pointed out that Dr. Hartman did not test the Petitioner for PTSD. Dr. Sky performed more broad-based testing and assessments geared towards depression, anxiety and PTSD. Another flaw with Dr. Hartman's theory is that he did not review the Petitioner's medical records from before the incidents to determine if the Petitioner's blood pressure was not under control previously. Dr. Sky thoroughly explained the bases for his opinions and his rationale as to why Dr. Hartman's conclusions were not well founded. The Arbitrator gives Dr. Sky's opinions greater weight.

Thus, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that his injuries occurred in the course of and arose out of his employment and the flying incidents caused his PTSD and related psychological conditions.

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 (2009).

Although Dr. Hartman found that EMDR therapy was not reasonable and necessary therapy for what he termed as a phobia, Dr. Sky did. For the reasons stated above, the Arbitrator gives more weight to Dr. Sky's opinions. Based on this and the findings above, the Arbitrator finds the medical expenses listed in Petitioner's Exhibit 1 were reasonable and necessary. Therefore, the Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 1 pursuant to Section 8(a) of the Act and in accordance with medical fee schedules. The Respondent shall have credit for any amounts already paid or paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

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

According to the Request for Hearing (AX1), the Petitioner is seeking temporary total disability benefits for the period of June 8, 2018, through June 15, 2018. Although the Arbitrator notes that the Petitioner was released to work duties other than flying on June 14, 2018, there appeared to be no medical record taking him off work on or about June 8, 2018. Therefore, TTD benefits are denied.

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.** No AMA impairment ratings were produced, therefore the Arbitrator gives this factor no weight.

(ii) **Occupation.** The Petitioner still works for the Respondent but as a patrol officer with a less likelihood of his employment triggering his PTSD because he is no longer flying. However, with Dr. Sky's prognosis that the Petitioner will not be able to pilot a plane in the future, his plans for a post-retirement occupation in aviation are no longer viable. The Arbitrator places some weight on this factor.

(iii) **Age.** The Petitioner was 44 years old at the time of the work incidents. He has many work years left during which time he will need to deal with the effects of his injuries. The Arbitrator places significant weight on this factor.

(iv) **Earning Capacity.** The Petitioner testified that air ops has a higher pay scale than patrol and his base salary has been reduced, as will his estimated pension. The Arbitrator places some weight on this factor.

(v) **Disability.** Due to the incidents, the Petitioner sustained psychiatric injuries and developed PTSD, major depressive disorder and generalized anxiety disorder. He still experiences

anxiety, sleep disorder, nightmares, flashbacks, depression related to his ability to fly and intrusive thoughts that make concentration difficult. His ability to enjoy life outside of work has been affected as well – no longer taking his family up for flights, not being able to teach his son to fly and not being able to fly on vacations with his family. The Arbitrator puts significant weight on this factor.

Based upon the foregoing evidence and factors, the Arbitrator finds that the Petitioner sustained serious and permanent psychological injuries that resulted in the 30% loss of Petitioner's body as a whole, with 15% assigned to the May 11, 2016, incident and 15% assigned to the December 16, 2016, incident.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC025444
Case Name	Zackary Conklin v. Carle Foundation Hospital
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0004
Number of Pages of Decision	13
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Kevin Elder
Respondent Attorney	John Sturmanis

DATE FILED: 1/3/2025

/s/Raychel Wesley,Commissioner

Signature

25IWCC0004

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ZACKARY CONKLIN,

Petitioner,

vs. NO: 19 WC 25444

CARLE FOUNDATION HOSPITAL,

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 Petitioner's entitlement to incurred medical expenses and the nature and extent of any permanent disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as set forth below, but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

CONCLUSIONS OF LAW

I. Medical Expenses

The parties disputed liability for two medical bills: 1) a November 8, 2019 PET scan ($9,830.00), and 2) a hospital admission at Christian Hospital/BJC HealthCare from May 29, 2020 through June 3, 2020 ($50,196.55, representing $47,448.55 in facility charges and $2,748 in physician services). The Arbitrator found Respondent liable for both bills. The Commission views the evidence differently.

The Commission observes the foundational prerequisite for an award of disputed medical expenses is the associated records must be submitted into evidence. Here, they were not. To be clear, there is no report from the November 8, 2019 PET scan in the transcript; moreover, while

the Christian Hospital/BJC HealthCare record certification reflects 1,563 pages were provided in response to Petitioner's subpoena, Petitioner's Exhibit 5 contains only 67 pages of records. The Commission finds the isolated records Petitioner submitted into evidence are insufficient to impose liability upon Respondent for the over $50,000 in charges from BJC HealthCare and Washington University Physicians Services that were incurred over that five-day hospitalization. PX7.

The Commission finds Petitioner failed to prove the disputed bills are reasonable, necessary, or causally related to the work accident. Therefore, the Commission finds Respondent is not liable for the November 8, 2019 PET scan charges nor any charges associated with the May 29, 2020 through June 3, 2020 hospitalization, and we vacate the Arbitrator's award of same.

II. Correction

The Commission observes the Permanent Partial Disability section of the Order contains scrivener's errors: the number of weeks awarded (125) is correct for a 25% loss of use of the person as a whole, however the Order misidentifies the §8(d)2 loss as relating to a "left shoulder" injury and further includes a "15% loss of use of the left hand as related to carpal tunnel syndrome." The Commission strikes the second paragraph in the Order and substitutes the following:

> Respondent shall pay to Petitioner the sum of $813.87 per week for a period of 125 weeks, as provided in §8(d)2 of the Act, for the reason that the neck injuries sustained caused the 25% loss of use of the person as a whole.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 28, 2023, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is not liable for the charges incurred for the November 8, 2019 PET scan nor the charges incurred during the May 29, 2020 through June 3, 2020 hospital admission, and the order directing Respondent to pay those charges is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $813.87 per week for a period of 125 weeks, as provided in §8(d)2 of the Act, for the reason that the neck injuries sustained caused the 25% loss of use 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 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.

January 3, 2025

/s/ *Raychel A. Wesley*

RAW/mck

O: 11/6/24

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC025444
Case Name	Zackary Conklin v. Carle Foundation Hospital
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Kevin Elder
Respondent Attorney	John Sturmanis

DATE FILED: 7/28/2023

THE INTEREST RATE FOR THE WEEK OF JULY 25, 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

ZACKARY CONKLIN
Employee/Petitioner

v.

CARLE FOUNDATION HOSPITAL
Employer/Respondent

Case # **19** WC **025444**

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 **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **CHAMPAIGN, ILLINOIS**, on **06/12/2023**. 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 **05/13/2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**70,824.00**; the average weekly wage was $**1,362.00**.

On the date of accident, Petitioner was **55** 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 $**N/A** for TTD, $**-0-** for TPD, $**-0-** for maintenance, and $**-0-** for other benefits, for a total credit of $**N/A/. ALL TTD BENEFITS PAID**.

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

ORDER

Respondent shall pay for necessary medical services as listed in Petitioner's Exhibit 7, pursuant to the medical fee schedule, as provided in Section 8(a) and 8.2 of the Act, and shall be given a credit for payments made by the group medical plan, and shall hold Petitioner harmless from any and all claims by any provider of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

*Respondent shall pay Petitioner the sum of **$813.87**/week for a further period of **125** weeks, as provided in Sections 8(d)2 and 8(e)9 of the Act, because the injuries sustained caused **25% loss of use of the person as a whole related to the left shoulder and 15% loss of use of the left hand as related to carpal tunnel syndrome.***

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

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

Jeanne L. AuBuchon

Signature of arbitrator

JULY 28, 2023

PROCEDURAL HISTORY

This matter proceeded to trial on June 12, 2023. The issues in dispute are: 1) liability for medical bills for a PET scan and an emergency room visit and hospital stay and 2) the nature and extent of the Petitioner's injury.

FINDINGS OF FACT

At the time of the accident, the Petitioner, who was 55 years old, was employed by the Respondent as environmental services manager. (AX1, T. 10) On May 13, 2019, the Petitioner was trying to break up an altercation between two employees when he hit the back of his neck on a metal pole. (T. 12-13)

The Petitioner went to the emergency room and was referred to Carle Occupational Medicine, where he underwent physical therapy and a cervical MRI at the direction of Dr. James Desalvio, an occupational medicine physician, who initially diagnosed cervical strain and left-hand contusion. (T. 13-15, PX3, PX6) The MRI performed on June 27, 2019, showed multilevel degenerative change of the cervical spine most pronounced at C3-4 with moderate to severe spinal canal stenosis (narrowing) and mild bilateral neural foraminal (where the nerves exit the spine) stenosis along with flattening of the cervical cord. (PX3.) The study also showed abnormal bone marrow signals at C5, C7 and T1 that raised a concern for metastatic disease (cancer). (Id.) Dr. Desalvio referred the Petitioner to Dr. James Harms, an orthopedic surgeon at Carle Spine Institute.

The Petitioner saw Dr. Harms on July 31, 2019. (Id.) Dr. Harms found that the MRI demonstrated a herniated disc at C3-4, indenting the spinal cord. (Id.) He noted the C5 cancer concern and thought the Petitioner needed a bone scan "first of all." (Id.) He also felt that an anterior discectomy and fusion at C3-4 was necessary. (Id.)

The Petitioner returned to Dr. Desalvio on August 27, 2019. (PX6) Dr. Desalvio noted that the request for the bone scan was denied and stated that the scan was needed to rule out any significant problems at C5. (Id.) Dr. Desalvio also prescribed nerve stabilization medication. (Id.) In a treatment note on September 12, 2019, Dr. Desalvio stated that it was critical to accomplish the bone scan prior to a neurosurgical consultation. (Id.)

The scan performed on October 3, 2019, showed a C5 lesion that was concerning for metastatic disease and a left upper lobe pulmonary nodule. (Id.) A positron emission tomography (PET) scan (imaging test using a radioactive substance to look for disease in the body) was recommended. (Id.) On October 7, 2019, the Petitioner saw Dr. Paul Arnold, a neurosurgeon at the Carle Neuroscience Institute, who said the scan confirmed suspicion of metastatic involvement of the C5 vertebral body. (PX6) The Petitioner underwent the PET scan on November 18, 2019, and testified that he did not receive any treatment for cancer after the scan. (T. 18)

The Petitioner testified that he was to have spine surgery in Fall 2019, but Dr. Arnold cancelled the surgery due to illness. (T. 19-20) The surgery was rescheduled for January 2020 and was cancelled again. (T. 20) The Petitioner testified that at that time his position was terminated, he moved to St. Louis and sought treatment from Dr. Rasheed Abiola, an orthopedic spine surgeon at BJC Medical Group Christian Hospital. (T. 20-21, PX1)

The Petitioner testified that he had a history of high blood pressure. (T. 23-24) He said that while waiting for surgery, his neck and arm problems were getting worse, and in late May 2020, he was in excruciating pain, and his blood pressure was going up. (T. 23-24) On May 29, 2020, the Petitioner went to BJC HealthCare Christian Hospital, where he was admitted and hospitalized. (PX5) Records showed that during the hospital stay, Dr. Abiola ordered cervical spine X-rays. (Id.) Neurologist Dr. Carlos Yu ordered MRI and CT scans. (Id.) A head CT and

brain MRI showed no acute cranial abnormality. (Id.) An angiogram of the carotid arteries was normal. (Id.) A cervical MRI showed a large central disc herniation at C3-4 with cord compression, questionable signal change within the cord and an abnormal vertebral body at C5 that appeared to be sclerosis (abnormal hardening of tissue). (Id.) A cervical CT scan showed mild sclerosis of the C5 vertebra of uncertain significance, degenerative disc disease at C5-6 with disc space narrowing and small posterior disc/osteophyte (bone spur) complex and a central disc protrusion at C3-4. (Id.)

On June 29, 2020, the Petitioner saw Dr. Abiola. (PX1) Dr. Abiola stated in his notes that he was asked to consult on the Petitioner during his hospitalization in May 2020, at which time he reviewed the imaging and prescribed a corticosteroid, nerve medication and anti-inflammatories. (Id.) He reviewed the studies again at the office visit and diagnosed cervical spondylotic myeloradiculopathy (compression of the spinal cord) affecting the left C6 and C6 nerve distribution to the left upper extremity. (Id.) He recommended surgery. (Id.)

Dr. Abiola performed an anterior cervical discectomy and fusion at C3-4 on July 30, 2020. (Id.) The Petitioner testified that his neck felt better after the surgery. (T. 28) The Petitioner underwent physical therapy, and improvement was noted during post-operative follow-ups at Dr. Abiola's office. (PX1) He still complained of some neck pain radiating down his left arm to his left hand as well as increased headaches and difficulty sleeping due to the pain. (Id.) A cervical MRI on February 18, 2021, showed a solid fusion at C3-4, progressive degenerative changes at C5-6 and abnormal vertebral body at C5 that was unchanged and appeared stable. (PX1, PX5)

At his last visit to Dr. Abiola's office on September 10, 2021, the Petitioner reported doing much better and feeling like he had his strength and mobility back. (PX1) He reported occasional pain but overall was "feeling really good." (Id.) Physician Assistant Jessica Neumann directed

the Petitioner to continue his last four physical therapy visits and said he would reach maximum medical improvement on October 1, 2020 (sic). (Id.) He was cleared to return to work with no restrictions and was to return in six months. (Id.) The Petitioner did not recall telling PA Neumann that he was feeling really good. (T. 50) He testified that he had not been back to a doctor for his cervical spine and was unaware that he was supposed to return to the doctor in six months. (T. 44-45) He said he reported numbness in his arm at his last visit and at physical therapy. (T. 46-47)

The Petitioner testified that after being returned to work, he found a job as an environmental service director in Indianapolis and was mostly in the office, doing rounds and walking. (Id.) At the time of arbitration, the Petitioner was working as an environmental service supervisor at a company in St. Louis performing office work and going to sites. (T. 30) He said he had to change jobs due to the injury and could not perform any overhead work at all. (T. 33-34) He estimated that he was making $10,000-$15,000 per year less money he did while working for the Respondent. (T. 34-35, 48-49) No current pay records were submitted at arbitration.

The Petitioner said that currently, he can't turn his neck to the right – having to turn his whole body. (T. 32) He said that some days he has to sleep in a recline because of his neck. (T. 32-33) He said he takes ibuprofen daily. (T. 34)

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

CONCLUSIONS OF LAW

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).

During the Petitioner's treatment of his cervical spine, abnormalities were discovered at C5 in addition to the herniated disc at C3-4. It is apparent from the medical records that the doctors wanted to determine what type of pathology was present at C5 before proceeding with the discectomy and fusion. The Arbitrator can understand the doctors' reluctance to perform surgery when there may be cancer or some other abnormality at an adjoining disc. Therefore, the Arbitrator finds that the PET scan was reasonable and necessary as being associated with his work-related injuries.

Regarding the hospitalization in May 2020, the Petitioner linked his acute hypertension incident to the neck pain and the stress he was under awaiting surgery. Although, there was no medical opinion to that effect, the records reflect that he was also being treated for his cervical condition during that hospitalization. Dr. Abiola, the orthopedic spine surgeon performed a consultation, reviewed the cervical MRI and CT and prescribed medications for the Petitioner's neck pain during the hospital stay. The Arbitrator finds that the medical expenses for the hospitalization at Christian Hospital was associated with the injuries the Petitioner suffered in the work accident and, therefore, was reasonable and necessary.

The Respondent is ordered to pay the expenses incurred from the PET scan at Carle Foundation Hospital and the Christian Hospital expenses as listed in Petitioner's Exhibit 7.

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.** No AMA impairment ratings were produced, therefore the Arbitrator gives this factor no weight.

(ii) **Occupation.** The Petitioner continues to work in environmental services in a supervisory position. His work does not include strenuous physical activity. Therefore, the Arbitrator places some weight on this factor.

(iii) **Age.** The Petitioner was 55 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 injury. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity.** Although the Petitioner testified that he is earning less than what he was working for the Respondent, no current pay records were submitted. Therefore, the Arbitrator places no weight on this factor.

(v) **Disability.** Despite being released to work without restrictions, the Petitioner testified that he cannot perform overhead work. He said he can't turn his neck to the right – having to turn his whole body – and some days he has to sleep in a recline because of his neck. He takes ibuprofen daily. The Arbitrator puts significant weight on this factor.

Therefore, the Arbitrator finds the Petitioner's permanent partial disability to be 25 percent of the body as a whole.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC013542
Case Name	Emil Jensen v. City of Batavia
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0005
Number of Pages of Decision	24
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Gregory Booth
Respondent Attorney	Robert Newman

DATE FILED: 1/8/2025

/s/Christopher Harris,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

EMIL JENSEN,

Petitioner,

vs. NO: 21 WC 13542

CITY OF BATAVIA,

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 benefit rates, medical expenses, temporary benefits, collateral estoppel, the nature and extent of Petitioner's disability and credits, and being advised of the facts and applicable law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 15, 2024 is hereby affirmed and adopted.

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

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

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.

January 8, 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	21WC013542
Case Name	Emil Jensen v. City of Batavia
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Gregory Booth
Respondent Attorney	Robert Newman

DATE FILED: 3/15/2024

/s/Frank Soto, Arbitrator
Signature

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

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

EMIL JENSEN
Employee/Petitioner

v.

CITY OF BATAVIA,
Employer/Respondent

Case # **21** WC **013542**

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 Arbitrator **Frank Soto**, in the city of **Geneva**, on **December 18, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

B. ☐ Was there an employee-employer relationship?

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

D. ☐ What was the date of the accident?

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

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

G. ☐ What were Petitioner's earnings?

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

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

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

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

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

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

N. ☒ Is Respondent due any credit?

O. ☒ Other **Whether the Petitioner should be awarded loss of wage earning capacity benefits under 8(d)(1) or a percentage loss of use of the whole man under 8(d)(2); commencement date for 8(d)(1) and amount of benefit if awarded; whether collateral estoppel based on the police pension board vote to deny petitioner's claim for a line of duty pension bars the petitioner from an 8(d)(1) award; if Respondent can claim an 8(j) credit against an 8(d)(1) award for regular retirement pension benefits.**

FINDINGS

On **February 14, 2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**102,024.00**; the average weekly wage was $**1,962.00**.

On the date of accident, Petitioner was **51** years of age, ***married*** with **2** dependent children.

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

Respondent shall be given a credit of $**62,954.15** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**62,954.15**.

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 $1,308.00/week for 47 weeks, commencing 11/10/2020 through 10/04/2021, as provided in Section 8(b) of the Act. Respondent shall pay maintenance benefits of $1,308.00 per week for 14 2/7 weeks, commencing 05/22/2022 through 08/29/2022. Respondent shall be given a credit for $62,954.15 in weekly benefits previously paid to Petitioner, as set forth in the Conclusions of Law attached hereto and incorporated herein;

Respondent is not owed a credit under 8(j) , as set forth in the Conclusions of Law attached hereto and incorporated herein;

Respondent shall pay reasonable and necessary medical services, at the average wholesale price plus $4.18 for the outstanding balance with ADCO, as provided in Sections 8.2(a)(3) of the Act, as set forth in the Conclusions of Law attached hereto and incorporated herein;

Based on the above factors, and the record taken as a whole, the Arbitrator finds Petitioner has demonstrated a loss of earning capacity under 8(d)(1) of the Act. Respondent shall pay wage differential benefits in the amount of $995.77 per week from 8/30/2022 through 12/18/2023 as an accrued lump sum benefit for 68 weeks, totaling $67,712.36. Additionally, Respondent shall pay Petitioner wage differential benefits in the amount of $995.77 per week from 12/19/2023 through Petitioner's 67th birthday, on 03/26/2035, as set forth in the Conclusions of Law attached hereto and incorporated herein;

Respondent shall pay Petitioner compensation that has accrued from February 14, 2020 through December 18, 2023 and shall pay the remainder of the award, if any, in weekly payments.

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

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

By: /o/ Frank J. Soto
Arbitrator

March 15, 2024

Procedural History

This case proceeded to hearing on December 18, 2023. The issues in dispute are whether Respondent is liable for unpaid medical bills, whether Petitioner is entitled to TTD and maintenance benefits, whether Respondent is entitled to a credit for Petitioner's retirement pension payments, whether Petitioner is collaterally estopped from receiving Section 8(d)(1) benefits when a pension board verbally votes to deny an application of line of duty disability pension which is withdrawn prior to the pension board issuing a written decision and, if not, the amount of Section 8(d)1 benefits Petitioner is entitled. (Arb. Ex. #2).

Finding of Facts

Emil Jensen (hereafter referred to as "Petitioner") testified he started working for the City of Batavia (hereinafter referred to as "Respondent") as a police officer in September of 1997. On February 14, 2020, Petitioner was working full duty as a patrol officer and the year prior to being involved in a work accident he earned $102,024.00 or $1,962.00 per week. (Arb. Ex. #2).

On February 14, 2020, Petitioner was injured while working. On that date, Petitioner was placing a ballistic bag into the truck of a marked Ford Explorer patrol vehicle when he experienced a sharp stabbing pain in his right shoulder. (TR 23-25). The accident and causation are not in dispute. (Arb. Ex. #2).

Petitioner sought medical treatment with Dr. Timothy Petsche of Fox Valley Orthopedics (TR 26). After reviewing the MRI, Dr. Petsche recommended arthroscopic shoulder surgery. At that time, Petitioner underwent a Section 12 examination with Dr. Ajay Balaram who concurred with the recommended right shoulder surgery. (RX #1 p.32). Petitioner underwent surgery on November 13, 2020 which consisted of a rotator cuff repair, a labral debridement, and a biceps tenodesis (PX #1-069). After the surgery, Petitioner was placed off work, prescribed physical therapy and medications which were dispensed at Fox Valley Orthopedics. (TR 29-30).

In April of 2021, Petitioner was diagnosed with adhesive capsulitis by Dr. Petsche. (TR 30). At that time, Petitioner testified to experiencing sharp, stabbing pain and limited range of motion. (TR 30). Petitioner testified he experienced pain in his shoulder while lifting his right arm up or reaching behind his back and during rotation. (TR 30). On April 14, 2021, Dr. Petsche administered a cortisone injection into Petitioner's right shoulder. (PX #1-041-043).

On September 8, 2021, Petitioner followed up with Dr. Petsche who ordered a new MRI and kept Petitioner off work. (PX #1-013-014). Petitioner testified, at that time, he was still experiencing

limited range of motion, weakness, and stabbing pains with rotation. (TR 36-37). Prior to that appointment Petitioner was undergoing work conditioning at Northwestern Medicine and the therapist, on September 7, 2021, authored a discharge note documenting Petitioner's right shoulder range of motion and strength deficits. (PX#3-004).

On September 29, 2021, Petitioner was examined again by Dr. Balaram Pursuant to Section 12 of the Act. (RX #1 p.12). Dr. Balaram initially released Petitioner back to work with restrictions only to later authoring a report stating that Petitioner could return to work full duty. (TR 39, RX #1 p.22).

On September 30, 2021 Petitioner returned to Dr. Petsche to review the results of the MRI. (PX #1-008). At that time, Dr. Petsche administered another steroid injection and kept Petitioner off work. (PX# 1-009 to 011). Respondent notified Petitioner to return to work light duty pursuant to Dr. Balaram's original light duty recommendation. (TR 39). Petitioner worked light duty from October 5, 2021 through October 17, 2021. (TR 39).

On October 20, 2021, Petitioner returned to Dr. Petsche who issued work restrictions of no lifting over 20 pounds and no interaction with suspects due to Petitioner's limited range of motion which prevented Petitioner from accessing the tools on his belt. (TR 40; PX#1-005).

On November 2, 2021, Petitioner underwent an FCE at Team Rehabilitation. (PX#4). The FCE included simulating Petitioner's job activities such as having Petitioner try to control a cane while being moved side to side and quickly reaching for a simulated gun. (PX#4-013). The FCE, found to valid, concluded that Petitioner should be restricted from apprehending offenders and from having to pull his gun quickly. (PX #4-004). Respondent did not accommodate Petitioner's light duty restrictions after October 17, 2021.

On November 17, 2021, Dr. Petsche reviewed the FCE report and issued permanent work restrictions of "*no interaction with suspects and no activity that could potentially require the use of a gun*" (PX #1-003). On December 13, 2021, Petitioner sought a second opinion from Dr. Nikhil Verma, of Midwest Orthopedics at Rush, who also opined that it would not be safe for Petitioner to be placed in an emergency situation requiring him to use a firearm or to protect his firearm. (PX #6 p.33).

Petitioner's Testimony Regarding his Pension and Subsequent Employment

At that time, Petitioner filed an application for a line of duty disability pension with the City of Batavia (TR 46). As part of that process, Petitioner was sent for three independent medical examinations with Drs. Goldstein, Phillips, and Obermeyer. The pension board hearing was set for June 28, 2022. At the hearing, the pension board members verbally voted to deny Petitioner's line of duty disability

pension. (PX#10-003). The pension board provided no explanation regarding the basis for the denial. (TR57). At that time, Petitioner withdrew his application for line of duty pension deciding to apply for his regular retirement pension. (TR 58). Because Petitioner withdrew his application for line of duty pension the pension board never issued a written decision but the pension board granted Petitioner's regular retirement retroactive to May 22, 2022. (TR 58-59).

At the hearing, Petitioner testified regarding the job duties of a police officer which, he believed, that he was able to perform such as forcefully taking a suspect into custody, fighting with a suspect, pulling himself up and over a fence, retrieving his gun quickly, protecting is gun from a suspect, fighting with two suspects, putting on his uniform, shooting a shotgun or reaching up to help rescue someone on a balcony. (TR 52-54).

Petitioner testified to looking for employment between May 22, 2022 and August 29, 2022. (TR 60). Petitioner found work as a cook at Team FIB BBQ in Batavia earning $15.00 per hour. *Id.* Because that job was seasonal Petitioner found other employment working for Batavia School District as a paraprofessional. Petitioner started working for Batavia School District on December 8, 2022 earning $15.32 per hour. (TR 61; PX12 p.10). Petitioner testified to loving his job as a paraprofessional because he works with children with special needs. (TR 62).

At the hearing, Petitioner testified as to the wages he would have been earning as a police officer. (TR 66). Under the current contract between Respondent and the Fraternal Order of Police Labor Council Petitioner's base pay in 2023 was $114,267.00 per year. (TR66; PX12-014; PX14 p.35). Petitioner testified in addition to his base pay he would also receive holiday of $6,043.00 or $120,310.00 per year.

Petitioner testified he has poor typing skills and during home typing tests he could only type between 23 to 24 words per minute. (TR 69-70). Petitioner testified to being interviewed by Ms. Laura Belmonte of Vocamotive and that his interview included typing tests. (TR 71).

Testimony of Dr. Petsche, the treating physician

On October 20, 2021, Petitioner was examined by Dr. Petsche who issued work restriction of "no lifting over 20 pounds, and no interaction with suspects due to limited range of motion preventing access to tools on belt." (PX #1-005). Dr. Petsche ordered the FCE which was performed on November 2, 2021 by Team Rehabilitation. (PX #4). The FCE recommended that Petitioner should be restricted from apprehending offenders and pulling his gun out of his belt quickly. (PX #4-004).

Dr. Petsche issued permanent restrictions of "*no interaction with suspects and no activity that could potentially require the use of a gun*." (PX #1-003; PX#5-30). Dr. Petsche testified even though Petitioner could lift at a heavy level his permanent restrictions were necessary due to Petitioner's other limitations. (PX #5 p.60). Dr. Petsche opined that it was unsafe for Petitioner work full duty as a police officer. (PX#5 p.61).

Testimony of Dr. Nikhil Verma, Petitioner's Second Opinion

Petitioner sought a second opinion with Dr. Nikhil Verma of Midwest Orthopedics at Rush. Dr. Verma examined Petitioner on December 13, 2021. (PX #6 p.9). Dr. Verma reviewed the medical records, FCE report, and IME reports of Dr. Balaram. (PX #6 p.12).

Dr. Verma testified his examination of Petitioner noted limited range of motion, particularly with behind the back rotation, as well as rotation with the arm elevated. (PX #6 p. 15). Dr. Verma found Petitioner's loss of motion to be between 20 to 30 percent and he also noted that Petitioner experienced pain with internal rotation and mild weakness with rotator cuff strength testing. *Id*. Dr. Verma testified Petitioner had objective signs of stiffness in the shoulder and weakness in the supraspinatus. (PX #6 p.16.).

Dr. Verma opined Petitioner's surgery and post-op treatment was reasonable and necessary and related to his work accident. (PX #6 p.20). Dr. Verma agreed with the findings of the FCE and that Petitioner did not meet all the requirements of his job. (PX #6 p. 27). Dr. Verma testified being able to lift weight was only one factor in determining whether Petitioner could return to work and that other factors need to also be considered such as range of motion and strength. *Id.*

Dr. Verma diagnosed Petitioner with mild shoulder pain with arthrofibrosis status-post rotator cuff repair. (PX #6 p.30). Dr. Verma testified that arthrofibrosis causes decrease in range of motion and will not improve over time *Id.* Dr. Verma opined that it would not be safe for Petitioner to be in situation requiring him to use his firearm or to protect his firearm. (PX #6 p.33). Dr. Verma testified Petitioner's physical deficits were reflected in the September 7, 2021 work hardening discharge note and were also consistent with his December of 2021 exam findings. (PX #6 p.55). Dr. Verma testified that "*My opinion was that he would not be able to perform full, unrestricted job duties as a police officer*." (PX #6 p.35).

Testimony of Dr. Goldstein, Independent Examiner for the Pension Board

Dr. Goldstein was hired by the pension board as an independent medical examiner to render opinions regarding Petitioner's line of duty disability application. (PX#7 p.9). Dr. Goldstein examined

Petitioner on March 17, 2022. *Id.* Dr. Goldstein testified his examination noted Petitioner had limitations with internal rotation and strength deficits with external rotation supraspinatus testing. (PX#7 p.13-14). Dr. Goldstein testified that his findings of weakness and decreased range of motion were consistent with Dr. Petsche's exam findings. (PX#7 p.14). Dr. Goldstein agreed Petitioner's surgery and postoperative treatment was reasonable, necessary, and related to Petitioner's February 14, 2020 work accident. (PX#7 p.15). Dr. Goldstein testified he agreed with the opinions of Drs. Petsche and Verma who opined that Petitioner was permanently restricted from returning to work as a full-duty police officer. (PX#7 p.16).

Dr. Goldstein testified therapists could have different techniques regarding how they perform examinations and that an FCE is one factor to consider when determining limitations or capacity. (PX#7 p.26). Dr. Goldstein testified the FCE should not be used in isolation to determine whether Petitioner can return to work as a police officer. (PX#7 p.27). Dr. Goldstein testified that he was able to examine the patient, get a history, and compare, throughout his post operative course, the consistency of limitations in his range of motion and weakness. (PX#7 p.27-28).

Dr. Goldstein opined Petitioner suffers from a disabling right shoulder condition which prevents him from performing his full duties as a police officer. (PX#7 p.29). Dr. Goldstein diagnosed persistent right shoulder pain and weakness with a component of postoperative adhesive capsulitis following a surgical procedure. (PX#7 p.29). Dr. Goldstein testified no additional treatment would allow Petitioner return to work full duty as a police officer. (PX#7 p.33).

Testimony of Dr. Phillips, Independent Examiner for the Pension Board

Dr. Phillips was hired by the pension board as an independent medical examiner to render opinions regarding Petitioner's line of duty disability application. (PX#8 p.8). Dr. Phillips examined Petitioner on March 2, 2022. *Id.* Dr. Phillips testified his examination noted that Petitioner's internal rotation was limited and his right arm testing showed weakness. (PX#8 p.16-18). Dr. Phillips diagnosed adhesive capsulitis, or frozen shoulder (PX#8 p.20). Dr. Phillips testified Petitioner "*formed a lot of scar around his shoulder and that's why he was so limited towards his end range*." (PX#8 p.21).

Dr. Phillips opined Petitioner could not return to work as a full-time unrestricted police officer. (PX#8 p.24). Dr. Phillips testified he agreed with the opinions of Drs. Petsche and Verma. (PX#8 p.25). Dr. Phillips testified that one's ability to lift heavy weight doesn't change one's deficiency in internal rotation. (PX#8 p.29). Dr. Phillips testified that "*I felt he could do many occupations, but I was concerned because of his pain and stiffness, especially with terminal internal rotation, that he wouldn't*

be able to appropriately defend himself in a scuffle and would have difficulty retrieving his firearm in a rapid fashion; and therefore, I believe that he would not be able to function as an active police officer in an unrestricted fashion." (PX#8 p.30).

Testimony of Dr. Obermeyer, Independent Examiner for the Pension Board

Dr. Obermeyer was hired by pension board as an independent medical examiner to render opinions regarding Petitioner's line of duty disability application. (PX#9 p.9). Dr. Obermeyer examined Petitioner on March 28, 2022. *Id.* Dr. Obermeyer testified his examination showed evidence of pain and stiffness with limited internal rotation and weakness of the arm consistent with ongoing rotator cuff pathology. (PX#7 p.14). Dr. Obermeyer testified his exam findings were consistent with impingement of the rotator cuff. *Id.* Dr. Obermeyer testified Petitioner's examination showed mildly positive minute provocative maneuvers of the rotator cuff consistent with subacromial impingement (PX#7 p.16).

Dr. Obermeyer testified to reviewing reports authored by Dr. Balaram. Dr. Obermeyer testified he disagrees with Dr. Balaram's opinion that Petitioner could return to work as a full duty police officer. (PX#7 p.18). Dr. Obermeyer testified that "*Well, I happen to treat a variety of police officers. And, in my opinion, based on the demands that are placed on the arm that have to do with safety of the officer as well as the requirements of a very vigorous and forceful restraint of the subjects, based on the patient's evaluation, his pain complaints, the irritability of the shoulder on provocation, I did not think that those types of demands would be safe for Officer—for Officer Jensen to pursue*." (PX#7 p.18-19).

Testimony of Dr. Balaram, Section 12 Examiner

Dr. Balaram testified he examined Petitioner a second time on September 29, 2021 (RX#1 p.15). Dr. Balaram testified his examination showed full range of motion of the shoulder. *Id.* Dr. Balaram diagnosed post right shoulder rotator cuff repair with biologic augmentation, biceps tenodesis, and a complication of adhesive capsulitis. (RX#1 p.20). Dr. Balaram opined Petitioner did not need work restrictions since, from an objective standpoint, he was continuing to make progress with function and that Petitioner should reach maximum medical improvement in a month. (RX#1 p.22-23). At that time, Dr. Balaram performed an AMA impairment rating[1].

On cross-examination, Dr. Balaram testified he is board certified in surgery of the hand. (RX#1 p.29). Dr. Balaram testified he is also certified in performing AMA ratings and was familiar with the requirement that Petitioner should be at maximum medical improvement before performing an impairment rating under Section 2.3(c) of the Sixth Edition of the AMA Guides (RX#1 p.45-46). Dr.

[1] Petitioner objected to the validity of Dr. Dr. Balaram's AMA impairment rating. (RX#1 p.24).

Balaram testified he performed Petitioner's AMA impairment rating, at that time, because, he believed, Petitioner would be at MMI in a month and since he did not see any regression in his underlying status. (RX#1 p.47). Dr. Balaram testified he was unaware Petitioner received an injection on September 29, 2021 and that he did not review the November 2, 2021 FCE. (RX#1 p.55-56).

Testimony of Tracy Camaj, who performed an FCE audit for Respondent

Ms. Tracy Camaj was hired to perform an "FCE Audit" for Respondent. (RX#4 p.12). Ms. Camaj is a physical therapist with Doctors of Physical Therapy. (RX#4 p.8-9). Ms. Camaj testified to reviewing the work conditioning notes of August 25, 2021 and the Team rehabilitation FCE report dated November 2, 2021. (RX#4 p.13). Ms. Camaj testified she only performed a records review and did not participate in the FCE. (RX#4 p.11). Ms. Camaj took issue with two simulations performed during the FCE involving wrestling away a cane and reaching for a gun at the hip. (RX#4 p.15, 18). Ms. Camaj testified there are no guidelines for simulated activities during an FCE. (RX#4 p.51).

Ms. Camaj testified the FCE was valid and Petitioner showed 100 percent consistency of effort and 100 percent of reliable pain during the FCE. (RX#4 p.44-46). Ms. Camaj testified the decision regarding returning to work and restrictions are decided by medical doctors but physical therapists could make recommendations. (RX#4 p.67-68).

Testimony of Julie Bose, Respondent's Vocational Expert

Julie Bose, a certified rehabilitation counselor with MedVoc, was retained by Respondent to perform a Vocational Rehabilitation File Review and Employability Opinion Report which she completed on November 17, 2022. (RX#3 p.7). Ms. Bose opined Petitioner's skills as a police officer would transfer to a position of a 9-1-1 dispatcher, private investigator, security operations manager, and process server. (RX#3 p.10-11). Ms. Bose testified to performing a labor market survey which reflected a yearly salary range for jobs Petitioner could perform range between $35,000.00 to $60,000.00. (RX#3 p.18).

Ms. Bose acknowledged she never met with Petitioner and she was unaware of his education history, personality, hobbies, or type of work he would like to perform. (RX#3 p.43,49). Ms. Bose stated she doesn't know Petitioner's current salary nor did she critique the suitability of his current job. (RX#3 p.145-46). Ms. Bose acknowledged other jobs with different salary ranges exist which she did not consider in her Labor Market Survey. (RX#3 p.49).

Ms. Bose testified she doesn't recall whether any of the jobs she identified had any certification or other requirements. Ms. Bose testified if any of the job descriptions contained testing requirements,

she would not list the testing requirements as an essential job duty because that information is not part of a labor market survey. (RX#3 p.63-64). Ms. Bose acknowledged if Petitioner failed a testing requirement he may not be hired. (RX#3 p.64). Ms. Bose testified her understanding of Petitioner's computer skills was derived from knowing that he used a computer in his patrol car. (RX#3 p.67). Ms. Bose testified the typing requirements of a 9-1-1 dispatcher varies but if Petitioner couldn't meet the typing requirements, he should be able to someday. Ms. Bose acknowledged that if Petitioner couldn't meet the typing requirement, he may be ineligible for the position (RX#3 p.68-69). As to that issue Ms. Bose testified "*If the employer does have a required typing speed and he does not meet that speed and does not practice so that he could meet that speed, then he would not be eligible for the position, correct*." (RX#3 p.69).

Testimony of Laura Belmonte, Petitioner's Vocational Expert

Laura Belmonte, a certified rehabilitation counselor with Vocamotive, was hired by Petitioner to perform a vocational evaluation. The evaluation included a face-to-face meeting with Petitioner and testing such as typing proficiency. (TR 124). Ms. Belmonte authored a report containing a vocational evaluation and labor market survey. (PX#11). Ms. Belmonte also noted that Petitioner suffers from tinnitus, hand tremors, mid-range hearing loss, due to his time in the military, and PTSD, due to his experiences as a police officer.

Ms. Belmonte testified to testing Petitioner's computer and typing skills. Ms. Belmonte indicated Petitioner is a slow touch typist who pecks at the keys. (TR 138). Ms. Belmonte testified that she conducted four typing evaluations and Petitioner's highest typing speed was 25 words per minute in a controlled quiet environment (TR 139).

Ms. Belmonte testified she reviewed the reports of Julie Bose, the vocational counselor retained by Respondent, and she noted that Ms. Bose's report failed to indicate whether a transferable skills analysis was performed. Ms. Belmonte testified that a transferable skills analysis is "*very standard, baseline task level for a vocational rehabilitation counselor…*" (TR 142-144). Ms. Belmonte indicated a transferable skill is something a person has done in their job that could still be performed post injury. (TR 147).

Ms. Belmonte opined Petitioner did not have skills which were a close match to other jobs. (TR 147-148). Ms. Belmonte opined Petitioner could not perform the job of a police officer, bailiff, or protective officer. (TR 148). Ms. Belmonte testified that "*No matter what level I'm looking at, Mr. Jensen does not have skills transferable to be a 9-1-1 dispatcher, private investigator, security*

operations manager, or process server." (TR 150). Ms. Belmonte testified other jobs would likely require retraining. Ms. Belmonte further testified that "*Mr. Jensen doesn't have any management or supervisory experience. So it doesn't make sense in my mind to assume that he could become a supervisor or manager in any role.*" (TR 153). Ms. Belmonte opined that "*Petitioner has identified a good job for himself based on his level of education and the skills that he has and the interests that he has, his physical abilities, and where he lives. I think it's an appropriate job for him.*"(TR 158-159). Ms. Belmonte testified there are other jobs available Petitioner could do and those jobs pay between $18.00 and $23.00 per hour, or an average salary of $20.50 per hour. (TR 160).

Petitioner's Testimony as to his Current Condition

Petitioner, who is right hand dominate, testified he continues to experience limited range of motion and pain in his right shoulder. (TR 51, 55). Petitioner testified getting dressed is difficult including tucking in his shirt and placing his belt through all the loops on his pants. (TR 51-52). Petitioner testified it is difficult to reach items high up in a cabinet and that he still is unable to reach behind is back using his right arm. (TR 52).

As to Petitioner's concerns regarding returning to work as a full duty police officer, Petitioner testified he wouldn't be able to forcefully put a suspect into custody, chase a suspect, stop a suspect from going for his gun and defend himself from two attackers. (TR 53-54). Petitioner testified he is also concerned with performing a rescue involving pulling someone up and drawing his gun in an emergency situation. (TR 54-56). Petitioner testified if he returned to work as a police officer he would be putting people at risk including his co-workers. (TR 57).

The Arbitrator found Petitioner's testimony to be credible.

Conclusion 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 "J", whether the medical services rendered to Petitioner were reasonable and necessary, the Arbitrator finds as follows:

Section 8(a) of the Act states a Respondent is responsible "…*for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury…*" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. *See Gallentine v. Industrial Comm'n*, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

The Arbitrator finds Petitioner has proven by the preponderance of the evidence that his medical treatment was reasonable and necessary to relieve or cure him from the effects of his injury. The Arbitrator notes Respondent did not present any evidence indicating the outstanding medical bills were not reasonable or necessary. Additionally, the testimony from the treating surgeon, Dr. Petsche, and the three orthopedic surgeons who examined Petitioner on behalf of the pension board all opined that Petitioner's medical care, including surgery and postoperative care, was reasonable and necessary.

The only bills outstanding involve charges for prescriptions ordered by Dr. Petsche which were filled by ADCO and dispensed through Fox Valley Orthopedics (PX #13). These charges were for pain medication and patches. (PX #13). Petitioner testified he picked up his medications at Fox Valley Orthopedics. (TR 30). At the hearing, the parties agreed that if the medical bills were found to be reasonable and necessary, the appropriate compensation rate for the outstanding prescription pricing would be the average wholesale price plus $4.18, as provided in Sections 8.2(a)(3) of the Act. (TR 11-13).

The Arbitrator finds Respondent shall pay to Petitioner the reasonable and necessary outstanding medical bills outstanding from ADCO, as identified in Petitioner's Exhibit 13, at the average wholesale price plus $4.18, as provided in Sections 8(a) and 8.2(a)(3) of the Act.

With Respect to Issue "K" Whether Petitioner is entitled to TTD benefits, the Arbitrator Finds as follows:

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

The parties stipulated Petitioner was placed off work by his medical providers and he was entitled to TTD benefits from November 10, 2020 through October 4, 2021. (AX #2). Petitioner testified to working light duty work from October 5, 2021 through October 17, 2021. (TR 39). Petitioner testified he last worked for Respondent was on October 17, 2021, after Dr. Petsche issued his permanent

restrictions. (PX#1-005). Petitioner testified he used his sick and vacation pay benefits from October 17, 2021 through May 22, 2022. (TR 42).

Petitioner's application for regular retirement pension benefits was granted on August 24, 2022 but he received retroactive pay back to May 22, 2022, the effective date of his retirement. (PX#10-005). Petitioner testified he began looking for employment after May 22, 2022. (TR 60). Petitioner testified after receiving his regular retirement pension benefits, he conducted a self-directed job search and he also asked friends and family for any employment leads. (TR 60). Petitioner was not provided any type of vocational assistance to find employment but he found a job on August 30, 2022 working for Team Fib BBQ earning $15.00 per hour. (PX #12-007 to 009).

The Arbitrator finds the period of time it took Petitioner to find a job reasonable given that he was not provided vocational assistance finding employment. Therefore, Petitioner is entitled to temporary disability (TTD) benefits from November 10, 2020 through October 4, 2021, or 47 weeks, and maintenance benefits from May 22, 2022 through August 29, 2022, for 14 2/7 weeks. As such, Respondent shall pay Petitioner 47 weeks of TTD benefits and 14 2/7 weeks of maintenance benefits, less a credit of $62, 9154 for TTD benefits Respondent previously paid.

With Respect to Issue "L", What is the Nature and Extent of Petitioner's injury, The Arbitrator Find as Follows:

Petitioner seeks a wage differential award pursuant to Section 8(d)(1) of the Act. Respondent believes Petitioner is not entitled to a wage differential award. Respondent claims Petitioner is collaterally estopped from a wage differential award based upon the pension board's verbal vote denying his line of duty pension which Petitioner withdrew prior to the pension board issuing a written decision. (Arb. Ex. 2). Respondent also claims if Petitioner is awarded wage differential benefits, Respondent is due a credit, pursuant to Section 8(j) of the Act, for the retirement pension payments. (Arb. Ex. 2). In subsection "O" of this decision, the Arbitrator finds that Petitioner is not collaterally estopped from receiving benefits pursuant to Section 8(d)(1) of the Act and, in subsection "N" of this decision, the Arbitrator further finds Respondent is not entitled to a credit pursuant to Section 8(j) of the Act for Petitioner's retirement pension payments.

Section 8(d) provides for two district types of PPD awards. A wage differential award under Section 8(d)(1) and a percentage of the person as a whole award under Section 8(d)(2) of the Act. 820 ILCS 305/8(d)(1), 8(d)(2) (West 2006). The Supreme Court has expressed a preference for wage differential awards over scheduled awards. *General Electric Co., v. Industrial Comm'n*, 89 Ill.2d. 432, 438, (1982). Pursuant to Section 8(d)(1), an injured employee is entitled to a wage differential award

when : (1) he is "partially incapacitated from pursuing his usual and customary line of employment;" and (2) there is a "difference between the average amount which he 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)(West 2006).

Based upon the medical evidence, vocational reports and testimony, Petitioner's credible testimony, and opinions of Drs. Petsche, Verma, Goldstein, Phillips, and Obermeyer, the Arbitrator finds by a totality of the evidence Petitioner is partially incapacitated from pursuing his usual and customary line of employment within the meaning of Section 8(d)(1) of the Act. Petitioner underwent a valid FCE which recommended restrictions prohibiting Petitioner from apprehending offenders and pulling his gun out of his belt quickly. (PX #4-004). Based, in part, upon the FCE, Dr. Petsche issued permanent work restrictions of no interaction with suspects and no activity which could potentially require Petitioner to use a gun. (PX #1-003). The exam findings and permanent restrictions issued by Dr. Petsche were consistent with the exam findings and restrictions also recommended by Drs. Verma, Goldstein, Phillips, and Obermeyer. The Arbitrator finds the opinions of Drs. Petsche, Verma, Goldstein, Phillips, and Obermeyer persuasive.

The Arbitrator does not find the opinions of Dr. Balaram, the Section 12 examiner, persuasive. The Arbitrator notes Dr. Balaram never reviewed the FCE and he was not aware that Petitioner was still receiving medical treatment and had just undergone a right shoulder injection when he performed the AMA impairment rating. Additionally, the Arbitrator does not find the opinions of Ms. Camaj, who performed a FCE audit, persuasive[2]. The Arbitrator notes that Ms. Camaj did not examine Petitioner, did not interview Petitioner, did not conduct any skills testing, and did not sufficiently explore the nature and potential value of the simulated job duties performed during the FCE. Whether there are guidelines for simulated activities in an FCE doesn't mean the simulated activities properly and sufficiently identified Petitioner's physical limitations and whether those limitations places Petitioner or others at risk.

[2] Petitioner raised an objection as to whether Camaj is an expert or authorized to provide expert services pursuant to Section 12 of the Act as she is not a medical provider and did not examine Petitioner. Although the Arbitrator did not bar Ms. Camaj's testimony, the Arbitrator finds some of her opinions were not disclosed by Ms. Camaj but rather were signed by Respondent's counsel without Ms. Camaj rendering or validating such opinions.

Once there is a finding that Petitioner's injuries partially incapacitated him from pursuing his usual and customary line of employment, the remaining issue involves whether Petitioner meets his burden of proving impairment of his "earning capacity". *See Jackson Park Hospital*, 2016 IL App (1st) 142431WC, par. 42. Under the Act, Petitioner must show: (1) the average amount that 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 his accident; and (2) the average amount which he is earning or is able to earn in some suitable employment or business after the accident. 820 ILCS 305/8(d)(1). (West 2006). See also *Gallianetti v. Illinois Industrial Comm'n*, 315 Ill. Ap. 3d 721, 730 (2000) (To prove an impairment of earnings, a claimant must prove his actual earnings for a substantial period before the accident and after he returns to work, or, in the event that he has not returned to work, the claimant must prove what he is able to earn in some suitable employment.)

Petitioner presented testimony and evidence of his earnings had he still been employed as a police officer on the date of hearing. (PX #12-014). Petitioner testified as a police officer he would be earning $114,267.00 per year plus holiday pay of $6,043.00. (TR 66). Petitioner testified to using the current Union Contract to determine his base salary for the 2023 year. (PX #14 p.35). As such, the Arbitrator finds, at the time of hearing, Petitioner would be earning $120,310.00 per year including holiday pay and his average weekly wage would be $2,313.65.

Petitioner testified to working for Team FIB BBQ as of August 30, 2020 earing $15.00 per hour. (TR 60). Because that job was seasonal, Petitioner subsequently found work with the Batavia School District as a special education teacher's aide earning $15.32 per hour. (TR 61). Based upon a 40-hour work week, Petitioner's average weekly wage working for the Batavia School District is $612.80.

The next question involves whether Petitioner's current job as a special education teacher's aide earning $15.32 per hour is suitable employment under the Act. Evidence was submitted at trial that other suitable occupations may exist based upon vocational evidence consisting of the opinions of Ms. Bose and Ms. Belmonte. Ms. Bose opined Petitioner could earn a starting salary range between $35,000.00 and $60,000.00 per years. (RX 3). Ms. Bose stated Petitioner was qualified to work as a 9-1-1 dispatcher, private investigator, security operations manager, and process server. (RX#3 p.10-11). The Arbitrator notes Ms. Bose never interviewed Petitioner nor perform any skills testing. (RX#3 p.43).

Petitioner retained Laura Belmonte, a vocational rehabilitation counselor, who interviewed Petitioner and performed computer and skills testing. Ms. Belmonte opined in addition to Petitioner's current job he could earn in other suitable employment ranging between $18.00 per hour and $23.00 per

hour with an average of $20.50 per hour. (TR 160). Ms. Belmonte testified Petitioner did not possess the transferable skills to meet the requirements of a 9-1-1 dispatcher, process server, investigator, or security guard supervisor. (TR 150). The Arbitrator notes the job requirements for a 9-1-1 Dispatcher required the ability to type 40 words per minute and, based upon the four different testing methods, Petitioner was only capable of typing 25 words per minute. (TR 139).

The Arbitrator finds the reports, testimony, and opinions of Ms. Belmonte to be more persuasive than those of Ms. Bose because Ms. Belmonte performed transferable skills analysis, met with Petitioner, and performed computer/typing testing. The Arbitrator finds the opinions of Ms. Bose to be speculative and not based upon Petitioner's actual skills or abilities. It is axiomatic that the weight accorded an expert opinion is measured by the facts supporting it and the reasons given for it; an expert opinion cannot be based on guess, surmise, or conjecture. *Wilfert v. Retirement Board*, 318 Ill. Spp. 3d 507, 514-15 (1st Dist. 2000).

The Appellate Court in *Crittenden* defined suitable employment as employment in which the claimant is both able and qualified to perform citing the Merriam-Webster's Collegiate Dictionary. 2017 IL App (1st) 160002WC-U at Par. 24. Based upon the definition of suitable employment articulated in *Crittenden*, the Arbitrator finds working as a special education teacher's aide to be suitable employment under the Act because Petitioner is able and qualified to perform the job of a special education teacher's aide.

When a claimant is working at the time of the calculation, but functional and/or vocational evidence is submitted which is sufficient to determine another suitable occupation for the claimant, there is nothing in Section 8(d)(1) of the Act that would prevent the Commission from utilizing such evidence to determine the average wage the claimant could make in some suitable employment or vice versa. *Crittenden v. Illinois Workers' Compensation Comm'n*, 2017 IL App. (1st Dist. 2017) 160002WC. Because Petitioner is currently earning less than the range of pay for other suitable employment, as identified by Petitioner's vocational expert, the Arbitrator elects to use the average of the range of other suitable employment which is $20.50 per hour or $820.00 per week.

The Arbitrator finds working as a special education teacher's aide is an occupation which contributes significantly to society but, in this case, Petitioner is technically underemployed since he is capable of earning between $18.00 per hour and $23.00 per hour, based upon the opinions of his vocational expert. However, in this case, Petitioner is choosing to earn less in an occupation he enjoys which contributes to society than he could earn in other suitable employment because he is also

receiving a pension. The Arbitrator finds there is nothing in Section 8(d)(1) of the Act prohibiting Petitioner from choosing to earn income less than the salary range of other suitable occupations but, if he does so, it should not increase Respondent's liability. The Arbitrator believes this finding is consistent with interpreting the Act liberally to effectuate its main purpose of providing financial protection to injured workers. See *Cassens Transport Co. v. Industrial Comm'n*, 218 Ill. 2d. 519, 524 (2006).

Based on the above factors, and the record taken as a whole, the Arbitrator finds Petitioner has demonstrated a loss of wage-earning capacity benefits under 8(d)(1). The difference between what Petitioner could make if he were still a police officer (*i.e*. $2,313.65 average weekly wage) and his current average weekly wage (*i.e*. $820.00) is $1,493.65 per week. At 2/3 of the differential, Petitioner is entitled to $995.77 per week in wage differential benefits. As such, Petitioner is awarded, and Respondent shall pay, wage differential benefits in the amount of $995.77 per week from 8/30/2022 through Petitioner's 67th birthday, on 03/26/2035.

With Respect to Issue "N" Whether is Entitled to a Credit, the Arbitrator Finds as Follows:

The parties stipulated Respondent is due a credit for TTD paid to Petitioner in the amount of $62,954.15 as addressed above in subsection "K"

Respondent claims an additional credit for retirement/pension income Petitioner received from May 23, 2022 through the present time as a result of his retirement. Petitioner's retirement pension income is not based upon disability but is based upon his service as a police officer for over 24 years. Petitioner testified he paid into his retirement pension. (TR 112). Petitioner testified retirement benefits are different than disability pension benefits and that he never received disability pension benefits. (TR 111). Petitioner received his regular retirement pension benefits as of May 22, 2022 after Petitioner withdrew his application for line of duty disability benefits, which the pension board granted. (PX #10-008).

It is Respondent's burden to prove that they are entitled to a credit under Section 8(j) of the Act. No evidence was presented to show that Petitioner's retirement benefits are anything other than normal retirement benefits. Respondent did not introduce evidence as to the amount of Petitioner's pension benefits. There was no testimony or evidence that Respondent paid any disability pension benefits. "Under the Act, the employer receives no credit for benefits which would have been paid irrespective of the occurrence of a workers' compensation accident." *Tee-Pak, Inc. v. Industrial Comm'n*, 141 Ill.App.3d 520, 95 Ill. Dec. 697, 490 N.E.2d 170 (1986). "An employer is not entitled to a credit against its obligation to pay benefits under the Act for pension payments received by a claimant since the pension payments

were the result of normal pension retirement benefits wholly unrelated to the claimant's workers' compensation accident." *Wood Dale Electric v. IWCC* 986 N.E.2d 107, Ill. App (1st) 113394. Other than the stipulated TTD credit, Arbitrator finds Respondent is not entitled to a credit against any benefits awarded.

With Respect to Issue "O" Whether Collateral Estoppel Bars Petitioner from receiving an 8(d)(1) award, the Arbitrator finds as follows:

For collateral estoppel to apply, three threshold requirements must be established. *Bassgar, Inc v. Illinois Workers' Compensation Comm'n*, 394 Ill. App. 3d 1079, 1086, 917 N.E.2d 579, 586 (3rd Dist. 2009). First, the issue decided in a prior adjudication must be identical with the issue presented in the suit in question. Second, there must be a final judgment on the merits in the prior adjudication. Third, the party against whom estoppel was asserted must have been a party or in privity with a party to the prior adjudication. *Id*. See also *Demski v. Mundelein Police Pension Board*, 358 Ill. App. 3d 499 at 502, 831 N.E.2d 704 (2nd Dist. 2005).

Respondent claims Petitioner is collaterally estopped from receiving an 8(d)(1) award when a pension board, without issuing a final order, takes a preliminary oral vote to deny a line of duty disability pension and before issuing the final order, the line of duty application is withdrawn. The Arbitrator finds Respondent failed their burden of proving by the preponderance of the evidence the requirements of collateral estoppel.

First, Respondent failed to prove the prior adjudication was identical to the issues in this case[3]. The Arbitrator notes the pension code, 40 ILCS 5/3-114.1 *et seq*, does not have the same standard for showing a compensable accident. The Police Pension Code requires the accident or injury incurred in or resulting from the "performance of an act of duty" and section 5-113 of the Police Pension Code defines "act of duty" in pertinent part, as:

[3] Respondent claims collateral estoppel bars Petitioner from re-litigating claims arguing there is no discernable difference between "Line of Duty" under the pension code and "arising out of and in the course of employment" under the Act. The Arbitrator finds Respondent's position to be misplaced. In this case, "arising out of and in the course of employment" is not being litigated. The parties stipulated to "arising out of and in the course of employment" and causation. (Arb. Ex.#2). Other than medical bills and TTD benefits the remaining issue being litigated is permanency which was not previously litigated. Petitioner is seeking an award pursuant to Section 8(d)(1) of the Act which provides an injured employee is entitled to a wage differential award when: (1) he is partially incapacitated from pursuing his usual and customary line of employment and (2) there is a difference between the average amount which he 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)(West 2006). The issues to be litigated before the Commission under Section 8(d)(1) of the Act were not previously litigated by the pension board, assuming the oral vote was a final order, which it was not.

> "Any act of police duty inherently involving special risk, not ordinarily assumed by a citizen in the ordinary walks of life, imposed on a policeman by the statutes of this State or by the ordinances or police regulations of the city in which this Article is in effect or by a special assignment; or any act of heroism performed in the city having for its direct purpose the saving of the life or property of a person other than the policeman." 40 ILCS 5/5-113 (West 2008).

Petitioner's burden of proof under the Illinois Workers' Compensation Act is different than an applicant's burden of proof under the Police Pension Code. Illinois court have previously held the question whether a police officer's "accident arose out of an in the course of her employment" is not identical to the question whether the accident occurred during "any act of police duty inherently involving special risk, not ordinarily assumed by a citizen in the ordinary walks of life." See *Demski v. Mundelein Police Pension Board*, 358 Ill. App. 3d 499, 831 N.E.2d 704 (2nd Dist. 2005).

Second, the Arbitrator finds Respondent failed to meet their burden of proving a final judgment on the merits in a prior adjudication. In this case, Petitioner withdrew is application for line of duty disability. Once the pension board allowed Petitioner to withdraw his line of duty application it is as if the application never existed. In this case, the pension board never issued a final decision on Petitioner's line of duty disability application because Petitioner withdrew his application. Final administrative decisions of the pension board are subject to review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2010). Section 3-148 of the Pension Code (40 ILCS 5/3-148 (West 2008)) provides that a judicial review of the Pension Board's decision is governed by the Administrative Review Law (735 ILCS 5/3-101 et seq. (West 2008)). The Administrative Review Law defines an "administrative decision" as "any decision, order or determination of any administrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties and which terminates the proceeding before the administrative agency." 735 ILCS 5/3-101 (West 2010). In this case, the pension board never issued a final decision or took final action because the application was withdrawn.

The Appellate Court held it is "elementary" that a final decision of an administrative agency must be in writing and "the written decision must be prepared and provided to each board member at or before the time the board votes to take final action on the application." See *Howe v. Retirement Board of the Firemen's Annuity & Benefit Fund*, 2013 IL App (1st) 122446, ¶ 19, 25 (2013). This is because "the Board's only decision is the written version, since that is the decision setting forth its findings of fact, reasoning, and analysis that judges consider during the administrative review process." *Id.* In this case, just as in *Howe*, no written decision was issued setting forth its findings of fact, reasoning, and analysis

existed nor did a board take final action on the written decision. In a similar case, the Appellate Court in *Balderman* stated "As we emphasized in *Howe*, the written decision of a public body must be prepared and provided to each board member in advance of a board vote finally disposing of the matter under consideration. *Balderman v. Board of Trustees of the Police Pension Fund of the Village of Chicago Ridge, 2015 IL. App. 1st, 140482.* ¶ 37 (2015); citing *Howe*, 2013 IL App (1st) 122446, ¶ 25.

The Arbitrator finds a preliminary oral vote was taken at the hearing on June 28, 2022 and that the pension board never issued a final administrative decision which was approved by the board that affected the legal rights and duties of the parties which was subject to review. The Arbitrator notes, at the pension board hearing, the attorney for the Pension Board said, "*The Pension Board will prepare a Written Decision and Order that will become the final administrative decision of the Board… Once approved, the Board will serve a copy on both parties for purposes of any administrative review the parties would like to take…"* (PX #10-003). The Arbitrator also notes the minutes of the August 24, 2022 pension board meeting shows the board acknowledged receipt of Petitioner's request to withdraw the line of duty disability pension application and that after granting the withdrawal the board granted Petitioner's application for regular retirement pension. (PX#10-008). The Arbitrator further notes the pension board never believed the preliminary oral vote was a final order. In a letter dated December 5, 2023 authored by the Board's attorney, Mr. Jeff Goodloe, stated that "*no written decision in the matter of the disability pension application of Emil Jensen ("Mr. Jensen") before the Pension Board exists*" (PX #10-012).

Third, the Arbitrator finds Respondent failed to meet their burden of proving "the party against whom estoppel is asserted is a party or in privity with a party to the prior adjudication." Respondent (City of Batavia) was not a party in the pension hearing. The hearing was held by the Batavia Police Pension Fund which is a separate legal entity than Respondent. The Arbitrator further notes that Respondent proffered no evidence showing Respondent was in privity with the Batavia Police Pension Fund.

Based upon the above, and the record taken as a whole, Arbitrator finds Respondent has not met their burden in showing the requirements necessary to bar Petitioner's 8(d)(1) wage differential claim.

By: /o/ Frank J. Soto
Arbitrator

March 14, 2024
Date

March 15, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC012019
Case Name	Menia Boyd v. Davita Dialysis
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0006
Number of Pages of Decision	26
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Michael Trybalski
Respondent Attorney	Justin Schooley

DATE FILED: 1/8/2025

/s/Carolyn Doherty,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MENIA BOYD,

Petitioner,

vs. NO: 19 WC 12019

DaVITA DIALYSIS,

Respondent.

DECISION AND OPINION ON REVIEW

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

While affirming and adopting the corrected Decision of the Arbitrator, the Commission writes additionally on the issue of permanent partial disability because the corrected Decision of the Arbitrator did not assign a weight to the evidence of disability corroborated by the treating medical records pursuant to subsection (v) of section 8.1b(b) of the Act. The Commission affirms and adopts the Arbitrator's findings in his decision and additionally notes Petitioner's unrebutted testimony that after leaving Respondent's employ, she worked for Southwest Airlines in September 2019 as an operations agent off and on. She further testified that she was off work for medical appointments, medical leaves, and FMLA because she physically could not do the job for Southwest and her back pain was aggravated. Petitioner also testified that after her surgery, she worked light duty for 16 weeks and then went on a permanent medical leave until the accommodations team at Southwest found her current position as a "station admin coordinator." Given this record, the Commission places greater weight on this factor and affirms the Arbitrator's award of permanent partial disability benefits representing a 15% disability to the person as a whole pursuant to Section 8(d)(2) of the Act.

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the corrected Decision of the Arbitrator dated June 24, 2024, is hereby affirmed and adopted, but changed with respect to the weighting of the evidence of disability corroborated by the treating medical records in determining the award of permanent partial disability benefits.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner permanent partial disability benefits of $503.63 per week for 75 weeks, because the injuries sustained caused the 15% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that 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 by Respondent is hereby fixed at the sum of $39,600.00. 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.

January 8, 2025

o: 12/19/24
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	19WC012019
Case Name	Menia Boyd v. Davita Dialysis
Consolidated Cases	
Proceeding Type	
Decision Type	***Corrected Decision***
Commission Decision Number	
Number of Pages of Decision	23
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Michael Trybalski
Respondent Attorney	Justin Schooley

DATE FILED: 6/24/2024

/s/Joseph Amarilio, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 18, 2024 5.15%

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
CORRECTED

Menia Boyd
Employee/Petitioner
v.
DaVita Dialysis
Employer/Respondent

Case # **19** WC **012019**

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 **3/22/2024**. 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. ☒ What temporary benefits are in dispute?
☒ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **4/19/2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**43,648.28**; the average weekly wage was $**839.39**.

On the date of accident, Petitioner was **41** years of age, ***single*** with **1** dependent children.

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

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

Respondent shall be given a credit of $**7,514.49** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**7,514.49**.

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

ORDER

Medical benefits: Pursuant to the medical fee schedule and as provided in Sections 8(a) and 8.2 of the Act, Respondent shall satisfy those medical charges outlined in Petitioner's Exhibits 8 (Px. 8) as said charges were for the reasonable and necessary medical treatment of Petitioner's April 19, 2019 19 work-related injuries. Respondent shall receive a credit for any benefits already made. Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule the amount of $1,366.00 to MidAmerica Orthopaedics, S.C, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the Illinois Workers' Compensation Commission.

TTD: Respondent shall pay Petitioner temporary total disability benefits of $559.59/week for 14-1/7 weeks, commencing 4/24/19 through 7/31/19 as provided in Section 8(b) of the Act.

TPD: Petitioner's claim for TPD benefits is denied for failure of proof.

PPD: Respondent shall pay Petitioner permanent partial disability benefits of $503.58 per week for 75 weeks, because the injuries sustained caused the 15% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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

/s/ *Joseph D. Amarilio*

Signature of Arbitrator Joseph D. Amarilio

June 24, 2024

0BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

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MENIA BOYD vs. DAVITA DIALYSIS 19 WC 12019

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ATTACHMENT TO ARBITRATION DECISION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PROCEDURAL HISTORY

Ms. Menia Boyd ("Petitioner"), by and through her attorney, filed an Application for Adjustment of Claim for benefits under the Workers' Compensation Act ("Act") (820 ILCS 305/1 *et seq.*). Petitioner alleged she sustained an accidental injury on April 19, 2019 that arose out of and in the course of her employment while working for DaVita Dialysis. ("Respondent').

At the start of the hearing, the parties jointly submitted a Request for Hearing Form representing that the following issues were in dispute: (1.) Whether Petitioner 's current condition of ill-being is causally connected to the accident; (2) Whether the medical services which were provided to Petitioner were reasonable and necessary, and whether Respondent has paid all appropriate charges for the reasonable and necessary medical services. (3) Whether Petitioner is entitled to TTD; and (4) The nature and extent of Petitioner's injury; and (5). The parties requested a written decision that includes findings of fact and conclusions of law. (Arb. X 1)

II. FINDINGS OF FACT

Petitioner 's Testimony

Petitioner testified that on April 19, 2019, she was employed as a dialysis technician for Respondent. (T. 10). She began working for the Respondent in this capacity around late 2016 or early 2017 (T. 12).

Petitioner provided a description of her typical work duties that included preparing the dialysis machines for patient use at the start of each morning, assisting patients who require help transferring to and from a wheelchair onto a dialysis treatment chair, making the necessary connections to a patient's veins, monitoring patients throughout their dialysis treatment, and cleaning up the site after a patient's treatment (T. 11). A patient's treatment may range from three (3) to four and a half (4.5) hours, with Petitioner being responsible for approximately four or five patients at a time (T. 11). Petitioner said that a dialysis technician is position requiring certification and licensing which she had obtained (T. 12).

Petitioner said that in order to perform this job, she was required to be on her feet extensively (T. 12-13). Petitioner enjoyed her work as a dialysis technician (T. 13) and denied ever having difficulty performing the duties of her job prior to her work accident of April 19, 2019. (T. 13).

Petitioner testified that on April 19, 2019, she slipped and fell to the floor due to water on the floor. (T. 15), She experienced immediate onset pain throughout her entire body (T. 15). Petitioner testified that her employer was informed of the incident that same day, and that she was sent to Ingalls Occupational Health for an evaluation that same day, that being April 19, 2019. (T. 15).

Petitioner testified recalled seeing Respondent's section 12 examining physician, Dr. Frank Phillips in July of 2019 (T. 21). When asked about the length of time Petitioner spent with Dr. Phillips during that appointment, Petitioner responded "[not] long. I think I spent more time with the nurse. The nurse was actually the one who did the examination. [Dr. Phillips] came in and did a few things afterwards, but probably two or three, five minutes at the most" (T. 21).

Petitioner knew that Dr. Phillips had opined in his July 2019 Section 12 report that Petitioner was able to return to work without restrictions (T. 21). She said that her treating doctors had not cleared her to return to work at that time (T. 22). She did not feel physically able to return to work at that time (T. 22). Petitioner did not return to work for the Respondent at that time, or any time since her injuries on April 19, 2019. (T. 22).

Petitioner resigned from her employment as a dialysis technician for the Respondent in September of 2019 (T. 23). According to Petitioner, "I resigned because I had asked for accommodations. At that time, I still had a tremendous amount of back pain. I was having back spasms. My hands would tremble. I had issues in my neck, shotting pains in my neck. And I could not stand. Like prior to the incident, like I could work and stand for 16 hours with no issues. I couldn't stand. I couldn't bend to cannulate. [Insert a thin tube into the patient's body.]. I asked them for accommodations, and they would not accommodate me. I had been off work since the incident without pay. I could not get any benefits from any place still being on the payroll with them, even though I wasn't getting paid. So, I had to resign in order to try and get some form of income coming into my home" (T. 23).

Petitioner subsequently located employment with Southwest Airlines in September of 2019 (T. 24). Petitioner confirmed that, as of the hearing date, she was still employed by Southwest Airlines, albeit in a different position (T. 24). Petitioner said that she is currently employed as a "station admin coordinator" (T. 24). According to Petitioner, that job "has some physical demands" though those demands were "not as much as DaVita" (T. 24)

On cross-examination, however, Petitioner testified that when she initially started working at Southwest Airlines in September 2019, she was working as an operations agent. (T p. 30). She testified that her job duties in that position included checking the weight and balance of the aircraft. She also performed flight planning, job duties associated with boarding the plane, taking passengers' tickets, and making sure pilots had everything they needed. (T. p. 31).

Petitioner testified that her job duties assisting with boarding the aircraft would mean that if there was a passenger that was not ambulatory, she would have to lift a passenger from a wheelchair to an aisle chair, and from an aisle chair to the aircraft seat. She indicated that going back and forth, up, and down the jet bridge on an incline "didn't work well for [her]." (T. p. 31). She testified that the job required working on her feet, pushing passengers in wheelchairs, and helping with luggage. (T. p. 31). Petitioner testified her job duties also required opening and closing the aircraft door, which was heavy. (T. p. 31-32). Petitioner further testified that the job at Southwest Airlines aggravated her back pain so much so that she had to call off work at Southwest Airlines. (T. p. 34).

Petitioner testified that, as of the time of trial, she was continuing to experience pain symptoms (T. 27). Petitioner testified that these symptoms are present in her back and left knee (T. 27). Petitioner described being "in pain just about 24 hours a day" (T. 27). Petitioner testified that she still sees her primary care physician regarding this pain (T. 27). Petitioner states that she is "on a lot of medication, pain pills" as a result (T. 27).

Petitioner testified that she never experienced the same level pain or symptoms in her back or left knee before her accident. T. 28). Petitioner denied ever receiving medical care regarding similar symptoms or pain before her work accident. (T. 28). Petitioner testified that she does not believe she was physically able of performing her job responsibilities as she did before the accident. (T. 28).

Medical Evidence

The medical records reflect that Petitioner was seen by Nurse Layoya Duncan at Ingalls Occupational Health on the date of the incident (4/19/19) (Px. 1). The initial treatment records indicate "Patient states while at work she slipped on water and fell injuring Left knee, Left toe, Lower back, Upper back and right hip" (Px.1, p.17). Xray imaging of Petitioner 's thoracic spine, lumbar spine, and left knee were all obtained and did not show any evidence of fracture (Px.1, p.18).

Petitioner was diagnosed with low back pain, pain in thoracic spine, pain in left knee, fall on same level from slipping, tripping, and stumbling without subsequent striking against object (Px.1, p.18). Records further reflect that Petitioner 's past medical history was "reviewed and was not pertinent to the chief complaint or injury" (Px1, p 17). It is noted that "the cause of this problem is related to work activities" (Px.1, p.19).

Petitioner was instructed to restrict her work duties to include "lifting should be limited to 10 pounds or less. Bending may not be performed." Petitioner was advised to fill the prescription medications she was provided, and to return to this facility for follow up in 7 days.

On April, 24, 2019, Petitioner presented for an initial evaluation with Dr. Aleksandr Goldvehkt, a physiatrist. at Advanced Physical Medicine (Px.2, p.4). Petitioner noted that "on 4.19.19, while she was working for Respondent, she stated that she slipped and fell" (Px.2, p.4). Petitioner complained of ongoing pain in her neck, midback, lower back, right shoulder, right

arm, right elbow, and left knee (Px.2, p.4). Dr. Goldvehkt noted limited range of motion throughout Petitioner 's spine during his physical examination. (Px.2, p.4).

Dr. Goldvehkt diagnosed Petitioner with cervical spine contusion/facetogenic pain, thoracic spine contusion/facetogenic pain, lumbar spine contusion/facetogenic pain, right shoulder injury, right elbow/arm injury, and left knee injury (Px.2, p.4). Petitioner was provided with various prescription medications, advised to begin a course of physical therapy, provided with a lumbar brace and a home exercise kit. Petitioner was to remain off of work until her follow up appointment (Px.2, p.4). If Petitioner failed to improve by the time of her follow up visit, then Dr. Goldvehkt would consider an MRI (Px.2, p.4).

Pursuant to Dr. Goldvehkt' s referral, Petitioner began a course of physical therapy with Mitchell Bershader of Advanced Physical Medicine the following day (4/25/19) (Px.2, p.31-33). In total Petitioner completed approximately twenty-two (22) sessions of PT between April 25, 2019 and July 26, 2019. (Px.2, p.31-46).

Petitioner returned for a follow up visit with Dr. Goldvehkt of Advanced Physical Medicine on May 8, 2019. (Px.2, p.6). Petitioner complained of pain in her neck, midback, lower back, right shoulder, right arm, right elbow, and left knee (Px.2, p.6). Petitioner noted that the pain in her neck and lower back had increased since her last visit on April 24, 2019. (Px.2, p.6). Dr. Goldvehkt advised Petitioner to continue with her physical therapy, medication, exercise program, and to obtain MRI imaging of her cervical and lumbar spine (Px. 2, p.6).

Petitioner was to return in four weeks, after the MRI imaging had been completed, and to remain off of work until that time (Px.2, p.6-7).

Pursuant to Dr. Goldvehkt' s 5/8/19 referral Petitioner presented to American Diagnostic MRI on May 14, 2019. (Px.4). MRI imaging of Petitioner 's cervical spine evidenced (Px.4, p.4). "Abnormal straightening and reversal of the usual cervical curvature, most likely representing significant posttraumatic muscular spasm", "At the C4-C5 level, there is a 2-3 mm posterior disk herniation which indents the thecal sac with mild generalized spinal stenosis and bilateral neuroforaminal narrowing seen, slightly greater on the left", "At the C3-C4 level, there is a 1-2 mm posterior disk bulge which indents the thecal sac."

With regard to Petitioner 's lumbar spine, the MRI imaging showed a 1-2 mm posterior annular disk bulge which indents the thecal sac at the L5-S1 level (Px.4, p.5).

On May 22, 2019, Petitioner returned to see Dr. Goldvehkt at Advanced Physical Medicine to have her MRI images reviewed. Petitioner noted ongoing complaints of neck, midback, lower back, right shoulder, right arm, right elbow, and left knee pain (Px.2, p.8). Dr. Goldvehkt continued the course of treatment and referred Petitioner to an interventional pain management provider for her lumbar and cervical spine pain (Px. 2, p.8). Petitioner was to remain off of work until her follow up appointment (Px.2, p.9).

Pursuant to Dr. Goldvehkt' s May 22, 2019 referral, Petitioner presented for an initial evaluation with pain management specialist Dr. Scott Glaser on June 3, 2019. (Px.2, p.10). Petitioner noted ongoing bilateral neck and lumbar pain, as well as pain in her right arm, right shoulder, right leg (Px.2, p.10). Petitioner noted that her symptoms began following a work-related incident on April 19, 2019. (Px.2, p.10).

Dr. Glaser diagnosed Petitioner with facet syndrome of cervical spine, cervical radiculopathy, lumbar facet joint pain, and lumbosacral radiculopathy (Px.2, p.12). Dr Glaser recommend Petitioner proceed with a right side transforaminal epidural steroid injection (Px. 2, p.13).

On June 17, 2019, Dr. Glaser performed a right L5-S1 and S1 transformational epidural steroid injection. (Px2, p. 51).

On June 26, 2019, recommendations included continuing physical therapy, Mobic, protonic, Flexeril, and Terocin pain patches, as well as follow up with the pain management physician. Petitioner was to remain off work. (Px. 2, p. 16).

Petitioner returned to Dr. Glaser July 1, 2019 and suggested she experienced complete relief of pain in the leg but minimal long-term benefits, limited to possibly 20%. (Px.2, p. 18). Recommendations included an additional L5-S1 injection as well as physical therapy. On July 8, 2019, Dr. Glaser administered a right L5-S1 transforaminal epidural steroid injection. (Px.2, p. 21).

Petitioner noted ongoing symptoms when she next saw Dr. Goldvehkt on July 24, 2019 7. Petitioner was advised to continue her course of treatment and to remain off of work in the meantime (Px.2, p.22-23) Petitioner continued therapy through July 26, 2019, with complaints largely focusing on the lumbar spine. (Px.2, p. 34-46).

On July 9, 2019, Petitioner submitted to a Section 12 examination at Respondent's request before. Frank Phillips of Midwest Orthopaedics at Rush pursuant to Section 12 of the Act. Dr. Phillips opined that Petitioner had reached maximum medical improvement and was able to return to work in full duty capacity. (Rx.1, Ex.3). Dr. Phillips opined that Petitioner's subjective complaints were far disproportionate to any pathology or injuries she sustained and opined petitioner had reached maximum medical improvement with respect to both the cervical and lumbar spines. (Id. p. 4).

Petitioner 's last appointment date with pain management specialist Dr. Scott Glaser was July 27, 2019. (Px.2, p.24). Petitioner continued to note pain in her lower back and neck – though with some decreased frequency (Px.2, p.24). Dr. Glaser recorded that "I have reviewed her IME which is incorrect in its assumptions and conclusions and will respond. The patient continues to suffer from injuries to her intervertebral joints from a fall at work. We discussed tx of her axial pain" (Px.2, p.25). An order was made for Bilateral L4-L5, L5-S1 facet injection (Px.2, p.25, P.58).

Petitioner 's last appointment with Dr. Goldvehkt was on July 31, 2019. (Px.2, p.26). Petitioner noted ongoing pain in her neck, midback, lower back, right shoulder, right arm, right elbow, and left knee (Px.2, p.26). Dr. Goldvehkt noted that "at this time due to her IME she is to return to work with no restrictions starting on Thursday 8.1.19" (Px.2, p.26).

At this point in time Respondent terminated further treatment based on the opinions expressed by Dr. Frank Phillips' Section 12 report dated July 9, 2019 (Rx.1). Also, at this time Petitioner resigned from her employment with Respondent based on Petitioner 's belief that she was unable to perform the job duties without restriction as suggest by Respondent's examining physician.

As such, Petitioner proceeded with treatment when and where she was able to – namely through John H Stroger. (Px.6).

Records reflect that Petitioner presented to Stroger Hospital on August 7, 2019. with complaints headaches, neck, and bilateral lower back pain. She was seen by Dr. Scott C. Sherman. Dr. Sherman rendered a diagnosis of back pain with sciatica. A future appointment was made with the pain clinic for January 3, 2020. [nearly 5 months]. (Px.6, p.4, 5). Petitioner was encouraged to proceed with therapy and a home exercise program (Px.6, p.14).

Updated MRI imaging of Petitioner 's lumbar spine was obtained by Stroger on December 5, 2019, (Px.6, p.17-18). According to the radiologist's report, that imaging evidenced "shallow disc and mild facet arthropathy, causing minimal effacement of the ventral thecal sac and mild bilateral neuroforaminal narrowing" at L3-L4, "shallow disc bulge, ligamentum flavum hypertrophy, and mild facet arthropathy, causing mild effacement of the ventral aspect of the thecal sac and mild to moderate narrowing of the right and mild narrowing of the left neural foramen" at L4-L5, and "disc bulge and facet arthropathy, causing minimal effacement of the thecal sac and mild bilateral foraminal narrowing" at L5-S1 (Px. 6, p.17-18). The records reflect that these images were compared to Petitioner 's 8/19/19 lumbar spine x-ray images (Px.6, p.17). A future appointment with the pain clinic was noted.

On September 9, 2019, Petitioner was seen at Stroger for an initial physical therapy evaluation upon Dr. Sherman's referral of August 7, 2019 for neck and bilateral back pain. (Px.6, pp.13, 15)

On December 5, 2019, Petitioner underwent an MRI of the lumbar spine without contrast. Dr. Rubina Zahedi opined that Petitioner had mild degenerative changes of the lower lumber spine. Specifically, Dr. Zahedi noted that at L4-5 a shallow disc bulge ligamentum flavum hypertrophy and mild fact arthropathy are causing mid effacement of the ventral aspect of the thecal sac and mild to moderate narrowing of the right and mild narrowing of the left neural foramen. (Px.6, pp. 5-6)

Petitioner was seen at the Stroger pain clinic on multiple dates by multiple physicians. (Px. 6). A note dated December 1, 2020 reflects that Petitioner presented with back, neck, right arm, and left arm pain (Px.6, p.49). Petitioner noted that she "had a fall at workplace in April 2019 and pain is noticeably worse after that" (Px.6, p.49). Petitioner reported back and neck

pain (Px.6, p. 49). She advised that a bilateral sacroiliac and trigger point injection from January 2020 provided mild improvement in pain for only 2 days. Current symptoms included pain at the top of the neck to the tailbone, occasionally radiating to the arm, as well as in the lower back radiating to the right lower extremity. She also complained of tingling and numbness in the right upper extremity into the fingers and left upper extremity radiating to the elbow.

On January 3, 2020, Petitioner has a follow up visit at Stroger Hospital Dr. Bhuvaneswari Sandeep Ram who rendered a diagnosis of chronic myofascial pain and Piriformis syndrome wherein she received home exercises instructions. (Px.6, p. 27).

On January 5, 2020, Petitioner had a follow-up visit with Dr. Subieta Benito at Stroger Hospital for a pain clinic assessment. Petitioner complained of pain from head to tailbone. Physical examination was positive for multiple tender points and right piriformis syndrome. Dr. Benito opined that Petitioner had chronic myofascial pain and Piriformis syndrome, right side. D. Benito started Petitioner on Duloxetine and Meloxicam and scheduled a Piriformis injection.

On January 13, 2020, Petitioner had a follow-up visit with Dr. Subieta Benito at Stroger Hospital who opined that Petitioner suffered from sacrococcygeal disorder and chronic myofascial pain. (Px.6, p. 35).

On January 14 2020, Petitioner had a visit with Dr. Inderbir Johal at Stroger Hospital pain clinic who after administering an injection opined that Petitioner suffered from myofascial pain and sacralities. (Px.6, p. 36). He opined that Petitioner likely had a component of myofascial pain questionable lumbar radiculopathy as imaging was consistent with neuroforaminal narrowing; fibromyalgia; and cervical radiculopathy. Petitioner was prescribed Gabapentin for fibromyalgia, Venlafaxine, recommended home exercises, proposed an epidural steroid injection (body part unknown), and recommended for an MRI of the cervical spine. (Px.6, p. 51)

On December 1, 2020, Petitioner was seen by Dr Rahman Abdul of Stroger Hospital Pain Clinic via Ambulatory Telehealth presenting with neck and low back pain. Dr. Abdul noted that on January 20, 2020 Petitioner underwent bilateral SI joint injections and trigger pint injection with mild improvement to pain for only 2 days. Pain is 9/10 from atop the neck to the tailbone with most of pain in the lower back. The 9/10 pain radiates down right leg as well as numbness and tingling down right leg. It was indicated that petitioner likely had a component of myofascial pain with questionable lumbar radiculopathy as imaging was consistent with neuroforaminal narrowing; fibromyalgia; and cervical radiculopathy. Petitioner was prescribed Gabapentin for fibromyalgia, Venlafaxine, recommended home exercises, proposed an epidural steroid injection (body part unknown), and recommended for an MRI of the cervical spine. (Px.6, p.49).

On February 20, 2021, Petitioner was seen by Dr. Sheba Ampalloor at Stroger Hospital noting chronic back pain with an episode of exacerbation. She denied new component to her back pain (Px.6, p.53). Petitioner presented to the ER due to worsening pain. Petitioner was

advised to follow up with her primary care provider for musculoskeletal low back pain. (Px6, p. 53

On March 22, 2021, Petitioner underwent a lumbar epidural steroid injection at the L5, S1, and S1 right level under Fluro Guidance performed by Dr. Gunar Subieta Benito (Px.6, p.56).

During a visit on April 23, 2021 with Dr. Simranjit Singh at Stroger, Petitioner was scheduled for an updated MRI of her cervical spine (Px. 6, p.61). That MRI imaging was completed on 5/8/21 (Px. 6, p.65). The radiologist's report indicates that the imaging evidenced "mild multilevel degenerative disc changes, no significant interval change from the MRI of 5/14/19 performed at OSH", additionally it was noted that Petitioner 's "cerebellar tonsils extend 4.2 mm below the foramen magnum effacing the cisterna magna" (Px.6, p.66).

On May 8, 2021, Petitioner then underwent an additional MRI of the cervical spine. Per the report, the study revealed multi-level degenerative changes with no significant change from a study on May 14, 2019. Incidentally, cerebellar tonsils extended 4.2 millimeters below the foramen magnum effacing the cisterna magna, borderline. Also, incidentally noted and partially visualized was diffuse enlargement of the thyroid gland nonspecific in nature. (Px.6, p. 65).

A noted dated September 28, 2021 from Stroger Hospital indicates that Petitioner continued to have complaints of "chronic pain that starts from the top of the head and goes down the spine to the butt bone and the right leg" (Px.6, p.77). It was further noted that Petitioner had been scheduled for ketamine therapy but had to reschedule that appointment (Px.6, p.77). It was noted too that "Patient failed 6 weeks conservative therapies in the past including physical therapy, activity modification, mild analgesics and at this point warrants an interventional pain procedure to alleviate pain" (Px.6, p.78).

On October 19, 2021, a CT scan of Petitioner 's lumbar spine was performed by Stroger (Px.6, p.84). That imaging was compared to Petitioner 's prior 12/5/19 MRI (Px. 6, p.84). The findings included "shallow disc and mild facet arthropathy, causing minimal effacement of the ventral thecal sac and mild bilateral neuroforaminal narrowing" at L3-L4, "shallow disc bulge, ligamentum flavum hypertrophy, and mild facet arthropathy, causing mild effacement of the ventral aspect of the thecal sac and mild to moderate narrowing of the right and mild narrowing of the left neural foramen" at L4-L5, and "disc bulge and facet arthropathy, causing minimal effacement of the thecal sac and mild bilateral foraminal narrowing" at L5-S1 (Px.6, pp.84-85).

The final note from Stroger is a letter authored by Dr. Ezike on January 25, 2022. (Px. 6, p.86). In that letter, Dr. Ezike states "The letter is to serve as documentation that Boyd, Menia has been under my medical care. Boyd, Menia is cleared to return to school/work on 1/25/2022" (Px.6, p.86). Dr. Ezike noted that Petitioner would require restrictions to include "no lifting more than 20 pounds" and "no prolonged standing or walking" (Px. 6, p.86).

On February 14, 2022, Petitioner was seen for an evaluation with Dr. Pannu at MidAmerican Orthopaedics (Px.7, p.4). Petitioner noted a 3-year history of significant lower back pain that does travel down the entirety of the right lower extremity (Px.7, p.4). Notes also

reflect that Petitioner related her symptoms to a fall at work in April of 2019 (Px. 7, p.4). Moreover, Dr. Pannu recorded that "this was a work comp case however she did not receive any relief from the treatment and case was closed" (Px. 7, p.4). Dr. Pannu ordered updated MRI imaging of Petitioner 's lumbar spine noting that the current images, which he had reviewed with Petitioner, were three years old at that point (Px. 7, p.5). Petitioner was to return with her cervical spine CT images and after having completed the updated MRI imaging. Dr. Pannu noted that "at that point she may be indicated for a facet injection radiofrequency ablation referral" (Px.7, p.5).

Pursuant to Dr Pannu's referral, on February 17, 2022, Petitioner underwent an MRI of the lumbar spine that revealed spinal stenosis and mild spondylolisthesis. There was new mild spinal stenosis at L4-5 in comparison to a study from December 5, 2019. The study revealed multi-level lateral recess and neuroforaminal stenosis and other unchanged findings at various other levels plus increased facet effusions at L5-S1 on the left. On the MRI, it was noted that moderate bilateral neuroforaminal stenosis at L4-5 was unchanged as was moderate bilateral lateral recess stenosis. (Px.7, p. 6).

On February 21, 2022, Dr. Pannu noted that Petitioner "does have some progression L4-5 with a disc bulge. She is failed epidural steroid injections in the past so I will refer her for lumbar facet injections and radiofrequency ablation. If this is ineffective, she will follow up with me and at that point we will have a discussion regarding an L4-5 laminectomy diskectomy procedure" (Px. 7, p.9).

SURGERY: On April 12, 2022, Petitioner underwent an L4-5 laminectomy, foraminotomy with Dr. Pannu (Px.7, p.11).

On May 4, 2022, Petitioner returned to Dr. Pannu 3 weeks status post L4-5 laminectomy and discectomy, overall doing reasonably well. (Px.7, p. 13). It was indicated that Petitioner 's post-operative course was complicated by leukocytosis and a fever, but workup was negative for a source of infection. Petitioner indicated that she experienced discomfort traveling around the hip into the anterior aspect of her thigh, but symptoms no longer traveled all the way down to her feet. Petitioner was to remain off work and follow up in 3 weeks, at which time therapy would be discussed.

On May 27, 2022, Petitioner presented for telemedicine follow up due to contracting COVID. (Px.7, p. 15). Petitioner reported some pain radiating into the right lower extremity but was no longer taking pain medication. Recommendations included remaining off work, beginning physical therapy, and following up in 6 weeks.

No additional medical records were presented at hearing.

Petitioner testified that as of the hearing date, she was working at Southwest Airlines as a station admin coordinator, which required filing and bending, lifting, and being able to stoop on lower levels. (T. p. 24). Petitioner testified that her current job requires computer work, sitting, standing, back and forth, and sitting for long periods of time throughout the day. (T. p. 24).

Petitioner testified that current symptoms included pain "about 24 hours a day" with her left knee still bothering her and her "entire back" bothering her as well. (T. p. 27). Petitioner testified that she did not feel capable of performing the job she used to do. (T. p. 28).

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Section 12 Reports of Dr, Frank Phillips

Pursuant to Section 12 of the Act, at Respondent's request, Petitioner was seen by Dr. Frank Phillips of Midwest Orthopaedics at Rush on two occasions: 7/9/19 and 6/24/21 (Rx. 1 Ex C and Ex D).

In report of July 9, 2019, (RX 1, Ex. C)., Dr. Phillips recorded in his report that Petitioner reported excruciating cervical, thoracic, and low back pain with no relief whatsoever from two lumbar epidurals and no improvement with cervical and lumbar therapy. (Id. p. 4). Dr. Phillips documented 5 out of 5 Waddell signs and superficial tenderness to barely palpating anywhere over the spine. (Id.). Dr. Phillips opined that there were no spinal findings that could account for Petitioner 's constellation of symptoms, and found that at most, she sustained a sprain/strain. Dr. Phillips found that Petitioner had no objective pathology to account for her clinical evaluation; was not a candidate for any injections given her completely normal imaging; was not a surgical candidate; not unexpectedly received no relief with epidural injection; and could return to regular duty work. (Id. p. 4-5). Dr. Phillips indicated that Petitioner 's subjective complaints were far disproportionate to any pathology or injuries she sustained and opined Petitioner had reached maximum medical improvement with respect to both the cervical and lumbar spines. (Id. p. 4). Dr. Phillips outlines his opinions with regards to Petitioner 's lumbar and cervical spine. According to Dr. Phillips, there was no basis to suggest any injury resulted to either Petitioner 's cervical or lumbar spine as a result of the 4/19/19 incident, aside from a soft-tissue sprain/strain (Rx. 1). Dr. Phillips opined that Petitioner was not a surgical candidate and did not require any further treatment. According to Dr. Phillips, Petitioner was capable of returning to her job as a dialysis technician without any restrictions. Dr. Phillips found Petitioner to be at maximum medical improvement for both her cervical and lumbar spine. (RX1)

Dr. Phillips then re-evaluated Petitioner on June 24, 2021. (RX1, Ex. D). Dr. Phillips opined that Petitioner 's most recent cervical MRI report from May 2021 showed no changes from her MRI from May 14, 2019. (Id. p. 5). He opined that none of Petitioner 's injections had provided her any lasting relief, nor had she responded to additional therapy. (Id). Dr. Phillips opined that continuing with the multitude of various injections without any specific structural pathology being identified made no sense and reiterated that Petitioner had no restrictions as related to her alleged work injury. (Id). Dr. Phillips reiterated that Petitioner sustained a spinal sprain/strain, and her current diffuse pain had no objective findings; nor did he believe Petitioner had any significant sacroiliac joint condition. (Id.). Dr. Phillips again found no objective basis for ongoing treatment as Petitioner had no neurocompression to suggest the need for epidural type injections; had no evidence of any facet injury; had no structural spinal pathology; and had no evidence of any SI joint source for her multitude of symptoms. (Id). Dr. Phillips reiterated that Petitioner was not a surgical candidate and required no additional treatment beyond over the counter analgesics and anti-inflammatory

medications to address her subjective complaints. (Id.). Dr. Phillips again opined Petitioner reached maximum medical improvement at the time of his prior examination and could return to regular unrestricted work. (Id).

In his June 24, 2021 report, Dr. Phillips that he only examined Petitioner 's cervical spine – no examination of Petitioner 's lumbar spine was performed at that time (Rx. 1, T. 37). He noted that no examination of Petitioner 's lumbar spine was possible because Petitioner was wearing a lumbar spine brace following a hernia surgery that Petitioner underwent four days earlier (Rx. 1, ex 3). Dr. Phillips maintained his opinions regarding the fact that Petitioner sustained, at most, a soft-tissue sprain/strain, and did not require any further treatment. Although he did not examine the lumbar spine, he still opined that it was normal and did not require further treatment based on his overall evaluation. (Rx. 1, Ex 3).

Evidence Deposition Testimony of Dr. Frank Phillips

On August 24, 2021, the parties proceeded with the evidence deposition of Dr. Frank Phillips, (Rx. 1). Dr. Phillips testified he is a partner at Rush University Medical Center, board certified Spine Surgeon, and Director of the Spine Program at Rush University Medical Center. (Id. p. 5). Dr. Phillips testified that his practice includes both treating workers compensation patients and conducting IME's. (Id. p. 6). Dr. Phillips reviewed MRI studies of both Petitioner 's cervical and lumbar spine and medical records. (Id. p. 10-11). He testified that Petitioner 's MRI of the cervical spine on or about May 14, 2019, was an unremarkable study. (Id. p. 12). He testified that disc issues that are 1 mm, 2 mm, and 3 mm are relatively normal findings. (Id). He also indicated the cervical MRI essentially showed no evidence of any acute structural pathology. (Id). He testified the MRI showed no evidence of herniation with minimal disc bulges that physicians see all the time with no evidence of any neuro compression and no evidence of a herniation. (Id. p. 13). He testified that a disc herniation tends to be more focal where part of the disc migrates or pushes out beyond the confines of the disc space in a specific location versus the sort of very diffuse minimal disc bulge present in Petitioner 's case. (Id. p. 14). He further testified that minimal disc bulges are considered normal physiologic findings and none of what was observed on Petitioner 's cervical MRI was an acute finding. (Id. p. 15). He testified that most of the population, if MRIs were obtained of their necks, would have findings exactly as described which included unremarkable normal physiologic findings. (Id.). He also testified that there was no evidence of compression on Petitioner 's cervical diagnostic to corroborate her symptoms of dropping objects. (Id. p. 21).

Dr. Phillips further testified that Petitioner 's MRI of the lumbar spine from May 14, 2019 was even less impressive with 1 mm to 2 mm bulges being insignificant with no evidence of a structural injury. (Id. p. 16). He testified that there was no acute finding with an incidental minimal, normal disc bulge at L5-S1. (Id.). He further testified that Petitioner 's facet joints on lumbar MRI were normal. (Id. p. 17). He testified that Petitioner 's report of diffusely radiating back pain was not in a distribution of any particular nerve or nerve roots and was not consistent with any localized lumbar pathology. (Id. p. 20). He also testified Petitioner 's reports of leg weakness involving her entire right leg were not consistent with any lumbar level pathology. (Id.). He testified that there was no MRI explanation for Petitioner 's complaints. (Id. p. 20-21).

Dr. Phillips testified that his examination revealed five out of five Waddell Signs and a lack of objective evidence to corroborate Petitioner 's subjective complaints. (Id. p. 22, 24).

Dr. Phillips testified that giving Petitioner the benefit of the doubt, her diagnosis after her alleged work injury was limited to a sprain / strain with no evidence of any acute structural injury, no disc injury, no facet injury, and a host of unexplainable findings. (Id. p. 24). He testified that Petitioner required no additional diagnostic testing or injections. (Id. p. 25). Dr. Phillips testified that there was no anatomic basis for Petitioner 's symptoms and no objective spinal contraindications to Petitioner working her regular duties as a dialysis technician. (Id. p. 26). He testified that Petitioner had reached maximum medical improvement. (Id).

Dr. Phillips testified that he again examined Petitioner on June 24, 2021, (Id. p. 26), after which Petitioner had undergone a repeat lumbar MRI on December 2019, sacroiliac joint injections, and a repeat MRI of the cervical spine in May 2021, which noted mild degenerative changes. (Id. p. 27-28). He further testified that Petitioner 's medical records showed varying diagnoses for her condition, including myofascial pain, a diagnosis related to the sacroiliac joint, and diagnoses were not consistent prior to her treating medical records. (Id. p. 29-30). Dr. Phillips testified that at the time of his second examination, Petitioner was working part time in a customer service position in a different job. (Id. p. 32). He testified that as of June 24, 2021, Petitioner 's condition remained diffuse, non-anatomic pain with no objective basis for her clinical findings with repeat imaging remaining unremarkable. (Id. p. 33). He found no specific diagnosis related to either the cervical or lumbar spine. (Id. p. 34). He again testified that Petitioner did not require any additional diagnostic studies or treatments directed towards her lumbar or cervical spine. (Id. p. 34). He reiterated the Petitioner required no work restrictions as related to her alleged work injury and that he had no change in his prior opinions regarding maximum medical improvement. (Id. p. 35).

On cross examination, stood fast in his opinion that Petitioner could return to work without restrictions. Dr. Phillips testified that he had a basic understanding of Petitioner's job duties. When asked "and what were the physical requirements of that job?" Dr. Phillips replied "I mean, I don't know exactly. I mean, presumably setting up the dialysis machine. I don't know exactly how much - - you know, what weight limits" (Rx. 1, T. 36-37). Dr. Phillips admitted he was never provided with a job description (Rx. 1, T. 37).

When asked about the fact that Dr. Phillips' second examination occurred just four days after hernia surgery and while Petitioner was wearing a lumbar brace, Dr. Phillips advised that "obviously it would be better to do an exam if she wasn't in that situation" (Rx. 1, T. 38).

When asked whether Dr. Phillips reviewed the updated MRI imaging as part of his second report, he advised that he had reviewed only the radiologist's reports, not the actual imaging. Dr. Phillips did not have a copy of the radiology report available to him at the time of his deposition, nor did he have any independent recollection of its contents, (Rx. 1, p. 41). Dr. Phillips was unable to offer an explanation as to the discrepancy between the radiologist's report and his own report considering Dr. Phillips had not reviewed the MRI imaging. For example, the radiologist report refers to the presence of herniations at various levels of Petitioner 's lumbar spine. However, in his report, Dr. Phillips refers to these either as bulges, or makes no

mention of them at all. When asked how the language and findings between himself and the radiologist could differ when only the radiologist had reviewed the imaging and Dr. Phillips was basing his opinion off the contents of that radiologist's report, Dr. Phillips testified that "he called some of them herniations, which I don't believe is the case by true definition of disk herniation" (Rx. 1, T. 40).

III. CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. Section 1(b)3(d) of the Act provides that, to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. *820 ILCS 305/1(b)3(d)*. To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all the elements of his claim including that there is some causal relationship between his employment and his injury. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980), *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989) It is well established that the Act is a humane law of remedial nature and is to be liberally construed to effect the purpose of the Act - that the burdens of caring for the casualties of industry should be borne by industry and not by the individuals whose misfortunes arise out of the industry, nor by the public. *Shell Oil v. Industrial Comm'n,* 2 Ill.2nd 590, 603 (1954).

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The Arbitrator, as the trier of fact in this case, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788, ¶ 47. Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony.

Credibility Findings: Petitioner testified in open hearing before the Arbitrator who had opportunity to view Petitioner's demeanor under direct examination, and under cross-examination. The Arbitrator finds the Petitioner demeanor as sincere but unsophisticated a judgement supported by a consistency of her testimony that was generally corroborated by the stipulated facts, the medical records, and the record as a whole. Moreover, any inconsistency in the testimony appeared to be due the passage of time and not made with the intent to deceive or mislead. At first blush, the Arbitrator was concerned by Petitioner's strong display of pain. However, it is noted that since her accident, she has consistently described her pain. She has been treated and examined by twelve (12) physicians, mostly at Stroger Hospital, none of whom suggested she was exaggerating or that her complaints lacked merit. They all believed that she needed treatment. They understood her. The sole dissenting opinion comes from Respondent's Section 12 expert, who argued that there is no objective evidence to substantiate her subjective complaints.

Therefore, based on the reasons provided below, the Arbitrator does not find the opinions of Respondent's Section 12 examiner convincing, nor does he deem them reliable.

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

The Arbitrator finds that Petitioner 's current condition of ill-being in her neck and back causally related to his work injury. It has long been held that "a chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *Int'l Harvester v. Indus. Comm'n*, 93 Ill. 2d 59, 63-64 (1982). "When the claimant's version of the accident is uncontradicted and his testimony is unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award. Id. at 64. It is also 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 v Industrial Commission*, 207 Ill. 2d 193, 205 (2003). An employer takes its employees as it finds them. *St. Elizabeth Hospital v Worker's Compensation Comm'n*, 371 Ill. App 3d 882, 888 (2007). A claimant with a pre-existing condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v Industrial Commission*, 92 Ill.2d 30, 36 (1982). That Petitioner had a pre-existing condition does not preclude the use of a chain of events analysis. *Schroeder v Illinois Worker's Compensation Commission*, 2017 Ill. App.(4th) 160192 WC (2017); *Corn Belt Energy Corp. v Illinois Worker's Compensation Commission,* 2016 Ill. App (3d) 150311 WC. The Arbitrator finds based on the weight of the credible evidence in this record, Petitioner 's current condition of ill-being is causally related to the work accident based on the chain of events.

In this claim, the Petitioner provided unrebutted testimony that, prior to her work accident, she never sought treatment for neck and back. Prior to her work accident she did not experience pain which required her to seek medical attention for her neck and back. As a result, the Petitioner established that her neck and back were asymptomatic prior to her work accident; Accordingly, she established that she was in a "previous condition of good health". Thus, Petitioner also established that she suffered an injury to her neck and back while performing her job duties. The Arbitrator notes that no evidence was introduced that Petitioner missed time off work due to neck or back pain before her work accident, nor that she had any restrictions placed on her, nor that she had ever requested to be accommodated due to neck or back pain.

After her work accident, Petitioner testified that she had neck pain and lower back pain, and pain radiating down her right leg. Prior to the date of accident. Consequently, based on the chain of events, there certainly appears to be a causal relationship between the work injury and Petitioner's current state of being. In in addition to proving by a preponderance of the evidence that his current condition of ill-being to her neck and back are causally related to her work injury of April 19, 2019 under the chain of events, some of Petitioner's physicians have also weighed in on the issue of causal relationship. Some her physicians opened that she suffered

from a work-related injury. None of the physicians at Stroger Hospital specifically addressed causation, however, some noted that her pain began after her work injury and persisted.

The Arbitrator finds that the current condition of ill-being present in Petitioner 's back, and left knee are causally related to the incident of April 19, 2019. In so finding the Arbitrator relies on the medical opinions offered at trial as well as Petitioner 's testimony.

The Arbitrator notes first that the record suggests Petitioner 's injuries were noted immediately and uniformly throughout this process. There is no dispute that Respondent was informed of the incident on the day it occurred (Arb. Ex. 1). There is no discrepancy in the way Petitioner described the incident which she alleges caused her injuries. The medical records consistently note that Petitioner related her injuries to a 4/19/19 incident at work in which she slipped and fell to the ground.

The Arbitrator found Petitioner 's testimony to be trustworthy and was given no reason to suggest Petitioner was not being forthright in her statements. The Arbitrator found Petitioner 's testimony that she enjoyed her job as a dialysis technician to be believable.

The Arbitrator notes too that nothing in Petitioner 's medical records or testimony suggests that prior to 4/19/19 Petitioner was experiencing similar pain/symptoms in her neck or lumbar spine. No medical records regarding Petitioner 's neck or lumbar spine from prior to 4/19/19 were produced or offered. The medical records which relate to treatment rendered after 4/19/19 all note a non-contributory history of lumbar or neck pain. There was no MRI, x-ray, or CT imaging of Petitioner 's lumbar or cervical spines which predate this incident. There was no evidence that Petitioner ever evidenced an inability to perform the physical requirements of her job for Respondent. There was no evidence that Petitioner ever filed a workers compensation claim or sought medical leave for any condition – let alone these conditions.

When Petitioner was referred to Ingalls Occupational Health for evaluation immediately following this incident on 4/19/19, it was recorded that "the cause of this problem is related to work activities" (Px. 1, p.19).

The only opinion in the record which did not find a causal connection between the incident of 4/19/19 and the condition of ill-being present in Petitioner 's lumbar and cervical spine was that of Respondent's section 12 examining physician – Dr. Frank Phillips. For several reasons, the Arbitrator is not persuaded by the opinion of Dr. Phillips on this issue.

First, when asked about the length of time Dr. Phillips spent with Petitioner as part of his examination, Petitioner testified "not long. I think I spent more time with the nurse. The nurse was actually the one who did the exam. [Dr. Phillips] came in and did a few things afterwards, but probably two or three, five minutes at the most" (T. 21).

Second, Dr. Phillips undermined his reliability by opining as to Petitioner 's ability to perform her usual and unrestricted work duties while having no understanding as to the physical requirements of that job, and without the assistance of a job description.

Third, the Arbitrator finds it questionable that Dr. Phillips would describe Petitioner 's MRI imaging differently than the radiologist when Dr. Phillips never reviewed the actual images. Dr. Phillips alleged that there were bulges at sections of Petitioner 's spine which were described in the report as herniations. When asked why Dr. Phillips described these as disc bulges in his report, Dr. Phillips suggested that perhaps the radiologist was not using the correct definition of herniation. Moreover, there were sections of Petitioner 's spine that the radiologist noted the presence of herniations which Dr. Phillips did not refer to at all – not even as a bulge – in his own report. The Arbitrator does not believe Dr. Phillips could have reached substantially different findings and opinions than the radiologist when Dr. Phillips has only the radiologist's report available to him.

Moreover, it is clear that Petitioner 's treating physicians disagreed with Dr. Phillips. For example, Dr. Glaser noted "I have reviewed her IME which is incorrect in its assumptions and conclusions and will respond. The patient continues to suffer from injuries to her intervertebral joints from a fall at work."

The Arbitrator acknowledges that while Petitioner may express her pain levels dramatically, her treating physicians seemed to grasp her situation and genuinely believed in her pain and treated her accordingly. Additionally, the injections served a dual purpose, both diagnostic and therapeutic, and her physicians noted that her responses aligned consistently with the objective findings. Moreover, the spinal surgery worked. After surgery, Petitioner no longer was prescribed pain medication.

The Arbitrator failed to find any persuasive evidence that Dr. Pannu would perform a L4-5 laminectomy, foraminotomy without an objective basis to perform the surgery on April 12, 2022. (Px. 7, p. 11). Moreover, the surgery worked. It got the Petitioner off prescribed narcotics and medications.

The Arbitrator notes that, while there were gaps in Petitioner 's treatment, there are reasons to explain for those. For instance, when Respondent terminated benefits in July/August of 2019, Petitioner was unable to proceed with the doctors she had been treating under to that point. As such, Petitioner had to proceed with care at a Stroger Hospital. Moreover, because Petitioner did not feel able to return to her unrestricted work duties in accordance with the opinions of Dr. Phillips Section 12 report, Petitioner resigned her employment with Respondent in September of 2019. As such she did not have access to a group health insurance plan any longer.

Petitioner did subsequently locate alternative employment in September of 2019 thereby granting her some group medical coverage with which to proceed. However, Petitioner still had to obtain her medical care and recover from that care on her own time, and without interfering in her work duties.

It's also noteworthy to the Arbitrator that the above issues were occurring during the beginning of the Covid-19 pandemic – which presented an obstacle to nonemergency medical. treatment.

The Arbitrator has considered the treating records and the opinions of Respondent's examiner as well as the uncontroverted testimony of Petitioner and finds that there does exist a causal relationship between Petitioner's current state of ill-being and the work accident of April 19, 2019. The Arbitrator relies on the fact that Petitioner had no issues with either her neck and back prior to her slip and fall accident and has been symptomatic ever since. There exists no evidence within the medical records present that Petitioner ever returned to his original baseline prior to the accident.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner has met her burden in establishing a causal connection between the incident of 4/19/19 and the condition of ill being present in her left knee and back.

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

The Arbitrator finds Petitioner 's treatment to be reasonable and necessary and further finds that Respondent has not yet paid for that reasonable and necessary medical treatment. In so reaching this determination the Arbitrator relies upon the medical records of Petitioner 's treating physicians as well as the reports generated by Respondent's section 12 examiners.

The medical bill in dispute by the parties was a charge in the amount of $1,366.00 relating to MRI imaging of Petitioner 's lumbar spine obtained on 2/17/22. This imaging was obtained at the request of Dr. Pannu. It was ordered by Dr. Pannu on account of the fact that the MRI imaging of Petitioner 's lumbar spine available to him at that time was over three years old. This imaging does not relate to some body part uninvolved to this claim. Moreover, the Arbitrator finds it reasonable that updated imaging of Petitioner 's lumbar spine may be necessary to proceed with treatment when the current imaging available to him is over three years old.

Respondent shall pay all outstanding medical bills f or Petitioner's reasonable and necessary medical treatment pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the Illinois Workers' Compensation Commission.

Pursuant to the medical fee schedule and as provided in Sections 8(a) and 8.2 of the Act, Respondent shall satisfy those medical charges outlined in Petitioner 's Exhibits 8 (Px. 8) as said charges were for the reasonable and necessary medical treatment of Petitioner 's 4-9-19 work-related injuries. Respondent shall receive a credit for any benefits already made.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $1,366.00 to MidAmerica Orthopaedics, S.C, as provided in Sections 8(a) and 8.2 of the Act MidAmerica Orthopaedics, S.C

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

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner is entitled to further disputed TTD, but not TPD benefits due to a failure of proof. These determinations are based on the medical records and Petitioner 's testimony at trial.

In the Request for Hearing Form, Petitioner alleged to be entitled to TTD from April 24, 2019 through July 31, 2019. Respondent denied liability for TTD after July 9, 2019. The parties stipulated that Respondent paid TTD in the amount $7,514.49. Petitioner further alleged to be entitled temporary partial disability benefits (TPD) for the period of April 20, 2019 through April 23, 2019. Respondent denied lability for TPD. (AX 1).

The record supports a finding that, as a result of her 4/19/19 work-related injuries, Petitioner was temporarily and partially disabled from 4/20/19 through 4/23/19. During Petitioner 's initial medical visit with Ingalls Occupational Health on 4/19/19, it was noted that Petitioner 's recommended work status is "restricted duty" and that the effective date of this work status was 4/19/19 (Px. 1, p.19). Light duty restrictions at that time stated that "lifting should be limited to 10 pounds or less" and that "bending may not be performed" (Px. 1, p.19). No evidence was introduced that Petitioner was offered light duty work. However, in the completed request for hearing form Petitioner alleged TTD commencing April 24, 2019 through July 31, 2019. The Arbitrator is bound by the Request for Hearing. *Pursuant to Walker v. Illinois Workers' Compensation* 345 Ill. App. 3d 1084 (4th Dist. WC 2004), the Request for Hearing is binding on the parties as to claims made therein.

The record contains off work slips dated 4/24/19 (Px. 2, p.5), 5/8/19 (Px.2, p.7), 5/22/19 (Px.2, p.9), 6/26/19 (Px.2, p.17), and 7/24/19 (Px.2, p.23). Those records establish Petitioner 's inability to work in any capacity from 4/24/19 through 7/31/19. On 7/31/19 Dr. Goldvehkt released Petitioner to full duty work beginning 8/1/19 (Px.2, p.27). However, Dr. Goldvehkt noted that this was only on account of Respondent's IME doctor opining Petitioner was capable of returning to work and that no further medical treatment was warranted. (Px.2, p.26). Prior to July 31, 2019, Dr. Goldvehkt gave no indication that Petitioner was approaching maximum medical improvement nor that she was ready to return to work full duty. Petitioner testified at trial that she did not feel physically capable of returning to her unrestricted work duties at that time, and none of her treating physicians agreed with the IME's opinion that she was capable of doing so at that time.

The Arbitrator finds that Petitioner has proven by a preponderance of the evidence that she was temporally totally disabled from 4/24/2019 through 7/31/2019, t.

Section 8(a) provides, in pertinent part: "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 the accident and the net amount which he or she is earning in the modified

job provided to the employee by the employer." 820 ILCS 305/8(a) (West 2006)." The Arbitrator is unable to award TPD benefits due to a failure of proof. The evidence does not contain sufficient evidence to do the necessary calculations. Accordingly, Respondent is not liable to pay TPD benefits.

Respondent shall pay Petitioner temporary total disability benefits of $559.59/week for 14-1/7 weeks, commencing 4/24/19 through 7/31/19 as provided in Section 8(b) of the Act, for a total TTD award of $7,914.20. Respondent shall be given a credit of $7,514.49 for temporary total disability benefits already issued, after applying the stipulated credit, Respondent is liable to pay Petitioner the balance in the amount of $399.71. The Arbitrator finds that Respondent did not pay any TPD benefits and is not liable to pay TPD benefits.

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

Petitioner's claim for permanent partial disability benefits is evaluated and has been carefully considered by this Arbitrator in accordance with Section 8.1b of the Act. No single enumerated factor shall be the sole determinant of disability.

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 statute does not require the claimant nor the employer 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. Therefore, the Arbitrator gives *no* weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator has considered this factor and notes that Petitioner was employed as dialysis technician. Petitioner testified that she resigned from her position as a dialysis technician because she could not physically perform the job any longer and the employer was unable or unwilling to offer any accommodation. The Arbitrator finds that Petitioner job duties at Southwest Airlines appear to share substantially similar physical demand levels. Petitioner credibly testified on direct and cross examination as to her job duties and that she worked in pain. Therefore, the Arbitrator give some weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 41 years old at the time of the accident. No evidence was presented as to how Petitioners age affected her disability. However, the Arbitrator notes that Petitioner is an older individual pursuant to Federal Guidelines. Petitioner's age tends to make her disability greater. Accordingly, the Arbitrator finds that Petitioner's age increases his disability. See *Flexible Staffing Services v. Illinois Workers' Compensation Commission,* 2016 IL App (1st) 151300WC (1st Dist. 2016) (holding that the Commission can make reasonable inferences from the medical evidence as it relates to how the claimant's age affects his disability) . The Arbitrator accords some weight to the fact that Petitioner's age increases his disability.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator has considered this factor and notes that that there was no evidence that Petitioner's future earning capacity was adversely affected by her work injury. The Arbitrator places no weight on this factor as the Arbitrator cannot speculate as to the extent of Petitioner's future earnings capacity.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator has carefully considered this factor and notes Petitioner suffered an injury to her back and neck. Petitioner had undergone a rather extensive amount of treatment, including numerous physician visits, prescription medication use, use of a lumbar brace, completion of an at-home exercise program, participation in some thirty sessions of physical therapy, two failed epidural steroid injections, as well as a microdiscectomy. There is objective evidence of injury in Petitioner 's medical records. For instance, MRI imaging of Petitioner 's cervical spine evidenced (Px. 4, p.4). "Abnormal straightening and reversal of the usual cervical curvature, most likely representing significant posttraumatic muscular spasm", "At the C4-C5 level, there is a 2-3 mm posterior disk herniation which indents the thecal sac with mild generalized spinal stenosis and bilateral neuroforaminal narrowing seen, slightly greater on the left", "At the C3-C4 level, there is a 1-2 mm posterior disk bulge which indents the thecal sac "Similarly, a 10/19/21 CT scan of Petitioner 's lumbar spine was performed by Stroger (Px. 6, p.84). That imaging was compared to Petitioner 's prior 12/5/19 MRI (Px. 6, p.84). The findings included "shallow disc and mild facet arthropathy, causing minimal effacement of the ventral thecal sac and mild bilateral neuroforaminal narrowing" at L3-L4, "shallow disc bulge, ligamentum flavum hypertrophy, and mild facet arthropathy, causing mild effacement of the ventral aspect of the thecal sac and mild to moderate narrowing of the right and mild narrowing of the left neural foramen" at L4-L5, and "disc bulge and facet arthropathy, causing minimal effacement of the thecal sac and mild bilateral foraminal narrowing" at L5-S1 (Px. 6, p.84-85).

Based on the foregoing factors the record as a whole, and Commission precedent, the Arbitrator awards permanent partial disability equivalent to 15 % disability to the person as a whole pursuant to Section 8(d)(2) of the Act, representing 75 weeks at the rate of $503.63 per week. An award under Section 8(d)(2) is appropriate when injuries partially incapacitate an individual from pursuing the duties of his or her usual and customary line of employment but do not result in an impairment of earning capacity. 820 ILCS 305/8(d)(2).

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC015795
Case Name	Raquel Garcia v. Anthony Marano Co., Inc
Consolidated Cases	
Proceeding Type	Petition for Review Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0007
Number of Pages of Decision	21
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	John Hillock

DATE FILED: 1/10/2025

/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 up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rachel Garcia

Petitioner,

vs. No. 22 WC 015795

Anthony Marano Co,

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

FINDINGS OF FACT

Petitioner, a 47-year-old, fruit/vegetable packer, testified that on November 19, 2021, she injured her bilateral knees when a forklift/pallet jack hit her from behind and knocked her into the assembly line. She reported the accident, and left work early because of the pain. She presented for medical treatment on November 22, 2021 with Dr. Shukla and was diagnosed with bilateral knee contusions. Petitioner initiated physical therapy and returned to work light duty. She continued physical therapy through April 20, 2022. She continued to have knee pain and bilateral steroid injections were administered by Dr. Shukla on January 24, 2022, which provided

approximately two weeks of pain relief. An MRI of both knees was ordered and showed patellofemoral and medial compartment arthritis. Petitioner was referred to orthopedic surgeon, Dr. Garelick, who opined Petitioner suffered an exacerbation of her underlying degenerative arthritis. Dr. Garelick administered bilateral viscosupplementation injections, but Petitioner continued to have pain. Due to severe osteoarthritis in both knees, Dr. Garelick recommended total knee replacements however, Petitioner did not wish to undergo surgery. Dr. Shukla echoed Dr. Garelick's recommendation, but Petitioner requested a full duty return to work on May 2, 2022. Petitioner was placed at MMI. Petitioner returned to work and suffered another work injury to her left wrist on May 26, 2022. Petitioner underwent left wrist surgery and remained off work. On June 24, 2022, Petitioner presented to Dr. Sompalli for continued bilateral knee pain. Dr. Sompalli opined Petitioner suffered a permanent aggravation of her underlying arthritis and recommended bilateral total knee replacements, right before left. Petitioner continued to treat with Dr. Sompalli through June 1, 2023. His recommendations remained unchanged.

Petitioner was also evaluated by Dr. Brian Forsythe for a Section 12 examination. Dr. Forsythe opined Petitioner suffered from resolved knee contusions and severe patellofemoral arthritis which pre-existed the work accident. In his opinion, Petitioner did not permanently aggravate her underlying arthritis, but suffered a natural deterioration in her knees. Dr. Forsythe testified Petitioner exhibited moderate symptom magnification during his exam and he did not find her credible. He opined Petitioner was at MMI for treatment related to the work accident and could return to work full duty.

At trial, Petitioner testified she continued to have pain and functional impairments in both knees and wanted to undergo the recommended knee replacements. She further testified that prior to the accident she had no knee pain and had never been treated for knee pain.

The Arbitrator found Petitioner failed to prove her bilateral knee condition was causally related to the work accident and denied all benefits.

CONCLUSIONS OF LAW

To be entitled to compensation for an injury, Petitioner need not prove that his injury was the sole causative factor in his subsequent treatment and disability, but only that it was a causative factor. If a pre-existing condition is aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. *Rock Road Construction v. Industrial Commission*, 37 Ill.2d 123, 227 N.E.2d 65, 67-8 (1967). Whether a claimant's [condition of ill-being] is attributable solely to a degenerative process of the preexisting condition or to an aggravation or acceleration of a preexisting condition because of an accident is a factual determination to be decided by the Commission." *Sisbro, Inc. v. Indus. Comm'n (Rodriguez)*, 207 Ill. 2d 193, 205 797 N.E.2d 665, 673 (2003).

The Commission views the evidence differently than the Arbitrator and finds the work accident aggravated Petitioner's pre-existing bilateral knee condition necessitating that she

undergo bilateral knee replacement surgeries. In so finding, the Commission relies on the absence of documented pain or treatment to Petitioner's bilateral knees before the work accident, her consistent reports of pain and treatment following the work accident, her imaging, and the opinions of her treating physicians.

Petitioner suffered an undisputed accident on November 19, 2021, with injuries to her bilateral knees. She reported the work incident the next day and sought treatment on November 22, 2021. Petitioner underwent physical therapy and injections for bilateral knee pain and reduced mobility. Petitioner continued to regularly treat her bilateral knees following the work accident. Despite conservative treatment, she continued to have pain, dysfunction, and positive exam findings for her bilateral knees including weakness, instability, decreased range of motion, patellofemoral grind, effusion, and tenderness. She had evidence of severe worsening patellofemoral arthritis following the work accident. Petitioner testified she had no prior pain or treatment to her knees before the work accident and there was nothing in the record to refute her testimony.

Dr Sompalli credibly opined the work accident caused a permanent aggravation of her underlying arthritis. Specifically, he felt the accident precipitated an accelerated destruction of the cartilage in her knees as evidenced by a narrowing of her joint spaces, flattening of the condyles, and subchondral sclerosis on her x-rays, which resulted in ongoing knee pain.

The Commission is not persuaded by Dr. Forsythe's opinion Petitioner merely suffered knee contusions which subsequently resolved. We find his opinion not consistent with Petitioner's continued and increased pain, her functional deficits, and her ongoing need for treatment despite months of conservative care. Moreover, Dr. Forsythe failed to consider the absence of bilateral knee pain or treatment prior to the work accident.

Accordingly, the Commission modifies the Decision of the Arbitrator and awards TTD from November 25, 2021 through May 3, 2022 and June 1, 2022 through October 24, 2023, as provided in §8(b) of the Act; unpaid medical expenses to Elite Orthopedics in the amount of $2,386.57 and to Midwest Specialty Pharmacy in the amount of $2,076.36 pursuant to §8a and 8.2 of the Act; and the bilateral knee replacement surgeries and all reasonable and necessary attendant care recommended by Dr. Sompalli,

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed May 20, 2024 is hereby modified as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $482.08 per week for 102 4/7 weeks for the period of November 25, 2021 through May 3, 2022 and June 1, 2022 through October 24, 2023, as provided in §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay unpaid medical expenses to Elite Orthopedics in the amount of $2,386.57 and to Midwest Specialty Pharmacy in the amount of $2,076.36, 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 bilateral knee replacement surgeries and all reasonable and necessary attendant care recommended by Dr. Sompalli.

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 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 $54,100.00. 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.

January 10, 2025

MP/ns
o-11/21/24
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	22WC015795
Case Name	Raquel Garcia v. Anthony Marano Co., Inc
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Charles Watts, Arbitrator

Petitioner Attorney	James McHargue
Respondent Attorney	James Holecek

DATE FILED: 5/20/2024

/s/Charles Watts, Arbitrator
Signature

INTEREST RATE WEEK OF MAY 14, 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

Raquel Garcia
Employee/Petitioner

v.

Anthony Marano Co.
Employer/Respondent

Case # **22** WC **015795**

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 **October 25, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **11/19/2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

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

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$37,600.68**; the average weekly wage was $**723.09**.

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

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

Respondent shall be given a credit of $**10,743.05** TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**10,743.05**

Respondent is entitled to a credit of $**19,819.22** under Section 8(j) of the Act.

ORDER

Temporary Total Disability
Because the Petitioner failed to prove that the petitioner's condition of ill-being is related to the work activities that she performed for the respondent, TTD is denied.

Medical Benefits
Because the Petitioner failed to prove that the petitioner had sustained a compensable accident and failed to prove that the petitioner's condition of ill-being is related to the work activities that she performed for the respondent, medical benefits are denied.

Prospective Medical
Because the Petitioner failed to prove that the petitioner had sustained a compensable accident and failed to prove that the petitioner's condition of ill-being is related to the work activities that she performed for the respondent, prospective medical treatment 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

ICArbDec19(b

MAY 20, 2024

Raquel Garcia v. Anthony Marano Co. 22 WC 015795
Attachment to Arbitration Decision

FINDINGS OF FACT

The issues in dispute are Petitioner's current condition of ill-being, medical services provided to the Petitioner, entitlement to temporary total disability, medical bills, maintenance and whether Respondent is due any credit. Arbitrators' Exhibit 1.

Petitioner's Testimony

Raquel Garcia testified that on 11/19/21 she was employed be Anthony Marano Company as a packer. (Tr. 9) Petitioner testified she was standing when a forklift hit her on the left leg causing her to fall into the packing line and causing her to hit her right leg, right elbow and back. (Tr. 10) She testified that she had pain in her knees, back and right elbow right away following the accident. (Tr. 10) She stated that this occurred a little bit after 11:00P.M. and that she did not finish her shift that day and went home (Tr. 10) She was off the next day, Saturday, and did not work her next scheduled shift on Sunday. (Tr. 11)

On Monday, 11/22/21, Anthony Marano Company sent her to a doctor at Concentra where she was provided light duty restrictions. (Tr. 11) Anthony Marano Company did not have work for her within those restrictions. (Tr. 12) She testified that she treated with the doctors at Concentra from November of 2021 until May of 2022. (Tr. 12) During that time she did physical therapy with Concentra and testified that it did not help much. (Tr. 12) On 1/24/22, Dr. Shukla performed some steroid injections into both of her knees and Petitioner testified the injections did not help at all. (Tr. 12) She testified that Dr. Shukla referred her to Dr. Garelick and that Dr. Garelick did some different injections in her knees with Synvisc in April of 2022 and these injections did not help at all. (Tr. 13)

Petitioner testified that Dr. Garelick would go on to recommend that she have knee replacement surgery on both of her knees. (Tr. 13) When asked if Dr. Garelick's records indicating that he wrote down she did not want to have the surgeries at this time were accurate, she testified that she did not understand what he was asking. (Tr. 13) Petitioner testified that Dr. Garelick does speak a little Spanish and that he did not have an interpreter with him when she was talking to him. (Tr. 13)

Petitioner testified that she was discharged to full duty work in May 2022 by Dr. Garelick. (Tr. 14) She stated that she returned back to work for about a month, then in May of 2022, she had another incident at work involving her left wrist. (Tr. 14) She came off work for a while for that and eventually had surgery for that. (Tr. 14)

Petitioner testified that she would eventually start seeing Dr. Sompalli in June of 2022 and has been treating with him since then. (Tr. 14-15) She stated that Dr. Sompalli has had her on work restrictions since and she has not gone back to work for Anthony Marano Company since the wrist injury in May of 2022. (Tr. 15) Petitioner testified Dr. Sompalli is currently

recommending that she has knee replacement surgery on both of her knees and she wishes to have those surgeries. (Tr. 15) Petitioner testified that she did not have any problems with her knees before the November 2021 work accident. (Tr. 15) She testified that she had not had any medical treatment on her knees, back or right elbow before that work accident. (Tr. 16) She testified that as she sits here today, her knees hurt and throb. She reported having difficulty walking, going up stairs and carrying heavy things and has to pause while doing chores. (Tr. 16) She testified that her back is also hurting a lot today. (Tr. 17). She testified that her elbow doesn't hurt as much. (Tr. 17)

On cross examination, Petitioner testified that she treated with Dr. Garelick on 4/27/22, was examined and was returned back to work without restrictions. Dr. Garelick had discharged her from treatment and told her that she could return to work full duty at her prior position. (Tr. 18) She testified that on 5/2/22 she treated with Dr. Shukla, was examined and was released from care and told she could return to work full duty at her prior position. (Tr. 19) On 5/26/22 she treated with UIC Hospital and answered all of the questions that were asked of her truthfully. (Tr. 19) Prior to 5/26/22 she had been working full duty for Anthony Marano Company following her release from Dr. Shukla. (Tr. 20)

Petitioner testified that she began treating with Dr. Lipov at Illinois Orthopedic Network on 6/17/22. She then visited Dr. Sompalli at Elite Orthopedics and Sports Medicine on 6/24/22. She attended the Independent Medical Exam with Dr. Forsythe on 8/18/22. (Tr. 21)

When asked when was the last time that she received treatment for her back she testified, "It's been a long time, I don't remember when." (Tr. 22) When asked when she last received treatment for her right elbow she testified, "more than a year ago." (Tr. 22)

Said asked how her knees were feeling at work she testified, "it was bad". When asked if she could carry out all of her job duties she testified, "no, well I would carry out my job but with a lot of medication." (Tr. 23) She testified that she was taking Ibuprofen at this point. (Tr. 23)

Medical Records

Concentra

Petitioner treated with Dr. Ayala on 11/22/21. Petitioner reported that while at work on 11/19/21, she was hit with a pallet jack at her right lower back region causing her to fall forward hitting the assembly line. Thereafter a lot of boxes fell on her, hurting her knees, right elbow and lower back region. She reported pain at 7/10. The assessment was a contusion of left knee, right elbow and right knee as well as a sprain of the lumbar region. Petitioner was returned to work with a 10-pound lifting restriction and to be seated 50% of the time at work. (PX1, pg. 257 – 259)

On 11/29/21 Petitioner followed up with Dr. Ayala. Petitioner reported she had been working at modified duty. The Physical Exam of both her knees indicated: appearance normal, no deformity, no tenderness, full range of motion, strength normal. Assessment was contusion of left knee, right elbow and right knee as well as a sprain of lumbar region. Petitioner was returned to work without restrictions and told she may work her entire shift. (PX1, pg. 211 – 213)

Petitioner followed up with Dr. Ayala again on 12/8/21. Petitioner reported pain in both knees at 8/10 and both elbows 8/10. She had been working regular duty. The assessment was unchanged and she was referred to physiatry. (PX1, pg. 199 – 200)

On 1/3/22 Petitioner had her initial consultation with Dr. Shukla. She reported that on 11/19/21 she was hit in the low back by a pallet jack, causing her to fall over the ground, hitting her knees. Petitioner reported she felt the same 7/10 pain as the day of the accident. Petitioner also reported a burning sensation in both knees that is worse while she walks. The recommendation was for her to complete a full course of PT, continue a 10-pound lifting restriction and to be seated 50% of the time at work. (PX1, pg. 187 – 190)

Dr. Shukla saw Petitioner again on 1/24/21. She had completed 9 sessions of PT, which had provided roughly 50% relief to her on-going bilateral knee pain. Petitioner's low back and left elbow pain were no longer bothersome and appeared to have resolved. Significant tenderness of the medial and lateral joints lines bilaterally as well as tenderness to the patellar tendon bilaterally were reported. She was assessed to be improving. Petitioner was administered steroid injections. Work restrictions remained the same. (PX1, Pg. 124-125)

On 2/14/22 Petitioner followed up with Dr. Shulka and reported bilateral knee pain. Previous complaints of low back and left elbow pain were noted to have resolved since the last visit. Petitioner reported she had completed PT. she reported her pain resolved for roughly 2 weeks after getting the steroid injections, after which the pain has returned to pre-injection levels in both knees. Petitioner reported current pain of 8/10 severity in both knees. The recommendation was to obtain an MRI and subsequently be seen by an orthopedic surgeon. Work restrictions remained the same. (PX1, Pg. 106)

Petitioner underwent an MRI Right Knee without contrast on 2/18/22. The MRI report indicated lateral patellar subluxation, patellofemoral joint osteoarthritis, moderate knee joint effusion, and no evidence of acute knee injury. (PX2, Pg. 48) An MRI of her left knee without contrast was also taken. It revealed left patellofemoral and medial tibiofemoral joints osteoarthritis, uncomplicated baker's cyst, minimal joint effusion, and no evidence of acute knee injury. (PX2, Pg. 50)

On 3/16/22 Petitioner had her initial consultation with Dr. David Garelick. Petitioner denied having problems with her knees prior to the 11/19/21 work accident. Petitioner reported current pain in both knees, right greater than left. The physical exam revealed discomfort with movement of the patella medially and laterally, right greater than left. There was no effusion or instability in either knee. Her knee range of motion was 0-120 degrees bilaterally. Dr. Garelick reviewed the MRIs and assessed Petitioner of having underlying degenerative arthritis. The plan was for Petitioner to undergo additional therapy. Dr. Garelick administered a Synvisc-one injection. Work restrictions were changed to require a 5-minute sitting break every hour and the lifting restriction was reduced to 5 pounds. lifting restriction. (PX1, Pg. 99)

On 3/28/22 Petitioner followed up with Dr. Shukla. Petitioner reported 5/10 bilateral knee pain which is worse with weightbearing and ambulation. It was noted that diagnostic testing revealed Petitioner had degenerative disease bilaterally and no evidence of acute knee injury. (PX1, Pg. 68)

On 4/6/22 Petitioner followed up with Dr. Garelick and received injections. Her pain complaints remained unchanged. (PX1, Pg. 40)

On 4/25/22 Petitioner followed up with Dr. Shukla. Petitioner's chief complaint was bilateral knee pain that had not improved after the recent 4/6/22 injections. Since her last visit on 3/28/22, she followed up with Dr. Garelick again on 4/6/22, who provided Synvisc-one injections on both knees. She was to follow up with orthopedic medicine. (PX1, Pg. 35)

Petitioner followed up with Dr. Garelick on 4/27/22. It was noted that Petitioner complained of bilateral knee pain, right greater than left. Dr. Garelick explained to Ms. Garcia that there are few options for her short of knee replacement. Petitioner reported she was not interested in knee replacement and wanted to go back to work without restrictions. She was returned to work and deemed to be at MMI. (PX1, Pg. 31)

On 5/2/22 Petitioner treated with Dr. Shukla. Petitioner complained of constant bilateral knee pain, rated 6/10, exacerbated by walking and weightbearing and somewhat alleviated by anti-inflammatories. Dr. Shukla wrote that Petitioner has failed conservative therapy including medications and PT as well as knee joint steroid injections and Visco supplementation. Dr. Shukla noted that Petitioner is not interested in surgical intervention and was released from care diagnosed with bilateral knee pain. (PX1, Pg. 19)

UI Health Orthopedics and Sports Medicine

Petitioner was treated by Dr. Alfonso Mejia on 5/26/2022. (RX7) The record indicates "Raquel Garcia Moncada is a 48-year-old female presents for evaluation of acute left wrist pain after slipping on a wet floor and landing on her arm. Patient with mild pain toward her left elbow as well. No other injury sustained."

Illinois Orthopedic Network

On 6/17/22 Petitioner had a telephonic conference with Dr. Eugene Lipov. (PX2). She complained of bilateral knee pain. It was noted Petitioner reports that she was working at her station when a colleague operating a forklift and moving a pallet which struck the patient from behind hitting both knees and causing her to be pushed back into her station. Dr. Lipov noted that Petitioner reports on 5/26/22 that her knees gave way which caused her to fall and she fractured her left wrist. Petitioner denied any prior injuries or pain to bilateral knees before incident on 11/19/21. Petitioner reported continued 7/10 knee pain, right worse than left, exacerbated with walking, going up and down stairs and prolonged standing. She also complained of stiffness and popping sensation at times and that her right knee gives way. Rates pain today at 7/10. It was noted that Petitioner had worked for Respondent for 10 months and last worked on 5/26/22. Light-duty restrictions were continued with no bending, squatting, climbing, kneeling, ladders, crawling or stairs and no prolonged standing for greater than one hour at a time.

Elite Orthopedics – Dr. Sompalli

On 6/24/22 Petitioner attended an appointment at Elite Orthopedics and Sports Medicine. Assessment: Dr. Sompalli ordered x-rays: a standing AP Lateral & Sunrise views of bilateral knees and reviewed the previously taken MRIs. Petitioner was diagnosed with bilateral knee arthritis with more pain in right knee than left knee. Dr. Sompalli opined that the work injury caused her pre-existing asymptomatic knee arthritis to become partially aggravated. Petitioner was taken off work. (PX3, Pg. 1-3)

On 7/5/22 Petitioner followed up with Dr. Sompalli. Petitioner rated her pain at 4/10 in both knees. Petitioner has weakness and instability. X-ray of right knee dated 6/28/22 showed moderate to severe arthritic changes in the right knee joint, more severe laterally. X-ray to left knee showed moderate severe arthritis in left knee joint. Dr. Sompalli opined that the MRI of Left Knee taken on 2/18/22 shows arthritis in all 3 compartments of knee joint and the MRI of right knee, also taken on 2/18/22, shows patellofemoral joint arthritis. Dr. Sompalli opined Petitioner has a permanent aggravation of an asymptomatic pre-existing condition of arthritis, that caused it to become painful and symptomatic by the work injury that occurred on 11/19/21 and recommended surgery for Right Knee total arthroscopy. Petitioner was taken off-work to return in 6 weeks or as soon as surgery is approved. (PX3, Pg. 4-6)

On 10/11/22 Petitioner followed up with Dr. Sompalli. Complaints of bilateral knee pain. Pain level in right knee is 7/10 and pain in the left knee is 6/10. Patient has weakness and instability. "I reviewed the IME Report from 8/18/22, I examined the patient, patient has a permanent aggravation of an asymptomatic pre-existing condition of arthritis that caused to become painful and symptomatic due to her work injury." He recommended surgery. (PX3, Pg. 11-13)

Testimony of Dr. Sompalli

Dr. Sompalli testified at the request for Petitioner on April 21, 2023 (PX4). Dr. Chandrasekhar Sompalli is an orthopedic surgeon and performs the majority of his surgeries on the shoulder and knee. He testified that he performs about 250 surgeries on an annual basis and about 30 of those are total knee replacements. (Pg. 8)

Dr. Sompalli testified that he reviewed all the Concentra records and also the records of ION. (Pg. 10) He performed a physical exam on the petitioner and when asked his findings he testified, "her right and left knee she had patellofemoral grind. That's when you push down on the kneecap, and you feel the grind. She had medial joint line tenderness. That's when you press on the knee from the inside. It causes pain. She had small effusion. That's swelling in the knee. She had a negative McMurray's sign, which is basically a sign that looks for meniscal tears. And her motion is zero to 100 degrees. Normal is zero to 110 to 120." (Pg. 11) Dr. Sompalli reviewed the MRI films and radiologist's reports. He opined that in the right knee she had patella femoral joint severe arthritis and the MRI of the left knee showed arthritis in all three compartments of her knee joint. (Pg. 12) He testified that the MRI images were consistent with his physical examination and the negative McMurray's test that he noted. (Pg. 13)

Dr. Sompalli testified testified that his recommendations for treatment at this point were that the way to treat arthritis is initial therapy, medications, cortisone injections, Synvisc injections. "When all of those fail, and they continue to have pain, the definitive treatment is a knee replacement. So, I explained to her that I would recommend a right knee replacement, because that's the knee that was hurting her the most." (Pg. 15)

When asked to a reasonable degree of medical and surgical certainty as to whether the recommendation for a right total knee replacement was casually related to the work accident that Petitioner described, Dr. Sompalli testified, "Well yes. My belief is this patient for existing arthritis, she was asymptomatic, and trauma from the work injury caused this to become permanently aggravated, requiring her to undergo a total knee. I mean there's no evidence to suggest that the claimant was in need of any care absent of the work-related injury for her knee arthritis." (Pg. 18) He testified that the arthritis was present before the accident happened. When asked how the trauma of this accident would aggravate the pre-existing arthritis Dr. Sompalli opined, "So there's a great study by NIH that looked at 4,700 patients who had knee arthritis, and after a traumatic injury what happens is like prostaglandins, and these micro, micro molecules get released into the knee joint, and that causes not only pain, but accelerated destruction of the knee joint. So, a lot of patients have had catastrophic failure within a year of sustaining injury to that knee with pre-existing arthritis. So that's what happens in these patients is they're going along fine, they have arthritis. Again, not everyone with arthritis has pain. Some have pain, some don't. and after that injury all kinds of like I said, prostaglandins, IL-R1's, interleukins all get released and that causes not only pain, but it doesn't subside in some people. It causes acceleration of destruction of the remaining cartilage." (Pg. 18 -19)

Dr. Sompalli testified that petitioner never acknowledged any history of bilateral knee pain prior to this work accident. (Pg. 19)

Dr. Sompalli reviewed a Section 12 report from Dr. Brian Forsythe. (Pg. 21) Dr. Sompalli stated that he disagreed with Dr. Forsythe's conclusion that Petitioner suffered bilateral knee contusions with a temporary exacerbation of her arthritis. When asked if he could point to anything objectively that would tell him there was a permanent aggravation or acceleration as a result of this work accident, Dr. Sompalli testified, "well all I can say is compared to what I believe her original knee x-rays, back at Concentra, to the ones I took there's been rapid progression of her arthritis." (Pg. 23) He testified that he believed there had been rapid progression of degeneration based on his review of the Concentra reports, Dr. Garelick's evaluation, his x-rays and he thought there had been some progression. (Pg. 24)

Dr. Sompalli compared Petitioner's first set of x-rays taken with Concentra to her second set of x-rays that he reviewed, saying, "I believe that I noticed progression of arthritis. I need to review them. I reviewed them yesterday, but I need to review them again to be 100%." (pg. 27) When asked if saw a significant change in the x-rays, Dr. Sompalli testified, "I believe I saw - - yes. I would say that. As far as when I – not the x-ray, I didn't have the original set of x-rays. I read the report. That doctor, I believe Garelick had stated what kind of arthritis she had. In the x-rays that I saw when I got them there was progression." (Pg. 27-28)

When asked how long it takes for arthritis to develop typically in a patient like Petitioner with arthritis in all three compartments of the joint, Dr. Sompalli opined that it would take "years". (Pg. 28) He opined that "rapid and severe" meant, "well you don't expect to see mild arthritis progress to moderate arthritis, or moderate arthritis to severe arthritis within 6 to 7 months. That takes years to happen." (Pg. 31)

Dr. Sompalli testified that symptom magnification is when a patient acts like she has more pain than what your exam shows. He defined giveaway with strength testing as "you try to strength test a patient like against resistance and they just let go." (Pg. 33) He testified that giveaway with strength testing would show that a patient is faking it. He testified that he did not do this testing during his examinations of Petitioner. (Pg. 33)

Midwest Orthopedics at Rush - Dr. Brian Forsythe

On 8/18/22 petitioner presented for an IME before Dr. Brian Forsythe of Midwest Orthopedics at Rush. (RX2). Dr. Forsythe noted that Petitioner gave a history of being struck by a forklift in her heels, causing her right knee to strike a machine and her left knee to strike a forklift. Dr. Forsythe opined that Petitioner demonstrated moderate symptom magnification during physical examination. Her subjective complaints are not supportive by the objective findings. He diagnosed her with resolved bilateral knee contusions and severe bilateral pre-existing patellofemoral arthritis. He also opined that there has been no aggravation, acceleration, or material worsening of Petitioner's severe, pre-existing arthritis beyond the natural course as a result of the 11/19/21 work injury.

On 10/4/23 Dr. Forsythe authored an IME Addendum Report. (RX3) Dr. Forsythe reviewed all of the diagnostic imaging described above. After reviewing all diagnostic imaging, Dr. Forsythe's opinion was unchanged.

Testimony of IME Dr. Forsythe

Dr. Forsythe testified on June 6, 2023, via deposition. (RX 4) Dr. Forsythe is a board-certified orthopedic surgeon who performs 700 surgeries per year with half of those being knee procedures. (Pg. 7) On 8/18/22 Dr. Forsythe examined Raquel Garcia at his office at Midwest Orthopedics at Rush.

Dr. Forsythe testified to the results of his physical examination of the patient. "She had a non-antalgic gait, meaning she did not limp. (Pg. 10) "Range of motion of the right knee was 2 degrees of hyperextension, 140 degrees of flexion. 30 Degrees of hyperextension on the left side and 140 degrees of flexion. She had diffuse non-localizing tenderness medially and laterally. She did not have any patellar or quadriceps tendon tenderness, nor did she have any patellar facet tenderness. When she performed a straight leg raise, she could hyperextend her knees. Her patella exam was normal regarding medial and lateral glide. She had no patella apprehension. She had a positive Clarke's exam bilaterally. She had a stable ligament exam. She could squat to 120 degrees but was wincing and guarding as she did so." (Pg. 11)

Dr. Forsythe performed strength testing. “Overall, my impression was that she was manifesting moderate symptom magnification during the physical exam based on her non-localizing tenderness and give-way effort with strength testing.” (Pg. 12) He testified that the effort she put forth was not consistent with her actual capabilities and that the wincing and guarding was sort of a non-physiologic response when she squatted to 120 degrees, along with the fact that she had non-localizing tenderness medially and laterally along the joint lines of both knees. (pg.12) “I performed this test with minimal resistance testing so I put my arm against her leg or my hand against her leg and have her extend, for instance, or pull to test quadriceps and hamstring strength respectively, and as she did so she would put very minimal effort for half of a second and give up. (Pg. 13)

Dr. Forsythe testified that performed over 3,000 knee examinations a year and symptom magnification was not difficult to find. “So, on her exam there is no significant structural deficiency. She had just trace effusions. She has a stable ligament exam. She’s able to walk without a limp, which in and of itself is the first indication that she probably has fairly normal strength. Furthermore, when she was squatting to 120 degrees, that requires a tremendous amount of strength. So, for someone to be able to squat to 120 degrees and then manifest or demonstrate 4 minus to 4 out of 5 quad strength, that’s a complete inconsistency. To squat to 120 degrees, she would have to have at least 4 plus or 5 minus quadriceps strength or a full grade higher than what she demonstrated when she was sitting in and tested in an isolated manner.” (pg.14)

Dr. Forsythe testified that he reviewed the MRI reports from 4/28/22 and specifically noted that there was no evidence of an acute knee injury. (pg. 16) He further opined that this was significant because all of the changes were degenerative and pre-existing in nature with respect to her alleged work injury. (Pg. 17) “Well, there was severe patellofemoral arthritis of both knees, and that condition does not come about from the type of injury that Ms. Garcia Moncada sustained.” (Pg. 17) He testified that severe patellofemoral arthritis would typically develop over the course of a decade at minimum, perhaps longer. He opined that petitioner’s subjective complaints of pain were not supported by the objective findings based on her moderate degree of symptom magnification. (pg. 17)

His diagnoses for the 11/19/21 work injury was resolved bilateral knee contusions and severe bilateral pre-existing patellofemoral arthritis. Dr. Forsythe opined that the treatment was reasonable and necessary to cure and relieve the effects of the alleged injury, specifically the resolved bilateral knee contusions. (Pg. 18) The resolved bilateral knee contusions were the acute injuries sustained, but those had resolved. (Pg. 19) He further opined that there was no aggravation or acceleration of the material condition of her pre-existing severe arthritis as a result of the alleged work injury based on his review of the radiographic imaging, MRIs, history, medical records and physical examination. (pg. 19)

When asked whether any further treatment was reasonable or necessary to resolve the injury, Dr. Forsythe stated that no further treatment was necessary. He testified that he agreed with Dr. Garelick who declared her at Maximum medical improvement on his visit on 4/27/22. (Pg. 20) He opined that petitioner could return to her job in a full duty capacity without restrictions and that she had reached the end of healing for her alleged injury. (Pg. 20-21)

Dr. Forsythe was asked if there was any change in her knees from his review of the x-rays. He stated, "I obtained x-rays on the day of her visit, these were 4 views, including AP, lateral, flexion, weightbearing and patellofemoral views. And on those x-rays, there was severe patellofemoral arthritis of both knees. The medial and lateral compartments had relatively well-preserved joint space. So that condition in and of itself would have existed or been the same since it was already sort of severe or near end stage wear of the patellofemoral joint. So, there would not have been any worsening and there wasn't worsening as compared to the MRIs which I reviewed from February which showed also severe patellofemoral arthritis." (Pg. 24-25) He discussed the NIH study that Dr. Sompalli referenced in his deposition and opined, "This is an epidemiological study, and as you know, medicine is not a cookbook, but in Ms. Raquel Garcia Moncada's case she already had severe arthritis so there isn't a progression." (Pg. 26) He testified that the study was not applicable because she was already severe, and it does not get worse than severe. (Pg. 26)

Dr. Forsythe testified that Petitioner just sustained a soft tissue contusion or a temporary flare-up of her pre-existing arthritic condition. "So, if she fell on both of her knees, which we'll give her the benefit of the doubt and say that she did, or that she was struck by a forklift, then the knee contusion in and of itself would have created symptoms of pain. Those symptoms of pain would have resulted in some type of reflex inhibition of her quad muscle, so she would not fire the quad muscles in her lower extremities as efficiently as she normally would. And because she's lost power to her legs the joint surfaces may have to bear a little bit more of the load and she would perceive increased symptoms of pain. That's a reversible condition, and the contusions resolve, and she regains strength with physical therapy she'll return to her baseline status." (Pg. 28)

Dr. Forsythe opined that Petitioner is still performing activities of daily living, walking around, ascending, and descending stairs and at minimum doing therapeutic exercises with her physical therapist. Generally, these contusion or minor injuries and considered to resolve well within 3 months following an injury like this. (Pg. 29) Her original treating doctor appropriately declared her at maximum medical improvement on 4/24/22. It is likely that she was in better shape following the completion of physical therapy. (Pg. 29)

When asked if he found it significant that Dr. Sompalli did not complete any symptom magnification testing on petitioner, Dr. Forsythe commented, "And if Dr. Sompalli is correlating her condition or progression of her condition to be a result of the alleged work injury I would say that is likely biased and not representative of what actually happened given that her initial treating orthopedic surgeon correctly declared her at maximum medical improvement." (Pg. 30) "When I examined Ms. Garcia Moncada, she manifested moderate symptom magnification, and she was not credible. Her subjective complaints were not fully supported by objective findings. My experience as a board-certified orthopedic surgeon treating several thousand knee conditions per year leads me to believe that she had severe arthritis before she fell on both knees, and she had severe arthritis and was in the same state 4/27/22 when Dr. Garelick declared her at MMI." (Pg. 31)

When asked to comment on Dr. Sompalli's statement that there is objective evidence of rapid progression of her arthritis from the imaging studies, Dr. Forsythe testified, "No. there was no rapid progression whatsoever. That's a gross mischaracterization. And it is not consistent with the natural history. And if you presented an answer like that on a board examination you would not do very well." (Pg. 32) Dr. Forsythe stated that this case was a low degree of difficulty in his opinion to conclude that there was no acceleration, that it was only a temporary aggravation and that Dr. Garelick concurred she was likely MMI in April of 2022, if not earlier. (Pg. 33)

On Cross Examination, Dr. Forsythe testified that Dr. Garelick correctly placed the patient at MMI on 4/24/22 and that Petitioner voiced a desire to return to work with restrictions. (Pg. 35) When asked to comment on Dr. Garelick's 4/27/22 note releasing petitioner to MMI and whether he thought it was reasonable to conclude that Dr. Garelick thinks she is a candidate for knee replacement, Dr. Forsythe testified, "Yes, it is reasonable. And the fact that he declared her at MMI is 100% consistent with the fact that she was at MMI and had fully recovered from the work injury. What he's effectively saying is that the knee replacement is unrelated to her condition sustained from work as he places her at MMI." (Pg. 36)

Dr. Forsythe testified that at the time of his evaluation that treatments that he reviewed through that point had been reasonable and necessary to cure and relieve the effects of the alleged 11/19/21 injury, which was the knee contusions and arthritic flare-up, which resolved. (pg. 41) he further opined that her BMI of 31.2 predisposed her to developing patellofemoral or just arthritis in general and a knee replacement by a factor of 4. "So just her weight alone would contribute a lot more to her condition than a minor fall and contusion which resolves quickly." (Pg. 46)

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 Petitioner to have some credibility issues. Petitioner seemed to be acting a bit with regard to physical movement in the

witness chair, exaggerated sighs, and generally behaving in a manner designed to elicit sympathy. At times, the witness seemed to be searching for an answer to a question rather than calmly and methodically responding. Review of the medical records and Dr. Forsythe's deposition did not cause the Arbitrator to change his initial impression that something was amiss.

The credibility of Petitioner and the other witnesses is discussed further below.

In support of the Arbitrator's decision with respect to (F) Causal Connection, the Arbitrator finds as follows:

A Worker's Compensation Claimant bears the burden of showing by a preponderance of the evidence that his current condition of ill-being is causally related to the work injury. *Horath v. Indus. Comm'n*, 96 Ill. 2d 349, 357-358, 449 N.E.2d 1345, 1348-1349. (1983).

Petitioner was correctly released to full duty at maximum medical improvement on 4/27/22 for the bilateral knee contusions and temporary flare-up of arthritis that she sustained when she was injured on 11/19/21. Dr. Garelick and Dr. Shukla allowed Petitioner to return to work. Dr. Forsythe all reached this conclusion and essentially agreed with these treaters in that Petitioner was at MMI for the knee contusions while at the same time a future candidate for total knee replacement surgeries. It is clear from all diagnostic testing that Petitioner was showing severe patellofemoral arthritis bilaterally prior to the date of accident. From the date of the initial x-rays, 2/18/22 to the final set obtained on 4/13/23, there had been no change in severe patellofemoral arthritis bilaterally. Dr. Forsythe testified credibly that Petitioner did not suffer a rapid acceleration or progression of arthritis because of this accident.

Dr. Sompalli reached the opinion that Petitioner's arthritis rapidly progressed as a result of this accident without even viewing the original x-ray films themselves. (PX4, 27-28) He never viewed the original diagnostic studies. Dr. Forsythe reviewed all of the diagnostic studies, including all x-rays and MRIs, and credibly testified that there had been no progression of arthritis as a result of this accident. He further testified that "rapid progression" was a gross mischaracterization and is not consistent with the natural history. (RX4, Pg. 32) The Arbitrator finds that Dr. Sompalli is not as credible as Dr. Forsythe.

Petitioner sustained bilateral knee contusions with a temporary exacerbation of arthritis on 11/19/21. This condition resolved. There has been no aggravation, acceleration or material worsening of her severe, pre-existing arthritis beyond its natural course as a result of the 11/19/21 work injury. As of 4/27/22, no further treatment was needed related to the work accident. This is also evidenced by the fact that Petitioner returned to work full duty without restrictions for Anthony Marano Company following her release from care before a subsequent accident to her wrist took her off of work.

The Arbitrator carefully reviewed the credibility of the Petitioner and found these inconsistencies: From UI Health on 5/26/22, "Raquel Garcia Moncada is a 48-year-old female presents for evaluation of acute left wrist pain after slipping on a wet floor and landing on her arm. Patient with mild pain toward her left elbow as well. No other injury sustained." (RX7) "The

patient reports on 05/26/2022 she reports that her knees gave way which caused her to fall, and she fractured her left wrist." (PX2, Pg. 53) On 2/14/22 petitioner followed up with Dr. Shukla at Concentra. Chief Complaint: Bilateral Knee Pain. Previous complaints of low back and left elbow pain have resolved since last visit. (PX1, pg. 106) At trial, Petitioner testified, "My back also hurts a lot" and that she was continuing to have pain in the right elbow. Dr. Forsythe credibly testified that Petitioner walks without a limp and demonstrated moderate symptom magnification during her physical examination. She reported non-localizing tenderness to palpation and give way effort with strength testing bilaterally. In totality, there are too many inconsistencies by the Petitioner for the Arbitrator to find her credible.

Additionally, Dr. Forsythe testified consistently and credibly that there was no aggravation, acceleration or material worsening of the claimant's severe pre-existing patellofemoral arthritis beyond its natural course as a result of the 11/19/21 work injury. Dr. Shukla, Dr. Garelick and Dr. Forsythe have all correctly released Petitioner to maximum medical improvement and released her to full duty without restrictions.

The Arbitrator finds that Petitioner did not meet her burden of proof to show that her current condition is related to the work injury of November 19, 2021. The Arbitrator finds that Petitioner suffered resolved bilateral knee contusions and severe bilateral pre-existing patellofemoral arthritis on November 19, 2021, which requires no additional treatment.

In support of the Arbitrator's decision with respect to (J) Medical Services, the Arbitrator finds as follows:

For the reasons set forth above, the Arbitrator finds that Petitioner is responsible for all treatment incurred beyond the 4/27/22 MMI date. The Arbitrator finds that the Respondent shall pay the reasonable, necessary, and related medical bills up to the date of MMI, 4/27/22.

Based on the above, the Arbitrator finds that Petitioner failed to prove that any of the medical services provided to Petitioner beyond the MMI date of 4/27/22 were not related to the alleged accident dated November 19, 2021.

In support of the Arbitrator's decision relating to Issue (K), TTD and maintenance, the Arbitrator finds the following:

For the reasons set forth above, the Arbitrator has found that Petitioner did not meet her burden of proof to show that her current condition is related to the work injury of November 19, 2021. The Arbitrator finds that the petitioner has failed to prove that she is entitled to any weekly benefits including but not limited to temporary total disability benefits and temporary partial disability benefits beyond the MMI Date of 4/27/22.

In support of the Arbitrator's decision relating to (N), Credit, the Arbitrator finds the following:

Respondent issued payments totaling $10,743.05 in temporary total disability.

The Arbitrator notes that Respondent paid $19,819.22 toward medical bills. Respondent is given credit for payment of bills under Section 8j, per Respondent's Exhibit 6.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC009232
Case Name	Mario Zarate v. Alliance Drywall Company
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) – Remand to Arbitrator Llerena
Decision Type	Commission Decision
Commission Decision Number	25IWCC0008
Number of Pages of Decision	12
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Kevin Veugeler
Respondent Attorney	Sean Ryan

DATE FILED: 1/10/2025

/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

Mario Zarate,

Petitioner,

vs. NO: 22 WC 9232

Alliance Drywall Company,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 23, 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 $6,500.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

JANUARY 10, 2025
O: 12/19/24
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC009232
Case Name	Mario Zarate v. Alliance Drywall Company
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	David Huber
Respondent Attorney	Sean Ryan

DATE FILED: 5/23/2024

/s/Elaine Llerena, Arbitrator
Signature

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

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

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

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

Mario Zarate
Employee/Petitioner
v.
Alliance Drywall Company
Employer/Respondent

Case # **22** WC **009232**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **November 29, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **March 7, 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 $**64,984.40**; the average weekly wage was $**1,249.70**.

On the date of accident, Petitioner was **50** years of age, ***single*** with **1** dependent children.

Respondent shall be given a credit of $**73,240.27** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**73,240.27**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $833.13 per week for 87-6/7 weeks, commencing March 25, 2022, through November 29, 2023, as provided in Section 8(b) of the Act.

Respondent shall pay outstanding reasonable and necessary medical services as shown in PX3, as provided in Sections 8(a) and 8.2 of the Act or other contractual reduction, whichever amount is less, per the parties' stipulation. Also, per the parties' stipulation, Petitioner will recognize a credit for Respondent for any and all medical bills that have already been paid and an 8(j) credit for any and all medical bills that were paid through Respondent's group medical plan.

Respondent shall authorize and pay for prospective medical care in the form of evaluation and treatment per the recommendations of Dr. Joel See and Dr. Michael Cohen pursuant to Sections 8(a) and 8.2 of the Act.

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

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

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

Signature of Arbitrator

ICArbDec19(b)

May 23, 2024

FINDINGS OF FACT

This matter proceeded to hearing on November 29, 2023, in Chicago, Illinois before Arbitrator Elaine Llerena on Petitioner's Petition for Immediate Hearing under Section 19(b)/8(a). The issues in dispute were causal connection, medical expenses, temporary total disability benefits, and permanency. Arbitrator's Exhibit 1 (AX1).

Testimony

Petitioner testified that on March 7, 2022, he was at work hanging drywall on the ceiling. (T. 9-10) As Petitioner tried to lift the drywall using his right hand, he heard a noise come out of his shoulder and at the same time felt pain in his shoulder. (T. 11-12) Petitioner sought treatment at Concentra on March 8, 2022. (T. 13,33) Petitioner told treatment providers and IMEs what he did for work and reported his symptoms and issues he was dealing with as a result of the accident. (T. 34-35)

Petitioner testified his last visit with Dr. Michael Cohen was September 5, 2023, and he does not have any visits with Dr. Cohen scheduled. (T. 38-39, 41) Petitioner testified he has gone to urgent care since September of 2023 for his neck pain that goes down his arm. (T. 45-46) Petitioner was provided pain medication at urgent care. (T. 40) Petitioner did not know if he had any records from his visit to urgent care. (T. 41)

Job Duties

Petitioner testified that he worked as a carpenter for Respondent and that his job included hanging drywall. (T. 8-9)

Prior Medical

Petitioner testified that he had not injured his right arm, hand, or shoulder prior to March of 2022. (T. 9)

Accident

On March 7, 2022, Petitioner was hanging drywall and as he was lifting up drywall overhead with his right upper extremity, he felt a sudden onset of pain in his right shoulder. (T. 9-12, PX1)

Summary of Medical Records

On March 8, 2022, Petitioner went to Occupational Health Centers of Illinois. (PX1) Petitioner reported that he was lifting drywall the day before and, while lifting the drywall overhead, Petitioner turned and felt a sharp pain in his right shoulder. Petitioner was unable to lift his arm up. Petitioner denied any preexisting right shoulder pain and stated he was asymptomatic until this injury. Petitioner denied prior shoulder injury or surgeries. Petitioner's pain was located in the right lateral shoulder and radiated down the right arm. Petitioner was assessed with a right shoulder strain and right triceps strain and referred for physical therapy. On March 11, 2022, a right shoulder MRI was recommended.

On April 6, 2022, Petitioner saw Dr. Nadia Siddiqui at Duly Health and Care by Dr. Siddiqui. (PX2, pg. 2651) Petitioner described the work accident and complained of pain in his right shoulder that radiated down his arm. Dr. Siddiqui diagnosed Petitioner as having acute right shoulder pain, restricted Petitioner from lifting and strenuous activity, provided an arm sling, ordered physical therapy and referred Petitioner for an orthopedic evaluation.

Petitioner saw Dr. Michael Cohen on April 7, 2022. (PX2, pg. 2636) Petitioner described the work accident and complained of right shoulder pain. Dr. Cohen noted Petitioner had some parasthesias in the dorsal aspect of the right hand, but Dr. Cohen thought this was more secondary to some dependent edema. X-rays of Petitioner's right shoulder showed AC arthritis, type II acromion high riding humeral head consistent with significant rotator cuff tear and possibly some early glenohumeral arthritis. Dr. Cohen ordered an MRI.

Petitioner underwent the right shoulder MRI on April 18, 2022, the results of which revealed a small focal high grade tear of the supraspinatus tendon at the anterolateral humeral insertion involving virtually the entire thickness of the tendon and a high grade partial thickness tear of the subscapularis tendon undersurface at the lesser tuberosity insertion; medial subluxation and partial thickness tearing of the long head biceps tendon, without evidence of full thickness biceps tendon rupture or frank biceps tendon dislocation; focal fraying of the posterior superior glenoid labrum; and mild to moderate degenerative hypertrophy at the acromioclavicular joint with resulting encroachment on the supraspinatus which can be associated with a clinical impingement syndrome. (PX2, pg. 2614)

Dr. Cohen reviewed the MRI on April 20, 2022, and diagnosed Petitioner as having a supraspinatus tear, a partial thickness subscapularis tear and biceps partial tear and partial subluxation. (PX2, pg. 2597) Dr. Cohen noted that Petitioner had symptoms of cervical radiculopathy into the right middle finger and ordered an EMG. Dr. Cohen also discussed with Petitioner surgical options regarding his right shoulder condition.

On April 25, 2022, Petitioner underwent an EMG/NCV study which revealed electrodiagnostic evidence of acute right, likely C7, radiculopathy. (PX2) On May 4, 2022, Dr. Cohen ordered right shoulder surgery and ordered a cervical MRI due to Petitioner's worsening C7 radiculopathy. (PX2, pg. 2559) Petitioner underwent the cervical MRI on May 14, 2022, the results of which showed bony spinal canal developmentally somewhat narrow in the mild cervical segment; a shallow broad-based disc bulge which presses slightly on the ventral spinal cord with moderate canal stenosis at the C3-4 level; moderate left foraminal stenosis due to a combination of disc bulge and mild left facet hypertrophy; moderate right foraminal stenosis due to a minimal generalized disc bulge at C4-5; and mild disc degeneration and generalized annular bulging with a punctuate posterior annular tear or fissure in the midline but no significant stenosis. (RX9) On May 17, 2022, Dr. Cohen noted that the cervical MRI did not show anything that would preclude right shoulder surgery.

On June 1, 2022, Dr. Cohen performed a right shoulder arthroscopy with extensive debridement including bicipital tenotomy, debridement of generative labral tears, anterior, posterior and superior significant synovectomy from the glenohumeral joint; an arthroscopic rotator cuff repair; an arthroscopic distal clavicle resection; and an arthroscopic subacromial decompression. (PX2, pg. 37)

On June 15, 2022, Dr. Cohen ordered post-operative physical therapy and kept Petitioner off work. (PX2, pg. 2494) Petitioner continued to follow up with Dr. Cohen and underwent physical therapy. (PX2) On August 30, 2022, Dr. Cohen noted that Petitioner complained of numbness and tingling down the right arm that radiated from his neck down to the right hand. (PX2, pg. 1662) Dr. Cohen ordered a cervical MRI. The MRI was done on September 15, 2022, and showed mild cervical spondylosis with mild spinal stenosis and bilateral

uncovertebral hypertrophy and facet arthropathy with mild bilateral neuroforaminal stenosis at C5-C6. (RX10) On September 28, 2022, Dr. Cohen referred Petitioner to Dr. Joel See for evaluation of his neck. (PX2, pg. 1498)

Petitioner saw Dr. See on November 15, 2022. (PX5, pg. 669) Dr. See diagnosed Petitioner as having right cervical radiculopathy, injury to the right shoulder and right arm weakness. Dr. See explained that he would not expect the shoulder injuries to cause significant numbness going down to the hand, and that it was likely radicular in nature. Dr. See discussed continued conservative care, medications, and epidural steroid injections. On December 15, 2022, Dr. Cohen noted that Petitioner's symptoms were consistent with cervical radiculopathy and restricted Petitioner to lifting no more than 10 pounds with the right arm at or above shoulder height. (PX2, pg. 621)

On January 18, 2023, Petitioner underwent a Section 12 examination (IME) with Dr. Carl Graf at Respondent's request. (RX1) Dr. Graf issued his report on February 1, 2023. Petitioner described the March 7, 2022, work accident and complained of pain in the right side of his neck with radiation to the right shoulder to the proximal triceps. Petitioner also reported numbness in his right long finger. Dr. Graf examined Petitioner and reviewed Petitioner's medical records (except the cervical MRI which was not provided). Dr. Graf felt that Petitioner's subjective right shoulder complaints did not appear to be cervical in origin. Dr. Graf opined that Petitioner could work light duty.

On March 8, 2023, Dr. Cohen noted that Petitioner had some recuring impingement type pain and administered a cortisone injection. (PX2, pg. 141) Dr. Cohen ordered additional physical therapy. Peer review reports issued on March 21, 2023, and April 21, 2023, and obtained by Respondent found that additional physical therapy was not medically necessary. (RX5 & RX6)

On April 28, 2023, Dr. Graf issued an IME addendum report after reviewing the September 5, 2022, cervical MRI. (RX2) Dr. Graf found that Petitioner had ongoing shoulder complaints with vague right arm numbness following right shoulder surgery and noted that Petitioner did not appear to have any preexisting cervical diagnosis. Dr. Graf found that Petitioner did not demonstrate nerve root compression from the cervical spine to substantiate his ongoing right shoulder pain. Dr. Graf found no aggravation or acceleration of any preexisting shoulder condition as a result of the work accident. Dr. Graf opined that the source of Petitioner's pain was not the cervical spine and determined that Petitioner was at maximum medical improvement (MMI) regarding the cervical spine. Dr. Graf further opined that Petitioner did not require work restrictions from a cervical spine standpoint nor did he require a cervical epidural injection.

On May 25, 2023, Dr. Cohen noted that Petitioner's right-hand numbness and tingling was not related to the shoulder surgery and existed at the time of surgery. (PX2)

Dr. Cohen's evidence deposition was taken on June 21, 2023. (PX4) Dr. Cohen's testimony was consistent with his findings and opinions in the medical records.

Petitioner underwent an IME with Dr. Guido Marra on July 18, 2023, at Respondent's request. (RX3) Petitioner described the March 7, 2022, work accident and Dr. Marra examined Petitioner and reviewed Petitioner's medical records. Dr. Marra found that the right shoulder MRI showed some chronicity regarding the rotator cuff tear, but felt that it was aggravated by the work accident. Dr. Marra opined that the right shoulder condition was causally related to the work accident and determined that Petitioner had reached MMI

for the accident as it pertained to the right rotator cuff tear. Dr. Marra recommended a functional capacity evaluation (FCE) and recommended a 25-pound lifting restriction temporarily.

Dr. Graf's evidence deposition was taken on August 8, 2023. (RX4) Dr. Graf's testimony was consistent with his reports.

On September 5, 2023, Dr. Cohen noted that Petitioner continued to have some intermittent parathesis from the C7 distribution with some weakness in the triceps wrists. Dr. Cohen recommended further evaluation and treatment with Dr. See and agreed with Dr. Marra that Petitioner was at MMI regarding the right shoulder. (PX2)

Petitioner underwent the FCE on September 15, 2023. (PX6) The FCE determined that Petitioner could occasionally lift 20 pounds floor to knuckle, occasionally lift 15 pounds waist to shoulder height, occasionally lift 15 pounds waist to overhead, lift 10 pounds, occasionally two hand carry 20 pounds, occasionally dynamic push 100 pounds, occasionally dynamic pull 100 pounds, sit or stand, do repetitive and sustained stooping, repetitive and sustained crouching, kneel, stair climb, reach above shoulder height, and occasionally reach repetitively waist height. Petitioner could also frequently walk and operate hand controls.

CONCLUSIONS OF LAW

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

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

The Arbitrator notes that the court in *Organic Waste Systems v. Industrial Commission*, 241 Ill.App.2d 257, 260 (1993), explained that "a chain of events which demonstrates a previous condition of good health, accident and subsequent injury resulting in disability may be circumstantial evidence to prove a causal nexus between the accident and claimant's injury." (citing *International Harvester v. Industrial Comm'n* (1982), 93 Ill. 2d 59, 442 N.E.2d 908, 66 Ill. Dec. 347.)

The Arbitrator notes that Petitioner did not have any right upper extremity or neck problems prior to the March 7, 2022, work accident. Further, Petitioner reported right shoulder pain and radiation of pain during his first office visit with Dr. Cohen. The April 18, 2022, right shoulder MRI revealed tears in Petitioner's right shoulder. The April 25, 2022, EMG/NCV study which revealed electrodiagnostic evidence of acute right, likely C7, radiculopathy. The September 15, 2022, cervical MRI showed mild cervical spondylosis with mild spinal stenosis and bilateral uncovertebral hypertrophy and facet arthropathy with mild bilateral neuroforaminal stenosis at C5-C6. There is nothing in the record to indicate that there was an intervening accident. Further, Respondent stipulated to the March 7, 2022, work accident.

The Arbitrator notes that Dr. Graf opined that Petitioner's cervical condition was not aggravated or accelerated by the work accident based on his finding of chronicity in the cervical MRI, but that Petitioner's right shoulder condition was causally related to the work accident. However, the Arbitrator notes that Petitioner did not have any neck symptoms or problems prior to the work accident and related to the work accident and the MRI did show stenosis and facet arthropathy and the EMG showed radiculopathy from Petitioner's cervical spine. Therefore, based on the medical records and findings, the

Arbitrator does not find the findings and opinions of Dr. Graf persuasive regarding Petitioner's cervical spine condition.

Based on the above, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to the March 7, 2022, work accident.

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

The Arbitrator notes her finding as to causal connection above. The Arbitrator further notes that Petitioner underwent conservative care and then surgery for the right arm that, ultimately, improved Petitioner's right shoulder condition. The Arbitrator further notes that Dr. Graf and the peer review reports have found that Petitioner does not require any additional treatment, but did not indicate that Petitioner's treatment to date was not necessary or reasonable.

Based on the above, the Arbitrator finds that Respondent shall pay for outstanding medical expenses as detailed on PX3 pursuant to Sections 8(a) and 8.2 of the Act or other contractual reduction, whichever amount is less, per the parties' stipulation. (AX1) Also per the parties' stipulation, Petitioner will recognize a credit for Respondent for any and all medical bills that have already been paid and an 8(j) credit for any and all medical bills that were paid through Respondent's group medical plan.

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

The Arbitrator notes her finding as to causal connection above. The Arbitrator further notes that Petitioner continues to have neck pain with radiation and that Dr. See diagnosed Petitioner as having right cervical radiculopathy and discussed treatment options with Petitioner. Furthermore, Dr. Cohen has recommended further evaluation and treatment with Dr. See. The Arbitrator also notes that Dr. Graf has opined that Petitioner does not require any additional treatment regarding his ongoing cervical issues. As noted above, the Arbitrator finds the opinions of Dr. Graf unpersuasive regarding Petitioner's cervical condition.

Based on the above, the Arbitrator finds that Petitioner is entitled to prospective medical care. Respondent shall authorize and pay for prospective medical care in the form of further evaluation and treatment of Petitioner's cervical condition with Dr. See.

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

The Arbitrator notes her finding as to causal connection above. The Arbitrator further notes that Petitioner has been off work since March 25, 2022. Additionally, Petitioner has not been released to return to work by any of his treaters following the March 7, 2022, work accident.

Based on the above, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from March 25, 2022, through November 29, 2023.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC013214
Case Name	Meredith Casazza v. Bon Ton Stores, Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0009
Number of Pages of Decision	15
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Jason Esmond
Respondent Attorney	William Brewster

DATE FILED: 1/10/2025

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Meredith Casazza,

Petitioner,

vs. NO: 17 WC 13214

Bon Ton Stores, Inc.,

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 causal connection, medical expenses, temporary total disability, prospective medical care, permanent partial disability, and temporary total disability overpayment credit, and being advised of the facts and law, affirms and adopts the corrected Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the corrected Decision of the Arbitrator filed May 20, 2024 is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

JANUARY 10, 2025
O: 12/19/24
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC013214
Case Name	Meredith Casazza v. Bon Ton Stores, Inc
Consolidated Cases	
Proceeding Type	
Decision Type	***Corrected Decision***
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Gerald Napleton, Arbitrator

Petitioner Attorney	Jason Esmond
Respondent Attorney	William Brewster

DATE FILED: 5/20/2024

/s/Gerald Napleton, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF MAY 14, 2024 5.165%

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
CORRECTED ARBITRATION DECISION

Meredith Casazza
Employee/Petitioner
v.

Case # **17 WC 13214**

Bon Ton Distribution Center
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Napleton**, Arbitrator of the Commission, in the city of **Rockford**, on **February 23, 2023 and August 31, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **October 26, 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 these accidents ***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's average weekly wage was **$390.86**.

On the date of accident, Petitioner was **44** years of age, ***married*** with **0** dependent children.

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

ORDER

- The Respondent shall pay the petitioner temporary total disability benefits of $ **260.57** /week for **5 and 4//7** weeks, from **October 27, 2016 through November 6, 2016, April 3, 2017, and April 13, 2017 through May 9, 2017** as provided in Section 8(b) of the Act**.**
- The Respondent is entitled to a credit for temporary total disability benefits paid.
- The respondent shall pay for all medical services rendered through May 9 2017, as provided in Section 8(a) and 8.2 of the Act and consistent with the medical fee schedule.

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

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

/s/ Gerald W Napleton
Signature of Arbitrator

May 20, 2024

ICArbDec

CORRECTED CONSOLIDATED STATEMENT OF FACTS

Petitioner testified that she began working for Respondent in June or July of 2010. (Tr. pp. 9-10). She worked as a processing auditor. (Tr. p. 10). In that position, she worked on a line, inspecting packages that were to be shipped. She would open boxes, inspect the items, scan items, and repackage the products. (Tr. p. 10). The products came down a conveyor belt and she would pull packages to her area to inspect. (Tr. p. 11). Petitioner worked full-time. (Tr. p. 11). Petitioner testified that she would at times be asked to do other jobs, such as unloading trucks, move pallets, create labels, or package products, but mainly she performed work on the line for the six years prior to her injury. (Tr. p. 12).

On October 26, 2016, Petitioner was on the south end after having come back from lunch. (Tr. p. 12). She noticed that the line was stopped at her area with one box caught in the line. (Tr. p. 12). Petitioner testified that the cardboard from the box was wrapped in a roller. (Tr. p. 13). She stuck her hand in to attempt to dislodge it. (Tr. p. 13). While doing so, the line was restarted her hand was caught and she was dragged several feet down the line. (Tr. p. 13). Petitioner's left ear hit a pole causing her vision to go black before seeing lights. (Tr. pp. 13-14). Petitioner testified another employer helped clean up blood from behind her ear. (Tr. p. 14). Petitioner testified that she continued to work her shift, with increasing pain in her head and nausea. (Tr. p. 15). Petitioner went to Rockford Health Physicians Convenient care that day. (Tr. p. 15). The history noted she had sustained a head injury 3-6 hours ago following a direct blow when she hit her head on a pole. It was noted she had also struck her left arm. (Px. 6). Petitioner was taken by ambulance to St. Anthony Hospital. (Rx. 18). The ambulance report noted her complaint of head and left shoulder pain after falling at work and hitting her head on a metal pole. (Rx. 18). St. Anthony ER records note a similar history and Petitioner was diagnosed with a cervical strain and concussion. (Px. 7).

Petitioner testified that she generally continued to work, though she would be taken off from time to time if work was not available within her restrictions. (Tr. p. 22). Petitioner began treatment with her primary care physician, Dr. Schermer, on November 3, 2016. (Px. 5). Due to ongoing symptoms in her neck and left shoulder, Petitioner was recommended physical therapy. (Px. 5). Petitioner testified she was having difficulty lifting her left arm and was having pain in her neck causing migraines in her neck and the lower part of her head. (Tr. pp. 17-18). Petitioner had previously treated for migraines, receiving Botox injections from Dr. Khan. (Tr. p. 18, Px. 4). Respondent submitted treatment records from A Family Chiropractic documenting chiropractic treatment for her neck from May 1, 2014 through July 2, 2014 following a motor vehicle accident on April 24, 2014. (Rx. 13). Petitioner testified that she had also seen Dr. Nowak on October 21, 2016 due to numbness and pain in her fingers. (Tr. pp. 18-19). Petitioner testified she also had some neck pain prior to her injury, relating it to bending over and looking down all day, working on the line. (Tr. p. 19).

Petitioner testified she had not had to miss time from work and had not required any work restrictions relative to her neck pain or finger numbness prior to her October 26, 2016 injury. (Tr. p. 19). She had occasionally been off work under FMLA due to her migraines. (Tr. p. 19). Petitioner testified that her neck pain was different after her October 26, 2016 injury. After the injury, she had difficulty just turning her head. With turning her head, she would develop migraines at the top of her neck, from ear to ear. (Tr. p. 19).

On November 3, 2016, Petitioner was seen by Dr. Schermer, her primary care physician. (Px. 5). Dr. Schermer assessed a concussion. On November 19, 2016, Dr. Schermer prescribed medication for concussion and neck pain. (Px. 5). Petitioner underwent physical therapy evaluation for neck, shoulder, and left arm pain on January 9, 2017. She reported neck and left-sided arm pain after a work injury in October 2016. She reported a whiplash like injury with difficulty lifting her left arm. She continued in physical therapy through March 23, 2017. (Px. 8).

Petitioner was seen by Dr. Khan on January 10, 2017. She complained of severe neck pain preceding her headaches and described the injury she had sustained at work when caught by a conveyor belt. Dr. Khan recommended a Botox injection and a cervical MRI. (Px. 4). Petitioner testified that Dr. Khan started injecting her Botox into the back of her neck following her injury. (Tr. pp. 23-24). Petitioner testified she also experienced ringing in her ear and trouble hearing after her October 26, 2016 injury. (Tr. p. 39).

A cervical MRI performed on February 27, 2017 revealed degenerative disc disease at C5-6 with scattered facet arthropathy. (Px. 9). On March 31, 2017, Petitioner was seen by Dr. Konstantakos for an evaluation of her left shoulder. He noted her injury and reviewed the February 27, 2017 MRI. Dr. Konstantakos assessed impingement of the left shoulder and recommended an injection, medication, and more physical therapy. (Px. 5).

On April 13, 2017, Petitioner was seen by Dr. Henderson at Rockford Health Physicians. (Px. 5). Dr. Henderson assessed brachial plexopathy with an overlying radiculopathy in the left upper extremity and recommended consult with a spine specialist to consider an injection. He also took Petitioner off work. (Px. 5). Petitioner was seen by Dr. Oteng-Bediako, a pain specialist, on April 25, 2017 and provided a facet injection. (Px. 10). Petitioner testified that the facet injection did help temporarily. (Tr. p. 25).

Petitioner continued to receive Botox injections with Dr. Khan. (Px. 4). She testified that she felt the injections helped to loosen her neck. (Tr. pp. 26-27). Petitioner testified that she continued to receive the Botox injections every three months, as she had prior to her injury, but that the amount of the medication increased after her October 2016 injury. (Tr. pp. 124-125).

On May 4, 2017, Petitioner was seen by Dr. Alpert for an Independent Medical Examination at Respondent's request. (Rx. 4). Petitioner testified that Dr. Alpert's evaluation lasted only a couple minutes. (Tr. p. 120). Dr. Alpert noted that Petitioner's left shoulder MRI showed a partial rotator cuff tear and her cervical MRI showed pinched nerves. He assessed a concussion, left neck strain, and left sided shoulder strain. He opined that Petitioner could return to work without restrictions and was at maximum medical improvement. (Rx. 4).

Petitioner continued under the care of Dr. Oteng-Bediako. She underwent left cervical branch blocks on June 1, 2017. Records noted 40% relief after the block and a second block was discussed. (Px. 10).

On June 20, 2017, Petitioner was seen by Dr. Krpan, an orthopedic. Dr. Krpan assessed cervical radiculopathy with radiation to the left arm. He noted Petitioner had not reached a level of comfort or strength to return to even sedentary work. He recommended she undergo an EMG which had been ordered in April and that she be evaluated by a spine specialist. Dr. Krpan noted he did not feel Petitioner would make any significant gains in function and would most likely deteriorate further, until appropriate treatment was completed. (Px. 15). Dr. Krpan reviewed Petitioner's left shoulder and cervical MRI on July 7, 2017. He again noted she needed a spine specialist evaluation and treatment of the radicular components of her condition, noting her symptoms were more consistent with cervical radiculopathy and brachial plexus injury. He noted his opinion that Petitioner would not be capable of return to gainful employment until her cervical spine was treated. (Px. 15).

Petitioner saw Dr. Goldberg on October 6, 2017 for Respondent's Independent Medical Examination. (Rx. 5). Dr. Goldberg assessed a cervical strain and felt she had a component of facet joint syndrome. He did not feel her MRI showed nerve compression that would explain her left upper extremity symptoms. Dr. Goldberg did opine that her treatment had been appropriate and recommended an additional two weeks of physical therapy as well as a 25-pound lifting restriction. (Rx. 5). Petitioner returned to work on October 30, 2017 within the restrictions recommended by Dr. Goldberg. (Tr. p. 27). On November 7, 2017, Dr. Goldberg

authored an addendum report, noting that based on surveillance from September 21, 2017 and September 22, 2017 that Petitioner sustained only a cervical strain from her work accident and could return to work full duty regarding her cervical spine. (Rx. 6). Petitioner testified that she was able to walk the dogs in September of 2017. (Tr. pp. 84-85). Petitioner testified that she would take her pain medication and walk the dogs, noting they wouldn't require leashes if it wasn't required by law. (Tr. p. 85). She testified that she could do some gardening while the pain medication eased her pain. (Tr. p. 85). On November 9, 2017, Petitioner appeared at OSF Hospital with increasing neck pain since returning to work. (Px. 7).

On November 30, 2017, Dr. Krpan provided Petitioner with a 5-pound restriction along with a recommendation she be evaluated by a spine specialist. (Px. 15). Petitioner's restriction was not accommodated, and she was off work until December 15, 2017. (Tr. p. 28). She then returned to work but testified that her restrictions were not strictly adhered to. (Tr. pp. 28-29). She testified that she complained about having to lift boxes that exceeded her restrictions. (Tr. p. 29). She continued to work, but with pain in her neck and left shoulder. (Tr. p. 29). She was taking Norco prior to going in to work along with a muscle relaxer and Advil and again at her lunch break to get through her shift. (Tr. p. 30). a

Petitioner testified to sustaining another injury at work on June 1, 2018. (Tr. p. 30). Petitioner testified that she was working in the north end, in a spot about five or six feet wide and two to three feet deep. (Tr. pp. 30-31). Petitioner testified that as soon as she got to the area, she noticed spill of bath oil on the ground in the area she was to work. (Tr. p. 31). She testified that she reported the spill to her lead's helper, Christi, to ask it to be cleaned up. (Tr. p. 31). Petitioner testified she reported the spill to another supervisor. (Tr. p. 32). Petitioner testified that she then worked in the designated area, attempting to stay all the way to the right side, avoiding the spill. (Tr. p. 32). As the spill wasn't cleaned up, she reported it to a maintenance person who put small paper towels down that were not sufficient to clean it. (Tr. pp. 32-33). The maintenance person then put a barrel garbage can on top of the spill, though Petitioner testified that it did not completely cover the spill. (Tr. p. 33). Petitioner continued to work, attempting to stay away from the spill. (Tr. p. 35). However when her pallet was nearly complete, she turned, and her feet slipped in the oil, causing her to fall. (Tr. p. 35). While falling, she attempted to grab the garbage can. Her neck and head hit an empty pallet and she cut her arm on the line. (Tr. p. 35). Petitioner provided photographs of her arms and behind her right ear that she had taken on her cell phone the day after her fall. (Px. 21, 22, 23).

Respondent called Christine Fulton to testify. (Tr. p. 131). Ms. Fulton testified that on June 1, 2018, she had told employees to stay away from a spill of shampoo. (Tr. p. 132). She testified that Petitioner told her that they could have made money off the spill. (Tr. p. 133). She reported the spill had been approximately a foot in diameter. (Tr. p. 134). She testified that Scott had put up cones around the spill and she walked away. (Tr. p. 134). Ms. Fulton did not witness the spill being cleaned. (Tr. p. 137). She did not witness Petitioner fall. (Tr. p. 137). Ms. Fulton testified that she told her supervisors and HR about the alleged statement from Petitioner. (Tr. p. 138). To her knowledge, Petitioner continued working at Respondent after the injury. (Tr. p. 138). To her knowledge, Petitioner had not been reprimanded or terminated for the alleged statement. (Tr. pp. 138-139).

Petitioner went to St. Anthony Hospital that day. The record notes she had fallen at work and hurt everywhere. The history noted she had slipped in bath oil and fell, landing on her butt and back, hitting her head as well. (Px. 7).

Petitioner testified that after the June 1, 2018 injury, her neck hurt even worse. (Tr. p. 37). She also reported pain in her left hip and lower back causing difficulty getting out of bed at times. (Tr. p. 37). Petitioner was seen for follow up by Dr. Schermer on June 6, 2018 and recommended physical therapy. (Rx. 11). Petitioner underwent a week of physical therapy before it was discontinued due to a lack of approval. (Rx.

11). On July 3, 2018, Dr. Schermer took Petitioner off work. (Rx. 11). Dr. Schermer continued to recommend physical therapy on August 1, 2018. (Px. 13). Petitioner testified she has not returned to work for Respondent. (Tr. p. 38).

Petitioner continued to receive Botox injections for her migraines with Dr. Khan on August 24, 2018, November 20, 2018, March 26, 2019, and September 24, 2019. (Px. 11). She underwent physical therapy from October 23, 2018 through December 17, 2018. (Px. 14). Petitioner was seen for an Audiological evaluation on February 13, 2019. (Px. 13). She reported decreased left-sided hearing post hitting her head at work, along with dizziness and tinnitus. She was assessed with mild high frequency sensorineural hearing loss bilaterally, worse in the left ear, and recommended seeing an ENT. (Px. 13). On March 11, 2019, Dr. Schermer recommended restarting PT due to chronic left shoulder pain. (Px. 13). Petitioner underwent additional physical therapy at OSF Rehab from April 27, 2020 through August 6, 2020. (Px. 14). She followed up with Dr. Schermer for her ongoing neck and left shoulder pain. On July 31, 2020, a new cervical MRI revealed an increased size of the posterior osteophyte complex at C5-6 compared to the July 28, 2018 MRI with new mild central canal stenosis. (Px. 13). Steroid injection to the left shoulder was discussed on September 29, 2020. (Px. 13). Dr. Oteng-Bediako performed left C3-4, C4-5, C5-6, and C6-7 medial branch blocks on November 13, 2020. (Px. 10).

Petitioner was seen again by Dr. Goldberg on December 7, 2020 at Respondent's request. (Rx. 7). Petitioner testified that the evaluation lasted only a couple minutes. (Tr. p. 117). Dr. Goldberg noted that the July 31, 2020 cervical MRI showed a larger herniation to the right at C5-6. He opined there were no objective findings on examination. He did not feel her MRI's demonstrated left sided nerve compression. Dr. Goldberg concluded that Petitioner had sustained cervical strains in 2016 and 2018. He noted she may have a large component of myofascial pain that could have been exacerbated by the accidents. Regarding any myofascial pain, he did not recommend use of narcotics. Dr. Goldberg opined that the fall in October of 2019, where Petitioner sustained a laceration to her nose had any bearing on her cervical spine. Dr. Goldberg opined Petitioner had reached MMI after 12 weeks of physical therapy after the 2018 accident and that she could work full duty without restrictions. (Rx. 7).

Petitioner underwent a lumbar spine MRI on May 24, 2021. It was ready by APRN Johnson at Ortho IL on June 10, 2021. Ms. Johnson assessed degenerative spondylosis of the lumbar spine with chronic axial back pain and left SI joint mediated pain. An EMG and continuation with Dr. Oteng-Bediako for potential injections was recommended. (Px. 9). Petitioner underwent facet block from L3-S1 on July 8, 2021. (Px. 10). The records noted 80% improvement with the lumbar facet blocks. (Px. 10). Petitioner testified that the injections did help for a short amount of time. (Tr. p. 42). Petitioner testified that from around August of 2021 to September of 2022 she had to file bankruptcy and had significant medical debt that prevented her from getting additional care. (Tr. p. 44).

Petitioner returned for treatment with Dr. Oteng-Bediako on September 28, 2022 due to chronic lower back and neck pain. Bilateral lumbar blocks were provided on October 21, 2022. (Px. 10). Petitioner testified the injection helped her pain for a month or two. (Tr. p. 45).

Petitioner testified she has continually been recommended to treat with a spine surgeon regarding her neck. (Tr. p. 46). She has been unable to see s specialist due to a lack of insurance approval and financial restrictions. (Tr. p. 46).

Petitioner was seen by Dr. Krpan on December 28, 2022. (Px. 15). Dr. Krpan noted she had continued numbness, tingling, and weakness in the left arm without significant treatment in over a year. Dr. Krpan

continued to recommend evaluation with a spine specialist. He continued to opinion that her symptoms remained related to her October 26, 2016 work injury. (Px. 15).

Petitioner testified she attempted to work at Momentum, standing at a table and attempting to get customers to sign up for products. She did not believe she worked even 40 hours at the position which occurred around March of 2019 and had otherwise not worked. (Tr. pp. 49-50).

At hearing, Petitioner testified that she continues to get sharp pains that shoot through her neck. (Tr. p. 47). She has difficulty walking up and down stairs due to pain in her back and hip. (Tr. p. 47). She reported the back and neck pain are constant. (Tr. p. 47). She continues to have difficulty lifting her left arm due to shoulder pain. (Tr. p. 48). Her neck pain aches with weather changes. (Tr. p. 48). She testified that her husband does most of the laundry. (Tr. p. 49). Petitioner testified she still has difficulty hearing from her left ear. She will put her phone to her right ear to talk as it is difficult to hear from the left. (Tr. p. 40). She still has ringing in her ears as well. (Tr. p. 40). Petitioner testified she continues to take Norco, Flexeril, and Advil. (Tr. p. 50).

Dr. Krpan was deposed on June 7, 2023. (Px. 18). Dr. Krpan testified that he relied upon Dr. Henderson's history as well as what Petitioner reported to him regarding Petitioner's injury. He noted that Petitioner immediately became symptomatic after her injury, leading him to believe that the October 26, 2016 injury was the initiating factor. Dr. Krpan noted that the August 1, 2017 EMG findings indicated that her symptoms were coming from the neck and noted that her MRI confirmed that. Dr. Krpan noted that the 5-pound restriction recommended in November 2017 would be permanent until she was evaluated and treated by a spine specialist. Dr. Krpan continued to opine that Petitioner's symptoms were more cervical in nature. He also noted she has left shoulder pathology as well, though it is secondary, and treatment for the shoulder, potentially injections or therapy, could be attempted after the cervical spine is treated. Dr. Krpan continued to opinion that Petitioner's current condition of ill-being was causally related to her October 26, 2016 injury. (Px. 18).

CONCLUSIONS OF LAW

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

17WC013214 (10/26/16)

The Arbitrator finds that an accident did occur that arose out of and in the course of Petitioner's employment by Respondent on October 26, 2016. Petitioner testified that on that date, her hand became stuck when attempting to dislodge boxes from the line, pulling her down the line where she struck her head on a metal pole. Petitioner provided a consistent medical history to her providers and examining physicians. There was no evidence that the accident did not occur as described. Accordingly, the Arbitrator finds that Petitioner suffered an injury that arose out of and in the course of her employment with Respondent on October 26, 2016.

18WC020119 (6/1/18)

The Arbitrator finds that an accident occurred which arose out of and in the course of Petitioner's employment on June 1, 2018. Petitioner testified to slipping in bath oil near her designated line are on that

day. She testified that she advised people of the spill, including a supervisor and maintenance. Petitioner drew a picture of the area in question (RX 21). Petitioner testified to attempting to maneuver around the spill but slipped while turning. The testimony of Christine Fulton does not dispute that an oil spill occurred but that Petitioner, prior to her slip and fall, had made an ill-timed joke about making money off the injury. Having observed Petitioner's demeanor during her testimony the Arbitrator does not find that Petitioner manufactured her slip and fall to profit off of a potential workers' compensation claim. Petitioner's hospital records corroborate her slip in the oil. The Arbitrator acknowledges that Petitioner's later medical history notes several inconsistencies but as far as the limited scope of this present issue, whether an accident occurred, the Arbitrator finds that the evidence supports a finding in favor of Petitioner. Respondent dutifully brought this issue to light at hearing, but the Arbitrator does not find that it amounted to Petitioner intending to commit workers' compensation fraud but instead made an unfortunate and somewhat prophetic joke. Accordingly, the Arbitrator finds that Petitioner suffered and injury that arose out of and in the course of her employment with Respondent on June 1, 2018.

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

17WC013214 (10/26/16)

It is clear from the record that that Petitioner had underwent longstanding treatment for chronic migraine headaches as well as cervical and shoulder complaints. Petitioner testified that she had treated for migraines for years, receiving Botox injections approximately every three months. The Arbitrator notes that Petitioner was seen by her primary care physician five days prior to her injury, on October 21, 2016, for bilateral hand pain and numbness with numbness in her big toes. At that visit, it was recommended she see a neurologist for possible cervical radiculopathy. The Arbitrator notes that records were submitted indicating Petitioner had treated for neck pain following a motor vehicle accident in 2014. The record reveals that Petitioner was symptomatic for migraine immediately prior to the 10/26/16 accident, having missed 10/24/16 and 10/25/16 for migraines. Rx 8. The record is not clear that Petitioner's treatment for her migraines changed course or increased in intensity or frequency following her injury.

It is axiomatic that "a preexisting condition will not preclude an award if the condition was aggravated or accelerated by the employment. The employee need not prove employment was the sole causative factor or even that it was the principal causative factor, but only that it was a causative factor in the resulting injury." *Williams v. Industrial Comm'n.*, 85 Ill. 2d 117, 122 (1981). 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).

Petitioner sought treatment following her accident for a head injury with convenient care records noting she also struck her left arm. She was taken to the hospital and diagnosed with a cervical strain and concussion. When seen by Dr. Schermer three weeks later, she continued to complain of neck pain. Months later, in January 2017, she mentions shoulder pain during her therapy. She was later diagnosed with left shoulder impingement and degenerative disc disease of the cervical spine following MRIs. On May 5, 2017, Dr. Alpert, Respondent's first IME physician, noted that Petitioner's left shoulder MRI demonstrated a partial rotator cuff tear and that her neck MRI demonstrated pinched nerves. Dr. Alpert opined Petitioner was at maximum medical improvement and could return to work without restrictions.

The Arbitrator finds Dr. Alpert's acknowledgment of a partial tear perplexing but when viewed in light of Dr. Krpan, Petitioner's treating physician, and his opinions that Petitioner's complaints do not stem from

shoulder pathology but cervical pathology, the Arbitrator finds Dr. Krpan's testimony unhelpful especially in light of the minimal findings on cervical MRIs and the opinion of Dr. Goldberg.

As it is Petitioner's burden to prove causation by a preponderance of the evidence, the Arbitrator finds that the medical evidence at bar is insufficient. The Arbitrator finds that while Petitioner sustained a compensable accident, she reached MMI in May of 2017 as suggested by Dr. Alpert in his Section 12 report.

18WC020119 (6/1/18)

If a claimant had health problems prior to a work-related, it is claimant's burden to show that the pre-existing condition was aggravated (see *Nunn v. Industrial Comm'n*, 157 Ill.App 3d 470 (1987)) but a claimant with preexisting conditions may recover where a work-related injury aggravated, accelerated, or caused a condition to deteriorate. See *Schroeder v. IWCC* 2017 IL App (4th) 2017 and *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36 (1982).

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). A finder of fact is not bound by an expert opinion on an ultimate issue but may look 'behind' the opinion to examine the underlying facts. *Id.*

Claimant has a substantial pre-accident history of medical treatment for migraine headaches, cervical pain, and shoulder issues. The medical records after June 1, 2018 note a history of a fall at work. The records in themselves support a finding that Petitioner temporarily aggravated her pre-existing issues. When viewed in light of the opinions of Dr. Goldberg, the treating records do not provide enough evidence to stand in contravention of Dr. Goldberg's opinions. Petitioner also had a long-standing history of lumbar issues dating back to 2012.

Dr. Goldberg provided a thorough review of Petitioner's medical history. Dr. Goldberg noted a long-standing history of cervical issues, that MRI studies did not demonstrate herniations or nerve compression that would substantiate left arm/shoulder issues, and that her treatment was for subjective complaints from Petitioner. Dr. Goldberg opined that Petitioner endured a sprain strain and would have reached MMI 12 weeks after her accident.

As it is Petitioner's burden to prove causation by a preponderance of the evidence, the Arbitrator finds that the medical evidence at bar is insufficient. The Arbitrator finds the opinion and summary provided by Dr. Goldberg to be persuasive. Petitioner sustained a temporary aggravation to her pre-existing issues and reached MMI 12 weeks after her injury or on August 24, 2018.

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?

17WC013214 (10/26/16)

Having found that Petitioner sustained an accident that arose out of and in the course of her Employment and reached MMI on or about May 9, 2017 pursuant to the opinion of Dr. Alpert, the Arbitrator awards payment of the reasonable and related medical expenses rendered to Petitioner and submitted into evidence for the dates of October 26, 2016 through May 9, 2017. The Arbitrator finds the opinions of Dr. Alpert and Dr. Goldberg more persuasive than the records of Dr. Khan. Medical treatment rendered beyond May 9, 2017 is denied.

18WC020119 (6/1/18)

Having found that Petitioner sustained an accident that arose out of and in the course of her Employment and reached MMI on or about August 24, 2018 pursuant to the opinion of Dr. Goldberg, the Arbitrator awards payment of the reasonable and related medical expenses rendered to Petitioner and submitted into evidence for the dates of June 1, 2018 through August 24, 2018. The Arbitrator finds the opinion of Dr. Goldberg to be more persuasive than the opinion of Dr. Krpan. Medical treatment rendered beyond August 24, 2018 is denied.

K. What temporary benefits are in dispute?

17WC013214 (10/26/16)

The Arbitrator incorporates his responses to the issues of accident, causation, and medical bills herein. Petitioner was taken off work after her injury and returned on November 7, 2016. She was taken off work again on April 13, 2017. The Arbitrator finds that Petitioner was temporarily totally disabled from October 27, 2016 through November 6, 2016, and April 13, 2017 through May 9, 2017 when she reached MMI and was capable of full duty work according to Dr. Alpert. Accordingly, Petitioner is entitled to 5 and 4/7 weeks of temporary total disability benefits.

18WC020119 (6/1/18).

The Arbitrator incorporates his responses to the issues of accident, causation, and medical bills herein. Petitioner was taken off work by Dr. Schermer following her injury. Dr. Krpan kept Petitioner on a five-pound restriction after that which was not accommodated. The Arbitrator finds that Petitioner was temporarily and totally disabled from June 1, 2018 through August 24, 2018 when she reached MMI and was capable of full duty work according to Dr. Goldberg. Accordingly, Petitioner is entitled to 12 weeks of temporary total disability benefits at the rate of 260.57 per week.

O. Is Petitioner entitled to prospective medical care?

The Arbitrator incorporates his responses to the issues of accident, causation, and medical bills herein. Having found that Petitioner has reached MMI for both consolidated accidents with dates of October 26, 2016 and June 1, 2018 the Arbitrator denies any prospective medical care.

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

Having found that Petitioner has reached MMI on the consolidated claims and noting that the submitted request for hearing/stip sheet that the nature and extent of the injury is in dispute (See AX1, Transcript p. 7) the Arbitrator finds as follows:

Considering the factors enumerated in Section 8.1b, the Arbitrator notes that an AMA impairment rating was nor provided and, as such, is not factored into this determination. Petitioner was employed as a processing auditor in a factory and, while kept off work or on restrictions by her treating doctors, was returned to full duty work by several Section 12 physicians. This factor is given moderate weight. Petitioner was 44 years old at the time of her injury. Since she has many working years ahead of her this factor is given moderate weight. Concerning factor (iv), although Petitioner has not returned to her work duties the credible evidence supports a finding that she was capable of returning to her job pursuant to the opinions of Drs. Alpert and Goldberg. This factor is given some weight. Finally, as a result of her accident, she underwent reasonable and related conservative care to her lower back, cervical spine, left shoulder, and head (regarding migraines and potential concussion treatment). Ongoing care is disputed but the Arbitrator has found the opinions of Drs. Alpert and Goldberg to be persuasive regarding MMI dates. The Arbitrator notes the records demonstrated subjective complaints for these body parts and ensuing conservative treatment. Considering the factors above, the Arbitrator awards 7.5% loss of use of the person as a whole.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC020119
Case Name	Meredith Casazza v. Bon Ton Stores, Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0010
Number of Pages of Decision	6
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Jason Esmond
Respondent Attorney	William Brewster

DATE FILED: 1/10/2025

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Meredith Casazza,

Petitioner,

vs. NO: 18 WC 20119

Bon Ton Stores, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the corrected Decision of the Arbitrator filed May 20, 2024 is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $21,900.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

JANUARY 10, 2025
O: 12/19/24
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC020119
Case Name	Meredith Casazza v. Bon Ton Stores, Inc
Consolidated Cases	
Proceeding Type	
Decision Type	***Corrected Decision***
Commission Decision Number	
Number of Pages of Decision	3
Decision Issued By	Gerald Napleton, Arbitrator

Petitioner Attorney	Jason Esmond
Respondent Attorney	William Brewster

DATE FILED: 5/20/2024

/s/Gerald Napleton, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF MAY 14, 2024 5.165%

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
CORRECTED ARBITRATION DECISION

Meredith Casazza
Employee/Petitioner
v.

Case # **18 WC 20119**

Bon Ton Distribution Center
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Napleton**, Arbitrator of the Commission, in the city of **Rockford**, on **February 23, 2023 and August 31, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **June 1, 2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

Timely notice of these accidents ***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's average weekly wage was **$390.86**.

On the date of accident, Petitioner was **46** years of age, ***married*** with **0** dependent children.

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

ORDER

The Respondent shall pay the petitioner temporary total disability benefits of $ 260.57 /week for 12 weeks, from July 1, 2018 through August 24, 2018, as suggested by Dr. Goldberg's Section 12 report and provided in Section 8(b) of the Act**.**

The respondent shall pay for necessary medical services accrued through August 24, 2018, as provided in Section 8(a) and 8.2 of the Act and consistent with the medical fee schedule.

Respondent shall pay permanent partial disability benefits in the amount of $234.52 for 37 and ½ weeks reflecting 7.5% loss of use of the person as a whole.

SEE CONSOLIDATED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN **17WC013214**

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

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

/s/ Gerald W Napleton
Signature of Arbitrator

ICArbDec **May 20, 2024**

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC033477
Case Name	Jimmie L. Tarver v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) – Remanded to Arb. Llerena
Decision Type	Commission Decision
Commission Decision Number	25IWCC0011
Number of Pages of Decision	13
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	John Budin
Respondent Attorney	Andrew Zasuwa

DATE FILED: 1/13/2025

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JIMMIE L. TARVER,

Petitioner,

vs. NO: 21 WC 33477

CHICAGO TRANSIT AUTHORITY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, prospective medical treatment, temporary total disability benefits, and whether Petitioner worked outside his restrictions and received income while receiving temporary total disability benefits and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission affirms the Arbitrator's Decision as to causal connection and prospective medical treatment, however, modifies the award of medical expenses to reflect an 8(j) credit to Respondent and modifies the award of temporary total disability benefits as set forth below:

On page 7 of the Decision, in the 4th line under Issue "L", the Commission strikes "2002" and replaces it with "2022".

On page 7 of the Decision, in the first paragraph under Issue "L", the Commission strikes "However, the Arbitrator notes that in *Paoletti v. Industrial Commission*…" through the end of the paragraph.

The Commission strikes the third paragraph under Issue "L" on page 7 of the Decision.

In the last paragraph on page 7, the Commission strikes "April 23, 2022, through July 27, 2023" and replaces it with "December 5, 2021, through July 27, 2023, for a period of 85-5/7 weeks." The Commission also modifies the paragraph to add: "The Respondent shall receive a credit for temporary total disability benefits paid in the amount of $46,841.76 for the period from December 5, 2021, through April 22, 2023, a period of 72 weeks pursuant to Rx38."

Additionally, the Commission modifies the first paragraph of the Order section of the Arbitrator's Decision to reflect the period of temporary total disability benefits of $650.58 per week for 85-5/7 weeks, commencing December 5, 2021, through July 27, 2023.

Finally, the Commission modifies the Arbitrator's award of medical expenses in both the Order section of the Decision, as well as under Issue (J) to award Respondent an 8(j) credit as supported by Rx39.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $650.58 per week for a period of 85-5/7 weeks, from December 5, 2021 through July 27, 2023, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $131,825.18 for medical expenses under §8(a) of the Act subject to the fee schedule in §8.2 of the Act. Respondent shall be given a credit for any bills paid pursuant to Rx39.

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.

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.

JANUARY 13, 2025

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

MEP/dmm
O: 121024
49

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC033477
Case Name	Jimmie L. Tarver v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	19(b)/8(a) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	John Budin
Respondent Attorney	Andrew Zasuwa

DATE FILED: 12/29/2023

THE INTEREST RATE FOR THE WEEK OF DECEMBER 27, 2023 5.08%

/s/Elaine Llerena, Arbitrator

Signature

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

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

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

Jimmie L. Tarver
Employee/Petitioner
v.
Chicago Transit Authority
Employer/Respondent

Case # **21** WC **033477**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **June 28, 2023 & July 27, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **December 4, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**50,745.24**; the average weekly wage was $**975.87**.

On the date of accident, Petitioner was **48** years of age, ***married*** with **1** dependent children.

Respondent shall be given a credit of $**46,841.76** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**46,841.76**.

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 $650.58 per week for 13-5/7 weeks, commencing April 23, 2023, through July 27, 2023, as provided in Section 8(b) of the Act.

Respondent shall pay outstanding reasonable and necessary medical services totaling $131,825.18, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for prospective medical care in the form of right total knee arthroplasty recommended by Dr. Sclamberg as provided in Sections 8(a) and 8.2 of the Act.

Petitioner’s claim for penalties and attorney’s fees is denied.

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

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

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

Elaine Llerena

DECEMBER 29, 2023

Signature of Arbitrator

ICArbDec19(b)

FINDINGS OF FACT

This matter proceeded to hearing on June 28, 2023, in Chicago, Illinois before Arbitrator Elaine Llerena on Petitioner's Petition for Immediate Hearing under Sections 19(b)/8(a). The issues in dispute were causal connection, medical expenses, temporary total disability benefits, whether Petitioner worked outside his work restrictions and received income while receiving temporary total disability benefits, prospective medical care, and penalties and fees. Arbitrator's Exhibit 1 (AX1).

Job Duties and Accident

Petitioner testified that he had been employed as a bus operator for Respondent since January 1, 2020. (T. 14) On December 4, 2021, Petitioner was stopped at a light at Washington Street near Michigan Avenue in Chicago, Illinois. (T. 21) When the light turned green, he drove the bus forward and heard a thud from in front of the bus. (T. 22) He immediately stopped the bus and got out to investigate. (T. 23) Petitioner did not strike anyone with bus. (T. 21-23) While outside the bus he suddenly became surrounded, and was attacked by a mob of angry and aggressive teenagers. (T. 24-25) Petitioner felt his right knee buckle as he fell to the ground. (T.25) The mob punched, kicked, and stomped Petitioner repeatedly. (T.25, 26, 28) The beating continued until the Chicago Police arrived at the scene. (T. 28)

Prior Medical Condition

Petitioner testified that he had no problems with his physical condition up through December 4, 2021, was not on medication, and was not under a doctor's care. (T. 17-18) He testified that he had never injured his left shoulder or head prior to December 4, 2021. (T. 17) He acknowledged that he had injured his right knee previously playing semi-pro football years earlier and underwent an ACL replacement about 30 years ago. (T. 17-18)

Summary of Medical Records

Petitioner was transported by ambulance to Northwestern Medical Emergency Medicine on December 4, 2021. (PX2 & PX3) Petitioner reported the assault and complained of neck and right knee soreness and jaw and mouth pain. (PX3, pg. 4) Dr. Demetrios Kyriacou found no broken bones or brain injury. (PX3, pg. 19) Dr. Kyriacou prescribed Tylenol and ibuprofen, updated Petitioner's tetanus shot, and advised Petitioner that he might have serious aches and pains over the next few days.

Petitioner followed up at Chicago Pain and Orthopedic Institute and saw Melanie Coderre PA-C on December 6, 2021. (PX4, pgs. 2-5) Petitioner described the assault on December 4, 2021, and complained of injuries to the low back, neck, right knee, bilateral shoulders, facial lacerations and headaches. Petitioner reported he had not been able to sleep due to being traumatized by the assault. Coderre, supervised by Dr. Steven Sclamberg, diagnosed Petitioner as having right knee pain and effusion, bilateral shoulder pain, neck pain, thoracic pain and low back pain. Coderre ordered diagnostic exams, prescribed Medrol Dosepak, referred Petitioner to a psychiatrist and pain management, and took Petitioner off work.

On December 14, 2021, Petitioner underwent an MRI of the right knee which showed a poorly visualized ACL graft, suspected complete tear, medial and lateral meniscal tears, osteoarthritis with chondromalacia and joint effusion. (PX5)

Petitioner saw Dr. Joseph Rabi on December 23, 2021. (PX4, pgs. 6-9) Dr. Rabi noted Petitioner had undergone a lumbar spine MRI that revealed a disc bulge at L5-S1 and a thoracic spine MRI that did not show

any disc herniation. Dr. Rabi diagnosed Petitioner as having cervical facet syndrome, lumbar facet syndrome, thoracic spine sprain, right knee injury, occipital neuralgia and concussion syndrome. Dr. Rabi continued Petitioner's physical therapy and psychological treatment, prescribed medications and kept Petitioner off work.

Petitioner followed up with Dr. Sclamberg on December 27, 2021. (PX4, pgs. 10-13) Dr. Sclamberg reviewed the right knee MRI and noted that Petitioner had undergone a left shoulder MRI that showed high-grade rotator cuff tearing. Dr. Sclamberg diagnosed Petitioner with left shoulder impingement with rotator cuff tearing, right shoulder impingement syndrome, and right knee effusion with ACL and meniscal tearing. Dr. Sclamberg recommended left shoulder arthroscopy with subacromial decompression and rotator cuff repair. On January 10, 2021, Coderre reviewed a right knee x-ray taken on December 30, 2021, that showed tricompartmental arthritis from mild DJD/OA. (PX4, pgs. 14-17; PX6) Coderre also reviewed x-rays of the shoulders which she noted showed no fractures and the right knee MRI. (PX4, pgs. 14-17) Coderre recommended the left shoulder surgery recommended by Dr. Sclamberg along with a right knee evaluation under anesthesia.

On January 31, 2022, Coderre noted that Petitioner had undergone a left shoulder arthroscopy with rotator cuff repair, subacromial decompression, synovectomy and debridement on January 20, 2022. (PX4, pgs. 18-20) Coderre indicated that Petitioner was to undergo physical therapy for the left shoulder and right knee. Petitioner returned to Dr. Rabi on February 17, 2022, complaining of ongoing shoulder, lumbar and mid back pain. (PX4, pgs. 21-24) Dr. Rabi continued Petitioner's physical therapy. On March 14, 2022, Petitioner saw Coderre and complained of ongoing right knee pain and swelling. (PX4, pgs. 25-27) Coderre and Petitioner discussed surgical treatment for the knee.

On April 18, 2022, Dr. Sclamberg performed a right knee arthroscopy with anterior cruciate ligament reconstruction revision using anterior tibialis allograft, a partial medial meniscectomy, and a synovectomy and debridement. (PX7)

Petitioner followed up with Dr. Sclamberg on May 2, 2022. (PX4, pgs. 32-34) Dr. Sclamberg began weaning Petitioner off the crutches and knee brace and continued physical therapy. Petitioner continued post-operative follow ups with Dr. Sclamberg. (PX4, pgs. 35-45) On October 24, 2022, Petitioner complained of swelling and a feeling of instability in the right knee. (PX4, pg. 46) Petitioner also complained of an increase in pain in the posterior shoulder and along the trapezius muscle, occasional sharp pain that extended down the arm, numbness and tingling in the hand, and pain and difficulty sleeping on his left side. Dr. Sclamberg ordered an MRI of the right knee and continued physical therapy for the right knee and left shoulder.

Petitioner underwent the right knee MRI on November 4, 2022, the results of which showed medial and lateral compartment arthritis and DJD/OA with underlying fibrillation and tear of the menisci, patellofemoral arthritis is DJD with moderate-severe chondromalacia patella, associated effusion and thin Baker's cyst, and femoral and tibial tunnel cysts. (PX9)

On November 14, 2022, Dr. Sclamberg reviewed the MRI and diagnosed Petitioner with right knee pain and effusion. (PX4, pgs. 50-53) Petitioner reported a new injury to the left shoulder during physical therapy. Dr. Sclamberg ordered weightbearing x-rays of the right knee and an MRI of the left shoulder. Petitioner underwent the left shoulder MRI on November 21, 2022, the result of which showed moderate tricompartmental osteoarthritis, probable small suprapatellar effusion and no acute osseous abnormality. (PX10) On November 28, 2022, Dr. Sclamberg reviewed the MRI and diagnosed Petitioner as being status post left shoulder arthroscopy with a new injury in physical therapy and status post right knee ACL osteoarthritis. (PX4, pgs. 54-57) Dr. Sclamberg recommended a right total knee arthroplasty and injected Petitioner's left shoulder. On December 12, 2022, Petitioner reported temporary improvement in his shoulder following the injection. (PX4,

pgs. 58-61) Petitioner reported that he is unable to do his daily workouts in the gym due to his ongoing right knee and left shoulder pain. Dr. Sclamberg diagnosed Petitioner with partial thickness rotator cuff tearing of the left shoulder and right knee ACL with osteoarthritis. Dr. Sclamberg recommended right total knee arthroplasty and revision arthroscopy of the left shoulder with subacromial decompression, possible rotator cuff repair, synovectomy and debridement.

On January 23, 2023, Dr. Sclamberg noted Petitioner had undergone a left shoulder arthroscopy with subacromial decompression, synovectomy and debridement on January 9, 2023. (PX4, pgs. 62-64) Dr. Sclamberg continued physical therapy and kept Petitioner off work. On March 6, 2023, Petitioner reported improvement with his left shoulder, but still complained of soreness. (PX4, pgs. 65-68) Dr. Sclamberg continued to recommend right knee surgery and ordered that Petitioner continue physical therapy.

Petitioner saw Dr. Gabriel Levi at Orthopaedic and Rehabilitation Centers, S.C., on February 8, 2023. (PX1, pgs. 2-8) Petitioner described the December 4, 2021, assault and complained of ongoing right knee pain. Dr. Levi noted Dr. Sclamberg had recommended a right total knee replacement and agreed with said treatment plan. Dr. Levi kept Petitioner off work. Petitioner continued to follow up with Dr. Levi, who noted that the right knee surgery had not been approved. (PX1, pgs. 11-22) Dr. Levi kept Petitioner off work.

Dr. Sclamberg kept Petitioner off work throughout his treatment. (PX4) Along with work status sheets indicating that Petitioner could not work, Dr. Sclamberg completed physical capacities evaluations belonging to Respondent during each visit which indicated that Petitioner could not work at any hours of the day and could sit, stand, walk, drive a bus and operate machinery 0 hours a day, and could lift 0 pounds.

Utilization Reviews

Respondent's Exhibit 17 thru 36 are utilization review (UR) determination reports denying the following recommended treatments and medications by Dr. Sclamberg: TENS 4 Lead Large Area/Multiple Nerve Stimulate, Docusate Sodium, Ondansetron, Lidopro ointment and topical patch, game-ready cold compression therapy, Lidothol pad, left shoulder surgery and right knee injection Petitioner underwent on January 20, 2022, H-Wave Homecare System, additional left shoulder and right knee chiropractic therapy, and continued physical therapy for the neck and low back.

Petitioner's other jobs

Petitioner testified that his other sources of income, other than working for Respondent, are from being a barber and a licensed insurance agent who sells life insurance. (T. 15) Petitioner testified that he had done these jobs for 20-plus years. *Id.* Petitioner explained that he worked as a barber on his days off from working for Respondent. (T. 37-38) Petitioner still works as a barber, but it depends on how he feels. (T. 39) Petitioner explained that his clientele dwindled significantly when he started working for Respondent and he mostly just sits around and talks at the barbershop. *Id.* On July 21, 2022, Petitioner posted a picture, about 3-4 years old, showing a haircut he had done on Facebook in order to drum up more business. (T. 50-51, RX3) Petitioner testified that the type of haircuts he currently does are mostly low and even, which take 15-20 minutes and he does while sitting on a stool most of the time and using clippers. (T. 51-53)

Petitioner did not sell any new life insurance policies in 2022 or 2023. (T. 41) The income on his tax returns from JTL insurance are residuals from prior policies sold. (T. 40-41) Petitioner started JTL insurance in July of 2021 in order to keep his license current. (T. 42) Petitioner testified that in 2020 he rented workspace from Southwest Cremation to do business. (T. 55-56, RX5) Petitioner is also licensed to sell insurance in Texas, Alabama and Michigan. (T. 58-60, RX8, RX10 & RX12)

Petitioner's Current Condition

Petitioner wishes to undergo the recommended right knee surgery so that he can return to his job as bus operator for Respondent and to regain the life he had prior to December 4, 2021. (T. 33-35, 85)

Petitioner acknowledged that both Dr. Sclamberg and Dr. Levi have kept him off work. (T. 71-84) Petitioner has not received temporary total disability benefits since April 22, 2023. (T. 37) This has caused him great stress. *Id.* Petitioner testified that in June of 2023, he had a fainting spell at church. (T. 87-88) His fellow parishioners called an ambulance, and he was sent to the emergency room where he related that the stress of no income was causing him mental anguish. (T. 87-89; PX1, pg.19)

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 long established Illinois law that an occupational accident need not be the sole, or primary, causative factor in the resulting condition of ill being, as long as it was a causative fact. *Sisbro v. Illinois Industrial Commission*, 207 Ill. 2d 193, 205 (2003). An employee need only prove that some act or phase of the employment was a causative factor in the resulting injury. *Land & Lakes Company v. Industrial Commission*, 359 Ill. App. 3d 582, 592 (2005).

Petitioner testified and the medical records show that Petitioner did not have any physical ailments nor was he undergoing treatment for any physical ailments prior to December 4, 2021. Petitioner had undergone right knee surgery 30 years before and had not undergone any additional treatment to the right knee following that surgery. There is no dispute that Petitioner was assaulted on December 4, 2021, while working for Respondent. The medical records show that Petitioner sustained multiple injuries during the assault, including injuries to the neck, low back, shoulders, right knee and face. There is no evidence of any intervening accident since December 4, 2021.

Based on the above, the Arbitrator finds that Petitioner's current conditions of ill-being are causally related to the December 4, 2021, work accident.

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

The Arbitrator notes that Respondent has disputed many of the treatments and medications ordered by Dr. Sclamberg via UR. The Arbitrator also notes that the diagnostic exams and medical records provide support for the all the conditions diagnosed as a result of the December 4, 2021, assault. As such, the Arbitrator finds the findings and opinions of Petitioner's treating physicians more persuasive than the UR reports.

Based on the above and the Arbitrator's finding that Petitioner's current condition of ill-being is causally related to the December 4, 2021, work accident, the Arbitrator finds Petitioner's treatment was reasonable and necessary to treat the injuries sustained on December 4, 2021. Therefore, Respondent shall pay for outstanding medical bills as follows: Northwestern Memorial Hospital ($403.09), Chicago Pain & Orthopedic Institute ($31,100.00), Accredited Ambulatory Care, LLC ($89,582.09), Windy City

Anesthesia, P.C. ($5,573.00), Electronic Waveform Lab, Inc. ($3,960.00), and Orthopaedic & Rehabilitation Centers ($1,207.00), totaling $131,825.18, pursuant to Sections 8(a) and 8.2 of the Act.

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

The Arbitrator notes her earlier finding that Petitioner's current conditions of ill-being are causally related to the December 4, 2021, work accident and that the findings and opinions of Petitioner's treating physicians are more persuasive than the UR reports. The Arbitrator further notes that Dr. Sclamberg has recommended right knee surgery to treat Petitioner's ongoing right knee problems since the December 4, 2021, work accident.

Based on the above, the Arbitrator finds that Petitioner is entitled to prospective medical care pursuant to Section 8(a) of the Act. Therefore, Respondent shall authorize and pay for prospective medical care in the form of a right total knee arthroplasty recommended by Dr. Sclamberg as provided in Sections 8(a) and 8.2 of the Act.

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

The Arbitrator notes that Petitioner has not reached maximum medical improvement (MMI) regarding his conditions of ill-being. The Arbitrator further notes that Petitioner's temporary total disability benefits were terminated on April 22, 2023. (RX38) In support of its termination of temporary total disability benefits, Respondent provided Petitioner's 2002 tax return showing he received $14,084.00 in gross receipts or sales. (RX16, pg. 9) Respondent argues that since Petitioner was collecting temporary total disability benefits in 2022, Respondent is entitled to a credit on the benefits it paid to Petitioner since Petitioner was working and earning an income. However, the Arbitrator notes that in *Paoletti v. Industrial Commission*, 279 Ill. App. 3d 988 (1st Dist. 1996), the Court held that a claimant's business income should not be included in the calculation of average weekly wage. The Court stated, "[w]e would be legislating from the bench if we were to hold that 'actual earnings' should be construed to include net profit." *Paoletti,* 279 Ill. App. 3d at 996, *see also Mansfield v. Illinois Workers' Compensation Commission*, 2013 Ill. App. (2d) 120909WC P.40-45. Therefore, business income is not included in the calculation of Petitioner's average weekly wage, and it is not determinative in suspending or terminating temporary total disability benefits.

The Arbitrator further notes that Petitioner testified he would go to the barber shop and work when he was able, but mostly sat around and talked. Petitioner also testified that he received residuals from insurance policies he had sold in the past. In *J.M. Jones Company v. Industrial Commission*, 71 Ill. 2d 368 (1978), the Court held that evidence that a claimant has been able to earn occasional wages or perform certain useful services does not preclude a finding of total disability. *See also E. R. Moore Co. v. Industrial Com.* (1978), 71 Ill. 2d 353, 361-62.

It is Respondent's burden to provide a reasonable basis for the denial of statutory benefits under the Act. *Oliver v. IWCC*, 2015 Ill. App. (1st) 143836WC, P.47; *McDonalds v. IWCC,* 2022 Ill. App. (1st) 210928WC, P. 68. Based on the above, Respondent has not met its burden.

Based on the above, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from April 23, 2022, through July 27, 2023.

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

Regarding the unpaid medical expenses, the Arbitrator notes that Respondent relied on the UR reports for denying certain treatments and medications. While the Arbitrator does not find the UR reports persuasive, it does not find Respondent's reliance on them vexatious or unreasonable.

Regarding the temporary total disability benefits, the Arbitrator notes that while it is clear that Petitioner has not reached MMI and that his work is sporadic, at best, it was not unreasonable for Respondent to believe that Petitioner was gainfully and consistently employed while receiving temporary total disability benefits based on the social media posts from Petitioner indicating his ongoing work as a barber. (RX1-RX4). As such, the Arbitrator does not find Respondent's behavior vexatious or unreasonable.

Based on the above, the Arbitrator denies Petitioner's claim for penalties and attorney's fees.

WITH RESPECT TO ISSUE (O), THE ARBITRATOR FINDS AS FOLLOWS:

As noted above in issue L, business income is not determinative of whether Petitioner is temporarily totally disabled. Additionally, as explained in In *J.M. Jones Company v. Industrial Commission*, 71 Ill. 2d 368 (1978), the ability to earn occasional wages or perform certain useful services does not preclude a finding of total disability. *See also E. R. Moore Co. v. Industrial Com.* (1978), 71 Ill. 2d 353, 361-62. Petitioner testified that his work as a barber was sporadic, at best.

Based on the above, the Arbitrator finds that Petitioner did not work outside his work restrictions while receiving temporary total disability benefits.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC023658
Case Name	Lakisha McDonald v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) – Remanded to Arb. Llerena
Decision Type	Commission Decision
Commission Decision Number	25IWCC0012
Number of Pages of Decision	10
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Al Koritsaris
Respondent Attorney	Andrew Zasuwa

DATE FILED: 1/13/2025

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LAKISHA MCDONALD,

Petitioner,

vs. NO: 22 WC 23658

CHICAGO TRANSIT AUTHORITY,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission affirms the Decision of the Arbitrator, but corrects the following clerical errors:

In the Findings Section of the Arbitrator's Decision, the Commission corrects the Petitioner's age from 33 years of age to 45 years of age.

In the last paragraph on page 6 of the Arbitrator's Decision under Issue (J), the Commission modifies the award for Illinois Orthopedic Network from $11,134.44 to $11,134.55;

the award for Bone & Joint Clinic from $2,500.00 to $21,403.35; and Molecular Imaging from $20,400.35 to $2,500.00. The Commission does not modify the Award for Trinity Hospital. Based on the corrected totals, the Commission modifies the medical expenses award from $40,048.24 to $41,051.35, pursuant to Sections 8(a) and 8.2 of the Act, under Issue (J) and in the Order Section of the Decision.

Finally, the Commission modifies the start date of temporary total disability benefits from September 2, 2022, to commence on September 3, 2022.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 30, 2024 is hereby affirmed and adopted.

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

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

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

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.

JANUARY 13, 2025

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

MEP/dmm
O: 121024
49

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC023658
Case Name	Lakisha McDonald v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	19(b)/8(a) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Al Koritsaris
Respondent Attorney	Andrew Zasuwa

DATE FILED: 1/30/2024

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

/s/Elaine Llerena, Arbitrator

Signature

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

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

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

Lakisha McDonald Case # **22** WC **023658**
Employee/Petitioner
v.
Chicago Transit Authority
Employer/Respondent

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

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **September 2, 2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**76,739.00**; the average weekly wage was $**1,475.75**.

On the date of accident, Petitioner was **33** years of age, ***single*** with **3** dependent children.

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

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $983.83 per week for 51-6/7 weeks, commencing September 2, 2022, through August 31, 2023, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services totaling $$40,048.24, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for L4-5 and L5-S1 medial branch rhizotomy as recommended by Dr. Krishna Chunduri pursuant to Sections 8(a) and 8.2 of the Act.

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

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

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

Signature of Arbitrator

JANUARY 30, 2024

FINDINGS OF FACT

This matter proceeded to hearing on August 31, 2023, in Chicago, Illinois before Arbitrator Elaine Llerena on Petitioner's Petition for Immediate Hearing under Section 19(b)/8(a). The issues in dispute were accident, causal connection, medical expenses, temporary total disability benefits, and prospective medical care. Arbitrator's Exhibit 1 (AX1).

Testimony/ Job Duties/Accident

On September 2, 2022, Petitioner was employed as a bus operator for Respondent. (T. 6-7) On that day, she was operating a bus when she was involved in a collision with another vehicle. (T. 6-8) The accident was captured by surveillance cameras that are affixed to various sections of the bus. (RX1)

Petitioner testified that she was injured when her bus was struck by another vehicle and that the impact occurred at the rear of the bus and was heavy. (T. 7-8) She testified that the bus was at a complete stop at the time of the collision. (T. 8, RX1) Upon impact, Petitioner was forced into a whiplash movement, moving her back and then forward. (T. 8-9, RX1) Petitioner was taken by ambulance to Trinity Hospital. (T. 9) Petitioner testified that she felt immediate pain in her abdomen and her back following the collision and that the next morning she began having lower back pain with numbness traveling down her left leg. (T. 18-19)

On cross examination, Petitioner testified that she received a PPP loan during the COVID-19 pandemic. (T. 31-32) Petitioner explained that she owns a building that she lives in and that she also rents out units. (T. 32-33) Petitioner also testified that she took out the loan to help her pay her maintenance employees on site during the pandemic. (T. 33-35)

Prior Medical Condition

Petitioner testified that she had injured her lower back approximately twenty (20) years before the September 2, 2022, accident. (T. 10) Petitioner underwent treatment for her lower back, which included physical therapy, and then returned to work full duty. (T. 11) Petitioner also sought treatment for lower back pain in 2015, seven (7) years before the September 2, 2022, accident. *Id.* She testified that there was no inciting event, but just developed an onset of low back pain. *Id.* Petitioner testified that she treated at Concentra for a few months and was prescribed medication. (T. 12) The medication eliminated her pain and she returned to her normal duties. (T. 12-13) Petitioner testified that she had no further treatment for lower back pain until the September 2, 2022, accident. (T. 13) Petitioner was working full duty with no physical restrictions on September 2, 2022. (T. 7)

The last record from Concentra, submitted by Respondent, is dated May 6, 2015. (RX2, pg. 13) No other records documenting any further lower back treatment or complaints of pain by Petitioner were submitted by Respondent.

Summary of Medical Records

Immediately following the accident, Petitioner was treated at the emergency room at Trinity Hospital. (PX1, pg. 4) Petitioner complained of abdominal pain and neck pain. X-rays were performed of her cervical spine, she was provided a ketorolac injection for pain, prescribed Flexeril and taken off work pending. (PX1, pg. 13) A CT scan was also performed of her abdomen, which revealed a small hiatal hernia. (PX1, pgs. 46-47)

On September 7, 2022, Petitioner saw Dr. Krishna Chunduri at the Illinois Orthopedic Network, with complaints of neck pain, low back pain and abdominal pain. (PX5, pg. 2) Petitioner reported neck pain that radiated down her left arm with numbness and tingling in her hand and low back pain with numbness traveling down her left leg and into her left foot. Physical exam revealed limited range of motion with flexion and rotation of the neck as well as reduced range of motion of the lumbar spine with flexion and extension as well as a positive straight leg raise test bilaterally. (PX5, pg. 3) Dr. Chunduri prescribed cyclobenzaprine and lidocaine patches, ordered a lumbar spine MRI and physical therapy, and kept Petitioner off work.

Petitioner began physical therapy on September 12, 2022, at Bone and Joint Clinic. (PX3, pgs. 145-149) Petitioner underwent physical therapy for several months, with limited improvement of her low back symptoms but with almost complete relief of her neck pain. (PX3)

On October 7, 2002, Petitioner returned to Dr. Chunduri for a telephonic follow-up visit. (PX5, pg. 8) Dr. Chunduri noted improvement in Petitioner's neck pain, but persistent lower back pain with associated radicular symptoms. Dr. Chunduri kept Petitioner off work, continued physical therapy and ordered an MRI. (PXx5, pg. 9)

On October 21, 2022, Petitioner underwent a lumbar spine MRI at Molecular Imaging Advantage MRI, the results of which revealed mild straightening of lumbar lordosis likely due to muscle spasm, T11 disc desiccation, multilevel disc bulges extending from L3-S1 levels with most marked findings at the L4-L5 level compressing of indentation of the anterior thecal sac and mild narrowing of bilateral lateral recesses and neural foramina. (PX5, pgs. 13-14)

On November 1, 2022, she returned for an in-person follow-up with Dr. Chunduri. (PX5, pgs. 17-18) Petitioner continued to complain of severe lower back pain with numbness traveling down her buttocks and left leg. Dr. Chunduri diagnosed Petitioner as having a facet injury consistent with the mechanism of injury, a rear-end collision. Dr. Chunduri continued physical therapy, kept Petitioner off work and ordered a L4-5, L5-S1 diagnostic medial branch block. Petitioner continued to follow up with Dr. Chunduri, during which time Dr. Chunduri kept Petitioner off work and continued to recommend the medial branch block. (PX5, pgs. 19-30)

On July 13, 2023, Petitioner underwent the diagnostic medial branch block injection, performed by Dr. Chunduri. (PX5, pg. 34) On July 20, 2023, Petitioner returned to Dr. Chunduri and reported temporary complete relief of her symptoms following the injection. Dr. Chunduri confirmed the left-sided facet joint injury at L4-5 and L5-S1 and ordered left L4-5 and L5-S1 medial branch rhizotomy injections in order to provide Petitioner prolonged and sustained relief. Petitioner testified that she was scheduled to have the aforementioned procedures performed by Dr. Chunduri on September 13, 2023. (T. 25)

Petitioner's Current Condition

Petitioner has not worked since the September 2, 2022, accident. (T. 16, 22, 24) Petitioner testified that her abdomen pain has resolved and that her neck pain has improved and is tolerable. (T. 21) Petitioner testified that she continues to have low back pain with numbness traveling down her left leg. (T. 18-19)

Petitioner testified that she did not receive any workers compensation benefits after being taken off work. (T. 16)

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

An employee's injury is compensable under the Act only if it arises out of and in the course of his employment. 820 ILCS 305/2. "In the course of" employment refers to the time, place and circumstances under which the accident occurred. *Lee v. Industrial Comm'n,* 167 Ill.2d 77, 81 (1995). For an injury to 'arise out of' the employment its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Caterpillar Tractor Co. v. Industrial Comm'n,* 129 Ill.2d 52, 58 (1989). If an employee is exposed to a risk common to the regular public to a greater degree than other persons, the accident is also said to arise out of the employee's employment. *Id* at 58-59. Further, an injury arises out of an employment related risk when the claimant is engaged in an activity that she might reasonably be expected to perform incident to her duties. *Accolade v. Illinois Worker Compensation Comm'n*, 371 Ill. Dec. 713 (App.Ct. 3d Dist. 2013), *Young v. Illinois Workers Compensation Comm'n*, 383 Ill.Dec. 131. (App. Ct. 4d Dist. 2014).

Petitioner was working as a bus operator for Respondent on September 2, 2022. She was performing her bus operator duties when the accident occurred. Further, Petitioner was engaged in an activity that she reasonably was expected to perform incident to her duties, operating the bus. Additionally, the risk of being involved in an automobile collision is greater for Petitioner than that of the general public due to the nature of having to operate a bus, which is not commonly operated by the general public.

Based on the above, the Arbitrator finds that Petitioner sustained injuries arising out of and in the course of her employment with Respondent during the September 2, 2022, work accident.

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

It is well settled that employers take their employees as they find them. Therefore, even though an employee may have a pre-existing condition which may make him more susceptible to an injury, compensation for the 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*, 92 Ill. 2d 30, 36, 440 N.E.2d 861 (1982). Furthermore, an accidental injury need not be the sole causative factor, or even the primary causative factor as long as it was a causative factor in the resulting condition of ill-being. *Rock Road Construction Co., v. Industrial Comm'n*, 37 Ill. 2d 123, 127, 227 N.E.2d 65 (1967). If a pre-existing condition was asymptomatic prior to the injury and then became symptomatic as a result of the injury, aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. *Id* at 67-68.

The Arbitrator notes that Petitioner had previously sustained a back injury twenty (20) years before the September 2, 2022, work accident and had an onset of back pain about seven (7) years before the work accident. The Arbitrator further notes that Petitioner did not have any back pain or undergo treatment for any back pain during the seven (7) years before the September 2, 2022, work accident. Additionally, Petitioner was working full duty without any restrictions on September 2, 2022. Petitioner began having back pain following the September 2, 2022, work accident and underwent treatment as a result of the September 2, 2022, work accident. Further, Petitioner continues to have back pain following the work accident. Dr. Chunduri diagnosed Petitioner as having a facet injury and found that injury consistent with the mechanism of injury, a rear-end collision. Also, Petitioner has not been released to return to work by her treater following the September 2, 2022, work accident.

Based on the above, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to the September 2, 2022, work accident.

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

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 adopts her findings above and incorporates them by reference as though fully set forth herein.

Based on the above, the Arbitrator finds Petitioner's treatment to be reasonable and necessary. Respondent shall pay the following outstanding medical expenses, pursuant to Sections 8(a) and 8.2 of the Act: $11,134.44 (Illinois Orthopedic Network), $2,500.00 (Bone & Joint Clinic), $6,013.45 (Trinity Hospital), and $20,400.35 (Molecular Imaging), totaling $40,048.24.

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

The Arbitrator adopts the above findings and incorporates them by reference as though fully set forth herein. The Arbitrator notes that Petitioner has not reached maximum medical improvement and that Dr. Chunduri has recommended additional care in the form of L4-5 and L5-S1 medial branch rhizotomy in order to treat Petitioner's ongoing low back pain as a result of the September 2, 2022, work accident.

Based on the above, the Arbitrator finds that Petitioner is entitled to prospective medical care pursuant to Section 8(a) of the Act. Respondent shall authorize and pay for L4-5 and L5-S1 medial branch rhizotomy as recommended by Dr. Chunduri pursuant to Sections 8(a) and 8.2 of the Act.

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

A claimant is temporarily totally disabled from the time an injury incapacitates her from work until such time as she is as far recovered or restored as the permanent character of her 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 temporary total disability 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).

The Arbitrator notes that Petitioner has not been released to return to work following the September 2, 2022, work accident. Additionally, the records show Petitioner still requires treatment, thus her condition has not stabilized.

Based on the above, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from September 2, 2022, through August 31, 2023.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC030907
Case Name	William Lionel George v. Dart Container Solo
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0013
Number of Pages of Decision	19
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Steven Seidman
Respondent Attorney	Andrew Rane

DATE FILED: 1/14/2025

/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

WILLIAM LIONEL GEORGE,
Petitioner,

vs. NO: 20 WC 30907

DART CONTAINER SOLO,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the Petitioner and the Respondent herein and notice given to all parties, the Commission, after considering the issues of temporary disability and nature and extent and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, with a change and/or correction to the Decision and Order stated as follows.

The Commission observes that in the Order section of Arbitration Decision, temporary total disability (hereinafter "TTD") benefits were awarded from "11/20/2020 through 2/7/2021," for a total of 11-3/7ths weeks. *See* Arbitration Decision, ICArbDec p.2. However, in the Arbitration Decision under "Conclusions of Law," the Arbitrator writes that "Petitioner's entitlement to TTD benefits ended after April 27, 2021, for a TTD period of 22 and 4/7ths weeks (November 20, 2020 through April 27, 2021)." *See* Arbitration Decision, p. 11-12. The totality of evidence supports the Arbitrator's conclusion that TTD should be awarded from November 20, 2020 through April 27, 2021, which is the date Dr. Stosic released Petitioner back to work without restrictions. The Commission also writes to correct the number of weeks TTD is to be paid, noting that the TTD period of 11/20/2020 through 04/27/2021 is 22 weeks and 5 days.

Therefore, the Commission writes change the Arbitrator's Decision to order that Respondent shall pay Petitioner temporary total disability benefits of $500.00 per week for 22-5/7ths weeks, commencing 11/20/2020 through 04/27/21, as provided in Section 8(b) of the Act.

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 June 17, 2024 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay Petitioner temporary total disability benefits of $500.00 per week for 22-5/7ths weeks, commencing 11/20/2020 through 04/27/21, as provided in Section 8(b) of the Act.

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

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

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall hold Petitioner harmless from any claims by providers of the services for which Respondent receives a credit under Section 8(j) of the Act.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $45,700.00. 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.

January 14, 2025

o: 12/19/24
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	20WC030907
Case Name	William Lionel George v. Dart Container Solo
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Charles Watts, Arbitrator

Petitioner Attorney	Steven Seidman
Respondent Attorney	Andrew Rane

DATE FILED: 6/17/2024

/s/Charles Watts, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 11, 2024 5.165%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

William (Petty) George
Employee/Petitioner

v.

Dart Container Corporation
Employer/Respondent

Case # **20** WC **030907**

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 **Arbitrator Watts**, Arbitrator of the Commission, in the city of **Chicago**, on **March 22nd, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **November 19th, 2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**39,000.00**; the average weekly wage was $**750.00**.

On the date of accident, Petitioner was **63** 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 $**5,285.72** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**5,285.72**.

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 $11,393.46, as provided in Sections 8(a) and 8.2 of the Act. The Respondent will also hold the Petitioner safe and harmless for the lien from Blue Cross Blue Shield for benefits paid on the Petitioner's behalf for care and treatment related to this injury. The Medical bills are awarded pursuant to the applicable fee schedule and pursuant to Section 8 of the Act.

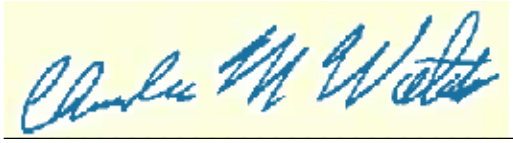
Respondent shall pay Petitioner temporary total disability benefits of $500.00 per week for 11-3/7ths weeks, commencing 11/20/2020 through 2/7/2021, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $5,285.72 for temporary total disability benefits that have been paid.

Respondent shall pay Petitioner the sum of $**450.00**/week for a further period of **62.5** weeks, as provided in Section **8(d)(2)** of the Act, because the injuries sustained caused **12.5% loss of use of a person as a whole.**

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

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



June 17, 2024

Signature of Arbitrator

William George v Dart Container Solo
Case No. 20 WC 030907

FINDINGS OF FACT

Petitioner William George (previously William Petty) was 63 years old and an employee of Dart Container Solo on November 19, 2020 working as a press operator. (AX1; T 7, 19.) His duties involved printing Solo plates, using a machine to form the plates. (T 7-8.) The machine had a steel "flute" projecting out of it; it was a sort of steel chute that waste paper from the printing process would pass through on its way to waste collection. (T 9.)

Prior to November 20, 2020, Petitioner had no medical treatment to his head for anything at all. (T 8.) Prior to that date, Petitioner suffered no concussive disorders. (T 8.)

On November 19, 2020, Petitioner came into work. (AX1; T 8.) Petitioner was operating the Solo plate printing machine when he accidentally dropped some paper on the floor. (T 8.) Petitioner bent down at a 90-degree angle to pick up the paper when one of the press machines went off. (T 8-9.) Petitioner abruptly straightened up very quickly, but his head was in the path of the machine's steel "flute"—he struck his forehead forcefully on the steel chute. (T 9-10.) Petitioner began bleeding from his head; he felt "really out of it." (T 9.)

Petitioner was brought into another room, where he drifted in and out of consciousness for approximately two hours while waiting for an ambulance. (T 10-11.) A coworker came in; Petitioner reported that he was not okay. (T 10.)

On November 20, 2020, Petitioner presented to the Christ Hospital emergency room complaining of dizziness and a headache following a head injury at work the day prior. (PX5 68.) He related his history of injury: he was at work, kneeling to get something off the ground, when he stood up rapidly and hit his head on the machine above him. (PX5 68.) Petitioner felt immediate, significant pain throughout his whole head and felt like he was about to pass out; he quickly developed persistent, vertiginous dizziness. (PX5 68.) Petitioner reported shortness of breath as well. (PX5 75.)

On physical examination, the doctor noted an abrasion on the superior aspect of Petitioner's frontal bone. (PX5 72.) Petitioner underwent a cranial CT scan showing a small hematoma in the right para midline and midline occipital and suboccipital region of his brain without skull fracture. (PX5 80.) He was diagnosed with a concussion, with a less-likely differential diagnosis of traumatic intracranial hemorrhage. (PX5 73.)

Petitioner was administered an anti-migraine cocktail, which he reported improved his headache pain. (PX5 73.) Petitioner was discharged home with instructions to follow-up with a neurologist in case of post-concussion syndrome. (PX5 73.)

Later that same day, Petitioner presented to Concentra at Respondent's request. (PX3.) He was assessed with a concussion with loss of consciousness; Petitioner was advised to rest and to remain in a dark room, with no reading or looking at screens, and to wear sunglasses when outside. (PX3 12.) He was taken off of work. (PX3 12.)

Petitioner returned to Concentra on November 24, 2020; he continued to complain of headaches. (PX3 8.) He was again assessed with a concussion with loss of consciousness, and was again kept off work with instructions to sit in a dark room with no phone, television, or reading. (PX3 8.) Petitioner was instructed to take Advil migraine and was given a referral to a neurologist for evaluation. (PX3 8, 18.)

On November 29, 2020, Petitioner presented to the Advocate Christ Hospital emergency room again with recurrent headaches, as well as photophobia and sensitivity to sound. (PX5 36, 42.) Petitioner reported that he had been taking Advil migraine without any significant relief of his pain. (PX5 36.)

Petitioner was assessed with post-concussive syndrome, which resident physician Dr. Tamathor Abughnaim opined would require follow-up with a neurologist. (PX5 40.) It was noted that Petitioner's condition was status post injury at work, and that he had not been able to follow up with a neurologist yet. (PX5 45.)

On December 1, 2020, Petitioner was seen by Advocate Medical Group doctor Katina Hope for follow-up on his headaches and a medication refill. (PX4 26.) Petitioner reported pain at 9/10, worse with bright light. (PX4 26-27.) He was assessed with post-concussion syndrome, status post traumatic head injury at work. (PX4 30.) Dr. Hope ordered a non-contrast head CT scan to assess for interval changes. (PX4 30-31.)

On December 2, 2020, Petitioner presented to Rush University neurologist Dr. Milena Stosic for the first time, complaining of post-concussion headaches. (PX6 89.) Petitioner described pulsating pain in the front and back of his head, ears popping, photophobia, and phonophobia. (PX6 90.) He suffered from neck stiffness, worse when his headaches became bad. (PX6 90.)

Petitioner reported that he had hit his head at work approximately 10 days prior and that he had suffered headaches every single day since then. (PX6 89.) He reported that he had been taking Advil four times a day as well as hydrocodone, but that it was not helping. (PX6 89.) Lying down and using an ice pack helped. (PX6 90.)

Dr. Stosic performed a physical exam and reviewed Petitioner's head CT scan report. (PX6 90-94.) Dr. Stosic noted that the report confirmed a small hematoma in the right para midline and midline occipital and suboccipital region. (PX6 94.)

Dr. Stosic assessed Petitioner with post-concussion headaches, neck stiffness pain, and cervicogenic headaches. (PX6 94.) Dr. Stosic started Petitioner on 25 mg of Elavil nightly, instructed him to reduce NSAID use to less than three times per week, and instructed him to use 5 mg Flexeril as needed ("with caution for drowsiness") as well as lidocaine patches for his neck. (PX6 94.) Dr. Stosic also prescribed a 7-day burst of Prednisone 50 with the goal of breaking the headache cycle, and ordered a repeat head CT scan due to Petitioner's history of traumatic hematoma. (PX6 94.)

On December 11, 2020, Petitioner returned to Advocate Christ Hospital for a repeat head CT scan. (PX5 21.) The scan revealed involutional changes similar to those shown on the previous scan as well as a partially empty sella. (PX5 22.)

On December 18, 2020, Petitioner followed up with Dr. Hope. (PX4 16.) The visit was conducted telephonically due to Covid-19 precautions in place at the time. (PX4 19.) Dr. Hope noted that Petitioner was gradually improving, with improvements to his photophobia. (PX4 19.) However, the top of his head remained tender. (PX4 19.) Dr. Hope reviewed a repeat head CT, which demonstrated a "partially empty sella." (PX4 20.) She diagnosed Petitioner with post-concussion syndrome and empty sella syndrome and instructed him to follow up with a neurologist. (PX4 20.)

Dr. Hope wrote a letter for Petitioner on that date, stating: "Please excuse William for his absence from work until 1/11/2021. He has sustained a serious work related head injury requiring intense pain control, active surveillance, and evaluation and management by me, his PCP, and a neurological specialist." (PX4 21.)

On December 29, 2020, Petitioner called Dr. Stosic's office to request a refill on his medications. (PX6 84.) He reported that he was suffering continued headaches with pain at 7/10, but that the medications were helping. (PX6 84.)

On January 7, 2021, Petitioner returned to Dr. Stosic with complaints of continued post-concussion headaches. (PX6 57.) Petitioner reported that he had been compliant with the nightly Elavil regimen and that he had been taking Flexeril (a.k.a. cyclobenzaprine) daily, which had improved his symptoms. (PX6 58.) However, once Petitioner ran out of medication, his headaches returned again with accompanying neck stiffness. (PX6 58.) Dr. Stosic again noted that Flexeril, indicated for headaches and neck stiffness, causes drowsiness. (PX6 58.)

Dr. Stosic examined Petitioner and reviewed his updated head CT scan. (PX6 60-62.) She maintained his diagnosis from the visit prior, noting that Petitioner's headaches remained a daily occurrence. (PX6 63.) Dr. Stosic noted: "complicated picture of post-traumatic headache with continuous neck stiffness and continuous need for medications." (PX6 63.) Dr. Stosic referred Petitioner to physical therapy for his neck in the hope of reducing his need for Flexeril, and instructed him to return in three months. (PX6 63.)

On January 13, 2021, Petitioner presented to ATI Physical Therapy for his initial evaluation. (PX7 31.) Petitioner complained of pulsating headaches around the crown of his head at 8/10 on the pain scale. (PX7 31.) Petitioner reported that the headaches were controlled with medications, but that when he tried to wean himself off those medications, the headaches returned just as severe as they had been immediately following his concussion. (PX7 31.) Petitioner reported dizziness as well as sensitivity to bright lights and noise; he reported that his headaches grew worse when he got up and moved around. (PX7 31.)

Petitioner reported his history of injury: he was at work when he stooped down to pick up some paper and hit his head on metal piping overhead. (PX7 31.) He went to the emergency room where he was diagnosed with a concussion. (PX7 31.) He developed severe headaches thereafter. (PX7 31.)

It was noted that Petitioner exhibited decreased cervical spine active range of motion and deep neck flexor strength, issues with soft tissue mobility and increased pain, as well as impairments with posture. (PX7 31.) Petitioner's neck deficits were deemed as limiting his ability to carry, clean, dust, wash overhead, drive, lift from the floor, lift overhead, perform any overhead task, look up or down,

push or pull, engage in sustained standing, engage in sustained sitting, and sleeping more than 6 hours. (PX7 31.) Petitioner was assessed as being able to perform at the sedentary physical activity level. (PX7 31.)

Petitioner underwent a course of physical therapy. (PX7.)

On February 1, 2021, Petitioner contacted ATI and informed them that he was returning to work and that he would not be returning to physical therapy. (PX7 7.) Petitioner's discharge summary listed identical complaints and pain levels to his initial evaluation; however, the functional limitations section of the report was left incomplete. (PX7 7.) Only one of eight goals for the course of physical therapy was listed as completed. (PX7 8.)

On February 2, 2021, Nurse Practitioner Marguerite O'Donnell at Advocate Aurora Healthcare authored a letter stating that Petitioner could return to work without restrictions on February 3, 2021. (RX3.)

On March 30, 2021, Petitioner followed up with Dr. Stosic complaining of continued post-concussion headaches. (PX6 19.) Petitioner reported that he was having daily headaches. (PX6 19.) Petitioner had returned to work at the start of February and tried weaning himself off his medicines. (PX6 19.) He had been trying to wean himself off of Elavil but he couldn't do so; whenever he stopped taking Elavil, the headaches and tenderness on the top of his head would return. (PX6 19.) Petitioner likewise reported that he was trying to take less Flexeril, but that his headaches were worse when he stopped taking it. (PX6 19.)

Dr. Stosic noted that prior to his attempted self-wean, Petitioner had been on Elavil and doing well. (PX6 19.) She stated that he did not have any side effects from Elavil and that she had not instructed Petitioner to wean himself off the medicine. (PX6 19.)

Dr. Stosic noted that Petitioner had an additional symptom of forgetfulness, present since a few weeks after the head injury. (PX6 20.) Petitioner reported that he had begun to forget conversations and forget things he needs to do. (PX6 20.) This was not typical for him, as ordinarily he described himself as "pretty sharp." (PX6 20.)

Dr. Stosic maintained Petitioner's diagnosis, stating: "Still uncontrolled headaches, new symptom of forgetfulness as well. He chose to address the memory issues with new neurologist later this week." (PX6 24.) She further noted: "He also needed a letter for work." (PX6 24.)

On April 1, 2021, Petitioner underwent a Section 12 examination at Respondent's request with Dr. Rishi Garg. (RX2.) Petitioner complained of holocepahalic throbbing headaches, tenderness around the top of his head, reduced cognition, neck pain, and sensitivity to light and sound with severe episodes. (RX2 2.) He also reported memory complaints: he would forget tasks, and had to rely on written notes. (RX2 2.) This was a new issue for him. (RX2 2.)

Petitioner related his history of injury: he was at work when he struck his head on work equipment. (RX2 2.) Petitioner had no history of headaches before the accident; after the accident, he began experiencing headaches every single day. (RX2 2.)

Dr. Garg stated that "[b]ased upon the *limited* medical records that have been forwarded to me," Petitioner sustained a mild concussion. (RX2 3)(emphasis in original). Dr. Garg stated that patients who suffer a mild concussion with prolonged post-concussive symptoms require a brain MRI, and on this basis opined that Petitioner "would require an MRI brain [sic]." (RX2 3.)

Dr. Garg opined that post-concussive headaches "should resolve within 3 months." (RX2 3.) Because Petitioner's headaches continued 3 months post-accident, he opined that Petitioner's headaches were therefore not related to the work accident. (RX2 3-4.) Dr. Garg opined that—assuming Petitioner had undergone a brain MRI and that said MRI was normal—Petitioner reached MMI on February 20, 2021 based on the fact that February 19, 2021 was exactly 3 months after the date of accident. (RX2 5.)

On April 9, 2021, Nurse Maria Alfonso called Petitioner; Petitioner reported that he was still having headaches. (PX6 10.) He had just finished taking a 50 mg course of Prednisone. (PX6 10.) Petitioner was taking amitriptyline every night and Flexeril daily. (PX6 10.) Despite everything, he was having headaches every day starting at 1-2 PM; he would get light-headed and need to lie down, and then he would start feeling throbbing pain up to 8/10 around the crown of his head. (PX6 10.) Light and noise made the pain worse. (PX6 10.)

Dr. Stosic remarked that she wanted Petitioner to get a brain MRI. (PX6 11.)

On April 27, 2021, Dr. Stosic wrote a letter stating, "Mr. William Petty is under my care for a neurological disorder. Mr. Petty is able to return to work without restrictions. Mr. Petty has an [sic] reevaluation scheduled on 7/6/2021." (PX8 100.) There is no further text in the letter providing a basis for this opinion. (PX8 100.)

On March 24, 2022, Petitioner called Dr. Stosic's office to discuss his medications. (PX8 244.)

On August 4, 2022, Petitioner had a telephone call with Rush Neurology registered nurse Carla Revis Celis. (PX8 236.) Petitioner reported to Celis that he had continued to take amitriptyline 25 mg and cyclobenzaprine 5 mg; he reported that if he stopped taking them for 2-3 days, his headaches would come back. (PX8 236.) The headaches were of the same sort he had experienced previously, but not as bad as when he first started treating with Dr. Stosic, with a severity of only 5/10. (PX8 236.) Petitioner reported that it was difficult for him to do anything because the pain was so aggravating. (PX8 236.) Via Nurse Celis, Dr. Stosic informed Petitioner that he needed to come in for a follow-up. (PX8 237.)

On October 13, 2022, Petitioner called Dr. Stosic's office to report that his condition was worsening, with worsened memory loss issues. (PX8 230.)

On August 14, 2023, Petitioner called Dr. Stosic's office once more. (PX8 205.) Petitioner reported that he had been getting refills on his medication from Dr. Hope, his primary care physician, but that he'd recently acquired a new primary care doctor and that he was now out of amitriptyline. (PX8 205.) Petitioner was instructed to follow up with his new primary care doctor for further refills and to schedule an appointment with Dr. Stosic as soon as he could. (PX8 205.)

On September 29, 2023, Petitioner returned to Dr. Stosic with continued complaints of post-

concussion headaches. (PX8 166.) Dr. Stosic noted that Petitioner's symptoms were both less intense and less frequent than they were two years ago, but further noted that Petitioner was nonetheless still experiencing regular headaches and neck stiffness on an almost-daily basis. (PX8 171.)

Petitioner reported that he was still taking Elavil about four times a week, as needed, as well as Flexeril—two pills at a time, then lying down. (PX8 171.) Both Flexeril and Elavil continued to make Petitioner drowsy. (PX8 171.) Petitioner requested that Dr. Stosic write a letter pointing out his continuing symptoms and medication side effects that make it hard for him to work. (PX8 171.)

Because Elavil was causing Petitioner significant drowsiness during the day, Dr. Stosic instructed Petitioner to stop taking it and to switch to a new medication, Pamelor. (PX8 171.) He was instructed to take 25 mg of Pamelor nightly. (PX8 171.) Petitioner was to continue taking Flexeril 5 mg or 10mg once or twice a day, as needed. (PX8 171.)

On September 29, 2023, Dr. Stosic authored a letter about Petitioner's condition, stating:

> William L. Petty was seen in my office today for his post-concussion headache. Mr. Petty is struggling with daily headaches, neck stiffness and pain. The medications that he is on to help control these symptoms causes him drowsiness and impairs his focus, which may affect his ability to perform at work. As we work to find the best treatment plan for him, please allow accommodations as he may require extra time to complete work duties.

(PX8 161.) On October 3, 2023, Dr. Stosic issued a revised version of this letter with further details about the course of her treatment with Petitioner and Petitioner's reports of debilitation. (PX8 150.)

Petitioner was scheduled to undergo a brain MRI; however, on or about October 11, 2023, the scan was canceled because Petitioner's primary care physician evidently refused to provide a referral for him to undergo a scan out-of-network. (PX8 127.)

On February 2, 2024, Dr. Stosic testified at an evidence deposition. (PX8 1.) Dr. Stosic practices at Rush Hospital specializing in neurology and neuro-opthalmology. (PX8 5-6.) Her work mostly involves outpatient care with patients suffering from neurological conditions such as multiple sclerosis, seizures, radiculopathy and myelopathy, as well as neuro-opthalmologic issues such as double vision, blurred vision, loss of vision, and optic neuropathies. (PX8 6.)

Dr. Stosic testified to a reasonable degree of medical certainty that Petitioner's work accident was a cause of Petitioner's post-concussion headaches. (PX8 24.) Dr. Stosic testified that she based this opinion on the timeline of Petitioner's condition: he had a head injury and after that, developed headaches, neck stiffness, and neck pain. (PX8 25.) She testified that in that situation, the condition would be classified as post-concussion headaches if the headaches were caused by head trauma. (PX8 25.) Dr. Stosic testified that this is so even if the initial concussion was not accompanied by loss of consciousness. (PX8 25.)

Dr. Stosic testified that the presence of a hematoma in Petitioner's brain in the right para midline and midline occipital and suboccipital region, visible in his CT scan of November 20, 2020, was likely related to Petitioner's concussion. (PX8 29.) She testified that it was analogous to a bruise

after a blunt force injury. (PX8 29.) Dr. Stosic testified:

> In a patient when we had—when we have a head trauma with hematoma visualized on the head CT, suggesting that there was some breaking of the blood vessels, we would probably think of the symptoms coming on being new and related to the trauma specifically.

(PX8 51.) Dr. Stosic testified that she wouldn't consider the headaches to be related solely to a preexisting condition under those facts. (PX8 51-52.)

Dr. Stosic testified that as of his last visit, Petitioner was not doing well. (PX8 31.) She did not yet have a prognosis for Petitioner. (PX8 30-31.) Asked if post-concussive headaches eventually relent after a period of time or whether they are permanent, Dr. Stosic testified: "A lot of times the—those symptoms go away with proper treatment, medications." (PX8 31.) Asked if post-concussive headache symptoms "typically" resolve completely, Dr. Stosic reiterated: "On an individual basis, each patient is different, but a lot of times things do get better for them with proper treatment." (PX8 50.)

Asked about her reasons for writing the April 27, 2021 letter releasing Petitioner back to work without restrictions, Dr. Stosic testified that she did not know what reasons she had for making that assessment. (PX8 11-12.) Dr. Stosic testified that she had never actually evaluated Petitioner for his ability to work. (PX8 47.) Dr. Stosic testified that her later letter of September 29, 2023 was not intended as an assessment of his ability to work. (PX8 18-20.)

Petitioner has not worked since November 20, 2020. (T 6.) Petitioner is now 66 years old. (T 19.)

At the arbitration hearing, Petitioner testified that he notices his speech remains off. (T 16.) He testified that he suffers from memory problems as well, forgetting to return money that had been entrusted to him as part of a prior side job. (T 18-19.) Petitioner still gets headaches; he has tried to "wing" himself off Dr. Stosic's medications, but he suffers recurrent daily headaches which force him to continue to take these medications and lie down. (T 16-17.) The medications include cyclobenzaprine and a medication Dr. Stosic prescribed in lieu of amitriptyline. (T 16-17.) He takes these medicines once a day to deal with his headaches. (T 17-18.)

At the time of his injury, Petitioner was 63 years old, unmarried, with no dependent children. (AX1.) The parties agree that Petitioner earned $39,000.00 in the year prior to the accident for an average weekly wage of $750.00. (AX1.)

Petitioner has $11,393.46 in unpaid, outstanding medical bills, as well as a lien of $179.31 due to benefits paid by Blue Cross Blue Shield Blue Care Network of Michigan. (AX1; PX2.) The parties stipulate that Respondent has paid Petitioner $0 in medical bills and $5,285.72 TTD benefits. (AX1.)

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 Petitioner credible. Specifically, Petitioner consistently seemed a bit off in terms of mentation and manner of speech. There were pauses during testimony in a manner that suggested some word-finding difficulty. Petitioner's facial expressions suggested some confusion. He was a bit slow. This is important because the treatment record is sparse. This is ultimately a difficult case to value and the Arbitrator's assessment matters more in this case than in others.

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

Respondent does not dispute that Petitioner suffered an accident arising out of and in the course of his employment. However, Respondent disputes that Petitioner's current medical issues are causally related to said accident. For the following reasons, the Arbitrator finds that Petitioner's conditions of ill-being are causally related to his work accident.

"A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *Int'l Harvester v. Indus. Comm'n*, 93 Ill. 2d 59, 63–64, 442 N.E.2d 908, 911 (1982). "The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been." *Schroeder v. Ill. Workers' Compensation Comm'n*, 2017 IL App (4th) 160192WC ¶ 26, 79 N.E.3d 833, 839 (4th Dist. 2017).

In this case, Petitioner's credible testimony and the records of his treatment establish such a chain of events. Prior to the date of accident, Petitioner had no medical treatment to his head for anything at all. (T 8.) Prior to that date, Petitioner suffered no concussive disorders. (T 8.)

On November 19, 2020, Petitioner was at work and operating a Solo plate printing machine when he accidentally dropped some paper on the floor; Petitioner bent down to pick up the paper, then straightened up very quickly and struck his head very hard on a steel chute. (T 8-10.) Petitioner began bleeding; he felt "really out of it," and spent hours in that state. (T 9.) When asked, he reported that he was not okay. (T 10.)

From this moment onward, Petitioner's medical records consistently document severe headaches. On November 20, 2020, for instance, Petitioner presented to the Christ Hospital emergency room complaining of dizziness and a headache following his head injury at work. (PX5 68.) The attending doctor noted an abrasion on the superior aspect of Petitioner's frontal bone. (PX5 72.) A cranial CT scan revealed a hematoma in the right para midline and midline occipital and suboccipital region of Petitioner's brain. (PX5 80.) He was diagnosed with a concussion and instructed to follow up with a neurologist in case of post-concussion syndrome. (PX5 73.)

Petitioner visited Concentra twice in the following week, consistently complaining of headaches and consistently diagnosed with a concussion. (PX3 8, 12.) On November 29, 2020, he was still complaining of headaches; he was officially diagnosed with post-concussion syndrome at this point. (PX5 36, 40, 42.) On December 1, 2020, Petitioner presented to his primary care physician Dr. Katina Hope for continuing headaches with pain at 9/10. (PX4 26-27.) He was assessed with post-concussion syndrome, status post traumatic head injury at work. (PX4 30.) Dr. Hope maintained this diagnosis on future visits. (*See e.g.* PX4 20.)

On December 2, 2020, Petitioner began to treat with Rush University neurologist Dr. Milena Stosic, complaining of daily headaches with pulsating pain in the front and back of his head, neck stiffness, ears popping, photophobia, and phonophobia beginning with his work accident. (PX6 89-90.) Dr. Stosic reviewed Petitioner's head CT scan report, which she noted confirmed a small hematoma in the right half of his brain. (PX6 94.) Dr. Stosic stated that this was "traumatic hematoma," and assessed Petitioner with post-concussion headaches, neck stiffness pain, and cervicogenic headaches. (PX6 94.) Petitioner continued to consistently report headaches—and to be diagnosed with post-concussive syndrome—going forward.

Although Respondent points to a putative gap in Petitioner's treatment, reflected in a period of approximately two years where he stopped appearing at Dr. Stosic's office for follow-ups after March 2021, the Arbitrator notes that Petitioner nonetheless continued to phone in to Dr. Stosic's office during this period and continued to report consistent headaches. (PX8 205, 30, 36-37, 44.) The evidence further suggests that this period does not represent a full gap in treatment: the records demonstrate that Petitioner continued to take his prescribed medications during this period and that they continued to help suppress his headache symptoms. (*See e.g.* PX8 236.) Petitioner's call of August 14, 2023 specifically documents that Petitioner was still visiting Dr. Hope and getting refills on the medications that Dr. Stosic had prescribed him, including amitriptyline (a.k.a. Elavil). (PX8 205.) As such, the Arbitrator does not find this putative gap in treatment dispositive.

In addition to the testimonial and medical record evidence of causal connection between Petitioner's accident and his post-concussive headaches, Petitioner's treating neurologist testified to such a causal connection. At her evidence deposition, Dr. Stosic credibly testified to a reasonable degree of medical certainty that Petitioner's work accident was a cause of Petitioner's post-concussion headaches. (PX8 24.) Dr. Stosic testified that she based this opinion on the timeline of Petitioner's condition: he had a head injury and after that, he developed headaches, neck stiffness, and neck pain. (PX8 25.) She testified that in that situation, the condition would be classified as post-concussion headaches if the headaches were caused by head trauma. (PX8 25.) Dr. Stosic further testified that the presence of a hematoma in Petitioner's brain in his November 20, 2020 CT scan suggested broken blood vessels and supported the conclusion that his headaches were caused at least in part by his work accident. (PX8 29, 51-52.)

Although Section 12 examiner Dr. Rishi Garg opined that Petitioner's headaches were no longer related to Petitioner's post-concussion syndrome after February 19, 2021, Dr. Garg's opinion came with significant caveats. Similarly to the other doctors in this case, Dr. Garg characterized Petitioner as having suffered a concussion "with prolonged post-concussion symptoms." (RX2 3.) However, Dr. Garg concluded that Petitioner had suffered only a mild concussion based upon the "*limited* medical records" available to him. (RX2 3)(emphasis in original).

Dr. Garg stated that patients who suffer a mild concussion with prolonged post-concussive symptoms require a brain MRI. (RX2 3.) Dr. Garg opined that post-concussive headaches "should resolve within 3 months." (RX2 3.) Dr. Garg opined that—assuming Petitioner had undergone a brain MRI and that said MRI was normal—Petitioner should have reached MMI on February 20, 2021 based on the fact that February 19, 2021 was exactly 3 months after the date of accident. (RX2 5.) However, no such brain MRI was ever completed.

It is a well-established principle that the weight to be afforded to an expert's opinion must be based upon the expert's credentials and upon the factual basis of his opinion. *Snelson v. Kamm,* 204 Ill. 2d 1, 27, 787 N.E.2d 796, 810 (2003). In this case, unlike Dr. Stosic (whose curriculum vitae establishes that she is a board-certified neurologist since 2015 (PX8 90)), there exists no evidence in the record establishing Dr. Garg's credentials beyond a conclusory inclusion of "Board Certified, Neurology" in his signature line (RX2 5). Further, Dr. Garg's causal opinion is based upon both an admittedly "limited" set of medical records provided for his review and upon assumed MRI results that—in reality—do not seem to actually exist.

Finally, although Dr. Garg stated that Petitioner's headaches could have been caused by some other mechanism after February 19, 2020, Dr. Garg failed to identify what this other mechanism might be. The Arbitrator notes that the medical records describe Petitioner's headaches in some detail, and that his headache symptoms do not meaningfully change after February 19, 2020. Both before and after February 20, 2021, Petitioner complained of pulsating or throbbing headaches with tenderness around the top of his head, neck pain, and sensitivity to light and sound. (*See e.g.* PX6 10, 90; RX2 2.) The consistency of his symptoms, combined with no evidence of any intervening or new cause, makes Dr. Garg's explanation unlikely. For all of these reasons, the Arbitrator does not find Dr. Garg's opinion in this matter as persuasive as that of Dr. Stosic.

For all of the above reasons, the Arbitrator finds Dr. Stosic's causation opinions in this matter more persuasive than those of Dr. Garg. Based on all of the above, the Arbitrator finds that Petitioner's post-traumatic headaches are causally related to Petitioner's work accident of November 19, 2020.

J. Were the medical services that were provided to Petitioner reasonable and necessary?

There is no dispute that the Petitioner suffered a compensable accident at work as alleged. In addition, as reflected above, the Arbitrator finds that the Petitioner's condition of ill-being was causally related to that work accident at least up through April 27, 2021. Accordingly, the Arbitrator finds the Petitioner is entitled to an award for the payment of the medical bills identified in Petitioner's Exhibit #2. Liability for those medical bills is limited to the appliable Medical Fee Schedule in place at the time the treatment was rendered consistent with the Illinois Workers' Compensation Act. Specifically,

the Arbitrator awards payment of the following medical bills, subject to the applicable Fee Schedule:

Advocate Urgent Care / Advocate Medical Group $448.00
Advocate Christ Medical Center $6,924.60
Integrated Imaging Consultants $180.00
Midwest Diagnostic Pathology $52.50
Rush University Medical Center $293.22
Rush University Medical Center $141.00
ATI Physical Therapy $3,351.14

In addition, the Arbitrator finds that the Respondent is required to hold the Petitioner safe and harmless from any claims made by Blue Cross/Blue Shield for group medical payments made on his behalf up to the lien amount of $179.31.

The Respondent is entitled to receive a credit for any medical bills for which payment have already been made and that were not included on the invoices submitted by the Petitioner as Petitioner's Exhibit #2.

K. What temporary benefits are in dispute?

Respondent disputes its liability to pay TTD based upon causal connection. As discussed above, however, the Arbitrator finds that Petitioner's conditions of ill-being are causally connected to his work accident.

Petitioner asserts that he was unable to work from November 20, 2020 to the date of hearing (March 22, 2024), representing 174 weeks off work; Respondent asserts that Petitioner's TTD period, if any, should be from November 23, 2020 to February 4, 2021.

Respondent's start date for TTD is not in accord with the evidence: Concentra records show that Petitioner was taken off work beginning on November 20, 2020 by Respondent's own treater. (PX3 12.) Nor does February 4, 2021 appear to correspond to any event or finding in the record; Dr. Garg, Respondent's own expert, set Petitioner's MMI date at February 20, 2021. (RX2 5.) However, as discussed above, Dr. Garg's MMI determination derived from a causal opinion based upon assumed facts not ultimately borne out in the record. (*See id.*)

It is clear from the record both that Petitioner has long depended upon medications which make him drowsy throughout the day and that he suffers daily headaches which impair his ability to concentrate. However, Dr. Stosic unambiguously returned Petitioner to work without restrictions on April 27, 2021. (PX8 100.) There are concerns with this return-to-work letter: it provides no medical basis for the release, and releases Petitioner without restrictions less than one month after Dr. Stosic herself last saw Petitioner and noted "uncontrolled" daily headaches with newfound memory issues. (PX6 20, 24.) The Arbitrator notes that Dr. Stosic testified that she "never" actually evaluated Petitioner for inability to work, and several notes in the record suggest that Petitioner requested the release because he "needed" it "for work." (*See e.g.* PX6 24; PX8 131.)

In any event, it is Petitioner's burden to establish entitlement to benefits; and following his

released back to work on April 27, 2021, there was no record of any treater deeming him unable to work. To the contrary, when asked to write him a new letter in 2023, Dr. Stosic still did not take him off work entirely, instead opining that he required work accommodations. (PX8 44.)

For these reasons, the Arbitrator finds that Petitioner's entitlement to TTD benefits ended after April 27, 2021, for a TTD period of 22 and 4/7th weeks (November 20, 2020 through April 27, 2021).

The parties have stipulated that Respondent has paid Petitioner $5,285.72 in TTD benefits. (AX1.) The Arbitrator therefore awards Petitioner a TTD award of $11,285.71 (22 and 4/7th weeks x 2/3 x $750.00), subject to Respondent's credit.

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

Pursuant to Section 8.1b(b) of the Act, the Arbitrator considers the following factors in determining the level of permanent partial disability for Petitioner's neurological condition:

(i) Neither party submitted an impairment rating report.
(ii) Petitioner is currently at retirement age and not working. (T 6, 19.)
(iii) Petitioner was 63 years old at the time of his injury.
(iv) No evidence as to Petitioner's future earnings capacity was submitted.
(v) Petitioner offered evidence of disability in the form of testimony at the arbitration hearing as well as via extensive medical documentation. At the hearing, Petitioner testified that he still gets headaches; he has tried to wean himself off Dr. Stosic's medications, but he suffers recurrent daily headaches which force him to continue to take these medications and lie down. (T 16-17.) The medications include cyclobenzaprine and a medication Dr. Stosic prescribed in lieu of amitriptyline, which the records suggest is Pamelor. (T 16-17.) Petitioner takes these medicines once a day to deal with his headaches. (T 17-18.) Petitioner testified that his speech remains off; the Arbitrator personally observed Petitioner inappropriately swapping words multiple times during his testimony. (T 16.) Petitioner testified that he suffers from memory problems as well. (T 18-19.)

Having weighed the relevant factors, the Arbitrator assigns significant weight to Petitioner's age. At 63 years old, Petitioner would face challenges finding work even in the absence of drowsiness and debilitating headaches, and Respondent presented no evidence of any attempt to accommodate Petitioner in his old position.

The Arbitrator also assigns great weight to Petitioner's evidence of disability: he suffered a traumatic head injury with bleeding in his brain and an unbroken chain of daily headaches that have lasted years, alleviated only by medications that make him drowsy and impair his ability to think. That said, Petitioner was only treated on a single occasion between April 27, 2021 and March 22, 2024. Dr. Stosic testified that there was no longer evidence of a hematoma on the last diagnostic test Petitioner underwent. In short, Petitioner's claim to be significantly disabled is discounted by the lack of consistent treatment for his condition. The Arbitrator was impressed that something was a bit off with Petitioner's demeanor at trial and coupled with Dr. Stosic's testimony that Petitioner was still suffering post-concussive symptoms.

Section 8(e) of the Act does not specifically enumerate weeks for loss of use of the head or the brain. In cases where a permanent partial injury affects a body part that is not part of the PPD schedule, the Commission typically awards a portion of the person as a whole. *See e.g. Rles Consol. Unit Sch. Dist. #303 v. Illinois Workers' Comp. Comm'n,* 2020 IL App (2d) 190974WC-U, ¶ 44 (awarding loss of a portion of the person as a whole for injury to the brain).

Based on the above, the Arbitrator finds that Petitioner is entitled to permanent partial disability equal to 12.5% loss of use of the person as a whole for his brain injury.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC016695
Case Name	Kimberly Brawthen v. Parsec, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0014
Number of Pages of Decision	23
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Matthew Coleman
Respondent Attorney	Robert Newman

DATE FILED: 1/14/2025

/s/Stephen Mathis, 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 WILL)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
		☐ PTD/Fatal denied
	☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Kimberly Brawthen,

Petitioner,

vs. No. 19 WC 16695

Parsec, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, penalties, attorney fees and credit, and being advised of the facts and law, corrects the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

In their respective briefs on review, the parties stipulate that Respondent is entitled to a credit for non-medical benefits paid in the total amount of $93,714.64, computed as follows: $62,709.54 for the temporary total disability benefits, plus $31,005.10 for the maintenance benefits paid.

After the Commission held oral argument in this matter, Respondent filed a "Petition for Re-Hearing" requesting "a re-hearing of Oral Argument" because Petitioner's attorney made an untrue statement about the medical bills Respondent paid after the Arbitrator's Decision issued on October 10, 2023. Respondent asserted that on November 15, 2023, its insurance carrier "paid all medical costs awarded to Petitioner for the neck and back surgery." Respondent attached an affidavit from a senior resolution manager to that effect, adding that the payment had cleared. Petitioner responded with a motion to strike, arguing among other things: "All facts contained in the affidavit are 'additional evidence' outside the issues related to the underlying arbitration," an introduction of which on review violates section 19(e) of the Worker's Compensation Act (the Act). Petitioner further argued that neither the Act nor the Commission

Rules provide for a petition for rehearing. The Commission agrees with Petitioner and denies Respondent's petition for a new oral argument. The Commission, however, notes that Petitioner in her motion to strike admitted the statement at issue was made in error.

Turning to the Arbitrator's Decision, the Commission corrects the Decision in accordance with the parties' stipulation. All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent's "Petition for Re-Hearing" is denied.

IT IS FURTHER ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 10, 2023, is hereby corrected, affirmed and adopted.

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

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

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.

January 14, 2025

SJM/sk
o-10/9/2024
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC016695
Case Name	Kimberly Brawthen v. Parsec, Inc.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	Matthew Coleman
Respondent Attorney	Robert Newman

DATE FILED: 10/10/2023

THE INTEREST RATE FOR THE WEEK OF OCTOBER 3, 2023 5.34%

/s/ Jessica Hegarty, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Kimberly Brawthen
Employee/Petitioner

v.

Parsec, Inc.
Employer/Respondent

Case # **19** WC **016695**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jessica A. Hegarty**, Arbitrator of the Commission, in the city of **Ottawa**, on **05/22/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **May 2, 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 with regard to his ***cervical spine is*** causally related to the accident.

Petitioner's current condition of ill-being with regard to his ***lumbar spine is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**37,960.00**; the average weekly wage was $**730.00**.

On the date of accident, Petitioner was **41** 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 $**62,709.54** for TTD, $**0.00** for TPD, $**28,577.05** for maintenance, and $**0.00** for other benefits, for a total credit of $**0.00**.

Respondent shall be given a credit of $8,879.77 for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

ORDER

Respondent shall pay *directly to Petitioner* reasonable and necessary medical services of **$347,412.12**, as provided in Sections 8(a) and 8.2 of the Act and set forth by Shared Exhibit 1 and Shared Exhibit 2.

Respondent shall pay Petitioner temporary total disability benefits of $486.66/week for 128 6/7 weeks, commencing May 3, 2019, through October 21, 2021, as provided in Section 8(b) of the Act.

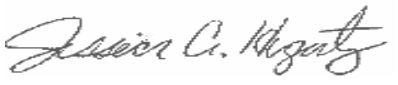
Respondent shall pay Petitioner maintenance benefits of $486.66/week for 63 and 5/7 weeks, commencing October 22, 2021, through January 11, 2023, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner wage differential benefits, commencing January 12, 2023, of $240.00/week until Petitioner reaches age 67 because the injuries sustained caused a loss of earnings, as provided in Section 8(d)1 of the Act.

Respondent shall pay to Petitioner penalties in the amount of **$81,933.50** representing 50% of the unpaid and uncontested medical expenses regarding the cervical spine pursuant to the fee schedule and stipulated to by the parties in Shared Exhibits 1 and Shared Exhibit 2 as provided in Section 19(k) of the Act; **$10,000.00** as provided in Section 19(l) of the Act; attorneys' fees in the amount of **$18,386.70** representing 20% of the above penalties awarded as well as attorneys' fees in the amount **$20,344.66** representing 20% of the previously disputed medical bill paid directly to the Center for Minimally Invasive Surgery pursuant to Section 16 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.



OCTOBER 10, 2023

Signature of Arbitrator

ADDENDUM TO THE DECISION OF THE ARBITRATOR

FINDINGS OF FACT

On May 2, 2019, Petitioner was employed as a driver and groundman for Respondent, Parsec Inc. (Tr. 10) Respondent is a subcontractor that provided intermodal terminal management services for the BNSF Railway at its Logistics Park Chicago ("LPC") location in Elwood Illinois. (Tr. 9) Her job duties were to move containers and chassis to different locations throughout the yard. (Tr. 10) She drove a hostler truck which is a mini-semi. (Tr. 11)

As a groundsman, Petitioner was required to pull the pins and locked the pins for chassis and containers on the tract. (Tr. 11) To accomplish this, she was physically required to climb up and down the stairs of the truck 40 to 60 times per day. (Tr. 11) She would open and close container doors weighing 50 pounds between six and twenty times per day. (Tr. 12-13) She also drove a hostler truck on bumpy roadways. (Tr. 13)

Prior to May 2, 2019, Petitioner's low back was in "fine" condition, and she was able to fully perform the physical requirements as a hostler truck driver and groundsman. (Tr. 17-18) She had not treated with a doctor for low back pain or missed any work due to low back pain before May 2, 2019. (Tr. 18)

Petitioner suffered a prior work injury to her neck and left shoulder on December 9, 2016. (Tr. 18-10). She underwent arthroscopic surgery with Dr. Fuentes. (Tr. 31) Petitioner filed a workers compensation claim and at the request of Respondent's administrator and was sent to Dr. Daniel Troy on February 6, 2017, for an independent medical exam ("IME") at which time Dr. Troy diagnosed Petitioner with a cervical strain and released her to return to work full duty. (Tr. 19-20) Between February 11, 2017, and May 2, 2019, Petitioner missed no work due to neck pain. (Tr. 20)

Regarding the case at bar, Respondent does not dispute that Petitioner suffered a work accident on May 2, 2019. (Tr. 15; AX1) On that evening Petitioner drove her hostler truck through an intersection, submerged by rainwater, which obscured a massive pothole. (Tr. 16)) As the truck hit the pothole, Petitioner's body bounced so hard that she almost hit her head on the interior roof of the truck's cabin. Petitioner then fell back slamming her lumbar back into the driver's seat followed by immediate rib-crushing pain that went down to her "tailbone." Petitioner testified the pain made it a little hard for her to breathe. (Tr. 17) Petitioner denied any previous issues with her back. (Tr. 18) She further testified that since returning to work in February of 2017 from her previous injury, she was physically able to perform her regular work duties. (Tr. 18)

After the accident, Petitioner reported the event to a supervisor and was taken to St. Joseph Hospital Emergency Room, by Safety Supervisor Sam Clark. (Tr. 21, 48). Petitioner treated at Respondent's occupational provider Physicians' Immediate Care ("PIC") from May 3, 2019, until May 20, 2019.

MRIs of Petitioner's back and neck were performed on May 16, 2019. (Tr. 22)

On May 24, 2019, Petitioner presented for initial consult with orthopedic surgeon, Dr. Cary Templin, an orthopedic surgeon who subsequently referred her to Dr. Farooq Khan, an interventional pain management physician, for a spine injury work up. (PX5 & 6)

On June 7, 2019, Petitioner underwent a lumbar bone scan ordered by Dr. Templin and on June 21, 2019, Dr. Khan administered an epidural steroid injection to her neck on July 19, 2019. (Tr. 23-24)

Dr. Templin ultimately diagnosed Petitioner with an aggravation of degenerative disc disease at the L4-L5 level; aggravation of spondylolisthesis at L4-L5; and L4-L5 facet arthropathy. (PX6) He further diagnosed Petitioner with an aggravation of pre-existing C5-C6 herniated disc with stenosis. (PX6) On June 28, 2019, Dr. Templin discussed treatment options with Petitioner which included a cervical fusion. (Tr. 24)

On July 22, 2019, Petitioner underwent an IME with Dr. Troy at Respondent's request. (Tr. 24-25)

Dr. Khan administered injections to Petitioner's lumbar spine on July 30, August 16, and September 19, 2019. (Tr. 25)

On October 19, 2019, Petitioner underwent surgery, consisting of a C5-6 anterior discectomy and fusion, performed by Dr. Templin. (Tr. 26) Petitioner followed up, post-operatively, with Dr. Templin on November 12, 2019. (Tr. 26)

Dr. Khan administered lumbar radiofrequency ablation treatment to Petitioner on December 19, 2019, and January 8, 2020. (Tr. 27)

On December 27, 2019, Dr. Templin discussed lumbar fusion surgery with Petitioner. (Tr. 27)

On November 2, 2020, Petitioner underwent a lumbar spine MRI. (Tr. 30)

On December 2, 2020, Petitioner underwent a lumbar fusion, performed by Dr. Templin. (Tr. 30) Post-operatively, she followed-up with Dr. Templin on December 29, 2020, and later on June 1, 2021, and underwent post-operative physical therapy and work conditioning in the summer of 2021. (Tr. 30)

On October 13, 2021, Petitioner underwent a functional capacity evaluation ("FCE") that determined she was able to lift 25 pounds from floor to waist and waist to shoulder and 20 pounds overhead. The FCE examiner further noted that Petitioner needed to change her position from time to time. (PX 7)

Dr. Templin released Petitioner to work consistent with the FCE recommendations. (PX6)

Dr. Cary Templin's Deposition Testimony

The evidence deposition of Dr. Cary Templin was taken April 27, 2021. (PX 1) Dr. Templin is a board-certified orthopedic surgeon who performs approximately 150-200 cervical spine fusions per year and approximately 150-200 lumbar fusions per year. (Id.)

Dr. Templin performed Petitioner's cervical fusion on October 9, 2019, and her lumbar fusion on December 2, 2020.

Petitioner first presented to Dr. Templin on May 24, 2019, with a history of a work accident while driving a truck 20 miles per hour when the truck hit a large pothole throwing Petitioner airborne and into her seat. Petitioner reportedly experienced low back and neck pain extending into the left arm,

immediately thereafter (Id., p. 16) On exam, Petitioner, who was wearing a lumbar back brace, complained of neck pain extending into her left arm and left lower back pain extending into her left buttock. (Id.) Petitioner complained of pain with extension of the neck while looking upwards and turning her head to the left side. Dr. Templin noted a Petitioner exhibited a positive Spurling maneuver sign for pain extending into the arm and upper back. Shoulder impingement sign was positive on the left and she had limited range of motion in her left shoulder. She also had problems raising her left arm to the side. Lumbar flexion was limited to ten degrees of flexion and five degrees of extension, and she had tenderness to palpation over the left lower back. A negative straight leg raise was also noted. (Id., p. 18)

Pursuant to his review of the cervical MRI, Dr. Templin noted a herniated disc at C5-C6 that extended centrally with a fragment extending to the left side that narrowed the entrance to the foramen. There was no cord impingement or signal change. (Id., p 20)

Pursuant to his review of the lumbar MRI, the doctor noted grade one anterolistesis at L4-L5 with some mild degenerative changes to the disc. There was no spinal stenosis. There was a STIR signal extending into the pedicle of L4 and L5 and around the facet joint. (Id., p. 20-21)

Dr. Templin ordered a lumbar CT scan which later showed an injury to the facet joint, either an occult fracture or contusion or a fracture. (Id., p. 28)

Dr. Templin opined that Petitioner's lumbar condition and need for surgery was causally related to her May 2, 2019, work accident. noting that the loading injury to her spine, caused by the accident, was competent to cause Petitioner's underlying asymptomatic lumbar spondylolisthesis and arthropathy to become symptomatic. Dr. Templin testified that Petitioner's lumbar MRI was significant for grade one anterolisthesis at L4-L5 with some mild degenerative changes in the disc. Although no spinal stenosis was evident. there was a STIR signal, indicative of an acute injury, that extended into the pedicle of L4 and L5 and around the facet joint. Regarding the mechanism of injury and the STIR signal, Dr. Templin further testified:

> *So, when the facet joint hits really hard, it will cause this reaction of the bone having basically what's swelling is in it. That's with the increased STIR signal means. STIR signals show a very hyperintensity of fluid or water, which would be consistent with edema or swelling which would find in a fracture of a bone. It was read as a fracture, but then I think they said something about a possible stress reaction. You see it very commonly when the facet joint is impacted significantly, and it will cause the surrounding edema that can indicate that was where the impact was, and in this case, it was on the left side most notably. (PX1 at 20-21)*

Regarding whether the mechanism of injury was competent to cause the underlying asymptomatic lumbar spondylolisthesis and arthropathy to become symptomatic, Dr. Templin testified to the following:

> *Yes. So, in this case the patient likely had some aspect of degenerative condition in the facet joint. She had a spondylolisthesis which did not start because of this injury. However, the spondylolisthesis indicates that the facet joint is arthritic in her case, and so when she gets a physiologic load of her body weight coming down on that facet joint, and it's enough to generate the findings of the MRI being this increased stir signal, that would indicate that*

that's certainly a likely source of her pain; and, therefore, it was the aggravation of the pre-existing facet arthropathy and spondylolisthesis becoming symptomatic in this situation. (PX1 at 24-25)

Dr. Templin further opined that Petitioner's medical treatment, including the lumbar discectomy and fusion that he performed on December 2, 2020, relieved Petitioner's lower back pain. (Id., p. 43) Post-operatively, Petitioner's lumbar vertebrae lined up perfectly and the spondylolisthesis was corrected. (Id., 44, 56)

Dr. Daniel Troy's Deposition

Dr. Daniel Troy's evidence deposition was taken on May 19, 2021. (PX 2; RX 1- herein "Troy") Dr. Troy is a board-certified orthopedic surgeon who performs cervical and lumbar fusions. (Troy p. 5)

Dr. Troy examined Petitioner on July 22, 2019. On exam of Petitioner's lumbar back, Dr. Troy noted, "bending to 60 degrees and extension to 10 degrees." The straight leg raising test was negative and strength was 5/5. (Id., p. 11) X-rays of the lower back showed mild disc narrowing at L4-5 and L5-S1 and no gross instability. (Id., page 12) The May 16, 2019, MRI showed mild neuroforaminal narrowing and no encroachment of the neural foramen to either side. (Id., page 14) The lumbar CT scan showed grade 1 spondylolisthesis. (Id., page 15) Petitioner reported a history of having been strapped into the driver's seat at the time of her accident. (Id., page 18) Dr. Troy diagnosed strains of the neck and lower back. (Id., page 19) Dr. Troy opined that Petitioner should only perform light-duty work. (Id., page 22)

Dr. Troy examined for the second time on February 24, 2020. Regarding Petitioner's lower back, she had no deficits to light touch. (Id., page 27) The straight leg raising test was negative and X-rays of the back showed well-maintained lumbar lordosis and no gross instability. (Id., page 28) Dr. Troy opined that Petitioner had subjectively based lower back pain with no discrete objective findings. (Id., page 31) Dr. Troy again found Petitioner would be able to perform light-duty work. (Id., page 32)

Dr. Troy examined the petitioner for the third time on July 27, 2020, at which time he reviewed Dr. Templin's note of April 2, 2020, which indicated that Petitioner's cervical range of motion was well preserved after the fusion surgery. (Id., page 34) Petitioner complained of lower back pain. Dr. Troy noted Dr. Templin's opinion that Petitioner the accident in question had aggravated Petitioner's L4-5 facet joint. (Id.)

On examination, the doctor noted Petitioner's neck condition had improved. She had slight discomfort but could rotate and bend the neck better. (Id., page 35) Petitioner continued to complain of lower back pain, as well as pain in the left gluteal region and thigh. She further complained of intermittent numbness to the left foot and ankle. (Id.) Dr. Troy found Petitioner's neck range of motion was 75 percent and that Petitioner's symptoms had essentially resolved after surgery. (Id., page 66) Dr. Troy found Petitioner had "giving way" weakness on examination of the left lower extremity noting she would drop the foot without any actual strength test being performed. (Id., page 38) She was able to stand on tip-toe, showing that there was strength in the foot and ankle. (Id., page 39) There were inconsistencies in the strength testing. Troy page 39. This was different than on the previous examinations. (Id.) Dr. Troy noted cogwheeling on strength testing, which means resisting then giving way, then resisting again. (Id.)

Dr. Troy's assessment was that the MRI and plain films showed no instability; there was no neurological compression to explain her examination findings. (Id., page 41) Dr. Troy opined that the pain complaints were out of proportion to the objective findings. (Id.) Dr. Troy noted the spondylolisthesis was minimal. (Id., page 43) Dr. Troy said there was no neurological compromise. (Id., page 44) Dr. Troy testified that there was no need for lumbar fusion surgery. The reasoning is that there is no gross instability, the subjective complaints are atypical for spondylolisthesis, the symptoms did not match the objective findings. (Id., pages 45, 47)

Dr. Troy found that, from the point of view of the lumbar spine, that Petitioner could resume full-duty work. (Id., page 46) Dr. Troy testified that the primary reason to perform fusion surgery is to correct instability. (Id., page 53) Sometimes, fusion surgery may be performed for facet arthritis. (Id., page 53)

The STIR signal can occur without a traumatic injury and can occur STIR signal can occur due to degenerative changes. (Id., page 60)

Regarding Petitioner's neck condition and based on Dr. Templin's operative report, Dr. Troy conceded that the accident could have been a causative factor in Petitioner's need for neck surgery. (Id., pages 67-68) Dr. Troy also conceded that the herniated disc in Petitioner's neck could have enlarged by natural progression in the time between her January 5, 2017 MRI and May 16, 2019. (Id., page 78.

Dr. Troy concluded that Petitioner did not need lumbar fusion surgery for her mild degree of facet arthritis. (Id., page 74) At the time of his July 27, 2020 examination, Petitioner did not need lumbar fusion surgery. (Id., page 75)

CONCLUSIONS OF LAW

(F) WHETHER PETITIONER'S CURRENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO HER WORK ACCIDENT

Petitioner only became symptomatic in her low back after her accident.

The Arbitrator finds that Petitioner has shown by a preponderance of the credible evidence contained in the record, that her current condition of ill-being, post L4-L5 lateral interbody fusion, is causally related to her May 2, 2019 accident. In reaching this conclusion the Arbitrator relies on the credible testimony of Petitioner's treating surgeon, Dr. Cary Templin, the credible, uncontradicted testimony of Petitioner, the chain of events, and the diagnostic lumbar MRI.

Regarding Petitioner's credibility, the Arbitrator closely observed Petitioner throughout her testimony and found her to be an intelligent individual who was confident and eager to tell her story and did so without hesitation or contradiction. The Arbitrator found that Petitioner's testimony and demeanor withstood the challenge and scrutiny of a relatively rigorous cross-examination by Respondent's attorney. To the Arbitrator, Petitioner came off as a straightforward individual who was simply telling her story. After the hearing, when the Arbitrator examined the evidence contained in the record, the Arbitrator found that Petitioner's testimony was, for the most part, corroborated by the treating medical records in evidence. Accordingly, the Arbitrator places a significant amount of weight on the testimony of Petitioner.

Petitioner's testimony regarding her general state of good in her back prior to her accident is uncontested and corroborated by the treating records in evidence which document a history of significant low back pain immediately following her May 2, 2019, accident when she presented to Respondent's occupational provider on May 3, 2019. (PX4 at 107) Thereafter, Petitioner's complaints of persistent low back pain were consistently documented by Respondent's occupational provider:

05/05/2019	PIC	"pain to lower back 7/10 that increases with activity." (PX5 at 107)
05/10/2019	PIC	"Low back pain still persistent and radiates to L leg." (PX5 at 130)
05/10/2019	PIC	Referral for lumbar MRI (PX5 at 146)
05/17/2019	PIC	"Patient her for f.u. Low back pain unchanged. Pt. still has limitation in ROM. She still has tingling radiating to left leg." (PX5 at 148)
05/20/2019	PIC	"Pt states her pain is now unbearable. Work has her sitting down for prolonged periods of time, which she is unable to do." (PX5 at 163)

The Arbitrator places significant weight on the aforementioned records due to their proximity to the accident. Based on the preponderance of credible evidence contained in the record, Petitioner has established that her low back was asymptomatic prior to the accident and she was able to perform the essential duties of her job prior to her accident but unable to do so after.

The Arbitrator found the opinions of Dr. Templin credible, persuasive, and consistent with the medical evidence and chain of events in this case. Further, the objective medical data, including the STIR signal evident on the lumbar MRI, supports his opinions. Regarding the mechanism of injury and the STIR signal, Dr. Templin testified to the following:

> *So, when the facet joint hits really hard, it will cause this reaction of the bone having basically what's swelling is in it. That's with the increased STIR signal means. STIR signals show a very hyperintensity of fluid or water, which would be consistent with edema or swelling which would find in a fracture of a bone. It was read as a fracture, but then I think they said something about a possible stress reaction. You see it very commonly when the facet joint is impacted significantly, and it will cause the surrounding edema that can indicate that was where the impact was, and in this case, it was on the left side most notably. (PX1 at 20-21)*

Regarding whether the mechanism of injury was competent to cause the underlying asymptomatic lumbar spondylolisthesis and arthropathy to become symptomatic, Dr. Templin testified to the following:

> *Yes. So, in this case the patient likely had some aspect of degenerative condition in the facet joint. She had a spondylolisthesis which did not start because of this injury. However, the spondylolisthesis indicates that the facet joint is arthritic in her case, and so when she gets a physiologic load of her body weight coming down on that facet joint, and it's enough to generate the findings of the MRI being this increased stir signal, that would indicate that that's certainly a likely source of her pain; and, therefore, it was the aggravation of the pre existing facet arthropathy and spondylolisthesis becoming symptomatic in this situation. (PX1 at 24-25)*

Dr. Templin further opined that Petitioner's medical treatment, including the lumbar discectomy and fusion that he performed on December 2, 2020, relieved Petitioner's lower back pain. (Id., p. 43) Post-operatively, Petitioner's lumbar vertebrae lined up perfectly and the spondylolisthesis was corrected. (Id., 44, 56)

The Arbitrator notes that Dr. Troy agreed that a STIR signal may be indicative of acute trauma sustained to the facet joints. According to Dr. Troy, a STIR signal is "an increased signal" on MRI signified by a change in color on MRI that tends to be white. Dr. Troy testified on cross-exam that, as an orthopedic surgeon, when he is confronted with a STIR signal on MRI:

> *It means there's something going on there, and the question is What is that something? Is that something reactive from degeneration? Is that something traumatic? But there's something causing the increased edema or inflammation in that area of the bone. (Troy dep. P. 61)*

Dr. Troy conceded that the findings on MRI with regard to Petitioner's lumbar spine may be consistent with trauma to her lumbar spine. (Id.)

Respondent does not dispute that Petitioner sustained a work accident on May 2, 2019, that caused injury to her cervical spine that necessitated surgery and is causally connected to her current condition of ill-being. This was a contested issue prior to the evidence deposition of Dr. Daniel Troy. Respondent initially denied causation with regard to Petitioner's cervical spine based on his report of July 22, 2019. At that time Dr. Troy diagnosed Petitioner with a cervical strain. (Report attached as Ex. 2 to Troy's Dep at 12) At his evidence deposition, Dr. Troy was unable to substantiate or defend the underlying basis for his causation opinions pertaining to Petitioner's cervical condition when confronted with intraoperative findings that were not considered when formulating his opinions in this case:

Q: If there was objective evidence that showed that the C5- C6 encroached upon the C6 nerve root, with that change your opinion?

A: If there is, but I'm looking at the objective evidence in front of me. I'm looking at the MRI, which is the objective evidence, from May 16th, 2019, that shows the foramen. Although there is a disc bulge going into the foramen and, the foramen is open.

Q: So, my question to you is: if there was objective evidence which indicated that there was foraminal stenosis, would you agree that an epidural injection would be reasonable and necessary to relieve the symptoms?

A: The way the question is worded, the answer would be yes.

Q: Did you review the ACDF operative report from Dr. Templin in this matter?

Q: Do Dr. Templin's intraoperative findings listed in that report show. . . that there was a large disc herniation extending to left side of the central foramina which he retrieved?

A: It does.

Q: Do you have any reason to disagree with that finding?

A: I do not.

Q: Does that finding change your opinion as to whether or not the C5-6-disc herniation was impinging upon the nerve?

A: It appears that intraoperatively he found, although it was not well viewed and visualized on the MRI, that there was encroachment into the foramen.

Q: So, does that change your opinion?

A: It would. (PX2 at 63-65)

Regarding his causation opinions pertaining to Petitioner's lumbar spine, Dr. Troy was confronted on cross-exam with evidence including *his own report* that Petitioner had no back complaints for at least two years prior to the May 2, 2019 accident. The Arbitrator finds it significant that Dr. Troy did not consider Petitioner's physical condition and treating medical history prior to tendering his causation opinions in this case. Also not considered by Dr. Troy, is the fact that Petitioner missed no work for back pain prior to May 2, 2019. Dr. Troy also did not consider the STIR signal indicating trauma to the L4-L5 left pedicle, nor did he consider the fact that every report of pain Petitioner made was consistent with L4-L5 arthropathy. At his deposition, he was asked and he answered:

Q: Every time you examined her, though, did she continue to complain of pain at the L4-L5 pedicle on the left?

A: She did continue to complain of low back pain on the left side. You can't really say from examination it is from the L4-L5 level, but her region of area of the pain never changed.

Q: So, is that consistent with arthropathy of the L4-L5 level?

A: That is. (PX2 at 70)

The Arbitrator finds further support in favor of Petitioner pursuant to the chain of events in this case which demonstrates that Petitioner was physically able to work her full-duty job prior to her May 2, 2019, accident but unable to do so afterward. The Arbitrator found no evidence that indicated Petitioner suffered any back-related symptoms prior to her accident. Petitioner's testimony regarding her physical ability to perform all of her job-related duties before the accident is uncontested. The medical records in evidence, prior to the May 2, 2019, accident, contain no back complaints. The Arbitrator finds significant the records from Respondent's occupational clinic, where Petitioner presented on March 9 and May 9, 2016, for an acute upper respiratory infection. Noticeably absent from these records are any reports of back pain, even with coughing. (PX4 at 20; (PX5 at 28)

On December 9, 2016, Petitioner suffered a work injury which is *not* the subject of this case. (Tr. 18-19; PX5 at 38) On that day she was standing in the doorway of the hostler truck when another hostler truck driver struck it from the opposite side. (Tr. 18-19; PX5 at 38) She presented to the same occupational clinic on December 9th, 12th, and 19th with primary complaints of right forearm and left shoulder pain. (PX5 at 38, 60, 83) On December 19, 2016, Petitioner made mention of "pain to her left shoulder that is a 7/10 and radiates down her left arm and pain in her left lower back/buttocks. (PX5 at 83) She was given a back brace. (PX5 at 84) The occupational physicians did not order

further lumbar workup. (PX5) Petitioner did not seek treatment again at Respondent's occupational clinic until May 3, 2019, immediately following the accident at issue in this case. (PX5 at 88) At that time her chief complaint was "constant (but worse at times) pain of the left lower back. (PX5 at 88)

Dr. Troy also had occasion to examine Petitioner's lower back prior to the May 2, 2019 injury. As part of the earlier case, Petitioner presented to Dr. Troy for an examination on February 6, 2017. At that time Dr. Troy recorded Petitioner "denied significant back pain today" and "denied pain radiating down the bilateral lower extremities. (Report attached as Ex. 5 to Troy's Dep. at 4) He assessed her ill-being as "resolved left lower lumbar contusion/strain. (Report attached as Ex. 5 to Troy's Dep. at 5)

The Arbitrator finds further support in the below summary of medical histories which illustrates consistent reports of left low back pain since the May 2, 2019 event:

DOS	Medical Facility	History
05/03/2019	PIC	"chief complaint of constant (but worse at times) back pain of the left lower back since Thu, May 2, 2019. (PX5 at 88)
05/03/2019	Saint Joseph	"Patient endorses lower back pain that has been constant since the incident." (PX3 at 41)
05/05/2019	PIC	"pain to lower back 7/10 that increases with activity." (PX5 at 107)
05/10/2019	PIC	"Low back pain still persistent and radiates to L leg." (PX5 at 130)
05/10/2019	PIC	Referral for lumbar MRI (PX5 at 146)
05/17/2019	PIC	"Patient her for f.u. Low back pain unchanged. Pt. still has limitation in ROM. She still has tingling radiating to left leg." (PX5 at 148)
05/20/2019	PIC	"Pt states her pain is now unbearable. Work has her sitting down for prolonged periods of time, which she is unable to do." (PX5 at 163)
05/24/2019	Dr. Templin	"left lower back pain extending across the lumbosacral junction and some into the left buttock." (PX6 at 4)
06/28/2019	Dr. Templin	"She also suffered what appears to be either a stress fracture or an aggravation of a degenerative change at her facet joints with continued lower back pain extending into the left buttock." (PX6 at 8)

As early as June 28, 2019, Dr. Templin considered Petitioner a candidate for surgery. (PX6 at 8) The Arbitrator further notes that the surgery was successful in relieving Petitioner's symptoms. On December 29, 2020, in her first post-op visit with Dr. Templin, Petitioner relayed she is "doing well." Dr. Templin also noted, "she notes immediately right after surgery that the pain in her back is significantly different in regards to that deep ache where the facet joint pain was… she only complains of muscular pain at this point in time. (PX6 at 70)

By April 14, 2021, Dr. Templin noted:

> *Kim is a 43-year-old the scene and follow-up. She has status post and L4 L5 lateral fusion and overall is doing better. She is much better than she was prior to surgery and is getting better with physical therapy as well. She feels her range of motion is improving. She rates her pain currently of 4/10. (PX6 at 88*)

The evidence in this case illustrates a chain of events in which Petitioner was asymptomatic prior to her accident but immediately following the May 2, 2019 event, experienced persistent left-sided low back pain.

There is no evidence in the record that Petitioner was symptomatic prior to her accident. Nor did Respondent offer evidence of an intervening injury that broke the causal chain.

Based on the above the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that her current condition of ill-being - status post L4-L5 lateral interbody fusion – is causally related to the accident of May 2, 2019.

(J), WERE THE MEDICAL SERVICES PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES?

Cervical Spine

The Arbitrator finds all medical treatments to Petitioner's cervical spine to be reasonable and necessary. As noted above and will be referenced below in Issue (M), at the time of arbitration, Respondent did not dispute causal connection with regard to Petitioner's injuries to her cervical spine. Respondent even paid the facility cost in the amount of $101,723.32 for the surgery – albeit three and half years later. However, in light of its own examiner's testimony, it inexplicably has made no other payments for medical treatment.

The Arbitrator relies on the testimony of *both* Dr. Templin and the Respondent's examiner Dr. Troy. There is no dispute that Petitioner had a C5-C6 disc herniation impinging upon the nerve. There is no dispute the surgery did in fact alleviate Petitioner's radiculopathy. In his deposition, Dr. Templin was asked, and he answered:

Q: Is it your opinion that the C5-C6 ACDF performed on October 9, 2019, was reasonable and necessary to treat Ms. Brawthen's cervical symptoms and radiculopathy?

A: Yes. . .

Q: Please explain your basis for the arbitrator.

A: The patient had an injury, had symptoms which were consistent with the x-ray findings. She had an appropriate course of conservative treatment, and in the failure of the treatment, surgical intervention became reasonable and necessary to alleviate her symptoms. (PX1 at 46)

Specifically, Dr. Templin provided a reasonable explanation for performing fusion surgery when he was asked, and he answered:

Q: What symptoms did you intend to relieve by performing the C5-C6 ACDF on October 9, 2019?

A: Her left arm pain and the numbness extending into the thumb.

Q: So to be clear, at least as of November 12, 2019, it appears that the surgery did actually relieve what it was intended to relieve, correct?

A: Yes. . .(PX1 at 35)

Q: . . . To be clear for the arbitrator, postop, Ms. Brawthen's Spurling maneuver was now negative; is that correct?

A: That's correct. (PX1 at 37)

Dr. Troy was also asked to comment on the surgery during his testimony. On cross-examination he was asked, and he answered:

Q: So, with regard to the treatment of Ms. Brawthen's cervical spine, after now reviewing the operative report, do you agree that all of the treatment with regard to Ms. Brawthen's cervical spine was reasonable and necessary?

A: It was. (PX2 at 68)

The Arbitrator finds such testimony compelling and persuasive on this issue. As discussed below in Issue (M) Respondent has not articulated any reasonable basis for failing to satisfy all bills related to the Petitioner's cervical spine injury. The Arbitrator finds no controversy with regard to the work-up or post-operative care.

Based on the above, the Arbitrator orders Respondent to pay *directly to Petitioner* all bills for medical services related to the cervical spine.

Lumbar Spine

The Arbitrator - having found Petitioner's lumbar condition causally related to the May 2, 2019 work injury – further finds all medical treatments to Petitioner's lumbar spine to be reasonable and necessary. The Arbitrator again relies on the testimony of *both* Dr. Templin and the Respondent's examiner Dr. Troy.

Dr. Templin testified as to the necessity of lumbar fusion surgery when he was asked, and he answered:

Q: Doctor, is it your opinion that the L4-L5 lateral fusion performed on December 2, 2020, was reasonable and necessary to treat Ms. Brawthen's lumbar symptoms?

A: Yes.

Q: What is your basis for that opinion?

A: The basis is that the patient had an appropriate --, an injury, had symptoms to the left lower back which were consistent with the MRI findings after the injury.

She had an appropriate extensive course of nonoperative care including physical therapy, multiple injections. She had temporary relief from the injections but had persistent consistent pain to the lower back. She had surgery, which was, therefore, reasonable and necessary to treat the problem and did, and she has improved. (PX1 at 48)

Dr. Templin further testified that the surgery was a success when he asked, and answered:

Q: So did the surgery actually relieve the symptoms that Ms. Brawthen had been complaining of since May 24, 2019, in the lumbar spine?

A: Yes.

Q: Doctor, at that point did you review any diagnostics?

A: Yes, X-rays were taken that show that everything was appropriately positioned. We had reduced or lined up her bones perfectly again, and there was nothing loose or out of place.

Q: Specifically, when you say you lined her bones up again, does that mean there is no longer any spondylolisthesis?

A: Yes. (PX1 at 43-44)

The Arbitrator finds further support in the testimony of Respondent's examiner Dr. Troy. On cross-examination, Dr. Troy generally testified as the reasonableness of lumbar fusion surgery to treat back pain:

Q: All right. So, to be clear for the arbitrator, you, in your own practice, perform lumbar fusions for facet arthritis; is that correct?

A: I do.

Q: Is another word for facet arthritis "arthropathy"?

A: It is.

Q: What are the symptoms of arthropathy?

A: It could be pain. That's the number one symptom.

Q: Pain located where?

A: In the lumbar spine.

Q: So to be clear for the arbitrator, that would be in the back?

A: That would be correct.

Q: And to be clear for the arbitrator, in your own practice you recommend and perform lumbar fusions to treat symptoms of back pain caused by arthropathy of the facet joint, correct?

A: That's correct.

Q: And the intention would be to relieve back pain, correct?

A: That's correct. (PX2 at 53-54)

Specifically, as to the lumbar fusion performed on Petitioner, Dr. Troy conceded that it was not "unnecessary" when he was asked and he answered:

Q: Are you aware that Dr. Templin performed the lumbar fusion on Ms. Brawthen's lumbar spine?

A: I am.

Q: Is it your opinion that Dr. Templin performed an unnecessary surgery on Ms. Brawthen's lumbar spine?

A: It is not.

Q: In fact, a lumbar fusion of the L4-L5 level is an accepted modality to treat L4-L5 arthropathy, correct?

A: It is.

Based on the above, the Arbitrator finds Petitioner has proven - that it is more probably true than untrue – that her treatment related to the lumbar spine was reasonable and necessary to diagnose and treat her lumbar facet arthropathy and the back pain it caused. The Arbitrator finds no controversy in the work-up or post-operative care. Dr. Templin testified that in addition to its therapeutic relief, the radiofrequency ablation ('RFA") was diagnostic of the fact joints being the pain generator. (PX1 at 38)

Accordingly, the Arbitrator orders Respondent to pay *directly to Petitioner* all bills for medical services related to the lumbar spine.

The Arbitrator notes the parties submitted into evidence Shared Exhibit 1 – a fee schedule analysis – and Shared Exhibit 2 – a medical cost summary. The amount of *unpaid* medical

bills related to the cervical spine pursuant to the fee schedule is **$163,867.00.** The amount of *unpaid* medical bills related to the lumbar spine pursuant to the fee schedule is **$183,545.12.**

Accordingly, the Arbitrator orders Respondent to pay *directly to Petitioner* all bills for medical services in the amount of $347,412.12 as itemized by Shared Exhibit 1 and Shared Exhibit 2.

(K), WHETHER PETITIONER IS ENTITLED TO TEMPORARY TOTAL DISABILITY/MAINTENANCE BENEFITS.

In light of the causation findings above the Arbitrator now addresses Petitioner's claims for temporary total disability benefits for the period of May 3, 2019, through October 21, 2021, and maintenance benefits for the time period of October 22, 2021, through January 11, 2023. (AX1) The Arbitrator references AX2 – further stipulations executed and submitted by the parties which state: It is stipulated between the parties that in a separate matter, Brawthen v. Parsec, Inc., 17WC000517 Respondent paid Petitioner TTD benefits for the time period of February 25, 2021, through October 21, 2021 (34 weeks) and maintenance benefits for the time period of October 22, 2021 through April 20, 2022 (25 and 5/7 weeks).

In the present case, Respondent claims it paid maintenance benefits for the time period of April 21, 2022, through January 11, 2023. It is stipulated between the parties that Respondent has paid the corresponding TTD and maintenance benefits to the extent of its liabilities because it made such payments for the same time period out of the companion case. The parties further stipulate that Respondent is entitled to a credit for all payments it has made on behalf of Petitioner for the above time periods. (AX2)

The Arbitrator finds no controversy with the above stipulation**. Having found in Petitioner's favor with regard to causal connection, the Arbitrator awards temporary total disability benefits in the amount of $486.66 per week for the time period of May 3, 2019, through October 21, 2021.**

As to maintenance benefits, the Arbitrator adopts the assessment of the agreed upon CRC, Mr. Steven Blumenthal. (PX10) Both parties submitted his reports into evidence which indicate that Petitioner actively participated in a Job Development Program, (PX10 at 88), "made a diligent effort in her job search" (PX10 at 55) and was "fully cooperative in all aspects of her program." (PX10 at 55) On January 17, 2023, Mr. Blumenthal closed his file and noted "Ms. Brawthen's job development program has been completed and her employment with Currency Exchange has been considered a successful job placement." (PX10 at 88)

Accordingly, the Arbitrator awards maintenance benefits in the amount of $486.66 per week for the time of October 22, 2021, through January 11, 2023. Based on the agreement of the parties, Respondent is awarded credit to the full extent of its liability for TTD payments it made for the time period of May 3, 2019, through October 21, 2021, and maintenance payments it made for the time period of October 22, 2021, through January 11, 2023.

(L) THE NATURE & EXTENT OF THE INJURY

As noted above, the Arbitrator adopts the opinions and assessments of Petitioner's surgeon – Dr. Templin, and the agreed upon CRC - Mr. Blumenthal. On October 21, 2021, Dr. Templin determined Petitioner had reached MMI. (PX6) He released her from his care with permanent restrictions at light demand as set forth by a valid functional capacity evaluation. (PX6) Petitioner met with Mr. Blumenthal and underwent a vocational rehabilitation interview as well as a complete battery of vocational testing. (PX10) Mr. Blumenthal noted:

> *Based upon the work releases of Dr. Templin and Dr. Fuentes, the results of the FCE, and this counselor's review of the Dictionary of Occupational Titles, [Petitioner] is unable to physically perform the job duties of a hostler and she has lost her access to this occupation. (PX10 at 13)*

Mr. Blumenthal projected that upon completion of training and Vocational Rehabilitation Services consisting of Job Readiness Training and Job Placement Services, she would be able to achieve employment earning between $13.00 and $18.72 an hour. (PX10 at 14) Using a transferable skills analysis Mr. Blumenthal stated Petitioner could return to work as a receptionist or information clerk; office clerk; or customer service representative. (PX10 at 12) He completed a Rehabilitation Plan pursuant to Rule 9110.10. He noted Petitioner required retaining in the form of "completion of computer office skills including keyboarding, data entry, and use of Microsoft Office Word, Excel, and Outlook, Post training provision of Job Readiness Training and Job Placement Services. (PX10 at 16)

As noted above, Petitioner actively participated in a Job Development Program, (PX10 at 88), "made a diligent effort in her job search" (PX10 at 55) and was "fully cooperative in all aspects of her program." (PX10 at 55) On November 9, 2022, Petitioner achieved employment as a Cashier/Clerk with Currency Exchange Inc. (PX10 at 73) The position paid $13.50 per hour. (PX10 at 73, 80-82, 86) On January 17, 2023, Mr. Blumenthal closed his file and noted "Ms. Brawthen's job development program has been completed and her employment with Currency Exchange has been considered a successful job placement."

At the time of arbitration, Petitioner was employed by Currency Exchange Inc., earning $13.50 per hour and working a 40-hour week – a weekly gross earning of $540.00. At the time of the injury, Petitioner was a member of Teamster Local 179. (Tr. 35) Both parties submitted the collective bargaining agreement ("CBA") between the union and Respondent. (PX11, RX) Respondent called Angela Costilla, its administration manager. (Tr. 56) She is responsible for payroll. (Tr. 56) Both Petitioner and Costilla reviewed the CBA. The CBA states and Petitioner agreed that if she were presently employed by Respondent, she would earn $22.50 per hour and be guaranteed 40 hours per week – a gross earning of $900.00 per week. Costilla agreed that Petitioner would be guaranteed a 40-hour-work week pursuant to the CBA. (Tr. 57) She did not offer any testimony regarding the rate.

The Arbitrator finds that Petitioner has met her burden in proving she has suffered a diminished earning capacity under Section 8(d)1 of the Act. The Arbitrator finds compelling that Petitioner fully cooperated with her Vocational Rehabilitation and achieved the exact employment identified by Mr. Blumenthal in his initial report.

Accordingly, Respondent shall pay Petitioner wage differential benefits, commencing January 12, 2023, of $240.00/week until Petitioner reaches age 67 pursuant to Section 8(d)1 of the Act.

(M) WHETHER PENALTIES SHOULD BE IMPOSED UPON RESPONDENT

The Arbitrator awards additional compensation and attorneys' fees pursuant to sections 19(k), 19(l) and 16 of the Act. The Arbitrator adopts and incorporates AX1 – the "Request for Hearing" form executed and submitted by both parties. (AX1) The Arbitrator notes Respondent *agreed* that Petitioner's current condition of ill-being with regards to her cervical spine is causally related to the injury. (AX1)

The Arbitrator refers to the testimony of Respondent's examiner Dr. Troy. As mentioned above, Dr. Troy gave his evidence deposition on May 19, 2021. At that time, he flipped his causal opinion regarding the cervical spine. On cross-examination he was asked, and he answered:

Q: So, to be clear for the arbitrator, is it now your opinion that the reported mechanism of injury of May 2nd, 2019 caused an aggravation to the C5-6 disk protrusion causing foraminal stenosis, which then required a C5-6 ACDF that was successful?

A: It was a factor.

Q: So is that a yes?

A: It was a yes to that. It was a variable that could have led to a C5-6 progression.

Q: To be clear for the arbitrator, the mechanism of injury of May 2nd, 2019 contributed to the symptoms which required surgery, correct?

A: Could have contributed. That's a correct statement. (PX2 at 66-67)

. . .

Q: So, with regard to the treatment of [Petitioner's] cervical spine, after now reviewing the operative report, do you agree that all of the treatment with regard to [Petitioner's] cervical spine was reasonable and necessary?

A: It was.

Inexplicably, Respondent refused to pay *any* medical bills related to cervical spine treatment until March 27, 2023 – almost two years after Troy's testimony – when it made its only payment to the surgical center in the amount of $101,723.32. (PX13) It continues to withhold payment of bills in the amount of $163,867.00 without explanation. Respondent has presented no viable reasonable defense for denying and delaying the payment of medical benefits related to the cervical spine. In its response to Petitioner's Petition for Penalties it merely stated it "has a reasonable and just cause to dispute the medical charges of other providers based on the reports and deposition testimony of Dr. Daniel Troy." (RX6) The

Arbitrator also notes that the *only* medical benefits Respondent paid were *directly* to the Center for Minimally Invasive Surgery – depriving Petitioner's attorney of its fee - just two months prior to arbitration. (PX13) Such action is vexatious and would be unjust in this case when Petitioner's counsel incurred significant costs, deposed the treating surgeon and examiner, proceeded to arbitration, and drafted a proposed decision. The Arbitrator further notes that allowing such vexatious action to take place without penalty would have a chilling effect on the remedial nature of the Act as it could inhibit injured workers with lower average weekly wages from retaining competent legal representation.

Accordingly, the Arbitrator awards to Petitioner penalties in the amount of $81,933.50 representing 50% of the unpaid and uncontested medical expenses regarding the cervical spine pursuant to the fee schedule and stipulated to by the parties in Shared Exhibits 1 and Shared Exhibit 2 as provided in Section 19(k) of the Act; $10,000.00 as provided in Section 19(l) of the Act; attorneys' fees in the amount of $18,386.70 representing 20% of the above penalties awarded as well as attorneys' fees in the amount $20,344.66 representing 20% of the previously disputed medical bill paid directly to the Center for Minimally Invasive Surgery pursuant to Section 16 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC023512
Case Name	Dzmitry Khokha v. Life Management, LLC
Consolidated Cases	
Proceeding Type	Petition for Review Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0015
Number of Pages of Decision	3
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Lawrence Jackowiak
Respondent Attorney	Olga Sheinman, Ashley Krenz

DATE FILED: 1/14/2025

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DZMITRY KHOKHA,

Petitioner,

vs. NO: 23 WC 23512

LIFE MANAGEMENT, LLC,

Respondent.

DECISION AND OPINION ON REVIEW

With due notice given to all parties, this matter comes before the Commission on Respondent's timely Petition for Review taking exception to the Arbitrator's dismissal of this claim as well as marking in dispute, the issues of jurisdiction and employer-employee relationship. Being advised of the facts and applicable law, and for the reasons stated below, the Commission reverses and vacates the Arbitrator's order and remands this matter to the Arbitrator.

On February 7, 2024, the matter proceeded with arbitration to its conclusion and proofs were closed. On February 14, 2024, and prior to the Arbitrator issuing a decision, Petitioner filed a Motion For Voluntary Dismissal of the claim with the intention of presenting the motion to the Arbitrator on February 15, 2024. The basis for Petitioner's request was that unexpected developments and new evidence presented during the arbitration hearing revealed that the work accident may have occurred in Wisconsin while Petitioner was working for a Wisconsin company. By its Brief, Respondent stated that the Arbitrator set Petitioner's motion for a pre-trial conference on February 22, 2024, and following a discussion with the parties, the Arbitrator granted Petitioner's motion on February 23, 2024 on CompFile, the Commission's electronic filing system. The Arbitrator further declined to issue a decision as it pertained to the February 7, 2024 arbitration hearing. No written order was issued. Respondent timely filed a Petition for Review on March 21, 2024.

Respondent argues on appeal that one-day notice of the hearing on Petitioner's motion was insufficient, and that the Arbitrator dismissed the claim after proofs from the arbitration hearing were closed and without any further discussion on the record. Respondent also argues that because the Act and our Rules are silent as to the proper procedure for voluntary dismissals filed after a trial has been completed, then the Illinois Code of Civil Procedure applies. Lastly, Respondent argues that its due process rights were violated because without a decision, Petitioner could refile

his claim until such time that the statute of limitations expires (August 24, 2026), and if Petitioner does refile, the same issues of jurisdiction and employer-employee relationship would continue to exist. Petitioner did not submit any response Brief.

The Commission agrees that one-day notice of Petitioner's motion was insufficient under our Rules Governing Practice Before the Illinois Workers' Compensation Commission. *50 Ill. Adm. Code 9020.70(b)(1)(A)*. Nevertheless, the Arbitrator gave the parties a one-week continuance, to February 22, 2024, at which time both sides appeared and discussed the matter during a pre-trial conference. The Commission finds that Respondent had sufficient notice of Petitioner's motion at that time to present any objections and arguments to the Arbitrator and thus suffered no undue prejudice in this regard.

The Commission further acknowledges that the Act and our Rules do not provide for any specific manner as to how to conduct a hearing on a motion for voluntary dismissal, and more specifically, how to handle a voluntary dismissal after arbitration has been completed. However, the Appellate Court addressed this issue in *Centeno v. Ill. Workers' Comp. Comm'n*, 2020 IL App (2d) 180815WC, and stated "that a party in a proceeding under the Act has the right to dismiss a petition, motion, or claim without the consent of the opposing party *provided* that the request to dismiss is made *prior to* the commencement of the underlying hearing and it does not prejudice the opposing party." *Id.* at ¶ 34. The Court indicated that once a trial or hearing had begun, the right to dismissal is curtailed to prevent a plaintiff from dismissing a case if the trial proceedings appeared unfavorable. *Id.* In this context and in consideration of Respondent's representations, the Commission finds the Arbitrator's dismissal of this claim untimely and prejudicial to Respondent.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's order of February 23, 2024, granting Petitioner's Motion for Voluntary Dismissal, is hereby reversed and vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator with instructions to prepare a written decision on the merits for the February 7, 2024 arbitration proceedings.

January 14, 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	22WC005505
Case Name	Juana Arellano v. Buckhead Meat & Seafood of Chicago
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0016
Number of Pages of Decision	12
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Jason Esmond
Respondent Attorney	Guy Maras

DATE FILED: 1/14/2025

/s/Kathryn Doerries,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
ROCKFORD

☐ 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

JUANA ARELLANO,

Petitioner,

vs. NO: 22 WC 005505

BUCKHEAD MEAT & SEAFOOD OF CHICAGO,

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 disability, medical expenses and prospective medical, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327 (1980).

The Commission modifies the award of medical expenses in the Arbitrator's Decision to comport with the narrative under Issue (J) in the Conclusions of Law, so that the Order reflects the itemization of medical expenses awarded, specifically, that the Respondent is liable for payment of the treatment provided, as set forth in Petitioner's Exhibit 6, pursuant to Section 8(a) and the medial fee schedule, for the following: UW Hospital and Clinics totaling $548.89 for date of service of April 13, 2022. Respondent shall also reimburse Petitioner for out-of-pocket expenses totaling $298.72 relative to treatment at Ortho IL on January 26, 2023 and July 6, 2023 ($132.21) and Swedish American Medical Group on November 23, 2021 ($166.51).

The Commission further corrects a scrivener's error in the first sentence in the last paragraph under Issue (K), in the Conclusions of Law, by substituting "February 26" for "February 6" so the sentence reads, "Accordingly, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from November 20, 2021, through February 26, 2024, for a total of 118-2/7 weeks, at the weekly rate of $587.19." The Commission further corrects that same scrivener's error in the Arbitrator's Order, as reflected in the Order below.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on May 30, 2024, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $587.18 per week for a period of 118-2/7 weeks, commencing November 20, 2021, through February 26, 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. Respondent is entitled to a credit of $23,907.02 for temporary total disability benefits paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay for the outstanding medical expenses, as set forth in Petitioner's Exhibit 6, pursuant to Section 8(a) and the medical fee schedule, for the following: UW Hospital and Clinics totaling $548.89 for date of service of April 13, 2022.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall also reimburse Petitioner for out-of-pocket expenses totaling $298.72 relative to treatment at Ortho IL on January 26, 2023 and July 6, 2023 ($132.21) and Swedish American Medical Group on November 23, 2021 ($166.51).

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize the bilateral epidural steroid injection recommended by Dr. Stanley**.**

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 $46,500.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

January 14, 2025
O111924
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	22WC005505
Case Name	Juana Arellano v. Buckhead Meat & Seafood of Chicago
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	Gerald Napleton, Arbitrator

Petitioner Attorney	Jason Esmond
Respondent Attorney	Guy Maras

DATE FILED: 5/30/2024

/s/Gerald Napleton, Arbitrator
Signature

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

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

- ☐ 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)

Juana Arellano
Employee/Petitioner

v.

Case # **22 WC 5505**

Consolidated cases:

Buckhead Meat & Seafood of Chicago
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Napleton**, Arbitrator of the Commission, in the city of **Rockford**, on **February 26, 2024.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **November 19, 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 her employment.

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

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

In the year preceding Petitioner's injury, Petitioner's average weekly wage was **$880.79.**

On the date of accident, Petitioner was **56** years of age, ***married*** with **0** dependent children.

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

ORDER

- The Respondent shall pay the petitioner temporary total disability benefits of $ **587.19** /week for **118 & 2/7** weeks, from **November 20, 2021 through February 6, 2024** as provided in Section 8(b) of the Act, less the **$23,907.02** credit due to Respondent for temporary total disability benefits paid.

- The Respondent shall pay the petitioner **$298.72** for out-of-pocket medical expenses.

- The Respondent shall pay for the outstanding medical pursuant to Section 8(a) and the medical fee schedule.

- The Respondent shall authorize the bilateral epidural steroid injection recommended by Dr. Stanley**.**

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

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

/s/ Gerald W. Napleton

Signature of Arbitrator

May 30, 2024

STATEMENT OF FACTS

Petitioner testified through an interpreter, Rafael Arrellano. She testified that she began working for Respondent approximately 6 years prior to her injury. (Tr. p. 7). She was working as a machine operator at the time of her injury and had been doing so for 6-8 months. (Tr. p. 7). As a machine operator, she would cut and seal packages of meat. (Tr. pp. 7-8). She did the position full-time and it was a standing position. (Tr. pp. 7-8). On November 19, 2021, Petitioner was lifting a basket of meat that she estimated weighed 40-50 pounds, from close to the floor. (Tr. pp. 8-9). While lifting the box, Petitioner felt a strong pain in the middle of her lower back. (Tr. p. 9). She testified that the pain radiated down both her legs. (Tr. p. 9). She testified that she couldn't get up and her supervisors assisted her until an ambulance arrived. (Tr. p. 8).

Petitioner was taken by ambulance to the emergency room where x-rays were performed and she was provided pain medication. (Tr. p. 10). Petitioner testified that she was referred to Ortho IL to see a specialist when discharged from the hospital. (Tr. p. 10). Petitioner followed up at Swedish American Medical Group on November 23, 2021 for follow up. She reported the onset of low back pain with right sided sciatic radiation and radiculopathy after lifting something heavy at work. She was recommended an MRI and medication. (Px. 2). Petitioner testified she did not return to work after her injury. (Tr. p. 10).

Petitioner testified she was working without restrictions or limitation prior to her injury. (Tr. p. 12). She testified that she did not have back pain prior to her injury, noting that she had treated for pain in the middle of her back approximately 2 years prior, but was not having any lower back symptoms. (Tr. p. 11). Respondent provided a record from Chiropractic First of Rockford from December 30, 2017. (Rx. 5). The intake paperwork indicated that two weeks prior, Petitioner fell at work, with the primary complaint of right knee pain. A scale stating Headache, Neck, and Low Back pain had three different numbers circled of 2, 5, and 8. Written notations indicated knee pain. Petitioner testified she went there for one visit. (Tr. p. 21). The record notes that as of January 6, 2018, she was improved. (Rx. 5). Petitioner testified she received no other treatment for that injury after January 6, 2018. (Tr. p. 27).

Respondent provided documentation that Petitioner had filed a claim for an injury on August 6, 2008 for which settled for approximately $19,000 in September of 2009. The documents indicate she had an injection and physical therapy. (Rx. 6). Petitioner testified she had gotten therapy for that injury. (Tr. p. 27). She testified that she had been released from treatment with no restrictions and had no ongoing back problems after that injury. (Tr. p. 27). Petitioner clarified that she never had radicular symptoms with either the 2008 or 2018 injuries and never had shooting pains into her legs prior to her November 19, 2021 injury. (Tr. p. 28).

On January 13, 2022, Petitioner was seen by Dr. Stanley, a spine surgeon at Ortho IL. (Tr. p. 11). Petitioner testified the delay in seeing Dr. Stanley was due to insurance approval. (Tr. p. 11). At the time of her initial visit, Petitioner was using a wheelchair due to the pain in her lower back. Dr. Stanley noted Petitioner had dermatomal distribution of pain symptoms in the bilateral lower extremities and recommended an MRI. (Px. 3). Petitioner followed up with Dr. Stanley on February 11, 2022 after having undergone the lumbar MRI on February 4, 2022. Dr. Stanley assessed a wedge compression fracture of the second lumbar vertebra and L2 compression fracture along with bilateral lumbar radiculopathy secondary to severe spinal stenosis at L3-4. He recommended a kyphoplasty at L2 with an epidural steroid injection. (Px. 3).

Petitioner was sent to Dr. Bergin on March 16, 2022 for evaluation at Respondent's request. Dr. Bergin assessed an acute L2 compression fracture and lumbar sprain/strain. Dr. Bergin opined that Petitioner's pain was way out of proportion to what one would expect from a compression fracture or mild to

moderate stenosis, assessing symptom magnification. He opined her symptoms were nonanatomic apart from her lower back pain which was consistent with the compression fracture. Dr. Bergin agreed the recommended kyphoplasty was necessary and causally related to her injury, but opined that any stenosis and radiculopathy was unrelated. He agreed Petitioner should remain off work until after undergoing the kyphoplasty and six weeks of physical therapy. (Rx. 1).

Petitioner underwent the kyphoplasty on April 18, 2022. (Px. 3). Petitioner testified that the surgery helped with her back pain, but she continued to have pain going down her legs. (Tr. pp. 13-14). Petitioner testified she has never had the pain shooting down her legs before her November 2021 injury. (Tr. p. 14). In follow up with Dr. Stanley's PA on April 29, 2022, Petitioner reported improvement in her back pain, though she continued to have severe radiating pain into the lower extremities, making it difficult for her to get up out of a chair. Bilateral epidural steroid injections were recommended. Petitioner followed up with PA Green on May 26, 2022. Her symptoms continued and the bilateral epidural continued to be recommended along with a new MRI. (Px. 3).

Petitioner was seen by Dr. Stanley on July 7, 2022. Dr. Stanley recorded ongoing stiffness, bilateral leg weakness, and constant pain. He reviewed the updated MRI and assessed spinal stenosis, recommending the bilateral epidural at L3-4. On July 21, 2022, Dr. Stanley recommended physical therapy which Petitioner underwent from July 27, 2022 through August 25, 2022. On August 25, 2022, Dr. Stanley assessed persistent right lumbar radiculopathy and noted approval for the epidural was still pending. Dr. Stanley continued to prescribe pain medication to Petitioner. (Px. 3).

Petitioner was sent to see Dr. Bergin again on August 23, 2022. Dr. Bergin opined that Petitioner was now at maximum medical improvement relative to her November 19, 2021 injury, noting his opinion that any lumbar stenosis symptoms were unrelated to her injury. Dr. Bergin continued to assess significant nonorganic pain behavior. (Rx. 2).

On December 27, 2022, Dr. Stanley authored a narrative report opining that her ongoing symptoms of lumbar radiculopathy were causally related to her November 19, 2021 injury. (Px. 4). Dr. Stanley was deposed regarding his opinions on September 8, 2023. Dr. Stanley testified that her ongoing symptoms were secondary to radiculopathy. He testified she had a dermatomal distribution of pain symptoms corresponding with the MRI evidence of severe spinal stenosis. He opined her condition was causally related to her injury as she had developed a new onset of pain radiating down her legs as a result of the work injury consistent with an aggravation of spinal stenosis. Dr. Stanley clarified on cross examination that Petitioner has radiculopathy due to spinal stenosis that likely pre-dated her injury. The new onset of radiculopathy is an aggravation of that pre-existing degeneration and stenosis and the objective basis for that is a dermatomal distribution of pain symptoms that corresponds to nerve root compression. Dr. Stanley testified that chiropractic care in 2018 for lower back pain would not change his opinions regardless of whether she had back pain or radiculopathy at that time due to the three year gap in treatment. Dr. Stanley testified that the epidural steroid injection would be an attempt to avoid surgery, though due to the fact that she had been persistently symptomatic for two years, the less likely non-surgical intervention is going to provide dramatic result. Dr. Stanley testified that Petitioner's symptoms appeared sincere and he found no evidence she was exaggerating or malingering. He testified he had kept Petitioner off work. (Px. 4).

Petitioner testified that she continues to experience back pain and pain radiating down her legs. (Tr. p. 15). She has difficulty doing chores at home or bending over to put shoes on. (Tr. p. 15). She testified that the shooting pain goes down the middle of her legs, down to her knees. (Tr. p. 16). The pain causes her to need to lie down. She continues to desire additional treatment. (Tr. pp. 16-17).

CONCLUSIONS OF LAW

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

The Arbitrator finds that Petitioner sustained an accident on November 19, 2021 that arose out of and in the course of her employment by Respondent. Petitioner testified to the sudden onset of back pain with radiating pain into her legs when lifting a box of meat from near the ground. An ambulance was called and Petitioner was taken to the hospital. Petitioner's testimony concerning accident is corroborated by the medical records and is unrebutted. Accordingly, the Arbitrator finds that Petitioner sustained an accident that arose out of and in the course of her employment by Respondent on November 19, 2021.

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

The Arbitrator finds that Petitioner's current condition of ill-being is causally related to her November 19, 2021 injury. The Arbitrator relies upon the treating records, the opinions of Dr. Stanley, and Petitioner's testimony.

It is well-settled by the Illinois Supreme Court that "the fact that an employee may have suffered from a preexisting condition will not preclude an award if the condition was aggravated or accelerated by the employment. The employee need not prove employment was the sole causative factor or even that it was the principal causative factor, but only that it was a causative factor in the resulting injury." Williams v. Industrial Com., 85 Ill. 2d 117, 122 (1981).

Petitioner's treatment records and her testimony establish a causal relationship exists between her November 19, 2021 injury and her current condition of ill-being. Respondent did not present any evidence that Petitioner's November 19, 2021 injury did not occur as she described. Respondent's Section 12 examining physician, Dr. Bergin, opined that Petitioner's injury resulted in the compression fracture at L2 and agreed that the kyphoplasty procedure was reasonable and necessary. However, Dr. Bergin disputed that her ongoing symptoms, potentially related to stenosis and radiculopathy, were causally related to her injury. Dr. Bergin concluded that Petitioner's symptoms were nonanatomic and assessed symptom magnification.

Petitioner's treating doctor, Dr. Stanley, opined that Petitioner's ongoing symptoms of lumbar radiculopathy were causally related to her November 19, 2021 injury. He testified she had a dermatomal distribution of pain symptoms corresponding with the MRI evidence of severe spinal stenosis. He opined her condition was causally related to her injury as she had developed a new onset of pain radiating down her legs as a result of the work injury consistent with an aggravation of spinal stenosis. Dr. Stanley agreed that Petitioner's spinal stenosis likely pre-dated her injury but opined that the new onset of radiculopathy was an aggravation of that pre-existing degeneration based on the dermatomal distribution of pain symptoms corresponding to nerve root compression. Dr. Stanley testified that chiropractic care in 2018 for lower back pain would not change his opinions regardless of whether she had back pain or radiculopathy at that time due to the three-year gap in treatment. Dr. Stanley testified that Petitioner's symptoms appeared sincere, and he found no evidence she was exaggerating or malingering.

The Arbitrator notes no evidence in the record that Petitioner experienced radicular symptoms prior to her November 19, 2021 injury. Respondent presented evidence that Petitioner had a claim in 2008 following a slip and fall injury. The documents indicated she had an injection and physical therapy, with settlement being reached in September of 2009. Respondent presented a chiropractic record from December

of 2017, seemingly alleging significant prior lower back symptoms. However, the chiropractic records note she was being seen for knee pain. While lower back pain is noted, so is pain to the neck, mid-back, head, and knees. There is nothing in the chiropractic records documenting specific lower back findings and nothing at all evidencing radicular symptoms. Petitioner testified to never experiencing radicular symptoms prior to her November 19, 2021 injury and no evidence was presented contradicting that statement.

The Arbitrator does not believe that Petitioner's confusion at hearing regarding her medical history and the histories given to her medical providers prove that Petitioner is being untruthful. It is common that Petitioners serve as imperfect historians that do not understand the magnitude of precise medical histories. The only evidence that Petitioner received lower back treatment are chiropractic records which show a widespread, diffuse, and overbroad treatment regimen and Respondent's Exhibit 6 which are correspondence from an insurance company claim representative and not medical records. Lastly, it is worth noting that the Petitioner testified through use of an interpreter. It's reasonable to infer that inaccuracies in a medical history could have their basis in a language barrier. The Arbitrator finds Petitioner's testimony credible.

After her accident, Petitioner's radicular complaints were documented promptly. She was assessed with right sided sciatic radiation and radiculopathy within 4 days of her injury. Those symptoms were noted by Dr. Stanley at his initial visit with Petitioner. Her symptoms have been consistently noted to include radiating pain into her legs. Petitioner worked for Respondent for approximately 6 years prior to her injury. The record demonstrates that she was working unrestricted and without restrictions relative to her lower back prior to November 19, 2021. After her accident she has experienced lower back and radiculopathy that has continued to the date of hearing. The records support that the symptoms in Petitioner's lumbar spine and legs began with her injury and have persisted. Dr. Stanley's opinions are supported by the treatment records. As such, Petitioner's current condition of ill-being is causally related to her November 19, 2021 injury.

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

The Arbitrator finds that the medical services provided to Petitioner were reasonable and necessary for the injuries she sustained as a result of her accident on November 19, 2021. The Arbitrator notes that the medical records, diagnoses, treatment carried out, and treatment recommendations are noted in the Statement of Facts. The Arbitrator finds that Petitioner's treatment was reasonable and necessary. For the reasons stated above and having found that Petitioner's current condition of ill-being to be related to her injuries, Petitioner's treatment is reasonable and necessary.

Accordingly, the Arbitrator finds that the Respondent is liable for payment of the treatment provided, as set forth in Petitioner's Exhibit 6, pursuant to Section 8(a) and the medial fee schedule, for the following: UW Hospital and Clinics totaling $548.89 for date of service of April 13, 2022. Respondent shall also reimburse Petitioner for out-of-pocket expenses totaling $298.72 relative to treatment at Ortho IL on January 26, 2023 and July 6, 2023 ($132.21) and Swedish American Medical Group on November 23, 2021 ($166.51).

K. What temporary benefits are in dispute?

The Supreme Court of Illinois has held that "the determinative inquiry for deciding entitlement to TTD benefits remains, as always, whether the claimant's condition has stabilized. If the injured employee is able to show that he continues to be temporarily totally disabled as a result of his work-related injury, the employee

is entitled to TTD benefits." Interstate Scaffolding v. Illinois Workers' Compensation Commission, 236 Ill. 2d 132 (2010). "To establish entitlement to TTD benefits, a claimant must demonstrate not only that he or she did not work, but also that the claimant was unable to work. (Internal citation omitted). It is irrelevant whether the claimant could have looked for work. (Internal citation omitted). The dispositive test is whether the claimant's condition has stabilized, that is, whether the claimant has reached maximum medical improvement." Mech. Devices v. Indus. Comm'n (Johnson), 344 Ill. App. 3d 752, 759 (4th Dist. 2003). "The factors to be considered in determining whether a claimant has reached maximum medical improvement include: (1) a release to return to work; (2) the medical testimony concerning the claimant's injury; (3) the extent of the injury; and (4) "most importantly," whether the injury has stabilized." Id. at 760.

Petitioner has not been released to return to work since her injury. She was recommended a kyphoplasty after undergoing an MRI. After that procedure, Petitioner was kept off work by Dr. Stanley due to ongoing lumbar radiculopathy. Dr. Stanley has recommended an epidural injection to attempt to avoid surgery. He testified that he does not anticipate significant improvement in Petitioner's symptoms without additional treatment. Dr. Bergin found Petitioner had reached maximum medical improvement after undergoing the kyphoplasty, finding any ongoing symptoms were due to an underlying degenerative condition and found that Petitioner was magnifying her symptoms. The Arbitrator finds Dr. Stanley's testimony more credible and supported by the records and Petitioner's testimony. The Arbitrator finds that Petitioner sustained a traumatic injury to her back and has not reached maximum medical improvement as she has been awaiting additional treatment since recommended in July of 2022. Having found her current condition of ill-being casually related to her injury, Petitioner remains entitled to temporary total disability benefits.

Accordingly, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from November 20, 2021 through February 6, 2024, for a total of 118 & 2/7 weeks, at the weekly rate of $587.19. Respondent is entitled to a credit of $23,907.02 for temporary total disability benefits paid.

O. Prospective Medical

Having found that Petitioner's current condition of ill-being regarding her lumbar spine is causally related to her November 19, 2021 work injury, Petitioner is entitled to prospective medical treatment consisting of the bilateral epidural steroid injection at L3-4 recommended by Dr. Stanley.

The medical records at issue demonstrate no indication that Petitioner had any radicular symptoms into her legs prior to this injury. Dr. Stanley testified that further treatment should be provided to address Petitioner's ongoing radiculopathy. The records do not demonstrate any pre-injury limitations to Petitioner prior to her injury but after her accident she has experienced ongoing pain with radicular symptoms. Dr. Stanley testified that an injection would be performed in an attempt to avoid surgery. The Arbitrator finds it reasonable that Dr. Stanley would recommend ongoing conservative care.

Accordingly, the Arbitrator finds that Respondent is responsible for providing prospective medical treatment consisting of the bilateral epidural steroid injection recommended by Dr. Stanley. The Arbitrator makes no findings regarding treatment beyond that.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC032120
Case Name	Bradley Herr v. Ford Motor Company
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0017
Number of Pages of Decision	17
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Michael Rom
Respondent Attorney	Katrina Robinson

DATE FILED: 1/14/2025

/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 Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BRADLEY HERR,

Petitioner,

vs. NO: 21 WC 032120

FORD MOTOR 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 causal connection, temporary total disability, medical expenses and prospective medical, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327 (1980).

The Commission affirms and adopts the Arbitrator's Decision except to correct one scrivener's error. The Commission strikes the case number listed on the heading on page one of the Findings of Fact and Conclusions of Law, and substitutes case number 21 WC 032120, so that portion of the heading now reads, "*BRADLEY HERR vs. FORD MOTOR COMPANY* 21 WC 032120."

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on April 29, 2024, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $1,002.33 per week for a period of 137-1/7 weeks, commencing August 6, 2021, through March 22, 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. Respondent shall be given a credit of $98,850.39 for TTD paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for the trial spinal cord dorsal stimulator and the attendant care as provided in Section 8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner for the outstanding medical bill contained in Petitioner's Exhibit 8, in the amount of $1,954.36 and hold Petitioner harmless for amounts paid by Blue Cross Blue Shield, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act and explained below.

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 $37,803.00. 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.

January 14, 2025

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KAD/bsd
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/s/*Kathryn A. Doerries*
Kathryn A. Doerries

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC032120
Case Name	Bradley Herr v. Ford Motor Company
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	Joseph Amarilio, Arbitrator

Petitioner Attorney	Michael Rom
Respondent Attorney	Chad Thompson

DATE FILED: 4/29/2024

/s/ Joseph Amarilio, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF APRIL 23, 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)/8(A)

Bradley Herr
Employee/Petitioner

Case # **21WC032120**

v.

Consolidated cases: **N/A**

Ford Motor Company
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 **February 26, 2024 and March 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 prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

FINDINGS

On **8/5/2021,** Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**78,221.00**; the average weekly wage was $**1,504.25**.

On the date of accident, Petitioner was **33** years of age, ***single*** with **3** dependent children.

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

Respondent shall be given a credit of $**98,850.39** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**98,850.39**.

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 $1,002.33 per week for 137-1/7 weeks, commencing August 6, 2021 thru March 22, 2024, as provided in Section 8(b) of the Act.

Respondent shall authorize and pay for the trial spinal cord dorsal stimulator and the attendant care as provided in as provided in Section 8(b) of the Act.

Respondent shall pay to Petitioner directly for the outstanding medical bill contained in Petitioner's Exhibit 8, in the amount of $1,954.36 and hold Petitioner harmless for amounts paid by Blue Cross Blue Shield, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act and explained below.

In no instance shall this Decision be a bar to a subsequent hearing and determination of an additional amount of medical benefits or compensation for 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

April 29, 2024

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

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BRADLEY HERR vs. FORD MOTOR COMPANY 23 WC 32382

==========

ATTACHMENT TO ARBIRATION DECISION
19b/8a

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PROCEDURAL HISTORY

Mr. Bradley Herr ("Petitioner"), by and through his attorney, filed an Application for Adjustment of Claim for benefits under the Workers' Compensation Act ("Act") (820 ILCS 305/1 *et seq.*). Petitioner alleged he sustained an accidental injury August 5, 2021 that arose out of and in the course of his employment while working for Ford Motor Company ("Respondent').

This matter proceeded to hearing on February 26, 2024 and on March 22, 2024 pursuant to Section 19(b) and Section 8(a) of the Act. The parties jointly submitted a Request for Hearing Form representing that the following issues were in dispute: (1.) Whether Petitioner's current condition of ill-being is causally connected to this injury; (2) Whether Respondent is liable for unpaid medical bills; (3.) Whether Petitioner is entitled to temporary total disability benefits (TTD); and (4) Whether Petitioner is entitled to prospective medical treatment. The parties jointly requested a written decision that includes findings of fact and conclusions of law. (Arb. X 1)

II. FINDINGS OF FACTS

Petitioner was the sole witness at the February 26, 2024 hearing. Petitioner testified that he had worked at Ford Motor for over 9 years before his accident. (T. 17) Petitioner completed high school and technical school. (*Id.*) He had previously suffered a non-work-related accident in March 2021 involving his left leg. (T. 20-21) Petitioner had no treatment to his foot prior to August 5, 2021. (T. 22)

On the date of accident, August 5, 2021, Petitioner was working for Respondent as a general utility/body dayman. (T. 18) Petitioner testified that his job duties entailed doing body work, changing out parts, and welding. (*Id.*) Petitioner's job required him to lift to 100 pounds. (*Id.*) His job required him to be on his feet the entire time while at work. (T. 19) Part of his job entailed emergency response duties. (T. 20)

Petitioner testified that on August 5, 2021, he sustained an accidental work injury when he picked up a car door to put in the scrap bin and the door, which Petitioner testified was "extra oily," slipped through his gloves and the bottom end of the door landed on his left foot at the distal end of the metatarsal bone [the area between the little toe and the 5th phalanx bone of the foot] .(T23-24) Petitioner felt immediate pain and, upon taking off his boot, found he had injured his pinky

toe. (T24-25) An accident report was filled out. (PX5, p. 6-7) A report from the Ford health clinic corroborates the accident and injury. (PX5, 75-78). Accident is not in dispute.

Petitioner was transported by ambulance to the emergency room at Franciscan Health. (T25) The emergency room doctor observed ecchymosis [bruising]and tenderness with some superficial skin abrasion to the left forefoot. (PX3, p. 19) X-rays of Petitioner's left foot showed digital soft tissue swelling of the digits and MP joint and a minimally displaced transverse fracture of the proximal fifth phalanx. (PX3, p. 20) Petitioner was prescribed medications, told to follow up with an orthopedic surgeon, and discharged. (PX3, p. 38; T25-26)

On August 10, 2021, Petitioner was seen by Dr. Gene Fedor at Northern Indiana Orthopedics for the first time. (PX4, p. 127) Dr. Fedor became Petitioner's main treating orthopedic doctor. (T. 26) Dr. Fedor treated Petitioner's left foot and toe. (PX4, p. 121) From the August 17, 2021 visit, Dr. Fedor interpreted an x-ray report that found no motion at the fracture site with no observed degrees of angulation of the proximal phalanx. (*Id*; PX7, p. 3)

Dr. Fedor kept Petitioner off work until October 12, 2021 due to limited walking. (PX4) At that time, Dr. Fedor released Petitioner to return to work with restrictions of Petitioner being able to elevate and ice every 3 hours. (PX4, p. 118)

Petitioner attempted an unsuccessful return to work for a short period of time. However, Petitioner began having more issues with his foot. (T. 26-27, 40-41) He noticed over a period numbness and a "wrenching" feeling in his toes and the feeling of glass particles inside of his foot. (T. 27) Petitioner testified he still suffers from these symptoms to this day. (T. 28)

Petitioner returned to Dr. Fedor on November 2, 2021. (PX4, p. 116) Dr. Fedor once again took Petitioner completely off work due to increased swelling. (*Id.*) Dr. Fedor noted an x-ray report demonstrating 15 degrees of lateral angulation with 0 degrees of angulation on the AP view. (PX4, p. 115; PX7, p. 2) On November 16, 2021, Dr. Fedor first noted discoloration along with the onset of complex regional pain syndrome (CRPS) in the Petitioner's left foot. (PX4, p. 113) On November 23, 2021, Dr. Fedor noted continued discoloration. (PX4, p. 111) On December 1, 2021, a Ford clinic note noted complaints of Petitioner's foot turning grey and purple. (PX5, p. 96)

On January 5, 2022, Dr. Fedor saw Petitioner at Pulaski Memorial Hospital. (PX1, p. 19) Dr. Fedor noted symptoms of numbness, stiffness, swelling, and weakness in Petitioner's left foot. (*Id.*) Dr. Fedor continued to keep Petitioner off work. (PX1, p. 20)

On January 25, 2022, Petitioner underwent an initial evaluation for physical therapy at Rush Physical Therapy. (PX6, p. 17-23) It was noted that Petitioner occasionally used a cane to stand and walk. (*Id.* at p. 18) Petitioner reported that he suffered a fracture of the fifth digit, as was well as nerve damage resulting in CRPS. The records also note that petitioner had a history of a tibia, fibula, and ankle fracture on March 21, 2021 that was treated with an open reduction and internal fixation procedure. Petitioner rated the pain in his left foot at a 4/10. Petitioner's overall rehabilitation potential was rated as good. It was recommended that Petitioner continue with physical therapy three times a week for eight weeks. (*Id.* at p. 10)

On January 26, 2022, Petitioner followed up with Dr. Fedor, who noted Petitioner had ankle instability and was ambulating with a cane. (PX1, p. 21) Dr. Fedor diagnosed Petitioner with CRPS of the left foot, referred Petitioner to physical therapy, and kept Petitioner off work. (PX1, p. 22) A Rush physical therapy note dated January 27, 2022 noted complaints from Petitioner of pain and a cold feeling in his foot. (PX6, p. 27) A Rush physical therapy note dated February 1, 2022 noted complaints from Petitioner of the cold weather making his pain worse. (PX6, p. 29)

Petitioner's subsequent visits with Dr. Fedor resulted in little to no changes in symptomology and no change in work status. (PX1, p. 23-24; PX4, 77-84) During this time Petitioner underwent physical therapy at Rush. (PX6, p. 24-182) A Rush physical therapy note dated March 31, 2022 noted complaints from Petitioner of numbness. (*Id.* at p. 126) Another physical therapy note dated May 17, 2022 noted complaints from Petitioner of periods of numbness with varying time lengths. (*Id.* at p. 180) Petitioner was eventually referred to Dr. Shaun Kondamuri for pain management. (PX4, p. 76)

On May 19, 2022, Petitioner had an initial consult with Dr. Kondamuri. (PX2, p. 128; T. 29) Dr. Kondamuri reported complaints of a severe, burning, cold pain that shoots up the leg; swelling; and color changes. (*Id.*) On exam Dr. Kondamuri noted a purplish darkening of the left foot, excessive mottling [mottled skin develops when there is a lack of blood flow to the skin which causes the vivid web- or lace-like pattern], edema, and allodynia hypersensitivity at times. (PX2, p. 129) Dr. Kondamuri found Petitioner had a low probability of having CRPS. (PX2, p. 130) Nevertheless, Dr. Kondamuri recommended Petitioner undergo a triple phase bone scan, physical therapy for gradually more aggressive desensitization techniques and range of motion and medications. (*Id.*)

On June 9, 2022, Dr. Fedor kept Petitioner off work. (PX4, p. 73) Petitioner also continued physical therapy. (PX6, p. 183-224) Several physical therapy notes contained complaints from Petitioner of lack of sensation in his 5th toe and lateral aspect of the foot. (*Id.* at p. 202-222)

On June 13, 2022, Petitioner underwent a bone scan. (PX2, p. 63-64) On June 23, 2022, Petitioner followed up with Dr. Kondamuri. (PX2, p. 124) Dr. Kondamuri found the bone scan did not add any additional information to the diagnosis and that Petitioner still had a low probability of CRPS. (PX2, p. 126)

On July 12, 2022, Dr. Fedor kept Petitioner off work. (PX4, p. 71) Petitioner also attended more physical therapy. (PX6, p. 225-240) On July 13, 2023, a Ford clinic note noted Petitioner was ambulating with a cane. (PX5, p. 115)

On July 28, 2022, Petitioner followed up with Dr. Kondamuri. (PX2, p. 116). Petitioner reported worse pain, with a fire-like feeling spreading to ankle, as well as slow nail growth and vascular changes. (PX2, p. 119) Dr. Kondamuri noted that the clinical features were now more demonstrative of CRPS and recommended an injection. (*Id.*)

On August 9, 2022, Dr. Fedor kept Petitioner off work. (PX4, p. 67) Petitioner also attended yet more physical therapy. (PX6, p. 241-263) A Rush physical therapy note dated August 18, 2022 noted that petitioner commented he wanted "cut it off [the foot]" due to the pain. (*Id.* at p. 254)

Petitioner underwent three lumbar sympathetic block injections with Dr. Kondamuri on August 26, September 1, and September 12, 2022. (PX2, p. 114-115, pp. 108-109, 101-102) During this time Dr. Kondamuri stopped further medications due to side effect of suicidal ideation and started Petitioner on a Clonidine patch. (PX2, p. 106; T. 30)

On September 15, 2022, Petitioner followed up with Dr. Kondamuri and reported no relief from the injections. (PX2, p. 96; T. 29-30) Having failed other treatment options, Dr. Kondamuri recommended Petitioner proceed with a dorsal root ganglion (DRG) stimulator. (PX2, p. 99)
On December 23, 2022, Petitioner was discharged from physical therapy due to insurance visit limitations. (PX6, pp. 281-284)

On February 9, 2023, Ford clinic noted Petitioner was ambulating with a cane and favoring his right side. (PX5, p. 139)

On March 22, 2023, Petitioner was examined at the request of the Respondent pursuant to Section 12 of the Act by Dr. Adam Schiff at Loyola Medical Center... (PX7) Dr. Schiff's records contain a consistent history of the accident in which the Petitioner reported having a car door slip out of his hand and land on his left foot. (PX7, p. 2) Dr. Schiff's records also contain a consistent history of the medical treatment. (PX7, p. 2-5) Petitioner reported that he was later diagnosed with complex regional pain syndrome under the care of Dr. Kondamuri. Petitioner underwent lumbar spine injections, which he stated yielded no improvement on physical examination, Dr. Schiff noted Petitioner was in no apparent distress, but also noted an antalgic gait. (PX7, p. 2) Dr. Schiff noted a darker appearance on the left foot, mild swelling, and pain with light touch. (*Id.*) Dr. Schiff diagnosed Petitioner with CRPS causally related to his August 5, 2021 work injury. (PX7, p. 5) Dr. Schiff found the treatment provided to Petitioner to have been reasonable and necessary. (*Id.*) Dr. Schiff opined that treatment for complex regional pain syndrome can include physical therapy for nerve desensitization, oral neurogenic medications, lumbar injections, and a spinal cord stimulator. Dr. Schiff agreed with Dr. Kondamuri's recommendation of a spinal cord stimulator. (PX7, p. 6) Dr. Schiff opined that Petitioner could not return to work full duty at this time. (*Id.*)

On April 17, 2023, Petitioner was examined at the request of the Respondent pursuant to Section 12 of the Act by Dr. Kenneth Candido. (RX2) Dr. Candido's records contain a consistent history of the accident. (RX2, p. 4-5) Dr. Candido reported a pain rating of 3/10 on a good day and a 10/10 on a bad day as well as complaints of difficulty walking, going up and down stairs, and wearing socks and boots. (RX2, p. 5-6) On examination Dr. Candido observed no edema, no temperature disparities between the right leg and left leg, positive for hypesthesia, no tactile allodynia, no abnormal hair or nail growth, and positive for mild limp. (RX2, p. 18-21) Photographs of Petitioner's feet were included in the report. (RX2, p. 22-31) Dr. Candido found Petitioner to not have CRPS. (RX2, p. 31) Dr. Candido found Petitioner's ongoing symptoms "suspect." (RX2, p. 31-32) Dr. Candido placed Petitioner at maximum medical improvement and opined a DRG stimulator was not necessary. (RX2, p. 32) Dr. Candido did not find impairment based on an incorrect edition of the AMA guidelines, even for Petitioner's original fracture. (RX2, p. 33; RX1, p. 45-46)

Dr. Candido testified that he disagreed with Dr. Kondamuri's diagnosis based on his Section 12 examination finding and a lack of objective evidence for CRPS. (RX1, p. 30) At the same time, on cross-examination Dr. Candido testified that he did not dispute Dr. Kondamuri's own objective findings on CRPS. (RX1, p. 30-36) As for Dr. Fedor's and Dr. Schiff's diagnoses, Dr. Candido disagreed on the basis that no doctor who has seen or examined Petitioner has the same expertise, publications, and accolades as he does on studying traumas such as CRPS. (RX1, p. 38-40) Dr. Candido also suggested that the findings of each of Petitioner's treating doctors, along with Dr. Schiff, were not objective.

Dr. Candido diagnosed petitioner as status post crush injury of the left foot, status post fracture of the left fifth toe, and mild neuropathy of the common peroneal nerve of the left foot. Dr. Candido stated that there were no signs of complex regional pain syndrome, Type 1 or Type 2. Dr. Candido also opined that petitioner exhibited some symptom magnification. He stated that Petitioner's reported pain was out of proportion to a minor neuralgia of the common peroneal nerve. Dr. Candido stated that, because petitioner's left foot injury had healed long ago, petitioner's ongoing symptoms were suspect. (RX 2, p. 31)

Dr. Candido stated that Petitioner's diagnoses involving the left foot were causally related to the alleged work accident of August 5, 2021. However, he stated that healing had occurred long ago, and that petitioner's pain was out of proportion to even a mild neurapraxia. (RX 2, p. 32)

Dr. Candido opined that Petitioner's treatment to date had been reasonable and necessary and causally related to the alleged work injury. He stated that, even with a low suspicion for complex regional pain syndrome, he did not find any fault with Dr. Kondamuri attempting to perform lumbar sympathetic blocks. Dr. Candido opined that the lumbar sympathetic blocks failed due to the absence of any sympathetically mediated type of pain. (RX 2, p32)

Dr. Candido stated that Petitioner did not require a spinal cord or dorsal root ganglion (DRG) stimulator. Dr. Candido stressed that petitioner did not have causalgia for complex regional pain syndrome. He further opined that petitioner did not need any additional medical care or treatment for his simple neurapraxia of the common peroneal nerve. Dr. Candido stated that petitioner was at MMI. (RX 2, p. 32)

Dr. Candido further opined that petitioner had no overt neurological condition precluding him from returning to full duty work without restrictions. Dr. Candido stated that petitioner did not have any limiting factors that precluded him from returning to full duty activities. Dr. Candido stated that petitioner attained MMI status within a week of completing the third and final lumbar sympathetic nerve block. (RX 2, p 33)

On May 5, 2023, Petitioner returned to Dr. Kondamuri. (PX2, p. 90) Authorization had still not been given for the DRG stimulator. (*Id.*) Petitioner reported fluctuations in pain with temperature changes. (PX2, p. 91) Dr. Kondamuri prescribed Nucynta. (PX2, p. 93) Petitioner found Nucynta to be helpful. (PX2, p. 85, p. 17; T. 30)

On June 27, 2023, Petitioner returned to Dr. Fedor. (PX4, p. 25) Dr. Fedor noted a reddish color on the left foot and left ankle weakness. (*Id.*) Dr. Fedor kept Petitioner off work at this visit and the following. (PX4, p. 26; PX4, p. 23)

On August 3, 2023, Petitioner followed up with Dr. Kondamuri. (PX2, p. 5) This was his last visit with Dr. Kondamuri before the hearing. (T. 30)

A typed note from Dr. Fedor dated August 22, 2023 found Petitioner's diagnosis and treatment with Dr. Kondamuri to be appropriate and necessary. (PX2, p. 19) Dr. Fedor has not released Petitioner to return to work. (PX2, p. 17; PX2, p. 14) Dr. Fedor also noted Petitioner's walking, standing, and sleeping was being affected by his condition. (PX2, p. 13)

On September 7, 2023, a Ford clinic note noted Petitioner was ambulating without a cane and with normal gait and posture. (PX5, p. 169) On October 31, 2023, a Ford clinic note noted Petitioner was once again ambulating with a cane and a slight limp. (PX5, p. 171) On November 28, 2023, a Ford clinic note noted Petitioner was ambulating without a cane and with a swift gait. (PX5, p. 173)

On November 28, 2023, Petitioner followed up with Dr. Fedor and reported worse pain from cold temperatures outside. (PX2, p. 9) Petitioner's work status did not change with subsequent visits with Dr. Fedor. (PX2, p. 2-6) Petitioner's last visit with Dr. Fedor prior to the hearing was on February 6, 2024. (PX2, p. 2)

Petitioner testified that he continued to suffer from symptoms, including pain, numbness, and tingling, to this day. (T 28) Petitioner stated that, at the time of trial, he experienced discoloration, numbness, and tingling in the left foot. (T 35) Petitioner claimed that his symptoms varied depending on the day. (T 36) Petitioner testified that he used a cane. (T 37) Petitioner admitted that neither Dr. Kondamuri nor Dr. Fedor prescribed the use of a cane. (T 54) Petitioner testified that he had color changes on the left foot at the time of trial. (T 38)

Petitioner testified that he tried to return to work for a period, but Ford could not accommodate his work restrictions. (T 40) Petitioner testified that Dr. Fedor had him off work at the time of trial. (T 34) Petitioner stated that he wanted to proceed with a spinal cord dorsal stimulator trail. (T 31)

At the hearing, the Arbitrator observed a scar on the inside of Petitioner's big toe and on the outside of his little toe. (T. 39) The Arbitrator also observed an opaque discoloration of the nail beds on the left foot. (*Id.*) The Arbitrator also observed Petitioner's left foot as being a little bigger than his right. (*Id.*)

Petitioner's pain complaints persist to this day. Petitioner described his discoloration as differing from day-to-day and his swelling and tingling symptoms as varying at certain times of the day. (T. 35-36) Petitioner feels more swelling and tingling when he elevates while he feels more of a burning numbness when his foot is down. (T. 36) His pain improves slightly when it is not as humid. (T. 36-37) Petitioner uses a cane to help ambulate and was observed with it at the hearing. (T.37-38) Petitioner no longer engages in physical activity. (T. 43)

Dr. Candido's Evidence Deposition Testimony

Dr. Candido testified that he is physician and surgeon. (RX 1, p. 5) He Dr. Candido testified that he took a residency in anesthesiology. He is board certified in anesthesiology with ED qualifications in pain medicine. (RX 1, p. 7) Dr. Candido testified that he has been so certified for 30 years. He maintains an active practice that specializes in interventional pain medicine and pain management. (RX1, p. 8) Dr. Candido testified that at least 80% of his practice was dedicated to the treatment of patients and 20% was dedicated to medical-legal work. (R! 1, p. 9)

Dr. Candido testified that, at the time of examination, Petitioner exhibited no tremor, no abnormal growth of nails or hair, no blood flow abnormality, and no sweating abnormality. (RX 1, p.18) Dr. Candido testified that he took photos of petitioner's feet using a Canon EOS camera and he included the photos in his IME report. (RX 1, p.28) Dr. Candido testified that, in aggregate, those findings indicated that petitioner did not meet two of the four objective Budapest clinical diagnostic criteria to indicate that he might have complex regional pain syndrome. (RX 1, Page 18)

Dr. Candido found no sensory changes or motor changes during the examination. Dr. Candido testified that petitioner had strength symmetrically intact on both feet. (RX 1, p. 19) Dr. Candido testified that Petitioner demonstrated symptom magnification, as his pain was out of proportion to what he considered to be a mild or minor neurology of the common peroneal nerve and that healing had long ago occurred. (RX 1, p. 21)

Dr. Candido did not find any fault with Dr. Kondamuri attempting a lumbar sympathetic block, but it predictively failed because there was no complex regional pain syndrome. (RX 1, p. 22)

Dr. Candido opined that Petitioner did not require any further treatment because Petitioner did not have a neurological condition that would preclude him from returning to full duty without restrictions. Dr. Candido testified that Petitioner failed to meet a single criterion for CRPS or sympathetically mediated pain or causalgia. (RX 1, p. 24)

Dr. Candido testified that Dr. Schiff, Dr. Kondamuri, and Dr. Fedor, in aggregate, lacked the publications and presentation of CRPS that Dr. Candido has had in his career. Dr. Candido testified that he was asked to present the keynote discussion on CRPS at last year's American Society of Regional Anesthesia. (RX 1, p. 38) Dr. Candido testified that he has written scientific papers and textbook chapters on the topic of CRPS. (RX 1, p/ 47)

III. CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. Section 1(b)3(d) of the Act provides that, to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. *820 ILCS 305/1(b)3(d)*. To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all the elements of his claim *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. 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 (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 Finding: In evaluating the testimony provided by Petitioner, his account was detailed, consistent, and supported by medical documentation. Petitioner demonstrated an understanding of the events leading to the injury and articulated the resulting impact on his ability to perform job-related tasks after the injury. Furthermore, his demeanor during the hearing was sincere. 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. Overall, based on the nature of the evidence presented and Petitioner's forthrightness, his testimony is deemed credible and forms a solid foundation for assessing the merits of his claim. In evaluating the evidence testimony provided by Dr. Kenneth Candido, the Arbitrator does not find his testimony persuasive for the reasons stated herein.

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

The burden is on the party seeking an award to prove by a preponderance of the credible evidence the elements of her claim. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193 (2003). 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 Comm'n*, 44 Ill. 2d 214 (1969). An accidental injury need not be the sole causative factor, nor even the primary causative factor, if it was a causative factor in the resulting condition of ill-being. *Rock Road Construction Co. v. Industrial Comm'n*, 37 Ill. 2d 123, 127 (1967). A chain of events which

demonstrates a previous condition of good health, an accident, and a subsequent injury "may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63-64 (1982).

The Arbitrator finds that Petitioner does have CRPS and that Petitioner's CRPS is causally related to the work injury. This conclusion is based on Petitioner's credible complaints, the treating medical records, the opinions of Dr. Fedor and Dr. Kondamuri and Dr. Schiff's initial opinion. There is a clear chain of events demonstrating this connection from the verified accident and the continued course of treatment from the time of accident to his last visit Dr. Fedor. *See International Harvester*, 93 Ill. 2d at 63 (1982). Dr. Fedor's notes specifically demonstrate the sudden onset of CRPS symptomology. Dr. Kondamuri specifically opined that Petitioner's clinical presentation presented objective findings of CRPS. In addition, the Respondent's first Section 12 examiner, Dr; Schiff, found a causal connection between CRPS and the Petitioner's accident. The Arbitrator adopts all three doctors' opinions.

The Arbitrator is not persuaded by Dr. Candido's opinions. The Arbitrator disagrees with what can only be characterized as Dr. Candido's "my-way-or-the-highway" approach to diagnosed CRPS; just as one person's CRPS condition is not the same as another's, doctors can diagnose CRPS in more than one manner. And although Dr. Candido is indeed credentialed as a pain management specialist, that cannot serve as a basis to accept his opinions with blind faith or for rejecting the other doctors' diagnoses and observations. Dr. Kondamuri is a board-certified pain specialist who concentrates on treating patients. He is qualified to diagnosis and treat CRPS Dr. Fedor and Dr Schiff are also qualified to recognize and identify symptoms consistent with CRPS. Nor, can the Arbitrator ignore is own observations that are inconsistent with those of Dr. Candido. Dr Candido also failed to address contrary observations of the Ford Motor Company inhouse medical clinic. For example, the December 1, 2021, a Ford clinic progress note noted complaints of Petitioner's foot turning grey and purple.

Dr, Candido testified the photographs he took one handed during the examination clearly corroborate his findings and opinions. However, Dr. Candido did not articulate how his photographs accurately depicted Petitioner's skin tones, nor did he establish his proficiency or qualifications in photography. The Arbitrator notes that Dr Candido is no stranger to evidence depositions and conducting Section 12 examinations, yet he failed to state that the photographs truly and accurately depicted the Petitioner's injured foot at the time of the examination. This omission negatively impacts the weight given to the photographic evidence contained in RX2. Moreover, the Arbitrator finds the color photographic images contained in pages 21 through 30 of Dr. Candido's report of April 17, 2023 to be of such poor quality as to be forensically unhelpful in corroborating his testimony. Thus, the Arbitrator finds the photographic images submitted into evidence are not deserving of any consideration nor entitled to any weight. (RX 2, pp. 21-30)

The Arbitrator is mindful that expert witnesses, like all witnesses, should be judged based on the merits and substance of their findings and opinions rather than solely on the length of their resumes or the length of their Section 12 reports. Additionally, although Dr. Candido indicated a lack of symptoms depicted in the photographs, the Arbitrator's direct observations of the Petitioner's injured foot during the hearing, of having an abnormal color with some swelling when compared to the uninjured foot, contradicts Dr. Candido So do the treatment records from Dr. Fedor and

Dr. Kondamuri noting observations of CRPS, Dr. Schiff's documented CRPS symptoms, and the Petitioner's reliable testimony about the variability of symptoms, persuasively refute Dr. Candido's conclusions. The juxtaposition between the findings of Dr. Candido and the other three physicians leads the Arbitrator to question the reliability of Dr. Candido's findings and opinions. The Arbitrator finds persuasive that Dr. Kondamuri has had the opportunity to get to know, evaluate, and examine Petitioner on many occasions, and, thus, was able to credibly assess Petitioner's condition over time. The symptoms of CRPS are numerous and variable, and the Arbitrator finds that Dr. Kondamuri had the best clinical opportunity to access Petitioner's condition.

Dr. Candido asserted that the photographs from the evaluation were irrefutable, yet he failed to offer a persuasive explanation for the discrepancy between his observations and those of other medical professionals. The evidence indicates the Petitioner's symptoms vary over time, that they wax and wane, a fact which Dr. Candido inadequately addressed. He saw Petitioner once. Dr. Kondamuri did not.

Despite acknowledging Petitioner's past unrelated leg injury, none of the physicians who have evaluated or examined the Petitioner, including Dr. Candido, have determined that the previous accident caused the current CRPS or nerve neuropathy. Therefore, the Arbitrator concludes that there is a causal link between the Petitioner's current health condition and the accident that occurred on August 5, 2021. This finding is supported by the lack of evidence of a subsequent intervening cause, Petitioner consistently complained of varying levels of pain since the accident to the date of hearing.

The Arbitrator, while assessing the reliability of Dr. Candido's findings and opinions, observed that Dr. Candido identified symptom magnification in the Petitioner, whereas Dr. Schiff, Dr. Kondamuri, and Dr. Fedor did not. Moreover, the Arbitrator notes that Dr. Schiff examined Petitioner at Respondent's request and that his responsibilities as an examiner include pointing out symptom magnification. It is reasonable to infer that he did not find it because he did not report it.

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

The Parties agreed that all bills had been paid except for one unpaid bill from Dr. Fedor in the amount of $1,954.26. (PX8) Based upon the Arbitrator's finding on the issue of causation above, the Arbitrator finds this charge to be reasonable and necessary.

Accordingly, the Arbitrator finds that Respondent is liable for this medical bill in the amount of $1,954.26 in medical bills as provided in Sections 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the Illinois Workers' Compensation Commission In addition, the Respondent shall hold Petitioner harmless for amounts paid by Blue Cross Blue Shield.

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

The dispute as to prospective medical treatment under Section 8(a) is based upon the differing medical opinions between Dr. Kondamuri's, the Petitioner's treating physician and Dr. Kenneth Candido, the Respondent's section 12e examining physician.

Based upon the Arbitrator's finding on the issue of causation above, it is appropriate for Petitioner to undergo the trial spinal cord dorsal stimulator recommended by Dr. Kondamuri. Although Dr. Candido opined that Petitioner did not need the DRG stimulator due to not having CRPS and being at maximum medical improvement, based on the Arbitrator's adoption of Dr. Kondamuri's and Dr. Schiff's opinions, the Arbitrator finds it reasonable for the Petitioner to undergo the trial stimulator along with the related, reasonable, and necessary medical treatment to make it so.

Accordingly, the Arbitrator finds that Respondent is liable to Petitioner for the costs associated with the trial spinal cord dorsal stimulator and the reasonable and necessary related medical treatment associated with the spinal cord dorsal stimulator as provided in Section 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FORTEMPORARY TOTAL DISABILITY, THE ARBITRATOR FINDS AS FOLLOWS:

Under the Act, temporary total disability benefits (TTD) are awarded for the period between when an injury incapacitates the Petitioner to the date the Petitioner's condition has stabilized or the Petitioner has recovered to the amount the character of the injury will permit. *Whitney Productions, Inc. vs. Industrial Comm'n*, 274 Ill. App. 3rd 28, 30 (1995).

Based on the Arbitrator's finding that Petitioner's current condition of ill-being was caused by the August 5, 2021 work-related accident, the Arbitrator finds that Petitioner is entitled to TTD benefits. The Arbitrator notes that Petitioner's testimony and medical records reflect that he was authorized off work from August 6, 2021 through the date of hearing. There was no evidence presented to the contrary. It was stipulated by the parties that Respondent is owed $98,850.39 as a credit for TTD paid.

Therefore, Respondent shall pay Petitioner temporary total disability benefits of $1,003.33 per week for 137-1/7 weeks commencing August 6, 2021 through the date of hearing March 22, 2024, as provided in Section 8(b) of the Act.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC013343
Case Name	Janae Martin v. Cook County
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0018
Number of Pages of Decision	26
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Michael P Casey
Respondent Attorney	Jynnifer Cotharn

DATE FILED: 1/16/2025

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JANAE MARTIN,

Petitioner,

vs. NO: 19 WC 13343

COOK COUNTY STROGER HOSPITAL,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical care, temporary disability, and penalties and fees, and being advised of the facts and law, changes in part, affirms in part, and reverses in part the Decision of the Arbitrator as stated below, but incorporates the Decision of the Arbitrator for the Findings of Fact, which is attached hereto and made a part hereof. The Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

FINDINGS OF FACT

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

On April 16, 2019, while detailing her symptoms, Petitioner indicated that her pain started from her right hand and extended to her shoulder, with loss of range of motion. She did not move her right hand that night and slept uncomfortably. Physical examination revealed right shoulder

tenderness, limited range of motion, pain with resistance on external rotation, and positive thumbs up sign.

On September 18, 2019 record of Advocate Medical Group and Dr. Neilesh Shah. On that date, Dr. Shah noted the lack of benefit Petitioner received from the additional therapy, and that her injury had worsened. Petitioner had difficulty raising her arm overhead and performing activities of daily living. She also complained of tingling, numbness, and pain radiating to her wrist and fingers. Physical examination revealed limited shoulder range of motion and decreased sensation in right thumb. She was diagnosed with rotator cuff tendinitis and likely nerve involvement. Surgery had been approved and Petitioner was taken off work. *PX 2, p.36-41*.

CONCLUSIONS OF LAW

I. Causal Connection

In the instant case, the injury at issue is Petitioner's carpal tunnel syndrome. The arbitrator found that Petitioner failed to prove causation between this diagnosis and her stipulated accident. After the accident, Petitioner's treating physicians diagnosed a right rotator cuff tendinitis and shoulder strain, and eventually underwent successful right shoulder surgery.

In June of 2019, prior to the surgery, Petitioner complained of bruising on her arms, pain in her hands and wrists, and throbbing in her thumbs after physical therapy. Eventually, Dr. Nikhil Verma referred Petitioner to a hand specialist for her hand complaints, but did not render a causation opinion regarding the carpal tunnel diagnosis himself.

The Arbitrator noted Respondent's §12 examiner Dr. Michael Vender's opinion that while the carpal tunnel diagnosis was valid,[1] it was unrelated to Petitioner's right shoulder injury. Further, Dr. Vender opined that the mechanism of injury would not lead to or aggravate any carpal tunnel injury. Lastly, Dr. Vender opined that any further carpal tunnel treatment would be unrelated to the instant accident.

The Arbitrator also noted the opinions of Respondent's other §12 examiner Dr. Mark Levin, who examined Petitioner twice. After the initial examination on June 6, 2019 (less than two months after the accident) Dr. Levin opined that Petitioner's wrist and thumb complaints were a new onset and not related to the accident.

The arbitrator highlighted the fact that, in December of 2019, Petitioner suffered unrelated severe injuries as a result of a traffic accident. While recovering from this accident, she did not treat for her carpal tunnel. Based on the above, the arbitrator found the opinions of Dr. Levin and Dr. Vender to be most persuasive, and found Petitioner failed to prove her carpal tunnel condition was causally related to the accident.

A chain of events which demonstrates a previous condition of good health, an accident,

[1] This is incorrect, as Dr. Vender opined the diagnosis was ***not*** valid.

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 Commission*, 93 Ill. 2d 59, 63-64 (1982).

The Commission views the evidence slightly different than the Arbitrator, and finds that both Petitioner's right carpal tunnel and right thumb conditions are causally related to the accident. While the evidence supports a finding of causal connection based on a chain of events analysis, there is also medical evidence supporting causation as well. Petitioner provided unrebutted testimony that she had no prior right wrist, hand, or thumb issues, and no prior right arm injuries. There is also no evidence she received any right upper extremity treatment prior to the date in question.

During the instant accident, Petitioner reached high while standing on a medical stool to grab a bottle containing a chemical which weighed 10-15 pounds. As she brought it down she felt a sharp pain in her wrist which shot up to her right shoulder, and heard a pop in her shoulder. She immediately sought treatment, complaining of hand pain radiating to her shoulder, underwent an MRI, and was diagnosed with rotator cuff tendinitis, prescribed physical therapy and pain medication. She was also taken off work.

Subsequently, Petitioner underwent a steroid injection in her shoulder, which only provided temporary relief, and also completed physical therapy, which actually worsened her shoulder, wrist, and thumb symptoms. Eventually, she underwent shoulder surgery, with a post-operative diagnosis of right shoulder pain, right shoulder impingement, and right shoulder AC joint pain. Petitioner then returned to physical therapy, but her wrist/thumb complaints continued. The record reflects that these issues were ongoing even prior to the surgery. Eventually an EMG was performed and revealed the presence of carpal tunnel syndrome, a diagnosis confirmed by Dr. Scott Lipson, and orthopedists Dr. Verma and Dr. John Fernandez.

Petitioner continued treating, and eventually underwent a right thumb MRI, which revealed thickening of the ulnar collateral ligament of the thumb and low T1 signal in the proximal phalanx at the metacarpal joint. Due to Petitioner's ongoing symptoms and the EMG results, Dr. Fernandez recommended a carpal tunnel release.

In relying on §12 examination reports and testimony to deny causation to Petitioner's thumb/carpal tunnel conditions, the Arbitrator noted Respondent-physician Dr. Levin's June 6, 2019 opinion that Petitioner's right thumb and wrist complaints were new and thus were unrelated to the accident, which had occurred two months prior. However, the record reflects that Petitioner's hand complaints date back to her medical treatment just one day after the accident, wherein she complained of pain starting in her right hand and extending to her shoulder, Further, Petitioner added that she did not move her hand when she went to sleep the night of the accident. These complaints were reiterated to Dr. Verma nearly one month later, when Petitioner again mentioned hand pain. Dr. Levin's inaccurate recitation of the evidence renders his opinion less than persuasive.

Next, the Arbitrator relied on the opinions of Dr. Vender, who disagreed with the carpal tunnel diagnosis, opining that the EMG results were unreliable, and that the mechanism of injury

would not cause carpal tunnel syndrome. The Commission finds that the record contradicts Dr. Vender's opinions. An EMG is an objective measure to diagnose carpal tunnel syndrome, and the findings herein were corroborated by not only Dr. Lipson, but also Dr. Verma and Dr. Fernandez. Further, although Dr. Vender opined that a carpal tunnel injection is only sufficiently diagnostic when it provides long term relief, Dr. Fernandez credibly rebutted this, indicating that if an injection improves carpal tunnel symptoms—even temporarily—there is no other explanation for this occurrence other than there is an issue with the carpal tunnel. Moreover, Respondent's Dr. Vender admitted that Petitioner's subjective complaints correlated with a diagnosis of carpal tunnel syndrome. Accordingly, we determine that the preponderance of evidence supports a finding that the carpal tunnel diagnosis was reliable.

Additionally, the Arbitrator found that, although Dr. Verma referred Petitioner to Dr. Fernandez for her hand complaints, Dr. Verma did not render a causation opinion regarding the carpal tunnel syndrome. The record seems to contradict this finding, however. On March 11, 2020, Dr. Verma noted that the EMG revealed significant median nerve involvement, and renewed his referral to Dr. Fernandez. Dr. Verma added that this referral was directly related to the work accident, based on the acute onset of symptoms and EMG results. Since the EMG results reveal a carpal tunnel diagnosis, it follows that Dr. Verma is essentially opining that the carpal tunnel syndrome is directly related to the work accident.

Regarding the mechanism of injury, Dr. Fernandez also rebutted Dr. Vender's opinion. Dr. Fernandez testified that the mechanism of injury was similar to someone pulling really hard on your hand or arm to the point that it tears your shoulder. The pull was heavy and forceful enough to lead to shoulder surgery. Dr. Fernandez testified that this type of shoulder injury comes via the hand, and the pulling it caused was sufficient to also cause trauma to both Petitioner's wrist and thumb. The Commission finds that Dr. Fernandez's opinion, along with the chain of events analysis, is more persuasive than the opinion of Dr. Vender. Thus, the mechanism of injury was sufficient to cause Petitioner's hand/wrist issues.

The medical evidence, testimony, and diagnostic evidence herein rebuts the Arbitrator's reliance on the opinions of Dr. Levin and Dr. Vender. Petitioner's subjective complaints are corroborated by said evidence. She had no prior shoulder, hand, or thumb issues, suffered an accident, and immediately complained of symptoms in those locations. The Commission finds that the initial focus on Petitioner's shoulder to the exclusion of her wrist/thumb is of little consequence, as Dr. Fernandez testified that the shoulder was more painful than the hand. Moreover, the gap in treatment from December 2020 to September of 2022 is wholly understandable, given Petitioner's unrelated circumstances dealing with her severe traffic accident injuries.

Based on the above, the Commission reverses the Arbitrator's denial of causation to Petitioner's thumb and carpal tunnel conditions, finding that Petitioner has proven causation between the instant accident ad both conditions. Further, in the interest of clarity, we note that this ruling is in addition to a finding of causal connection between the instant accident and Petitioner's right shoulder injury as well.

II. Prospective Medical Care

Upon establishing causal connection and the reasonableness and the necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Mfg. Co. v. Industrial Commission*, 294 Ill. App. 3d 705, 711-12 (2d Dist. 1997). This includes treatment required to diagnose, relieve, or cure the effects of the claimant's injury. *F&B Mfg. Co. v. Industrial Commission*, 325 Ill. App. 3d 527, 534 (1st Dist. 2001).

With the exception of the June 2020 right thumb MRI, Respondent's Dr. Vender opined that Petitioner's medical treatment had been reasonable, but that any carpal tunnel treatment would not be related to the accident. Nevertheless, Dr. Vender did not express any disagreement with the carpal tunnel surgery itself. However, relying on diagnostic evidence, Dr. Fernandez repeatedly recommended said surgery.

The totality of evidence supports a finding that the carpal tunnel surgery is necessary to cure or relieve the effects of Petitioner's injury. The Commission reverses the Arbitrator's denial, and awards said surgery. However, the Commission notes that, despite causation being extended to Petitioner's thumb condition as well, there is no evidence of any recommended treatment for the thumb. In fact, Dr. Fernandez testified that the thumb had pretty much healed itself by the time of his final treatment with Petitioner. Thus, there is no award for prospective treatment related to Petitioner's thumb.

III. Temporary Total Disability

Petitioner seeks temporary total disability ("TTD") benefits from the date of accident through the date of hearing. After the accident, Petitioner was either taken off work completely or released to light duty work, with no evidence that Respondent could accommodate her restrictions. That is until a June 19, 2020 letter was sent to her counsel from Respondent, indicating that they were now capable of accommodating her restriction of no lifting or carrying with the right upper extremity. Respondent's equal employment opportunity director (at that time) Nicholas Krasucki testified that these letters were only sent out if an accommodation was possible. Although Petitioner testified that there was no possible light duty work for her in her department, the evidence contradicts her statement. Petitioner had contracted COVID-19 at during this time period, and was told she had to be cleared of that prior to returning to work. However, Petitioner never did return to work.

A claimant's stabilization is the determinative inquiry for deciding entitlement to TTD benefits. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Commission*, 236 Ill. 2d 132, 149 (2010). However, the supreme court recognizes three exceptions allowing termination or suspension of TTD benefits. *Sharwarko v. Illinois Workers' Compensation Commission*, 2015 IL App (1st) 131733WC, P 47 (citing *Interstate Scaffolding, Inc.*, 236 Ill 2d at 146-47). The relevant exception to the instant case is the third one, which states TTD benefits may be suspended or terminated if the employee refuses work falling within the physical prescriptions prescribed by his

doctor. See *Sharwarko*, 2015 IL App (1st) 131733WC, P 47. On May 20, 2020, Petitioner was restricted from lifting over 10 pounds by Dr. Verma. The June 2020 letter indicated these restrictions could be accommodated, and that Petitioner needed to contact Employee Health to initiate her return. Due to her COVID-19 diagnosis, Petitioner was told she could not yet be cleared. Subsequently, the record does not indicate that Petitioner followed up with Employee Health after recovering from COVID-19.

The Commission finds that when Petitioner failed to follow up with Employee Health to initiate the process of returning to work after recovering from COVID-19, she triggered this third exception, as she never accepted Respondent's offer to return to work. Further, when Petitioner contacted Respondent in January of 2023 to return to work, Petitioner indicated she was unable to return at that time—but due to her unrelated traffic accident. There is no evidence Petitioner attempted to return to work thereafter. Accordingly, the Commission affirms the Arbitrator, finding that the termination of TTD benefits on June 19, 2020 was appropriate. The parties stipulate that Respondent is entitled to a TTD credit of $31,655.93.

Lastly, the Commission corrects a scrivener's error in the Decision of the Arbitrator. In the Decision, TTD benefits were awarded for 222 & 1/7ths weeks. *Decision of the Arbitrator, p.3*. However, we note that this award should read 61 & 4/7ths weeks (April 16, 2019 through June 19, 2020), and correct the Decision accordingly.

IV. Penalties & Fees

Petitioner argues that Respondents failure to authorize the carpal tunnel release and decision to terminate TTD benefits are grounds for an award of penalties & fees. However, the Commission finds that Respondent relied on the opinions of Dr. Levin and Dr. Vender to deny authorization for prospective carpal tunnel treatment. Although we ultimately disagree with their opinions, we do not believe that Respondent was unreasonable or vexatious in relying on them.

Regarding the termination of TTD benefits, since we find appropriate the termination of benefits as of June 19, 2020, it follows that Respondent's decision to do the same would also be affirmed, thus no penalties will be awarded based on Respondent's action.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 27, 2023, is hereby changed in part, affirmed in part, and reversed in part for the reasons stated above.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner's current thumb and carpal tunnel conditions of ill-being are causally related to the instant work accident. Additionally, we find causal connection between the accident and Petitioner's right shoulder condition.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for the carpal tunnel release recommended by Dr. Fernandez, as provided in §8(a) of the Act. No prospective treatment for Petitioner's thumb is awarded.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner is entitled to TTD benefits the sum of $514.13 per week for a period of 61 & 4/7ths weeks, representing April 16, 2019 through June 19, 2020, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b), this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any. Respondent shall receive credit in the amount of $31,655.93 for TTD benefits previously paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's Petition for Penalties under §19(k) and §19(l), and attorney fees under §16 are hereby denied.

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

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

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

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

January 16, 2025

/s/ *Raychel A. Wesley*

RAW/wde
O: 11/20/24
43

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC013343
Case Name	Janae Martin v. Cook County
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Antara Nath Rivera, Arbitrator

Petitioner Attorney	Michael P Casey
Respondent Attorney	Anthony Ulm

DATE FILED: 11/27/2023

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 21, 2023 5.23%

/s/ Antara Nath Rivera, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

JANAE MARTIN
Employee/Petitioner

v.

COOK COUNTY
Employer/Respondent

Case # **19** WC **13343**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Nath-Rivera** , Arbitrator of the Commission, in the city of **Chicago**, on **July 18, 2023 and 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. ☒ 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, **4/15/2019**, 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 $**40,102.40**; the average weekly wage was $**771.20**.

On the date of accident, Petitioner was **40** years of age, ***single*** with **2** dependent children.

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

Respondent shall be given a credit of $**31,655.93** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**31,655.93**.

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

ORDER

The Arbitrator finds that Petitioner's current condition of ill-being, with respect to her right carpal tunnel, is not causally related to the April 15, 2019, work related accident.

The Arbitrator finds that Respondent paid TTD benefits, covering a time period of April 16, 2019, through June 19, 2020, of $514.13/week for 222 1/7weeks, totaling $31,655.93, and thus, Respondent is not liable for the payment of any additional TTD to Petitioner.

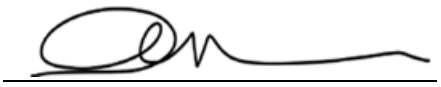
The Arbitrator finds that Respondent is not liable for a right carpal tunnel release or any future treatment related to Petitioner's carpal tunnel syndrome.

Respondent shall not pay penalties as provided in Sections 16 or 19 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

NOVEMBER 27, 2023

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATOR'S DECISION

Janae Martin,	)	
Petitioner,	)	
	)	Case No. 19WC013343
v.	)	
	)	
Cook County Stroger Hospital,	)	
Respondent.	)	

PROCEDURAL HISTORY

This matter proceeded to trial on July 18, 2023, in Chicago, Illinois before Arbitrator Antara Nath Rivera on Petitioner's Request for Hearing. Issues in dispute include causal connection, prospective medical care, temporary total disability ("TTD"), and penalties and/or fees. (Arbitrator's Exhibit "AX" 1)

Upon completion of Petitioner's testimony, Respondent requested a continuance to present a witness who was unavailable at the time of hearing. Petitioner objected to Respondent's witness. Over Petitioner's objection, Arbitrator Nath Rivera allowed Respondent to present its witness and the case was bifurcated until September 13, 2023. On September 13, 2023, the case commenced and proofs were closed after the presentation of testimonial and physical evidence presented by both sides.

FINDINGS OF FACT

Job Duties

Janae Martin, ("Petitioner") was an employee of Cook County Stroger Hospital, ("Respondent") as a health advocate technician. (Transcript "T." 13) Petitioner testified that she worked as a health advocate technician for 15 years with Respondent Petitioner testified that her duties were to process endoscopic scopes; colon scopes; to sterilize the scopes; check supplies to make sure she had what was required to process scopes. (T. 14) Petitioner testified that to get supplies of Prolystica and Rapicide A and B, she raised cabinet doors, with her hands, about eight to ten feet. (T. 15)

Petitioner testified that she is five feet even. (T. 12) Petitioner testified that the cabinets are about 10-12 feet tall. (T. 17) Petitioner testified that to open the cabinet, she took the cabinet with both hands, grabbed the bottom, and pushed it up. *Id*. Petitioner testified that the cabinets were like rolling cabinets

where she had to roll the door up. (T. 17-18) Petitioner testified that sometimes she used a medical step stool to reach into the tall cabinets. (T. 18)

Petitioner testified that once she got the cabinets open, her job was to reach up with her hands and take every scope out one by one and conduct inventory and wrote down each number by hand. (T. 19-20) Petitioner testified that she performs the same duties in each procedure room. will go to other rooms and do the same process. *Id*.

Petitioner also testified that her job duty also included handling the buckets of dirty scopes whereby she would take each out and document them. (T. 20-21) Petitioner testified that these had to be handled with care because they had cameras and any slight hit could damage them. *Id*. Petitioner testified that she also ran tests in which she connected a scope to a machine to test the air purge. (T. 21) Petitioner testified that, to do that, she would take the attachment with her right hand, push it into the machine, and then cut it off with her left hand. (T. 21-22) Once it is cut off, she would pull out the attachment. *Id*. Petitioner testified that if a scope is broken, she had to write a report, bag it, identify it, and let Respondent know that it was out of order. (T. 22) She also placed broken scopes in a bag so it was no longer in use. *Id.*

Petitioner testified that she after she saw what supplies she needed, she would go into a storage room, grab a cart with her hands, and place bottles of chemicals on the cart. (T. 24-25) Petitioner testified that she carried oxygen tanks, wheelchairs, boxes of chemicals. *Id.* Petitioner testified that the bottles of chemicals were stored on shelves up against the wall about six feet high. *Id.* Petitioner testified that she took the cart to the room where the scopes are processed. *Id.* Petitioner testified that to get to reach overhead to get the chemicals while she was on a medical step stool. (*Id.*; Petitioner's Exhibit "PX" 20) Petitioner testified that she would have to reach over head to get the bottle of chemical. *Id.* Petitioner testified that her job was to twist the cap off the bottle, take the spout with other hand, put the spout inside bottle, then twist the cap to lock it. (T. 27-28)

Petitioner testified that she is right hand-dominant and that she would use her right hand to remove the caps on these bottles. *Id.* Petitioner testified that she would use her left hand to hold the bottle. *Id.* Petitioner testified that the bottles of Rapicide were roughly the size of big detergent bottles, and that they contained more than a gallon in each bottle. (T. 29-30) Petitioner also testified that after she documented the bottle of Rapicide, she would sign and date a sticker, peel the sticker off of a sheet, and physically place it on the bottle of Rapicide. (T. 31) Petitioner testified that she used both her hands to use a computer to document these materials. (T. 32) Petitioner testified that the container of Rapicide that she lifted maybe weighed between 10 and 15 pounds. (T. 75)

Petitioner testified that after she finished her job duties related to the supplies, she started processing the dirty side of the scopes. (T. 33-34) Petitioner testified that she obtained the scopes with both hands and carried them to the sink. *Id.* Petitioner testified that she placed the scopes inside of the sink, picked up the cap, and twisted it onto a battery pack. *Id*. Petitioner testified that, after that, she took an air purging

machine, with her right hand, and pushed the valve inside the machine to connect it. *Id*. Petitioner testified that she then placed a cover onto the scope to allow air to go through. *Id.* Petitioner testified that she took an adapter piece and attached it with her left hand. *Id*. Petitioner testified that, once the attachment was on, she cut the air purge valve with her hand by pressing a button while she checked for leaks inside the scope. *Id*. Petitioner testified that she simultaneously turned the water on with her hands to fill up the sink. *Id.* Petitioner testified that she filled up the sink and used her hand to maneuver the knobs on the scope. (T. 32-34) Petitioner testified that while she maneuvered the knobs of the scopes in the sink, she took her left hand and lifted the scope up to check for air bubbles. (T. 34-35) Petitioner testified that if there was an air leak in the scope, she would get a bucket and manually cleanse it and soak it several times. (T. 35) Petitioner testified that, in order to do that, she disconnected the air purge, left the cap on, and then pumped detergent into the sink. (T. 36) Petitioner testified that she then took the pump detergent into the sink, where the scope was, and then wash it by hand with a brush. (T. 35-37) Petitioner testified that she took her right hand and guided the brush through the machine all the way until it reaches the bottom. *Id.* If the scope was be clogged, so she would have to do the brushing several times. *Id.*

Petitioner testified that once she finished with one end of the brush, she used the opposite end of the brush and went through a second hole in the scope with the brush. (T. 37) Petitioner testified that, after this was finished, she went over to the other side and placed a scope inside of a machine. (T. 38-39) Petitioner testified that she pressed a button with one hand, lifted up the machine up with the other hand, grabbed the scope, made sure it is coiled up, and set it into a wash basin. *Id*. Petitioner testified that once all of the pieces and attachments were connected to the machine and scope, Petitioner closed the door of the machine with her hands and pressed a button to start the scope. (T. 39-40) Petitioner testified that there were three machines and that she would load each one the exact same way. *Id.* Petitioner testified that once the cycle was finished, she took the scope out of the machine, disconnected the attachments, took the scope out, and hung the scopes up in the cabinet. *Id*.

Prior Medical Condition

Petitioner testified that, prior to the alleged date of incident of April 15, 2019, she was able to do all of the aforementioned job activities with her arms and hands, lift and maneuver the scopes in order to wash, and clean them without any problems in her right shoulder, right wrist and hand, and right thumb. (T. 40) Petitioner testified that, prior to April 15, 2019, she did not seek medical treatment for her right hand, wrist, thumb, or shoulder. *Id.*

Accident

On April 15, 2019, Petitioner testified that she went into the storage room to get chemicals for the sterile processing room. (T. 41) Petitioner testified that she moved a case carts, oxygen tanks, and a wheelchair out of the way so that she could get the chemicals from the backside of the wall. *Id*. Petitioner

testified that she took the step stool still by the handle, picked it up, and took it over to the back of the room. *Id*. Petitioner testified that she stepped onto the step stool, reached up, and grabbed the Rapicide with her right hand. (T. 41-42) Petitioner testified that as she pulled the Rapicide down, she felt a sharp pain, that started in her right wrist, and shoot up into her right shoulder. (T. 42) Petitioner testified that she stepped off the step stool, placed the Rapicide on the floor, and rubbed her arm with her hand which caused the pain to go away. *Id.* Petitioner testified that she bent down and picked the Rapicide off the floor with both hands and placed it on the cart. *Id.* Petitioner testified that she was only able to get one bottle of Rapicide and one bottle of Prolystica, instead of the normal six to ten each. (T. 43)

Petitioner testified that she rolled the cart to the processing side and began to put on her PPD equipment when she felt a pain in her right arm as she reached up to put on her gown. *Id*. Petitioner testified that she it felt like the same pain when she grabbed the Rapicide, but worse. *Id*. Petitioner testified that she told the charge nurse that her arm hurt badly and that the pain was not going away. *Id.* Petitioner testified that she called her supervisor and was told to go to Employee Health. (T. 43-44) Petitioner testified that she had never felt pain like she described at any time prior to the alleged accident. (T. 44)

Medical Summary

On April 15, 2019, Petitioner was seen at Employee Health and then sent home. (PX 2 at 6; T. 45-46) Petitioner testified that she was in a lot of pain and did not sleep well. (T. 45-46)

On April 16, 2019, Petitioner presented to her primary care physician, Dr. Neilish Shah, M.D., at Advocate Medical Group. (PX 2; T. 46) Petitioner reported that she injured her right arm when she pulled and lifted a heavy object, heard a pop, and experienced shooting pain. (PX 2 at 6) Dr. Shah diagnosed Petitioner with tendinitis of the right rotator cuff. (PX 2 at 10) Dr. Shah indicated that Petitioner could resume work after two weeks without restriction. *Id*. Petitioner was referred to physical therapy and given a prescription for Naproxen. *Id.*

On April 17, 2019, Petitioner went back to Employee Health. (PX 3) Petitioner was diagnosed with rotator cuff tendinitis (PX 3 at 11; T. 46-47)

On April 30, 2019, Dr. Shah noted that Petitioner had not received physical therapy because it was not approved. (PX 2 at 12) Dr. Shah kept Petitioner off work until May 31, 2019, to participate in physical therapy. (PX 2 at 16) Petitioner began physical therapy at Athletico on May 24, 2019. (PX 2 at 17)

On May 1, 2019, she went back to Employee Health and complained that her shoulder pain. (PX 3 at 12) Petitioner presented to Employee Health from May 1, 2019, to March 15, 2020, with continuous complaints of right shoulder pain, pre and post-surgery. (PX 3)

On May 6, 2019, Petitioner to Dr. Nikhil Verma, M.D., at Midwest Orthopaedics at Rush. (PX 4 152-156; T. 48-49) Petitioner reported that she worked in a chemical plant for 17 years and that she injured her right shoulder when she lifted chemicals and a large detergent container. *Id*. Petitioner reported that

she felt a pain and pop from her shoulder down to her arm and hand. *Id*. Dr. Verma diagnosed her with shoulder strain and recommended that she undergo an MRI. (PX 4 152-156; T. 49)

On May 15, 2019, Petitioner underwent an MRI of her right shoulder. (PX 5) The MRI revealed subdeltoid bursitis and mild distal supraspinatus and infraspinatus tendinosis. *Id*. On that same day after the MRI, Petitioner returned to Dr. Verma. Dr. Verma, who reviewed the MRI and diagnosed her with "right shoulder rotator cuff tendinopathy with subacromial impingement and biceps tenosynovitis." (PX 4 at 150) Dr. Verma administered a shoulder joint steroid injection for the inflammation. *Id.* Dr. Verma recommended that Petitioner continue physical therapy and return to sedentary duty work with restricted overhead activity. (PX 4 at 150; T. 50)

On June 6, 2019, Petitioner was seen by Dr. Mark Levin, M.D., Section 12 medical examiner for an independent medical examination ("IME"). (PX 12; T. 51) Petitioner reported that she was a certified nursing assistant for Respondent. (PX 12 at 1-2) Petitioner reported her history, her shoulder complaints, and her recent right thumb and wrist pain. (PX 12 at 2) Dr. Levin, after considering Petitioner's report of her accident, medical records, and MRI, diagnosed Petitioner with developing adhesive capsulitis of the right shoulder as a result of the April 15, 2019, work related accident. (PX 12 at 4) Dr. Levin opined that this type of injury could take Petitioner up to a year to recover, that she was not at maximum medical improvement ("MMI"), and that she was capable of working light duty with no use of her upper extremity. (PX 12 at 5-6) Dr. Levin recommended aggressive physical therapy. *Id.* Dr. Levin further opined that Petitioner's complaints of her wrist and thumb were a new onset and not related to the April 15, 2019, work accident. (PX 12 at 4)

On June 19, 2019, Petitioner returned to Dr. Verma. (PX 4 at 146) Dr. Verma noted that Petitioner reported two weeks of relief after the steroid injection and that she still had pain. *Id.* Dr. Verma recommended a diagnostic arthroscopy subacromial decompression and biceps tenodesis given the mild improvement from the injection. (PX 4 at 147; T. 52) Petitioner advised she wished to proceed with surgery. *Id*.

On June 28, 2019, Petitioner returned to Dr. Shah. (PX 2 at 26-31; T. 52) She complained of bruising on her arms, pain in her hands and wrists, and throbbing in her thumbs, after physical therapy. *Id.*

On July 12, 2019, Dr. Verma received a letter from Respondent denying requested surgical procedure of the right shoulder. (PX 4 at p 44)

On August 27, 2019, Petitioner presented to Employee Health. (PX 3) Records indicated that Petitioner developed hematoma in her right upper arm. The records also indicated that Risk Management approved six more physical therapy sessions and then evaluate before they could approve her surgery of her right upper arm shoulder. (PX 3 at 18)

On September 16, 2019, Petitioner returned to Dr. Verma. (PX 4 at 140-143) Dr. Verma noted that Petitioner completed all of the nonoperative treatments available, that she got worse with physical therapy, and that she has had symptoms for approximately five months. *Id*. Dr. Verma recommended arthroscopic

surgery and opined that post surgery, she could work 6-12 weeks of sedentary to light duty and would be at MMI in 4-6 months. *Id*.

On September 18, 2019, Petitioner was seen by Dr. Shah again, who documented Petitioner had gone through additional physical therapy without benefit, and that therapy made her injuries worse. Dr. Shah authorized Petitioner to off work. (T. 55)

On October 29, 2019, Dr. Verma performed an arthroscopic decompression and distal clavicle excision on Petitioner's right shoulder. (PX 4 at 41-43; PX 6) The postoperative diagnosis was: "1. Right shoulder pain; 2. Right shoulder impingement; 3 right shoulder AC joint pain." *Id*.

On November 7, 2019, Petitioner presented to Dr. Verma for a post operative visit. (PX 4 134-135) Petitioner reported moderate discomfort and intermittent tingling in her right thumb that was present before the surgery. *Id.* Dr. Verma opined that Petitioner had "full painless range of motion of the elbow, wrist, and digits" and good grip strength. *Id*. Dr. Verma noted that Petitioner's right thumb symptoms were to be monitored to determine if positional. *Id.* Dr. Verma kept Petitioner off work and recommended physical therapy for Petitioner. *Id*.

On December 17, 2019, Petitioner began physical therapy after surgery. (PX 4 at 259) The records indicated that the diagnoses were disorder of bursae and tendons in right shoulder region and biceps tendonitis on right. *Id*.

On December 18, 2019, Petitioner returned to Dr. Verma and complained of pain and low range of motion. (PX 4 at 127-130) Dr. Verma noted that Petitioner also complained of right thumb pain that radiated down from the shoulder after her previous physical therapy session. *Id*. Dr. Verma recommended Petitioner undergo an EMG/NCV of her right upper extremity to assess any C5 nerve damage. (PX 4 at 127-130; T. 60)

On January 7, 2020, Petitioner underwent EMG/NCV right arm performed by Dr. Scott Lipson, M.D., at EMG Centers of Chicagoland. (PX 7) The EMG/NCV revealed carpal tunnel syndrome right upper limb and did not show any cervical radiculopathy, brachial plexopathy, or injury to her shoulder that would have been the cause of the problems with her arm and hand. (PX 7; T. 61)

On January 8, 2020, Petitioner presented to Employee Health. (PX 3 at 22-23) The records documented that Petitioner complained of pain and limitation of movement of her right shoulder. *Id*. Petitioner was instructed to continue physical therapy until January 31, 2020, and remain off work. *Id*.

On January 22, 2020, Athletico's records indicated that Petitioner attended 17 sessions and reported that her thumb and arm still hurt and that the popping continued. (PX 4 at 228-229; T. 61)

On January 29, 2020, Petitioner was seen by Dr. Verma. (PX 4 at 124-125) Dr. Verma noted that Petitioner still complained of numbness in her right thumb and that it was painful at night. *Id*. Dr. Verma noted that her recent EMG showed compression of the median nerve at the carpal tunnel. *Id*. Dr. Verma recommended that Petitioner continue physical therapy. *Id*. Dr. Verma noted gave her Medrol dose to reduce some of her inflammation. *Id*. Dr. Verma referred Petitioner to Dr. John Fernandez, M.D., for an

evaluation of carpal tunnel syndrome. (PX 4 at 124-125; T. 64) Petitioner stated she had this numbness in her thumb prior to her shoulder surgery. (T. 63)

On February 17, 2020, Dr. Levin performed a second IME of Petitioner at the request of Respondent. (PX 15) Dr. Levin noted that since Petitioner was last seen by him in October 2019, she treated with Dr. Verma and underwent surgery for arthroscopy to her right shoulder. *Id*. Dr. Levin noted that postoperatively, it took over eight weeks, after surgery, to be placed in physical therapy but ultimately completed six weeks of physical therapy. *Id*. Dr. Levin opined that Petitioner was unable to return to work full duty, because of her shoulder, but that the goal is to return to work in the next 8 to 10 weeks. *Id*. Dr. Levin further opined that Petitioner had not reached MMI but that she should be at MMI upon completing six more weeks of physical therapy followed by 24 weeks of work conditioning/work simulation. *Id*. With respect to her wrist, Dr. Levin noted that both wrists had symmetrical flexion and extension and that her carpal tunnel syndrome was not related to her shoulder. (PX 15 at 2-5)

On March 11, 2020, Petitioner returned to see Dr. Verma. (PX 4 at 114-119) He documented that Petitioner still had some pain and numbness and noted Petitioner had an EMG which showed a significant median nerve involvement. *Id.* Dr. Verma again referred her to Dr. Fernandez and opined that Petitioner needed to see a hand surgeon "based on acute onset of symptoms and EMG evidence of carpal tunnel." (PX 4 at 118; PX 9) Dr. Verma placed Petitioner on light duty work restrictions. *Id.*

On May 20, 2020, Petitioner was seen by Dr. Verma who noted that Petitioner nearly finished work conditioning, was seven months post-surgery, that she continued to have right shoulder pain with weakness and loss of motion, and also had carpal tunnel symptoms. (PX 4 at 111-112; T. 65) Dr. Verma continued Petitioner's light duty restrictions and noted that workers' compensation had not authorized her visit to Dr. Fernandez. (PX 4 at 111)

On June 9, 2020, Petitioner presented to Dr. Fernandez, at Hand & Shoulder Center at Rush. (PX 4 103-105) Petitioner reported that she was lifting a chemical bottle off a tall shelf, which she stated was heavier than expected, which took her arm quickly down to the floor and she sustained pain all the way from her wrist up to her shoulder, but that her shoulder was more problematic. *Id*. Dr. Fernandez diagnosed Petitioner with "[r]ight hand numbness and tingling likely carpal tunnel syndrome, active." (PX 4 at 104) He also diagnosed her with right hand thumb pain and related both diagnoses to a work related injury. *Id.* Dr. Fernandez recommended an MRI and EMG. (PX 4 103-105; PX 11)

On July 14, 2020, Petitioner returned to Dr. Fernandez. (PX 4 at 91-92) Dr. Fernandez reviewed the MRI and EMG and diagnosed Petitioner with mild thickening of the ulnar collateral ligament ("UCL") of the right thumb and mild right carpal tunnel syndrome. *Id*. Dr. Fernandez performed a right wrist carpal tunnel injection. (PX 4 at 91-92; PX 10) Petitioner was given work restrictions of no use of the right arm. (PX 4 at 91-92)

On September 15, 2020, Petitioner returned to Dr. Fernandez and reported that the injection helped, but that her numbness and tingling wakes her up at night. (PX 4 at 83-84) While Dr. Fernandez considered the injection to be successful, he recommended carpal tunnel release and opined that this was a result of

an injury to the "entire upper extremity at work." *Id.* Petitioner testified that the diagnostic injection administered by Dr. Fernandez did provide relief, but that the pain and numbness returned. (T 68-69) Petitioner testified that she could not turn the cap of a jar because of weakness in her hand and that she dropped the jar of pickles because of weakness in her hand. *Id*. She testified that the weakness in her hand was getting worse and that she would undergo the surgery that was ordered by the doctor if it were approved. *Id*.

On September 16, 2020, Dr. Michael Vender, M.D., conducted an IME of Petitioner. (RX 1; PX 4 at 60-64) Dr. Vender noted that Petitioner presented with a history of sudden onset symptoms related to her right shoulder. *Id*. Dr. Vender noted that Petitioner underwent surgery and that Petitioner complained of numbness and tingling in her right hand which are consistent with symptoms of carpal tunnel syndrome. *Id*. Dr. Vender opined that while the carpel tunnel diagnosis is valid, it would not be related to an injury to the right shoulder. *Id*. Dr. Vender noted that the type of activity she reported performing, lifting chemicals off of a tall shelf, would not lead to a diagnosis of carpal tunnel syndrome. (RX 1) He also noted that it was rare for carpal tunnel syndrome to be caused by trauma, unless it was a single incident involving a major incident, not the one alleged by Petitioner in this case. *Id*. Dr. Vender further opined that lifting does not cause carpal tunnel syndrome, nor does reaching above your head. *Id*. He further noted that Petitioner was at a heightened risk factor due to her increased body mass index due to her height and weight. *Id.* Dr. Vender also noted that any further treatment for Petitioner's carpal tunnel would not be related to the work related injury. *Id.*

On September 29, 2022, Petitioner presented to Dr. Fernandez. (PX 4 at 72-76) Dr. Fernandez reported that Petitioner was last seen in 2020 when he recommended a carpal tunnel release. *Id*. Dr. Fernandez noted that Petitioner stated she had too much going on at the time but now wanted the surgery. *Id*. Dr Fernandez continued to recommend a right carpal tunnel release. *Id*.

On January 11, 2023, Petitioner was seen by Dr. Vender for another IME. (RX 2) She complained of right shoulder pain and numbness and tingling in her fingers, and difficulty writing and gripping objects. *Id*. Dr. Vender opined that while the record indicated a diagnosis of carpal tunnel syndrome, Petitioner's work accident on April 15, 2019, did not cause carpal tunnel syndrome, or aggravate any potential pre-existing carpal tunnel syndrome. *Id*. Furthermore, Dr. Vender noted that Petitioner had risk factors for the development of carpal tunnel syndrome in the way of her age and gender and increased body mass index. *Id*. He did not believe the mechanism of injury would cause or contribute to carpal tunnel syndrome, or aggravate pre-existing carpal tunnel syndrome. *Id*. Dr. Vender further opined that Petitioner did not require any work restrictions for possible carpal tunnel syndrome. (RX 2; RX 3)

Petitioner testified that she received a letter from Nicholas Krasucki. (PX 4; T. 83) She testified that she called Mr. Krasucki in June 2020, and that he instructed her to contact Employee Health and her department supervisor. (T. 84-85) Petitioner testified that she contacted both Employee Health and her department supervisor and took letters to them, but did not recall the date. *Id*. She further testified that the last date she went to Employee Health Services was on March 16, 2020, and that the letter she received from Mr. Krasucki was dated June 19, 2020. (T. 86) Petitioner testified that she was told by Respondent

that there was no work for her which would not involve using her right arm. (T. 88) Petitioner testified that her work restrictions at the time of the aforementioned letter from Mr. Krasucki were no lifting more than 10 pounds. (T. 89) Petitioner did not return to work on or about June 19, 2020. (T. 89-90)

Petitioner's Current condition

Petitioner testified that she has periods of numbness, tingling, and throbbing in her right hand and wrist. (T. 70-72) Petitioner testified that she wakes up at night, has a brace to sleep in to stabilize hand and nerve, and sometimes feels like someone took a hammer and hit her at the tip of her thumb. *Id*. Petitioner testified that she does not have any similar problems in her left hand. *Id*. Petitioner testified that she has remained off of work from the alleged date of accident to the present date per Dr. Shah, Dr. Verma, and Dr. Fernandez's recommendations. *Id.* Petitioner testified that she is still under the care of both Dr. Verma and Dr. Fernandez. *Id*.

Petitioner also testified that she was involved in an accident that occurred on December 19, 2020, where she was a pedestrian and was hit by a semitruck. (T. 100-107) Petitioner testified while she did not sustain any injury to her right wrist, right hand, right thumb, or right shoulder, she sustained severe internal injuries, burns, permanent nerve damage in her legs and her sciatic nerve, and had to learn to walk again. *Id.* Petitioner testified that she is currently using a walker due to being hit by the semi-truck and that use of the walker hurts her right hand and arm. *Id*. Petitioner testified that she notified all of her doctors of this accident. *Id.*

Petitioner testified that she received TTD benefits from March 6, 2019, through June 19, 2020, in the amount of $31,655.93. *Id*. Petitioner testified that she her medical bills in connection with her workers' compensation case were paid by Respondent. *Id*. Petitioner testified that she is not receiving Social Security disability benefits. *Id*.

Testimony of Nicholas Krasucki

Mr. Krasucki testified that he is currently employed by UI Health, University of Illinois. (Transcript September 13, 2023 "T. Sept. 13" at 10) Mr. Krasucki testified that he was previously employed by Cook County as the Equal Employment Opportunity Director for Cook County Health from September 2015 through May 2022. *Id*. Mr. Krasucki testified that, as the Employment Opportunity Director, he oversaw the Equal Employment Opportunity Division, which included handling all discrimination investigations, complaints of harassment, religious accommodations, and return to work matters related to workers' compensation cases. (T. Sept. 13 at 11)

Mr. Krasucki testified that, as the Employment Opportunity Director, he was part of the Human Resources Department and he was familiar with workers' compensation cases. (T. Sept. 13 at 11) Mr. Krasucki testified that he handled matters involving return to work and found accommodated work for employees with restrictions. (T. Sept. 13 at 12) Mr. Krasucki testified that he acted as a liaison between

operational management and the claims adjusters to determine whether there was work available for an employee on workers' compensation. (T. Sept. 13 at 14)

Mr. Krasucki testified that he is familiar with Petitioner's workers' compensation case and began working on her case in June 2020. (T. Sept. 13 at 13) Mr. Krasucki testified that he spoke with Jason Henschel, a claims adjuster for Cook County's central system, regarding Petitioner's case and bringing her back in June 2020. *Id.*

Mr. Krasucki testified that to bring an employee back to work, he/she would be assigned to duties that fell within whatever the restrictions were until such time they reached MMI or until the employee was authorized to full duty work. (T. Sept. 13 at 14-15) He further testified that when Respondent could accommodate an employee within their restrictions, the claims adjuster would send a letter to the employee providing information regarding who to contact in order to facilitate the return to work. *Id*. If the Respondent could not accommodate the employee's restrictions, a return to work letter would not be sent to the employee or her attorney. (T. Sept. 13 at 15-16)

Mr. Krasucki testified that if a workers' compensation petitioner contacted Mr. Krasucki directly, he would tell him or her that they needed to contact Human Resources to have their leave terminated, get their badge reactivated, and establish the return to work date. (T. Sept. 13 at 16) Mr. Krasucki testified that the employee would also be told to contact Employee Health Services as well, in order to facilitate the return to work. (T. Sept. 13 at 17)

Mr. Krasucki testified that Petitioner's job title was health advocate. (T.Sept. 13 at 18) Mr. Krasucki testified that in June 2020, there were about a hundred people out of work due to COVID, which made jobs available, with the advocate health position, at that time including the checking temperatures, serving as a sitter on a patient, doing screenings at a door, handing out masks, and making sure people did not have COVID symptoms if they were walking into a facility. *Id*.

Mr. Krasucki testified that if a workers' compensation petitioner contacted Mr. Krasucki directly, he would not tell them that he was not with the Human Resources Department. *Id*. Mr. Krasucki testified that if a workers' compensation petitioner was to be returned to work, he would direct that person to the front desk of Human Resources. (T. Sept. 13 at 18-19)

Mr. Krasucki testified that Respondent attempted to bring Petitioner back to work in the present case. (T. Sept. 13 at 19) Mr. Krasucki testified that he recalled that Mr. Henschel sent Petitioner's attorney a letter, dated June 19, 2020, informing him that Respondent could accommodate Petitioner's work restrictions and that she should contact Mr. Krasucki to arrange her return to work with the Respondent. (T. Sept. 13 at 19-21; PX 4) Mr. Krasucki testified that the June 19, 2020, letter directed Petitioner's attorney to tell Petitioner to contact Employee Health Services regarding her return to work with the Respondent. (T. 33) Mr. Krasucki testified that the accommodated job for the Petitioner with the Respondent was in the same department that Petitioner worked in at the time of her accident. (T. 35)

Mr. Krasucki testified that Petitioner contacted Mr. Krasucki in June 2020 regarding her return to work with the Respondent. (T.Sept.13 at 21) Mr. Krasucki testified that Petitioner was diagnosed with

COVID on or about June 21, 2020. (T. Sept. 13 at 23) Mr. Krasucki testified that she would not have been able to return to work if she had active COVID, but she could have returned to work after she had been quarantined for the appropriate time period and was cleared by Employee Health Services. *Id*. Mr. Krasucki testified that he did not know whether Petitioner did return to work after she completed her COVID quarantine protocols. (T. Sept. 13 at 24-25) Mr. Krasucki testified that while his work in connection with returning Petitioner back to work with Respondent was to establish whether the Petitioner could be accommodated within the restrictions, he did not coordinate the actual return to work process. (T. 33)

Petitioner's Rebuttal Testimony

Petitioner testified that she was informed by her attorney that Respondent had a job for her which could accommodate her work restrictions after he received a letter from Mr. Henschel. (T. Sept. 13 at 42-44) Petitioner testified that once she found out about this, she called Mr. Krasucki and left a message. *Id.* Petitioner testified that she also called Employee Health about returning to work and informed them that she had COVID. *Id.* Petitioner said she was told that she could not come back to work. (T. Sept. 13 at 46) Petitioner testified that she called Mr. Krasucki again and left him another voicemail message and informed him that she was sick. (T. Sept. 13 at 47) Petitioner testified that Mr. Krasucki called Petitioner back and told her to call Employee Health regarding her return to work. (T. Sept. 13 at 49-50)

Petitioner testified that in June 2020, if she was offered a job with the respondent that accommodated her with no lifting or carrying with her right arm, she would have been able to do that job. (T. Sept. 13 at 59) Petitioner presented a call log from her cell phone, from June 25, 2020, which evidenced the phone calls. (PX 21; T. Sept. 13 at 52-58)

Testimony of Dr. Michael Vender

Dr. Vender testified by evidence deposition taken on June 23, 2023. (RX 3) Dr. Vender testified that he is licensed to practice medicine in the State of Illinois and that his practice is focused solely on the hand and upper extremities. *Id.* Dr. Vender testified that he is board certified in orthopedic surgery, with added qualifications in hand surgery, and performs approximately 350 surgeries per year. *Id*.

Dr. Vender testified that he did not agree with Dr. Fernandez's opinion that Petitioner receiving relief from a right carpal tunnel steroid injection on July 14, 2020, was an important finding to confirm the diagnosis of carpal tunnel. *Id*. Dr. Vender opined that to confirm this diagnosis, an objective finding from an electrodiagnostic study is more reliable. *Id*. Dr. Vender testified that his review of the electrodiagnostic studies performed on Petitioner did not lead to a diagnosis of carpal tunnel syndrome, because the numbers listed in the studies were within normal limits as they related to palmar latency of the median nerve and latency of the motor nerve. *Id*. Dr. Vender testified that there was a natural progression of carpal tunnel syndrome and that there can be a progression of symptoms. *Id*. Dr. Vender

opined that Petitioner did not need any work restrictions because of her right wrist or thumb. *Id*. Dr. Vender testified that a lack of access to medical treatment would be an explanation for a gap in treatment of the right wrist and thumb. *Id*.

CONCLUSIONS OF LAW

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

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

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

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

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds the Petitioner credible and that she was calm, well-mannered, and composed. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find material contradictions that would deem the witness unreliable.

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

Petitioner bears the burden of proving, by a preponderance of the evidence, every element of the claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). To obtain compensation under the Illinois Workers' Compensation Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative

factor, as long as it was *a* causative factor in the resulting condition of ill-being. Causation between the work-related accident and condition of ill-being can be established by showing prior history of good health, followed by a work-related accident in which petitioner is unable to perform his physical duties. *Kawa v. Illinois Workers' Comp. Comm'n*, 991 N.E.2d 430, 448 (2013).

It is well established law that proof of prior good health and change immediately following and continuing after an injury may establish that an impaired condition was due to the injury. *Navistar International Transportation Corporation*, 315 Ill. App. 3d 1197, 1206 (2000) The Court specifically stated that causal connection between work duties and a condition may be established by a chain of events, including Petitioner's ability to perform duties before the date of the accident and inability to perform the same duties following that date. *Id.*

The Arbitrator finds that Petitioner's alleged right carpal tunnel syndrome is not causally related to her work related accident. The Arbitrator notes that Petitioner was diagnosed with right rotator cuff tendinitis and shoulder strain as a result of a work accident on April 15, 2019, by treating physicians, Dr. Shah, Dr. Verma, and IME Dr. Levin. (PX 2 at 10; PX 3 at 11; PX 4 at 150; PX 12 at 5) The Arbitrator notes that Petitioner underwent an arthroscopic decompression and distal clavicle excision on Petitioner's right shoulder which was successful. (PX 4 at 41-43; PX 6)

The Arbitrator notes that in June 2019, Petitioner complained of bruising on her arms, pain in her hands and wrists, and throbbing in her thumbs, after physical therapy. (PX 2 at 26-31; T. 52) The Arbitrator notes that Dr. Verma opined that Petitioner had "full painless range of motion of the elbow, wrist, and digits" and good grip strength, however, referred Petitioner to a hand surgeon for an opinion. (PX 4 134-135) The Arbitrator notes that Dr. Verma did not provide a casual opinion between Petitioner's right carpal tunnel and the April 15, 2019, accident.

The Arbitrator notes that Dr. Fernandez diagnosed Petitioner with right carpal tunnel syndrome and related this diagnosis to the work related accident. (PX 4 at 91-92; 104) The Arbitrator notes that Dr. Fernandez administered a right wrist carpal tunnel injection which gave Petitioner relief. (PX 4 at 83-84; 91-92; PX 10) The Arbitrator notes that while Dr. Fernandez considered the injection to be successful, he recommended carpal tunnel release. (PX 4 at 83-84)

The Arbitrator notes that IME Dr. Vender opined that while the carpel tunnel diagnosis is valid, it would not be related to an injury to the right shoulder. (RX 1; PX 4 at 60-64) The Arbitrator notes that Dr. Vender noted that the type of activity Petitioner performed at work would not lead to a diagnosis of carpal tunnel syndrome or aggravate any potential pre-existing carpal tunnel syndrome. (RX 1; RX 2) He further noted that it was rare for carpal tunnel syndrome to be caused by a single trauma. (RX 1) The Arbitrator notes that Dr. Vender noted that Petitioner was at a heightened risk factor due to her increased body mass index due to her height and weight. *Id.* The Arbitrator notes that Dr. Vender opined that any further treatment for Petitioner's carpal tunnel would not be related to the work related injury. *Id*. The Arbitrator notes that Dr. Vender's review of the electrodiagnostic studies performed on Petitioner indicated normal limits and did not lead to a diagnosis of carpal tunnel syndrome. (RX 3)

The Arbitrator also notes that IME Dr. Levin, who saw Petitioner twice, opined in his report that Petitioner's complaints of right wrist and thumb pain were a new onset and not related to any injury of April 15, 2019.(PX 12; PX 14; PX 15)

Additionally, the Arbitrator notes that Petitioner was involved in an unrelated traffic accident that left her with severe injuries. The Arbitrator notes that while she was recovering from that accident, she did not receive any medical treatment for her carpal tunnel.

Based upon the totality of the evidence, the Arbitrator finds Dr. Levin and Dr. Vendor to be more persuasive and finds that Petitioner's current condition of ill-being, with respect to her right carpal tunnel, is not causally related to the April 15, 2019, work related accident.

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

As the Arbitrator found that Petitioner's current condition of ill-being with respect to her right carpal tunnel syndrome was not caused by the April 15, 2019, work accident, the Arbitrator finds that Respondent is not liable for a right carpal tunnel release as recommended by Dr. Fernandez. The Arbitrator also finds that Respondent is not liable for any future medical treatment for Petitioner's carpal tunnel syndrome.

WITH RESPECT TO ISSUE (L), WHAT TEMPORARY BENEFITS ARE IN DISPUTE, 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).

As the Arbitrator found that Petitioner's current condition of ill-being, with respect to her right carpal tunnel, is not causally connected to the work-related accident, the Arbitrator finds that Respondent paid TTD benefits to Petitioner in the amount of $31,655.93, covering the time period of April 15, 2019, through June 19, 2020. (AX 1 line 9) The Arbitrator notes that, as of June 19, 2020, Respondent was able to accommodate Petitioner's work restrictions and requested that she return to work. (RX 4) The Arbitrator does note that Petitioner made attempts to contact Respondent when she was diagnosed with COVID. The Arbitrator also notes that Petitioner testified that in June 2020, if she was offered a job with the Respondent that accommodated her with no lifting or carrying with her right arm, she would have been able to do that job. (T. Sept. 13 at 59)

The Arbitrator notes that Petitioner was involved in an unrelated traffic accident that left her with severe injuries and was unable to work. However, the Arbitrator notes that there was no evidence presented whether Petitioner attempted to return or did return to work thereafter. Based on the Petitioner's testimony

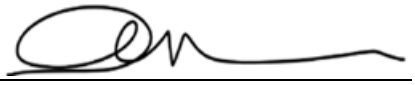
and evidence presented, the Arbitrator notes that any work restrictions which might have been related to Petitioner being hit by a truck, are not related to her injuries in this case.

The Arbitrator finds that Respondent paid TTD benefits, covering a time period of April 16, 2019, through June 19, 2020, of $514.13/week for 222 1/7weeks, totaling $31,655.93, and thus, Respondent is not liable for the payment of any additional TTD to Petitioner.

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

The Arbitrator finds that Respondent's actions in this case were not unreasonable, vexatious, or without good cause and, therefore, Respondent shall not pay penalties as provided in Sections 16 or 19 of the Act. The Arbitrator notes that Respondent paid proper TTD benefits to Petitioner and properly relied on Dr. Levin and Dr. Vendor's medical opinions. (AX l line 9; RX 5)

It is so ordered:



ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC006540
Case Name	Jason Coca v. B & P Enterprises
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0019
Number of Pages of Decision	17
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Angie Zinzilieta
Respondent Attorney	Andrew (AJ) Sheehan

DATE FILED: 1/16/2025

/s/Kathryn Doerries,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JASON COCA,

Petitioner,

vs. NO: 22 WC 006540

B & P ENTERPRISES,

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, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 26, 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) is applicable only when "the Commission shall have entered an award for the payment of money." *820 ILCS 305/19(f)(1)*. Based upon the denial of compensation herein, no bond is set by the Commission. The party commencing the proceedings

for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

January 16, 2025

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KAD/bsd
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/s/*Kathryn A. Doerries*
Kathryn A. Doerries

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC006540
Case Name	Jason Coca v. B & P Enterprises
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Dennis OBrien, Arbitrator

Petitioner Attorney	Angie Zinzilieta
Respondent Attorney	Andrew (AJ) Sheehan

DATE FILED: 12/26/2023

THE INTEREST RATE FOR THE WEEK OF DECEMBER 19, 2023 5.13%

/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
19(b)

JASON COCA
Employee/Petitioner

v.

B & P ENTERPRISES
Employer/Respondent

Case # **22** WC **006540**

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 **October 23, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **February 2, 2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

In the year preceding the injury, Petitioner earned $**94,999.84**; the average weekly wage was $**1,826.92**.

On the date of accident, Petitioner was **46** years of age, ***married*** with **1** dependent child.

Respondent shall be given a credit of $**8,172.45** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**8,172.45**.

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

ORDER

Petitioner has failed to prove that he suffered an accident on February 2, 2022, which arose out of and in the course of his employment by Respondent.

Petitioner's medical conditions, neck pain and low back pain are not causally related to the accident of February 2, 2022.

Based upon the findings in regard to accident and causal connection, all other issues are deemed moot.

Claim for compensation is therefore denied.

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

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

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

DECEMBER 26, 2023

Signature of Arbitrator

ICArbDec19(b)

FINDINGS OF FACT:

TESTIMONY AT ARBITRATION

Petitioner

Petitioner testified that he had been employed by Respondent for about two years prior to the date of this accident, working as a train derailment supervisor. His duties included driving a tractor trailer, loading and unloading equipment, chaining and unchaining cars, locomotives, and heavy rigging, performing rail derailment clean up, and installing switches and tracks. He considered his work to be heavy manual labor. Petitioner testified that although his role was supervisory, everyone worked when Respondent was short-handed, so he performed heavy labor duties daily while working for Respondent. He said he had not performed manual work for Respondent since February 2, 2022, though he did some administrative work while at home, as he was to be hiring people. He said as far as he knew, he was still employed by Respondent, no one had actually talked to him about firing him, though he felt like he lost his job on February 15, 2022, when Respondent turned off his credit card, his email and his ability to use the company chat message service.

Petitioner testified that Petitioner's Group Exhibit 6 was a set of test messages, including one of February 15, 2022 telling Glen that he was unable to follow a directive to travel to Birmingham, Alabama or to operate equipment because of a fall out of his truck in Quincy, and his having dislocated his SI joint and having back issues. He then identified a text of February 16, 2022, to the owner of the company, Josh Pruitt, similar to what he had sent Glen, explaining what had happened and what was going on. Another page of the exhibit was a record of his having called the supervisor for Birmingham, Josh Lablonck, on February 15, 2022. Another page showed he had missed a call from Glen on February 15, 2022. He said he missed that call as he was in the chiropractor's office due to his back problem suffered in falling from the truck in Quincy on February 2, 2022. Petitioner also identified a page with a text message on it from Carl Bolina, his manager, who had taken over the Little Rock office. He said in that text he told Mr. Bolina, that he, Petitioner, was probably going to be fired, that he had fallen from a truck in Quincy and had a dislocated SI joint and inflamed discs, and had had told Respondent he could not run a boom in Birmingham at this time. He said he felt Mr. Bolina was a person he should report a workplace injury to. Petitioner said he also verbally reported the injury to Glen on the 16th in the foyer of the Quincy office. Petitioner testified that he was not trained as to whom to report a workplace injury.

Petitioner identified Petitioner Exhibit 6 pages 7 and 8 as a work restriction he received from Bierman Chiropractic, and the email showing he sent it to Tom in HR.

Petitioner testified that on February 2, 2022, he was on snow removal duty for Respondent in Quincy, Illinois. Petitioner said that on that date he stepped into his truck, slipped off the foot rail and fell backwards, hitting his head and shoulder on the door and landing on his back. He said he immediately felt pain in his lower back, neck and leg, as well as between his shoulder blades. He said he waited for a coworker, told the coworker of his fall, and they both returned to their hotel rooms. Petitioner said he took a hot shower, and laid down,

hoping he'd feel better the next day. Petitioner testified that he spoke with his wife on the telephone during the evening of February 2, 2022, and he informed her of his fall.

Petitioner said that he really had done no work in Quincy, and after the fall he went to his home and did sedentary administrative work from his house, he was to hire people, while the rest of his crew went to Louisiana for work there. He said that despite his just doing administrative work, he continued to have pain in his low and middle spine, legs, and numbness and tingling down his arms, fingers, and toes. Petitioner testified that prior to his February 2, 2022 injury, he had never previously experienced those type of symptoms. He said he had suffered from a cervical spine injury in 1996 which completely resolved itself after a course of physical therapy, and he testified that after that 1996 injury, he never missed work for any type of spinal condition until this February 2, 2022, workplace injury. Petitioner said he had previously had general aches, pains, and soreness due to the physical tasks associated with his employment with Respondent, including walking on ballasts and mud and dirt, but had always been able to perform his duties for Respondent

Petitioner testified he sought medical treatment with a chiropractor, Dr. Biermann, on February 15, 2022. He said he did not complete the Dr. Biermann's intake form but rather relied on his wife to complete it for him. Petitioner recalled speaking with Dr. Biermann about a prior fall in shower which occurred on December 3, 2021, but he said that fall did not cause him any pain or discomfort in his spine, that he had gone to work a 12 hour shift after that fall occurred.

Petitioner said he missed time from work at the end of December of 2021 due to a hernia surgery.

Petitioner said that since this injury, he has struggled with everyday activities of living, such as putting on his socks and shoes, yardwork, household chores, getting in and out of vehicles, driving for long distances, and being able to hold his grandchild. Petitioner said he is currently unable to work, and he wanted additional medical treatment due to the pain he was in and his note being able to provide for his family.

Petitioner said he saw and orthopedist, Dr. Lee, and an MRI, medication and spinal injections were prescribed, but not conducted as he did not have a workers' compensation number and the treatment was not approved by workers' compensation. Petitioner said he still wanted that treatment.

Petitioner said he had not suffered any new injuries to his low back and neck since the February 2, 2022 injury.

On cross examination Petitioner said his job was to be supervisory, but that when they did not have sufficient employees he would perform heavy lifting work. He said that due to Covid it was impossible to get enough truck drivers who could do the labor portion of the job, so he was doing laboring work all of the time.

Petitioner said he told Glen Wedford of his accident in the middle of the day on February 3, 2022, in Quincy, saying he told him he thought that as a result of his fall he thought he had ripped a stitch out from his hernia surgery, and he had some back pain. He said Carson Toler was with him on February 2, 2022, that Andrew Newman came in later that evening. He noted Mr. Toler was not present at the arbitration hearing.

Petitioner agreed that his wife filled out the chiropractic intake form, and that she did not mention this fall at work, but had mentioned the fall in the bathtub in January of 2022, though he then testified that fall occurred on December 3, 2021. He said he and Dr. Bierman talked about the injuries, but she was kind of vague when doing so. He said he did tell Dr. Bierman that he had fallen out of his truck. He said he also told her of the

fall in the bathtub, but said she must have been confused when she wrote that the bathtub fall had caused a significant increase in his pain and disability in activities of daily living. He said he saw Dr. Bierman at about 1 o'clock in the afternoon, before he sent the texts to Glen and Josh, and before he got the text from Carl. He said at that point in time he was afraid he was to be fired, as he had been cut off of the company chat. He said it was the next day, February 16, 2022, that Respondent came to get his truck, at which point he assumed he was terminated.

Petitioner said that after February 2, 2022, he performed administrative work, doing hiring, and that he had been doing that type of work prior to February 2, 2022, as well.

Petitioner said he knew why he was terminated by Respondent, he believed it was because he would not go to Birmingham.

Petitioner testified that he did not have any orientation when he was hired by Respondent, and did not get an employee handbook or similar material, that the only time he saw Tom Pegram was when they were going to a hurricane. He said he knew of other employees who had suffered work accidents, but he was not familiar with how they reported their work accidents. He said when he first became a supervisor an employee was injured and Petitioner was told to take the employee to the nearest hospital. He said he knew he was to tell his immediate manager if there was a work injury, which in this case would be Glen Wadford.

On redirect examination Petitioner identified a photograph in Petitioner's Exhibit 8 as being a photograph he sent in of his scraped ankle, as he was going to be a little late getting in. He said that injury was a result of his bathtub fall.

Petitioner said that prior to February 2, 2022, he would perform laboring work for Respondent on a daily basis, up to the point of his hernia surgery, and that he returned to full duty work, including laboring work, after his hernia surgery.

Petitioner testified that in addition to being kicked off the company's chat app, he also thought he had been terminated as they shut off his credit card because he would not drive to Birmingham because of his back issues.

Charity Coca

Mrs. Coca was called as a witness by Petitioner and testified that she was Petitioner's wife, and they had been together for approximately 15 years. She said that during that period of time, she was not aware of his having low back or neck treatment, though she was aware of his having an injury in 1996. In the period prior to February 2, 2022, she was not aware of his having sustained any injuries to his low back or neck.

Mrs. Coca said Petitioner called her on February 2, 2022, and told her he had fallen, and his back was hurting. She asked him if she should come pick him up, but he stayed at the hotel that night, returning home the next day. She said from that time through February 15, 2022, Petitioner worked in bed, on a computer. She said it was not normal for him to perform his work at home. She said that since February it had been hard for him to dress himself, get his shoes on, he even needs help getting out of bed.

Mrs. Coca said she recalled Petitioner falling in the bathtub, she heard a noise when he fell, and he then came out into the bedroom and laid on the bed. His ankle was scratched and was bleeding. She said while he

was delayed, he worked his full day after that occurred, and he did not complain of back pain. She said he worked regular duty work after that, with the exception of the time after his hernia surgery.

Mrs. Coca testified that she filled out the intake form at Dr. Bierman's office, and she did not mention the February 2, 2022 fall on it as she was afraid of repercussions if she mentioned it, that Respondent might terminate her husband.

On cross examination Mrs. Coca said she had noted on the intake form that Petitioner fell in the bathtub in January of 2022, but she was just estimating when he fell, she didn't know the actual date, but knew it had been in the past couple of months. She said she absolutely had not noted his fall from the truck accident on the intake form. She said her husband had always worked on hiring people, both before and after the accident, but after the accident he did it from home.

On redirect examination Mrs. Coca said she believed her husband's work was 70 percent laboring and 30 percent administrative.

On recross examination Mrs. Coca said she had not been on job sites to see Petitioner work, but she had helped her husband with forms. She said she had not seen him actually work on the job sites.

Tom Pegram

Mr. Pegram was called as a witness by Respondent. He testified that he is the corporate safety and insurance and EEOC director for Respondent, and has been for seven years. He said that employees of Respondent who sustain work injuries are to report them to him or one of his assistants, it would then come into his office and they would handle it. All such reports funnel themselves to him.

Mr. Pegram said that every new hires goes through orientation, they go through the handbook, deal with DOT issues, EEOC and social media topics and a lot is done on safety. The process of reporting injuries is dealt with, and he said it was in the employee handbook. He said when an injury was reported to his office they would contact the employee and the supervisors and do an investigation, a drug test would be done, they would get the employee to a doctor or medical care, and deal with things like light duty. He said he did a portion of the orientation of Petitioner, and Petitioner received a handbook.

Mr. Pegram said he never on any jobs with Petitioner, so he did not see him perform his work. He said he had been hired to build their sales force, but then was made the leader of an office on the Union Pacific yard. He said Petitioner was a supervisor. He noted that normally laborers would load equipment, and, because Petitioner had a commercial driver's license, he would drive the truck.

Mr. Pegram testified that Petitioner never mentioned a fall out of a truck to him. He identified Petitioner's Exhibit 6, page 6 as being a February 17, 2022 email to him from Petitioner, with a note from a chiropractor with it saying, "To Whom It May Concern. I have seen Jason Coca in my office and I have recommended he refrain from lifting, bending, twisting." He noted that Petitioner did not in that email or at any other point tell him that the work status note was because of a fall our of a truck in Quincy. If it had noted that, Mr. Pegram said he would have called Petitioner and found out what it was all about.

Mr. Pegram testified that on February 15, 2022, he sent his assistants, Jim Sanders and Jordan Sanders, to the office to pick up Petitioner's credit card, cell phones and laptop as well as his truck. They did so on

February 16, 2022. He said Petitioner as of the date of arbitration still had the laptop, and they had to pick up the truck from Petitioner's house, and return them to Walls, Mississippi. He said Petitioner was terminated as he was not for a period of several months been doing his duties as a leader, soliciting business, but the main reason he was terminated was for employee theft via credit card. He said credit card records indicated Petitioner had been buying gift cards, that he had company employees take company dump trucks with 15 to 20 loads of rock from the rail yard and dump them at property he had purchased south of St. Louis. He said Respondent provided the Department of Employment Security with a letter on April 1, 2022, explaining Petitioner's termination, with documentation.

In response to Petitioner's testimony that he did not report his work injury right away because of a fear of retaliation, Mr. Pegram said Respondent did not have a history of retaliating against employees with workers' compensation claims, they try to help those employees with a strong return to work program, providing work in the office, accommodating restrictions entirely.

On cross examination Mr. Pegram testified he would be called in for Respondent in wrongful discharge or workers' compensation cases, and had testified in depositions in regard to wrecks, but not in courtrooms. He had never been deposed in regard to a wrongful retaliation case. He said he was asked a lot of questions by Respondent's Chief Financial Officer, principally about employee theft, on April 1, 2022, and while he had never been made aware of Petitioner claiming an injury at that time, as it was not reported to him, that they first knew of it when they received paperwork from the State of Illinois indicating Petitioner was making a workers' compensation claim. At that point he did not do an investigation, he did not call Petitioner, as he considered it a frivolous claim. He noted he was Respondent's safety person, who was in charge of workers' compensation, he was not hear of HR. He said he did not respond to the email from Petitioner dated February 17, 2022, as Petitioner had been terminated on February 16, and nobody had told him Petitioner was hurt at work.

Mr. Pegram said he could not read the receipts that were pages 5 of Respondent Exhibit 2.

Glen Wadford

Mr. Wadford was called as a witness by Respondent. He testified that he was a railroad contractor for Respondent, performing general managerial operations for B & P Enterprises for ten years. He said he worked with Petitioner, but was not present with him on the date of accident. He said he did not recall speaking with Petitioner about the accident on February 3, 2022, but said he received about 400 telephone calls a day. The only injury he recalled was Petitioner having hernia surgery. He said he was not aware of a fall out of a truck. He said Petitioner had been sent to Quincy, Illinois on standby for five days due to a snow storm, but they never had to actually work. He said on February 2 he did have a text exchange with Petitioner about credit card and hotel rooms, and Petitioner was to come to the office that day. He reiterated that Petitioner did not tell him of a fall occurring on that day.

Mr. Wadford said Petitioner, like all employees, was required to report injuries that occurred on the job to Tom Pegram. He said reporting of injuries was covered in Respondent's orientation process.

On cross examination Mr. Wadford said he did not recall getting a text from Petitioner on February 15, 2022 describing a fall from a truck, he had looked for one and did not find one, but said he got a lot of texts, as he had 19 people working for him through out the country. When shown Petitioner Exhibit 6, Mr. Wadford said

he did not recall receiving that text, though he could have done so. He said he had worked with Petitioner on four or five occasions on major derailment jobs, but they otherwise worked in different divisions, covering different railroad companies. He was in charge of Burlington Northern Sante Fe railroad work and Petitioner was assigned to Union Pacific railroad work.

On redirect Mr. Wadford said the text seen on Petitioner Exhibit 6 was dated February 15, and he assumed that was from 2022.

He said he did not recall his calling Petitioner on February 15, but he would not dispute it if there was a call log showing he did.

Andrew Newman

Mr. Newman was called as a witness by Respondent. He testified that as of the date of arbitration he was employed as a certified flight instructor in Columbia, Missouri, but he had previously worked as an assistant team leader / assistant superintendent for Respondent, assisting in hiring and running jobs, as assigned. He said his team leader supervisor for five to seven of the eight to nine months he worked for Respondent was Petitioner. He said he observed Petitioner performing his job duties in February of 2022, that the work he observed was all administrative, he did not observe him performing any heavy physical labor.

Mr. Newman said that during his orientation when hired, he was told about how to report a work injury. He said he went with Petitioner to the job site in Quincy, Illinois on February 1 or 2, 2022 to put fuel treatment in trucks as it was cold. He said he was with Petitioner in Quincy for four or five days, and there was very little work to do as they were on standby, all they had to do was make sure the trucks were fueled and ready to work in cold weather. He said he did not see Petitioner fall out of a truck while they were in Quincy. He knew Petitioner was sore the entire time he worked with him, that he had a hernia surgery scheduled.

Mr. Newman said he never was concerned he'd be retaliated against if he reported a work injury to Respondent. He said that he was to do the work Petitioner could not do, so he would have expected Petitioner to tell him if he had sustained an injury falling out of a truck, but he did not mention such an event to him.

On cross examination Mr. Newman said he did not always work with Petitioner while employed with Respondent, he would occasionally be sent to run a job by himself, with a couple of other people. He said that in the time prior to February 2, 2022, Petitioner had worked full duty, but he had noted he felt sore all over, because they performed physical jobs.

On redirect examination Mr. Newman testified that he, on the first or second day they were working in Quincy in February of 2022, did suffer an accident himself, as he stepped out of a truck, hit a patch of ice, and landed on his back. He said it hurt, but he got up and laughed, saying he was fine. Mr. Newman said Petitioner was in the truck when he fell, and knew what had happened.

James Shiver

Mr. Shiver was called as a witness by Respondent. He testified that he was employed as an equipment operator for Respondent, and had been for four years. He said his job entailed hauling and operating equipment at different projects for the railroad. He said Petitioner was his team leader, and had worked for him for a year before February of 2022. He said Petitioner told him about falling in a bathtub, but he did not complain to him

of having back complaints as a result of that bathtub incident. When asked if he observed Petitioner do physical laboring work following the bathtub incident, as Petitioner was a supervisor and principally delegated work. He said he could not remember if he was in Quincy on February 2, 2022. He said Petitioner did not, after February 2, 2022, tell him of having fallen out of a truck, but he would not have expected him to do so, as they were told they were to tell their supervisors of injuries. He said his supervisor was Ryan Blanchard at that time.

On cross examination Mr. Shiver said that with the exception of when he was off for hernia surgery, Petitioner worked full duty, but he delegated the work to others to do the work. He said Mr. Newman was an assistant manager, and was above him.

Robert Blanchard

Mr. Blanchard was called as a witness by Respondent. He testified that he is a team leader for Respondent, and had worked for the company for ten years. He said he worked the same job Petitioner worked, supervising operations in the Quincy division. He said it was a supervisory position rather than a physical labor position. He said he worked with Petitioner in Quincy in February of 2022, and Petitioner never reported a work injury to him, nor did he tell him he had fallen out of a truck. He said he would have expected Petitioner to report such an accident to him as he was the team leader of the Quincy division.

On cross examination Mr. Blanchard said he would expect accidents to be reported to him as he was Petitioner's direct supervisor on that project.

MEDICAL EVIDENCE

On February 15, 2022, Petitioner sought treatment at Biermann Chiropractic. A Chiropractic Registration and History form was filled out by the patient. Item Number 4 on that form, titled "Accident Information," was left blank. Item Number 5, titled "Patient Condition," indicated that his SI joint symptoms had been present for two months and this condition was getting progressively worse. Item Number 6, titled "Health History," indicated a prior injury history of falling in a bathtub in January of 2022 as well as a prior hernia surgery. No indication of the February 2, 2022, alleged accident is mentioned on the Chiropractic Registration and History form filled out by the patient. In the chiropractic treatment notes of February 15, 2022, it is noted that Petitioner presented with a chief complaint of low back, left and right sided SI joint pain, and "stated he has had this problem for a couple months and it has gotten significantly worse over the past couple weeks." The medical records further indicate "he had a fall in the bathtub in January 2022. The fall in the tub caused significant increase in the pain and disability for activities of daily living. The pain interferes with sleep, recreation, and daily routine . . . He has been trying to work, but he's at the point he can't sit in his truck and drive any distance due to the pain." Petitioner was given light-duty work restrictions. No mention of the February 2, 2022, alleged accident is included in the treatment records of this date. (PX1)

On February 17, 2022, Petitioner was again seen by Dr. Biermann, and the medical records of that date indicate Petitioner felt about the same. No mention of a fall at work or out of a truck is included in the office notes for that visit. On February 25, 2022, Petitioner again followed up with Dr. Biermann, and on this occasion, he reported slipping off the side rail on his work truck on February 2, 2022. The office notes state that Petitioner indicated he "thought it was mentioned on his initial visit" and "[u]pon further questioning, [he] states he has had mild, achy back pain in the past and the fall in the tub may have aggravated the dull low back

pain somewhat," but he attributed his lumbar radicular symptoms to the February 2, 2022, incident. Petitioner was seen for the last time by Dr. Biermann on March 2, 2022, and the records indicate Petitioner reported feeling slightly better without long-lasting relief. On that date Dr. Biermann gave Petitioner light-duty work restrictions. Dr. Biermann never addressed the cause of any of Petitioner's complaints or physical findings. (PX1; PX5)

On March 17, 2022, Petitioner was seen by Dr. Thomas Lee, an orthopedic surgeon. Petitioner provided a history of the February 2, 2022, alleged accident. Petitioner advised Dr. Lee of his chiropractic treatment, of his seeing his primary care physician, and of having had an x-ray. Dr. Lee's records do not reflect his having been advised of having low back, left and right sided SI joint pain which had gotten worse in the two months prior to February 15, 2022, or of the fall in the bathtub. Dr. Lee's records reflect Petitioner gave him a work history, and indicated he drove heavy equipment and has been working for Respondent for 22 years. Dr. Lee's impression was "rule out cervical and lumbar (disc herniations)." Home exercises were prescribed, as was medication and cervical and lumbar MRIs. He was deemed medically unable to work. (PX3)

On April 5, 2022, an MRI of the cervical spine showed protrusions at C3 through C6, resulting in some bilateral foraminal stenosis. An MRI of the lumbar spine showed protrusions at L3 through L5, resulting in right greater than left foraminal stenosis. (PX2; PX3).

On April 25, 2022, Petitioner was seen by Dr. Lee, with new complaints of numbness in his arm and hand, principally while laying down, though he said his back was his worst problem, complaining of pins and needles down the thigh into his foot. It is not noted if the symptoms were in his left or right arm or his left or right leg. After reviewing the MRIs, Dr. Lee diagnosed C3 through C7 disc protrusion/annular tear and L4 through S1 annular tears, possibly symptomatic at L3-4. An L5-S1 epidural steroid injection was recommended, and he was continued off work. Dr. Lee never addressed the cause of any of Petitioner's complaints or physical findings. (PX3)

No medical treatment records were introduced subsequent to Petitioner's last visit with Dr. Lee on April 25, 2022, approximately nineteen months prior to arbitration.

On September 15, 2023, Petitioner was examined by Dr. Michael Chabot for a Section 12 Independent Medical Examination at Respondent's request. Petitioner reported he was involved in an alleged work accident on February 2, 2022, when he slipped getting out of his truck. No history of pre-existing complaints or accidents was apparently given to Dr. Chabot. Petitioner told Dr. Chabot he informed his employer the following day of his injury and complaints. Dr. Chabot reviewed the cervical MRI to show mild disc bulging at C5 through C7 without herniations, and that the radiologist's report was grossly overstated. Dr. Chabot reviewed the lumbar MRI to show no evidence of disc herniation or neural compromise, but did show evidence of facet degeneration bilaterally at L3 through L5. (RX1, Exh.2)

In his report, Dr. Chabot highlighted that the initial records from Biermann Chiropractic did not make any mention of a specific injury at all. He noted the registration form that did not document Petitioner's complaints were work-related and made no mention of any specific work injury. He noted that document described that his symptoms as having begun two months prior to February 15, 2022, which would not correlate with Petitioner's alleged injury date of February 2, 2022, and that Dr. Biermann documented the bathtub fall in January of 2022. He noted that it was not until February 25, 2022, that Petitioner mentioned he had fallen on

February 2, 2022. Dr. Chabot did not believe the documentation from Dr. Biermann supported the history presented by Petitioner during his examination. (RX1, Exh2)

Dr. Chabot authored an Addendum Report dated October 4, 2023. This report basically deals with Dr. Chabot's personal opinions of Petitioner's credibility and has not been considered by the arbitrator in this case. (RX1)

DEPOSITION TESTIMONY OF DR. CHABOT

Dr. Chabot testified by deposition on October 18, 2023, as a witness for Respondent. He testified that he is a board-certified orthopedic surgeon who has specialty training in spine surgery. His testimony in regard to history, complaints, past medical treatment and diagnoses were consistent with the summary of his report, above. He testified Petitioner provided a history of the February 2, 2022, alleged work accident involving falling out of a truck. (RX1 at 10).

Dr. Chabot testified about the significance regarding Dr. Biermann's records and registration form, which do not document the February 2, 2022, alleged work accident, but do specifically document the previous fall in the bathtub. He explained, "I'm not sure why he did [that] other than people usually list the most significant event as being responsible for their complaints. I can only assume that's what was felt to be the most significant event." On cross-examination, he further explained, "Again, the intake form quite specifically asks if the condition is associated with a work injury, and that is not answered to indicate it was . . . [h]e had that opportunity, completing the intake form prior to his visit, and then also the time that he spoke with Dr. Biermann; it was not documented in either situation." (RX1 p.14,35,36)

ARBITRATOR CREDIBILITY ASSESSMENT

The Arbitrator has given no weight to the contents of Respondent's Exhibit 2, which reference credit card thefts by Petitioner. While theft is an act of moral turpitude and therefore relevant, the attachments/receipts attached to said exhibit are totally illegible and incapable of supporting the allegation. That allegation therefore is not being considered in regard to credibility. Mr. Pegram's testimony is accepted as proof of Respondent's reason for terminating Petitioner's employment, but not to reflect on Petitioner's character or truthfulness, as there is no supporting evidence for that allegation.

Petitioner's testimony in regard to prior physical maladies involving the low back is not believable, especially when compared to the medical history form and the history included in Dr. Biermann's office examination notes, which point to ongoing, progressively worsening complaints in the two months to his presentation to that doctor, the history of a fall in the bathtub, and the absolute absence of any history of the alleged February 2, 2022. The timing of his later history of a work accident being one or two days after he was fired supports the theory that the work accident was invented due to his being fired. His later histories to medical providers being devoid of any mention of pre-existing complaints further supports that theory. Petitioner's demeanor at arbitration when testifying to these facts was not believable in the opinion of the Arbitrator. Similarly, the testimony of Mrs. Coca appeared self-serving, and no evidence presented at arbitration supports the testimony of either Mrs. Coca or Petitioner that they did not give a history of the accident to avoid retaliation by Respondent. It is noted that Petitioner is a supervisor for Respondent, and he

denied being advised of how to report injuries, while other witnesses testified orientation with the company specifically covered that topic. Further, it is noted that Petitioner's flurry of texts and phone calls all start on February 15, 2022, the day he said he knew he was terminated, and one of his texts specifically says he had not claimed (reported) a work comp injury until he was terminated. The Arbitrator finds Petitioner and Mrs. Coca to not have been credible witnesses.

All of the witnesses called by Respondent, Mr. Pegram, Mr. Wadford, Mr. Newman, Mr. Shiver, and Mr. Blanchford, appeared to testify in a straightforward manner, answering questions posed by both attorneys without any semblance of avoidance, freely admitting their memories might be incomplete or incorrect in some manner due to the passage of time and the number of texts or phone calls in a day. They were consistent, however, in testifying that they did not remember any mention by Petitioner of his having injured himself at work until after he had been terminated. The Arbitrator finds all of Respondent's witnesses to have been credible.

CONCLUSIONS OF LAW:

In support of the Arbitrator's decision relating to whether an accident occurred which arose out of and in the course of Petitioner's employment by Respondent on February 2, 2022, and whether Petitioner's current condition of ill-being, neck pain and low back pain, is causally related to the accident of February 2, 2022, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The Arbitrator's credibility assessments, above, are incorporated herein.

Petitioner's claimed accident was unwitnessed. Petitioner said he told a coworker of his fall shortly thereafter, but did not identify who that coworker was, nor was such a coworker called as a witness by Petitioner to support his allegations.

Petitioner began working at home days after this alleged accident, doing recruiting work for the company, per his testimony. Mr. Pegram testified that on February 15, 2022, he sent his assistants, Jim Sanders and Jordan Sanders, to the office to pick up Petitioner's credit card, cell phones and laptop as well as his truck. Petitioner testified that on February 15, 2022 he realized he was being fired as his credit card was turned off, he was deleted from Respondent's group chat, etc.. Respondent's employees picked up Petitioner's work materials from the office on February 16, 2022, with the exception of a laptop, as Petitioner had that at his home. Mr. Pegram testified that Petitioner was terminated as he was not for a period of several months been doing his duties as a leader, soliciting business, but the main reason he was terminated was for employee theft via credit card. He said credit card records indicated Petitioner had been buying gift cards, that he had company employees take company dump trucks with 15 to 20 loads of rock from the rail yard and dump them at property he had purchased south of St. Louis. Respondent's Exhibit 2 indicates it advised the Department of Employment Security via letter on April 1, 2022 of these reasons for terminating Petitioner's employment.

Immediately after being terminated by Respondent Petitioner began getting treatment for alleged injuries, and then reported the alleged accident to Respondent. The timing is more than a little suspect, and while Petitioner says he reported the fall to individuals, those individuals denied being told of a fall at arbitration, Petitioner did not fill out required paperwork, despite having been instructed to do so at orientation and being a supervisor others could report injuries to. His first actual history to a medical provider of his injuries being as a result of a fall from a truck at work did not take place until February 25, 2022, well after his having had his employment terminated by Respondent.

The medical findings of Petitioner's medical providers are fairly non-specific, and none attributed the cause of Petitioner's complaints to his alleged fall from a truck at work. Indeed, Dr. Lee was never told of the pre-existing complaints and of their having been gradually worsening in the two months prior to his first medical visit of February 15, 2022. Neither Dr. Biermann nor Dr. Lee voiced any opinions whatsoever in regard to causal connection in their reports, and neither was deposed to obtain those opinions. Had Dr. Lee voiced such an opinion his opinion would have been of questionable weight based upon his lack of knowledge of the pre-existing, worsening complaints. *Horath v. Industrial Commission*, 96 Ill.2d 349 (1983)

Dr. Chabot, who examined Petitioner at Respondent's request, was aware of the prior complaints, found no objective abnormalities on physical examination, reviewed the cervical MRI to show mild disc bulging at C5 through C7 without herniations, and that the radiologist's report was grossly overstated. Dr. Chabot reviewed the lumbar MRI to show no evidence of disc herniation or neural compromise, but did show evidence of facet degeneration bilaterally at L3 through L5. He noted the lack of documentation to link Petitioner's cervical or lumbar complaints to the alleged accident, instead noting the fall in the bath tub and subsequent low back complaints were consistent with the history of complaints given to Dr. Biermann.

A claimant has a burden of proving by preponderance of the credible evidence, all of the elements of this claim to recover benefits under the Illinois Workers' Compensation Act. *Illinois Bell Telephone Company v. Industrial Commission,* 265 Ill. App. 3d 381, 638 N.E. 2d 307 (1994). The burden of establishing the necessary causal relationship between an injury and the employment rests with the claimant. *Saunders v. Industrial Commission*,189 Ill. 2d 623, 727, N.E. 2d 247 (2000). Petitioner has failed to prove, with credible evidence, that an accident occurred on February 2, 2022, or that his alleged low back or cervical complaints and conditions were causally related to that alleged accident.

The Arbitrator finds that Petitioner has failed to prove that he suffered an accident on February 2, 2022 which arose out of and in the course of his employment by Respondent.

The Arbitrator further finds that Petitioner's medical conditions, neck pain and low back pain are not causally related to the accident of February 2, 2022. These findings are based upon the conclusions of law stated above.

Based upon the findings in regard to accident and causal connection, all other issues are deemed moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC033269
Case Name	Michelle Awe v. Springfield Police Department
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0020
Number of Pages of Decision	18
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Francis Lynch
Respondent Attorney	Kenneth Bima

DATE FILED: 1/16/2025

/s/Kathryn Doerries,Commissioner

Signature

25IWCC0020

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHELLE AWE,

Petitioner,

vs. NO: 21 WC 033269

SPRINGFIELD POLICE DEPARTMENT,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission modifies the Arbitrator's Decision solely with respect to the permanency award. The Commission strikes the last two sentences on page 12 of the Conclusions of Law, under Issue (L) What is the nature and extent of the Petitioner's injury? The Commission adds the following to the last paragraph under Section 8.1b(b)(v).

Regarding the Petitioner's injury, Dr. Stephens performed a left ankle arthroscopy with limited synovectomy on May 20, 2022. (PX2) On October 25, 2022, Petitioner reported incisional paresthesias and occasional pain but requested to return to work. *Id*. Dr. Stephens placed Petitioner at maximum medical improvement and released her to full duty work. *Id.*

At the time of the arbitration hearing on August 29, 2023, or approximately 10 months after maximum medical improvement, Petitioner testified that the operation improved her condition very much; it no longer hurt to walk on her foot; it did not hurt to twist her foot inward and neither her ankle or foot made clicking noises. (T. 65-66) Petitioner further testified that after

she got out of the boot, her foot and ankle felt better, continued to improve and her leg was "100 times better" than it was before surgery. (T. 66-67) Further, Petitioner testified that she had no sequelae or residual issues associated with her ankle and she was able to perform the tasks that she did before the injury at her job. (T. 67) Petitioner is still a police officer. *Id*. Eventually, after following all the doctor's orders, she got back into her full duty job. (T. 68) The Commission places significant weight on factor (v) of Section 8.1b(b) resulting in a decrease in Petitioner's permanent partial disability to 10% loss of use of the left foot.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on October 24, 2023, 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 15% loss of use of the left foot is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,095.44 per week for a period of 4-4/7 weeks, commencing May 20, 2022, to June 21, 2022, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $937.11 per week for a period of 16.7 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused 10% loss of use of the left foot.

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

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

Based upon the named Respondent herein, no bond is set by the Commission. *820 ILCS 305/19(f)(2)*. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

January 16, 2025
O011425
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	21WC033269
Case Name	Michelle Awe v. Springfield Police Department
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Francis Lynch
Respondent Attorney	Kenneth Bima

DATE FILED: 10/24/2023

THE INTEREST RATE FOR THE WEEK OF OCTOBER 24, 2023 5.32%

/s/ Jeanne AuBuchon, 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

Michelle Awe
Employee/Petitioner

v.

Springfield Police Department
Employer/Respondent

Case # **21** WC **033269**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Springfield**, on **8/29/23**. 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 **10/19/21**, 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 $**86,307.52**; the average weekly wage was $**1,659.76**.

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

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

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

Petitioner received medical care paid by Respondent's health insurer. Respondent's health insurer is self-funded. Respondent is entitled to an 8(j) credit and by agreement will hold Petitioner harmless for payment or reimbursement demand.

ORDER

Respondent shall pay temporary total disability benefits of $1,095.44 per week for 4 4/7 weeks from 5/20/22 to 6/21/22, pursuant to Section 8(b) of the Act.

Respondent shall pay permanent partial disability benefits of $937.11 per week for 25.05 weeks representing 15% of the left foot, pursuant to Section 8(e) of the Act.

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

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

Jeanne L. AuBuchon

Signature of Arbitrator

OCTOBER 24, 2023

PROCEDURAL HISTORY

This matter proceeded to trial on August 29, 2023. The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of her employment; 2) the causal connection between the accident and the Petitioner's left ankle condition; 3) entitlement to temporary total disability benefits (TTD) from May 20, 2022, through June 21, 2022, on the basis of liability; and 3) the nature and extent of the Petitioner's injury.

FINDINGS OF FACT

At the time of the accident on October 19, 2021, the Petitioner was 49 years old and employed by the Respondent as a police officer. (AX1, T. 32) The Petitioner testified that on May 24, 2021, she tore her right Achilles tendon during training, was on light duty and resumed regular duty in July 2021. (T. 33-34) She said that in August 2021, she fell off a pool ladder at her home and damaged the outside of her left foot. (T. 33-34, 36)

On August 30, 2021, the Petitioner saw Dr. Thomas Duhig, a sports medical specialist at Springfield Clinic, and complained of pain and discomfort throughout the anterior lateral aspect of the left foot and ankle after suffering an inversion-type injury stepping off a ladder getting out of a pool. (PX1, RX1) She rated her pain at 7/10 and experienced pain with walking and weightbearing. (Id.) Dr. Duhig diagnosed a left ankle sprain and gave her a Cam walking boot and home exercise program. (Id.) At a follow-up visit on September 20, 2021, the Petitioner reported 50 percent improvement with a pain level of 3-4/10 and "nerve sensitivity." (Id.) Dr. Duhig diagnosed left ankle sprain, midfoot sprain and potential for evolving complex regional pain syndrome (CRPS). (Id.) She was prescribed oral steroids and recommended physical therapy and transition to an ASO ankle stabilizer. (Id.) The Petitioner was put on light duty. (Id.)

The Petitioner underwent an MRI on her left foot on October 2, 2021, that showed: subacute bone contusion along the lateral aspect of the anterior calcaneal process but no fracture; a tiny osteochondral lesion of the posterior medial corner of the talar dome; peroneal and posterior tibialis tenosynovitis but no tendon tear; posterior subtalar joint effusion; small chronic/corticated bone fragment at the dorsal/proximal corner of the navicular that was either an accessory ossicle or sequela of old trauma; and an old healed partial tear of the ATFL at its fibular attachment. (Id.)

On October 4, 2021, the Petitioner returned to Dr. Duhig and reported 20-30 percent improvement with a pain level of 2/10 on good days. (Id.) She described burning and radiating of pain as well as numbness in the foot like pins and needles up and down her leg. (Id.) She stated that she was taking gabapentin prescribed by neurology for polyneuropathy in the past. (Id.) She said standing and walking exacerbated her pain, and she was unable to perform her job duties as a police officer. (Id.) Dr. Duhig stated that at the last visit, he requested further evaluation with a surgeon, but the prior medical record did not record this. (Id.) He diagnosed left foot pain, avulsion fracture of the navicular bone of the left foot, moderate left ankle sprain and osteochondral defect of the talus and prescribed pain medication. (Id.) He said there was a potential role for physical therapy moving forward and asked the Petitioner to stop using the walking boot until further evaluation. (Id.)

On October 19, 2021, the Petitioner saw Dr. Benjamin Stevens, an orthopedic surgeon at Springfield Clinic, and described her pain as sporadic, sharp, dull and electrical – rating it at 2/10 at best and 9/10 at worst. (PX2, RX1) She had pain and tingling radiating up her foot and ankle. (Id.) She said she tried ice, wearing a boot, bracing, a painkiller, oral steroids and anti-inflammatories with no relief. (Id.) Dr. Stevens reviewed X-rays and the MRI and diagnosed left ankle sprain with bony contusion of the talus, multiple MRI findings likely inconsequential and

nerve pain. (Id.) He discussed icing, elevating, anti-inflammatories, physical therapy, activity modification and shoe wear modification. (Id.) He stated the Petitioner could continue healing and progress with physical activity as tolerated. (Id.) He prescribed physical therapy and an anti-inflammatory. (Id.) He continued light-duty restrictions and told the Petitioner to follow up in seven weeks. (Id.)

The Petitioner testified that at that time, her left leg felt great, and she had no problems with it. (T. 43) She said she had no swelling, bruising, pain, difficulty walking or clicking in her ankle. (T. 43, 44) On cross-examination, the Petitioner acknowledged her statements to Dr. Duhig on October 4, 2021. (T. 78-79) She said she was not under the impression that Dr. Duhig wanted her to see Dr. Stevens for a surgical consult, but for a second opinion. (T. 80) She also acknowledged her reports to Dr. Stevens on October 19, 2021, as stated above. (T. 81-82)

The Petitioner testified that later on October 19, 2021, she was trying to get an annual report together and had pages laid out but did not have enough room, so she was working to the front of her body and to the left. (T. 45) She said the chair she was sitting in had plastic rollers, and when she went to the left to grab something, her leg on the inside popped, and she screamed loudly. (T. 46) She said she stood up and was bent over the desk, holding onto the desk with her left foot in the air when the police chief ran in asking if she was okay. (T. 46-47) She said her ankle was extremely painful. (T. 47) She demonstrated the incident using a rolling chair, turning to the left with her foot on the floor and turning over on its side. (T. 84)

Kenneth Winslow, the Respondent's chief of police at the time of the accident, testified that the Petitioner was on light duty status following an off-duty injury to her left ankle and was performing administrative duties, such as answering the phones, typing and filing. (T. 11) He said the Petitioner had been wearing a boot but on the day of the accident, she was not. (T. 19, 29)

He said the Petitioner was working in a wheeled chair that spun at an L-shaped desk outside his office. (T. 13) He agreed that in order for the Petitioner to move her chair without getting up, she would have to use her feet to scoot the chair and turn herself. (T. 14) He said that at the end of the day on October 19, 2021, he was on the phone and heard loud screaming and some profanity. (T. 15) When he walked outside his office, the Petitioner was leaned over the top of the desk holding her foot up and was obviously in pain. (T. 15-16) He said he told the Petitioner to get checked out, but she said she would be fine. (T. 18) He said that the following day, the Petitioner came in wearing a walking boot, said her foot was swollen and bruised and that she was going to get checked out. (T. 18, 25) Chief Winslow prepared a memo on October 21, 2021, describing the accident consistently with his testimony. (PX5, RX4)

The Petitioner testified that she did not seek immediate treatment because she wanted to see if her ankle issues would subside. (T. 48-49) She said that the day after the incident, her ankle was swollen and starting to turn black and blue. (T. 50) She said pain was radiating onto the top of her foot and to the side. (Id.) She said the difference in her ankle from before and after the incident was 180 degrees. (T. 51) On October 21, 2021, the Petitioner executed an Employee Accident Report describing the accident consistently with her testimony. (RX3)

Also on October 21, 2021, the Petitioner saw Dr. Marc DeJong, a sports medicine specialist at Springfield Clinic, and reported the work incident consistently with her testimony. (PX2, RX1) She described her pain as sharp with weightbearing, radiating into the first and second dorsal ray of the foot as well as into the distal anterior medial aspect of the lower leg, and rated it at 6/10. (Id.) Dr. DeJong reviewed Dr. Stevens' office visit note from October 19, 2021, and the MRI from October 4, 2021, and ordered X-rays that he said were unremarkable. (Id.) Dr. DeJong diagnosed a left anterior tibialis strain occurring on October 19, 2021, in the setting of prior/ongoing ankle

and foot issues. (Id.) He recommended ongoing conservative management, using the walking boot and performing an ankle rehab program. (Id.) He gave light duty restrictions. (Id.)

At a follow-up with Dr. DeJong on November 1, 2021, the Petitioner reported 50 percent improvement and 4/10 sharp, burning pain aggravated by turning her foot in. (Id.) She was given a new walking boot and allowed to transition to the ankle brace when she was able to do so pain-free and limp-free. (Id.)

The Petitioner returned to Dr. Stevens on November 30, 2021, and described the work incident. (Id.) Dr. Stevens ordered another MRI. (Id.) The MRI was performed on December 16, 2021, and showed: resolving marrow edema in the anterior process of calcaneus; stable mild flexor and peroneal tenosynovitis, small ankle and subtalar joint effusions, stable mild retrocalcaneal bursitis and intact ankle ligaments and tendons. (Id.) On January 11, 2022, Dr. Stevens reviewed the MRI and examined the Petitioner, who reported mild pain and swelling to the dorsal aspect of her foot and mild weakness to the foot. (Id.) Dr. Stevens diagnosed moderate left ankle sprain and ordered physical therapy. (Id.)

The Petitioner underwent physical therapy at Springfield Clinic from January 24, 2022, through March 23, 2022, for a total of nine visits. (PX2, RX1) The last physical therapy note stated that none of the Petitioner's short-term or long-term goals was met. (Id.) The Petitioner testified that with physical therapy and home exercises, she thought her ankle got a little better, but it hit a plateau where it wouldn't get any better. (T. 55)

At a follow-up appointment with Dr. Stevens on April 5, 2022, the Petitioner reported continuing pain to her ankle but said physical therapy was helping. (PX2, RX1) Dr. Stevens noted crepitus on motion in his examination. (Id.) The Petitioner testified that she heard the clicking. (T. 57, 59-60) Dr. Stevens ordered two more weeks of physical therapy. (PX2, RX1) On a health

status form dated April 5, 2022, Dr. Stevens reported that the Petitioner had a follow-up appointment on May 17, 2022, and that the Petitioner may return to work with no restrictions. (Id.)

The Petitioner did not recall being allowed to return to full duty. (T. 87-88) She said she got a phone call from Dr. Stevens' office and received a date for surgery. (T. 62-63, 90-91) Dr. Stevens' records included a scheduling order entered May 11, 2022, for surgery on May 20, 2022 – specifically a left ankle arthroscopy and possible talus microfracture. (RX1)

On May 20, 2022, Dr. Stevens performed a right ankle arthroscopy with limited synovectomy. (PX2, PX3, RX1) On June 21, 2022, he allowed the Petitioner to return to light duty work. (PX2, RX1) The Petitioner testified that when she returned to work after taking personal and comp days and vacation, she was in a boot and worked at the front desk. (T. 64) On August 23, 2022, Dr. Stevens ordered physical therapy and kept the Petitioner on light duty. (Id.) The Petitioner underwent physical therapy from September 20, 2022, through October 7, 2022, for a total of five visits. (Id.) At the last visit, the Petitioner requested to be discharged because her ankle felt great and she did not experience pain after chasing a suspect. (Id.)

The Petitioner saw Dr. Stevens on October 25, 2022, and reported that her ankle pain was better, but she was still having some pain on the medial aspect of her ankle and some nerve pain along the anterolateral aspect of her ankle and foot. (PX2, PX4, RX1.) Dr. Stevens found the Petitioner to be at maximum medical improvement and allowed her to return to work. (Id.)

The Petitioner testified that the surgery improved her condition "very much" – that it didn't hurt to walk on her foot or twist her foot forward, and her ankle didn't make clicking noises. (T. 65-66) She said it felt "perfectly fine," and she was able to perform the tasks she did before the injuries. (T. 66)

Dr. Stevens testified consistently with his records at a deposition on June 8, 2023. (PX6) He explained that the first injury from August 2021 was an inversion injury, where the foot is pointing inward and the ankle is directed outward. (Id.) He said that neither he nor Dr. Duhig thought the Petitioner needed surgery. (Id.) He agreed that the work incident could cause, contribute to, aggravate or exacerbate an ankle condition so as to leave it in the condition that he found when he performed the surgery. (Id.) He stated that during the surgery, he found inflamed tissue at the anterior aspect (front) of the ankle and shaved it off. (Id.) He agreed that either incident could have caused what he found during surgery. (Id.) He said the work incident aggravated or exacerbated the Petitioner's condition and made her ankle more symptomatic. (Id.)

Regarding his decision to proceed with surgery, Dr. Stevens said he and the Petitioner probably talked about her dealing with ankle pain for many months and needing increased resilience and activity to perform her job. (Id.) He said they would have talked about the possibility of an ankle scope as a diagnostic measure, adding that occasionally with ankle sprains, they can find things that are a little different than what is seen on an MRI. (Id.) He said that with such a surgery, they find superfluous or redundant tissue that can cause some impingement but doesn't necessarily show up on an MRI. (Id.)

When asked on cross-examination as to whether the first injury in August 2021 could alone explain why he performed surgery, Dr. Stevens responded that it could have. (Id.) He agreed that in comparing the X-rays and MRI from before and after the October 19, 2021, incident, there was no evidence that the incident changed or altered the underlying pre-existing condition. (Id.) He said that at the office visit immediately prior to the work incident, the Petitioner's pain complaint was on the dorsal lateral aspect of the foot, which was the top and outside of the foot, but after the work incident, the Petitioner's pain was in a different location – the medial aspect of the foot. (Id.)

He acknowledged that at the visits in January and February 2022, the pain was in the dorsal aspect of the foot. (Id.) He said the impingement he operated on was more at the front of the ankle. (Id.)

On redirect, Dr. Stevens explained that it does not entirely make a difference if the pain locations were different because the pain was on one spot and changed – meaning she had a separate injury – and bounced back and forth where it hurt, suggesting that it was about the ankle. (Id.) He said that as a result of the surgery, he gave an ultimate diagnosis of impinging tissue in the anterior aspect of the ankle that was superfluous and inflamed. (Id.) He said he was unable to tell if the internal findings were from the pool incident or the chair incident. (Id.) He still believed the chair incident contributed to the injury. (Id.)

On June 19, 2023, the Petitioner underwent a Section 12 examination by Dr. John Krause, an orthopedic surgeon affiliated with The Orthopedic Center of St. Louis. (RX2) He reviewed the Petitioner's medical records and imaging and examined her. (Id.) He concluded the Petitioner had two separate injuries – the first in August 2021 that affected the Petitioner's lateral ankle ligaments and was appropriately diagnosed as an ankle sprain, and the second on October 19, 2021, that affected the medial side of the ankle and was diagnosed as anterior tibial tendonitis. (Id.) Dr. Krause opined that the Petitioner suffered a medial ankle sprain/anterior tibial tendonitis in the latter incident. (Id.) He said the records did not reflect that the latter injury aggravated or changed the pre-existing ankle sprain. (Id.) He stated there was no good physical exam by Dr. Stevens to indicate where the Petitioner's pain was located when he saw her after the latter injury. (Id.) He said Dr. DeJong's records indicated the Petitioner injured her medial ankle and potentially her anterior tibial tendon, adding that neither the MRI nor Dr. Stevens' physical examination corroborated that suggestion. (Id.) He further stated that the MRI did not document a new injury on October 19, 2021. He opined that the need for surgery was not causally related to the October

19, 2021, injury, and the Petitioner was at maximum medical improvement at the January 11, 2022, follow-up with Dr. Stevens after the new MRI was negative – at which time Dr. Stevens was no longer treating the October 19, 2021, injury. (Id.) Dr. Krause did not testify.

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

CONCLUSIONS OF LAW

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 was consistent with her reports to her doctors and the accident report and was corroborated by Chief Winslow. Both witnesses were credible. Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that her injury occurred in the course of and arose out of her employment.

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

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).

From reviewing the medical records, the Petitioner appeared to be on the mend from her prior ankle injury at the time of the work incident. She was out of the walking boot and had reported 50 percent improvement on September 20, 2021, and another 20-30 percent improvement on October 4, 2021. Her pain levels went from 7/10 on August 30, 2021, to 2/10 at best on October 19, 2021. Although she saw a surgeon on October 19, 2021, there was no surgical recommendation at that time. This circumstantial evidence supports a finding that the work accident was a contributing cause to her ankle condition.

Both Dr. Stevens and Krause agreed that the Petitioner suffered an injury as a result of the work incident. Dr. Krause believed the Petitioner suffered a separate injury and that injury was resolved by January 2022. Dr. Stevens believed the second incident aggravated the Petitioner's pre-existing sprained ankle. Dr. Krause did not testify to explain his opinion. Dr. Stevens did

explain his findings in support of his opinion. The medical records on their face raised a question as to how the Petitioner went from her condition improving and a release for work to orders for surgery. However, Dr. Stevens satisfactorily explained how this came about.

The Arbitrator finds the opinions of Dr. Stevens deserve greater weight than those of Dr. Krause. Dr. Stevens was the Petitioner's treating physician and had more opportunities to become familiar with the Petitioner and her condition – both before and after the work accident. In addition, Dr. Krause did not examine the Petitioner prior to her having recovered from her injuries and was limited in determining the nature and extent of her injuries by only having records to review. Dr. Krause also stated that the records showed Dr. Stevens did not examine the Petitioner. A review of the records, the Petitioner's testimony and Dr. Stevens' testimony show that this was not the case.

Therefore, the Arbitrator finds that the Petitioner has met her burden of proving by a preponderance of the evidence that the accident of October 19, 2021, was a contributing factor to her left ankle condition.

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

The parties dispute temporary total disability benefits from May 20, 2022, through June 21, 2022. An employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

Based on the findings above, the Arbitrator finds the Petitioner is entitled to temporary total disability benefits pursuant to Section 8(b) of the Act for 4 4/7 weeks from May 20, 2022, through June 21, 2022.

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.** No AMA impairment ratings were produced, therefore the Arbitrator gives this factor no weight.

(ii) **Occupation.** The Petitioner still works as a police officer with the same physical demands as before the accident. The Arbitrator places significant weight on this factor.

(iii) **Age.** The Petitioner was 49 years old at the time of the injury. She has many work years left during which time she will need to deal with the residual effects of the injury. The Arbitrator places significant weight on this factor.

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

(v) **Disability.** The Petitioner achieved an excellent result from the surgery. She said her ankle felt "perfectly fine," and she was able to perform her work duties without any issues. The Arbitrator puts some weight on this factor.

Therefore, the Arbitrator finds the Petitioner's permanent partial disability to be 15 percent of the left foot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC008173
Case Name	Michael Guyette v. Installation Specialists Inc
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0021
Number of Pages of Decision	40
Decision Issued By	Christopher Harris, Commissioner, Marc Parker, Commissioner

Petitioner Attorney	David Huber
Respondent Attorney	Jason Kolecke

DATE FILED: 1/16/2025

/s/Christopher Harris,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

MICHAEL GUYETTE,

Petitioner,

vs. NO: 21 WC 8173

INSTALLATION SPECIALISTS, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, prospective medical treatment, temporary total disability benefits, penalties, and procedural and evidentiary issues, 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 4, 2024 is hereby affirmed and adopted.

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

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $53,600.00. 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.

January 16, 2025

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

CAH/tdm
O: 12/19/24
052

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

DISSENT

After reviewing the evidence, I would modify the Arbitrator's denial of penalties and find that penalties and attorney's fees under Sections 16, 19(k) and 19(l) are warranted. Therefore, I respectfully dissent from the Majority's decision.

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC008173
Case Name	Michael Guyette v. Installation Specialists Inc
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	37
Decision Issued By	Jacqueline Hickey, Arbitrator

Petitioner Attorney	David Huber
Respondent Attorney	Jason Kolecke

DATE FILED: 3/4/2024

/s/ Jacqueline Hickey, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 27, 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
19(b)

MICHAEL GUYETTE
Employee/Petitioner

v.

INSTALLATION SPECIALISTS, INC
Employer/Respondent

Case #**21 WC 008173**

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 **Jacqueline Hickey**, Arbitrator of the Commission, in the city of Chicago, on June 30, 2023 & August 15, 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, **2/9/21,** 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 **$103,500.80;** the average weekly wage was **$1,990.40** .

On the date of accident, Petitioner was 54 years of age, ***married*** with 1 dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable & necessary medical services. Respondent ***has not*** paid all temporary total disability benefits related to Petitioner's injuries.

Respondent shall be given a credit of **$85,681.76** for TTD, **$31,710.45** for TPD, $0 for maintenance, and $0 for other benefits, for a total credit of **$117,392.21.**

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 $1,375.00 to Expert Pain Physicians LLC, as provided in Section 8(a) and 8.2 of the Act.

Respondent shall pay for Petitioner's prospective medical care, including the anterior cervical discectomy and fusion, in addition to the reasonable and necessary pre and post operative care as recommended by the treating physician, Dr. Templin.

Respondent shall pay Petitioner temporary total disability benefits of $1,326.93 per week for the period of 11/24/22 through 8/15/23 weeks, representing 37 and 5/7 weeks, as provided in Section 8(b) of the Act.

Further, Respondent shall pay Petitioner for underpayment of TTD from 11/7/22 to 11/23/22, a period of 2 and 2/7 weeks, totaling $2,085.18. (See Arb. Ex. 1)

Respondent shall pay no penalties to Petitioner under Section 19(k), Section 19(l) and Section 16 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.

Jacqueline C. Hickey

Signature of Arbitrator

March 4, 2024

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL GUYETTE,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No: **21 WC 008173**
	)	
INSTALLATION SPECIALISTS, INC.,	)	
	)	
Respondent.	)	

RIDER TO DECISION

This matter proceeded to hearing on June 30, 2023 and August 15, 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 causal connection, medical bills, temporary total disability, fees/penalties, and prospective medical treatment. *See* Arbitrator's Exhibit "Ax" 1.

FINDINGS OF FACT

Background

The parties stipulate that on February 9, 2021, Petitioner and Respondent were operating under the Illinois Worker's Compensation Act and their relationship was that of employee and employer. The parties further agree that Petitioner gave Respondent notice of a February 9, 2021 work accident within the time limits stated in the Act and that the accident arose out and in the course of petitioner's employment. The parties agree that Petitioner's average weekly wage is $1,990.40. Petitioner alleges and Respondent disputes that petitioner's current condition of ill being is related to the accident sustained on February 9, 2021, while working for the Respondent.

Petitioner, Michael Guyette, was employed by Respondent, Installation Specialists, Inc., on February 9, 2021. (Tr.1 p. 13). Petitioner worked as a union carpenter for respondent. (Id.) He dismantled and installed office cubicles and private offices. (Id. at 14). He did this without any restrictions from his date of hire up to his work accident on February 9, 2021. (Id. at 16-17).

Accident

On February 9, 2021, Petitioner was dismantling cubicles and private offices with two co-workers. (Tr.1 p. 14). While Petitioner was pulling a cart of dismantled material up the ramp to the dumpster, Petitioner stepped sideways, lost his footing, and fell into the dumpster landing directly on his right shoulder. (Id. at 16). Petitioner immediately felt pain in his right shoulder. (Id.)

Pre-Accident Condition

Petitioner testified that he had never sustained a right shoulder injury prior to his February 9, 2021 accident. (Tr.1 p.16). Petitioner further testified that prior to his February 9, 2021 accident, he had never received medical treatment to his right shoulder, had never had any injections, and he had never been given work restrictions as to his right shoulder. (Tr.1 p. 16-17). Petitioner also testified that prior to his February 9, 2021, accident he had never experienced pain in his neck down to his arm, right hand pain, or weakness/problems in the right arm. (Id. at 17). Petitioner testified he was able to fulfill all the job duties as a carpenter prior to the accident.

Job Duties

Petitioner testified that he would unload product by hand, put product on panel carts and four-wheeled rubber dollies. Then he would take the product on the freight elevator upstairs, open it and throw all the garbage out, then start assembling and installing the product for that day (Tr.1 p.18). His job involved installing office cubicles (Id.) Petitioner testified that his work requires him to lift up to 200 pounds and work overhead, including working with tools overhead. Petitioner works on a ladder frequently and is expected to crawl and reach under objects and furniture. (Tr.1 p.20)

Medical Treatment

On March 24, 2021, Petitioner presented to Dr. Thorsness at Hinsdale Orthopaedics complaining severe pain in his right shoulder. (Px1, P. 2). An x-ray revealed spurring at the acromion. (Id. at 4). Dr. Thorsness opined that Petitioner likely tore his right rotator cuff and ordered an MRI. (Id. at 5). On March 27, 2021, Petitioner presented to Hinsdale Orthopedics and underwent an MRI of the right shoulder. (PX 1, P. 6). On March 31, 2021, Petitioner presented to Kristopher Bridgeman at Hinsdale Orthopedics. (PX 1, P. 7). After reviewing the MRI, Bridgeman diagnosed Petitioner with a partial-thickness rotator cuff tear, impingement syndrome, subacromial bursitis, AC joint arthropathy, and biceps tendinitis. (PX 1, P. 8). Petitioner also underwent a right shoulder injection. (PX 1, P. 8). Bridgeman determined that Petitioner was unable to return to work. (PX 1, P. 9).

On May 14, 2021, Petitioner presented to Dr. Thorsness at Salt Creek Surgery Center and underwent a right shoulder arthroscopy with limited debridement of the labrum and subacromial space, pancapsular release with manipulation under anesthesia, subacromial decompression with acromioplasty, distal clavicle excision, rotator cuff repair, and open biceps tenodesis. (PX 1, P. 10). Petitioner testified that after the first surgery his "hand felt like it was on fire". (TR1 p.25-6)

On June 4, 2021, Petitioner presented to Dr. Horodysky at Hinsdale Orthopedics for a post operative evaluation. (PX 1, P. 15). Petitioner stated that his pain was poorly controlled, that his pain had worsened over the previous two weeks, and that he contracted COVID-19, which prevented him from attending formal physical therapy. (PX 1, P. 15). Petitioner also complained of having an even limited range of motion post operation. (PX 1, P. 15).

Dr. Horodysky recommended that Petitioner continue physical therapy, abstain from lifting weight, and remain active to improve his capsulitis symptoms. (PX 1, P. 16). Petitioner testified that physical therapy was extremely painful. He experienced pain in his shoulder, neck and in his arm and right hand. (TR1 p.32) He had limited range of motion, problems with moving his arm

away from his body or overhead. Petitioner testified that his main physical therapist was Joshua Knitter. (TR1 p.36) In the ten months following his first surgery improvement to passive or active range of motion in the right arm. (TR1 p.36)

On June 14, 2021, Petitioner presented to Dr. Birman at Hand to Shoulder Associates for an independent medical evaluation. Dr. Birman noted that the work injury could have caused Petitioner's rotator cuff tear and biceps tendinitis. Dr. Birman further noted that Petitioner's impingement symptoms and acromioclavicular joint arthritis could have been aggravated by the work injury. (RX 4, Ex 1, p. 5).

On July 7, 2021, Petitioner presented to Bridgeman complaining of increased pain following an IME. (PX 1, P. 17). Bridgeman recommended that Petitioner remain active in and out of physical therapy with range of motion exercises. (PX 1, P. 19).

On August 20, 2021, Petitioner presented to Dr. Horodysky at Hinsdale Orthopedics complaining of severe right shoulder pain. (PX 1, P. 13). Dr. Horodysky advised Petitioner to remain active with home therapy and to report to formal physical therapy 2-3 times a week for 6 weeks. (PX 1, P. 14). Dr. Horodysky also recommended that Petitioner remain active with stretches to prevent recurrence of his adhesive capsulitis. (PX 1, P. 14).

On October 4, 2021, Petitioner presented to Dr. Horodysky at Hinsdale Orthopedics complaining of right shoulder pain, difficulty sleeping and completing daily tasks, and limited range of motion. (PX 1, P. 21). Dr. Horodysky advised Petitioner to continue physical therapy for the next 6 weeks. ((PX 1, P. 22). Dr. Horodysky also placed Petitioner on light duty work restrictions consisting of a 2 pound max lift and no overhead work. (PX 1, P. 22).

On January 17, 2022, Petitioner presented to Dr. Thorsness at Hinsdale Orthopedics complaining of throbbing and burning pain, especially after physical therapy and other movement. (PX 1, P. 24). Dr. Thorsness noted that Petitioner still showed signs and symptoms of post-operative capsulitis and ordered a right shoulder MRI. (PX 1, P. 26).

On January 27, 2022, Petitioner presented to Hinsdale Orthopedics and underwent an additional MRI of the right shoulder. (PX 1, P. 27). On February 4, 2022, Petitioner presented to Dr. Thorsness at Hinsdale Orthopedics for a review of the MRI. (PX 1, P. 29). Dr. Thorsness noted that Petitioner's rotator cuff was intact and that Petitioner's symptoms appeared to be the result of post-operative capsulitis. (PX 1, P. 31). Petitioner also underwent a glenohumeral cortisone injection to address pain and inflammation. (PX 1, P. 31). Dr. Thorsness recommended continued physical therapy to address remaining range of motion and strength deficits and allowed Petitioner to work with restriction. (PX 1, P. 31).

On February 15, 2022, Petitioner presented to Dr. Horodysky at Hinsdale Orthopedics complaining of a "flare reaction" following the cortisone injection on February 4, 2022. (PX 1, P. 32). Petitioner complained of extreme pain following any use, trouble stretching the shoulder joint, and "decreased quality of life." (PX 1, P. 32).

Dr. Horodysky recommended a revision right shoulder arthroscopy with debridement and a capsular release with manipulation under anesthesia. (PX 1, P. 33). Dr. Horodysky advised Petitioner to stop physical therapy while awaiting surgery and recommended that physical therapy begin immediately following the procedure. (PX 1, P. 33).

On April 1, 2022, Petitioner presented to Bridgeman at Hinsdale Orthopedics complaining of continued pain, stiffness, and inability to complete daily tasks. (PX 1, P. 35). Bridgeman continued to recommend revision surgery. (PX 1, P. 36).

On April 22, 2022, Petitioner presented to Dr. Thorsness at Salt Creek Surgery Center and underwent a second surgery involving a right shoulder arthroscopy with capsular release and manipulation under anesthesia and adhesiolysis and debridement. (PX 1, P. 39). Upon awaking from anesthesia, Petitioner testified that his right arm was very painful. He described the post operative physical therapy as "very bad". Petitioner testified that there was worse burning pain in his right arm and hand. Portions of the hand were numb. (TR1 p.44) Petitioner testified that pain during physical therapy was very intense and was causing him to want to cry and it made him feel sick. (TR1 p.44)

On May 2, 2022, Petitioner presented to Bridgeman at Illinois Bone & Joint Institute (formerly Hinsdale Orthopedics) for a post-operative evaluation. (PX 1, P. 40). Petitioner complained of severe pain throughout the entire upper extremity. (PX 1, P. 41). Petitioner stated that his pain following physical therapy "makes him cry" and "makes [him] want to throw up." (PX 1, P. 41). Bridgeman explained that Petitioner's signs and symptoms are consistent with complex regional pain syndrome and reduced Petitioner's physical therapy to 3 times per week. (PX 1, P. 43). Bridgeman referred Petitioner to Dr. Malhotra for pain management and further evaluation and treatment of his CPRS. (PX 1, P. 43).

On May 13, 2022, Petitioner presented to Dr. Malhotra at Hinsdale Orthopaedics complaining of increased pain and limited range of motion. (PX 3, P. 19). Dr. Malhotra also recommend a cervical MRI and cervical flexion extension x-ray. (PX 3, P. 21). On May 24, 2022, Petitioner underwent an MRI of the cervical spine. (PX 3, P. 33-34).

On June 3, 2022, Petitioner presented to Dr. Malhotra at Hinsdale Orthopedics complaining of increased pain and limited range of motion. (PX 3, P. 14). On June 22, 2022, Petitioner underwent a cervical epidural steroid injection performed by Dr. Malhotra at Hinsdale Orthopedics. (PX 3, P. 12). On July 8, 2022, Petitioner presented to Dr. Malhotra at Hinsdale Orthopedics complaining of increased pain in his right shoulder and decreased range of motion. (PX 3, P. 9). Dr. Malhotra stated that Petitioner did not appear to have CRPS. (PX 3, P. 11). Dr. Malhotra also referred Petitioner to Dr. Templin for a cervical radiculopathy evaluation. (PX 3, P. 11).

On August 4, 2022, Petitioner presented to Dr. Templin at Hinsdale Orthopedics complaining of continued pain over the right shoulder, pain radiating from the neck into the right periscapular region and then downward into the arm, limited range of motion, and numbness and tingling. (PX 2, P. 3-4). Dr. Templin reviewed an MRI performed on May 24, 2022 that showed spondylosis, most notable at C5-C6 and C6-C7 with moderate bilateral foraminal stenosis. (PX 2, P. 4).

Dr. Templin recommended an EMG of the right upper extremity and a course of physical therapy aimed at the cervical spine. (PX 2, P. 4). Dr. Templin further noted and recommended that surgical intervention in the form of C5-C6, C6-C7 ACDF could benefit petitioner's radicular symptoms. (PX 2, 4 and 8).

On September 21, 2022, Petitioner presented to Dr. Templin at Hinsdale Orthopedics who reviewed Petitioner's EMG, which showed ulnar neuropathy. (PX 2, P. 15). Dr. Templin referred Petitioner back to Dr. Thorsness to evaluate the ulnar neuropathy. (PX 2, P. 15).

On October 25, 2022, Petitioner presented to Dr. Salehi at Chicago Neurospine Surgery for an independent medical evaluation. (RX 5). Dr. Salehi opined that Petitioner had no cervical spine restrictions on return to work. However, Dr. Salehi limited his opinions to cervical spine. The details of this exam and the doctor's opinions are contained in his testimony.

On October 31, 2022, Petitioner presented to Dr. Birman at Hand to Shoulder Associates for an independent medical evaluation. (RX 4). Dr. Birman found no objective basis for restrictions needed at the right shoulder but acknowledged that he did not have an opinion regarding the cervical spine treatment. The details of this exam and the doctor's opinions are contained in his testimony.

Respondent terminated benefits, including TTD, physical therapy, pain management, physician care and prescription medication on November 23, 2022.

On December 20, 2022, Petitioner presented to Dr. Malhotra complaining of neck pain and pain in the right upper extremity. (PX 3, P. 6). Dr. Malhotra diagnosed Petitioner with pain in the right arm, cervicalgia, cervical region radiculopathy, and cervical region spondylosis without myelopathy or radiculopathy. (PX 3, P. 7).

Overall, from May 3, 2021 to September 8, 2022, Petitioner completed over 100 sessions of physical therapy and Illinois Bone & Joint Institute. (PX 4).

Petitioner testified he last saw Dr. Templin in July 2023. Petitioner testified that at that time movement of his right arm above his head, away from his body or circular motions over his head with his right arm provoked symptoms. Petitioner described circumduction, an overhead arm movement above his shoulder, with circular motion similar to a swimmer or an overhand ball thrower. He testified that he could not perform circumduction with his right arm. (TR1 p.55) Petitioner testified that even when he was not moving his right arm, it hurt. It increased with activity. (TR1 p. 56) Petitioner testified that Dr. Thorsness and Mr. Knitter stressed to him that moving his right arm was vital to maximizing recovery in order to avoid frozen shoulder. (TR1 p.58)

Petitioner testified that during the Summer of 2022, he was attending physical therapy, including manual arm manipulation and active range of motion therapy. Petitioner's range of motion was physically restricted. Petitioner testified that he did not have the neck pain he was experiencing before his injury; it appeared after his injury. (TR1 p.61-2)

Petitioner testified to various specific movements and exercises that he performed in physical therapy. (TR1 p.62) He described "pegs" exercises, which involves repeatedly moving pegs into holes mounted on the wall. Petitioner testified that he could not reach over his head with his right arm. Even though the pegs had little to no weight, he was unable to manipulate them above his head. (TR1 p.63) Petitioner testified that he performed "wall washes" facing the wall, placing both hands side by side on the wall in order to move both of his hands above his head, the limit of the range of motion of his right shoulder. Petitioner testified that movement above his head caused pain. (TR1 p. 64) Petitioner performed "rows." Petitioner was instructed to lay on the floor with a three-foot wooden handle and repetitively move it from waist to head. (TR1 p.65) Petitioner performed "ball circles" involving repeatedly moving a partially deflated ball against the wall. Petitioner testified that these exercises and others were not particularly helpful in improving the range of motion. (TR1 p.67) Range of motion stayed the same. Id. Petitioner was given resistance bands and was instructed to perform home exercise program. At home he was instructed to perform these exercises and that it hurt. (TR1 p.68) In the summer of 2022 he was prescribed gabapentin and amitriptyline to address the pain in his right arm while asleep. (Id.) Petitioner testified that gabapentin and amitriptyline helped with his symptoms. (TR1 p. 69) Petitioner testified that he would continue to take those medications if they were approved. *(*Id.)

Alternative job offered

During Summer 2022, Petitioner was instructed by Respondent to report to an alternate job at the Abraham Lincoln National Cemetery after the July 4th holiday. (TR1 p.70) Petitioner testified that, with the exception of national holidays and days which he was instructed to attend alternate work five days per week. This job accommodated his doctors' appointments. (TR1 p.73) Petitioner testified that the alternate position ended the Wednesday before Thanksgiving 2022. (TR1 p.72) Petitioner testified that physical therapy, prescriptions, and physicians' visits were not authorized after Dr. Templin suggested cervical surgery.

Petitioner's testimony regarding surveillance footage

Around January 2022, Petitioner noticed unusual activity near his home including surveillance and persons following him. (TR1 p.80-1) Petitioner noticed video recording equipment hidden in a structure similar to a construction horse with blinking lights and batteries in the ditch across the street from his house. Petitioner testified that upon investigating the device, he saw camera a lens sticking out from it. It was located at his house in June, July, and August 2022. (TR1 p.83) The device was removed and replaced from time to time, and it reappeared the week before first hearing in this case commenced. (TR1 p.84)

Petitioner testified about various activities that he was shown performing in the surveillance footage. (TR1 p.99) He stated that in the videos with his son, he was able to manipulate the ball with his right hand but not throw it overhand and could not catch the ball in a natural way. He testified that at one point in the video, his son kicked the ball towards him and instead of stopping/catching the ball with his right hand, he reached cross with his left arm as a "shield catch." (TR1 p.100-1)

Petitioner testified that during Summer 2022, while taking out the trash, he took out recyclables that were lighter in weight; his wife took out regular garbage because of the weight of the garbage. (TR1 p.102) Petitioner testified that from time to time he would move the rolling garbage cans back and forth from the curb to his house using both his right and left arm. Petitioner testified that in doing so, the activities of moving the garbage cans were similar to those that he was performing in physical therapy. (TR1 p.104) Petitioner testified that in Summer 2022, he loaded some material into the back of his pickup truck for transportation to the end of the driveway to be put out with the garbage. Petitioner testified that he was able to get in and out of his car using his right arm and he was able to mow the lawn. Petitioner testified that he mows his two- and one-half acre lawn with a John Deere Zero-Turn seated mower which is equipped with hand controls located near his waist. (TR1 p.106)

Petitioner testified that he has an overhead garage door. He usually opens it with his left hand. (TR1 p.107) He testified that the garage door is counterbalanced using springs and that the force to open the door is much less than the weight of the door. (TR1 p.108-9) Petitioner testified that because of the counterweights, the force necessary to open the garage door is in the range necessary to open the hatchback on a car; considering that a gallon of milk weighs approximately eight pounds, Petitioner testified that the force necessary to open the garage door is about the same as the force required to lift a gallon of milk in his opinion. (TR1 p.110)

Petitioner testified that during Summer 2022, his eight-year-old son was in T-ball. Petitioner tried to teach his son how to throw the ball. Petitioner testified that he had played high school baseball. He played short stop and second base, which required the ability to throw the ball from second base to home, approximately 125 feet. (TR1 p.112) Before his injury, Petitioner was able to throw a baseball overhand. However, because of his injured right arm, he was unable to demonstrate proper overhand throwing to his son. (TR1 p.113) While playing baseball with his son during Summer 2022, Petitioner was forced to throw the ball underhand. He described rather than demonstrated to his son how to throw overhand. (TR1 p.114) Petitioner testified that when he attempted to throw overhand, he was forced to keep his right elbow by his side, move his forearm and hand in a throwing motion rather than a "windmill" overhand throw. Petitioner described this a "flick". (TR1 p.116)

Petitioner testified that his garbage bins are two wheeled Waste Management bins, approximately five feet tall. The bins have a hinged top. During Summer 2022, if he were opening the garbage bin with his right hand, he could grab the lid and push against the hinge and the lid would open itself up so that he could place objects in it. (TR1 p.119)

During Summer 2022, while his home was being continusouly surveilled, Petitioner testified that this situation caused anxiety in his family. Petitioner testified that because of the surveillance of their home and being followed by strangers, Petitioner's wife was forced to decamp at her mother's house for a period of time. (TR1 p.124-5)

Petitioner's Current Condition
Petitioner testified that after prescription medication was no longer authorized and he was no longer able to fill his amitriptyline and gabapentin prescriptions, and his symptoms are worse. (TR1 p.126) While taking gabapentin, Petitioner testified that it masked or diluted his symptoms allowing him more functional. Petitioner testified that amitriptyline allowed him to sleep. ((Id.) Since discontinuing gabapentin, his symptoms are worse, and his sleep is worse. (TR1 p.127) Petitioner seeks the cervical spine surgery as recommended by treating physician, Dr. Templin.

Cross Examination of Petitioner
On cross examination, Petitioner testified that after his injury, he experienced shoulder pain including a "Velcro" type pulling sensation which to him, felt as if his arm was trying to pull away two pieces of Velcro while moving the arm. He testified that this was uncomfortable. He was unable to move his arm behind his back or overhead. He could only pick up small objects but could not move his arm away from his body with any force. (TR1 p.135) In Fall, 2021, Petitioner was able to brush his teeth but with difficulty because holding his right arm up to his head was problematic at that time. (TR1 p.137)

Petitioner testified that his pain increased with physical therapy and that he underwent a second surgery on his shoulder of April 2022. After surgery, petitioner testified that physical therapy was making his arm symptoms worse. Dr. Thorsness recommended Petitioner see Dr. Malhotra. (TR1 p.142) Petitioner testified that he described the sensation of his shoulder "on fire" to Dr. Birman and that the pain was going through his collar bone, the front of his shoulder, and underneath his arm pit, down to his elbow, hand, and right shoulder. (TR1 p.147-8) Petitioner described his pain as grinding and feeling like his shoulder joint was "rock on rock." He stated that he was in constant pain. (TR1 p.148) Petitioner testified that in June 2022, he indicated to his physical therapist that he had difficulty washing his hair due to shoulder pain. (TR1 p.150-1)

Petitioner testified that by July 25, 2022, he was unable to put a belt through the loops on his trousers. He is still unable to do so at the time of hearing. (TR1 p.162)

On August 23, 2022, Petitioner started physical therapy for his cervical spine. He testified that his neck was in constant pain. The pain was felt through his collarbone, elbow, and under his arm pit. Sudden movements of his neck, such as driving increased pain. (TR1 p.166) Petitioner denied asking to be discharged from physical therapy. (TR1 p.169) Petitioner testified that although he was in constant pain and that physical therapy was painful, he did not ask to be discharged from physical therapy. (TR1 p.170) Petitioner testified that he had never voluntarily asked to stop physical therapy. If physical therapy was authorized, he would still be doing it. (TR1 p.195)

Redirect Examination of Petitioner
On re-direct testimony, Petitioner testified that Drs. Templin, Malhotra, and Thorsness have not told him that he is capable of working as a carpenter at any time since his injury. (TR1 p.193-4)

Petitioner was shown various video clips contained in Petitioner's Exhibit 9 which are surveillance video footage clips, separated by subject matter and located based on descriptions provided in reports and as reviewed by Section 12 Examiners, Dr. Birman and Dr. Salehi.

Exhibit 9a is Petitioner playing soccer with his son. Petitioner catches the ball with his left hand. He describes this as an awkward movement since the ball is on his right side and he is forced to twist his body all the way around, 180 degrees, in order to catch the ball with his left hand. (TR1 p.286)

Exhibit 9b is located one hour and 21 minutes into the footage provided by Respondent. This clip depicts Petitioner playing soccer with his eight-year-old son on July 8, 2022.

Exhibit 9f is at two hours and ten minutes into the exhibit provided by Respondent. It depicts Petitioner mowing his two- and one-half acre lawn using a zero-turn John Deere seated mower. Petitioner testified that the mower utilizes arm controls which consist of wrist control levers that are located near his lap. Petitioner testified that after his second surgery, he was able to operate the mower while wearing the arm immobilizer and sling. (TR2 p.96)

Exhibit 9e is at two hours and four minutes in the exhibit provided by Respondent. This clip depicts Petitioner getting into his car. (TR2 p.97)

Exhibit 9g is at five hours and 22 minutes into the exhibit supplied by Respondent. It shows Petitioner using both arms to open his garage door. Petitioner testified that sometimes he uses one arm and sometimes he uses two to open the garage door. He testified that opening the garage door is similar to exercises he was doing in physical therapy during July 2022, including "wall washes". Petitioner testified that he was instructed by Mr. Knitter, his physical therapist, that he should be doing movements similar to that depicted in the video as often as possible. (TR2 p.99)

Exhibit 9d appears at one hour and eleven minutes into the video provided by Respondent. Petitioner was asked while whether he frequently engages in a movement aimed at addressing the symptoms in his arm and hand. With his hand extended below his waist, he frequently shakes his hand in order to alleviate pain symptoms. This behavior can be seen in Exhibit 9d, wherein Petitioner is loading material into his truck. Petitioner testified that he was moving padding from a tent that had become soiled with rodent urine during storage. He was throwing the padding out. 9d shows Petitioner loading the padding and some cardboard into his truck with the assistance of his wife. (TR2 p.108-10) Petitioner testified that the maximum weight of the objects was ten pounds. (TR2 p.111) Petitioner is seen using both arms to load the material.

Petitioner testified that considering that the videos shown in PX9 were from July and August 2022, that, during all of the videos, he had the benefit of taking his gabapentin medicine. (TR2 p.114)

Petitioner's exhibit 9i, 27 minutes into the video, depicts Petitioner and his son playing catch with a rubber baseball. (TR2 p.115) Initially while on the driveway, Petitioner rolls the ball or throws it underhand to his son. Petitioner testified that he was trying to teach his son about playing catch or baseball. Petitioner can be shown explaining to his son how to throw the ball overhand. After the explanation to his son, Petitioner throws the ball underhand. Petitioner testified that his ability to throw overhand was limited and if he had the ability, he would have thrown overhand to demonstrate how to properly throw the ball. (TR2 p. 117) Petitioner explained that he has experience playing baseball and was trying to explain how to properly throw a ball overhand to his son, but he was unable to do so because of his arm injury. (TR2 p.118) Petitioner describes, and the video appears to show, a modified throwing overhand which involves keeping his elbow close to his side and flicking the ball with his wrist and forearm. (TR2 p.119) Petitioner testified that this movement is similar to an exercise performed in physical therapy known as "triceps extension". (TR2 p.119) Petitioner testified that he could throw a baseball more than 100 feet and throw a football 65 yards a year before he was injured. (TR2 p.121-2) He cannot do so now because of his injury. (Id.)

Exhibit 9c is at one hour 45 minutes into the video exhibit. (TR2 p.126) Exhibit 9c show Petitioner moving empty trash cans back from the curb to his garage.

Exhibit 9h is at 58 minutes and nine seconds into the exhibit. This clip is July 7, 2022, at six a.m. It depicts Petitioner placing a bag of recyclables into the can. Petitioner places the bag of recyclables on the ground and lifts the lid with his right hand. Petitioner described the force he used to open the lid at about a pound. (TR2 p.131) Petitioner testified that he grabbed the lid and pushed forward and had his hand ride up on the lid as it opens against the hinge. Thereafter, Petitioner opens the garage door using only his left hand. (TR2 p.132)

Petitioner testified that at the time the video clips were recorded, he was in physical therapy and was doing more rigorous exercises in physical therapy than depicted in the videos. (TR2 p.133) Petitioner testified that none of the activity on the videos approached the level of activity that would be needed to engage in as work as a carpenter. (TR2 p. 135)

Petitioner was shown the video of him moving a child's bicycle with training wheels. (TR2 p.142) Petitioner testified that the bike weighed less than 15 pounds. Petitioner testified that two different bicycles appear in the video, one with training wheels and one without. (TR2 p.144) Petitioner is depicted balancing his son without the training wheels on the bicycle. Petitioner was shown video of him assisting his son climbing a tree and taking pictures of his son in the tree.

Petitioner was shown video of appearing at approximately one hour and 18 minutes into the exhibit provided by Respondent taken on July 7, 2022. Petitioner is assisting his son riding a bicycle. (TR2 p.152)

Petitioner was shown video taken July 7, 2022, approximately one hour and 18 minutes into the exhibit provided by Respondent. It depicts Petitioner picking up a soccer ball with his right hand. (Tr2 p.154)

Petitioner was shown video taken July 7, 2022, one hour and 26 minutes into the exhibit supplied by Respondent. Petitioner used his right arm to attempt to catch the soccer ball. Petitioner testified that the video was shot from a ditch 330 feet away, across the street and five to six feet lower than the front yard. His shoes/feet are not visible in the surveillance. Petitioner testified that his son kicked the ball over his head, and he tried to get his arm up, had his elbow at his side but not fully extended up like a basketball player. He stated he could "not get my arm out", then turned around and picked up the ball. Petitioner testified that his arm appears in the video to be more extended than it was. (TR2 p.159)

Petitioner was shown video taken July 9, 2022, approximately one hour and 45 minutes into the exhibit provided by Respondent. Petitioner is depicted rolling his garbage bins along his driveway, approximately 300 feet from his curb to his garage.

Petitioner was shown video taken July 12, 2022, showing Petitioner moving his garbage cans and emptying water from them. Petitioner testified that because of the arrangement of the lid on a hinge, the movement necessary to open the can lid is similar to a passive range of motion exercise conducted in physical therapy. (TR2 p.171) Petitioner explained that his therapist stressed that he must do as much physical activities with his right arm. He was told not to sit around and avoid using the arm because it hurt, he was given home exercise to do, a home exercise program to conduct, and to make sure that he did it. Petitioner was told not to rely solely on his left arm to do tasks because that would cause undue wear and tear on his left arm, potentially leading to symptoms and problems in his left arm. (TR2 p.175)

Petitioner was shown video taken July 12, 2022, at approximately two hours seven minutes into the exhibit provided by Respondent. Petitioner is shown assisting his son balance on a bicycle, and testified he cupped the bottom side of the bicycle seat with his right hand fingertips, then left hand on handlebars if needed. (TR2 p.176) Petitioner testified that the force required to balance his son on the bicycle much lower than the 65 pounds that the child and his bike weighted. He testified his child was balancing as well. (TR2 p.179)

Petitioner was shown video taken August 2, 2022, appearing at one hour and 28 seconds into the exhibit provided by Respondent. In this clip, Petitioner is speaking to neighbors that are in a golf cart. Petitioner is depicted moving his right arm and waving goodbye. Petitioner again testified that because of the low angle of the video and the distance from which it was taken, it appears that his arm is extended up further than it is. Petitioner does not think his shoulder is pointed up. (TR2 p.186)

Petitioner was shown video taken August 6, 2022, approximately 10 hours and 25 minutes into the video. Petitioner is playing baseball with his son. At one point he reaches to the side and back to pull his shorts up with his right hand. Petitioner testified that his right hand is on his hip. (TR2 p.189)

Petitioner was shown video taken August 5, 2022, at 11:15 in the morning. Petitioner was playing catch with his son. He again testified he could not properly throw a baseball overhand. (TR2 p.190)

Petitioner was shown video taken August 25, 2022, at 23 minutes and seconds into exhibit provided by Respondent. This video depicts Petitioner playing catch with his son. Petitioner testified that they were working on pop flies, and he was flinging the ball and denied it was forward motion above his head. He further stated that his arm was to the side and it looks like momentum did take his hand to the height of his head while throwing the ball up in the air to his son. (TR2 p.196-199) On the same date, 32 minutes in to the video, petitioner testified that he rolled the baseball to his son and did no throw it across his body. Id. Petitioner also testified that washing armpit, shoulder or backside requires stretching shoulder across body not "pendulum rolling of baseball". (TR2 p. 199).

Petitioner testified that he allows his friends to hunt on his land during hunting season. He purchased a hunting license because he is often with his friends in hunting blinds. (TR2 p.204) Petitioner testified that it is his belief that being present in a blind while people are hunting may appear to a conservation officer as being engaged in hunting. Petitioner testified that it is easier for him to buy a $37 hunting license than to run the risk of having a misunderstanding with the conservation officer, resulting in a citation for unlicensed hunting. (TR2 p. 204-5) Petitioner testified that he had specific conversations with the conservation officer assigned to his area. That officer advised him that it was easier to possess a hunting license if he was going to be with people who are hunting during hunting season rather than run the risk of having a misunderstanding with a conservation officer. (TR2 p.213-4) Petitioner testified that because of the overlapping deer, shotgun and crossbow seasons, hunting licenses are required depending on when you would be on the field. (TR2 p.214) Petitioner testified that the having a hunting tag, which comes with the license makes it easier to explain the presence of venison in his freezer should a conservation officer inquire. That motivates him to purchase a $37 hunting license rather than take the chance of engaging in a misunderstanding with a conservation officer. *Id.*

On the subject of whether Petitioner can reach into his back pocket to retrieve his wallet out of his pants pocket, Petitioner testified that he can engage in that. However, Petitioner cannot touch his spine with his right arm and cannot wipe his bottom after using the toilet. (TR2 p. 208) Petitioner testified that he cannot reach his right hand into his left armpit for the purpose of washing. (TR2 p.208)

Testimony of Dr. Thorsness: treating physician (right shoulder)

Petitioner's shoulder care has been managed by Dr. Thorsness and his colleagues, Dr. Horodysky and PA Kristopher Bridgeman, at Hinsdale Orthopedics. Dr. Thorsness testified via evidence deposition. (PEX 7). Dr. Thorsness is a board-certified orthopedic surgeon. (PEX 7, P. 17). In both reviewing Petitioner's right shoulder MRI and personally observing Petitioner's right shoulder, Dr. Thorsness attributed Petitioner's right shoulder symptoms to the injury he sustained on February 9, 2021. (PEX 7, P. 26-27). Dr. Thorsness testified to performing two separate surgical procedures on the petitioner's right shoulder. (PX7 at 14 & 41) He testified to the documented pain complaints and symptoms the petitioner expressed to him. He testified to the work ability of the petitioner throughout his treatment of the petitioner, as well as the medication prescribed. (PX7)

With regard to Petitioner's pain throughout physical therapy, Dr. Thorsness stated that he tells patients that physical therapy should be "comfortably uncomfortable" and that it is normal for him to advise patients to stretch to the point of discomfort. (PEX. P. 30-31, 60). Further, Dr. Thorsness noted that the right elbow bursitis following Petitioner's first surgery was a "common post-operative complaint" and that he attributed it to "sling use and swelling." (PEX 7, P. 33). In addition, Dr. Thorsness formed an impression that Petitioner was experiencing post-operative capsulitis, which he described as "very common" after surgery. (PEX 7, P. 28-29).

Regarding Petitioner's neck complaints, Dr. Thorsness testified that "[Petitioner's] shoulder and neck were . . . injured at the time of the [February 9, 2021] fall" and that he "[thought] the condition in [Petitioner's] neck, the radiculopathy, likely got exacerbated during shoulder surgery." (PEX 7, P. 44). Following Petitioner's first surgery, Dr. Thorsness recommended that Petitioner engage in as much activity as possible and noted that Petitioner's right rotator cuff was intact and healed; however, there was evidence of adhesive capsulitis. (PEX 7, P. 46-47, 65-66, 68-69). Regarding the shoulder and neck pain Petitioner was experiencing following the first surgery, Dr. Thorsness was concerned that it was being caused by either Complex Regional Pain Syndrome, CPRS, or cervical radiculopathy. He opined that the pain was caused by Petitioner's February 9, 2021 work injury. (PEX 7, P. 53). Dr. Thorsness referred Petitioner to Dr. Malhotra, an anesthesiologist specializing in pain management. (PEX 7, P. 46-47). Dr. Malhotra provided Petitioner with cervical spine injections, which Dr. Thorsness considered "a reasonable approach" to Petitioner's symptoms and that his referral to Dr. Malhotra for pain management was reasonable and necessary given Petitioner's injuries, all of which resulted from Petitioner's February 9, 2021 work accident. (PEX 7, P. 49, 52-53). Further, Dr. Thorsness testified that referring Petitioner to Dr. Templin, a spine surgeon, was reasonable and necessary. (PEX 7, P. 53). Ultimately, Dr. Thorsness testified that all of the care and treatment he prescribed Petitioner was reasonable and necessary considering his injury. (PEX 7, P. 66). Regarding the possibility of Petitioner "inventing, making up, lying about, or fibbing about" his pain levels, Dr. Thorsness testified that Petitioner "appeared to be in a significant amount of discomfort . . . so he did not appear to be falsifying [his pain levels] to me." (PEX 7, P. 97). Dr. Thorsness further testified that, if he had suspected Petitioner of falsifying his pain levels, he would have noted that in his records. (PEX 7, P. 98).

Dr. Thorsness testified that, following Petitioner's second surgery, he recommended that Petitioner engage in movement of his right arm over his head as much as possible, including movements over his head and away from his body, but at the same time, testified based on his post operative exam that the petitioner stated he could not perform those movements based on severe complaints of pain. (PX7 at 91 and 100) Dr. Thorsness testified he last examined the petitioner on July 21, 2022. At that time, the petitioner was having continued complaints of pain as documented in the records. Dr. Thorsness testified that as of his examination of the petitioner on July 21, 2022, he did not believe the petitioner was capable of returning to work as a carpenter based on his persistent and recalcitrant arm pain, weakness and dysfunction of the arm. (PX7 at 54) Dr. Thorsness testified the petitioner was capable of working with two pound lifting restrictions for the right arm. (PX7 at 50)

Dr. Thorsness testified the petitioner was to return to see him post treatment with Dr. Templin. Id. Dr. Thorsness testified that as of his examination of the petitioner on July 21, 2022, he did not believe the petitioner was capable of returning to work as a carpenter based on his persistent and recalcitrant arm pain, weakness and dysfunction of the arm. (PEX7 at 54) Dr. Thorsness testified the petitioner was capable of working with two pound lifting restrictions for the right arm. (PEX7 at 50)

Testimony of Dr. Templin: treating physician (cervical spine)

Dr. Templin testified via evidence deposition. (PEX 8). Dr. Templin is a board-certified orthopedic surgeon specializing in minimally invasive spinal surgery dealing with all areas of the spine. (PEX 8, P. 14). Dr. Templin testified to examining the petitioner on two occasions, August 4, 2022, and September 23, 2022. (PX8 at 8) Dr. Templin testified to the details of his exams and the work accident history provided to him by the petitioner. (PX8 at 9) Dr. Templin testified that the activities the petitioner indicated he was incapable of performing were volunteered by the petitioner, not in response to the questions he asked of the petitioner. (PX8 at 32)

Dr. Templin testified that referral to Dr. Malhotra was "absolutely" reasonable and necessary since the patient had radicular symptoms, had MRI findings consistent with radiculopathy and that an epidural injection would certainly be reasonable. (PEX 8, P. 19). After Petitioner's first surgery, Dr. Templin referred Petitioner back to Dr. Thorsness for an evaluation of his ulnar neuropathy, which Dr. Templin considered reasonable and necessary considering Petitioner's condition. (PEX 8, P. 29). Further, Dr. Templin considered Petitioner's prescription for gabapentin reasonable and necessary. (PEX 8, P. 30).

As to Dr. Templin's recommendation for a cervical fusion, or ACDF, at C5-7, Dr. Templin testified, "I think it would be a reasonable approach to improving his pain and quality of life, yes." (PEX 8, P. 34). Dr. Templin testified he felt that proposed surgery of an ACDF at C5-C7 would help the nerve pain he thought the petitioner was experiencing and the need for surgery stemmed from petitioner's work accident. (PX8 at 20 & 27) Further, Dr. Templin testified that the need for the ACDF was the result of Petitioner's February 9, 2021 injury and that all of Petitioner's care and treatment has been reasonable and necessary. (PEX 8, P. 34).

Regarding Petitioner's complaints of severe pain and limited improvement during physical therapy, Dr. Templin testified that physical therapy could make Petitioner's condition worse: "I mean, when you start doing more activity, you can aggravate the nerve root more. I've seen that happen before, where people go to therapy and it makes the situation worse, but I think it's worth giving it a try." (PEX 8, P. 52). Regarding whether Petitioner's symptoms were the product of the February 9, 2021 work injury or a degenerative condition, Dr. Templin testified that the injury, surgeries, and physical therapy were all the product of the February 9, 2021 work injury and not the product of a degenerative condition. (PEX 8, P. 66). Further, Dr. Templin testified that if he had picked up on any notion that Petitioner was "faking, making up, exaggerating, being a baby, or anything else with pain," he would have noted it in his records and that he would not have prescribed neck surgery to address the pain, which Dr. Templin testified would be reasonable and necessary. (PEX 8, P. 69-71). Dr. Templin never noticed any "pill seeking" or similar behavior from Petitioner. (PEX 8, P. 72). Dr. Templin testified that he did not provide his own work

restrictions to the petitioner but wanted the petitioner to adhere to the restrictions provided by Dr. Thorsness, two-pound lifting. (PX8 at 26) Dr. Templin did not believe the petitioner was capable of working as a carpenter. (PX8 at 26)

Testimony of Dr. Birman: Respondent's Section 12 Examiner (right shoulder)

Dr. Michael Birman is Respondent's Section 12 examiner. His practice concentrates on shoulder maladies. He authored three reports, October 29, 2021, May 26, 2022 and November 7, 2022. In his first two reports, Dr. Birman opined that Petitioner suffered a shoulder injury and, following shoulder surgery suffered from post-surgical capsulitis. (RX4, Ex. 1, p. 5) His impression that after the second shoulder surgery, Petitioner continued to exhibit signs of right arm and hand numbness, pain, and tingling. He suspected these symptoms were cervicogenic. (RX4 p. 51-2, 58). He reviewed physical therapy notes from April 23-8, 2022, following Petitioner's second surgery. Dr. Birman opined that referral to pain management was appropriate given Petitioner' symptoms. (RX4 p. 61). Dr. Birman did review Petitioner's physical therapy records after April 2022. Dr. Birman did not know the type of physical therapy Petitioner was performing or what movements Petitioner was encouraged to perform. (RX4 p. 63).

Dr. Birman's third report and exam took place on October 31, 2022, wherein he reviewed approximately two hours of video surveillance of Petitioner. At this visit Dr. Birman testified that the petitioner told him he was unable to, squeeze mustard from a bottle with the right hand, he could not play baseball with his son, reaching out or up was a problem, he could not wipe his buttocks, wash his armpit, put on a belt, could not take laundry out of the washer drum, difficulty putting on his socks, among other tasks. (RX4 at 21) Dr. Birman testified that he believed what the petitioner reported to him on October 31, 2023 was inconsistent with what he viewed on the surveillance. (RX4 at 35) In his report, Dr. Birman concluded that Petitioner did not require work restrictions and had reached maximum medical improvement which was based in part on watching portions of video surveillance. (RX4 p. 117).

In his report, Dr. Birman lists several portions of the video by description. Dr. Birman stated that several of the identified portions of the surveillance were not pertinent to his opinions since they did not depict actions beyond Petitioner's stated capabilities. For example, opening a car door and using a riding lawnmower to mow his lawn were not inconsistent with Petitioner's stated capabilities. (RX4 p. 123-126). He opined that Petitioner moving garbage cans up and down his driveway was consistent with his capabilities (RX4 p. 123). Picking up a soccer ball with the right hand is consistent with Petitioner's capabilities (RX4 p. 125).

Dr. Birman did base some of his opinions on portions of the surveillance which depicted Petitioner throwing a baseball and moving his right hand and arm. (RX4 p. 127, 134). Dr. Birman described the normal motion used in throwing a baseball overhand as "circumduction," which is outward rotation of the arm and shoulder in a throwing motion. (RX4 p. 138-139). However, Dr. Birman was not able to identify any circumduction in any portion of the video he reviewed. Dr. Birman did not note Petitioner's throwing which showed Petitioner appearing to keep his elbow closer to or near his body and "flicking" the baseball. These modified throwing mechanics attempted by Petitioner, are seen on the provided video at 28:30, 29:09, and 30:50.

In another portion of the surveillance showing Petitioner loading objects into the back of his truck, Dr. Birman did not know what the weights of the objects were. (RX4 p. 120). Dr. Birman admitted that if had known that none of the objects weighed more than twenty pounds, Petitioner's actions would have been consistent with his stated capabilities. (RX4 p. 122). Petitioner testified that the objects were foam rubber padding and cardboard, all of which weigh less than ten pounds. (TR2, 111). Dr. Birman stated that he did not see Petitioner lift any object over his head that weighed more than one pound. (RX4 p. 130).

Dr. Birman opined that Petitioner's arm limitations after his second surgery through the June 27, 2022 physical therapy note that he reviewed at his deposition, were the result of neck problems, not shoulder problems. (RX4 p. 135-138). Dr. Birman specifically agreed that Petitioner's reported level of symptoms and the extent of his right arm disfunction are not consistent with returning to work as a carpenter. (RX4 p. 142 line 8 to 18). Lastly, Dr. Birman stated that he is not aware of any treating physician or physical therapist who expressed any idea that reported symptoms and pain levels were misreported or magnified. (RX4 p. 138-139).

Testimony of Dr. Salehi: Respondent's Section 12 Examiner (cervical spine)

Dr. Salehi is Respondent's Section 12 examiner. He is a spine surgeon and explicitly stated that his opinions were limited to Petitioner's cervical spine. (RX5 p. 29). He opined that Petitioner's arm symptoms are from his shoulder. (RX5 p. 30.) Dr. Salehi also acknowledged that in order for Petitioner to return to work as a carpenter, Petitioner would require adequate function of both his arm and neck(RX5 p. 67).

Dr. Salehi testified he examined the petitioner on October 25, 2023. (RX5 at 23) At the time of that visit, Dr. Salehi testified to the petitioner providing a history of pain in the neck, right collarbone, and right scapula. (RX5 at 23) Dr. Salehi testified that petitioner's cervical condition was aggravated by the work accident. (RX5 at 30) Petitioner described shooting pain down the right arm with turning his head to the left. (RX5 at 23)

Dr. Salehi opined that Petitioner's problems in his right arm and hand were not cervicogenic or the result of an aggravated, previously asymptomatic cervical issue. (RX5 p. 30-31). Dr. Salehi's reports note the absence of Waddell signs, which he uses to detect whether a patient is misreporting, faking, or magnifying symptoms. (RX5 p. 50). The presence of symptoms in his hand that do not follow a dermatomal pattern suggests to Dr. Salehi that those symptoms are not cervicogenic, but likely from a shoulder pathology. (RX5 p. 103). They were not present before Petitioner's injury, but are present after. (RX5 p. 103).

Dr. Salehi stated clearly that there is nothing in the record to suggest Petitioner's symptoms are not real, even though they are subjective. (RX5 p. 114). Nothing in the record suggests that petitioner is faking or lying about symptoms in the arm. Id. He believes that petitioner has symptoms in is right arm and hand. Id. He opined that the symptoms are present because he aggravated a preexisting condition in his neck. Id. Dr. Salehi opined that the cervical MRI suggested that the accident aggravated a pre-existing condition in Petitioner's neck, generating symptoms in his hand and arm. Id.

Dr. Salehi noted that patients with shoulder problems, such as Petitioner's, often report neck issues, and that patients with neck problems often report shoulder issues. (RX5 p. 55). Further, Dr. Salehi stated that the functions of the neck and shoulder overlap; therefore, neck and shoulder problems can be interrelated. (RX5 p. 66). He acknowledged that negative EMG findings have only 17% predictive value, opposed to 83% predictive value for positive EMG results. (RX5 p. 102). Petitioner's EMG was negative. Id.

Petitioner's physical examination performed by Dr. Salehi was not normal. The examination showed an absent brachioradialis and triceps reflex. (RX5 p. 32). Dr. Salehi considered this an objective finding, which supported his opinion that Petitioner's problems in the right arm are not neck related, but shoulder generated. (RX5 p.. 32).

Dr. Salehi did not review at any physical therapy notes after April 2022, and had no knowledge of what physical therapy activities and movements Petitioner was performing in the summer of 2022, which is when the surveillance took place. Dr. Salehi was also not aware of whether Petitioner's movements in the surveillance videos he reviewed was consistent with Petitioner's activities and movements in physical therapy. (RX5 p. 68).

In his first report, Dr. Salehi testified that work restrictions of twenty-pound lifting, thirty-five pound pulling, and no pushing or overhead work were appropriate. However, Dr. Salehi never reviewed any of Dr. Templin's records or deposition, in which Dr. Templin recommended surgical intervention. (RX5 p. 57).

In his second report, Dr. Salehi opined that Petitioner no longer required any work restrictions as to his neck. Dr. Salehi based his opinion on the EMG he reviewed, the lack of response to epidural steroid injections, a non-dermatomal distribution of pain, and the surveillance video supplied. (RX5 p. 62).

Dr. Salehi listed, in his second report, what he considered to be key portions of the video he reviewed. (RX5 p. 70). He identified Petitioner getting in and out of his vehicle and turning his head without difficulty. (RX5 p. 70-1). However, he did not characterize the movement in terms of range of motion and did not testify that any aspect of that portion of the video discussed was beyond the range of motion Petitioner had in physical therapy or at his exam. (RX5 p. 71-4).

Dr. Salehi discussed Petitioner playing baseball with his son as depicted in the surveillance video. He did not see Petitioner move his arm above his shoulder while playing with this son. (RX5 p. 77). Dr. Salehi did not specify what he meant by "pointing" in his discussion of whether the video was inconsistent with petitioner's reported capabilities. (RX5 p. 76-8).

Dr. Salehi discussed his listing of Petitioner's opening of the overhead garage door as a key point. However, he did not know what force was necessary to open the door. (RX5 p. 82). He did not know if physical therapy required similar movements from Petitioner. Id. He discussed Petitioner "working in the garage" as a key point in his report, but acknowledged he did not know what activity, movement or weights were involved. He admitted this portion did not inform his opinions about Petitioner's capabilities. (RX5 p. 86).

Ultimately, Dr. Salehi identified ball throwing, opening the garage door and moving a child's bicycle as significant to informing his opinions about Petitioner's capabilities. (RX5 p. 91). In forming his opinions, he did not know the force needed to move the door. The doctor testified that the child's bicycle would have to weigh 20 to 40 pounds to make moving it inconsistent with Petitioner's limitations. (RX5 p. 89). The heaviest object he saw Petitioner lift was the child's bicycle. (RX5 p. 98). He did not see Petitioner do overhead work. Id. He did not see him reach behind his back. Id. He did not see Petitioner pushing or pulling in excess of 35 pounds. (RX5 p. 95).

Dr. Salehi testified that he could not opine that Petitioner was engaging in any activity in the surveillance video that not something he already did in physical therapy. (Rx5 p 100) He opined that the pain symptoms Petitioner has in his right arm down into his hand is caused by cervical problem, radiculopathy. (Rx5 p. 101) Further, he stated agreed that the constant pain in the arm would preclude him from working as a carpenter but that the surveillance video showed Petitioner doing activities beyond what he stated he could do. Id.
Overall, Dr. Salehi testified that the activities performed by the petitioner on the surveillance showed the petitioner was more functional than the petitioner suggested during exam. (RX5 at 27) Dr. Salehi diagnosed the petitioner with cervical spondylosis. (RX5 at 28) He testified that he disagreed with Dr. Templin and he believed cervical surgery would not change the petitioner's symptoms. (RX5 at 28) Dr. Salehi testified that in his opinion the petitioner required no work restrictions and was at maximum medial improvement as of October 25, 2022. (RX5 at 29) Dr. Salehi testified that his opinion of petitioner's work ability was based on multiple factors including, the negative EMG, the lack of good response from the epidural injection, nondermatomal distribution of the sensory paraesthesias and the surveillance video. (RX5 at 66)

Dr. Salehi stated that reading his opinions in this case to mean that Petitioner can return to work as a carpenter would be misstating the importance of his testimony. (RX5 p. 106-7). He reiterated that he only opined that Petitioner has no restriction as it relates to his cervical spine. (RX5 p. 107-8). He stated he would defer to Petitioner's treating orthopedic surgeon as to work restrictions. (RX5 p. 109)

Testimony of Joshua Knitter, DPT- Petitioner's physical therapist

Josh Knitter is a Doctor of Physical Therapy who worked with Petitioner in physical therapy. (TR.1 P. 224). Knitter first encountered Petitioner prior to his first right shoulder surgery. (TR.1 P. 226-27). Knitter testified that Petitioner was in a lot of pain after his first surgery, and that his pain levels were abnormal. (TR.1 P. 228-29).Knitter noted that Petitioner did not materially improve between his first and second surgery. (TR.1 P. 244-45). Mr. Knitter testified that initially the petitioner's pain level was not unusual but as time went on, it was higher than usual. (Tr.1 at 229) Mr. Knitter testified that his goal is to increase function and decrease pain. (Tr.1 at 231) Mr. Knitter testified to portions of the physical therapy records he was provided by the petitioner's attorney while testifying. (Tr.1 at 213-286) Mr. Knitter testified to the petitioner's complaints of pain and lack of benefits from therapy. (Tr.1 at 245, 259, 277, 286) Mr. Knitter testified that the petitioner made complaints of extreme pain at all times. (Tr.1 at 282) Mr. Knitter testified that if he wrote something in the records it was because that is what was expressed to him by the petitioner. (Tr.1 at 286)

Knitter stated that based on his treatment of Petitioner, Petitioner would be able, based on weight, to take out trash and load it into a container. (TR.1 P. 267). Again, depending on weight, Knitter stated that Petitioner would be able to load things from ground level into a pickup truck, open a car door, open a garage door, and operate a riding lawn mower. (TR.1 P. 267). Knitter based his conclusions on movements and activities that he had Petitioner perform during physical therapy, such as wall washes. (TR.1 P. 266-70).

Testimony of Kristi Schrank, RN- Respondent Nurse Case Manager

Respondent called Kristi Schrank, a Registered Nurse and nurse case manager it assigned to Petitioner's case by Respondent. Ms. Schrank began working on Petitioner's case after his second surgery on April 22, 2022. She first saw him on April 29th. (TR2 39). At that time, Petitioner reported significant pain, including his arm feeling "dead", burning pain in his arm and hand. (TR2 56). Petitioner reported that he often shook his hand and clenched his fist in an effort to alleviate the pain. Id. By July, 2022, petitioner had not made significant progress in physical therapy. He described grinding sensations and burning, shooting, electrical "nerve" pain. (TR2 57-9). Petitioner never told Ms. Schrank that the pain ever went away after the second surgery. Id.
Nurse Shrank spoke to Dr. Malhotra, who reported that epidural steroid injections had been ineffective and needed to be repeated. (TR2 67). The injections produced more severe pain. (TR2 68). Nurse Shrank spoke to Drs. Templin and Thorsness, who never expressed any indication that Petitioner could work as a carpenter. (TR2 71). By September, 2022, Physical therapy was not going well. Petitioner's pain persisted. Dr. Templin recommended cervical surgery. In October 2022, approval for Petitioner's medical care was withdrawn. Pain management, prescriptions for Gabapentin and Amitriptyline were cancelled. Physicians' appointments were not authorized.

Testimony of Officer George Gates- Illinois Conservation officer

Petitioner called as a witness a conservation officer who testified that Petitioner obtained hunting licenses for deer and turkey. Officer George Gates testified he was employed by the State of Illinois as a Conservation Police Officer. (Tr.2 at 7) This position is affiliated with the Illinois Department of Natural Resources. (Tr.2 at 8) Within in the officer's capacity, is the process of obtaining hunting permits in the State of Illinois, including deer and turkey hunting. (Tr.2 at 8) Officer Gates testified that hunting permits can only be used by the person it register to, and it is a criminal violation if a person uses someone else's permit. (Tr.2 at 9) Officers Gates testified that this information confirmed that petitioner purchased, over the counter, three archery deer hunting permits in 2021, a hunting license, a habitat stamp, a turkey permit on September 14, 2021. (Tr.2 at 18-19) Officer Gates further testified that the petitioner purchased a firearm deer hunting permit on November 18, 2021, which was the day right before firearms deer hunting season started. (Tr.2 at 20) Officer Gates testified those permits would have had to been to be used in the year 2021. Officer Gates also testified in 2022, the petitioner purchased a combo archery deer permit on September 27, 2022. (Tr.2 at 23) These permits would have allowed the petitioner to harvest two deer during archery season. (Tr.2 at 23) The Petitioner also purchased two firearm arms deer permits on November 4, 2022. (Tr.2 at 24, RX 11) Officer Gates testified there are no other uses for deer and turkey hunting permits besides legally harvesting one of the types of animals. (Tr.2 at 22)

He testified that when patrolling during hunting season, he asks all members of groups he encounters to produce a hunting permit. (TR2, p. 31). He testified that possession of a hunting permit does not require one to hunt. Id. He testified that once an animal is harvested, users are required to report the harvest. (TR2, p. 33). Harvest tags are recorded in a database; Officer Gates testified that Guyette's tags obtained after his injury were not used. Id.

Officer Gates testified that if a person is not hunting there is no need for a hunting license or permit (TR.2 at 36) Prior to Petitioner's injury, the database shows three harvests in 2018. Id. In response to questions about hunting, Petitioner later testified and explained that he owns property on which he allows his friends to hunt during hunting season. Petitioner testified that he accompanies his friends on these excursions and that he occupies the hunting blinds. Petitioner explained that he applied for and received a hunting licenses to avoid any possible complications with conservation officers whom he might encounter while hunting. Further, Petitioner stated that he occasionally obtains deer meat from his hunting friends. By possessing a valid hunting license, Petitioner can avoid the complications that arise when deer meat is obtained without a license. (TR2, p. 203-6). Petitioner has not recorded a deer harvest on his deer tag since his work injury. Id. The Arbitrator notes that the extensive and lengthy surveillance videos did not show any hunting activity. Petitioner testified that he has not hunted since his February 9, 2021 work injury. He stated that he cannot climb a tree or clear brush necessary for hunting. (TR1 p. 177-180, 196-198) Petitioner testified he cannot prepare or use a crossbow because he is physically unable to load it.

Testimony of Brian Adams* – *Delta Group surveillance video witness

On June 30, 2023, Brian Adams testified he worked for Delta Group, as the Director of Investigations. (Tr.1 at 289) Mr. Adams testified to his certification in order to obtain his position of employment. (Tr.1 at 290) Mr. Adams testified and explained what "remote surveillance" entails, including 24hr surveillance. (Tr.1 at 290) Mr. Adams testified that the 24hrs of surveillance each day is edited and reduced to the video footage of activities of the person who is thought to be the claimant. (Tr.1 at 292) Mr. Adams testified that the unedited raw footage is retained and provided if requested. (Tr.1 at295) Mr. Adams testified that approximately four hours and twelve minutes of surveillance was provided to the respondent for this claim. (Tr.1 at 295, RX. 7) Mr. Adams testified that the reports that coincide with the video evidence are drafted by a person that reviews the video evidence. (Tr.1 at 297)

Mr. Adams testified that his group placed an automated video surveillance camera near Petitioner's house. The camera detects movement and records when movement occurs. (TR. 290). The camera was present from July 6-13, 2022, July 18 & 21, 2022 and August 25-30, 2022 for a total of 17 days. Approximately 500 hours of surveillance was obtained. His group produced video of portions of surveillance showing Petitioner; totaling four hours and approximately twelve minutes of footage. (TR. 295) (REX 7). This surveillance footage was provided to Respondent, which were there provided to its Section 12 examiners. Respondent's examiners mention nine areas of subject matter in their reports which corresponds to Petitioner Exhibit 9. Petitioner appears to have produced the clips by description from Respondent's Section 12 reports and Respondent Exhibit 7. These 9 clips are PX 9. The Arbitrator notes that Petitioner testified regarding these clips as well and they are detailed below:

1.	Petitioner playing soccer with his son.	01:21
2.	Petitioner playing soccer with his son.	01:21
3.	Petitioner taking out the trash.	01:45
4.	Petitioner loading foam into his truck	01:11
5.	Petitioner getting in his car	02:04
6.	Petitioner mowing his lawn	02:10
7.	Petitioner opening garage door	5:00
8.	Petitioner opening garbage bin	36:52
9.	Petitioner playing baseball with his son	27:17

In the various surveillance clips/videos that were produced and shown at trial, Petitioner is seen moving about in his front yard and driveway, getting in and out of various vehicles, taking out the trash, transferring plastic grocery carrier bags to his house from his car, playing soccer and baseball with his son. He is seen rolling garbage cans back and forth in his driveway, loading foam padding and cardboard into his vehicle, assisting his son on a bicycle with and without training wheels, opening and closing the overhead garage door. The arbitrator notes that this is not new footage but shortened clips taken from Respondent's surveillance footage exhibit, that corresponds with what the section12 examiners reviewed and/or focused on in their reports and testimony.

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. 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 finds Dr. Thorsness, Dr. Templin, Dr. Birman and Dr. Salehi to have testified credibly as to petitioner's diagnosis and treatment rendered as to petitioner's right shoulder and cervical spine. However, The Arbitrator finds Dr. Thorsness and Dr. Templin, the treating physicians, to be more persuasive as to petitioner's need for treatment and work ability, as it pertains to the right shoulder and cervical spine, further explained below.

The Arbitrator further finds Officer Gates, Joshua Knitter-DPT, Kristi Schrank- NCM, Brian and Adams to be credible witnesses.

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

The Arbitrator finds that Petitioner's current condition of ill being, of the right shoulder and cervical spine, are causally related to his February 9, 2021 work injury.

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).

Expert testimony should be weighed like any other evidence, with its weight determined by character, capacity, skill, and opportunities for observation. *Madison Mining Company v. Industrial Commission*, 309 Ill. 91, 138 N.E. 211 (1923). The Commission may attach greater weight to the opinion of the treating physician. *International Vermiculite Co. v. Industrial Comm'n*, 77 Ill.2d 1, 31 (1979); *ARA Services, Inc. v. Industrial Comm'n*, 226 Ill. App. 3d 225 (1992).

Petitioner currently seeks out the cervical spine surgery/fusion, as recommend by his treating surgeon, Dr. Templin. Further, he seeks payment of medical bills, TTD and payment of penalties and fees. As of the second date of trial, Petitioner continues to complain of right shoulder and cervical spine issues. Respondent also retained two section 12 examiners and relies on their opinions in the denial of futher medical care and discontinuation of TTD benefits.

In the present case, the Petitioner testified credibly that prior to his work injury, he did not have any right shoulder or neck pain. He never received injections or recommendations for injections, nor did he undergo right shoulder or neck surgery, nor receive recommendations for right shoulder or neck surgery. Since his injury on 2/9/21 and two shoulder surgeries, Petitioner has consistently reported severe right hand and arm pain. These symptoms consist of burning and shooting pains in the armpit, arm and hand. These symptoms, according to all the physicians testifying implicate some sort of nerve pain. Petitioner's symptoms are lessened by Gabapentin, a prescription specifically utilized by physicians to address nerve pain. These symptoms persist and were aggravated by physical therapy. Treating physicians initially suspected CRPS based on the symptoms' severity and persistence. All physicians believe that Petitioner is having these symptoms in his arm/ hand. The treating physicians believe Petitioner is precluded from working as a carpenter, while the Section 12 Examiners state Petitioner is at MMI and does not require additional treatment nor the recommended cervical fusion.

The ongoing disputes between the parties pertain to the need for cervical spine surgery in the form of a ACDF and whether Petitioner continues to have symptoms and injuries to the extent he complains of. There was extensive surveillance conducted and produced in this case and it is further discussed below. The Arbitrator notes that the Section 12 examiners reviewed the footage and relied on it but the treating physicians were not privy to the video.

The parties do not appear to dispute the right shoulder injury, initial diagnosis and subsequent shoulder surgeries but the cervical spine is disputed. Regarding Petitioner's neck injuries and complaints, Dr. Thorsness testified that "[Petitioner's] shoulder and neck were . . . injured at the time of the [February 9, 2021] fall" and that he "[thought] the condition in [Petitioner's] neck, the radiculopathy, likely got exacerbated during shoulder surgery." (PEX 7, P. 44). Following Petitioner's first surgery, Dr. Thorsness recommended that Petitioner engage in as much activity as possible and noted that Petitioner's right rotator cuff was intact and healed; however, there was evidence of adhesive capsulitis. Regarding the shoulder and neck pain Petitioner was experiencing following the first surgery, Dr. Thorsness was concerned that it was being caused by either Complex Regional Pain Syndrome, CPRS, or cervical radiculopathy. He opined that the pain was caused by Petitioner's February 9, 2021 work injury.

Dr. Thorsness referred Petitioner to Dr. Malhotra, and he gave Petitioner cervical spine injections, which Dr. Thorsness considered "a reasonable approach" to Petitioner's symptoms and that his referral to Dr. Malhotra for pain management was reasonable and necessary given Petitioner's injuries, all of which resulted from Petitioner's February 9, 2021 work accident. Further, Dr. Thorsness testified that referring Petitioner to Dr. Templin, a spine surgeon, was reasonable and necessary. Ultimately, Dr. Thorsness testified that all of the care and treatment he prescribed Petitioner was reasonable and necessary considering his injury.

As to Dr. Templin's recommendation for a cervical fusion, or ACDF, at C5-7, Dr. Templin testified, "I think it would be a reasonable approach to improving his pain and quality of life, yes." (PEX 8, P. 34). Further, Dr. Templin testified that the need for the ACDF was the result of Petitioner's February 9, 2021 injury and that all of Petitioner's care and treatment has been reasonable and necessary. Regarding whether Petitioner's symptoms were the product of the February 9, 2021 work injury or a degenerative condition, Dr. Templin testified that the injury,

surgeries, and physical therapy were all the product or the February 9, 2021 work injury and not the product of a degenerative condition. Further, Dr. Templin testified that if he had picked up on any notion that Petitioner was "faking, making up, exaggerating, being a baby, or anything else with pain," he would have noted it in his records and that he would not have prescribed neck surgery to address the pain, which Dr. Templin testified would be reasonable and necessary. Dr. Templin never noticed any "pill seeking" or similar behavior from Petitioner.

Section 12 Examiner Dr. Birman opined that Petitioner suffered a shoulder injury and, following shoulder surgery suffered from post-surgical capsulitis. His impression that after the second shoulder surgery, Petitioner continued to exhibit signs of right arm and hand numbness, pain and tingling. He suspected these symptoms were cervicogenic in nature. He reviewed physical therapy notes from April 2022, following Petitioner's second surgery. Dr. Birman opined that referral to pain management was appropriate given Petitioner' symptoms. Further, Dr. Birman did not know the type of physical therapy Petitioner was performing or what movements Petitioner was encouraged to perform. Dr. Birman did base some of his opinions on portions of the surveillance depicting Petitioner throwing a baseball and moving his right hand and arm. Dr. Birman described the normal motion used in throwing a baseball overhand as "circumduction," which is outward rotation of the arm and shoulder in a throwing motion. However, Dr. Birman was not able to identify any circumduction in any portion of the video he reviewed. The Arbitrator also did not see full overhand, normal motion of the right arm by petitioner. In another portion of the surveillance showing Petitioner loading objects into the back of his truck, Dr. Birman did not know what the weights of the objects were. Dr. Birman admitted that if had known that none of the objects weighed more than twenty pounds, Petitioner's actions would have been consistent with his stated capabilities. Petitioner testified that the objects were foam rubber padding and cardboard, all of which weigh less than ten pounds. Dr. Birman stated that he did not see Petitioner lift any object over his head that weighed more than one pound. Dr. Birman opined that Petitioner's arm limitations after his second surgery through the June 27, 2022 physical therapy note he reviewed at his deposition were the result of neck problems, not shoulder problems. Dr. Birman specifically agreed that Petitioner's reported level of symptoms and the extent of his right arm disfunction are not consistent with returning to work as a carpenter. Again, the above testimony and evidence pertains to Petitioner's abilities shown in the surveillance as of summer 2022, and the Arbitrator does not find that the footage shows that petitioner is able to work as a carpenter.

Section 12 Examiner Dr. Salehi opined that Petitioner's arm symptoms are from his shoulder. Dr. Salehi also acknowledged that in order for Petitioner to return to work as a carpenter, Petitioner would require adequate function of both his arm and neck. Dr. Salehi testified that his opinions pertained to the cervical spine and then opined that Petitioner's problems in his right arm and hand were not cervicogenic or the result of an aggravated, previously asymptomatic cervical issue. Dr. Salehi's reports note the absence of Waddell signs, which he uses to detect whether a patient is misreporting, faking, or magnifying symptoms. He believed Petitioner's symptoms were not present before Petitioner's injury but are present after. Dr. Salehi opined that the cervical MRI suggested that the accident aggravated a pre-existing condition in Petitioner's neck, generating symptoms in his hand and arm. Dr. Salehi never looked at any physical therapy notes after April 2022, and had no knowledge of what physical therapy activities and movements Petitioner was performing in the summer of 2022. Further, Dr. Salehi was not aware of whether

Petitioner's movements in the surveillance videos he reviewed was consistent with Petitioner's activities and movements in physical therapy. In his second report, Dr. Salehi opined that Petitioner no longer required any work restrictions as to his neck. Dr. Salehi based his opinion on the EMG he reviewed, the lack of response to epidural steroid injections, a non-dermatomal distribution of pain, and the surveillance video supplied. Dr. Salehi discussed Petitioner playing baseball with his son as depicted in the surveillance video. He did not see Petitioner move his arm above his shoulder while playing with this son. Dr. Salehi did not specify what he meant by "pointing" in his discussion of whether the video was inconsistent with petitioner's capabilities.

Dr. Salehi discussed his listing of Petitioner's opening of the overhead garage door as a key point. However, he did not know what force was necessary to open the door. He did not know if physical therapy included similar movements. He discussed Petitioner "working in the garage" as a key point in his report, but acknowledged he does not know what activity, movement or weights were involved. He admitted this portion did not inform his opinions about Petitioner's capabilities. Ultimately, Dr. Salehi identified ball throwing, opening the garage door and moving a child's bicycle as the significant activities to informing his opinions about Petitioner's capabilities. In forming his opinions, he did not know the force needed to move the door. He assumed that the child's bicycle would have to weigh 20 to 40 pounds to make moving it inconsistent with Petitioner's limitations. The heaviest object he saw Petitioner lift was the child's bicycle. He did not see Petitioner do overhead work. He did not see him reach behind his back. Id. He did not see Petitioner pushing or pulling in excess of 35 pounds. Assisting his son riding a bike was not relevant to Dr. Salehi's opinions. Dr. Salehi reiterated that Petitioner only has no restrictions as it pertains to the cervical spine and defers to the treating orthopedic surgeon on the shoulder for work restrictions.

Respondent submitted the video surveillance into evidence and suggests that Petitioner was exaggerating his pain levels and his range of motion. However, the video evidence shows that Petitioner was doing what his treating physicians advised him to do, as well as what was stressed to Petitioner during physical therapy by Mr. Knitter. When asked if he recommended and encouraged Petitioner to engage in as much activity as possible, Dr. Thorsness testified that he did, in fact, recommend and encourage Petitioner to do so. Dr. Thorsness testified that not using and stretching his right arm and shoulder would decrease Petitioner's range of motion and pain symptoms. Further, Dr. Thorsness encouraged Petitioner to be as active as possible and to continue pushing the right upper extremity's range of motion as far as he conceivably could to prevent capsulitis symptoms. Dr. Thorsness also testified that, after his second surgery, Petitioner's physical therapy included movement of his right arm over his head as much as Petitioner could tolerate. Despite that recommendation, Petitioner is seen on hours of footage participating in activities of daily living but is infrequently lifting his arm above head nor carrying heavy items. The Arbitrator notes opening the garage door, helping his son into a tree and catching a ball, show Petitioner with his arm/hand above shoulder height.

The Arbitrator notes that Dr. Templin's recommendations are consistent with Dr. Thorsness'. When asked if there would be any logical reason that Petitioner would be able to perform certain activities outside of physical therapy that he could not perform during physical therapy, Dr. Templin replied: I think if [Petitioner] needed to get something done, he would have to do those activities. He probably doesn't have an assistant that does everything for him around his house and otherwise, so if he has to do something, we . . . can all, you know, deal with our pain and do what we need to do.

The testimony of Drs. Thorsness and Templin appear to show that Petitioner was not told to avoid use of his right arm/shoulder and needed to continue to use the right arm so that Petitioner's range of motion would increase, not only to prevent further problems but also to live a normal life. Attempting to play sports with his son, helping his son balance and ride a bike, taking out the trash, loading his truck, opening his garage and car doors, and mowing his lawn are all everyday activities that the Arbitrator would expect Petitioner to attempt to perform and was not prohibited to perform by his doctors.

Additionally, the Arbitrator finds that the testimony of Drs. Thorsness and Templin to be more persuasive and more reliable than the testimony of the section 12 examiners, Dr. Birman and Dr. Salehi. The arbitrator also reviewed the extensive medical records and relies on DPT Knitter's testimony and PT records. Drs. Thorsness and Templin are Petitioner's treating physicians, and the Arbitrator places greater weight on their testimony as further explained below. Drs. Thorsness and Templin had more personal exposure to Petitioner and a better opportunity to observe him. Drs. Thorsness and Templin are of the opinion that Petitioner's work accident caused both his right shoulder and cervical spine problems. Drs. Thorsness and Templin premised their opinions on the fact that there were no prior shoulder or cervical spine symptoms and no prior MRIs showing any issues, as well as physical observation, objective testing and subjective complaints.

Drs. Salehi and Birman rely in part on their review of surveillance however, the Arbitrator notes that it appears neither of Respondent's Section 12 physicians reviewed all of the physical therapy notes after April, 2022, after the time of Petitioner's second surgery. Reference to the notes shows that Petitioner was in pain in physical therapy during the Summer of 2022, at the time surveillance was obtained. The physical therapy records also indicate and show what Petitioner was doing in therapy sessions and what was expected of him. All of the relevant physical therapy notes were not included in Drs. Salehi and Birman's opinions and all PT records do not appear to have been provided to the doctors. The Arbitrator notes that neither Dr. Salehi or Birman opined that Petitioner could work at the physical demand required of a carpenter.

Overall, Drs. Thorsness, Templin and Malholtra's opinions as to Petitioner's condition are more credible than those of Drs. Salehi and Birman. Drs. Salehi and Birman were not given all pertinent records, including physical therapy notes and notes including the medical reasoning and rationale for Drs. Templin, Birman and Malholtra's plan of treatment. It is important to the Arbitrator that the treating physicians also knew what was required of petitioner in therapy and how Petitioner was performing in therapy from spring to summer 2022. It is important for those providing surgical recommendations and medical opinions, to have complete medical records.

Upon examination, the video surveillance reviewed that Drs. Birman and Salehi rely on, does not appear to support their change of opinion. Drs. Birman and Salehi testified that none of the activities in over 4 hours of video produced, gleaned from over 500 hours of 24 hour surveillance for 17 days the Arbitrator notes, reveals Petitioner doing any activity that he was not also doing in physical therapy. None of the activities shown in the surveillance suggest that Petitioner could work as a carpenter, including crawling, working with tools overhead, lifting and carrying 100 pounds or engaging in the vigorous physical demands required of a carpenter, as Petitioner testified to.

It is significant to the Arbitrator that out that the 4 plus hours of video produced, all clips show some activity however, Petitioner is generally engaged in the same level of activity he would likely perform at physical therapy. The surveillance overall shows Petitioner making best attempts at every day activities including taking the garbage can out, spending time with his son whether involving sports or bike riding etc. Petitioner is not seen performing heavy lifting or doing activities outside of what he would perform at physical therapy. The Section 12 Examiners appear to speculate as to weights, angle and heights for which Petitioner is seen engaged in some sort of every day activity, or the doctors just do not know if Petitioner is exceeding either his light duty work restrictions or the physical therapy session requirements. For those additional reasons, the Arbitrator places less weight on the opinions of the section 12 examiners. Further, the Arbitrator has already found Petitioner to be credible and finds the explanations and further details from Petitioner on the surveillance footage to be reasonable and persuasive. An example would be how Petitioner is not performing a full overhand throw, windmill style to properly teach his young son how to throw a baseball and is instead seen to be pushing or flicking the ball. Petitioner previously played baseball and one can assume petitioner would likely be operating his shoulder/arm in a normal and full "windmill" fashion on the hidden video surveillance, if he was in fact not injured to the extent he previously complained of.

The wide breadth of surveillance yielding only 4 hours of any activity does not demonstrate to the Arbitrator that Petitioner is capable of performing work at the level of a carpenter's demand, nor that he is faking or somehow lying about his injuries to his right shoulder and cervical spine. Finally, it is worth noting that Petitioner is seeking an inherently uncomfortable procedure, an anterior cervical discectomy and fusion at C5-C6 and C6-C7. The Arbitrator does not have suspicion of secondary gain or symptom magnification, and notes the fact that Petitioner is seeking an inherently painful procedure in an effort to alleviate his ongoing symptoms, that he has consistently complained of to all physicians involved in this case. Given the volume of comprehensive surveillance, the absence of any activity beyond the scope of what Petitioner was performing in physical therapy, it is apparent that Petitioner is not capable of performing the full duties of a carpenter.

The Arbitrator herein incorporates the finding of fact and conclusions of law explained above and finds the petitioner's current condition of ill-being is causally connected to the accident sustained on February 9, 2021. In support of such a finding, the Arbitrator relies on the treating doctor's opinions and the need for additional medical treatment and ongoing work restrictions. The arbitrator has already found petitioner to be credible and finds his testimony persuasive as well. In reviewing the testimony of the petitioner and the totality of the evidence, the Arbitrator finds the opinions of Dr. Birman and Dr. Salehi less persuasive and does not rely on them in reaching this conclusion regarding the causation of petitioner's injuries.

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. The Arbitrator finds that all of the treatment that was rendered to Petitioner was reasonable and necessary.

Section 8(a) of the Act states a Respondent is responsible …"for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury…" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. See *Gallentine v. Industrial Comm'n*, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

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 cervical spine and right shoulder is found to be reasonable and necessary, and would be casually related. The Arbitrator relies on the medical records, and opinions of Dr. Templin and Dr. Thorsness. Respondent has stipulated that an accident occurred, and treatment rendered through October 31, 2022 is causally related to the work accident on February 9, 2021. (Arb. Ex. 1) See Petitioner Exhibit 5 for relevant bills in evidence. All medical treatment incurred thus far and provided by Petitioner's treating physicians must be paid by Respondent. The outstanding bills that remain, including but not limited to:

- Expert Pain Physicians LLC- Dr. Malhotra: $1,375.00 outstanding and must be paid by Respondent per the Fee schedule
- Illinois Bone & Joint $0 balance
- Salt Creek Surgery Center $0 balance
- Dr. Malhotra $0 balance
- Chicago Neurospine Surgery PLLC $0 balance
- Dr. Orest P. Horodysky $0 balance

The Arbitrator finds that Respondent failed to pay for the above noted reasonable and necessary medical treatment pursuant to Section 8(a) of the Act.

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

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein. The Arbitrator awards Petitioner the prospective medical care he seeks.

Petitioner seeks prospective care in the form of anterior cervical discectomy and fusion, as recommended by treating physician, Dr. Templin. Respondent maintains that Petitioner failed to establish causation as to the need for these surgical measures and believes Petitioner to be at MMI per the opinions of Dr. Birman and Dr. Salehi. The Arbitrator has previously found in Petitioner's favor on the issue of causation. With respect to the cervical spine, the Arbitrator awards prospective care in the form of the cervical spine fusion (ACDF) as recommended by Dr. Templin. With respect to the cervical spine, the Arbitrator awards the prospective care as stated above, in addition to any related pre operative and post operative care in the form of medications, therapy, pain management etc., as recommended by Dr. Templin.

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

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Westin Hotel v. Indus. Comm'n*, 372 Ill.App.3d 527, 542 (1st Dist. 2007). In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n*, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

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.

It is a well-settled principle that when a claimant seeks TTD benefits, the dispositive inquiry is whether the claimant's condition has stabilized, i.e., whether the claimant has reached maximum medical improvement. *Westin Hotel v. Industrial Comm'n*, 372 Ill.App.3d 527, 542, 310 Ill.Dec.

18, 865 N.E.2d 342 (2007); *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill.App.3d 582, 594, 296 Ill.Dec. 26, 834 N.E.2d 583 (2005); *F & B Manufacturing Co. v. Industrial Comm'n*, 325 Ill.App.3d 527, 531, 259 Ill.Dec. 173, 758 N.E.2d 18 (2001). See also *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill.2d 107, 118, 149 Ill.Dec. 253, 561 N.E.2d 623 (1990) (TTD compensation is provided for in section 8(b) of the Workers' Compensation Act, which provides, "[W]eekly compensation * * * shall be paid * * * as long as the total temporary incapacity lasts," which this court has interpreted to mean that an employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit).

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 is causally related to his work injury on 2/9/21, any periods of temporary total disability incurred would be the responsibility of Respondent. The Arbitrator notes that Respondent has stipulated that Petitioner is owed temporary total disability from the date of accident through November 23, 2022. The dispute regarding TTD begins after 11/23/22. Respondent paid TTD benefits through 11/23/22 but there appears have been an underpayment in the amount of 2 and 2/7 weeks from 11/7/22 through 11/23/22. Pursuant to this stipulation, the Arbitrator hereby orders Respondent to pay TTD underpayment from November 7, 2022 through November 23, 2022, a period of 2-2/7ths weeks, totaling $2,085.18. (Arb EX1)

Petitioner further alleges and the evidence supports, that Petitioner was temporarily and totally disabled for the period of 11/24/22 through 8/15/23 (IWCC hearing date), a period of 37-5/7 weeks. Respondent did not pay any TTD benefits during this time which the Petitioner was authorized off work or on restricted work, (per his treating physicians) and did not work. The Arbitrator has already found for Petitioner on the issue of causation and finds the treating physicians and their medical opinions to be more persuasive that the Section 12 Examiners regarding Petitioner's inability to work full duty. The arbitrator once again notes that Petitioner is and was a credible witness and was restricted from work during the TTD periods claimed. Petitioner works as a carpenter and per his treating physicians has not yet finished treatment nor been released back to full duty work as a carpenter. The Arbitrator previously awarded the recommended prospective medical treatment in the form of a cervical fusion and once again finds that Petitioner is not at maximum medical improvement, per Dr. Templin. The Arbitrator finds Respondent shall pay petitioner 37 5/7 weeks of TTD benefits or the period of 11/24/22 through 8/15/23 at a rate of $1,326.93/week.

Respondent shall be given a credit of $85,681.76 for TTD, $31,710.45 for TPD, $0 for maintenance, and $0 for other benefits, for a total credit of $117,392.21. Respondent is entitled to a credit of $0 under Section 8(j) of the Act, as no benefits were paid by any group insurance through Respondent.

Issue M, whether penalties or fees should be imposed upon Respondent, the Arbitrator finds as follows:

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 surveilled Petitioner over 17 days. Respondent extensively investigated this case. The parties presented 5 live witnesses at trial including Petitioner, in addition to 4 medical witnesses via evidence deposition all of which underwent cross examination and redirect examination to address the causation of Petitioner's current condition of his cervical spine and right shoulder, Petitioner's ability to work and whether Petitioner requires prospective cervical spine surgery. Further, Respondent alleges credibility issues with Petitioner's true abilities and the nature of his current injury, per the surveillance. Respondent also had its Section 12 examiners review the surveillance as well. Accordingly, nonpayment of benefits following the latest IME examinations and reports, 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. Despite awarding Petitioner surgery and TTD benefits per this Decision, there were legitimate disputes between the parties at trial.

Petitioner underwent more than one IME with both Dr. Birman and Dr. Salehi. The doctors opinions changed following their viewing of surveillance of Petitioner. The Arbitrator notes there was extensive medical records and evidence for the IME doctors and treating physicians to consider. Petitioner has already undergone two shoulder surgeries and seeks a cervical fusion at

this time. 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.

For the reasons stated above, Petitioner is entitled to an award of benefits under The Illinois Workers' Compensation Act consistent with the findings herein.

It is so ordered:

Jacqueline C. Hickey
Arbitrator

March 1, 2024
Date

March 4, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC003073
Case Name	Kelly Hronek v. Sears Holdings Corporation
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0022
Number of Pages of Decision	22
Decision Issued By	Maria Portela, Commissioner, Amylee Simonovich, Commissioner

Petitioner Attorney	Jose Rivero
Respondent Attorney	Frank Barber

DATE FILED: 1/16/2025

/s/Maria Portela,Commissioner
Signature

DISSENT: /s/Amylee Simonovich,Commissioner
Signature

25IWCC0022

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

KELLY HRONEK,

Petitioner,

vs. NO: 18 WC 03073

SEARS HOLDINGS CORP.,

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, causation, medical expenses, temporary total disability benefits and permanent partial disability benefits and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission affirms the Arbitrator's finding that Petitioner failed to prove that she sustained a compensable accident arising out of and in the course of her employment on July 14, 2017. However, the Commission strikes the analysis of the Arbitrator under Section "C" and replaces it with the following:

The Commission finds that Petitioner's fall down the stairs that resulted in an injury to her ankle on July 14, 2017 arose out of a risk personal to the Petitioner.

In *McAllister* the Illinois Supreme Court noted that "generally, all risks to which a claimant may be exposed fall within one of three categories." These three 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. *McAllister v. Illinois Workers' Comp. Comm'n*, 2020 IL 124848, ¶ 38.

According to the Court in *McAllister*, the first category of risks involves risks that are distinctly associated with employment. "Employment risks include the obvious kinds of industrial

injuries and occupational diseases and are universally compensated." The Court went on to note that "examples of employment-related risks include 'tripping on a defect at the employer's premises, falling on uneven or slippery ground at the work site, or performing some work-related task which contributes to the risk of falling.'" *McAllister v. Illinois Workers' Comp. Comm'n*, 2020 IL 124848, ¶ 40, citing *First Cash Financial Services v. Industrial Comm'n*., 367 Ill. App.3d at 106.

The *McAllister* Court reasoned that 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.

The facts of the occurrence are undisputed. Petitioner was leaving her workstation to take her son to a doctor's appointment off campus. Her son was located in a daycare center in another building on Respondent's corporate campus. Petitioner testified that while walking down the stairs from the second floor to the first floor she fell as she passed around a coworker who had stopped on the stairs ahead of her. As she passed around the coworker she fell down one or more stairs to the landing in the stairwell.

Petitioner testified that she regularly used the stairs although an elevator was also available. She was clear that she was not required to use the stairs in furtherance of her job responsibilities. Her free choice of using the stairs in lieu of the elevator did not rise to meet the burden of showing her injury arose out of her employment. She must prove some risk was connected with or was incidental to the employee's duties. The mere fact that the person was at the location of the injury because of his employment alone is insufficient.

Petitioner was equally clear that there was no defect in the stairs, and more clearly, she did not know how she fell.

The evidence is clear that Petitioner was not engaged in any activity in furtherance of her job duties. She was on a personal errand that was not for her personal comfort that would have been in furtherance of her job duties. Petitioner was not exposed to a risk that was incidental to her job duties. Petitioner could not provide a reason why she suddenly fell on the stairs on July 14, 2017. (T. 47)

As the Commission finds that Petitioner's accident did not arise out of a risk distinctly associated with Petitioner's employment, the analysis then focuses on whether the risk was one that was personal to the employee.

"Personal risks include nonoccupational diseases, injuries caused by personal infirmities such as a trick knee, and injuries caused by personal enemies and are generally non-compensable." *McAllister v. Illinois Workers' Comp. Comm'n*, 2020 IL 124848, ¶ 42. "Injuries resulting from personal risks generally do not arise out of employment. An exception to this rule exists when the workplace conditions significantly contribute to the injury or expose the employee to an added or increased risk of injury." *McAllister v. Illinois Workers' Comp. Comm'n*, 2020 IL 124848, ¶ 42

citing *Rodin v. Industrial Comm'n*, 316 Ill. App.3d at 1229. An exception may occur if the workplace conditions significantly contribute to the injury or expose the employee to an increased risk of injury. The evidence does not support that there was a defect in the stairs, nor does it support that the presence of another employee on the stairs was sufficient to constitute a hazardous condition in the workplace.

In the instant case, the Petitioner admitted to a long history of right ankle problems. These problems were documented in the medical records from Midwest Orthopedics at Rush dating as far back as 2007. Dr. Holmes, Petitioner's treating doctor, noted that years before this incident that Petitioner had a history of numerous ankle injuries and fractures. He also noted that as a result of these injuries she had rather dramatic chronic right lateral ankle instability which resulted in a history of issues with giving way of the right ankle. Dr. Holmes opined that eventually Petitioner will require ligament reconstruction to reestablish the stability of the ankle. (Rx2, 7/18/2007 note)

The Commission finds that the incident was a result of a personal risk to the Petitioner. As the accident was the result of a personal risk, the Commission finds that there is no need to conduct a neutral risk analysis.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 10, 2023 is hereby affirmed and adopted with the modifications noted above.

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.

January 16, 2025

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

MEP/dmm
O: 111924
49

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

DISSENT

I respectfully dissent from the opinion of the majority and would reverse the Decision of the Arbitrator. After carefully considering the totality of the evidence, I find that Petitioner has met her burden of proving that she sustained an accident that arose out of and in the course of her employment.

There is no dispute that Petitioner was in the course of her employment. When reviewing the issues in dispute at the start of the Arbitration hearing, Petitioner's counsel stated, "So, Judge, I just want to clarify for the record the issue on accident. My understanding is Respondent is not disputing occurrence, and it is my understanding that the Respondent is not disputing in the course of. This is solely an arising out of dispute." T. 5-6. There was no disagreement by Respondent. This is further confirmed by Respondent's statements on the Request for Hearing: "Respondent disputes liability for medical bills based on the arising out of dispute on case" and "Respondent disputes liability for temporary total disability benefits based on arising out of dispute on case." T. 77-78.

Nonetheless, the Arbitrator appeared to conflate the issues of "in the course of" and "arising out of" by addressing the personal comfort doctrine, which pertains solely to the issue of "in the course of." See *Circuit City Stores, Inc. v. Ill. Workers' Comp. Comm'n*, 391 Ill. App.3d 913, 921 (2009).

It is well settled that an injury accidentally received by an employee on the premises of his employer while going to or from his place of employment by a customary or permitted route, within a reasonable time before or after work, is received in the course of and arises out of his employment." *Chmelik v. Vana*, 31 Ill. 2d 272, 279, 201 N.E.2d 434, 439 (1964). Petitioner was descending stairs that she regularly transverses to enter and exit the workplace, and at the time of the accident she was descending to take a break from work. She was clearly "in the course of" her employment when the injury occurred.

As to "arising out of," this requirement concerns the origin or cause of the claimant's injury. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 672 (2003). There are three types of risks to which employees may be exposed: (1) risks that are distinctly associated with employment; (2) risks that are personal to the employee, such as idiopathic falls; and (3) neutral risks that do not have any particular employment or personal characteristics. *Potenzo v. Ill. Workers' Comp. Comm'n*, 378 Ill. App. 3d 113, 116, 317 Ill.Dec. 355, 881 N.E.2d 523, 527.

In *McAllister v. Ill. Workers' Comp. Comm'n*, 2020 IL 124848, the Supreme Court clarified that a risk is distinctly associated with an employee's employment if at the time of the occurrence the employee was (1) performing acts he or she was instructed to perform by the employer, (2) performing acts that he or she had a common law duty to perform or (3) performing acts that the employee might reasonably be expected to perform incident to his or her assigned duties. *McAllister*, ¶ 46.

The act of traversing stairs is an act that an employer might reasonably expect its employees to perform. Petitioner testified that her office was on the second floor and that she primarily took the stairs to get to her office. T.9. She testified that she also used the stairs when she left to meet with vendors or meet with different teams on different floors. T.10, 37. She also described using the stairs with her team, "because the team traveled together". *Id*. No evidence was offered to refute Petitioner's testimony. As such, Respondent might reasonably expect that Petitioner would traverse stairs throughout the day to enter and exit her office and to attend meetings. While Petitioner testified that there were elevators, she indicated that the elevators did not always work, and the stairs were the primary method of transversing between floors. T.9. More importantly,

the option to use the elevator has no bearing on whether the accident arose of out her employment. See *Rund v. Ill. Workers' Comp. Comm'n*, 2018 IL App (4th) 170054WC, ¶ 16.

Further, while there is no dispute that there was no physical defect on the stairs, the presence of a "hazardous condition" on the employer's premises renders the risk of injury a risk incidental to employment. As Petitioner was descending the stairs, a woman, "Amanda," in front of her abruptly stopped. T. 12. The abrupt stop caused Petitioner to let go of the railing with her left hand, causing her to veer right and walk around the woman to avoid collision. T. 12-13. Petitioner testified, "It felt like my foot got stuck on the carpet as I was trying to walk around her." T. 13. The Athletico Physical Therapy Initial Evaluation states, "…she felt that he[r] heel got stuck in the carpet which made her roll her ankle and she fell down the stairs." T. 291. The abrupt stop of this woman constituted a "hazardous condition" on the employer's premises as it caused Petitioner to let go of the railing as she moved around her.

In *Knox County YMCA v. Indus. Comm'n*, 311 Ill. App. 3d 880, 885, 725 N.E.2d 759 (2000), an award was upheld where the claimant was descending stairs while holding a soft drink and her purse. The Court noted that "[a]bsent the purse and the soft drink in her hands, claimant would have been able to grab on to the stairwell's railings." Similarly, in *Daniels v. Indus. Comm'n of Ill.,* 1995 Ill. Wrk. Comp. LEXIS 202, the Circuit Court of Cook County upheld the award of benefits to a worker "who had been forced to ascend on the other side of the stairway because of debris on the stair and was forced to make a sudden movement to avoid a collision with other employees at the top of the stairway…" *Daniels,* at 12. A claimant need not prove a hazard to which they were exposed was the sole or even principal cause of injury, only that it was "a" causative factor resulting in the injury. *All Steel, Inc. v. Indus. Comm'n*, 221 Ill. App. 3d 501, 504, 582 N.E. 2d 240 (1991).

Even if Petitioner's accident was not due to a risk distinctly associated with her employment, I believe the case is compensable under the neutral risk analysis, as Petitioner was exposed to a risk to a greater degree than the general public.

"Injuries resulting from a neutral risk generally do not arise out of the employment and are compensable under the Act only where the employee was exposed to the risk to a greater degree than the general public." *Springfield Urban League, v. Ill. Workers' Comp. Comm'n*, 2013 IL App (4th) 120219WC, ¶ 27. "Such an increased risk may be either qualitative, such as some aspect of the employment which contributes to the risk, or quantitative, such as when the employee is exposed to a common risk more frequently than the general public." *Metro. Water Reclamation Dist. of Greater Chicago v. Ill. Workers' Comp. Comm'n*, 407 Ill. App. 3d 1010, 1014, 944 N.E.2d 800 (2011).

Petitioner was exposed to a greater risk than the general public because she traversed the stairs on which she injured herself more frequently than the general public. The seminal case regarding quantitative risk is *Vill. of Villa Park v. Ill. Workers' Comp. Comm'n*, 2013 IL App (2d) 130038WC. In that case, the claimant was injured on a set of stairs which he traversed six times per day for his personal comfort and to complete work activities. *Id*., ¶ 21. The Appellate Court determined that despite the absence of any defect on the stairs, the frequency with which the claimant used the stairs placed him at an increased risk on a quantitative basis from that to which

the general public is exposed. *Id*., ¶13.

In the instant case, Petitioner testified that she regularly traverses the stairway where she sustained her accident at least ten (10) times per day, thereby placing her at an increased risk. T.37. Petitioner testified that she would take the stairs upon arrival (1), to and from lunch (2), to and from two daily breaks (4), at least one meeting with vendors (2), and then to leave for the day (1). T. 9-10. Petitioner testified that she and her team with the home appliances department used the stairs to routinely go to meetings together as a team. T. 37. The frequency with which Petitioner traversed the stairwell increased her risk to a greater degree than that of the general public.

The option to use the elevator again remains irrelevant to the analysis. In the matter of *Fields v. Advocate Trinity*, 23IWCC0037, this Commission found that Petitioner regularly traversed the stairs at work and was thus exposed to a risk to a greater degree than the general public, despite the fact that Petitioner "could have used the elevator." *Id*. at 14.

I disagree with the majority that this case should be analyzed under the personal risk doctrine. While Petitioner was seen by Dr. Holmes in 2007 for lateral ankle instability and episodes of giving way of the ankle, it was in the context of a recent ankle sprain injury. T. 411. There was no indication she experienced any further giving way of the ankle in the interim ten (10) years. In fact, she returned to Dr. Holmes in 2009 for a course of treatment for a left 2nd metatarsal stress fracture, with no mention of any right ankle complaints. T. 403-404, 408. She also sought a second opinion with Dr. Vinci on December 9, 2009, with no mention of any right ankle complaints and a normal right foot examination. T. 95-96. Petitioner returned to Dr. Vinci in 2012 for an ingrown toenail on her right great toe, and again had a normal right foot examination. T. 93-94.

The record is replete with Petitioner's mechanism of injury being that she rolled her ankle, with no reference to "giving way." It is speculative that Petitioner's ankle instability from 2007 caused her ankle to roll on the stairway. In fact, there are multiple references to Petitioner feeling "stuck" on the carpet. As noted above, Petitioner testified, "It felt like my foot got stuck on the carpet as I was trying to walk around her…My ankle rolled when I was veering to the right." T. 13-14. The Athletico Physical Therapy Initial Evaluation states, "…she felt that he[r] heel got stuck in the carpet which made her roll her ankle and she fell down the stairs." T. 291.

On the Athletico Physical Therapy Patient Medical History & Intake Questionnaire, Petitioner wrote, "used to be very active before I fell." T. 305. She testified, "I was very active my entire life. I owned a fitness business prior to working at Sears. I would run 5 and 10Ks with my children while pushing them in a stroller." T. 29. It was only after the instant injury that Petitioner could no longer run around the yard with her children, practice soccer with her son, and swim with her daughter. T. 30. While Petitioner admitted to prior ankle issues, mostly in her childhood, she testified that nothing like this ever happened before. T. 48-50.

It is apparent from the medical records that Petitioner sought medical attention for foot issues several times in the ten (10) years following her diagnosis of ankle instability. Yet, there is no indication in those records that she was plagued by issues of her ankle giving way. Further, there is no medical opinion in the record that her history of ankle instability ten (10) years prior contributed to her rolling her ankle on the stairway. To the contrary, the record establishes that it

was her foot getting stuck on the carpet as she veered around Amanda that caused her to roll her ankle. The medical evidence does not establish any personal condition contributed to her fall.

For these reasons, I believe Petitioner met her burden of proving that she sustained an injury that arose out of and in the course of her employment.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC003073
Case Name	Kelly Hronek v. Sears Holdings Corporation
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Steven Fruth, Arbitrator

Petitioner Attorney	Jose Rivero
Respondent Attorney	Frank Barber

DATE FILED: 3/10/2023

THE INTEREST RATE FOR THE WEEK OF MARCH 7, 2023 4.97%

/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

Kelly Hronek Case # **18 WC 3073**
Employee/Petitioner
v.
Sears Holding 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 **May 23, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

N. ☐ Is Respondent due any credit?

O. ☐ Other _____

FINDINGS

On **7/14/2017**, 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 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 $**65,527.32**; the average weekly wage was $**1,240.91**.
On the date of accident, Petitioner was **36** years of age, ***married*** with **2** dependent children.
Petitioner ***has*** received all reasonable and necessary medical services.
Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services.
Respondent shall be given a credit of $**0** 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 failed to prove that she sustained and accidental injury that arose out of and in the course of her employment. Therefore, Petitioner's claim for benefits is denied.

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

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

_____ **MARCH 10, 2023**

Signature of Arbitrator

Kelly Hronek v. Sears Holdings Corporation
18 WC 003073

INTRODUCTION

This matter proceeded to hearing before Arbitrator Steven Fruth. The disputed issues were: ***C:*** Whether an accident occurred that arose out of and in the course of her employment with Respondent; ***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?

The Arbitrator redacted certain personal identifying information which was included contrary to Illinois Supreme Court Rule 138.

STATEMENT OF FACTS

Petitioner Kelly Hronek testified that at the time of the incident she was working for Respondent Sears Holdings Corporation at their corporate office in Hoffman Estates, Illinois. Petitioner testified she was hired in February 2017. At first she worked as an Inventory Analyst. At the end of June 2017, she was promoted to Associate Buyer in the Refrigeration Department. An Associate Buyer Petitioner's job duties included meeting with vendors, working on ads, assortments and inventory and forecasting sales.

Petitioner testified that her office was located on the second floor of the Home Appliance wing. She testified that both stairs and elevators were located in the Home Appliance Wing. At times she used the elevators, but primarily used the stairs because the elevators did not always work. However, once she started working in the Refrigeration Department, she almost exclusively used the stairs. She testified she was not required to use the stairs but was allowed to use either the stairs or the elevators. She testified that when her team in the Refrigeration Department would go to client meetings off campus they would use the stairs as a team.

Petitioner testified that on July 14, 2017, she was at her office in Hoffman Estates. At around 10:30 AM Petitioner left to take her son to a doctor's appointment off campus. Petitioner testified that there was a daycare on the Sears

campus for the children of Sears employees. She informed her boss that she was leaving to take her son to this appointment.

Petitioner testified that as she walked down the stairs there was another woman, "Amanda", walking down the stairs in front of her. Amanda was on her phone. While she was looking at her phone Amanda abruptly stopped on the stairs. Petitioner caught up to this woman about one or two steps from the landing. In order to get around her, Petitioner let go of the railing to veer to the right around the woman. Petitioner testified that as she did so, she tripped and fell to the landing of the stairs. Petitioner testified that she did not know why she tripped but felt that her foot got "stuck on the carpet."

Petitioner denied that there was any defect in either the carpet or the stairs. Petitioner testified that she was wearing Keds, a type of flat-bottomed gym shoes. She testified that she was not carrying anything as she walked down the stairs. Petitioner testified that she was not in a rush or hurrying down the stairs. Petitioner testified that she told all of her doctors about Amanda on the stairs and her role in causing Petitioner to fall down the stairs. She identified Petitioner's Exhibit #7, a copy of a photo of the stairwell.

Petitioner testified that her right ankle rolled and heard a loud pop. She then had excruciating pain in her ankle. Petitioner testified that "Amanda" helped her up and down the rest of the stairs from the landing to the ground floor. From there, Petitioner went to her car and took her son to his appointment. Following the appointment, she returned to her office and completed her workday. That afternoon Petitioner also went to the on-campus nurse's office and got ice for her ankle swelling and Advil for her pain.

Petitioner first sought medical treatment on Monday July 17, 2017 at DuPage Medical Group in Bloomingdale, IL (PX #1). Petitioner gave a history of walking down the stairs when she suffered an inversion injury to her right ankle from falling down one stair, hearing a crunching sensation. She did not report that anyone else was on the stairs. She reported gradually worsening pain, bruising, and swelling since the date of the accident. She also reported that she had broken her ankle as a child.

X-rays the right foot and ankle showed a fracture of the medial malleolus of the right tibia along with associated soft tissue swelling. A physical exam noted bruising and mild swelling. There was tenderness over the right midfoot and later malleolus. Dr. Phillip Digiacomo diagnosed a nondisplaced fracture of the

malleolus of the right tibia. Petitioner was given a short-leg splint and crutches. She was referred to an orthopedist, to follow up within 7 days.

Petitioner testified that the following day, July 18, 2017, she gave a recorded statement to Debbie Spanier of Sedgwick. A transcription of the recorded statement was admitted in evidence without objection (RX #1). Petitioner testified that Debbie asked her what happened and then cut her off to ask whether the stairs were defective. Petitioner testified that she told Debbie she did not know what happened. Petitioner further testified that she felt she had not adequately described Amanda's involvement. She tried to call Debbie back and left a message which was not returned.

In that statement (RX #1), Petitioner stated that she was walking down the stairs from the second floor to the first floor when she rolled her ankle and fell. She denied any defect with the stair or stairwell, specifically stating:

> DS: Any defect with the stair or the stairwell?
> KH: No. (RX #1, pg. 3)

She was only carrying her purse when she fell. Petitioner did not state that anyone was blocking her path on the stairs or that she had to move around anyone on the stairs. Petitioner stated that she did not know what happened, specifically stating:

> DS: And when you were coming on Spears (*sic*, presumably down stairs) do you know what caused you to roll, did you just mis-step?
> KH: I, I really don't know how it happened so quick. (RX #1, pg. 8)

On July 18, 2017 Petitioner consulted orthopedic surgeon Dr. George Holmes of Midwest Orthopedics at RUSH (PX #3 & RX #2). Petitioner gave a history that she had fallen down numerous stairs about 4 days before while walking down a flight of carpeted stairs at work. She did not report that anyone was on the stairs in front of her, nor did she tell the doctor that she had to walk around another individual causing her to fall down the stairs. She complained of 8/10 right ankle pain.

On examination Dr. Holmes noted bruising and tenderness over the right foot and ankle. Range of motion was limited. X-rays of the right ankle demonstrated a nondisplaced fracture of the medial malleolus distal tibia. Dr. Holmes diagnosed a right ankle nondisplaced avulsion fracture of the distal tibia.

Petitioner was fitted with a bivalve cast, instructed to be non-weight bearing with the right ankle, and given a knee scooter.

Petitioner returned to Dr. Holmes August 1, 2017. Due to issues with Petitioner being completely non-weight bearing, she was transitioned to a hard weight bearing cast with a cast shoe.

Petitioner returned to Dr. Holmes August 24, 2017. Her pain had improved since being placed in the hard cast. She was instructed to start physical therapy and gradually increase her weight bearing.

Petitioner returned to Dr. Holmes September 19, 2017. She had not yet started physical therapy and was encouraged to do so. She reported some ongoing pain and instability in the right ankle. X-rays showed good interval healing. She was instructed to use a compression stocking as needed, discontinue the use of the Cam boot, and participate in physical therapy. Finally, she was advised to follow up with Dr. Holmes on an as-needed basis.

Petitioner presented to Athletico on September 23, 2017 for an initial evaluation for physical therapy. Petitioner presented with the history of a fall July 14, 2017 on carpeted stairs. She felt that her heel got stuck on the carpet which made her roll her ankle and then fell down stairs. She reported hearing an audible "crunch." It was noted she was working full duty. On examination petitioner demonstrated decreased Ryanair coal range of motion, abnormal gait, this creased strength, and poor balance. She reported tenderness to palpation over the right medial condyle as well as the Peroneal and gastroc musculature.

Petitioner continued with physical therapy at Athletico until December 29, 2017, when she was discharged for failure to keep scheduled appointments and failing to return calls. The records indicate Petitioner made limited progress during her course of therapy.

On November 7, 2017, Petitioner retuned to Dr. Holmes at Midwest Orthopedics at RUSH (PX #3 & RX #2). Petitioner had been participating in physical therapy, but at almost 4 months out from the accident had plateaued in a condition that she was not happy with. X-rays showed good interval healing. She was advised to discontinue physical therapy and get an MRI of the right ankle.

Petitioner had the right ankle MRI on November 9, 2017 (PX #3 & RX #2). The MRI demonstrated a suspicious disruption of the anterior talofibular ligament, subtle signal alteration in the medial malleolus and calcaneus, and minor signal alteration of the caudal margin of the peroneal brevis. On November 13, 2017 Dr. Holmes reviewed the MRI, noting a stress fracture at the distal anterior aspect of the tibia. Dr. Holmes recommended a bone stimulator to be worn in the evening to promote healing of the stress fracture located at the distal tibia.

Petitioner returned to Midwest Orthopedics at RUSH on December 15, 2017, when she was fitted for a pneumatic walking boot. The pneumatic walking boot was adjusted on December 20.

On December 22, 2017, Petitioner presented to Dr. Narendra Patel at Barrington Orthopedics with right ankle pain (PX #2). Petitioner reported that she had fallen down stairs in July 2017 and fractured her right fibula. She did not report that anyone was on the stairs in front of her or that she had to walk around another person causing her to fall. She reported that Dr. Holmes had diagnosed a fibula fracture and that she had had several casts, splints, and a CAM walker without relief. She also reported that a recent MRI showed a tibia fracture.

On examination Dr. Patel noted laxity and instability in the right ankle and impingement syndrome, which he related to her history. Range of motion assessment was painful. Imagining showed avulsion flecks off of the distal tibia and medial malleolus. The doctor diagnosed right ankle pain and sprain.

Dr. Patel recommended a right Broström procedure, excision of the fibula fracture fragment, and excision of the tibia fracture fragment and discussed the post-operative course at length. Driving restrictions were discussed.

Petitioner returned to Dr. Patel March 30, 2018. Dr. Patel reviewed Petitioner's MRI of the right ankle from November of 2017. Dr. Patel diagnosed an unstable ankle with non-union medial and lateral malleolar avulsion fragments with tarsal tunnel. Dr. Patel recommended a right Broström procedure, excision of the fibula fracture fragment, and excision of the tibia fracture fragment and discussed the post-operative course at length. Driving restrictions were discussed.

Dr. Senall noted the November 9, 2017 right ankle MRI demonstrated poorly defined fibers of the anterior talofibular ligament which was suspicious of disruption. He also noted a subtle signal alteration in the medial malleolus as well as the calcaneus adjacent to the lateral talar process. He further noted minor signal

alteration within the caudal margins of the peroneal brevis, peroneus quartus, and the lateral inferior flexor hallucis longus musculature. Due to persistent discomfort and exhibited instability in the right ankle Dr. Senall recommended surgery. He recommended an arthroscopy with debridement and a modified Broström ankle reconstruction. Petitioner wanted to proceed with surgery.

Dr. Senall performed a right ankle arthroscopy with debridement of a loose fragment with synovectomy and a modified Broström ligament reconstruction on July 24, 2018 (PX #5). The doctor's pre- and post-operative diagnoses were chronic right ankle pain, right ankle sprain, right ankle impingement, and right ankle instability. She was discharged with a splint and no weight bearing. Petitioner was placed off of work completely following this surgery.

Following surgery, Petitioner followed up with Dr. Senall on August 8, 2018 for a post-op evaluation. Petitioner was doing well, and no concerns were noted. She was to remain nonweightbearing with a short-leg cast. Petitioner was advised to return in 4 weeks at which time physical therapy was to start.

On September 7, 2018, Petitioner returned to Dr. Senall and reported that she was doing well. She had minimal swelling but had good motion. She was transitioned to a boot and was allowed to start weightbearing as tolerated. Petitioner was allowed to return to work starting September 10, 2018, initially working from home for 2 weeks before returning to the office.

Petitioner testified that she did return to work for Sears following her surgery.

Northwestern Medicine billing records, PX #5, indicate physical therapy started September 12, 2018 and continued through January 12, 2019. No physical therapy clinical records were contained within PX #5.

On October 19, 2018, Petitioner returned to Dr. Senall. She had not yet transitioned out of wearing the boot due to pain. She was advised to continue physical therapy and transition out of the walking boot.

On January 18, 2019, Petitioner returned to Dr. Senall. She was 6 months out from her surgery. She was doing well but had pain with work shoes. She complained of weakness in her legs. Her reported her ankle felt stable but that there was pain on the medial side of the ankle. Due to the complaints, Dr. Senall recommended an additional course of physical therapy. The doctor noted if she

still had issues at the time she completed the additional physical therapy she could return to Dr. Senall. Otherwise, she was released and could return on an as needed basis.

Petitioner testified that she has not seen Dr. Senall or any other doctor for her right ankle since January 18, 2019. Petitioner testified that she is no longer taking any medication for her right ankle at this time.

Petitioner testified she returned to work for Sears but eventually started to work for True Value doing the same type of work. At her current job, she uses stairs, just as she did with Sears. She testified that stairs are difficult because going up and down stairs causes pain. She testified she has pain when she is driving using the foot pedals of the car to stop and go. Weather affects her as she experiences pain in her foot when there is rain or snow.

Prior to the injury, Petitioner testified that she was very active in sports such as running in races. Due to the instability of the ground in the yard, she does not play any sports with her children, such as soccer. She no longer swims as the flipping motion of her feet causes her pain. Petitioner testified that she separated from her spouse in 2019 primarily and eventually divorced in part because her husband was not helpful during her recovery.

On cross-examination, Petitioner admitted that she had a history of right ankle injuries. This began with an ankle fracture when she was child. Over the years she had sprained her ankle multiple times. She admitted that she had prior incidences of rolling her ankle or it giving out.

Respondent's Exhibit #2, Midwest Orthopedics at RUSH, included records of Dr. Holmes' care for Petitioner's right ankle problems prior to the accident at issue here. Dr. Holmes wrote a note on July 18, 2007 in which he noted Petitioner's history of numerous ankle injuries and fractures. Dr. Holmes opined that she had chronic right lateral ankle instability, which was noted he noted was rather dramatic. This resulted in the ankle giving way of the right ankle. Dr. Holmes recommended a Broström procedure and ligament reconstruction.

C: *Whether an accident occurred that arose out of and in the course of her employment with Respondent*

The Arbitrator finds that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment.

The facts of the occurrence are undisputed. Petitioner was leaving her work station to take her son to a doctor's appointment off campus. Her son was located in a daycare center in another building on Respondent's corporate campus. While walking down the stairs from the second floor to the first floor she fell as she passed around a coworker who had stopped on the stairs ahead of her. As she passed around the coworker she fell down one or more stairs to the landing in the stairwell.

Petitioner testified that she regularly used the stairs although an elevator was also available. She was clear that she was not required to use the stairs in furtherance of her job responsibilities. Her free choice of using the stairs in lieu of the elevator did not rise to meet the burden of showing her injury arose out of her employment. She must prove some risk was connected with or was incidental to the employee's duties. The mere fact that the person was at the location of the injury because of his employment alone is insufficient. She was not engaged in an activity that was expected to be in performance of her job duties or doing something incidental to job those duties.

Petitioner was equally clear that there was no defect in the stairs, and more clearly, she did not know how she fell.

The evidence was clear that Petitioner was not engaged in any activity in furtherance of her job duties. She was on a personal errand that was not for her personal comfort that would have been in furtherance of her job duties.

Petitioner was not exposed to a risk that was incidental to her job duties. Although she had previously used the stairs in furtherance of her job duties, a stated before, she was engaged in a personal errand at the time of her accident. Walking down stairs with no defect did not expose Petitioner to any risk inherently associated with her job duties. She had not been directed by her employer to use the stairs as a part of her job.

Absent evidence of a physical defect there is no need to assess whether there was a neutral risk. Merely stepping around a person who had stopped on the stairs

ahead did not create a risk greater than one to which the general public might be exposed to, particularly absent any evidence of public use of the stairwell.

The Arbitrator further noted that although Petitioner generally testified credibly, she testified several times that she had mentioned to her healthcare providers that she fell as she passed around a woman she named as Amanda. None of her healthcare providers documented such a statement.

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?*

In light of the Arbitrator's finding that Petitioner failed to prove that she sustained a compensable accidental injury that arose out of and in the course of her employment, this issue is mooted.

The Arbitrator does note that had Petitioner's accident been compensable the evidence amply showed that the medical services and charges for those services were reasonable and necessary.

K: *What temporary benefits are in dispute? TTD*

In light of the Arbitrator's finding that Petitioner failed to prove that she sustained a compensable accidental injury that arose out of and in the course of her employment, this issue is mooted.

The Arbitrator does note that had Petitioner's accident been compensable the evidence showed that she would have been entitled to TTD.

L: *What is the nature and extent of the injury?*

In light of the Arbitrator's finding that Petitioner failed to prove that she sustained a compensable accidental injury that arose out of and in the course of her employment, this issue is mooted.

The Arbitrator does note that had Petitioner's accident been compensable the evidence showed that she would have been entitled to an award for permanent partial disability.

Steven J. Fruth, Arbitrator

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC034975
Case Name	James R. Bentz v. Village of Wilmette
Consolidated Cases	15WC034976;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0023
Number of Pages of Decision	12
Decision Issued By	Kathryn Doerries, Commissioner, Amylee Simonovich, Commissioner

Petitioner Attorney	Richard Volpe
Respondent Attorney	John Fassola

DATE FILED: 1/16/2025

/s/Kathryn Doerries,Commissioner
Signature

DISSENT: /s/Amylee Simonovich,Commissioner
Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse 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 BENTZ,

Petitioner,

vs. NO: 15 WC 034975

VILLAGE OF WILMETTE,

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, TTD benefits, reasonableness and necessity of medical expenses, and nature and extent of disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 6, 2024, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical services through November 18, 2014, as provided in Sections 8(a) and 8.2 of the Act.

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

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

Based upon the named Respondent herein, no bond is set by the Commission. *820 ILCS 305/19(f)(2)*. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

January 16, 2025

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

KAD/swj
O111924
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/s/*Maria E. Portela*
Maria E. Portela

DISSENT

I respectfully dissent from the opinion of the majority and would reverse the Decision of the Arbitrator. After carefully considering the totality of the evidence, I find that Petitioner has met his burden of proving his left knee condition is causally related to his accident on November 13, 2014.

The long-established threshold for a compensable injury is that the work-related accident need not be the sole or principal causative factor, as long as it was **a** causative factor in the resulting condition of ill-being. (*Emphasis added*) *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205 (2003). Furthermore, an employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Workers' Comp. Comm'n*, 371 Ill. App. 3d 882, 888 (2007). If a pre-existing condition is aggravated, exacerbated or accelerated by an accidental injury, the employee is entitled to benefits. *Rock Road Construction v. Ill. Indus. Comm'n,* 37 Ill.2d 12 (1967); *Caterpillar Tractor Co. v. Ill. Indus. Comm'n*, 92 Ill. 2d 30, 36 (1982). Thus, even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Caterpillar* at 36; *Williams v. Industrial Comm'n*, 85 Ill. 2d 117, 122,51 Ill. Dec. 685,421 N.E.2d 193 (1981). "If a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration. The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been." *Schroeder v. Ill. Workers' Comp. Comm'n*, 2017 Il. App. (4th) 160192WC, ¶26.

This position on causation has further been consistently applied by the Commission. *See Boricich v. Ford Motor Co* 18 IWCC 0161, (Commission found the sudden change in Petitioner's ability to work following the accident to be basis for causation despite pre-existing osteoarthritis in knee and a prior recommendation for knee replacement); *Lane v. Kickert School Bus Lines*, 19 IWCC 0276, (Commission affirmed Arbitrator's finding of causation when Petitioner with a pre-existing condition was able to perform her job prior to the injury and unable to do so afterward); *Kusch v. Chicago Heights Fire Department*, 16 IWCC 0039 (Firefighter with prior knee surgery in excellent prior physical shape prior to accident with a rapid and continuous decline of the knee

following the accident). Similarly to the case at hand, the Commission has repeatedly found that the need for a total knee replacement was caused by an aggravation, exacerbation or acceleration of an underlying pre-existing knee condition. *Jones v. Southwest Airlines Co.* 14 IWCC 0612; *Bartlett v. Illinois Dept of Transportation*, 19 IWCC 0674; *Reaka v. Captain D's LLC,* 12 IWCC 0116; *Thomas v. Centers for New Horizons*, 19 IWCC 0145; *Corry v. State of Illinois, Illinois State University*, 18 IWCC 0042; *Turner v. Cook County Hospital*, 98 IWCC 1252*; Alguire v. Chicago Transit Authority,* 16 IWCC 0168; *Pittman v. Kroeschell, Inc.,* 15 IWCC 0980; *Clutterbuck v. UPS*, 15 IWCC 0046.

In the case at hand, while it is clear that Petitioner had a pre-existing arthritic condition in his left knee requiring prior injections, he was able to work full duty as a firefighter for an entire year following his last injection. When Petitioner presented to Dr. Chams on March 14, 2013, he denied locking, instability, and swelling, and had normal range of motion. T. 194. When he returned to Dr. Chams on September 13, 2013, physical examination again revealed normal range of motion, and no swelling or effusion. T. 192. Further, there is no indication that a knee replacement was recommended, let alone even discussed, prior the accident. The only discussion of surgery was on March 14, 2013 when Dr. Chams indicated that if Petitioner did not have relief from his cortisone injection, an arthroscopy "may" be considered. T. 196. However, Petitioner was noted to have had good relief from the injection. PX2, p.65.

The evidence shows that Petitioner's condition changed following the accident on November 13, 2014. After he jumped down from the ambulance from a height of two (2) feet up, he felt immediate piercing pain. PX3, p.1. He also reported increased pain with activity and was ambulating with an antalgic gait. PX2, p.65. Examination showed Petitioner ambulating with a varus knee and an antalgic gait. *Id*. He also lacked terminal 7-10 degrees of terminal extension and flexion was limited to 105 degrees, whereas it was 140 degrees in 2013. PX2, p.65, 67. Petitioner was prescribed physical therapy and was educated on a knee replacement. PX2, p.66. Dr. Pavlatos noted that the x-rays showed a progression of his medial compartment arthritis with an obvious varus deformity and a fair to moderate amount of patellofemoral arthritis. PX2, p.65. Petitioner experienced night pain, antalgic gait, and loss of range of motion, all of which were notably absent in 2013.

Both of Petitioner's treating surgeons provided causal connection opinions in this matter. However, the Arbitrator omitted Dr. Schwartz's opinion from his analysis. Dr. Schwartz testified, "So the jump from the ambulance from 2014 led to potentially an aggravation of his preexisting arthritis, which led to him getting potentially a knee replacement much earlier on in life than otherwise." PX8, p.24.

For these reasons, I believe Petitioner met his burden of proving that his left knee condition was aggravated and accelerated by his accident on November 13, 2014, thus requiring a knee replacement.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC034975
Case Name	James R. Bentz v. Village of Wilmette
Consolidated Cases	15WC034976;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Thomas Duda
Respondent Attorney	John Fassola

DATE FILED: 6/6/2024

/s/Elaine Llerena, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 4, 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

James Bentz
Employee/Petitioner
v.
Village of Wilmette
Employer/Respondent

Case # **15** WC **034975**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **July 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 **November 13, 2014**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**100,658.48**; the average weekly wage was $**1,935.74**.

On the date of accident, Petitioner was **48** years of age, ***single*** with **2** dependent children.

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

Respondent is entitled to a credit of $**338,448.41** under Section 8(j) of the Act.

ORDER

The Arbitrator finds that Petitioner sustained a temporary aggravation of his preexisting left knee condition on November 13, 2014, that resolved on November 18, 2014.

Respondent shall pay reasonable and necessary medical services through November 18, 2014, as provided in Sections 8(a) and 8.2 of the Act.

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

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

Signature of Arbitrator

June 6, 2024

FINDINGS OF FACT

This matter proceeded to hearing on July 28, 2023, in Chicago, Illinois before Arbitrator Elaine Llerena on Petitioner's Request for Hearing. The issues in dispute were causal connection, medical expenses, temporary total disability benefits, and permanency. Arbitrator's Exhibit 1. (AX1)

This case, 15WC034975 is consolidated with 15WC034976. This case addresses the work accident on November 13, 2014.

Petitioner Testimony

Petitioner testified he was hired as a full-time firefighter by Respondent in March of 1995. (T. 9) Two years later he was promoted to firefighter/paramedic, to Lieutenant in December of 2013, and to Battalion Chief in July of 2017. *Id.*

Petitioner did not have any medical issues with his left knee when he started working for Respondent. *Id.* His job duties as a firefighter varied depending on the emergency call, and whether it was a fire or ambulance call. (T. 10) If it was a fire call, he wore turn out gear that weighed 50 to 70 pounds. *Id.* If it was an ambulance call, he wore normal station duty wear. (T. 11) Respondent Fire Department responds to about 3,500 calls per year or about 10 per day. (T. 9)

Petitioner testified that on November 13, 2014, he was dispatched for to an emergency to which he responded in the rescue vehicle so that he could assist the ambulance. (T. 19-20) At the site, Petitioner got into the ambulance to help stabilize a patient. *Id.* When he went to exit the ambulance through the side door, Petitioner stepped out and down approximately 2 feet to the ground. *Id.* Petitioner landed on both feet and jammed his left knee, which immediately caused a very sharp pain in his left knee. *Id.*

Petitioner finished that shift, but was off the next day on a duty exchange. (T. 23) His knee pain persisted over the next two days, and he called in sick on November 17, 2014. *Id.* Petitioner was seen by Respondent Fire Department physician, Dr. Lori Turnock, on November 18, 2014, and released to return to work. (T. 25)

Petitioner testified that while on duty on January 22, 2015, doing ice rescue drills on the lakefront, he was climbing an ice mound when he stepped in a footprint and his left leg kicked out and his right leg twisted, causing severe pain to his right knee. *Id.* Petitioner testified that he continued to work full duty while undergoing treatment, but it was a struggle. (T. 27)

Petitioner ultimately returned to full duty work, but his left knee was never the same. (T. 31-32) Petitioner continues to have pain and weakness in his left knee and has difficulty climbing ladders. *Id.* He cannot crawl on his knees and crawling is an integral part of being a firefighter. *Id.* Petitioner retired after a change in the law allowed him to purchase additional pension time. *Id.* He retired with 26-1/2 years of service, but he had always intended on retiring with thirty years of service. (T. 33)

Prior Medical Condition

In 2003, while working as a firefighter/paramedic, he suffered an injury to his left leg that lead to a left knee arthroscopy and partial medial meniscectomy, chondroplasty of the medial femoral condyle and patellofemoral joint, and resection of the medial synovial plica. (T. 12; PX2) He subsequently

returned to full duty and passed all department ordered physicals after the surgery. (T. 12) Upon his discharge from care on December 29, 2003, Dr. Van P. Stamos noted Petitioner had no limp and that Petitioner was back at work doing all activities without difficulty and no significant tenderness. (PX2, pgs. 75-76) The workers' compensation claim was resolved for 30% loss of use of Petitioner's left leg. (RX3)

Petitioner testified that in 2009 he believed he suffered an injury to his right leg when exiting a fire truck in full turn out gear. (T. 13) The medical records reflect the injury occurred at work on October 30, 2008. (PX2, pg. 73) Dr. Stamos diagnosed Petitioner with a contusion of the right knee for which Petitioner underwent a steroid injection. (PX2, pgs. 73-74) Dr. Stamos released Petitioner from care on January 21, 2009, and released Petitioner to return to full duty work. (PX2, p.72)

Petitioner saw Dr. Roger Chams of Illinois Bone & Joint in March of 2013, with complaints of pain in his left knee after umpiring multiple games and then while on an elliptical machine, he felt sharp pain. (PX2, pg. 68) Petitioner underwent cortisone injections on March 14, 2013, and September 13, 2013. Petitioner was discharged from care on September 13, 2013, with instructions to return in three months if symptoms returned or did not improve. (PX2, pgs. 67-68) Petitioner worked his regular full duty job between September of 2013 and November of 2014. (T. 14)

Medical Record Summary

Petitioner saw Dr. Christ Pavlatos on November 17, 2014. (PX2, pgs. 65-66) Petitioner reported the November 13, 2014, work accident and complained of left knee pain. Dr. Pavlatos administered an intraarticular steroid injection to the left knee, released Petitioner to return to regular activities in 24 hours, and recommended physical therapy and education on knee replacement surgery. On November 18, 2014, Petitioner saw Dr. Lori Turnock for a fit for duty examination. (RX4, pg. 64) Dr. Turnock deemed Petitioner fit to return to work full duty.

Petitioner returned to Dr. Pavlatos on January 23, 2015. (PX2, pgs. 62-63) Petitioner reported the January 22, 2015, work accident and complained of right knee pain and swelling. Dr. Pavlatos drained serosanguineous fluid from Petitioner's right knee, administered a cortisone injection and ordered an MRI. Dr. Pavlatos released Petitioner to regular activities in 24 hours.

Petitioner underwent the right knee MRI on January 26, 2015, the results of which revealed a complex, unstable tear involving the posterior horn and body of the lateral meniscus; tear of the posterior horn of the medial meniscus; several tricompartmental osteoarthritis with high grade chondromalacia; low to moderate grade sprain of the posterior cruciate ligament; and large joint effusion. (PX4, pgs. 94-99)

On January 27, 2015, Petitioner reported 100% improvement in his right knee condition following the injection. (PX2, pg. 62) Dr. Pavlatos reviewed the MRI and noted it showed degenerative arthritic changes in the right knee and medial and lateral meniscus tears. Dr. Pavlatos released Petitioner to return to work, full duty.

On January 28, 2015, Petitioner saw Dr. Michael Hanna for a fit for duty evaluation. (RX4, pgs. 36-42) Dr. Hanna opined that Petitioner was fit to return to full duty work.

On May 15, 2015, Dr. Pavlatos administered a cortisone injection to Petitioner's left knee. (PX2, pgs. 59-60) From August 28, 2015, through November 23, 2015, Petitioner continued to complain of bilateral knee pain. (PX2, pgs. 57-58) Dr. Pavlatos recommended arthroplasty for the left knee.

On November 27, 2015, Dr. Preston Wolin prepared a medical record review report at Respondent's request. (RX1-EDX2) Dr. Wolin diagnosed Petitioner as having osteoarthritis of the knees and did not find Petitioner's knee conditions related to the November 13, 2014, or January 22, 2015, work accidents. Dr. Wolin opined that the medical records showed evidence that Petitioner's knees were symptomatic prior to the work accidents. Dr. Wolin found Petitioner's treatment reasonable and necessary, but not related to the work accidents.

On December 2, 2015, Dr. Pavlatos performed a left total knee arthroplasty. (PX2, pg. 139) On March 29, 2016, Andrea Duffey PA-C reviewed x-rays of Petitioner's left knee and found a well aligned total knee arthroplasty. (PX2, pg. 97) On April 26, 2016, Dr. Pavlatos released Petitioner to work, full duty. (PX2, pg. 48) On April 27, 2016, Petitioner saw Dr. Turnock, who noted that Petitioner was status-post left total knee arthroplasty and found that Petitioner was fit to return to work, full duty. (RX4, pg. 25)

On January 6, 2017, Dr. Pavlatos opined that Petitioner had preexisting degenerative arthritis in his knees that was aggravated by work related injuries and resulted in the left total knee arthroplasty. (PX2, pg. 47) On September 8, 2017, Dr. Pavlatos noted Petitioner continued to have left knee pain and had a flare up of some patellofemoral symptoms. (PX2, pg. 46) On November 30, 2017, Dr. Pavlatos diagnosed Petitioner as having patellofemoral pain with plantar fasciitis and recommended medication, physical therapy and heel inserts. (PX2, pg. 45)

On May 14, 2018, Dr. Pavlatos' evidence deposition was taken. (PX7) Dr. Pavlatos testified that Petitioner had degenerative joint disease in both knees, and that the nature of the disease is that it will progress over time. (PX7, pgs. 37-38) He explained that someone with the degree of osteoarthritis that Petitioner had in his knees would have symptoms waxing and waning over time and might have an increase in symptoms with what otherwise would be considered relatively minor activity. (PX7, pg. 39) He agreed that the medical records reflected that Petitioner had an increase in pain complaints when he was crouching down as an umpire at a baseball game. *Id.* He also agreed that Petitioner had bone on bone arthritis which existed prior to the November 13, 2014, work accident, and when he saw Petitioner in November 2014, Petitioner was already a candidate for a total knee replacement. (PX7, pg. 40)

Dr. Wolin's evidence deposition was taken on July 16, 2018. (RX1) Dr. Wolin's testimony was consistent with the findings and opinions in his medical record review report.

On February 23, 2019, Petitioner saw Dr. Anand Vora for an unrelated injury to the right upper extremity. (PX2, pgs. 43-44) Dr. Vora noted Petitioner had chronic left knee pain and referred Petitioner to Dr. Brian Schwartz. Petitioner saw Dr. Schwartz on March 8, 2019. (PX2, pgs. 38-39) Dr. Schwartz took x-rays of the left knee and diagnosed Petitioner as having aseptic loosening of left total knee arthroplasty and ordered revision surgery. On August 12, 2019, Dr. Schwartz aspirated Petitioner's left knee for a potential infection. (PX2, pgs. 27-28) On October 24, 2019, Dr. Schwartz performed a revision left total knee arthroplasty. (PX2, pg. 110) Petitioner followed up with Dr. Schwartz post-operatively and on January 6, 2020, Dr. Schwartz indicated that Petitioner would likely return to full duty work. (PX2, pg. 15)

On February 12, 2020, Petitioner returned to Dr. Schwartz and reported slipping on ice and falling on his left knee on January 14, 2020. (PX2, pg. 82) Dr. Schwartz took x-rays of the left knee and found no acute interval change since the last study. On April 8, 2020, Petitioner was provided a note to return to work as a firefighter from Ryan Anderson PA-C from Dr. Schwartz's office. (PX2, pgs. 11-12, 81) On April 9, 2020, Dr. Hanna determined that Petitioner was ready to return to work full duty. (RX4, pg. 16)

On November 11, 2022, Dr. Schwartz's evidence deposition was taken. (PX8) Dr. Schwartz's testimony was consistent with his findings and opinions in the medical records.

CONCLUSIONS OF LAW

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

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

The Arbitrator notes that Dr. Pavlatos, Dr. Wolin, and Dr. Schwartz agreed that Petitioner had degenerative arthritis in the left knee preceding his work injury in November 2014. While Dr. Pavlatos opined that Petitioner's pre-existing arthritis was exacerbated by his work injuries. Dr. Wolin opined that Petitioner had a long history of symptomatic osteoarthritis in the left knee prior to his work injury, and that the incident did not aggravate the pre-existing condition. The Arbitrator notes that Petitioner had been performing his regular job duties in the months preceding November 2014. After the November 13, 2014, work accident, Petitioner underwent a left knee injection and was released to return to work without restrictions. Petitioner also underwent a fit for duty exam that determined he was fit to return to work, full duty. There is no indication of any left knee issue until May 15, 2015, when Dr. Pavlatos administered a cortisone injection to Petitioner's left knee. The Arbitrator also notes that Dr. Pavlatos acknowledged that Petitioner had osteoarthritis to the degree that his symptoms would wax and wane. This is supported by Petitioner's complaints of increased knee pain when crouching down to umpire a baseball game and using an elliptical machine. He further acknowledged that Petitioner had bone on bone arthritis which existed prior to the November 13, 2014, work accident, and when he saw Petitioner in November 2014, Petitioner was already a candidate for a total knee replacement.

Based on the above, the Arbitrator finds that Petitioner sustained a temporary aggravation of his preexisting left knee condition on November 13, 2014, that resolved November 18, 2014, when Dr. Pavlatos released Petitioner to return to work, full duty.

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

Based on the Arbitrator's finding above that Petitioner sustained a temporary aggravation of his preexisting left knee condition on November 13, 2014, that resolved on November 18, 2014, the Arbitrator finds that Respondent shall pay for any outstanding medical expenses through November 18, 2014, pursuant to Sections 8(a) and 8.2 of the Act.

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

Based on the Arbitrator's finding above that Petitioner sustained a temporary aggravation of his preexisting left knee condition on November 13, 2014, that resolved on November 18, 2014, the issue of temporary total disability benefits is moot.

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

Based on the Arbitrator's finding above that Petitioner sustained a temporary aggravation of his preexisting left knee condition on November 13, 2014, that resolved on November 18, 2014, the issue of permanency is moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC034976
Case Name	James R. Bentz v. Village of Wilmette
Consolidated Cases	15WC034975;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0024
Number of Pages of Decision	11
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Richard Volpe
Respondent Attorney	John Fassola

DATE FILED: 1/16/2025

/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 Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JAMES BENTZ,

Petitioner,

vs. NO: 15 WC 034976

VILLAGE OF WILMETTE,

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, TTD benefits, reasonableness and necessity of medical expenses, and nature and extent of disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission corrects a scrivener's error in the Findings of Fact section on page 3, second paragraph, and strikes "November 13, 2014" and replaces it with "January 22, 2015."

The Commission corrects a scrivener's error in the Findings of Fact section on page 4, Medical Record Summary, third paragraph, and strikes "several" and replaces it with "severe."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical services through January 28, 2015, as provided in 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 the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

Based upon the named Respondent herein, no bond is set by the Commission. *820 ILCS 305/19(f)(2)*. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

January 16, 2025

KAD/swj
O111924
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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	15WC034976
Case Name	James R. Bentz v. Village of Wilmette
Consolidated Cases	15WC034975;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Thomas Duda
Respondent Attorney	John Fassola

DATE FILED: 6/6/2024

/s/Elaine Llerena, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 4, 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

James Bentz
Employee/Petitioner
v.
Village of Wilmette
Employer/Respondent

Case # **15** WC **034976**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **July 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 **January 22, 2015**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**100,658.48**; the average weekly wage was $**1,935.74**.

On the date of accident, Petitioner was **48** years of age, ***single*** with **2** dependent children.

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

ORDER

The Arbitrator finds that Petitioner sustained a temporary aggravation of his preexisting right knee condition on January 22, 2015, that resolved on January 28, 2015.

Respondent shall pay reasonable and necessary medical services through January 28, 2015, as provided in Sections 8(a) and 8.2 of the Act.

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

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

Signature of Arbitrator

June 6, 2024

FINDINGS OF FACT

This matter proceeded to hearing on July 28, 2023, in Chicago, Illinois before Arbitrator Elaine Llerena on Petitioner's Request for Hearing. The issues in dispute were causal connection, medical expenses, temporary total disability benefits, and permanency. Arbitrator's Exhibit 2. (AX2)

This case, 15WC034976 is consolidated with 15WC034975. This case addresses the work accident on November 13, 2014.

Petitioner Testimony

Petitioner testified he was hired as a full-time firefighter by Respondent in March of 1995. (T. 9) Two years later he was promoted to firefighter/paramedic, to Lieutenant in December of 2013, and to Battalion Chief in July of 2017. *Id.*

Petitioner did not have any medical issues with his left knee when he started working for Respondent. *Id.* His job duties as a firefighter varied depending on the emergency call, and whether it was a fire or ambulance call. (T. 10) If it was a fire call, he wore turn out gear that weighed 50 to 70 pounds. *Id.* If it was an ambulance call, he wore normal station duty wear. (T. 11) Respondent Fire Department responds to about 3,500 calls per year or about 10 per day. (T. 9)

Petitioner testified that on November 13, 2014, he was dispatched for to an emergency to which he responded in the rescue vehicle so that he could assist the ambulance. (T. 19-20) At the site, Petitioner got into the ambulance to help stabilize a patient. *Id.* When he went to exit the ambulance through the side door, Petitioner stepped out and down approximately 2 feet to the ground. *Id.* Petitioner landed on both feet and jammed his left knee, which immediately caused a very sharp pain in his left knee. *Id.*

Petitioner finished that shift, but was off the next day on a duty exchange. (T. 23) His knee pain persisted over the next two days, and he called in sick on November 17, 2014. *Id.* Petitioner was seen by Respondent Fire Department physician, Dr. Lori Turnock, on November 18, 2014, and released to return to work. (T. 25)

Petitioner testified that while on duty on January 22, 2015, doing ice rescue drills on the lakefront, he was climbing an ice mound when he stepped in a footprint and his left leg kicked out and his right leg twisted, causing severe pain to his right knee. *Id.* Petitioner continued to work full duty while undergoing treatment, but it was a struggle. (T. 27)

Petitioner ultimately returned to full duty work, but his left knee was never the same. (T. 31-32) Petitioner continues to have pain and weakness in his left knee and has difficulty climbing ladders. *Id.* He cannot crawl on his knees and crawling is an integral part of being a firefighter. *Id.* Petitioner retired after a change in the law allowed him to purchase additional pension time. *Id.* He retired with 26-1/2 years of service, but he had always intended on retiring with thirty years of service. (T. 33)

Prior Medical Condition

In 2003, while working as a firefighter/paramedic, he suffered an injury to his left leg that lead to a left knee arthroscopy and partial medial meniscectomy, chondroplasty of the medial femoral condyle and patellofemoral joint, and resection of the medial synovial plica. (T. 12; PX2) He subsequently

returned to full duty and passed all department ordered physicals after the surgery. (T. 12) Upon his discharge from care on December 29, 2003, Dr. Van P. Stamos noted Petitioner had no limp and that Petitioner was back at work doing all activities without difficulty and no significant tenderness. (PX2, pgs. 75-76) The workers' compensation claim was resolved for 30% loss of use of Petitioner's left leg. (RX3)

Petitioner testified that in 2009 he believed he suffered an injury to his right leg when exiting a fire truck in full turn out gear. (T. 13) The medical records reflect the injury occurred at work on October 30, 2008. (PX2, pg. 73) Dr. Stamos diagnosed Petitioner with a contusion of the right knee for which Petitioner underwent a steroid injection. (PX2, pgs. 73-74) Dr. Stamos released Petitioner from care on January 21, 2009, and released Petitioner to return to full duty work. (PX2, p.72)

Petitioner saw Dr. Roger Chams of Illinois Bone & Joint in March of 2013, with complaints of pain in his left knee after umpiring multiple games and then while on an elliptical machine, he felt sharp pain. (PX2, pg. 68) Petitioner underwent cortisone injections on March 14, 2013, and September 13, 2013. Petitioner was discharged from care on September 13, 2013, with instructions to return in three months if symptoms returned or did not improve. (PX2, pgs. 67-68) Petitioner worked his regular full duty job between September of 2013 and November of 2014. (T. 14)

Medical Record Summary

Petitioner saw Dr. Christ Pavlatos on November 17, 2014. (PX2, pgs. 65-66) Petitioner reported the November 13, 2014, work accident and complained of left knee pain. Dr. Pavlatos administered an intraarticular steroid injection to the left knee, released Petitioner to return to regular activities in 24 hours, and recommended physical therapy and education on knee replacement surgery. On November 18, 2014, Petitioner saw Dr. Lori Turnock for a fit for duty examination. (RX4, pg. 64) Dr. Turnock deemed Petitioner fit to return to work full duty.

Petitioner returned to Dr. Pavlatos on January 23, 2015. (PX2, pgs. 62-63) Petitioner reported the January 22, 2015, work accident and complained of right knee pain and swelling. Dr. Pavlatos drained serosanguineous fluid from Petitioner's right knee, administered a cortisone injection and ordered an MRI. Dr. Pavlatos released Petitioner to regular activities in 24 hours.

Petitioner underwent the right knee MRI on January 26, 2015, the results of which revealed a complex, unstable tear involving the posterior horn and body of the lateral meniscus; tear of the posterior horn of the medial meniscus; several tricompartmental osteoarthritis with high grade chondromalacia; low to moderate grade sprain of the posterior cruciate ligament; and large joint effusion. (PX4, pgs. 94-99)

On January 27, 2015, Petitioner reported 100% improvement in his right knee condition following the injection. (PX2, pg. 62) Dr. Pavlatos reviewed the MRI and noted it showed degenerative arthritic changes in the right knee and medial and lateral meniscus tears. Dr. Pavlatos released Petitioner to return to work, full duty.

On January 28, 2015, Petitioner saw Dr. Michael Hanna for a fit for duty evaluation. (RX4, pgs. 36-42) Dr. Hanna opined that Petitioner was fit to return to full duty work.

On May 15, 2015, Dr. Pavlatos administered a cortisone injection to Petitioner's left knee. (PX2, pgs. 59-60) From August 28, 2015, through November 23, 2015, Petitioner continued to complain of bilateral knee pain. (PX2, pgs. 57-58) Dr. Pavlatos recommended arthroplasty for the left knee.

On November 27, 2015, Dr. Preston Wolin prepared a medical record review report at Respondent's request. (RX1-EDX2) Dr. Wolin diagnosed Petitioner as having osteoarthritis of the knees and did not find Petitioner's knee conditions related to the November 13, 2014, or January 22, 2015, work accidents. Dr. Wolin opined that the medical records showed evidence that Petitioner's knees were symptomatic prior to the work accidents. Dr. Wolin found Petitioner's treatment reasonable and necessary, but not related to the work accidents.

On December 2, 2015, Dr. Pavlatos performed a left total knee arthroplasty. (PX2, pg. 139) On March 29, 2016, Andrea Duffey PA-C reviewed x-ray of Petitioner's left knee and found a well aligned total knee arthroplasty. (PX2, pg. 97) On April 26, 2016, Dr. Pavlatos released Petitioner to work, full duty. (PX2, pg. 48) On April 27, 2016, Petitioner saw Dr. Turnock, who noted that Petitioner was status-post left total knee arthroplasty and found that Petitioner was fit to return to work, full duty. (RX4, pg. 25)

On January 6, 2017, Dr. Pavlatos opined that Petitioner had preexisting degenerative arthritis in his knees that was aggravated by work related injuries and resulted in the left total knee arthroplasty. (PX2, pg. 47) On September 8, 2017, Dr. Pavlatos noted Petitioner continued to have left knee pain and had a flare up of some patellofemoral symptoms. (PX2, pg. 46) On November 30, 2017, Dr. Pavlatos diagnosed Petitioner as having patellofemoral pain with plantar fasciitis and recommended medication, physical therapy and heel inserts. (PX2, pg. 45)

On May 14, 2018, Dr. Pavlatos' evidence deposition was taken. (PX7) Dr. Pavlatos testified that Petitioner had degenerative joint disease in both knees, and that the nature of the disease is that it will progress over time. (PX7, pgs. 37-38) He explained that someone with the degree of osteoarthritis that Petitioner had in his knees would have symptoms waxing and waning over time and might have an increase in symptoms with what otherwise would be considered relatively minor activity. (PX7, pg. 39) He agreed that the medical records reflected that Petitioner had an increase in pain complaints when he was crouching down as an umpire at a baseball game. *Id.* He also agreed that Petitioner had bone on bone arthritis which existed prior to the November 13, 2014, work accident, and when he saw Petitioner in November 2014, Petitioner was already a candidate for a total knee replacement. (PX7, pg. 40) Regarding Petitioner's right knee, Dr. Pavlatos testified that Petitioner had a temporary increase in symptoms related to activity and then responded to treatment, which was consistent with the overall course of degenerative joint disease. (PX7, pg. 44) Dr. Pavlatos testified that Petitioner had returned to baseline in his right knee following the January 22, 2015, work accident. (PX7, pg. 48) He also opined that the future need for a knee replacement would not be related to the January 22, 2015, work accident. (PX7, pg. 48) Additionally, Dr. Pavlatos agreed that a complex tear could often be seen in degenerative arthritis. (PX7, pg. 51)

Dr. Wolin's evidence deposition was taken on July 16, 2018. (RX1) Dr. Wolin's testimony was consistent with the findings and opinions in his medical record review report.

On February 23, 2019, Petitioner saw Dr. Anand Vora for an unrelated injury to the right upper extremity. (PX2, pgs. 43-44) Dr. Vora noted Petitioner had chronic left knee pain and referred Petitioner to Dr. Brian Schwartz. Petitioner saw Dr. Schwartz on March 8, 2019. (PX2, pgs. 38-39) Dr. Schwartz took x-rays of the left knee and diagnosed Petitioner as having aseptic loosening of left total knee arthroplasty and ordered revision surgery. On August 12, 2019, Dr. Schwartz aspirated Petitioner's left knee for a potential infection. (PX2, pgs. 27-28) On October 24, 2019, Dr. Schwartz performed a revision left total knee arthroplasty. (PX2, pg. 110) Petitioner followed up with Dr. Schwartz post-operatively and on January 6, 2020, Dr. Schwartz indicated that Petitioner would likely return to full duty work. (PX2, pg. 15)

On February 12, 2020, Petitioner returned to Dr. Schwartz and reported slipping on ice and falling on his left knee on January 14, 2020. (PX2, pg. 82) Dr. Schwartz took x-rays of the left knee and found no acute interval change since the last study. On April 8, 2020, Petitioner was provided a note to return to work as a firefighter from Ryan Anderson PA-C from Dr. Schwartz's office. (PX2, pgs. 11-12, 81) On April 9, 2020, Dr. Hanna determined that Petitioner was ready to return to work full duty. (RX4, pg. 16)

On November 11, 2022, Dr. Schwartz's evidence deposition was taken. (PX8) Dr. Schwartz's testimony was consistent with his findings and opinions in the medical records.

CONCLUSIONS OF LAW

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

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

The Arbitrator notes that Dr. Pavlatos, Dr. Wolin, and Dr. Schwartz agreed that Petitioner had degenerative arthritis in the right knee preceding his work injury on January 22, 2015. Dr. Pavlatos opined that Petitioner's preexisting arthritis was exacerbated by his work injuries. Dr. Wolin opined that Petitioner had a long history of symptomatic osteoarthritis in the right knee prior to his work injury, and that the incident did not aggravate the preexisting condition. The Arbitrator notes that Dr. Pavlatos administered an injection to Petitioner's right knee on January 23, 2015, and on January 27, 2015, Petitioner reported that he had gotten 100% improvement in his right knee condition following the injection and Dr. Pavlatos released Petitioner to return to work starting the following day. The medical records also reflect that Petitioner had undergone injections to the right knee prior to the January 22, 2015, work accident, and then returned to work, full duty, just as he did after the January 22, 2015, work accident. Dr. Pavlatos testified at his May 14, 2018, evidence deposition that Petitioner had returned to baseline in the right knee following the January 22, 2015, work accident.

Based on the above, the Arbitrator finds that Petitioner sustained a temporary aggravation of his preexisting right knee condition on January 22, 2015, that resolved January 28, 2015, when Dr. Pavlatos released Petitioner to return to work, full duty.

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

Based on the Arbitrator's finding above that Petitioner sustained a temporary aggravation of his preexisting right knee condition on January 22, 2015, that resolved on January 28, 2015, the Arbitrator finds that Respondent shall pay for any outstanding medical expenses through January 28, 2015, pursuant to Sections 8(a) and 8.2 of the Act.

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

Based on the Arbitrator's finding above that Petitioner sustained a temporary aggravation of his preexisting right knee condition on January 22, 2015, that resolved on January 28, 2015, the issue of temporary total disability benefits is moot.

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

Based on the Arbitrator's finding above that Petitioner sustained a temporary aggravation of his preexisting right knee condition on January 22, 2015, that resolved on January 28, 2015, the issue of permanency is moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC017855
Case Name	Patrick Mullaney v. City of Chicago
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0025
Number of Pages of Decision	18
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	William H. Martay
Respondent Attorney	Michael Manseau

DATE FILED: 1/16/2025

/s/Amylee Simonovich,Commissioner

Signature

25IWCC0025

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

Patrick Mullaney,

Petitioner,

vs. NO: 21 WC 17855

City of Chicago,

Respondent.

DECISION AND OPINION ON REVIEW

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

In the interest of efficiency, the Commission primarily relies on the detailed recitation of facts provided in the Decision of the Arbitrator. The Commission affirms the Arbitrator's conclusion that Petitioner's current condition of ill-being is causally related to the June 14, 2021, work accident. The Commission also affirms the Arbitrator's award of medical expenses. However, the Commission vacates the award of TTD benefits and addresses the issue of maintenance benefits. Finally, the Commission modifies the Arbitrator's permanency award.

Additional Modifications to the Arbitration Decision

On page 4 of the Decision, the Arbitrator wrote: "He had a re-exam with Dr. Colman…After the pre-trial he continued under the care of Dr. Bergin for an additional period of time." The Commission modifies the aforementioned sentences to read as follows:

> Dr. Colman reexamined Petitioner and Respondent temporarily stopped paying TTD benefits after receiving the Section 12 report. Eventually, Respondent continued Petitioner's TTD benefits and Petitioner continued treatment with Dr. Bergin.

On page 9 of the Decision, the Arbitrator wrote: "A pre-trial was held concerning Petitioner's

19(b) Motion…" The Commission strikes this sentence in its entirety from the Decision. Also on the same page, the Arbitrator wrote: "Petitioner, as he testified, attempted to return to work per the release by Dr. Colman, yet was denied his return to work…" The Commission modifies the aforementioned sentence to read as follows:

> Petitioner attempted to return to work pursuant to the restrictions Dr. Colman recommended in his July 2023 Section 12 report; however, Respondent denied Petitioner's request due to the pre-existing conditions identified by the doctor.

Temporary Total Disability Benefits

The Arbitrator concluded Petitioner met his burden of proving an entitlement to TTD benefits from August 5, 2023, through October 31, 2023, a period of 12-4/7 weeks. The parties stipulated that Respondent paid TTD benefits through August 4, 2023, and Respondent stipulated that Petitioner was entitled to TTD benefits through that date. After considering the evidence, the Commission finds Petitioner failed to prove an entitlement to TTD benefits after August 4, 2023.

A claimant is temporarily and totally disabled from the time a work injury incapacitates them from work until such time that they are "…as far recovered or restored as the permanent character of [their] injury will permit." *Shafer v. Ill. Workers' Comp. Comm'n*, 2011 IL App (4th) 100505WC at ¶ 45. To prove an entitlement to TTD benefits, a claimant must prove they did not work and that they were unable to work. *Freeman United Coal Mining Co. v. Indus. Comm'n.*, 318 Ill. App. 3d 170, 177 (2000). Furthermore, "…the dispositive inquiry is whether the claimant's condition has stabilized, *i.e.*, whether the claimant has reached maximum medical improvement." *Interstate Scaffolding, Inc. v. Ill. Workers' Comp. Comm'n*, 236 Ill. 2d 132, 142 (2010) (internal citation omitted). Once a claimant has reached maximum medical improvement (MMI), their disabling condition has become permanent and they no longer qualify for TTD benefits. *See, e.g.*, *Nascote Indus. v. Indus. Comm'n*, 353 Ill. App. 3d 1067, 1072 (2004).

The credible evidence shows that Dr. Bergin placed Petitioner at maximum medical improvement (MMI) on March 28, 2023. However, both parties stipulated that Petitioner was entitled to TTD benefits through August 4, 2023. Each party is bound by its stipulations on the Request for Hearing. *See Walker v. Indus. Comm'n*, 345 Ill. App. 3d 1084, 1088 (2004). Thus, Petitioner is not entitled to any TTD benefits after August 4, 2023. The Commission therefore vacates the Arbitrator's award of TTD benefits.

Maintenance Benefits

The Commission exercises original jurisdiction. *See, e.g.*, *Caterpillar Tractor Co. v. Industrial Comm'n*, 215 Ill. App. 3d 229, 238-39 (1991). This means it has the authority to determine all unsettled questions in the record and is not bound by the Arbitrator's findings. The Commission's review of a case is not restricted to the information found in the Petition for Review or the reviewing party's Statement of Exceptions. Thus, the Commission has the authority to review all questions of law or fact which are evident in the record as long as a party's substantial rights are not prejudiced.

In this case, Respondent is not prejudiced by the Commission's review of the issue of maintenance benefits because the parties had an opportunity to fully litigate the disputed issue during the arbitration hearing. While the parties did not select maintenance benefits as a disputed issue, Petitioner's entitlement to benefits from August 5, 2023, through October 31, 2023, was in dispute. Thus, neither party is prejudiced by the Commission considering the issue of Petitioner's entitlement to maintenance benefits during that period.

Pursuant to Section 8(a) of the Act, an employer must pay for treatment, instruction, and training necessary for the "physical, mental and vocational rehabilitation of the employee, including all maintenance costs and expenses incidental hereto." However, an employer must pay maintenance benefits only while the claimant engages in vocational rehabilitation. *See, e.g., W.B. Olson, Inc. v. Ill. Workers' Comp. Comm'n*, 2012 IL App (1st) 113129WC. Vocational rehabilitation may include services such as counseling for job searches, supervised job search programs, and vocational retraining programs. Illinois courts have determined that a claimant's self-directed job search may also constitute vocational rehabilitation. *See Euclid Bev. v. Ill. Workers' Comp. Comm'n*, 2019 IL App (2d) 180090WC at ¶ 30. After considering the credible evidence, the Commission finds Petitioner was entitled to maintenance benefits from August 5, 2023, through October 31, 2023.

Dr. Colman, Respondent's Section 12 examiner, last examined Petitioner on July 18, 2023. After examining Petitioner and reviewing certain medical records, the doctor opined that Petitioner should return with the restrictions outlined in the April 2023 functional capacity evaluation (FCE). Petitioner testified that he contacted Respondent and requested to return to work pursuant to Dr. Colman's restrictions. He further testified that Respondent told him he could not return to his position with any restrictions. The evidence shows that Petitioner was willing and able to return to work with the permanent restrictions established by the April 2023 FCE and recommended by Dr. Colman. He ultimately chose to retire due to Respondent's refusal to return him to work with restrictions and because he was no longer receiving TTD benefits. He testified that he did not receive his first pension check until November 1, 2023. Thus, the Commission finds Petitioner was entitled to maintenance benefits from August 5, 2023, through October 31, 2023, a period of 12-4/7 weeks.

Permanent Disability

The Arbitrator concluded Petitioner sustained a 35% loss of the whole person due to the June 14, 2021, work accident. While the Commission generally agrees with the Arbitrator's analysis of the five factors pursuant to Section 8.1b(b) of the Act, it views the evidence differently. After carefully considering the totality of the evidence, the Commission finds Petitioner sustained a 30% loss of the whole person.

The Commission finds the work accident aggravated Petitioner's preexisting back condition. Petitioner testified that he suffers from constant, significant, and debilitating low back pain and was even afraid to lift a laundry basket due to his pain. While there is no evidence that any doctor recommended or anticipated Petitioner's condition would require surgery, Petitioner believed low back surgery was inevitable. Additionally, Petitioner underwent very limited conservative treatment that consisted only of physical therapy. The April 2023 FCE revealed

Petitioner met less than half of his job demands and demonstrated an ability to work within the physical demand level. Dr. Bergin, his treating doctor, determined the restrictions established by the FCE were permanent. Petitioner has not sought any additional treatment relating to his work injury since his final visit with Dr. Bergin on May 2, 2023.

After considering the evidence and the relevant Section 8.1b(b) factors, the Commission finds an award of 30% loss of the whole person is most appropriate.

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on February 14, 2024, is modified as stated herein.

IT IS FURTHER ORDERED that the Arbitrator's award of temporary total disability benefits is vacated. Petitioner was not entitled to TTD benefits after August 4, 2023.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner maintenance benefits of $1,109.33 for 12-4/7 weeks, commencing August 5, 2023, through October 31, 2023, as provided in Section 8(a) of the Act.

IT IS FURTHER ORDERED that Respondent shall pay reasonable and necessary medical services of $220.00 to Advance Radiology Consultant, and $1,870.00, to Advocate Aurora Health, as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner permanent partial disability benefits of $871.73/week for 150 weeks, because the injuries sustained caused the 30% loss of whole person, as provided in Section 8(d)2 of the Act.

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

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

Pursuant to Section 19(f)(2) of the Act, 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.

January 16, 2025
o: 11/19/24
AHS/jds
51

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC017855
Case Name	Patrick Mullaney v. City of Chicago
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Raychel Wesley, Arbitrator

Petitioner Attorney	William H. Martay
Respondent Attorney	Michael Manseau

DATE FILED: 2/14/2024

/s/ Raychel Wesley, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 14, 2024 5.065%

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Patrick Mullaney
Employee/Petitioner

Case # 21WC017855

v.

City of Chicago
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 **Arbitrator Raychel Wesley** , Arbitrator of the Commission, in the city of **Chicago**, on **1/10/24**. 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 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 ***$86,528.00***; the average weekly wage was ***$1,664.00***.

On the date of accident, Petitioner was ***56*** years of age, ***Single***, with ***0*** children under 18.

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 ***$123,403.61*** for TTD, ***$0.00*** for TPD, ***$0.00*** for maintenance, and ***$0.00*** for other benefits, for a total credit of ***$123,403.61***.

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

ORDER

The Arbitrator finds Petitioner's current condition of ill-being is causally connected to his June 14, 2021, work injury.

The Arbitrator orders Respondent to pay to Petitioner an additional period of temporary total disability (TTD) from August 5, 2023 through October 31, 2023 or 12-5/7 weeks at the rate of $1,108.89 per week.

The Arbitrator orders Respondent to pay reasonable and necessary medical services of $**220.00** , as provided in Sections 8(a) and 8.2 of the Act, to Advance Radiology Consultant. Respondent shall pay reasonable and necessary medical services of $**1,870.00** , as provided in Sections 8(a) and 8.2 of the Act, to Advocate Aurora Health.

Respondent shall pay Petitioner permanent partial disability benefits of $**871.73** /week for 175 weeks, because the injuries sustained caused the 35% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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.

/s/ *Raychel A. Wesley* **February 14, 2024**

Signature of arbitrator

This matter proceeded to hearing before this Arbitrator on January 10, 2024. The issues in dispute included causal connection, additional TTD; two (2) medical bills; and the nature and extent of Petitioner's injury.

FINDINGS OF FACTS:

Testimony:

The only witness to testify was the Petitioner and the Arbitrator finds his testimony to be clear, convincing, and credible. Petitioner testified on direct exam that he lived in the City of Chicago and was hired by the City in 1989. He was first hired as a watchman and remained on that job for about two years. (R11) Petitioner transferred to the Department of Transportation, Signs and Marking and continued to work on that job until he retired in October, 2023. Before June 14, 2021, he had no injury to his back and was under no medical care for his back before June 14, 2021. He did have prior claims as was shown in Petitioner Exhibit 10. (R12) These are the injuries he had for over thirty (30) years, and none are related to his back. He reported to work on June 14, 2021, and during the course of that day he was scraping metal in a forklift and driving the forklift down the south lot when he hit a pothole and the back tire jarred him and bounced him out of the seat and jarred his entire back. He was immobile for several minutes. (R13) He reported the injury to Danny Inendino, his supervisor and foreman. An accident report was filled out. (P2) He first had medical care about four (4) days after the accident because there was some problem with the City of Chicago Finance and Gallagher Bassett taking over the cases. (R14) He received medical care at Advocate Healthcare—Immediate Care Center for the City of Chicago.(R15) When he first went to the City clinic, he told them how he was injured and was given x-rays and pain medication, and they gave him the name of Dr. Bergin, a specialist to see at the Spine Center at Lutheran General. He eventually saw Dr. Bergin and was taken off physical therapy which had previously been prescribed at Physicians. (R16) Dr. Bergin told him to stop therapy as he wanted to find out more about what damage had been done. Dr. Bergin set a CT scan. While this was going on Respondent sent him to Dr. Colman for a Section 12 exam. Petitioner could not have an MRI as requested by Dr. Colman since he had a heart condition. (R17) Dr. Colman recommended twelve (12) sessions of physical therapy and a CT scan. The doctor also wrote in his report that the alleged work injury was a direct cause of the sprain or strain and aggravation of an underlying degenerative disease. He did have the CT scan in February, 2022, and it showed L3-4, L4-5 and

L5-1, with a herniated disc at L5-S1. (R18) He was still off work. He was getting paid TTD or duty disability. He was still seeing Dr. Bergin for additional medical care in 2022. He had a re-exam with Dr. Colman, and after this report came out, TTD stopped and he had to file a 19(b) Petition for Immediate Hearing. (R19) After a pre-trial with the Arbitrator TTD was reinstated for over $20,000.00. After the pre-trial he continued under the care of Dr. Bergin for an additional period of time. The updated Section 12 exam with Dr. Colman stated he could work full duty without restriction. "***Regardless of causation, the patient should be on sedentary duty only until such time is further diagnostic can be accomplished as outlined sedentary duty requires no lifting more than 5 to 10 pounds and no repetitive or strenuous activity***." They never took him back to work. TTD was terminated after an additional IME with Dr. Colman. At that time, Dr. Colman reviewed the CT scan and also reviewed the FCE which was requested by Dr. Bergin which showed permanent work restrictions. Dr. Colman again stated in his report he could return to full duty work. (R21). He had no money coming in from either the City, duty disability or ordinary disability, and (R22) filed for his pension. He received his first pension check November 1, 2023. For the period August 5, 2023 through October 31, 2023, he is claiming TTD if the Arbitrator finds in his favor. He was also shown medical bills from Advocate Aurora Health, $1,870.00, and now in collection, Advanced Radiology, $820.00. He believes these bills are still unpaid. (R23).

He is not under active treating medical care today by Dr. Bergin or any other doctor. He believes he last saw Dr. Bergin, August, 2023. (R24) He saw Dr. Bergin for the last time after the FCE test. At the time of the injury, he was 56 years old. He discussed surgery with Dr. Bergin but did not feel that it was warranted. (P9)

Today he notices his back hurts every day. He cannot sleep through the night without tossing and turning. He sleeps in what he characterized as four (4) shifts and sometimes falls asleep during the day. He cannot lift a laundry basket, and on one occasion when he attempted this, he became incapacitated, and his legs gave out. He believes he might need a back operation at some point in time. (R26) Walking helps alleviate some of the pain. He never returned to any type of employment. He never had any of these complaints before June 14, 2021. (R27) He was working full time, full duty for years before his work injury on June 14, 2021. He was driving a forklift every day, cleaning the shop, loading, and unloading trucks, hauling aluminum sheets, performing all duties associated with the job for almost 33 years. (R29)

On cross-exam Petitioner testified he worked as a watchman for the City for two (2) years when he first started. He became a laborer sometime around 91 or 92 when he went from watchman to laborer for the Department of Transportation. He still is in the Laborers Union. He was shown as Respondent Exhibit 1 a job description as a laborer. (R29) He testified that in addition to what is listed, however, laborers have a right to drive a forklift. He confirmed on cross examination that he was operating a forklift when he was injured on June 14, 2021. (R31) He was seated and had a seat belt on. The accident was a jarring of his back when he hit the pothole. He flew out of the seat and flew right back in the seat. He was tossed. (R32) He continued to work, stayed at work all day to file an accident report because he was not sent to a doctor. He did not work, but he was there and in pain. He was in pain for four (4) days before he saw a doctor. He was seen at Physicians Immediate Care on June 15, 2021, but he thought it was June 18. (R33) he was treated at Physician Immediate Care about six (6) weeks. They gave him pain medication, took x-rays and referred him to Dr. Bergin. His last visit with Physicians Immediate Care was August 5, 2021. He first saw Dr. Colman for an exam on October 12, 2021, and Dr. Colman took a history. (R36) After he saw Dr. Colman for the second time, he continued to see Dr. Bergin over the next several months who continued to monitor him throughout his physical therapy regimen. (R37) Petitioner had the FCE as Dr. Bergin indicated that the initial physical therapy was only doing more damage. Dr. Bergin discussed surgery, it was not however, recommended. He did have the FCE April, 2023 and he cooperated with therapist for the FCE. He gave it his full effort. He saw Dr. Bergin for a review of the FCE results. (R38) It was about that time he was discharged from care. He has no follow-up appointments. He is not under any care of any doctor for his back. He is not taking any pain medication. He is not doing any physical therapy; however he does walk which seems to alleviate some of the pain. (R39) He has no future diagnostic tests. He saw Dr. Colman for the third time July 18, 2023.

On re-direct exam Petitioner testified he does have a heart problem, and he has a device in the heart area. Surgery may not be an option. He testified that if asked he would go back to work for the City, but it never took place. (R42)

Medical Evidence:

A written accident report was proffered in evidence as Petitioner Exhibit 2. The report noted Petitioner's work accident which occurred on June 14, 2021.

Petitioner also gave oral notice of his work accident to his foreman on the date he was injured.

Petitioner was sent by his foreman, Danny Inindino, to Physicians Immediate Care, a City clinic. (P4) These records give a history as to how Petitioner was injured on June 14, 2021, and what care was given to his lower back, including medications and a back brace.

Petitioner continued to treat at Physicians Immediate Care for his strain and sprain of his back, including an injection, therapy, and request for an MRI, which Petitioner could not have since he has a pacemaker.

On August 5, 2021, Petitioner was referred by Physicians Immediate Care to an ortho which was approved by the adjuster at Gallagher Bassett.

Per request of Respondent, Petitioner saw Dr. Matthew Colman, for a first Section 12 exam. Dr. Colman summarized the medical records sent to him by Gallagher Bassett and wrote "***I do believe the alleged work injury is the direct cause of the minor sprain or strain and an aggravation of underlying degenerative disease, since the jarring of the forklift is a sufficient mechanism, the patient reported the injury immediately, and the medical record does not reflect pre-existing condition. I do believe the work incident aggravated pre-existing condition***."

Dr. Colman recommended additional therapy and continued medication.

Physician Immediate Care had referred Petitioner for an ortho doctor for continued medical care. Petitioner saw Dr. Christopher Bergin at Lutheran General Hospital, Spine Center. (Pet. Ex. 9) Petitioner saw Dr. Bergin on December 17, 2021, and Dr. Bergin stopped physical therapy. Dr. Bergin recommended a CT and possibly a myelogram. Petitioner was to remain off work.

Petitioner's care with Dr. Bergin was then transferred to IBJ, January, 2022. Dr. Bergin switched his practice (Pet. Ex. 5) Petitioner continued off work per Dr. Bergin per medical note dated May 24, 2022. Petitioner again saw Dr. Bergin on July 12, 2022, still with low back discomfort. The CT showed probable herniated disc at L5-S1 from the left side. Petitioner was to see pain management for evaluation for injections and get into a course of McKenzie based physical therapy.

Petitioner saw Dr. Bergin on August 23, 2022, still low back discomfort, yet no physical therapy or pain management was yet approved, and he was going to another Section 12 exam per Respondent. Petitioner was to remain off work.

On September 6, 2022, Petitioner had a second Section 12 exam with Dr. Colman. Per this exam, Dr. Colman now wrote "The patient's current condition is not work related. I believe the work incident did temporarily aggravate the condition but is now resolved." Dr. Colman also wrote Petitioner should have an EMG study, as well as a CT myelogram, but those tests would be non-work related.

Dr. Colman wrote "As it relates to work related injuries from 6/14/2021, the patient can work full duty capacity without restriction. Regardless of causation, the patient should be on sedentary duty only until such time as further diagnostics can be accomplished as I have outlined above. Sedentary duty requires no lifting more than 5 to 10 pounds and no repetitive or strenuous activity." Dr. Colman found Petitioner at MMI.

Petitioner saw Dr. Bergin on November 1, 2022. Petitioner continued to have back discomfort and remained off work and have an FCE.

An FCE was performed at Athletico on April 21, 2023. (P6) The FCE found Petitioner consistent, and rated him at a medium demand level, and did not demonstrate the physical capabilities and tolerances to perform all the essential job functions of his job. Petitioner had several work restrictions.

At the May 2, 2023, doctor visit with Dr. Bergin, he found the FCE valid and Petitioner could return to work per the restrictions, and the restrictions were permanent.

Petitioner had a third Section 12 exam with Dr. Colman on July 18, 2023. Dr. Colman wrote his diagnosis had not changed and again wrote MMI with a return to full duty work, but only restricted work because of his personal health condition.

CONCLUSIONS OF LAW

With respect to Issue (F), Is Petitioner's current condition of ill being causally connected to the injury, the Arbitrator finds as follows:

"In a workers' compensation case, the claimant has the burden of proving, by a preponderance of the evidence, all of these elements of his claim." *R&D Thiel v. Illinois Workers'*

Compensation Comm'n 398 Ill. App. 3d 858, 867 (2010)" [A] pre-existing condition does not prevent recovery under the Act if that condition was aggravated or accelerated by the claimant's employment." *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n,* 409 Ill. App. 3d 463, 470, (2011), quoting *Caterpillar Tractor Co. v. Industrial Comm'n* 92 Ill. 2d 30, 36, (1982). Further, "[e]very natural consequence that flows from an injury that arose out of and in the course of the claimant's employment is compensable unless caused by an independent intervening accident that breaks the chain of causation between a work-related injury and an ensuing disability or injury." *Vogel v. Ill. Workers' Comp. Comm'n*, 354 Ill. App. 3d 780 (2005). "That other incident, whether work -related or not, may have aggravated the claimant's condition is irrelevant." *Vogel*, 354 Ill. App. 3d at 786.

Respondent placed in dispute causal connection, however, Dr. Colman Respondent's own Section 12 exam doctor, wrote in his initial Section 12 dated October 12, 2021 (Resp. Ex. 4) at page 3, "I do believe the alleged work injury is the direct cause of the minor strain" and also wrote: "I do believe the work incident aggravated pre-existing condition."

This Arbitrator also heard Petitioner's credible testimony, and reviewed the medical records offered by Petitioner, including the records from Physicians Immediate Care and Dr. Bergin. Petitioner testified he was working full time, full duty as a laborer for Respondent for years before his work injury in June, 2021. Petitioner had no prior back care before his June, 2021 work injury.

Dr. Colman never mentions what pre-existing condition he was talking about and, per Dr. Colman's exam report dated August 5, 2021, Dr. Colman writes ***"…and the medical record does not reflect, pre-existing condition***."

Both Petitioner and Respondent introduced prior work injuries which Petitioner suffered over 33 years working for Respondent (Pet. Ex. 10, Resp. Ex. 8 (a and b). None of these involved the back. Based on the medical records, Respondent's own Section 12 exam report, and Petitioner's credible testimony, the Arbitrator finds Petitioner's current condition of ill-being for his back is causally related to his June 14, 2021 work accident.

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

The Arbitrator finds and concludes that the medical treatment that Petitioner received including the CT scan of the lumbar spine due to petitioner's pacemaker, was reasonable, necessary, and related to the work accident. Pursuant to Sections 8(a) and 8.2 of the Act, Respondent shall be liable for the following charges:

- Advanced Radiology Consultant (Date of Service: 02/08/22; $220.00).
- Advocate Aurora Health (Date of Service: 02/08/22; $1,870.00.

With respect to Issue (K) what temporary benefits are in dispute, the Arbitrator finds as follows:

It was stipulated by the parties that Petitioner was paid TTD from June 25, 2021 through August 4, 2023. The Arbitrator notes Petitioner had to file a 19(b) Motion to have TTD reinstated as it ended and stopped per the second Section 12 exam report of Dr. Colman. A pre-trial was held concerning Petitioner's 19(b) Motion, and after the pre-trial and recommendation of this Arbitrator, back TTD was paid by Respondent over $23,000.00, and continued to be paid until again stopped after the third Section 12 exam Dr. Colman report, July, 2023.

Petitioner, as he testified, attempted to return to work per the release by Dr. Colman, yet was denied his return to work by the City HR Department based upon what Dr. Colman wrote concerning some pre-existing condition, which Petitioner describes as "phantom" condition.

Petitioner testified he had no prior back injury before June 14, 2021; had no prior back care, and was working full time, full duty for years as a laborer before his June 14, 2021 work injury.

Petitioner applied for his pension but did not receive the first pension check until November, 2023. Petitioner requested TTD to be paid by Respondent from August 5, 2023 through October 31, 2023 or an additional 12-5/7 weeks.

Since Respondent would not return Petitioner to work after TTD stopped on August 4, 2023, the Arbitrator finds the off work medical per Dr. Bergin and the FCE report more persuasive and credible than the Section 12 exam report written by Dr. Colman dated July 18, 2023. (Pet. Ex. 5 and 6)

The Arbitrator orders Respondent to pay to Petitioner an additional 12-5/7 weeks of TTD from August 5, 2023 through October 31, 2023 at the rate of $1,108.89 weekly.

With respect to issue (L), what is the nature and extent of the Petitioner's injury, the Arbitrator finds as follows:

Petitioner is seeking benefits under Section 8(d)(2) of the Illinois Worker's Compensation Act. An award under Section 8(d)(2) of the Act is an award for permanent partial disability benefits and, therefore, must be evaluated under the five factors set forth in Section 8.1b of the Act. These five factors are:

(i) the reported level of impairment pursuant to the AMA Guidelines in subsection (a);

(ii) the occupation of the injured employee;

(iii) the age of the employee at the time of injury;

(iv) the employee's future earning capacity;

1. The Arbitrator notes per Section 8.1b (b) (i) no permanent partial disability report by Petitioner was submitted in evidence. Respondent's second Section 12 exam report by Dr. Colman indicate an impairment rating of "0" impairment, yet no actual impairment report was offered by Respondent. The Arbitrator gives minimum weight to this factor.

2. Section 8. 1b (b) (ii) is the occupation of the injured employee. The Arbitrator notes Petitioner was a laborer for Respondent for 33 years, now retired and receiving his pension when duty disability (TTD) was stopped, August 4, 2023. Petitioner requested a return to work, which was denied by Respondent. The Arbitrator gives more weight to this factor.

3. Section 8.1b (b) (iii) is the age of the employee at the time of his injury. Petitioner was 56 years old at the time of his accident and had several more years of work life, yet Respondent would not return Petitioner to employment even though requested. The Arbitrator gives some weight to this factor.

4. With regard to subsection (iv) of §8.1b(b), Petitioner's future earning capacity, the Arbitrator considers petitioner's testimony. Petitioner voluntarily removed himself from the workforce but credibly testified that he was forced to take an early retirement because of the loss of income suffered through TTD termination. There is no evidence that Respondent would take Petitioner back to work. There was no vocational rehabilitation nor light duty offered. Petitioner has expressed an interest in returning to work but testified he has not been searching for work. The Arbitrator accords some weight to this factor.

5. With regard to subsection (v) of §8.1b(b), the evidence of disability corroborated by the treatment records, the Arbitrator notes that petitioner did complain of immediate low back pain after the accident. When he was initially examined at Physicians Immediate Care on June 15, 2021, he did present with complaints of low back pain. His physical examination showed reduced range of motion. He was diagnosed with a lumbar sprain, given work restrictions, and given some over-the-counter medications. Petitioner continued to be symptomatic during his treatment with Physicians Immediate Care. He did require a Toradol injection, along with some prescription medications and continued work restrictions. He underwent some physical therapy, and the records demonstrate that his condition improved. The Arbitrator notes that Dr. Colman diagnosed a lumbar sprain/strain with a transient aggravation of his pre-existing lumbar condition of ill-being. Additionally, Petitioner did have some findings on his CT scan. Petitioner underwent a valid FCE and has permanent work restrictions. There is no doubt that Petitioner requires work restrictions that prevent him from returning to his pre-accident employment as a laborer. The Arbitrator finds that his restrictions are related to his work accident. Therefore, the Arbitrator awards greater weight to this factor.

CONCLUSION

The Arbitrator awards Petitioner an additional 12-5/7 weeks of TTD from August 5, 2023 through October 31, 2023 at the rate of $1,108.89 weekly.

The Arbitrator awards Petitioner's unpaid medical expenses from Advocate Aurora Health in the amount of $1,870.00, along with a $220.00 balance from Advance Radiology Consultant, pursuant to Sections 8(a) and 8.2 of the Act.

Given the forgoing and taking the five factors into consideration, the Arbitrator awards Petitioner permanent partial disability benefits for 35% loss of use man as a whole per Section 8(d)(2) of the Act, or 175 weeks at the PPD rate of $871.73 per week.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC020018
Case Name	INSURANCE COMPLIANCE v. LOLITA'S MEXICAN FOOD & TAMALES
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0026
Number of Pages of Decision	7
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Benjamin Pryde
Respondent Attorney	

DATE FILED: 1/17/2025

/s/Amylee Simonovich,Commissioner

Signature

STATE OF ILLINOIS)
)
COUNTY OF Cook)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

State of Illinois
Department of Insurance,
Insurance Compliance Department[1], Case # **20WC020018**
Petitioner,

v. **Chicago, IL**

Misael Pena, d/b/a Lolita's Mexican Food and Tamales
Employers/Respondents.

DECISION AND OPINION REGARDING INSURANCE COMPLIANCE

Petitioner, the State of Illinois Department of Insurance, Insurance Compliance Department, brings this action, by and through the Office of the Illinois Attorney General, against the above captioned Respondents alleging violation of Section 4(a) of the Illinois Workers' Compensation Act for failure to procure mandatory workers' compensation insurance. Petitioner alleges that Respondents knowingly and willfully lacked workers' compensation insurance for 1,525 days. On October 2, 2024, after timely notice to Respondents, a hearing was held before Commissioner Simonovich in Chicago, Illinois. Petitioner was represented by the Office of the Illinois Attorney General. Respondent did not appear in person or through counsel. A record was taken.

Petitioner seeks the maximum fine allowed under the Act, $500.00 per day for each of the 1525 days during the periods of September 11, 2012 to October 29, 2015 and December 19, 2016 to January 3, 2018, when Respondents did business and failed to provide coverage for its employees.

The Commission, after considering the record in its entirety, and being advised of the applicable law, finds that Respondents knowingly and willfully violated §4 of the Act and §9100 of the Rules Governing Practice before the Illinois Workers' Compensation Commission (Rules) during the claimed periods in question. As a result, Respondent shall be held liable for non-compliance with the Act and shall pay a penalty in accordance with section 4(d) of the Act. For the following reasons, the Commission assesses a civil penalty against the Respondents under §4 of the Act in the sum of $457,500.00, representing $300.00 per day for each of the 1,525 days.

I. Findings of Fact

The State of Illinois, Department of Insurance, Insurance Compliance Department, initiated an insurance compliance investigation in 2017 after the Injured Workers' Benefit Fund (IWBF) had been named as an additional party in the matter of *Rocio Rodriguez v. Lolita's*

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

Restaurant & IWBF, No. 11 WC 044583. The department's investigation determined that Respondents' business was subject to the Worker's Compensation Act by virtue of Section 3 of the Act and had failed to provide insurance coverage for its employees. The department further determined Respondents' business was not self-insured.

Respondent was initially served with Notice of Compliance Hearing on February 10, 2023. (PX1). The matter was continued to allow Respondent to obtain counsel. No counsel entered their appearance and Respondent did not appear for any subsequent Webex conferences. *Id*. On December 11, 2023, Petitioner was served Notice of Non-Compliance Hearing via USPS mail to the same address where personal service had previously been made. *Id*. An Order of Default was issued on February 27, 2024. *Id*. An affidavit of Service showed that Respondent was personally served with a Notice of Insurance Compliance via substitute service through Elizabeth Bias Pena, Misael Pena's daughter and manager of Lolita's Mexican Food and Tamales, at the business address on 8605 Ogden Avenue, Lyons, IL on March 15, 2024. (PX2). On March 25, 2024, an additional copy of the Notice of Insurance Compliance and Order of Default was sent to Respondent via USPS mail. *Id*.

Notice of a Scheduled Hearing on the Merits was sent via certified mail to Respondent at his business address at 8605 Ogden Avenue, Lyons, IL. (PX2A). On September 11, 2024, the Notice was received by an individual at the Respondents address. *Id*.

On October 2, 2024, the Scheduled Hearing on the Merits was conducted before Commissioner Simonovich in Chicago, Illinois. Petitioner appeared via their attorney. Respondent did not appear in person or through counsel.

At the time of hearing, Petitioner called Antonio Smith, an investigator for the Illinois Department of Insurance, Insurance Compliance Department, to testify regarding his investigation.

He testified that on January 3, 2018, a State of Illinois Notice of Non-Compliance was sent via certified mail by his office to Respondent at 6340 Ogden Avenue, Berwyn, Illinois, 60402. PX3. The Notice stated that according to Commission records, the Respondent was not in compliance with the requirements of §4(a) of the Act for the period beginning September 11, 2012 to October 29, 2015 and December 19, 2016 through January 3, 2018. *Id*. On January 27, 2021, Petitioner sent a State of Illinois Notice to Employer of Insurance Compliance Informal Conference, set for February 16, 2021 at 10:00 a.m. PX4. Neither Respondent nor any proxy appeared on that date. On March 16, 2021, Petitioner sent a State of Illinois Notice of Insurance Compliance Hearing, set for May 12, 2021. PX5. The period of non-compliance alleged was from September 11, 2012 to October 29, 2015 and December 19, 2016 through September 24, 2018. *Id*.

Investigator Smith testified he had requested corporation records from the Illinois Secretary of State. In response, the Illinois Secretary of State certified that an examination of their records demonstrated Respondent was not an incorporated entity. PX6. Investigator Smith identified Petitioner's Exhibit 7 and 8 as Illinois Workers' Compensation Commission Case Docket case detail printouts for 11WC044583 and 15WC28404, respectively. The case detail printouts showed two pending workers' compensation cases naming Lolita's Restaurant and the Injured Workers' Benefit Fund as the Respondents.

Investigator Smith testified to his belief that Respondent was required by the Act to provide workers' compensation insurance coverage for its employees under the automatic coverage provisions of §3 of the Act, in that they serve food to the public and provide goods or services which are sold to the public.

Investigator Smith conducted an inquiry into whether Respondent was self-insured by making a request to the Commission's Office of Self-Insurance Administration. In response to his request, he received a sworn certification by Maria Sarli-Dehlin of the Commission's Office of Self-Insurance Administration, which stated that no certificate of approval to self-insure was issued by the Commission to Lolita's Mexican Food & Tamales a/k/a Misael Pena Lolitas Mexican Food & Tamales from September 11, 2012 to October 29, 2015 and December 19, 2016 to June 12, 2018. PX9. The certification also identified Misael Pena as Respondent's President. *Id.*

Investigator Smith also requested insurance information from the National Council on Compensation Insurance (NCCI). He received a certification from Corey Brown, the NCCI agent designated by the Commission for the purpose of collecting proof of insurance coverage information on Illinois employers. The certification showed which showed no record of Respondent having filed policy information showing proof of workers' compensation insurance from September 11, 2012 to October 29, 2015 or December 19, 2016 to the date of filing, February 9, 2019. PX10. NCCI records showed Respondent had filed proof a workers' compensation insurance policy from December 15, 2011 to December 15, 2012, but noted the policy had been cancelled effective September 11, 2012. *Id.* Records also showed Respondent had filed proof of a workers' compensation insurance policy from October 30, 2016 to October 30, 2017, but noted it had been cancelled effective December 19, 2016. *Id.*

Investigator Smith requested records from the Illinois Department of Revenue for tax return information from 2012 through 2018. He received certification that the department had processed Illinois withholding income tax returns for periods ending September 2015, December 2015, and December 2016 through June 2018. PX11.

Lastly, Investigator Smith requested records from the Illinois Department of Employment Security who certified copies of the Employer's Quarterly Wage Reports for the third quarter of 2015 through the third quarter of 2018. PX12. Those records demonstrated employment of a number of employees during this period, with the exception of quarters September 30, 2016 and March 31, 2018. *Id*.

II. Conclusions of Law

The Commission first considers whether Respondents are subject to the Act. Pursuant to Section 3 of the Act, certain employers and their employees are automatically subject to the provisions of the Act if they engage in specific businesses, including: "the distribution of any commodity by… motor vehicle where the employer employs more than 2 employees in the enterprise or business." 820 ILCS 305/3(3).

The Commission recognizes investigator Smith's testimony that Respondent's company fell under §3(14) and §3(17) of the Act. Pursuant to §3(14) 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:

> 14. Any business or enterprise serving food to the public for consumption on the premises wherein any employee as a substantial part of the employee's work uses handcutting instruments or slicing machines or other devices for the cutting of meat or other food or wherein any employee is in the hazard of being scalded or burned by hot grease, hot water, hot foods, or other hot fluids, substances or objects…
>
> 17. (a) any business or enterprise in which goods, wares or merchandise are sold or in which services are rendered to the public at large, provided that this paragraph shall not apply to such business or enterprise unless the annual payroll during the year next preceding the date of injury shall be in excess of $1,000.
>
> *820 ILCS 305/3(14) and (17) (West 2016).*

Further, Petitioner exhibits 11 and 12 demonstrate the exception under §3(17) does not apply to Respondent, as the wages from 2015 through 2018 all exceeded $1,000. Based upon investigator Smith's testimony and Petitioner's exhibits 11 and 12, the Commission finds that the work Respondents engaged in automatically subjected them to the provisions of the Illinois Workers' Compensation Act.

Pursuant to §4(a) of the Act, all employers who come within the auspices of the Act are required to provide workers' compensation insurance. See 820 ILCS 305/4(a) (West 2004). Section 9100.90(a) of the Rules similarly provides that any employer subject to §3 of the Act shall insure payment of compensation required by §4(a) of the Act "by obtaining approval from the Commission to operate as a self-insurer or by insuring its entire liability to pay the compensation in some insurance carrier authorized, licensed or permitted to do such insurance business in Illinois." 50 Ill. Adm. Code 9100.90(a) (1986). Section 9100.90(d)(3)(E) of the Rules similarly provides that a certification from a Commission employee "that an employer has not been certified as a self-insurer shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D) (1986). Section 9100.90(d)(3)(D) of the Rules provides that "[a] certification from an employee of the National Council on Compensation Insurance stating that no policy information page has been filed in accordance with Section 9100.20 shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D) (1986).

The Commission analyzes here the culpability of Respondents and the applicability of §4(a). Section 4 of the Act requires that all employers of at least one employee who come within the provisions of Section 3 of the Act, and any other employer who shall elect coverage under §2 of the Act, provide workers' compensation insurance for the protection of their employees. 820 ILCS 305/4.

In this case, Petitioner submitted a certified finding from the Department of Self-Insurance that no certificate of approval to self-insure was issued to Respondent from September 11, 2012 to October 29, 2015 and December 19, 2016 to June 12, 2018. PX9. The NCCI certification provided by Petitioner shows Respondent did not file policy information showing proof of workers' compensation insurance for the period from September 11, 2012 to October 29, 2015 or

December 19, 2016 to February 5, 2019. PX10. Records did show Respondent had a workers' compensation insurance policy from December 15, 2011 to December 15, 2012, but that it was cancelled effective September 11, 2012. Records did show Respondent had a workers' compensation insurance policy from October 30, 2016 to October 30, 2017, but that it was cancelled effective December 19, 2016., to August 3, 2016. *Id*. Investigator Smith concluded that Respondent did not have workers' compensation insurance, nor was Respondent self-insured during the relevant time period. Accordingly, the Commission concludes that Petitioner has proved, by a preponderance of the evidence, that Respondents failed to comply with the legal obligations imposed by section 4(a) of the Act from September 11, 2012 to October 29, 2015 and December 19, 2016 to January 3, 2018.

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

> "Upon a finding by the Commission, after reasonable notice and hearing, of the knowing and willful failure or refusal of an employer to comply with any of the provisions of paragraph (a) of this Section ***, the Commission may assess a civil penalty of up to $500 per day for each day of such failure or refusal after the effective date of this amendatory Act of 1989. The minimum penalty under this Section shall be the sum of $10,000. Each day of such failure or refusal shall constitute a separate offense. The Commission may assess the civil penalty personally and individually against the corporate officers and directors of a corporate employer, the partners of an employer partnership, and the members of an employer limited liability company, after a finding of a knowing and willful refusal or failure of each such named corporate officer, director, partner, or member to comply with this Section. The liability for the assessed penalty shall be against the named employer first, and if the named employer refuses to pay the penalty to the Commission within 30 days after the final order of the Commission, then the named corporate officers, directors, partners, or members who have been found to have knowingly and willfully refused or failed to comply with this Section shall be liable for the unpaid penalty or any unpaid portion of the penalty." 820 ILCS 305/4(d) (West 2004).

On the merits, the Commission has considered the following factors in assessing penalties against an uninsured employer: (1) the length of time the employer had been violating the Act; (2) the number of workers' compensation claims brought against the employer; (3) whether the employer had been made aware of his conduct in the past; (4) the number of employees working for the employer; (5) the employer's ability to secure and pay for workers' compensation coverage; (6) whether the employer had alleged mitigating circumstances; and (7) the employer's ability to pay the assessed amount. See, *e.g.*, *State of Illinois v. Murphy Container Service*, Ill. Workers 'Comp. Comm'n, No. 03 INC 00155, 7 IWCC 1037 (Aug. 2, 2007).

The Commission finds that the 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 1,525 days from September 11, 2012 to October 29, 2015 and December 19, 2016 to January 3, 2018. As Respondent failed to have workers' compensation insurance, the Injured

Workers' Benefit Fund was named as co-Respondent in two pending cases. 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 evidence established that Respondent on two separate occasions had a workers' compensation policy but cancelled it prematurely. The Commission concludes that Respondents knowingly and willfully failed to comply with the Act. Based on the significant period of time that Respondents failed to comply with the Act, the Commission assesses a penalty of $300.00 per each day of non-compliance. The Commission assesses a penalty of $457,500.00 ($300.00 x 1,525 days) against Respondent Misael Pena, doing business as Lolita's Mexican Food and Tamales.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent Misael Pena, doing business as Lolita's Mexican Food and Tamales, pay to the Illinois Workers' Compensation Commission the sum of $457,500.00 pursuant to §4(d) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that pursuant to Commission Rule 9100.90(e) payment shall be made according to the following procedure: (1) payment of the penalty shall be made by certified check or money order made payable to the Illinois Workers' Compensation Commission; and (2) payment shall be mailed or presented within thirty (30) days of the final order of the Commission or the order of the court of review after final adjudication to:

Department of Insurance
Attn: Insurance Compliance
122 South Michigan Avenue, 19th floor
Chicago, Illinois 60603

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.

January 21, 2025

H: 10/02/2024

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	22WC020692
Case Name	Marcin Misiaszek v. XPO Logistics Drayage (subsequently STG Drayage, LLC) dba XPO Logistics, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0027
Number of Pages of Decision	14
Decision Issued By	Amylee Simonovich, Commissioner,

Petitioner Attorney	Andrew Pippin
Respondent Attorney	Lauren Weber, Masood ALi

DATE FILED: 1/21/2025

/s/Amylee Simonovich,Commissioner
Signature

DISSENT: /s/Amylee Simonovich,Commissioner
Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARCIN MISIASZEK,

Petitioner,

vs. NO: 22 WC 20692

XPO LOGISTICS DRAYAGE
(subsequently STG Drayage, LLC)
d/b/a XPO Logistics, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, employer-employee relationship, causal connection, medical expenses, prospective medical, and temporary total disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

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

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

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

The bond requirement in Section 19(f)(2) is applicable only when "the Commission shall have entered an award for the payment of money." 820 ILCS 305/19(F)(2). Based upon the denial

January 21, 2025
O111924
AHS/ldm
051

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

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

DISSENT

After carefully considering the totality of the evidence, I respectfully dissent from the opinion of the majority and would reverse the Decision of the Arbitrator on the issue of employer-employee relationship.

I agree with the Arbitrator's application of the factors in *Roberson* and agree that the significance of the factors depends upon the totality of the circumstances, with no single factor being determinative. 225 Ill. 2d 159 (2007). However, in evaluating the facts of the case, I come to a different conclusion.

When examining whether the employer may control the manner in which the person performs the work, factor (1) in *Roberson*, I find the evidence demonstrates Respondent had significant control over Petitioner's equipment and work. *Id*. at 175

Petitioner believed he had leased his truck solely to Respondent (T.21) and this belief was bolstered by the control exerted by Respondent over Petitioner's truck. The truck had an assigned spot at McCook Terminal for times when it was not in use. T.15. It displayed a placard stating it was leased and operated by Respondent. T.20. Petitioner testified that the placard had been glued onto the truck and that it would be difficult to remove it without removing the paint. T.21-22. Petitioner testified he carried no passengers in the truck because Respondent would not allow it. T.25. Respondent required inspections of his truck every 90 days, which was in excess of DOT regulations. T.28. The mechanical inspections were provided and paid for by Respondent. *Id*. Respondent would not allow loading/unloading of the trailers. T.30. All Petitioner's insurance policies were chosen by Respondent. T.12. Respondent supplied registration to almost all 50 states. T.22-24. Delivery paperwork was provided by Respondent. T.31.

Similar to the control exerted over Petitioner's equipment, Petitioner testified that his own actions were likewise controlled. Petitioner testified that it was his understanding that he could not drive for any other company. T.71, 73. Respondent provided Petitioner with his assignments and tracked his mileage via a tablet they provided for him. T.26-27. Respondent would only pay mileage at the shortest route available. T.81. So, while not technically mandating a route, the withholding of reimbursement in practice was an inherent control over Petitioner's chosen route. Further, Respondent required health evaluations of Petitioner every 18 months, which was again in excess of DOT regulations which only required evaluations every two years. T.32. The health evaluations were provided and paid for by Respondent. *Id*.

Petitioner testified if he rejected a load, he would not be given another one. T.14. Despite the testimony from Mr. Quinn that there would be no negative consequences for rejecting loads, it appeared as though, in practice, there were consequences. When describing his time at McCook Terminal after rejecting a load, he was described as "sitting around" waiting for another load to be offered to him. T.99. So, while he may not have been technically "reprimanded", he was also clearly not given another option to drive in a timely manner, which could have affected his overall earnings.

Petitioner testified that if he was driving a load for Respondent and they became unhappy with his performance, they could instruct him to stop driving, pull over and have another driver complete the load. T.24-25. There was no evidence presented to contradict this. I find this speaks directly to factor (5) in *Roberson*. *Roberson,* at 175.

Respondent also supplied Petitioner with a number of materials and equipment, factor (6) in *Roberson*. *Id* at 175. Respondent was supplied with a security vest, work bag and t-shirt, all bearing Respondent's logo. T.16-18. Respondent supplied a placard with Respondent's logo. T.20. Respondent provided Petitioner with a tablet/app, to provide his assignments and to track his mileage. T.26-27.

Finally, in *Roberson,* the Court recognized that the question of whether the employer's general business encompassed the person's work was important in the determination an employer-employee relationship. *Id* at 175, 200. In this case, Respondent was in the business of the delivery of goods to customers by truck.

The Arbitrator cited some facts that he found suggested an independent contractor relationship. Looking at the degree of control effectively held by Respondent, I do not think these items are determinative of the employer-employee relationship in this case. While no single factor is determinative and the Commission must look at the totality of the circumstances, whether the purported employer has a right to control the actions of the employee is "[t]he single most important factor." *Ware*, 318 Ill. App. 3d at 1122; see also *Bauer v. Industrial Comm'n*, 51 Ill. 2d 169, 172, 282 N.E.2d 448 (1972). The evidence detailed above demonstrates control over the actions of Petitioner and, therefore, the presence of an employee-employer relationship.

Lastly, the Arbitrator found that the "independent contractor agreement" showed that the Parties knew they were entering into a business-to-business independent contractor relationship when they signed the contract. Arbitration Decision, p.8. I disagree. While Petitioner signed the independent contractor agreement, he had limited understanding of its terms due to a language barrier. T.12. He testified repeatedly that he believed he needed to sign the document if he wanted to drive for Respondent. T.12, 64, 66. As a result of signing the agreement, he believed that while

he owned his own truck, he had leased the use of his truck to Respondent. T.21. It seems that the "independent contractor agreement" in this case seemed to be provided to Petitioner as a take it or leave it situation and he clearly felt he had no choice but to sign it. Further, based upon the stark differences in Petitioner's testimony from Mr. Quinn's testimony and the contract, there did not appear to be any meeting of the minds regarding the contract.

For these reasons, I would reverse the Decision of the Arbitrator and find the existence of an employer-employee relationship.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC020692
Case Name	Marcin Misiaszek v. XPO Logistics Drayage (subsequently STG Drayage, LLC) d/b/a XPO Logistics, Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Andrew Pippin
Respondent Attorney	Lauren Weber, Magdalena Filipiuk

DATE FILED: 1/3/2024

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

/s/ Jeffrey Huebsch, Arbitrator

Signature

M. Misiaszek v. XPO, etc., 22 WC 020692

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)

Marcin Misiaszek Case # **22** WC **020692**
Employee/Petitioner

v

XPO Logistics Drayage
(subsequently STG Drayage, LLC)
d/b/a XPO Logistics, Inc.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **October 25, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **August 5, 2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did not*** exist between Petitioner and Respondent.

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned $**57,434.41**; the average weekly wage was $**1,104.51**.

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

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

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

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

ORDER

Claim for Compensation denied. Petitioner failed to prove that an employee-employer relationship existed between him and Respondent.

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

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

JANUARY 3, 2023

Signature of Arbitrator

INTRODUCTION

This matter was tried on Petitioner's §19(b) Petition. The primary issue in dispute is whether there was an employee-employer relationship between Petitioner and Respondent. The testimony of Petitioner and Sean Quinn (Regional Vice President of Respondent, Director of Chicago McCook and Joliet Terminal for Respondent at the time of the accident) was submitted by the Parties, along with medical records, photographs and documentary evidence.

The Arbitrator redacted Petitioner's SSN from RX 3 in order to comply with SCR 138.

Petitioner testified via a Polish/English interpreter.

FINDINGS OF FACT

Respondent, XPO Logistics Drayage, LLC ("Respondent") is a transportation company engaged in the business of intermodal freight transport. (Tr. 11, 92-93). Respondent has employees working in departments such as operations and customer service, but all of Respondent's truck drivers are owner-operators whom Respondent engaged as independent contractors. (Tr. 90-91, 116).

Petitioner, Marcin Misiaszek ("Petitioner"), who owned his own truck, delivered loads for Respondent. (Tr. 20; 76, 92-93). On August 5, 2020, Petitioner was driving his truck when another truck driving against the flow of traffic struck his and another vehicle. This was a high impact collision. Petitioner lost consciousness and his truck caught on fire. (Tr. 35-37, PX 15C). Petitioner alleges the following injuries: lumbar disc herniation, lumbar post-laminectomy syndrome, cervical strain, a broken tooth, and psychological injuries. (PX 1-13; RX 2).

The Contract/Parties' Relationship

Petitioner testified that the Parties' relationship began in 2008. On July 22, 2020, Petitioner and Respondent signed a contract titled "XPO LOGISTICS DRAYAGE, LLC. INDEPENDENT CONTRACTOR OPERATING CONTRACT" (the "Contract"). (Tr. 60-62; RX 3). The Parties were designated as "Carrier" (Respondent") and "Contractor" (Petitioner). Petitioner testified that he signed the Contract and by doing so agreed to all its terms. (Tr. 63). The Contract states: "Contractor understands that this Contract creates the relationship of principal-independent contractor, not employer-employee, and that all aspects of relationship between Contractor and Carrier are based on the Contractor's status as an independent contractor. Contractor specifically desires and intends to operate as an independent contractor." (Tr. 63-64; RX 3, 0487). The Contract further states that the relationship of the parties is an ("Independent-Contractor relationship" made between two co-equal business enterprises that are separately owned and operated. (RX 3, 0468). Article 21 of the Contract provides that it can be terminated by either party for any reason at any time upon giving of 30 days' notice. (RX 3, 0480).

Also, in accordance with the terms of the Contract, Respondent did not withhold taxes from the settlement amounts that Petitioner was paid by Respondent for completed trips. (Tr. 70; RX. 3). It was Petitioner's experience that taxes were not withheld by Respondent and Petitioner was responsible for his own State and Federal taxes. (Tr. 70, 104). Respondent gave Petitioner a 1099 Federal Income Tax Form each year. (Tr. 73, RX 3, 0526). Petitioner checked "Individual, Sole Proprietor" on his W-9 tax form. (Tr. 75, RX 3, 0547).

Petitioner was responsible for his own operating expenses per the terms of the Contract, which stated: "Contractor has agreed to be responsible for the operating expenses incurred in connection with Contractor's business operations.". (Tr. 63-64, RX 3, 0487). In accordance with these terms, it was Petitioner's experience that he was responsible for the expenses associated with operating his business. (Tr. 71).

Respondent assisted Petitioner and other independent contractors in obtaining proper insurance and licensure. (Tr. 23-24). Respondent would pay fees associated with licensing their independent contractors in various states to ensure Respondent's compliance with Department of Transportation regulations. (Tr. 102-103), (RX 3. Petitioner was free to obtain his own license plates. (RX 3, 0513).

Petitioner purchased his own truck. (Tr. 76). Petitioner's truck was neither acquired by nor paid for by Respondent. *Id*. Petitioner had a sticker with Respondent's company logo and name on the side of his truck. (Tr. 97-98). This sticker was placed on Petitioner's truck pursuant to Department of Transportation regulations mandating the same. (Tr. 98, 102-103). It was not Respondent's policy to mandate placement of the sticker. *Id*. If something needed to be fixed on Petitioner's truck, Petitioner would pay for those repairs. (Tr. 82).

Petitioner was responsible for paying for fuel. (Tr. 29-30, 80, 98-99). Respondent would sometimes partially or fully reimburse those expenses, depending on the price of fuel, in order to stay competitive in the job market, per the Contract. (Tr. 30, 80, 98-99; RX 3). Petitioner paid tolls and was reimbursed by Respondent. (Tr. 29-30).

The Contract further states that "[t]he fees Carrier agrees to pay are not intended to ensure that Contractor covers Contractor's operating expenses, but instead to provide the amount of revenue sufficient, in the relevant market for such services, to convince a contractor-business both to provide, maintain, fuel, legally-credential, and otherwise operate suitable and dependable Vehicle and provide and pay a qualified professional driver or drivers to drive that vehicle." (Tr. 67; RX 3).

Article 4(B) of the Contract provides, pursuant to FMCSA regulations, that Carrier will assume complete responsibility for the operation of the Vehicle. (Tr. 118-199; RX 3, 0470). 4(B) also states that this declaration is made solely to comply with regulations and should not be used to classify a contractor as an employee of Carrier. (RX 3, 0470).

Petitioner paid for his own occupational accident policy and liability insurance on his truck. (Tr. 12-13, 101). Respondent offered insurance policies, but Petitioner was not required to purchase the policies offered by Respondent and could opt for a policy through another carrier. (Tr. 12-13, 101; RX 3, 0518).

Respondent did not require Petitioner to wear a uniform. (Tr. 81-82, 95-97). Respondent did provide Petitioner and others with bags and tee-shirts bearing Respondent's logo, but use of these items by Petitioner was not mandated. (Tr. 19, 81-82, 95-97, 112-113). Respondent also provided Petitioner with a high visibility safety vest bearing Respondent's logo and the words "Contracted To" on the back. (Tr. 112-113, 116-117, PX 14). At no time did Respondent's policies require Petitioner to wear the provided vest. (Tr. 95-97, 116-117). In certain contexts, the vests were required by entities other than Respondent and were required in Respondent's yard *Id*. Petitioner was free to use a vest of his own, if he so preferred. *Id*.

Respondent provided Petitioner with a tablet that had multiple functions, including logging his time and seeing the trips available to him. (Tr. 94). Respondent chose the logging system that was installed on the tablets in order to ensure compliance with Department of Transportation regulations. (Tr. 25-26). Petitioner could elect to use his own logging system, but it had to be compatible with Respondent's system for regulatory purposes. (RX 3, 0507).

When Petitioner drove for Respondent, he was told where (and sometimes when) to pick-up and drop-off loads via the information provided for the trip on the tablet. (Tr. 94). However, Respondent did not control which deliveries Petitioner drove. (Tr. 13-14, 93-95). Rather, Petitioner had sole discretion to choose which deliveries he wanted to accept, out of the deliveries available. *Id*. When offered a delivery by Respondent, Petitioner was free to accept or decline as he pleased. *Id*. Petitioner could refuse or accept as many deliveries as he desired. *Id*. There were no consequences for refusing a delivery. (Tr. 71-72, 99-100, RX 3, 0471). There were many instances in which Petitioner rejected deliveries and waited instead for a trip that suited him better. (Tr. 99-100). If Petitioner declined all deliveries offered to him and there were no more available, that was simply because Respondent had none to offer. (Tr. 93-95). Sometimes there was one trip offered and other times there were multiple trips offered, depending on the amount of work Respondent had available on a given day. *Id*.

Petitioner chose the deliveries he wanted to make and the travel route to make the delivery. (Tr. 81). Although there were sometimes required delivery times for a shipment, Petitioner otherwise decided his own schedule for making a delivery, including where and when to stop for gas and make rest stops. (Tr. 76-78). Petitioner was not required to check in with Respondent or start work at any certain time in the mornings. *Id*. Petitioner was not required to work any certain days or a minimum number of hours. (Tr. 76-79, 93). Petitioner did not receive paid time off. *Id*.

After a delivery was complete, Petitioner would be paid a settlement for the delivery. (RX 3). Petitioner was paid per mile or per shipment and not paid by the hour. (Tr. 29, 76). Respondent did not control Petitioner's schedule. (Tr. 76-79, 93). Petitioner had sole discretion in choosing what time and what days he worked or did not work. *Id*. Due to the nature of the business, *i.e*., making deliveries, there were some deliveries that had a "deadline" or a time by which they needed to be completed. (Tr. 77-78). However, Petitioner was free to decline any delivery that did not fit within his desired timeframe or personal schedule. *Id*.

Respondent did not control who made the deliveries Petitioner elected to take. (Tr. 100-101). All truck drivers for Respondent, as independent contractors, were permitted to take on employees to complete deliveries in their stead. *Id*. The contractor would have its own contract with said employees and would pay them from the settlement received from Respondent. *Id*. Petitioner would have been responsible for obtaining workers' compensation insurance for employees. *Id*. The Contract required Petitioner and any of his employees to abide by various federal and state laws and regulations. (RX 3).

Although Petitioner did not drive for other companies during his contract with Respondent because he felt he did not have the time, he was permitted to do so per the terms of the Contract. (Tr. 22-23, 100-102; RX 3). Petitioner had the ability to choose his own schedule and could have made choices which allowed him to seek other driving assignments. (Tr. 76-79, 93). Petitioner was free to choose the route that he took to get to the assigned destinations. (RX 3, 0468, 0526).

Petitioner testified that before the August 5, 2020 accident, he had no prior left leg or back or neck issues or treatment. He had no prior mental health treatment or neurologic issues and was not in need of dental treatment. (Tr. 34-35, 47).

The Accident/Medical Treatment

After the August 5, 2020, accident, Petitioner reported the accident to Respondent. (Tr. 38-39). Quinn requested that he do a test for alcohol and drugs per DOT regulations. (Tr. 37-38, 102-103). Petitioner first treated in Michigan at Lakeland Hospital's emergency room. (Tr. 37-38; PX 1). He presented with right shoulder pain and law back pain. (PX 1; RX 2). He did not hit his head and was walking. *Id*. An X-ray revealed

no fractures in the right shoulder. *Id*. He was discharged the same day. *Id*. There was no mention of a broken tooth. *Id*.

Petitioner presented to Loyola MacNeal Hospital's emergency room on August 8, 2020, after a "fainting spell". (Tr. 39-40; PX 2; RX 2). He presented with head and neck pain. *Id*. CT scans were negative for lumbar or thoracic fractures. *Id*.

After he was discharged from MacNeal the next day, he followed up with a nurse practitioner Jessica Rebstock of Access Community Health Network on August 10, 2020, at which time he was ordered off work. (Tr. 41; PX 3). To date, he has not been cleared to return to work. *Id*. Rebstock referred Petitioner to an orthopedic specialist, a behavioral health specialist and a neurologist. (Tr. 43; PX 3).

Petitioner first saw Dr. Mark Sokolowski, an orthopedic surgeon, on January 14, 2021. (Tr. 43-44; PX 4). He is still under Dr. Sokolowski's care and is treating with him for issues related to his back, neck and left leg pain. *Id*. Dr. Sokolowski prescribed physical therapy and three epidural steroid injections in the lower back, which helped to alleviate some of his neck and back pain. (Tr. 45-46; PX 4). Due to his ongoing problems with his left leg, Dr. Sokolowski prescribed lower back surgery, which Petitioner underwent on July 13, 2022. *Id*. Following the surgery, Dr. Sokolowski prescribed post-operational physical therapy, which Petitioner has yet to undergo. (Tr. 46-47; PX 4).

Petitioner also treated with Dr. Rostafinski, a psychologist, starting on May 5, 2021 to date. (Tr. 49; PX 5). He sees Dr. Rostafinski every other week for treatments including talk therapy and hypnosis to treat his flashbacks and nightmares. *Id*.

Petitioner also treated with a neurologist, Dr. Wilson. (Tr. 51; PX 6). He has seen him twice—once in May of 2022 and once in July of 2022. *Id*. He was prescribed gabapentin for numbness and topiramate for his headaches. (Tr. 52; PX 6).

Dr. Rebstock's notes from the August 10, 2020, visit indicate that Petitioner was missing a portion of his tooth. (Tr. 42; PX 3). The missing tooth was not reported during his initial emergency room visit following the crash. (PX 1). Further, the records for initial treatment indicate that Petitioner did not hit his head and had no skin abrasions. (PX 1). The records for the subsequent August 8, 2020, visit to Loyola MacNeal note that Petitioner claimed the right side of his face was swollen and a tooth was broken, but also notes that there was no bruising, swelling or skin abrasions apparent. (PX 2). Petitioner had a surgery performed to remove his broken tooth on October 10, 2021 at Dental Works, which was covered by the occupational insurance policy. (PX 10).

Dr. Clay, Respondent's Section 12 examiner, opined that Petitioner's current diagnoses were lumbar disc herniation, lumbar post-laminectomy syndrome, cervical strain (whiplash) and cervical facet mediated pain. (RX 2). He further opined that Petitioner's complaints were causally related to the August 5, 2020 accident. *Id*. Dr. Clay stated that Petitioner had reached maximum medical improvement as to his cervical spine injuries, but not with regards to his lumbar spine injury. *Id*. Dr. Clay agreed that Petitioner would benefit from additional physical therapy, at least 20 sessions. *Id*. Dr. Clay opined that all treatment to date has been necessary. *Id*. Dr. Clay did not address the issue of Petitioner's broken tooth or related treatments for same. *Id*.

Petitioner testified that therapy has helped some of his neck symptoms, but at the last visit with Dr. Sokolowski, on October 13, 2023, his neck was feeling badly. Regarding his low back, Petitioner's left leg pain had returned significantly. He had back pain. He uses a cane for balance because he has left leg weakness. He would like to receive ESI injections offered by Dr. Sokolowski. He would like follow-up care with neurologist Dr. Wilson and psychologist, Dr. Rostafinski. Petitioner complains of constant low

back pain, varying in intensity. He has numbness and pain in his left leg. He relates an inability to move his leg or arm with neck positioning. He has nightmares and is startled by loud noises. He has occasional headaches. (Tr. 46-58).

CONCLUSIONS OF LAW

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

Section 1(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of employment. 820 ILCS 305/1(d). To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all elements of his claim, including the existence of an employer-employee relationship. Pearson v. Industrial Comm'n, 318 Ill. App. 3d 932, 935 (2001) (O'Dette v. Industrial Commission, 79 Ill. 2d 249, 235 (1980))

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)

AS TO ISSUE (B), WAS THERE AN EMPLOYEE-EMPLOYER RELATIONSHIP?, THE ARBITRATOR FINDS:

Petitioner failed to prove that there was an employee-employer relationship between him and Respondent. Petitioner was an independent contractor.

This finding is based on the testimony of Petitioner and Mr. Quinn, along with RX 3 and PX 14A.

As the Illinois Supreme Court stated in Roberson v. Industrial Comm'n, there is no clear line or single dispositive factor to be considered in determining whether an employment relationship exists. 225 Ill. 2d 159, 175 (2007) There are a number of factors which should be analyzed in making such a determination. *Id*. Among the are:

(1) Whether the employer may control the manner in which the person performs the work;
(2) Whether the employer dictates the person's schedule;
(3) Whether the employer compensates the person on an hourly basis;
(4) Whether the employer withholds income and social security taxes from the person's compensation;
(5) Whether the employer may discharge the person at will; and
(6) Whether the employer supplies the person with materials and equipment.

Id. The significance of these factors rests on the totality of the circumstances, and no single factor is determinative. *Id*.

Here, Petitioner controlled the manner in which he performed his truck driving work. He was free to accept a run from McCook to Gary and choose to drive the route via Milwaukee (being paid, of course for the mileage to Gary, or the flat fee to Gary). He chose when to fuel and when to take rests while driving. Petitioner was free to accept or reject loads and had done so many times. Petitioner chose his own schedule. He could accept trip leases. He could schedule whatever days he wanted to work and schedule his start time as he wished. He was paid on a per mile or per trip basis, not on an hourly basis. Taxes were not withheld from his compensation. The truck that Petitioner used was his own. He was responsible for its repairs and maintenance.

He could purchase a license for the truck if he wished. He could purchase his own logging program if he wished. The vest that Petitioner wore clearly labeled him as a contractor. A vest was required where required by safety rules and Petitioner could choose to buy and wear his own vest. Petitioner was free to hire employees to drive his truck.

RX 3 clearly shows that the Parties designated their relationship as a business to business independent contractor agreement. Both Parties knew what they were doing when they signed the contract.

Based upon the above, Petitioner was not an employee of Respondent on the date of accident. The claim for compensation is, therefore, denied.

AS TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?, THE ARBITRATOR FINDS:

This issue was disputed on the basis of Respondent's employee-employer dispute. The evidence adduced establishes that Petitioner was injured in a truck accident while on a run for XPO; if there was an employee-employer relationship, the accident would have arisen out of and in the course of the employment.

AS TO ISSUE ISSUE (F), IS PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSUALLY RELATED TO THE INJURY, ISSUE (J), MEDICAL EXPENSES, ISSUE (K), PROSPECTIVE MEDICAL, ISSUE (L), TTD, THE ARBITRATOR FINDS:

The Arbitrator needs not decide these issues based upon the finding above on the issue of employee-employer relationship.

AS TO ISSUE (N), IS RESPONDENT DUE ANY CREDIT?, THE ARBITRATOR FINDS:

RX 1 was an exhibit containing payments made by Protective Insurance for Petitioner's medical expenses. There was no proof that the payments were made in accordance with section 8(j) of the Act. Accordingly, no credit is awarded to Respondent.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC006678
Case Name	Bradley Usher v. State of Illinois - Chester Mental Health Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0028
Number of Pages of Decision	21
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Kenton Owens

DATE FILED: 1/21/2025

/s/Carolyn Doherty,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BRADLEY USHER,
Petitioner,

vs. NO: 22 WC 6678

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 issues of causal connection, medical expenses, temporary total disability, prospective medical care, and permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

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

IT IS FURTHER ORDERED BY THE COMMISSION that 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.

January 22, 2025

O: 01/16/25
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	22WC006678
Case Name	Bradley Usher v. State of Illinois - Chester Mental Health Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Kenton Owens

DATE FILED: 5/23/2024

/s/Bradley Gillespie, Arbitrator

Signature

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

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

May 23, 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

Bradley Usher
Employee/Petitioner

v.

State of IL / Chester Mental Health Center
Employer/Respondent

Case # **22** WC **006678**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Herrin, Illinois**, on **April 2, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **02/27/2022**, 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 $**57,986.12**; the average weekly wage was $**1,115.12**.

On the date of accident, Petitioner was **61** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**14,974.56** for TTD and extended benefits, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**14,974.56**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $743.41/week for 32 2/7 weeks, commencing February 28, 2022, through May 8, 2022, and from February 26, 2023, through July 31, 2023, as provided in Section 8(b) of the Act.

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

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

Respondent shall pay Petitioner compensation that has accrued from 02/22/2024 through 04/02/2024, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay Petitioner permanent partial disability benefits of $669.07/week for 137.5 weeks, because the injuries sustained caused the 27.5% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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

Bradley D. Gillespie May 23, 2024

Signature of Arbitrator

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BRADLEY USHER,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No.: 22WC006678**
	)	
STATE OF ILLINOIS/ CHESTER MENTAL HEALTH ,	)	
	)	
	)	
Respondent.	)	

DECISION OF ABRITRATOR

Bradley Usher [hereinafter "Petitioner"] filed an Application for Adjustment of Claim on March 14, 2022, alleging injuries when he was assaulted by a mental health patient while working for the State of Illinois at Chester Mental Health Center [hereinafter "Respondent"]. (Arb. Ex. 2) This claim proceeded to hearing on April 2, 2024, in Herrin, Illinois. (Arb. Ex. 1) The following issues were in dispute at arbitration:

- Causation;
- Medical Bills,
- Temporary Total Disability; and
- Nature and Extent of Injuries.

FINDINGS OF FACT

Petitioner has been employed by Respondent as a Security Therapy Aide for over 10 years. (Tr. p. 13) On February 27, 2022, Petitioner was sitting with another employee when an agitated patient suddenly began screaming that he was going to kill them. (Tr. p. 14) The patient ran toward a door where people were coming in, and Petitioner followed him. *Id.* The patient turned around and punched Petitioner in the head twice. *Id.* Petitioner then placed the patient in restraints. *Id.*Later, when Petitioner was writing his report, he noticed that his right arm was numb, and he began experiencing pain as the adrenaline started to wear off. (Tr. pp. 14-15)

MEDICAL EVIDENCE

On February 28, 2022, Petitioner presented to Chester Clinic where he saw Angela Albertini, PA-C and reported that he was hit in the face multiple times while at work. (PX #3) He had symptoms of neck pain, right shoulder pain, headache, dizziness, and blurred vision and stated that he felt "out of it." *Id.* On examination, Petitioner had tenderness over the maxillary sinuses and left frontal region, tenderness over the cervical paraspinals, decreased range of motion due to

pain in the right shoulder, tenderness over the anterior shoulder joint and positive impingement signs. *Id.* The assessment was a head injury, concussion, cervicalgia, facial contusion and right shoulder pain. (PX #3) Petitioner was sent for imaging, instructed to use ice and anti-inflammatories, and was taken off work the rest of the week. *Id.*

That same day, he presented to Memorial Hospital in Chester, Illinois for a CT of the head, which showed mild ethmoid and sphenoid sinuses, but no acute intracranial pathology. (PX #4) A maxillofacial CT showed no acute bone pathology. *Id.* X-rays of the cervical spine showed multilevel spondylosis without acute bone pathology and x-rays of the right shoulder were normal. *Id.*

On March 4, 2022, Petitioner presented to the office of Dr. Matthew Gornet, where he gave the history of his assault injury and reported symptoms of neck pain to the base of the neck and both trapezii, right greater than left shoulder pain, headaches, dizziness and blurred vision. (PX #5, 3/4/22) His symptoms were constant and worsened with reaching, pulling and fixed head positions. *Id.* He had occasional right shoulder and arm pain that had improved since the accident. *Id.* Dr. Gornet noted the Petitioner did not recall any previous problems of significance with his neck prior to the event. *Id.*

On exam, Petitioner motioned to pain the base of his neck and right trapezius and occasionally to the left side as well. (PX #5, 3/4/22) He had decreased range of motion in all directions with spasm. *Id.* His sensation and motor exam were normal. *Id.* Dr. Gornet reviewed cervical spine films, which revealed some loss of disc height at C6-7 and to a lesser extent at C5-6. *Id.*

A cervical spine MRI was performed that day, and the impression was midline annular tears/fissures and protrusions at each level at C3-4, C4-5, C5-6 and C6-7, extending into the foramen at all four levels. (PX #6) There was bilateral foraminal stenosis at all four levels, but no central canal stenosis. *Id.*

Dr. Gornet reviewed the MRI, and his impression was that Petitioner had a concussion as well as a multilevel cervical disc injury. (PX #5, 3/4/22) He recommended anti-inflammatories, muscle relaxants and physical therapy, and placed Petitioner off work. *Id.* He believed Petitioner's symptoms and requirement for treatment were related to his work accident. *Id.* He indicated consideration would be given to injections if Petitioner failed to improve at the next follow in in six to eight weeks. *Id.*

Petitioner performed physical therapy for his cervical spine from March 8, 2022, through April 11, 2022, at Apex Network Physical Therapy in Chester, Illinois. (PX #7) At the initial therapy appointment, Petitioner reported the history of his assault injury, as well as his symptoms of bilateral cervical pain from the occiput down to C7. *Id.* He indicated that his pain was generally worse on the left then on the right and that he had constant headaches. *Id.* At his final therapy visit on April 11, 2022, it was noted that Petitioner's pain was at a 4/10 when he arrived at physical

therapy and that his most difficult activity was rotating his head while driving. (PX #7)The evaluation summary indicated that his cervical range of motion had improved; however, he had persistent pain and his function remained restricted. *Id.* He scored a moderate disability on the neck disability index. *Id.*

On April 28, 2022, Petitioner returned to Dr. Gornet's office, where he was seen by Nathan Collins, PA. (PX #5, 4/28/22) He continued to have symptoms of pain to the base of his neck and into his right greater than left trapezius with pain into his right shoulder and associated headaches, dizziness and blurred vision. *Id.* He reported that his course of physical therapy had helped with some of his symptoms; however, PA Collins noted that Petitioner still had symptoms that might require further treatment. *Id.* Petitioner requested to attempt to return to work duty, and PA Collins indicated he could begin a trial of returning to work duty beginning on May 8, 2022. *Id.* A follow up in several months was recommended and the visit was discussed with Dr. Gornet. (PX #5, 4/28/22)

On July 25, 2022, Petitioner returned to Dr. Gornet's office where he saw PA Collins. (PX #5, 7/25/22) He still had symptoms to the base of his neck, bilateral trapezius and right shoulder, along with frequent headaches and dizziness. *Id.* PA Collins noted that since returning to work full duty, Petitioner noticed increasing symptoms, specifically increased headaches and pain into his left trapezius and left shoulder. *Id.* His exam was unchanged. *Id.* PA Collins recommended injections with Dr. Blake. (PX #5, 7/25/22) He indicated Petitioner could continue working full duty; however, if his symptoms continued to progress, he might need to be placed off work. *Id.* The visit was discussed with Dr. Gornet. *Id.*

On August 2, 2022, Petitioner underwent an epidural steroid injection at C6-C7 with Dr. Helen Blake. (PX #8, 8/2/22) On August 29, 2022, Petitioner returned to Dr. Blake and reported that his pain remained the same since the injection. (PX #8, 8/29/22) He continued to have diminished physical functioning due to his pain, which he indicated was constant. *Id.* She noted his neck pain was largely axial in nature with a pain rating of 6/10 to 8/10. *Id.* Exam showed diminished range of motion of the cervical spine and tenderness over the right paravertebral musculature. *Id.* Dr. Blake's assessment was neck pain. (PX #8, 8/29/22) She felt that Petitioner would benefit from an epidural steroid injection at C5-6, and same was performed on September 6, 2022. (PX #8)

On October 20, 2022, Petitioner returned to Dr. Gornet's office, where he saw Allyson Joggerst, PA. (PX #5, 10/20/22) He reported continued neck pain radiating into his bilateral trapezius and shoulders along with headaches. *Id.* He indicated that neither of his injections gave him sustained relief. *Id.* He was continuing to work full duty; however, he was "quite miserable." *Id.* A CT scan of the cervical spine was performed, which revealed collapse of the disc space at C5-6 and C6-7, air in the disc space at C6-7, well preserved facets bilaterally, bony foraminal stenosis on the left at C5-6 and C6-7, and lesser changes on the right. (PX #10) Anterior cervical disc replacement at C3 through C7 was recommended. (PX #5, 10/20/22)

Petitioner returned to Dr. Gornet on January 30, 2023, and reported continued pain to the base of his neck and both trapezii, with the left side being worse than the right, as well as frequent headaches and intermittent dizziness. (PX #5, 1/30/23) He was working full duty; however, he was miserable. *Id.* His pain and symptoms affected all aspects of his life and his quality of life. *Id.* Dr. Gornet noted that his MRI scan showed structural pathology with annular tears and central herniations at C3 through C7 and a left sided fragment into the foramen at C3-4 that correlated with his trapezius pain. *Id.* Dr. Gornet discussed disc replacement surgery at C3 through C7, and Petitioner was given a surgery date along with preoperative medications. (PX #5, 1/30/23)

On February 24, 2023, Petitioner underwent a cervical disc replacement surgery at C3-4, C4-5, C5-6 and C6-7 with Dr. Gornet at the St. Louis Spine and Orthopedic Surgery Center. (PX #11) Intraoperatively at C6-7, Dr. Gornet identified an osteophyte on the left with foraminal herniation, and a smaller osteophyte and larger herniation on the right. *Id.* At C5-6, there was a midline herniation, a left-sided foraminal herniation, and right-sided disc osteophyte. *Id.* At C4-5, there was a midline central annular tear, central herniation, and a left-sided foraminal herniation. *Id.* At C3-4, there was a left-sided annular tear, a left-sided herniation, a central herniation, and a small right-sided herniation in the foramen. (PX #11)

On March 13, 2023, Petitioner returned to Dr. Gornet's office for his initial follow up visit where he saw PA Joggerst. (PX #5, 3/13/23) He could already tell a dramatic difference in his symptoms. *Id.* He had some intermittent dysphagia, which was noted to be normal. *Id.* He was cautioned against heavy lifting and falling and was transitioned to a soft collar at night. *Id.* He remained temporarily totally disabled and was instructed to return in four weeks. (PX #5, 3/13/23) The visit was discussed with Dr. Gornet. *Id.*

On April 6, 2023, Petitioner returned to Dr. Gornet's office where he saw PA Collins and reported a dramatic improvement in his neck pain and headaches. (PX #5, 4/6/23) PA Collins indicated that he could discontinue the use of his collars. *Id.* He remained temporarily totally disabled. *Id.*

On June 8, 2023, Petitioner returned to Dr. Gornet, who noted that he still had some pain at the base of his neck, but that this was slowly improving and overall, he was doing extremely well. (PX #5, 6/8/23) A CT scan showed no evidence of lucency around his devices. (PX10) Petitioner brought with him an independent medical evaluation from Dr. Bernardi, which Dr. Gornet reviewed. (PX #5, 6/8/23) Dr. Gornet indicated that Dr. Bernardi was uncertain regarding the cause of Petitioner's neck pain, and that this was somewhat curious given the fact that Petitioner did not recall previous problems of significance, that he was assaulted and punched in the face multiple times and that he suffered on acute onset of symptoms. *Id.* Dr. Gornet noted that Petitioner's MRI scan showed multiple structural disc pathologies that were consistent with his symptoms, that he improved significantly following his treatment, and the fact that he had done well spoke for itself. *Id.* Petitioner was given a script for physical therapy for upper extremity

strengthening and Dr. Gornet indicated that he would remain off work until August 1, 2023, at which time he could return to work with no restrictions. *Id.*

Petitioner performed his post-operative physical therapy at Apex Network Physical Therapy from June 13, 2023, through July 21, 2023. (PX #7)

On August 17, 2023, Petitioner returned to Dr. Gornet's office, where he saw PA Collins, who noted that he continued to do extraordinarily well following his surgery. (PX #5, 8/17/23) Petitioner was back to work full duty as a security aide at Chester Mental Health. *Id.* Petitioner stated that the surgery had made a dramatic difference in his pain, symptoms, and overall quality of life. *Id.* PA Collins indicated the next follow up would be in February, at which point they would consider placing Petitioner at maximum medical improvement. *Id.* The visit was discussed with Dr. Gornet. (PX #5, 8/17/23)

On February 22, 2024, Petitioner returned to Dr. Gornet and reported that he continued to do well with his neck; however, on February 9, 2024, he was kneed in the face and left eye. (PX #5, 2/22/24) Dr. Gornet noted that Petitioner had ecchymosis around his eye. *Id.* He indicated that while this might have flared his neck, he was doing fairly well; however, it was still early on. *Id.* A CT scan performed that day showed no evidence of lucency around his devices. *Id.* He noted that Petitioner might have some residual symptoms in his neck from the new injury and that they were watching him closely regarding this. (PX #5, 2/22/24) He indicated that Petitioner was at maximum medical improvement and that he could follow-up in one year or sooner if his symptoms flared from his recent injury. *Id.*

DOCUMENTARY EVIDENCE

Respondent's exhibit one was the Worker's Compensation Documentation Log. (RX #1) It included a notice of injury completed by Petitioner on February 27, 2022, which indicated that a recipient inflicted two blows to his face and head. *Id.* A staff injury summary from a nurse supervisor on that date indicated injury with redness to the left side of the head and cheek, dizziness, blurred vision, 10/10 pain, and pain radiating down the neck. *Id.*

SECTION 12 REPORT AND DEPOSITION OF DR. BERNARDI

At Respondent's request, Petitioner submitted to an independent medical evaluation with Dr Robert Bernardi on April 18, 2023. (RX #2) Dr. Bernardi noted that Petitioner was injured on February 27, 2022, while working as a security therapy aide at Chester Mental Health Center. *Id.* He noted that one individual who was incarcerated for murder and rape was "seemingly paranoid," and gradually grew more agitated until he threatened to kill Petitioner. *Id.* Petitioner and his coworker got up to restrain the individual, who took off down the hallway. *Id.* When he reached the end of the hall, the individual turned and punched Petitioner in the face two times. (RX #2) With the second punch, Petitioner felt his neck snap backwards. *Id.* Petitioner reported that due to adrenaline, and he did not notice immediate symptoms. *Id.* Once the inmate was restrained with

assistance, Petitioner noticed a squeezing sensation in his neck that subsequently became associated with numbness in his entire right arm and hand, which was so pronounced that he could not finish his incident report. *Id.* Dr. Bernardi reviewed only six dates of treatment with respect to Petitioner subsequent medical care. (RX #2)

He indicated that prior to the surgery, Petitioner had neck pain and continuous headaches. *Id.* He initially had right arm numbness that was short-lived and did not have any periscapular or radiating arm discomfort. *Id.* He indicated that since the operation, Petitioner was doing "pretty well." *Id.* At the time of his examination, it had been less than eight weeks since Petitioner's surgery, and he still had pain in his lower neck, was still wearing a soft collar when sleeping and a hard collar intermittently in the afternoon when sitting. (RX #2)

Dr. Bernardi noted that Petitioner arrived on time, was pleasant and cooperative, was a credible historian, and that there were no indications of symptom magnification. *Id.* On exam, he stated that he did not detect any muscle spasms or trigger points; however, the upper interscapular muscles were prominent. *Id.* Internal rotation of the left shoulder provoked complaints of left suprascapular discomfort, and range of motion in the cervical spine was 50% of normal flexion and extension. *Id.*

He reviewed x-rays and a CT scan and believed that Petitioner had degenerative disc disease at C5-6 and C6-7 and left sided facet disease at C7-T1. (RX #2) He reviewed Petitioner's cervical spine MRI and indicated that there was mild degenerative disc disease at C2-C5 with loss of disc hydration. *Id.* He stated there was slight bulging at the latter two levels. *Id.* He felt there was more pronounced degenerative disc disease at C5-C7 where there was more prominent bulging and loss of disc height. *Id.* He stated that he did not see a disc fragment at C4. (RX #2) He admitted that there might have been minimal left C5 foraminal stenosis and mild right and moderate left C7 degenerative foraminal compromise. *Id.*

His diagnoses were multilevel degenerative disc disease, left C7-T1 facet disease, multilevel degenerative foraminal stenosis, neck pain/headaches of uncertain etiology, and status-post C3 through C7 disc replacements. (RX #2) He stated that Petitioner's work accident did not cause or contribute to his degenerative findings. *Id.* He noted that Petitioner denied a prior history of significant or sustained neck pain and admitted that he did not have any records that suggested otherwise. *Id.* Dr. Bernardi felt that Petitioner's mechanism of injury could cause cervicalgia. *Id.* He stated that Petitioner's complaints appeared to be work related; however, he stated that "like the vast majority of individuals with neck pain that is not associated with neurological features, the precise etiology of this man's is uncertain." (RX #2)As the cause of Petitioner's complaints was uncertain, he did not know whether the accident aggravated a pre-existing condition. *Id.* He did not believe Petitioner sustained skeletal trauma, ligamentous injury, disc rupture, or aggravation of his degenerative foraminal stenosis. *Id.* He stated that aggravations are typically self-limiting, as are sprains/strains, and he again stated that the etiology of Petitioner's pain was undefined. *Id.* The only thing he could say was certain he was that the accident did not produce

any acute trauma. (RX #2) He believed that Petitioner had reached maximum medical improvement at some point prior to his surgery; however, he could not say precisely when this occurred. *Id.*

He did not feel that Petitioner's injections nor his surgery were reasonable or necessary, as he did not have radicular pain. *Id.* Although he admitted that Petitioner had improved since his surgery, his explanation for the improvement was that "people get better or don't following treatment for a variety of reasons, many of which are not immediately apparent." *Id.* He indicated that Petitioner would need follow up with Dr. Gornet for at least another four to six months and that he was not capable of working; however, he did not feel that the treatment was related to work. (RX #2)

Dr. Bernardi testified via deposition on July 14, 2023. (RX #3) He testified that "less than 10%" of his practice is comprised of independent medical examinations. (RX #3 pp. 7-8) He charges $3,500 for IMEs and $2,000 for depositions. *Id.* at 7, 8. On direct examination, Dr. Bernardi testified consistently with his report.

On cross-examination, he was asked if the mechanism of being punched in the face could cause injury to someone's cervical spine, and he replied that professionals like Mike Tyson "get punched in the head all the time" and that he has never heard of one of them having a neck ache after getting punched and knocked out. (RX #3 pp. 21-22) Subsequently, however, he admitted that getting punched in the face and having your head bounced backwards is a potential mechanism of injury that could cause neck pain. *Id.* at 22.

Dr. Bernardi testified that he did not review any records prior to January 26, 2023, other than the MRI. (RX #3 p. 22) He admitted that Petitioner he did not have a history of neck pain prior to his accident, that he was not provided with any medical records that detailed a prior history of neck pain, and that he did he review any records regarding any traumatic incidents following Petitioner's work accident. *Id.* at 23.

Dr. Bernardi testified that the conservative treatment Petitioner received prior to his surgery did not resolve his symptoms. (RX #3 p. 24) He testified that he did not review the MRI report and only reviewed the images. (RX #3 pp. 24-25) He admitted that Petitioner's mechanism of injury could cause or aggravate an underlying condition in his cervical spine, and that individuals can have increased symptoms without increased without a change in their pathology. *Id.* at 26. He agreed that the driving force behind a treatment recommendation is a patient's symptoms and not necessarily findings on their MRI. (RX #3 p. 27) He agreed that at no point prior to Petitioner's cervical spine surgery did his cervical symptoms resolve; however, he admitted that Petitioner improved following the surgery. *Id.* He agreed that when he saw Petitioner, he was still wearing his soft collar to sleep and intermittently wearing his hard collar, and that he had not seen Petitioner since April 18, 2023, and did not know how he was currently faring. (RX #3 pp. 27-28)

DEPOSITION OF DR. MATTHEW GORNET

Dr. Gornet testified via deposition on October 12, 2023. (PX #12) He testified consistently with his medical records regarding Petitioner. He is a board-certified orthopedic spine surgeon who sees 100 to 120 patients and performs five (5) to 10 surgeries per week.(PX #12 pp. 4–6) He stated that his practice is involved in clinical research for neck and low back pain and that he lectures on this topic throughout the United States and around the world. (PX #12 p. 4-5) He frequently performs cervical and lumbar disc replacement surgeries, and most are multilevel procedures.(PX #12 pp. 5-6) Regarding the outcomes of his procedures, he testified that he has published papers regarding same. (PX #12 p. 7) He testified that one paper regarding cervical disc replacement in injured workers demonstrated that persons who underwent cervical disc replacement at single or multiple levels did extremely well, and that injured workers returned to work at the same frequency as people who were not involved in litigation. *Id.* He stated that this was a landmark finding, and the paper was given an award by a very high impact journal. *Id.* He also authored a major publication, which is the world's largest series on axial neck pain, wherein he treated patients with axial neck pain independent of radiculopathy. (PX #12 pp. 7-8) The study demonstrated that patients were treated for axial neck pain did extremely well with surgery. *Id.* at 7, 8. He stated that this was a landmark finding, and that this document was peer-reviewed and published. *Id.* He also authored the world's largest series on three and four level cervical disc replacements, which demonstrated that the outcomes at three and four levels were similar to the outcomes at one and two levels both in clinical benefit and complication rates. *Id.* at 7, 8.

Regarding Dr. Bernardi's opinion that surgical societies do not recommend surgery to manage axial neck pain, Dr. Gornet indicated that surgical societies do not recommend any procedure and that they defer to physicians. (PX #12 pp. 21-22) He stated what the societies do is produce journals and peer-reviewed literature, and the fact that Dr. Bernard does not comment on the world's largest series of treatment of axial neck pain or the multiple other manuscripts regarding axial neck pain indicate that Dr. Bernardi's medical literature is probably out of date. *Id.*

Dr. Gornet reviewed Dr. Bernardi's IME report and agreed with Dr. Bernardi that Petitioner's injury did not cause or accelerate his degeneration. (PX #12 p. 18) He explained:

> First I agree that Mr. Usher's injury did not cause his degeneration. I agree with that. So from that standpoint, it did not cause or accelerate his degeneration. Our belief is that it caused disc injuries in the face of preexisting degeneration. So his opinion of stating that that's his diagnosis is factually incorrect. If that was his diagnosis and Dr. Bernardi was incorrect -- and I'm sure Dr. Bernardi would agree with me on this -- he has preexisting degeneration the day before the accident. Why wasn't he symptomatic? If he had facet arthritis that was there a day before the accident, why wasn't he symptomatic? So therefore Dr. Bernardi's conclusion about what the cause of his pain is coming from is just factually incorrect. It's inconsistent with the MRI. It's inconsistent with the history. It's inconsistent with the operative findings. So making a statement that this person has preexisting degeneration -- I

> like puppies. That's a blanket statement. It means nothing. We all agree. He's 61 years old. The question is, is, why is he there? Why did he need treatment? He needed treatment because of disc injuries, and those disc injuries were in the face or in conjunction with preexisting degeneration, so I think that clarification needs to be made. (PX #12 pp. 18-19)

Regarding Dr. Bernardi's opinion that the etiology of Petitioner's neck pain was uncertain, Dr. Gornet stated:

> Well, I believe it's uncertain in Dr. Bernardi's viewpoint. He clearly on multiple occasions believes he can't tell where the neck pain is coming from, so in this situation we would with --high-resolution MRI, intraoperative findings, and appropriate treatment – essentially dramatically improved this person. So I guess either we're just the luckiest people on the face of the earth or we got it right. And given the fact that we've had multiple peer-reviewed publications, which go way beyond my opinion, would speak for the fact that what we're diagnosing is the correct diagnosis, it is a preexisting degeneration, and I'd be happy to illustrate these findings to Dr. Bernardi if he ever would feel like he would like to understand this better. (PX #12 pp. 19-20)

Dr. Gornet agreed with Dr. Bernardi that Petitioner had facet arthritis at C7-T1; however, he stated that Petitioner had no other facet arthropathy in his cervical spine other than at those areas. (PX #12 pp. 30-31) During cross-examination, he thoroughly explained Petitioner's MRI findings regarding fragmented and caudally extruded disc material, which was present at each level from C3 through C7. (PX #12 pp. 43-46)

Dr. Gornet explained that Petitioner's symptoms into his left trapezius and left shoulder represented referred pain from his cervical spine that went beyond his axial neck pain and headaches, and which improved following his surgery. (PX #12 pp. 20-21) He indicated that the symptoms were painful radicular symptoms that were in addition to his axial neck pain. (PX #12 p. 21).

Dr. Gornet opined that Petitioner's MRI findings were consistent with his symptoms and complaints and that his mechanism of injury and symptoms were consistent with cervical disc injury. (PX #12 p. 11) He opined that Petitioner's accident aggravated his underlying asymptomatic condition as well as caused disc injuries, and that his current condition was directly related to his work injury. (PX #12 pp. 11-12) The basis for his opinion was that Petitioner was doing well and working full duty for Respondent prior to his accident, that his mechanism of injury is known to cause injury, that his MRI was consistent with same, and that appropriate treatment dramatically improved his symptoms and allowed him to return to work full duty with no restrictions. (PX #12 p. 12) He testified to Petitioner's intraoperative findings and stated that same were consistent with the pathology observed on Petitioner MRI as well as his preoperative symptoms. (PX #12 pp. 15-16) He stated that after surgery, Petitioner did "wonderfully well." (PX #12 p. 16) He indicated that Petitioner's clinical improvement is indisputable, that his dramatic

improvement speaks volumes for treating the appropriate problem, and the current medical literature suggests that this can be done. (PX #12 p. 22)

PETITIONER'S TESTIMONY

Petitioner testified that the physical therapy and injections helped him temporarily but his symptoms "went back to the original pain." (Tr. pp. 17-18) He testified that he asked Dr. Gornet to return to work at his April 2022 appointment because he does not like to sit around, and as he preferred to be in pain at work than at home. (Tr. pp. 18-19)

Following his therapy, injections and return to work, he continued to have symptoms of pain in his neck going down into his shoulders and back along with headaches and discomfort with "almost anything" that he did. (Tr. p. 19) These symptoms were not present prior to his work injury. *Id.* Prior to his work injury, he had never seen a physician or surgeon for a neck injury and have never received treatment in the form of therapy, injections or medications with regard to his neck. (T. 20)

Following his accident, he never experienced a period when his symptoms resolved. (Tr. p. 20) He is glad he underwent the surgery because it was hard to do anything due to the pain he was in. (Tr. p. 23) He does not feel that his condition would have improved without surgery because he had tried physical therapy and injections, but they did not work. *Id.* Since his surgery, his condition has improved and the pain in his neck went away. (Tr. p. 21) His symptoms have improved since the time when he was examined by Dr. Bernardi. (Tr. p. 35) He confirmed that the surgery made a dramatic difference in his life and that his quality of life was better following same. (Tr. pp. 21-22) He was able to return to work for Respondent as a Security Therapy Aide. (Tr. pp. 34-35)

Despite the improvements, Petitioner still has residual symptoms, including discomfort when sleeping, pain after performing strenuous activities, loss of range of motion to the extreme right and left and when looking up, and some loss of endurance. (Tr. pp. 23-35) He testified that prior to the injury, he was on a strict regimen of exercise, but after the injury he could not exercise like he used to. (Tr. p. 25) He is able to perform the requirements of his job, but his injuries have limited his strength. *Id.* He is an avid outdoorsman and his outdoor hobbies of hunting, fishing, and cutting wood have been adversely affected due to his injuries. (Tr. pp. 25-26)

CONCLUSIONS OF LAW

<u>Issue (F)</u>: Is Petitioner's current condition of ill-being causally related to the injury?

Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still

perform immediately after accident. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill. 2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724 (1994*); International Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 442 N.E.2d 908 (1982).

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

Where a preexisting condition is present, Petitioner need only show that the prior condition was aggravated or the need for treatment accelerated. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 672-673 (2003); *Schroeder v. Illinois Workers' Comp. Comm'n*, 2017 IL App (4th) 160192WC, 79 N.E.3d 833.

A compensable aggravation occurs when a claimant's need for surgery is accelerated. *Judith Wheaton v. State of Illinois/Choate Mental Health Center*, 13 I.W.C.C. 0467; *Bowman v. Gateway Reg'l Med. Ctr*., 14 I.W.C.C. 1022; *Clutterbuck v. UPS*, 15 I.W.C.C. 0046; *Howard v. St. Clair Hwy. Dept.*, 16 I.W.C.C. 0187, modified 16 MR 106.

The law holds that accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it is *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 672-673 (2003). [Emphasis added]. Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Indus. Comm'n*, 359 Ill. App. 3d 582, 834 N.E.2d 583 (2005). "Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Industrial Commission*, 309 Ill. App. 3d 1037, 723 N.E.2d 846 (2000). Employers are to take their employees as they find them. *A.C. & S. v. Industrial Comm'n*, 304 Ill. App. 3d 875, 710 N.E.2d 837 (1999) citing *General Electric Co. v. Industrial Comm'n*, 89 Ill. 2d 432, 434, 433 N.E.2d 671, 672 (1982). If a preexisting condition is aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. *Rock Road Constr. v. Indus. Comm'n*, 227 N.E.2d 65, 67-68 (Ill. 1967), 37 Ill. 2d 123; see also *Illinois Valley Irrigation, Inc. v. Indus. Comm'n*, 66 Ill. 2d 234, 362 N.E.2d 339 (1977).

"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, 274 Ill.Dec. 284, 791 N.E.2d 80, 87 (2003). "An expert opinion is only as valid as the reasons for the opinion." *Kleiss v. Cassida*, 297 Ill.App.3d 165, 174, 231 Ill.Dec. 700, 696 N.E.2d 1271, 1277 (1998). The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Torres v. Midwest Development Co*., 383 Ill.App.3d 20, 28, 321 Ill.Dec. 389, 889 N.E.2d 654, 662 (2008). If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to

be reliable. *Modelski v. Navistar International Transportation Corp*., 302 Ill.App.3d 879, 885, 236 Ill.Dec. 394, 707 N.E.2d 239, 244 (1999).

The Arbitrator notes that Petitioner was forthcoming during his testimony and there were no attempts to evade any line of questioning. Even Respondent's examiner, Dr. Bernardi, opined that Petitioner was a credible historian. (RX2) Therefore, the Arbitrator finds that Petitioner's testimony was credible.

Petitioner reported to his medical providers and testified at Arbitration that he did not have preexisting symptoms in his cervical spine, nor had he ever sought prior treatment for same. (Tr. pp. 19-20) Respondent offered no evidence to refute Petitioner's credible testimony, and even Dr. Bernardi admitted that there was no evidence of prior symptoms or treatment. (RX #2)

Respondent does not dispute that Petitioner suffered an accident wherein he was struck multiple times in the head by a mental health patient. Respondent's own exhibit one confirms that Petitioner had significant symptoms resulting from his assault, including neck symptoms. (RX1)

Petitioner sought medical treatment promptly following his injury, and the evidence shows that despite conservative treatment, his symptoms never resolved or returned to baseline following the assault. (Tr. pp. 17-20; PX #5) Although Petitioner requested to return to work full duty following a period of time off, the records of Dr. Gornet and Petitioner's testimony demonstrate that his condition caused significant pain and symptoms that affected all aspects of his life. (PX #5; Tr. p. 19)

The Arbitrator has carefully considered the opinions of Dr. Bernardi and Dr. Gornet, and finds the opinions of Dr. Gornet to be more logical and persuasive than those of Dr. Bernardi.

Specifically, although Dr. Bernardi seemingly compared Petitioner to a professional boxer and surmised that professional boxers do not sustain neck injuries after being punched, the Arbitrator notes that Petitioner is not on par with former world heavyweight champion Mike Tyson, but rather, he is a 61-year-old security therapy aide who works at a mental health facility and was violently assaulted by a convicted murderer who threatened to kill him. (RX #2; RX #3, pp. 21-22) The Arbitrator agrees with Dr. Gornet, who opined with certainty that Petitioner's mechanism of injury was consistent with a cervical disc injury. (PX#12, pp. 11-12)

Additionally, Dr. Bernardi admitted that Petitioner had no preexisting symptoms, that he had not sought prior treatment for his neck, that his mechanism of injury could cause neck symptoms, that he had symptoms following the accident, that conservative treatment did not resolve his symptoms, and that his symptoms did not resolve at any point prior to his surgery; yet, he somehow still felt that the etiology of Petitioner's neck pain was uncertain and was not remiss to state his uncertainty numerous times. (RX #2; RX #3, pp. 24-27) Dr. Bernardi even went so far as to state that Petitioner's symptoms appeared to be work-related; however, because they were not associated with neurological features, he was unable to make the connection and again opined

that the etiology was uncertain. (RX #2) Despite his admissions noted above regarding the chain of events surrounding Petitioner's injury, Dr. Bernardi stated that the only thing he knew for certain was that the accident did not cause acute trauma. *Id.* Moreover, although he opined that Petitioner was at MMI, he could not state when this occurred. *Id.* The Arbitrator finds that the opinions of Dr. Bernardi are grossly contrary to the evidence and his own admissions regarding the injury. Moreover, although he admitted that Petitioner improved following the surgery, Dr. Bernardi failed to make the connection to the surgery, once again proclaiming his uncertainty as to the reason for the improvement. (RX #2)

On the contrary, Dr. Gornet's opinions are logical and persuasive. Namely, on cross-examination, Dr. Gornet clearly explained the objective findings on Petitioner's MRI regarding fragmented and caudally extruded disc material, which was present at C3 through C7. (PX #12, pp. 43-45) He logically pointed to the mechanism of injury, which correlated with the objective findings on MRI as well as intraoperatively. (PX #12 pp. 11-12, 15-16)

Additionally, Dr. Gornet agreed that Petitioner had preexisting degeneration in his cervical spine; however, unlike Dr. Bernardi, he logically reasoned that the diagnosis could not simply be that of degeneration and uncertainty when Petitioner had degeneration the day before the accident but never reported or treated for neck symptoms until after the accident. (PX #12 pp. 18-19)

Finally, regarding the success of Petitioner's surgery as it relates to the etiology of Petitioner's symptoms, Dr. Gornet stated, "So I guess either we're just the luckiest people on the face of the earth or we got it right." (PX #12 pp. 19-20) The Arbitrator agrees, as the evidence demonstrates that the etiology of Petitioner's symptoms stemmed from disc injuries in the face of his preexisting degeneration, and that said injuries occurred as a direct result of his work accident.

Therefore, the Arbitrator finds that Petitioner has met his burden of proof with regard to causation, and that his current condition of ill-being with regard to his cervical spine is causally related to his work accident of February 27, 2022.

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

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

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

If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. *Modelski v. Navistar International Transportation Corp*., 302 Ill.App.3d 879, 885, 236 Ill.Dec. 394, 707 N.E.2d 239, 244 (1999).

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, 394 N.E.2d 1166 (1979); *ARA Services, Inc. v. Industrial Comm'n*, 226 Ill. App. 3d 225, 590 N.E. 2d 78 (1992).

As noted above, Petitioner's current condition of ill-being in his cervical spine is causally related to his work injury. The Arbitrator notes that Petitioner tried and failed conservative treatment measures, including medications, physical therapy and injections and that his work-related symptoms did not significantly improve until after his four-level cervical disc replacement.

Although Dr. Bernardi indicated that he would not have performed disc replacement surgery, he admitted that Petitioner's symptoms did not resolve prior to the surgery despite conservative measures. Moreover, as noted previously, Dr. Bernardi was uncertain regarding the etiology of Petitioner's symptoms, the reason why he improved after surgery, and even when Petitioner might have reached MMI. As such, his opinions are too speculative and uncertain to be reliable, and therefore, the Arbitrator relies on the credible opinions of Dr. Gornet regarding the reasonableness, necessity, and work-relatedness of Petitioner's medical treatment.

Moreover, the Arbitrator finds it significant that Dr. Gornet is involved in clinical research and has published extensive papers regarding the positive outcomes of multilevel disc replacement surgeries. Notwithstanding, the results of Petitioner's own procedure speak for themselves. The evidence shows that his condition was not improving and that he continued to be "miserable" as time passed and as he continued to work. (PX #5) It was only after his surgery that his symptoms improved. (Tr. p. 23)

Therefore, pursuant to the above and the previously noted findings on causal connection, the Arbitrator finds that the medical treatment rendered to Petitioner was reasonable, necessary, and related to his work injury, and that Respondent is liable for the payment of medical expenses as outlined in Petitioner's exhibit one.

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

The law in Illinois holds that "[a]n employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit." *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 561 N.E.2d 623 (Ill. 1990). The ability to do light or restricted work does not preclude a finding of temporary total disability. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 561 N.E.2d 623 (Ill., 1990) citing *Ford Motor Co. v. Industrial Comm'n*, 126 Ill. App. 3d 739, 743, 467 N.E.2d 1018, 1021 (1984).

Respondent disputed liability for temporary total disability benefits but did not dispute the dates that Petitioner was off work. The evidence shows that Petitioner was off work for the disputed period of TTD. Therefore, pursuant to the above findings on causal connection, the Arbitrator finds that Respondent is liable for the payment of temporary total disability benefits to Petitioner for a period of 32 3/7 weeks, representing the periods of February 28, 2022, through May 8, 2022, and from February 26, 2023 through July 31, 2023.

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 uses the remaining factors to evaluate Petitioner's permanent partial disability.

(ii) **Occupation**: Petitioner continues to serve as a Security Therapy Aide for Respondent. (Tr. p. 34-35) He testified that he is able to perform the requirements of his job, but his injuries have limited his strength. (Tr. p. 25) Moreover, Petitioner's job places him at an elevated risk of reinjury, and the Arbitrator notes that Petitioner had already been the victim of another assault at work even prior to being released at MMI. (PX #5, 2/22/24) The Arbitrator places greater weight on this factor.

(iii) **Age**: Petitioner was 61 years old at the time of his injury. (AX #1) He has diminished healing capacity as a result thereof. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity**: While there is no direct evidence of reduced earning capacity contained in the record; based on the severity of Petitioner's injuries, the requisite treatment, and the resulting disability, it is reasonable to conclude that such repercussions will manifest in the near future. The Arbitrator places little weight on this factor.

(v) **Disability**: As a result of his work-related assault, Petitioner sustained cervical disc injuries which ultimately required surgery in the form of a four-level disc replacement at C3 through C7. (PX #5) Petitioner credibly testified that despite the improvements he gained from the surgery, he still experiences discomfort when sleeping, pain after performing strenuous activities, loss of range of motion and loss of endurance. (Tr. pp. 23-25) His hobbies of exercising, hunting, fishing, and cutting wood have been adversely affected. *Id.* Dr. Gornet's last note indicates that Petitioner was doing fairly well but had suffered another assault at work that might have flared his neck. (PX #5, 2/22/24) The Arbitrator places significant weight on this factor.

Based upon the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained serious and permanent injuries that resulted in the 27.5% loss of Petitioner's body as a whole in relation to his cervical spine.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC005824
Case Name	Claudio Martinez v. United Scrap Metal Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0029
Number of Pages of Decision	21
Decision Issued By	Christopher Harris, Commissioner, Marc Parker, Commissioner

Petitioner Attorney	Jonathan Currie
Respondent Attorney	Courtney Cronin

DATE FILED: 1/22/2025

/s/Marc Parker,Commissioner
Signature

DISSENT: /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

Claudio Martinez,

Petitioner,

vs. NO: 21 WC 005824

United Scrap Metal, Inc.

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 16, 2024, is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $4600.00. 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.

January 22, 2025

/s/ *Marc Parker*
Marc Parker

MP:ns
o 12/19/24
68

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

DISSENT

While I agree with the Arbitrator's findings on accident and causal connection, there is no testimonial or documentary evidence to support a PPD award in this case. The medical records and Petitioner's own testimony reflects that he made a complete recovery from COVID-19, and Petitioner neither presented nor directed the Commission to any evidence of disability he may have been allegedly suffering by the time this matter proceeded to hearing. Given the absence of any evidence of permanent disability, I would award the Petitioner 0% loss of use of the person as a whole pursuant to Section 8.1b, and therefore must respectfully dissent from the Majority's decision.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC005824
Case Name	Claudio Martinez v. United Scrap Metal Inc
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Jonathan Currie
Respondent Attorney	Courtney Cronin

DATE FILED: 4/16/2024

/s/Ana Vazquez, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF APRIL 16, 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

CLAUDIO MARTINEZ,
Employee/Petitioner

Case #**21 WC 005824**

v.

Consolidated cases:

UNITED SCRAP METAL, INC.,
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **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. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

FINDINGS

On **April 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.

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

In the year preceding the injury, Petitioner earned $**38,864.28**; the average weekly wage was $**747.39**.

On the date of accident, Petitioner was **38** years of age, ***single*** with **0** dependent children.

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

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

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

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

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of **$448.43/week** for **10 weeks**, because the injuries sustained caused **2% loss of the person-as-a-whole**, as provided in Section 8(d)2 of the Act.

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

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

Ana Vazquez

Signature of Arbitrator

April 16, 2024

PROCEDURAL HISTORY

This matter proceeded to arbitration on January 5, 2024 before Arbitrator Ana Vazquez in Chicago, Illinois. The issues in dispute are (1) accident, (2) causal connection, (3) unpaid medical bills, and (4) the nature and extent of the injury. Arbitrator's Exhibit ("Ax") 1. The Arbitrator notes that at arbitration, the issue of unpaid medical bills was in dispute, however, after proofs were closed, the Parties stipulated that the medical bills for this claim are not in dispute. Ax2. The Arbitrator considers the Agreed Stipulation to be a part of the record and Ax2 is admitted into evidence. All other issues have been stipulated. Ax1.

FINDINGS OF FACT

Petitioner testified in Spanish via an interpreter. Transcript of Proceedings on Arbitration ("Tr.") at 10-11. On April 30, 2020, Petitioner was 38 years old, single, with no dependent children. Ax1; Tr. at 14. Petitioner testified that while single, he has a significant other that he lives with that he refers to as his wife. Tr. at 14.

Petitioner was employed at Respondent in April 2020 as a machine operator. Tr. at 14-15. Petitioner worked at Respondent for nine years. Tr. at 15-16. Petitioner testified that he worked the night shift, from 5 p.m. to 5 a.m., Monday to Saturday Tr. at 30-31. Petitioner's duties as a machine operator included arriving and checking the machine, operating the machine, cleaning the machine, and separating material. Tr. at 16. Petitioner testified that he worked on a team of five employees. Tr. at 16. Petitioner testified that throughout the course of the workday, he worked alone and did not interact with other members of the team. Tr. at 17. Petitioner then testified that he worked side-by-side with other employees when cleaning the machine. Tr. at 17. On cross examination, Petitioner testified that he worked side-by-side with the other team members daily, all day long. Tr. at 32. Petitioner testified that material would come out of a conveyor belt and that they would clean behind the machine. Tr. at 17-18. Petitioner testified that he used a shovel and gloves when cleaning the machine. Tr. at 18. On cross examination, Petitioner testified that he shared a shovel with the other team members and that he had his own pair of gloves. Tr. at 32. Petitioner testified that he was not disinfecting or sanitizing the machine, and that the cleaning he was performing was maintenance. Tr. at 18-19. Petitioner testified that it was the kind of cleaning that he would do prior to the COVID-19 pandemic. Tr. at 19. Petitioner was shown Respondent's Exhibit ("Rx") 3 during cross examination. Tr. at 31. Petitioner confirmed that the photographs in Rx3 looked like the platform that he worked on at Respondent. Tr. at 31. Petitioner testified that he stood on the platform while operating the machine. Tr. at 31. Petitioner testified that he came down from the platform to clean the machine. Tr. at 32.

Petitioner testified that he did not receive any specific instructions about additional cleaning or extra precautions that needed to be taken from management or a supervisor in March or April 2020. Tr. at 19-20. Petitioner testified that prior to testing positive for COVID-19 in April 2020, there were other employees that had tested positive for COVID-19. Tr. at 20. Petitioner testified that he observed other employees coughing, with a runny nose, or sneezing. Tr. at 21. Petitioner testified that prior to April 28, 2020, he and other employees were provided with personal protective equipment including masks and gloves. Tr. at 21-22.

April 28, 2020 Walkout

Petitioner testified that he participated in a walkout with other coworkers on April 28, 2020. Tr. at 22. Petitioner testified that it was his understanding that the walkout was related to concerns about safety in the workplace regarding COVID-19 precautions, which were his concerns as well. Tr. at 22-23. Petitioner testified that he had not seen management take steps to protect employees from the transmission of COVID-19 prior to participating in the April 28, 2020 walkout. Tr. at 23. Petitioner testified that he saw changes after the walkout occurred. Tr. at 22. Petitioner testified that there was no temperature screening or symptom checks prior to the walkout. Tr. at

23. Petitioner testified that there was no additional deep cleaning or sanitizing of work equipment, tools, or common areas prior to the walkout. Tr. at 23-24.

On cross examination, Petitioner did not remember when the walkout started or when it ended. Tr. at 33. Petitioner testified that he was going into work at the time he began participating in the walkout and that he attended the walkout for three hours. Tr. at 33. Petitioner did not arrive at work three hours early to attend the walkout. Tr. at 33. Petitioner then testified that he did not attend the walkout. Tr. at 36.

Petitioner was shown Rx7. Tr. at 34. Petitioner agreed it was the document he handed Respondent regarding his demands at the walkout, and that he as well as other employees signed the document. Tr. at 34, 36. Petitioner agreed that the demands made at the walkout were that the company be disinfected for two weeks and that they receive pay for the two weeks off. Tr. at 34-35. Petitioner testified that Respondent gave him two weeks off with pay and that the plant was disinfected during that time. Tr. at 35. Respondent reopened after the two-week period ended. Tr. at 35. Petitioner was not aware of any other walkouts. Tr. at 35. Petitioner agreed that he had a positive COVID-19 test two days after the walkout. Tr. at 35-36.

Petitioner was shown Rx6. Tr. at 39. Petitioner agreed that his signature was on the document. Tr. at 39. Petitioner agreed that he confirmed that he received two masks from Respondent on April 23, 2020. Tr. at 39. Petitioner testified that he was given masks and gloves by his employer and agreed that his earlier testimony that there were no steps taken by respondent was incorrect. Tr. at 40. Petitioner testified that Respondent told him to stay home if he was symptomatic and that they told him to report to them if he became symptomatic and needed to quarantine. Tr. at 40. Petitioner testified that he was not asked who he was in contact with while at work. Tr. at 40.

Accident/Current Condition

Petitioner testified that he was tested for COVID-19 on April 30, 2020 at Esperanza Health Clinic. Tr. at 24-25. Petitioner testified that on April 30, 2020, he was experiencing body aches, headaches, fever, coughing, and fatigue. Tr. at 25. Petitioner had follow-up appointments after April 30, 2020 which were done virtually. Tr. at 26. Petitioner testified that after his last visit on May 8, 2020, he did not have any remaining symptoms. Tr. at 27. Petitioner then testified that he had remaining fatigue and headaches and that these symptoms lasted for months after May 8, 2020. Tr. at 27-28. Petitioner testified that these symptoms did not prevent him from doing any activities that he would have normally done. Tr. at 28. Petitioner then testified that the fatigue and headaches kept him from cleaning around the house and outside and taking out his dog. Tr. at 29. Petitioner agreed that he went to work between April 24, 2020 and April 30, 2020. Tr. at 36. Petitioner testified that he did not get any medication and that he was not hospitalized. Tr. at 37. Petitioner was shown Rx4. Tr. at 38. Petitioner agreed that it was the form that he completed when notifying Respondent that he had COVID-like symptoms. Tr. at 38. Petitioner agreed that after completing the form, he remained off work. Tr. at 38. Petitioner testified that his wife began experiencing symptoms about three days after him. Tr. at 25-26. Petitioner testified that his wife was not experiencing symptoms on April 30, 2020. Tr. at 26.

On cross examination, Petitioner testified that his wife was not working in 2020, and that prior to him getting COVID-19, his wife did tasks around the house, groceries, and went to the bank. Tr. at 30. Petitioner testified that he could not do such tasks because of fatigue and that he could not get up sometimes. Tr. at 30.

Petitioner's testimony as to the duration of his symptoms was somewhat conflicting. Petitioner initially testified that he experienced fatigue and headaches for two weeks. He then testified that the fatigue lasted a long time but went on to deny saying that the fatigue lasted several months. Tr. at 41. Petitioner returned to work on May 25, 2020. Tr. at 36, 41. Petitioner did not miss time from work after May 25, 2020. Tr. at 42.

Petitioner's testimony as to when his symptoms began is also somewhat conflicting. Petitioner initially testified that he reported that his symptoms began on April 24, 2020, but then went on to deny that he was experiencing symptoms before the walkout on April 28, 2020. Tr. at 25, 36-37, 45-46.

Petitioner testified that he no longer works at Respondent and that he last worked at Respondent in January 2021. Tr. at 44. Petitioner testified that at the time of arbitration, he was working for a different employer. Tr. at 44.

On redirect examination, Petitioner agreed that on April 30, 2020, he reported symptoms beginning on April 24, 2020. Tr. at 45. Petitioner then testified that he was not experiencing symptoms on April 28, 2020, the day of the walkout, nor on April 24, 2020. Tr. at 45-46. Petitioner then testified that he accurately reported to the doctor on April 30, 2020 that he was experiencing symptoms on April 24, 2020. Tr. at 46. Petitioner then testified that he was not experiencing symptoms before the walkout on April 28, 2020. Tr. at 46.

Medical Records Summary

On April 30, 2020, Petitioner was seen by Dr. Stefan Czestochowski at Esperanza Health Center for a chief complaint of COVID-19 symptoms. Petitioner's Exhibit ("Px") 1 at 38-43. Petitioner's symptom onset was documented as April 24, 2020. Petitioner's "COVID-19 contact" was documented as "multiple from work," and Petitioner's "work situation" was documented as "currently quarantined." Petitioner's symptoms were noted as myalgias, sore throat, cough, and fatigue. Petitioner was tested for COVID-19. Petitioner was given a letter instructing him to quarantine until results were available. Petitioner was kept off work until May 25, 2020. Px1 at 96.

Petitioner followed up with Linda Simon-Price, APN on May 2, 2020. Px1 at 35-37. A positive SARS-CoV-2 result was noted. Px1 at 68. Petitioner reported that he was feeling flu-like symptoms and chills. Petitioner reported that a coworker had passed away recently from COVID-19. Petitioner reported that his wife was with symptoms and tested positive. Petitioner reported stable symptoms.

Petitioner followed up with APN Simon-Price on May 8, 2020. Px1 at 32-34. Petitioner reported feeling much better and wanted to return to work. Petitioner reported no fever or shortness of breath. Petitioner reported that his wife was also much improved. Petitioner reported improved symptoms.

Testimony of Adam Wilk

Respondent called Mr. Adam Wilk to testify on its behalf. Tr. at 48-49. Mr. Wilk testified that at the time of arbitration his occupation was national director of safety compliance for Respondent. Tr. at 49. Mr. Wilk had been in that position for three years and had worked at Respondent for a total of around 11 years. Tr. at 49. Mr. Wilk testified that his job duties include overseeing the safety and compliance across Respondent's entire brand. Tr. at 50. Mr. Wilk was the national director of safety compliance for Respondent in 2020 when the COVID-19 pandemic began. Tr. at 51. Respondent's day-to-day business consists of buying, processing, and selling scrap metal. Tr. at 51-52. Mr. Wilk primarily works out of Respondent's Cicero, Illinois facility. Tr. at 52. Mr. Wilk testified that he knows Petitioner as a team member, or employee, at Respondent. Tr. at 52.

Mr. Wilk testified that he first learned of the COVID-19 pandemic through the news media. Tr. at 53. Mr. Wilk testified that he could not answer whether Respondent noticed an increase in the number of employees who were sick or calling out of work. Tr. at 53. Regarding when he first began taking action at Respondent in response to the pandemic, Mr. Wilk testified that he believed that they started internal discussions in early 2020, prior to it being declared a pandemic, which he believed was declared a pandemic on March 11, 2020 by the

World Health Organization ("WHO"). Tr. at 53. Mr. Wilk testified that they were trying to get ahead of it and formed a COVID-19 task force that was led by various leads of departments within Respondent. Tr. at 53-54. Mr. Wilk testified that the task force met weekly to discuss internal and overall feelings of team members, team members' questions, and how they were addressing those concerns, questions, or comments. Tr. at 54. Mr. Wilk testified that the task force also discussed travel restrictions, how travel would restrict day-to-day operations, and hot spots throughout the country. Tr. at 54. Mr. Wilk testified that they also started procuring more personal protective equipment and began to keep an inventory of face coverings. Tr. at 54. Mr. Wilk testified that at that time face coverings were hard to come by and an internal employee and her family made face coverings that were distributed to all other employees. Tr. at 54-55. Mr. Wilk testified that there were communications and trainings, and that they also created a pandemic preparedness program, which was a written program of Respondent's plan to respond per CDC guidelines. Tr. at 55. Mr. Wilk testified that everything they did was in step with the WHO and the CDC. Tr. at 55. Mr. Wilk was shown Rx1, which he identified as the CDC guidance for business and employers, which was published on March 21, 2020. Tr. at 55. Mr. Wilk testified that these were the kind of documents that would be referred to in the task force in determining next steps and procedures and is what helped Respondent build out its pandemic preparedness program. Tr. at 56.

Mr. Wilk testified that Respondent remained open as an essential business during the pandemic. Tr. at 56. Mr. Wilk was a member of the task force. Tr. at 56. Mr. Wilk testified that the CDC guidelines were being monitored for changes. Tr. at 56-57. Regarding response to guideline changes, Mr. Wilk testified that it was a fluid situation, and that as new guidance and information came out, they adjusted everything that they did. Tr. at 57. Mr. Wilk testified that social distancing became a very visible part of what they did within the operation, and they had markings on the floor around any area considered a congregation area, such as time clocks and break rooms, and they staggered shifts. Tr. at 57. Mr. Wilk testified that they also employed the proper disinfecting personnel at all of Respondent's facilities, they began more emphasis on internal housekeeping, and they began to give all the equipment operators disinfecting bottles and sprays to spray upon entry into the equipment or on any surface they were touching. Tr. at 57-58. The bathrooms were monitored. Tr. at 57. Mr. Wilk testified that they had a third-party disinfecting company conduct disinfecting in all offices and anywhere there was a touch surface for employees, as well as bathrooms, locker rooms, lunchrooms, all equipment, all power units, and trucks. Tr. at 57. Mr. Wilk testified that disinfecting by the third-party would occur every week or every other week and that as the pandemic moved through 2021 into 2022, the frequency was monthly, and then eventually, as needed. Tr. at 57.

Mr. Wilk testified that procedures and training were communicated through Respondent's internal "Toolbox Talk" program. Tr. at 59. Mr. Wilk explained that trainings would go out to managers and supervisors daily and that the managers and supervisors would deliver the training. Tr. at 59. The training consisted of different topics including staying home if sick, proper hygiene, covering your mouth when sneezing and coughing, washing hands before and after eating, and wearing face coverings. Tr. at 59-60. Tr. at 60. Mr. Wilk testified that Toolbox Talks were held on Mondays, Wednesday, and Fridays, but that they began increasing them throughout the pandemic to every day. Tr. at 60. Mr. Wilk testified that they also had a "See Something Say Something" program, where if an employee felt there was anything that could be done to better improve the health, safety, and security of the employees, it was communicated back to them. Tr. at 60-61. There was a QR code available to all employees with a message box, and any message received by the task force would be discussed and acted on. Tr. at 61.

Mr. Wilk was shown Rx2, which he identified as communications that were distributed as Toolbox Talks to all managers and supervisors and that were delivered by the managers and supervisors to their teams throughout the pandemic. Tr. at 61. Mr. Wilk went through some of the topics that were provided to employees. Tr. at 61-66. Mr. Wilk testified that the Toolbox Talks communications were emailed to supervisors and managers from the safety department, and that the supervisors and managers were responsible for relaying the communications

to the team. Tr. at 66-67. Mr. Wilk testified that there were sign-in sheets and that employees would sign off on the training they took. Tr. at 67. The communications were also posted on bulletin boards throughout the facility in English and Spanish. Tr. at 67.

Mr. Wilk testified that face masks were offered to employees before the pandemic. Tr. at 67. There had always been a respiratory protection program for some positions in the organization. Tr. at 68. Mr. Wilk testified that all employees were permitted to request an N95 face covering, and this was documented in the new hire orientation as well as in trainings. Tr. at 68. Mr. Wilk testified that Respondent has a respiratory protection month within training in January where all employees are trained on respiratory protection and sign off on OSHA's Appendix D, which is an acknowledgement that they understand how to don and doff a face covering. Tr. at 68. Regarding the form that Petitioner signed on April 23, 2020 acknowledging receipt of two masks, Mr. Wilk testified that he did not know the exact date that process began. Tr. at 69. Mr. Wilk testified that as the pandemic drew on, Respondent was able to procure surgical masks and Respondent always had an inventory of surgical masks. Tr. at 69. Respondent would also procure N95 masks when able to. Tr. at 69. Mr. Wilk testified that there was a period where face coverings were required in public, and that Respondent applied that requirement internally. Tr. at 69. Mr. Wilk testified that he believed that there was disciplinary action taken if an employee was not wearing a mask at work, and that for situations involving religion or otherwise, the employee would be asked to leave the facility. Tr. at 69-70.

Mr. Wilk testified that Respondent's internal policy was that employees stay home and contact their immediate supervisor if they felt that they had COVID-19 symptoms or were exposed to COVID-19. Tr. at 70. Mr. Wilk testified that there was a process in place to contact trace and to document and track everything through their system. Tr. at 70. Mr. Wilk testified that the instructions that employees stay home and contact their immediate supervisor if they felt they had symptoms of or were exposed to COVID-19 were communicated via Toolbox Talks and postings on bulletin boards. Tr. at 70. Mr. Wilk testified that if an employee reported feeling ill to a supervisor or someone at Respondent, the employee would be told to stay home, get a COVID-19 test, isolate, and to do all the things that the employee was trained on. Tr. at 71. Mr. Wilk testified that employees were allowed to stay home for the period recommended by the CDC. Tr. at 71. Mr. Wilk testified that to his knowledge, there was not any penalty in terms of attendance points when employees stayed home for experiencing symptoms. Tr. at 71. Mr. Wilk believed that employees were compensated for the period that they stayed home. Tr. at 71-72.

Mr. Wilk testified that the visitor policy included that all visitors sign in at a kiosk that was sanitized after every use, answer questions regarding whether they were feeling symptomatic and if they had traveled domestically or internationally, and had their temperature screened. Tr. at 72. Employees also had their temperatures screened. Tr. at 72-73. When asked when employee temperature screening started, Mr. Wilk testified "I don't know when it started around, but I do believe it went back to April, yeah." Tr. at 73. Mr. Wilk testified that temperature screening was done internally at first, and then Respondent had a third party do it. Tr. at 73. Regarding whether any changes were made to the facility specifically to try to stop the spread of COVID-19, Mr. Wilk testified "Yes, yes. I mean, we isolated team members from one another. We made it extremely visible…I mean, there were portions in the operation that had plexiglass that separated team members from one another, you know, if there was, you know, a workstation. So, yeah." Tr. at 73. Mr. Wilk testified that social distancing was practiced in break rooms and cafeterias, and that there were visual markers in these areas, as well as supervision to make sure that six-foot social distancing was being maintained. Tr. at 73-74. Mr. Wilk testified that he believed that Respondent followed the CDC guidelines during the pandemic. Tr. at 74.

Mr. Wilk recalled a walkout on April 28, 2020. Tr. at 74. Mr. Wilk did not remember what triggered the walkout. Tr. at 74. Mr. Wilk testified that his understanding of the walkout was that "…there was a group of individuals that met out on one of the premises that was owned by the organization, got together and, you know,

started discussing something. I'm not sure." Tr. at 74-75. Mr. Wilk testified that he did not specifically know of any demands made on behalf of the employees to Respondent. Tr. at 75. Regarding whether any action was taken by Respondent following the walkout, Mr. Wilk testified "To my knowledge, I don't know. I don't know. No, not that I know of." Tr. at 75.

Mr. Wilk testified that throughout 2020, Respondent was inspected by the Secretary of State and OSHA. Tr. at 75. They were not on-site inspections, and were largely virtual via emails, correspondence, phone calls, and video chats. Tr. at 75. There were no citations or suggestions made. Tr. at 75. Mr. Wilk was shown Rx8, which he identified as a letter from the U.S. Department of Labor Occupational Safety and Health Administration regarding employees not being provided with adequate protective personal protective equipment and not cleaning the facility effectively. Tr. at 76. The complaint was closed unless appealed by the complainant. Tr. at 77; Rx8. Mr. Wilk testified that no action or fine was given to Respondent by OSHA. Tr. at 77. Mr. Wilk was shown Rx9, a similar complaint regarding employees not provided with adequate personal protective equipment dated June 19, 2020. Tr. at 80. The complaint was also closed unless appealed by the complainant. Tr. at 78; Rx9. Mr. Wilk testified that no negative action was taken against Respondent by the departments or agencies that investigated or received complaints. Tr. at 78.

On cross examination, Mr. Wilk testified that he was familiar with employee Raymundo Rodriguez by name only. Tr. at 79. Mr. Wilk testified that he had heard about Mr. Rodriguez's death and that OSHA opened an investigation into his death and that zero liability was found. Tr. at 81. Mr. Wilk testified that he was not familiar with who Mr. Rodriguez worked closest with nor that the April 28, 2020 walkout was connected to his death. Tr. at 81-82. Mr. Wilk agreed that he testified that he was not familiar with any motivations behind the walkout. Tr. at 84. Mr. Wilk testified that he may have heard about a petition submitted to Respondent, and further testified that he was not sure what the petition necessarily pertained to. Tr. at 84. When asked if the petition was regarding employee safety concerns and if it would be within the scope of his position to review and address those concerns, Mr. Wilk testified "I believe if there were concerns about workplace safety, I would be a part of the conversation." Tr. at 84. Mr. Wilk then testified that it was not his responsibility, to recall the specifics about the walkout or if he saw the petition. Tr. at 85.

Mr. Wilk testified that they considered employee feedback in tailoring policies toward safety and noted that he believed that the See Something Say Something program had been previously discussed. Tr. at 85. Mr. Wilk testified that every See Something Say Something that came across was investigated and meaningful changes were made. Tr. at 85-86. Mr. Wilk testified that the employee's petition was not submitted through the QR code. Tr. at 86.

When asked when the third-party sanitizing company started, Mr. Wilk testified that "[i]t was early on in the pandemic." Tr. at 87. Mr. Wilk testified that he believed that he had mentioned that it started sometime in April, when asked whether it started before April 30, 2020 or April 28, 2020. Tr. at 87. The third-party sanitizing company would come in on Saturdays and Sundays during the day. Tr. at 87. Mr. Wilk did not supervise any of the sanitizing efforts by the third-party company. Tr. at 87. Employees were on site to supervise, and Respondent received certificates and checklists that areas were disinfected. Tr. at 87-88. When asked when the Toolbox Talks began, Mr. Wilk testified that he did not know the exact date, but that they began "early on." Tr. at 88. The information disseminated via Toolbox Talks could be received in written and verbal form. Tr. at 89. Mr. Wilk did not supervise team leads disseminating Toolbox Talks communications to employees. Tr. at 89-90. Regarding personal protective equipment, Mr. Wilk testified that there was an organizational mandate that employees were required to don face coverings, and if a team member did not want to participate in the organization's mandate, the employee would be disciplined, including termination. Tr. at 91. The Human Resources ("HR") department was responsible for disciplinary action. Tr. at 91-92. Disciplinary actions would be reported to the HR department, and Mr. Wilk would have an understanding that they happened, but he would

not discipline the employee. Tr. at 92. When asked how many incidents required disciplinary action during the COVID-19 pandemic related to personal protection equipment noncompliance, Mr. Wilk testified "I would not like to give you an inaccurate number." Tr. at 92. When asked about the scale of such disciplinary actions, Mr. Wilk testified "I think our team did a really good job with complying with our requests. I don't have the number in front of me, and I would prefer not to speculate on quantities." Tr. at 93. When asked when temperature screening and symptom checking for visitors began, Mr. Wilk testified that it began "early on" and that he did not know the exact date. Tr. at 93. Mr. Wilk testified that prior to the third-party temperature screening company coming in, temperature screening was done by a member of the front office or inside sales. Tr. at 93-94. When asked if he supervised the temperature screening process, Mr. Wilk testified that he made sure it complied with policy. Tr. at 94. Managers were temperature screened. Tr. at 95. Mr. Wilk testified that to the best of his knowledge, he did not recall having an issue with temperature screening and symptom checking measures not being taken. Tr. at 96.

Regarding when changes to the facility were made in response to guidelines put out by the CDC or other knowledge gained about the COVID-19 pandemic, Mr. Wilk testified that he did not have an accurate date. Tr. at 96. He did not remember exactly when changes were made. Tr. at 96. Mr. Wilk testified that as soon as the CDC posted on their website that social distancing was one of the most important things to observe, they began to change what they did to comply with that guidance. Tr. at 96-97. Mr. Wilk testified that there were more than two inspections conducted by OSHA. Tr. at 98-99. He did not recall the dates of the other OSHA inspections. Tr. at 99. Mr. Wilk testified that those inspections had the same result, and that everything was cleared. Tr. at 99. Mr. Wilk testified that the inspection conducted by the Secretary of State occurred during a similar timeframe, potentially congruently with the others, and had similar results. Tr. at 99. The inspections were conducted via electronic communications, including phone calls, emails, and pictures. Tr. at 99-100. OSHA inspectors did not survey the facility in person during the COVID-19 pandemic. Tr. at 100. Mr. Wilk testified that he did not know about the October 2021 NLRB complaint, and that he has no dealings with any type of ongoing process with that entity. Tr. at 101-102. When asked if he was unaware of the employee complaints brought forward by the petition on the day of the walkout, Mr. Wilk testified "I don't know. I think I stated I don't know exactly what was contained within and the reason why they were out in the street." Tr. at 103.

On redirect examination, Mr. Wilk was shown Rx7, the employee demand letter of April 28, 2020. Tr. at 108. The demand letter is addressed to Bradley Serlin, Respondent's president, and Marsha Serlin, Respondent's secretary. Tr. at 108; Rx9. Mr. Wilk testified that he may have been in the loop if there had been problems addressing the employees' concerns during the walkout. Tr. at 109. Mr. Wilk testified that Toolbox Talks were also posted in visible areas on bulletin boards throughout the facility and they were emailed. Tr. at 109-110. Mr. Wilk testified that he was required to go through the temperature screening process. Tr. at 110. Mr. Wilk testified that to his recollection, there was not a day when he came into work, and no one was performing temperature checks. Tr. at 110.Regarding the NLRB decision that was discussed, Mr. Wilk testified that it did not fall within his scope of responsibilities. Tr. at 110-111.

On recross examination, Mr. Wilk testified that he did not have a discussion with Mr. Serlin regarding the employees' petition. Tr. at 111-112. Mr. Wilk agreed that the expectation was that if someone brought up a safety concern to someone else, it would then be brought to him so that he could address the situation. Tr. at 112-113. The NLRB report was not brought to his attention. Tr. at 113.

Testimony of Joseph Cuevas

Respondent also called Mr. Joseph Cuevas to testify on its behalf. Tr. at 113-114. Mr. Cuevas testified that his occupation at the time of arbitration was general manager at Respondent's Cicero, Illinois location. Tr. at 114. Mr. Cuevas has worked at Respondent for 17 years. Tr. at 114-115. Mr. Cuevas had been the general manager

for nine years. Tr. at 115. His job duties as the general manager include making sure the trainings are done, providing a safe work environment, making sure that consumers are getting their orders on time, understanding the process and controls, understanding on-time delivery for consumers, understanding the packaging for consumers, and making sure employees are trained. Tr. at 115-116. Mr. Cuevas testified that his team is responsible for Toolbox Talks each day. Tr. at 116. Mr. Cuevas testified that within Respondent's Cicero, Illinois facility there are nine operational departments, and each department has a manager who is responsible for handing out the Toolbox Talks and verbally giving out the Toolbox Talks. Tr. at 116. Mr. Cuevas supervises the operational managers. Tr. at 116. Mr. Cuevas testified that he has an office in the facility but is on the floor with the team most of the time. Tr. at 117. Mr. Cuevas testified that Respondent's Cicero, Illinois facility has 287 employees, they do not all speak English, and that there are bilingual employees and managers. Tr. at 117. Mr. Cuevas is bilingual and speaks English and Spanish. Tr. at 117-118.

Mr. Cuevas has known Petitioner since Petitioner began working at Respondent. Tr. at 118. Petitioner's job position at the end of his employment at Respondent was baler operator. Tr. at 118. Petitioner began as a laborer, then a forklift driver, and then as a baler operator. Tr. at 118. Petitioner was a baler operator in 2020. Tr. at 118-119. The baler operator position typically worked 50 to 60 hours a week depending on the workload. Tr. at 119. Petitioner worked the night shift. Tr. at 119. The general duties of a baler operator included making sure the line was functional, checking the mechanics quickly, checking the operating table, and understanding the schedule that the manager had set to produce product. Tr. at 119. Mr. Cuevas explained that the line consisted of two conveyors that feed the baler and that the baler is a large compactor that compacted material and ejected it in the form a bale. Tr. at 120. Mr. Cuevas was shown Rx3, which he identified as the baler platform. Tr. at 120. Mr. Cuevas described the baler platform. Tr. at 120-121. Mr. Cuevas testified that once ejected, the bale would be taken out by the dock or shipping team. Tr. at 121. Mr. Cuevas testified that Petitioner was responsible for disinfecting his area and workstation. Tr. at 121-122. Mr. Cuevas testified that the cylinder or shaft of the machine, as well as the ejection pad, would be cleaned out after a specific run and that any left-over material would be taken away. Tr. at 122. The baler operator and the forklift operator cleaned out the machine and product. Tr. at 122. There would be two people at a time cleaning the machine. Tr. at 123. The frequency of cleaning the machine depended on the frequency of the change between different products. Tr. at 123. When not cleaning the machine, Petitioner would be up on the platform handling the controls. Tr. at 123. Only one person worked on the platform. Tr. at 124. Petitioner's job duties did not change when the pandemic started. Tr. at 124.

Mr. Cuevas testified that steps were taken to limit contact during the pandemic, including implementing the six-foot rule so that employees were always six feet away from each other. Tr. at 124. Mr. Cuevas testified that it was possible for the forklift driver and baler operator to remain six feet apart while cleaning the machine. Tr. at 124-125.

Mr. Cuevas attended Toolbox Talks. Tr. at 125. Company policies regarding COVID-19 would be communicated to employees at Toolbox Talks. Tr. at 125. Mr. Cuevas testified that the COVID-19 task force would pass on CDC guideline information to him, and he would then get his team together and implement the guidelines through Toolbox Talks and conversations with team members. Tr. at 125. If the team members had any questions or concerns, they could be raised to Mr. Cuevas or the team members' manager. Tr. at 125-126. Temperature checks were implemented during the pandemic. Tr. at 126. Mr. Cuevas testified that temperature checks were implemented "[r]ight at the beginning of the pandemic." Tr. at 126. There was never a time that Mr. Cuevas came into work and temperature checks were not being conducted during the pandemic. Tr. at 126. Mr. Cuevas testified that there was bi-weekly sanitation done by a third-party and the third-party company would come in on Saturdays and Sundays and clean all the equipment. Tr. at 126-127. The company required face masks at some point. Tr. at 127. The face mask requirement began when the CDC said they had to have face masks implemented. Tr. at 127. If an employee arrived at work without a face mask, a face mask was provided to them. Tr. at 127. If an employee chose not to wear a face mask, they were not allowed to enter the facility. Tr.

at 127. Employees have always been provided a face mask prior to the pandemic, and when it became mandatory, everybody was provided face masks and there was a sign-off sheet saying they had received masks. Tr. at 128. Mr. Cuevas was shown Rx6, which he identified as Respondent's required pandemic mask acknowledgment and deduction form. Tr. at 128-129. Rx6 was signed by Petitioner. Tr. at 129. If an employee was symptomatic or reported being exposed to COVID-19, they were told to visit their physician and to get tested. Tr. at 129. The employees remained off work after reporting symptoms. Tr. at 129. There was no negative action taken against the employee if they stayed home with symptoms or with a positive test. Tr. at 129-130. When the employee returned to work, they required their test results and that the employee had quarantined, and that if the employee did not feel symptoms, they were able to return to work. Tr. at 130.

Mr. Cuevas was aware of the April 28, 2020 walkout. Tr. at 130. It started at 8:30 a.m. and lasted all day. Tr. at 130-131. It ended after a Cicero health inspector showed up and toured the facility, then called the police after employees ignored social distancing and keeping face masks on, and they were escorted off site for not following COVID-19 protocols. Tr. at 131. Petitioner was scheduled to work on April 28, 2020, and Petitioner came in early to participate in the walkout. Tr. at 132. Petitioner submitted a positive COVID-19 test dated April 30, 2020 and Petitioner remained off work following the positive test result. Tr. at 132. Mr. Cuevas believed that Petitioner returned to work on May 25, 2020. Tr. at 132. Petitioner was paid for the time off work for COVID-19 in April 2020. Tr. at 133. All employees were paid for time off work due to COVID-19. Tr. at 133. Petitioner continued to work at Respondent until January 2021. Tr. at 132-133. Mr. Cuevas was aware of the demands that were made by the employees to Respondent at the walkout. Tr. at 133. Mr. Cuevas agreed that the employees demanded a two-week closure for further disinfecting and that the employees wanted to be paid for that time. Tr. at 133-134. Mr. Cuevas testified that Respondent did not close but did more disinfecting. Tr. at 134. Mr. Cuevas testified that the employees that remained off work were paid for the two weeks. Tr. at 134.

Petitioner returned to his job as a baler operator on May 25, 2020. Tr. at 134. Mr. Cuevas testified that to his knowledge, Petitioner did not report any difficulty in performing his job. Tr. at 134. Petitioner worked his normal hours. Tr. at 134. Petitioner was not working at Respondent at the time of arbitration. Tr. at 134.

On cross examination, Mr. Cuevas testified that the demands made at the walkout that he was aware of included disinfecting the facility more frequently. Tr. at 135. Respondent hired a third-party to clean and did not close. Tr. at 135. Mr. Cuevas did not see a copy of the petition from the employees. Tr. at 136. Mr. Cuevas was not aware that a formal written petition had been made. Tr. at 136. Mr. Cuevas testified that the task force was part of the discussion regarding the extra sanitation and disinfecting measures that were being requested with the task force. Tr. 136-137. Mr. Wilk was a significant part of the task force. Tr. at 137. Mr. Cuevas did not receive an inspection report relative to the inspection performed by the Cicero health inspector on April 28, 2020 and he did not see a report being written by the inspector. Tr. at 137-138. Mr. Cuevas was with the inspector while the inspector performed the inspection. Tr. at 138. Mr. Cuevas did not recall if the inspector was taking notes. Tr. at 138-139. Employees were provided disinfectant to make sure that their equipment was clean. Tr. at 139. Mr. Cuevas testified that he supervised the temperature screenings and symptom check process every day. Tr. at 140.

The walkout was a surprise to Mr. Cuevas. Tr. at 141. Mr. Cuevas heard about Mr. Rodriguez's death. Tr. at 141. Mr. Cuevas was not aware of any employees testing positive for COVID-19 or out sick around the time of the walkout. Tr. at 141, 142. Mr. Cuevas was not aware of any complaints made to the NLRB or OSHA. Tr. at 143. Mr. Cuevas was notified by HR of Petitioner's positive COVID-19 test result. Tr. at 143.

On redirect examination, Mr. Cuevas agreed that employees could have been on sick leave without having a COVID-19 test or complaint around April 28, 2020. Tr. at 144-145. Mr. Cuevas testified that it would not fall

within his duties to receive or respond to NLRB or OSHA issues. Tr. at 145. Mr. Cuevas would be made aware of such issues if it pertained to him and his departments, but he was not made aware of anything. Tr. at 145.

On recross examination, Mr. Cuevas agreed that he was not sure of any employees being out because of COVID-19 specifically. Tr. at 145-146. Employees out due to COVID-19 would be paid 10 days from a separate allotment of time and not from PTO. Tr. at 146.

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. The Arbitrator notes that Petitioner was not the best historian when it came to time periods and that he gave conflicting estimates of the duration of his symptoms and when they began. The Arbitrator notes, however, that the inconsistencies in Petitioner's testimony stemmed from confusion and are not a deliberate attempt to mislead the Arbitrator.

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:

Petitioner alleges that he was exposed to COVID-19 while employed as a baler operator for Respondent on April 30, 2020. It is not disputed that Petitioner had a positive COVID-19 test result dated April 30, 2020. The issue in dispute is whether Petitioner contracted the COVID-19 virus from an exposure arising out of and in the course of his employment with Respondent.

On June 5, 2020, the Illinois Legislature amended the Occupational Diseases Act and created a rebuttable presumption for first responders and front-line workers who were exposed to and contracted COVID-19 in the course of their employment. The presumption provides that "the injury or occupational disease shall be rebuttably presumed to be causally connected to the hazards or exposures of the employee's first responder or front-line worker employment." 820 ILCS 310/1(g)(1). Further, the presumption is applied to cases filed by qualified workers who contracted COVID-19 between March 9, 2020 through December 31, 2020. 820 ILCS 310/1(g)(4). The presumption was later extended to June 30, 2021. For claims of exposure occurring on or before June 15, 2020, a claimant must provide a confirmed medical diagnosis by a licensed medical practitioner or a positive laboratory test for COVID-19 or for COVID-19 antibodies. 820 ILCS 310/1(g)(6).

In this case, the presumption applies as Petitioner's role as a front-line worker falls within the rebuttable presumption, 820 ILCS 310/1(g)(2), and Petitioner alleges that he was exposed to the COVID-19 virus on April 30, 2020. Because the presumption applies, the burden of proof shifts to Respondent to present "some evidence" to establish that Petitioner's alleged exposure and/or diagnosis resulted from something other than Petitioner's employment/occupation. 820 ILCS 310/1(g). The presumption may be rebutted by evidence of the following (1) that "the employee was working from his home, on leave from his employment, or some combination thereof, for a period of 14 or more consecutive days immediately prior to the employee's injury," (2) that "the employer was engaging in and applying to the fullest extent possible or enforcing to the best of its ability industry-specific workplace sanitation, social distancing, and health and safety practices based on updated guidance issued by the Centers for Disease Control and Prevention or Illinois Department of Public Health or was using a combination of administrative controls, engineering controls, or personal protective equipment to reduce the transmission of COVID-19 to all employees for at least 14 consecutive days prior to the employee's injury, occupational disease, or period of incapacity resulting from exposure to COVID-19," or (3) that "the employee was exposed to COVID-19 by an alternate source." 820 ILCS 310/1(g)(3). If the presumption is rebutted, the burden then shifts to Petitioner to prove his claim and/or exposure by a preponderance of the evidence that said exposure arose out of and in the course of his employment. Respondent, through its questioning of Petitioner and the evidence offered in its case-in-chief, argues that it should not be held liable based on its COVID-19 protocols in place. 820 ILCS 1(g)(1)(3)(B).

Petitioner credibly testified that he did not receive any specific instructions about additional cleaning or extra precautions that needed to be taken from management in March or April 2020. Petitioner testified that prior to April 28, 2020, he and other employees were provided with personal protective equipment and gloves. Petitioner testified that he participated in the April 28, 2020 walkout, and that it was his understanding that the walkout was related to employee concerns about safety in the workplace regarding COVID-19 precautions. Petitioner testified that he had not seen management take steps to protect employees from the transmission of COVID-19 prior to the walkout, and that there was no temperature screening, symptoms checks, or additional deep cleaning or sanitizing of work equipment, tools, or the common areas prior to the walkout. Petitioner and other employees signed a demand letter that was passed around at the walkout. Petitioner testified that two of the demands made were that the facility be closed for two weeks for disinfecting and that the employees receive pay for that time. Petitioner was given two weeks off with pay and the facility was disinfected during that time. Petitioner testified that he saw changes after the walkout.

Respondent's witness, Mr. Adam Wilk, testified extensively about the actions taken by Respondent to reduce the transmission of COVID-19 at its Cicero, Illinois facility during the COVID-19 pandemic. Mr. Wilk's position at Respondent in 2020 was the national director of safety compliance. Mr. Wilk testified that Respondent began internal discussions regarding the pandemic in early 2020, prior to it being declared a pandemic. Mr. Wilk testified that a COVID-19 task force was formed in an attempt to get ahead of the pandemic. Mr. Wilk was a member of the task force. Mr. Wilk testified that Respondent also started procuring more personal protective equipment and began to keep an inventory of face coverings. Mr. Wilk testified that there were also communications and trainings, including a Pandemic Preparedness Program, which was a written program of Respondent's plan to respond to the pandemic per CDC guidelines. Mr. Wilk testified that the COVID-19 task force met weekly to discuss internal and overall feelings and questions, and how they were addressing same. Mr. Wilk testified that the task force referred to documents, such as Rx1, to determine next steps and procedures and such documents were used by Respondent to build its Pandemic Preparedness Program. Mr. Wilk testified that face masks were offered to employees upon request before the pandemic, and that all employees were permitted to wear an N95 face masks. Mr. Wilk also testified that Respondent had a respiratory protection training in January and employees were required to sign an acknowledgement that they understood how to don and doff a facemask.

Mr. Wilk testified that procedures and training were communicated to employees through Toolbox Talks by managers and supervisors in English and Spanish. Toolbox Talks were held on Mondays, Wednesdays, and Fridays, but increased in frequency to daily throughout the pandemic. Mr. Wilk testified that there were sign-in sheets at Toolbox Talks and that employees would sign off on the training they took. Toolbox Talk communications were posted on bulletin boards throughout the facility. Mr. Wilk testified that social distancing became a visible part of Respondent's operation, with markings on the floor in congregation areas, including areas near time clocks and break rooms. Respondent also staggered shifts. Mr. Wilk testified that Respondent employed disinfecting personnel at all of its facilities and began more emphasis on internal housekeeping, including giving equipment operators spray bottles of disinfectant to spray upon entry into equipment and surfaces. Mr. Wilk testified that a third-party disinfecting company was hired to disinfect all offices, surfaces, bathrooms, locker rooms, lunchrooms, equipment, power units, and trucks. Mr. Wilk testified that the third-party disinfecting occurred every week or other week, and that as the pandemic moved through 2021 into 2022 the frequency of cleaning was monthly, and then eventually, as needed. Mr. Wilk testified that there was also a See Something Say Something program, where employees could communicate concerns via a QR code made available to all employees. Mr. Wilk testified that the messages submitted via QR code were received by the COVID-19 task force and that any message received would be discussed and acted on.

Mr. Wilk testified that Respondent's internal policy was that employees stay home and contact their immediate supervisor if they were experiencing COVID-19 symptoms or were exposed to COVID-19. These instructions were communicated to employees via Toolbox Talks and postings on bulletin boards throughout the facility. Employees were allowed to stay home for the period recommended by the CDC. Employees were not penalized for staying home for experiencing COVID-19 symptoms and were compensated for the period they stayed home. Employees and visitors were temperature screened before entry into the facility. Mr. Wilk testified that temperature screening was done internally at first, by a member of the front office or inside sales, and then a third-party was hired by Respondent. Plexiglass was also installed at workstations to separate team members from one another.

Regarding Respondent's response to guideline changes, Mr. Wilk testified that it was a fluid situation, and that as new guidance and information was released, Respondent adjusted what it did. Mr. Wilk testified that he believed that Respondent complied with the CDC guidelines to the best of its ability. Mr. Wilk's testimony regarding the actions taken by Respondent to reduce the transmission of COVID-19 at its Cicero, Illinois facility was corroborated by the testimony of Mr. Joseph Cuevas. Mr. Cuevas also corroborated that Mr. Wilk was a significant member of the COVID-19 task force.

Mr. Wilk conceded that throughout 2020, Respondent was inspected by government agencies for complaints of not providing employees with adequate protective personal equipment and not cleaning the facility effectively. These inspections, however, were not done on-site, and were conducted via emails, correspondence, phone calls and video chat. Mr. Wilk testified that no citations or suggestions were made following the inspections.

The Arbitrator notes that while Mr. Wilk provided testimony regarding Respondent's procedures and protocols during the COVID-19 pandemic, Mr. Wilk provided vague information as to when such procedures and protocols were implemented or enforced. When asked when employee temperature screening began, Mr. Wilk responded that he did not know when it started and that he believed that it went back to April. When asked when temperature screening for visitors began, Mr. Wilk testified that he did not know and that he believed that it began "early on." When asked when the Toolbox Talks began, Mr. Wilk again testified that he did not know and that he believed they began "early on." When asked when sanitization by the third-party began, Mr. Wilk testified that it was "early on" in the pandemic, and that he believed that he had testified that it began "sometime" in April. When asked when changes to the facility were made in response to CDC guidelines or other knowledge gained about the COVID-19 pandemic, Mr. Wilk testified that he did not have an accurate date

and that he did not remember exactly when changes were made. Mr. Wilk testified that social distancing was implemented as soon as the CDC posted on its website that social distancing was the most important thing to observe. Mr. Cuevas's testimony regarding implementation of COVID-19 procedures and protocols at Respondent's Cicero, Illinois facility is similarly vague. Mr. Cuevas testified that temperature screening was implemented "right at the beginning" of the pandemic. Mr. Cuevas testified that Respondent required face masks "at some point" during the pandemic, and that the face mask requirement began when the CDC said face masks had to be implemented.

The Arbitrator notes that while Mr. Wilk's testimony during direct examination was straightforward, his testimony during cross examination was at times evasive. The Arbitrator further questions Mr. Wilk's testimony regarding his knowledge of the April 28, 2020 walkout. Mr. Wilk testified that he did not know what triggered the walkout and that he maybe "heard" about the demand letter submitted to Respondent, but that he did not know what it pertained to. Mr. Wilk testified that he did not specifically know of any demands made by employees to Respondent. Mr. Wilk testified that he did not know whether any action was taken by Respondent following the walkout, and that he did not know of any actions taken by Respondent following the walkout. Mr. Wilk testified that if the walkout had been due to safety concerns, he would be a part of the conversation, but then testified that it was not his responsibility to recall the specifics of the walkout or if he saw the demand letter. Mr. Wilk testified that the task force considered employee feedback submitted via the See Something Say Something QR code when tailoring safety policies, and the employee demand letter had not been submitted via the QR code. The Arbitrator acknowledges that Respondent attempts to suggest that Mr. Wilk was not aware of the employee demand letter because it was addressed to Mr. Bradley Serlin, Respondent's president, and Ms. Marsha Serlin, Respondent's secretary. The Arbitrator, however, finds it questionable that as Respondent's national director of safety compliance and as a significant member of Respondent's COVID-19 task force, Mr. Wilk was unaware of any information regarding the April 28, 2020 walkout. The Arbitrator further notes that Mr. Cuevas also testified that Respondent's COVID-19 task force was involved in the discussion regarding the request for extra sanitation and disinfecting measures, which further calls Mr. Wilk's testimony about the walkout into question. Simply put, the Arbitrator finds Mr. Wilk's overall testimony regarding the April 28, 2020 walkout disingenuous.

Respondent also presented several exhibits in an attempt to demonstrate its effectiveness in combating the transmission of COVID-19. Rx1, titled "CDC Guidance for Businesses & Employers (as of March 21, 2020), Plan, Prepare and Respond to Coronavirus Disease 2019" provides guidance to businesses. Employers were recommended to encourage employees to wear cloth face coverings, practice social distancing, and perform routine cleaning of frequently touched surfaces. This guidance, in accordance with 820 ILCS 310/1(g)(3)(B), was available more than 14 days prior to Petitioner's COVID-19 diagnosis. The record, however, is vague as to when Respondent implemented or enforced these practices. Respondent offered Rx2, which are Team Service Announcements on different COVID-19 related topics. Mr. Wilk identified Rx2 as the communications that were distributed as Toolbox Talks to all managers and supervisors that were then communicated by the managers and supervisors to their teams during the pandemic. Mr. Wilk, however, testified that he did not know when Toolbox Talks began. The Arbitrator notes that the communications within Rx2 are not dated nor is there any reference as to when these communications were disseminated to employees.

Respondent further offered Rx6, which is a form in Spanish signed by Petitioner acknowledging receipt of two masks on April 23, 2020. The Arbitrator notes that Rx6 states that the face covering was being offered in response to the Town of Cicero's requirement of face coverings for team members while at work that began on April 16, 2020. Rx6 demonstrates that Petitioner received face masks approximately seven days after the Town of Cicero's face mask requirement went into effect. The Arbitrator further notes that Rx6 lists some "Do's" and "Don'ts" for team members to understand the proper use of a mask. The Arbitrator notes that Rx6 also states that if the team member experiences any COVID-19 symptoms or any other symptoms of illness, the employee

should stay home and contact their supervisor or HR representative immediately. Petitioner acknowledged that he received two face masks from Respondent on April 23, 2020, one day prior to feeling COVID-related symptoms and approximately seven days prior to his COVID-19 diagnosis. The Arbitrator notes that Mr. Wilk, however, testified that he did not know when the process of employees signing for receipt of masks began. Respondent also offered Rx7, the demand letter of April 28, 2022 with the subject line of "Re: Covid-19 Quarantine," with over two pages of employee signatures. Petitioner's testimony is corroborated by the contents of Rx7.

The rebuttable presumption makes clear that Respondent must show "some evidence" that it was "engaging in and applying to the fullest extent possible or enforcing to the best of its ability industry-specific workplace sanitation, social distancing, and health and safety practices based on updated guidance issued by the Centers for Disease Control and Prevention or Illinois Department of Public Health or was using a combination of administrative controls, engineering controls, or personal protective equipment to reduce the transmission of COVID-19 to all employees *for at least 14 consecutive days prior to* the employee's injury, occupational disease, or period of incapacity resulting from exposure to COVID-19." 820 ILCS 310/1(g)(3)(B) (emphasis added). The Arbitrator notes that according to Mr. Wilk and Mr. Cuevas, Respondent's efforts to reduce the transmission of COVID-19 to its employees were comprehensive. The record, however, is overall vague as to when Respondent engaged in, applied, or enforced its health and safety procedures and protocols, such as Toolbox Talks, temperature screening, social distancing, symptom checks, face masks/coverings, and workplace sanitization/disinfecting, or whether such were used for at least 14 consecutive days prior to Petitioner's injury. The Arbitrator further notes Petitioner's credible testimony that there was no temperature screening, symptoms checks, or additional deep cleaning or sanitization of work equipment, tools, or the common areas prior to the April 28, 2020 walkout and that he saw changes after the walkout.

Further, there is no evidence that Petitioner contracted the COVID-19 virus somewhere else. There is also no evidence that Petitioner worked from home or was off work in the 14 days prior to diagnosis.

Having considered all the evidence, the Arbitrator finds that Respondent has failed to rebut the presumption. Petitioner offered a confirmed medical diagnosis by a licensed medical practitioner or a positive laboratory test for COVID-19 dated April 30, 2020. Accordingly, the Arbitrator finds that Petitioner's exposure to the COVID-19 virus arose out of and in the course of his employment with Respondent.

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

Consistent with the Arbitrator's prior finding as to accident/exposure, and there being no medical evidence to the contrary, the Arbitrator finds Petitioner's current condition of ill-being is causally related to the April 30, 2020 workplace exposure. The Arbitrator notes that the overall record demonstrates that Petitioner was tested for COVID-19 on April 30, 2020, which yielded a positive result.

Issue L, as to the nature and extent of the injury, the Arbitrator finds as follows:

The Arbitrator notes that pursuant to Section 8.1b of the Act, permanent partial disability shall be established using five enumerated factors, with no single factor being the sole determinant of disability. Per 820 ILCS 305/8.1b(b), the factors to be considered include: (i) the reported level of impairment pursuant to AMA; (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.

With regard to Subsection (i) of Section 8.1b(b), the Arbitrator notes that an AMA Impairment Rating was not offered, and therefore the Arbitrator assigns no weight to this factor.

With regard to Subsections (ii) and (iii) of Section 8.1b(b), the Arbitrator notes that at the time of the accident, Petitioner was 38 years of age and was employed at Respondent as a baler operator. Petitioner returned to work full duty at Respondent as a baler operator on May 25, 2020. The Arbitrator assigns some weight to these factors.

With regard to Subsection (iv) of Section 8.1b(b), the Arbitrator notes that Petitioner has not demonstrated that his future earning capacity has been affected by the injury and there is no evidence of reduced earning capacity in the record. The Arbitrator assigns less weight to this factor.

With regard to Subsection (v) of Section 8.1b(b), the medical records reflect that Petitioner presented at Esperanza Health Center on April 30, 2020 for complaints of COVID-19 symptoms, including myalgias, sore throat, cough, and fatigue. Petitioner was tested for SARS-CoV-2 on April 30, 2020, which yielded a positive result documented on May 2, 2020. On May 8, 2020, Petitioner reported improved symptoms. Petitioner returned to work full duty on May 25, 2022. Petitioner last sought treatment for his condition on May 8, 2020. Petitioner was not prescribed medications and was not hospitalized. Petitioner testified that he suffered from headaches and fatigue for some time thereafter. The Arbitrator assigns more weight to this factor.

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

Ana Vazquez

ANA VAZQUEZ, ARBITRATOR

April 16, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC004561
Case Name	Rebecca Treffert v. SSM Health St. Mary's Hospital
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0030
Number of Pages of Decision	24
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Michael Karr

DATE FILED: 1/22/2025

/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

REBECCA TREFFERT,

Petitioner,

vs. NO: 23 WC 4561

SSM HEALTH ST. MARY'S HOSPITAL,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 22, 2024 is hereby affirmed and adopted.

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

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

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

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

January 22, 2025

CAH/pm
O: 1/16/25
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	23WC004561
Case Name	Rebecca Treffert v. SSM Health St. Mary's Hospital
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Michael Karr

DATE FILED: 5/22/2024

/s/Bradley Gillespie, Arbitrator

Signature

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

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)

Rebecca Treffert
Employee/Petitioner

v.

SSM Health St. Mary's Hospital
Employer/Respondent

Case # **23** WC **04561**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Herrin, Illinois**, on **April 2, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **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 $**66,450.28**; the average weekly wage was $**1,277.89**.

On the date of accident, Petitioner was **37** years of age, ***single*** with **2** dependent children.

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

Respondent shall be given a credit of $**4,381.32** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**4,381.32**.

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 $851.93/week for 9 weeks, commencing November 1, 2023, through January 2, 2024, as provided in Section 8(b) of the Act.

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

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

Respondent shall authorize and pay for the prospective treatment recommended by Dr. Gornet, including, but not limited to, postoperative 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.

Bradley D. Gillespie
Signature of Arbitrator

ICArbDec19(b)

May 22, 2024

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

REBECCA TREFFERT,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No.: 23WC004561**
	)	
SSM HEALTH ST. MARY'S HOSPITAL,	)	
	)	
Respondent.	)	

19(b) DECISION OF ARBITRATOR

This matter proceeded to hearing on a 19(b) on April 2, 2024, in Herrin, Illinois. (Arb. Ex. 1 & Arb. Ex. 2) The following issues were in dispute:

- Causal connection
- Medical Bills
- TTD
- Prospective Medical Care

FINDINGS OF FACT

Petitioner was employed as a registered nurse for Respondent for nine years and was working in that capacity when she sustained accidental injuries on October 18, 2021. (T. 14) Petitioner typically worked on the cardiac floor; however, on that date, she was floated down to the psych unit to sit with a patient. (T. 14) The patient became agitated, hit and shoved Petitioner, and attempted to hit Petitioner with the bathroom door. (T. 14, 15) Another nurse heard the patient's bed alarm and came to assist, and the patient was taken to receive medication injections to calm her down. (T. 15) When the patient returned to the room, she walked around her bed and toward the doorway and Petitioner followed her. (T. 15, 16) The patient spun around, grabbed Petitioner's hair, which was in a high and tight ponytail, and began yanking, attempting to bash Petitioner's head into the door frame. (T. 15, 16) Petitioner reached up and attempted to pry the patient's hands out of her hair, but the patient "got a rise out of it." (T. 15, 16) A CNA two doors down heard Petitioner yelling and ran in the room and grabbed the patient so that she would let go of Petitioner. (T. 16) Following the incident, Petitioner felt pain in her neck all the way down to her shoulders, and she walked down to the emergency department. (T. 16)

MEDICAL EVIDENCE

On October 18, 2021, Petitioner presented to the emergency department at SSM Health St. Mary's Centralia Hospital. (PX3) The history indicates that just prior to arrival, Petitioner was assaulted by a "demented patient who became agitated." *Id.* The patient grabbed Petitioner by the hair and yanked her head around for about one minute. *Id.* Petitioner's head was pulled "hard,"

and she had neck pain since that time. *Id.* She indicated that it hurt to palpate or move her neck. *Id.*

Review of symptoms indicated that she was positive for upper back pain, myalgia and neck pain. *Id.* Examination showed tenderness in the paraspinal musculature down to the upper back. *Id.* Her neurological review of symptoms indicated that she was "positive for headaches (sore)." *Id.* It was noted that Petitioner was pleasant and cooperative; however, she was tearful and seemed upset. *Id.*

CT of the head was normal. *Id.* CT of the cervical spine showed mild reversal of normal cervical lordosis, likely due to position or muscle spasm, and slightly prominent lymph nodes in the anterior cervical chains, likely reactive in nature. *Id.* Petitioner was given injections of Toradol and Norflex and was prescribed Tramadol and 650 mg of Tylenol. *Id.* The impression was strain of the neck muscle. *Id.* She was given a work excuse and instructed to follow up with Carolyn McMurphy, PA. *Id.*

On October 21, 2021, Petitioner presented to Carolyn McMurphy-Quick, PA-C, at Asbury and Associates, with symptoms of neck pain following an assault on October 18, 2021. (PX4, 10/21/21) She gave the history of the assault injury and stated that she had pain in her neck with a burning sensation between her shoulder blades. *Id.* On exam, Petitioner had full but painful range of motion, as well as tenderness to the trapezius muscle. *Id.* The assessment was neck pain. *Id.* Petitioner was given a prescription for methylprednisolone and was instructed to begin physical therapy. *Id.* She was taken off work until November 2, 2021. *Id.*

Petitioner attended physical therapy at SSM Health St. Mary's Hospital on October 22, 2021, October 25, 2021, and October 27, 2021. (PX3) At her initial therapy visit, she reported the history of the injury and the sudden onset of right cervical pain and thoracic burning and pain which began on that date. (PX3, 10/22/21) It was noted that her pain levels were at 4/10 at best and 8/10 at the worst. *Id.* The assessment was that she had signs and symptoms consistent with significant spinal soft tissue injury and pain without radicular complaints. *Id.*

On October 25, 2021, Petitioner reported that she had a bad day the day prior and that the pain had gone up into the back of her head. (PX3, 10/25/21) On October 27, 2021, she reported that she woke up the day prior with severe pain and that just riding in the car made her pain severe and she became nauseated. *Id.* She reported that therapy did not seem to help or hurt, but she was fearful of continuing, as she did not want to feel like that again. *Id.* The therapist indicated that she was not responding to passive therapies and an MRI was recommended. *Id.*

Petitioner returned to PA McMurphy-Quick on October 28, 2021, and reported that after doing the exercises on Monday, she woke up in the middle of the night with horrible pain and felt like someone was squeezing and pulling at the same time. (PX4, 10/28/21) PA McMurphy-Quick noted that the therapist had called her that morning and indicated that Petitioner was in so much pain after her treatment that he recommended an MRI. *Id.* Review of symptoms was positive for back pain, neck pain and burning sensation down the shoulder blades that was more on the right side. *Id.* Her exam showed neck pain when Petitioner looked down and from side to side, and a swollen trapezius muscle on the right side that was tender to palpation. *Id.* An MRI of the cervical

spine was ordered. *Id.* It was noted that Petitioner was to return to work on November 2; however, she was extended another week in order to get her MRI. *Id.*

MRI of the cervical spine was performed on November 1, 2021, at SSM Health St. Mary's Hospital in Centralia, Illinois. (PX3, 11/1/21) Findings showed a "small lateral protrusion of disc material far lateral recess right without nervously [sic] contact" at C4-C5, and a small midline protrusion of disc material without cord contact at C5-C6. *Id.* The radiologist's impression was that Petitioner had an essentially normal MRI without focal herniation or residual effect upon the cord or nerve sleeves. *Id.*

November 4, 2021, Petitioner returned to PA McMurphy-Quick and reported that she still had pain to the right side of the neck and she was in pain unless she was at rest. (PX4, 11/4/21) PA McMurphy-Quick noted that Petitioner was crying, had been having nightmares about the attack, and was fearful of returning to work. *Id.* The assessment was neck pain on the right side, post-traumatic stress disorder, and depression with anxiety. *Id.* She was given Meloxicam for her neck pain and Sertraline for her PTSD, was referred to psychiatry, and was kept off work for one more week. *Id.* Her medication list indicated that methylprednisolone had been discontinued. *Id.*

On November 11, 2021, Petitioner returned to PA McMurphy-Quick and indicated that she had attempted to see a therapist for her PTSD; however, she had her son with her and the therapist made her reschedule until the following Monday. (PX3. 11/11/21) PA McMurphy-Quick indicated that Petitioner's neck pain had resolved. *Id.* She indicated that she called Petitioner's caseworker to see what to do with her return to work. *Id.* She indicated that medically, Petitioner was "ok," but she was still having issues mentally. Petitioner's medication list was reviewed and reconciled with her on that date, and same indicated that she was taking Tramadol, Cyclobenzaprine and Meloxicam for pain. *Id.* Sertraline had also been added to her medication list for her PTSD. *Id.*

On November 15, 2021, Petitioner was seen at SSM Health St. Mary's Centralia for an adult outpatient psychiatric diagnostic examination and initial treatment plan. (PX5) It was noted that while she was comfortable with her therapist, she was concerned about seeing a therapist within the SSM system due to privacy concerns. *Id.*

On November 16, 2021, Petitioner returned to PA McMurphy-Quick, who noted that Petitioner was scheduled for therapy for her PTSD on November 29. (PX3, 11/16/21) It was noted that Petitioner had a neck injury that had "basically resolved," although it was noted that Petitioner was on vacation until the 30th of the month. *Id.* PA McMurphy-Quick indicated that Petitioner could try to go back to work with restrictions of not being floated off her telemetry unit. *Id.* Petitioner's medication list was reviewed and reconciled with Petitioner, and same again showed that Petitioner was still taking Tramadol, Cyclobenzaprine and Meloxicam. *Id.*

On November 29, 2021, Petitioner was seen by Rebekah Pharris, MHP, at Community Resource Center for a mental health assessment. (PX6, 11/29/21) It was noted that Petitioner was attacked by a patient where she works, that she had been having nightmares/inability to sleep well, and that she had trouble working due to being attacked at work. *Id.* The mental health assessment summary indicated Petitioner had adjustment disorder. *Id.* The criteria indicated that she had the development of emotional or behavioral symptoms and response to an identifiable stress occurring

within three months of the onset, that her symptoms were clinically significant, that the stress-related disturbance did not meet the criteria for another mental disorder and was not merely an exacerbation of a pre-existing mental disorder, and that her symptoms did not represent normal bereavement. *Id.*

On December 7, 2021, Petitioner reported to her mental health therapist that she was having nightmares due to her traumatic experiences of being bullied when she was younger and by and being assaulted by a psych patient while working at the hospital. (PX6, 12/7/21) She felt she had PTSD from the attack and had been experiencing nightmares and high blood pressure. *Id.*

On December 16, 2021, Petitioner returned to PA McMurphy-Quick and indicated that her neck was better than it was, but it was still sore. (PX3, 12/16/21) She requested a refill of her muscle relaxer. *Id.* Although PA McMurphy-Quick indicated that Petitioner's neck pain had resolved, her assessment was for neck pain and PTSD, and her Cyclobenzaprine was refilled as a result of her neck pain. *Id.*

Petitioner continued to treat for her mental trauma at the Community Resource Center. (PX6) On December 29, 2021, it was noted that Petitioner would work to process her work-related trauma and how it impacted her mental health. (PX6, 12/29/21) She rated her anxiety at work as a 10 and outside of work at a four (4). *Id.* On January 24, 2022, she felt as though things were the same as they were at her previous visit. (PX6, 12/29/21) On February 14, 2022, Petitioner was tearful when discussing stressful situations regarding her son. (PX6, 2/14/22) On April 4, 2022, Petitioner reported that she continued to have struggles at work, as her doctor had instructed her not to be pulled from her current floor; however, the week prior her employer tried to float her to a different floor. (PX6, 4/4/22) She reported that her anxiety spiked when patients became agitated. *Id.*

On April 11, 2022, Petitioner returned to PA McMurphy-Quick, who noted that Petitioner was still having PTSD issues and seeing a therapist monthly. (PX3, 4/11/22) Ms. McMurphy-Quick noted that Petitioner's neck pain had resolved; however, she also noted that Petitioner reported that her neck occasionally still hurt. *Id.* Her medication list again indicated that she was still taking Tramadol, Meloxicam and Cyclobenzaprine for pain. *Id.* The assessments were neck pain and PTSD, and Petitioner was instructed to continue her Cyclobenzaprine. *Id.*

At Petitioner's May 2, 2022, therapy session at the Community Resource Center, she reported that she had totaled her car the week before, but there were no injuries. (PX6, 5/2/22) She reported that a patient at work began to get aggressive and lunged toward her. *Id.* She felt like she handled the situation better than she had in the past, and it was noted that she appeared to have made progress on how she was handling her anxiety. *Id.* On June 6, 2022, she reported that she had to deal with patients that had been combative and that she continued to struggle with same. (PX6, 6/6/22) She reported that she tried to help the patients, but she had to step back when her anxiety was too high. *Id.*

On July 13, 2022, Petitioner followed up with PA McMurphy-Quick, who noted that Petitioner had PTSD and was scared to work in any department besides the one she was hired in. (PX3, 7/13/22) She was continuing to see a therapist and still had some nightmares. *Id.* Her

medication list was reviewed, which demonstrated that she was taking Tramadol, Meloxicam, and Cyclobenzaprine. *Id.*

At Petitioner's August 9, 2022, therapy session at the Community Resource Center, she reported that there had been an incident at work that brought back flashbacks of her trauma. (PX6, 8/9/22) She was to continue working on her goals. *Id.* On September 6, 2022, Petitioner worked with her therapist on learning about the cognitive triangle. (PX6, 9/6/22) On September 13, 2022, she worked on decreasing her symptoms and processing her trauma. (PX6, 9/13/22) She reported that her anxiety was higher that week due to situations at work. *Id.* She worked on a trauma timeline narrative that included different events throughout her life and indicated that the physical attack at work was the most distressing. *Id.* From September 20, 2022 through October 18, 2022, she worked with her therapist on trauma processing. (PX6)

On October 5, 2022, Petitioner returned to PA McMurphy-Quick at AST Primary Care for follow up on her PTSD. (PX3, 10/5/22) It was noted that she had PTSD due to the incident at work and was still seeing a therapist once a week. *Id.* Her work was limited to telemetry unit only and the possibility that she needed to consider a new job was discussed. *Id.* PA McMurphy-Quick indicated that "her neck is no longer a problem;" however, her current medication list indicated that she was still taking Cyclobenzaprine for pain. *Id.*

At Petitioner's October 25, 2022, therapy session at the Community Resource Center, she reported that she relived the incident all the time and that everything came flooding back when patients became aggressive. (PX6, 10/25/22) She and her therapist also discussed "the workman's comp part of the situation" and Petitioner reported that they wanted her to "see a different doctor." She stated that she continued to have pain and problems with her neck. *Id.*

At her November 1, 2022 therapy session, Petitioner and her therapist worked on relaxation skills. (PX6, 11/1/22) On November 8, 2022, they worked on trauma processing. (PX6, 11/8/22) Petitioner discussed that it was her first week back after a vacation and she was tired from working the night before. *Id.* On November 15, 2022, Petitioner and her therapist worked on trauma processing. (PX6, 11/15/22)

At her November 22, 2022 therapy session, Petitioner reported that she switched jobs and was starting to see a decrease her anxiety. (PX6, 11/22/22) She reported that she had gotten slightly better due to not being in the same environment where her trauma occurred. *Id.* A summary analysis of her visit indicated that she continued to struggle with emotional regulation and that she continued to have physical pain from the incident. *Id.*

On January 9, 2023, Petitioner returned to PA McMurphy-Quick and reported that she was still having issues with her neck and that she was scheduled to see specialist on January 23. (PX3, 1/9/23) PA McMurphy-Quick indicated that in April, Petitioner had reported that her neck was basically better but was now reporting that she still had pain to the right posterior neck that radiated to the head, and that she was still taking the muscle relaxer. *Id.* Her diagnoses were cervicalgia and post-traumatic stress disorder. *Id.* She was given a note not to be floated to other areas of the hospital and was instructed to follow up after her orthopedic appointment. *Id.*

On January 23, 2023, Petitioner presented to the office of Dr. Matthew Gornet with symptoms of neck pain to the base of her neck and right trapezius, daily headaches, and pain between her shoulder blades. (PX7, 1/23/23) She reported the history of her assault injury on October 18, 2021. *Id.* She indicated that she had undergone physical therapy, but that same increased her pain, and informed Dr. Gornet that she had undergone an MRI, which was read as negative for significant herniation. *Id.* She reported that she had been diagnosed with PTSD and had undergone counseling. *Id.* She admitted to a history of some chiropractic care in approximately 2018 for her low back. *Id.* She indicated that her symptoms were constant and worsened with fixed head positions, reaching, pulling, and turning to the right. *Id.* Her physical examination showed normal sensation and motor strength. *Id.*

Dr. Gornet reviewed her November 1, 2021, MRI, which was noted to be of moderate quality. *Id.* He indicated that right-sided views clearly showed pathology with the suggestion of potential tear and herniation C4-5, C5-6, C6-7 and possibly at C3-4. *Id.* He noted that there was obvious central disc pathology at C5-6. *Id.*

That same day, Petitioner underwent an MRI at MRI Partners of Chesterfield, which was noted to be of diagnostic quality with foraminal views. (PX7, 1/23/23; PX8, 1/23/23) This showed central annular tear/fissures and protrusions at C5-6 and C6-7 and small central protrusions at C4-5 and C7-T1, resulting in dural displacement at those levels, but no central canal or foraminal stenosis. *Id.*

Dr. Gornet reviewed the MRI and opined that Petitioner sustained global disc injuries to C3-4, C4-5, C5-6 and C6-7. (PX7, 1/23/23) The diagnosis was axial neck pain. *Id.* Dr. Gornet indicated that predominant disc injuries were visible on both foraminal views as well as the T2 space view at C5-6 and C6-7. *Id.* He recommended a steroid injection at C6-7. *Id.* He gave Petitioner prescriptions for Meloxicam and Cyclobenzaprine and allowed her to return to work without restrictions; however, indicated that if she did not improve, consideration could be given for disc replacement surgery. *Id.*

At Petitioner's February 15, 2023, therapy session at the Community Resource Center, she was upset and crying due to issues with her boyfriend. (PX6, 2/15/23) She reported that she was still struggling with physical pain and was now adjusting to working a different shift. *Id.*

On February 22, 2023, Petitioner underwent a C6-7 epidural steroid injection with Dr. Helen Blake. (PX9) Petitioner returned to Dr. Gornet on April 3, 2023, and reported that her injection helped for approximately one week. (PX7, 4.3.23) Dr. Gornet indicated that her right-sided formal views showed protrusions at C3-4, C5-6, and C6-7 with subtle changes at C5-6 and that left sided views showed more subtle pathology at C5-6 and C6-7. *Id.* He noted Petitioner was still symptomatic and recommended that she continue to work full duty with no floating, but that her symptoms would drive where she needed to go in her treatment. *Id.* He stated that she was not at maximum medical improvement and recommended a follow up in three months. *Id.*

At Petitioner's March 28, 2023, appointment at the Community Resource Center, an integrated assessment and treatment planning visit occurred, and the recommendations were that Petitioner continue to receive individual services. (PX6, 3/28/23)

On July 6, 2023, Petitioner returned to Dr. Gornet and reported that she continued to have neck pain to the right trapezius in between her shoulder blades along with headaches. (PX7, 7/6/23) He noted that she was developing increasing arm symptoms. *Id.* He indicated that she did not have neural compressive lesions, but that her injuries were structural to the disc and disc mechanism. *Id.* He indicated that he would continue to observe her but noted that she had already tried and failed an injection with Dr. Blake. *Id.* She was given Meloxicam and Cyclobenzaprine to help manage her symptoms. *Id.*

On October 12, 2023, Petitioner returned to Dr. Gornet for her neck and right trapezius pain and headaches. (PX6, 10/12/23) He indicated that her pain and symptoms were affecting all aspects of her life and quality of life. *Id.* He noted she was having radicular pain without neurologic deficit, as well as axial neck pain. *Id.* He believed her symptoms and requirement for treatment were related to her October 18, 2021, injury. *Id.* He recommended a cervical disc replacement at C5-6 and C6-7. *Id.*

Petitioner underwent preoperative laboratory testing as well as a preoperative cervical CT scan. (PX4, 7/26/23, 7/28/23; PX11, 10/12/23)

On November 1, 2023, Petitioner underwent surgery with Dr. Gornet in the form of disc replacements at C5-6 and C6-7. (PX7, 11/1/23) Intraoperatively at C6-7, Dr. Gornet noted a longitudinal tear across the entire disc, and intraoperative video was performed demonstrating the tear with the nerve hook. *Id.* A C5-6, there was a longitudinal tear with a central component, an avulsion off the annulus at the central aspect of the C6 endplate, and a small lateral recessed protrusion. *Id.* Intraoperative video was also performed of the pathology at C5-6. *Id.*

At Petitioner's initial postoperative visit of November 16, 2023, she reported that her neck and trapezius pain and headaches had all dramatically improved. (PX7, 11/16/23) She was kept off work and instructed to return in several weeks for her next postop visit. *Id.*

On December 14, 2023, Petitioner returned to Dr. Gornet and reported that she continued to do well with improvement in her neck pain and headaches. (PX7, 12/14/23) She was returned to work with restrictions of no moving patients and no lifting greater than five pounds. *Id.* Dr. Gornet indicated that Petitioner had two jobs. *Id.* She still had PTSD from her accident, but he felt she would be able to get back to work at the surgery center with her restrictions. *Id.*

On December 22, 2023, Petitioner had a phone conversation with Dr. Gornet's physicians' assistant, Kyle McLafferty, who indicated that Petitioner was very pleased with her results and was scheduled to return to work on January 2, 2024. (PX7, 12/22/23) She indicated that she was working part-time as a floor nurse, and that she could be pulled to other units where she would likely be exposed to patients that could attack her. *Id.* Additional restrictions indicating that she may not float to other units were added to her existing work restrictions. *Id.*

On January 9, 2024, Petitioner had a phone conversation with PA McClafferty and indicated that her employer wanted clarification on her work status. (PX7, 1/9/24) PA McClafferty

indicated that her restrictions included no lifting more than five pounds, no physically moving patients and no floating to other units. *Id.*

Petitioner returned to Dr. Gornet on February 12, 2024, and reported that she continued to do well. (PX7, 2/12/23) A postoperative CT was performed, which showed no lucencies around her prosthesis. (PX7, 2/12/23; PX11, 2/12/23) She was referred for physical therapy and upper extremity strengthening and was instructed to return to work full duty beginning on April 8, 2024. (PX7, 2/12/23) Dr. Gornet indicated that Petitioner was still having PTSD from her assault but had done very well clinically with respect to her neck. *Id.* She was instructed to return for a follow up visit in three months.

Petitioner performed postoperative physical therapy at Apex February 26, 2024 through March 20, 2024. (PX12)

SECTION 12 REPORT AND DEPOSITION OF DR. KITCHENS

On December 7, 2023, Dr. Daniel Kitchens authored a records review report at the request of Respondent. (RX1, Ex. B) He reviewed Petitioner's records and opined that her October 18, 2021, injury caused a cervical strain. *Id.* He did not believe her November 1, 2021, MRI revealed acute injury, herniation, fracture, or subluxation. *Id.* He stated that she did not have radiculopathy, disc herniation, cord compression, or acute injury. *Id.* He felt that the medical treatment she received for his diagnosis of a cervical strain was reasonable, necessary, and related to her work incident, but the treatment she received from Dr. Gornet, including surgery, was not. *Id.* He believed that she did not require further medical treatment or work restrictions and that she was at maximum medical improvement. *Id.*

Dr. Kitchens testified via deposition on January 3, 2024. (RX1) He testified that most of his reports are performed on behalf of the defense. *Id.* at 19-23. He performs two IMEs on two Mondays per month and charges $2,000 for depositions. *Id.* at 23. On direct examination, he testified consistently with his report. *Id.* He does not perform cervical disc replacement surgery. *Id.* at 35. He did not review any records past the operative note of November 1, 2023. *Id.* at 35.

He stated that there was no mention of neck pain on the progress note regarding her PTSD from July 13, 2022, but admitted that he did not ask Petitioner if she still had symptoms at that time because he has never had any contact with her. *Id.* at 26. He believed that Petitioner's neck pain had gone away completely because no neck pain complaints were documented on July 13, 2022, or October 5, 2022. *Id.* at 28.

He admitted that Petitioner's January 24, 2023, MRI showed annular tears, protrusions and dural displacement, but stated he would not expect symptoms from the protrusions or dural displacement. *Id.* at 10-12. He testified that Dr. Gornet provided treatment for the central annular tears, fissures, and protrusions at C5-6 and C6-7 that were seen on Petitioner's January 24, 2023, MRI, but stated that Petitioner did not have this condition after her work accident based on her November 1, 2021 MRI. *Id.* at 17. He believed that her condition developed sometime after her initial MRI and that when her neck pain returned in January 2023, it was most likely from the annular disc protrusion at C5-6 and C6-7. *Id.* at 17. He was unaware of the strength of the Tesla

magnets at both SSM in Centralia and MRI Partners. *Id.* at 32, 33. He admitted that he did not review either of the actual MRI films and was unaware if Dr. Gornet had done so. *Id.* at 24.

When asked if Petitioner's intraoperative findings could cause symptoms, he stated that he was not there, did not see the findings from the operation, and that it would depend on the extent of the tear; however, he did not have the images to confirm that same existed. *Id.* at 33, 34. Regarding the operative report, he stated that the report stands for itself, and that he could not verify or deny the written report. *Id.* at 36, 37. He stated that he did not know if he could verify or deny the findings if he viewed the intraoperative video. *Id.* at 37. He did not review the intraoperative video, but agreed with the findings contained in the operative report and stated that they were consistent with the January 24, 2023, MRI. *Id.* at 32.

When asked how many episodes of cervical symptoms Petitioner had prior to her accident, he was not able to answer; however, he admitted that he was not provided with any records documenting cervical symptoms or treatment prior to Petitioner's accident and he did not see any history of prior cervical symptoms in her records. *Id.* at 25, 26.

DEPOSITION OF DR. MATTHEW GORNET

Dr. Gornet testified via deposition on February 8, 2024. (PX13) He is a board-certified and fellowship trained spine surgeon who performs five (5) to 10 surgeries per week and is involved in clinical research, peer review, and development of newer types of clinical techniques to help treat neck and back conditions. *Id.* at 5. He testified that this was an important part of his practice, as it places his practice on the cutting edge of medicine. *Id.* at 5, 6. Dr. Gornet testified that he authored multiple publications regarding cervical disc replacement, including the world's largest series of treatment on axial neck pain, as well as a peer-reviewed paper regarding cervical disc replacement in injured workers. *Id.* at 14, 15. He has two separate clinical trials on disc replacement and is the author of the longest prospective randomized long-term follow up study on cervical disc replacement. *Id.* at 14, 15.

Dr. Gornet testified consistently with his medical records regarding Petitioner. He reviewed numerous treatment records, including pain management and primary care records, physical therapy records, and an IME. *Id.* at 7.

He testified that he allowed Petitioner to continue to work full duty up until her surgery, and explained:

> Again, if we are implementing treatment modalities to her to see whether it benefits her, if I take her off work and put her in a four-by-four padded room, she may feel better. Case in point is her other notes that were pointed out earlier in this deposition, where she was off work for a period of time and felt she didn't have much neck pain. That's not a real test of whether or not we have cured and relieved the effects of her work-related injury. *Id.* at 46.

He agreed that the first mention of arm pain was in his July 6, 2023, note but testified that Petitioner had always had lateralization to the right trapezius and shoulder. *Id.* at 41. He opined

that it was not unusual to see symptoms such as those develop over the course of treatment, as the symptoms are driven by inflammation. *Id.* at 44, 45. Although he stated that it was possible for disc protrusion or herniations to ultimately become asymptomatic, he did not believe Petitioner's pathology was going to heal. *Id.* at 39, 40, 45, 46.

Dr. Gornet acknowledged that Petitioner's July 13, 2022, and October 2022 records from AST Primary Care did not include neck pain. *Id.* at 31, 32. He testified that his understanding was that Petitioner's neck pain never completely went away and stated that the work history she described to him of getting back to work was consistent with the notes he reviewed. *Id.* at 32.

He indicated that it is not unusual to see inconsistencies from note to note in primary care physician's records. *Id.* at 43, 44. Regarding the inconsistencies in Petitioner's primary care records, he stated: "She has no neck pain or discomfort, but yet they are treating her still on those same notes, with cyclobenzaprine and meloxicam. So if she has none of that, why are we treating her with those medicines? So those are the type of inconsistencies we see." *Id.* at 43, 44. He opined that during a patient's clinical course, their symptoms could evolve over time, as no injury stays the same. *Id.* at 44.

Dr. Gornet testified that when he initially saw Petitioner, he obtained a new MRI scan of her cervical spine, as the new MRI had foraminal views, whereas the previous study did not. *Id.* at 10. He stated that her initial MRI was not diagnostic enough to identify structural tears in the disc, and that it did not obtain all of the views necessary to identify same. *Id.* at 10. He stated that while it was a moderate-quality study, it was insufficient to make an accurate diagnosis. *Id.* at 10, 11.

He agreed with Dr. Kitchens' observation that there was no evidence of spinal cord compression on Petitioner's MRI but disagreed that Petitioner did not have herniations. *Id.* at 24, 25. He stated that there were clear protrusions in her neck, which were low-level herniations, and that these were not only documented by the radiologist, but they were identified intraoperatively. *Id.* at 24, 25.

Dr. Gornet testified that he reviewed the report as well as the films from Petitioner's November 1, 2021, MRI. *Id.* at 33. He agreed that the radiologist's impression was an essentially normal MRI; however, he noted that in the body of the report, the radiologist identified structural disc pathology, which Dr. Gornet also identified in his review of the images. *Id.* at 33, 34. He testified that the initial MRI study did not have foraminal views, and that these views are important, as 30 percent of herniations and protrusions are missed without them. *Id.* at 34. He stated, "So if you are looking for somebody who has a normal neurologic exam without major herniations present, you need to specifically look at all of the pathology present. Unfortunately, this current scan [of November 1, 2021] did not do so." *Id.* at 34.

Dr. Gornet disagreed with Dr. Kitchens' opinion that Petitioner suffered a cervical strain, as Dr. Kitchens did not specify what he felt was strained. *Id.* at 22, 23. On the other hand, objective MRI and intraoperative evidence showed that Petitioner had a disc injury. *Id.* at 22, 23.

When asked if the presence of radiculopathy was a necessity when performing cervical disc arthroplasty, Dr. Gornet replied:

> No. In fact, that's why we authored the world's largest publication on treatment of axial neck pain and compared it to people with radiculopathy. And guess what we found out. We found that appropriate treated and selected patients did just as well as their counterparts. And so people with predominant axial neck pain can be successfully treated as long as they have appropriate imaging studies that define that. Number 2 is, again, these are significant disc injuries, and if you think about every other aspect of musculoskeletal care, we don't hold those injuries to the same level. If you tear a cartilage in your knee or your rotator cuff or your labrum or your ACL, no one says, well, I don't think you have nerve symptoms, so I'm not going to fix you. In fact, all of those would be considered, if failing conservative measures, appropriate surgical candidates. It's only in the spine do we say that you need to have radiculopathy, at least some people such as Dr. Kitchens. That's obviously completely inconsistent with our knowledge today, although we understand that that may have been the knowledge years ago. *Id.* at 23, 24.

He testified that although Petitioner had injuries at multiple levels in her neck, he chose to treat C5-6 and C6-7 based on thorough review of her imaging as well as his experience in treating like or similar patients. *Id.* at 36, 37.

Dr. Gornet testified that Petitioner's mechanism of injury was consistent with a cervical spine injury, as were her symptoms. *Id.* at 11. He believed that she suffered injuries to C3 through C7, but predominantly at C5-6 and C6-7, and that her symptoms and disc injuries were caused by the October 18, 2021, work injury. *Id.* at 11, 12. The basis for his opinion was that Petitioner had been working full duty with no restrictions and had not had any significant prior issues. *Id.* at 12. She had a clear mechanism of injury that he had seen with others at mental health facilities, namely, that mental patients have grabbed hair, particularly that of women, and her head was thrown around violently. *Id.* at 12. He stated this situation often causes multilevel disc injuries, and Petitioner's MRI and mechanism of injury were consistent with same. *Id.* at 12. Her intraoperative videos also showed compelling disc injuries at both levels and most importantly, the outcome of her treatment was positive. *Id.* at 12, 13. Due to those reasons, he felt confident that Petitioner sustained disc injuries. *Id.* at 12, 13.

Dr. Gornet confirmed that intraoperative findings showed internal damage to the disc mechanism that was well visualized, and which was more impressive than suggested on her MRI. *Id.* at 15. He testified that these findings certainly accounted for Petitioner's symptoms, as she dramatically improved once they were addressed. *Id.* at 16. Her intraoperative findings were also consistent with her mechanism of injury. *Id.* at 16. He testified that it is common for a defect in the disc mechanism, particularly at C5-6, to cause referred pain into the trapezius area. *Id.* at 17, 18. He did not believe that Petitioner's symptoms would have improved without the surgery, as she was still symptomatic quite some time after her accident. *Id.* at 20, 21.

TESTIMONY OF PETITIONER

Petitioner testified that at her initial visit with PA McMurphy-Quick, she was prescribed Zoloft for PTSD and Cyclobenzaprine and Meloxicam for neck pain. (T. 18, 19) She testified that

physical therapy did not help her condition. (T. 19 She continued to treat with PA McMurphy-Quick for both PTSD and neck pain, and testified that depending on how work was going, there were dates where one condition seemed worse than the other. (T. 19, 20, 47) During that time, she continued to work, had good and bad days, and tolerated the pain; however, her neck symptoms never fully resolved. (T. 20) She indicated that her symptoms were dependent on her level of activity and that they would worsen with lifting and repetitive motions, which she performed at work. (T. 20, 21, 46)

Regarding PA McMurphy-Quick's November 16, 2021, note, Petitioner testified that her neck symptoms had not completely resolved as the note may have implied. (T. 21, 38, 39) She testified that she was off work on vacation at that time, that her symptoms were dependent on her activities, and that they were not as bothersome when she was sedentary. (T. 46, 47) Moreover, at that visit, she was again prescribed Cyclobenzaprine and Meloxicam for her neck pain and stated that these helped her symptoms. (T. 21) When PA McMurphy-Quick described Petitioner's symptoms as "occasional," Petitioner clarified that she still had headaches, neck pain, and pressure that would be excruciating if she was unable to relieve the pressure or take a pain reliever. (T. 22) She further explained that while PA McMurphy-Quick's October 5, 2022, office note may have noted that her "neck was no longer a problem" she continued to prescribe Petitioner Meloxicam and Cyclobenzaprine for neck pain. (T. 22, 23)

Petitioner candidly testified that she was in a motor vehicle accident in late April or early May of 2022; however, the accident did not cause any flare ups of her cervical spine or any other physical injuries, and Petitioner did not seek medical treatment of any kind in relation to this incident. (T. 41-43, 48, 49)

She testified that sometime in October [2022], she was contacted by a case worker for Respondent who was attempting to close her case because they believed Petitioner's neck was better. (T. 25) Petitioner explained that her neck was not better and at that point, she was made aware that she could have a second opinion. (T. 25) Prior to this, Petitioner had "never dealt with work comp" and was unaware that she could have a second opinion. (T. 25, 26) She testified that "the day or the week of speaking to the case worker," she reached out to Dr. Gornet's office, and an appointment was scheduled for her in January of 2023. (T. 25, 26)

In January 2023, she began a new job at a surgery center, which she performed full-time. (T. 32, 40, 41) At that time, she went to part-time work for Respondent. (T. 45) When she was released to return to work light duty in January 2024 following her surgery, she was released to go back to work for Respondent and for the surgery center; however, she only returned to the surgery center because Respondent did not have any work within her restrictions. (T. 44, 45) Her last shift for Respondent was either March 6 or March 8. (T. 44) At the time of Arbitration, she was still on light duty but was to return to full duty on April 8, 2024. (T. 32, 33)

Petitioner testified that prior to her surgery, she had constant pain and pressure in her cervical spine, burning between her shoulder blades, pain in her clavicle, headaches, and right arm symptoms. (T. 29, 30) Petitioner testified that when she woke up from surgery, she felt "100 percent" different, her headache was gone, and she was not in the "constant misery" that she was in prior to surgery. (T. 31) At the time of Arbitration, she was glad she had the surgery because

she felt significantly better and was "not waking up every day miserable" as she had prior to her treatment. (T. 33)

Petitioner testified that prior to her work accident, she never had any significant neck injuries, had never undergone any MRIs, physical therapy, or injections to her neck, had no prior recommendations for neck surgery, and had not received any medical treatment for her cervical spine. (T. 24) She had never previously experienced symptoms in her neck and shoulder blades prior to her accident. (T. 34) She had never taken Meloxicam and Cyclobenzaprine for her neck prior to her work accident. (T. 23, 43) Petitioner testified that she has not suffered any new accidents or injuries to her cervical spine since October 18, 2021. (T. 49)

CONCLUSIONS OF LAW

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

The law holds that differences between a claimant's testimony and other parts of the records are not fatal to a claim. See *Danny Farris v. Phoenix Corp. of Quad Cities*, 11 I.W.C.C. 0610 (2011), aff'd by *Farris v. Illinois Workers' Comp. Comm'n*, 2014 IL App (4th) 130767WC, 22 N.E.3d 54; *Jennifer Stronz v. Alexian Brothers Medical Center*, 07 I.W.C.C. 0289 (2007); *Jamie Blommaeet v. Ford Motor Co*., 06 I.W.C.C. 0682 (2006). A claimant's testimony should not be expected to exactly mirror medical proofs due to the fact that the burden of proof is the preponderance of the evidence and inconsistency and error is inherent in the history taking process. *Blommaeet,* 06 I.W.C.C. 0682 (2006); *Danny Farris v. Phoenix Corp. of Quad Cities*, 11 I.W.C.C. 0610 (2011), aff'd by *Farris v. Illinois Workers' Comp. Comm'n*, 2014 IL App (4th) 130767WC, 22 N.E.3d 54.

A doctor's testimony is not required to establish causation and the extent of disability when there is a clear causal chain and the medical reports in the record corroborate the employee's testimony. *Gubser v. Industrial Comm'n*, 248 N.E.2d 75 (Ill. 1969); see *also Union Starch & Refining Co. v. Indus. Comm'n*, 37 Ill. 2d 139, 144, 224 N.E.2d 856, 859 (1967).

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

Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury. *Gano Electric Contracting v. Industrial Comm'n*, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724, 728 (1994); *International Harvester v. Industrial Comm'n*, 93 Ill.2d 59, 442 N.E.2d 908 (1982).

"The ultimate issue is not whether there was a gap in treatment but rather, whether the initial accident was a causative factor in the condition of ill-being which was produced." *William Gordon v. State of Illinois DOT Joliet Yard*, 07 I.W.C.C. 1599 (2007). The important issue is

whether the symptoms and findings later in the treatment match up to the symptoms immediately following the accident, and whether the gap was logically explained. *Id.*

In *William Gordon*, the claimant did not seek treatment for some 9 months from January 29, 2004, to October 16, 2004, and thereafter again for nearly 4 months until February 7, 2005. *Gordon*, 07 I.W.C.C. 1599 (2007). The Commission agreed with the Arbitrator that it is not unreasonable for claimants to expect to "simply heal with time." *Id*. The court referred to the Supreme Court decision in *Durand*, which declined to "penalize an employee who diligently worked through progressive pain." *Gordon*, 07 I.W.C.C. 1599 (2007), *Durand v. Industrial Comm'n*, 862 N.E.2d 918 (2006). In *Sharon Langorgen v. K-Mart*, 09 I.W.C.C. 1160 (2009), the Commission recognized that, although there was a gap in formal treatment between mid-2003 and September of 2005, the claimant continued to identify the accidental injury as the source of her complaints without rebuttal. *Langorgen*, 09 I.W.C.C. 1160 (2009). The Commission relied on her credible testimony and the circumstantial evidence, which showed an absence of any intervening accident, in holding that causal chain remained unbroken and awarding benefits. *Id*.

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; as the Court in *Lasley Const. Co*., aptly stated: "The fact that other incidents, whether work related or not, may have aggravated claimant's condition is irrelevant." *Lasley Const. Co., Inc. v. Indus. Comm'n*, 274 Ill.App.3d 890, 893, 655 N.E.2d 5, 8, (5th Dist. 1995). See also *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 786, 821 N.E.2d 807, 812, (2d Dist. 2005).

The Arbitrator notes that there is no evidence in the record that suggests that Petitioner had any preexisting injuries or conditions to her cervical spine or that she had ever sought treatment for same prior to her October 18, 2021, injury.

Petitioner suffered a significant whiplash-type injury and had immediate symptoms in her cervical spine shortly thereafter. (PX3)

The Arbitrator acknowledges that several of Petitioner's notes from PA McMurphy-Quick indicate that her neck pain had resolved; however, inconsistencies abound within the notes themselves. Namely, several of the notes either do not mention neck pain or indicate that Petitioner's neck pain had resolved; however, medication lists for those dates show that Petitioner was still taking Tramadol, Meloxicam, and/or Cyclobenzaprine for neck pain. (PX4, 11/11/21, 11/16/21, 7/13/22, 10/5/22) Similarly, the December 16, 2021, note indicated in one part of the note that Petitioner's neck pain had resolved despite the fact that in another section of the note, Petitioner was documented as reporting continued soreness in her neck and was requesting additional muscle relaxants, which were prescribed for her neck pain on that date. (PX4, 12/16/21) The Arbitrator notes that the October 5, 2022, note indicates that she was taking Cyclobenzaprine only at that time, that Sertraline was added to the medication list the visit after it was prescribed, and that Methylprednisolone was noted to be discontinued after the prescribed course. (PX4, 11/4/21, 11/11/21, 10/5/22) This clearly demonstrates that the medication list was not simply a copy-and-paste list that remained the same from visit to visit but was reviewed and reconciled with Petitioner.

Regarding inconsistencies, the Arbitrator notes that PA McMurphy-Quick's April 11, 2022, note again indicated that Petitioner's neck pain had resolved but then also documented that her neck still hurt "occasionally," that she was still taking Tramadol, Meloxicam and Cyclobenzaprine, that the assessment included neck pain, and that Petitioner was instructed to continue her Cyclobenzaprine for neck pain on that date. (PX4, 4/11/22) Then, the January 9, 2023, record references the April 11, 2022, note, indicating that Petitioner reported that her neck pain was better at that time, but that "now" she was reporting right-sided neck pain and was still taking her muscle relaxer. (PX4, 4/11/22; 1/9/23) This notation appears inaccurate, as Petitioner was clearly not better according to the April 11, 2022, note.

Notwithstanding the above inconsistencies of the PA's office notes, Petitioner's mental health therapy sessions on October 25, 2022, and November 22, 2022 indicate that she was still experiencing pain and problems with her neck due to the work incident. (PX6, 10/25/22, 11/22/22) The Arbitrator notes that it was Dr. Kitchens' opinion that Petitioner's neck pain had completely resolved because there was no documentation of neck complaints at her July or October 2022 visits with PA McMurphy-Quick; however, the documentation in her therapy session notes reveal that she did, in fact, continue to have symptoms during that same relative time period. (RX1, p. 28) Further, these records support Petitioner's testimony that her neck symptoms never resolved after her accident. (T. 20-23)

The Arbitrator notes that, aside from her initial emergency department visit on the date of injury, Dr. Gornet was the first actual physician with whom Petitioner treated for her neck pain. Given this, the fact that Petitioner's therapist noted neck complaints in October and November 2022, and the fact that PA McMurphy-Quick's notes are contradictory within themselves, the Arbitrator finds that the inconsistencies in Petitioner's treatment records are not fatal to her claim, but rather, demonstrate inherent inconsistency in the history-taking process.

Further, the Arbitrator finds that the motor vehicle accident that occurred in April or May of 2022 did not break the chain of causation, as Petitioner testified that she suffered no injury nor did she seek medical treatment following same, and Respondent offered no evidence to the contrary. (T. 41-43, 48, 49)

The Arbitrator has carefully considered the opinions of both Dr. Gornet and Dr. Kitchens and finds the opinions of Dr. Gornet to be more logical and persuasive than those of Dr. Kitchens.

Specifically, the Arbitrator notes that Dr. Kitchens did not ask Petitioner to clarify whether or not she was still having symptoms at the time of the notes in question, as he did not examine her, but rather, he relied on the notes despite obvious contradictions within the notes. (RX1, pp. 26, 28)

Dr. Kitchens did not review either of the MRI images and was unaware of the difference between the diagnostic quality of the two MRIs. (RX1, pp. 24, 32, 33) Further, although Dr. Kitchens insinuates that Petitioner's condition developed after her initial MRI, there is no evidence of any intervening accident. The Arbitrator finds the opinions of Dr. Gornet regarding the MRI to be persuasive, namely, that Petitioner's initial MRI did not have foraminal views and that it was not high-powered enough to identify structural tears, making it insufficient to make an accurate diagnosis, but that even despite its limitations, it *did* show low-level herniations that were

documented by the radiologist in the body of the report. (PX13, pp. 10, 11, 24, 25, 33, 34) The Arbitrator finds that the most plausible explanation for the differences in Petitioner's MRIs is the difference in the diagnostic quality of the two studies and the additional views obtained in the subsequent MRI.

Further, the Arbitrator notes that Petitioner had objective findings intraoperatively that correlated with her diagnostic imaging. (PX13, p. 22-25) Although Dr. Kitchens did not review the intraoperative video, he admitted that the findings in the operative report were consistent with Petitioner's January 24, 2023, MRI. (RX1, p. 32) Moreover, Petitioner's condition improved significantly following her surgery. (T. 33)

Regarding Petitioner's PTSD/adjustment disorder, the evidence shows that she suffered a violent assault by a demented mental health patient. There is no indication in the record that she suffered from prior mental health difficulties that required therapy, but mental health symptoms began to be documented shortly after her assault. The records from her therapy sessions point to the accident as the most significant cause of Petitioner's mental health difficulties, and it is clearly documented that Petitioner's symptoms increased when she had to deal with agitated patients after her assault. Respondent offered no contrary opinion as to causation of her mental health condition.

Therefore, pursuant to the above, the Arbitrator finds and concludes that Petitioner's current condition of ill-being with regard to both her cervical spine condition and mental health disorder are causally related to her October 18, 2021, 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?

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

Issue (O): Has Petitioner reached maximum medical improvement?

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

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

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, 394 N.E.2d 1166 (1979); *ARA Services, Inc. v. Industrial Comm'n*, 226 Ill. App. 3d 225, 590 N.E. 2d 78 (1992).

Petitioner treated for her PTSD/adjustment disorder with appropriate therapy sessions and medication. Respondent has no contrary opinion on the record regarding same. Petitioner's mental health condition improved following her therapy.

For her cervical spine, Petitioner initially treated conservatively with physical therapy and medications. (PX3; PX4) Even Dr. Kitchens agreed that this treatment was reasonable, necessary, and related to her work injury. (RX1, Ex. B) Later in her treatment course, Petitioner underwent additional conservative treatment in the form of an injection, which only provided temporary relief. (PX9) When her symptoms did not resolve, she underwent a two-level cervical disc replacement at C5-6 and C6-7. (PX7, 11/1/23)

As noted previously, the Arbitrator finds the opinions of Dr. Gornet to be more persuasive and logical than those of Dr. Kitchens. Moreover, Dr. Kitchens had limited information, as he did not review Petitioner's MRI films, intraoperative videos, or any records following her operative report and had never actually examined Petitioner.

Although he denied that her condition was work-related, Dr. Kitchens admitted that the findings in the operative report were consistent with Petitioner's January 2023 MRI. (RX1, pp. 32) However, when asked if the intraoperative findings could cause Petitioner's symptoms, he essentially declined to answer, stating that it would depend on the tear, that he did not have the images to confirm if same existed, and that he was unsure if he could verify or deny the findings even if he viewed the intraoperative video. (RX1, pp. 33, 34, 36, 37) Dr. Gornet, however, was not vague in his testimony. He stated that Petitioner had objective findings on MRI that evidenced a disc injury, that her MRI findings correlated with her intraoperative findings, and that these findings certainly accounted for Petitioner's symptoms, as she dramatically improved once they were addressed. (PX13, pp. 16, 22, 23) Dr. Kitchens, however, was unaware of how Petitioner fared following her surgery. (RX1, p. 35)

Dr. Gornet testified that Petitioner would not have improved had she not undergone surgery, and Petitioner's own testimony demonstrates that the surgery greatly improved her condition. (PX13, pp. 20, 21; T. 31, 33)

Pursuant to the above findings on causal connection, the Arbitrator finds that the medical services rendered to Petitioner regarding both her cervical spine and mental health conditions was reasonable, necessary, and related to her accident, and that Respondent is liable for the medical expenses as outlined in Petitioner's exhibit one. Further, the evidence demonstrates that Petitioner is still receiving postoperative care from Dr. Gornet, and therefore, she has not reached maximum medical improvement. (PX7) Therefore, the Arbitrator also finds that Petitioner is entitled to receive prospective medical treatment, including, but not limited to, postoperative care with Dr. Gornet.

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

The law in Illinois holds that "[a]n employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit." *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 561 N.E.2d 623 (Ill. 1990). The ability to do light or restricted work does not

preclude a finding of temporary total disability. *Archer Daniels Midland Co. v. Indus. Comm'n,* 138 Ill.2d 107, 561 N.E.2d 623 (Ill., 1990) citing *Ford Motor Co. v. Industrial Comm'n,* 126 Ill. App. 3d 739, 743, 467 N.E.2d 1018, 1021 (1984).

The evidence shows that Petitioner was off work due to her work-related injuries during the period of disputed TTD. Therefore, pursuant to the above findings on causal connection, the Arbitrator finds that Respondent is liable for the payment of temporary total disability payments to Petitioner for a period of 9 weeks, representing the dates of November 1, 2023, through January 2, 2024.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC009075
Case Name	Rachel Morgan v. State of Illinois - Menard Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0031
Number of Pages of Decision	19
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Kenton Owens

DATE FILED: 1/22/2025

/s/Christopher Harris,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

RACHEL MORGAN,

Petitioner,

vs. NO: 22 WC 9075

MENARD CORRECTIONAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 29, 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.

January 22, 2025

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

CAH/pm
d: 1/16/25

052

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC009075
Case Name	Rachel Morgan v. State of Illinois/Menard Correctional Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Kenton Owens

DATE FILED: 4/29/2024

/s/ Bradley Gillespie, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF APRIL 23, 2024 5.16%

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

April 29, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

RACHEL MORGAN
Employee/Petitioner

v.

SOI/MENARD CORR. CTR.
Employer/Respondent

Case # **22** WC **009075**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **March 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. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **March 28, 2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**59,501.20**; the average weekly wage was $**1,144.25**.

On the date of accident, Petitioner was **39** years of age, ***married*** with **2** dependent child(ren).

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

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

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

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 temporary total disability benefits of $**762.83**/week for **1 2/7** weeks, for Petitioner's periods of incapacity from **7/12/23-7/17/23 and 9/20/23-9/24/23**, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $**686.66**/week for **110.75** weeks, because the injuries sustained caused the **12.5% loss of the right and left hands (47.5 weeks)** and the **12.5% loss of the right and left arms (63.25 weeks)**, 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.

Bradley D. Gillespie
Signature of Arbitrator

April 29, 2024

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RACHEL MORGAN,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No.: 22WC009075**
	)	
MENARD CORRECTIONAL CENTER,	)	
	)	
	)	
Respondent.	)	

DECISION OF ARBITRATOR

Rachel Morgan [hereinafter, "Petitioner"] filed an Application for Adjustment of Claim on April 6, 2022, alleging repetitive trauma injuries to her bilateral arms, hands, wrists, and elbows while working for the State of Illinois, Menard Correctional Center [hereinafter, "Respondent"]. (Arb. Ex. 2) This matter was tried to completion on March 22, 2024, in Mt. Vernon, Illinois. (Arb. Ex. 1) The following issues were in dispute:

- Accident;
- Notice;
- Causal Connection;
- Medical Bills;
- Temporary Total Disability; and
- Nature & Extent of Injury.

FINDINGS OF FACT

Background

Petitioner filed an Application for Adjustment of Claim on April 6, 2022, alleging she suffered repetitive injuries to her bilateral wrists and elbows that manifested on March 28, 2022, as a result of repetitive trauma in Respondent's employ. (AX2) Respondent disputes accident, notice, causal connection, liability for medical expenses and temporary total disability benefits, save the duration of the temporary incapacity, and the nature and extent of the injuries. (AX1)

History of Injury

Petitioner has been employed as a Correctional Officer for Respondent at its Menard facility for seven (7) years. (T.15) She completed and admitted a written job description, which detailed the positions she worked in and the job activities she engaged in. (PX8) She documented

and testified that her job as a gallery officer required lifting, pushing, pulling, and firm grasping and twisting in order to perform property searches and cell shakedowns twice a day, move inmate property during transfers, push and pull racks of trays and laundry for delivery to inmates, open and close difficult cell doors, turn difficult locks, cuff and uncuff inmates, restrain inmates during transport, and restrain combative inmates. (PX8; T.17-21). Petitioner also wrote that she was assigned to the control pod for three years and worked in the gatehouse, but at trial she testified that 95% of her time is spent as a gallery officer. (*Id.*; T.15) When asked to clarify at trial, Petitioner explained that regardless of where her roster indicated she was assigned, she would find out her post for the day at roll call. (T.15-16) She testified on cross-examination that even when she did manage to receive a light duty assignment, she "got pulled out of [her] assignment, and [she] would have to go work the gallery and have to do all the bar rapping and getting the laundry and feeding them and doing the trash . . ." (T.42) She stated the assignment roster (RX4, Staff Assignment History) was completely inaccurate and in no way reflected where she actually worked for the day. (T.42, 44)

As a gallery officer, Petitioner detailed that her daily duties including conducting a morning count of all gallery inmates, using a Folger Adams key to take all cells and crank boxes off deadlock, bar rapping every morning, individually keying inmates out for their call passes, walking inmates to visits under cuff restraint, keying open padlocks, keying other personnel into the cell house, and "having to pry cell doors to get them to open and/or close." (PX8) Petitioner explained at trial that opening doors with Folger Adams keys was difficult because the cell and chuckhole doors were old, and the internal door mechanisms required significant force to operate:

> Q. And describe that for me. Why do they not work sometimes?
>
> A. They're old.
>
> . . .
>
> Q. Are you moving a bar that goes up?
>
> A. Yes.
>
> Q. What's that bar made out of?
>
> A. Metal.
>
> Q. What kind of metal?
>
> A. Real heavy steel. (T.19)

Petitioner testified at trial that her duties significantly increased in difficulty during the pandemic, because inmate workers were unavailable, and there was no line movement. (T.17-18) Thus, officers such as herself had to perform even more keying and additional tasks such as feeding, laundry, and trash. *Id.* When asked whether assistance was readily available before the pandemic, Petitioner stated that even then there were times when inmate workers were unavailable. (T.42)

During the pandemic lockdown, Petitioner developed symptoms of numbness, tingling and pain in her upper extremities. (T.22) She denied having any comorbid risk factors of gout, hypothyroidism, rheumatoid arthritis, or diabetes. (T.16-17) When her symptoms did not abate

with self-care through bracing and medication, she sought legal consultation and treatment for her symptoms. (T.22) On cross-examination, counsel for Respondent asked Petitioner how long she waited to see Dr. Bradley after consulting her attorney and when she completed her job description to justify its dispute of notice. (T.33-37) Petitioner had no recollection of when first met with her attorney or completed the Job Description and Work History Timeline. (T.35-37) After Petitioner saw Dr. Bradley and received a diagnosis on March 28, 2022, she filed her claim on April 6, 2022. (AX2; PX3) When asked when she first heard about repetitive trauma at Menard, she stated, "I didn't hear about it. I was physically hurt trying to open a cell door, and then the tingling and the numbness kicked in . . . Even worse than what it was." (T.44)

Major Shaun Gee, Petitioner's shift supervisor, was present on behalf of Respondent but called by Petitioner. (T.46) He testified that Petitioner was an exemplary employee. (T.47) He was not present at Menard facility during the pandemic, for he was at Robinson, and thus could not testify as to what her assignments were or what impact the lockdown had on them. (T.47-48)

Medical History

On March 28, 2022, Dr. Matthew Bradley evaluated Petitioner for complaints of bilateral elbow and wrist pain with paresthesia and popping and burning of the elbow with repetitive motion that were unresponsive to bracing and anti-inflammatory medication. (PX3 3/8/22) Petitioner indicated her numbness and tingling were worse in her fourth and fifth digits and greater in her right upper extremity. *Id.* Her symptoms had been present for two of her 6 years of employment as a correctional officer but worsened with the lockdown, and she denied any history of contributing factors such as repetitive hobbies or comorbid health factors. *Id.*

Physical examination of the elbows revealed tingling along the ulnar nerve distribution and positive Tinel's bilaterally. *Id.* Examination of the wrists and hands revealed numbness and tingling over the median nerve distribution, decreased sensation to light touch over the ulnar nerve distribution, positive Phalen's, and positive Tinel's bilaterally. *Id.* X-rays were negative for fractures or significant degenerative changes. *Id.* Dr. Bradley clinically diagnosed Petitioner with bilateral carpal and cubital tunnel syndrome and ordered an EMG and nerve conduction test. *Id.* These were positive for right greater than left bilateral carpal tunnel syndrome, bilateral cubital tunnel syndrome, and bilateral Guyon's canal syndrome. (PX4) Dr. Bradley believed that "the chronic repetitive use of [Petitioner's] bilateral upper extremities while working as a correctional officer for the last five and a half years is contributing and would therefore be causally related to the development of bilateral carpal and cubital tunnel syndrome with the need for further medical workup and evaluation with potential intervention." (PX3, 3/8/22)

Dr. Bradley recommended a home exercise program, but Petitioner returned on April 18, 2022, with no improvement in her symptoms with therapy or medication. (PX3, 4/18/22) She denied interval trauma and reported inability to hold her phone to her ear for extended periods of time. *Id.* Dr. Bradley reviewed the EMG studies confirming his diagnoses and noted that Petitioner failed nonoperative treatment of her condition. *Id.* He recommended operative decompression. *Id.*

Petitioner obtained preoperative clearance but waited for surgical approval for a year without any clearance from Respondent's workers' compensation carrier. (PX3, 4/10/23; PX5) She returned to Dr. Bradley on April 10, 2023, again denying interval trauma, and reported that

her symptoms had only increased during the delay in her left upper extremity. *Id.* She stated that over the last year she had been processing reports and visitors all day, which required a significant amount of data entry without appropriate ergonomic adjustments to her station. *Id.* Physical examination continued to evidence bilateral carpal and cubital tunnel syndromes, and Dr. Bradley again recommended surgery. *Id.*

After obtaining preoperative clearance, on July 12, 2023, Petitioner underwent left cubital tunnel release with ulnar nerve transposition and left open carpal tunnel release. (PX6; PX7) Objective intraoperative findings noted that the ulnar nerve within the cubital tunnel/elbow was grossly unstable, and the median nerve within the carpal tunnel/wrist had a flattened appearance. (PX7) Petitioner was doing well save reduced grip strength on follow-up, so Dr. Bradley allowed her to return to work until her left upper extremity procedures. (PX3, 7/27/23)

Petitioner underwent the same procedures on the right upper extremity on September 20, 2023, and objective intraoperative findings showed thinning of the ulnar nerve as it passed through the cubital tunnel and adhesions without evidence of inter-tunnel cysts, masses, or osteophytes. *Id.* Petitioner reported marked improvement in her symptoms on the right side and also her left side for the first couple of weeks after the July 2023 surgery, but she reported increasing numbness and tingling in her pinky and ring finger on the left in her left upper extremity over the course of September during her visit with Dr. Bradley on October 2, 2023. (PX3, 10/2/23) He planned to monitory her condition closely with the possibility of additional diagnostic studies and recommended she continue her home therapy program, but in the meantime she was allowed to return to work full duty. *Id.*

After each operation, Petitioner used her own personal time to recover and returned to work just days after. (T.25)

On November 27, 2023, Petitioner reported right-sided complaints of numbness and tingling along the ulnar forearm and the fourth and fifth digits, though admittedly much improved over her preoperative complaints. (PX3, 11/27/23) During her final visit on February 29, 2024, she continued to voice residual complaints of tingling on the tip of all five fingers, which Dr. Bradley may be attributable to scar tissue and the change of seasons. (PX3, 2/29/24) He recommended that Petitioner continue her home exercise program and take over-the-counter anti-inflammatory medication as needed and placed her at maximum medical improvement. *Id.*

Petitioner testified that despite the improvement from surgery, she suffers diminished grip strength, upper extremity fatigue, and residual numbness and tingling, particularly with prolonged use or increased activity. (T.28-29) Her symptoms still occasionally awake her at night, though she candidly testified nowhere near as frequent as prior to her treatment. (T.28) She takes over-the-counter medication for her symptoms. (T.28)

Opinion of Dr. Richard Crandall

Respondent had Petitioner evaluated under Section 12 by Dr. Richard Crandall, who authored an opinion report on August 1, 2023 (RX2) He took the history of Petitioner's preoperative complaints and noted the improvement in her left upper extremity symptoms following her recent surgery. *Id.* When he asked Petitioner what part of her job she thought caused her problem and why, she responded, [sic] "I was trying to open a cell door and was pulling on it and it finally opened and when it did both wrists popped and then the tingling and

numbness started and is still occurring." *Id.* Petitioner also noted her job duties at the maximum security facility required cranking doors, opening and closing sliding cell doors, and escorting inmates. *Id.* She further reported additional duties that were added due to COVID restrictions restricting inmate movement and stated. *Id.* She explained that everything had to be delivered to the inmates in their cells. *Id.*

Dr. Crandall's physical examination showed healing and improvement in her operated left upper extremity but continued complaints and positive Phalen's test in her right upper extremity; however, he felt that Petitioner's hand pinch and grip data were suggestive of submaximal effort on the right, though he attributed the variance on the left to Petitioner's recent surgery. (RX2) He then summarized his review of Petitioner's records and answered Respondent's queries as to causation. *Id.* He did not believe Petitioner suffered a work injury, though he agreed that Petitioner suffered from carpal and cubital tunnel syndromes based on the nerve conduction study results. *Id.* He did not feel that opening doors, using keys, or performing any other duties could cause, aggravate, or contribute to compression neuropathy, as he did not believe said activities to "have enough stress, strain, repetition, awkward position, or force" to be able to do so; but he believed that she had contributing factors of increased body mass index and high blood pressure based upon a noted medication prescription. *Id.* He wholly attributed Petitioner's condition to "personal medical conditions" rather than any physical activity. *Id.* He agreed that Petitioner's treatment was reasonable for her "personal medical condition" but unrelated to her employment. *Id.*

Dr. Crandall testified by way of deposition, and his testimony on direct examination was consistent with his opinions expressed in his report. (RX3) He estimated that 10% of his practice is spent performing independent medical evaluations. *Id.* at 7. He testified that Petitioner denied smoking and having high blood pressure, but he noted that she was taking a medication designed to treat high blood pressure which he claimed "causes carpal tunnel syndrome." *Id.* at 10-11. After noting additional risk factors of body mass index and age and reviewing his exam findings, he again agreed with the diagnosis of bilateral carpal and cubital tunnel syndromes but denied any causal relation between these conditions and Petitioner's employment. *Id.* at 10-17. On further questioning, he noted that Petitioner's examination was consistent with her nerve studies, because he acknowledged that, "[a] lot of patients can have a negative ulnar Tinel sign and still have compression. It doesn't mean they don't have compression." *Id.* at 14-15.

On cross-examination, Dr. Crandall estimated he performed 100 medical/legal examinations per year, 99% of which are for employers or defense parties in the State of Missouri. *Id.* at 18-19, 24-25. He estimated that 20% to 30% of his evaluations are conducted for the State of Illinois. *Id.* at 19. He confirmed he had no disagreement with the diagnosis or treatment in this case; his only dissent was respecting causation. *Id.* at 19-20.

Dr. Crandall stated that he was not provided with a job description for Petitioner's position. *Id.* at 20. He was given a notice of injury. *Id.* at 20. He acknowledged that Petitioner's reporting of injury was consistent in all the documents he reviewed. *Id.* at 20-21. He testified that he has seen photographs of Menard and has reviewed a video tape of a corrections officer working at Menard, but he has never opined in any case that an officer's duties caused or contributed to compression neuropathy. *Id.* at 22. In fact, he stated that he has never found that any officer at any facility suffered repetitive injuries to which their employment was a causative or contributing factor. *Id.* at 22. He acknowledged, however, that carpal and cubital tunnel

syndromes can be considered cumulative conditions "if the physical activity is intensive enough . . ." *Id.* at 24. Yet, he only believed that one only need to consider "a year or two" of the prior history in evaluating causation. *Id.* at 25.

Opinion of Dr. Matthew Bradley

Petitioner's treating physician, Dr. Bradley, also testified by way of deposition. (PX9) Dr. Bradley testified that Petitioner's non-occupational risk factors for compression neuropathy were only mild. *Id.* at 8-9. He did review Petitioner's job description and full work history, including the positions she worked prior to her employ with Respondent, and testified that he was very familiar with the duties of a Menard Correctional Officer, as he has seen and treated many over the last 10 years of his practice. *Id.* at 9-10. He noted that Menard was an older, maximum-security facility with stricter operation protocols, including lockdown. *Id.* at 10-11. He noted that inmates were not available during such times, so the work load of correctional staff intensified. *Id.* at 11-12. He testified that Petitioner's account of her duties and their increase during lockdown was consistent with reports from prior patients, and he further noted that Petitioner's condition worsened to the point where she started really noticing her symptoms and weakness during a lockdown period. *Id.* at 11-12. He testified that the facility also utilized Folger Adams keys, which were "bigger, heavier keys" than typical. *Id.* at 12.

Dr. Bradley noted that Petitioner's objective intraoperative findings were consistent with chronic repetitive trauma, evidenced by thickening of the affected ligaments and inflammation. *Id.* at 13-14. Notably absent was spurring, cysts, or tumors. *Id.* at 13. Dr. Bradley acknowledged that in most cases, these conditions are multifactorial and come about through contribution of both occupational and non-occupational factors. *Id.* at 15-16. He noted this to be true in Petitioner's case, stating that although she had some non-occupational contributing factors, she also had significant occupational contribution from "years of repetitively utilizing these hands on a daily basis." *Id.* at 16.

On cross-examination, Dr. Bradley noted that although Petitioner had an elevated body index, he did not consider it a substantial risk factor, because she did not have any history of complications or medical problems related to obesity. *Id.* at 17-18. He also acknowledged that her age, gender, and smoking could be factors. *Id.* at 19-21. While he declined to say one task alone caused Petitioner's condition, he noted that the two or three pages of hand activities performed together as a whole described by Petitioner were contributing factors. *Id.* at 22-23.45

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?

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)

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 ours]. 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).

The Commission has also recognized that a claimant's employment may not be the only factor in his or her development of a condition of ill-being. 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. *Fierke v. Indus. Comm'n*, 309 Ill.App.3d 1037; 723 N.E.2d 846, 849. The Court stated, "The fact that other incidents, whether work related or not, may have aggravated a claimant's condition is irrelevant." *Id*. at 723 N.E.2d 846, 849.

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). [emphasis ours]

A Petitioner's job duties need not be repetitive in the sense that the same task is done over and over again as on an assembly line to result in a compensable injury. *City of Springfield v. Illinois Workers' Comp. Comm'n*, 388 Ill.App.3d 297, 901 N.E.2d 1066, 327 Ill.Dec. 333 (4th Dist., 2009). Intensive use of hands and arms can result in cumulative injuries that are compensable. *Id*.

"[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).

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 noted in *Dorhesca Randell v. St. Alexius Medical Center*, 13 I.W.C.C. 0135 (2013), a repetitive trauma claim, that 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 time, duration, and "dosage") 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.

As Petitioner's duties are unique to those in a maximum-security facility, her 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. The Arbitrator thus finds that her description of duties as outlined in her job description is factually sufficient to put forth a claim of repetitive trauma.

Turning to the opinion evidence, expert testimony shall be weight 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). 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, 31 Ill. Dec. 789, 394 N.E.2d 1166 (1979);

ARA Services, Inc. v. Industrial Comm'n, 226 Ill. App. 3d 225, 168 Ill. Dec. 756, 590 N.E. 2d 78 (1992).

After evaluating the facts and the evidence, the Arbitrator finds the opinion of Dr. Bradley more persuasive than that of Dr. Crandall. Dr. Crandall testified that Respondent did not provide him with a job description specific to Petitioner. (RX3, p.20) In contrast, Dr. Bradley reviewed Petitioner's job description and work history timeline detailing her job history at length. (PX9, p.8-10) Dr. Crandall testified that he only considered a small portion of a patient's job history, "a year or two", when evaluating causation for repetitive trauma. *Id.* at 25. This contravenes Illinois law, which holds that a since 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).

The Arbitrator further notes that Dr. Crandall has never concluded that any corrections officer has sustained a repetitive injury that was related to his or her employment. (RX3, p.22) While claims are evaluated on a case-by-case basis, Commission precedent holding that the repetitive duties of a Menard Correctional Officer cause and/or contribute to the development of compression neuropathy is plentiful. *See Edwin Gladney v. SOI/Menard Corr. Ctr.*, 23 I.W.C.C. 034893; *Nick E Sullivan v. State of Illinois/Menard Corr. Ctr.*, 15 I.W.C.C. 0104 (2015); *Jeff Broshears v. State of Illinois/Menard Corr. Ctr.*, 13 I.W.C.C. 0063 (2013); *James Ryan v. State of Illinois/Menard*, 13 I.W.C.C. 0705 (2013); *Larry Hale v. State of Illinois/Menard Corr. Ctr*., 13 I.W.C.C. 0201 (2013); *Jimmie Smith v. State of Illinois/Menard Corr. Ctr*., 12 I.W.C.C. 0959 (2012); *Renee Veath v. State of Illinois/Menard Corr. Ctr*., 12 I.W.C.C. 1347 (2012); *Misti Langston v. State of Illinois/Menard Corr. Ctr*., 12 I.W.C.C. 1161 (2012); *Sean Wolters v. State*

of Illinois/Menard Corr. Ctr., 12 I.W.C.C. 1159 (2012); *Timothy Roy v. State of Illinois/Menard Corr. Ctr*., 12 I.W.C.C. 1114 (2012); *Virgil Smith v. State of Illinois/Menard Corr. Ctr.*, 12 I.W.C.C. 0786 (2012); *Matthew Lavender v. State of Illinois/Menard Corr. Ctr*., 12 I.W.C.C. 0663 (2012); *Andrea Pasquino v. State of Illinois/Menard Corr. Ctr.*, 12 I.W.C.C. 0809 (2012); *Darl Prange v. State of Illinois/Menard Corr. Ctr*., 12 I.W.C.C. 0629 (2012); *Minh Scott v. State of Illinois/Menard Corr. Ctr*., 12 I.W.C.C. 0888 (2012); *Jason Lane v. State of Illinois/Menard Corr. Ctr.*, 12 I.W.C.C. 0146 (2012); *Shane Lair v. State of Illinois/Menard Corr. Ctr.*, 12 I.W.C.C. 0115 (2012); *Javelins Lewis v. Menard Corr. Ctr.*, 12 I.W.C.C. 0173 (2012); *Frederick Scott Carter v. State of Illinois/Menard Corr. Ctr.*, 12 I.W.C.C. 0342 (2012); *Lucas Mennerich v. State of Illinois/Menard Corr. Ctr.*, 12 I.W.C.C. 0272 (2012); *James Bauersachs v. State of Illinois/Menard Corr. Ctr.*, 12 I.W.C.C. 0411 (2012); *David Couty v. State of Illinois/Menard Corr. Ctr.*, 12 I.W.C.C. 0531 (2012); *Michael Danley v. State of Illinois/Menard Corr. Ctr*., 12 I.W.C.C. 0434 (2012); *Troy Rushing v. State of Illinois/Menard Corr. Ctr.*, 12 I.W.C.C. 0456 (2012); *Travis Lindsey v. State of Illinois/Menard Corr. Ctr.*, 12 I.W.C.C. 0706 (2012); *Billy Rose v. State of Illinois/Menard Corr. Ctr.*, 12 I.W.C.C. 0459 (2012); *Scott Montroy v. State of Illinois/Menard Corr. Ctr.*, 12 I.W.C.C. 0576 (2012); *Leroy Sumnicht v. State of Illinois/Menard Corr. Ctr.*, 12 I.W.C.C. 0338 (2012); *Jeremy Colvin v. State of Illinois/Menard Corr. Ctr*., 12 I.W.C.C. 1158 (2012); *James Wingerter v. State of Illinois/Menard Corr. Ctr.*, 11 I.W.C.C. 0669 (2011); *Sean Starkweather v. State of Illinois/Menard Corr. Ctr*., 11 I.W.C.C. 0670 (2011); *Greg Mayhugh v. State of Illinois/Menard Corr. Ctr*., 11 I.W.C.C. 0970 (2011); *Cynthia Pickering v. State of Illinois/Menard Corr. Ctr*., 11 I.W.C.C. 0671 (2011); *Rachel Vasquez v. State of Illinois/Menard Corr. Ctr*., 10 I.W.C.C. 0826 (2010); *Robert Walker v. State of Illinois/Menard Corr. Ctr*., 10 I.W.C.C. 0233 (2010); *Virgil Taylor v. State of Illinois/Menard Corr. Ctr.*, 13 I.W.C.C. 0179 (2012). In light of the above, the Arbitrator finds Dr. Bradley's opinion persuasive.

Petitioner testified that the majority of her time was spent as a gallery officer, much like the claimants in the aforementioned cases. The Arbitrator also places weight on the fact that Petitioner's condition deteriorated when her job activities increased during lockdown, which further supports Dr. Bradley's opinion that Petitioner's employment was a contributing factor. (T.17-18, 22; PX9) Based upon the evidence as a whole and the aforementioned precedent, the Arbitrator finds that Petitioner sustained her burden in proving that she suffered accidental repetitive injuries that arose out of and in the course of her employment with Respondent.

Issue (E): Was timely notice of the accident given to Respondent?

The Act requires that employees give notice of the injury to their employer within 45 days of its occurrence. 820 ILCS 305/6(c). The purpose of the notice requirement of the Act is to enable an employer to investigate an alleged accident, and to protect an employer from unjust or fraudulent claims. *Gano Electrical Contracting v. Indus. Comm'n*, 631 N.E.2d 724, 727 (Ill. App. 4th Dist., 2004); *Thrall Car Manufacturing Co. v. Indus. Comm'n*, 356 N.E.2d 516 (1976). A claim is only barred if no notice whatsoever has been given. *Gano supra*. Section 6(c) if the Act provides that the notice of the accident "shall give the approximate date and place of the accident, if known, and may be given orally or in writing" and that "no defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings * * * unless the employer proves

that he is unduly prejudiced in such proceedings by such defect or inaccuracy." 820 ILCS 305/6(c).

Petitioner filed her claim application on April 6, 2022. (AX2) Her date of accident is March 28, 2022. The filing of a claim application within the notice period satisfies the notice requirement of the Act. *Paul v. WM Hair Design*, 09 I.W.C.C. 0753 (2009); *Koch v. Belleville Shoe Mfg. Co.*, 09 I.W.C.C. 0853 (2009). Thus, there is no question that Petitioner gave timely notice of her accident, as her claim was filed well within the 45-day notice period of the Act. Respondent's dispute, although not specified on the request for hearing, is in fact a challenge to Petitioner's selected manifestation date. The Arbitrator will therefore address the issue.

The law allows the manifestation date to be determined in multiple ways, including the date the employee first requires medical treatment, or the date the employee receives confirmation his or her condition is causally related to employment. See *Timothy Knop v. SOI/Menard Corr. Ctr.*, 14 I.W.C.C. 0303 (July 28, 2014) (finding that Petitioner's injuries manifested on the first day he sought treatment despite being referred to his physician by his attorney); and *Steven Beal v. Town of Normal*, 06 IL.W.C. 25261, 10 I.W.C.C. 0380 (2010); see also *White v Worker's Compensation Commission*, 374 Ill.App.3d 907, 873 N.E.2d 388, 392-393 (4th Dist. 2007) (holding Petitioner could select accident date); *A.C. & S. v. Industrial Commission*, 304 Ill.App.3d 875, 710 N.E.2d 837, 841-842 (1st Dist. 1999). The fact that a claimant suspected a condition is work-related is not dispositive in determining the manifestation date, as the Supreme Court has made it known that "the 'fact of injury' is not synonymous with the 'fact of discovery'". *Durand v. Industrial Commission,* 224 Ill.2d 53, 862 N.E.2d 918, 927 (2007).

The Appellate Court in *A.C. & S.* noted the Supreme Court deliberately modified the standards for determining the date of injury for repetitive trauma cases in order provide protection for injured workers. *A.C. & S. v. Industrial Commission*, 304 Ill. App. 3d 875, 880, 710 N.E.2d 837, 840–41 (1999). It has even been permissible to change the date of accident during litigation as long as doing so would not prejudice the employer. See *Steven Beal v. Town of Normal*, 06 IL.W.C. 25261, 10 I.W.C.C. 0380 (2010). "The purpose behind the Workers' Compensation Act is best served by allowing compensation where an injury is gradual but linked to the employee's work." *Durand*, 862 N.E.2d at 925, 224 Ill. 2d at 66. The Court further noted that in harmony with the purpose of the Act, it would "decline to penalize an employee who diligently worked through progressive pain until it affected her ability to work and required medical treatment." *Durand v. Indus. Comm'n*, 862 N.E.2d at 930.

As the Court noted, a claim cannot be won on speculation; therefore, the fact that a claimant suspects or believes that his or her condition may be work-related does not automatically determine the manifestation date and trigger the notice requirement of the Act. *Id.* Petitioner selected an appropriate manifestation date, as the aforementioned cases highlighted, because her date of accident coincides with the date she sought treatment and received a definitive opinion as to causation. (T.22) Consequently, the Arbitrator finds that Petitioner's claim application filed shortly thereafter satisfies the notice requirement of the Act.

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 (2001).

Both Dr. Crandall and Dr. Bradley agree that Petitioner's treatment was reasonable for her condition of ill-being. (RX3, p.19-20; PX9) Given the above finding that Petitioner met her burden of proof on the issues of accident and causation, Respondent is hereby ordered to pay the reasonable and necessary expenses outlined in Petitioner's group exhibit. Respondent shall have credit for any expenses paid through its group carrier, provided that it indemnifies and holds Petitioner harmless from any claims arising from the expenses for which it claims credit.

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

Respondent disputed liability for temporary total disability benefits but agreed to the duration of Petitioner's period of incapacity. (T.9; AX1) Based upon the above evidence and findings establishing that Petitioner met her burden of proof on the issues of accident, causal connection, and notice, the Arbitrator hereby awards temporary total disability benefits for the undisputed duration of 1 2/7 weeks.

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. Dr. Crandall declined to opine on the subject given his opinion that Petitioner suffered no injury. (RX2) Therefore, the Arbitrator places no weight on this factor.

(ii) **Occupation**: Petitioner continues to serve as a Correctional Officer. The Arbitrator places greater weight on this factor.

(iii) **Age**: Petitioner was 39 years old at the time of her injury. She is younger and must live with her disability for an extended period of time. The Arbitrator places greater weight on this factor.

(iv) **Earning Capacity**: There is no direct evidence of reduced earning capacity. The Arbitrator places no weight on this factor.

(v) **Disability**: As a result of her repetitive job duties, Petitioner developed bilateral carpal and cubital tunnel syndromes. These failed to respond to conservative care and necessitated surgical intervention by way of bilateral carpal and cubital tunnel releases. (PX7) Petitioner testified that despite the improvement from surgery, she suffers diminished grip strength, upper extremity fatigue, and residual numbness and tingling, particularly with prolonged use or increased activity. (T.28-29) Her symptoms still occasionally awake her at night, though she candidly testified nowhere near as frequent as prior to her treatment. (T.28) She takes over-the-counter medication for her symptoms. (T.28) The Arbitrator finds Petitioner's complaints generally supported by her treating records and 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 and left hands and the 12.5% loss of the right and left arms.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC019929
Case Name	Dana Walter v. C-U Under Construction
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0032
Number of Pages of Decision	14
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Adilene Gonzalez
Respondent Attorney	Kenneth Bima

DATE FILED: 1/22/2025

/s/Christopher Harris,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DANA WALTER,

Petitioner,

vs. NO: 23 WC 19929

C-U UNDER CONSTRUCTION,

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 charges, temporary total disability, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 25, 2024 is hereby affirmed and adopted.

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

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

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the

Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

January 22, 2025

CAH/tdm
O: 1/16/25
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	23WC019929
Case Name	Dana Walter v. C-U Under Construction
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Adilene Gonzalez
Respondent Attorney	R. James Giacone

DATE FILED: 3/25/2024

/s/Linda Cantrell, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF MARCH 19, 2024 5.13%

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)

Dana Walter
Employee/Petitioner

v.

C-U Under Construction
Employer/Respondent

Case # **23** WC **019929**

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 **2/28/24**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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, **7/13/23**, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**32,483.36**; the average weekly wage was $**624.68**.

On the date of accident, Petitioner was **37** 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 $**7,079.65** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**7,079.65**.

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

ORDER

Based on the Arbitrator's finding that Petitioner's current condition of ill-being is not causally connected to the work injury on 7/13/23, the Arbitrator awards no medical expenses, prospective medical care, or temporary total disability benefits and said benefits are denied herein.

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

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

March 25, 2024

Arbitrator Linda J. Cantrell

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

DANA WALTER,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 23-WC-019929
	)	
C-U UNDER CONSTRUCTION,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Springfield on February 28, 2024, pursuant to Section 19(b) of the Act. On 8/2/23, Petitioner filed an Application for Adjustment of Claim alleging injuries to her bilateral shoulders as a result of lifting toilets on 7/13/23. (AX2)

The issues in dispute are accident, causal connection, medical bills, temporary total disability benefits, and prospective medical care. Petitioner claims entitlement to TTD benefits from 12/4/23 through 2/28/24. The parties stipulated that Respondent is entitled to a credit for TTD benefits paid in the amount of $7,079.65 for the period 8/7/23 through 12/3/23. Respondent disputes liability for further TTD benefits. Respondent claims a credit for all medical expenses previously paid.

TESTIMONY

Petitioner was 37 years old, single, with no dependent children at the time of the alleged accident. Petitioner was hired by Respondent in September 2020. She was a construction laborer/runner for approximately one year prior to the alleged accident. Her job duties included delivering and unloading supplies to job sites.

Petitioner testified that on 7/13/23 she was unloading pallets of toilets at a college apartment building that Respondent was restoring. She reached up and grabbed a toilet off the top of a pallet and the toilet pulled her down "really fast". She testified that the toilets she previously lifted were on lower pallets and she did not think much about grabbing a toilet six feet off the ground. Petitioner estimated the toilets weighed 70 to 90 pounds. She alleges injuries to her bilateral shoulders. Petitioner testified that she had issues with her right bicep in 2020 and her whole arm and shoulder hurt, but she never had issues with her bilateral shoulders prior to

7/13/23. Her right bicep injury was not work-related, and she underwent a couple sessions of physical therapy. She did not miss work and was symptom free following that injury. Petitioner testified that she was working full duty without restrictions for Respondent from September 2020 until 7/13/23.

Petitioner testified that she experienced immediate pain after lifting the toilet on 7/13/23. She reported the accident to Michael Breen the same day. She did not complete an accident report. Petitioner testified that she did not immediately seek treatment because she thought her symptoms would subside with Ibuprofen and she performed lighter jobs after that day.

Petitioner testified that Respondent sent her to Center for your Health on 7/27/23. She had a lot of pain lifting her shoulders. Petitioner reported a history of injury and was prescribed steroids. Petitioner testified that the doctor told her she might have to take off work and she stated she could not take off because she needed an income. Petitioner returned to work following that visit.

Petitioner returned to Center for your Health on 8/1/23 with persistent symptoms. She was referred to a specialist and placed on light duty restrictions. Respondent accommodated Petitioner's restrictions for four days and then began paying TTD benefits. On 8/21/23, Petitioner was examined by Dr. Below at OSF Orthopedics. She provided a history of injury and reported no improvement in her pain. Dr. Below ordered bilateral shoulder MRIs and placed Petitioner on light duty restrictions which were not accommodated by Respondent.

Dr. Below recommends a left shoulder surgery and possibly physical therapy on Petitioner's right shoulder. Petitioner was examined by Dr. Lehman at Respondent's request. She stated the visit lasted 45 minutes and she saw the doctor for 10 minutes and he tested her strength. Her TTD benefits were terminated following that examination. Petitioner has not returned to work.

Petitioner testified that she does not sleep well, and she has pain performing daily activities. She cannot lift anything with her left arm. She has not sustained any injuries to her shoulders since 7/13/23. Her symptoms have not improved since Dr. Below recommended surgery.

On cross-examination, Petitioner denied telling the physician at Center for your Health that she carried 100 toilets. She testified that she did not deliver 100 toilets to the college apartment complex. She testified that there were 100 toilets that needed to be installed that day, but she did not carry 100 toilets herself. She denied telling the doctor that there was no exact moment of injury because "she knew when it happened". She agreed that she told the doctor that her symptoms started to improve because she was not lifting anything over the weekend. She stated that her left shoulder hurts way more than her right shoulder. Petitioner agreed she told the doctor that when she returned to work the week after the accident, she began using her right arm more to compensate for her left. She stated that is why she sought medical treatment because both of her shoulders were painful, and she could not lift anything. She clarified that her right shoulder hurt from the injury, but her right shoulder symptoms increased due to overcompensating.

Petitioner testified that she broke her collarbone eight years ago as the result of an ATV accident. She underwent two surgeries that included a plate and screws. Petitioner has referred to her right shoulder as the "bad shoulder" since that injury. Petitioner testified that she injured her neck in a motor vehicle accident a couple of years ago. She stated she broke C2 and C3 and severed an artery in her neck. She underwent surgery and has a plate at C2-3 and a coil on the side of her neck to repair the artery.

Petitioner agreed that she told Dr. Below that she felt a pull and immediate pain in her left shoulder at the time of the accident. She agreed that she told Dr. Lehman that she lifted a specific toilet and felt a pull in her left shoulder as she was putting the toilet down. Petitioner testified that she "felt it" in her right shoulder when she pulled the toilet down. She stated that she told the doctor at Center for your Health she had a specific injury to her right shoulder on 7/13/23.

MEDICAL HISTORY

On 7/27/23, Petitioner presented to the Center for your Health with bilateral shoulder pain. (PX1) Petitioner reported that she was working on 7/13/23 and at the end of the day she went to bed and slept poorly due to left shoulder pain. Petitioner reported that she was a runner for CUUC and helped carry 100 toilets upstairs. She reported no exact moment of injury. Petitioner stated she felt better over the weekend but then worked all week and by the end of the week she was miserable. PA-C Erica Sutton noted that sometime between then and now Petitioner started using her right arm more to compensate and it is very sore. Petitioner stated she was "living on Ibuprofen". It was noted that Petitioner had a right collarbone fracture seven years ago and she refers to it as her "bad shoulder". She was also in a motor vehicle accident two years ago and broke C2 and C3. Petitioner reported some neck pain from that injury but was doing well.

Physical examination revealed very limited range of motion of the left shoulder and tenderness to palpation diffusely throughout the shoulder. She was weak and unable to perform an empty can test or subscapularis lift off test. Petitioner's right shoulder was diffusely tender with minimal range of motion. PA Sutton noted Petitioner's pain seemed out of proportion from what she would expect based on the mechanism of injury. Petitioner's condition was difficult to examine due to pain and hard to assess due to weakness. PA Sutton believed MRIs were premature. Petitioner was diagnosed with bilateral shoulder pain and was prescribed Medrol dosepak. PA Sutton opined that Petitioner should take time off work which Petitioner stated was not an option due to financial reasons.

On 8/1/23, Petitioner returned to Center for your Health and reported she was off work yesterday for a personal matter. Her pain was improved with the Medrol dosepak. Petitioner was not sure if her improvement was from rest. She still had generalized pain in both shoulders that was not as intense since she was not lifting. Physical examination showed normal range of motion; strength intact; negative empty can bilaterally; negative subscapular lift off; and normal supination and pronation against resistance bilaterally. She had generalized tendon tenderness in the bilateral shoulders with palpation. PA Sutton noted that Petitioner's bilateral shoulder pain did not fit a specific disease process from a specific injury. She suspected an overuse injury vs.

myalgia. PA Sutton recommended that Petitioner seek a second opinion and be placed on light duty restrictions.

On 8/21/23, Petitioner presented to Dr. Steven Below at OSF Orthopedics. (PX2) Petitioner complained of bilateral shoulder weakness and pain with away from the body and above the shoulder activities, pain over the anterolateral aspect of the shoulder over the AC joints, and pain laying on her left side. She had a constant dull aching pain to her lateral bilateral shoulders with radiation into her upper arms, worse on the left. She had pain with lifting. Petitioner reported that her right side felt like "bone on bone", with grinding popping pain. She denied popping in her left shoulder.

Petitioner reported no issues with her shoulders until 7/13/23 when she was carrying a number of toilets up several flights of stairs to the third floor of an apartment complex. She felt a pull in her left shoulder followed by immediate pain and weakness. She denied feeling a pop. She reported that she noticed a burning pain to her shoulders while carrying the toilets. Petitioner continued working, went home, and woke up the next morning with severe pain and was unable to move her left arm. She reported her injury to her supervisor who told her to see a physician. Petitioner stated she waited the weekend and continued to have tenderness, and then over the next few days of the following week she had increasing pain in her right shoulder.

Dr. Below noted Petitioner's right clavicle fracture from eight years prior that was surgically repaired. Petitioner reported that her injury healed well and she had no issues with her shoulder or clavicle since. She was taking Ibuprofen and restricting her activities. Physical examination revealed a positive Neer and Hawkins test, positive cross-body adduction test, and positive O'Brien test. Bilateral shoulder x-rays revealed bilateral acromioclavicular joint early generative changes with a history of a right ORIF of a clavicle fracture that appeared healed. Dr. Below assessed bilateral shoulder rotator cuff weakness, impingement, and bursitis, with minimal degenerative changes of the AC joints. He recommended bilateral shoulder MRIs and placed Petitioner on restrictions of no lifting over 10 pounds and no away from the body or above the shoulder activities with either shoulder.

On 10/2/23, Dr. Below reviewed the MRIs and interpreted a left partial-thickness infraspinatus rotator cuff tendon tear; a left superior labrum anterior-posterior (SLAP) type 2 tear; some left subacromial bursitis; and a right interstitial partial-thickness infraspinatus rotator cuff tendon tear with a possible labral tear. Petitioner continued to have tenderness and pain with away from the body and above the shoulder activities. Her positive cross-body adduction test was greater on the left than right. Her symptoms varied in intensity from left to right. Dr. Below noted Petitioner was a very active person with a very labor-intensive job. He recommended a left shoulder arthroscopy, subacromial decompression, acromioplasty, excision of the distal clavicle, rotator cuff repair, and superior labrum anterior-posterior (SLAP) type 2 labral tear repair. He recommended physical therapy for Petitioner's right shoulder in the form of home exercises.

On 11/15/23, Petitioner was examined by Dr. Richard Lehman pursuant to Section 12 of the Act. (RX1) Dr. Lehman noted Petitioner was lifting a toilet and felt a pull in her left shoulder when she put the toilet down. The pull appeared to be anterior, and she had been unable to return to work since. Petitioner reported that her right shoulder started to hurt subsequently. Dr. Below

noted Petitioner's history was inconsistent in that she initially reported carrying 100 toilets upstairs and there was no exact moment of injury. He noted that Petitioner was a runner and carried lumber, etc. to job sites.

Dr. Lehman noted Petitioner appeared to have pain with abduction. She had full range of motion in the left shoulder with no evidence of instability. She had full flexion and rotation of her bilateral shoulders. Her biceps tendon and anterior left shoulder were generally sore. She had mild complaints with internal rotation and some pain with O'Brien's, Neer, and Hawkins testing. She had minimal tenderness in the lateral aspect of her left shoulder. Examination of her right shoulder was essentially normal.

Dr. Lehman reviewed Petitioner's medical records and diagnosed bilateral degenerative partial tears of her rotator cuff and bilateral labral degeneration with a type 2 SLAP tear. He opined that Petitioner had the same pathology and similar degenerative patterns bilaterally. He noted low-grade partial thickness tears of the infraspinatus tendon bilaterally, an equivocal labral tear on the right, and SLAP tear on the left. Dr. Lehman diagnosed long-term impingement syndrome and mild rotator cuff tendinitis bilaterally.

Dr. Lehman opined that Petitioner's work activities did not cause, aggravate, or in any way change her bilateral pathology. He stated Petitioner had exactly the same pathology bilaterally and her history of injury was not conducive to a rotator cuff or labrum tear. He opined that impingement syndrome, partial rotator cuff tears, and SLAP tears are generally treated conservatively, which Petitioner has not received. He did not recommend surgery on either shoulder but opined that physical therapy and injections were appropriate, despite causation. Dr. Lehman opined that Petitioner's treatment was not causally related in any way or necessitated by Petitioner's work injury of 7/13/23. He opined that the bilateral nature of signal in the superior labrum suggests a degenerative pattern and not a work related or overuse type pattern. He opined that Petitioner did not require work restrictions.

On 2/1/24, Petitioner returned to Dr. Below who noted positive Neer, Hawkins, cross-body adduction, and O'Brien tests. Dr. Below continued to recommend a left shoulder surgery and referred Petitioner to physical therapy for her bilateral shoulders.

CONCLUSIONS OF LAW

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

"To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Comm'n,* 797 N.E.2d 665, 671 (2003). "In the course of employment" refers to the time, place, and circumstances surrounding the injury. *Id.* That is to say, for an injury to be compensable, it generally must occur within the time and space boundaries of the employment.

An injury "arises out of" one's employment if its origin is in a risk connected with or incidental to the employment. *Id.* A risk is incidental to the employment "…when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties. In order to meet this burden, a claimant must prove that the risk of injury is peculiar to the work *or* that he or she is exposed to the risk of injury to a greater degree than the general public. *McAllister v. Ill. Workers' Comp. Comm'n*, 2020 IL 124848. Illinois courts recognize the following three categories of risks: "1) risks distinctly associated with the employment; 2) risks personal to the employee; and 3) neutral risks which have no particular employment or personal characteristics." *Id.* A risk is distinctly associated with the employment if the employee was "performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties." *Id.*

It is undisputed that Petitioner was a construction laborer/runner for approximately one year prior to 7/13/23 and that her job duties included delivering and unloading supplies to job sites. Petitioner testified that on 7/13/23 she was unloading pallets of toilets at a college apartment building that Respondent was restoring. She reached up and grabbed a toilet off the top of a pallet that was six feet above the ground. She estimated the toilets weighed 70 to 90 pounds. Petitioner testified that as she lowered the toilet it took her down "really fast". She testified that she experienced immediate pain after lifting the toilet. She did not clarify which shoulder she felt immediate pain or that she felt a pull in her left shoulder. Petitioner testified that she "felt it" in her right shoulder and had burning in her shoulders as she carried toilets that day.

Petitioner testified that she reported her injury to Michael Breen. The medical records indicate Petitioner reported the accident to her supervisor; however, it is unclear what position Mr. Breen held on behalf of Respondent and he did not testify at arbitration. There was no evidence admitted at arbitration that rebutted Petitioner's testimony and no written reports were prepared with respect to the accident.

The evidence supports that Petitioner's injury occurred in the course of her employment with Respondent when she was lifting a toilet as part of her job duties on 7/13/23. Petitioner has further proven, by a preponderance of the evidence, that her injury arose out of her employment as she was performing acts distinctly associated with her employment and reasonably expected to be performed incidental to her assigned job duties.

Based on the evidence as a whole, the Arbitrator finds that Petitioner sustained accidental injuries that arose out of and in the course of her employment with Respondent on 7/13/23.

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

Petitioner testified that on 7/13/23 she was unloading pallets of toilets at a college apartment building that Respondent was restoring. She testified that 100 toilets had to be installed that day, but she did not personally lift and carry 100 toilets. Petitioner estimated the toilets weighed 70 to 90 pounds. She alleged a specific, acute injury when she reached up and grabbed a toilet off the top of a pallet six feet above the ground. She stated the toilet pulled her down "really fast" and she experienced immediate pain. Petitioner did not specify which

shoulder she felt immediate pain in or that she felt a pulling sensation while lifting the specific toilet. She testified that she injured her bilateral shoulders and "felt it" in her right shoulder when she pulled the toilet down. Petitioner testified that her right shoulder symptoms increased due to overcompensating for her left shoulder injury. There were no witness statements or accident reports admitted into evidence.

Petitioner initially sought treatment two weeks after the accident. She testified that she did not immediately seek treatment because she thought her symptoms would subside with Ibuprofen and she performed lighter jobs after 7/13/23. On 7/27/23, Petitioner provided a history of working on 7/13/23 and at the end of the day she went to bed and slept poorly due to left shoulder pain. Petitioner reported that she *helped* carry 100 toilets upstairs. PA Sutton noted no exact moment of injury. Petitioner denied telling PA Sutton there was no exact moment of injury because "she knew when it happened". PA Sutton's office note does not contain a history of lifting a toilet from overhead and being pulled down fast, or a specific pulling sensation in Petitioner's left shoulder when lowering a toilet. The medical record also does not contain a specific injury to Petitioner's right shoulder. PA Sutton noted that sometime between 7/13/23 and 7/27/23 Petitioner started using her right arm more to compensate and it was very sore. Petitioner agreed she told PA Sutton that when she returned to work the week after the accident, she began using her right arm more to compensate for her left. She testified that that is why she sought medical treatment because both of her shoulders were painful, and she could not lift anything. PA Sutton noted Petitioner's bilateral shoulder pain did not fit a specific disease process from a specific injury. She suspected an overuse injury vs. myalgia and recommended that Petitioner seek a second opinion.

On 8/21/23, Dr. Below noted that on 7/13/23 Petitioner was carrying a number of toilets up several flights of stairs to the third floor of an apartment complex. She felt a pull in her left shoulder followed by immediate pain and weakness. She noticed a burning pain to her shoulders while carrying the toilets. Dr. Below did not document a specific incident of reaching up and lifting a toilet off a pallet six feet above ground, or a specific injury to Petitioner's right shoulder. This is the first medical visit, five weeks after the accident, that documented Petitioner felt a pulling sensation in her left shoulder and it was not associated with lifting a specific toilet. Dr. Below noted Petitioner continued working, went home, and woke up the next morning with severe pain and was unable to move her left arm. She reported her injury to her supervisor who told her to see a physician. Petitioner stated she waited the weekend and continued to have tenderness, and then over the next few days of the following week she had increasing pain in her right shoulder. Dr. Below's record does not support Petitioner's testimony that she "felt it" in her right shoulder when she pulled the toilet down off the pallet. Although Petitioner complained of left worse than right shoulder pain, she reported to Dr. Below that her right shoulder felt like "bone on bone", with grinding popping pain. She denied popping in her left shoulder.

It was not until Dr. Lehman's Section 12 examination on 11/15/23 that the pulling sensation in Petitioner's left shoulder was related to a specific incident of lifting and setting a toilet down. Dr. Lehman noted that Petitioner's right shoulder began to hurt subsequently. Dr. Lehman reviewed Petitioner's medical records and diagnosed bilateral degenerative partial tears of her rotator cuff, bilateral labral degeneration with a type 2 SLAP tear, long-term impingement syndrome, and bilateral mild rotator cuff tendinitis. He noted that the pathology in Petitioner's

shoulders were identical. Dr. Lehman opined that Petitioner's work activities did not cause, aggravate, or in any way change her bilateral pathology and her history of injury was not conducive to a rotator cuff or labrum tear. He opined that the bilateral nature of signal in the superior labrum suggests a degenerative pattern and not a work related or overuse type pattern.

Dr. Below did not provide a causation opinion. He noted that Petitioner was a very active person with a very labor-intensive job; however, he did not testify and his records do not contain opinions with respect to whether Petitioner's bilateral shoulder conditions were caused or aggravated by her work duties for Respondent.

An expert medical opinion is not required to establish a causal relationship between an injury and a work accident. That said, the burden of proof is on a claimant to establish the elements of his/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. Hansel & Gretel Daycare Center v. Industrial Commission, 158 Ill. Dec. 851, 215 Ill.App.3d 284, 574, N.E. 2d 1244 (Ill. App. 3d. Dist. 1991). The Arbitrator finds that Petitioner has not met her burden of proof that her injuries were causally connected to her employment.

Based on the record as a whole, the Arbitrator finds that Petitioner's current condition of ill-being in her bilateral shoulders is not causally connected to the work injury on 7/13/23.

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

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

Based on the Arbitrator's finding that Petitioner's current condition of ill-being is not causally connected to the work injury on 7/13/23, the Arbitrator awards no medical expenses or prospective medical care herein.

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

Based on the Arbitrator's finding that Petitioner's current condition of ill-being is not causally connected to the work injury on 7/13/23, the Arbitrator awards no temporary total disability benefits herein.

Arbitrator Linda J. Cantrell DATED: March 25, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC010756
Case Name	Vanessa Ivory v. Tyson Foods
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0033
Number of Pages of Decision	30
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	David Jerome
Respondent Attorney	Brian Hindman

DATE FILED: 1/22/2025

/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

VANESSA IVORY,

Petitioner,

vs. NO: 22 WC 10756

TYSON FOODS,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 4, 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 $66,100.00. 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.

January 22, 2025

CAH/tdm
O: 1/16/25
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	22WC010756
Case Name	Vanessa Ivory v. Tyson Foods
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	27
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	David Jerome
Respondent Attorney	Juan Arias

DATE FILED: 6/4/2024

/s/Jeanne AuBuchon, Arbitrator

Signature

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

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)

Vanessa Ivory
Employee/Petitioner

v.

Tyson Foods
Employer/Respondent

Case # **22** WC **010756**

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 **Collinsville**, on **4/26/22**. 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, **3/1/22**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $; the average weekly wage was $**634.16**.

On the date of accident, Petitioner was **54** years of age, ***single*** with **1** dependent children.

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

Respondent shall be given a credit of **$21,694.63** for TTD, $**0** for TPD, $**0** for maintenance, and $0 for medical benefits, for a total credit of $21,694.63.

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 listed in Petitioner's Exhibit 12, pursuant to the medical fee schedule, as provided in section 8(a) and 8.2 of the Act.

Respondent shall authorize medical treatment, specifically a disc replacement at C5-6 and follow-up treatment as recommended by Dr. Raskas and arthroscopic surgery to the Petitioner's right shoulder and follow-up treatment as recommended by Dr. Solman.

Respondent shall pay Petitioner temporary total disability benefits of **$422.77**/week for 76 2/7 weeks, commencing 4/25/22 to 10/1/23 as provided in Section 8(a) of the Act. Respondent shall receive a credit of $21,694.63

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

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

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

Jeanne L. AuBuchon
Signature of Arbitrator

June 4, 2024

ICArbDec19(b)

PROCEDURAL HISTORY

This matter proceeded to trial on April 26, 2024, pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) the causal connection between the accident and the Petitioner's cervical spine and right shoulder conditions; 2) payment of medical bills incurred after April 25, 2022, for the Petitioner's right shoulder and after June 7, 2022, for the neck; 3) entitlement to prospective medical care to the Petitioner's cervical spine and right shoulder and 4) entitlement to temporary total disability (TTD) benefits from January 13, 2023, through January 25, 2023, and after March 21, 2023. The parties stipulated that the Respondent will pay a medical bill from Central Illinois Radiological Associates for services rendered on March 1, 2022, that was not included in the Petitioner's exhibits.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 54 years old and employed by the Respondent in assembly, laying crackers in trays. (AX1, T. 11) On March 1, 2022, she was in the restroom when she slipped on air freshener that a supervisor was spraying and fell on her right hip and outstretched right arm. (T. 11-13) Afterwards, she noticed problems with her right hip and right shoulder and was unable to lift her arm past her shoulder. (T. 13-14) She said she was not having problems with her neck on the day of the accident. (T. 16)

The Petitioner acknowledged having been in motor vehicle accidents in January and March 2021 in which she injured her back and neck. (T. 32-33) She was treated at Gateway Spine and Joint and underwent an MRI of her neck but not one of her right shoulder. (T. 33) She said she received chiropractic care and injections, and by May 13, 2021, she was only having symptoms in her low back. (T. 33, 41) She said no one was suggesting surgery to either her neck or right shoulder. (T. 34) She said that when she last saw her doctors on May 27, 2021, she was not having

problems with either her neck or right shoulder and had no work restrictions. (Id.) Records from Gateway Spine & Joint were consistent with this testimony. (PX10)

Following the work accident, the Petitioner saw the nurse at the plant dispensary. (T. 15, RX5) Nurse Marsha McCottrell noted no physical injuries and 0/10 pain, educated the Petitioner on pain management and returned her to work full duty. (Id.) The Petitioner then went to the emergency room at St. Elizabeth's Hospital, where she complained of right hip and right shoulder pain and denied having neck pain. (T. 16, PX4) Shoulder and hip X-rays were negative, and the Petitioner was discharged to follow up with her primary care physician or orthopedics. (PX4)

The Petitioner said the next morning, she was feeling very stiff and couldn't lift her arm. (T. 17) She said she was having problems with her neck and couldn't hardly turn it. (Id.) She again went to the plant dispensary and complained of soreness to her right shoulder and hip. (RX5) She rated the pain at 2/10 after taking over-the-counter pain medication. (Id.) Ms. McCottrell recommended cold therapy and acetaminophen. (Id.)

The Petitioner testified that she tried to see her primary care physician, but he would not see her because it was a workers' compensation injury. (T. 18) She said she asked for treatment from the Respondent's insurance carrier and the nurse at the dispensary, but they did not send her anywhere for help. (T. 18-21) The dispensary records showed that the Petitioner saw Ms. McCottrell three more times with essentially the same results as the prior visits. (RX5) The Petitioner testified that she told the nurse that she couldn't lift her arm overhead. (T. 19) She said she continued to work but was still having problems with her arm going overhead and could not hold items away from her body. (T. 23-24)

On April 25, 2022, the Petitioner saw Dr. Daniel Brunkhorst, a chiropractor at DB Health Services, and complained of pain to her cervical spine, right shoulder, lumbar spine and right hip.

(PX6) Dr. Brunkhorst performed a physical examination and diagnosed: cervical disc displacement; cervical radiculopathy; sprain of the cervical ligaments; strain of the cervical muscle, facia and tendon; sprain of the thoracic ligaments; strain of the thoracic muscle, tendon and fascia; sprain of the lumbar ligaments; strain of the lumbar muscle, tendon and fascia; ligament disorder; myalgia; myositis; and muscle contracture. (Id.)

The Petitioner was given a transcutaneous electrical nerve stimulation (TENS) unit. (Id.) Dr. Brunkhorst ordered a cervical spine MRI and gave a treatment plan consisting of electrical stimulation therapy, cervical and lumbar traction, chiropractic manipulation, myofascial release and therapeutic exercise. (Id.) He ordered the Petitioner off work beginning April 25, 2022. (Id.)

The cervical spine MRI was performed on May 3, 2022, by radiologist Dr. Matthew Ruyle at Greater Missouri Imaging. (PX6, PX7) He found: midline protrusions at each level from C3-4 through C6-7 with signal hyperintensity at their apices likely annular tears/fissures; caudally extruded disc material extending below the interspace at the C5-6 level; bilateral foraminal stenoses due to the protrusions at C3-4, C5-6 and C6-7; and left lateral recess protrusion at C2-3 with mild left-sided facet arthropathy resulting in mild left foraminal stenosis but no central canal stenosis. (Id.)

Dr. Brunkhorst referred the Petitioner to Dr. David Raskas, an orthopedic spine surgeon at the Orthopedic and Spine Institute of St. Louis. (PX6) The Petitioner presented to Dr. Raskas's office on June 7, 2022, and saw Clinical Nurse Specialist Tabitha Stith, to whom she complained of posterior neck pain alternating to the right and left of midline and pain over the anterior aspect of the right shoulder traveling into the right deltoid. (PX2 Deposition Exhibit 2) CNS Stith performed an examination and reviewed the May 3, 2022, cervical spine MRI and cervical X-rays taken that day. (Id.) CNS Stith noted instability on the X-rays. (Id.) She diagnosed an acute

herniated disc at C5-6 and a possible right shoulder injury and recommended evaluation by a shoulder specialist. (Id.) She stated that once the Petitioner was cleared, she would like to get the Petitioner into a formal course of physical therapy and would consider injection therapy in the neck – specifically facet blocks and selective nerve root blocks. (Id.) CNS Stith prescribed an anti-inflammatory and took the Petitioner off work. (Id.)

On July 15, 2022, the Petitioner retuned to the Orthopedic and Spine Institute of St. Louis and saw orthopedic surgeon Dr. Corey Solman regarding her right shoulder. (PX3 Deposition Exhibit 2) Dr. Solman performed an examination and had X-rays of the right shoulder performed that showed some mild degenerative changes within the acromioclavicular (AC) joint. (Id.) He diagnosed right shoulder pain, possible labral and rotator cuff pathology, possible biceps pathology and biceps tendinitis post-traumatic. (Id.) He believed that based on the Petitioner's description of the mechanism of injury, the work accident was the substantial contributing factor in the development of her right shoulder pain. (Id.) He prescribed pain medication and recommended an MRI of the right shoulder, remain off work and treat with Dr. Raskas. (Id.)

On September 21, 2022, upon orders from Dr. Brunkhorst, Dr. Ruyle took an MRI of the Petitioner's right shoulder and found supraspinatus and infraspinatus tendinopathy and enthesopathy with a supraspinatus infraspinatus junction insertional partial tear up to 40-50 percent in thickness, with possible minimal bursal-sided extension of the tear but no definite glenohumeral-sided extension of the tear. (PX6, PX7) He also noted os acromiale with degenerative changes of the AC joint and acromial synchondrosis that he said may be an indication of instability of the os acromiale. (Id.)

The Petitioner returned to Dr. Ruyle, on October 19, 2022, who diagnosed neck pain with left-sided radiculopathy after a fall that was unresponsive to chiropractic therapy, heat and over-

the-counter medications. (PX6, PX7) He recommended epidural steroid injections and performed one that day at C5-6. (Id.) He performed another injection on November 11, 2022. (Id.) The Petitioner testified that the injections helped for about two weeks. (T. 27)

On January 25, 2023, the Petitioner returned to Dr. Solman, who performed an examination and reviewed the MRI. (PX3 Deposition Exhibit 2) He diagnosed right shoulder rotator cuff tear, biceps tendinitis, a Type II superior labrum anterior to posterior (SLAP) lesion, AC joint inflammation and arthrosis and subacromial impingement. (Id.) He believed the Petitioner was a surgical candidate but said she would like to do a little bit more therapy at that time. (Id.) He ordered therapy and took the Petitioner off work. (Id.)

The Petitioner underwent a Section 12 examination of her right shoulder ON March 15, 2023, by Dr. Michael Nogalski, an orthopedic surgeon at Orthopedic Associates. (RX2 Deposition Exhibit 2) He took X-rays, examined the Petitioner and reviewed medical records. (Id.)

On the MRI, Dr. Nogalski noted: generalized tendinopathic changes in the distal rotator cuff with some bony signal changes around the rotator cuff insertion site indicating longstanding tendinopathy; rotator cuff attached to the rotator cuff footprint, tendinopathic through about 40-50 percent of the rotator cuff but no sign of full-thickness or significant delamination; os acromiale (an incomplete fusion of the bony roof over the rotator cuff) associated with rotator cuff tendinopathy and tears; relative overhand of the acromion along the lateral humeral head also associated with rotator cuff tendinopathy; increased signal around the os acromiale synchrondrosis; some irregularities, which support hypermobility of the region and effects of this hypermobile segment on the rotator cuff below; generalized changes consistent with a 50-year-old patient; no clinical findings to support bicipital tendinopathic issues or distinct labral/biceps issues; some degenerative changes of the AC joint; and enlarged axillary lymph nodes. (Id.)

Dr. Nogalski diagnosed right shoulder pain and cited objective findings of: age-related rotator cuff tendinopathy without evidence of tear; age appropriate MRI findings of the superior labrum without clinical correlation of current pain from, nor injury to, this region; and os acromiale with degeneration and signal changes supporting hypermobility and potential contribution of this condition to right shoulder pain, along with pre-existing degenerative change of AC joint that did not appear to be symptomatic. (Id.) He found no mechanism of injury to support rotator cuff or superior labrum injury. (Id.) He stated that the medical records supported possible right shoulder contusion based on initial emergency department records. (Id.) He said Dr. Brunkhorst's records did not support right shoulder complaints nor problems but supported myofascial or cervical radicular complaints, noting that Dr Brunkhorst reported on August 1, 2022, that the Petitioner's right radiating symptoms had improved. (Id.) Dr. Nogaliski pointed out that Dr. Brunkhorst's initial evaluation did not reveal any findings to support rotator cuff problems, and Dr. Brunkhorst only reported significant right shoulder issues on September 16, 2022, when he apparently learned Dr. Raskas (sic) recommended a right shoulder MRI. (Id.) Dr. Nogalski stated that Dr. Brunkhorst's note that day appeared "to be a relative shill to generate an MRI order." (Id.) He stated there had been no justification for a right shoulder MRI until months after the accident. (Id.) He said CNS Stith generated the issue of a right shoulder problem when she could not find a clear surgical lesion for Dr. Raskas, and she "appeared to keep the ball rolling for a potential injury with respect to recommendation for an MRI study of the right shoulder…" (Id.)

Dr. Nogalski also pointed to inconsistencies such as the doctors not documenting the Petitioner requiring help to get up, although she told him that, and the Petitioner telling him she worked at the same job until the end of April 2022 while Dr. Solman stated (or understood) that she had been on light duty. (Id.)

Although he acknowledged that he was not specifically asked to comment on treatment of neck of spine problems, he did so. (Id.) He stated that treatment of neck or cervical pain by multiple chiropractic treatments, which generated essentially the same recitation in reports, was equivalent to Einstein's definition of insanity: doing the same thing over and over again and expecting a different result. (Id.) Dr. Nogalski referred to a "reconsideration review" from Genex regarding chiropractic treatment. (Id.) This report was not offered into evidence at arbitration. Dr. Nogalski concluded that the Petitioner's pain complaints were consistent with myofascial or possible radicular issues and not a shoulder condition. (Id.)

Regarding treatment, Dr. Nogalski said he did not identify any significant conservative treatment and that the norm would be injections that would help differentiate a shoulder versus cervical condition and treat a shoulder problem. (Id.) He said physical therapy would also address radiating pains in the shoulder as well as shoulder pain from contusions or strains with tendinopathy, but it did not appear that Dr. Brunkhorst treated the Petitioner's right shoulder. (Id.) Dr. Nogalski found the Petitioner reached maximum medical improvement regarding her right upper extremity as of April 25, 2022, when Dr. Brunkhorst did not note positive findings in the right shoulder or upper arm. (Id.) Dr. Nogalski stated that the Petitioner did not require any work restrictions regarding the right upper extremity. (Id.) He gave the Petitioner a 0 percent impairment rating based on AMA guidelines. (Id.)

The Petitioner saw Dr. Solman on March 22, 2023, and reported that she was doing physical therapy with Dr. Brunkhorst but was continuing to have pain with most activities – especially with lifting overhead. (Id.) Dr. Solman believed the Petitioner had failed at conservative management and recommended a right shoulder arthroscopy with subacromial

decompression, distal clavicle resection, biceps tenodesis, labral debridement and rotator cuff repair. (Id.) He continued off-work orders. (Id.)

The Petitioner treated with Dr. Brunkhorst from April 25, 2022, through April 21, 2023, for a total of 56 visits. (PX6) Dr. Brunkhorst's treatment notes during that time were essentially identical except for addition of the shoulder diagnosis on September 16, 2022. (Id.) At the Petitioner's last visit, Dr. Brunkhorst noted that he reviewed Dr. Nogalski's report and disagreed with Dr. Nogalski's statement that the Petitioner's shoulder complaint was not diagnosed at the initial date of service, saying the shoulder was discussed and examined then. (PX6) The Petitioner testified that the therapy helped ease her symptoms a little. (T. 28)

Dr. Solman issued a report on April 24, 2023, after having reviewed Dr. Nogalski's report and re-reviewing the shoulder MRI. (PX3 Deposition Exhibit 2) He reiterated his findings that the MRI showed evidence of a SLAP lesion and a partial thickness tear of the rotator cuff that he opined was a "significant lesion" and correlated with the Petitioner's pain. (Id.) Regarding Dr. Nogalski's observation that shoulder issues were not reported in Dr. Brunkhorst's notes until later, Dr. Solman explained that most chiropractors he has worked with, including Dr. Brunkhorst, are excellent evaluators with regards to the spine, but many times they omit examinations of the extremities on a regular basis or are merely focusing on the spine. (Id.) Dr. Solman stated that the bottom line was that the Petitioner clearly had a significant mechanism of falling directly on her right shoulder, which would cause right shoulder pathology and cause an asymptomatic os acromiale condition to become symptomatic and painful. (Id.)

Dr. Solman disagreed with all of Dr. Nogalski's opinions and said it seemed Dr. Nogalski was trying to find specific reasons why the Petitioner did not have shoulder pain rather than focusing why her shoulder pain was not related to the work accident. (Id.) He stated that Dr.

Nogalski trying to explain away clear MRI findings and trying to say that Dr. Brunkhorst's notes being cut and pasted were completely flawed arguments as to there being no demonstrable shoulder pathology. (Id.)

Regarding Dr. Nogalski's treatment recommendations, Dr. Solman did not believe injections would heal the Petitioner's condition and would not be safe because they would increase risk of infection and the risk of recurrent tearing of tendons. (Id.) He also did not believe that physical therapy would significantly improve the Petitioner's condition, although he would not have a problem with it. (Id.)

Dr. Nogalski testified consistently with his report at a deposition on May 22, 2023. (RX2) The Petitioner's attorney was not present for this deposition. Dr. Nogalski explained that in his examination of the Petitioner, her range of motion was within normal limits and her motor strength was slightly less than normal, which can be normal for a person who is somewhat deconditioned. (Id.) He also explained that the finding of an os acromiale was essentially an incomplete fusion of the roof of the shoulder above the rotator cuff that is a congenital condition. (Id.) He said the roof of the Petitioner's shoulder had a slightly lower position in the front of the rotator cuff and puts increased pressure on the rotator cuff, which is another condition that can lead to some rotator cuff abnormalities. (Id.)

The Petitioner saw Dr. Raskas on June 8, 2023, and complained of right shoulder pain and left-sided neck pain. (PX2 Deposition Exhibit 2) Dr. Raskas performed an examination and reviewed the MRI and X-rays, medical records and Dr. Nogalski's report. (Id.) He thought the pain generator in the Petitioner's neck was at the C5-6 and opined that the work injury was causing her current condition in both the neck and shoulder. (Id.) Because he did not want to proceed with

injections based on a one-year-old MRI, Dr. Raskas ordered a new MRI and CAT scan. (Id.) He prescribed an anti-inflammatory and ordered the Petitioner off work. (Id.)

On July 12, 2023, Dr. Ruyle performed another cervical spine MRI and found: 1) C5-6 circumferential disc bulge with extruded disc material extending above and below the interspace resulting in ventral cord flattening but no central canal stenosis and moderate bilateral foraminal stenosis; 2) circumferential disc bulge at C6-7 with midline herniated/extruded disc material extending above and below the interspace resulting in mild bilateral foraminal stenosis but no central canal stenosis; 3) central annular tear/fissure and protrusion at C3-4 resulting in dural displacement but no central canal or foraminal stenosis; and 4) minimal circumferential disc bulge at C4-5 resulting in mild bilateral foraminal stenosis. (PX8, PX2 Deposition Exhibit 2)

The Petitioner returned to Dr. Raskas on July 20, 2023, who determined the Petitioner had a broad-based herniation at C5-6 and C6-7 that was likely the source of her symptoms. (PX2, Deposition Exhibit 2) He recommended a selective nerve root block on the left at C6 and C7 and prescribed a muscle relaxer, nerve pain medication and an increase in the anti-inflammatory medication. (Id.)

The Petitioner saw Dr. Barry Feinberg, a pain medicine specialist at Frontenac Surgery and Spine Care Center, on August 8, 2023, and complained of pain in her neck, scapula and right arm. (PX9) She said she had occasional bilateral pain into the arms. (Id.) An examination revealed positive compression testing of the cervical spine on the left, significant tightness myofascially in the left sternocleidomastoid and posterior scalene muscles and left periscapular and suprascapular trigger points. (Id.) Dr. Feinberg performed a cervical transforaminal epidural injection at left C6-7. (Id.) On September 5, 2023, he performed another injection at left C5-6. (Id.)

The Petitioner returned to Dr. Raskas on September 7, 2023, and reported that the injection at C6-7 did not improve her condition, but the injection at C5-6 did. (PX2 Deposition Exhibit 2) Dr. Raskas stated that this confirmed the diagnosis that the Petitioner had a disc injury at C5-6. (Id.) He recommended a disc replacement at C5-6 and kept the Petitioner off work. (Id.) He again recommended disc replacement on September 19, 2023. (Id.)

Also on September 19, 2023, the Petitioner underwent a Section 12 examination by Dr. Robert Bernardi, a spinal neurosurgeon at Olive Surgical Group. (RX1 Deposition Exhibit B) Dr. Bernardi reviewed medical records from before and after the work accident, examined the Petitioner and reviewed imaging studies. (Id.) He diagnosed: 1) multilevel degenerative disc disease (spondylosis) greatest at C5-6; 2) left C2-3 and C3-4 degenerative facet disease: 3) neck pain of uncertain etiology; 4) and right subscapular pain of uncertain etiology. (Id.) He stated that the first and second diagnoses were based entirely upon objective information and could be seen on the imaging studies but were present prior to March 1, 2022. (Id.) He said the second and third (sic) diagnoses were subjective, based entirely on the Petitioner's history and were not supported by any objective findings on her physical examination. (Id.)

Dr. Bernardi pointed to the following aspects of the medical record that he found problematic:

1) Previous episode of neck pain from a January 27, 2021, motor vehicle accident, another motor vehicle accident on March 4, 2021, and no records of ongoing neck issues between March 27, 2021, and the work accident.
2) X-ray reports with the same findings before and after the work accident and an MRI report from February 16, 2021, interpreting multilevel protrusions but nothing he would characterize as a protrusion on the post-accident MRIs.
3) Confusing medical records such as: Dr. Brunkhorst's reference to the Petitioner landing on her left side rather than her right, reports of neck pain the day after the accident and of "immediate" neck pain and references in various records to left- and right-sided neck and shoulder pain.

Dr. Bernardi stated that in reading the records, the Petitioner "may have lost track of what she was supposed to be complaining about." (Id.) He concluded that it would be reasonable to conclude that the Petitioner's acute symptoms were attributable to the work accident and that she could have suffered a myofascial sprain/strain or aggravated pre-existing degenerative disease, which would have resolved within a matter of days to weeks. (Id.) He said he was unable to attribute the Petitioner's ongoing complaints to the work accident for the following reasons: the Petitioner's neck symptoms before the work accident; no subjective or objective findings on her physical or neurological examinations; objective findings on imaging studies that were degenerative and present prior to the work accident; unclear etiology of symptoms; rancor towards her former employer; and an uninterpretable narrative of the Petitioner's symptoms. (Id.)

As to the unclear etiology of the Petitioner's symptoms, Dr. Bernardi explained that while it is conceivable that a muscular sprain/strain, an aggravation of degenerative disease or an aggravation of cervical foraminal stenosis might have caused pain that developed in a somewhat delayed fashion, the Petitioner did not have any of these conditions. (Id.) He stated that muscular injuries heal within a matter of days to weeks and aggravations of arthritic disease do the same, while they take a little longer. (Id.) As to radiculopathy, he said the Petitioner did report subscapular pain, but that did not develop until after her epidural injection on August 8, 2023. (Id.) He noted that while the injection was done on the left, the Petitioner reported pain beneath her right shoulder blade. He also stated that the Petitioner had no other signs of radiculopathy, such as radiating arm pain extending past her elbow or nerve root tension signs and had a normal neurological exam. (Id.) He said the Petitioner did not have clinically meaningful foraminal stenosis on her MRI, and her complaints were not radicular. (Id.) He said she did not sustain skeletal trauma, and there was no evidence of ligamentous damage on the MRI or dynamic X-rays.

(Id.) He characterized the Petitioner's complaints as obscure and said they would almost certainly remain that way. (Id.)

As to the uninterpretable narrative, Dr. Bernardi said the Petitioner's symptoms evolved to include additional body parts, and their laterality changed in a way he could not readily explain. (Id.) He said the reported severity of the symptoms was far out or proportion to any physical, neurological or imaging findings. (Id.)

Regarding treatment, Dr. Bernardi stated that four to six weeks of chiropractic or physical therapy would have been reasonable but almost 11 months of treatment with Dr. Brunkhorst was excessive. (Id.) He said he would not have recommended cervical epidural steroid injections because the Petitioner was not experiencing radicular pain. (Id.) He did not think the Petitioner needed the CT scan or repeat MRI of her cervical spine. (Id.) Otherwise, he thought the testing and treatment the Petitioner received had been reasonable and necessary. (Id.) He did not think the Petitioner was a surgical candidate because she did not have radiculopathy or myelopathy, which he said are the only two recognized indications for cervical spine surgery, with incredibly rare exceptions. (Id.)

Dr. Bernardi opined that the Petitioner reached maximum medical improvement on June 7, 2023, when Dr. Raskas evaluated her. (Id.) He said he could find to objective basis for assigning activity restrictions, adding that they would be counterproductive. (Id.) He noted that following the accident, the Petitioner was able to work full duty for nearly two months, yet she was unable to work for a temp service when she attempted to do so several months before his examination. (Id.) He assigned a permanent impairment rating of 1 percent at the level of the cervical spine that was directly attributable to the work accident. (Id.)

The Petitioner testified that in November 2023, she asked her doctors to release her for light duty work because she had no income. (T. 29) She said she found a job with Amazon beginning October 1, 2023, but was unable to perform that job because of problems with her right arm. (T. 29-31) On December 11, 2023, she took a job at Beverly Farms supervising autistic adults. (T. 31)

Dr. Raskas issued a report on December 4, 2023, after having reviewed Dr. Bernardi's report. (PX2 Deposition Exhibit 2) As to Dr. Bernardi's statement that the Petitioner's symptoms changed from side to side, he did not think it was uncommon when someone has a cervical injury that aggravates a pre-existing degenerative condition for the symptoms to change laterally. (Id.) He explained that while it may be true for extremity injuries that when one side is injured, only that side hurts, the cervical spine is a midline structure. (Id.) He noted that the Petitioner had foraminal disc protrusions and degenerative changes at the C5-6 levels on both sides and that he had documented that the Petitioner had right periscapular pain. (Id.) He said the X-rays showed motion at the C5-6 level. (Id.) He thought disc replacement at C5-6 was less likely to aggravate the adjacent segments and would likely alleviate the Petitioner's chronic neck symptoms. (Id.) He pointed out that it seemed as though the Petitioner had a year of no symptoms at all between the time of her work injury and when she concluded treatment with the Gateway Center for the automobile accidents. (Id.) He concluded that the work accident caused a permanent aggravation of a pre-existing condition necessitating disc replacement (Id.)

On January 1, 2024, Dr. Bernardi issued an addendum report after reviewing records from Dr. Feinberg, additional records from Dr. Raskas and the cervical MRI and X-rays from before and after the work accident. (PX1, Deposition Exhibit C) He found that all of the MRIs were identical and there were no meaningful differences between the X-rays, although he noted that

anterior subluxation that developed with flexion was not seen on the 2021 films. (Id.) He said the records and imaging studies did not lead him to alter any of his opinions.. (Id.)

On January 24, 2024, Dr. Raskas testified consistently with his records at a deposition. (PX2) Regarding the Petitioner's report of symptoms on the right and left sides of her neck, Dr. Raskas explained that with a tear in a disc, there are nerve fibers that innervate the annulus and can refer pain on either side. (Id.) As to the Petitioner's report of symptoms down her left arm, he said it was not a dominant symptom in looking at the Petitioner's history. (Id.) He stated that there is an overlap between neck and shoulder symptoms and agreed that it is sometimes difficult for a patient to differentiate between the symptoms coming from the neck or shoulder. (Id.)

Regarding comparison of the MRIs from before and after the work accident, Dr. Raskas stated that the saw an extruded herniation on the May 3, 2022, MRI that was not recorded in the 2021 MRI report. (Id.) He said he ordered a new MRI and CT scan because the prior MRI was more than a year old. (Id.) He explained that the flattening of the thecal sac that he saw on the later MRI was produced by the herniated disc going out of the disc space and putting pressure on the thecal sac. (Id.) He felt that brought about the Petitioner's symptoms. (Id.)

As to the results of the injections he ordered, Dr. Raskas stated the relief provided by the second injection, which would have affected the C6 nerve root, told him that was the pain generator. (Id.) He said the Petitioner would not have known to tell him that the injection to the disc with the bigger herniation helped more. (Id.) He was not surprised that the Petitioner had some right parascapular pain because the medicine in the injection would not get there. (Id.)

Regarding his recommendation for a disc replacement, Dr. Raskas stated that with the Petitioner's predominantly axial pain for a year and a half and the instability noted on the X-rays, that procedure was preferable to performing a fusion, which would transfer stress to segments that

have structural changes that he did not like to make symptomatic. (Id.) He thought that without the surgery, the Petitioner's ability to return to work would be significantly restricted. (Id.)

In further response to Dr. Bernardi's reports, Dr. Raskas stated that he disagreed with Dr. Bernardi's diagnosis of neck pain of an unknown etiology, explaining that the results of the injection and objective change in the MRI scans correlating with the fall made him think it was more likely than not that the Petitioner's problem was coming from C5-6. (Id.)

On cross-examination, Dr. Raskas pointed out that Dr. Brunkhorst's records showing the Petitioner first reported neck complaints on April 25, 2022, did not mean that was the day her neck pain first started. (Id.) He agreed that the Petitioner did not have radiculopathy or myelopathy. (Id.)

Dr. Solman testified consistently with his reports at a deposition on February 27, 2024. (PX3) He explained that when a person lands on the shoulder, this imparts a force on the humeral head that can cause a contusion, fracture, cartilage damage, a tear of the labrum depending on which direction the humeral head is translated in and a tear of the rotator cuff. (Id.) He stated that in a fall such as the one the Petitioner sustained, it is possible to have injury to both the neck and the shoulder and sometimes the symptoms associated with the neck and shoulder can overlap. (Id.)

As to his review of the Petitioner's medical records, he said the symptoms she reported appeared to be similar to what she reported to her other doctors and had been continuing since the work accident. (Id.) He said there was no indication that she had any resolution of those symptoms leading up to her visit with him. (Id.) He said that in his physical examination of the Petitioner, he saw some possible issues with the rotator cuff, biceps and labrum. (Id.)

Regarding the shoulder MRI, Dr. Solman stated that in addition to the tearing of the rotator cuff at the level of the supraspinatus and a tear of the labrum at the insertion of the biceps tendon

on the top of the glenoid, he felt that there were changes within the AC joint consistent with inflammation and some bursitis in the subacromial space. (Id.) He believed these findings were consistent with the type of trauma the Petitioner sustained as part of her work injury. (Id.) He said his findings on the MRI, the symptom complex reported by the Petitioner and the physical examination findings all were consistent. (Id.)

Dr. Solman testified that without the recommend surgery, the Petitioner will continue to have pain and dysfunction in the shoulder and the rotator cuff tear will get larger, becoming more painful and potentially more debilitating and leading to a significant enough problem that would not be resolved other than having a shoulder replacement. (Id.)

On March 11, 2024, Dr. Nogalski testified at another deposition at which the Petitioner's attorney was present and conducted his cross examination. (RX2) He restated his opinion that the Petitioner's complaints were coming from her neck and not her shoulder. (Id.) He agreed that a shoulder injection would be a viable option to determine whether her problems were coming from her neck or shoulder. (Id.) On redirect examination, he said that even if the injection gave the Petitioner some relief from her shoulder complaints, he would not change his opinion as to the cause of the Petitioner's shoulder condition. (Id.)

Dr. Nogalski stated that on the MRI, he saw a finding that was consistent with a lack of complete attachment of the rotator cuff but that the rotator cuff was attached and would reasonably be consistent with a 55-year-old patient with rotator cuff tendinopathy. (Id.) He said the word "tear" can be "thrown around failing discriminately by people that read MRIs." (Id.) He said the word "tear" appeared to be "a noun or descriptor of a shoulder condition which pre-existed the claimed injury." (Id.) He said that what he saw on the MRI "could be termed a tear in a passive sense." (Id.)

Dr. Nogalski acknowledged that a person could have the same shoulder condition as the Petitioner and be asymptomatic. (Id.) He agreed that a fall as the Petitioner described could cause symptoms. (Id.) He did not agree that a pre-existing tendinopathic change as he saw on the Petitioner's MRI would turn the condition symptomatic as a result of the Petitioner's fall and such a mechanism would relax the rotator cuff rather than stress it. (Id.)

Dr. Bernardi testified consistently with his reports at a deposition on March 15, 2024. (PX1) Regarding the Petitioner's favorable response to the injection by Dr. Feinberg, Dr. Bernardi noted that the Petitioner's previous injections didn't help her at all. (Id.) He found it very problematic to rely upon a person's subjective response to diagnostic injections as a reason to make any kind of diagnosis and especially as a basis for making surgical decisions. (Id.)

On cross-examination, Dr. Bernardi agreed that the type of fall the Petitioner had could aggravate a degenerative condition in the neck. (Id.) He also acknowledged that doctors can differ in describing a patient's symptoms and what they see on an MRI. (Id.)

At the time of arbitration, the Petitioner continued having problems with her right arm – specifically pain shooting through her neck when she tried to raise her arm overhead. (T. 32, 38) She said she was unable to fully raise her arm overhead or hold a gallon of milk straight out in front of her or overhead. (T. 38) She wanted to undergo the surgeries recommended by Dr. Solman and Dr. Raskas. (Id.)

CONCLUSIONS OF LAW

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

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).

Although the Petitioner had prior neck injuries, there was no evidence that she had any problems in the year before her work accident. Dr. Bernardi's conclusion that the Petitioner's condition was attributable to her pre-existing conditions is not supported by the circumstantial evidence.

Regarding Dr. Bernardi's contention that the Petitioner's medical records were confusing and showed an uninterpretable narrative the Arbitrator finds his reports made the records more complicated and confusing than they appeared to the Arbitrator. He focused on aspects of the records that, in isolation, would appear to rebut the Petitioner's claims. But in looking at the evidence as a whole, most of Dr. Bernardi's points are of little consequence. The Arbitrator will address those points that could have significant impact on the determination of causation.

First is the assertion that the Petitioner did not experience neck symptoms until nearly two months after the accident. The Arbitrator does not read Dr. Brunkhorst's April 25, 2022, note to mean that the Petitioner had no neck pain until precisely that date, and there is no other evidence to substantiate that assertion.

Next is Dr. Bernardi's diagnosis of neck pain of an unknown etiology and his statements that there were no differences between the imaging studies before and after the accident. Dr. Raskas did see changes in the MRI findings that were substantiated by the radiologist's findings. He explained how the results of the C5-6 injection and the changes he saw on the MRIs led to his conclusion that the Petitioner's neck pain was axial and caused by the accident.

Lastly, Dr. Bernardi pointed to the Petitioner's rancor to her employer as part of the rationale for his opinions. Although the Petitioner expressed her frustration with the company nurse not referring her for treatment, the Arbitrator finds no evidence that the Petitioner was being untruthful about her conditions because of rancor to her employer.

The evidence in its entirety appears to support Dr. Raskas's observations and opinions, and therefore, the Arbitrator gives his opinions greater weight and finds that the Petitioner has proved by a preponderance of the evidence that her cervical condition, as diagnosed by Dr. Raskas, is causally related to the accident.

As to the Petitioner's right shoulder, the Arbitrator sees the same issues with Dr. Nogalski's report as with Dr. Bernardi's and agrees with Dr. Solman's summation of Dr. Nogalski's report. Dr. Nogalski picked various items out of the medical records to poke holes in the theory that the Petitioner had a shoulder injury caused by the accident. For example, in his conclusions, Dr. Nogalski criticized Dr. Brunkhorst's records, he stated that the September 16, 2023, report appeared to be "a relative shill" to generate an MRI order, that he said appeared to have been recommended by Dr. Raskas. The Arbitrator notes it was Dr. Solman, the shoulder specialist, who recommended the MRI. It is unknown why Dr. Brunkhorst rather than Dr. Solman ordered the MRI, but that is a distinction that bears little weight in this analysis.

The more salient point in Dr. Nogalski's report is his observation that there had not been justification for a right shoulder MRI until months after the accident. Again, taken in isolation, this could be an issue refuting causation for a shoulder injury. However, the Petitioner expressed shoulder pain immediately after the accident and testified that treatment of both her shoulder and neck was delayed for several reasons – her primary care physician would not see her for a work injury, and the Respondent's nurse did not refer her to any specialists for treatment. When she did get treatment from Dr. Brunkhorst, he referred her to Dr. Raskas, whose clinical nurse specialist found an issue with the Petitioner's shoulder, and to Dr. Solman, who recommended the shoulder MRI, made his findings and continued to treat the Petitioner. The Arbitrator sees nothing nefarious in this timeline.

Since Dr. Nogalski seems fond of using phrases such Einstein's theory of insanity and healthcare providers "keeping the ball rolling," the Arbitrator finds it appropriate to state that Dr. Nogalski does not see the forest from the tree by focusing on small details in the medical records.

The real issues are the differences in observations of pathology by Dr. Solman and Dr. Nogalski and whether the work accident was a mechanism that would cause such injury. Although Dr. Nogalski found some pathology, he did not characterize it in the same way as Dr. Solman and did not believe the Petitioner's fall was a mechanism of injury. The Arbitrator finds that Dr. Nogalski's parsing of words – such as tear versus incomplete attachment of the rotator cuff – does not adequately rebut Dr. Solman's findings.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that her right shoulder condition, as diagnosed by Dr. Raskas, is causally related to the accident.

The Arbitrator also finds that Dr. Raskas's and Dr. Solomon's opinions deserve greater weight as treating physicians who had more opportunities to become familiar with the Petitioner and her conditions and were focused on treating the Petitioner, rather than poking holes in her story. Regarding Dr. Brunkhorst's records, the Arbitrator puts little stock in them, as they appear to be virtually identical as to each visit except for the addition of the shoulder issue following Dr. Solman's examination. The Arbitrator relies more upon the reports and opinions of Dr. Raskas and Dr. Solman, as they are orthopedic experts and more qualified to diagnose spine and shoulder pathology.

Lastly, the Arbitrator finds the Petitioner to be credible. Her testimony and reports to her medical providers were overall consistent, and there was no evidence of untruthfulness or malingering.

Therefore, the Arbitrator finds that the Petitioner's current cervical spine and right shoulder conditions are causally related to the accident of March 1, 2022.

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 the Arbitrator gives little weight to Dr. Brunkhorst's records, the Arbitrator finds he did give beneficial treatment to the Petitioner, based on the Petitioner's testimony that the therapy helped and there being no objections to the treatment by Dr. Raskas or Dr. Solman. Furthermore, based on the findings above regarding causation, the Arbitrator finds the expenses for diagnosis and treatment of the Petitioner's cervical spine and right shoulder conditions were reasonable and necessary.

The Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 12 pursuant to Section 8(a) of the Act and in accordance with medical fee schedules.

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

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

Based on the findings above regarding causation, the Arbitrator finds that disc replacement surgery is reasonable and necessary. Dr. Raskas explained the rationale for this surgery – specifically the results of the MRI and injections – to relieve the axial neck pain the Petitioner

continued to have after conservative treatment. Similarly, Dr. Solman explained his recommendation for surgery with his reading of the MRI and the findings from his physical examination of the Petitioner.

For the reasons explained above regarding causation, the Arbitrator gives more weight to the recommendations of Dr. Raskas and Dr. Solman. Therefore, the Petitioner is entitled to prospective medical care, specifically a disc replacement at C5-6 and follow-up treatment as recommended by Dr. Raskas and arthroscopic surgery to the Petitioner's right shoulder as recommended by Dr. Solman. The Respondent shall authorize and pay for such.

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

"The fundamental purpose of the Act is to provide injured workers with financial protection until they can return to the work force." *Interstate Scaffolding, Inc., v. Illinois Workers' Compensation Comm'n,* 236 Ill.2d 132, 146, 923 N.E.2d 266, 337 Ill.Dec. 707 (2010). "Therefore, when determining whether an employee is entitled to TTD benefits, the test is whether the employee remains temporarily totally disabled as a result of a work-related injury and whether the employee is capable of returning to the work force." *Id.*

Due to the findings above and the off-work orders from the treating physicians, the Arbitrator finds the Petitioner is entitled to TTD disability benefits pursuant to Section 8(b) of the Act for 76 and 2/7 weeks, from April 25, 2022, through October 1, 2023. The Respondent is entitled to a credit of $21,694.63 for TTD previously 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.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC003716
Case Name	Brian McClanahan v. Heartland Coca-Cola
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0034
Number of Pages of Decision	29
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Jay Lory

DATE FILED: 1/23/2025

/s/Carolyn Doherty,Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BRIAN McCLANAHAN,

Petitioner,

vs. NO: 23 WC 3716

HEARTLAND COCA-COLA,

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

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

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $52,600.00. 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.

January 23, 2025

O: 01/16/25
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	23WC003716
Case Name	Brian McClanahan v. Heartland Coca-Cola
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	26
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Jay Lory

DATE FILED: 7/17/2024

/s/Jeanne AuBuchon, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF JULY 16, 2024 4.985%

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)

BRIAN MCCLANAHAN
Employee/Petitioner

v.

HEARTLAND COCA-COLA
Employer/Respondent

Case # **23** WC **003716**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Herrin**, on **June 4, 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 **choice of physicians**

FINDINGS

On the date of accident, **6/15/22**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**58,365.83**; the average weekly wage was $**1,122.42**.

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

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

Respondent shall be given a credit of $**any paid** for TTD, $**n/a** for TPD, $**n/a** for maintenance, and $**n/a** for other benefits, for a total credit of $**any paid**.

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 group health insurer or providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall authorize and pay for the prospective treatment, specifically cervical disc replacements and follow-up treatment as recommended by Dr. Gornet.

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

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

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

Jeanne L. AuBuchon
Signature of Arbitrator

July 17, 2024

PROCEDURAL HISTORY

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

FINDINGS OF FACT

At the time of the accident, the Petitioner was 51 years old and employed by the Respondent as a full-service driver. (AX1, T. 11) On June 15, 2022, he was pulling back a two-wheeler and felt a sharp pain in his bicep and going up and down his arm. (T. 12) He said he had numbness and tingling in his arm and fingers all the way up and down. (Id.) He said he didn't guess there was any jerking motion. (T. 26) He said he did not stumble, fall or hit his head or neck. (Id.) He said the cart was heavy. (T. 27)

The Petitioner acknowledged having pain in his shoulder and undergoing therapy about 10 years ago. (T. 20-21) The medical records from that time reflect Petitioner had right shoulder pain and tingling and numbness in his right hand in 2005, for which he underwent physical therapy and was released to work full duty. (RX4) In 2007, the Petitioner again sought treatment for right shoulder pain. (Id.) He underwent a right shoulder MRI, and surgery was recommended. (Id.) It did not appear that the surgery was performed. (Id.) In April 2019, the Petitioner sought treatment for shoulder pain and reported some numbness and tingling in his thumb and index finger. (Id.) The Petitioner was diagnosed with right shoulder pain, right acromioclavicular (AC) joint arthrosis, carpal tunnel syndrome of the right wrist and a superior glenoid labrum lesion of the right shoulder. (Id.) Electromyography and a nerve condition study (EMG/NCS) showed

suspected nerve irritation in the anterior shoulder due to large muscle mass. (Id.) An injection was performed. (Id.) The Petitioner had a neck CT in 2021 for "neck mass." (Id.) There were no doctor notes accompanying the CT report. (Id.) The scan showed changes suggestive of right laryngeal nerve palsy, subcentimeter-size reactive nodes in the neck and mild-to-moderate degenerative changes in the neck. (Id.)

On cross-examination, the Petitioner did not recall a work accident in which he injured his shoulder while lifting soda cases. (T. 35-36) Nor did he recall receiving a worker's compensation settlement during the period of 2005-2007. (T. 36) He acknowledged having prior carpal tunnel surgery, having diabetes and having numbness and tingling in his right hand in December 2005. (Id.) When asked if he continued to have right shoulder complaints in 2006, 2007 and 2019, the Petitioner replied, "I guess." (T. 37)

The Petitioner testified that for two weeks after the June 15, 2022, accident, he was on vacation in Wisconsin but was in pain. (T. 13, 22) He said he had a deformity in his biceps and thought it was a cramp. (T. 25) He said that after he returned from vacation, he sought medical treatment. (T. 13-14) , The Petitioner testified that he thought he had always complained about his neck but was not for sure. (T. 30)

On July 5, 2022, the Petitioner saw Family Nurse Practitioner Kali Jo Moe at the Orthopaedic Institute of Southern Illinois (OISIL) and described the work accident. (PX3) He complained of right anterior shoulder pain that increased while he was on vacation. (Id.) He said he had some numbness for the past three to four days. (Id.) An examination revealed an obvious bicep deformity in the right arm, tenderness along the anterior shoulder, difficulty raising his arm above shoulder height, and supination of the hand about 70 degrees. (Id.) FNP Moe diagnosed a

rupture of the right proximal biceps tendon, put the Petitioner in a splint and sling, ordered an MRI and kept off work until a follow up with orthopedic surgeon Dr. Steven Young at OISIL. (Id.)

The right shoulder MRI was performed on July 6, 2022, and showed: a completely torn and retracted long head of the biceps tendon; a suspected large labral tear; a low-grade tear of the cuff at the junction of the supraspinatus and infraspinatus; and mild tendinosis of the supraspinatus and infraspinatus. (Id.)

On July 11, 2022, the Petitioner saw Dr. Young and reported pain in the right shoulder and upper extremity and that his hand and upper extremity had begun to feel week. (Id.) Dr. Young examined the Petitioner and diagnosed a superior glenoid labrum lesion of the right shoulder, tear of the labrum of the right shoulder and rupture of the right biceps' tendon. (Id.) Dr. Young referred Petitioner to Dr. J.T. Davis, another orthopedic surgeon in that practice. (Id.)

That same day, the Petitioner saw Dr. Davis's physician assistant, Jeremy Palmer. (Id.) At that time, the Petitioner reported not having any prior complaints in the shoulder. (Id.) In describing the accident, the Petitioner said he was lifting eight cases of product onto a handcart and, as he "took the load," he felt a spasm in his biceps and had pain. (Id.) After a physical examination, the Petitioner was diagnosed with a work injury to the right shoulder resulting in a long head of the biceps tendon rupture, a partial-thickness rotator cuff tear and a likely labral tear. (Id.) PA Palmer recommended conservative care for the biceps rupture and rotator cuff tear, including physical therapy, and ordered the Petitioner off work. (Id.) It was noted that if the Petitioner's symptoms failed to improve, they would consider surgery. (Id.) When asked if the accident description of lifting cases of product on a hand cart was accurate, the Petitioner testified that was incorrect in part. (T. 25-26)

The Petitioner began physical therapy on July 13, 2022, at the Therapy Center of Southern Illinois. (PX3) During therapy, the Petitioner reported some relief in his biceps but continued to have shoulder pain. (Id.)

On August 15, 2022, the Petitioner returned to Dr. Davis's office for a follow-up and reported some numbness and tingling that had become more problematic, with some weakness with grip. (Id.) After a physical examination, PA Palmer diagnosed a right shoulder traumatic partial-thickness rotator cuff tear, biceps tendon rupture, paresthesias of the right upper extremity and possible cubital tunnel and carpal tunnel syndrome versus cervical nerve root impingement. (Id.) He recommended obtaining an EMG/NCS. (Id.) The Petitioner underwent a therapeutic cortisone injection in his shoulder. (Id.)

The Petitioner continued physical therapy with little improvement. (Id.) He reported that the shoulder injection did not provide any relief. (Id.) On August 24, 2022, Physical Therapist Pamela Hunter noted they would begin to address his cervical issues with neck traction and manual therapy to the cervical spine and shoulder due to his lack of response from previous therapy. (Id.) During subsequent therapy sessions, the Petitioner continued to complain of numbness and tingling in his hand. (Id.)

On September 14, 2022, the Petitioner saw Dr. Davis, who examined the Petitioner and diagnosed right-sided C8 versus ulnar neuropathy with C6-7 spondylolysis and possible disc herniation; a right shoulder partial, traumatic rotator cuff tear; and long head of biceps tendinopathy rupture. (Id.) Dr. Davis stated that the Petitioner's progress in physical therapy had plateaued and recommended arthroscopic shoulder surgery if the Petitioner failed to improve. (Id.) Dr. Davis believed the ulnar dysesthesias, pain in the neck, radiation down his arm and inability to open his hand was related to a nerve-based issue and recommended a cervical MRI. (Id.) Dr.

Davis believed the work injury of June 15, 2022, required this workup and treatment for the neck, nerve, and shoulder issues. (Id.)

The Petitioner continued physical therapy through September 20, 2022, at which time the therapist reported that the Petitioner's active range of motion remained unchanged, that the Petitioner's pain reports were improved but present and that the Petitioner was still complaining of numbness in the thumb, index finger and little finger on the right. (Id.) The therapist did not recommend further therapy. (Id.)

On October 17, 2022, the Petitioner underwent a Section 12 examination by Dr. Mitchell Rotman, an orthopedic surgeon at The Orthopedic Center of St. Louis. (PX4; RX2) The Petitioner gave a history of pulling back a 2-wheeler hand cart, and flexing his elbows to pull the cart towards him when he felt a pop in his elbow. (Id.) He reported his shoulders were at his side. (Id.) He complained of weakness and numbness in his hand and pain in his neck and shoulder blade. (Id.) Dr. Rotman reviewed the shoulder MRI and noted the biceps rupture and a "teeny signal" in the rotator cuff indicating a very small partial lesion and nothing that would require a repair. (Id.) He performed a physical examination and diagnosed significant issues with what appears to be C7-8 and T1 cervical radiculopathy. (Id.) He said this would have nothing to do with the mechanism of injury when the Petitioner flexed his elbows and ruptured his biceps, which he said would not cause a herniated disc or neck injury. (Id.) Dr. Rotman recommended additional treatment for Petitioner's cervical spine – an MRI and nerve studies – but emphasized this needed to be done through Petitioner's private insurance. (Id.) Dr. Rotman said the Petitioner was at maximum medical improvement for his biceps injury and did not require any further medical treatment for that injury nor for his shoulder. (Id.) He gave the Petitioner a 10-pound weight restriction. (Id.)

The Petitioner returned to Dr. Davis's office on November 7, 2022, and saw PA Palmer with continued complaints of persistent pain, numbness and tingling from the right trapezium to the scapula and down the right arm as well as weakness. (PX3) PA Palmer again recommended an MRI and nerve studies and ordered the Petitioner off work. (Id.) He believed the Petitioner's current complaints were directly related to his work and further work-up of the cervical spine was required to determine the full extent of the injury and an explanation of the continued pain. (Id.)

The Petitioner underwent the EMG/NCS on December 8, 2022, performed by Dr. Daniel Phillips, a neurologist at Neurological & Electrodiagnostic Institute of St. Louis. (PX5) Dr. Phillips stated that the findings were most consistent with C8 radiculopathy. (Id.) He said there may also be a component of chronic right C7 radiculopathy. (Id.) There was also some electrical residual from his previous median neuropathy across the carpal tunnel and likely a component of generalized diabetic type neuropathy reflected into the upper extremity. (Id.)

A cervical MRI taken that day at Imaging Partners showed multilevel disc bulge and foraminal disc protrusions with lateral endplate spurring from C3-4 to C7-T1, resulting in varying degrees of moderate to severe foraminal stenosis at all levels, more severe on the right at C6-7, on the left at C3-4, and bilaterally at C4-5. (PX6)

Also on December 8, 2022, the Petitioner returned to Dr. Rotman, who reviewed the EMG/NCS and MRI. (PX4, RX2) Dr. Rotman believed the Petitioner had significant issues at C7-T1 and at C6-7, noting disc bulges and lateral endplate spurring from C3-4 through C7-T1. (Id.) He referred the Petitioner to Dr. Benjamin Crane, another orthopedic surgeon at The Orthopedic Center of St. Louis. (Id.)

The Petitioner presented to Dr. Crane on December 14, 2022. (PX7) Dr. Crane took his history noting that following a work-related injury in June, he began noticing hand weakness and

hand wasting while recovering from the biceps tear and rotator cuff tear he sustained in the work accident. (Id.) The Petitioner complained of pain in his neck and right shoulder blade with weakness in his right hand. (Id.) He reported difficulty opening jars and grasping things. (Id.) Dr. Crane performed a physical examination and reviewed the MRI and EMG/NCS. (Id.) On the MRI, he found a broad-based disc bulge at C6-7 with uncovertebral joint spurs causing moderate central, lateral recess and foraminal stenosis, worse to the right than left. (Id.) At C7-T1, he saw a soft tissue disc herniation causing mild central and lateral recess stenosis, worse to the right than left. (Id.) He said the remainder of the cervical spine appeared relatively normal without significant disc bulge or facet arthropathy at any level resulting in significant central, lateral recessed or foraminal stenosis. (Id.) He diagnosed the Petitioner with right cervical radiculopathy and did not feel further nonoperative treatment was a viable option. (Id.) He recommended a posterior decompression and discectomy at C7-T1. (Id.) Dr. Crane felt most of the Petitioner's symptoms were coming from C7-T1, and they would focus on that level first with the understanding the Petitioner may need to come back for an anterior cervical total disc arthroplasty at C6-C7. (Id.)

On January 24, 2023, Dr. Crane performed a right C7-T1 posterior cervical decompression and discectomy. (Id.) At a follow-up on February 13, 2023, the Petitioner reported his hand was stronger, but his function had not fully returned. (Id.) He reported no significant neck pain but continued to have numbness in the ring and small fingers of the right hand, radiating up along the ulnar aspect to the elbow. (Id.) Dr. Crane explained to the Petitioner that his right-hand strength may never fully recover. (Id.)

The Petitioner returned to Dr. Crane on March 8, 2023, and reported doing quite well with no neck pain. (Id.) He said his hand felt stronger, but he continued to have paresthesias along the

ulnar aspect of the forearm and into the ring and small fingers. (Id.) Dr. Crane believed the Petitioner was doing well and could return to work without restrictions on March 13, 2023. (Id.)

On April 28, 2023, the Petitioner saw to Dr. Crane and reported he may have "overdone it at work" and was having increased neck pain with the pain draping over the right shoulder. (Id.) He reported continued difficulty with strength in the right hand but felt it was slowly getting better. (Id.) A physical examination revealed tenderness to palpation of the paraspinal muscles of the cervical spine with pain localizing to the right cervicothoracic junction and pain at the extremes of cervical range of motion. (Id.) He had wasting in the thenar muscles in the right hand. (Id.) Dr. Crane recommended physical therapy and anti-inflammatories. (Id.)

On May 1, 2023, Petitioner underwent another Section 12 examination with Dr. Daniel Kitchens, a neurosurgeon at Cardinal Neurosurgery & Spine. (RX3, Deposition Exhibit 2) The Petitioner gave a history of pulling on a 2-wheeler dolly cart and tearing his right biceps. (Id.) He said he felt a pop in his upper arm and had associated weakness and pain. (Id.) He denied an injury to his head or neck, a blow to his head or neck or a trip and fall. (Id.) He said the biceps healed but he developed weakness in his right hand with loss of tissue between the thumb and index finger. (Id.) He denied pain in his shoulder radiating into his arm or hand. (Id.) At the time of the examination, the Petitioner's main complaint was of right-hand weakness and numbness, which had not improved after surgery. (Id.) He reported numbness and tingling into his little and ring fingers and in the ulnar aspect of his right hand and forearm to his elbow. (Id.) He reported some mild discomfort into his right shoulder and shoulder blade. (Id.)

A physical examination revealed atrophy of the right first dorsal interosseous, right hand grip weakness and decreased sensation in the right little finger, ulnar aspect of the right hand, right wrist, and right forearm. (Id.) Dr. Kitchens reviewed the cervical MRI and saw multiple-level

degenerative disc disease with disc bulging and bilateral joint hypertrophy at C3-4, C4-5, C5-6, C6-7, and C7-T1. (Id.) He did not see evidence of acute disc herniation, spinal cord compression or nerve root impingement. (Id.)

Dr. Kitchens opined that the Petitioner did not sustain an injury to his cervical spine in the work accident. (Id.) He believed the Petitioner's hand atrophy and decreased sensation in the finger and ulnar aspect of the hand and forearm were a result of an injury to the C8 and T1 nerves in his upper arm related to his work incident. (Id.) He stated that the Petitioner did not sustain a disc herniation at C7-T1 as a result of the accident, explaining that such a herniation would not cause atrophy of the first dorsal interosseous because that muscle is innervated by the T1 nerve root, which would be related to a T1-2 herniation, of which he saw no evidence on the right side. (Id.) Dr. Kitchens believed the Petitioner needed treatment to further evaluate and possibly treat the C8 and T1 nerve injuries. (Id.)

The Petitioner testified that Dr. Kitchens did not allow him to bring his spouse into the room. (T. 19) He said he wanted his wife to be there because she listens better than he does, documents everything and pays attention. (T. 20)

The Petitioner returned to Dr. Crane on June 9, 2023, and reported "doing okay," but having continued hand weakness. (PX7) He was unable to participate in therapy due to family issues. (Id.) Dr. Crane did not believe there was anything further he could offer and believed he the hand weakness and thenar wasting may never fully recover. (Id.)

On June 26, 2023, Dr Crane authored a report after reviewing Dr. Kitchens' report. (Id.) He disagreed with Dr. Kitchens' opinion that Petitioner's MRI did not demonstrate a disc herniation at C7-T1. (Id.) Dr. Crane said he appreciated a disc herniation at that level that he believed correlated with C8 radiculopathy, which was confirmed by the EMG/NCS. (Id.) He

continued to believe the surgery was appropriate and necessary to cure the effects of the C8 radiculopathy. (Id.) He disagreed with Dr. Kitchens' opinion that Petitioner did not sustain an injury on June 17, 2022, that contributed to the cause of his right-hand weakness and need for surgery. (Id.)

Dr. Crane testified consistently with his records at a deposition on August 23, 2023. (PX15) He explained that patients having an overlap between shoulder and cervical symptoms happens quite frequently. (Id.) He said disc herniations do not always cause neck pain and cause pain and numbness usually radiating down the arm or weakness, like the Petitioner had. (Id.) He said the Petitioner's complaints of right shoulder pain and numbness on June 15, 2022, could have been from cervical etiology. (Id.) He compared the nerves in the neck to telephone lines and a tree branch resting on a telephone causing static on the line to a disc herniation or arthritis causing pain, numbness and weakness to the arm. (Id.) He said a patient's symptoms can change over the course of time as the mechanics in the upper extremity change and put additional strain on the neck, potentially aggravating the radiculopathy and weakness. (Id.)

Dr. Crane said his opinion that the work accident was a causative factor in the need for surgery was based on the Petitioner not having symptoms prior to the accident. (Id.) He said the mechanism of injury was consistent with the Petitioner's post-accident symptoms, the MRI findings and intraoperative findings. (Id.) He said a jerking action can cause disc herniations and impingement on nerves, causing radiculopathy and weakness. (Id.) He further explained that the wasting of the Petitioner's thenar muscles meant that the signal telling the hand to contract was not making it from the brain to the hand as a result of the impingement on the C8 nerve root on the right-hand side. (Id.) He agreed that facet arthropathy can be asymptomatic and can become symptomatic following a traumatic accident. (Id.) He said the Petitioner's symptoms alleviated

following the surgery in that his hand was getting strong, he felt it was working better, and he was able to return to work without restrictions. (Id.)

On cross-examination, Dr. Crane acknowledged that the written accident description that he had did not mention jerking, and the pain diagram filled out by the Petitioner did not reflect neck pain. (Id.) Dr. Crane also agreed that the Petitioner had pre-existing degenerative changes in his cervical spine. (Id.) He also acknowledged that the Petitioner's diabetes can have an effect on the nerves in his cervical spine. (Id.) Regarding the force necessary to herniate a disc in the neck, Dr. Crane said that could be anything from bending down to pick up a piece of lint off the floor to horrific motor vehicle crashes. (Id.) As to Dr. Rotman's contrary opinion, Dr. Crane acknowledged that Dr. Rotman is not a spine surgeon, which was why Dr. Rotman referred the Petitioner to him. (Id.)

Dr. Rotman testified consistently with his report at a deposition on September 12, 2023. (RX1) He said he was an orthopedic surgeon with a subspecialty in the upper extremity. (Id.) He said the basis of his opinion that the Petitioner's cervical spine condition was not related to the work accident was that this wasn't a case of a neck injury. (Id.) He gave reasons for the Petitioner's cervical radiculopathy as diabetes and residual carpal tunnel, which he said were confirmed by the EMG/NCS. (Id.)

Dr. Kitchens testified consistently with his report at a deposition on September 13, 2023. (RX3) He explained that he opined that the Petitioner did not sustain an injury to the cervical or upper thoracic spine as a result of the work incident because there was no abnormal axial force applied to his head or neck. (Id.) He said the surgery performed by Dr. Crane was not reasonable and necessary as a result of the work injury. (Id.) He said he would not have proceeded with the surgery because there were objective findings of T1 nerve dysfunction – atrophy of the first dorsal

interossei and decreased sensation in the right forearm and ulnar distribution – but no findings or symptoms suggestive of radiculopathy, such as pain in the neck radiating into the shoulders, arm or hand. (Id.)

Regarding further treatment related to the T1 nerve dysfunction, Dr. Kitchens recommended a specific NCS to look for areas of dysfunction along the pathway of the ulnar nerve as it comes out in the shoulder axial area into the biceps region to see if there is a blockage or dysfunction of the nerve within the region of the biceps injury. (Id.) He said this would be needed to determine what the next step is. (Id.)

On cross-examination, Dr. Kitchens stated that he found the Petitioner to be straightforward and honest, and he did not detect any signs of symptom magnification or malingering. (Id.) He said he agreed with the radiologist's interpretation of the cervical MRI appreciating a disc protrusion at C7-T1 and acknowledged that a disc protrusion at that level can correlate with radiculopathy if it is impinging or damaging the C8 nerve. (Id.) He agreed that a disc protrusion at that level can cause neck or shoulder blade pain. (Id.) He agreed with Dr. Phillips's EMG/NCS findings of right-sided radiculopathy at C7 and C8. (Id.) He acknowledged that when the Petitioner saw Dr. Crane, he had complaints of neck and right shoulder pain and that when he saw the Petitioner after the surgery, he did not have those symptoms. (Id.) He admitted that he did not view any intraoperative photographs or video of the surgery and did not personally visualize the structures in the Petitioner's spine. (Id.) Dr. Kitchens maintained that the surgery was not reasonable and necessary to address the pathology at C7-T1 and that the Petitioner's symptoms were not related to a disc herniation at C7-T1 but rather to an injury to the C8 and T1 nerves in the upper arm. (Id.) He disagreed with Dr. Crane's conclusion that a jerking action of the arm or shoulder could cause a disc herniation. (Id.)

The Petitioner testified that before the surgery with Dr. Crane, he had shoulder pain, arm pain, weakness in the hand, numbness in the arm and bicep pain. (T. 16) He said the surgery helped for a little bit, then he went back to hurting again. (Id.) He said that when he returned to work full duty, the longer he worked, the more the pain came back, and it was harder to deal with. (Id.) He stated that as a result of the shoulder pain, his attorney referred him to Dr. Matthew Bradley, an orthopedic surgeon at Metro East Orthopedics. (T. 17)

On December 21, 2023, the Petitioner saw Dr. Bradley with complaints of neck, right upper extremity pain and dysfunction and atrophy, particularly of his hand. (PX11) He described the accident and said that over the next 72 hours he began developing pain in his shoulders and base of his neck that went down into his hand. (Id.) His biggest complaints were dysfunction, lack of coordination, weakness, and fine motor skills such as using a pencil or screwdriver. (Id.) He told Dr. Bradley that he injured his shoulder in 2019, and his symptoms were resolved with physical therapy. (Id.) A physical examination revealed decreased rotator cuff strength, positive impingement testing of the shoulder, decreased wrist flexion/extension, and decreased sensation to the C8/T1 dermatome. (Id.) He reviewed the July 7, 2022, shoulder MRI and found that the long head of the biceps tendon was completely torn and retracted and saw a large labral tear and a low-grade rotator cuff tear. (Id.)

Dr. Bradley diagnosed right upper extremity atrophy, neurologic dysfunction and ongoing neck pain. (Id.) He said the majority of the Petitioner's symptoms seemed to be more related to either his cervical spine or nerves. (Id.) He recommended repeat MRIs and EMG/NCS to get a better idea what has changed over the past year. (Id.) Dr. Bradley believed the work injury was causally related to the Petitioner's ongoing right upper extremity pain, dysfunction an atrophy and possibly to a cervical spine or brachial plexus injury. (Id.)

The MRIs were performed on December 21, 2023, at Imaging Partners on December 21, 2023. (PX 6) The cervical MRI showed: 1) multilevel degenerative disc disease throughout the cervical spine with no significant central canal stenosis; and 2) varying degrees of bilateral neuroforaminal exit stenosis most significantly involving the left C3-4, right C4-5, and bilateral C6-7 neural foramen. (Id.) The right shoulder MRI showed: 1) a small partial-thickness rotator cuff tear; 2) long head of the biceps tendon not visualized, likely representing a full thickness tear with distal retraction; 3) superior labrum anterior to posterior (SLAP) tear; 4) a small tear of the inferior glenoid labrum is associated with a paralabral cyst; and 6) mild acromioclavicular degeneration. (Id.)

Dr. Phillips performed another EMG/NCS on January 23, 2024, and again found significant chronic C8 radiculopathy. (PX5) He said there also was evidence of a component of generalized diabetic neuropathy and electrical residual from a previous carpal tunnel. (Id.) He was not optimistic that additional cervical interventions would have a beneficial effect on the Petitioner's motor or sensory function. (Id.)

That same day, the Petitioner saw Dr. Matthew Gornet, an orthopedic spine surgeon at The Orthopedic Center of St. Louis, upon referral by Dr. Bradley. (PX12) He complained of neck pain to the base of the right trapezius, shoulder, scapula and upper arm into his fingertips with tingling into the fingertips. (Id.) He gave a history of the accident and development of his symptoms. (Id.) He did not recall previous problems of significance with his neck, shoulder, arm or nerves. (Id.) A physical examination revealed decreased range of motion in the neck; decreased motor function of the biceps, wrist and intrinsics; atrophy of the right forearm and biceps; and decreased sensation in the C8 distribution. (Id.)

Dr. Gornet reviewed the MRIs from December 8, 2022, and December 21, 2023, as well as a CT scan performed that day. (Id.) On the December 8, 2022, MRI, Dr. Gornet saw right-side foraminal herniations at C4-5, C5-6 and C6-7 and to a lesser extent at C7-T1. (Id.) He said there was a more acute herniation abutting up to the spinal cord at C7-T1. (Id.) On the December 21, 2023, MRI, he saw the same herniations. (Id.) He also saw extruded fragments in the discs, particularly at C3-4, C4-5, C5-6 and C6-7, that resulted in moderate to severe foraminal stenosis at predominantly C4-5, C5-6 and C6-7, but also to some extent at C3-4. (Id.) He noted a continued herniation central and slightly to the right at C7-T1 that remained unchanged. (Id.) He said the CT scan revealed no evidence of facet arthropathy and no major bony foraminal narrowing on the right. (Id.) He said there was some foraminal narrowing on the left at C3-4 and subtly at C6-7 and 4-5. (Id.)

Dr. Gornet said the Petitioner would require treatment at all five levels, which would address his trapezial, shoulder, arm and scapular pain. (Id.) He prescribed an anti-inflammatory, a muscle relaxant, calcium and vitamin D3. (Id.) He believed the Petitioner's symptoms and requirement for treatment were related to the work accident. (Id.)

At a follow-up visit on April 1, 2024, Dr. Gornet noted that the Petitioner's continued pathology objectively seen on the MRI correlates with his continued subjective complaints. (Id.) He recommended cervical disc replacements at C7-T1, C6-7, C5-6 and subsequent disc replacements at C3-4, and C4-5. (Id.)

On April 15, 2024, Dr. Kitchens performed another Section 12 examination. (RX5, Deposition Exhibit B) He reviewed additional medical records and imaging and again opined the Petitioner did not sustain an injury to his cervical spine in the work accident. (Id.) He said the Petitioner was in no need of additional treatment and was at maximum medical improvement. (Id.)

Dr. Kitchens testified at another deposition on May 15, 2024, and reiterated the opinions in his latest report. (RX5)

Dr. Gornet testified consistently with his records at a deposition on May 23, 2024. (PX16) He stated that despite the Petitioner reporting improvement from Dr. Crane's surgery, he still had ongoing neck and radicular symptoms. (Id.) He commented on the quality of the various MRIs the Petitioner underwent, saying that the earlier MRIs were of borderline quality, having been performed with a less powerful magnet. (Id.) He said he saw the pathology on the scans were identical, but the more recent MRI was clearer. (Id.) He said the Petitioner's continuing neck pain and arm symptoms made sense in light of having severe narrowing secondary to the disc material present. (Id.) He said the Petitioner had some pre-existing degeneration at C6-7 that was not significant. (Id.) He thought the work incident "pulled on him just right, and he herniated his discs." (Id.) He explained that the physical exam was consistent with that – showing multilevel weakness at multiple nerve roots – as were the MRIs showing correlating objective pathology. (Id.) He also noted that the Petitioner had no prior neck problems before the work accident. (Id.)

Regarding the EMG/NCS report pointing to C8 radiculopathy but not other nerves, Dr. Gornet stated that Dr. Phillips did not pick up on the other nerve root problems in his studies, but he saw them on his physical exam and in the imaging. (Id.)

As to why Dr. Crane did not address what Dr. Gornet wanted to with the recommended disc replacements, Dr. Gornet stated that he would say Dr. Crane looked at the Petitioner specifically to try to rapidly alleviate the atrophy and decompress him at the nerve that seemed to be most affected o the nerve function studies, specifically the C8 nerve affected by C7-T1. (Id.) He said that was a reasonable thing to do, but it didn't do all that was needed to cure and relieve

the effects of the Petitioner's injuries. (Id.) Dr. Gornet disagreed with Dr. Crane's statement that aside from C7-T1, the rest of the cervical appeared relatively normal. (Id.)

Regarding Dr. Kitchens' opinions that more workup would have been necessary before surgery and that the surgery was not related to the accident, Dr. Gornet opined that "Dr. Kitchens has gone off the rails and this is one of the most outlandish decisions I think I've ever heard or seen him write." (Id.) His reasons for this statement were: 1) the Petitioner never had a previous problem of significance; 2) he's seen multiple providers who predominantly do work with the employer/insurer who said he has a work-related injury; and 3) the employer/insurer approved the surgery with Dr. Crane. (Id.) He said that for Dr. Kitchens to come back and "armchair quarterback" and create a "mystical belief" that the injury was not work-related was beyond his comprehension. (Id.)

In justifying his surgical recommendation, Dr. Gornet stated that the Petitioner still had significant neck pain and motor weakness in other nerve roots, so the purpose of the surgery is to cure and relieve the effects. (Id.) He pointed out that there was an extruded fragment and explained that he would remove that pathology and hope the nerve will recover. (Id.) He believed the surgery would substantially help the Petitioner's neck pain. (Id.) He said that if the Petitioner's condition is left untreated, he will get worse. (Id.)

The Petitioner testified that at the time of arbitration, he was experiencing neck pain, shoulder pain, numbness, bicep pain and lack of muscle in his hand. (T. 16-17) He said he was "kind of scared" about the proposed surgery, but said it was "worth a chance." (T. 18-19)

CONCLUSIONS OF LAW

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

As a preliminary issue, the Arbitrator finds the Petitioner to be credible. He has a very poor memory – probably the reason he wanted his wife to be present for his Section 12 examination – but the Arbitrator did not pick up any signs that he was being untruthful. His testimony and reports to his doctors were consistent. The only inconsistency would be that the Petitioner reported to Dr. Davis that his injury occurred while lifting eight cases of product onto a handcart. However, he stated that as he "took the load," he felt a spasm in his biceps and had pain. The Arbitrator understands this to mean that he was pulling the hand cart when he "took the load." This is consistent with his other reports.

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

It does not appear that the Respondent is disputing the biceps injury. The doctors agreed that the Petitioner ruptured his biceps in the accident. Therefore, the Arbitrator finds this condition was caused by the accident and focuses on the cervical injury.

An accident need not be the sole or primary cause as long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill. 2d 193, 205 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n,* 371 ILL. App. 3d 882, 888 (2007). When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *Id.*

As to pre-existing conditions, the Petitioner did have cervical spine degeneration and shoulder issues before the accident. However, from reviewing the prior medical records, it is apparent that the Petitioner did not have neck issues before the accident.

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).

Dr. Rotman believed the Petitioner may have suffered a neck injury and referred him to a spine surgeon. However, he did not believe the mechanism of injury described by the Petitioner would have caused such an injury. The Arbitrator notes that Dr. Rotman is not a spine surgeon and defers to the opinions of those experts.

Dr. Kitchens is a neurosurgeon who performs spine surgery. Although he read the 2022 MRI as showing multiple-level degenerative disc disease with disc bulging and bilateral joint hypertrophy at all five levels, he said he saw no evidence of acute disc herniation, spinal cord compression or nerve root impingement. He believed there was a nerve problem but not in the neck. However, he acknowledged that a disc protrusion such as the Petitioner's can correlate with radiculopathy. He agreed with Dr. Phillips's EMG/NCS findings of right-sided radiculopathy at C7 and C8. However, he did not fully explain why the cervical injuries could not be acute nor why the nerve issues he identified could not be coming from the neck. Even if the condition of the Petitioner's cervical spine at the time of the accident was not acute, Dr. Kitchens did not explain why the Petitioner's symptoms and need for treatment would not have been caused by an aggravation of his pre-existing spinal condition.

However, both Dr. Gornet and Dr. Crane stated that the Petitioner's symptoms correlated with their physical examinations, the imaging studies and the nerve studies. They believed the Petitioner pulling on the cart could cause the pathology they saw. The Arbitrator gives greater weight to the opinions of Dr. Crane and Dr. Gornet as treating physicians. They also more thoroughly explained the pathology and how it related to their examination findings and the imaging studies as detailed above. In addition, although he did not testify, Dr. Davis also opined that treatment for the Petitioner's neck, shoulder and nerve issues was causally related to the work accident.

Furthermore, the circumstantial evidence supports the premise that the Petitioner suffered a cervical injury in the work accident. Prior to the accident, he had no problems that could be attributed to his neck. Afterwards, he did. None of the doctors noted signs of malingering or exaggeration. In looking at the evidence as a whole, it is apparent that there was a progression of the Petitioner's complaints. Although the Petitioner did not immediately report neck pain, he did report shoulder pain at his first doctor's visit, then reported upper extremity weakness about a week later, then numbness and tingling about a month after that. The physical therapy notes from two months after the visit speak of addressing cervical issues, and Dr. Davis's notes a month later refer to neck pain radiating down the arm.

As to whether the Petitioner's condition following Dr. Crane's surgery is causally related to the work accident, the Arbitrator notes that from reviewing the medical records, it is apparent that Dr. Crane's surgery did not fully or permanently resolve the Petitioner's problems. Three months after the surgery, the Petitioner's symptoms returned after having gone back to work full duty. Also, Dr. Crane did not have the benefit of the more powerful MRI that Dr. Gornet ordered. From that MRI, Dr. Gornet was able to give more detail as to the cervical pathology and saw that

extruded material from the herniated discs. Dr. Gornet also explained why Dr. Crane would have focused on the C7-T1 level because that level needed to be addressed quickly as it appeared to be causing the Petitioner's more exigent symptoms.

Thus, the Arbitrator finds the Petitioner proved by a preponderance of the evidence condition of ill-being – both before and after Dr. Crane's surgery – is causally related to the injury from the June 15, 2021, accident.

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

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

Based upon the findings above regarding causation, the Arbitrator finds the treatment rendered was reasonable and necessary. The Respondent has not paid these medical expenses.

As to the Petitioner exceeding the choice of two doctors pursuant to Section 8(a) of the Act, the Arbitrator finds the Petitioner's first choice of doctors was Dr. Young at OISIL, who referred him to Dr. Davis. The Respondent sent the Petitioner to Dr. Rotman, who referred him to Dr. Crane. The Arbitrator finds this was not the Petitioner's second choice. He may have "chosen" to treat with Dr. Rotman and Dr. Crane, but the doctors themselves were not his choice. They were the Respondent's choice. The Petitioner's second choice was Dr. Bradley, who referred him to Dr. Gornet. Therefore, the Arbitrator finds the Petitioner did not exceed his choice of doctors.

Therefore, the Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 1 pursuant to Section 8(a) of the Act and in accordance with medical fee

schedules. The Respondent shall have credit for any amounts already paid or paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

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

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

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

Disc replacement surgery was contemplated as early as December 2022. At that time, Dr. Crane felt most of the Petitioner's symptoms were coming from C7-T1, and they would focus on that level first with the understanding the Petitioner may need to come back for an anterior cervical total disc arthroplasty at C6-C7. Although the Petitioner improved after Dr. Crane's surgery, his symptoms returned after going back to work full duty.

Dr. Gornet believed the surgery was necessary to address the Petitioner's continuing symptoms coming from multiple cervical levels. Dr. Rotman and Dr. Kitchens did not weigh in on the reasonableness of Dr. Gornet's treatment plan. They focused on whether the Petitioner's problems were coming from his neck and whether the mechanism of injury was sufficient to cause

cervical injuries. Based on the findings above regarding causation, the Arbitrator relies on Dr. Gornet's opinions regarding his treatment plan.

Therefore, the Arbitrator finds that the Petitioner is entitled to prospective medical care, specifically cervical disc replacement and follow-up care as recommended by Dr. Gornet. The Respondent shall authorize and pay for such.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC022826
Case Name	Reynaldo Pagan v. City of Chicago - Fleet Management
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0035
Number of Pages of Decision	21
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Michael Youkhana
Respondent Attorney	Craig Scarpelli

DATE FILED: 1/24/2025

/s/Carolyn Doherty,Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

REYNALDO PAGAN,

Petitioner,

vs. NO: 17 WC 22826

CITY OF CHICAGO – FLEET MANAGEMENT,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission observes that this matter was the subject of two prior 19(b) hearings on September 10, 2019 and November 16, 2021. At the first 19(b) hearing, Petitioner testified that he was at work installing a car door, when the frame weighing 80 pounds fell and struck the left side of his face. Petitioner also testified, that when the door frame hit the left side of his face it caused his head to jerk to the right side of his body.

At the first 19(b) hearing, the Arbitrator found that it was "undisputed" that "Petitioner suffered a neck, nasal, and head injury on January 10, 2017" and that "the mechanism of injury described is a competent cause to sustain cervicalgia and cervical radiculopathy." The Arbitrator also concluded, "Petitioner's current condition of ill-being is causally related to the work injury of January 10, 2017." At the second 19(b) hearing, the Arbitrator again concluded that "Petitioner's current condition of ill-being is causally related to work injury," based on the credible testimony of Petitioner and Drs. Sokolowski and Kurdzylwoski and awarded benefits, including prospective

treatment. The Commission observes that the Arbitrator did not make a distinction between the right and left side of the cervical spine as it related to the issue of causal connection at the first or second 19(b) hearing. Rather, any distinction in the Arbitration Decisions between the right and left side of the cervical spine was made pertaining to medical treatment placed at issue during those hearings. Requests for left-sided medical treatment only was placed at issue during those prior hearings. *See* PX 1 and PX 2.

The Commission further observes that after second 19(b) hearing, Petitioner continued to treat with Drs. Sokolowski and Kurzdylowski for the cervical spine and received the awarded left side treatment. By January of 2023, Petitioner was reporting some lasting relief from the left-sided radiofrequency ablation, but the right-sided cervical pain remained significant. Due to the continued complaints of right-sided cervical spine pain, Drs. Sokolowski and Dr. Kurzdylowski recommended a right-sided radiofrequency ablation (hereinafter "RFA"). This case was tried on a third 19(b) before Arbitrator Watts on February 21, 2024 at which Respondent disputed the recommended right-side RFA in reliance on the most recent Section 12 report of Dr. Singh dated March 8, 2023.

I. Causal Connection

At the third 19(b) hearing on February 21, 2024, Petitioner again testified that he was injured at work on January 10, 2017 while installing an overhead door on a box truck, when "it" came off the track, hit him, and fell on his head and the side of his face. Petitioner again testified the right-side cervical spine symptoms started after the door fell on him at work.

Petitioner testified that after the second left-side RFA in December of 2022, he had a lot of relief on the left side but still had pain on the right side. Regarding the right side of the neck, Petitioner testified that he gets numbness down his arm, and it will flare-up for three or four days. Petitioner also testified that after the right-side block was denied, he continued to follow up with his doctors and that his symptoms remained the same. Petitioner explained during his testimony that he had the same problem on the left side before, but that with treatment, the symptoms have improved on the left side. His right-side symptoms continue. Petitioner testified he has not reinjured his neck in any way since the last trial and is not currently working because his doctors have him off work.

Following the February 21, 2024 hearing, the Arbitrator adopted the medical opinions rendered by Section 12 Examiner Dr. Singh in his most recent report dated March 8, 2023 report. The Arbitrator concluded Petitioner's *left-sided* cervical condition had reached maximum medical improvement effective March 8, 2023 and determined that Petitioner's *right-sided* cervical condition was not causally connected to the work accident on January 10, 2017. However, after a review of the record in its entirety, the Commission views the evidence differently and concludes that Petitioner has not reached MMI for the condition of the left-side cervical spine and that Petitioner's condition of ill-being of the left and right sides of the cervical spine remain causally connected to the work accident on January 10, 2017.

On January 23, 2023, Petitioner returned to Dr. Sokolowski and reported some lasting relief from the left sided RFA, but the right-sided cervical facet pain remains significant. It was noted authorization for the right sided RFA was pending. Right sided neck pain was rated 7-8/10 and left sided neck pain was rated 1-2/10. Dr. Sokolowski reviewed the updated MRI images and noted they showed a partial tear of the nuchal ligament at the C7 spinous process tip and disk pathology at C5-6 persists. Dr. Sokolowski noted the cervical pain, facet joint mediated and cervical radiculopathy were related to the work injury. He recommended proceeding with the right sided RFA, "as the MRI demonstrates no significant new pathology." (PX 3/T. 82-85).

On March 8 2023, Dr. Singh performed a third Section 12 Examination at which time Petitioner reported neck pain that is 7-8/10. He denied bilateral upper extremity dysesthesias, but described the pain as unchanged, severe discomfort that comes on suddenly and constant throughout the day. On exam, monofilament testing was symmetric without sensory loss and cervical range of motion was full. Dr. Singh reviewed the 10/5/22 cervical spine MRI which showed C5-C6 disk protrusion without stenosis, no soft tissue edema, no tear, no increase signal changes and was unchanged when compared to the previous 04/18/18 MRI, which he noted showed C5-6 disk protrusion without stenosis and no soft tissue edema. Dr. Singh's diagnosis was subjective neck pain. Dr. Singh opined that no further treatment was needed, and that Petitioner was capable of full duty and at MMI. (RX 5/T. 257-262).

On April 27, 2023, Petitioner followed up with Dr. Kurzydlowski complaining of neck and arm pain located in the right paracervical area and right trapezius. Exam findings included cervical ROM flexion 45 degrees and extension 25 degrees, trigger points present at right neck and pain was present with touch at the right cervical. Dr. Kurzydlowski's note states, "right sided neck pain is causally related to the original injury." (PX 4/T. 189-193).

On May 5, 2023**,** Petitioner reported persistent right-sided cervical facet pain to Dr. Sokolowski, who continued to recommend the right-sided RFA.(PX 3/T. 86-87).

On July 5, 2023, Dr. Sokolowski noted that Petitioner complained of right-sided cervical facet pain, subsequent to work injury. Exam findings included that right C5-7 facet pain increased with neck extension and the left side did not. Dr. Sokolowski recommended the right sided cervical RFA, noting the improvement on the left side after the RFA portends a positive prognosis for the right-side. He deferred to the pain doctor for work restrictions. (PX 3/T. 88-91).

On October 6, 2023, Dr. Sokolowski noted Petitioner complained of persistent right sided neck pain that radiates to his periscapular region and occasionally his arm. The treatment recommendations and work status remained unchanged from the July visit. (PX 3/T. 92-93).

On January 2, 2024, Petitioner followed up with Dr. Kurzydlowski for complaints of right-sided neck pain described as "sharp pain, chronic, intermittent, and worsening. Dr. Kurzydlowski wrote that the right and left neck pain is related to the 2017 injury. "Initially the left neck pain was more severe forcing him to compensate by shifting the weight of the head right. Left sided symptoms were successfully addressed with a left cervical RFA. Right sided neck pain persists and will more likely than not require RFA." (PX 4/T. 194-198).

On January 16, 2024, Petitioner was evaluated by Dr. Sokolowski, who again noted the chief complaint to be "right-sided cervical facet pain, subsequent to work injury." Dr. Sokolowski noted that on his first visit with Petitioner in April of 2018, he identified neck pain with extension was maximal over the right C5-7 joints during the physical exam. Dr. Sokolowski also noted that Petitioner continued to report bilateral cervical facet pain, thereafter, as documented in his visits on March 22, 2019 and April 26, 2019. Dr. Sokolowski explained that the left-sided cervical RFA addressed only left-sided symptoms, leaving Petitioner with the right-sided symptoms, initially documented in April of 2018. Because the right C5-7 facet pain continues to this day, Dr. Sokolowski continued to recommend a right-side RFA. (PX 3/T. 94-97).

The interpretation of medical testimony is particularly within the province of the Commission. *A. O. Smith Corp. v. Indus. Comm'n*, 51 Ill. 2d 533, 536-37 (1972). A finder of fact is not bound by an expert opinion on an ultimate issue but may look 'behind' the opinion to examine the underlying facts. 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, 31 Ill.Dec. 789, 394 N.E.2d 1166 (1979); *AHA Services. Inc. v. Industrial Comm'n* , 226 Ill. App. 3d 225, 168 Ill. Dec. 756, 590 N.E. 2d. 78 (1992); *Danielle Henderson-Ryan v. Edward Hospital*, 2020 Ill. Wrk. Comp. LEXIS 1070, *32.

In finding continued causal connection for the right-side cervical condition, the Commission notes there is no evidence or testimony to refute Petitioner's testimony at the first 19(b) hearing "that the door frame hit the left side of his face causing his head to jerk to the right side of his body." At the first medical visit on the date of the accident, Petitioner reported neck, nasal and head pain. Thereafter, the focus of Petitioner's treatment was on the nasal and head injury, which required concussion treatment and two nasal surgeries. On August 21, 2017, Petitioner returned to US Healthworks to treat for neck pain. Petitioner testified this was the first time he got treatment for the neck because he thought the pain would go away and he was taking pain medication which masked his pain. There is no evidence that Petitioner had previously injured his cervical spine or sought treatment for the cervical spine prior to the work accident. There is no evidence Petitioner suffered any injuries to the cervical spine subsequent to the work accident. Accordingly, the Commission concludes that Petitioner has proven causation under a chain of events analysis, irrespective of any medical opinions.

Turning to the medical opinions in this case, the Commission notes that the Section 12 Examiner, Dr. Singh acknowledges Petitioner suffered cervical strain injury as a result of the accident. Further, Dr. Singh acknowledges the disk protrusion visible in both of the cervical spine MRIs but gives no explanation as to why the protrusion does not require treatment nor does he provide a basis for opining that the protrusion is not the source of Petitioner's complaints or a result of the work accident. The Commission also notes that Dr. Singh had placed Petitioner at MMI as far back as 02/11/2019, which is contradicted by the fact that Petitioner received some relief from his persistent left-sided symptoms following the injection and left-sided RFA recommended by the treating physicians.

Further, contrary to the Arbitrator's findings, the Commission observes that both Drs. Sokolowski and Kurzdylowski provided causation opinions. Dr. Kurzydlowski opined that the right and left neck pain is related to the 2017 injury, stating "[i]nitially the left neck pain was more

severe forcing him to compensate by shifting the weight of the head right." Dr. Sokolowski stated that on his first visit with Petitioner in April of 2018, he identified neck pain with extension was maximal over the right C5-7 joints during the physical exam. Dr. Sokolowski also noted that Petitioner continued to report bilateral cervical facet pain, thereafter, as documented in his visits on March 22, 2019 and April 26, 2019. Dr. Sokolowski explained that the left-sided cervical RFA addressed only left-sided symptoms, leaving Petitioner with the right-sided symptoms, initially documented in April of 2018. Neither treating physician has placed Petitioner at MMI for the cervical condition, which is reasonable given that they agreed Petitioner needs further treatment related to the right cervical spine condition.

In this case, the Commission finds the opinions of Drs. Kurzydlowski and Sokolowski to be more persuasive than Dr. Singh's opinions. Based on the totality of the evidence, the Commission concludes that Petitioner has proven that the current condition of ill-being of the left and right sides of the cervical spine remain causally related to the work injury on January 10, 2017 and that Petitioner has not reached MMI for the left side cervical spine condition. Accordingly, the Commission vacates the Arbitrator's finding of MMI for Petitioner's left-side cervical condition.

II. Temporary Total Disability

Having concluded that Petitioner's condition of ill-being of the left and right sides of the cervical spine remain causally related to the January 10, 2017 work accident, the Commission finds that Petitioner is entitled to additional temporary total disability benefits.

As noted above, this matter was tried before Arbitrator Watts as a 19(b) on two previous occasions. The Arbitrator awarded TTD benefits after each of those hearings. At the 19(b) hearing which is the subject of this review, Petitioner claimed periods of TTD that were previously awarded by the Arbitrator. Those incurred and awarded periods are as follows: 02/01/2017-03/15/19, 07/16/20-07/28/20, 09/28/20-10/18/20, 06/21/21/-08/09/21. *See* AX 1/T. 47; *see also* PX 1 and PX 2. Accordingly, the only properly claimed period of TTD listed on the Request for Hearing Form (hereinafter "RFH") is the period of 06/09/22 through 01/22/24. The Commission also notes that on the RFH, Respondent stipulated it had paid TTD through 05/07/23 and disputed liability for all TTD incurred after 03/08/23, which is the date of the most recent Section 12 Examination. *See* AX 1/T. 47; *see also* RX 5.

Regarding Petitioner's work status, the treating records provide that orthopedic physician, Dr. Sokolowski deferred to pain management physician Dr. Kurzydlowski as it related to work status. While Dr. Kurzydlowski's record dated 09/27/2022 states that Petitioner had not worked since 06/09/22, there are no medical records from 06/09/22 through 09/26/22 taking Petitioner off work. In fact, some of the treating records note Petitioner was working full duty at various times after 06/09/22.

The first record ordering Petitioner off work is the 09/27/22 note from Dr. Kurzydlowski, who keeps Petitioner off work until 11/01/22. Dr. Kurzdylowski's records indicate he also ordered Petitioner off work from 04/27/23 through 06/01/23 and 01/02/24 through 02/06/24. Petitioner testified that he agreed Dr. Kurzdylowski had taken him off work for those time periods.

Accordingly, the Commission awards TTD benefits for the periods of 09/27/22 through 11/1/22; 04/27/23 through 06/01/23; and 01/02/24 through 02/06/24 for a total of 15-3/7 weeks. The Commission also awards a credit to Respondent for TTD paid during any of those time periods as demonstrated in RX 6.

III. Medical Expenses

Having concluded that Petitioner's condition of ill-being of the left and right sides of the cervical spine are causally related to the January 10, 2017 work accident, the Commission awards the medical bills in PX 5 ($1,510.00) and PX 6 ($36,064.00) pursuant to Sections 8(a) and 8.2 of the Act. The Commission further orders a credit to Respondent for bills paid as demonstrated in RX 7.

IV. Prospective Medical Treatment

Having concluded that Petitioner's condition of ill-being of the left and right sides of the cervical spine are causally related to the January 10, 2017 work accident, the Commission awards the right-side radiofrequency ablation (RFA) as specifically recommended by treating physicians, Drs. Sokolowski and Kurzydlowski.

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated June 17, 2024, is modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's condition of ill-being of the left and right sides of the cervical spine are causally related to the January 10, 2017 work accident.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's finding that Petitioner has reached maximum medical improvement for the left-sided cervical condition is vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay temporary total disability benefits of $1,222.74/week for the periods of September 27, 2022 through November 1, 2022; April 27, 2023 through June 1, 2023; and January 2, 2024 through February 6, 2024, for a total of 15-3/7 weeks. Respondent shall have credit for amounts paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the reasonable and necessary medical expenses in PX 5 and PX 6, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall have credit for amounts paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for the prospective medical treatment, specifically the right-side radiofrequency ablation recommended by Drs. Sokolowski and Kurzdylowksi.

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

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

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

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

January 24, 2025
o: 12/19/24
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	17WC022826
Case Name	Reynaldo Pagan v. City of Chicago - Fleet Management
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	Charles Watts, Arbitrator

Petitioner Attorney	Michael Youkhana
Respondent Attorney	Craig Scarpelli

DATE FILED: 6/17/2024

/s/Charles Watts, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 11, 2024 5.165%

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

REYNALDO PAGAN
Employee/Petitioner

v.

CITY OF CHICAGO – FLEET MGT.
Employer/Respondent

Case # **17** WC **022826**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Charles Watts**, Arbitrator of the Commission, in the city of **Chicago**, on **February 21, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **1/10/17**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**95,373.68**; the average weekly wage was $**1,834.11**.

On the date of accident, Petitioner was **40** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**215,950.79** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**215,950.79**.

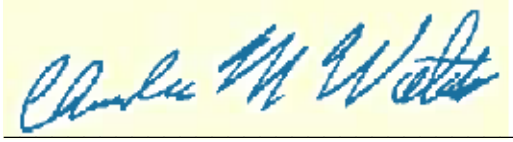
Respondent is entitled to a credit of $**0.00** under Section 8(j) of the Act.

ORDER

- The Arbitrator adopts the medical opinions of Dr. Kern Singh and finds Petitioner's left sided cervical condition was at MMI effective March 8, 2023. The Arbitrator further finds Petitioner's right sided cervical condition is not causally connected to the work injury of January 10, 2017.
- Respondent shall pay reasonable and necessary medical services from the date of injury through March 8, 2023 relative to care and treatment for the Petitioner's left cervical condition. All medical treatment relative to the right cervical region is denied pursuant to the March 8, 2023 medical opinions of Dr. Kern Singh.
- Respondent shall pay Petitioner temporary total disability benefits of **$1,222,74**/week for **11 1/7** weeks, commencing **6/20/22 – 8/1/22 and 9/27/22 -11/1/22** as provided in Section 8(a) of the Act for a total of **$13,624.82**. After taking into account a credit of **$33,188.66** due to overpayment of benefits for the periods of **6/9/22 - 6/19/22; 8/2/22 – 9/26/22 and 11/2/22 – 3/7/23**, the Arbitrator finds Respondent overpaid Petitioner **$19,563.84** in TTD Benefits and is afforded a credit for said overpayment toward resolution or further award in this matter**.**
- Prospective medical care for the cervical spine is herein denied.
- Nature and Extent of the injury is deferred for future assessment.

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

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



June 17, 2024

Signature of Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

REYNALDO PAGAN,	**)**	
	)	
Petitioner,	**)**	
	)	
vs.	**)**	**No. 17 WC 022826**
	)	
CITY OF CHICAGO – FLEET MGT.,	**)**	
	)	
Respondent.	**)**	

RIDER TO ARBITRATION DECISION

The issues in dispute at the time of this hearing are causal connection, medical bills, TTD, and prospective medical care. (Ax. 1 & Tr. 4) The parties have also agreed that should the Arbitrator deny causal connection and/or prospective medical care that an opinion relative to nature and extent of the injury may issue. (Ax. 1 & Tr. 4)

Two prior 19(b) Decisions were issued by this Arbitrator on February 27, 2020 and April 26, 2022 respectively that have become law of the case in this matter. (Pxs. 1 & 2) It is undisputed that Petitioner suffered an injury that arose out of and in the course of his employment with Respondent on or about January 10, 2017. Petitioner testified that he was installing an overhead door when it came off the track and struck him on his head and the left side of his face. (Tr. 7 and Px. 1 & 2)

Pursuant to the prior 19(b) Decision on February 27, 2020, Petitioner was awarded a left cervical facet block recommended by Dr. Sokolowski. (Px. 1 & Tr. 6) Pursuant to the 19(b) Decision on April 26, 2022, Petitioner was awarded a left sided cervical radiofrequency ablation procedure. (Px. 2 & Tr. 7) Petitioner testified that the left radiofrequency ablation was performed by Dr. Kurzydlowski, Petitioner's pain management physician, on 6/20/22. (Tr. 7) Petitioner further testified that he was placed under physical restrictions by Dr. Kurzydlowski that Respondent could not accommodate, which is subject to debate. (Tr. 7)

A second left radiofrequency ablation was performed by Dr. Kurzydlowski on December 5, 2022. Petitioner testified that after that procedure he still had some pain on the left side of his neck but it was a lot better. He testified that he also had pain on the right side of his neck and was experiencing numbness down his right arm all of which he claimed resulted from the door striking him. (Tr. 8-9)

On December 27, 2022 Dr. Kurzydlowski recommended a cervical MRI and a right cervical median branch block. (Px. 4 & Tr. 10) Petitioner testified that he saw Dr. Sokolowski, his orthopedic surgeon, on January 23, 2023 at which time he noted pain on both sides of his neck and intermittent right arm numbness. Dr. Sokolowski agreed Petitioner should undertake a right median branch block. (Tr. 10 & Px. 3)

Respondent had Petitioner evaluated by Dr. Kern Singh pursuant to Section 12 of the Act on March 8, 2023. (Rx. 5 & Tr. 11) Petitioner testified that the right median branch block was denied pursuant to the opinions of Dr. Singh. (Tr. 12) Despite this denial of further care Petitioner testified that he continued seeing his doctors and his symptoms did not change. (Tr. 12) Petitioner testified that, if he moves a certain way, he has neck pain and also experiences numbness down his arm when sleeping. (Tr. 15) He indicates these symptoms are the same as he experienced on the left side before the left median branch block. (Tr. 15)

Petitioner testified that he is not working as his doctors have him off work. (Tr. 16) He is aware that Dr. Singh opined he can work without restrictions, but he feels he has a physical job involving weights of 60 to 70 lbs., the use of heavy equipment and tools, and the use of ladders with some work 20 feet in the air. Petitioner testified that he does not feel he can safely perform such duties due to his on-going symptoms. (Tr. 16-17)

In support of the Arbitrator's Decision with respect to current condition of ill-being, the Arbitrator finds as follows:

Petitioner bears the burden of showing by a preponderance of credible evidence that his current condition of ill-being is causally related to the workplace injury. ***Horath v. Industrial Commission*, 449 N.E.2d 1345, 1348 (Ill. 1983)** Expert medical evidence is not essential to support a conclusion that a causal relationship exists between a Petitioner's injury and his condition of ill-being. ***International Harvester v. Industrial Commission,* 93 Ill. 2d 59, 442N.E.2d 908 (1982)**. A chain of events suggesting a causal connection may suffice to prove causation. ***Consolidation Coal Co. v. Industrial C omission,* 265 Ill. App. 830, 639 N.E.2d 886 (1994)**. Prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is a result of the accident. ***Navistar International Transportation Co. v. Industrial Commission,* 315 Ill. App. 3d 1197 (2000)**.

It is undisputed that Petitioner suffered an injury that arose out of and in the course of his employment with Respondent on or about January 10, 2017. This led to medical treatment with various providers, including but not limited to Drs. Kurzydlowski and Sokolowski relative to his left sided cervical symptoms which were substantially improved by a left cervical facet block and left sided radiofrequency ablation procedure.

Petitioner's complaints which are at issue at this third 19(b) hearing relate to his right cervical area and the alleged need for medical treatment to cure and relieve those symptoms. Petitioner testified that he has had right-sided cervical complaints since the date of injury of January 10, 2017. However, the evidence presented at this hearing fails to competently corroborate that allegation as does the record taken as a whole. It is clear that the medical treatment prior to this hearing focused upon Petitioner's left-sided cervical symptoms and Respondent's Section 12 evaluations with Dr. Singh on February 11, 2019, May 20, 2019 and April 19, 2021 also focused on the left side of the neck. (Rxs. 2, 3 & 4) In fact, the Arbitrator takes specific note that Petitioner, who testified that he provided his full cooperation to Dr. Singh and advised him of all his on-going symptoms, never mentioned any right sided cervical complaints during those evaluations. (See Rxs. 2, 3 & 4 and Tr. 19-20)

At the telemedicine session with Dr. Sokolowski on June 8, 2022, the Petitioner's complaints were of left-sided cervical pain with a radiofrequency ablation procedure to proceed in the next several weeks. It is also noted Petitioner is working with restrictions. There is no mention of right-sided symptoms in this record. (Px. 3) There is no further treatment of any kind with Dr. Sokolowski until October 3, 2022 at which time there was another telemedicine session. This is the first time Petitioner advises Dr. Sokolowski that he has been experiencing increasing right cervical facet pain. While there are notes of physical exam findings these are little more than observations over video with no hands-on evaluation undertaken. Dr. Sokolowski notes that Petitioner's pain specialist ordered a new MRI and anticipated a right cervical radiofrequency ablation. (Px. 3) There is no further treatment with Dr. Sokolowski until January 23, 2023. Petitioner reports lasting relief from left cervical RFA but significant right cervical facet pain. Save for some noted pain in the right cervical facet region, Petitioner's physical examine is benign. Dr. Sokolowski assesses the images from the October 5, 2022 cervical MRI and indicates it demonstrates no significant new pathology. (Px. 3) He defers restrictions to Dr. Kurzydlowski and opines a right cervical RFA is reasonable but does not address causal connection to the work injury.

On January 16, 2024 Dr. Sokolowski makes note that Petitioner's right-sided complaints were documented as early April 24, 2018 but the Arbitrator notes this is tenuous as that is the only note that indicates right-sided pain with all treatment from Dr. Sokolowski dedicated to the left side until October 3, 2022. (Px. 3) It should also be noted that the April note could have easily been made in error as Petitioner clearly notes he was struck on the left side of the head and neck and ALL his treatment until October 3, 2022 focuses on the left side and left upper extremity. This January exam and note was also obtained by Petitioner after he was aware that this matter was initially set to be tried on January 22, 2024 suggesting this visit was initiated in anticipation of this litigation. None of Dr. Sokolowski's records presented at this hearing provide a medical opinion indicating Petitioner's right-sided cervical complaints are causally related to the January 10, 2017 work injury. These facts make Dr. Sokolowski's sudden revelation regarding the April 24, 2018 complaint of right sided cervical symptoms suspect at best. (Tr. 31)

The Arbitrator notes that the October 5, 2022 cervical MRI report was produced by Petitioner within Dr. Kurzydlowski's records and that the report indicates he was also the referral source. (Px. 4) Dr. Kurzydlowski's records fail to note any assessment of the October 5, 2022 C-Spine MRI report nor the films from that study. Further, the MRI report is made with comparison to the April 18, 2022 cervical MRI secured as part of the treatment protocol for this work injury. The radiologist that completed the new MRI compared it with the April, 2022 study and noted new partial tear between the nuchal ligament and tip of the C7 process that "can be acute". Redemonstrated was the C5-6 minimal posterior bulging (already under active treatment since the onset of the injury) and new superimposed very small central disc protrusion of indeterminate chronicity. (Px. 4) It is clear from the radiologist's comparison that there are new findings on this MRI compared to the one secured in 2018 and Petitioner testified he had not returned to work since the injury nor did he claim to have suffered a new on-set or aggravation of symptoms as a by-product of any of his treatment protocols. There has been no evidence submitted to establish that these new findings are causally connected to the January 10, 2017 work injury. Since Petitioner's symptoms shifted from his left cervical to his right cervical region one can conclude, absent any medical opinion to the contrary, that the new findings are the potential cause of the right sided complaints and that the new findings are not causally related to the work injury. Dr. Sokolowski opined there was no significant new pathology when he assessed the study on January 23, 2023 but he does take note of the partial tear of the nuchal ligament at C-7 with no further comment which calls his interpretation in to question. Dr. Kurzydlowski fails to entertain or consider the October 5, 2022 MRI findings despite ordering the study which is also suspect.

Petitioner submitted reports from Dr. Kurzydlowski beginning on September 17, 2020 and documenting treatment for left sided cervical and arm pain through September of 2022. (Px. 4) The Arbitrator notes that the September 1, 2022 report of Dr. Kurzydlowski records the first mention of right sided neck pain with all prior records solely focusing upon the left sided symptoms. (Px. 4) The left sided symptoms improved with occasional left upper extremity pain and the main focus was now right neck pain. There is no indication of a new, acute work injury, but Petitioner was noted to be working full time without restrictions in all the records from September 17, 2020 through September 1, 2022 . (Px 4) Dr. Kurzydlowski recommends the aforementioned cervical MRI presumably to investigate these obviously new right sided cervical symptoms since the left sided symptoms were already being successfully addressed. (Px. 4)

Dr. Kurzydlowski's September 27, 2022 report again notes improved left cervical symptoms after facet injections with Petitioner's working full time without restriction and main complaints again in the right neck and arm. Here, Dr. Kurzydlowski removes Petitioner from work until November 1, 2022. The Arbitrator can only assume this restriction arises from the right sided cervical complaints since Dr. Kurzydlowski fails to specify otherwise and also noted

Petitioner was working full time after treatment for the left sided symptoms. (Px. 4) The MRI, as noted above, is performed on October 5, 2022 yet is never mentioned in the subsequent narrative report of Dr. Kurzydlowski so his impression of the films is unknown.

The next report from Dr. Kurzydlowski, is dated April 27, 2023 suggesting no evaluations were undertaken for 7 months and again noting Petitioner is working full time with no restrictions which invalidates any need for lost time from November 1, 2022 through April 27, 2023. As noted above, there is no mention that the new MRI study was considered. Petitioner is removed from work until June 1, 2023.

We then have a nearly 8-month period until Petitioner presents to Dr. Kurzydlowski again on January 2, 2024. Petitioner presents markedly improved after left cervical facet injections and is noted to be working full time with no restriction suggesting no medical basis for lost time since June 1, 2023. The main complaints are again on the right side of the neck and no mention is made of the October, 2022 MRI. Dr. Kurzydlowski removes Petitioner form work until February 6, 2024 and opines that Petitioner's right neck pain, along with the left, is related to the 2017 injury though he wholly fails to address the NEW findings from the October, 2022 MRI scan that he ordered. He surmises that the left neck pain was more severe forcing Petitioner to compensate by shifting the weight of the head to the right and now recommends a right sided radiofrequency ablation. This is the first time any mention is made of any potential causal connection between the right sided symptoms and the January, 2017 work injury. The Arbitrator finds this opinion weak at best with no medical records from any physician to support any right sided neck complaints until late 2022, over 5 years after the work injury and an October, 2022 MRI with NEW cervical abnormalities noted yet wholly ignored as a clinically significant cause of the right sided symptoms.

Petitioner submitted to a Section 12 evaluation with Dr. Kern Singh on March 8, 2023. (Rx. 5) Dr. Singh was familiar with the Petitioner since he had already evaluated him in February of 2019 and April of 2021. (Rxs. 2 & 4) It should be noted that Petitioner made no complaints relative to the right side of the neck during either of those prior evaluations despite his testimony that he advised Dr. Singh of all the symptoms he was experiencing at the time of each of his evaluations. (Tr. 20) Dr. Singh assessed the full medical records available from March of 2018 through January of 2023 as part of his evaluation including the films from the cervical MRIs. Dr. Singh also performed a physical examine that noted no sensory loss and full cervical range of motion. Petitioner also had full strength in both upper extremities and no clinical signs of radiculopathy. Dr. Singh assessed the cervical MRI and found the C5-6 level was unchanged in each study with no signs of stenosis. Dr. Singh opined that Petitioner's neck pain was subjective in nature with no clinical sings of radiculopathy nor dysesthesias. (Rx. 5) Petitioner had a normal neurological exam with no stenosis noted in the C5-6 area (the only area with any notable protrusion). Dr. Singh felt no further medical treatment was required and that the cervical MRI

noted only minimal degenerative changes. Dr. Singh indicated that a right radiofrequency ablation was not reasonable nor required. He further indicated his opinion that Petitioner was at MMI from his January, 2017 work injury and could resume full and unrestricted work duties. (Rx. 5)

The Arbitrator adopts the medical opinions of Dr. Singh with specific note that on February 11, 2019, Dr. Singh initially opined that Petitioner suffered a work-related cervical strain on January 10, 2017. (Rx. 2) At all times from his first exam to his last he has noted that Petitioner did not require further treatment nor restriction and that his complaints were wholly subjective in nature. (Rxs. 2-5) Dr. Singh causally related the initial cervical issues to the work injury but felt the long- standing complaints of pain and radiculopathy could not be clinically corroborated by exam nor by MRI.

Dr. Sokolowski assessed the October, 2022 cervical MRI and found no significant new pathology while Kurzydlowski failed to assess the updated cervical MRI nor compare that study to the original scan to investigate the Petitioner's new complaints of right sided cervicalgia. Dr. Sokolowski fails to present a causal connection opinion relative to the right cervical symptoms. While Dr. Kurzydlowski does make an assertion of causal connection he made no effort to assess the updated MRI scan that he ordered and simply bases his opinion on Petitioner's subjective symptoms. Both physicians fail to provide any clinical basis for their continued treatment and physical restrictions. (Pxs. 3 & 4) Further, their exams fail to reveal clinical signs of cervical abnormality which further confirms the findings of Dr. Singh. It is clear that the treating physicians were responding to Petitioner's subjective complaints despite the evident lack of clinical/objective findings. Dr. Singh performed a thorough physical evaluation and assessed multiple diagnostic studies during the March, 2023 evaluation which led to his conclusion that Petitioner required no further medical care. (Rx. 5)

As the Arbitrator adopts the medical opinion of Dr. Kern Singh in this matter, the Arbitrator finds that Petitioner's current condition of ill-being is not causally connected to the January 10, 2017 work injury. It is clear from the diagnostic studies and the medical opinions of Dr. Singh that Petitioner had reached the MMI when he was evaluated by Dr. Singh on March 8, 2023 at which time Petitioner's subjective complaints could no longer be clinically corroborated. None of the findings from any of the physicians Petitioner has seen since the alleged onset of right cervicalgia disprove/discredit Dr. Singh's 2023 medical opinions. In fact, Petitioner has suffered nothing but failure with further medical care and there are no anatomical or clinical indications that it would be dangerous to Petitioner to resume working. While this Arbitrator provided greater weight to the treating physician's opinions in the prior 19(b) proceedings (See Pxs. 1 & 2), that in no way discounts Dr. Singh as a respected and competent orthopedic spine surgeon. Therefore, the Arbitrator feels comfortable in adopting Dr. Singh's opinions at this stage in Petitioner's claim given that his medical opinions have come to be proven over time and have far more basis in clinical medical fact than the opinions of Drs. Sokolowski and Kurzydlowski, who

appear to be pandering to Petitioner's subjective complaints despite the clear lack of clinical corroboration for his wholly subjective complaints and the clear lack of medical basis for prohibiting his return to any form of work.

Petitioner did not provide any testimony nor medical evidence to suggest any medical basis for his on-going subjective complaints in the left cervical area nor any evidence suggesting the right cervical region was injured in January of 2017. Therefore, there is no current condition of ill-being to assess relative to the right cervical spine with satisfactory resolution of the left cervical condition pursuant to the treatment provided by Drs. Sokolowski and Kurzydlowski. Therefore, the Arbitrator discounts any causal connection between the alleged right cervical condition and the work injury. The Arbitrator further finds that Petitioner's let cervical condition has reached a state of MMI.

In support of the Arbitrator's Decision with respect to unpaid medical bills, the Arbitrator finds as follows:

Petitioner has submitted no evidence relative to unpaid medical bills from any provider from the January 10, 2017 injury through the Sec. 12 evaluation with Dr. Kern Singh on March 8, 2023. The Arbitrator finds Respondent responsible to pay for all related medical treatment through March 8, 2023 with all subsequent treatment with any medical provider no longer representing medical treatment that can be causally related to the work injury subsequent to that date. The Arbitrator does not find any causal connection between Petitioner's right cervical complaints and the work injury and therefore does not find Respondent liable to provide payment for any medical treatment relative to the right cervical spine.

In support of the Arbitrator's Decision with respect to TTD/Maintenance benefits, the Arbitrator finds as follows:

Temporary compensation is provided for in Section 8(b) of the Act, which provides that weekly compensation shall be paid as long as the total temporary incapacity lasts, which has been interpreted to mean that a Petitioner is temporarily totally incapacitated from the time the injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of the injury will permit. The dispositive test is whether Petitioner's condition has stabilized (reached MMI). ***Sunny Hill of Will County Mechanical Devices v. Industrial Commission, 344 Ill. App. 3d 752 (4th Dist. 2003).*** To be entitled to TTD a claimant must prove not only that he did not work but that he was unable to work. ***Freeman United Coal Mining Co. v. Industrial Commission,* 318 Ill, App. 3d 170 (2000)**.

The Arbitrator adopts the medical opinions of Dr. Kern Singh in this matter which declare Petitioner at MMI as of March 8, 2023. Dr. Singh found Petitioner capable of full and unrestricted duty at that time. (Rx. 5) Petitioner has not made himself available for employment with Respondent nor any other employer in the State of Illinois despite these findings and despite the lack of medical basis for his alleged

temporary total disability. By adopting the opinion of Dr. Singh, the Arbitrator finds the Petitioner was as far recovered or restored as the permanent character of his injury would permit by March 8, 2023. Petitioner's right-sided cervical complaints are wholly subjective in nature without clinical corroboration and without evidence of any causal connection to the January 10, 2017 work injury.

It is noted that Respondent continued to disburse weekly TTD benefits despite the opinions of Dr. Singh through May 7, 2023. The Arbitrator takes note that the payment of such benefits is not an admission of liability on the part of Respondent and there is no contra-indication to Respondent disputing liability for any period of TTD at trial. Therefore, the Arbitrator gives no evidentiary weight to the on-going payment of benefits subsequent to Dr. Singh's March 8, 2023 Section 12 evaluation.

The Arbitrator notes that the period of alleged TTD in dispute that is relevant to the current hearing is the period of June 9, 2022 through January 22, 2024. The Arbitrator finds that all TTD from May 8, 2023 through January 22, 2024 is denied pursuant to the medical opinions of Dr. Kern Singh and the lack of causal connection between the right cervical complaints and the alleged disability arising from that condition and the January 10, 2017 work injury. That period of disability is denied in whole.

The burden of proof is upon Petitioner to show he was medically temporarily and totally disabled for any period between June 9, 2022 and May 7, 2023. Dr. Sokolowski's records reveal that the work status report dated June 7, 2022 permits a full duty return to work. (Px. 3 pg. 2) Dr. Sokolowski's remaining records presented at trial defer any additional work status to Petitioner's pain management physician. (Px. 3) Therefore, Dr. Sokolowski's records fail to address Petitioner's work status subsequent to June, 2022.

Dr. Kurzydlowski's report of June 9, 2022 indicates Petitioner is working full duty. (Px. 4 pg. 69) This report indicates Petitioner's will have a procedure on June 20, 2022 and will follow-up on July 28, 2022 with return to work on August 1, 2022. (Px. 4 pg. 70) Therefore, evidence indicates Petitioner's was to be off work from June 20, 2022 through August 1, 2022 totaling 6 weeks. Dr. Kurzydlowski's records fail to address any restrictions on work again until a September 27, 2022 report indicates Petitioner has been off work continuously since June 9, 2022, however, there is no evidence he was medically prohibited from working for any period save June 20, 2022 through August 1, 2022. Just because Petitioner reports he is not working does not mean he is medically incapable of working. Petitioner's indication has no evidentiary value absent work status report declaring he is prohibited from working. Dr. Kurzydlowski once more removes Petitioner from work on September 27, 2022 through November 1, 2022. (Px. 4 pg. 86), a period of 5 1/7 weeks. Petitioner is not seen by Dr. Kurzydlowski again until April 27, 2023 at which time he is taken off work until June 1, 2023. (Px. 4 pg. 92) This period is not considered nor awarded as this evaluation comes after the March 8, 2023 Section 12 opinion of Dr. Singh that has been fully adopted herein.

The Arbitrator takes note that Petitioner testified at trial that while Dr. Kurzydlowski's reports reflect that he was working full duty without restrictions that he took issue with those reports and raised that issue with Dr. Kurzydlowski. Petitioner testified that Dr. Kurzydlowski explained to him that this was a template he could not go in and change to reflect alternate work s tatus. (Tr. 34) However, Petitioner went on to testify that Dr. Kurzydlowski provided him work slips that either placed him off work or restricted his work. (Tr. 35) despite this testimony, none of the work slips were submitted as evidence and Petitioner's testimony as to his alleged work s tatus is insufficient given his admission that the best evidence of his work s tatus would be the alleged work slips he secured from Dr. Kurzydlowski. Without those slips, the Arbitrator must rely on the best evidence available at trial, that being the records of Dr. Kurzydlowski submitted as evidence. (Px. 4). Those records contradict Petitioner testimony relative to work status.

Given the totality of the evidence and the adoption of the opinions of Dr. Singh, the Arbitrator awards Petitioner's TTD for a period of 11 1/7 weeks spanning the periods of June 20, 2022 through August 1, 2022 and from September 27, 2022 through November 1, 2022. No evidence was submitted at trial to indicate Petitioner's was removed or restricted from work for any additional periods prior to the March 8, 2023 Section 12 opinion of Dr. Singh. Respondent has, therefore, overpaid Petitioner's weekly TTD Benefits for a total of 27 1/7 weeks and shall be entitled to a credit for this overpayment at settlement or upon further Award relative to nature and extent of the injury.

In support of the Arbitrator's Decision with respect to prospective medical care, the Arbitrator finds as follows:

Given the totality of the evidence and the adoption of the opinions of Dr. Singh, the Arbitrator denies Petitioner's any prospective medical care for the cervical spine in any form. All medical treatment subsequent to March 8, 2023 with any medical provider no longer represents medical treatment that can be causally related to the work injury. The Arbitrator does not final any causal connection between Petitioner's right cervical complaints and the work injury and therefore does not find Respondent liable to provide any medical treatment relative to the right cervical spine and further finds Petitioner was at MMI for his left cervical spine condition as of March 8, 2023 with no need for further medical care beyond that date.

In support of the Arbitrator's Decision with respect to Nature & Extent of the injury, the Arbitrator finds as follows:

The Arbitrator has found that Petitioner's causally related medical treatment terminated effective March 8, 2023 by adopting the Section 12 opinions of Dr. Singh. While the parties stipulated that such a finding would permit the Arbitrator to then assess the Nature & Extent of the January 10, 2010, the Arbitrator finds that is premature at this time. This because Petitioner's has other injuries as a result of

being stuck by the door on January 10, 2010 such as injuries to the nose and face. Since Petitioner was not given the opportunity to testify as to his current condition of ill-being as regards the other injuries suffered in this work accident, this matter requires further hearing relative to nature and extent of the full injuries before nature and extent can be properly assessed.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC009107
Case Name	Derry Davis v. Nussbaum Trucking Company
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0036
Number of Pages of Decision	22
Decision Issued By	Christopher Harris, Commissioner, Carolyn Doherty, Commissioner

Petitioner Attorney	Crystal B. Figueroa
Respondent Attorney	Michael Baggot

DATE FILED: 1/24/2025

/s/Carolyn Doherty,Commissioner
Signature

DISSENT: /s/Christopher Harris,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 PEORIA)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
		☐ PTD/Fatal denied
	☒ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DERRY DAVIS,

Petitioner,

vs. NO: 23 WC 9107

NUSSBAUM TRUCKING COMPANY,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission modifies the finding of causal connection and the awards of medical expenses and temporary total disability benefits.

I. Causal Connection

The Commission affirms the Arbitrator's finding of a causal connection between Petitioner's accident and the current condition of his head and neck. The Commission modifies the Decision of the Arbitrator to find a causal connection regarding the left shoulder. The chain of events generally supports a finding of causation regarding the left shoulder, as Petitioner had no shoulder issue prior to the stipulated accident and consistently reported his injury and shoulder symptoms to his treating physicians, who diagnosed a full-thickness rotator cuff tear which ultimately required surgery. Moreover, Dr. Balaram, the Section 12 examiner, who reviewed all of Petitioner's records, including the Accident Worksheet and Smart Drive videos,

initially opined that there was a causal connection between the accident and the left shoulder condition, and changed his opinion only after the insurer wrote him to reconsider based on the different report of the accident generated by Respondent's dispatcher, Mr. Rainwater.

Regarding that initial report, Petitioner testified that he told the person he talked to that he hurt his head, neck, and shoulder. The Accident Worksheet documents that Petitioner injured his head after being knocked out of bed. However, on cross-examination, Mr. Rainwater acknowledged that there were past occasions where he had gotten the history wrong or omitted something from a report. Respondent's internal email chain discusses Petitioner mentioning the shoulder injury to his coworker, "Klay," on Wednesday morning, which is the morning following the accident. Mr. Rainwater's email response indicates that Petitioner may have reported that he was getting ready to sit down on his bed, not that he was knocked out of bed. Respondent's own emails support the conclusions that: (1) Mr. Rainwater was not meticulous in documenting the accident; and (2) Petitioner complained of a shoulder injury the morning after the accident. Petitioner appears to have complained of a shoulder injury more than once before reporting the hyperextension of his arm days later, which Petitioner described as an aggravation or exacerbation of his initial condition.

Petitioner's apparent lack of difficulty steering the truck with his left arm after the accident, as depicted in the Smart Drive videos, may support Dr. Balaram's opinion regarding symptom magnification, but that opinion did not preclude Dr. Balaram from initially finding a causal connection between the stipulated accident and Petitioner's rotator cuff tear. The Smart Drive system was not triggered by the accident, but Respondent does not dispute that the truck was struck and that an accident occurred. Moreover, the Commission considers that a greater force likely would be required to knock Petitioner out of his bed than to throw him off balance while standing in front of his bed, making Petitioner's testimony more likely than the account recorded by Mr. Rainwater. The only evidence contradicting Petitioner's consistent reporting of his shoulder injury is the Accident Worksheet as possibly inaccurately recorded by Respondent's agent, Mr. Rainwater. Given this record, the Commission concludes that Petitioner proved a causal connection between the stipulated accident and the condition of not only his head and neck, but also his left shoulder by a preponderance of the evidence.

II. Medical Expenses / Prospective Care

Based on the above findings regarding causal connection, the Commission affirms the Decision of the Arbitrator awarding Petitioner's necessary and reasonable medical expenses for his head and neck, as reflected in Petitioner's Exhibit 9. The Commission modifies the Decision of the Arbitrator to additionally award Petitioner's necessary and reasonable medical expenses for his left shoulder, pursuant to Sections 8(a) and 8.2 of the Act, as reflected in Petitioner's Exhibit 9. Respondent shall be awarded a credit for medical benefits that have been paid. Lastly, Petitioner sought review of the issue of prospective care. The Commission denies this request, finding that there are no specific recommendations from the treating physicians in the record.

III. Temporary Total Disability

Based on the above findings regarding causal connection, the Commission modifies the Decision of the Arbitrator to award Petitioner temporary total disability benefits for a period of 60 and 3/7ths weeks, from February 14, 2023, when Petitioner was taken off work by Dr. Splitter, through the initial hearing date of April 11, 2024.

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated July 18, 2024, is 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 January 17, 2023 work accident and the condition of ill-being of his head, neck, and left shoulder.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner's reasonable and necessary medical services related to the treatment of his head, neck, and left shoulder, as reflected in Petitioner's Exhibit 9, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be awarded a credit for medical benefits that have been paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $969.64 per week for a period of 60 and 3/7ths weeks, commencing February 14, 2023, through April 11, 2024, as provided in Section 8(b) of the Act.

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

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 $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.

January 24, 2025

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

O: 01/16/25
CMD/kcb
045

/s/ *Marc Parker*
Marc Parker

DISSENT

I respectfully dissent from the majority's decision. I would have affirmed and adopted the Arbitrator's thorough and well-reasoned decision.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC009107
Case Name	Derry Davis v. Nussbaum Trucking Company
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	Crystal Figueroa
Respondent Attorney	Michael Baggot

DATE FILED: 7/18/2024

/s/Maureen Pulia, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JULY 16, 2024 4.985%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

DERRY DAVIS,
Employee/Petitioner

v.

NUSSBAUM TRUCKING CO.,
Employer/Respondent

Case # **23** WC **9107**

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 **Peoria**, on **4/11/24 and 6/27/24**. 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, **1/17/23**, 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 as it relates to his left shoulder ***is not*** causally related to the accident.

Petitioner's current condition of ill-being as it relates to his head/neck ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**1,454.46**; the average weekly wage was $**75,631.92**.

On the date of accident, Petitioner was **57** 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 $**23,271.36** for TTD, $**00.00** for TPD, $**00.00** for maintenance, and $**00.00** for other benefits, for a total credit of $**23,271.36**.

Respondent is entitled to a credit of $**00.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay all necessary medical services as provided in Sections 8(a) and 8.2 of the Act for petitioner's head/neck. Respondent shall be given a credit for medical benefits that have been paid.

Respondent shall pay necessary medical services of $00.00 as provided in Sections 8(a) and 8.2 of the Act for petitioner's left shoulder condition, given that the arbitrator has found petitioner's current condition of ill-being as it relates to his left shoulder is not causally related to the accident on 1/17/23. Respondent shall be given a credit for medical benefits that have been paid.

Respondent shall pay Petitioner temporary total disability benefits of $969.64/week for 0 weeks, as provided in Section 8(b) of the Act, given that the arbitrator has found petitioner's current condition of ill-being as it relates to his left shoulder is not causally related to the accident on 1/17/23 because all time off was related to his left shoulder condition.

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

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

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

Signature of Arbitrator

July 18, 2024

ICArbDec19(b)

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 57 year old truck driver sustained an accidental injury that arose out of and in the course of his employment by respondent on 1/17/23 when his tractor trailer was struck by another tractor trailer. Respondent disputes that petitioner's alleged left shoulder condition is causally related to the accident on 1/17/23. Petitioner denied any problems with, or treatment to his left shoulder, neck or head prior to 1/17/23.

Petitioner began working for respondent 7-10 days prior to the injury. He testified that when he began, he underwent training and orientation. As part of that training the Smart Drive System was discussed. The Smart Drive System is a system that records activity in the truck via video camera based on certain activities or events that take place while driving. Petitioner agreed that the system is activated when certain activities take place, and the cameras will record the front and back of what takes place. Petitioner testified that this system was in place on his truck on 1/17/23.

Petitioner testified that on 1/17/23 he was 6 feet tall and weighed 200 pounds. His educational background includes grammar school and a GED. Petitioner testified that on 1/17/23 he was a truck driver for respondent and his duties were to deliver loads to different shippers. He would back into the dock, open the doors of the tractor trailer, wait for the shipper to unload the trailer, load the trailer, and complete the paperwork. As an over the road trucker petitioner can only be on the road 11 hours a day.

On 1/17/23 petitioner had completed his allowable hours on the road and had gone to a rest area to rest before driving to his next shipper the next day. Petitioner stated that he parked for the day, did his paperwork and everything. As nighttime was coming, he decided to shut it down to go to sleep. He testified that he grabbed a water out of the refrigerator inside the truck, was standing up, and the board where he did his paperwork was still out. As petitioner was about to drink the water, he got rearended. Petitioner testified he was standing and facing the closet, and the impact knocked him off his balance. He testified that he hit his head on the closet, and his left shoulder on the board. Petitioner stated that the refrigerator, the closet, and the board were all to the left of him if he was sitting on his bed.

On cross-examination, he stated that the refrigerator was actually to the right of him if he was sitting on the bed.

On rebuttal, he testified that he was drinking some water when he was rearended, causing him to fall and damage his left shoulder. He also said his head was hurting. Petitioner testified that he was hit very hard, and the Smart Drive System must have been malfunctioning not to have recorded the event. Petitioner testified he is 6 feet tall and 196 pounds.

Petitioner testified that the refrigerator was closed at the time of impact. Petitioner testified that he experienced immediate pain in his left shoulder, and his head was kind of dazed from being rearended. Petitioner stated that he then pulled the curtain back and saw the driver of the truck that hit him running away. He then got his phone, went outside, and said to the other driver "Where are you going? Where are you going? You just hit me," to which the other driver said he did not. The petitioner then took some pictures of the scene of the accident.

On cross-examination petitioner testified that he was rearended on the back right side of his tractor. (RX2, pg. 2) Petitioner testified that in the picture labeled RX2, page 5, his truck is the truck on the left, and the truck that hit him is on the right, ahead of his. Petitioner testified that the truck that hit him is farther up than his because the driver tried to run away, but he came out of his cab and stood in front of the other driver's truck.

On cross-examination, petitioner testified that he had the water bottle in his right hand and upon impact he dropped the bottle and spilled it on him. He further testified that when he fell his left shoulder hurt and was throbbing immediately. Petitioner testified that after the impact, he looked out the window and saw the truck going around him, so he exited the driver's side of his truck, went around the front of his truck and blocked the other driver from going any further. Petitioner testified that the Smart Drive System was not activated because the truck was off, and the Smart Drive System does not work when the truck is off. He further testified that if the Smart Drive System was on the impact was hard enough that the Smart Drive System would have been activated and recorded the accident.

Petitioner testified that he called respondent's dispatcher and told him everything that happened. Petitioner testified that he told the dispatcher that he was hurt, but the dispatcher told him the load had to be done "or whatever like that." Petitioner testified that he agreed to drop off the load the next day, but let him know he was hurt. Petitioner testified that he slept that night, got up, and delivered the load he had.

On cross-examination petitioner testified that he did not know who he talked to at dispatch. He further testified that he told the person he talked to that he hurt his head, neck and shoulder, but the dispatcher did not tell him to seek treatment.

After petitioner called the police, State Trooper Feuer came to assess the damage, and told him that no accident report would be issued because the damage was less than $1,500.00. Petitioner testified that the State Trooper told him to call his insurance.

On cross-examination petitioner testified that he told the State Trooper that he was injured as a result of the injury, but the State Trooper did not take a report. He further testified that that State Trooper recommended that he go see a doctor or go to the emergency room.

On 1/17/23 at 9:00 pm an Accident Reporting Worksheet was completed by David Rainwater as petitioner was reporting the accident to him. (RX1) Rainwater typed all the information into the computer as petitioner was telling him what happened. (RX1) Rainwater input that petitioner told him he 'parked at rest area and another truck side swiped him and his trailer hard enough to knock him out of bed hitting his head." Rainwater also noted that the other driver's name was Efran Yazdani with Spring Freight LLC DOT #2844401. Petitioner did not provide Rainwater with any witnesses, but told Rainwater that State Trooper Feuer responded to the scene, but did not complete an Incident Report because no report is made if the damage is less than $1,500.00. Rainwater noted that petitioner also told him no Citation was issued.

Rainwater testified that when petitioner called in to dispatch to report the incident, petitioner did not mention that he injured his left shoulder. Rainwater stated that had petitioner told him that he injured his left shoulder he would have documented that at the time, and it would have appeared in his report. Rainwater testified that the only complaint petitioner reported was with respect to his head. Rainwater has been with respondent for 15 years, and worked as a driver before joining night operations. Night operations is where emergency calls are received and processed at night.

Petitioner testified that dispatch (Rainwater) told him he would let 'Peggy in HR' (Peg Balducci) and Rick Schmidt, his boss and District Manager, know about the accident the next day. Petitioner returned home after he delivered his load, and Balducci had set up an appointment for him.

Between 1/18/23 and 1/20/23 petitioner continued to work his regular duties as a truck driver for respondent.

In an email response to Balducci in Human Resources, Rainwater stated that petitioner told him nothing about his shoulder. He further stated that "I thought he was getting ready to sit down or just sat down on his bed, and that's when the other truck hit him causing him to hit his head." (PX10)

On 1/20/23 petitioner first presented for treatment at Normal College Convenient Care, complaining of acute pain in his left shoulder. Petitioner reported a left shoulder injury on Tuesday. He reported that on Tuesday night he was parked off at a rest area and another truck hit his truck. He stated that the mechanism of injury was that he was standing in his semi when another vehicle hit him and he landed on his left shoulder on a pull out desk and his head on a closet. He reported that it was painful to

move his left arm, and could not internally rotate the left arm. An x-ray of the left shoulder showed normal alignment, and mild degenerative changes. Petitioner was diagnosed with acute pain of the left shoulder, and a sprain of the left shoulder. He was given a 15 mg Toradol injection.

Following this visit, petitioner testified on cross-examination that he continued working as a full time truck driver for respondent. Petitioner testified that although he was performing his full duty job he was in excruciating pain. He testified that he couldn't take off because he had just started working and needed the money. Petitioner testified that after 1/20/23 he basically used his right hand to drive more. He stated that the truck was automatic so he could use his right hand to drive. Petitioner testified that he would basically keep his left arm down by his knee, on his lap. Petitioner would do this for the 9-10 hours he drove a day, until 2/14/23. Petitioner testified that once in awhile he would forget and move his left arm due to the pain, but that is natural. Petitioner testified that before the injury on 1/17/23 he used both his hands to drive because if you hit a pothole, it is going to jerk.

On redirect examination, petitioner testified that after 1/20/23 while working for respondent that "I'm so used to using both my hands driving, so I was probably using both my hands because I'm used to using both hands driving." He testified that he was pushing it because when you are on the road, you hit potholes, so you jerk, and then jerk the truck. He stated that "It's a habit driving with two hands."

On 2/14/23 petitioner presented to Bloomington Empire Occupational and Employee Health for his left shoulder pain. Petitioner was examined by Dr. Lawrence Splitter, D.O. Petitioner gave a history of standing in his cab 3-5 days before 1/20/23, when he was hit by another truck, causing him to fall and hit his left shoulder on a small shelf. Petitioner also reported that a couple days after the injury he was holding the trailer door open when a gust of wind blew the door causing him to hyperextend the left arm causing increased pain in his left shoulder. He rated his pain at a 10/10. An exam revealed decreased range of motion due to pain. Strength was normal. Dr. Splitter injected petitioner's left shoulder with Toradol, and prescribed pain medications. Dr. Splitter restricted petitioner from driving, and only allowed him to do right hand work. An MRI of the left shoulder was ordered. Petitioner was given a sling.

On 2/16/23 petitioner underwent an MRI of his left shoulder. On 2/17/23 Dr Splitter reviewed the MRI and assessed a full-thickness tear. He referred petitioner to orthopedics.

On 3/7/23 petitioner presented to Specialty Physicians of Illinois Orthopedics. He was seen by Dr. William Payne. Petitioner provided a history of an accident on 1/17/23. He stated that he was parked at a rest site and was hit by another driver. He stated that he was standing in his truck at the time of the

accident and he hit his arm on a table. He reported constant, throbbing pain. He reported trouble sleeping at night. He also reported radiating pain to his neck. He rated his pain at a 10/10. Dr. Payne examined petitioner and reviewed the MRI. He assessed petitioner with cervical radiculopathy and assessed a traumatic complete tear of the left rotator cuff. Dr. Payne ordered an EMG of the left upper extremity and an MRI of the cervical spine. He also planned for a left shoulder arthroscopy, rotator cuff repair, biceps tenotomy versus tenodesis, subacromial decompression and review of the EMG and MRI.

On 3/17/23 petitioner last followed-up with Dr. Payne. Dr. Payne again recommended surgery, as well as an MRI of the cervical spine and an EMG of his left upper extremity.

On 3/17/23 petitioner underwent an MRI of the cervical spine. The impression was shallow protrusion at C7-T1 level with ventral cord effacement, with no clear etiology for a left radicular syndrome.

On 3/21/23, petitioner underwent a Section 12 examination performed by Dr. Ajay Balaram at Hand to Shoulder Associates, at the request of respondent, for his left shoulder. Petitioner gave a history that on 1/16/23 he had his 16 wheeler truck parked at a rest area when he was hit by another truck and injured his left shoulder. He reported that there was a drawer in the cab of the truck that was opened and out, and that when he was struck by the other truck he fell striking his left shoulder onto the open drawer. He also reported that he hit his head on the closet. Petitioner complained of sharp pain associated with the left shoulder, as well as numbness and tingling associated with the left hand, wrist and elbow. He also complained of pain in the left side of the neck, and some occasional pain associated with the right shoulder. Petitioner identified his associated symptoms as the entire left upper extremity including the shoulder, upper arm, elbow, forearm, hand and wrist; left sided neck pain; left sided numbness in the feet; left sided leg pain; and, right sided shoulder pain. Petitioner noted that he was a diabetic and takes Metforim. Petitioner reported that he has been off work since the date of injury.

Following an examination and record review including reports, diagnostic tests and videos, Dr. Balaram noted extensive symptom magnification, prominently with the left shoulder. Dr. Balaram was of the opinion that tenderness to light touch was in a nonanatomic or physiologic distribution, and the petitioner's nerve conditions appeared to follow a nonanatomic or systemic distribution, as opposed to a specific peripheral nerve distribution. Dr. Balaram assessed a left shoulder full thickness rotator cuff tear and SLAP lesion. With respect to the left shoulder pathology, Dr. Balaram was of the opinion that it appeared as though there were some chronic changes, but mostly acute on chronic findings, associated with the petitioner's reported injury on 1/17/23. Dr. Balaram noted that petitioner gave a history of standing in his cab when his truck was struck by another truck and he fell onto the left shoulder on the

open drawer, experiencing immediate pain that he reported immediately. Dr. Balaram was of the opinion that a fall onto an open drawer striking the left shoulder can cause acute pathology associated with the shoulder including a possible rotator cuff tear and SLAP lesion. He based this on immediately reporting the injury after the accident; that there was an accident reported, including to the police on the scene; that the reported mechanism of injury had been consistent throughout the medical records; and, that there were objective findings of pathology on the petitioner's MRI. Dr. Balaram was of the opinion that petitioner is a candidate for a left shoulder arthroscopy, rotator cuff repair, subacromial decompression, and possible biceps tenodesis, causally related to the accident. Dr. Balaram did not see any other conditions in petitioner's bilateral upper extremities causally related to the accident. Dr. Balaram was of the opinion that petitioner could work light duty with no overhead work and limited lifting/pushing/pulling of 1 pound with the left upper extremity. He was also of the opinion that petitioner's treatment to date was reasonable and necessary. Lastly, Dr. Balaram noted that petitioner had extensive symptom magnification, and reported a maximal DASH score which is usually reserved for patients with amputations. He noted that petitioner's subjective complaints outweighed his objective findings.

On 4/27/23 Dr. Balaram issued an addendum report after reading a cover letter from respondent that indicated that the initial report of injury to the employer contradicts the petitioner's reported mechanism of injury. Following a review of the Accident Reporting Worksheet of 1/17/23 and the 1/20/23 report of Nurse Practitioner Berry, as well as his report of his 3/21/23 evaluation, Dr. Balaram noted that there were varying reports of mechanism of injury and development of the petitioner's left shoulder pain in the medical records. Dr. Balaram indicated that based on these discrepancies, his opinion on the issues of causation between the petitioner's current condition of ill-being as it relates to the left shoulder and the injury on 1/17/23 would change. Based on the additional records he reviewed, Dr. Balaram was of the opinion that petitioner's left shoulder condition is not causally related to the injury on 1/17/23.

On 7/7/23 petitioner presented to Illinois Orthopedic Network. Petitioner was seen by Dan Clemente, NP. Petitioner gave a history of being inside his truck when it was hit by another vehicle. He reported that he fell and landed on his left shoulder. He stated that he then felt pain in the left shoulder, aggravated by movement. Following an examination, Clemente recommended further imaging and referral to an orthopedic surgeon for a possible rotator cuff repair. Clemente authorized petitioner off work.

On 7/31/23 petitioner was seen by Dr. Thomas Poepping at Illinois Orthopedic Network. Following an examination Dr. Poepping's impression was left shoulder adhesive capsulitis and left shoulder pain. Dr. Poepping performed an intraarticular injection of Kenalog into petitioner's left shoulder. Dr. Poepping requested that petitioner get him the MRI of his left shoulder to review. Dr. Poepping continued petitioner off work.

Petitioner followed-up with Dr. Poepping on 8/21/23. He reported that his condition remained unchanged. Following an examination, Dr. Poepping's diagnoses were the same. He continued petitioner off work until next visit.

On 9/25/23 petitioner returned to Dr. Poepping. Dr. Poepping reviewed the MRI of the left shoulder and examined petitioner. Dr. Poepping was of the opinion that the MRI showed evidence of a full thickness tear of the anterior supraspinatus, as well as some subacromial bursitis. He was of the opinion that surgery was a reasonable option for petitioner. He recommended a left shoulder arthroscopy, likely rotator cuff repair, subacromial decompression and debridement, and evaluation of the long head of the biceps. Petitioner indicated that he wanted the recommended surgery. Dr. Poepping continued petitioner off work.

On 10/30/23 petitioner underwent a left shoulder arthroscopic rotator cuff repair, subacromial decompression, extensive debridement, and open subpectoral biceps tenodesis performed by Dr. Poepping. Petitioner followed up postoperatively with Dr. Poepping. This postoperative treatment included a course of physical therapy at LaClinica that began on 11/8/23. Petitioner provided a history of the accident during his initial visit.

On 12/4/23 petitioner followed-up with Dr. Poepping. He reported that his pain was controlled. Dr. Poepping noted that petitioner had passive evaluation to 15 degrees, and external rotation to 60 degrees. Dr. Poepping instructed petitioner to wear a sling for 1 more week, and then discontinue use. He also instructed petitioner to continue in therapy. He continued petitioner off work.

On 12/13/23 petitioner's attorneys received a letter from Metro Continued Care regarding an outstanding balance due in the amount of $9,077.92, that had been submitted to West Bend Mutual for payment. Service dates were 10/31/23, 11/3/23, 11/5/23, 11/1/23 and 11/6/23.

On 1/19/24 petitioner had a telephonic visit with Dr. Poepping. He reported that his pain was improved. He rated his pain at 6/10. He reported some soreness under the armpit, and some throbbing at night. Petitioner reported that he weaned off his use of the sling. Dr. Poepping continued petitioner in therapy and off work.

On 2/12/24 petitioner followed up with Dr. Poepping. Petitioner reported that therapy was a bit more aggressive and it was giving him some pain, numbness and tingling in his left hand. He reported that it bothers him a lot at night. Following an examination, Dr. Poepping's impression was status post left shoulder arthroscopic rotator cuff repair, subacromial decompression and debridement and open subpectoral biceps tenodesis, and left carpal tunnel syndrome. Dr. Poepping injected petitioner's left carpal tunnel with Kenalog. Dr. Poepping gave petitioner a cock-up wrist splint for the left wrist. He continued petitioner in physical therapy and off work.

Petitioner last followed up with Dr. Poepping on 3/11/24. He reported good progress with therapy. He also reported that he was doing quite a bit of strengthening. An examination of the left shoulder demonstrated strength in elevation of 4+/5; strength in external rotation of 5/5; biceps supination strength of 5/5; and full range of motion. Dr. Poepping noted that petitioner had a nice response to the carpal tunnel injection, and was doing well with therapy working on his strengthening. Dr. Poepping anticipated one more month of physical therapy followed by a month of work conditioning. He instructed petitioner to follow-up in 4 weeks. He continued petitioner off work.

On 4/5/24 petitioner's last recorded physical therapy took place. This was his 61 of 61 visits. Petitioner reported no new complaints. He reported tenderness on his left shoulder.

Petitioner testified that the reason he was not working was because Schmidt called him and told him he had until the 10th to return to work, otherwise they had to let him go. When he did not return by the 10th he was let go. Petitioner testified that he is not currently working.

On cross examination petitioner testified that he was never involved in a motor vehicle accident in Michigan. Petitioner then responded that he hit the rail, and nobody got hurt. He stated that he was driving his own vehicle. Petitioner denied being in another motor vehicle accident prior to the motor vehicle accident in Michigan. When asked if he was in a motor vehicle accident on 12/15/19, petitioner testified that he could not recall. He then stated that "my car didn't hit no rail." He then testified that he did not know if he had a blowout or something like that. Petitioner denied any workers' compensation claims prior to 1/17/23, and specifically denied filing a workers' compensation claim against PTL in August of 2020. He also denied settling a case as a result of an injury before 1/17/23. Petitioner also denied ever working in a warehouse.

On redirect examination, petitioner testified when asked if he ever had an accident in Michigan he stated that "Yes I did. It's coming to me. I hit a rail." He testified that he slid on ice into the rail. He

denied being injured and sought no treatment. On recross examination petitioner testified that he did not receive any settlement from this motor vehicle accident in Michigan.

On cross examination petitioner was shown pictures of the inside of the sleeper cab of a truck. (RX4, pgs 1-9). Some had no one in them and others had Schmidt. Petitioner testified that some pictures did not look like his truck, because the board did not look the same. Petitioner testified that picture RX4, pg 4, looked like the board in his sleeper cab, but he was not sure about the others pictures because the board in those looked different. Petitioner testified that the board on RX4, pg. 5, was only partially pulled out, and when he fell, the board was pulled out all the way.

On redirect examination, when shown the pictures from RX4, pg 1-9, petitioner could not recall if the sleeper cab in the pictures was from the truck he drove. Specifically with respect to picture 1 and 9, petitioner testified that one picture RX4 page 9, was showing his stuff, and RX page 1, was not. Petitioner confirmed that RX4, page 4 and 9, looked like his sleeper cab, but RX4, page 1 and 8, did not. Petitioner testified that the things on top of the refrigerator in RX4, page 8, did not look like his stuff.

On recross-examination petitioner testified that after 2/14/23 he never went back to respondent to reclaim his items from the truck he was driving on 2/14/23. Petitioner also testified that he did not know if anyone drove the truck he stopped driving on 2/14/23 for respondent, after that date.

Respondent offered into evidence pictures petitioner took of the accident site. (RX2). They included a picture of the front of the truck that hit him, the back right corner of the petitioner's tractor trailer; some gravel debris on the ground; a picture of the driver that hit petitioner's truck looking at the back of his tractor trailer; a picture of the back of the petitioner's tractor trailer; and, the back of the tractor trailer of the person that hit him.

Petitioner offered into evidence unpaid medical bills in the amount of $190,679.54. (PX9)

Rick Schmidt, Senior Director of HR and Safety for respondent, was called as a witness on behalf of respondent. His duties include overseeing both HR and the safety department. His duties include anything from accidents and incidents to insurance, manuals, policy, as well as training and driver development. Schmidt testified that part of his job responsibilities include dealing with workers' compensation cases. Schmidt testified that he is the primary contact for anything involving any significant injuries or significant accidents.

Schmidt testified that his understanding is that petitioner finished the evening on 1/17/23 and parked in a rest area, and another driver looking to park next to him scraped petitioner's truck and tried to run away. Petitioner then got out of his truck and took pictures of the damage, and stopped the other

driver. Schmidt testified that from respondent's understanding the damage was minor, and although the police were called no report was filed because the damage was minor and there were no injuries.

Schmidt testified that the truck petitioner was driving had adaptive cruise control, as well as inward and outward facing event recordings that begin recording when the Smart Drive System is activated. Schmidt testified that the Smart Drive system is activated when something unsmooth takes place (i.e., hard brake, hard acceleration, take a turn too fast, swerve out of way of something in the road). He further testified that it will activate with accidents, rear-end collisions, or anything that results in a jolt, as minor as spilling a cup of coffee. The Smart Drive System also activates if someone is following to close, if the driver hits the panic button because there is something they want to record, or if the driver hits 75 miles an hour. Schmidt testified that when the system is activated the cameras go on and record what is taking place 10 seconds before, and 10 seconds after the activation. It records what is in the cabin and in front of the truck. There is no camera in the back of the truck. Schmidt testified that the cameras activate at .2Gs, which he testified is as little as spilling a cup of coffee.

Schmidt testified that the Smart Drive System is running on the truck 99% of the day. He noted that the only time it would not be running is if the truck is parked and the engine is off for more than eight hours. Schmidt testified that based on the Geotab in the truck petitioner was driving, petitioner had parked in the rest area at about 7:00 pm, and was there when he was struck by the other truck about 9:00 pm. Based on this time frame, Schmidt testified that the Smart Drive System would have been running, and would have activated had the impact been more than .2Gs. Schmidt testified that an impact severe enough to knock someone over in the cab, should have triggered and activated the Smart Drive System, but the System was never activated based on the accident history petitioner provided. He noted that even petitioner, who thought the Smart Drive System was off, testified that had it been on the impact was great enough to have activated the System. Schmidt testified that if the System was not working as petitioner claimed, the office would have received a report indicating that it was not working. He also testified that the office gets information when the Smart Drive System is working, and they received information on petitioner's truck before and after the alleged accident.

Schmidt testified that petitioner did not drive the morning of 1/18/23, but did start driving later that day. He testified that after petitioner resumed driving his Smart Drive System was activated on 1/24/23, 1/25/23, 2/4/23 and 2/13/23 pm when the shock level in his truck hit .2Gs. On 1/24/23, 1/25/23, and 2/13/23 the System was activated when petitioner was making a right hand turn. The recordings show petitioner using primarily his left hand/arm in a full circle motion to turn the vehicle. The Smart Drive System was also activated on 2/4/23 when a driver cut petitioner off and he hits his brake hard. In that

recording petitioner is seen primarily uses his left hand/arm to drive, steer and make the turn. Petitioner's last day of work with respondent was 2/14/23. (RX5) Petitioner testified that he always drives with his left hand. He never uses his right hand. He testified that in all these videos he was basically just pushing through the pain because he needed the job.

Schmidt testified that the photos he took of the sleeper cab in the truck petitioner was driving, were taken in July of 2023, after a new driver had started driving the truck, and that is why the articles in the truck looked different that petitioner's personal belongings. Schmidt testified that he is 6 feet tall, and weighs about 220-230. He testified that he took the pictures to reenact how petitioner was positioned on the date of accident based on conversations petitioner relayed to the office about what took place, and because he and the petitioner were of similar height and weight based on what petitioner reported to respondent. (RX6)

Schmidt testified that petitioner was hired about 1/8/23 or 1/9/23, but did not drive for respondent until 1/16/23 because there were some problems getting a medical card cleared. Schmidt testified that he did not reach out to Klay, who allegedly had a different understanding of the alleged accident involving petitioner's head and left shoulder, even though his office was near his.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

Petitioner alleges that his left shoulder injury is causally related to the accident on 1/17/23, when he fell forward and struck his left arm on a pulled out drawer when his truck was rearended by another truck in a rest area. Respondent denies. Respondent does not dispute the causal connection between petitioner's head/ neck as it relates to the injury on 1/17/23.

With respect to the issue of causation, when a dispute exists, the arbitrator will first look to the opinions of the treating and examining doctors. In giving weight to these opinions it is imperative that the doctor have an accurate history of the mechanism of injury. In the case at bar, the arbitrator finds it significant that none of the petitioner's treating physicians provided a causal connection opinion between petitioner's left shoulder condition and the accident on 1/17/13.

The only causal connection opinion offered was by Dr. Balaram, the respondent's IME. When Dr. Balaman first examined petitioner, petitioner gave a history of standing in his cab when his truck was struck by another truck and he fell onto his left shoulder on the open drawer, experiencing immediate pain. Based on this history, Dr. Balaram opined that there was a causal connection between petitioner's left shoulder condition and the injury on 1/17/23. However, following his examination, Dr. Balaram issued an addendum report after reviewing a letter from the respondent, the Accident Reporting

Worksheet of 1/17/23, the 1/20/23 report of Nurse Practitioner Berry, and the report of his 3/21/23 evaluation. Dr. Balaram noted that there were varying reports of mechanism of injury and development of the petitioner's left shoulder pain in the medical records. Dr. Balaram indicated that based on these discrepancies, his opinion on the issues of causation between the petitioner's current condition of ill-being as it relates to the left shoulder and the injury on 1/17/23 would change. Based on the additional records he reviewed, Dr. Balaram was of the opinion that petitioner's left shoulder condition is not causally related to the injury on 1/17/23.

Although the petitioner provided consistent accident histories to his healthcare providers beginning 1/20/23 that included an injury to his left shoulder when he fell onto an pulled out drawer, the reports of injury most contemporaneous to the accident do not include any injury to petitioner's left shoulder. When petitioner called dispatch after the accident and spoke to Rainwater he provided no history of any injury to his left shoulder. The only thing he told Rainwater was that he hit his head. This history was contemporaneously documented in Accident Reporting Worksheet. Additionally, petitioner testified that he spoke with State Trooper Feuer, who responded to the accident site the night of the accident. Petitioner testified that he told Trooper Feuer that he was hurt and that he hit his head, and that Trooper Feuer just told him to go see a doctor or go to the emergency room, which petitioner did not do. Instead, petitioner continued working until 1/20/23, when he first sought treatment, and provided a completely different mechanism of injury.

Respondent also offered into evidence pictures of petitioner's truck following the accident. The pictures show a very small minor scratch on the back passenger side of petitioner's tractor trailer (RX2, pg 2), and a very small amount of dirt debris that might have fallen off the truck when it was struck. (RX2, pg 4). At one point during his testimony petitioner testified that the other truck driver rearended him. But from petitioner's other testimony and the pictures of the accident scene, it is clear that the other truck driver side swiped the back passenger side corner of the petitioner's tractor trailer leaving a small scratch, and a very minimal amount of dirt debris that fell off of petitioner's tractor trailer as a result of the impact. The arbitrator finds it significant that there are no dents or significant damage to the back side of petitioner's trailer where the impact took place. Given that petitioner's Smart Drive System, which was operating at the time, did not activate, the arbitrator finds the force of impact on petitioner's tractor trailer by the other driver was not hard enough to "spill a cup of coffee." The arbitrator also notes that the spot of impact was the entire tractor trailer length away from where petitioner was in his sleeper cab. Additionally, the arbitrator finds it significant that Trooper Feuer assessed the damage to be less than $1,500.00.

Also, with respect to the petitioner's credibility, the arbitrator questions the petitioner's alleged mechanism of injury based on the credible evidence. The petitioner claims that he was standing drinking a bottle of water when his truck was hit and he fell forward striking his left shoulder on the pull out drawer and hitting his head on the cabinet. Looking at the pictures of petitioner's sleeper cab, the pull out drawer is directly next to the lower bed at about the same height (PX5, pgs. 1,4). If the petitioner was standing as he claims, the arbitrator finds the pull out drawer was at about his knee level, based on the picture in PX5, pg. 9, given that he and Schmidt, who is in the picture, are the same height. Looking at PX5, pg. 4, 9, the arbitrator does not see how if petitioner's tractor trailer was struck and he fell as he claims, how petitioner from a standing position could fall and hit his left shoulder on the pulled out drawer, given that the pull out drawer is located at his knee level. Additionally, if the petitioner was jolted forward into the cabinet and hit his head on the cabinet as he claims, the arbitrator sees no manner in which the petitioner at the same time could hit his left shoulder on the pulled out drawer. For these reasons, the arbitrator finds the petitioner's alleged mechanism of injury less than persuasive.

The arbitrator also notes a history petitioner gave on 2/14/23. At that time, petitioner reported that only a couple days after the injury of 1/17/23 he was holding the trailer door open when a gust of wind blew the door open causing him to hyperextend his left arm, and experience increased pain in the left shoulder. The arbitrator finds that given petitioner continued to work and did not seek any treatment until 1/20/23, three days after the accident, that this described incident could have occurred prior to his first visit on 1/20/23 and be the cause of his current left shoulder complaints, given that before 1/20/23, there is no documented evidence that petitioner reported any left shoulder complaints as a result of the accident on 1/17/23.

Although the petitioner stated that his left shoulder pain following the injury was so excruciating that when he was driving he had to keep his left arm in his lap, the arbitrator finds the videos from the Smart Drive System rebut this testimony. The videos recorded by the Smart Drive System after the accident on 1/17/23 clearly show petitioner turning the wheel fully and easily with his left arm when making turns without any difficulty on 1/24/23, 1/25/23, and 2/13/23. (RX10). This, coupled with Dr. Balaman's findings of petitioner's extensive symptom magnification, leads the arbitrator to find petitioner's testimony as to his left shoulder less than persuasive.

Lastly, the petitioner claims that "Klay", who works for respondent, allegedly had a different understanding of the alleged accident involving petitioner's head and left shoulder. However, petitioner made no attempt to call Klay as a witness to provide his understanding of petitioner's injury on 1/17/23.

Therefore, 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 that his current condition of ill-being as it relates to his left shoulder is causally related to the injury he sustained on 1/17/23.

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?
L. IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE?

Petitioner is requesting medical expenses for treatment he received for his left shoulder, head and neck. Based on the arbitrator's finding that petitioner has failed to prove by a preponderance of the credible evidence that his current condition of ill-being as it relates to his left shoulder is causally related to the injury on 1/17/23, the arbitrator finds the petitioner is not entitled to any prior or future medical expenses related to his left shoulder.

Respondent shall pay all necessary medical services as provided in Sections 8(a) and 8.2 of the Act for petitioner's head/neck. Respondent shall be given a credit for medical benefits that have been paid.

Respondent shall pay necessary medical services of $00.00 as provided in Sections 8(a) and 8.2 of the Act for petitioner's left shoulder condition, given that the arbitrator has found petitioner's current condition of ill-being as it relates to his left shoulder is not causally related to the accident on 1/17/23. Respondent shall be given a credit for medical benefits that have been paid.

L. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

Based on the arbitrator's finding that petitioner has failed to prove by a preponderance of the credible evidence that his current condition of ill-being as it relates to his left shoulder is causally related to the injury on 1/17/23, and all of petitioner's time off was related to his left shoulder condition, the arbitrator finds the petitioner is not entitled to any temporary total disability benefits.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC020514
Case Name	Emory Erwin v. City of Chicago
Consolidated Cases	22WC031615;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0037
Number of Pages of Decision	35
Decision Issued By	Marc Parker, Commissioner, Christopher Harris, Commissioner

Petitioner Attorney	Jack Cannon
Respondent Attorney	Derrick Lloyd

DATE FILED: 1/24/2025

/s/Christopher Harris,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 up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

EMORY ERWIN,

Petitioner,

vs. NO: 22 WC 20514

CITY OF CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, the reasonableness and necessity of the medical treatment and charges, prospective medical treatment, temporary total disability benefits, and penalties, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. 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).

This claim was consolidated with claim number 22 WC 31615 for purposes of the arbitration hearing and review before the Commission. A separate decision has been issued for claim 22 WC 31615.

The Commission disagrees with the Arbitrator's decision to deny penalties in this matter. After reviewing the evidence, the Commission modifies the Arbitrator's denial of penalties and

finds that penalties and attorney's fees under Sections 16, 19(k) and 19(l) are warranted. All else is affirmed and adopted.

Section 19(l) of the Act states:

> If the employee has made written demand for payment of benefits under Section 8(a) or Section 8(b), the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay. In the case of demand for payment of medical benefits under Section 8(a), the time for the employer to respond shall not commence until the expiration of the allotted 30 days specified under Section 8.2(d). In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of $30 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed $10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay. *820 ILCS 305/19(l)*.

The Commission finds that Respondent's denial of benefits from November 29, 2022 through March 28, 2023, the date of Dr. Deutsch's report was without good and just cause. After the second accident on November 28, 2022, the Petitioner filed an Application for Adjustment of Claim on December 5, 2022, and an 8(a) petition on December 13, 2022, requesting approval for treatment related to the new injury. The Petitioner's attorney specifically pointed out disputes concerning the medical bills from Concentra Medical as well as the lack of TTD benefits despite multiple requests made to the Respondent. The Respondent did not file a response. Instead, Dr. Deutsch conducted an examination of the Petitioner on March 27, 2023, and issued a report the following day, March 28, 2023. Based on the findings, Dr. Deutsch concluded that there was no mechanism of injury to the cervical spine on November 28, 2022. Additionally, the cervical MRI showed no objective evidence of an injury. Dr. Deutsch stated that the medical treatment for the cervical spine was not reasonable or necessary, as there was no injury to that area. He opined that Petitioner had reached MMI and was capable of returning to full duty work. While Dr. Deutsch's report provides Respondent a reasonable basis to deny liable effective March 28, 2023, the Respondent did not provide a reasonable explanation for withholding benefits from November 29, 2022 until the report's issuance. Without such a report, the Commission finds Respondent's conduct unreasonable pursuant to Section 19(l). Accordingly, the Commission awards Petitioner penalties pursuant to Section 19(l) of $3,600.00, representing 120 days x $30 per day from November 29, 2022 through March 28, 2023.

With respect to Section 19(k) penalties and Section 16 attorney's fees, the Act provides:

> In case where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award. Failure to pay compensation in accordance with the provisions of Section 8, paragraph (b) of this Act, shall be considered unreasonable delay. When determining whether this subsection (k) shall apply, the Commission shall consider whether an Arbitrator has determined that the claim is not compensable or whether the employer has made payments under Section 8(j). *820 ILCS 305/19(k)*.

According to Section 16,

> Whenever the Commission shall find that the employer, his or her agent, service company or insurance carrier has been guilty of delay or unfairness towards an employee in the adjustment, settlement or payment of benefits due such employee within the purview of the provisions of paragraph (c) of Section 4 of this Act; or has been guilty of unreasonable or vexatious delay, intentional under-payment of compensation benefits, or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of paragraph (k) of Section 19 of this Act, the Commission may assess all or any part of the attorney's fees and costs against such employer and his or her insurance carrier. *820 ILCS 305/16*.

Our Supreme Court further instructed in *McMahan v. Indus. Comm'n*:

> In contrast to section 19(l), section 19(k) provides for substantial penalties, imposition of which are discretionary rather than mandatory. (Citation omitted). The statute is intended to address situations where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose. This is apparent in the statute's use of the terms 'vexatious,' 'intentional' and 'merely frivolous.' Section 16, which uses identical language, was intended to apply in the same circumstances. 183 Ill. 2d 499, 515 (1998).

The employer has the burden of justifying the delay. *Jacobo v. Ill. Workers' Comp. Comm'n*, 2011 IL App (3d) 100807WC. In response to Petitioner's argument for the imposition

of penalties and attorney's fees pursuant to sections 19(k) and 16, the Respondent asserts that it acted in good faith when challenging liability for the cervical spine treatment, relying on the findings from three Section 12 reports authored by Dr. Forsyth and Dr. Deutsch. Respondent relies on Dr. Deutsch's opinion that Petitioner did not sustain a cervical injury in the June 23, 2022 accident based on the lack of objective evidence of injury in the medical records and the lack of objective evidence of injury on the cervical MRI. Further, Dr. Deutsch noted that the Petitioner failed to provide a clear explanation of injury during the November 28, 2022 accident and observed that Petitioner's complaints remained consistent and that he exhibited evidence of malingering during the examination. Based on these opinions, the Respondent argues that it had a reasonable basis to deny treatment related to the cervical spine arguing that there was no substantiated medical evidence of a cervical injury related to the accidents.

The Respondent had a good faith objection to deny payment of medical expenses and TTD benefits based on Dr. Deutsch's report dated March 28, 2023. However, the Respondent's decision to deny payment of TTD and medical benefits between November 29, 2022 and March 28, 2023 was unreasonable and vexatious as it lacked a supporting medical opinion at that time. Based upon the evidence, the Commission finds that the Respondent unreasonably and vexatiously withheld TTD benefits from November 30, 2022 to March 28, 2023, resulting in outstanding TTD benefits of $21,484.58. Additionally, the evidence supports that medical bills incurred during this period, totaling $5,537.13, remain outstanding.[1] As such, the Petitioner is entitled to additional compensation of $13,510.86, representing 50% of the outstanding amount, pursuant to Section 19(k). Furthermore, the Petitioner is also entitled to attorney's fees of $2,702.17, or 20% of additional compensation awarded pursuant to Section 16.

All else if affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed March 25, 2024, is hereby modified as stated above and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner penalties pursuant to Section 19(l) of the Act in the amount of $3,600.00.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner penalties pursuant to Section 19(k) of the Act in the amount of $13,510.86.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner attorney's fees pursuant to Section 16 of the Act in the amount of $2,702.17.

[1] Based upon the evidence, the following bills incurred between November 29, 2022 and March 28, 2023 remain unpaid: 1) Concentra - $447.13; 2) ReLive Physical Therapy - $4,515.00; and 3) Illinois Bone and Joint - $575.00, representing $5,537.13 outstanding.

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

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

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

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

January 24, 2025

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

CAH/tdm
O: 12/19/24
052

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

SPECIAL CONCURRENCE/DISSENT

I concur with the Majority's decision to modify the decision of the arbitrator and award penalties. However, because in my view the opinions of Dr. Deutsch were so unreliable, I would have awarded penalties through the date of trial. Therefore, I respectfully dissent from that portion of the Majority's decision.

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC020514
Case Name	Emory Erwin v. City of Chicago
Consolidated Cases	22WC031615;
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Corrected Decision
Commission Decision Number	
Number of Pages of Decision	29
Decision Issued By	Crystal Caison, Arbitrator

Petitioner Attorney	Jack Cannon
Respondent Attorney	Derrick Lloyd

DATE FILED: 3/25/2024

/s/Crystal Caison, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF MARCH 19, 2024 5.13%

Consolidated with Case No: 22WC031615

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
CORRECTED ARBITRATION DECISION
19(b)

EMORY ERWIN
Employee/Petitioner

v.

CITY OF CHICAGO
Employer/Respondent

Case # **22** WC **020514**

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 **July 12, 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 _____

Consolidated with Case No: 22WC031615

FINDINGS

On the date of accident, **6/23/2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**97,760.00**; the average weekly wage was $**1,880.00**.

On the date of accident, Petitioner was **42** 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 $**36,431.43** for TTD, $**0** for TPD, $**0** for maintenance, and **$11,245.32** PPD Advance, for a total credit of $**47,676.7**5.

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

ORDER

The Arbitrator finds that Petitioner met his burden to establish that the June 23, 2022 accident occurred and arose out of and in the course of Petitioner's employment by Respondent.

The Arbitrator finds that Petitioner has proven by a preponderance of the evidence that his condition of ill-being in the neck, bilateral shoulders and cervical spine are causally related to the June 23, 2022 work accident.

The Arbitrator finds the Petitioner's treatment to be reasonable and necessary, pursuant to the medical fee schedule and finds that Respondent has not paid for said treatment. As such, the Arbitrator orders the Respondent to pay reasonable and necessary medical services as set forth below for causally related treatment Petitioner underwent, as provided in Sections 8(a) and 8.2 of the Act.

$4,626.74 to Concentra Medical Center, $2,250.00 to American MRI, $6,500.00 to University Spine Surgeons, $62,245.00 to ReLive Physical Therapy, $5,311.00 to Illinois Bone and Joint Institute, and $1,878.27 to Pain and Spine LLC.

The Arbitrator finds that Petitioner is entitled to prospective medical care as recommended by Dr. Neckrysh. Respondent shall authorize and pay reasonable and necessary medical services associated with said treatment.

The Arbitrator finds Arbitrator finds Respondent liable for a total of 54 3/7 weeks of Temporary Total Disability (TTD) benefits (from the periods June 24, 2022 to November 28, 2022 & November 30, 2022 through July 12, 2023) at a weekly rate of $1,253.33, which corresponds to $68,216.96. After applying the Respondent credit in the amount of $47,676.75, the Respondent shall pay to Petitioner $20,540.21.

The Arbitrator declines to impose any penalties and fees.

Respondent is entitled to a credit for TTD paid in the amount of $36,431.43 and for the PPD advance in the amount of $11,245.32 for a total credit of $47,676.75.

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

Crystal L. Caison

March 25, 2024

ICArbDec19(b)

ILLINOIS WORKERS' COMPENSATION COMMISSION
CHICAGO, ILLINOIS – COOK COUNTY

EMORY ERWIN,	)		
	)		
Petitioner,	)	Case No:	22WC 020514
	)	*Consolidated*:	22WC 031615
v.	)		
	)		
CITY OF CHICAGO,	)		
	)		
Respondent.	)		

CORRECTED ARBITRATOR DECISION

PROCEDURAL HISTORY

This matter proceeded to hearing on July 12, 2023 before Arbitrator Crystal L. Caison. Issues in dispute include accident, causal connection, medical bills, prospective medical care, TTD benefits, and penalties under §16, §19(k), and §19(l). (AX 1).

The parties reserved the issue of injury relating to Petitioner's alleged carpal tunnel syndrome for a future hearing. The parties stipulated that Respondent paid TTD benefits in the amount of $36,431.43 and a PPD advance in lieu of TTD in the amount of $11,245.32. (AX 1).

A decision and orders were entered on February 15, 2024. Petitioner filed a timely 19(f) petition requesting for the Arbitrator to issue a corrected decision to clarify in the Arbitrator's Decision and Orders the calculations of the respective TTD payments ($36, 431.43), PPD advance payments ($11,245.32) and amount due and owing to Petitioner through July 12, 2023, which is $20,540.21. Also, the Arbitrator is correcting a typo in paragraph 3 in Order #22WC031615. The correction is to delete the reference of Case #22WC031615 and insert in its place Case #22WC020514.

This corrected decision addresses changes under Issue "L" and in the corresponding Orders #22WC020514 and #22WC031615.

THE ARBITRATOR MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner's Testimony

Petitioner worked for 10 years as a 43-year-old construction laborer for the City of Chicago's Department of Water Management. His job duties include excavating ditches, repairing fire hydrants, and repairing water mains throughout the city. TR 19-21. Petitioner is required to lift various pieces of equipment necessary to perform the job including ladders, drills, saws, pumps, and generators, which can weigh as little as five to ten pounds and as much as 100 pounds. TR 21. Petitioner's duties also include carrying materials, climbing in and out of ditches with materials, and using a clay spade to hand dig six-foot by four-foot ditches. TR 20-21. Prior to the June 23, 2022, Petitioner never underwent medical treatment, never missed any time from work for neck, left shoulder, or right shoulder injuries prior and was working without issue. TR 22.

June 23, 2022 Injury

On June 23, 2022, Petitioner was working the afternoon shift, 3:00pm - 11:00pm. He was offloading a service pump from a trailer when the frame detached, the pump broke from the frame, and fell forward. TR 22. Petitioner tried to catch the pump, and it jerked his body causing him to fall forward. TR. 22-23. Petitioner estimated that the pump weighed between 80 and 100 pounds. TR 23. Petitioner immediately felt a strain over the left side of his neck and his back and believed that he injured both shoulders. TR 23. He reported the incident to his foreman, Jose Mota, but continued to work the rest of the shift. TR 23. Respondent's incident report reflects that on June 23, 2022 Petitioner was "offloading a pump from a construction trailer and frame came off pump assembly causing Emory to fall forward from the weight of the pump caused left shoulder pain and tingling in his hands right shoulder sore." PX 1, pg. 236.

By the end of the shift, Petitioner felt terrible. TR 24. His shoulder was swollen, his neck was stiff, he could not really move and one of his coworkers gave him an Ibuprofen and a muscle relaxer. TR 24.

June 24, 2022, Petitioner was sent by his foreman, John Daly, to Respondent, the City of Chicago's occupational medical facility, Concentra, where he was seen by Anthony Oyetola, NP. TR 25, PX 1 p. 228. Petitioner reported left shoulder and left upper back pain. PX 1 p. 228. Concentra put Petitioner on light duty, consisting of no use of the left arm, no reaching above the shoulders with his left arm, and no use of power/impact/vibratory tools with the left arm. TR. 25, PX1 p. 228. Petitioner began receiving Temporary Total Disability ("TTD") benefits. TR 25. Petitioner testified that he ultimately had two epidural injections in his neck, but they did not relieve his pain. TR 30.

A few weeks later, Petitioner was notified that Dr. Deutsch said the petitioner could work full duty. TR 30. Petitioner's understanding was that Dr. Forsythe examined him for his shoulder and Dr. Deutsch for his neck. TR 30-31.

November 28, 2022 Injury

Petitioner testified that he went back to work on November 28, 2022. He said that he was putting away shovels and ladders and two other employees were trying to put away a pump. When he tried to help lift the pump overhead, he felt a pull on his right side similar to the one on his left side. TR 31-32 Petitioner testified that he told the foreman what happened, and he was directed to go back to Concentra the next day. TR 33.

Petitioner's current condition

Dr. Taiwo never returned Petitioner back to work full duty after the November 28, 2022 visit. TR 34. Respondent never restarted Petitioner's workers' compensation benefits following the November 28, 2022 accident despite Dr. Taiwo taking him off work again. TR 34. Respondent did not have any medical opinion returning Petitioner to work after the November 28, 2022 aggravation at work at that time. Petitioner has been without benefits since then. TR 34. He received a PPD advance in exchange for a continuance in the spring of 2023. TR 34.

Petitioner testified that, as of the hearing date, it was difficult to move and do some of the things that he used to do. TR 35-36. It is also hard to drive. His pain flares up "really bad" so that he cannot twist his whole body and cannot look over his shoulder. He testified that he cannot do anything with his kids anymore. TR 35-36. Petitioner feels pain and pulling in his neck and at the top of his left shoulder, which starts at the top of his neck and comes down into the middle of his back. TR 36. Petitioner testified his pain began with the June 23, 2022 accident and has never gone away since. Petitioner kept pointing to his left shoulder and neck area at the time of his testimony. TR 36.

Petitioner testified that he's been without a regular source of income since November 2022. TR 34, 37-39. Petitioner advised the Arbitrator that he would like the Arbitrator to award payment of his medical bills which he identified. TR 39.

Despite the opinions in the medical records and by Petitioner's treating medical providers, Respondent cross-examined Petitioner on whether he injured his shoulder or his neck and as to whether or not he had or reported a second accident on November 28, 2022. Petitioner kept pointing to the left side of the top of his shoulder the bottom of his neck. TR 40-47.

On re-direct, Petitioner read into the record a signed statement from his foreman (and Respondent's own employee), Jim Leatherman. TR 70. Mr. Leatherman confirmed that the petitioner had suffered a second accident on November 28, 2022.

Petitioner testified that he complained of tingling in his fingers from the very first day he got hurt in June 2022. Petitioner testified he had never heard of the term, "cervical radiculopathy" before Dr. Taiwo explained it to him. Petitioner was not aware that injuries to his neck could cause pain in his shoulder and his hands until that conversation with Dr. Taiwo. TR 72-73. Petitioner testified Dr. Taiwo was the first person to tell him he had, in fact, injured his neck and that he had a herniated disc, which was causing shoulder pain. TR 73. Petitioner reconfirmed that Dr. Taiwo was the physician at Concentra that the City of Chicago sent him to. TR 73.

Medical treatment after Petitioner's June 28, 2022 injury

June 28, 2022, Petitioner followed up with Dr. Afiz Taiwo at Concentra on complaining of pain in his bilateral shoulders of 8/10 in severity, mostly left shoulder, and numbness of the left thumb. PX1 p. 221. Dr. Taiwo noted that Petitioner had "left shoulder pain that travels down the arm, left thumb numbness… still awaiting authorization for therapy." *Id*. at 218. Petitioner was unable to sleep at night. *Id*. at 221. Petitioner reported that he had not been working, and no light duty was available. *Id*. Dr. Taiwo advised Petitioner to return to work with no use of left arm. *Id*. at 223. Dr. Taiwo diagnosed Petitioner with left shoulder strain, muscle strain left upper back. *Id*.

July 5, 2022, the Petitioner returned to see Dr. Taiwo, who assessed Petitioner with impingement of the left shoulder and referred him to physical therapy. PX 1, p. 210. When Petitioner reported to physical therapy at Concentra, he was continuing to have pain in his left arm and hand. PX 1, p. 194.

July 20, 2022, Dr. Taiwo diagnosed Petitioner with cervical radiculopathy and ordered an MRI of his neck. PX 1, p. 152.

July 27, 2022, Petitioner returned to see Dr. Taiwo. PX1 p. 123. Dr. Taiwo diagnosed him with left cervical radiculopathy and recommended physical therapy three times a week for two weeks. *Id*. Petitioner was placed on modified duty with no use of his left arm. *Id*.

August 2, 2022, Petitioner's MRI revealed multiple cervical disc abnormalities. PX 2, p. 4. Dr. Saldanha, the radiologist, reported that the MRI showed a 2mm disc bulge toward the left with 4-5mm disc herniation vs. bulge left foramen; C5-6 2mm mildly lobular disc bulge eccentrically greater towards the left up to 3- 4 mm; C6-7 1 mm disc bulge with broad endplate lateral spondylosis; and C6-C7 impingement of the thecal sac. (See also PX 6, p. 14).

August 3, 2022, Petitioner was next seen at Concentra by nurse practitioner, Emily Opiola, NP. Petitioner continued to have soreness with movement in his left shoulder and left side of his neck.

August 5, 2022, Petitioner returned to Concentra, and it was noted that his symptoms were worsening, constant, sharp, and aching. PX1 p. 73. Dr. Taiwo placed him off work completely. PX1 p. 73. Dr. Taiwo also diagnosed Petitioner with left cervical radiculopathy, herniation of cervical intervertebral disc with radiculopathy, and referred him to a specialist. Tr 27-28, PX 1, p. 73.

Maria Diaz of Concentra authored a note stating, "I was trying to obtain physical therapy authorization for the injured worker, Emory Erwin. Our provider is requesting 6 sessions for the cervical. Could you please forward the approval status." PX1 p. 67- 68. A response from Mary Menlendez of GBTPA.com states, "I approve the 6 sessions." PX1 p. 67. The date of injury is listed as June 23, 2022. PX1 p. 67.

September 1, 2022, Petitioner presented to Dr. Sergey Neckrysh, who noted a consistent history of the June 23, 2022 accident. TR 28, PX 3, p.12. Dr. Neckrysh reviewed the MRI of Petitioner's cervical spine and noted an acute foraminal disc herniation to the C5-6 foramina on left side. Dr. Neckrysh recommended another month of physical therapy and a nerve root block at C5-6 on left side. *Id*. at. p. 14-15. He stated that if this controlled Petitioner's symptoms, he could continue physical therapy and injections. PX 3 p. 14-15. Otherwise, Dr. Neckrysh recommended C5-6 anterior cervical discectomy and fusion. Petitioner was placed off work. *Id*.

September 15, 2022, at Respondent's request, Petitioner was seen by Dr. Brian Forsythe, pursuant to §12 of the Act. RX 3. Dr. Forsythe's assessment was, resolved acute left shoulder strain and recommended Petitioner return to work full duty. *Id*. He did not comment on Petitioner's neck. *Id*.

Between September 16, 2022 and September 21, 2022, Petitioner attended physical therapy at ReLive Physical Therapy. PX 4.

September 22, 2022, Petitioner saw Dr. Udit Patel at the referral of Dr. Neckrysh. PX 5, p. 5. Dr. Patel noted Petitioner had a lifting injury at work and his pain was a 7/10, and recommended an epidural steroid injection, but Petitioner elected to postpone the injection . *Id*.

September 28, 2022, September 30, 2022, October 3, 2022, and October 5, 2022, Petitioner continued physical therapy at ReLive. PX 4. The injury was described as cervical radiculopathy and the therapy focused on Petitioner's neck and left upper extremity. PX 4, p. 98-114.

October 5, 2022, Petitioner followed up with Dr. Patel at the Pain & Spine Institute for an injection. PX 5, p.8. Dr. Patel noted Petitioner's pain was 4-5/10 and remarked that Petitioner was showing some signs of improvement with physical therapy. *Id*. They discussed holding off on the injection to see how he did with physical therapy. *Id*.

October 6, 2022, Petitioner returned to Dr. Neckrysh and Dr. Neckrysh agreed with Dr. Patel's plan to finish physical therapy and then evaluate for a new nerve root block or epidural steroid injection. PX 3, p. 18. Dr. Neckrysh advised Petitioner to follow up in November. PX 3, p. 18. Petitioner continued physical therapy at ReLive Physical Therapy three times a week throughout October 2022. PX 4, p. 115-135.

October 31, 2022, Dr. Deutsch diagnosed Petitioner with "at most" a left shoulder and left trapezius strain, stating the petitioner had no objective findings of injury. RX 4. Dr. Deutsch posited that the MRI of Petitioner's cervical spine was unremarkable, and that Petitioner should have no work restrictions for his left shoulder. RX 4. Dr. Deutsch opined that there was no causation for the neck symptoms and no initial neck complaints or mechanism of injury. Dr. Deutsch stated there is no evidence of a mechanism of injury for the cervical spine in the records. RX 4. Petitioner continued physical therapy at ReLive three times a week throughout November 2022. PX 4.

November 3, 2022, Petitioner returned to Dr. Patel with continued pain at 5/10 in severity located in the neck, left shoulder, and left arm. PX 5 p. 10. Compared to the prior visit, his pain was worse. *Id*. Dr. Patel recommended Petitioner return in 2 weeks for an epidural steroid injection. *Id*.

November 10, 2022, Petitioner was seen by Dr. Neckrysh and complained of continued neck pain that traveled to the shoulder and with a new complaint of tingling when he "taps on his veins" in the projection of the carpal tunnel in the left hand. PX 3 p. 19. Dr. Neckrysh recommended continued physical therapy, a selective nerve root block, and an EMG of the left upper extremity. *Id*. Petitioner was instructed to follow up at the beginning of December after

EMG and injection. *Id*. Petitioner continued physical therapy throughout November at ReLive. PX 4.

November 23, 2022, Petitioner returned to Dr. Patel who administered a transforaminal epidural steroid injection at C5-C6 on the left. PX 5, p. 13.

Medical treatment after Petitioner's November 28, 2022 injury

Petitioner underwent an EMG performed by Dr. Adarsh Shukla. PX 1, p. 59. The EMG results were abnormal with evidence of chronic left sided C8- T1 radiculopathy without active denervation. *Id*. The EMG also showed evidence of superimposed moderate to severe left side median neuropathy at the wrist/carpal tunnel. *Id*., PX 6, p. 8.

November 29, 2022, Petitioner saw Dr. Taiwo. PX 1 p. 23-25. Respondent's incident report describes the incident as lifting a pump onto a truck, lists an accident date of November 28, 2022, and notes injuries to Petitioner's back and neck. PX 1, p. 24.

Dr. Taiwo documented the new accident and diagnosed Petitioner with left cervical radiculopathy and herniation of cervical intervertebral disc with radiculopathy and recommended Petitioner remain off work and follow up with his current treating orthopedic. PX1 p. 56. The November 29, 2022 note lists a case date of June 23, 2022, (PX 1, p. 56), and states, "Patient has ongoing aggravation of cervical impingement." PX 1, 35. Dr. Taiwo states the "reason for visit" was "workers' compensation." PX 1, p. 38. Petitioner was released from care at Concentra on that date. PX 1, p 38.

Petitioner continued physical therapy three times a week at ReLive throughout November and December of 2022. TR 34, PX 4. On December 8, 2022, Petitioner returned to see Dr. Patel and reported significant relief of the upper extremity pain from the procedure but that "[h]e did go back to work as ordered from the IME on the 28th and did reinjure himself." PX 5 p. 16. Petitioner

reported that he was lifting another pump with help and had sudden and severe neck pain and has worsening pain over the [bilateral] cervical and thoracic spine." PX 5, p. 16. Dr. Patel noted that Petitioner's severe spasms and radicular pain in the left upper extremity were improved but felt Petitioner would have been better if he had not had his injury repeat at work on November 28th. PX 5, p. 16. Dr. Patel's diagnosis was continued neck pain with myofascial pain. PX 5, p. 16.

December 15, 2022, Petitioner returned to Dr. Neckrysh, who noted that he needed to see the EMG report to evaluate whether Petitioner should proceed with surgery. PX 3, p. 21. Petitioner continued therapy at ReLive three times a week between December 16, 2022 and January 3, 2023. PX 4.

January 5, 2023, Petitioner followed up with Dr. Patel for pain management and reported that his pain was 6/10 and related back to the lifting event at work. PX 5, p. 19. Dr. Patel noted the bulk of Petitioner's pain was axial but noted continued numbness in Petitioner's left hand. PX 5, p. 19. Dr. Patel also stated that Petitioner was still in physical therapy and off work. PX 5, p. 19. The diagnosis remained continued neck pain myofascial muscle pain with a treatment for medication for pain. PX 5, p. 19. Petitioner continued therapy with ReLive Physical Therapy twice a week through January 25, 2023.

January 26, 2023, Petitioner returned to see Dr. Neckrysh who reviewed the EMG report, which demonstrated chronic left sided C8-T1 radiculopathy without any active denervation. Dr. Neckrysh opined that Petitioner should undergo treatment for left sided carpal tunnel, and given the severity the findings, have the carpal tunnel release performed by a hand orthopedic surgeon because that was a surgery that Dr. Neckrysh did not perform. PX 3, p. 2. Dr. Neckrysh recommended that if Petitioner remained symptomatic afterwards, he should return for continued assessment. PX 3, p. 2. Petitioner continued therapy at ReLive into February 2023. PX 4.

February 2, 2023, Dr. Patel noted that Petitioner had bilateral neck pain rating 7/10. PX 5, p. 22. Dr. Patel noted Petitioner was stable with medication for pain and requested that he come back to see him after he had seen the hand surgeon. PX 5, p. 25.

February 18, 2023, Dr. Taiwo completed a physician statement for disability benefits, in which he opined that Petitioner is unable to return to work. PX1 p. 5. Petitioner participated in physical therapy three times a week at ReLive from February 3, 2023 through March 8, 2023. PX 4.

March 9, 2023, Petitioner returned to see Dr. Patel with a similar history of bilateral neck pain, (PX 5, p. 25), then continued physical therapy at ReLive three times a week from March 10, 2023 through April 4, 2023. PX 4.

March 28, 2023, four (4) months after his second injury, Petitioner was seen by Dr. Deutsch for a second time at the instruction of Respondent for a §12 examination. RX 6.

April 5, 2023, Petitioner saw Dr. Patel and complained of having neck pain, now rating 8/10 in severity. PX 5, p. 28. On examination, Petitioner had "palpable taught bands of muscles that would signify a spasm" with restricted range of motion and sensitivity to touch. PX 5, p. 28. Dr. Patel administered a trigger point injection. PX 5, p. 28.

April 20, 2023, Petitioner returned to see Dr. Patel reporting some relief from the injection, but that his pain was now deeper. PX 5, p. 31. Dr. Patel recommended a new MRI. PX 5, p. 31.

April 27, 2023, Petitioner returned to Dr. Neckrysh. At that time, Dr. Neckrysh explained the previous MRI showed a large disc herniation at C5-6 on the left "which would produce C5-C6 radiculopathy, which will mimic distribution of pain in the first, second, and third digits consistent with carpal tunnel." PX 3, p. 24. Dr. Neckrysh noted a smaller disc protrusion at C6-7 which was symmetric and "will produce pain which will be very similar to carpal tunnel syndrome pain." *Id*.

Dr. Neckrysh recommended the carpal tunnel syndrome be taken care of first and then to reimage to decide if Petitioner was a candidate for a cervical discectomy after the carpal tunnel surgery. As noted in the Procedural History above, the parties agreed to postpone the issue of the carpal tunnel pending a decision in this matter. Petitioner completed physical therapy three times a week a ReLive Physical Therapy from May 5, 2023 through May 26, 2023. PX 4.

June 1, 2023, Petitioner returned to Dr. Patel with his pain unchanged since June of 2022 and aggravated by activity including prolonged positions, lifting, and sitting. PX 4, p. 37. Dr. Patel noted Petitioner had "[n]o history of this type of pain before the accident." PX 4, p. 37. Dr. Patel documented Petitioner's lower back pain as starting with the November accident. PX 5, p. 37. Petitioner was instructed to return in 4 weeks. PX 5, p. 37.

Petitioner's Medical Bills

Petitioner's medical bills admitted into evidence include those from Concentra Medical Center (PX 1, p. 246-276), American MRI (PX 2, p. 2-3), University Spine Surgeons (PX 3, p. 2-3), ReLive Physical Therapy (PX 4, p. 597-602), Pain and Spine Institute (PX 5, p. 2-4), Illinois Bone and Joint Institute (PX 6, p. 30), and Pain and Spine Institute, LLC (PX 7, p. 2-3). Petitioner testified he would like the Arbitrator to direct Respondent to pay the unpaid medical bills that were submitted into evidence. Respondent offered no evidence to dispute the reasonableness or necessity of the medical bills.

Issue C, whether the accident arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner sustained a work-related injury within the meaning of the Act on June 23, 2022 when the brackets of a pump broke while Petitioner was lifting it, causing injury to Petitioner's cervical spine and left shoulder when Petitioner tried to catch the pump. This finding is supported by Respondent's incident report, which states Petitioner was "offloading a pump from a construction trailer and frame came off pump assembly causing Emory to fall forward from the weight of the pump caused left shoulder pain and tingling in his hands right shoulder sore." PX 1, pg. 236. Petitioner consistently provided the same history of accident to his treating doctors, including those at Respondent's company clinic, Concentra, and to Respondent's §12 examiners. (TR22-23, PX1 p. 23-25, 38, 56, 194, 221, 236, PX3 p. 12, PX5 p. 5, 16, 19, 37, RX3, RX4, RX6). The Arbitrator finds Petitioner's testimony regarding his work accidents on June 23, 2022, November 28, 2022, and his medical history to be credible. As such, the Arbitrator finds Petitioner's injuries on June 23, 2022 and November 28, 2022 arose out of and in the course of Petitioner's employment with Respondent.

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

The Arbitrator further finds that Petitioner's current condition of ill-being is causally related to the June 23, 2022 work accident in which Petitioner injured his neck and bilateral shoulders lifting a pump while working as a laborer for City of Chicago Water Department. This finding is supported by the Petitioner's testimony, (TR 22-23), the City of Chicago's Incident Reports, (PX1 p. 23-25, 236), the histories taken by Respondent's own §12 examiners, (RX3, RX4,

RX6), and the consistent histories provided in the medical records of Dr. Taiwo, Dr. Neckrysh, and Dr. Patel, (PX1 p. 38, 56, 194, 221, PX3 p. 12, PX5 p. 5, 16, 19, 37), all of which documented a consistent history of injury beginning when trying to catch a pump that was falling while at work for Respondent on June 23, 2022.

Additionally, with respect to causation, proof of prior good health and change immediately following and continuing after an injury may establish that an impaired condition was due to the injury. *Granite City Steel Co. v. Indus. Comm'n*, 97 Ill.2d 402 (1983). To constitute an accidental injury within the meaning of the Act, the claimant need only show that some act or phase of the employment was a causative factor of the resulting injury. *Teska v. Indus. Comm'n*, 266 Ill.App.3d 740, 742 (1st Dist. 1994). Every natural consequence that flows from the injury which arose out of and in the course of the claimant's employment is compensable under the Act. *Id.* A chain of events suggesting a causal connection may suffice to prove causation. *Consolidation Coal Co. v. Industrial Comm'n*, 265 Ill.App.3d 830, 839 (1994).

In this case, Petitioner had no problems with pain, numbness, tingling, or limitations with respect to his neck, shoulders, or upper extremities prior to the accident of June 23, 2022. TR 22, PX4 p. 37, PX5 p. 37. After the June 23, 2022 accident, however, Petitioner has made consistent and unrelenting complaints of pain in his upper back, neck, and left arm and complaints of numbness and tingling into his hands. Petitioner's pain and limitations have never completely resolved since the time of the accident and have, in fact, worsened since his second injury, which occurred after he was instructed to return to work, against the recommendations of his treating doctors, on November 28, 2022. The Arbitrator finds Petitioner's testimony to be credible and supports the finding of causal connection. The Arbitrator also finds the lack of symptoms prior to the injury and the consistent symptoms after the injury support the existence of a causal connection.

Additionally, while a medical opinion is not essential to support the conclusion that an accident caused a claimant's condition of ill-being, (see *Univ. of Ill. v. Indus. Comm'n,* 365 Ill.App.3d 906, 912 (1st Dist. 2006)), the Arbitrator relies on the medical records of Concentra, University Spine Surgeons, Pain and Spine Institute, American MRI, and Illinois Bone and Joint Institute, which all support that Petitioner's injuries were caused by the June 23, 2022 accident. Indeed, as reflected in Respondent's own incident report from the day of the injury, Petitioner was immediately displaying objective signs of cervical radiculopathy, reporting to his foreman that he was having "tingling in his hands." PX1 p. 236. Just five (5) days after the accident, Dr. Taiwo documented Petitioner's complaints of numbness in the left thumb. By July 5, 2022, less than two weeks after the injury occurred, Dr. Taiwo had diagnosed Petitioner with "cervical radiculopathy." Less than a month later, Petitioner underwent an MRI of his cervical spine, which revealed additional objective evidence of cervical pathology. Dr. Taiwo, Dr. Neckrysh, and Dr. Patel have all opined that Petitioner's August 2, 2022 MRI revealed a herniated disc based on their clinical exams.

Nevertheless, Respondent's chosen §12 physician, Dr. Deutsch, contends Petitioner's neck complaints are not causally related to the work injury, based on two assumptions that are unsupported by the evidence. First, as Dr. Deutsch explained after his second examination of Petitioner, his opinions assume that there was no evidence that an accident occurred in the medical records. However, this assumption required Dr. Deutsch to ignore Respondent's own Incident Report, dated June 23, 2022, completed by Respondent's foreman, Jose Mota, which documented that Petitioner was "offloading a pump from a construction trailer and frame came off pump assembly causing Emory to fall forward from the weight of the pump caused left shoulder pain and ***tingling in his hands*** right shoulder sore." PX 1, pg. 236 (emph. added). Respondent's

Incident Report from the November 28, 2022 accident, completed by Jim Leatherman, similarly documents that the injury occurred while Petitioner was lifting a pump onto a truck on that date when he suffered injuries to his back and neck. PX 1 p. 24. Dr. Deutsch's premise of no evidence of accident is also contradicted by the treatment records of Respondent's own occupational clinic, Concentra, from the day after the accident, June 24, 2022, and from later that same week, June 28, 2022. Notes from each of these dates of service note a consistent history of accident. Accordingly, Dr. Deutsch's opinions, and the bases for them, are inconsistent with the evidence.

The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Gross v. Illinois Workers' Compensation Comm'n,* 2011 IL App (4th) 100615WC. Expert opinions must be supported by facts and are only as valid as the facts underlying them. *In re Joseph S.,* 339 Ill.App.3d 599, 607 (2003). Where an expert's opinion rests on certain factual assumptions, those assumptions must be proved. If the expert's assumptions are unproven or contrary to the evidence, the expert's opinion is considered a "naked opinion" and has no weight or probative value. *People v. Winters (In re Winters)*, 255 Ill.App.3d 605, 609 (2nd Dist. 1994), *Kemnitz v. Semrad*, 206 Ill.App.3d 668 (1st Dist. 1990), *Manion v. Brant Oil Co.*, 85 Ill.App.2d 129, 136 (4th Dist. 1967). When an expert's opinion is unsupported by the evidence, it is proper to strike it. *See Schuler v. Mid–Central Cardiology,* 313 Ill.App.3d 326, 335 (4th Dist. 2000). Here, there is no factual foundation underlying Dr. Deutsch's opinions.

Next, Dr. Deutsch's opinions on causation are based on the purported lack of neck pain complaints in Petitioner's medical records immediately after the accident. However, as Dr. Neckrysh explained in his April 27, 2023 note, complaints of numbness and tingling in the arms are symptoms that are universally understood and recognized by physicians as being symptomatic of cervical radiculopathy. PX3 p. 24. The evidence shows Petitioner made immediate complaints

of numbness and tingling in his left hand, as documented in Respondent's incident report, and in the records of its chosen company clinic, Concentra. Dr. Deutsch's opinion ignores this. Specifically, Respondent's incident report states Petitioner was having "tingling in his hands." PX1 p. 236. At his first visit at Concentra on June 24, 2022, the day after the accident, Petitioner complained of numbness and tingling in his left hand. PX 1 p. 228. Petitioner also reported pain in his "upper back." *Id.* On June 28, 2022, just 5 days after the accident, Petitioner was complaining of numbness of the left hand and thumb. *Id.* at 221. By July 20, 2022, Dr. Taiwo diagnosed Petitioner with cervical radiculopathy and ordered an MRI of the cervical spine. *Id.* at 152. The MRI of August 2, 2022 reveled objective evidence of multiple herniated discs in Petitioner's cervical spine, which were impinging on his spinal cord. Accordingly, contrary to Dr. Deutsch's opinion, Petitioner did, in fact, have objective symptoms referrable to his cervical spine immediately after the work accident.

Thus, the bases for Dr. Deutsch's "opinions" are unsupported by and contradict the evidence. "Regardless of how skilled or experienced an expert may be, he is not permitted to speculate or to state…a conclusion based on assumptions not in evidence or contradicted by the evidence." *Royal Elm Nursing & Convalescent Ctr., Inc. v. N. Ill. Gas Co.*, 172 Ill.App.3d 74, 79 (1st Dist. 1988). Experts cannot base opinions on what may have occurred or what the expert believed might have happened in a particular case. *Schuler v. Mid–Central Cardiology,* 313 Ill.App.3d 326, 335 (4th Dist. 2000), *citing Dyback v. Weber,* 114 Ill.2d 232, 244 (1986). "Mere surmise or conjecture is never regarded as proof of a fact." *Lyons v. Chicago City Ry. Co.*, 258 Ill. 75, 81 (1913). Expert's opinions based on conjecture, guess or speculation are inadmissible. *Hudson v. City of Chicago*, 378 Ill.App.3d 373, 401 (1st Dist. 2007).

Dr. Deutsch makes other assumptions and misrepresentations of the evidence throughout his report which are contradicted by a plain reading of the evidence. For instance, Dr. Deutsch characterizes Petitioner's August 2, 2022 MRI as "unremarkable," while the radiologist, Dr. Saldaha, and all three of Petitioner's treating doctors, Dr. Taiwo, Dr. Neckrysh, and Dr. Patel, read the same MRI and diagnosed Petitioner with a herniated cervical disc and cervical radiculopathy based on that imaging. Numerous other medical providers at Concentra, including Emily Opiloa, NP, Katlyn McHale, PT, Andrew Mack, PT, and Brittany Brodeson, DPT, also identified Petitioner's problem as a herniated disc with cervical radiculopathy.

The MRI scan, and the interpretations of that scan by all of Petitioner's treating doctors also contradict Dr. Deutsch's supposition that there were no objective findings of any injury. There are at least eight (8) medical professionals that disagree with Dr. Deutch, and believe the MRI shows objective evidence of a herniation and cervical radiculopathy. Dr. Deutch's is the only contrary opinion. Many of those medical professionals work at Respondent's hand-selected company clinic, Concentra. *Nunez v. Ill. Workers' Comp. Comm'n*, 17 ILWC 28222 (Mar. 4, 2021) (noting it was Respondent, and not Petitioner, that selected Concentra and finding Concentra doctors' opinion persuasive), *Mares v. Indus. Comm'n*, 12 ILWC 04403 (Jan. 28, 2019) (noting Concentra doctor "was a physician of Respondent's selection," and finding Concentra records "significantly undermine the validity of the defenses" offered by employer), *Gonzalez v. Indus. Comm'n*, 09 ILWC 47643 (Sept. 12, 2011) ("evidence is replete with positive causal connection opinions by not only the treating surgeons, but also the company clinic Concentra"), *Medley v. Indus. Comm'n*, 08 ILWC 53407 (Dec. 4, 2009) (giving greater weight to medical opinions of Petitioner's treating doctors than to Respondent's §12 examiner, noting "these doctors are Respondent's doctors from the company clinic of Concentra"), *Aguilar v. Indus. Comm'n*, 04

ILWC 57684 (Sept. 15, 2006) (finding "the opinions of all the treating physicians should be given greater weight than Respondent's IME…").

Similarly, Dr. Deutsch's October 31, 2022 report states that there are no objective findings of any injury. The MRI on August 2, 2022 revealed a 4-5 mm herniated disc at C5-C6, among other findings. PX 2, p. 4. As noted, there are at least eight (8) medical professionals disagree with Dr. Deutsch's statement that there were no objective findings of injury. Dr. Saldanha (the radiologist), Dr. Taiwo, Dr. Neckrysh, Dr. Patel, and numerous medical personnel at Concentra, Respondent's own clinic, also interpreted this as a herniated cervical disc.

The Arbitrator finds it significant that the facts introduced into evidence plainly contradict Dr. Deutsch's opinions and the bases for them. Therefore, the Arbitrator disregards those opinions as being without proper foundation. *Soto v. Gaytan*, 313 Ill.App.3d 137, 147 (2d Dist. 2000) ("As the gatekeeper of expert opinions disseminated to the jury, the trial court plays a critical role in excluding testimony that does not bear an adequate foundation of reliability."). Indeed, this is not the first time that Dr. Deutsch has been found to be less than credible by this Commission. *George Howe v. Abrasive-Form, LLC*, 20 WC 018405.

Dr. Deutsch also questions the credibility of the Petitioner despite his own opinions plainly contradicting the objective medical evidence and the opinions of essentially every one of Petitioner's treating physicians. However, Respondent cannot reconcile how its own hired §12 examiner found that none of Petitioner's treatment for his cervical spine was reasonable, despite every one of the doctors at Respondent's hand-selected clinic, Concentra, diagnosing Petitioner with a herniated disc in his cervical spine.

The Arbitrator finds Petitioner's testimony was credible, and more persuasive than that of Dr. Deutsch. 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 (1984), *Hosteny v. Illinois Workers' Compensation Comm'n,* 397 Ill. App. 3d 665, 675 (2009); *Fickas v. Industrial Comm'n,* 308 Ill. App. 3d 1037, 1041 (1999). Additionally, it is for the Commission to decide which medical view is to be accepted, and it may attach greater weight to the opinion of the treating physician, particularly where those treating physicians are selected by the employer. *International Vermiculite Co. v. Industrial Comm'n,* 77 Ill.2d 1 (1979), *ARA Services, Inc. v. Industrial Comm'n,* 226 Ill. App. 3d 225 (1992).

In this case, Petitioner, an individual with no medical training, initially believed he had injured his left shoulder. He consistently reported numbness and tingling in his left hand beginning the day of the incident, as documented in the incident report from Respondent's own foreman. Given Petitioner's numerous and consistent complaints and repeated instances that numbness and tingling are recorded in the medical notes, the existence of some medical notes that do not specifically indicate "neck pain" are of no moment. They do not disprove any of the complaints testified to credibly by Petitioner, nor those contained within Respondent's incident report and the medical records. Indeed, Respondent's occupational medicine physician, Dr. Taiwo, relates Petitioner's condition to the work-related injury of June 23, 2022. The records from Concentra repeatedly designate Petitioner's medical condition as related to "workers' compensation." PX1 pg. 35, 38, 69, 90, 94, 207, 211, 221, 225.

Moreover, the November 28, 2022 aggravation of the injury breaks the chain of causal connection. Under the Act, compensation may be awarded for a claimant's condition of ill-being even though the conditions of his or her employment do not constitute the sole, or indeed principal, cause of injury. *Teska*, 266 Ill.App.3d at 742. To constitute an accidental injury within the meaning

of the Act, the claimant need only show that some act or phase of the employment was a causative factor of the resulting injury. *Id.* Every natural consequence that flows from the injury which arose out of and in the course of the claimant's employment is compensable under the Act, unless caused by an independent, intervening accident. *Id.*

An independent, intervening accident is one which breaks the chain of causation between a work-related injury and an ensuing disability or injury. *Id.* A nonemployment-related factor which is a contributing cause with the compensable injury in ensuing injury or disability, however, does not constitute an intervening cause sufficient to break the causal connection between the employment and claimant's condition of ill-being. *Id.* That other accidents, whether work-related or not, may have aggravated the claimant's condition is irrelevant. *Vogel v. Indus. Comm'n*, 354 Ill.App.3d 780, 786 (2nd Dist. 2005). Compensation for subsequent injury or disability is properly awardable whenever the existing employment-related condition is a causative factor in producing the subsequent injury or disability. *Int'l Harvester Co. v. Indus. Comm'n*, 46 Ill.2d 238, 245, 247 (1970) (where work injury itself causes subsequent injury, chain of causation not broken). "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." *Dunteman v. Ill. Workers' Comp. Comm'n*, 2016 IL App (4th) 150543WC ¶43, *citing Global Products v. Workers' Comp. Comm'n*, 392 Ill.App.3d 408, 411 (1st Dist. 2009). "A work-related injury 'need not be the sole causative factor, nor even the primary causative factor, so long as it was *a* causative factor in the resulting condition of ill-being. *Id. quoting Sisbro v. Indus' Comm'n*, 207 Ill.2d 193, 205 (2003). As long as there is a "but for" relationship between the work-related injury and subsequent condition of ill-being, the employer remains liable. *Id.* at ¶44. In the case at bar, the November 28, 2022 was either an aggravation of injury originally suffered on

June 23, 2022 or it was a new injury. Either way, it was compensable. Any aggravation of the injury Petitioner suffered while working for Respondent on November 28, 2022 is also causally related to the original June 23, 2022 injury.

Based upon the records as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that his condition of ill-being in the neck, bilateral shoulders and cervical spine are causally related to the June 23, 2022 and the November 28, 2022 work accidents. The Arbitrator finds the testimony of the Petitioner credible and finds the opinions of Petitioner's treating physicians credible and persuasive. The Arbitrator finds Dr. Deutsch's opinions unsupported by evidence.

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:

Petitioner submitted medical bills for treatment of his work-related injury from Concentra Medical Center from June 24, 2022 through November 29, 2022 in the amount of $4,626.74, American MRI from August 2, 2022 in the amount of $2,250.00, University Spine Surgeons from September 1, 2022 through April 27, 2023 in the amount of $6,500.00, ReLive Physical Therapy from September 16, 2022 through May 17, 2023 in the amount of $62,245.00, Pain and Spine Institute from September 22, 2022 through June 1, 2023 in the amount of $5,311.00, Illinois Bone and Joint Institute from May 2, 2023 through June 6, 2023 in the amount of $435.18, and Pain and Spine, LLC from November 23, 2022 through April 5, 2023 in the amount of $1,878.27. These charges were admitted into the record as evidence at the time of hearing. There was no evidence offered to the contrary.

The Arbitrator finds that all medical bills are reasonable, necessary, and causally related to the work accidents Petitioner sustained on June 23, 2022 and November 28, 2022. The Arbitrator notes that at Petitioner's first visit with Dr. Taiwo he reported that his pain had begun originally on June 23, 2022. The Arbitrator also notes that the treatment corresponding to these bills is for Petitioner's neck and bilateral shoulders, which Petitioner did not suffer from prior to his work accident.

Thus, because this treatment is for injuries the Arbitrator has found to reasonable, necessary, and causally related to the accident, Respondent shall pay the outstanding balance of those bills pursuant to the medical fee schedule directly to the provider per stipulation of the parties.

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

Petitioner had a symptomatic cervical spine injury since the accident date of June 23, 2022. Petitioner completed an extensive course of conservative treatment without relief including medication, rest, physical therapy, and injections. Petitioner has undergone consistent treatment and complied with the recommendations of his treating physicians. Although Petitioner has not reached maximum medical improvement, Dr. Neckrysh recommended the carpal tunnel syndrome be taken care of first and then "to reimage to decide if Petitioner was a candidate for a cervical discectomy after the carpal tunnel surgery." As noted in the Procedural History above, the parties agreed to postpone the issue of the carpal tunnel pending a decision in this matter.

Based on the foregoing, the Arbitrator finds that there is not a specific recommendation at this time for the cervical discectomy, only a recommendation to reimage. As such, the Arbitrator

orders the Respondent to pay for medical services related to the reimaging. The Arbitrator reserves finding with regard to the cervical discectomy until such time, it is clearly recommended.

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).

According to Dr. Taiwo, Dr. Neckrysh, and Dr. Patel, Petitioner is unable to return to work. Petitioner has remained unable to work since his initial injury on June 23, 2022. Petitioner was returned to work at the direction of Respondent's chosen §12 physician, Dr. Harel Deutsch and contrary to Respondent's occupational medicine doctor, Dr. Taiwo. Petitioner worked on November 28, 2022 and was reinjured. He has not been released to return to work since that time. At the time Respondent refused to pay TTD benefits after the November 28, 2022 aggravation and re-injury. Respondent's third IME report was dated March 28, 2023. The Arbitrator finds the Petitioner's treaters opinions as more persuasive than Dr. Deutsch. Consistent with that finding, the Arbitrator finds that Respondent appears to have acted in good faith in relying on Dr. Deutsch's opinions.

Based on the above, the Arbitrator finds Respondent liable for a total of 54 3/7 weeks of Temporary Total Disability (TTD) benefits (from the periods June 24, 2022 to November 28, 2022 & November 30, 2022 through July 12, 2023) at a weekly rate of $1,253.33, which corresponds to $68,216.96. After applying the Respondent credit in the amount of $47,676.75 (See N below), the Respondent shall pay to Petitioner $20,540.21.

Issue M, whether penalties or fees should be imposed upon Respondent, the Arbitrator finds as follows:

The Arbitrator declines to impose any penalties and fees.

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

The parties have stipulated Respondent is entitled to a credit for TTD paid in the amount of $36,431.43 and for the PPD advance in the amount of $11,245.32 for a total credit of $47,676.75.

It is so ordered:

Crystal L. Caison

Arbitrator Crystal L. Caison

March 25, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC031615
Case Name	Emory Erwin v. City of Chicago
Consolidated Cases	22WC020514;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0038
Number of Pages of Decision	31
Decision Issued By	Christopher Harris, Commissioner, Marc Parker, Commissioner

Petitioner Attorney	Jack Cannon
Respondent Attorney	Derrick Lloyd

DATE FILED: 1/24/2025

/s/Christopher Harris,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 up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

EMORY ERWIN,

Petitioner,

vs. NO: 22 WC 31615

CITY OF CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, the reasonableness and necessity of the medical treatment and charges, prospective medical treatment, temporary total disability benefits, and penalties, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. 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).

This claim was consolidated with claim number 22 WC 20514 for purposes of the arbitration hearing and review before the Commission. A separate decision has been issued for claim 22 WC 20514.

The Commission has incorporated its findings and conclusions from the decision in claim 22 WC 20514. Based on the reasoning outlined in that decision, the Commission modifies the Arbitrator's decision for this calm. Benefits are only being awarded under claim 22 WC 20514.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed March 25, 2024, is hereby modified as stated in claim 22 WC 20514 and otherwise 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.

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.

January 24, 2025

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

CAH/tdm
O: 12/19/24
052

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

SPECIAL CONCURRENCE/DISSENT

I concur with the Majority's decision to modify the decision of the arbitrator and award penalties. However, because in my view the opinions of Dr. Deutsch were so unreliable, I would have awarded penalties through the date of trial. Therefore, I respectfully dissent from that portion of the Majority's decision.

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC031615
Case Name	Emory Erwin v. City of Chicago
Consolidated Cases	22WC020514;
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	***Corrected Decision***
Commission Decision Number	
Number of Pages of Decision	28
Decision Issued By	Crystal Caison, Arbitrator

Petitioner Attorney	Jack Cannon
Respondent Attorney	Derrick Lloyd

DATE FILED: 3/25/2024

/s/Crystal Caison, 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
CORRECTED ARBITRATION DECISION
19(b)

EMORY ERWIN
Employee/Petitioner
v.
CITY OF CHICAGO
Employer/Respondent

Case # **22** WC **031615**

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 **July 12, 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 _____

Consolidated with Case No: 22WC020514

FINDINGS

On the date of accident, **11/28/2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**97,760.00**; the average weekly wage was $**1,880.00**.

On the date of accident, Petitioner was **42** 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 $**36,431.43** for TTD, $**0** for TPD, $**0** for maintenance, and **$11,245.32** PPD Advance, for a total credit of $**47,676.7**5.

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

ORDER

The Arbitrator finds that Petitioner met his burden to establish that the November 28, 2022 accidents occurred and arose out of and in the course of Petitioner's employment by Respondent.

The Arbitrator finds that Petitioner has proven by a preponderance of the evidence that his condition of ill-being in the neck, bilateral shoulders and cervical spine are causally related to the November 28, 2022 work accident.

See Arbitrator Decision and Order in connection with Case No: 22WC020514 for Issues J, K, L, M & N.

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

Crystal L. Caison

March 25, 2024

ICArbDec19(b)

ILLINOIS WORKERS' COMPENSATION COMMISSION
CHICAGO, ILLINOIS – COOK COUNTY

EMORY ERWIN,	)		
	)		
Petitioner,	)	Case No:	22WC 020514
	)	*Consolidated*:	22WC 031615
v.	)		
	)		
CITY OF CHICAGO,	)		
	)		
Respondent.	)		

CORRECTED ARBITRATOR DECISION

PROCEDURAL HISTORY

This matter proceeded to hearing on July 12, 2023 before Arbitrator Crystal L. Caison. Issues in dispute include accident, causal connection, medical bills, prospective medical care, TTD benefits, and penalties under §16, §19(k), and §19(l). (AX 1).

The parties reserved the issue of injury relating to Petitioner's alleged carpal tunnel syndrome for a future hearing. The parties stipulated that Respondent paid TTD benefits in the amount of $36,431.43 and a PPD advance in lieu of TTD in the amount of $11,245.32. (AX 1).

A decision and orders were entered on February 15, 2024. Petitioner filed a timely 19(f) petition requesting for the Arbitrator to issue a corrected decision to clarify in the Arbitrator's Decision and Orders the calculations of the respective TTD payments ($36, 431.43), PPD advance payments ($11,245.32) and amount due and owing to Petitioner through July 12, 2023, which is $20,540.21. Also, the Arbitrator is correcting a typo in paragraph 3 in Order #22WC031615. The correction is to delete the reference of Case #22WC031615 and insert in its place Case #22WC020514.

This corrected decision addresses changes under Issue "L" and in the corresponding Orders #22WC020514 and #22WC031615.

THE ARBITRATOR MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner's Testimony

Petitioner worked for 10 years as a 43-year-old construction laborer for the City of Chicago's Department of Water Management. His job duties include excavating ditches, repairing fire hydrants, and repairing water mains throughout the city. TR 19-21. Petitioner is required to lift various pieces of equipment necessary to perform the job including ladders, drills, saws, pumps, and generators, which can weigh as little as five to ten pounds and as much as 100 pounds. TR 21. Petitioner's duties also include carrying materials, climbing in and out of ditches with materials, and using a clay spade to hand dig six-foot by four-foot ditches. TR 20-21. Prior to the June 23, 2022, Petitioner never underwent medical treatment, never missed any time from work for neck, left shoulder, or right shoulder injuries prior and was working without issue. TR 22.

June 23, 2022 Injury

On June 23, 2022, Petitioner was working the afternoon shift, 3:00pm - 11:00pm. He was offloading a service pump from a trailer when the frame detached, the pump broke from the frame, and fell forward. TR 22. Petitioner tried to catch the pump, and it jerked his body causing him to fall forward. TR. 22-23. Petitioner estimated that the pump weighed between 80 and 100 pounds. TR 23. Petitioner immediately felt a strain over the left side of his neck and his back and believed that he injured both shoulders. TR 23. He reported the incident to his foreman, Jose Mota, but continued to work the rest of the shift. TR 23. Respondent's incident report reflects that on June 23, 2022 Petitioner was "offloading a pump from a construction trailer and frame came off pump assembly causing Emory to fall forward from the weight of the pump caused left shoulder pain and tingling in his hands right shoulder sore." PX 1, pg. 236.

By the end of the shift, Petitioner felt terrible. TR 24. His shoulder was swollen, his neck was stiff, he could not really move and one of his coworkers gave him an Ibuprofen and a muscle relaxer. TR 24.

June 24, 2022, Petitioner was sent by his foreman, John Daly, to Respondent, the City of Chicago's occupational medical facility, Concentra, where he was seen by Anthony Oyetola, NP. TR 25, PX 1 p. 228. Petitioner reported left shoulder and left upper back pain. PX 1 p. 228. Concentra put Petitioner on light duty, consisting of no use of the left arm, no reaching above the shoulders with his left arm, and no use of power/impact/vibratory tools with the left arm. TR. 25, PX1 p. 228. Petitioner began receiving Temporary Total Disability ("TTD") benefits. TR 25. Petitioner testified that he ultimately had two epidural injections in his neck, but they did not relieve his pain. TR 30.

A few weeks later, Petitioner was notified that Dr. Deutsch said the petitioner could work full duty. TR 30. Petitioner's understanding was that Dr. Forsythe examined him for his shoulder and Dr. Deutsch for his neck. TR 30-31.

November 28, 2022 Injury

Petitioner testified that he went back to work on November 28, 2022. He said that he was putting away shovels and ladders and two other employees were trying to put away a pump. When he tried to help lift the pump overhead, he felt a pull on his right side similar to the one on his left side. TR 31-32 Petitioner testified that he told the foreman what happened, and he was directed to go back to Concentra the next day. TR 33.

Petitioner's current condition

Dr. Taiwo never returned Petitioner back to work full duty after the November 28, 2022 visit. TR 34. Respondent never restarted Petitioner's workers' compensation benefits following the November 28, 2022 accident despite Dr. Taiwo taking him off work again. TR 34. Respondent did not have any medical opinion returning Petitioner to work after the November 28, 2022 aggravation at work at that time. Petitioner has been without benefits since then. TR 34. He received a PPD advance in exchange for a continuance in the spring of 2023. TR 34.

Petitioner testified that, as of the hearing date, it was difficult to move and do some of the things that he used to do. TR 35-36. It is also hard to drive. His pain flares up "really bad" so that he cannot twist his whole body and cannot look over his shoulder. He testified that he cannot do anything with his kids anymore. TR 35-36. Petitioner feels pain and pulling in his neck and at the top of his left shoulder, which starts at the top of his neck and comes down into the middle of his back. TR 36. Petitioner testified his pain began with the June 23, 2022 accident and has never gone away since. Petitioner kept pointing to his left shoulder and neck area at the time of his testimony. TR 36.

Petitioner testified that he's been without a regular source of income since November 2022. TR 34, 37-39. Petitioner advised the Arbitrator that he would like the Arbitrator to award payment of his medical bills which he identified. TR 39.

Despite the opinions in the medical records and by Petitioner's treating medical providers, Respondent cross-examined Petitioner on whether he injured his shoulder or his neck and as to whether or not he had or reported a second accident on November 28, 2022. Petitioner kept pointing to the left side of the top of his shoulder the bottom of his neck. TR 40-47.

On re-direct, Petitioner read into the record a signed statement from his foreman (and Respondent's own employee), Jim Leatherman. TR 70. Mr. Leatherman confirmed that the petitioner had suffered a second accident on November 28, 2022.

Petitioner testified that he complained of tingling in his fingers from the very first day he got hurt in June 2022. Petitioner testified he had never heard of the term, "cervical radiculopathy" before Dr. Taiwo explained it to him. Petitioner was not aware that injuries to his neck could cause pain in his shoulder and his hands until that conversation with Dr. Taiwo. TR 72-73. Petitioner testified Dr. Taiwo was the first person to tell him he had, in fact, injured his neck and that he had a herniated disc, which was causing shoulder pain. TR 73. Petitioner reconfirmed that Dr. Taiwo was the physician at Concentra that the City of Chicago sent him to. TR 73.

Medical treatment after Petitioner's June 28, 2022 injury

June 28, 2022, Petitioner followed up with Dr. Afiz Taiwo at Concentra on complaining of pain in his bilateral shoulders of 8/10 in severity, mostly left shoulder, and numbness of the left thumb. PX1 p. 221. Dr. Taiwo noted that Petitioner had "left shoulder pain that travels down the arm, left thumb numbness… still awaiting authorization for therapy." *Id*. at 218. Petitioner was unable to sleep at night. *Id*. at 221. Petitioner reported that he had not been working, and no light duty was available. *Id*. Dr. Taiwo advised Petitioner to return to work with no use of left arm. *Id*. at 223. Dr. Taiwo diagnosed Petitioner with left shoulder strain, muscle strain left upper back. *Id*.

July 5, 2022, the Petitioner returned to see Dr. Taiwo, who assessed Petitioner with impingement of the left shoulder and referred him to physical therapy. PX 1, p. 210. When Petitioner reported to physical therapy at Concentra, he was continuing to have pain in his left arm and hand. PX 1, p. 194.

July 20, 2022, Dr. Taiwo diagnosed Petitioner with cervical radiculopathy and ordered an MRI of his neck. PX 1, p. 152.

July 27, 2022, Petitioner returned to see Dr. Taiwo. PX1 p. 123. Dr. Taiwo diagnosed him with left cervical radiculopathy and recommended physical therapy three times a week for two weeks. *Id*. Petitioner was placed on modified duty with no use of his left arm. *Id*.

August 2, 2022, Petitioner's MRI revealed multiple cervical disc abnormalities. PX 2, p. 4. Dr. Saldanha, the radiologist, reported that the MRI showed a 2mm disc bulge toward the left with 4-5mm disc herniation vs. bulge left foramen; C5-6 2mm mildly lobular disc bulge eccentrically greater towards the left up to 3- 4 mm; C6-7 1 mm disc bulge with broad endplate lateral spondylosis; and C6-C7 impingement of the thecal sac. (See also PX 6, p. 14).

August 3, 2022, Petitioner was next seen at Concentra by nurse practitioner, Emily Opiola, NP. Petitioner continued to have soreness with movement in his left shoulder and left side of his neck.

August 5, 2022, Petitioner returned to Concentra, and it was noted that his symptoms were worsening, constant, sharp, and aching. PX1 p. 73. Dr. Taiwo placed him off work completely. PX1 p. 73. Dr. Taiwo also diagnosed Petitioner with left cervical radiculopathy, herniation of cervical intervertebral disc with radiculopathy, and referred him to a specialist. Tr 27-28, PX 1, p. 73.

Maria Diaz of Concentra authored a note stating, "I was trying to obtain physical therapy authorization for the injured worker, Emory Erwin. Our provider is requesting 6 sessions for the cervical. Could you please forward the approval status." PX1 p. 67- 68. A response from Mary Menlendez of GBTPA.com states, "I approve the 6 sessions." PX1 p. 67. The date of injury is listed as June 23, 2022. PX1 p. 67.

September 1, 2022, Petitioner presented to Dr. Sergey Neckrysh, who noted a consistent history of the June 23, 2022 accident. TR 28, PX 3, p.12. Dr. Neckrysh reviewed the MRI of Petitioner's cervical spine and noted an acute foraminal disc herniation to the C5-6 foramina on left side. Dr. Neckrysh recommended another month of physical therapy and a nerve root block at C5-6 on left side. *Id*. at. p. 14-15. He stated that if this controlled Petitioner's symptoms, he could continue physical therapy and injections. PX 3 p. 14-15. Otherwise, Dr. Neckrysh recommended C5-6 anterior cervical discectomy and fusion. Petitioner was placed off work. *Id*.

September 15, 2022, at Respondent's request, Petitioner was seen by Dr. Brian Forsythe, pursuant to §12 of the Act. RX 3. Dr. Forsythe's assessment was, resolved acute left shoulder strain and recommended Petitioner return to work full duty. *Id*. He did not comment on Petitioner's neck. *Id*.

Between September 16, 2022 and September 21, 2022, Petitioner attended physical therapy at ReLive Physical Therapy. PX 4.

September 22, 2022, Petitioner saw Dr. Udit Patel at the referral of Dr. Neckrysh. PX 5, p. 5. Dr. Patel noted Petitioner had a lifting injury at work and his pain was a 7/10, and recommended an epidural steroid injection, but Petitioner elected to postpone the injection . *Id*.

September 28, 2022, September 30, 2022, October 3, 2022, and October 5, 2022, Petitioner continued physical therapy at ReLive. PX 4. The injury was described as cervical radiculopathy and the therapy focused on Petitioner's neck and left upper extremity. PX 4, p. 98-114.

October 5, 2022, Petitioner followed up with Dr. Patel at the Pain & Spine Institute for an injection. PX 5, p.8. Dr. Patel noted Petitioner's pain was 4-5/10 and remarked that Petitioner was showing some signs of improvement with physical therapy. *Id*. They discussed holding off on the injection to see how he did with physical therapy. *Id*.

October 6, 2022, Petitioner returned to Dr. Neckrysh and Dr. Neckrysh agreed with Dr. Patel's plan to finish physical therapy and then evaluate for a new nerve root block or epidural steroid injection. PX 3, p. 18. Dr. Neckrysh advised Petitioner to follow up in November. PX 3, p. 18. Petitioner continued physical therapy at ReLive Physical Therapy three times a week throughout October 2022. PX 4, p. 115-135.

October 31, 2022, Dr. Deutsch diagnosed Petitioner with "at most" a left shoulder and left trapezius strain, stating the petitioner had no objective findings of injury. RX 4. Dr. Deutsch posited that the MRI of Petitioner's cervical spine was unremarkable, and that Petitioner should have no work restrictions for his left shoulder. RX 4. Dr. Deutsch opined that there was no causation for the neck symptoms and no initial neck complaints or mechanism of injury. Dr. Deutsch stated there is no evidence of a mechanism of injury for the cervical spine in the records. RX 4. Petitioner continued physical therapy at ReLive three times a week throughout November 2022. PX 4.

November 3, 2022, Petitioner returned to Dr. Patel with continued pain at 5/10 in severity located in the neck, left shoulder, and left arm. PX 5 p. 10. Compared to the prior visit, his pain was worse. *Id*. Dr. Patel recommended Petitioner return in 2 weeks for an epidural steroid injection. *Id*.

November 10, 2022, Petitioner was seen by Dr. Neckrysh and complained of continued neck pain that traveled to the shoulder and with a new complaint of tingling when he "taps on his veins" in the projection of the carpal tunnel in the left hand. PX 3 p. 19. Dr. Neckrysh recommended continued physical therapy, a selective nerve root block, and an EMG of the left upper extremity. *Id*. Petitioner was instructed to follow up at the beginning of December after

EMG and injection. *Id*. Petitioner continued physical therapy throughout November at ReLive. PX 4.

November 23, 2022, Petitioner returned to Dr. Patel who administered a transforaminal epidural steroid injection at C5-C6 on the left. PX 5, p. 13.

Medical treatment after Petitioner's November 28, 2022 injury

Petitioner underwent an EMG performed by Dr. Adarsh Shukla. PX 1, p. 59. The EMG results were abnormal with evidence of chronic left sided C8- T1 radiculopathy without active denervation. *Id*. The EMG also showed evidence of superimposed moderate to severe left side median neuropathy at the wrist/carpal tunnel. *Id*., PX 6, p. 8.

November 29, 2022, Petitioner saw Dr. Taiwo. PX 1 p. 23-25. Respondent's incident report describes the incident as lifting a pump onto a truck, lists an accident date of November 28, 2022, and notes injuries to Petitioner's back and neck. PX 1, p. 24.

Dr. Taiwo documented the new accident and diagnosed Petitioner with left cervical radiculopathy and herniation of cervical intervertebral disc with radiculopathy and recommended Petitioner remain off work and follow up with his current treating orthopedic. PX1 p. 56. The November 29, 2022 note lists a case date of June 23, 2022, (PX 1, p. 56), and states, "Patient has ongoing aggravation of cervical impingement." PX 1, 35. Dr. Taiwo states the "reason for visit" was "workers' compensation." PX 1, p. 38. Petitioner was released from care at Concentra on that date. PX 1, p 38.

Petitioner continued physical therapy three times a week at ReLive throughout November and December of 2022. TR 34, PX 4. On December 8, 2022, Petitioner returned to see Dr. Patel and reported significant relief of the upper extremity pain from the procedure but that "[h]e did go back to work as ordered from the IME on the 28th and did reinjure himself." PX 5 p. 16. Petitioner

reported that he was lifting another pump with help and had sudden and severe neck pain and has worsening pain over the [bilateral] cervical and thoracic spine." PX 5, p. 16. Dr. Patel noted that Petitioner's severe spasms and radicular pain in the left upper extremity were improved but felt Petitioner would have been better if he had not had his injury repeat at work on November 28th. PX 5, p. 16. Dr. Patel's diagnosis was continued neck pain with myofascial pain. PX 5, p. 16.

December 15, 2022, Petitioner returned to Dr. Neckrysh, who noted that he needed to see the EMG report to evaluate whether Petitioner should proceed with surgery. PX 3, p. 21. Petitioner continued therapy at ReLive three times a week between December 16, 2022 and January 3, 2023. PX 4.

January 5, 2023, Petitioner followed up with Dr. Patel for pain management and reported that his pain was 6/10 and related back to the lifting event at work. PX 5, p. 19. Dr. Patel noted the bulk of Petitioner's pain was axial but noted continued numbness in Petitioner's left hand. PX 5, p. 19. Dr. Patel also stated that Petitioner was still in physical therapy and off work. PX 5, p. 19. The diagnosis remained continued neck pain myofascial muscle pain with a treatment for medication for pain. PX 5, p. 19. Petitioner continued therapy with ReLive Physical Therapy twice a week through January 25, 2023.

January 26, 2023, Petitioner returned to see Dr. Neckrysh who reviewed the EMG report, which demonstrated chronic left sided C8-T1 radiculopathy without any active denervation. Dr. Neckrysh opined that Petitioner should undergo treatment for left sided carpal tunnel, and given the severity the findings, have the carpal tunnel release performed by a hand orthopedic surgeon because that was a surgery that Dr. Neckrysh did not perform. PX 3, p. 2. Dr. Neckrysh recommended that if Petitioner remained symptomatic afterwards, he should return for continued assessment. PX 3, p. 2. Petitioner continued therapy at ReLive into February 2023. PX 4.

February 2, 2023, Dr. Patel noted that Petitioner had bilateral neck pain rating 7/10. PX 5, p. 22. Dr. Patel noted Petitioner was stable with medication for pain and requested that he come back to see him after he had seen the hand surgeon. PX 5, p. 25.

February 18, 2023, Dr. Taiwo completed a physician statement for disability benefits, in which he opined that Petitioner is unable to return to work. PX1 p. 5. Petitioner participated in physical therapy three times a week at ReLive from February 3, 2023 through March 8, 2023. PX 4.

March 9, 2023, Petitioner returned to see Dr. Patel with a similar history of bilateral neck pain, (PX 5, p. 25), then continued physical therapy at ReLive three times a week from March 10, 2023 through April 4, 2023. PX 4.

March 28, 2023, four (4) months after his second injury, Petitioner was seen by Dr. Deutsch for a second time at the instruction of Respondent for a §12 examination. RX 6.

April 5, 2023, Petitioner saw Dr. Patel and complained of having neck pain, now rating 8/10 in severity. PX 5, p. 28. On examination, Petitioner had "palpable taught bands of muscles that would signify a spasm" with restricted range of motion and sensitivity to touch. PX 5, p. 28. Dr. Patel administered a trigger point injection. PX 5, p. 28.

April 20, 2023, Petitioner returned to see Dr. Patel reporting some relief from the injection, but that his pain was now deeper. PX 5, p. 31. Dr. Patel recommended a new MRI. PX 5, p. 31.

April 27, 2023, Petitioner returned to Dr. Neckrysh. At that time, Dr. Neckrysh explained the previous MRI showed a large disc herniation at C5-6 on the left "which would produce C5-C6 radiculopathy, which will mimic distribution of pain in the first, second, and third digits consistent with carpal tunnel." PX 3, p. 24. Dr. Neckrysh noted a smaller disc protrusion at C6-7 which was symmetric and "will produce pain which will be very similar to carpal tunnel syndrome pain." *Id*.

Dr. Neckrysh recommended the carpal tunnel syndrome be taken care of first and then to reimage to decide if Petitioner was a candidate for a cervical discectomy after the carpal tunnel surgery. As noted in the Procedural History above, the parties agreed to postpone the issue of the carpal tunnel pending a decision in this matter. Petitioner completed physical therapy three times a week a ReLive Physical Therapy from May 5, 2023 through May 26, 2023. PX 4.

June 1, 2023, Petitioner returned to Dr. Patel with his pain unchanged since June of 2022 and aggravated by activity including prolonged positions, lifting, and sitting. PX 4, p. 37. Dr. Patel noted Petitioner had "[n]o history of this type of pain before the accident." PX 4, p. 37. Dr. Patel documented Petitioner's lower back pain as starting with the November accident. PX 5, p. 37. Petitioner was instructed to return in 4 weeks. PX 5, p. 37.

Petitioner's Medical Bills

Petitioner's medical bills admitted into evidence include those from Concentra Medical Center (PX 1, p. 246-276), American MRI (PX 2, p. 2-3), University Spine Surgeons (PX 3, p. 2-3), ReLive Physical Therapy (PX 4, p. 597-602), Pain and Spine Institute (PX 5, p. 2-4), Illinois Bone and Joint Institute (PX 6, p. 30), and Pain and Spine Institute, LLC (PX 7, p. 2-3). Petitioner testified he would like the Arbitrator to direct Respondent to pay the unpaid medical bills that were submitted into evidence. Respondent offered no evidence to dispute the reasonableness or necessity of the medical bills.

Issue C, whether the accident arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner sustained a work-related injury within the meaning of the Act on June 23, 2022 when the brackets of a pump broke while Petitioner was lifting it, causing injury to Petitioner's cervical spine and left shoulder when Petitioner tried to catch the pump. This finding is supported by Respondent's incident report, which states Petitioner was "offloading a pump from a construction trailer and frame came off pump assembly causing Emory to fall forward from the weight of the pump caused left shoulder pain and tingling in his hands right shoulder sore." PX 1, pg. 236. Petitioner consistently provided the same history of accident to his treating doctors, including those at Respondent's company clinic, Concentra, and to Respondent's §12 examiners. (TR22-23, PX1 p. 23-25, 38, 56, 194, 221, 236, PX3 p. 12, PX5 p. 5, 16, 19, 37, RX3, RX4, RX6). The Arbitrator finds Petitioner's testimony regarding his work accidents on June 23, 2022, November 28, 2022, and his medical history to be credible. As such, the Arbitrator finds Petitioner's injuries on June 23, 2022 and November 28, 2022 arose out of and in the course of Petitioner's employment with Respondent.

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

The Arbitrator further finds that Petitioner's current condition of ill-being is causally related to the June 23, 2022 work accident in which Petitioner injured his neck and bilateral shoulders lifting a pump while working as a laborer for City of Chicago Water Department. This finding is supported by the Petitioner's testimony, (TR 22-23), the City of Chicago's Incident Reports, (PX1 p. 23-25, 236), the histories taken by Respondent's own §12 examiners, (RX3, RX4,

RX6), and the consistent histories provided in the medical records of Dr. Taiwo, Dr. Neckrysh, and Dr. Patel, (PX1 p. 38, 56, 194, 221, PX3 p. 12, PX5 p. 5, 16, 19, 37), all of which documented a consistent history of injury beginning when trying to catch a pump that was falling while at work for Respondent on June 23, 2022.

Additionally, with respect to causation, proof of prior good health and change immediately following and continuing after an injury may establish that an impaired condition was due to the injury. *Granite City Steel Co. v. Indus. Comm'n*, 97 Ill.2d 402 (1983). To constitute an accidental injury within the meaning of the Act, the claimant need only show that some act or phase of the employment was a causative factor of the resulting injury. *Teska v. Indus. Comm'n*, 266 Ill.App.3d 740, 742 (1st Dist. 1994). Every natural consequence that flows from the injury which arose out of and in the course of the claimant's employment is compensable under the Act. *Id.* A chain of events suggesting a causal connection may suffice to prove causation. *Consolidation Coal Co. v. Industrial Comm'n*, 265 Ill.App.3d 830, 839 (1994).

In this case, Petitioner had no problems with pain, numbness, tingling, or limitations with respect to his neck, shoulders, or upper extremities prior to the accident of June 23, 2022. TR 22, PX4 p. 37, PX5 p. 37. After the June 23, 2022 accident, however, Petitioner has made consistent and unrelenting complaints of pain in his upper back, neck, and left arm and complaints of numbness and tingling into his hands. Petitioner's pain and limitations have never completely resolved since the time of the accident and have, in fact, worsened since his second injury, which occurred after he was instructed to return to work, against the recommendations of his treating doctors, on November 28, 2022. The Arbitrator finds Petitioner's testimony to be credible and supports the finding of causal connection. The Arbitrator also finds the lack of symptoms prior to the injury and the consistent symptoms after the injury support the existence of a causal connection.

Additionally, while a medical opinion is not essential to support the conclusion that an accident caused a claimant's condition of ill-being, (see *Univ. of Ill. v. Indus. Comm'n,* 365 Ill.App.3d 906, 912 (1st Dist. 2006)), the Arbitrator relies on the medical records of Concentra, University Spine Surgeons, Pain and Spine Institute, American MRI, and Illinois Bone and Joint Institute, which all support that Petitioner's injuries were caused by the June 23, 2022 accident. Indeed, as reflected in Respondent's own incident report from the day of the injury, Petitioner was immediately displaying objective signs of cervical radiculopathy, reporting to his foreman that he was having "tingling in his hands." PX1 p. 236. Just five (5) days after the accident, Dr. Taiwo documented Petitioner's complaints of numbness in the left thumb. By July 5, 2022, less than two weeks after the injury occurred, Dr. Taiwo had diagnosed Petitioner with "cervical radiculopathy." Less than a month later, Petitioner underwent an MRI of his cervical spine, which revealed additional objective evidence of cervical pathology. Dr. Taiwo, Dr. Neckrysh, and Dr. Patel have all opined that Petitioner's August 2, 2022 MRI revealed a herniated disc based on their clinical exams.

Nevertheless, Respondent's chosen §12 physician, Dr. Deutsch, contends Petitioner's neck complaints are not causally related to the work injury, based on two assumptions that are unsupported by the evidence. First, as Dr. Deutsch explained after his second examination of Petitioner, his opinions assume that there was no evidence that an accident occurred in the medical records. However, this assumption required Dr. Deutsch to ignore Respondent's own Incident Report, dated June 23, 2022, completed by Respondent's foreman, Jose Mota, which documented that Petitioner was "offloading a pump from a construction trailer and frame came off pump assembly causing Emory to fall forward from the weight of the pump caused left shoulder pain and ***tingling in his hands*** right shoulder sore." PX 1, pg. 236 (emph. added). Respondent's

Incident Report from the November 28, 2022 accident, completed by Jim Leatherman, similarly documents that the injury occurred while Petitioner was lifting a pump onto a truck on that date when he suffered injuries to his back and neck. PX 1 p. 24. Dr. Deutsch's premise of no evidence of accident is also contradicted by the treatment records of Respondent's own occupational clinic, Concentra, from the day after the accident, June 24, 2022, and from later that same week, June 28, 2022. Notes from each of these dates of service note a consistent history of accident. Accordingly, Dr. Deutsch's opinions, and the bases for them, are inconsistent with the evidence.

The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Gross v. Illinois Workers' Compensation Comm'n,* 2011 IL App (4th) 100615WC. Expert opinions must be supported by facts and are only as valid as the facts underlying them. *In re Joseph S.,* 339 Ill.App.3d 599, 607 (2003). Where an expert's opinion rests on certain factual assumptions, those assumptions must be proved. If the expert's assumptions are unproven or contrary to the evidence, the expert's opinion is considered a "naked opinion" and has no weight or probative value. *People v. Winters (In re Winters)*, 255 Ill.App.3d 605, 609 (2nd Dist. 1994), *Kemnitz v. Semrad*, 206 Ill.App.3d 668 (1st Dist. 1990), *Manion v. Brant Oil Co.*, 85 Ill.App.2d 129, 136 (4th Dist. 1967). When an expert's opinion is unsupported by the evidence, it is proper to strike it. *See Schuler v. Mid–Central Cardiology,* 313 Ill.App.3d 326, 335 (4th Dist. 2000). Here, there is no factual foundation underlying Dr. Deutsch's opinions.

Next, Dr. Deutsch's opinions on causation are based on the purported lack of neck pain complaints in Petitioner's medical records immediately after the accident. However, as Dr. Neckrysh explained in his April 27, 2023 note, complaints of numbness and tingling in the arms are symptoms that are universally understood and recognized by physicians as being symptomatic of cervical radiculopathy. PX3 p. 24. The evidence shows Petitioner made immediate complaints

of numbness and tingling in his left hand, as documented in Respondent's incident report, and in the records of its chosen company clinic, Concentra. Dr. Deutsch's opinion ignores this. Specifically, Respondent's incident report states Petitioner was having "tingling in his hands." PX1 p. 236. At his first visit at Concentra on June 24, 2022, the day after the accident, Petitioner complained of numbness and tingling in his left hand. PX 1 p. 228. Petitioner also reported pain in his "upper back." *Id.* On June 28, 2022, just 5 days after the accident, Petitioner was complaining of numbness of the left hand and thumb. *Id.* at 221. By July 20, 2022, Dr. Taiwo diagnosed Petitioner with cervical radiculopathy and ordered an MRI of the cervical spine. *Id.* at 152. The MRI of August 2, 2022 reveled objective evidence of multiple herniated discs in Petitioner's cervical spine, which were impinging on his spinal cord. Accordingly, contrary to Dr. Deutsch's opinion, Petitioner did, in fact, have objective symptoms referrable to his cervical spine immediately after the work accident.

Thus, the bases for Dr. Deutsch's "opinions" are unsupported by and contradict the evidence. "Regardless of how skilled or experienced an expert may be, he is not permitted to speculate or to state…a conclusion based on assumptions not in evidence or contradicted by the evidence." *Royal Elm Nursing & Convalescent Ctr., Inc. v. N. Ill. Gas Co.*, 172 Ill.App.3d 74, 79 (1st Dist. 1988). Experts cannot base opinions on what may have occurred or what the expert believed might have happened in a particular case. *Schuler v. Mid–Central Cardiology,* 313 Ill.App.3d 326, 335 (4th Dist. 2000), *citing Dyback v. Weber,* 114 Ill.2d 232, 244 (1986). "Mere surmise or conjecture is never regarded as proof of a fact." *Lyons v. Chicago City Ry. Co.*, 258 Ill. 75, 81 (1913). Expert's opinions based on conjecture, guess or speculation are inadmissible. *Hudson v. City of Chicago*, 378 Ill.App.3d 373, 401 (1st Dist. 2007).

Dr. Deutsch makes other assumptions and misrepresentations of the evidence throughout his report which are contradicted by a plain reading of the evidence. For instance, Dr. Deutsch characterizes Petitioner's August 2, 2022 MRI as "unremarkable," while the radiologist, Dr. Saldaha, and all three of Petitioner's treating doctors, Dr. Taiwo, Dr. Neckrysh, and Dr. Patel, read the same MRI and diagnosed Petitioner with a herniated cervical disc and cervical radiculopathy based on that imaging. Numerous other medical providers at Concentra, including Emily Opiloa, NP, Katlyn McHale, PT, Andrew Mack, PT, and Brittany Brodeson, DPT, also identified Petitioner's problem as a herniated disc with cervical radiculopathy.

The MRI scan, and the interpretations of that scan by all of Petitioner's treating doctors also contradict Dr. Deutsch's supposition that there were no objective findings of any injury. There are at least eight (8) medical professionals that disagree with Dr. Deutch, and believe the MRI shows objective evidence of a herniation and cervical radiculopathy. Dr. Deutch's is the only contrary opinion. Many of those medical professionals work at Respondent's hand-selected company clinic, Concentra. *Nunez v. Ill. Workers' Comp. Comm'n*, 17 ILWC 28222 (Mar. 4, 2021) (noting it was Respondent, and not Petitioner, that selected Concentra and finding Concentra doctors' opinion persuasive), *Mares v. Indus. Comm'n*, 12 ILWC 04403 (Jan. 28, 2019) (noting Concentra doctor "was a physician of Respondent's selection," and finding Concentra records "significantly undermine the validity of the defenses" offered by employer), *Gonzalez v. Indus. Comm'n*, 09 ILWC 47643 (Sept. 12, 2011) ("evidence is replete with positive causal connection opinions by not only the treating surgeons, but also the company clinic Concentra"), *Medley v. Indus. Comm'n*, 08 ILWC 53407 (Dec. 4, 2009) (giving greater weight to medical opinions of Petitioner's treating doctors than to Respondent's §12 examiner, noting "these doctors are Respondent's doctors from the company clinic of Concentra"), *Aguilar v. Indus. Comm'n*, 04

ILWC 57684 (Sept. 15, 2006) (finding "the opinions of all the treating physicians should be given greater weight than Respondent's IME…").

Similarly, Dr. Deutsch's October 31, 2022 report states that there are no objective findings of any injury. The MRI on August 2, 2022 revealed a 4-5 mm herniated disc at C5-C6, among other findings. PX 2, p. 4. As noted, there are at least eight (8) medical professionals disagree with Dr. Deutsch's statement that there were no objective findings of injury. Dr. Saldanha (the radiologist), Dr. Taiwo, Dr. Neckrysh, Dr. Patel, and numerous medical personnel at Concentra, Respondent's own clinic, also interpreted this as a herniated cervical disc.

The Arbitrator finds it significant that the facts introduced into evidence plainly contradict Dr. Deutsch's opinions and the bases for them. Therefore, the Arbitrator disregards those opinions as being without proper foundation. *Soto v. Gaytan*, 313 Ill.App.3d 137, 147 (2d Dist. 2000) ("As the gatekeeper of expert opinions disseminated to the jury, the trial court plays a critical role in excluding testimony that does not bear an adequate foundation of reliability."). Indeed, this is not the first time that Dr. Deutsch has been found to be less than credible by this Commission. *George Howe v. Abrasive-Form, LLC*, 20 WC 018405.

Dr. Deutsch also questions the credibility of the Petitioner despite his own opinions plainly contradicting the objective medical evidence and the opinions of essentially every one of Petitioner's treating physicians. However, Respondent cannot reconcile how its own hired §12 examiner found that none of Petitioner's treatment for his cervical spine was reasonable, despite every one of the doctors at Respondent's hand-selected clinic, Concentra, diagnosing Petitioner with a herniated disc in his cervical spine.

The Arbitrator finds Petitioner's testimony was credible, and more persuasive than that of Dr. Deutsch. 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 (1984), *Hosteny v. Illinois Workers' Compensation Comm'n,* 397 Ill. App. 3d 665, 675 (2009); *Fickas v. Industrial Comm'n,* 308 Ill. App. 3d 1037, 1041 (1999). Additionally, it is for the Commission to decide which medical view is to be accepted, and it may attach greater weight to the opinion of the treating physician, particularly where those treating physicians are selected by the employer. *International Vermiculite Co. v. Industrial Comm'n,* 77 Ill.2d 1 (1979), *ARA Services, Inc. v. Industrial Comm'n,* 226 Ill. App. 3d 225 (1992).

In this case, Petitioner, an individual with no medical training, initially believed he had injured his left shoulder. He consistently reported numbness and tingling in his left hand beginning the day of the incident, as documented in the incident report from Respondent's own foreman. Given Petitioner's numerous and consistent complaints and repeated instances that numbness and tingling are recorded in the medical notes, the existence of some medical notes that do not specifically indicate "neck pain" are of no moment. They do not disprove any of the complaints testified to credibly by Petitioner, nor those contained within Respondent's incident report and the medical records. Indeed, Respondent's occupational medicine physician, Dr. Taiwo, relates Petitioner's condition to the work-related injury of June 23, 2022. The records from Concentra repeatedly designate Petitioner's medical condition as related to "workers' compensation." PX1 pg. 35, 38, 69, 90, 94, 207, 211, 221, 225.

Moreover, the November 28, 2022 aggravation of the injury breaks the chain of causal connection. Under the Act, compensation may be awarded for a claimant's condition of ill-being even though the conditions of his or her employment do not constitute the sole, or indeed principal, cause of injury. *Teska*, 266 Ill.App.3d at 742. To constitute an accidental injury within the meaning

of the Act, the claimant need only show that some act or phase of the employment was a causative factor of the resulting injury. *Id.* Every natural consequence that flows from the injury which arose out of and in the course of the claimant's employment is compensable under the Act, unless caused by an independent, intervening accident. *Id.*

An independent, intervening accident is one which breaks the chain of causation between a work-related injury and an ensuing disability or injury. *Id.* A nonemployment-related factor which is a contributing cause with the compensable injury in ensuing injury or disability, however, does not constitute an intervening cause sufficient to break the causal connection between the employment and claimant's condition of ill-being. *Id.* That other accidents, whether work-related or not, may have aggravated the claimant's condition is irrelevant. *Vogel v. Indus. Comm'n*, 354 Ill.App.3d 780, 786 (2nd Dist. 2005). Compensation for subsequent injury or disability is properly awardable whenever the existing employment-related condition is a causative factor in producing the subsequent injury or disability. *Int'l Harvester Co. v. Indus. Comm'n*, 46 Ill.2d 238, 245, 247 (1970) (where work injury itself causes subsequent injury, chain of causation not broken). "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." *Dunteman v. Ill. Workers' Comp. Comm'n*, 2016 IL App (4th) 150543WC ¶43, *citing Global Products v. Workers' Comp. Comm'n*, 392 Ill.App.3d 408, 411 (1st Dist. 2009). "A work-related injury 'need not be the sole causative factor, nor even the primary causative factor, so long as it was *a* causative factor in the resulting condition of ill-being. *Id. quoting Sisbro v. Indus' Comm'n*, 207 Ill.2d 193, 205 (2003). As long as there is a "but for" relationship between the work-related injury and subsequent condition of ill-being, the employer remains liable. *Id.* at ¶44. In the case at bar, the November 28, 2022 was either an aggravation of injury originally suffered on

June 23, 2022 or it was a new injury. Either way, it was compensable. Any aggravation of the injury Petitioner suffered while working for Respondent on November 28, 2022 is also causally related to the original June 23, 2022 injury.

Based upon the records as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that his condition of ill-being in the neck, bilateral shoulders and cervical spine are causally related to the June 23, 2022 and the November 28, 2022 work accidents. The Arbitrator finds the testimony of the Petitioner credible and finds the opinions of Petitioner's treating physicians credible and persuasive. The Arbitrator finds Dr. Deutsch's opinions unsupported by evidence.

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:

Petitioner submitted medical bills for treatment of his work-related injury from Concentra Medical Center from June 24, 2022 through November 29, 2022 in the amount of $4,626.74, American MRI from August 2, 2022 in the amount of $2,250.00, University Spine Surgeons from September 1, 2022 through April 27, 2023 in the amount of $6,500.00, ReLive Physical Therapy from September 16, 2022 through May 17, 2023 in the amount of $62,245.00, Pain and Spine Institute from September 22, 2022 through June 1, 2023 in the amount of $5,311.00, Illinois Bone and Joint Institute from May 2, 2023 through June 6, 2023 in the amount of $435.18, and Pain and Spine, LLC from November 23, 2022 through April 5, 2023 in the amount of $1,878.27. These charges were admitted into the record as evidence at the time of hearing. There was no evidence offered to the contrary.

The Arbitrator finds that all medical bills are reasonable, necessary, and causally related to the work accidents Petitioner sustained on June 23, 2022 and November 28, 2022. The Arbitrator notes that at Petitioner's first visit with Dr. Taiwo he reported that his pain had begun originally on June 23, 2022. The Arbitrator also notes that the treatment corresponding to these bills is for Petitioner's neck and bilateral shoulders, which Petitioner did not suffer from prior to his work accident.

Thus, because this treatment is for injuries the Arbitrator has found to reasonable, necessary, and causally related to the accident, Respondent shall pay the outstanding balance of those bills pursuant to the medical fee schedule directly to the provider per stipulation of the parties.

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

Petitioner had a symptomatic cervical spine injury since the accident date of June 23, 2022. Petitioner completed an extensive course of conservative treatment without relief including medication, rest, physical therapy, and injections. Petitioner has undergone consistent treatment and complied with the recommendations of his treating physicians. Although Petitioner has not reached maximum medical improvement, Dr. Neckrysh recommended the carpal tunnel syndrome be taken care of first and then "to reimage to decide if Petitioner was a candidate for a cervical discectomy after the carpal tunnel surgery." As noted in the Procedural History above, the parties agreed to postpone the issue of the carpal tunnel pending a decision in this matter.

Based on the foregoing, the Arbitrator finds that there is not a specific recommendation at this time for the cervical discectomy, only a recommendation to reimage. As such, the Arbitrator

orders the Respondent to pay for medical services related to the reimaging. The Arbitrator reserves finding with regard to the cervical discectomy until such time, it is clearly recommended.

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).

According to Dr. Taiwo, Dr. Neckrysh, and Dr. Patel, Petitioner is unable to return to work. Petitioner has remained unable to work since his initial injury on June 23, 2022. Petitioner was returned to work at the direction of Respondent's chosen §12 physician, Dr. Harel Deutsch and contrary to Respondent's occupational medicine doctor, Dr. Taiwo. Petitioner worked on November 28, 2022 and was reinjured. He has not been released to return to work since that time. At the time Respondent refused to pay TTD benefits after the November 28, 2022 aggravation and re-injury. Respondent's third IME report was dated March 28, 2023. The Arbitrator finds the Petitioner's treaters opinions as more persuasive than Dr. Deutsch. Consistent with that finding, the Arbitrator finds that Respondent appears to have acted in good faith in relying on Dr. Deutsch's opinions.

Based on the above, the Arbitrator finds Respondent liable for a total of 54 3/7 weeks of Temporary Total Disability (TTD) benefits (from the periods June 24, 2022 to November 28, 2022 & November 30, 2022 through July 12, 2023) at a weekly rate of $1,253.33, which corresponds to $68,216.96. After applying the Respondent credit in the amount of $47,676.75 (See N below), the Respondent shall pay to Petitioner $20,540.21.

Issue M, whether penalties or fees should be imposed upon Respondent, the Arbitrator finds as follows:

The Arbitrator declines to impose any penalties and fees.

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

The parties have stipulated Respondent is entitled to a credit for TTD paid in the amount of $36,431.43 and for the PPD advance in the amount of $11,245.32 for a total credit of $47,676.75.

It is so ordered:

Crystal L. Caison

Arbitrator Crystal L. Caison

March 25, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC010440
Case Name	Maria Guzman v. Menasha Packaging Company
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0039
Number of Pages of Decision	12
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Jill Wagner
Respondent Attorney	Brad Antonacci

DATE FILED: 1/28/2025

/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

Maria Guzman,

Petitioner,

vs. NO: 23 WC 010440

Menasha Packaging Co.,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission modifies the Arbitrator's award of temporary total disability benefits. The Arbitrator awarded TTD benefits commencing December 6, 2022 through March 1, 2023, and April 14, 2023 through April 10, 2024, "… *and ongoing, unless she fails to undergo surgery.*"

The Act gives the Commission authority to find a disabling condition temporary and order the payment of compensation only up to the date of the hearing. 820 ILCS 305/19(b).

Accordingly, the Commission strikes the Arbitrator's award of ongoing TTD benefits and awards them through April 10, 2024, the date of trial.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 21, 2024, is hereby modified as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $503.73 per week for 63 5/7 weeks, commencing December 6, 2022 through March 1, 2023, and April 14, 2023 through April 10, 2024, as provided in §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for the EMG/NCS and the lateral approach peroneal synovectomy, reconstruction of the peroneal split tear, possible groove deepening, removal of the loose body, deltoid repair, and ankle synovectomy, along with all reasonable and necessary attendant care, as recommended by Dr. Kadakia.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $18,700.00. 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.

January 28, 2025
MP:ns
o 12/19/24
68

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC010440
Case Name	Maria Guzman v. Menasha Packaging Company
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Francis Brady, Arbitrator

Petitioner Attorney	Jill Wagner
Respondent Attorney	Kevin Luther

DATE FILED: 6/21/2024

/s/Francis Brady, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 18, 2024 5.15%

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

Maria Guzman
Employee/Petitioner

Case: 23 WC 010440

v.

Menasha Packaging Co.
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 Honorable **Francis Brady**, Arbitrator of the Commission, in the city of **Chicago**, on April 10, 2024. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On November 22, 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 $39,291.20; the average weekly wage was $755.60.

On the date of accident, Petitioner was **55** years of age, ***single*** with 1 dependent children.

Petitioner ***has*** not received all reasonable and necessary medical services.

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

ORDER

Credits

Per Arbitrator's Ex 1 Respondent shall be given a credit of $6,692.40 for TTD, $**0** for TPD, and $**0** for maintenance benefits, "$6,647.14 in nonoccupational indemnity disability benefits and $2,368.80 in other benefits, for which credit may be allowed under 8(j) of the Act", for a total credit of $**15,708.34**. (Arbitrator's Ex 1 and Tr. 10)

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $503.73 per week for 63 5/7 weeks, commencing 12/6/22 through 3/1/23, and 4/14/23 through 4/10/24 as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from 12/6/2022 through 3/1/2023 , and 4/14/2023 – 4/10/2024 and shall pay the remainder of the award, if any, in weekly payments. (Tr. 17, 18)

Respondent shall be given a credit of $ 6,692.40 for temporary total disability benefits that have been paid. (see above and Tr. 20)

Medical benefits

Respondent shall pay reasonable and necessary medical services of $ 2,127.30 , as provided in Sections 8(a) and 8.2 of the Act and pursuant to the medical fee schedule as follows: $ 445.10 to Northwestern Medicine and $ 1,682.20 to Erie Family Health Center (See Bill Special attached to Arbitrators Ex 1 as well as Tr. 9 and 10.)

Signature of Arbitrator

June 21, 2024

STATEMENT OF FACTS

Petitioner, Maria Guzman, "Guzman" walked into Swedish Covenant Hospital, "Covenant" on July 25, 2022, and underwent x rays comprising "3 views" of her "TOE(S) (RT)" due to "Toe pain, right" which were negative for fracture or malalignment (PX, 6, pps. 12 – 16). There were no prior films available for comparison (id) At times these x rays are misidentified in the record as an MRI of Guzman's right foot or right foot x ray (RX 1., 14, 17 and Ex 2 to RX 1, p 3)

As of November 22, 2022, Guzman was able to function at full duty (Tr. 39)

On that date, at work. a metal cart turned her right foot out to the right as she performed job duties required by her employer, Respondent, Menasha Packaging Co, "Menasha", (Arbitrator's Exhibit 1; Tr. 31, 32) Thereafter, she felt pain and on December 2, 2022, visited Erie Family Clinic, "Erie" complaining to Dr Hale, "Hale" about worsening "ankle pain" since a "work injury last week (Tr. 33, 34; PX 2., p, 37, 38) Too, she worried about a fracture and whether there was a deadline on her workers compensation rights. (RX2 p. 38) She was still working and wished to continue in her duties. (id) Hale's exam revealed right ankle swelling with extreme point tenderness over the lateral malleolus. There were no other abnormal findings and Guzman denied "injury anywhere else outside of right ankle." (Tr. 38, 39). Hale ordered an x ray, prescribed a boot for comfort, told Guzman to use ice and a wrap, and to return if the pain or swelling worsened. (Tr. 39) Guzman "declines work note" (PX 2., p. 38).

Guzman returned to Erie on December 6, 2022, telling Syed Hussaini, DO, "Syed" that she was "on her feet all day at work and Menasha's doctor asked she get reexamined regarding her return to work" (Tr. 34; PX 2., p. 35) Syed interpreted the x rays which Guzman had, by that date, undergone as "most consistent with a lateral ligament injury with a small avulsion fracture of the lateral margin of the distal fibula." (PX2., p. 35; PX 3., P. 188) Syed felt the fracture (which affected the right ankle) was healing routinely and he prescribed an air cast for Guzman. (id)

Syed concluded Guzman's December 6, 2022, presentation by instructing her to come back to Erie in one to two weeks for reassessment, but she reappeared on December 7, 2022 (PX 2., p. 33, 34) complaining to Doctor Joan Savage, "Savage" of "pain at the right lateral malleolus and difficulty ambulating' (PX 2., P. 33) There was "notable (right ankle) swelling and tenderness" upon exam and Guzman claimed she could neither wear a steel toed boot nor stand for long periods, both required by her job. (TX 2., 32). Savage referred her to an orthopedist and "provided" a letter "for "work" (Tr. 35; PX. 2., p 33)

Guzman treated at Erie again on December 27, 2022; January 5, 2923; March 17 and/or 19, 2023; and March 20 and/or 21, 2023 but made no mention of any work accident or right ankle injury. (PX., 2., PPs 9 – 30).

She did however follow Savage's referral of December 7, 2022, presenting to Dr. Bradley Merk, "Merk" at Northwestern Medicine, "Northwestern" on December 20, 2022 (Tr. 34, 35) His assistant, "PA", recorded Guzman had been suffering pain "around her 'whole (right) ankle'" worse with walking and weight bearing since hitting it on a piece of machinery at work on November 22, 2022 (PX., 3, 180). Her job involved ". . . doing general labor. . . lifting and carrying heavy boxes and pieces of equipment... "at a "'box and carton'" company which "includes lifting, standing and walking for long periods of time." (PX 3., P. 180, 181). Merk concurred that the x ray of December 6, 2022, demonstrated a right fibular avulsion fracture which would "heal on its own in due time. . ." Still, he prescribed a course of physical therapy, "PT" and removed her from work for four weeks at which time she was to return "for re-evaluation and consideration of full release." (PX. 3 P. 180,181)

Guzman didn't start PT because she got covid according to what her daughter stated on January 6, 2023, when she telephoned Merk's staff seeking an updated off work letter. She was told by Merk's staff to come in for an examination on 1/17/23. (PX 3., p 175)

On the 17th Guzman was examined by Merks' PA who confirmed the "work-related avulsion fracture to her right ankle approximately 2 months ago. . ." and the fact she'd been referred by Merk to PT which she had yet to start due to a case of covid and a reaction to Covid medication, (RX3 157) The PA.'s exam revealed "mild soft tissue swelling over the lateral malleolus, . . ." The PA renewed orders for Guzman's to undergo PT for "range of motion and strength without restriction"; restricted from her "typical job doing labor-type work"; and told her to return in 4 weeks. (PX 3., p. 158) Merk himself added that if Guzman remained symptomatic in four weeks, he'd order an MRI. (PX 3 p157)

Guzman commenced PT at Atletico on January 17, 2023, with records characterizing her diagnosis as "Nondisplaced fracture of lateral malleolus of fibula. . .", with right ankle sprain resulting in decreased range of motion, muscle weakness and gait difficulty, all conditions relating to a "work/occupational. . . mechanism of injury" on "11/22" (PX 4., pps 118-124). Guzman described the physicality of the "General Labor" job she was working when she got hurt as "medium" requiring, at most, she lift and/or carry 50 pounds, though she wasn't working it at the time (PX 4., 119) The plan was for Guzman to undergo skilled PT 3 times a week for six weeks to get her back to a previous level of function (PX 4.,121)

Guzman had PT further PT sessions at Athletico on January 19, 20, 22, 23, 24, 30, and 31; and, February 3, 6, 7, 10, 13, 21, 22, 24, and 27, 2024 (PX 4 pps 70 – 11) Various treatment modalities, for example tens unit, ice and foot gear, were unavailing. (January 31, 2023 and February 3, 2023, PX 4., p 102, 104) Throughout this period she continued to express her fear she was not healing properly as a stabbing pain persisted in her ankle and she kept requesting additional scans. (PX 4., pps 70, 76, 107) Pain was omnipresent not only in her right ankle but also in her right hip (PX 4., p 79). Notes from the session of February 13, 2023, specify she was wearing "steel toe shoes when at work. . ." but the notion she's working in mid-February is incongruous with her job situation spelled out on January 17 (above) where she's not on the job. Records from February 27, 2023, noted at the beginning of a paragraph that her right ankle range of motion had improved as had strength there and in his right knee and hip. However, later that same paragraph notes she hadn't met any of her goals and continued to walk in an altered pattern. While early on (January 24, 2023) she reported "significant improvement since starting PT" she was ordered to continue it for another 8 weeks 3 times per week. (February 27, 2023) (PX 4, 72, 110).

Guzman saw Merk again on February 28, 2023, noting some improvement in her range of motion and strength due to PT but she reported ongoing pain and swelling with "compensatory discomfort in the knee and hip. . ." because she limped at times (PX 3., p 131) Merk repeated x rays "in view of (petitioner's) slow progress" and

when they revealed an appropriately healed distal fibular avulsion injury" he prescribed an MRI and continuing outpatient PT with home exercise. (id) Guzman, he felt, could work "light-duty if available to avoid prolonged standing and walking, lifting and carrying, climbing or work at heights." (id) Merk concluded his charting of this visit noting Guzman would "follow up post MRI" and that he had discussed her case with a representative from Genex (id)

PT continued per Merks order with Guzman undergoing sessions at Athletico on March 1, 3, 6, 9, 10, 13, 15, and 20th, 2023 (PX 4., 48 - 69.). She reported on March 1, 2023, she'd gotten a voicemail message to return to work on March 2, 2023, at 7 am and Athletico notified that Guzman could not wear steel toed boots (PX 4. P 67, 68)

As of March 3, and 9, 2023 Guzman was having difficulty physically performing the work functions she was assigned (PX 4., 58, 64,) Her job status weas defined as "part time with restrictions" in Athletico's note for the March 15, 2023, session (PX 4., 49)

Guzman missed her PT appointments on March 17th and 20th 2023 and because she did not reschedule them failed to "maintain the prescribed frequency of session attendance". (Rx 4., p, 48),

A report of a March 21, 2023, MRI depicts Guzman as a 55-year-old female suffering from a "closed avulsion fracture of (the) lateral malleolus of the right fibula." (RX 3., p 97) The scan revealed mild swelling and sprain; a tendon tear, and mild inflammation (id) She also presented to Merk on the 21st who, based on his examination and assessment of the MRI diagnosed tear of the peroneal tendon and referred her to Anish Kadakia, MD, "Kadakia", an ankle surgeon, to explore further treatment options. (RX. 3. P. 76) In the meantime, he maintained Guzman on light duty, continued her in PT, and placed her at weightbearing as tolerated. (id)

On March 22, 2023, she returned to PT explaining to Athletico personnel she'd missed her "last 2 visits" as she'd been "very sick . . . with diagnosis of bacterial pneumonia. . ." and also referencing her March 21 MRI which showed her "fibularis/Achilles tendon is not ruptured but torn" and resulting in her being "sent to another surgeon to get an opinion on if surgery is needed." (PX 4., p. 45) Her pneumonia precluded her involvement in any lifting that day. (PX 4., p. 42)

Guzman continued with PT at Athletico on March 29th and 31st and April 3rd, 5th, 6th, 11th 12th and 13th. (PX 4., pps11- 39) On the last date, she was frustrated that her right ankle continued to swell and capacity for work remained restricted. (RPX 4., p. 11) She hoped surgery might be available to restore her to usefulness (id) but it was "unknown if there will be a surgical repair of right ankle tendon . . . "PX 4., p 14. Regardless of the decision on surgery Athletico believed Guzman would benefit from "continuing skilled physical therapy. . . to ensure a safe return to work." (PX 4., 14) As she had met none of her long-term goals, she would benefit from work hardening "prior to returning to work without restrictions." (id)

Menasha had Guzman examined by Dr Hythem P Shadid, "Shadid" under Section 12 of the Illinois Workers Compensation Act on April 10, 2023. (RX 1., p 7, 8). He graduated from the University of Illinois with an engineering degree in 1978 and went on to get his MD there in 1988. (PX 1., pps 5- 7) He is Board Certified in Orthopedic Surgery and performs as many as 12 procedures per week, though mostly they involve knees and shoulders (RX1., 7, 30) His focus on knees and shoulders is borne out by his publishing history as none of the items listed in the "RESEARCH and PUBLICATIONS" section of his Curriculum Vitae concern ankles or feet. (Ex 1 to RX 1) His education and training beyond medical school consists of residencies in general and orthopedic surgery. (id) He understood that on November 22, 2022, Guzman's right ankle was traumatized at work when it was forced into "external rotation" though she was able to work for another two weeks. (RX 1., p 12). And Shadid "had to conclude" from ". . . a record of an x-ray of (Guzman's) right foot. . . in July of 2022. . . that there was a reason she was complaining of something" even before the work incident (RX 1., p. 13, 14)

Concerning the work incident, while Shadid's own history involved Guzman's ankle being externally rotated he noted that, at other places Guzman related differing versions of the mechanics of the injury (PX 1., pps 14 – 16). Regardless he was able to diagnose "chronic right foot peroneal tendinopathy" based primarily on the MRI of March 21, 2023, revealing a peroneal tear along with mild tenosynovitis of the posterior tibial tendon. (RX., 20, 24, 25) Those conditions were "unlikely to be related" to any work incident of November 22, 2024, no matter which of its iterations is adapted, as none "are going to put stress on the peroneal tendon." (PRX 1., p 25, 26) Moreover, Hadid believed Guzman couldn't have worked for another two weeks had she suffered an acute peroneal injury as she's claiming (RX 1., p. 26)
.
Shadid further found Guzman's significant pain complaints failed to correlate with either the physical exam he conducted or the results of the objectives testing (RX 1., 298-29). He concluded that while "reasonable" any treatment recommended for Guzman after he examined her, including "surgical interventions were not required by the alleged work injury and, further, that as of his exam Guzman could work without limitations (RX., 27,28)

Guzman continued treating after Shadid's Section 12 exam of April 10, 2023, presenting to Dr. Anish Kadakia, "Kadakia" on April 14, 2023, per Merk's referral of March 21, 2023. (Tr. 37, 38; PX 3., 57, PX 5., p. 7). Kadakia graduated Phi Beta Kappa from Northwestern University in three years and went on to medical school there earning his MD in 2000 tied as the top ranked graduate of the Feinberg School of Medicine. He served a five-year orthopedic residency, again at Northwestern McGaw Medical Center, and then completed a fellowship with a specialization year at the Foot and Ankle Institute of Mercy Medical Center, Baltimore, (PX 5, p 5, and Dep Ex 1., pps., 1 and 3). He has researched, published, and presented voluminously on foot and ankle topics. (PX 5/, Ex 1., pps 7 – 67) He is a full professor of Orthopedic Surgery at Feinberg as well as Director of its Foot and Ankle Fellowship program where he trains "both National and International Fellows." (Exhibit 1 to PX 5., p 2) Kadakia is Board Certified in Orthopedic Surgery (id)

He recorded Guzman's history of pain and nerve type discomfort after a definite job-related eversion injury with rotation. (Tr. 37, 38; PX 3., p. 57; PX 5, p 5). He diagnosed a peroneal tendon tear, and syndesmotic and deltoid injuries resulting from the "eversion external rotation injury" she described to him where, on November 22, 2022, trying to "pull a cart back at work" her foot got "kicked off to the outside . . . and she had pain. . ." (PX 5., pps 7, 10, 11-13). Her condition was injury, not age, related. It was not a chronic condition that you get through wear and tear. (PX 5, p 14). The care already rendered to her, including "all the standard stuff. . . a soft brace, physical therapy. . .)" had been "totally appropriate" and related to the work injury of November 22, 2022 (PX 3., pps 15, 20)

He prescribed corrective surgery consisting of a "peroneal tendon synovectomy, reconstruction of the peroneal split tear and possible groove deepening." (Px 3 pps., 19, 57) He ordered electro diagnostic tests to ascertain the exact nerve impairment and whether a surgical release was necessary or on the other hand the procedure could remain solely orthopedic in nature. (id, PX 5., p 16, 17) Guzman's need of this care is causally connected to the November 22, 2022 work injury (PX 5., p 22)

Until surgery, Kadakia removed Guzman entirely from work due to her work connected disabilities (id; PX., 5, 20, 21). After surgery, Guzman would remain off work entirely for three to four and a half months and then could work with a brace. (PX 5., p 22) His April 14, 2023 charting concluded that the "goal of the surgery is to get (Guzman) back to a well-functioning limb so she can get back to work." (PX 3., p 57)

Around July of 2023 Guzman fell descending the stairs in her home when her right foot, which lacked strength gave way, and her "condition" worsened. (Tr. 39 – 41, PX 5., 24)

On September 8, 2023, Kadakia reexamined Guzman confirming her history of work-related eversion-rotations stress type injury of the right lower leg and foot (Tr., 38; PX 3., pps. 26, 27). He recounted telling Guzman on

her last presentation in April that she should undergo "syndesmotic ORIF and deltoid repair (to) see if that could help with her pain and discomfort and obviously clean out the peroneal tendons if necessary.) (PX 3 p. 27). Since that visit Guzman reported her ankle had remained unstable and she had fallen "down the stairs again a couple of months ago." (id). The electro diagnostics hadn't been approved so Kadakian renewed his order as he needed them "to see if there is any neurologic issue that happened at the time of the injury that might need intervention . . . (as) (i)t would complicate the orthopedic intervention." (id) His goal continued to be to return Guzman to work as she remained completely unable to do so at that visit. (id)

While she has undergone no care or treatment since September 8 , 2023, Guzman's right ankle has remained painful and her functionality impaired; indeed, she desires to undergo the further procedures, including surgical prescribed by Kadakia (Tr. 41, 42, 47; PX 3 16 – 24)

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

Kadakia has testified the conditions currently disabling Guzman, and for which she's been treated and needs further care including the surgery he's prescribed, are causally related to the trauma she suffered at work on November 22. 2022. Given his superior academic background, his exceedingly accomplished education and training regarding maladies of the foot and ankle, and his practical focus on them and experience with their care and treatment, Merk's example of March 21, 2023 is followed: defer to Kadakia.

His opinions are thus adapted, and Menasha is found liable under the Illinois Worker's Compensation Act to Guzman for the injuries she suffered on November 22, 2022, and their sequalae, including functional impairment, as well as the appropriates cost of reasonable and necessary care and treatment, rendered to-date and prescribed for, or in, the future.

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:

By adapting in total Kadakia's opinions, his testimony that Guzman's care and treatment to-date has been advisable is persuasive. Guzman is thus awarded the cost of such treatment that has not been paid by Menasha as itemized in Petitioners Ex 1

K. WITH REGARD TO ITEM (K), IS THE PETITIONER ENTITLED TO PROSPCTIVE MEDICAL TREATMENT, THE ARBITRATOR RENDERS THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Kadakia recommends a lateral approach peroneal synovectomy, reconstruction of the peroneal split tear, possible groove deepening, and removal of the loose body and deltoid repair and ankle synovectomy. He also advises an EMG / NCV to determine if there are any neurological issues that could be addressed at the same time of the surgery since she continues to have numbness in the affected leg. In line with his overwhelming credibility on pathologies of the foot and ankle, including their origins and care and treatment, the treatment recommended by Kadakia is hereby awarded.

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

The Arbitrator finds that Guzman is entitled to TTD benefits from December 6, 2022 through March 1, 2023 and April 14, 2023 through April 10, 2024, a period of 63 5/7 weeks. She has shown by a preponderance of credible evidence that her current condition of ill-being is causally related to her work injury. It is not clear from the record that Guzman was authorized off work on December 6, 2022, versus December 7, 2022, but since the parties stipulated to a commencement date of the former (Arbitrator's Ex 1, Tr. 19) Menasha's obligation for TTD starts them. Her off-work restrictions were continued by Merk through March 1, 2023, at which point she was placed on light duty restrictions, which were accommodated. On April 14, 2023, Kadakia took her back off work until she undergoes surgery. She was still awaiting surgery on the trial date. Thus, Guzman is entitled to TTD benefits for that time period of December 6, 2022, through March 1, 2023 and again from April 14, 2023 through April 10, 2024 and ongoing, unless she fails to undergo the surgery.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC020864
Case Name	David Canania v. Woody Bogler Trucking
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0040
Number of Pages of Decision	34
Decision Issued By	Carolyn Doherty, Commissioner, Christopher Harris, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	James Telthorst

DATE FILED: 1/30/2025

/s/Carolyn Doherty,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

DAVID CANANIA,
Petitioner,

vs. NO: 22 WC 20864

WOODY BOGLER TRUCKING,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 26, 2024 is hereby affirmed and adopted.

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

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

IT IS FURTHER ORDERED BY THE COMMISSION that commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the ***Rate Adjustment Fund***, as provided in Section 8(g) of the Act.

Bond for 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.

January 30, 2025

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

O: 01/16/25
CMD/ma

045

/s/ *Marc Parker*
Marc Parker

DISSENT

Petitioner has not sufficiently proven that he is entitled to PTD benefits under the odd-lot theory of recovery. "The claimant ordinarily satisfies his burden of proving that he falls into the odd-lot category in one of two ways: (1) by showing diligent but unsuccessful attempts to find work, or (2) by showing that because of his age, skills, training, and work history, he will not be regularly employed in a well-known branch of the labor market." *Westin Hotel v. Indus. Comm'n*, 372 Ill. App. 3d 527, 544, 865 N.E.2d 342, 310 Ill. Dec. 18 (2007).

Petitioner's job search, which consisted of applying to 20 driving positions over two weeks, does not evidence a diligent but unsuccessful attempt to find work. Moreover, the fact that his own vocational counsel, Tim Kaver, stated that he is not suited for driving positions undermines the sincerity of his purported search. Considering the second prong, I find the evidence supports Karen Kane-Thaler's vocational opinion over Mr. Kaver's vocational opinion. Mr. Kaver suggested the Petitioner might be able to find work in sedentary or light duty physical work capacity and recommended vocational rehabilitation. (PX.19.) However, no such services had been provided. Ms. Kane-Thaler, on the other hand, identified several jobs that the Petitioner could potentially perform within his physical limitations[1] including dispatcher, order clerk, cashier II, dining room attendant, garment inspector, sorter, hanger, telephone solicitor, and a customer service clerk. (RX.4.) She also noted that there is a stable job market for these types of positions, given the Petitioner's age, skills, training, and work history. (*Id.)* Without these vocational services, it is premature to conclude that the Petitioner is permanently and totally disabled under the odd-lot theory of recovery.

While the evidence fails to support that Petitioner is permanently and totally disabled under the odd-lot theory, the overwhelming evidence establishes that he has sustained permanent partial disability as a result of his injury. I would award Petitioner 60% loss of use of the person-as-a-whole for the injuries suffered in this case. Therefore, I respectfully dissent from the Majority.

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

[1] Petitioner underwent an FCE on February 22, 2024. The Petitioner was observed lifting 25 pounds from floor to waist, which places him in the medium physical demand level. On March 22, 2024, Dr. Rutz placed Petitioner at MMI and prescribed permanent 25-pound lifting restrictions.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC020864
Case Name	David Canania v. Woody Bogler Trucking
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	31
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	James Telthorst

DATE FILED: 7/26/2024

/s/Bradley Gillespie, Arbitrator

Signature

INTEREST RATE WEEK OF JULY 23, 2024 4.99%

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

David Canania
Employee/Petitioner

v.

Woody Bolger Trucking
Employer/Respondent

Case # **22** WC **20864**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Collinsville, Illinois**, on **May 15, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **07/20/2022**, 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 $**73,005.35**; the average weekly wage was $**1,403.95**.

On the date of accident, Petitioner was **53** 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 $**83,271.29** for TTD, $**1,750.94** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**85,022.23**.

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 $935.97/week for 90 1/7 weeks, commencing August 3, 2022, through October 22, 2022, and from November 13, 2022 through May 15, 2024, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner temporary partial disability benefits of $1,750.94, representing 3 weeks for the period of October 23, 2022, through November 12, 2022, as provided in Section 8(b) of the Act.

Respondent shall pay the reasonable and necessary medical services and vocational rehabilitation service charges outlined in Petitioner's group exhibits 1 and 19, 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 and total disability of $935.97 week for life commencing on May 15, 2024, pursuant to Section 8(f) of the Act.

Commencing on the second July 15th after the entry of this award and for every subsequent July 15th, 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.

Bradley D. Gillespie
Signature of Arbitrator

JULY 26, 2024

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DAVID CANANIA,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case Nos: 22WC020864**
	)	
WOODY BOGLER TRUCKING CO.,	)	
	)	
Respondent.	)	

DECISION OF ARBITRATOR

David Canania [hereinafter "Petitioner"] filed an Application for Adjustment of Claim on August 10, 2022, alleging injuries from a motor vehicle accident while employed by Woody Bogler Trucking Co. [hereinafter "Respondent"]. (Arb. Ex. #2) This claim proceeded to hearing on May 15, 2024, in Collinsville, Illinois. (Arb. Ex. #1) The following issues were in dispute at arbitration:

- Causation;
- Medical Expenses after March 28, 2023, and Vocational Rehabilitation;
- Temporary Total Disability/Temporary Partial Disability; and
- Nature and Extent of Injuries.

FINDINGS OF FACT

Petitioner worked as an over-the-road truck driver for Respondent (Tr. p. 11) He testified that on the date of the accident, he was driving an 18-wheeler, travelling northbound on 55 when traffic came to a stop, and he was rear-ended by another 18-wheeler truck. (Tr. p. 14)

Petitioner testified that following the accident, his low back hurt and he took the rest of the week off to try and "make it better." (Tr. p. 15) He attempted to work for a week and one day, but his symptoms became "excruciating" and he reported to the urgent care. (Tr. pp. 15-16)

MEDICAL EVIDENCE

Patient care records from Troy Fire Protection District dated July 20, 2022, indicate that Petitioner had been rear-ended by a semi-truck traveling at a "significantly fast speed." (PX #3) Petitioner had complaints of constant low back pain along the lumbar spine along with tightness. *Id.* On exam, there was pain to palpation in the lumbar spine area and pain with range of motion. *Id.* Petitioner declined to be transported to the hospital. *Id.*

On August 3, 2022, Petitioner reported to Total Access Urgent Care, where he saw Nurse Practitioner Kaylin Wessel, who noted that he had back pain following motor vehicle accident that occurred two weeks prior where he had been rear-ended by a truck traveling at 70 mph. (PX #4) He had been taking Aleve with no relief. *Id.* It was noted that he had surgery on his back seven years prior. *Id.* He appeared to be uncomfortable, and there was decreased extension and flexion in his back and tenderness to palpation of the midline lumbar, lumbosacral, and thoracic spine regions. *Id.* The assessments were back strain, pain in the thoracic spine, low back pain, motor vehicle collision, and elevated blood pressure without a diagnosis of hypertension. (PX #4) He was instructed to take Tylenol and ibuprofen, and was prescribed hydrocodone/acetaminophen, methocarbamol and prednisone. *Id.*

On August 4, 2022, Petitioner was seen by Dr. Kevin Rutz and his nurse practitioner, Loren Vandergriff. (PX #5, 8/4/22) The history of being rear-ended by an 18-wheeler traveling at a high rate of speed was documented, along with Petitioner's symptoms of pain in his neck, thoracic and lumbar spine. *Id.* It was noted that he had previously undergone thoracic fusion seven to eight years prior following a motorcycle accident, but that he had done well following the surgery until his most recent accident. *Id.* He had some discomfort in his neck with radiation into the upper thoracic region, pain in the mid-thoracic region, numbness in both hands and pain in his lower back. *Id.* His thoracic symptoms were greater than his lower back pain and his greatest area of pain was in approximately the same area where he had prior surgery. (PX #5, 8/4/22) He indicated that his pain was sharp, aching, burning and present all of the time. *Id.* His ability to walk long distances had been reduced and his pain awoke him from sleep. *Id.* He felt that his symptoms were worsening. *Id.* X-rays of the cervical spine showed mild right-greater-than-left facet arthropathy, lumbar x-rays showed grade I degenerative spondylolisthesis at L4-5 with a four millimeter anterior translation, and thoracic x-rays showed posterior pedicle screw instrumentation bilaterally from T9 through T5. (PX #5, 8/4/22)

On exam, Petitioner had diminished lumbar flexion and extension which reproduced low and thoracic back pain. *Id.* His cervical flexion and extension were reduced; however, this was painless. *Id.* He was tender over the midline, cervical and lumbar regions with diffuse tenderness throughout the thoracic region. *Id.* He had normal strength and sensation on lumbar and cervical neurologic exam. (PX #5, 8/4/22)

Dr. Rutz's diagnoses were thoracic and low back pain. *Id.* Petitioner was given a prescription for a Medrol Dosepak, and MRI and CT scans of the thoracic spine were ordered. *Id.* Petitioner was kept off work. *Id.*

CT of the thoracic spine performed on August 9, 2022, at Greater Missouri Imaging showed a healed T7 fracture and posterior instrumentation at T5 through T9 and anterior spurring/bridging at all postoperative levels, as well as at T9 through T12. (PX #6, 8/9/22) There was no evidence of hardware loosening or malposition. *Id.* A thoracic spine MRI performed that same day showed a probable hemangioma or fatty replacement adjacent to a healed fracture line

within the T7 vertebral body, a midline disc protrusion at T9-10 resulting ventral cord flattening but no central canal stenosis, mild foraminal stenosis at T3-4 bilaterally and at T10-11 on the right due to small disc protrusions, and minimal anterior wedging at T11. *Id.*

That same day, Dr. Rutz reviewed Petitioner's MRI and CT and noted that his hardware was in good position, and there was no nerve impingement, new fracture or significant degenerative change in the thoracic spine. (PX #5, 8/9/22) Petitioner reported no improvement following his Medrol Dosepak, and Dr. Rutz referred him to Dr. Hurford for further treatment. *Id.* Petitioner was kept off work. *Id.*

On September 8, 2022, Petitioner presented to the office of Dr. Patricia Hurford, where he reported his high speed motor vehicle collision. (PX #7, 9/8/22) He indicated that at the time of the accident, he had pain but felt that he would be fine. *Id.* However, within the next week, his symptoms increased and progressed to the point where he was seen at urgent care. *Id.* Dr. Hurford reviewed Petitioner's thoracic MRI and noted his prior surgery from 2016. *Id.* She noted that following his treatment for same, he had avoided chronic pain management. (PX #7, 9/8/22)

Dr. Hurford indicated that Petitioner's current symptoms were rated at an 8/10, and that although the hydrocodone was helpful, he was not using it due to his occupation as a truck driver. *Id.* He described his pain as burning, sharp, constant, and stabbing. *Id.* He indicated that he missed three days of work following the incident and then attempted to work again before limiting himself due to his ongoing symptoms. *Id.* She noted that as a truck driver, Petitioner worked 10 to 11 hours per day, five to six days per week, and performed lifting, bending/twisting, walking, sitting, climbing, standing and shoveling. (PX #7, 9/8/22) On exam, Petitioner had increased thoracic kyphosis with significant pain, a well-healed scar in the midline region, significant pain in the mid to lower portion of the thoracic spine extending into the upper lumbar region, guarded movements with flexion, significant restriction with extension at the thoracolumbar region, and vertebral tautness. *Id.*

Dr. Hurford's assessments were motor vehicle accident with resulting thoracic and thoracolumbar axial pain symptoms, history of compression deformity with fusion from T5-T9, chronic wedging of T11, juxta fusional changes with narrowing at T3-4 and T 10-11, and based on MRI evaluation, discogenic changes at multiple levels but most pronounced at T9-10. (PX #7, 9/8/22) Dr. Hurford recommended a functional and restorative program with myofascial treatment and range of motion emphasis. *Id.* She indicated that he could use his hydrocodone on an as-needed basis and prescribed an anti-inflammatory and muscle relaxer. *Id.* He was given work restrictions of no heavy lifting or semi tractor trailer driving. *Id.*

At Petitioner's initial therapy evaluation at Athletico Physical Therapy on September 15, 2022, he reported central, mid and low back symptoms with numbness and tingling. (PX #8) He had increased difficulty with prolonged walking, standing, bending over, twisting and prolonged sitting. *Id.* The history of his work accident was taken as well as his pre-accident surgical history.

Id. As Petitioner continued his physical therapy treatments, he reported continued symptoms of soreness. *Id.* On September 20, 2022, he reported that he was "hurting a lot" and that he had gone back to work but had only lasted an hour or so. (PX #8)

Petitioner returned to Dr. Hurford on September 22, 2022 where it was noted that he had significant pain in the mid-thoracic region extending into the lower lumbar region. (PX #7, 9/22/22) She noted that despite commercial driving restrictions, he had been made to drive at work which had exacerbated his pain symptoms and led to worsening of his condition. *Id.* He reported that his pain was severe at a 7 to 8/10, that Nabumetone and cyclobenzaprine had not helped, and that therapy had only provided limited benefit. *Id.* She noted that his therapy notes indicated diffuse weakness and limited range of motion in the spine. *Id.* Her assessment was thoracic and lumbar pain symptoms following a motor vehicle accident. (PX #7, 9/22/22) She ordered an MRI on Petitioner's lumbar spine, gave him prescriptions for hydrocodone and methocarbamol and kept him off work, as his prescriptions were not appropriate for use with driving activities. *Id.*

Petitioner continued to engage in physical therapy at Athletico, where he reported continued pain in his mid and low back. (PX #8) On September 23, 2022, he indicated to his physical therapist that his lower back pain was just as bad as his upper back pain. *Id.* On September 27, 2022, he reported that his low back pain was worse than his upper back pain, but he still had "a lot of pain all over." *Id.* At his October 7, 2022, therapy appointment, it was noted that he continued to have weakness of the lower extremity along with slow, cautious movements with step ups and squatting activities. *Id.*

On October 4, 2022, he underwent an MRI of the lumbar spine which showed fat prominence in the epidural space which was suggestive of mild lipomatosis with a developmentally small thecal sac, broad-based disc bulging at L3-4 and L4-5, which contributed to a mild to moderate degree of central spinal stenosis with superimposed posterior element hypertrophy at L4-5. (PX #9) There was also narrowing at that level without definite root impingement. *Id.*

Petitioner returned to Dr. Hurford's office on October 10, 2022, where he saw PA Jeffrey Todd. (PX #7, 10/10/22) Petitioner reported continued mid-thoracic and low back pain and indicated that "it goes back and forth between which side is the worst." *Id.* It was noted that he had some numbness and tingling radiating into the bilateral thighs. *Id.* Given his severe pain, it was recommended that Petitioner undergo three or four epidural injections to see if this would help his low back pain and thigh symptoms. *Id.* He was continued off work. (PX #7, 10/10/22)

On November 1, 2022, Petitioner underwent a right L3-4 epidural steroid injection with Dr. Hurford. (PX #10, 11/1/22) On November 23, 2022, Petitioner returned to Dr Hurford and reported that he initially did well after his epidural steroid injection; however, he was returned to work without limitations due to confusion regarding his work status, and this aggravated his spine symptoms. (PX #7, 11/23/22) Dr. Hurford noted that Petitioner had significant and severe pain in

the low back and numbness and tingling in the thighs with prolonged standing and walking. *Id.* She recommended a repeat injection at L4-5 with a right zygapophyseal joint injection at that level along with a trial of gabapentin. *Id.* Petitioner was kept on work restrictions. *Id.*

On December 6, 2022, Petitioner underwent an epidural steroid injection and right facet joint injection at L4-5 with Dr. Hurford. (PX #10, 12/6/22) He returned to Dr. Hurford on December 21, 2022 and reported that following the injection, he had three days of improvement, and that the numbness and tingling in his posterolateral thighs had improved. (PX #7, 12/21/22) However, he continued to have pain across his low back, which was primarily axial, as well as ongoing pain in the mid back. *Id.* Dr. Hurford noted that Petitioner was still not able to tolerate full work activities, and his attempts at light duty had aggravated his pain symptoms. *Id.* On exam, Petitioner had low back pain with straight leg raise on the right, paravertebral tenderness in the lower lumbar region with palpation, and pain with flexion, extension and extension rotation. *Id.* She recommended diagnostic medial branch blocks, followed by a short period of work conditioning and possible work hardening. (PX #7, 12/21/22)

On January 17, 2023, Petitioner underwent bilateral paravertebral nerve injections at L3, L4 and L5 with Dr. Hurford. (PX #10, 1/17/23) Petitioner returned to Dr. Hurford on February 1, 2023, and reported that his recent medial branch blocks did not improve his pain. (PX #7, 2/1/23) She noted that Petitioner had mid and low back symptoms with numbness into his groin and both sides. *Id.* She encouraged smoking cessation, refilled his methocarbamol and gabapentin, and gave him a Medrol Dosepak for the increase in his back symptoms. *Id.* She discussed further therapy treatments and Petitioner was kept on work restrictions. *Id.*

On February 15, 2023, Petitioner returned to Dr. Hurford's office, where he was seen by PA Todd. (PX #7, 2/15/23) He reported continued mid and low back symptoms. *Id.* He indicated that his work had been assigning him new duties in a factory-type setting, and he was not sure he could complete the requirements of same. *Id.* Petitioner was kept on restrictions and was referred back to Dr. Rutz for surgical consultation. *Id.*

Petitioner returned to Dr. Rutz at the referral of Dr. Hurford on March 7, 2023. Dr. Rutz noted that Petitioner had an inadequate response to injections and was being referred for surgical evaluation. (PX #5, 3/7/23) His pain was noted to be in the back on the right greater than left with burning and numbness in his legs, buttocks and groin which was worse with walking. *Id.* Dr. Rutz reviewed the MRI from October 4, 2022, and noted that it revealed moderate L4-5 facet arthropathy and a left sided disc protrusion at L5-S1. *Id.* Given Petitioner's worsening radicular complaints since his prior imaging, Dr. Rutz recommended a new lumbar spine MRI, and indicated that he may require a discogram. *Id.* Depending on the results, he would perform a fusion at either L4-5 or L5-S1. *Id.* Dr. Rutz kept Petitioner off work. (PX #5, 3/7/23)

Dr. Rutz saw Petitioner for a follow up on March 21, 2023. (PX #5, 3/21/23) He reviewed the new MRI, which demonstrated moderate bilateral L3-4 facet arthropathy, as well as advanced

facet arthropathy at L4-5 with a degenerative spondylolisthesis with moderate lateral recess stenosis and a moderate sized left-sided disc herniation at L5-S1. (PX #5, 3/21/23; PX #11, 3/21/23) At that point, Dr. Rutz recommended surgical intervention in the form of a decompression and fusion at L4-5. (PX #5, 3/21/23) He recommended discography at L5-S1 to determine whether his pathology at that level was symptomatic and would require operative intervention. *Id.* He was kept off work. *Id.*

The discogram recommended by Dr. Rutz was performed on April 3, 2023, by Dr. Greg Cizek. (PX #11, 4/3/23) It revealed classically positive L5-S1 discography with the contrast injection immediately extravasated posteriorly through an annular tear with reproduction of Petitioner's left-sided low back pain consistent with his chronic complaints. *Id.*

Dr. Rutz reviewed the results of the discogram with Petitioner at his follow up several days later on April 6, 2023. (PX #5, 4/6/23) He noted that it revealed concordant reproduction of his symptoms at the same level as his left-sided disc herniation. *Id.* At that point, Dr. Rutz recommended a fusion and decompression from L4-S1. *Id.* Petitioner wished to proceed and was given instructions for pre-operative testing and was kept off work. *Id.*

On May 5, 2023, Dr. Rutz performed decompressions and transforaminal lumbar interbody posterior fusions from L4-S1 with pedicle screw instrumentation and placement of prosthetic interbody vertebral devices. (PX #10, 5/5/23) Intraoperatively, he noted that the herniated disc at L5-S1 was removed. *Id.* Petitioner was kept off work following surgery. *Id.*

Petitioner followed up two weeks postoperatively with Dr. Rutz on May 16, 2023. (PX #5, 5/16/23) Dr. Rutz indicated that Petitioner's legs felt good and his preoperative back pain was gone. *Id.* He had appropriate surgical soreness and was able to tell the difference. *Id.* He was taking Percocet 5-325 MG as needed every four hours, as well as Prednisone. *Id.* Dr. Rutz indicated that Petitioner was progressing as expected. *Id.* He kept him off work during the healing process. (PX #5, 5/16/23)

On June 20, 2023, Petitioner returned to Dr. Rutz, who noted that he was down to 1-2 pain pills per day, had no pain in his legs and had appropriate soreness in his back. (PX #5, 6/20/23) At that point, Dr. Rutz felt he was progressing as expected. As he was still taking some narcotic medications and given that his job involved driving heavy vehicles, Dr. Rutz kept him off work and indicated that he may recommend physical therapy depending on his progress. *Id.*

Petitioner returned to Dr. Rutz next on August 15, 2023. (PX #5, 8/15/23) At that point, he was three (3) months status post L4-S1 fusion. *Id.* Dr. Rutz noted appropriate soreness in his back and no pain in his legs. *Id.* He believed Petitioner was progressing as expected and recommended physical therapy to begin work conditioning. *Id.* Petitioner was kept off work. (PX #5, 8/15/23)

The next day, Petitioner began participating in physical therapy at Athletico Physical Therapy. (PX #8) At his initial visit, the therapist noted his history of lumbar fusion in May of

2023 following a rear end motor vehicle collision in July of 2022. *Id.* Petitioner was noted to have pain in his back since surgery along with restricted range of motion. *Id.* He reported difficulty performing activities, including household chores, work-related tasks, transfers, sleeping, standing and walking. *Id.* He was recommended to participate in therapy three (3) times per week. *Id.*

On September 19, 2023, Petitioner returned to Dr. Rutz, who noted that he continued to trend slowly in a good direction. (PX #5, 9/19/23) He recommended continuation of physical therapy and to obtain a CT scan to ensure that his fusion was healing properly. *Id.*

Following a CT scan, Petitioner was seen again in follow up by Dr. Rutz on October 24, 2023. (PX #5, 10/24/23) Dr. Rutz noted that the CT demonstrated what appeared to be solid fusions from L4 to S1. (PX #5, 10/24/23; PX #11, 10/24/23) He noted some pain in Petitioner's right lower back going into his right groin, hip, and anterior thigh. (PX #5, 10/24/23) Petitioner was using a cane as a result of his hip and groin pain. *Id.* He was only taking oxycodone occasionally. *Id.* On physical exam, there was tenderness to palpation over his right hip trochanteric bursa. *Id.* Dr. Rutz believed he was showing signs of right hip bursitis and performed an in-office injection of Depo-Medrol into the right hip greater trochanteric bursa. (PX #5, 10/24/23) He recommended that Petitioner continue with physical therapy and prescribed an anti-inflammatory. *Id.* Dr. Rutz believed that if Petitioner could continue to strength in physical therapy and get his weight down, he would optimize his recovery. *Id.* He recommended light duty restrictions of no lifting more than twenty (20) pounds, limited bending, and no commercial driving. *Id.*

Petitioner returned to Dr. Rutz on November 28, 2023. (PX #5, 11/28/23) Dr. Rutz noted that his right hip improved quite a bit following the injection. *Id.* He still used a cane to ambulate at times, particularly when walking. *Id.* He felt as though Petitioner was making progress slowly in therapy. *Id.* Dr. Rutz recommended continued physical therapy and restrictions in the form of a twenty (20) pound limit on lifting and limited bending. (PX #5, 11/28/23)

On December 26, 2023, Petitioner again followed up with Dr. Rutz, who documented that Petitioner had good and bad days with his symptoms but was trending in a good direction and continued to improve. (PX #5, 12/26/23) He increased Petitioner's lifting restrictions to forty (40) pounds, and instructed him to follow up in one month, at which time he hoped to place him at full duty. *Id.*

Athletico Physical Therapy performed a reassessment of Petitioner's condition on January 25, 2024. (PX #8, 1/25/24) His therapist, Ms. DeCollo, noted that since the start of care, Petitioner had progressed well with strength, range of motion, flexibility, endurance, and functional mobility and was able to dress and bathe independently and perform light household chores with limitations in outdoor activities. *Id.* However, he had slow cadence with ambulation, bilateral trunk leaning, right hip pain with walking, weakness, and difficulty with sitting to standing, standing prior to walking, decreased trunk motion, inability to pick up and carry heavy items from the floor, inability to climb ladders, difficulty with stairs, and he was only able to lead with the left flower extremity

for ascending. *Id.* She noted Petitioner's ability to lift twenty (20) pounds from floor to waist and floor to shoulder height one time with slow movement and reports of difficulty when squatting down to pick up the object. *Id.* He was able to climb three (3) rungs of a ladder with the use of his upper extremities and was able to ambulance around the clinic for eight (8) minutes continuously and an additional 5-6 minutes including walking on stairs and ramps. (PX #8, 1/25/24) Petitioner had continued to demonstrate compliance with the home exercise program and was encouraged to continue with exercises upon discharge. *Id.* Ms. DeCollo noted that Petitioner had not returned to work, and that he would have difficulty with prolonged driving and cleaning out the truck after dumping a load. *Id.*

On January 30, 2024, Petitioner followed up with Dr. Rutz, who noted that Petitioner was not using a cane that day. (PX #5, 1/30/24) Dr. Rutz ordered a functional capacity evaluation at that point to determine any permanent restrictions, as Petitioner believed he would have difficulty returning to full duty work as a truck driver. *Id.*

Petitioner underwent a functional capacity evaluation as ordered by Dr. Rutz on February 22, 2024. (PX #14, 2/22/24) Mr. Muskopf, the therapist administering the test, noted the required job tolerances of a truck driver for Woody Bogler based on Petitioner's description and the Dictionary of Occupational Titles. *Id.* According to the available job descriptions, Mr. Muskopf noted he would be required to function in the Medium-Heavy physical demand level. *Id.* Specifically, Petitioner would be expected to lift 30-40 pounds frequently from floor to waist, and 30-40 pounds generally from waist to shoulder and shoulder to overhead. *Id.* Petitioner was able to lift 25 pounds occasionally from floor to waist but was not able to perform this activity frequently. (PX #14, 2/22/24) He could lift 25 pounds from the waist occasionally and 10 pounds frequently and could lift 10 pounds frequently and 30 pounds occasionally from waist to shoulder. *Id.* He could lift 10 pounds frequently from shoulder overhead and 25 pounds occasionally. *Id.* Likewise, his work as a truck driver would require him to carry, push, and pull 30-40 pounds, but Petitioner was only able to carry 25 pounds occasionally and 15 pounds frequently. *Id.* As a result, Petitioner did not meet any of the job demands for lifting or carrying. (PX #14, 2/22/24)

Likewise, Petitioner would be required to walk frequently as a truck driver, but on testing, he was only able to walk occasionally at a slow pace. *Id.* He would also be required to bend frequently, squat and kneel occasionally, climb stairs or a ramp or at an incline frequently, and shovel frequently. *Id.* He was not able to perform any of these tasks, and specifically, it was noted that Petitioner could only bend or squat occasionally due to decreased range of motion, kneel occasionally due to poor support, and occasionally climb stairs or a ramp or at an incline, and was only able to shovel occasionally with breaks. *Id.*

After performing four (4) hours of testing, Mr. Muskopf concluded that Petitioner's functional abilities displayed on this date were not consistent with the full duty demands of a truck driver per the available job description information. (PX #14, 2/22/24) He noted that all the

objective and subjective findings observed during testing indicated acceptable and full effort during the exam, and no Waddell signs were noted. *Id.*

Dr. Rutz reviewed the results of the functional capacity evaluation and on March 21, 2024, assigned Petitioner permanent restrictions of no lifting greater than 25 pounds and placed him at maximum medical improvement. (PX #5, 3/21/24, 3/22/24)

SECTION 12 REPORTS AND DEPOSITION OF DR. BERNARDI

At Respondent's request, Petitioner presented for a Section 12 examination with Dr. Robert Bernardi on October 11, 2022. (RX #1, Dep. Ex. #2) Dr. Bernardi took the history of Petitioner's motor vehicle accident, wherein his vehicle was struck by a semi-trailer weighing approximately 80,000 pounds and traveling at 70 mph. *Id.* He noted that the collision detached the rear axle of Petitioner's trailer and knocked his headset off his head. *Id.* He noted that Petitioner had immediate pain in his mid and low back but felt that his symptoms would be transient and declined evaluation at the hospital at that time. *Id.* He noted that Petitioner worked that following week but his pain gradually intensified until he sought treatment at an urgent care facility and was taken off work. (RX #1, Dep. Ex. #2)

Dr. Bernardi noted that Petitioner did not have a prior history of significant or sustained lower back pain prior to the accident and had never previously been seen by a medical doctor or chiropractor for symptoms regarding his lumbar spine. *Id.* He noted Petitioner's prior history of thoracic fracture and fusion from his 2016 motorcycle accident and that once Petitioner was fully recovered from his prior surgery, his mid back did not give him any trouble. *Id.* He stated that Petitioner was not taking any pain medication or seeking treatment for his mid back prior to his work injury and that Petitioner had passed his pre-employment physical examination with no issues. *Id.* Dr. Bernardi stated that Petitioner was pleasant and very cooperative, and that no Waddell's signs were detected. (RX #1, Dep. Ex. #2)

On exam of the lumbar spine, Dr. Bernardi indicated that Petitioner's neurological exam was normal but that he had pain when rising from a flexed posture. *Id.* Dr. Bernardi's diagnosis with regard to his thoracic spine included status-post T7 fracture and T5 through T9 posterior fusion, spontaneous fusions at T9-10, T10-11 and T11-12 with possible Forestier's disease, multilevel degenerative disc disease, and middle back pain of uncertain etiology. *Id.* Diagnoses for Petitioner's low back included multilevel degenerative disc and facet disease, L4-5 degenerative spondylolisthesis, mild L4-5 congenital/degenerative stenosis, and low back pain of uncertain etiology. *Id.* Regarding Forestier's disease, he stated that this was often asymptomatic. (RX #1, Dep. Ex. #2)

Regarding Petitioner's 2016 motorcycle accident, he admitted that he had no records to suggest that Petitioner was taking any pain medication for residual issues or that he had seen a doctor or chiropractor for ongoing discomfort. (RX #1) Petitioner denied any prior history of lower back pain, and Dr. Bernard admitted that he had no records stating otherwise. *Id.* He indicated that

Petitioner's mechanism of injury could produce mid and/or low back pain and that Petitioner's description and complaints had remained consistent throughout his records. *Id.* He stated that Petitioner's accident occurred less than three months prior and that it was not surprising that he might still have residual symptoms. *Id.* He stated that "at least for now" the symptoms in his mid and lower back were considered work-related. (RX #1, Dep. Ex. #2) He stated that "like most individuals with spinal complaints following motor vehicle collisions," the cause of Petitioner's symptoms was "undefined" and that it would "almost certainly remain that way." *Id.* He stated that multiple conditions could produce the symptoms he described, and that distinguishing between the conditions was not realistically feasible. *Id.*

Dr. Bernardi felt that the testing and treatments Petitioner had received had been reasonable and necessary. *Id.* He noted that Petitioner was scheduled to have an epidural steroid injection and although he did not feel this was necessary, he admitted that it was reasonable. (RX #1, Dep. Ex. #2) He recommended three to four weeks of work conditioning/hardening. *Id.* He felt that Petitioner's symptoms warranted activity restrictions, and that same were related to his work-related motor vehicle accident. *Id.* He did not feel that Petitioner had reached MMI but felt that he should resume full duty upon completion of work conditioning. *Id.*

At Respondent's request, Petitioner returned for a second Section 12 evaluation with Dr. Bernardi on March 28, 2023. (RX #1, Dep. Ex. #3) He indicated that Petitioner had mid back pain, but that it was the same as what it had been prior to his work accident. *Id.* His chief complaint was lower back pain, which was midline at the waist level with the right side being more affected than the left. *Id.* He had numbness in both buttocks and laterally on both thighs that worsened when his back pain intensified. *Id.* He reported that any position maintained for an extended period of time became uncomfortable, that he could not shop for groceries without a scooter, and lifting bothered him. *Id.* Dr. Bernardi's diagnoses were unchanged from his previous report. (RX #1, Dep. Ex. #3)

He felt that it was "interesting" that Petitioner's mid back bothered him more than his low back initially, then they bothered him equally, and now his low back was more bothersome. *Id.* He felt that the ongoing middle back pain was a continuation of symptoms from 2016 and was not attributable to the work accident. *Id.* Dr. Bernardi still felt that the etiology of Petitioner's low back symptoms was "undefined" and "entirely obscure." *Id.* He admitted that in his previous report, he opined that Petitioner's symptoms were work-related; however, because Petitioner's symptoms had not spontaneously resolved as he believed they would, he reversed his opinion and stated that he could no longer consider Petitioner's low back pain to be work-related. (RX #1, Dep. Ex. #3)

He felt that Petitioner's treatment had been reasonable other than his injections and Norco. *Id.* He felt that Petitioner had exhausted nonoperative treatment, and that further therapy or work conditioning/hardening would not have any significant effect. *Id.* He did not believe that Petitioner was a candidate for surgical intervention and did not feel that work restrictions were warranted because they would "only serve to reinforce a sense of disability where none can be identified." *Id.* He rhetorically questioned why Petitioner had different "responses" to his "genuine skeletal

injury" in 2016 and his "invisible injury" in 2022. (RX #1, Dep. Ex. #3) He felt Petitioner was at maximum medical improvement and that he had a permanent impairment rating of 0% with respect to his work accident. *Id.*

On May 26, 2023, Dr. Bernardi testified via deposition. (RX #1) On direct examination, he testified consistently with his reports. He stated that there was "virtually no injury" that does not improve with time, and that he could not "come up" with an accident that would have caused Petitioner's pain but admitted that Petitioner's records did not suggest that he had ever been previously seen for a problem with his low back. (RX #1 pp. 25-26) He stated that although he was not a "fan" of discography, he admitted that surgical societies recognize its use, and surgeons use it on a regular basis. (RX #1 pp. 29-30)

On cross examination, he testified that he generally performs two medical-legal examinations per week and performs approximately three depositions per month. (RX #1 p. 35) He charges $3,500 for examinations and $2,000 for depositions, and his charges in Petitioner's case had been $9,000. (RX #1 pp. 35-36) He admitted that the majority of his medical-legal work is performed at the request of employers or insurance carriers. (RX #1 p. 35)

He did not review any medical records pertaining to Petitioner's 2016 motorcycle accident. (RX #1 p. 37) He did not review any incident reports, police reports or photographs pertaining to Petitioner's July 2022 motor vehicle collision. *Id.* He did not review any records indicating that Petitioner was suffering from mid or low back pain prior to July 20, 2022. (RX #1 p. 39) He did not review Petitioner's March 2023 MRI. (RX #1 p. 46)

He disagreed with the radiologist that Petitioner's initial lumbar MRI showed moderate stenosis but admitted that moderate stenosis could cause symptoms in the low back and legs. (RX #1 pp. 42-43) He agreed that Petitioner's mechanism of injury and lumbar and thoracic symptoms were documented at urgent care and by Dr. Rutz. (RX #1 pp. 40-41) He agreed Petitioner's mechanism of injury could produce mid and low back pain, that his description of injury remained consistent throughout his records, and that Petitioner's complaints remained consistent. (RX #1 pp. 43-44)

Despite the fact that Petitioner was involved in a severe motor vehicle collision with a semi-truck traveling at 70 mph and weighing 80,000 pounds and the fact that there were no medical records suggesting a history of lumbar spine complaints prior to the accident, Dr. Bernardi still believed the cause of Petitioner's low back pain was "undefined." (RX #1 pp. 47-48) He testified that the vast majority of neck or back pain without neurological features cannot be accurately defined. (RX #1 p. 48) He agreed that a person could have a change in symptomology that could be permanent without seeing changes on an MRI. *Id.* He agreed that someone could have pathology in their lumbar spine that is asymptomatic, and that a mechanism of injury such as Petitioner's could aggravate an underlying degenerative condition. (RX #1 pp. 48-49) He agreed

that the driving force behind treatment recommendations is a patient's symptoms and not exclusively their findings on MRI. *Id.*

Dr. Bernardi was asked:

Q. And even trivial trauma can aggravate underlying stenosis, true?
A. I wish I had never said that. Yes." (RX #1 pp. 48-49)

Although he felt that Petitioner would be no better or no worse with surgery, when asked if it would be inappropriate for Dr. Rutz to perform surgery on Petitioner, he replied, "I am not going to say that one way or the other." (RX #1 p. 56) He had not seen Petitioner since prior to his surgery, was unaware of how he was doing and admitted that he had not prepared a supplemental report discussing the surgery. (RX #1 pp. 49-50) He agreed that Petitioner's mechanism of injury aggravated the underlying condition in his thoracic spine. *Id.* He agreed that Petitioner reported lumbar spine pain to him during both evaluations and reported same to all of his treating physicians. (RX #1 p. 50) He did not have any records or information to indicate that Petitioner had injured his lumbar spine in any other way. *Id.* He agreed that the type of accident Petitioner had could cause back pain, and that a person could "absolutely" have back pain without neurologic findings. (RX #1 pp. 50-51) He testified that if Petitioner had suffered a strain or ligamentous injury, that he should have improved within days or weeks; however, admitted that Petitioner was still symptomatic eight months following his injury, and that his lumbar spine had not returned to its pre-injury or baseline status as of the date of his last exam. (RX #1 p. 51) He testified that he believed Petitioner was at maximum medical improvement but did not know at which point he had reached same and indicated that he would have to "look through his records again to try to pick a date out." (RX #1 p. 53) Subsequently, he decided that Petitioner was at MMI at the date of his second IME. (RX #1 pp. 53-54)

Although he indicated that the natural history of virtually all back pain is that it will spontaneously resolve, he admitted that eight months out from Petitioner's injury, his symptoms has still not spontaneously resolved at any point, and that in fact, they had worsened. (RX #1 p. 54)

DEPOSITION OF DR. KEVIN RUTZ

Dr. Rutz testified via deposition on May 19, 2023. (PX #17) Dr. Rutz is a board-certified orthopedic surgeon with a subspecialty in spinal surgery. (PX #17 p. 4) He performs 500 to 600 spine surgeries per year and performs two independent medical examinations per week, the majority of which are at the request of the defense. (PX #17 pp. 5-7) Dr. Rutz testified consistently with his medical records regarding Petitioner. He testified that Petitioner was compliant, polite, and extremely pleasant. (PX #17 p. 15)

Regarding Dr. Bernardi's opinion that there were no correlating physical or neurological findings to support a diagnosis regarding Petitioner's lumbar spine, Dr. Rutz testified:

> [W]ith the type of pathology that we were dealing with, it is not strange to have a normal neurologic exam but still have significant pain. So, when people talk about back pain with prolonged sitting or prolonged standing, that's a classic complaint for an annular injury to a disc. So, his subjective complaints fit with the objective findings on his MRI. Sometimes I see some people review things and they point out and they say, "Oh, there's no pinched nerve" or "There's no weakness in the legs." And in a case like this, I would say, "You are correct. This is not a pinched nerve problem. This is not a nerve impingement problem. This is a facet arthritis problem. This is a damage-to-a-disc problem." And the subjective complaints for that -- and the complaints for that are subjective pain. But that's true in, you know, litigating cases and normal people that come off the streets every day to see me. (PX #17 pp. 24-25)

Regarding Dr. Bernardi's opinion that Petitioner's thoracic spine symptoms were related to his 2016 injury, Dr. Rutz testified, "I think it can be a little of both." (PX #17 p. 26) He stated that people can aggravate the levels adjacent to a fusion because a fusion is a stress riser that can lead to persistent symptoms. *Id.*

Regarding Dr. Bernardi's opinion that Petitioner's symptoms "shifted," Dr. Rutz testified that it was not odd that Petitioner's thoracic pain improved and that his lower back pain worsened, as the two are separate pathologies, and one was getting better, and one was slowly getting worse. (PX #17 p. 27)

Regarding Dr. Bernardi's opinion that the cause of Petitioner's back pain was "entirely obscure," Dr. Rutz testified:

> I didn't think so. The degenerative spondylolisthesis is one of the most common pathologies we see. And I -- and I would say it's -- in a non-litigated-type scenario when, I think, there are regular patients are coming in, I probably operate on two or three degenerative spondylolistheses a week. It's an extremely common problem, and it's common for it to become symptomatic to a point where it doesn't get better. So, we do lumbar fusions on them. (PX #17 pp. 27-28)

Dr. Rutz agreed that Petitioner had some risk factors for surgery such as obesity and smoking; however, he disagreed with Dr. Bernardi that Petitioner was not a surgical candidate. (PX #17 pp. 28-29) He testified that he was optimistic that Petitioner would return to work because he was tired of being off, tired of hurting and he wanted to get back to work. (PX #17 p. 30)

Dr. Rutz testified that the leg symptoms/lumbar radiculopathy that Petitioner developed was nerve irritation or a consequence of a flareup from injections. (PX #17 p. 39) He testified that Petitioner's back pain and not lumbar radiculopathy, was his dominant symptom, and that if the radiculopathy was a result of a flareup from injections, the injections were performed as a result of the work accident. (PX #17 p. 40) If the radiculopathy was secondary to progression of his lumbar pathology, same was also a result of the accident. (PX #17 pp. 40-41) He stated that

people's symptoms wax and wane with radicular complaints even though their predominant complaint is back pain, and he would still attribute those complaints to either the accident or treatment from the accident. *Id.*

Dr. Rutz testified that he initially ordered imaging on Petitioner's thoracic spine because Petitioner's thoracic spine was more painful than his lumbar spine at that time, and he was concerned about Petitioner's pre-existing thoracic spine hardware. (PX #17 pp. 10-11)

He testified that both Petitioner's October 2022 and March 2023 lumbar MRIs showed disc herniations. (PX #17 pp. 41-42) Dr. Rutz opined that Petitioner's degenerative spondylolisthesis at L4-5 was causing part of his back pain, and the positive discogram confirmed his suspicion that his L5-S1 disc herniation was painful as well. (PX #17 pp. 16-17) He testified that discograms have been helpful in his practice, that the specificity of those diagnostic tests had been "very high," and that a good result from surgery is indirect proof of their accuracy. (PX #17 p. 18)

Dr. Rutz reviewed photographs of the vehicles from Petitioner's accident and indicated that there was significant force to cause that type of damage. (PX #17 pp. 32-33) He stated that he has seen many similar-type accidents which have caused people to develop similar symptoms. (PX #17 p. 33) He testified that he did not have any evidence of prior lumbar spine complaints or treatment that predated Petitioner's work-related motor vehicle accident. (PX #17 p. 9) Dr. Rutz testified that when Petitioner returned to him in March 2023, after completing conservative treatment with Dr. Hurford, his low back symptoms had never resolved since the time of the accident. (PX #17 p. 14) He testified that when back pain is persistent for several months with conservative treatment, individuals are less likely to improve on their own, and that is when he begins to discuss appropriate surgical intervention. (PX #17 pp. 14-15)

He testified that intraoperatively, he found, as expected, arthritic joints at L4-5 and a disc herniation at L5-S1. (PX #17 p. 21) He indicated that Petitioner's preoperative back pain was gone at his two-week follow-up, and he believed that this confirmed Petitioner's diagnosis and the appropriateness of his treatment. (PX #17 p. 22) Dr. Rutz opined Petitioner's need for surgery was causally related to the motor vehicle collision, and his basis for same was that there was no evidence of a lumbar problem prior to the accident, that there was documentation of low back pain quickly after the accident, that the symptoms persisted up until the surgery, that he had a pathology that could be aggravated by an accident, and that they ultimately proved that he wasn't getting better. (PX #17 pp. 23-24)

Regarding causation, Dr. Rutz believed the accident caused an aggravation of Petitioner's previously asymptomatic degenerative condition at L4-5 as well as a disc herniation/damage or sustained aggravation at L5-S1 and attributed his symptom complex to the motor vehicle accident. (PX #17 pp. 19-20) The basis for his opinion was that Petitioner's onset of symptoms happened quickly after the accident and his symptoms never went away, but slowly worsened over time. (PX #17 p. 20)

VOCATIONAL REHABILITATION REPORTS / DEPOSITIONS

Respondent submitted an Employability Assessment Labor Market Survey completed by Karen Kane-Thaler dated May 12, 2024. (RX #4) Ms. Kane-Thaler reviewed Petitioner's medical records, job searches and the vocational report from England & Company. *Id.* She felt that Petitioner's aptitude profile/transferable skills placed him in a semi-skilled work category of 4/9, with 9 being the highest. *Id.* She felt that based on his work history and education, he had a GED scale of 3/6 for reasoning development, and 2/6 for language and mathematical development, with 6 being the highest. *Id.* She felt that Petitioner would be able to obtain employment with a new employer. (RX #4) The transferable skills analysis that was generated using a computerized assessment tool indicated positions for Petitioner that fell in the sedentary to light category. *Id.* Her labor market survey results indicated potential employers that offered wages from $11 to $15 per hour. *Id.* Some required or preferred computer knowledge/experience and prior experience in the respective field. *Id.* Many required or preferred a high school diploma/GED. *Id.* She stated that Petitioner's lack of a high school diploma / GED would not necessarily preclude him from being considered for positions given his past extended work history. (RX #4) She indicated that Petitioner had a consistent work history, but had non-work related medical problems due to diabetes and high blood pressure that could impact accessing different employment due to his medications. *Id.* Ms. Kane-Thaler reviewed the file on Petitioner that was provided to her by Respondent and did not meet with Petitioner, nor did she testify at Arbitration or by way of deposition. *Id.*

Petitioner submitted job search logs dated April 23, 2024, through May 13, 2024. (PX #18) Petitioner's Exhibit 19 is a Vocational Evaluation Report dated May 1, 2024, from Tim Kaver at England & Company Rehabilitation Services, Inc. (PX #19) Petitioner met with Mr. Kaver on April 24, 2024, for a vocational evaluation and vocational rehabilitation services. *Id.* Mr. Kaver indicated that Petitioner was receptive to the meeting, responded to all interview questions and provided a comprehensive background history. *Id.* Mr. Kaver reviewed Petitioner's medical records. *Id.*

Mr. Kaver noted that Petitioner had been diagnosed with high blood pressure and diabetes in 2023. (PX #19) Petitioner reported that he still experienced chronic pain in his mid-back that spreads to the region of his left shoulder and that this was a 6 to 7/10. *Id.* He reported that in a typical eight-hour period, his pain and fatigue symptoms forced him to recline for total of four hours during a typical eight-hour day. *Id.* He indicated that his chronic pain caused him to struggle with focus and concentration as well as general fatigue. *Id.* He had mobility issues with standing, walking and arising from a seated position. (PX #19) He reported that when he is active and walking for a bit, he used a cane for mobility support.

Mr. Kaver reviewed Petitioner's education and indicated that he left high school during his senior year and failed to graduate. *Id.* Petitioner recalled having difficulty with academics due to ADHD. *Id.* He also reported struggling with reading comprehension and with learning new

information through reading. (PX #19) Mr. Kaver administered a Wide Range Achievement Test and Adult Basic Learning Examination, which indicated Petitioner's reading comprehension was equivalent to a high school graduate, his reading was equivalent to high school, his spelling was equivalent to seventh grade and his math was equivalent to sixth grade. *Id.*

His employment history included working as a truck driver for Respondent and for several prior employers. (PX #19) His other prior employment consisted of working as a tire re-treader where he repaired vehicle tires, and as a roadside technician, assisting stranded motorists, both of which required a heavy level of physical labor. *Id.* He also formerly worked as a farm hand laborer. *Id.* He possessed a basic level of computer skills. *Id.* Mr. Kaver indicated that Petitioner was awarded Social Security disability in January 2024.

Mr. Kaver noted that Petitioner had been displaced from his career as an over-the-road truck driver due to his injury symptoms. (PX #19) He noted that Petitioner's symptoms did not allow him to return to the workforce within any occupation, as he described a chronic level of pain that forced him to recline periodically. *Id.* Mr. Kaver stated that employers cannot modify their job sites to allow employees to recline while on duty. *Id.* He noted that Petitioner had inability to focus and concentrate on activities due to his severe pain symptoms. *Id.*

Mr. Kaver indicated that Dr. Rutz placed Petitioner on a light duty work release of lifting up to 25 pounds. (PX #19) He noted that Dr. Hurford restricted Petitioner to sedentary work level activity and he was given a 10 pound lifting restriction. *Id.* He noted that light duty required lifting up to 20 pounds. *Id.* He noted that at Petitioner's discharge from physical therapy on January 25, 2024, his therapist, Kristine DeCollo, indicated that he had a sedentary level of physical abilities, with a walking limit of 14 minutes, and not five to six hours as required to successfully staff a light duty job. *Id.* Mr. Kaver indicated that Petitioner's FCE evaluation limited him to lifting up to 25 pounds, and that this fell in the level of light duty, and not the 50 pound lifting limit required for medium work level as described by the U.S. Department of Labor. (PX #19) Mr. Kaver indicated that Petitioner was at the light duty physical level and had not been medically released to return to work within any of the careers that he had previously staffed, including that of a truck driver, tire re-treader, vehicle mechanic, or farm laborer. *Id.*

He noted that Petitioner's physicians indicated he could function at a sedentary to light level of physical activity and that if Petitioner would be capable of safely functioning at this level, he would need to consider reemployment in entry-level, service-related careers that allowed for on-the-job training; however, he noted that Petitioner lacked a high school diploma, and that many employers would not consider him to be a qualified applicant without same, which further limited his reemployment opportunities. *Id.* He noted that entry-level salary expectations would be in the range of $13-$17 per hour; however, Petitioner could expect to earn at the lower end of this expected wage range due to the fact that he lacked a high school diploma. *Id.* He noted that Petitioner previously earned an annual salary of $75,000 as an over-the-road truck driver and that if he was able to perform labor at a sedentary to light level, he would experience much wage loss.

(PX #19) However, Mr. Kaver noted that if Petitioner was unable to successfully function at a sedentary level of physical work activity given his severe, chronic pain and impaired mobility, his wage earning potential would be zero. *Id.*

Mr. Kaver indicated that due to Petitioner's physical limitations, he was totally and permanently disabled and unable to return to work within any occupation, including sedentary or light physical activity levels. *Id.* He indicated that at his initial interview meeting, Petitioner walked slowly with a noticeable lamp, arose slowly from a seated position, and that his first steps after arising were slow and hesitant. *Id.* He stated that it was evident Petitioner was experiencing chronic pain, and that an interviewing employer would not seriously consider him for hire. (PX #19)

On May 13, 2024, Mr. Kaver testified via deposition. (PX #20) He is a certified vocational rehabilitation counselor. (PX #20 p. 4) He provides vocational rehabilitation counseling services, helps people get back to work, sets up vocational rehabilitation plans and implements those plans. (PX #20 pp. 4-5) He provides services for the U.S. Federal government, insurance carriers, attorneys, and individuals looking for assistance with job placement. (PX #20 p. 5) He testified consistently with his report.

He testified that the restrictions placed upon Petitioner by Dr. Rutz would prevent him from going back to work as a tire re-treader and an over-the-road truck driver. (PX #20 p. 10) He testified that Petitioner would be unable to work as a commercial driver, whether it be a truck, bus, or passenger van, because he had difficulty moving his neck to the left, right, up and down. PX #20 pp. 10-11) He testified that drivers have to pass a clinical examination from the Department of Transportation to obtain a CDL and that Petitioner would not be able to pass the physical required for same. *Id.* He testified that if Petitioner could function in a sedentary occupation, he would require vocational rehabilitation assistance; however, he had the additional obstacle of lacking a high school diploma. (PX #20 pp. 12-13) If Petitioner had to lay down regularly during the course of an eight hour workday, he would not be employable at all, as that is something that employers cannot allow. (PX #20 pp. 13-14)

He testified that if he performed vocational services with Petitioner, he would assist Petitioner with career research, get him a career assessment inventory to help him recognize careers of high interest, set him up with information and interviews with employers, look at what community colleges offer by way of a certificate or diploma program, provide him with interview skills training, job seeking skills training, and a résumé, and would assist him with scheduling job interviews. (PX #20 pp. 14-15)

On cross-examination, Mr. Kaver was questioned as to whether he was taking into consideration Petitioner's complaints of neck and left shoulder pain and difficulty turning his head when determining employability, and he replied that he looks at the physician and PT-prescribed work restrictions, and that regardless of what causes the restrictions, the restrictions are what he

needs to work with. (PX #20 p. 22) He testified that the ability to drive a truck was beyond Petitioner's sedentary work release and would violate his prescribed restrictions of needing to work at a sedentary level. (PX #20 pp. 22-23)

DOCUMENTARY EVIDENCE

An Illinois traffic crash report was marked as Petitioner's exhibit 15, and same confirms that Petitioner was rear-ended by another tractor trailer. (PX #15) The driver of the vehicle that struck Petitioner was given multiple citations. *Id.*

Photographs of the vehicles involved in the accident are compelling and show catastrophic damage to the front end of the semi-truck that struck Petitioner's vehicle, as well as significant damage to the rear of Petitioner's vehicle, including large areas of structural damage to the back and underside of the trailer and significant damage to the driver's side wheels and tires on the back. (PX #16)

Petitioner's Exhibit 21 consists of several temporary transitional duty assignments offered by Respondent to Petitioner. (PX #21) Correspondence from Petitioner's counsel indicated that Petitioner reported to three different assignments, all of which turned him away after he presented himself in good faith. *Id.* It was noted that at the latest assignment, he was provided with a note from "John," who indicated there was no work within his restrictions. *Id.* The handwritten note was included in the exhibits and stated, "Sorry we can not [sic] use him[.] His restrictions are too limited for any position here." *Id.* Later correspondence from Respondent's counsel indicated that Respondent was unable to accommodate Petitioner's restrictions. (PX #21)

PETITIONER'S TESTIMONY

Petitioner testified that he initially waited to see a doctor following the accident because he was trying to "walk it off and not see the doctor and continue working." (Tr. p. 34) He explained:

> I do not want to miss work. That is one of the main reasons why I didn't want to go to the doctor, I was just hoping to take a few days off, rest, breathe through it and try to start over. I went to work for a week to give it a fair shake, an honest effort, and the more I did it, the worse it hurt. *Id.*

Prior to his work accident, he had never undergone surgery on his lower back. (Tr. p. 18) Petitioner had prior surgery on the "center" of his back due to a motorcycle accident in 2016 but was able to return to work full duty as a truck driver. *Id.* He testified that the area he had surgery on his mid back was not near the area where he had low back surgery with Dr. Rutz. (Tr. p. 19) He testified that the work accident aggravated his prior mid back problem and he has ongoing symptoms relating to same. (Tr. pp. 19-20) He testified that he previously had pain in his mid-back, but that it was nowhere near the level that it is now, as the work accident increased his pain. (Tr. pp. 29-31)

He testified that he quit school during his senior year of high school because he had family issues and had to go to work. (Tr. p. 13) At that time, he got into the tire business, where he worked for over 30 years. *Id.* Petitioner was previously employed for 20 years at MFR Tire Service, where he worked as a tire re-treader, roadside service technician, accounts manager, service manager, and in sales. (Tr. p. 12) In every position he held during his employment at MFR Tire Services, he still performed the customary duties of labor. (Tr. pp. 12-13) After working in the tire industry, he began a truck driving career and worked for two prior employers as a truck driver before working for Respondent. (Tr. pp. 11-12) He testified that he is 55 years old, began working at age 17, and has never held a job that was not labor-intensive. (Tr. pp. 13, 22-23) He has not completed his GED. (Tr. p. 23)

Petitioner testified it was his understanding that Dr. Rutz had given him restrictions of a 30 minute sit and stand regimen, no lifting over 20 pounds, and using a cane when walking for long periods. (Tr. p. 20) Due to his accident, he has been prevented from working in his former positions in trucking and in the tire business. (Tr. p. 22) Petitioner testified that, although he still holds his CDL license, he could not go back to driving a truck because he "would never pass the DOT physical that would be required by most companies." (Tr. p. 27) He testified that he has been looking for work but has found none. (Tr. pp. 20, 26) He testified that Respondent sent him to different locations for employment on four occasions, but on each occasion, he was not allowed to work due to his restrictions. (Tr. pp. 20-21)

Petitioner testified that prior to his lumbar spine surgery, he was in excruciating pain. (Tr. p. 18) He testified that the surgery with Dr. Rutz improved his condition; however, he still has a high level of pain and problems walking, moving, twisting, and lifting. (Tr. p. 20) He is able to perform some household chores and mowing the lawn; however, he has to take breaks and where it used to take him two hours to complete mowing the lawn, it now takes him two days. (Tr. p. 28) He takes oxycodone on an as-needed basis but testified that it only masks the pain. (Tr. pp. 24-25) Due to his injuries, he is no longer able to engage in his hobbies of bowling and riding motorcycles and has difficulty playing with his grandchildren. (Tr. pp. 25-26) He testified that he attempted to take his grandchildren to the park but "just couldn't do it." *Id.*

CONCLUSIONS OF LAW

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

"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, 274 Ill.Dec. 284, 791 N.E.2d 80, 87 (2003). "An expert opinion is only as valid as the reasons for the opinion." *Kleiss v. Cassida*, 297 Ill.App.3d 165, 174, 231 Ill.Dec. 700, 696 N.E.2d 1271, 1277 (1998). The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Torres v. Midwest Development Co.*, 383 Ill.App.3d 20, 28, 321 Ill.Dec. 389, 889 N.E.2d 654, 662 (2008). If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to

be reliable. *Modelski v. Navistar International Transportation Corp*., 302 Ill.App.3d 879, 885, 236 Ill.Dec. 394, 707 N.E.2d 239, 244 (1999).

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).

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

The law holds that accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it is *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 672-673 (2003). [Emphasis added]. Where a preexisting condition is present, Petitioner need only show that the prior condition was aggravated or the need for treatment accelerated. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 672-673 (2003); *Schroeder v. Illinois Workers' Comp. Comm'n*, 2017 IL App (4th) 160192WC, 79 N.E.3d 833. Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Indus. Comm'n*, 359 Ill. App. 3d 582, 834 N.E.2d 583 (2005).

"Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Industrial Commission*, 309 Ill. App. 3d 1037, 723 N.E.2d 846 (2000). Employers are to take their employees as they find them. *A.C. & S. v. Industrial Comm'n*, 304 Ill. App. 3d 875, 710 N.E.2d 837 (1999) *citing General Electric Co. v. Industrial Comm'n*, 89 Ill. 2d 432, 434, 433 N.E.2d 671, 672 (1982). The law is clear that if a preexisting condition is aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. *Rock Road Constr. v. Indus. Comm'n*, 227 N.E.2d 65, 67-68 (Ill. 1967), 37 Ill. 2d 123; see also *Illinois Valley Irrigation, Inc. v. Indus. Comm'n*, 66 Ill. 2d 234, 362 N.E.2d 339 (1977). A compensable aggravation occurs when a claimant's need for surgery is accelerated. *Judith Wheaton v. State of Illinois/Choate Mental Health Center*, 13 I.W.C.C. 0467; *Bowman v. Gateway Reg'l Med. Ctr*., 14 I.W.C.C. 1022; *Clutterbuck v. UPS*, 15 I.W.C.C. 0046; *Howard v. St. Clair Hwy. Dept*., 16 I.W.C.C. 0187, modified 16 MR 106.

Respondent disputes causation for Petitioner's lumbar and thoracic spine and relies on the opinion of its Section 12 examiner, Dr. Bernardi. (AX1; RX1)

The Arbitrator has reviewed the police report and photographs of Petitioner's accident. (PX15; PX16) The photographs demonstrate that the force with which Petitioner's vehicle was

struck was tremendous, and any finder of fact would undoubtedly recognize that an individual involved in such an accident would likely sustain significant injuries.

Immediately after the accident, Petitioner reported symptoms of back pain and tightness to emergency responders. (PX3) The Arbitrator notes that Petitioner did not seek immediate medical attention because he took the rest of the week off work to rest his back in an attempt to alleviate his symptoms, then made a good faith attempt to work the next week but was unable to continue due to his symptoms. (T. 15, 16, 34) The Arbitrator finds that this is a reasonable explanation as to why Petitioner did not seek immediate treatment. Further, the Arbitrator notes that once he presented to the urgent care, Petitioner's symptoms never subsided, a fact which even Dr. Bernardi admits. (RX1, p. 51)

Both Dr. Rutz and Dr. Bernardi noted that there was no evidence that Petitioner had prior symptoms or treatment to his lumbar spine. (PX17, pp. 9, 23,24; RX1, Dep. Ex. 2) Petitioner readily reported the history of his 2016 motorcycle accident and thoracic fusion to his medical providers and to Dr. Bernardi, and even Dr. Bernardi admitted that Petitioner was not taking pain medication or seeking treatment for his mid-back prior to the work accident. (RX1, Dep. Ex. 2)

The Arbitrator has carefully considered the opinions of both Dr. Bernardi and Dr. Rutz and finds the opinions of Dr. Rutz to be more logical and persuasive than those of Dr. Bernardi. Specifically, Dr. Bernardi attributed Petitioner's thoracic and lumbar symptoms to his work accident in his initial report; however, he subsequently changed his mind and concluded in his second report that Petitioner's persistent symptoms were no longer work-related because they did not spontaneously resolve in the time frame that he imagined they should. The Arbitrator finds this reasoning to be illogical and unfounded.

The Arbitrator also notes that this was Dr. Bernardi's opinion despite his significant admissions on cross-examination that Petitioner had no prior history of low back pain or treatment and no recent history of significant issues or treatment to his thoracic spine, that his mechanism of injury could cause mid and/or low back pain or aggravate an underlying condition, that he did not injure his spine in any other way, that he could "absolutely" have back pain without neurologic findings, and that he was still symptomatic and had not returned to his pre-accident baseline eight months after the accident. (RX1, pp. 43, 44, 48-51)

Moreover, despite taking the history that Petitioner was "hit by another semi- [sic] traveling approximately 70 mph and weighing approximately 80,000 lbs," Dr. Bernardi curiously stated that he could not "come up" with an accident that would have caused Petitioner's pain, and reached the bizarre conclusion that the etiology of Petitioner's low back symptoms was "undefined" and "entirely obscure." (RX1, pp. 25, 26, 47, 48; RX1, Dep. Ex. 2 & 3) The Arbitrator likewise finds this conclusion to be illogical and unpersuasive.

Moreover, despite Petitioner's significant accident and persistent severe symptoms, Dr. Bernardi condescendingly stated that Petitioner's work restrictions would "only serve to reinforce

a sense of disability where none can be identified," and indicated that Petitioner had no permanent impairment as a result of the accident. (RX1, Dep. Ex. 3) Further, although he opined that Petitioner was at MMI, he stated that he did not know when this might have occurred until he flippantly decided that Petitioner had reached MMI on the date of his second exam, but offered no logical explanation as to why he chose that date. (RX1, pp. 53, 54) The Arbitrator finds that these opinions are against the weight of the evidence and Petitioner's testimony.

Interestingly, when Dr. Bernardi was asked on cross-examination if trivial trauma could aggravate underlying stenosis, Dr. Bernardi replied, "I wish I had never said that. Yes." (RX1, pp. 48, 49) Dr. Bernardi's reply in this manner blatantly betrays his desire to obscure a medical fact because same did not serve his opinion well, demonstrating a clear bias.

Conversely, Dr. Rutz's opinions were logical and persuasive. He explained that Petitioner's subjective complaints fit with the objective findings on his MRI. (PX17, pp. 24, 25) Unlike Dr. Bernardi, Dr. Rutz did not simply shrug his shoulders in uncertainty as to the cause of Petitioner's complaints but explained that Petitioner aggravated his degenerative spondylolisthesis, that degenerative spondylolisthesis is one of the most common pathologies he sees, that it is common for it to become symptomatic to the point where it does not improve, and that he operates on two or three spondylolistheses per week. (PX17, pp. 19, 20, 27, 28) He also explained that both of Petitioner's lumbar MRIs showed disc herniations at L5-S1, and that the discogram confirmed his suspicion that this was a pain generator as well. *Id.* at pp. 16-20. He logically concluded that the accident was the cause of Petitioner's immediate and ongoing symptoms because there was no evidence of a lumbar problem prior to the accident, there was documentation of low back pain quickly after the accident, Petitioner had a pathology that could be aggravated by an accident, and his symptoms persisted and slowly worsened up until the surgery. *Id.* at 20, 23, 24.

Finally, Petitioner's credible testimony adds to Dr. Rutz's opinion. Petitioner candidly testified that he had prior mid back surgery and that he previously experienced symptoms but stated that they were nowhere near the level that they were currently, as the work accident had aggravated his problem and increased his pain. (T. 19, 20, 29-31) Additionally, the evidence demonstrates that Petitioner did not have prior symptoms in his low back prior to the accident, nor had he ever sought prior treatment for same; however, he testified that prior to his surgery, he was in "excruciating" pain. (T. 18)

Therefore, as a result of the aforementioned findings, the Arbitrator concludes that Petitioner has met his burden of proof with regard to causation, and that his current condition of ill-being with respect to his thoracic and lumbar spine is causally related to his work-related motor vehicle accident of July 20, 2022.

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

Upon establishing causal connection and the reasonableness and the necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Mfg. Co. v. Indus. Comm'n*, 294 Ill.App.3d 705, 691 N.E.2d. 13 (1997). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 758 N.E.2d 18 (2001). The right to be compensated for medical costs associated with work-related injuries is at the very heart of the Workers' Compensation Act. *Hagene v. Derek Polling Const*., 388 Ill. App. 3d 380, 383, 902 N.E.2d 1269, 1273 (2009).

The fundamental purpose of the Act is to afford protection to employees by providing them with prompt and equitable compensation for their injuries. *W.B. Olson, Inc. v. Illinois Workers' Comp. Comm'n*, 2012 IL App (1st) 113129WC, ¶ 50, 981 N.E.2d 25, 38. This includes maintenance and vocational rehabilitation under § 8(a) of the Act. *Id.* at ¶ 39, 981 N.E.2d 25, 35. The Act treats vocational rehabilitation as a medical expense, providing that vocational rehabilitation shall be paid for along with physical and mental rehabilitation. *Butts v. Salem Mfg. and Modular Homes*, 18 MR 0064 (Ill. 4th Cir. Marion Cnty. Ct., Nov. 7, 2018). "Generally, a claimant has been deemed entitled to rehabilitation where he sustained an injury which caused a reduction in earning power and there is evidence rehabilitation will increase his earning capacity." *Howlett's Tree Serv. v. Indus. Comm'n of Illinois*, 160 Ill. App. 3d 190, 194, 513 N.E.2d 82, 84 (1987) citing *National Tea Co. v. Industrial Comm'n*, 97 Ill.2d 424, 454 N.E.2d 672 (1983). In determining reasonableness of rehabilitation award, factors to consider include relative costs and benefits to be derived from program, employee's work-life expectancy, his ability and motivation to undertake the program, and his prospects for recovering work capacity through medical rehabilitation or other means. *Nat'l Tea Co. v. Indus. Comm'n*, 97 Ill. 2d 424, 454 N.E.2d 672 (1983). These factors, however, are not exclusive factors. *Howlett's Tree Serv. v. Indus. Comm'n of Illinois*, 160 Ill. App. 3d 190, 195, 513 N.E.2d 82, 85 (1987).

Respondent disputes liability for medical expenses incurred after March 28, 2023. (AX1)

As noted above, Petitioner sustained a significant accident which caused aggravation and injury to his thoracic and lumbar spine. Petitioner underwent conservative treatment in the form of physical therapy, medications, and injections, all of which were reasonable and appropriate attempts to alleviate the effects of his work-related injury.

The Arbitrator notes that Dr. Bernardi's solution to Petitioner's ongoing severe symptoms was to return him to full duty, place him at maximum medical improvement, and opine that he required no further treatment. (RX1, Dep. Ex. 3) As with his opinions regarding causation, the Arbitrator finds the opinions of Dr. Bernardi regarding medical treatment to be illogical and unpersuasive and finds that Dr. Rutz's performance of a two-level lumbar fusion to be reasonable and necessary, and notes that the surgery improved Petitioner's symptoms. (T. 20)

Additionally, due to his permanent restrictions, Petitioner required an evaluation with a vocational rehabilitation specialist, Mr. Kaver. The Arbitrator finds that the services provided by Mr. Kaver were reasonable, necessary, and related to Petitioner's work injury.

Pursuant to the above findings on causal connection, the Arbitrator finds that the medical treatment and vocational rehabilitation services rendered to Petitioner were reasonable, necessary, and causally related to Petitioner's work injury. Therefore, Respondent is liable for payment of the medical bills as outlined in Petitioner's exhibit 1, as well as the charges from England & Company, as outlined in Petitioner's exhibit 19.

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

"An employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit." *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 561 N.E.2d 623 (1990). The ability to do light or restricted work does not preclude a finding of temporary total disability. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 561 N.E.2d 623 (1990) citing *Ford Motor Co. v. Industrial Comm'n*, 126 Ill.App.3d 739, 743, 467 N.E.2d 1018 (1984).

Pursuant to the above findings on causal connection, the Arbitrator finds that Respondent is liable for the payment of temporary partial disability payments for a period of 3 weeks, commencing October 23, 2022 through November 12, 2022. The Arbitrator also finds that Respondent is liable for the payment of temporary total disability benefits for a period of 90 1/7 weeks, commencing August 3, 2022 through October 22, 2022, and from November 13, 2022 through May 15, 2024.

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

Illinois courts have routinely held that a claimant does not need to be reduced to total physical incapacity before a permanent total disability award may be granted. *See Interlake, Inc. v. Indus. Comm*., 86 Ill. 2d 168, 176-77 (1981). The Illinois Supreme Court has frequently held that an employee is totally and permanently disabled when he "is unable to make some contribution to the work force sufficient to justify the payment of wages." *Janine Pittman v. Beverly Farm*, 22 I.W.C.C. 0111; *Ceco Corp. v. Industrial Comm'n*, 447 N.E.2d 842, 845 (Ill.1985) (citing e.g, *Gates Division, Harris-Intertype Corp. v. Industrial Comm'n*, 399 N.E.2d 1308 (Ill. 1980); *Arcole Midwest Corp. vs. Industrial Comm'n*, 405 N.E.2d 1306 (Ill. 1980)). However, an employee need not be reduced to total physical incapacity to be entitled to PTD benefits. *Janine Pittman v. Beverly Farm*, 22IWCC0111. 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.* If an employee's disability

is limited and it is not obvious that the employee is unemployable, the employee may nevertheless demonstrate an entitlement to PTD by proving that he or she fits within the "odd lot" category. *Id.* The odd lot category consists of employees who, "though not altogether incapacitated for work, [are] so handicapped that he will not be employed regularly in any well- known branch of the labor market." *Pittman*, citing *Valley Mould & Iron Co. v. Industrial Comm'n*, 419 N.E.2d 1159 (Ill. 1981 (citing (2 A. Larson, Workmen's Compensation sec. 57.51, at 10-164.24 (1980)). In arriving at a determination of an award for permanent and total disability, the Commission should consider the extent of the claimant's injury, the nature of his employment, his age, experience, training and capabilities. *A.M.T.C. of Illinois, Inc., v. Indus. Comm'n*, 77 Ill. 2d 482, 489, 397 N.E.2d 804, 807 (1979)

An employee meets the burden of proving that he or she falls into the odd-lot category in one of two ways: (1) by showing a diligent but unsuccessful job search; **or** (2) by demonstrating that the disability coupled with the employee's age, training, education, and experience does not permit the employee to find gainful employment. *Pittman,* 22IWCC0111; *ABB C-E Servs. v. Industrial Comm'n*, 737 N.E.2d 682 (5th Dist. 2000). Once the employee makes this showing, the burden shifts to the employer to show that some kind of suitable work is regularly and continuously available to the claimant. *Pittman,* 22IWCC0111; *Ceco Corp*, 447 N.E.2d at 845-846. *See also Westin Hotel v. Industrial Comm'n*, 865 N.E.2d 342, (2007). Absent evidence of available employment, the Commission can rightfully award PTD benefits to the employee. *Pittman,* 22IWCC0111; *Waldorf Corp. v. Industrial Comm'n*, 708 N.E.2d 476 (3d Dist. 1994). See also *ARA Servs. v. Indus. Comm'n*, 226 Ill. App. 3d 225, 233-34, 168 Ill. Dec. 756, 761, 590 N.E.2d 78, 83 (1992)

To meet its burden, the employer must show more than a theoretical possibility of an available job and cannot rely on speculative testimony that the employee has the potential for employment. *Pittman*, citing *Walliser v. Waste Management East*, 12 ILWC 2451, 2017 WL 4769231 (September 29, 2017). In *Walliser*, the Commission reversed a decision awarding a wage differential instead of PTD benefits to a garbage truck driver who performed a job search with vocational counselors provided by the employer. *Id.* The counselor testified that she did not currently know of a job that was available for the worker but stated "it is not impossible in my eyes" and that just because she had not found him a job does not mean that one does not exist. *Id.* The counselor further testified that the worker was employable due to his "potential." *Id.* Yet, the counselor admitted that the job search was a "pretty good sample," and, out of those, he was not employable. *Id.* The Commission found the counselor's opinion "completely speculative and contradicted by the actual evidence." *Id.* The Commission explained that the worker was only required to show a diligent but unsuccessful job search, which he did. *Id.* "He is not required to engage in a universally exhaustive job search that excludes every possible employer that might, possibly, offer employment to him at some undetermined point in the future." *Id.* Since the counselor acknowledged that it was a valid job search and the worker was unable to secure employment within his restrictions, the Commission awarded PTD benefits. *Id.*

The case of *Pittman v. Beverly Farms* is also instructive. In that case, the petitioner had permanent restrictions (limited use of her left hand) and notably, the opinions of the same two vocational experts, Mr. Kaver and Ms. Kane-Thaler, were at issue. *Janine Pittman v. Beverly Farm*, 22IWCC0111. In *Pittman*, however, the petitioner not only had a high school diploma, but had taken some basic study courses as a part-time college student. *Id.* Mr. Kaver opined that the Petitioner was not employable on the open labor market not only because of her permanent restrictions, but because of her difficulty with daily living activities, limited educational background, scholastic aptitude, and limited work history lacking transferrable skills. *Id.* Ms. Kane-Thaler, however, performed an Employability Assessment / Labor Market survey and felt that Petitioner was employable. The Commission found the opinions of Mr. Kaver to be more persuasive than those of Ms. Kane-Thaler and found that the petitioner was permanently totally disabled in the "odd lot" category. *Id.*

The Arbitrator concludes that likewise, Petitioner in the instant case is entitled to a permanent total disability award under the "odd-lot" theory, as he meets both the criteria for same pursuant to *ABB C-E Servs*. *ABB C-E Servs. v. Industrial Comm'n*, 737 N.E.2d 682 (5th Dist. 2000). The bases for this conclusion are as follows:

Petitioner's accident caused substantial injuries to his lumbar and thoracic spine, which have resulted in permanent restrictions assigned by Dr. Rutz of no lifting over 25 pounds. (PX5, 3/21/24) Respondent has not accommodated Petitioner's permanent restrictions. (PX21)

Shortly after his permanent restrictions were assigned, Petitioner began a job search and sought out vocational rehabilitation assistance, which Respondent declined to provide on the basis of causation. (PX18, PX19) Petitioner testified credibly at Arbitration that he is still searching for work but has found none. (T. 20, 26) Moreover, Petitioner testified that he still has a high level of pain and problems with walking, moving, twisting and lifting, and that he still takes oxycodone on an as-needed basis. (T. 20, 24, 25)

The Arbitrator finds the opinions of Petitioner's vocational expert, Mr. Kaver, to be more persuasive than those of Respondent's vocational expert, Ms. Kane-Thaler. Specifically, Ms. Kane-Thaler did not interview or speak to Petitioner and generated her report solely based on the file she received from Respondent.

Additionally, Ms. Kane-Thaler felt that that Petitioner's lack of a high school diploma / GED would not necessarily preclude him from being considered for positions given his past extended work history; however, the Arbitrator notes that the only positions Petitioner has ever held without a GED have been heavy labor-type positions, and therefore, does not find Ms. Kane-Thaler's reasoning on this matter to be sound. (RX5; T. 13, 22, 23) Notably, this was also the conclusion of the Commission in *Pittman*.

Interestingly, Ms. Kane-Thaler admitted in her report that Petitioner had applied for and obtained Social Security Disability Insurance in early 2024, which demonstrates that even the

Federal government does not believe that Petitioner is capable of meaningful work. *Id.* There is no indication whatsoever that Petitioner was on the path to obtaining SSD prior to his work injury, or that he suffers from non-work related comorbidities to the extent that he would be disabled if not for the work injury.

Notwithstanding, Ms. Kane-Thaler still felt that Petitioner could work, albeit in the sedentary to light category, as she indicated via her computer assessment tool. *Id.* Ms. Kane-Thaler also listed potential employers in her Labor Market Survey; however, the Arbitrator notes that many of these required or preferred a GED, computer skills, and/or prior experience in their respective fields. (RX5)

In light of the above, the Arbitrator finds the opinions of Mr. Kaver more persuasive, namely, that Petitioner is unable to return to the workforce in any occupation. (PX19) Mr. Kaver was also realistic regarding the impact that Petitioner's lack of a high school diploma / GED would have on his employability, indicating that same represented a significant obstacle, as many employers would not consider him. (PX19; PX20, pp. 12, 13) Mr. Kaver also noted what the Arbitrator visualized at Arbitration; that Petitioner is in obvious pain. (PX19)

In summary, as a direct result of this motor vehicle collision, Petitioner is unable to return to his previous line of work as a truck driver. (PX20, p. 10) He has worked for thirty (30) years as a truck driver or road technician, which both fall into the medium to heavy physical demand categories. (T. 11-13; PX19) His highest level of education is the eleventh (11th) grade, and he does not have a high school diploma. (PX19) Given his advanced age of 55, as well as his lack of education and transferrable skills, he is unlikely to be able to obtain any gainful employment.

When Petitioner's permanent physical restrictions are combined with the evidence, the credible opinions of Mr. Kaver, Petitioner's diligent but unsuccessful job search, his credible testimony, his lack of transferrable skills/prior work experience outside of heavy-labor positions, his obvious chronic pain, his sub-par academic assessments, his lack of a high school diploma/GED and his advanced age of 55, the Arbitrator finds that although Petitioner may not be "obviously unemployable," he is permanently and totally disabled as a result of his work injury. See *Ameritech Servs., Inc. v. Illinois Workers' Comp. Comm'n*, 389 Ill. App. 3d 191, 204, 904 N.E.2d 1122, 1133 (2009) The Arbitrator finds that Respondent has failed to meet its burden of proof my establishing that a reasonably stable labor market exists for Petitioner and therefore, finds that Petitioner falls into the "odd lot" category of permanent total disability.

Accordingly, Respondent shall pay Petitioner permanent and total disability of $935.97 week for life commencing on May 15, 2024, pursuant to Section 8(f) of the Act.

Commencing on the second July 15th after the entry of this award and for every subsequent July 15th, Petitioner may become eligible for cost-of-living adjustments, paid by the Rate Adjustment Fund, as provided in Section 8(g) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC021963
Case Name	Laura Barth v. Limelight Communications
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0041
Number of Pages of Decision	13
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Joseph Blewitt

DATE FILED: 1/31/2025

/s/Kathryn Doerries,Commissioner

Signature

25IWCC0041

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LAURA BARTH,

Petitioner,

vs. NO: 19 WC 021963

LIMELIGHT COMMUNICATIONS,

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 of disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

As it pertains to the nature and extent of Petitioner's disability, the Arbitrator's Section 8.1b(b) analysis gave proper weight to the enumerated factors; however, the Commission views the level of disability differently and increases Petitioner's PPD award from 35% loss of use of the left hand to 45% loss of use of the left hand pursuant to Section 8(e) of the Act.

The Commission modifies the Conclusions of Law, Issue L, and hereby strikes the words "and scapholunate" in the last sentence of the first paragraph, so that the Decision reads: "That opinion was not rebutted, and therefore the Arbitrator finds that Petitioner's left wrist displaced distal radius fracture and the triangular fibrocartilage complex tears are causally related to the work injury."

The Commission modifies the Conclusions of Law, Issue L, and hereby strikes the word "hand" in the second paragraph replaces it with the word "arm."

The Commission further modifies the Conclusions of Law, Issue L, and strikes in its entirety the paragraph addressing factor (v.) and replaces it with the following:

(v.) Regarding evidence of disability corroborated by the treating medical records, Petitioner sustained a 50% displaced and impacted distal radius fracture which necessitated open reduction/internal fixation. The operative report described the injury as an intra-articular three-part fracture. Petitioner was later found to have a tear in the triangular fibrocartilage complex (TFCC) and underwent arthroscopic repair. The medical records generated after the two wrist surgeries reflect a relatively good recovery with mild residual deficits and symptoms. On May 15, 2023, Dr. Williams released Petitioner for full duty work without restrictions. At this visit, Dr. Williams indicated Petitioner's only real discomfort at that time was pain in the dorsal aspect of the middle and ring fingers. Dr. Williams further noted Petitioner's grip strength in her left hand as measured at the last preceding therapy session of May 3, 2023, was 66 pounds compared to 70 pounds for the uninjured right side. As Petitioner is right-hand dominant, a somewhat weaker left hand would be expected; however, there was no evidence to suggest this difference in grip strength was normal. Dr. Williams recommended additional therapy with instructions to return for follow-up. On June 19, 2023, the physician assistant documented full range of motion and noted that the pre-operative catching sensation from the TFCC tear had resolved. On August 14, 2023, Dr. Williams discharged Petitioner from care. At this last visit, Dr. Williams recorded that Petitioner stated her strength was almost returned to normal; however, Petitioner reported occasional snapping every once in a while. This factor is given substantial weight.

All else is adopted and affirmed.

IT IS HEREBY ORDERED BY THE COMMISSION that Respondent pay Petitioner the sum of $317.04 per week for a period of 92.25 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 45% loss of the left hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay all reasonable, related medical bills contained in PX7 as provided under §8(a) and §8.2 of the Act.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $29,346.94. 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 31, 2025

KAD/swj
O12825
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	19WC021963
Case Name	Laura Barth v. Limelight Communications
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	Stephen Kelly
Respondent Attorney	Joseph Blewitt

DATE FILED: 7/15/2024

/s/Kurt Carlson, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JULY 9, 2024 5.08%

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

Laura Barth Case # **19WC021963**
Employee/Petitioner/ skelly@stephenkellylaw.com

v.

Lime Light Communications
Employer/Respondent/ JBLEWITT@travelers.com

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 **06-17-24**. 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 **7/26/2019** Respondent ***was*** operating under and subject to the provisions of the Act.

On these dates, 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 first injury, Petitioner earned $**27,476.80**; the average weekly wage was $**528.40.**

On the first date of accident, Petitioner was **52** years of age, ***Single*** with **1** dependent children.

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

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

Respondent shall be given a credit of $ **$24,356.95** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $ **$24,356.95.**

Respondent is entitled to a credit of for all reasonably related group medical under Section 8(j).

ORDER

Respondent shall pay all reasonable, related, and unpaid medical bills contained in PX7.

Respondent shall pay Petitioner $317.04 per week for 71.75 weeks because the work-related accident caused a 35% loss of her left hand.

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

Arbitrator

July 15, 2024

ICArbDec p

FINDINGS OF FACT

Petitioner Laura Barth testified that she was employed as a Project Manager for Respondent Limelight Communications from November 2017 until September 2019. Tr. 8. She stated that she compiled articles, advertisement, and graphics for each monthly publication from Respondent. Tr. 9. On July 26, 2019, the date in question, Petitioner reported falling backwards while playing disc golf during a team-bonding lunch event. *Id.* She stated that she felt immediate pain and saw deformity of the wrist. Tr. 13. Petitioner gave notice of the accident to Respondent's owner and was subsequently taken to Midwest Orthopaedic Center. PX2.

After being examined at Midwest Orthopaedic, Petitioner obtained an x-ray and was diagnosed with a 50 percent displaced and impacted distal radius fracture on her left wrist. *Id.* A regular short arm splint was applied to her left arm. *Id.* Surgery was recommended and scheduled. *Id.* On July 30, 2019, Petitioner underwent open reduction and internal fixation (ORIF) on the left distal radius. PX5. A volar locked DVR plate and screws were inserted to get the bones back into place. *Id.* Petitioner was discharged following surgery that same day. *Id.* A week later, on August 5, 2019, an x-ray showed that the Petitioner was healing well with anatomical alignment with intact hardware. PX2. Dr. Williams referred Petitioner to physical therapy which was to be performed twice per week for six weeks. *Id.*

On August 12, 2019, Petitioner began physical therapy. *Id.* She reported pain on her left arm near the wrist, and her left shoulder. *Id.* At a follow-up appointment with Dr. Williams on August 19, 2019, Petitioner complained of pain in her left hand and forearm, but otherwise she was doing well. *Id.* Dr. Williams noted that locking and triggering on movements of the finger was visible. *Id.* X-rays taken on that date showed good alignment and signs of bone healing regarding Petitioner's surgically repaired left wrist. *Id.* Dr. Williams allowed for Petitioner to

return to work on September 9, 2019, but with light duty restrictions including no lifting, pulling, or carrying of anything over 3 pounds with the left arm. *Id*. X-rays continued to show that the healing of Petitioner's fracture was still in a good position. PX9. Dr. Williams testified that he recommended Petitioner continue physical therapy. *Id.*

Petitioner testified that in the middle of September 2019, she began employment at Gold's Gym working as the front desk person. Tr. 23. On October 7, 2019, Petitioner underwent re-evaluation at physical therapy. PX2. The physical therapist noted improvement in Petitioner's left wrist range of motion, wrist strength, elbow strength, shoulder strength, and a decrease in pain with movement. *Id.* The physical therapist recommended continuing physical therapy but taper it to one visit per week for eight weeks. *Id.*

At Petitioner's October 24, 2019, follow-up, Dr. Williams noted that she was still having catching and sharp pain with certain movements on her wrist. *Id.* Dr. Williams found tenderness at the ulnar aspect of the TFCC. *Id.* At this point, he recommended getting Petitioner an MRI of her left wrist to determine if she had a tear of her TFCC, a ligament in her wrist. *Id.* Petitioner also continued to experience pain in her left shoulder and had tenderness at the scapular thoracic bursa and along the trapezius, all on the left side. PX9. Dr. Williams testified that the tenderness could either be from the fall or from how she was holding her arm because of the wrist fracture. *Id.* In January 2020, Petitioner left her employment at Gold's Gym and remained off work for approximately one year. Tr. 25.

On September 15, 2020, Petitioner underwent an MRI on her left wrist at UnityPoint Health. PX2. The MRI indicated that Petitioner's fracture was healed, and the plate and screws were in good position. PX9. However, it also revealed a large tear of the triangular fibrocartilage complex and a probable tear of the scapholunate ligament, as well as a contusion versus

degeneration of the fourth carpometacarpal joint. PX6. At Petitioner's follow-up with Dr. Williams, on October 1, 2020, it was noted that Petitioner was still having left wrist pain and weakness, pain mostly with motion. PX9. Dr. Williams recommended an arthroscopy on Petitioner's wrist, but she elected not to proceed with it. *Id.* Dr. Williams testified that Petitioner did not have any complaints of pain on the left shoulder, nor did she have any continued catching or locking of the left small finger trigger. *Id.*

Petitioner went back to work as a Front Desk Associate for the Bondi Center on January 14, 2021. Tr. 31. Travelers Insurance paid her for the 51-week period that she was off work. RX2. Petitioner left her employment at Bondi Center on September 5, 2022. Tr. 32. The next day she began working as a Receptionist and Dispatcher for HOI Vending where she still currently works and is making more money per hour than she did when working for Respondent. *Id.*

On June 22, 2022, Petitioner went back to Dr. Williams for the first time since her follow-up on October 1, 2020. PX6. Dr. Williams once again noted tenderness at the triangular fibrocartilage complex and recommended a wrist arthroscopy. *Id.*

On September 28, 2022, Petitioner underwent an Independent Medical Evaluation (IME) performed by Dr. Stephen Weiss. *Id*. Dr. Weiss opined that the proposed surgical intervention was reasonable and necessary, and that recovery time would be three to six months. *Id*. It was his understanding that Petitioner was performing full work activities, but she would not be able to resume full work activities for at least six to twelve weeks if she were to have the arthroscopy. *Id.* Dr. Weiss believed it would take 6 months post-surgery for Petitioner to return to MMI. *Id*.

Petitioner underwent the arthroscopy on her left wrist with a debridement of the radial sided TFCC tear on February 14, 2023. PX3. Petitioner followed-up with Dr. Williams on February 27, 2023, who noted that both of Petitioner's wounds were clean, dry, and healing well.

Id. On March 27, 2023, Dr. Williams noted that Petitioner's pain had improved quite a bit since surgery, but he recommended Petitioner continue to stay off work. *Id*. Petitioner was to begin physical therapy following that visit. *Id*.

On May 15, 2023, Dr. Williams stated that Petitioner was recovering well and that the only discomfort she complained of was in the dorsal aspect of the middle and ring fingers. *Id.* It was noted that Petitioner could return to work regular duty without restrictions on May 22, 2023. *Id.* Dr. Williams released Petitioner from his care in November 2023. Tr. 29. Petitioner testified that since then, she had only gone back to Dr. Williams once, but for a new pain. *Id.* She stated that she was experiencing a deep ache from the base of her thumb up to the inside of her elbow on the same side that she had plates and screws inserted into. *Id.* She noted that it felt cold and tingly. Tr. 30. Dr. Williams opined that he could remove the plate and screws, but he did not know if that would change anything. *Id*. Petitioner elected not to go through with it but has not ruled it out in case the pain continues to get worse. *Id*.

According to Respondent's exhibit 1, Respondent has paid all medical payments from July 26, 2019, to December 20, 2023. RX1. Further, Respondent has paid Petitioner temporary total disability (TTD) for the time she was off work due to her work-related injury from July 27, 2019, till September 19, 2019; January 20, 2020, till January 14, 2021; and, February 14, 2023, to April 25, 2023. RX2.

Conclusions of Law

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

The medical services provided to Petitioner regarding her left wrist are reasonable and necessary to treat her work accident. Both parties have submitted an accounting of what has been billed (PX7) and what has been paid (RX1). Respondent is liable for all related and unpaid medical charges related to the care of her left hand, wrist, and arm through her release by Dr. Williams on May 15, 2023.

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

Regarding Petitioner's left wrist, Respondent's Section 12 examiner found that there was a causal relationship between the work accident and the injury sustained. That opinion was not rebutted, and therefore the Arbitrator finds that Petitioner's left wrist displaced distal radius fracture and the triangular fibrocartilage complex and scapholunate tears are causally related to the work injury.

Regarding the injury to Petitioner's left shoulder and left hand, there is nothing in the medical records that demonstrate any nerve damage, loss of strength, loss of range of motion, or other permanent disabilities upon her reaching maximum medical improvement.

Pursuant to Section 8.1(b) of the Act, permanent partial disability (PPD) shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Regarding these factors, the Arbitrator notes the following evidence:

(i.) No AMA rating was offered by either party in relation to Petitioner's left wrist. The arbitrator gives no weight to this factor.

(ii.) The Petitioner was 56 years old at the time of the accident. Petitioner is therefore, middle-aged and it's fair to presume that she will heal slower and less completely than a younger version of herself. The Arbitrator gives some weight to this factor.

(iii.) The Petitioner's occupation at the time of the accident was Project Manager. Petitioner returned to work as a Front Desk Associate. Petitioner currently works as a Receptionist and Dispatcher. Since the Petitioner did not suffer any occupational detriment, the Arbitrator gives this factor some weight.

(iv.) The Petitioner testified that she makes more post-accident than she did pre-accident. As the Petitioner did not suffer any income detriment, the Arbitrator gives this factor moderate weight.

(v.) Regarding Petitioner's left wrist, the most recent evidence is Regarding Petitioner's left shoulder, the most recent evidence of disability is from Petitioner's follow-up with Dr. Williams on October 1, 2020, where it was noted that there were no complaints of pain. the May 15, 2023 Dr. Williams note where he released her PRN. He noted full ROM and intact sensation. The Arbitrator gives this factor substantial weight.

A distal radius fracture and the ORIF to repair the same cause disability of the hand, and not the arm or shoulder. *Wilson v. Casey's General Store* 22IWCC0421 (2022). Even though the plate and some screws are anchored on a portion of Petitioner's forearm, the Arbitrator could find no similar case where an award was this made on the arm, instead of a hand and there appears to be no basis to make a "person as a whole" award.

Likewise, A TFCC tear and the surgery to repair the same likewise causes disability to the hand, and not the arm or shoulder. *Thompson v. City of Chicago* 20IWCC0239 (2020). Therefore, based on the above factors and caselaw the Arbitrator finds that Petitioner suffered an aggregate loss of 35% of her left hand.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC018837
Case Name	John Haddix v. Bonnie Plants
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0042
Number of Pages of Decision	21
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Domenic Maciariello
Respondent Attorney	David Wolfe

DATE FILED: 1/31/2025

/s/Maria Portela,Commissioner

Signature

25IWCC0042

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOHN HADDIX,

Petitioner,

vs. NO: 15WC018837

BONNIE PLANTS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, benefit/wage rate, temporary total disability, medical expenses, nature and extent and "Evidentiary Rulings," 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 clarifies that Petitioner's tarsal tunnel and ganglion cyst conditions are also causally related to his work accident. Petitioner did not have any preexisting left ankle problems and his job was fairly vigorous involving being on his feet and climbing in and out of a truck. He sustained an undisputed work accident and has subsequently treated relatively consistently. Although his diagnoses and pain locations may have changed slightly over time, there is no evidence of an intervening injury. We find that Petitioner's left ankle sprain, Achilles tendinosis, tarsal tunnel syndrome and ganglion cyst were sequalae of that initial, significant ankle injury. We also rely on Dr. Patel's explanation and findings with respect to the tarsal tunnel pathology beginning with his note of September 29, 2017 when he found a positive Tinel's sign at the tarsal tunnel. On October 31, 2017, Dr. Patel recommended a tarsal tunnel injection. On March 26, 2018, Dr. Patel noted that Petitioner had received the tarsal tunnel injection, which provided about two weeks of relief of some of the medial pain.

We affirm the temporary total disability (TTD) award through February 19, 2016.

However, on page 13, in the second paragraph of issue (K), we strike the phrase "date of MMI." We note that this was not Petitioner's date of maximum medical improvement since he underwent subsequent treatment and surgery. Nevertheless, we agree that Petitioner failed to prove entitlement to TTD after this date because the evidence shows that he was working.

Finally, we reduce the permanency partial disability (PPD) award to 50% of the left foot. Petitioner failed to prove a loss of trade. Dr. Patel testified Petitioner could not be on ladders for a significant amount of time, however Petitioner did not prove his job required use of ladders. We note that the photograph in Px8 shows two rungs more like a step stool. There was no testimony as to how often this was even used. We find it more likely that Petitioner used the ramp on the back of the truck to load and unload the plants. Therefore, Petitioner is entitled 83.5 weeks of PPD for the 50% loss of use of the left foot at a rate of $721.66 per week, which is the maximum PPD rate at the time of Petitioner's accident.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,126.08 per week for a period of 94-6/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act. Respondent shall be given a credit of $66,780.00 for temporary total disability benefits paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $721.66 per week for a period of 83.5 weeks, as provided in §8(e)11 of the Act, for the reason that the injuries sustained caused the 50% loss of use of the left foot.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the medical expenses until July 20, 2018, as outlined in Px7, under §8(a) of the Act subject to the fee schedule in §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent 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.

January 31, 2025

/s/ *Maria E. Portela*

SE/

O: 12/10/24

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/s/ *Amylee H. Simonovich*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC018837
Case Name	John Haddix v. Bonnie Plants
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Antara Nath Rivera, Arbitrator

Petitioner Attorney	Patrick Shifley
Respondent Attorney	David Wolfe

DATE FILED: 8/28/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 22, 2023 5.29%

/s/Antara Nath Rivera, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

John Haddix
Employee/Petitioner

v.

Bonnie Plants
Employer/Respondent

Case # **15** WC **018837**

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 **Antara Nath Rivera**, Arbitrator of the Commission, in the city of **Chicago**, on **June 14, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **March 26, 2014**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**62,256**; the average weekly wage was $**1,689.12**.

On the date of accident, Petitioner was **39** 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 $**66,870.00** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $$**66,870.00**.

Respondent is entitled to a credit of $$**66,870.00** under Section 8(j) of the Act.

ORDER

Petitioner's AWW, per Section 10 of the Act, was $1,689.12 because he earned $62,256.00 over 37 1/7 weeks.

Respondent shall pay for reasonable and necessary medical services received until July 20, 2018, as outlined in PX 7, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner 94 6/7 weeks of TTD benefits from May 24, 2014, through February 19, 2016, at a weekly rate of $1,126.08, which corresponds to $106,885.02, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $66,780.00 for TTD benefits paid to Petitioner by Respondent, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner PPD benefits of $721.00 per week for 175 weeks, because the injuries sustained caused a 35% loss of use of person as a whole as provided in Section 8(d)2 of the Act.

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

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

Signature of Arbitrator

AUGUST 28, 2023

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

John Haddix,	)	
Petitioner,	)	
	)	Case No. 15WC018837
v.	)	
	)	
Bonnie Plants,	)	
Respondent.	)	

This matter proceeded to hearing on June 14, 2023, in Chicago, Illinois before Arbitrator Antara Nath Rivera on Petitioner's Request for Hearing. Issues in dispute include causal connection, average weekly wage ("AAW"), medical bills, temporary total disability ("TTD"), and nature and extent. (Arbitrator's Exhibit "AX" 1)

FINDINGS OF FACT

John Haddix ("Petitioner") testified that he was employed by Bonnie Plants ("Respondent") as a sales representative. (Transcript "T." 13-14) Petitioner testified that he began working for Respondent in February of 2012 as a helper for a sales representative. (T. 14-15) Petitioner testified that this was a starter position and that was not the job he was working at the time of his accident. (T. 15) Petitioner testified that he started working in January 2013 as driver/salesman for Respondent. (T. 130) Petitioner testified that his job was a seasonal job. (T. 13) Petitioner testified that the sales season started in February and ended July 31st. (T. 16) Petitioner testified that after July 31, he would be laid off and had an option to run a fall route that lasted about 45 days. *Id*. Petitioner testified that the fall route was from August until beginning of October. *Id*. Petitioner testified that the fall route consisted of getting rid of herbs and tomato plants. *Id.* Petitioner testified that he was free to work for other companies and receive unemployment during laid off periods. (T. 19)

Petitioner testified that, generally, his job duties entailed stocking plants at multiple stores. *Id*. Petitioner testified that he set up racks in the beginning of the season and built relationships with the managers in the stores like Home Depot, Walmart, Lowe's, and other stores. *Id*. Petitioner testified that, throughout the season, he replenished the stores and stocked them up on a daily basis. *Id.* Petitioner testified that he drove a 24-foot box truck that stored all the plants. (T. 14; 40-41) Petitioner testified that he loaded the truck in the morning, or at night, delivered the plants, brought back the ones that were bad, discarded them, and then restocked for the next day. *Id*. Petitioner testified that this entailed loading the flats of plants onto racks and then loading the racks unto the truck. (T. 41) Petitioner testified that during the peak season he might unload and reload his vehicle a second time in a day. (T. 42) Petitioner further testified that the goal was to fit as much product on the truck as possible to maximize the commission. (T. 42)

Petitioner testified that while he was employed in Illinois, he received a sales territory in Alvin, Texas where he worked routes. (T. 15; Petitioner's Exhibit "PX" at 1) Petitioner testified that he started working in January 2013 as driver/salesman for Respondent. (T. 130) Petitioner testified that, at each stop, he provided new plants to his customers. He testified that he cleaned his racks at the store, took out any plants that were old, overwatered, or just didn't look good, loaded those plants back onto his truck, and took them back to be recycled at the farm. (T. 42)

Accident

Petitioner testified that, on the date of this accident, March 26, 2014, he was working at a store by himself. (T. 44-45) Petitioner testified that he was driving a shuttle truck because his regular truck was in the shop. (T. 45; PX 8) Petitioner testified that the shuttle truck had steps that were flush with the box of the truck that he had to walk up to get into the truck. *Id.* Petitioner testified that there was supposed to be a safety handle for him to use to get in and out of the truck. *Id*. Petitioner testified that the shuttle truck did not have the safety handles because they were broken and never replaced. *Id*. Petitioner testified that as he was coming out of the truck, walking backward, he went to grab the safety handle, which was not there, and fell off the truck. *Id*. Petitioner testified that he was trained to exit the truck by walking backwards. (T. 47) Petitioner testified that his foot hit the top rung, which was four feet off the ground, he hit the metal step up, and his left foot twisted. (T. 45; 49) Petitioner testified that both of his shins hit the rungs as he fell all the way down. *Id*. Petitioner testified that his shins were bloody from his foot to his knees. (T. 46)

Petitioner testified that he felt immediate pain and felt as if he sprained his foot. (T. 51) Petitioner testified that his shins hurt from catching the front of the rungs. *Id.* Petitioner testified that as he drove back to the farm, his foot was throbbing. *Id.*

Petitioner testified that he did not receive any treatment for his left ankle prior to this date of injury. (T. 52) He also testified that he never received ongoing care for either of his feet or legs. (T. 52) Petitioner testified that he never experienced pain similar to that for which he was treated in this case prior to this injury. (T. 57)

Summary of Medical Records

On April 8, 2014, Petitioner sought treatment at Park Lakes Family Medicine and presented to Dr. Efrain Soto. (PX 1 at 35; Respondent's Exhibit "RX" A at 440-442) Petitioner reported that he hyperextended his left ankle coming out of his work truck on March 26, 2014. *Id*. Petitioner complained of pain and swelling and that nothing alleviated his pain. *Id.* Petitioner was diagnosed with ankle pain, Achilles tendonitis and talofibular sprain, and an MRI was ordered. (PX 1 at 36; RX A at 440-442)

On April 16, 2014, Petitioner had an MRI of the left ankle. (RX A at 83-84) The MRI revealed small ankle joint effusion, grade 2 sprain of the posterior talofibular ligament, cartilage of the anteromedial talar dome "and adjacent plafond appears mildly thickened and edematous over an area of 2.7 x 4.7 mm, possibly due to trauma" and two small subchondral cysts of the posterior tibial plafond. *Id*.

On April 21, 2014, Petitioner returned to treat with Dr. Soto. (RX A at 445) The medical records indicated that Petitioner was told to use crutches for a week and was referred to an orthopedist. *Id.*

On April 22, 2014, Petitioner presented to Dr. E. Brooke Roberts, M.D., at East Houston Orthopedics & Sports Medicine ("EHOSM"). (RX A at 427) Petitioner reported that he was coming out of a safety truck which did not have a handle, causing him to stumble, strike his shins against the door jam and have his feet strike the ladder. (PX 1 at 45) Dr. Roberts diagnosed Petitioner with a left ankle sprain and Achilles tendinosis. *Id*. He recommended that Petitioner wear a boot with all weightbearing activities, take his anti-inflammatory medications on a regular basis, and return in three weeks. (PX 1 at 45; RX A at 427)

Petitioner testified that he worked through May 23, 2014, on the farm as a stationary employee. (T. 35) Petitioner testified that Respondent had a helper/driver help cover Petitioner's route during this time because Petitioner was in a boot and Respondent did not want Petitioner to get reinjured. *Id*. Petitioner testified that he received care in Texas at the office of East Houston Orthopedics & Sports Medicine, and then transitioned care to OrthoVirginia. (T. 55) Petitioner testified that, in spring or early summer of 2014, he moved to Virginia to be closer to his son. (T. 100)

On June 17, 2014, Petitioner presented to Dr. Glenn Kerr, M.D., at Ortho Virginia. (PX 1 at 23-25) Petitioner reported his work injury and complained of ankle pain of more than three months. *Id*. Dr. Kerr diagnosed Petitioner with left foot chronic pain with possible Lisfranc injury and Achilles tendinopathy. *Id.* Dr. Kerr recommended a repeat MRI to rule out any occult injury. *Id*. Dr. Kerr kept Petitioner off of work and opined that Petitioner needed 6 to 12 weeks of immobilization prior to returning to work. *Id*.

On August 6, 2014, Petitioner returned to Dr. Kerr. (PX 1 at 20; RX A at 96) Dr. Kerr recommended physical therapy, which Petitioner began on August 18, 2014, at Ortho Virginia. The records also indicated that Petitioner was instructed to use a CAM walker as needed. *Id*.

On March 31, 2015, Petitioner followed up with Dr. Kerr and presented with continued left foot pain. (PX at 18; RX A at 121) Dr. Kerr recommended another MRI of the right ankle and foot. (PX at 18; RX A at 118)

On May 5, 2015, August 7, 2015, and February 4, 2016, Petitioner followed up with Dr. Kerr. (PX 1 at 14) Petitioner reported continued pain. *Id.* The MRI was not yet performed. *Id.*

On January 18, 2016, Petitioner was evaluated by Section 12 examiner, by Dr. Timothy Zimmer, M.D., at Commonwealth Orthopedic Specialist, in Richmond, VA for an independent medical exam ("IME"). (RX A at 450-452) Petitioner reported his work accident from March 25, 2014, as well as pain and having a limp. *Id.* Dr. Zimmer noted that Petitioner told him that he has not had treatment since May of 2015. *Id.* Dr. Zimmer opined that while treatment received up to date was reasonable and related to his work injury, however, he did not believe surgery was needed. *Id.* Dr. Zimmer recommended that Petitioner have another MRI and that light duty work restrictions were appropriate pending the MRI. *Id.*

On February 19, 2016, Petitioner underwent the recommended MRI. (RX A at 448) The MRI revealed mild Achilles tendinopathy and small posterior ganglion. *Id*.

On March 13, 2016, Dr. Kerr issued an addendum report and opined that while it is not clear whether the ganglion is causing the problem but that it may contribute to his posterior pain at the Achilles. (PX 1 at 8) Dr. Kerr recommended that Petitioner treat with a foot and ankle surgeon. *Id*.

On May 2, 2016, Petitioner saw Dr. Michael Brown, M.D., a foot and ankle surgeon at Ortho Virginia. (PX 1 at 6) Petitioner testified that Dr. Kerr referred him to Dr. Brown. (T. 113) Dr. Brown reviewed the MRI from February 19, 2016. (PX 1 at 6) Dr. Brown diagnosed Petitioner with left foot pain and noted the posterior ganglion cyst, but opined that he did not believe that was a source of his pain. *Id.* Dr. Brown indicated that Petitioner's complaints were quite diffuse, vague, and "difficult to grasp." Dr. Brown did not believe Petitioner was a surgical candidate and recommended additional physical therapy. *Id*.

On May 12, 2016, Petitioner was seen by Dr. Joel Anderson, DPM, in Chicago, IL. Petitioner reported his March 2014 accident as well as his history of medical treatment. (PX 3 at 3-5) Dr. Anderson diagnosed him with Achilles tendinosis, ganglion cyst in left ankle and foot, left ankle and foot pain. *Id*. Dr. Anderson found a causal connection and recommended surgery and removal of the ganglion cyst. *Id*.

On July 30, 2016, Dr. Zimmer issued an addendum to his IME report. (RX A at 452) He opined that the MRI was normal and that Petitioner was able to return to full duty work and that he did not need future treatment. *Id*. He opined that Petitioner reached maximum medical improvement ("MMI). *Id*.

On September 6, 2017, the Petitioner was seen by Dr. Peter White, M.D., at OrthoVirginia. (PX 1 at 93-95) Petitioner reported pain in his left heel resulting from an injury in 2014, that happened in Chicago, when he slipped down the steps and reports that there. *Id*. Dr. White noted that this was Petitioner's 3rd opinion "for a worker's compensation injury that happened in 2014." *Id*. Dr. White indicated that Dr. Kerr and Dr. Brown recommended conservative care. *Id*. Dr. White diagnosed Petitioner with Achilles tendinosis and Haglund's deformity of left heel. *Id*. The records noted that Petitioner declined additional conservative care but was happy when provided with a recommendation for a surgical referral to Virginia Commonwealth University ("VCU") for another opinion. *Id*.

On September 29, 2017, Petitioner presented to Dr. Tejas Patel, M.D., at VCU Health Medical Center, in Richmond, VA. (PX 2) Petitioner reported a history of a rapid dorsiflexion injury to the left ankle with persistent pain. (PX 2 at 224-226) Dr. Patel diagnosed Petitioner with left foot tarsal tunnel, left Achilles tendinosis, and left ankle cyst. *Id*. Dr. Patel recommended an EMG and a future Tenex procedure. (PX 2 at 214)

On October 5, 2017, Petitioner's MRI was reviewed by Dr. Patel. (PX 2 at 220-222) Dr. Patel noted while the nerve conduction study was normal, the MRI revealed a ganglion cyst on the left ankle. *Id*. Dr. Patel recommended an EMG for the evaluation of tarsal tunnel syndrome. *Id*.

On December 6, 2017, Petitioner had an ultrasound on his left Achilles tendon. (PX 2 at 193) The impression was "mild calcification of the left Achilles insertion enthesis, which can be seen in tendinosis changes." *Id*.

On January 10, 2018, Dr. Jeff Elbich, M.D., performed at left Achilles Tenex procedure. (PX 2 at 191)

On February 7, 2018, Petitioner followed up with Dr. Elbich. (PX 2 at 189) It was noted that Petitioner was doing well and could advance activities as tolerated. *Id*.

On March 26, 2018, Petitioner followed up with Dr. Patel. (PX 2 at 182-184) Dr. Patel opined that the Achilles was contributing to his pain, and that the only remaining option would be a tarsal tunnel release. *Id*. Dr. Patel recommended a repeat MRI and a tarsal tunnel release with the excision of the cyst. *Id*.

On March 28, 2018, an MRI of the left ankle revealed scarring of the anterior syndesmotic ligament and chronic partial tear of the anterior talofibular ligament with osteochondral defect. (PX 2 at 169) The MRI also revealed a midfoot osteoarthritis and thickening of the distal insertion of the Achilles tendon. *Id*.

On May 23, 2018, Dr. Patel performed the left ankle tarsal tunnel release and cyst excision. (PX 2 at 134) Dr. Patel noted that there was no objective way for him to tell that the nerve was actually compressed. (PX 5 at 25) Petitioner continued to follow up with Dr. Patel through December 10, 2018. (PX 5 at 32-36)

On July 20, 2018, Petitioner was seen by Dr. Patel for follow up. (PX 2 at 10-12) Petitioner reported significant improvement in pain, but continued to have some pain which was activity related. Dr. Patel deemed this a reasonable recovery where Petitioner's pain is tolerable, that Petitioner was in a stable condition, and Petitioner should continue with exercising to get stronger. *Id*. Petitioner could return as needed. *Id*.

On April 28, 2021, at the request of Respondent, Petitioner was examined by Dr. Anand Vora for an IME. (RX A at 76-80) Petitioner reported that he was exiting his truck, attempted to grab a handle that was not there, when his foot slid off the rung, off the step, his ankle twisted upwards, and he had a severe onset of pain. *Id*. Dr. Vora diagnosed Petitioner with status post tarsal tunnel release, ganglion cyst removal, Tenex procedure, Achilles tendinosis. *Id*. Dr. Vora opined that this diagnosis had no relationship to a work-related condition. *Id.* Dr. Vora further opined that physical therapy would be the only reasonable and necessary treatment for a sprain/strain of the ankle and Achilles. *Id.* Dr. Vora placed Petitioner at MMI as of February 19, 2016. *Id.* Dr. Vora noted that if Petitioner's injury would have been work related, he assessed an AMA rating of 0% lower extremity and 0% whole person rating. *Id.*

Average Weekly Wage Testimony of Petitioner

Petitioner testified that his pay structure for 2013 and 2014 entailed that Respondent would take a percentage of the route that was established the year before, give him a base percent, and get a draw from

that every week to pay for insurance and taxes. (T. 19; PX 4) Petitioner testified that the draw was determined by how long he worked for the company. *Id*. Petitioner testified that in his first year, his draw was allowed to be $600 a week. *Id*. Petitioner testified that in his second year, he was allowed to raise it up to a certain point. *Id*.

Petitioner testified that at the end of his year, which was July 31, Respondent would see all the sales made, would calculate how much was left over from that compensation of the draw; and if it would be more money, they would pay him in a large sum or draw it out in more payments throughout the year so that he could continue on with his insurance through the year while laid off. (T. 19-20) Petitioner testified that the lump sum that he received at the end of the year was based off his performance based sales. (T. 20) Petitioner testified that he elected to take both a single lump and a series of payments to keep his insurance and contribute towards his 401K. (T. 20-21) Petitioner testified that the money he earned during spring sales period and the fall route were evaluated the following periods. (T. 33-34)

Petitioner testified that his earnings from the spring route of 2014 represented a partial year of his route and that it was not completed due to this injury. (T. 34-35; PX 4.4) Petitioner testified that he worked from March 26, 2014, through May 23, 2014, as a stationary office employee. (T. 34-37)

Petitioner testified that he worked from January 1, 2013, through the end of July 2013 until he was laid off. (T. 16, 130) Petitioner testified that he was off during the month of August. Petitioner testified that he reported back to the station in the end of August and worked until the beginning of October. Petitioner testified that he could not say precisely how many days he worked in 2013. Petitioner testified that he was off work for August, November, December and about half of October. (T. 130) Petitioner testified that he worked from January 1, 2014, through May 23, 2014. (T. 35) Petitioner testified that Respondent had a helper/driver help cover Petitioner's route until May 23, 2014. *Id*.

Petitioner testified that he was employed and worked when he first saw Dr. Patel in September 2017. (T. 95; PX 5 at 43) Petitioner testified that in 2017 and 2018, he was working for cash doing construction work. (T. 96) Petitioner testified that he has no documentation of any money he earned after he left Respondent. *Id*.

Petitioner testified that the contract in PX 4.1 correctly reflected the terms of his employment. (T. 18) The contract specified that it a term of employment which was to end on February 14, 2014. (PX 4.1) The contract also indicated that bi-weekly draw against commissions is to be paid in the pay period ending February 15, 2013, and are to be calculated through February 14, 2014. (PX 4.1 ¶9) The remainder of the commission is to be paid based upon an agreement between the employee and the employer. *Id*. Petitioner admitted that there is no way to break out the amount of commission earned in 2013 for the first 3 months of the year. (T. 36-37)

Petitioner presented evidence that his gross commission was 88,528.21, as of August 28, 2013. (PX 4.2 Line 17) Petitioner also had a $12,053.50 deduction for a Route Helper and a $4,811.05 Route Investment expense per Compensation Agreement. (PX 4.2 ¶9) Petitioner's net commission per Line 34 was $71,663.66. (PX 4.2 Line 34)

Petitioner presented his Fall 2013 Commission Statement, dated March 24, 2014. (PX 4.3) Petitioner's net commission was $7,918.19. *Id*.

Petitioner testified that he worked for Respondent from January 1, 2013, through July 31, 2013, and from the end of August to the second week of October. (T. 71) The first period totals 30 1/7 weeks, the second totals 6 2/7 weeks, for a total of 36 3/7 weeks. (PX 4.2; 4.3) Per Petitioner, his earnings in both periods, $71,663.66 and $7,918.19, totaled $79,581.85, for an AWW of $2,184.60.

Respondent presented evidence that indicated that Petitioner's reported earnings, per his 2013 tax returns, was $62,256.00. (RX B at 459) During 2014 he earned $51,171. (RX 4 at 470) Petitioner could not say how much of his 2014 earnings on his tax returns was from before or after the accident. Petitioner testified that he did not know how much of the money on his 2013 or 2014 tax returns was earned in the period of time between March 26, 2013, and March 26, 2014. Respondent's records indicated that this would yield an AWW of $1,689.12. (RX B at 459; 470)

Petitioner's current condition

Petitioner testified that his pain has not stopped since the date of accident. (T. 57) Petitioner testified that the procedures he received from Dr. Patel at VCU provided improvement of his symptoms, but not total alleviation. (T. 60) Petitioner testified that some of his symptoms are less painful or of less duration and that has better range of motion, but it is not full range of motion. (T. 62)

Petitioner testified that he is able to drive a car and ride a motorcycle. (T. 12; 66) Petitioner testified that he goes to the gym at Planet Fitness, but that he only does light leg workouts. (T. 120) Petitioner has testified that he cannot currently get a CDL in Illinois due to high blood pressure. (T. 117)

Petitioner testified that he worked since this accident. (T. 63) Petitioner testified that he had a background in construction and tile work. *Id*. Petitioner testified that he is able to do construction work, but it takes him longer. *Id*. Petitioner testified that sometimes his brother will help him carry stuff up and down stairs. (T. 63) Petitioner testified that he has not applied for any jobs other that submitting bids for his own construction business. (T. 122)

Petitioner testified that he does not take any pain medication and only uses Tiger Balm. (T. 64) Petitioner testified that he works out at Planet fitness on a regular basis and described his work outs. (T. 123)

Testimony of Dr. Tejas Patel

Dr. Patel testified for an evidence deposition on May 8, 2020. (PX 5) Dr. Patel testified that he was a graduate of Virginia Commonwealth University school for medical school at residency, with a foot and ankle fellowship at University of Pittsburgh Medical Center. (PX 5 at 6) He had practiced for five years as a foot and ankle specialist with 90% of his practice below the knee pathology. (PX 5 at 7)

Dr. Patel testified that Petitioner indicated that he injured himself in 2014 when he slipped off the back of a truck and had a rapid upward flexion of the foot. (PX 5 at 12) The pain started after that and

changed a little bit over time. Dr. Patel testified that he diagnosed Petitioner with left Achilles tendinosis, tarsal tunnel of the left foot, and a cyst in the back of his ankle. (PX 5 at 14) Dr. Patel testified that Petitioner's treatment was a result of the accident in March 2014. *Id*. Dr. Patel further testified that the mechanism of accident described by the Petitioner, a hyper dorsiflexion injury, was consistent with the diagnosis. (PX 5 at 35-36)

Dr. Patel testified that he noted that Petitioner cannot be on ladders for a significant amount of time and that after standing for an hour or two he would get some rest. (PX 5 at 39) Dr. Patel has not seen Petitioner since December 10, 2018. (PX 5 at 57) Dr. Patel testified that a functional capacity evaluation ("FCE") would have made it clear as to what, if any restrictions would be necessary. (PX 5 at 59)

Testimony of Dr. Anand Vora

Dr. Vora testified on January 21, 2022. (RX A at 1-55) Dr. Vora is a fellowship trained orthopedic foot and ankle surgeon. *Id.* Dr. Vora testified that he has been a board certified orthopedic surgeon since 2006. *Id.* Dr. Vora testified that he is currently the Director, Illinois Bone and Joint Institute Orthopaedic Foot and Ankle Fellowship and Clinical Assistant Professor of Orthopaedic Surgery at University of Illinois Medical School. *Id.*

Dr. Vora testified that prior to the examination, he reviewed all of the records. *Id.* Dr. Vora testified that the entire physical exam was normal and that Petitioner had no clinical evidence of nerve damage, no Tinel's, and appropriate strength. *Id.* Dr. Vora testified that Petitioner was able to walk on his toes and his heels. *Id.* Dr. Vora testified that there was no weakness and Petitioner was walking normally. Dr. Vora testified that there were no objective findings of abnormalities. *Id*.

Dr. Vora testified that the tarsal tunnel release that Petitioner had performed was not causally related to the March 2014 accident. (RX A at 18) Dr. Vora testified that the procedure provided was the correct procedure for a tarsal tunnel release. (RX A at 39) Dr. Vora testified that the surgical procedure also provided partial subjective pain relief. (RX A at 40)

Dr. Vora testified that he is an expert on tarsal tunnel syndrome and that he wrote a chapter in a textbook on traumatic tarsal tunnel syndrome. (RX A at 19) Dr. Vora testified that tarsal tunnel does not occur from a dorsiflexion injury. (RX A at 19) Dr. Vora testified that there was no evidence of any pressure on the nerve to cause tarsal tunnel. (RX A at 18)

Dr. Vora testified that he did not believe that the ganglion cyst was related to Petitioner's work injury. (RX A at 21) Dr. Vora testified that most ganglion cysts are just incidental findings that are not traumatically based, but could be caused by trauma. *Id*. Dr. Vora testified that when they are caused by trauma, they show up right away. (RX A at 22) Dr. Vora testified that, in this case, there was no cyst in the area where surgery was performed on the April 2014 MRI. Dr. Vora testified that the cyst that was excised by Dr. Patel is not related to the initial injury. *Id*.

Dr. Vora also testified that the degenerative Achilles and subsequent Tenex procedure was not related to this work accident. (RX A at 26) Dr. Vora also testified that the MRI that was done in 2014

clearly shows no degeneration of the Achilles tendon. Dr. Vora also testified that a Tenex procedure is done for a degenerated tendon. Dr. Vora also testified that, in this case, there was no aggravation of any type of degeneration as there was none. *Id*.

Testimony of Kari Stafseth

Ms. Stafseth testified that she was a certified rehabilitation counselor with 13 years of experience and a master's degree. (PX 6 at 9) Ms. Stafseth testified that she performed a vocational analysis of Petitioner's counsel at the request of Petitioner's counsel. (PX 6 at 13) She testified that she formed her opinions based upon records received and her personal interview of Petitioner. *Id*.

Ms. Stafseth testified that she generated a report for this case and that, in her opinion, Petitioner lost access to his pre-accident position with the Respondent. (PX 6 at 19; PX 3) Ms. Stafseth further testified that Petitioner was employable in other employment. (PX 6 at 20) Ms. Stafseth recommended that Petitioner develop a commercial driver's license or computer skills. (PX 6 at 23)

Ms. Stafseth testified that per the report, Petitioner has lost access to his most recent line of employment with the Respondent, and his earning potential in the job market at large would be between $11 and $15 per hour. (PX 6 at 3)

CONCLUSIONS OF LAW

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

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

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

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

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him be a credible witness. Petitioner was calm, well-mannered, and well spoken. 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 inherently unreliable.

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

Petitioner bears the burden of proving, by a preponderance of the evidence, every element of the claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). To obtain compensation under the Illinois Workers' Compensation Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Causation between the work-related accident and condition of ill-being can be established by showing prior history of good health, followed by a work-related accident in which petitioner is unable to perform his physical duties. *Kawa v. Illinois Workers' Comp. Comm'n*, 991 N.E.2d 430, 448 (2013).

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003)

The Arbitrator notes that Petitioner sustained a work related injury to his left ankle when Petitioner fell off his work truck after he tried to grab the safety handle which was not there. (T. 45) The Arbitrator notes that Petitioner testified that his foot hit the top rung, which was four feet off the ground, he hit the metal step up, and his left foot twisted. (T. 45; 49) The Arbitrator notes that Petitioner testified that he felt immediate pain and felt as if he sprained his foot. (T. 51)

The Arbitrator notes that Dr. Soto diagnosed Petitioner with ankle pain, Achilles tendonitis and talofibular sprain. (PX 1 at 36; RX A at 440-442) An MRI revealed small ankle joint effusion, grade 2 sprain of the posterior talofibular ligament, cartilage of the anteromedial talar dome "and adjacent plafond appears mildly thickened and edematous over an area of 2.7 x 4.7 mm, possibly due to trauma" and two small subchondral cysts of the posterior tibial plafond. (RX A at 83-84)

The Arbitrator notes that Dr. Roberts diagnosed Petitioner with a left ankle sprain and Achilles tendinitis. (PX 1 p 45) The Arbitrator notes that Dr. Kerr diagnosed Petitioner with left foot chronic pain

with possible Lisfranc injury and Achilles tendinopathy. (PX 1 at 23-25) The Arbitrator notes that Dr. Brown diagnosed Petitioner with left foot pain and noted the posterior ganglion cyst. (PX 1 at 6) The Arbitrator notes that Dr. Anderson diagnosed him with Achilles tendinitis, ganglion cyst in left ankle and foot, left ankle and foot pain. (PX 3 at 3-5) The Arbitrator notes that Dr. White diagnosed Petitioner with Achilles tendinitis and Haglund's deformity of left heel. (PX 1 at 94) The Arbitrator notes that Dr. Patel diagnosed Petitioner with left foot tarsal tunnel, left Achilles tendinosis, and left ankle cyst. (PX 2 at 224-226) The Arbitrator notes that after Petitioner had the left Achilles Tenex procedure performed by Dr. Elbich, Petitioner was doing well and could advance activities as tolerated. (PX 2 at 189-191) The Arbitrator notes that after Dr. Patel performed the left ankle tarsal tunnel release and cyst excision, Petitioner reported significant improvement in pain, but continued to have some pain which was activity related. Dr. Patel deemed this a reasonable recovery, and that this was a stable condition. (PX 2 at 10-12; 134)

The Arbitrator notes that Dr. Zimmer opined that while treatment received up to date was reasonable and related to his work injury, Petitioner was at MMI on July 30, 2016. (RX A at 450-452) Dr. Vora opined that this diagnosis had no relationship to a work-related condition. (RX A at 76-80) The Arbitrator notes that Dr. Vora noted that if Petitioner's injury would have been work related, he assessed an AMA rating of 0% lower extremity and 0% whole person rating. *Id.* The Arbitrator notes that Dr. Vora placed Petitioner at MMI as of February 19, 2016. *Id*.

Based on the records and testimony of Drs. Soto, Roberts, Brown, Kerr, Patel, and Zimmer, the Arbitrator finds that Petitioner sustained a sprain of the left ankle and Achilles as a result of a work related accident. Thus, the Arbitrator finds that, Petitioner's current condition is related to his work injury.

WITH RESPECT TO ISSUE (G), WHAT WERE 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 Arbitrator notes that Petitioner testified that he was employed by Respondent in a sales role. According to the Request for Hearing, Petitioner claims his earnings during the year preceding the injury were $88,358.21 and that his AWW was $3,025. (T. 5) Respondent contends that Petitioner's AWW was $1,197.23.

The Arbitrator notes that It is undisputed that Petitioner's entire compensation was based on commission. A business year was comprised of two seasons. The Arbitrator notes that the Spring season runs January 1st and ends July 31st and the Fall season runs August 1st through December 31st. The Arbitrator notes that the amount of money earned is calculated using a formula: base commission plus incentives minus deductions. (See PX 4 at 1). The Arbitrator notes that Petitioner testified that there is no

way to break out the amount of commission earned in 2013 for the first 3 months of the year. (T. 36-37) Likewise, there is no way to determine what portion of the sales in 2014 occurred before his injury.

Furthermore, the Arbitrator notes that while Petitioner presented evidence showing how his commission was earned, it is less clear when (and for how) much his earned commissions were realized and paid out. This is important as commissions are not paid if accounts are not collected by a specific due date. (PX 4 at 8)

The Arbitrator notes that, according to Petitioner's tax returns, Petitioner earned $62,246.00 in 2013 and $51,171.00 in 2014. (RX B at 459; 470) The Arbitrator notes that Petitioner could not say how much of the money on his 2013 or 2014 tax returns was earned in the period of time between March 26, 2013, and March 26, 2014.

The Arbitrator notes that Petitioner testified that he worked from January 2013 thru the end of July 2013. (T. 130) He was off during the month of August. He stated that he reported back to the station in the end of August and worked until the beginning of October. This was the fall route and lasted "about 45 days." (T. 16) The Arbitrator notes that Petitioner could not say precisely how many days he worked in 2013. It appears from the testimony that he was off work for August, November, December and about half of October. The Arbitrator notes that, in 2014, Petitioner worked from January 1, 2014, through May 23, 2014, in a stationary role. (T. 35-37

Petitioner has the burden of establishing all elements of his case. The Arbitrator finds that Petitioner has failed to meet his burden in proving an AWW of $3,025.00. However, the Arbitrator can determine, based on the tax returns, that in 2013 Petitioner earned $62,256.00 which, based on the totality of the evidence presented, represents the best estimate of a full year of wages while working for Respondent. The Arbitrator notes that, based on Petitioner's testimony, he worked 36 and 1/7 weeks (January 1 through the end of July plus the 45 day period in the fall sales season) which yields an AWW of $1,689.12.

Based on the evidence presented, the Arbitrator finds that Petitioner's AWW, per Section 10 of the Act, was $1,689.12 because he earned $62,256.00 over 37 1/7 weeks.

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

Under Section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are 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)

As the Arbitrator found that Petitioner's current condition of ill-being, with respect to his left ankle and foot, was causally connected to the work-related accident, the Arbitrator finds that the following medical treatment and services Petitioner received, until July 20, 2018, were reasonable and necessary: PX 1, PX 2, PX 3, PX 7.

The Arbitrator finds that Respondent shall pay for reasonable and necessary medical services received until July 20, 2018, as outlined in PX 7, as provided in Sections 8(a) and 8.2 of the Act.

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

Under Illinois law, temporary total disability is awarded for the time period between when an injury incapacitates the Petitioner to the date the Petitioner's condition has stabilized or the Petitioner has recovered to the amount the character of the injury will permit. *Whiteney Productions, Inc. v. Industrial Comm'n*, 274 Ill.App.3d 28, 30 (1995). In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n*, 236 Ill.2d 132, 148 (2010)

As the Arbitrator found that Petitioner's current condition of ill-being, with respect to his left ankle and foot, was causally related to the injury sustained on March 26, 2014, the Arbitrator finds that Petitioner is entitled to TTD benefits until February 19, 2016, date of MMI.

The Arbitrator notes that Petitioner testified that he worked from January 1, 2014, through May 23, 2014. (T. 35) However, the Arbitrator notes that Petitioner was working intermittently though out the pendency of the case. The Arbitrator notes that Petitioner testified that he was employed and worked when he first saw Dr. Patel in September 2017. (T. 95; PX 5 at 43) The Arbitrator notes that Petitioner testified that in 2017 and 2018, he was working for cash doing construction work. (T. 96) The Arbitrator notes that Petitioner failed to establish that he was off of work after February 19, 2016. The Arbitrator notes that Petitioner testified that he has no documentation of any money he earned after he left Respondent. *Id*.

Based on the above, the Arbitrator finds Respondent liable for 94 6/7 weeks of TTD benefits from May 24, 2014, through February 19, 2016, at a weekly rate of $1,126.08, which corresponds to $106,885.02 to be paid directly to Petitioner. The Arbitrator notes that Respondent has paid TTD benefits in the amount of $66,870.00. The Arbitrator finds that Respondent shall pay Petitioner a remaining TTD balance of $40,015.02, as provided in Section 8(b) of the Act.

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

Pursuant to §8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability for accidental injuries occurring on or after September 1, 2011:

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that an American Medical Association ("AMA") impairment rating was performed in this case. Dr. Vora opined that if Petitioner's injury would have been work related, Petitioner sustained a 0% lower extremity impairment rating and 0% whole person rating. The rating was based on Achilles tendinopathy and an ankle strain. (RX A at 79) However, as the Arbitrator found that Petitioner's injury was causally connected, accordingly, the Arbitrator places lesser weight on this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that Petitioner worked an extremely intense job that required Petitioner to operate a truck, enter and exit the truck and work more than eight hours a day. Petitioner testified that he drove for hours at a time and was on his feet moving plants and loading and unloading trucks. As such, the Arbitrator gives greater weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 39 years old at the time of the accident. (AX 1, line 6) As such, the Arbitrator gives lesser weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator found that Petitioner failed to meet his burden in proving an accurate AWW. The Arbitrator notes that Petitioner testified that he was running his own construction business but did not produce any wage records illustrating his earning capacity. Thus, the Arbitrator therefore gives greater 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 based on the medical records of Drs. Soto, Roberts, Brown, Kerr, and Patel, along with Petitioner's testimony, the Arbitrator found that Petitioner sustained a sprain of the left ankle and Achilles as a result of a work related accident. The Arbitrator also notes that Petitioner testified that his pain has not stopped since the date of accident. (T. 57) Petitioner testified that the procedures he received from Dr. Patel at VCU provided improvement of his symptoms, but not total alleviation. (T. 60) The Arbitrator notes that Petitioner testified that some of his symptoms are less painful or of less duration and that has better range of motion, but it is not full range of motion. (T. 62) The Arbitrator further notes that Petitioner testified that he worked out five days a week and worked

construction jobs. (T. 63, 122-123) The Arbitrator also notes that Petitioner has not sought any treatment since 2018. (T. 115) As a result, there are no records to substantiate Petitioner's ongoing complaints. Therefore, the Arbitrator gives greater weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Respondent shall pay Petitioner PPD benefits of $721.00 per week for 175 weeks, because the injuries sustained caused a 35% loss of use of person as a whole as provided in Section 8(d)2 of the Act.

WITH RESPECT TO ISSUE (N), IS RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS

Consistent with the Arbitrator's foregoing findings, and as stipulated by the parties, Respondent shall be given a credit of $66,780.00 for TTD benefits paid to Petitioner by Respondent, as provided in Section 8(j) of the Act. (AX 1 line 9)

It is so ordered:

Arbitrator Antara Nath Rivera