ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC010266
Case Name	Thomas Hum v. Installation Specialists, Inc
Consolidated Cases	22WC030665
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0252
Number of Pages of Decision	25
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Muriel Collison
Respondent Attorney	Brad Antonacci, Timothy Steil

DATE FILED: 6/4/2025

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

THOMAS HUM,

Petitioner,

vs. NO: 20 WC 010266

INSTALLATION SPECIALISTS, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, causal connection, 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 TTD rate to $957.61 per week. All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's finding that Petitioner's right knee condition of ill-being is causally related to the July 2, 2018, work-related accident is hereby affirmed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $957.61 per week for a period of 19 weeks, commencing December 4, 2019, through April 20,2020; and for a period of 75 6/7 weeks commencing November 1, 2022, through April 15, 2024, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $171,874.98 for reasonable and necessary medical expenses under §8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall be given a credit towards the awarded medical expenses that have been paid by Respondent prior to the hearing date, either by workers' compensation or a qualified group insurance provider as contemplated by Section 8(j) of the Act, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that 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 $30,000.00. 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.

June 4, 2025
SJM/msb
o:5/7/25
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC010266
Case Name	Thomas Hum v. Installation Specialists, Inc
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	***Corrected Decision***
Commission Decision Number	
Number of Pages of Decision	22
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Muriel Collison
Respondent Attorney	Brad Antonacci, Timothy Steil

DATE FILED: 8/14/2024

/s/William McLaughlin, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF AUGUST 13, 2024 4.795%

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)

Thomas Hum
Employee/Petitioner

v.

Installation Specialists
Employer/Respondent

Case # **20**WC **010266**

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 **William McLaughlin**, Arbitrator of the Commission, in the city of **Chicago**, on **6/7/2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

B. ☐ Was there an employee-employer relationship?

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

D. ☐ What was the date of the accident?

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

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

G. ☒ What were Petitioner's earnings?

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

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

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

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

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

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

N. ☐ Is Respondent due any credit?

O. ☐ Other _____

FINDINGS

On the date of accident, **07/02/2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

On those dates, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain accidents 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 accidents.

In the year preceding the injury, Petitioner's average weekly wage was $**1,436.42**. On the date of the **7/2/18** accident, and **1784.56** in the year prior to **10/31/22**.

Petitioner was **47** years of age, ***single*** with **0** dependent children.

Respondent shall be given a total credit of $**31,519.72** which equals **23,381.02** for TTD paid prior to trial, plus **8138.70,** for the PPD advance which was converted into a TTD credit.

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

ORDER

Please see Arbitration Decision for case 22WC030685 which is consolidated with 20WC010266.

The Arbitrator finds that the Petitioner's right knee condition of ill-being **is** causally related to the July 2, 2018.

Respondent shall pay Petitioner temporary total disability benefits **for 19 weeks (December 4,2019-April 20th), for the 7/2/18 accident, and 75 6/7 weeks, from (November 1, 2022 - April 15th, 2024),** as provided in Section 8(b) of the Act.

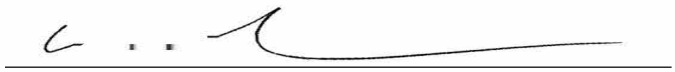
Respondent shall pay reasonable and necessary medical services of **$171,874.98**, as provided in Sections 8(a) and 8.2 of the Act per fee schedule.

Respondent shall be given a credit towards the awarded medical expenses that have been paid by Respondent prior to the hearing date, either via workers compensation or a qualified group insurance provider as contemplated by Section 8(j) of the Act, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

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

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

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



Signature of Arbitrator

August 14, 2024

ICArbDec19(b)

FACTS
20wc010266 & 22wc030665
D/A: 7/2/18 & 10/31/22

CONCLUSIONS OF LAW
20wc010266

20wc010266 -Accident 7/2/18

Petitioner testified that he is a 53-year-old carpenter for Local Union 272 (Tr. 12-13) He was employed as a carpenter for 24 years. (Tr. 13) Petitioner testified that on July 2, 2018, he was installing a frame for a glass door. (Tr. 24) He stated that he had to twist the door on an angle to get it into a rail that set the door. This caused a lot of weight towards his right knee. He testified he walked a few steps and almost fell down. He noted a strange feeling and constant pain. (Tr. 25) Petitioner testified that he reported the accident to Juan Escamilla, the foreman on the date of the accident. He testified that he worked the rest of the day but had pain at night when he went home. (Tr. 25) The July 2, 2018, accident is not disputed.

Medical Treatment

On July 5, 2018, the Petitioner presented to Advanced Urgent Care, where he was evaluated by Dr. Mohamed A. Mansour. (PX. A, Pg. 25). He reported that he had some pain in the medial side of the right knee after doing some work on July 2, 2018. He stated that he pulled the tendon. The pain was random, worsened with walking. He reported the knee felt like it was going to give out. On physical examination, there was positive tenderness on the medial aspect of the right knee with minimal swelling and decreased range of motion. Dr. Mansour diagnosed the Petitioner with a sprain of the right MCL and acute pain of the right knee. He ordered an MRI of the right knee and prescribed a steroid pack and diclofenac.

On July 6, 2018, the Petitioner underwent an MRI of the right knee at Preferred Imaging. (PX. B, Pg. 17). The MRI revealed a lateral meniscus oblique tear, medial meniscus fibrillation, as well as PCL thickening and signal abnormality from an interstitial/intrasubstance partial tear. There were also tiny osteochondral lesions on the posterior rim of the femoral condyles and anterior rim medially.

On July 20, 2018, the Petitioner presented to Dr. Russell Glantz at Parkview Orthopedic Group. (PX. C, Pg. 43). He complained of persistent medial and lateral joint line discomfort. He denied any improvement with the diclofenac. He stated that he obtained a knee sleeve, which gave him some support. On physical examination, the Petitioner was found to have a mild limp favoring his right knee. He had soft tissue swelling and minimal knee joint effusion. He had positive medial and lateral joint line discomfort. There was clicking along both the medial and lateral joint

surfaces. He had a positive McMurray sign. Dr. Glantz noted the exam was consistent with potential internal derangement of his knee.

X-rays of the right knee showed preservation of the medial and lateral surface on all views. The joint surfaces were preserved and maintained. The lateral x-ray showed preservation of the patellofemoral joint. There were minimal osteophytes, at best. There was no fracture or dislocation. Dr. Glantz reviewed the MRI of the right knee. He diagnosed the Petitioner with a lateral meniscal tear of the right knee, potential meniscal posterior horn tear and fibrillation, PCL strain, and potential small osteochondral lesions.

Dr. Glantz discussed treatment options including conservative measures, medicinal treatment through injections, and an arthroscopic evaluation. Petitioner stated that he wanted to continue working full duty. Dr. Glantz prescribed the Petitioner meloxicam and topical pain-relieving gel.

On September 10,2018 and on May12 2019, the Petitioner presented to Advanced Urgent Care with complaints of pain to the left axilla area. However, the Petitioner also requested medication for his right knee and hands due to discomfort. The Petitioner was prescribed Celebrex for acute arthritis. (PX A, Pg. 28,34).

On July 26, 2019, the Petitioner presented to Dr. Kevin Luke at Parkview Orthopedic Group for right knee pain. (PX C, Pg. 63). The Petitioner reported that he initially injured his knee on July 2, 2018. He had ultimately been working full duty but noted on and off pain and disability in the right knee interfering with activities. He stated that he had tried over-the-counter anti-inflammatories, meloxicam, and topical modalities. However, he continued to have pain and disability about the knee. An examination revealed that there was mild soft tissue swelling about the knee, but no effusion. There was positive medial and lateral joint line discomfort. There was clicking along the medial and lateral joint surfaces with a positive McMurray sign. The knee was stable. His previous MRI was reviewed. Treatment options were again discussed, but the Petitioner was unsure as to how he wanted to proceed. He wanted to discuss further with his family. In the interim, he continued working full duty.

On August 21, 2019, the Petitioner returned to Dr. Luke due to a recent occurrence of increased pain and disability. (PX. C, Pg. 67). On physical examination, the Petitioner's right knee range of motion was just shy of full extension. He noted some increased discomfort. There was some soft tissue swelling about his knee, but no joint effusion. He had positive medial and lateral joint line discomfort. There was some clicking along the joint surfaces. He had a positive McMurray sign. The Petitioner opted to proceed with an arthroscopic evaluation of the right knee. Dr. Luke ordered a right knee arthroscopy with meniscectomy and debridement of articular cartilage/chondroplasty.

On September 3, 2019, Dr. Jay Levin at AP Ortho performed an IME. (RX. 2). The Petitioner reported that he had been employed as a union carpenter for over 20 years. He reported that his job required lifting over 100 pounds. The Petitioner reported that he had a prior work-related injury to his thoracic spine. He denied any prior injury to the right knee.

The Petitioner reported that on July 2, 2018, he was installing a frame for a glass door in a small room. He stated that he had all his weight on the right knee and had to twist and turn to maneuver the framing in the door jam. He reported that as he twisted, he felt and heard a pop in the right knee. He stated the knee gave out, but he was able to catch himself before falling to the ground. The Petitioner reported that he reported the accident immediately and sought treatment a few days later. He stated that surgery and injections were recommended to him, which he did not want. The Plaintiff reported that he continued working as he had a good crew who helped him out at work. He stated he called off work when he had increased knee pain or if there was significant lifting required of him. The Plaintiff stated that he had not undergone any physical therapy, but he did exercises in his backyard pool. The Plaintiff stated that he pushed through the pain as he did not want to miss any work.

The Petitioner stated his right knee was 0% improved since the date of the injury. He stated the pain was located at the medial aspect of the right knee. He noted that he wore a knee brace daily at work and used knee pads for kneeling. He stated he felt as if his knee would give out. He noted that he was slower to do activities due to the constant pain. He had pain in the knee at night. The pain was worsened with activities, including walking, driving, squatting, navigating stairs, and kneeling. He reported numbness in the medial aspect of the right knee. Examination of the right knee was significant for anteromedial knee pain, central patellar tendon tenderness, posteromedial corner tenderness, and medial knee pain. X-rays of the right knee were taken, which revealed minimal spurring over the right medial tibial plateau with calcification in the lateral retinaculum without any gross subluxation in the patellofemoral joint. Due to the persistent complaints, Dr. Levin recommended a repeat MRI of the right knee. Once the MRI was completed, he would review it in conjunction with the medical records and provide his opinions.

On September 3, 2019, the Petitioner underwent an MRI of the right knee at Corporate Woods Open MRI. (PX. D). It demonstrated complex tearing of the posterior horn lateral meniscus similar to the prior study with accompanying stable osteochondral defect of the posterior rim lateral femoral condyle and a small defect of the posterior medial tibial condyle. There was a degenerative tear along the inferior surface of the posterior medial meniscus and fraying of the free edge, which was now accompanied by a new horizontal linear tear with apical extension of the posterior horn medial meniscus. There were stable osteochondral defects of the posterior rim medial femoral condyle and anterior medial femoral condyle. Finally, there was stable chondromalacia patella.

On September 9, 2019, Dr. Levin authored an addendum report to his IME. (RX. 3). Dr. Levin vin stated that the recent MRI showed a development of a medial meniscal tear. He noted that the MRI in 2018 demonstrated a right knee lateral meniscal tear with fraying of the medial meniscus. Across time that had progressed to include a medial meniscal tear where the previous degenerative changes were noted. Dr. Levin stated that assuming the historical information was accurate that the Petitioner did not have a subsequent injury following his injury on July 2, 2018. Dr. Levin opined that the development of the medial meniscal tear could be based on continued activities at work and/or degeneration. Dr. Levin stated the Petitioner could either live with the condition or undergo a right knee arthroscopy with both medial and lateral partial meniscectomies to a stable rim, which was medically appropriate and related to the July 2, 2018, occurrence. Dr. Levin stated that there was no preexisting condition. Dr. Levin started that given the continued complaints, the Petitioner failed conservative care and surgical intervention was definitely an option. Dr. Levin

stated that if he elected to undergo surgery, he should be able to work in a light duty capacity avoiding deep knee bends for up to 4-6 weeks and then be able to work in a full duty capacity thereafter. Dr. Levin estimated MMI approximately 6-8 weeks postoperatively.

On December 10, 2019, the Petitioner underwent surgery at Advocate Christ Medical Center. (PX. 53). Dr. Luke performed an arthroscopic evaluation of the right knee with a partial medial meniscectomy, partial lateral meniscectomy, abrasion arthroplasty of the right distal medial femoral condyle osteochondral defect, and chondroplasty and debridement of the patellofemoral joint and medial compartment.

On December 16, 2019, the Petitioner followed up with Dr. Luke. (PX. C, Pg. 107). The incision was clean and dry. The sutures were removed, and Petitioner was to begin physical therapy.

On December 18, 2019, the Petitioner initiated physical therapy at Parkview Orthopedic Group. (PX C, Pg. 110). He reported that he always had pain since surgery. He stated he was unable to sleep throughout the night. He stated that stairs and walking was painful. He could not even sit. The therapist noted that the Petitioner showed high pain levels, swelling, decreased strength, decreased active range of motion, and bruising throughout the right posterior thigh. His deficits limited him from ambulating with proper pattern, perform stairs reciprocally, community ambulation, sleeping without waking, and performing transfers without pain and difficulty.

The Petitioner attended physical therapy on December 18, December 20, December 23, December 26, December 28, and December 30, 2019, and January 4, January 6, January 8, January 13, and January 15, 2020. (PX Pgs. 114-140).

A physical therapy progress note was prepared on January 17, 2020. (PX. Pgs. 141). The Petitioner reported continued discomfort with prolonged walking and increased activity. The therapist noted improvements with knee range of motion and strength. However, he continued to have strength deficits primarily with eccentric quad control. Due to the heavy demands of his job, the therapist believed he would benefit from continued therapy.

On January 20, 2020, the Petitioner returned to Dr. Luke. (PX.C, Pg. 151). He reported improvement in terms of pain and disability, but still noted some persistent pain and symptoms in the medial aspect of the knee. Dr. Luke stated this would be more consistent with his underlying right distal medial femoral condylar osteochondral injury. The Petitioner reported that physical therapy was helping, but there were still limitations because of the pain and disability. Dr. Luke sated that the physical therapy notes showed improvement, but the Petitioner was still having symptoms with prolonged standing and walking up and down stairs. Dr. Luke recommended continued physical therapy. He also prescribed diclofenac, Norco, and topical pain ointments. The Petitioner was to remain off work.

The Petitioner attended physical therapy on January 22, January 24, January 27, January 31, February 5, February 7, February 11, February 12, February 14, and February 17, 2020. (PX C, Pgs. 156-187).

Another physical therapy progress note was prepared on February 19, 2020. (PX C, Pg. 188). The Petitioner reported difficulty fully squatting due to pain. He also had a stabbing pain under his kneecap and numbness along the lateral thigh. The therapist noted that he was tolerating light work simulation activities with good form and muscle control. Due to his heavy job demands, the therapist recommended a work conditioning program.

On February 21, 2020, the Petitioner returned to Dr. Luke. (PX. C, Pg. 191). He reported that he had continued pain and disability about his right knee despite physical therapy interventions. He noted episodes of feeling as if the knee was going to give out. He had a hard time squatting secondary to pain and disability. The Petitioner noted some improvement from surgery, but he still had ongoing symptoms. Dr. Luke noted that the Petitioner also had evidence of an osteochondral injury to the right distal medial femoral condylar region. Examination of the right knee revealed soft tissue swelling and mild joint effusion. Range of motion was just shy of full extension through about 120 degrees of flexion. The Petitioner pointed to the patellofemoral joint and medial compartment as his primary locations of pain and disability. He also had discomfort on stress maneuvers to the point where he felt that it interfered with gait and activities. Dr. Luke noted that the physical therapy notes showed him to still be having episodes of discomfort about the knee, as well as stabbing pain and evidence of the osteochondral injury. Dr. Luke believed the symptoms were secondary to the osteochondral defect. Dr. Luke believed it was time to consider an OATS type procedure or cartilage transplant. He referred the Petitioner to Dr. Shah to determine the potential need for addressing the osteochondral defect. The Petitioner remained off work. Physical therapy was placed on hold pending Dr. Shah's visit.

On February 26, 2020, the Petitioner presented to Dr. Nirav Shah at Parkview Orthopedic Group. (PX. C, Pg. 195). The Petitioner reported that he had continued pain since his arthroscopic surgery. He noted pain deep in the medial aspect of the knee. He stated the knee felt as if it was going to give out. There was pain deep in the inner aspect of his knee. He felt he had plateaued in therapy. He still had a hard time kneeling and squatting. On physical examination of the right knee, there was tenderness to palpation in the medial joint line, in the medial femoral condyle, and along the patella. There was mild crepitus in the patellofemoral joint. There was some pain and tightness in flexion. X-rays of the left knee were performed, which showed no fractures, dislocations, or degenerative changes. Dr. Shah reviewed arthroscopic images from the surgery. It was noted that there was a 5x5 mm osteochondral defect of the medial femoral condyle that appeared to be a well-contained lesion. Dr. Shah stated the defect was located in the weightbearing portion on the somewhat medial aspect of the medial femoral condyle, but it was contained with healthy articular cartilage margins. Dr. Shah recommended an updated MRI of the right knee to assess the condylar defect as well as bony edema deep to the osteochondral defect. Dr. Shah stated the next reasonable step after the MRI would be to proceed with a right knee osteochondral autograft transplant (OATS) and possible arthrotomy. Dr. Shah recommended putting physical therapy and hold. The Petitioner remained off work.

On March 9, 2020, the Petitioner underwent an MRI of the right knee at PMI Diagnostic Imaging. (PX C, Pg. 199). The MRI revealed grade III and grade II lateral patellar chondromalacia with focal high-grade chondromalacia along the articular surface of the lateral femoral condyle at the patellar articulation. There were focal tears involving the posterior horn of the lateral and medial meniscus. There was medial greater than lateral tibiofemoral joint space narrowing and high-grade

chondromalacia. There was subchondral cystic change along the medial tibial plateau, which was mildly worse than on the previous examination.

On March 30, 2020, Dr. Jay Levin performed an IME at AP Ortho. (RX 4). The Petitioner's surgical history was noted. He stated that he attended physical therapy post-surgery. He noticed improvements with strength and range of motion of the knee with therapy but continued to have pain along the anterior/medial aspect of his right knee. He reported difficulty going up and down stairs. The Petitioner stated that he was told that he had a "hole in his anterior/medial" aspect of the right knee where the pain was located. He stated that he saw Dr. Shah, who recommended a repeat MRI of the right knee, which was completed on March 9, 2020. After a review of the MRI Petitioner was recommended to undergo a second surgery.

Dr. Levin did not agree that an OATS procedure should be performed. Dr. Levin stated the MRI obtained on July 6, 2018, approximately four days after the accident, showed chronic changes consisting of tiny osteochondral lesions in the posterior and anterior rim in the femoral condyles, which predated the occurrence of July 2, 2018. Dr. Levin stated the traumatic component from the accident was a right knee medial and lateral meniscal tear, which was surgically treated on December 10, 2019. Dr. Levin believed that the osteochondral defect lesion was caused by preexisting degenerative changes of the right knee. Dr. Levin stated that he would not recommend any additional surgery related to the right knee as related to the July 2, 2018, occurrence. Dr. Levin stated the Petitioner could work in a full duty capacity and was at MMI.

On April 15, 2020, Dr. Levin authored an addendum to his IME report. (RX 5). Dr. Levin noted that the Petitioner did not require further treatment for the OCD lesion as related to the July 2, 2018, occurrence. Dr. Levin did not believe the injury aggravated or exacerbated the preexisting OCD lesion to the point of needing medical treatment.

On May 27, 2020, the Petitioner followed up with Dr. Shah. (PX. C, Pg. 201). The MRI was reviewed. It was noted that it showed evidence of still possibly some punctate meniscus tears and a 5x5 OCD lesion. There were also some early arthritic changes in the knee which were aggravated by the work injury. The Petitioner complained of continued pain in the medial aspect of the knee and tenderness to palpation in the medial joint line. The Petitioner reported that he had an IME, at which he was told that he did not need surgery or further treatment as it was a preexisting condition, and he was at MMI. Dr. Shah stated that she disagreed with the IME. Dr. Shah believed that an OATS autograft procedure would help with some of his pain. Dr. Shah noted that there was some present possibly prior to the injury but he did not have symptoms. Therefore, he definitely aggravated the preexisting condition. Dr. Shah continued to recommend the autograft OATS procedure.

On June 1, 2022, Dr. Jay Levin of Levin Orthopedics, S.C. authored a report. (RX. 6). Dr. Levin noted that he had received intraoperative photos of the Petitioner's right knee procedure completed on December 10, 2019. He noted there were two pages each with nine images. Dr. Levin stated that the images on the top row of page 1 showed fibrillation of the cartilage probably from trocar entrance into the knee joint. The ACL was visualized in the second row and was intact. The third row showed the insertion of a shaver and probe, which appeared to be done by the surgeon down to the subchondral bone. Dr. Levin stated that page 2 showed a probe inserted in row 2, which

appeared to show a grossly stable ACL, a partial meniscectomy, and a chronic OCD lesion. Dr. Levin stated that consistent with his review of the MRI of the right knee completed four days after the injury, an OCD lesion was visualized, which was a chronic finding and unrelated to the acute event of July 2, 2018.

Accident 10/31/22

Petitioner testified he went to work and was performing drilling in the ground. This drilling entailed kneeling on concrete and drilling into cement. (Trans Pg. 41-42) Petitioner noted locking of his right knee, the pain was more on the outside of the bone after the first injury, but more in the bone after the second injury. Petitioner testified he reported the injury the following day. He indicated to his foreman; he could not lift his tools out of his truck because it was too heavy on his knee. (Tr. 41-44)

On November 1, 2022, the Petitioner presented to Advanced Urgent Care complaining of right knee pain that started the day prior. (PX 1, Pg. 84). He stated that he could not go up the stairs. It was noted that he had a history of a right knee injury. He reported that he had a hole in the right knee and had an arthroscopy performed previously. The examination revealed a significant right medial knee tenderness triggered with palpation, weightbearing, and external rotation. X-rays of the right knee revealed no acute bone abnormalities. An MRI of the right knee was ordered.

On November 7, 2022, the Petitioner underwent an MRI of the right knee at Preferred Imaging. (PX. B, Pg. 25). The MRI revealed an ACL signal abnormality with pattern of interstitial partial-tear or mucinous degeneration, medial compartment arthritis from degenerative joint disease/osteoarthritis, minimal chondromalacia patella, and associated small joint effusion.

On November 18, 2022, the Petitioner was referred to orthopedics by Advanced Urgent Care due to a recurrent injury to the right knee. (PX. A, Pg. 92).

On November 30, 2022, the Petitioner was evaluated by Dr. Shah at Parkview Orthopedic Group. (PX. C, Pg. 206). Dr. Shah noted that Petitioner complained of instability and medial sided knee pain. The Petitioner reported a new work injury on October 31, 2022. He stated he was kneeling a lot that day while drilling concrete. He stated that he sat down for a break and when he got up to walk, the knee pain was significantly worse. He noted significant locking and severe pain. He reported that he tried to work through it, but due to the pain, stiffness, locking and disability, he was unable to continue working.

On physical examination, the Petitioner had a severe antalgic gait with severe pain. There was global swelling in the medial aspect of the knee. He had pain and tenderness at the medial joint line, anteromedial aspect, and medial femoral condyle. There was some loss of motion in full extension and flexion. The Petitioner had difficulty squatting. X-rays of the right knee were performed, which showed some increased joint space loss. Dr. Shah noted the new MRI showed increased degeneration of the ACL, minimal chondromalacia of the patella, and medial

compartment arthritis with mild fibrillation of the medial meniscus. Dr. Shah further noted that the medial compartment showed erosions, along with marginal osteophytes.

Dr. Shah diagnosed the Petitioner with right knee arthritis at the medial compartment and post-traumatic arthritis. Dr. Shah recommended a cortisone injection followed by physical therapy and medications. Dr. Shah noted that the OATS transplant would have been a viable procedure two-and-a-half years ago when he developed an osteochondral lesion. It was noted that this would have significantly improved his symptoms and could have prevented further degradation of the post-traumatic arthritis. However, it had led to more severe medial compartment osteoarthritis. Dr. Shah believed the arthritis worsened due to repeated kneeling and drilling. Dr. Shah stated that if injections, physical therapy and medications did not help, the Petitioner may require a noncompartmental or total knee arthroplasty. The Petitioner stated that he wanted to work as long as possible in his heavy manual duty job. Therefore, Dr. Shah stated that a high tibial osteotomy to unload the medial compartment prior to an arthroplasty could be considered. The Petitioner was placed off work.

On December 21, 2022, Dr. Shah performed an ultrasound guided cortisone injection into the right knee to help with the painful arthritis from his work injury. The Petitioner remained off work. The plan was to follow up in six weeks for possible viscosupplementation injections. (PX. C, Pg. 209).

On December 22, 2022, the Petitioner underwent an initial physical therapy evaluation at Theory Physical Therapy. (PX J, Pg. 20). The Petitioner reported that he had tears in his knee three years prior. He knew something was not right, and he found out that he had a hole in his knee. He also noted arthritis and bone spurs. The Petitioner did not notice a difference in his symptoms following the cortisone injection. He stated that walking, kneeling, and going up/downstairs was difficult. k. On examination, the Petitioner had tenderness to palpation at the medial joint line. He had a positive patellar grind test and McMurray test. The Petitioner demonstrated decreased flexion. The therapist believed he could benefit from skilled therapy.

The Petitioner attended physical therapy on December 23, December 28, and December 30, 2022. He further attended physical therapy on January 4, January 5, January 10, January 13, and January 17, 2023. (PX J, Pgs. 23-46).

A physical therapy progress note was prepared on January 19, 2023. (PX. J, Pg. 47). The therapist noted that the Petitioner had shown great progression with no pain to palpation. He had increased mobility without pain. He had functional activities of stairs and squats without pain.

On January 30, 2023, the Petitioner returned to Dr. Shah. (PX. C, Pg. 216). He reported that the cortisone injection did not help but physical therapy helped a little bit. Dr. Shah recommended viscosupplementation injections. Petitioner remained off work.

On March 2, 2023, Dr. Jeffrey Goldstein, an orthopedic surgeon, performed an IME. (RX 9). The Petitioner reported that he injured his right knee when lifting heavy glass and heard a pop at work on July 2, 2018. He did not know the exact mechanism of action and did not fall to the ground. However, he felt his right knee give out while attempting to walk it off. The Petitioner reported undergoing surgery and physical therapy. He stated he was doing well for a while, but then had

residual pain. He attributed the residual pain to a separate structural injury that occurred at the time of the accident on July 2, 2018.

On physical examination, the Petitioner complained of tenderness to palpation at the medial and lateral joint lines. There was no ligament instability. He had 5/5 quad strength. Sensation was intact to light touch in all nerve distributions of the right lower extremity. The right knee range of motion was within normal limits. X-rays of the right knee were performed, which showed moderate medial joint space narrowing with varus alignment. There was about 50% joint space narrowing in the medial compartment. Dr. Goldstein reviewed the MRI of the right knee dated July 6, 2018. Dr. Goldstein noted that the MRI revealed PCL thickening and signal abnormality for interstitial partial-thickness tear, lateral meniscus oblique tear, medial meniscus fibrillation, and tiny osteochondral lesions of the posterior and anterior rim of the femoral condyle.

Dr. Goldstein diagnosed the Petitioner with right knee osteoarthritis. Dr. Goldstein stated the osteoarthritis was a preexisting condition. He stated that despite the fact that he was not symptomatic prior to July 2, 2018, it does not change the fact that there was a degenerative process occurring within the right knee. Dr. Goldstein noted that the Petitioner had an MRI four days after the knee injury, which showed no effusion or subchondral edema, which would be expected if he had actually had an acute osteochondral injury on July 2, 2018. Rather, he had multiple small osteochondral defects as well as degenerative tears of the menisci and chondromalacia in all three compartments of the knee. Dr. Goldstein stated that all of those findings added up to an underlying degenerative condition that had to have been present prior to July 2, 2018. Dr. Goldstein noted that the Petitioner underwent the right knee arthroscopy and meniscectomy, in which Dr Luke debrided the cartilage on at least one of the osteochondral defects on the medial side. He stated the intent of that surgery was to help the knee symptoms a year after the alleged injury. However, the Petitioner continued to have pain. Dr. Goldstein stated the reason for the pain after surgery was because of underlying degenerative joint disease.

In addition Dr. Goldstein stated that the Petitioner was not a good candidate for the OATS procedure. Dr. Goldstein named contraindications for the procedure, including the multiple small osteochondral defects seen on the initial MRI, the fact that there was no subchondral edema with no identifiable loose body associated, the lack of any effusion indicative of chronic osteochondral degenerative findings as opposed to an acute osteochondral injury, the degenerative meniscus tears, the multiple areas of chondromalacia, and adjacent tibial-sided bone marrow edema. Dr. Goldstein stated the fact that the Petitioner was almost 50 years old with varus alignment of his knee and obesity were additional relative contraindications. Dr. Goldstein stated that in the Petitioner's case, he had obvious degenerative changes from the start, as well as an osteochondral defect on the distal femur on the non-weightbearing portion of the joint. Dr. Goldstein stated that the Petitioner had further degeneration of the right knee over the course of time from 2018 through 2023. This was based on the fact that he clearly had joint space narrowing in the medial compartment on the x-rays performed in the office on the day of the IME, which would be consistent with an osteoarthritic knee. Dr. Goldstein stated that he disagreed with Dr. Shah's assessment that the failure to perform the OATS procedure accelerated the development of post-traumatic arthritis. Dr. Goldstein stated that if the claimant had an OATS procedure, he would be in the exact same position. Dr. Goldstein stated that the current condition of right knee osteoarthritis was not causally connected to the October 31, 2022, accident. He noted that there

was no discrete injury or trauma. Dr. Goldstein believed the pain in the right knee was because of the arthritic knee rather than a structural injury.

Dr. Goldstein stated that arthroscopic intervention in 2018 would have been premature without conservative care. He noted that the Petitioner disappeared for a year and continued working full duty. Dr. Goldstein stated it was not unreasonable to perform the surgery in 2019, after he came back with continued symptoms. However, he did not believe the surgery was necessary at that time. Dr. Goldstein then stated that the surgery was reasonable. He also stated that the physical therapy and injections performed subsequently were reasonable.

Dr. Goldstein stated that the Petitioner would likely require further treatment to the right knee, including repeat cortisone injections, possible viscosupplementation injections, anti-inflammatories, and physical therapy. However, the necessity for any and all of the treatments would be due to the underlying naturally progressing osteoarthritis in the right knee. Dr. Goldstein would not attribute the need for further care to the right knee to be causally related to the July 2, 2018, or October 31, 2022, accidents. Dr. Goldstein stated that the Petitioner might need work restrictions for his osteoarthritis, but not because of the work accidents. Dr. Goldstein stated that osteoarthritis was a degenerative condition that never reaches MMI. However, as it related to the alleged incident in question, the Petitioner had most certainly reached MMI. Dr. Goldstein stated that even if it was conceded that the Petitioner exacerbated his underlying degenerative joint disease, a temporary exacerbation of underlying right knee osteoarthritis would be expected to reach MMI at a point three months from the date of injury. In that context, Dr. Goldstein placed MMI on January 31, 2023. He stated that any and all treatment subsequent, including future treatment, would not be causally connected to the alleged work accident on October 31, 2022.

On April 7, 2023, the Petitioner returned to Dr. Shah, who noted that he had failed nonsurgical and conservative measures. He complained of continued knee pain. Dr. Shah recommended viscosupplementation injections. (PX. C, Pg. 218).

Between April 14, 2023, through April 28, Dr. Shah performed three viscosupplementation injections guided by ultrasound. (PX C, Pg. 219-223)

On June 2, 2023, the Petitioner followed up with Dr. Shah's physician assistant for the right knee. (PX C, Pg. 228).. He was prescribed Celebrex and recommended physical therapy to help with strength and range of motion.

On June 30, 2023, the Petitioner was evaluated by Dr. Luke at Parkview Orthopedic Center. (PX. C, Pg. 231).. The Petitioner reported increasing pain and disability interfering with his daily life. He stated he could only walk at most one block because of his symptoms. He stated he had not been able to work due to his knee symptoms.

On physical examination of the right knee, X-rays were obtained, which showed degenerative joint disease of the right knee with bone-on-bone changes, varus malalignment, and osteophytes. Treatment options were discussed, which ran from conservative measures through a total knee arthroplasty. He was prescribed a new anti-inflammatory, Relafen.

On September 28, 2023, the Petitioner underwent a total knee arthroplasty. Following surgery, he underwent home health therapy.

On October 13, 2023, the Petitioner attended outpatient physical therapy at Theory. (PX J, Pg. 139). He reported that home health therapy was painful. At his final visit, the therapist got him to 85 degrees in knee bending. The Petitioner reported that he used a walker at home and walked without it for short distances. He was taking hydrocodone as needed, mostly once every six hours. The therapist noted reduced mobility, weakness, increased swelling, and increased pain. The deficits were affecting the Petitioner's sleep, gait, transfers, and stairs. The therapist recommended continued therapy to return to gait without an assistive device and compensation, as well as improve balance and safety with transfers and stairs.

The Petitioner attended physical therapy on October 17, October 19, October 20, October 24, October 26, October 27, and October 31, 2023. (PX. J, Pgs. 142-162).

On November 1, 2023, Dr. Shah authored a narrative report. (PX. C, Pg. 242). Dr. Shah stated that the cortisone injections and viscosupplementation injections were secondary to pain that the Petitioner sustained after the injuries on July 2, 2018, and March 2, 2023. Dr. Shah stated the right knee arthroplasty performed by Dr. Luke was necessary due in part or whole to the work injuries. Dr. Shah stated the Petitioner did not have any pain in the right knee prior to the work injuries. He stated the Petitioner had multiple nonsurgical and arthroscopic surgeries to try to improve his pain and symptoms and, ultimately, an OCD transplant was not approved, and the arthritic pain and symptoms worsened. Dr. Shah stated that despite multiple other treatment options that were exhausted, the OCD lesions were not treated, and the arthritic symptoms worsened secondary to the work injury. Dr. Shah stated that all of the symptoms were related to the work injury that ultimately led to a knee replacement. Dr. Shah stated that the time the Petitioner was off work was reasonably necessary and related to the accidents.

The Petitioner attended physical therapy on November 2, 3, 7, 10,17, 20,22, 24, 27, 29, and December 1, 2023. (PX. J, Pgs. 163-199).

On December 4, 2023, the Petitioner followed up with Dr. Luke. (PX. C, Pg. 245). Dr. Luke recommended continued physical therapy for range of motion and strengthening, especially of the quadriceps. The Petitioner was prescribed anti-inflammatories and topical pain ointments. Norco was renewed. The Petitioner remained off work.

The Petitioner attended physical therapy on nine separate occasions between December 6, 2023, through January 12, 2024. (PX J, Pgs. 203-223).

On January 15, 2023, Dr. Luke noted (PX. J, Pg. 246). Dr. Luke noted that the Petitioner was treated with physical therapy post-operatively. He noted that there were some improvements, but he still had episodes of pian and disability interfering with activity. Dr. Luke stated that he referred the Petitioner to Dr. Shah for evaluation, consultation, and consideration of an OATS procedure to treat the osteochondral defect. Dr. Luke noted that the surgery with Dr. Shah was never approved. Thus, the Petitioner attempted to treat his condition with conservative measures. Unfortunately, the Petitioner had persistent pain and disability which worsened to the point of requiring a total

knee arthroplasty. Dr. Luke stated the Petitioner was currently being treated with physical therapy in an effort to improve the condition so that he could return to work full duty without restrictions. Dr. Luke noted that he reviewed Dr. Goldstein's IME report.

Dr. Luke agreed that the Petitioner's right knee condition was degenerative joint disease of the right knee. Dr. Luke believed that the right knee condition was causally related to his work-related injury on July 2, 2018. He believed that the persistence of pain, disability, and further exacerbations of his underlying injury was causally related to the work-related injury. Dr. Luke stated that although the Petitioner may have had a preexisting condition of some degenerative joint disease or osteoarthritis of the right knee, he was not symptomatic prior to the work-related injury. Thus, the work-related injury exacerbated the underlying condition and caused his further pain and disability. Dr. Luke stated that conservative measures were unsuccessful and ultimately required further surgical intervention. Dr. Luke believed that his referral to Dr. Shah to contemplate an OATS procedure was a medical necessity and warranted. Dr. Luke disagreed with Dr. Goldstein's opinion that the Petitioner would be in the same condition if the OATS procedure had been approved and performed. Dr. Luke believed the total knee arthroplasty was necessary secondary to failure of conservative measures and treatment related to the work-related injury. Dr. Luke was unsure of any work-related restrictions in the future. Dr. Luke noted that he was continuing in rehabilitation. Dr. Luke stated that a functional capacity evaluation versus work conditioning would ultimately be required to determine work restrictions.

After attending physical therapy on January 16, 19, 23, and January 26, 2024, Petitioner returned to Dr. Luke on February 2, 2024 (PX. C, Pg. 249). X-rays of the right knee were showed the knee well aligned with no gross change in alignment or positioning compared to the prior x-rays. Dr. Luke recommended continued physical therapy. The Petitioner was kept off work. However, Dr. Luke noted that if the Petitioner felt able to return to work prior to his next appointment, he would fax a note accordingly.

After attending physical therapy on February 13 and 16, 2023. (PX. J, Pgs. 245-252) Petitioner followed up with Dr. Luke on March 15,2024 (PX C, Pg. 250). He reported that he had completed physical therapy and advanced to a home exercise program. Petitioner reported some improvement in terms of the disability to his knee. He felt ready to go back to work. Physical examination showed no swelling or joint effusion. Stress maneuvers still showed the quads to be a touch weaker on the right side. X-rays of the right knee showed no change in alignment or positioning. Dr. Luke recommended continued home exercises for quad strengthening. Dr. Luke released the Petitioner to return to work full duty without restrictions as of April 1, 2024.

CONCLUSIONS OF LAW

(F) Is Petitioner's current condition of ill-being is causally connected to injury on 7/2/18, and were the medical services provided to the Petitioner were reasonable and necessary.

The Arbitrator finds that Petitioner's current condition of ill-being is causally connected to his injury on 7/2/18.

The Arbitrator give greater weight to the conclusions drawn by Dr. Luke who concluded to a reasonable degree of medical and surgical certainty that the necessity of the first surgery was due to the 7/2/18 injury. (PX. L Pg. 15-16) Dr Luke formulated this opinion by discussing the injury with the Petitioner, the injury pattern, the findings on the scans and his examination of the patient. (Pet. Ex. L Pg. 16)

Dr. Luke opined on the causation of Petitioner's conditions.

"I'm saying that the meniscal tear and potentially the osteochondral lesions were caused by the injury. The underlying arthritic processes that were in the knee in all likelihood predate his injury, but his injury exacerbated the underlying problem. The meniscal tear, I do believe, was caused by the injury." (PX. L Pg. 18)

Dr. Luke opined that the OATS procedure was necessary and due to the injury on 7/2/18. (PX. L Pg 23)

Dr. Luke also indicated the physical therapy and strengthening, work hardening, and all of the treatment was necessary. "I think it's all related to the initial injury, which kind of started it all in motion kind of stuff, but all of his treatment in my mind and Dr. Shah's mind was necessary for him." (PX. L Pg 40)

He believes the need for knee replacement surgery was from a combination of both accidents. The Dr. wanted Petitioner to undergo the OATS procedure that was never approved. He ultimately went back to work and then had an issue with this new onset injury, but he already had never had the OATS or the underlying problem corrected and so there was another exacerbation of the initial injury**…** (PX. L Pg.45)

Dr. Luke conclusions are in opposition to those of with Respondent's Section 12 examiner, Dr. Goldstein.

Dr. Luke concluded that the Petitioner may have had a pre-existing condition of some degenerative joint disease or arthritic changed to his knee, but he wasn't symptomatic prior to this injury as previously discussed. Thus, is was DR. Lukes' belief that in either case, the work-related injury exacerbated his underlying condition and caused his further pain and disability. Conservative measures, again, had been unsuccessful. He does not agree with Dr. Goldstien's opinion that the patient would be in the same condition if the OATS procedure had been approved and performed." (PX. L Pg. 48)

Arbitrator also gives greater weight to Dr. Shah who opined that that the OCD lesion on the medial, femoral chondyle was caused or aggravated by the accident. (PX. L Pg. 14)

Dr. Shah concluded that a patient's injury can either cause the defect or somebody can have an asymptomatic osteochondritis dissecans cartilage bone problem that was never symptomatic because it was stable, and then the injury can make that unstable and painful, as is the case with the Petitioner. (PX. L Pg. 15)

Dr. Shah, disagrees with Dr. Levin. "Yes. I disagree with Dr. Levin's opinion that Mr. Hum will not require any further treatment for the OCD lesion. When I last saw the patient, he still had symptoms. He failed arthroscopy. He failed debridement. He failed non-surgical treatment. He continued to have pain secondary to the work injury causing him continued pain and symptomatic. This patient does need further treatment for his symptomatic OCD lesion." (PX. L Pg. 19)

Dr. Shah also disagrees with Dr. Goldstein's opinions. Dr. Shah opined the patient did sustain new symptoms after the injury. All of his medical treatment was necessary and reasonable, in order to try and improve his symptoms after the work injury. All of the treatment he received, including the knee replacement, is related to the work injury. (PX. C Pg. 234)

Arbitrator considered Dr. Shah when he opined that all of Petitioner's treatment is reasonable and related to his work accidents. And his conclusions that the Petitioner did not have any pain in his knee prior to the injury at work, where he was working well. Had multiple nonsurgical and arthroscopic surgeries to try and improve his pain and symptoms et and, ultimately, OCD transplant was not approved, and the symptoms worsened, the arthritic pain and symptoms. Despite multiple other treatment options that were exhausted and tried for this patient, the OCD lesions were not treated, and the arthritic symptoms worsened secondary to the work injury. All of the symptoms are related to the work injury that ultimately led to a knee replacement." (PX. C Pg. 233)

As to the 10-31-22 accident Dr. Shah saw Petitioner on 11/30/22 and noted:

"He sustained a new injury at work with a new claim number and a new injury 10/31/22. On that date, he was kneeling a lot that day drilling concrete, sat down for a break and when he got up to walk the knee pain was significantly worse than it had been with significant locking and severe pain. He tried to continue to work through it, but significant increase in severe pain on the inner aspect of his knee with pain, stiffness and locking and increase in disability, inability to work. Therefore, he had a new recent MRI on 11/7/22 and referred on to me."

When he examined Petitioner, he noted Petitioner had a severe antalgic gait with severe pain. Pain with valgus stress testing. Global swelling in the medial aspect of the knee. Anteromedial pain is present. Deep pain noted to the medial femoral condyle. Difficulty squatting. Very painful to squat and/or kneel.

"I do believe that the recent injury with repeated kneeling, drilling and with increased pain significantly aggravated the post traumatic arthritis." (PX. C Pg. 197-198)

AS the 7-2-18 injury relates to the 10-31-22 injury Arbitrator relies in part on Par Electric v. Illinois Workers' Compensation Comm'n, 2018 IL App (3d) 170656 WC. In that case, claimant had a pending workers compensation claim against one employer, Par Electric ("Par), and then filed two subsequent claims against a second employer, Henkels & McCoy ("Henkels"), for the same body part. Claimant had a right shoulder surgery for the first claim against Par, had an FCE and was allowed to work full duty. Thereafter, claimant alleged two accidents causing right shoulder injury against Henkels. Thereafter, a second right shoulder surgery was performed in which the treating surgeon opined the second surgery was a "continuation" from the first accident. The appellate court found Par as the employer for the first accident, was the responsible party for the ongoing care of the right shoulder as opposed to the latter accidents against Henkel as there was not a break in the chain of causation from the initial accident

The facts show Petitioner had a pre-existing right knee workers' compensation claim against Respondent prior to October 31, 2022. Petitioner credibly testified to an undisputed accident at work for Respondent on July 2, 2018, which caused a right knee injury. As a result of this 2018 accident, Petitioner had a right knee surgery on December 10, 2019. It is also undisputed Petitioner continued to have ongoing right knee complaints after the surgery wherein a second surgery had been recommended prior to October 31, 2022.

Further, no evidence was introduced that Petitioner's pre-existing right knee condition was at MMI prior to October 31, 2022. In fact, the unrebutted facts show that a trial was pending in November 2022 for purposes of obtaining a decision from the Illinois Workers' Compensation Commission to order Respondent in the first accident claim to pay for the proposed OATS procedure for the right knee.

Therefore Arbitrator considered all the evidence combined with the petitioners credible testimony in concluding the Petitioners current condition relates to the 7-2-18 accident and all the Medical services provided were reasonable and necessary.

. *Par Electric v. Illinois Workers' Compensation Comm'n*, 2018 IL App (3d) 170656 WC. In that case, claimant had a pending workers compensation claim against one employer, Par Electric ("Par), and then filed two subsequent claims against a second employer, Henkels & McCoy ("Henkels"), for the same body part. Claimant had a right shoulder surgery for the first claim against Par, had an FCE and was allowed to work full duty. Thereafter, claimant alleged two accidents causing right shoulder injury against Henkels. Thereafter, a second right shoulder surgery was performed in which the treating surgeon opined the second surgery was a "continuation" from the first accident.

The appellate court found Par as the employer for the first accident, was the responsible party for the ongoing care of the right shoulder as opposed to the latter accidents against Henkel as there was not a break in the chain of causation from the initial accident

(G) What were Petitioner's earnings?

Petitioner asserts his overtime earnings should be included in his average weekly wage calculation. Section 10 of the Illinois Workers' Compensation Act states: "compensation shall be computed on the basis of the "Average weekly wage" which shall mean the actual earnings of the employee in the employment in which he was working at the time of the injury during the period of 52 weeks ending with the last day of the employee's last full pay period immediately preceding the date of injury, illness or disablement excluding overtime, and bonus divided by 52."

In *Airborne Express v. Illinois Workers' Compensation Comm'n*, 372 Ill. App. 3d 549 (2007), the appellate court discussed prior decisions issued concerning overtime. It noted that "overtime includes those hours in excess of an employee's regular weekly hours of employment that he or she is not required to work as a condition of his or her employment or which are not part of a set number of hours consistently worked each week." 372 Ill. App. 3d at 554. The court also noted "[i]f merely working overtime on a regular, voluntary basis were sufficient to include the overtime hours worked in the calculation of an employee's average weekly wage, the overtime exclusion in section 10 of the Act would be rendered meaningless." 371 Ill. App. 3d at 555.

In the instant case, Petitioner failed to show that his overtime was mandatory and failed to show that his overtime was scheduled consistently.

Petitioner testified he had no choice if he wanted to work more than 40 hours and there would be repercussions if he did not work on a scheduled Saturday shift. However, Petitioner did not testify his overtime was mandatory. And did not provide any corroborating testimony overtime was mandatory or that employees had to work on Saturdays. Petitioner also did not testify he would be fired if he did not work overtime. In summary, Petitioner did not testify nor provide any evidence to support overtime was mandatory.

Petitioner's testimony was rebutted by witness, Ken Maschek. Mr. Maschek credibly testified that overtime was not mandatory and that the only "repercussion" for an employee who refuses overtime is that they would be put to the bottom of the list of employees who do agree to work overtime for Respondent. Mr. Maschek also testified that a person would need to call in if they did not want to work. The Arbitrator agrees that it is universally accepted that any employee needs to call into their employer if they do not plan to work on a scheduled workday.

Additionally, the Arbitrator finds Mr. Maschek's testimony is credible. The testimony provided by Mr. Maschek boils down to Respondent provided an incentive to its employees to work overtime as they would be provided opportunities in the future and was not a mandatory direction that the employees had to work overtime. Based on this incentive, the Arbitrator does not agree the overtime requested by Respondent was mandatory. Therefore, Petitioner's overtime wages are excluded from his average weekly wage calculation.

Petitioner's gross wages for the 7/2/18 accident was 1436.42.

Petitioner's gross wages for his 10-31-22 accident was $1,784.56.

(J) Were the medical services provided to the Respondent is reasonable and necessary? And has Respondent paid all appreciate charges for said services.

This Arbitrator finds all the treatment is reasonable and necessary and related to the accidents on 7/2/18 and 10/31/22. Respondent is to pay all the medical bills pursuant to the exhibit list in the total amount of $171,874.98 pursuant to the fee schedule.

(K) Petitioner is entitled to any prospective medical care.

Based on the above conclusions Arbitrator finds Petitioner's treatment has been reasonable and necessary. Petitioner is not at MMI and has not been released from care. Dr. Luke testified he follows his knee replacement patients for a year following surgery and would see Petitioner in July (3 months from last visit on 3/15/24) (PX. M Pg. 39, PX C Pg. 241) Petitioner testified he had a follow up appointment with Dr. Luke on 7/12/24 (Tr.. Pg. 22)

(L) Is Petitioner entitled to TTD. from 12/4/19-4/20/20 and 11/1/22 and 4/15/24 representing 19 6/7 weeks and 75 6/7weeks.

Arbitrator finds Petitioner is entitled to TTD benefits from 12/4/19-4/20/20 and 11/1/22-4/15/24. Petitioner was taken off work for the first surgery which was approved and paid for by the Respondent. Respondent paid $23,381.02 and is entitled to a credit. Respondent has not paid any TTD benefits relating to the second injury and Petitioner is entitled to 75 6/7 weeks.

Respondent is not entitled to a PPD credit of $8,138.70 at this time as this case was heard on a 19(b) petition and PPD is not being addressed at this time. This Arbitrator converts the PPD advance into a TTD credit and awards Respondent a total TTD credit of $31,519.72.

Petitioner was taken off work following the second accident starting on 11/1/22 from urgent care and continuing until his return to work on 4/15/24. (PX A, C and L Pg. 35-39).

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC030665
Case Name	Thomas Hum v. Installation Specialists, Inc.
Consolidated Cases	20WC010266
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0253
Number of Pages of Decision	19
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Muriel Collison
Respondent Attorney	Timothy Steil, Brad Antonacci

DATE FILED: 6/4/2025

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Thomas Hum,

Petitioner,

vs. NO. 22WC030665

Installation Specialists, Inc.

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19b having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, benefit rates, medical expenses, causal connection, temporary disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

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

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

No bond is required for the 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.

June 4, 2025

SJM/sj
o-5.7.25
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/s/*Stephen J. Mathis*
Stephen J. Mathis

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC030665
Case Name	Thomas Hum v. Installation Specialists, Inc.
Consolidated Cases	20WC010266;
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Muriel Collison
Respondent Attorney	Brad Antonacci, Timothy Steil

DATE FILED: 8/5/2024

/s/William McLaughlin, Arbitrator

Signature

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Thomas Hum
Employee/Petitioner

v.

Installation Specialists
Employer/Respondent

Case # **22** WC **030665**

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 **William McLaughlin**, Arbitrator of the Commission, in the city of **Chicago**, on **6/7/2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

B. ☐ Was there an employee-employer relationship?

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

D. ☐ What was the date of the accident?

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

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

G. ☒ What were Petitioner's earnings?

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

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

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

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

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

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

N. ☐ Is Respondent due any credit?

O. ☐ Other _____

FINDINGS

On the date of accident, **10/31/2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**92,796.99**; the average weekly wage was $**1,784.56**.

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

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

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

ORDER

Please see Arbitration Decision for case 20WC010266 which is consolidated with 22WC030665.

Petitioner failed to prove he suffered an accident that arose out of and in the course of employment with Respondent on October 31, 2022.

Petitioner failed to prove his current condition of ill-being relates to an injury that occurred on October 31, 2022.

Petitioner's request for workers' compensation benefits for claim 22WC030665 for the alleged October 31, 2022, accident is denied. See 20WC010266 concerning benefits Petitioner is entitled to as it relates to that claim.

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

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

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

Signature of Arbitrator

August 5, 2024

22WC030685 -Accident 10/31/22

Petitioner testified that he is a 53-year-old carpenter for Local Union 272 (Tr. 12-13) He was employed as a carpenter for 24 years. (Tr. 13) Petitioner testified that on July 2, 2018, he was installing a frame for a glass door. (Tr. 24) He stated that he had to twist the door on an angle to get it into a rail that set the door. This caused a lot of weight towards his right knee. He testified he walked a few steps and almost fell down. He noted a strange feeling and constant pain. (Tr. 25) Petitioner testified that he reported the accident to Juan Escamilla, the foreman on the date of the accident. He testified that he worked the rest of the day but had pain at night when he went home. (Tr. 25) The July 2, 2018, accident is not disputed.

Medical Treatment

On July 5, 2018, the Petitioner presented to Advanced Urgent Care, where he was evaluated by Dr. Mohamed A. Mansour. (PX. A, Pg. 25). He reported that he had some pain in the medial side of the right knee after doing some work on July 2, 2018. He stated that he pulled the tendon. The pain was random, worsened with walking. He reported the knee felt like it was going to give out. On physical examination, there was positive tenderness on the medial aspect of the right knee with minimal swelling and decreased range of motion. Dr. Mansour diagnosed the Petitioner with a sprain of the right MCL and acute pain of the right knee. He ordered an MRI of the right knee and prescribed a steroid pack and diclofenac.

On July 6, 2018, the Petitioner underwent an MRI of the right knee at Preferred Imaging. (PX. B, Pg. 17). The MRI revealed a lateral meniscus oblique tear, medial meniscus fibrillation, as well as PCL thickening and signal abnormality from an interstitial/intrasubstance partial tear. There were also tiny osteochondral lesions on the posterior rim of the femoral condyles and anterior rim medially.

On July 20, 2018, the Petitioner presented to Dr. Russell Glantz at Parkview Orthopedic Group. (PX. C, Pg. 43). He complained of persistent medial and lateral joint line discomfort. He denied any improvement with the diclofenac. He stated that he obtained a knee sleeve, which gave him some support. On physical examination, the Petitioner was found to have a mild limp favoring his right knee. He had soft tissue swelling and minimal knee joint effusion. He had positive medial and lateral joint line discomfort. There was clicking along both the medial and lateral joint surfaces. He had a positive McMurray sign. Dr. Glantz noted the exam was consistent with potential internal derangement of his knee.

X-rays of the right knee showed preservation of the medial and lateral surface on all views. The joint surfaces were preserved and maintained. The lateral x-ray showed preservation of the patellofemoral joint. There were minimal osteophytes, at best. There was no fracture or dislocation. Dr. Glantz reviewed the MRI of the right knee. He diagnosed the Petitioner with a lateral meniscal tear of the right knee, potential meniscal posterior horn tear and fibrillation, PCL strain, and potential small osteochondral lesions.

Dr. Glantz discussed treatment options including conservative measures, medicinal treatment through injections, and an arthroscopic evaluation. Petitioner stated that he wanted to continue working full duty. Dr. Glantz prescribed the Petitioner meloxicam and topical pain-relieving gel.

On September 10,2018 and on May12 2019, the Petitioner presented to Advanced Urgent Care with complaints of pain to the left axilla area. However, the Petitioner also requested medication for his right knee and hands due to discomfort. The Petitioner was prescribed Celebrex for acute arthritis. (PX A, Pg. 28,34).

On July 26, 2019, the Petitioner presented to Dr. Kevin Luke at Parkview Orthopedic Group for right knee pain. (PX C, Pg. 63). The Petitioner reported that he initially injured his knee on July 2, 2018. He had ultimately been working full duty but noted on and off pain and disability in the right knee interfering with activities. He stated that he had

tried over-the-counter anti-inflammatories, meloxicam, and topical modalities. However, he continued to have pain and disability about the knee. An examination revealed that there was mild soft tissue swelling about the knee, but no effusion. There was positive medial and lateral joint line discomfort. There was clicking along the medial and lateral joint surfaces with a positive McMurray sign. The knee was stable. His previous MRI was reviewed. Treatment options were again discussed, but the Petitioner was unsure as to how he wanted to proceed. He wanted to discuss further with his family. In the interim, he continued working full duty.

On August 21, 2019, the Petitioner returned to Dr. Luke due to a recent occurrence of increased pain and disability. (PX. C, Pg. 67). On physical examination, the Petitioner's right knee range of motion was just shy of full extension. He noted some increased discomfort. There was some soft tissue swelling about his knee, but no joint effusion. He had positive medial and lateral joint line discomfort. There was some clicking along the joint surfaces. He had a positive McMurray sign. The Petitioner opted to proceed with an arthroscopic evaluation of the right knee. Dr. Luke ordered a right knee arthroscopy with meniscectomy and debridement of articular cartilage/chondroplasty.

On September 3, 2019, Dr. Jay Levin at AP Ortho performed an IME. (RX. 2). The Petitioner reported that he had been employed as a union carpenter for over 20 years. He reported that his job required lifting over 100 pounds. The Petitioner reported that he had a prior work-related injury to his thoracic spine. He denied any prior injury to the right knee.

The Petitioner reported that on July 2, 2018, he was installing a frame for a glass door in a small room. He stated that he had all his weight on the right knee and had to twist and turn to maneuver the framing in the door jam. He reported that as he twisted, he felt and heard a pop in the right knee. He stated the knee gave out, but he was able to catch himself before falling to the ground. The Petitioner reported that he reported the accident immediately and sought treatment a few days later. He stated that surgery and injections were recommended to him, which he did not want. The Plaintiff reported that he continued working as he had a good crew who helped him out at work. He stated he called off work when he had increased knee pain or if there was significant lifting required of him. The Plaintiff stated that he had not undergone any physical therapy, but he did exercises in his backyard pool. The Plaintiff stated that he pushed through the pain as he did not want to miss any work.

The Petitioner stated his right knee was 0% improved since the date of the injury. He stated the pain was located at the medial aspect of the right knee. He noted that he wore a knee brace daily at work and used knee pads for kneeling. He stated he felt as if his knee would give out. He noted that he was slower to do activities due to the constant pain. He had pain in the knee at night. The pain was worsened with activities, including walking, driving, squatting, navigating stairs, and kneeling. He reported numbness in the medial aspect of the right knee. Examination of the right knee was significant for anteromedial knee pain, central patellar tendon tenderness, posteromedial corner tenderness, and medial knee pain. X-rays of the right knee were taken, which revealed minimal spurring over the right medial tibial plateau with calcification in the lateral retinaculum without any gross subluxation in the patellofemoral joint. Due to the persistent complaints, Dr. Levin recommended a repeat MRI of the right knee. Once the MRI was completed, he would review it in conjunction with the medical records and provide his opinions.

On September 3, 2019, the Petitioner underwent an MRI of the right knee at Corporate Woods Open MRI. (PX. D). It demonstrated complex tearing of the posterior horn lateral meniscus similar to the prior study with accompanying stable osteochondral defect of the posterior rim lateral femoral condyle and a small defect of the posterior medial tibial condyle. There was a degenerative tear along the inferior surface of the posterior medial meniscus and fraying of the free edge, which was now accompanied by a new horizontal linear tear with apical extension of the posterior horn medial meniscus. There were stable osteochondral defects of the posterior rim medial femoral condyle and anterior medial femoral condyle. Finally, there was stable chondromalacia patella.

On September 9, 2019, Dr. Levin authored an addendum report to his IME. (RX. 3). Dr. Levin vin stated that the recent MRI showed a development of a medial meniscal tear. He noted that the MRI in 2018 demonstrated a right knee lateral meniscal tear with fraying of the medial meniscus. Across time that had progressed to include a medial

meniscal tear where the previous degenerative changes were noted. Dr. Levin stated that assuming the historical information was accurate that the Petitioner did not have a subsequent injury following his injury on July 2, 2018. Dr. Levin opined that the development of the medial meniscal tear could be based on continued activities at work and/or degeneration. Dr. Levin stated the Petitioner could either live with the condition or undergo a right knee arthroscopy with both medial and lateral partial meniscectomies to a stable rim, which was medically appropriate and related to the July 2, 2018, occurrence. Dr. Levin stated that there was no preexisting condition. Dr. Levin started that given the continued complaints, the Petitioner failed conservative care and surgical intervention was definitely an option. Dr. Levin stated that if he elected to undergo surgery, he should be able to work in a light duty capacity avoiding deep knee bends for up to 4-6 weeks and then be able to work in a full duty capacity thereafter. Dr. Levin estimated MMI approximately 6-8 weeks postoperatively.

On December 10, 2019, the Petitioner underwent surgery at Advocate Christ Medical Center. (PX. 53). Dr. Luke performed an arthroscopic evaluation of the right knee with a partial medial meniscectomy, partial lateral meniscectomy, abrasion arthroplasty of the right distal medial femoral condyle osteochondral defect, and chondroplasty and debridement of the patellofemoral joint and medial compartment.

On December 16, 2019, the Petitioner followed up with Dr. Luke. (PX. C, Pg. 107). The incision was clean and dry. The sutures were removed, and Petitioner was to begin physical therapy.

On December 18, 2019, the Petitioner initiated physical therapy at Parkview Orthopedic Group. (PX C, Pg. 110). He reported that he always had pain since surgery. He stated he was unable to sleep throughout the night. He stated that stairs and walking was painful. He could not even sit. The therapist noted that the Petitioner showed high pain levels, swelling, decreased strength, decreased active range of motion, and bruising throughout the right posterior thigh. His deficits limited him from ambulating with proper pattern, perform stairs reciprocally, community ambulation, sleeping without waking, and performing transfers without pain and difficulty.

The Petitioner attended physical therapy on December 18, December 20, December 23, December 26, December 28, and December 30, 2019, and January 4, January 6, January 8, January 13, and January 15, 2020. (PX Pgs. 114-140).

A physical therapy progress note was prepared on January 17, 2020. (PX. Pgs. 141). The Petitioner reported continued discomfort with prolonged walking and increased activity. The therapist noted improvements with knee range of motion and strength. However, he continued to have strength deficits primarily with eccentric quad control. Due to the heavy demands of his job, the therapist believed he would benefit from continued therapy.

On January 20, 2020, the Petitioner returned to Dr. Luke. (PX.C, Pg. 151). He reported improvement in terms of pain and disability, but still noted some persistent pain and symptoms in the medial aspect of the knee. Dr. Luke stated this would be more consistent with his underlying right distal medial femoral condylar osteochondral injury. The Petitioner reported that physical therapy was helping, but there were still limitations because of the pain and disability. Dr. Luke sated that the physical therapy notes showed improvement, but the Petitioner was still having symptoms with prolonged standing and walking up and down stairs. Dr. Luke recommended continued physical therapy. He also prescribed diclofenac, Norco, and topical pain ointments. The Petitioner was to remain off work.

but he did not have symptoms. Therefore, he definitely aggravated the preexisting condition The Petitioner attended physical therapy on January 22, January 24, January 27, January 31, February 5, February 7, February 11, February 12, February 14, and February 17, 2020. (PX C, Pgs. 156-187).

Another physical therapy progress note was prepared on February 19, 2020. (PX C, Pg. 188). The Petitioner reported difficulty fully squatting due to pain. He also had a stabbing pain under his kneecap and numbness along the lateral thigh. The therapist noted that he was tolerating light work simulation activities with good form and muscle control. Due to his heavy job demands, the therapist recommended a work conditioning program.

On February 21, 2020, the Petitioner returned to Dr. Luke. (PX. C, Pg. 191). He reported that he had continued pain and disability about his right knee despite physical therapy interventions. He noted episodes of feeling as if the knee was going to give out. He had a hard time squatting secondary to pain and disability. The Petitioner noted some improvement from surgery, but he still had ongoing symptoms. Dr. Luke noted that the Petitioner also had evidence of an osteochondral injury to the right distal medial femoral condylar region. Examination of the right knee revealed soft tissue swelling and mild joint effusion. Range of motion was just shy of full extension through about 120 degrees of flexion. The Petitioner pointed to the patellofemoral joint and medial compartment as his primary locations of pain and disability. He also had discomfort on stress maneuvers to the point where he felt that it interfered with gait and activities. Dr. Luke noted that the physical therapy notes showed him to still be having episodes of discomfort about the knee, as well as stabbing pain and evidence of the osteochondral injury. Dr. Luke believed the symptoms were secondary to the osteochondral defect. Dr. Luke believed it was time to consider an OATS type procedure or cartilage transplant. He referred the Petitioner to Dr. Shah to determine the potential need for addressing the osteochondral defect. The Petitioner remained off work. Physical therapy was placed on hold pending Dr. Shah's visit.

On February 26, 2020, the Petitioner presented to Dr. Nirav Shah at Parkview Orthopedic Group. (PX. C, Pg. 195). The Petitioner reported that he had continued pain since his arthroscopic surgery. He noted pain deep in the medial aspect of the knee. He stated the knee felt as if it was going to give out. There was pain deep in the inner aspect of his knee. He felt he had plateaued in therapy. He still had a hard time kneeling and squatting. On physical examination of the right knee, there was tenderness to palpation in the medial joint line, in the medial femoral condyle, and along the patella. There was mild crepitus in the patellofemoral joint. There was some pain and tightness in flexion. X-rays of the left knee were performed, which showed no fractures, dislocations, or degenerative changes. Dr. Shah reviewed arthroscopic images from the surgery. It was noted that there was a 5x5 mm osteochondral defect of the medial femoral condyle that appeared to be a well-contained lesion. Dr. Shah stated the defect was located in the weightbearing portion on the somewhat medial aspect of the medial femoral condyle, but it was contained with healthy articular cartilage margins. Dr. Shah recommended an updated MRI of the right knee to assess the condylar defect as well as bony edema deep to the osteochondral defect. Dr. Shah stated the next reasonable step after the MRI would be to proceed with a right knee osteochondral autograft transplant (OATS) and possible arthrotomy. Dr. Shah recommended putting physical therapy and hold. The Petitioner remained off work.

On March 9, 2020, the Petitioner underwent an MRI of the right knee at PMI Diagnostic Imaging. (PX C, Pg. 199). The MRI revealed grade III and grade II lateral patellar chondromalacia with focal high-grade chondromalacia along the articular surface of the lateral femoral condyle at the patellar articulation. There were focal tears involving the posterior horn of the lateral and medial meniscus. There was medial greater than lateral tibiofemoral joint space narrowing and high-grade chondromalacia. There was subchondral cystic change along the medial tibial plateau, which was mildly worse than on the previous examination.

On March 30, 2020, Dr. Jay Levin performed an IME at AP Ortho. (RX 4). The Petitioner's surgical history was noted. He stated that he attended physical therapy post-surgery. He noticed improvements with strength and range of motion of the knee with therapy but continued to have pain along the anterior/medial aspect of his right knee. He reported difficulty going up and down stairs. The Petitioner stated that he was told that he had a "hole in his anterior/medial" aspect of the right knee where the pain was located. He stated that he saw Dr. Shah, who recommended a repeat MRI of the right knee, which was completed on March 9, 2020. After a review of the MRI Petitioner was recommended to undergo a second surgery.

Dr. Levin did not agree that an OATS procedure should be performed. Dr. Levin stated the MRI obtained on July 6, 2018, approximately four days after the accident, showed chronic changes consisting of tiny osteochondral lesions in the posterior and anterior rim in the femoral condyles, which predated the occurrence of July 2, 2018. Dr. Levin stated the traumatic component from the accident was a right knee medial and lateral meniscal tear, which was surgically treated on December 10, 2019. Dr. Levin believed that the osteochondral defect lesion was caused by preexisting degenerative changes of the right knee. Dr. Levin stated that he would not recommend any additional surgery related

to the right knee as related to the July 2, 2018, occurrence. Dr. Levin stated the Petitioner could work in a full duty capacity and was at MMI.

On April 15, 2020, Dr. Levin authored an addendum to his IME report. (RX 5). Dr. Levin noted that the Petitioner did not require further treatment for the OCD lesion as related to the July 2, 2018, occurrence. Dr. Levin did not believe the injury aggravated or exacerbated the preexisting OCD lesion to the point of needing medical treatment.

On May 27, 2020, the Petitioner followed up with Dr. Shah. (PX. C, Pg. 201). The MRI was reviewed. It was noted that it showed evidence of still possibly some punctate meniscus tears and a 5x5 OCD lesion. There were also some early arthritic changes in the knee which were aggravated by the work injury. The Petitioner complained of continued pain in the medial aspect of the knee and tenderness to palpation in the medial joint line. The Petitioner reported that he had an IME, at which he was told that he did not need surgery or further treatment as it was a preexisting condition, and he was at MMI. Dr. Shah stated that she disagreed with the IME. Dr. Shah believed that an OATS autograft procedure would help with some of his pain. Dr. Shah noted that there was some present possibly prior to the injury. Dr. Shah continued to recommend the autograft OATS procedure.

On June 1, 2022, Dr. Jay Levin of Levin Orthopedics, S.C. authored a report. (RX. 6). Dr. Levin noted that he had received intraoperative photos of the Petitioner's right knee procedure completed on December 10, 2019. He noted there were two pages each with nine images. Dr. Levin stated that the images on the top row of page 1 showed fibrillation of the cartilage probably from trocar entrance into the knee joint. The ACL was visualized in the second row and was intact. The third row showed the insertion of a shaver and probe, which appeared to be done by the surgeon down to the subchondral bone. Dr. Levin stated that page 2 showed a probe inserted in row 2, which appeared to show a grossly stable ACL, a partial meniscectomy, and a chronic OCD lesion. Dr. Levin stated that consistent with his review of the MRI of the right knee completed four days after the injury, an OCD lesion was visualized, which was a chronic finding and unrelated to the acute event of July 2, 2018.

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Petitioner testified he went to work and was performing drilling in the ground. This drilling entailed kneeling on concrete and drilling into cement. (Trans Pg. 41-42) Petitioner noted locking of his right knee, the pain was more on the outside of the bone after the first injury, but more in the bone after the second injury. Petitioner testified he reported the injury the following day. He indicated to his foreman; he could not lift his tools out of his truck because it was too heavy on his knee. (Tr. 41-44)

On November 1, 2022, the Petitioner presented to Advanced Urgent Care complaining of right knee pain that started the day prior. (PX 1, Pg. 84). He stated that he could not go up the stairs. It was noted that he had a history of a right knee injury. He reported that he had a hole in the right knee and had an arthroscopy performed previously. The examination revealed a significant right medial knee tenderness triggered with palpation, weightbearing, and external rotation. X-rays of the right knee revealed no acute bone abnormalities. An MRI of the right knee was ordered.

On November 7, 2022, the Petitioner underwent an MRI of the right knee at Preferred Imaging. (PX. B, Pg. 25). The MRI revealed an ACL signal abnormality with pattern of interstitial partial-tear or mucinous degeneration, medial compartment arthritis from degenerative joint disease/osteoarthritis, minimal chondromalacia patella, and associated small joint effusion.

On November 18, 2022, the Petitioner was referred to orthopedics by Advanced Urgent Care due to a recurrent injury to the right knee. (PX. A, Pg. 92).

On November 30, 2022, the Petitioner was evaluated by Dr. Shah at Parkview Orthopedic Group. (PX. C, Pg. 206). Dr. Shah noted that Petitioner complained of instability and medial sided knee pain. The Petitioner reported a new work injury on October 31, 2022. He stated he was kneeling a lot that day while drilling concrete. He stated that he sat down for a break and when he got up to walk, the knee pain was significantly worse. He noted significant locking and severe pain. He reported that he tried to work through it, but due to the pain, stiffness, locking and disability, he was unable to continue working.

On physical examination, the Petitioner had a severe antalgic gait with severe pain. There was global swelling in the medial aspect of the knee. He had pain and tenderness at the medial joint line, anteromedial aspect, and medial femoral condyle. There was some loss of motion in full extension and flexion. The Petitioner had difficulty squatting. X-rays of the right knee were performed, which showed some increased joint space loss. Dr. Shah noted the new MRI showed increased degeneration of the ACL, minimal chondromalacia of the patella, and medial compartment arthritis with mild fibrillation of the medial meniscus. Dr. Shah further noted that the medial compartment showed erosions, along with marginal osteophytes.

Dr. Shah diagnosed the Petitioner with right knee arthritis at the medial compartment and post-traumatic arthritis. Dr. Shah recommended a cortisone injection followed by physical therapy and medications. Dr. Shah noted that the OATS transplant would have been a viable procedure two-and-a-half years ago when he developed an osteochondral lesion. It was noted that this would have significantly improved his symptoms and could have prevented further degradation of the post-traumatic arthritis. However, it had led to more severe medial compartment osteoarthritis. Dr. Shah believed the arthritis worsened due to repeated kneeling and drilling. Dr. Shah stated that if injections, physical therapy and medications did not help, the Petitioner may require a noncompartmental or total knee arthroplasty. The Petitioner stated that he wanted to work as long as possible in his heavy manual duty job. Therefore, Dr. Shah stated that a high tibial osteotomy to unload the medial compartment prior to an arthroplasty could be considered. The Petitioner was placed off work.

On December 21, 2022, Dr. Shah performed an ultrasound guided cortisone injection into the right knee to help with the painful arthritis from his work injury. The Petitioner remained off work. The plan was to follow up in six weeks for possible viscosupplementation injections. (PX. C, Pg. 209).

On December 22, 2022, the Petitioner underwent an initial physical therapy evaluation at Theory Physical Therapy. (PX J, Pg. 20). The Petitioner reported that he had tears in his knee three years prior. He knew something was not right, and he found out that he had a hole in his knee. He also noted arthritis and bone spurs. The Petitioner did not notice a difference in his symptoms following the cortisone injection. He stated that walking, kneeling, and going up/downstairs was difficult. k. On examination, the Petitioner had tenderness to palpation at the medial joint line. He had a positive patellar grind test and McMurray test. The Petitioner demonstrated decreased flexion. The therapist believed he could benefit from skilled therapy.

The Petitioner attended physical therapy on December 23, December 28, and December 30, 2022. He further attended physical therapy on January 4, January 5, January 10, January 13, and January 17, 2023. (PX J, Pgs. 23-46).

A physical therapy progress note was prepared on January 19, 2023. (PX. J, Pg. 47). The therapist noted that the Petitioner had shown great progression with no pain to palpation. He had increased mobility without pain. He had functional activities of stairs and squats without pain.

On January 30, 2023, the Petitioner returned to Dr. Shah. (PX. C, Pg. 216). He reported that the cortisone injection did not help but physical therapy helped a little bit. Dr. Shah recommended viscosupplementation injections. Petitioner remained off work.

On March 2, 2023, Dr. Jeffrey Goldstein, an orthopedic surgeon, performed an IME. (RX 9). The Petitioner reported that he injured his right knee when lifting heavy glass and heard a pop at work on July 2, 2018. He did not know the

exact mechanism of action and did not fall to the ground. However, he felt his right knee give out while attempting to walk it off. The Petitioner reported undergoing surgery and physical therapy. He stated he was doing well for a while, but then had residual pain. He attributed the residual pain to a separate structural injury that occurred at the time of the accident on July 2, 2018.

On physical examination, the Petitioner complained of tenderness to palpation at the medial and lateral joint lines. There was no ligament instability. He had 5/5 quad strength. Sensation was intact to light touch in all nerve distributions of the right lower extremity. The right knee range of motion was within normal limits. X-rays of the right knee were performed, which showed moderate medial joint space narrowing with varus alignment. There was about 50% joint space narrowing in the medial compartment. Dr. Goldstein reviewed the MRI of the right knee dated July 6, 2018. Dr. Goldstein noted that the MRI revealed PCL thickening and signal abnormality for interstitial partial-thickness tear, lateral meniscus oblique tear, medial meniscus fibrillation, and tiny osteochondral lesions of the posterior and anterior rim of the femoral condyle.

Dr. Goldstein diagnosed the Petitioner with right knee osteoarthritis. Dr. Goldstein stated the osteoarthritis was a preexisting condition. He stated that despite the fact that he was not symptomatic prior to July 2, 2018, it does not change the fact that there was a degenerative process occurring within the right knee. Dr. Goldstein noted that the Petitioner had an MRI four days after the knee injury, which showed no effusion or subchondral edema, which would be expected if he had actually had an acute osteochondral injury on July 2, 2018. Rather, he had multiple small osteochondral defects as well as degenerative tears of the menisci and chondromalacia in all three compartments of the knee. Dr. Goldstein stated that all of those findings added up to an underlying degenerative condition that had to have been present prior to July 2, 2018. Dr. Goldstein noted that the Petitioner underwent the right knee arthroscopy and meniscectomy, in which Dr Luke debrided the cartilage on at least one of the osteochondral defects on the medial side. He stated the intent of that surgery was to help the knee symptoms a year after the alleged injury. However, the Petitioner continued to have pain. Dr. Goldstein stated the reason for the pain after surgery was because of underlying degenerative joint disease.

In addition Dr. Goldstein stated that the Petitioner was not a good candidate for the OATS procedure. Dr. Goldstein named contraindications for the procedure, including the multiple small osteochondral defects seen on the initial MRI, the fact that there was no subchondral edema with no identifiable loose body associated, the lack of any effusion indicative of chronic osteochondral degenerative findings as opposed to an acute osteochondral injury, the degenerative meniscus tears, the multiple areas of chondromalacia, and adjacent tibial-sided bone marrow edema. Dr. Goldstein stated the fact that the Petitioner was almost 50 years old with varus alignment of his knee and obesity were additional relative contraindications. Dr. Goldstein stated that in the Petitioner's case, he had obvious degenerative changes from the start, as well as an osteochondral defect on the distal femur on the non-weightbearing portion of the joint. Dr. Goldstein stated that the Petitioner had further degeneration of the right knee over the course of time from 2018 through 2023. This was based on the fact that he clearly had joint space narrowing in the medial compartment on the x-rays performed in the office on the day of the IME, which would be consistent with an osteoarthritic knee. Dr. Goldstein stated that he disagreed with Dr. Shah's assessment that the failure to perform the OATS procedure accelerated the development of post-traumatic arthritis. Dr. Goldstein stated that if the claimant had an OATS procedure, he would be in the exact same position. Dr. Goldstein stated that the current condition of right knee osteoarthritis was not causally connected to the October 31, 2022, accident. He noted that there was no discrete injury or trauma. Dr. Goldstein believed the pain in the right knee was because of the arthritic knee rather than a structural injury.

Dr. Goldstein stated that arthroscopic intervention in 2018 would have been premature without conservative care. He noted that the Petitioner disappeared for a year and continued working full duty. Dr. Goldstein stated it was not unreasonable to perform the surgery in 2019, after he came back with continued symptoms. However, he did not believe the surgery was necessary at that time. Dr. Goldstein then stated that the surgery was reasonable. He also stated that the physical therapy and injections performed subsequently were reasonable.

Dr. Goldstein stated that the Petitioner would likely require further treatment to the right knee, including repeat cortisone injections, possible viscosupplementation injections, anti-inflammatories, and physical therapy. However, the necessity for any and all of the treatments would be due to the underlying naturally progressing osteoarthritis in the right knee. Dr. Goldstein would not attribute the need for further care to the right knee to be causally related to the July 2, 2018, or October 31, 2022, accidents. Dr. Goldstein stated that the Petitioner might need work restrictions for his osteoarthritis, but not because of the work accidents. Dr. Goldstein stated that osteoarthritis was a degenerative condition that never reaches MMI. However, as it related to the alleged incident in question, the Petitioner had most certainly reached MMI. Dr. Goldstein stated that even if it was conceded that the Petitioner exacerbated his underlying degenerative joint disease, a temporary exacerbation of underlying right knee osteoarthritis would be expected to reach MMI at a point three months from the date of injury. In that context, Dr. Goldstein placed MMI on January 31, 2023. He stated that any and all treatment subsequent, including future treatment, would not be causally connected to the alleged work accident on October 31, 2022.

On April 7, 2023, the Petitioner returned to Dr. Shah, who noted that he had failed nonsurgical and conservative measures. He complained of continued knee pain. Dr. Shah recommended viscosupplementation injections. (PX. C, Pg. 218).

Between April 14, 2023, through April 28, Dr. Shah performed three viscosupplementation injections guided by ultrasound. (PX C, Pg. 219-223)

On June 2, 2023, the Petitioner followed up with Dr. Shah's physician assistant for the right knee. (PX C, Pg. 228).. He was prescribed Celebrex and recommended physical therapy to help with strength and range of motion.

On June 30, 2023, the Petitioner was evaluated by Dr. Luke at Parkview Orthopedic Center. (PX. C, Pg. 231).. The Petitioner reported increasing pain and disability interfering with his daily life. He stated he could only walk at most one block because of his symptoms. He stated he had not been able to work due to his knee symptoms.

On physical examination of the right knee, X-rays were obtained, which showed degenerative joint disease of the right knee with bone-on-bone changes, varus malalignment, and osteophytes. Treatment options were discussed, which ran from conservative measures through a total knee arthroplasty. He was prescribed a new anti-inflammatory, Relafen.

On September 28, 2023, the Petitioner underwent a total knee arthroplasty. Following surgery, he underwent home health therapy.

On October 13, 2023, the Petitioner attended outpatient physical therapy at Theory. (PX J, Pg. 139). He reported that home health therapy was painful. At his final visit, the therapist got him to 85 degrees in knee bending. The Petitioner reported that he used a walker at home and walked without it for short distances. He was taking hydrocodone as needed, mostly once every six hours. The therapist noted reduced mobility, weakness, increased swelling, and increased pain. The deficits were affecting the Petitioner's sleep, gait, transfers, and stairs. The therapist recommended continued therapy to return to gait without an assistive device and compensation, as well as improve balance and safety with transfers and stairs.

The Petitioner attended physical therapy on October 17, October 19, October 20, October 24, October 26, October 27, and October 31, 2023. (PX. J, Pgs. 142-162).

On November 1, 2023, Dr. Shah authored a narrative report. (PX. C, Pg. 242). Dr. Shah stated that the cortisone injections and viscosupplementation injections were secondary to pain that the Petitioner sustained after the injuries on July 2, 2018, and March 2, 2023. Dr. Shah stated the right knee arthroplasty performed by Dr. Luke was necessary due in part or whole to the work injuries. Dr. Shah stated the Petitioner did not have any pain in the right knee prior to the work injuries. He stated the Petitioner had multiple nonsurgical and arthroscopic surgeries to try to improve his

pain and symptoms and, ultimately, an OCD transplant was not approved, and the arthritic pain and symptoms worsened. Dr. Shah stated that despite multiple other treatment options that were exhausted, the OCD lesions were not treated, and the arthritic symptoms worsened secondary to the work injury. Dr. Shah stated that all of the symptoms were related to the work injury that ultimately led to a knee replacement. Dr. Shah stated that the time the Petitioner was off work was reasonably necessary and related to the accidents.

The Petitioner attended physical therapy on November 2, 3, 7, 10,17, 20,22, 24, 27, 29, and December 1, 2023. (PX. J, Pgs. 163-199).

On December 4, 2023, the Petitioner followed up with Dr. Luke. (PX. C, Pg. 245). Dr. Luke recommended continued physical therapy for range of motion and strengthening, especially of the quadriceps. The Petitioner was prescribed anti-inflammatories and topical pain ointments. Norco was renewed. The Petitioner remained off work.

The Petitioner attended physical therapy on nine separate occasions between December 6, 2023, through January 12, 2024. (PX J, Pgs. 203-223).

On January 15, 2023, Dr. Luke noted (PX. J, Pg. 246). Dr. Luke noted that the Petitioner was treated with physical therapy post-operatively. He noted that there were some improvements, but he still had episodes of pian and disability interfering with activity. Dr. Luke stated that he referred the Petitioner to Dr. Shah for evaluation, consultation, and consideration of an OATS procedure to treat the osteochondral defect. Dr. Luke noted that the surgery with Dr. Shah was never approved. Thus, the Petitioner attempted to treat his condition with conservative measures. Unfortunately, the Petitioner had persistent pain and disability which worsened to the point of requiring a total knee arthroplasty. Dr. Luke stated the Petitioner was currently being treated with physical therapy in an effort to improve the condition so that he could return to work full duty without restrictions. Dr. Luke noted that he reviewed Dr. Goldstein's IME report.

Dr. Luke agreed that the Petitioner's right knee condition was degenerative joint disease of the right knee. Dr. Luke believed that the right knee condition was causally related to his work-related injury on July 2, 2018. He believed that the persistence of pain, disability, and further exacerbations of his underlying injury was causally related to the work-related injury. Dr. Luke stated that although the Petitioner may have had a preexisting condition of some degenerative joint disease or osteoarthritis of the right knee, he was not symptomatic prior to the work-related injury. Thus, the work-related injury exacerbated the underlying condition and caused his further pain and disability. Dr. Luke stated that conservative measures were unsuccessful and ultimately required further surgical intervention. Dr. Luke believed that his referral to Dr. Shah to contemplate an OATS procedure was a medical necessity and warranted. Dr. Luke disagreed with Dr. Goldstein's opinion that the Petitioner would be in the same condition if the OATS procedure had been approved and performed. Dr. Luke believed the total knee arthroplasty was necessary secondary to failure of conservative measures and treatment related to the work-related injury. Dr. Luke was unsure of any work-related restrictions in the future. Dr. Luke noted that he was continuing in rehabilitation. Dr. Luke stated that a functional capacity evaluation versus work conditioning would ultimately be required to determine work restrictions.

After attending physical therapy on January 16, 19, 23, and January 26, 2024, Petitioner returned to Dr. Luke on February 2, 2024 (PX. C, Pg. 249). X-rays of the right knee were showed the knee well aligned with no gross change in alignment or positioning compared to the prior x-rays. Dr. Luke recommended continued physical therapy. The Petitioner was kept off work. However, Dr. Luke noted that if the Petitioner felt able to return to work prior to his next appointment, he would fax a note accordingly.

After attending physical therapy on February 13 and 16, 2023. (PX. J, Pgs. 245-252) Petitioner followed up with Dr. Luke on March 15,2024 (PX C, Pg. 250). He reported that he had completed physical therapy and advanced to a home exercise program. Petitioner reported some improvement in terms of the disability to his knee. He felt ready to go back to work. Physical examination showed no swelling or joint effusion. Stress maneuvers still showed the quads to be a touch weaker on the right side. X-rays of the right knee showed no change in alignment or positioning. Dr.

Luke recommended continued home exercises for quad strengthening. Dr. Luke released the Petitioner to return to work full duty without restrictions as of April 1, 2024.

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 as follows:

Prior to the October 31, 2022, accident, Petitioner had a pre-existing earlier workers' compensation claim against the same Respondent involving the same right knee. Per Petitioner's testimony, that claim was scheduled for trial in November 2022. The trial was to address the OATS procedure recommended by both Dr. Shah and Dr. Luke. Petitioner testified he had ongoing right knee symptoms up to October 31, 2022.

Petitioner described he was kneeling on concrete drilling into cement and took a break towards the end of the day and felt like everything was getting worse on October 31, 2022. Petitioner testified it was hard when he got up from his break, and it seemed his right knee was getting worse. Petitioner confirmed the knee pain he experienced on October 31, 2022, occurred after he was on a break when he remembers getting up and his right knee was hurting. (Tr.67)

While Petitioner described noticing an increase in knee pain after being on break, he did not testify to anything that could be considered an accident that occurred on October 31, 2022. The alleged accident description Petitioner provided did not support an accident arose out of or in the course of his employment. Rather, Petitioner described having increased knee pain after he was on break. Noticing an alleged increase in symptoms while on break does not support an accident arose out of or in the course of employment. Further, there was no opinion from Dr. Luke or Dr. Shah that there was a new injury in Petitioner's right knee after October 31, 2022, that would support a traumatic accident at work happened.

Based on the evidence submitted at trial, the Arbitrator finds Petitioner failed to prove he suffered an accident that arose out of or in the course of his employment with Respondent on October 31, 2022.

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

Whether a causal connection exists between an employee's condition of ill-being and a particular work-related accident presents a question of fact. *Vogel v. Industrial Comm'n* , 354 Ill. App. 3d 780, 786 (2005); see also, *Bell & Gossett Co. v. Industrial Comm'n* , 53 Ill. 2d 144, 148 (1972) (whether an accident constitutes an independent, intervening cause is a question of fact for the Commission); *Bailey v. Industrial Comm'n* , 286 Ill. 623, 626, (1919) (same).

Petitioner posits his right knee condition is causally related, at least in part, to an alleged accident on October 31, 2022. However, the evidence shows Petitioner failed to prove any "new" injury occurred on that date. Neither Dr. Luke nor Dr. Shah provided any opinion that a new injury occurred on October 31, 2022. Of note, there is no apportionment under the Illinois Workers' Compensation Act. See I*nternational Harvester Co. v. Industrial Comm'n*, 46 Ill. 2d 238, 247 (1970) (rejecting apportionment of compensation involving multiple accidents)

An instructive case concerning the claim at hand is *Par Electric v. Illinois Workers' Compensation Comm'n*, 2018 IL App (3d) 170656 WC. In that case, claimant had a pending workers compensation claim against one employer, Par Electric ("Par), and then filed two subsequent claims against a second employer, Henkels & McCoy ("Henkels"), for the same body part. Claimant had a right shoulder surgery for the first claim against Par, had an FCE and was allowed to work full duty. Thereafter, claimant alleged two accidents causing right shoulder injury against Henkels. Thereafter, a second right shoulder surgery was performed in which the treating surgeon opined the second surgery was a "continuation" from the first accident. The appellate court found Par as the employer for the first accident, was the responsible party for the ongoing care of the right shoulder as opposed to the latter accidents against Henkel as there was not a break in the chain of causation from the initial accident.

Employers take their employees as they find them. *Baggett v. Industrial Comm'n* , 201 Ill. 2d 187, 199, (2002). Thus, even though an employee has a preexisting condition that may make him or her more vulnerable to injury, recovery for an accidental injury will not be denied as long as the employee establishes that the employment was *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n* , 207 Ill. 2d 193, 205 (2003). For this reason, the relevant inquiry in preexisting-condition cases is whether the employee's condition is attributable solely to a degenerative process of the preexisting condition or to the aggravation or acceleration of the preexisting condition resulting from a work-related accident. *Sisbro*, 207 Ill. 2d at 204-205 (2003).

Under an independent intervening cause analysis, compensability for an ultimate injury or disability is based upon a finding that the employee's condition was caused by an event that would not have occurred "but for" the original injury. *International Harvester Co. v. Industrial Comm'n* , 46 Ill. 2d 238, 245 (1970). That the other event, whether work-related or not, may have aggravated the employee's condition is irrelevant. *Vogel* , 354 Ill. App. 3d at 786. An employer is relieved of liability only if the intervening cause completely breaks the causal chain between the original work-related injury and the ensuing condition of ill-being. *Global Products v. Illinois Workers' Compensation Comm'n* , 392 Ill. App. 3d 408, 411 (2009).

Additionally, see *National Freight Industries v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, ¶ 26, ("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' Compensation Comm'n* , 2016 IL App (4th) 150543WC, ¶ 42; *Teska v. Industrial Comm'n* , 266 Ill. App. 3d 740, 742 (1994) ; *Boatman v. Industrial Comm'n*, 256 Ill. App. 3d 1070, 1074 (1993).

The facts show Petitioner had a pre-existing right knee workers' compensation claim against Respondent prior to October 31, 2022. Petitioner credibly testified to an undisputed accident at work for Respondent on July 2, 2018, which caused a right knee injury. As a result of this 2018 accident, Petitioner had a right knee surgery on December 10, 2019. It is also undisputed Petitioner continued to have ongoing right knee complaints after the surgery wherein a second surgery had been recommended prior to October 31, 2022.

Further, no evidence was introduced that Petitioner's pre-existing right knee condition was at MMI prior to October 31, 2022. In fact, the unrebutted facts show that a trial was pending in November 2022 for purposes of obtaining a decision from the Illinois Workers' Compensation Commission to order Respondent in the first accident claim to pay for the proposed OATS procedure for the right knee.

Dr. Luke testified there was no new treatment plan after the October 31, 2022, alleged accident since the OATS procedure was not previously authorized. Dr. Luke testified the October 31, 2022, incident did not change anything. Dr. Luke testified the initial injury of July 2, 2018, set Petitioner's right knee condition into motion. Dr. Luke believed Dr. Shah would feel that the right knee also goes back to the initial injury as well. Dr. Luke did not agree with Dr. Goldstein's opinion that Petitioner would have been in the same condition had the OATS procedure been performed. Dr. Luke also testified it was not a given Petitioner would have needed a total knee replacement even if the OATS

procedure had been performed.

There was no evidence introduced showing there was an intervening accident to break the chain of causation for the July 2, 2018, accident based on both Dr. Luke's and Dr. Goldstein's testimony showing no new injury in the right knee occurred on October 31, 2022.

Prior to October 31, 2022, Dr. Shah had recommended an OATS procedure to the right knee which he related to the July 2, 2018, accident. This procedure was denied by the insurance carrier for Respondent for the first accident in reliance of Dr. Levin's IME opinion. Though Petitioner was taken off work by Dr. Shah and Dr. Luke, Petitioner did return to work for Respondent as the insurance carrier stopped paying benefits in reliance of Dr. Levin's opinion Petitioner no longer required work restrictions as it related to the 2018 work injury.

Thereafter, Petitioner's claim went under litigation and was scheduled to proceed with trial in November 2022 as Petitioner wished to obtain an order granting the knee surgery. However, Petitioner noticed an alleged increase in knee complaints after being on break on October 31, 2022, which resulted in the trial being postponed.

The Arbitrator took note of the conclusions reached by Dr. Goldberg's IME causation opinions concerning the alleged October 31, 2022. Dr. Goldstein opined Petitioner's right knee osteoarthritis was not causally related to the alleged incident on October 31, 2022. (R2X-1, p.8) Dr. Goldstein noted Petitioner had no discrete injury or trauma and the event seemed more consistent with the appearance of manifestation of symptoms from an arthritic right knee. The fact Petitioner currently had pain in the right knee was not because of a structural injury or trauma sustained on October 31, 2022. Rather, Petitioner had an arthritic right knee.

Additionally, even if Petitioner had proved he suffered an accident occurred on October 31, 2022, the Arbitrator notes Petitioner was not at MMI for his right knee condition from his July 2, 2018, accident. There was no evidence submitted of any new traumatic knee injury on October 31, 2022, that broke the chain of causation of Petitioner's right knee condition. Dr. Luke agreed he did not see any new tears or traumas in the right knee when he performed the knee replacement surgery.

Based on the totality of the evidence submitted at trial, the Arbitrator finds Petitioner failed to prove his current condition of ill-being has a causal relationship to an accident at work on October 31, 2022.

(G) What were Petitioner's earnings?; the Arbitrator finds as follows:

Petitioner asserts his overtime earnings should be included in his average weekly wage calculation. Section 10 of the Illinois Workers' Compensation Act states: "compensation shall be computed on the basis of the "Average weekly wage" which shall mean the actual earnings of the employee in the employment in which he was working at the time of the injury during the period of 52 weeks ending with the last day of the employee's last full pay period immediately preceding the date of injury, illness or disablement excluding overtime, and bonus divided by 52."

In *Airborne Express v. Illinois Workers' Compensation Comm'n*, 372 Ill. App. 3d 549 (2007), the appellate court discussed prior decisions issued concerning overtime. It noted that "overtime includes those hours in excess of an employee's regular weekly hours of employment that he or she is not required to work as a condition of his or her employment or which are not part of a set number of hours consistently worked each week." 372 Ill. App. 3d at 554. The court also noted "[i]f merely working overtime on a regular, voluntary basis were sufficient to include the overtime hours worked in the calculation of an employee's average weekly wage, the overtime exclusion in section 10 of the Act would be rendered meaningless." 371 Ill. App. 3d at 555.

In the instant case, Petitioner failed to show that his overtime was mandatory and failed to show that his overtime

was scheduled consistently.

Petitioner testified he had no choice if he wanted to work more than 40 hours and there would be repercussions if he did not work on a scheduled Saturday shift. However, Petitioner did not testify his overtime was mandatory. And did not provide any corroborating testimony overtime was mandatory or that employees had to work on Saturdays. Petitioner also did not testify he would be fired if he did not work overtime. In summary, Petitioner did not testify nor provide any evidence to support overtime was mandatory.

Petitioner's testimony was rebutted by witness, Ken Maschek. Mr. Maschek credibly testified that overtime was not mandatory and that the only "repercussion" for an employee who refuses overtime is that they would be put to the bottom of the list of employees who do agree to work overtime for Respondent. Mr. Maschek also testified that a person would need to call in if they did not want to work. The Arbitrator agrees that it is universally accepted that any employee needs to call into their employer if they do not plan to work on a scheduled workday.

Additionally, the Arbitrator finds Mr. Maschek's testimony is credible. The testimony provided by Mr. Maschek boils down to Respondent provided an incentive to its employees to work overtime as they would be provided opportunities in the future and was not a mandatory direction that the employees had to work overtime. Based on this incentive, the Arbitrator does not agree the overtime requested by Respondent was mandatory. Therefore, Petitioner's overtime wages are excluded from his average weekly wage calculation.

Petitioner's gross wages for his second claimed accident without overtime is $92,796.99 for the weeks of November 5, 2021, through October 28, 2022, for a period of 52 weeks. The corresponding average weekly wage is $1,784.56.

(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:

Petitioner failed to prove he suffered an accident at work on October 31, 2022. He further failed to prove his knee condition has a causal relationship to an accident at work on October 31, 2022. Therefore, the Arbitrator declines to award medical bills for Petitioner's claim against Respondent for claim 22WC030685.

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

Petitioner failed to prove he suffered an accident at work on October 31, 2022. He further failed to prove his knee condition has a causal relationship to an accident at work on October 31, 2022. Therefore, the Arbitrator declines to award prospective medical care for Petitioner's claim against Respondent for claim 22WC030685.

(L) What TTD benefits are in dispute?; the Arbitrator finds as follows:

Petitioner failed to prove he suffered an accident at work on October 31, 2022. He further failed to prove his knee condition has a causal relationship to an accident at work on October 31, 2022. Therefore, the Arbitrator declines to award TTD benefits for Petitioner's claim against Respondent for claim 22WC030685.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC002253
Case Name	Earl Gettis v. State of Illinois - Illinois Department of Transportation
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0254
Number of Pages of Decision	14
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Mary Massa, Todd Schroader
Respondent Attorney	Casey Fitzgerald

DATE FILED: 6/6/2025

/s/Kathryn Doerries, 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

Earl Gettis,
Petitioner,

vs. NO: 23 WC 2253

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 1, 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.

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.

June 6, 2025
o: 5/21/25
KAD/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC002253
Case Name	Earl Gettis v. State of Illinois - Illinois Department of Transportation
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Todd Schroader
Respondent Attorney	Casey Fitzgerald

DATE FILED: 3/1/2024

/s/ Bradley Gillespie, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 27, 2024 5.13%

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

March 1, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

25IWCC0254

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)

Earl Gettis
Employee/Petitioner

v.

Illinois Department of Transportation
Employer/Respondent

Case # **23** WC **002253**

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**, on **February 8, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **July 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 $**66,000.00**; the average weekly wage was $**1,269.23**.

On the date of accident, Petitioner was **53** 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 $ for TTD, $ for TPD, $ for maintenance, and $ for other benefits, for a total credit of $.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $846.15/week for 47 6/7 weeks, commencing July 20, 2022, through October 30, 2022, and November 28, 2022, through July 12, 2023, as provided in Section 8(b) of the Act.
Respondent shall pay reasonable and necessary medical services of $17.02, as provided in Sections 8(a) and 8.2 of the Act.
The Arbitrator finds that Petitioner is entitled to prospective medical treatment. Respondent shall authorize and pay according to the fee schedule further treatment recommended by Dr. Bell.

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
March 1, 2024

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

EARL GETTIS,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No.: 23WC002253**
	)	
ILLINOIS DEPARTMENT OF TRANSPORTATION,	)	
	)	
	)	
Respondent.	)	

19(b) DECISION OF ARBITRATOR

On or about January 25, 2023, Earl Gettis [hereinafter "Petitioner"] filed an Application for Adjustment of Claim alleging injuries to his left shoulder pulling a traffic barrel from the bottom of a hill to the top on July 2, 2022, while working for the Illinois Department of Transportation [hereinafter "Respondent"]. (Arb. Ex. #2) This matter proceeded to hearing on February 8, 2024, in Collinsville, Illinois. (Arb. Ex. #1) The following issues were in dispute in the instant case at arbitration:

- Accident;
- Causation;
- Medical Bills;
- TTD; and
- Prospective Medical Treatment

FINDINGS OF FACT

On July 20, 2022, Petitioner was working as a Highway Maintainer/Lead Worker/Temporary Lead Worker. (Tr. p. 13) On that date, Petitioner was removing traffic control barrels. Petitioner testified that he was working on Highway 64 at the Caseyville exit and there was a traffic barrel which had rolled down an embankment. (Tr. p. 14) Petitioner explained that the barrels are weight on the bottom with 20-50 pounds to keep them in place. *Id.* Petitioner was dragging the traffic barrel with the weighted bottom up the embankment when it shifted and twisted, and he heard a snap or pop in his left shoulder. *Id.*

Petitioner filled out a notice of injury form and turned it into the employer on July 21, 2022. (RX #1) In the report, Petitioner wrote that he was removing traffic barrels at I64 Eastbound Mile Marker 8.4 at Caseyvillle, Illinois. *Id.* He was dragging a traffic barrel and weight to the truck and the barrel rolled injuring his left shoulder. *Id*. This report and the testimony of Petitioner concerning the accident were unrebutted.

Petitioner was seen in the Memorial Hospital-Shiloh at 4:23 AM on July 21, 2022. (PX #1 p. 1) Petitioner gave a history of pulling a traffic barrel and it twisted when he was trying to pull it up onto the truck. *Id*. Petitioner stated that his left shoulder popped, and he had immediate pain. *Id*. An x-ray of his left shoulder was taken for an accidental injury/work injury. (PX #1 p. 3) The emergency room doctor was unable to say whether it is a rotator cuff tear vs. labral tear. (PX #1 p. 4) An MRI was ordered and Petitioner was referred to an orthopedic surgeon. (PX #1 p. 5) Rest and ice were recommended along with over-the-counter medications.

On July 22, 2022, Petitioner returned to the emergency room at Memorial Hospital-Shiloh. (PX #2 p. 1) Petitioner reported that he was experiencing severe pain in his left shoulder. *Id.* Petitioner's final diagnoses was acute pain of the left shoulder. (PX #2 p. 5) He requested an off work note until he could obtain the MRI. *Id.*

On July 28, 2022, Petitioner returned to the Emergency Room at Memorial Hospital-Shiloh. (PX #3 p. 1) Petitioner needed an off work slip until he could be seen by his Primary Care Physician on August 2, 2022. (PX #3 p. 1)

On August 5, 2022, Petitioner was seen by Dr. David Rawdon, who took a history of lifting at work and sudden onset of left shoulder pain. (PX #4 p. 1) Dr. Rawdon noted significant decrease in Petitioner's range of motion. *Id*. Dr. Rawdon noted that Petitioner was status post work related injury, off work for two weeks. (PX #4 p. 2) Dr. Rawdon's assessment was acute pain of left shoulder, injury of left shoulder, subsequent encounter. *Id*. Dr. Rawdon prescribed hydrocodone-acetaminophen (NORCO). (PX #4 p. 3). Dr. Rawdon took Petitioner off work for 2 weeks and noted he was due to see orthopedics. (PX #4 p. 2).

Petitioner was seen by Dr. Bell on September 13, 2022, on referral from Dr. David Rawdon. (PX #5 p. 7). Dr. Bell took a history of Petitioner injuring his left shoulder dragging a traffic barrel up an embankment. (PX #5 p. 8) Petitioner stated he had no problems with the left shoulder prior to the accident. *Id.* Dr. Bell's assessment was pain of the left shoulder joint and anterior to posterior tear of the superior glenoid labrum of the left shoulder. *Id*. Dr. Bell wanted Petitioner to have an MRI with contrast to rule out labral tear. *Id*. Petitioner was given an off work slip to be off work until further notice and that he needed an arthrogram of the left shoulder. (PX #5 p. 11)

Petitioner returned to Dr. Bell on December 6, 2022, and received a Kenalog injection in his left shoulder. (PX #5 p. 13) Dr. Bell stated the MRI scan shows a little fluid down the biceps sheath, do not see a labral tear, and do not see any rotator cuff tears mild AC arthritis mild amount of fluid in the subacromial bursa. *Id*. Dr. Bell's assessment was pain of the left shoulder joint and anterior to posterior glenoid labrum lesion of the left shoulder. (PX #5 p. 14) Dr. Bell referred Petitioner to physical therapy. *Id*. Dr. Bell took Petitioner off work until January 3, 2023. (PX #5 p. 15) Petitioner returned to Dr. Bell on January 3, 2023, for continued pain along the long head of the biceps in the left shoulder. (PX #5 p. 19) Dr. Bell recommended an arthroscopic evaluation of the shoulder and biceps tenodesis to evaluate his labrum. *Id.* He stated that there is still a 5 percent or

higher chance that there was a labral tear not seen on the MRI scan associated with his trauma. *Id.* Dr. Bell opined that the MRI scan does confirm the biceps tenosynovitis and noted the injection helped with the pain for 1-2 weeks and he has now had almost 6 months of conservative treatment. (PX #5 p. 19) Petitioner elected to proceed with an arthroscopic evaluation of the shoulder and treatment as indicated including a biceps tenodesis for the left shoulder pain. *Id.* Petitioner was given an off work slip at his visit on January 3, 2023, until after surgery. (PX #5 p. 20)

On August 28, 2023, Petitioner returned to Dr. Bell. (PX #5 p. 23) Dr. Bell performed a physical examination which noted a positive Yergason's and Speed test to the left shoulder. (PX #5 p. 24) Petitioner had mild tenderness over the AC joint with the arm resisted across the chest localized to the AC joint. *Id*. Petitioner had pain with impingement testing and pain with resisted supraspinatus function. *Id.* Petitioner had good strength to the subscapularis and the infraspinatus with no significant pain. *Id.* Dr. Bell's assessment was tendonitis of long head of biceps brachii of the left shoulder. (PX #5 p. 24) Dr. Bell stated that the mechanism of injury is consistent with a bicep's injury and SLAP tear, he has failed conservative treatment, the next step would be to do a diagnostic arthroscopy and a biceps tenodesis as indicated and evaluate his cuff and AC joint for any signs of impingement. *Id*.

Petitioner testified that he still wants the surgery that Dr. Bell has recommended. (Tr. p. 16) Petitioner testified that he had extreme pain in his shoulder, and it has progressively gotten worse from date of accident on July 20, 2022. *Id.* Petitioner has already completed extensive conservative treatment including injections and physical therapy. (Tr. pp. 16-17) Prior to the accident, Petitioner did not have any problems with his left shoulder. (Tr. p. 17) Petitioner testified that he returned to work briefly and transferred from working in the maintenance yard to the sign shop. (Tr. pp. 17-18) Currently, Petitioner is working on Emergency Patrol in which he assists motorist on the highways. (Tr. p. 18) Petitioner testified that he is performing his job duties as best as he can. (Tr. pp. 18-19)

Section 12 Examiner Dr. Michael Nogalski Report

Respondent submitted their report from Section 12 examiner Dr. Michael Nogalski. (RX #4) Dr. Nogalski's assessment was left shoulder pain with un-reproducible examination, possible adhesive capsulitis and no clear findings supporting rotator cuff, bicipital, nor labral pathology and mild AC joint and glenohumeral chondromalacia/chrondrosis. (RX #4 p. 4) Dr. Nogalski stated in his report that he did not have any contemporaneous medical assessment or treatment with respect to any medical reports nor is there a report of injury. *Id.* Dr. Nogalski noted that he reviewed a job description, radiology reports, and records from Dr. Bell and physical therapy. (RX #4 p. 3)

Dr. Nogalski was not provided the Notice of Injury filled out by Petitioner on July 21, 2022. (RX #1 p. 1). Dr. Nogalski did not review any of the records from Memorial Hospital Emergency room. Dr. Nogalski wrote that:

> …objective findings in relationship to subjective complaints are not consistent: he does not have clear reproducible lack of motion. (RX #4 p. 4) He does not show scapular substitution, and actively resists motion in general with respect to the passive range of motion tests here today. *Id.* His MRI is negative, which is even often not the case in the general population of asymptomatic men over the age of 50; more than half of them have asymptomatic labral abnormalities. (RX #4 pp. 4-5) This test was done without gadolinium contrast. (RX #4 p. 5) The false positive rate for labral tears is higher in the non-contrast as was done here. *Id.* His clinical exam does not allow for accurate special tests, such as O'Briens active compression test. (RX #4 p. 5).

Dr. Nogalski stated Petitioner represented that he had immediate medical treatment, but Dr. Nogalski stated that he did not identify that this actually occurred. (RX #4 p. 5) Dr. Nogalski felt it was possible that Petitioner experienced a temporary aggravation of an idiopathic adhesive capsulitis. *Id*. Dr. Nogalski felt Petitioner was at maximum medical improvement with respect to the claimed work injury but does require some further treatment for his adhesive capsulitis. (RX #4 p. 6)

Dr. Robert Bell Deposition Testimony

Dr. Robert Bell is a Board Certified Orthopedic Surgeon who treated Petitioner for his left shoulder condition. (PX #9 p. 6). On September 13, 2022, Dr. Bell recorded a history of Petitioner working as a highway maintainer trying to drag a traffic control barrel that had a weight at the bottom which twisted and felt a pop in his shoulder while trying to control barrel from twisting and getting loose from him. *Id*. Dr. Bell recounted Petitioner had pain you would typically see associated with any injury to the bicep and where the biceps tendon attaches to was called the labrum. (PX #9 p. 7). Dr. Bell stated sometimes this is injured with a traction type injury similar to what Petitioner was complaining of where something heavy, pulled and he pulled against it, and it didn't give. *Id*. Dr. Bell noted that in order to help with his assessment an MRI with contrast was needed. (PX #9 p. 7) Dr. Bell stated that from his exam and from the mechanism of injury, he felt Petitioner probably had a bicep labral injury. (PX #9 p. 8) Dr. Bell stated he felt like it probably was a SLAP tear, called a superior labrum, anterior to posterior, that's the acronym we use for it. *Id*.

Dr. Bell testified there were two options. One is to have an arthrogram, the other option would be to do a diagnostic shoulder arthroscopy because it had been a few months, he had not been better and the symptoms are fairly classic, the mechanism of injury fairly classic for a SLAP tear. (PX #9 p. 8) Dr. Bell and Petitioner elected the MRI arthrogram of the left shoulder. (PX #9 pp. 8- 9) On December 6, 2022, Dr. Bell reviewed the previous MRI which showed a little bit of fluid around the biceps sheath but did not show a labral tear. (PX #9 p. 9) Dr. Bell stated they are still waiting on the scan, and he performed a steroid injection to see if that would help Petitioner in the meantime. (PX #9 p. 9) Dr. Bell stated the injection was placed in the sheath of the biceps tendon and bursa

area of his left shoulder. *Id*. Dr. Bell stated that this injection was performed to see if it would relieve any inflammation associated with the tendinitis of his bicep. *Id*.

Dr. Bell saw Petitioner on January 3, 2023, and he was still having pain after only a few days of relief following the injection of the sheath around the bicep tendon. (PX #9 pp. 9-10) As of January 3, 2023, Dr. Bell stated that Petitioner had the injection, there was inflammation on the biceps tendon which is typically associated with SLAP tears. Dr. Bell spoke with Petitioner regarding moving ahead with the arthroscopy, evaluating the labrum, and seeing if he had significant inflammation of the bicep tendon. (PX #9 p. 10) Dr. Bell stated if Petitioner did have significant inflammation, then he would perform the biceps tenodesis. *Id*. Dr. Bell stated that if there was a SLAP tear associated with the biceps tendinitis, he would do a debridement of the labral SLAP tear at the same time. (PX #9 p. 10)

On August 20, 2023, Dr. Bell noted Petitioner had the scan showing the bicep had some swelling or fluid around it; he was still having issues with the shoulder now seven or eight months later; and they had discussed doing the arthroscopy to look at the biceps tendon labrum in doing the tenodesis for him because the cortisone had only given him temporary relief. (PX #9 p. 11) Dr. Bell noted that the physical examination on August 20, 2023, matched earlier exams. (PX #9 p. 12) Dr. Bell noted that Yergason and Speed were painful. He went on to state:

> Those are tests on the bicep tendon. And he also had a little bit of pain over the front of the shoulder. He still had a little bit of soreness with part of his cuff. But, again, the scan -- the cuff, looked for the most part in pretty good condition. He might have had just a little mild tendinitis in the cuff, which we would look at arthroscopically. But we didn't see any tearing of that cuff. But it was consistent. Similar to what he had complained of previously. (PX 9 at 12)

Dr. Bell further noted that in his examination Petitioner did not have any inappropriate exam findings. (PX #9 p. 12). Dr. Bell testified that based upon a reasonable degree of medical and surgical certainty with a history where he was trying to manipulate something that was somewhat heavy and awkward in shape and as it pulled and he pulled against it, felt a pop and is having pain that we typically see with bicep labral issues, I would say the causation would be that, pulling on the road construction barrel and twisting of the arm with some traction on the arm leading to the bicep labral issues he is having. (PX #9 p. 13).

Dr. Bell stated that medically the next step was to do the arthroscopy now that he's been so far out from the time of injury, still having the same pain. (PX #9 p.13) Dr. Bell noted that Petitioner had similar types of issues with his other shoulder that actually did pretty well following the bicep tenodesis and debridement of his labrum. He recommended doing the arthroscopy, looking at the labrum, looking at the bicep and the cuff. (PX #9 pp. 13-14) Dr. Bell felt that he was going to find an inflamed bicep and maybe a little tearing within the tendon and also tearing might extend up into his labrum.

And if it is, then same treatment. (PX #9 p. 14) He explained that if that were the case, he would "release the bicep from the labrum and do a tenodesis and a cleanup of the labral tear." *Id*.

Dr. Bell testified that postoperatively Petitioner would be in a sling for about four to six weeks and then would begin therapy and could start doing his heavier lifting by about 10 to 12 weeks and go back to usual activities around 10 to 12 weeks. (PX #9 p. 14) Dr. Bell testified, "So, yes, I would agree MRI scans are not perfectly reliable or specific. Sometimes they will find things that aren't symptomatic. And sometimes they will miss things that are actually there that are symptomatic." (PX #9 p. 17)

Dr. Bell stated he thinks Petitioner has inflammation and maybe some tearing within the bicep tendon near the groove of the at the top of the shoulder just before it takes the turn to head towards the labrum. There may be a little tearing of the labrum as well. (PX #9 p. 21). He opined that Petitioner has a very tender bicep tendon. He noted that on the MRI there was quite a bit of fluid in that sheath that makes fluid for the tendon to glide. *Id.* Dr. Bell explained that normally it's very thin film, and in this case, it was rather thickened, which you commonly see in someone whose got tendinitis and an inflamed tendon sheath. *Id.* He opined that "there is a fair chance 10 to 30 percent chance or more that there is a small labral tear that they just couldn't see in the MRI scan." (PX #9 p. 21)

On cross-examination, Dr. Bell recommended looking at the shoulder arthroscopically. (PX #9 ap. 21) He explained the procedure as following the bicep tendon from the labrum and down to its sheath and pulling the tendon up to see if it looks inflamed. *Id.* Dr. Bell said if the tendon is inflamed, he would release it off the labrum and do a tenodesis since his biceps been hurting him now since this happened July of 2022. *Id*. Dr. Bell didn't see any overt signs that he was malingering when he saw him and noted that Petitioner seem to be bothered by the shoulder. (PX #9 p. 22) Dr. Bell advised that he did not recommend any further conservative measures. *Id*.

Credibility Determination

The Arbitrator notes that Petitioner appeared to testify in a forthright and honest manner without hesitancy or attempt to deceive. He answered questions directly and concisely. The Arbitrator found Petitioner's testimony to be credible and reliable.

CONCLUSIONS OF LAW

The Arbitrator finds the following:

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

The Arbitrator incorporates the Findings of Fact by reference as if set out in full herein. Petitioner filled out an accident report on July 21, 2022, for an injury occurring on July 20, 2022. The Employee Report of Injury indicates that Petitioner was removing

traffic barrels on I–64 Eastbound in Caseyville, Illinois when he was dragging a traffic barrel with weights to the truck, rolled, injuring his left shoulder. (RX #1) Petitioner testified consistent with the Employee Report of Injury regarding his July 20, 2022, accident. Petitioner's testimony and the accident report were unrebutted at trial. Petitioner gave a consistent description of the accident throughout his medical treatment including the Section 12 examination by Dr. Nogalski. Although many of the medical reports indicate an accident date of July 21, 2022, the evidence clearly shows, and Petitioner testified that the accident occurred on July 20, 2022. Petitioner was in the course of his duties as a highway maintainer retrieving a traffic barrel when he felt pain in his left shoulder. Petitioner testified that he had never had problems with his left shoulder prior to this incident. No evidence was adduced to rebut Petitioner's testimony about his left shoulder.

Wherefore, the Arbitrator finds and concludes that Petitioner sustained an accident arising out of and in the course of his employment with Respondent.

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 his injury of July 20, 2022, wherein he injured his left shoulder removing the traffic barrel. Petitioner testified that he had no problems with the left shoulder prior to the accident on July 20, 2022. The Arbitrator finds that the opinions of Petitioner's treating physician, Dr. Robert Bell, were more credible than those of Dr. Michael P. Nogalski, Respondent's Section 12 examiner. Dr. Nogalski stated he did not have any contemporaneous medical assessment, treatment notes or a report of injury. (RX #4 p. 4) Dr. Nogalski noted in his report that he reviewed a job description, radiology reports, records from Dr. Bell, and physical therapy records. (RX #4 p. 3) However, it is clear from the record that Petitioner presented to Memorial Hospital on July 21, 2022, and filled out the Employee Report of Injury on that date as well. (PX #1; RX #1) Dr. Nogalski was not provided the Notice of Injury filled out by Petitioner on July 21, 2022. (RX1 at 1). Dr. Nogalski did not review any of the records from Memorial Hospital Emergency room. Dr. Nogalski had no knowledge of the contemporaneous Notice of Injury and medical treatment. Dr. Nogalski did not have the foundation to render a complete medical opinion.

Petitioner testified that he had extreme pain in his shoulder, and it has progressively gotten worse from the accident of July 20, 2022. Petitioner testified that he had not had any problems with his left shoulder prior to the accident of July 20, 2022.

Dr. Bell's opinion that Petitioner's left shoulder condition is causally related to the work accident is fully supported by the evidence. No pre-accident medical records or other evidence of pre-existing left shoulder issues were offered into evidence. Petitioner sought medical treatment the day after his accident at Memorial Hospital-Shiloh. (PX #1) Petitioner followed up with his family physician, Dr. Rawdon, on July 28, 2022. (PX #4) Dr. Rawdon referred Petitioner to Dr. Robert Bell, a board certified orthopedic surgeon.

Dr. Bell testified to a reasonable degree of medical and surgical certainty that, pulling on the road construction barrel, and twisting his arm with some traction on it led to the bicep and labral issues Petitioner was having. (PX #9 p. 13) The Arbitrator finds Dr. Bell's opinion more persuasive than that of Dr. Nogalski. Dr. Nogalski's opinion relied upon incomplete information.

Based upon the foregoing facts and the record as a whole, the Arbitrator finds and concludes that Petitioner's current condition of ill-being to be causally related to his July 20, 2022, work 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?

Respondent shall pay reasonable and necessary medical services of $17.02, as provided in Sections 8(a) and 8.2 of the Act.

K. Is Petitioner entitled to any prospective medical care?

Dr. Bell has recommended diagnostic arthroscopic surgery to evaluate and repair Petitioner's left shoulder. Petitioner testified that he has ongoing pain and has exhausted conservative measures. Petitioner testified that he still wants the surgery that Dr. Bell has recommended. Petitioner testified that his left shoulder pain has progressively gotten worse since the July 20, 2022, accident.

As stated above, the Arbitrator finds Dr. Bell's opinions to be more persuasive than those of Respondent's Independent Medical Examiner, Dr. Nogalski. Based upon the conclusions regarding accident and causation, and the fact that Petitioner still has not obtained significant relief from his symptoms, the Arbitrator finds and concludes that Petitioner is entitled to prospective medical treatment. Respondent shall authorize and pay for the treatment recommended by Dr. Bell according to the fee schedule.

L. What temporary benefits are in dispute? (TTD)

Respondent shall pay Petitioner temporary total disability benefits of $846.15/week for 47 6/7 weeks, commencing July 20, 2022, through October 30, 2022, and November 28, 2022, through July 12, 2023, as provided in Section 8(b) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC026301
Case Name	Daniel Dinga v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0255
Number of Pages of Decision	19
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Marc Campagna
Respondent Attorney	Elizabeth Meyer

DATE FILED: 6/9/2025

/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

DANIEL DINGA,

Petitioner,

vs. NO: 21 WC 026301

CHICAGO TRANSIT AUTHORITY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary disability, prospective medical treatment, and nature and extent of the injury and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, and further clarifies the Decision of the Arbitrator as follows.

The Commission writes to correct the start date of temporary total disability ("TTD") benefits from July 27, 2021 to July 28, 2021. Accordingly, the Commission also corrects the period of TTD benefits awarded to July 28, 2021 through January 7, 2022, representing 23 and 3/7 weeks.

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated January 6, 2025 is clarified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay temporary total disability benefits of $1,005.64/week for a period of 23 and 3/7 weeks for the period of July 28, 2021 through January 7, 2022, 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.

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.

June 9, 2025
o: 06/04/25
CMD/jjm
045

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC026301
Case Name	Daniel Dinga v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Jennifer Bae, Arbitrator

Petitioner Attorney	Marc Campagna
Respondent Attorney	Elizabeth Meyer

DATE FILED: 1/6/2025

/s/Jennifer Bae, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF DECEMBER 31, 2024 4.14%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Daniel Dinga
Employee/Petitioner

v.

Chicago Transit Authority
Employer/Respondent

Case # **21** WC **026301**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jennifer Bae**, Arbitrator of the Commission, in the city of **Chicago**, on **10/15/24**. 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 **7/27/21**, 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 $**78,439.75**; the average weekly wage was $**1,508.46**.

On the date of accident, Petitioner was **52** years of age, ***married*** 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 $**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

Temporary Total Disability:
Respondent shall pay temporary total disability benefits of $1,005.64/week for a period of 23 and 3/7 weeks (July 27, 2021 through January 7, 2022), as provided in Section 8(b) of the Act.

Permanent Partial Disability:
Respondent shall pay Petitioner the sum of $905.08/week for a period of 90 weeks because the injuries he sustained caused 18 % loss of use of the person-as-a-whole pursuant to 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.

Jennifer Bae
Signature of Arbitrator

January 6, 2025

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

DANIEL DINGA,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 21WC026301
CTA,	)	
	)	
	)	
Respondent.	)	

MEMORANDUM OF DECISION OF ARBITRATOR

I. PROCEDURAL HISTROY

Mr. Daniel Dinga ("Petitioner"), by and through his attorney, filed an Application for Adjustment of Claim for benefits under the Workers' compensation Act ("Act"). *820 ILCS 305/1 et seq. (West 2014)*. Petitioner alleged that he sustained an accidental injury on July 27, 2021 while employed by CTA ("Respondent"). A hearing was held on October 15, 2024 on the following issues: accident, causation, temporary total disability, and nature and extend.

Petitioner testified in support of his claim. Respondent called Mr. Steven Wojnicki ("Wojnicki") as their witness. The parties requested a written decision, including findings of fact and conclusions of law pursuant to the Act. (AX 1)

II. FINDINGS OF FACT

Petitioner's Testimony and Medical History of Injury:

Petitioner testified that lives in Cedar Lake, Indiana. (T. 8) He is married and on July 27, 2021, he had one dependent child. (T. 8-9)

In July of 2021, Petitioner testified that he was taking 90 milligrams of NP Thyroid for hypothyroidism which he was diagnosed with in 2007 by Dr. Streeter. (T. 9) Petitioner testified that there are no side effects of this medicine. (T. 10) He was not under any other doctor's care and did not have any history of diabetes, low blood sugar, chest pain, heart issues, and seizures. (T. 10-11)

On July 27, 2021, Petitioner testified that he was employed by Respondent, hired on December 12, 1988. (T. 13) He worked out of 77 South Vincennes Avenue, Chicago which is known as 77th

Street Complex that consist of transportation, garage, and south shops. (T. 13) Petitioner described the area as having a transportation building where drivers pull out, south shops where they work on the buses, and a garage where buses are repaired and maintained. (T. 13-14) There are also bays separated from the garage referred to as Two West, Three West, Four West, Five West, Two East, Three East, Fourt East, Five East, and One Bay also referred to as the Tire Center. (T. 14) Petitioner testified that he worked at One Bay/Tire Center. (T. 14)

On July 27, 2021, Petitioner testified that he was a tire repairment and had been so for 6 years. (T. 14) Petitioner's duties included replacing defective tires with new tires. (T. 14-15) On July 27, 2021, Petitioner testified that his shift was 6 am to 2:30 pm, Monday through Friday, and was off on Saturday and Sunday. (T. 15) He testified that he typically arrives at work around 5:15 to 5:20 am and starts work at 6 am. (T. 15) Petitioner described One Bay/Tire Center as filthy, dirty, very hot and humid. (T. 15) He testified that there are dogs, cats, squirrels, mice, rats, and cockroaches in his work area at all times. (T. 15) In the summertime, it's very hot and humid with minimal air flow. (T. 15-16) Petitioner explained that One Bay/Tire Center has an overhead door big enough to pull a vehicle, a bus, or a truck and has 3 entry/exit doors to outside. (T. 16) Next to One Bay is Two East and there is 1 door between One Bay and Two East. (T. 16) Petitioner testified that there is a door approximately 15 feet from his work area. (T. 16) Petitioner further testified that his work area has poor ventilation with no air conditioning, only 3 to 5 fans on the side of the wall closed to the roof. (T. 17) There are total of 12 to 14 fans but only 5 work and are in poor condition - they rattle and noisy, and Petitioner felt like they were going to drop out of the ceiling. (T. 17) Some of the working fans are off because the other employees turn them off due to the noise. (T. 17-18) On July 27, 2021, Petitioner testified that it was a hot sunny summer day and that he believed the temperature in One Bay/Tire Center was in the upper 80's. (T. 18) Petitioner explained that because there's no air conditioner, the building stays hot all night long and it felt like an oven. (T. 18-19) Petitioner testified that there are 2 overhead doors at One Bay/Tire Center, one use by the semitrucks to bring tires every day and the other is used by contractors. (T. 19) The semitrucks normally start at 5 am and leave around 5:30 am, they return at 12 pm to 1 pm and leave with bad tires. (T. 20) After the semitrucks leave, the overhead doors are usually closed. (T. 20)

On July 27, 2021, Petitioner testified that he arrived at work approximately 5:15 am and the temperature in his work area was about 84 degrees. (T. 21) He believed that the temperature was going up as he began to work around 6 am. (T. 21) He felt good when he woke up that day and felt fine to start work. (T. 21) Between 6 am to 8 am, Petitioner testified that he began replacing tires. (T. 22) At approximately 8 am, he was at his desk in his work area taking a break (eating a banana and nuts) when he smelled gasoline fumes coming through the door to Two East. (T. 22-23) Petitioner testified that he went to investigate by walking over to the door, which was opened, he saw a white van with engine running in front of the door. (T. 23) Petitioner testified that he walked away, about 30 to 40 feet when his vision went out and fell on his face first on top of used tires. (T. 23-24) Petitioner testified that his desk is about 15 feet from the Two East door and the van was about 25 feet from his desk. (T. 24) Petitioner testified that his chest hit the tires as his arms fell forward to catch him. (T. 25) The next thing he remember was a coworker, Chuck Acton, walking toward him asking what happened. (T. 25-26) Petitioner testified that he didn't know what had happened at that moment but had blood on him; his head, left shoulder, left elbow, wrist and leg began to hurt. (T. 25) Another coworker helped him get on his feet. (T. 25) There was

blood on his left side and about a plate size pool of blood on the ground. (T. 26) Before passing out, Petitioner said he felt dizzy and off and vision started to go. (T. 27) He said he was on his way to the bathroom when he passed out. (T. 27) Petitioner testified that he did not feel dizzy or off prior to smelling engine fumes. (T. 27)

Petitioner testified that he was transported to the University of Chicago Hospital by ambulance. (T. 28) Petitioner claimed that he was at the hospital for more than 10 hours as they were running tests. (T. 28) Petitioner testified that he left the hospital because he was waiting over 2 hours for a chest x-ray that he did not believe it was needed. (T. 28) He believed that he "was in no condition to be waiting there any longer" and left because he was seeing his own doctor the next day. (T. 29)

Petitioner followed up with Nurse Practitioner Ben Koch ("NP Koch") on July 28, 2021. (T. 29-30) NP Koch recommended physical therapy for Petitioner's neck as it was sore and balance was off and a CAT scan. (T. 30) Petitioner believed he had a CAT scan completed at the University of Chicago Hospital that was negative. (T 30-31) Petitioner testified that he started physical therapy but it did not help as his gait and vision was off. (T. 31) His wife called his doctor and when he was examined, Petitioner said he failed the neurological test. (T. 32) He had a CAT scan at Franciscan in Dyer, Indiana about a week after. (T. 32) As he and his wife were leaving the hospital after the CAT scan, a hospital employee came running out and said that he needed to go to the Community Hospital Emergency Room immediately. (T. 33) At Community Hospital, Petitioner had a surgery on his left side of the brain. (T. 33-34) Petitioner testified that he was at Community Hospital for 3 days. (T. 34) After the surgery, Petitioner testified that he had pain in his head, neck was sore, body was aching, balance was off but his vision started improving. (T. 34) NP Koch referred Petitioner to a neurologist, Dr. Richard Cristea. (T. 34-35) After the surgery, Petitioner testified that he had in-home physical therapy, occupational therapy, and speech therapy. (T. 35) The surgeon placed him on off work and no driving. (T. 35) Petitioner testified that following the surgery, his speech was off and the right side of his cheek was swollen from the injury. (T. 35-36) Petitioner further testified that his short-term and long-term memory was "very bad." (T. 36)

Petitioner testified that Dr. Cristea referred him to Porter Health – Jamie Koufman who worked with him to figure out where he was weak and strong. (T. 36) Petitioner testified that his short-term and long-term memory and his thought process has not improved. (T. 37) He said he did not have any issues with his short-term or long-term memory prior to his head injury. (T. 37) Petitioner testified that he did not have any short-term or long-term memory following his concussion that occurred in 2002 at CTA. (T. 37-38)

Petitioner testified that NP Koch also referred him to see a cardiologist, Dr. Khokor. (T. 38) He took echocardiogram that resulted in normal. (T. 38) Dr. Khokher released Petitioner to return to work. (T. 39) Petitioner testified that it was Dr. Kaakaji who performed the surgery on his head. (T. 39)

Petitioner testified that Dr. Cristea also referred him to a psychotherapist, Dr. John Heroldt. (T. 43) As far as problem solving, Petitioner testified that he forgets things. (T. 43-44)

Prior to the accident, Petitioner testified that he had depression but never clinically diagnosed. (T. 45) He had been under doctor's care between July 27, 2021 to January 7, 2022. (T. 46)

On cross-examination, Petitioner testified that he fell forward on tires and was laying on the ground when his coworker found him. (T. 46-47) One Bay/Tire Center is approximately 400 feet long with overhead doors – like garage doors. (T. 47) At the time of the accident, Petitioner testified that the 2 overhead doors were closed. (T. 48) Petitioner testified that there is a thermostat on the wall everywhere there is a heater. (T. 48) Petitioner said his desk is about 100 feet from where the semitrucks bring in the tires through the overhead. (T. 48-49) Petitioner explained that he worked in the south side closer to the door of the Two East where the white van was parked outside. (T. 50-51)

On cross-examination, Petitioner testified that he did not remember if he filled out an incident report at work. (T. 51) RX 1 is a copy of the incident report dated July 30, 2021. (T. 51-52) Petitioner confirmed his handwritings on RX 1. (T. 52-53)

On cross-examination, Petitioner testified that he was at the University of Chicago Emergency Room for quite long time but was not told specifically that he should not leave when he left. (T. 53) Petitioner testified that he did not remember if the doctors told him that they were waiting for results from Troponin test. (T. 54) Petitioner said he was treated by multiple doctors and nurses that made it confusing and "not a good experience" for him. (T. 54)

On cross-examination, Petitioner explained that Dr. Streeter is his family doctor that he sees for his thyroid. (T. 54) Petitioner labeled Dr. Streeter as M.D. but as an "alternative doctor." (T. 54) Petitioner confirmed that NP Koch is his primary care. (T. 54) Petitioner stated that he has hypothyroidism and his TSH levels are at "where they should be…normal." (T. 54-55) Petitioner denied being diagnosed with Hashimoto Apostrophe S. (T. 55) Petitioner confirmed that NP Koch referred him to a neurologist, Dr. Cristea, who referred him to Dr. Heroldt. (T. 55) Petitioner testified that he first saw Dr. Heroldt in January 2022, however the medical records show that Petitioner saw Dr. Heroldt on April 4, 2022 after retiring from Respondent. (T. 56)

On cross-examination, Petitioner denied telling Dr. Heroldt that he had anxiety or fear after the accident 15 years ago. (T. 57) He confirmed that he told Dr. Heroldt that he had depression on and off for a long time. (T. 57) Petitioner testified that he was never treated for depression but was in counseling. (T. 57-58) Petitioner testified that he is still seeing Dr. Heroldt. (T. 58) Petitioner believed that the last time he saw Dr. Cristea was in September or the last month. (T. 58) Petitioner confirmed that he does not have any medical training such as an EMT, nurse, or nurse's aide. (T. 58-59) He testified that the ground in One Bay/Tire Center is concrete. (T. 59)

Respondent's Witness: Steven Wojnicki:

Mr. Wojnicki testified that he had been working for Respondent for 29 years. (T. 61) Currently, his title is the senior maintenance manager of bus and has been in this position for 9 years, starting June of 2015. (T. 61-62) Mr. Wojnicki confirmed that One Bay/Tire Center is approximately 400 feet long, roughly 100 feet wide , kind of close with 3 overhead garage doors and 2 service doors in the east and west side of the building. (T. 62) For the 3 overhead garage doors – first is used for

the delivery of tires, second is used for trucks that go in and out on the east, and the third is for the servicing of the porta potties on the west side. (T. 63) The 2 overhead garage doors are on the east side about 15 feet apart. (T. 63)

Mr. Wojnicki explained that there are 9 buildings in the complex and his office is in Building 9. (T. 63) Building 9 is approximately 1000 feet from One Bay. (T. 64) On July 27, 2021, Mr. Wojnicki testified that he came in before 6 am and in a senior GM meeting on Zoom from 6:30 am to 9am. (T. 64) Mr. Wojnicki testified that he received a phone call around 8:30 am and was told that Petitioner had passed out in One Bay/Tire Center. (T. 64) He sent manager Freeman and instructed the group leader Marty Gentile to contact an ambulance to transport Petitioner for medical treatment. (T. 64) Mr. Wojnicki testified that he went back to his meeting and had another meeting at 9 am. (T. 65) Thereafter, he arrived at One Bay/Tire Center at 9:30 am and learned that Petitioner was already transported by CFD Ambulance 23 to University of Illinois. (T. 65) When he arrived at One Bay/Tire Center, Mr. Wojnicki observed "slight spot of blood on the floor" and both overhead doors were open. (T. 65)

Mr. Wojnicki testified that he normally walks inside and outside once or twice a day through out the complex including One Bay/Tire Center because he has 267 employees under his supervision. (T. 65-66) Mr. Wojnicki explained that during the late spring, early fall and summer, the overhead doors are usually open around 7 am after the buses exit the property for service. (T. 66) He further explained that he usually walks around 9:30 to 10 am and 1:30 to 2 pm each day. (T. 66) The garage doors are open for the entire facility. (T. 66-67)

Again, Mr. Wojnicki testified that when he arrived at One Bay/Tire Center around 9:30 am on July 27, 2021, both garage doors were opened. (T. 67) He walked over to the Two East and observed that it was empty. (T. 67) He did not observe a white van outside One Bay/Tire Center by the Two East. (T. 67) Mr. Wojnicki explained that during the overnight parting, there are buses in the Two East that go out in the morning for services. (T. 67-68) He further explained that there are vans parked on the west end of One Bay/Tire Center in One West and the machinists (pipe fitters, bricklayers, electricians, painters, and radio department) store their supplies in One East. (T. 68) Usually, the machinists parked their vans between building one and two to get their equipment. (T. 68) On July 27, 2021, Mr. Wojnicki stated that he visited One Bay/Tire Center three times. (T. 68)

Mr. Wojnicki testified that he took a 4 Gas Reader which is a small dark gray black machine that checks the oxygen, CO2 level, hydrogen sulfide, and combustion of a location. (T. 69) He explained that they normally use this device when they have buses with fumes or fumes in a facility. (T. 69) Mr. Wojnicki testified that that he used this device to make sure that there were no fumes in the location. (T. 70) He also stated that the safety department came out to the location on a different date to make sure that there were no fumes in the location. (T. 70)

Mr. Wojnicki further testified that he did not smell any fumes on July 27, 2021 in One Bay/Tire Center. (T. 71) When he arrived at One Bay/Tire Center on July 27, 2021, Mr. Wojnicki saw that the overhead garage doors were opened. (T. 72)

On cross-examination, Mr. Wojnicki agreed that he did not arrive at One Bay/Tire Center until 9:30 to 9:40 am to perform the 4 Gas Reader device on July 27, 2021. (T. 73) He was not present at 8:15 am at One Bay/Tire Center but he was told that the overhead doors were opened at that time. (T. 74) He explained that there were no contractors that use Two Bay for parking because they do not go into Two Bay. (T. 74) Mr. Wojnicki explained that he has seen CTA vehicles parked briefly in Two Bay because they are going in and out for service. (T. 74) He admits that he does not know whether a van was parked and idling at approximately 8 to 8:15 am on July 27, 2021. (T. 75)

On cross-examination, Mr. Wojnicki testified that he does visit One Bay/Tire Center every day to make sure that they have tires, rims, and any scrap. (T. 75) Everyday, he visits outside of One Bay/Tire Center but does not always go inside at the same time. (T. 75) He stated that in the summer, One Bay/Tire Center does get hot and if it's 90 degrees outside, it would get above 80 degrees inside. (T. 75-76)

Prior Medical Condition

Petitioner testified that he suffered a concussion in 2002 because of an accident that occurred while employed by Respondent – while changing a front brake, the bus dropped 12 to 18 inches and hit him on top of his head. (T. 11-12) He received medical care that required him to be off 8 months and filed a workers' compensation claim that was settled. (T. 12-13) Petitioner testified that he did not have any treatment for his head in the last 15 years prior to this accident. (T. 13)

Summary of Medical Records

On July 27, 2021, at 8:54 am, an ambulance from City of Chicago Fire Department was dispatched to Respondent's location at 79th and Vincennes Avenue in Chicago. (PX 3) It was noted that Petitioner's cause of injury was "fall from slip, trip, or stumbling." (PX 3 p. 4) Petitioner was transported to University of Chicago – Emergency Room approximately 9:30 am. (PX 3 p. 7)

At the University of Chicago Emergency Room, Petitioner reported fainting that occurred at work when "he got up from standing position while walking to the restroom began to feel lightheaded and then passed out hitting the back of his head on concrete ground. Has never had this happen before. He did lose consciousness but is unsure for how long. Denies any history of similar symptoms in the past." (PX 4 p 5) It was noted that Petitioner did not want to wait for his troponin results, refused chest x-rays, and refused a covid swab. (PX 4 p. 13) Petitioner left the hospital without further treatment. (PX 4 p. 13)

On July 28, 2021, Petitioner sought treatment at Franciscan Physician Network Valparaiso Health Center ("Franciscan") with NP Koch. (PX 5 pp. 33-36) Petitioner reported his fall at work after smelling fumes where he blacked out and sustained a head laceration. (PX 5 p. 34) He informed Franciscan that he was taken to ER and ECG test had no concerning findings, troponin tests were negative and signed out before he could get chest x-ray. (PX 5 p. 34) He reported having pain in the head, neck, left elbow, and left rib along with some light sensitivity. (PX 5 p. 34) NP Koch noted that Petitioner probably had vasovagal syncope based on symptoms and placed him off work. (PX 5 p. 36)

On August 2, 2021, Petitioner sought treatment at Franciscan. (PX 5 pp. 38-47) Petitioner reported having nausea and vertigo. (PX 5 p. 39) He reported having a head injury 6 years ago where he had a loss of consciousness and is having similar symptoms currently. (PX 5 p. 39) Petitioner reported bright lights makes pain worse and that he was unable to drive to work due to vertigo. (PX 5 p. 39) He felt more irritable than usual and that his brain is not functioning like usual. The chest x-ray did not show any abnormalities and Echocardiogram test was completed with no results yet. (PX 5 p. 39)

On September 2, 20201, Petitioner sought treatment at Franciscan. (PX 5 pp. 48-55)

On September 10, 2021, Petitioner saw NP Koch. (PX 5 pp. 57-60) Petitioner complained of having head pressure that started about 10 days prior, nausea, and balance was off. (PX 5 p. 58) He reported not hearing as well as usual. (PX 5 p. 58) NP Koch gave Petitioner referral to neurology and CT scan for head/brain. (PX 5 pp. 59-60)

On September 15, 2021, Petitioner saw NP Koch. (PX 5 pp. 61-64) Petitioner reported having rash and skin spots. (PX 5 p. 61)

On September 17, 2021, Petitioner was treated at Franciscan Health Emergency Department Dyer. (PX 6 pp. 5-22) A CT scans showed large subacute subdural hematoma with mass effect on adjacent brain compression causing massive transfalcine and transtentorial brain herniaton and right frontal convexity subdural hemorrhage with some adjacent brain compression. (PX 6 p. 9) Petitioner was transferred to Munster Community Hospital by ambulance for a surgery. (PX 6 pp. 10-11)

On September 18, 2021, Petitioner underwent left parietal bur hold with evacuation of subdural hematoma. (PX 8 p. 4) It was noted that on September 19, 2021, Petitioner was neurologically stable and postoperative pain was controlled. (PX 8 p. 4)

From September 22, 2021 to October 8, 2021, Petitioner received physical and occupational therapy. (PX 10)

On September 28, 2021, Petitioner saw NP Koch. (PX 5 pp. 65-67) Petitioner reported feeling "really good", getting tired easily, getting physical therapy at home, no headaches, pressure was gone, no vertigo, sleeping ok. (PX 5 p. 65) He reported some improvement with physical therapy and occupational therapy. (PX 5 p. 65) Petitioner reported seeing neurosurgeon since discharge. (PX 5 p. 65)

On October 15, 2021, Petitioner saw NP Koch and Dr. Tohir Khokher for a follow up. (PX 5 pp. 70-73) He reported "doing better" and it was noted that Petitioner was to follow up with the neurosurgery. (PX 5 p. 71) It was further noted that echocardiogram was normal. (PX 5 p. 71)

On October 20, 2021, Petitioner saw NP Koch for a follow up. (PX 5 pp. 74-78) Petitioner reported being fearful of returning to work because of the 2 accidents he had and was currently

off until December 15, 2021. (PX 5 p. 75) He reported seeing a neurologist and was given a referral for psychiatrist. (PX 5 p. 75)

Petitioner saw a neurologist, Dr. Richard Cristea on December 7, 2021, January 12, 2022, February 17, 2022, March 29, 2022, May 12, 2022, November 9, 2022, August 25, 2022, January 19, 2023, and April 24, 2023. (PX 11)

On December 17, 2021, Petitioner had an electroencephalogram that was normal. (PX 11 pp. 7-8)

Petitioner met with Dr. John Heroldt on April 4, 2022, April 18, 2022, May 2, 2022, May 16, 2022, June 6, 2022, June 20, 2022, July 18, 2022, August 8, 2022, August 29, 2022, September 19, 2022, October 10, 2022, October 24, 2022, November 7, 2022, and November 21, 2022. (PX 14)

On September 12, 2022, Petitioner was discharged from speech-language therapy after attending 10 sessions. (PX 13)

On April 11, 2023, Petitioner had a neuropsychological evaluation with Dr. Joseph Fink. (PX 11 pp. 31-42) Dr. Fink noted a mild cognitive impairment. (PX 11 p. 39)

Petitioner's Current Condition

Petitioner testified that currently, he has short-term and long-term memory issues, anxiety, off balance, forgetfulness, and sleeping issues. (T. 40) To combat his forgetfulness, Petitioner uses timers, calendars, and notes. (T. 40-41) As far as balance, Petitioner testified that he does stretch exercises in the morning and is unable to do certain exercises without losing his balance. (T. 41) Petitioner has difficulty turning left to right, bending, and looking up in the dark. (T. 42) Prior to this accident, Petitioner testified that he did not suffer from anxiety. (T. 42) Petitioner testified that his mood since the accident has been "not good." (T. 44) He gets angry easily, short fuse and has anxiety around people. (T. 44) He has anxiety that feeds the depression. (T. 45)

Petitioner testified that he got tired when driving to court and was "very exhausted mentally." (T. 44) He retired from CTA on April 1, 2022. (T. 46)

III. CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. *820 ILCS 305/1.1(e).* Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v.*

Industrial Commission, 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

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

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. Petitioner was forthright and testified consistently regarding his prior medical condition, the previous work-related accident, the current work-related accident, and all medical treatment he received thus far. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

Issue C, whether the accident arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848, ¶ 34. A compensable injury occurs 'in the course of' employment when it is sustained while he performs reasonable activities in conjunction with his employment. *Id*.

"The 'arising out of' component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Id*. at ¶ 36. To determine whether a claimant's injury arose out of his employment, the risks to which the claimant was exposed must be categorized. *Id.* The three categories of risks are "(1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics." *Id*. at ¶ 38. "A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties." *Id*. at ¶ 46.

For an injury caused by a fall to arise out of the employment, Petitioner must present evidence which supports a reasonable inference that the fall stemmed from a risk associated with the employment. *Builders Square, Inc. v. Industrial Commission*, 339 Ill.App.3d 1006, 1010 (2003). Employment-related risks associated with injuries sustained from a fall are those to which the general public is not exposed such as the risk of tripping on a defect, falling on uneven or slippery

ground, or performing some work-related tasks which contributes to falling. *Illinois Consolidated Telephone Co. v. Industrial Commission, 214 Ill.App.3d 347,* 352 (2000).

Here, Petitioner testified that he smelled gasoline fumes emitting from a vehicle that was idling near his desk where Petitioner was located while on break. (T. 23) Petitioner was feeling good upon waking up, arriving at work, and prior to beginning his shift on the accident date. (T. 21) Petitioner estimated the inside temperature in One Bay/Tire Center when he arrived the morning of the accident was 84 degrees. (T. 21) Petitioner testified that he got up from his desk, walked fifteen feet to the door separating One Bay/Tire Center and Two Bay to investigate and saw a white van idling, emitting gasoline fumes in Two Bay just in front of the service door. (T. 23-24) The idling van was approximately 25 feet from Petitioner's desk. (T. 24) Petitioner testified that he was not feeling right and started walking to the bathroom. (T. 24) He testified that he walked 30-40 feet when his vision started going out, he was dizzy, and then he fell to the ground attempting to break his fall on tires. (T. 27) Petitioner struck his head on the concrete floor. (T. 27) Petitioner's account of his working conditions which led to him fainting and falling to the ground and striking his head was unrebutted. The air test performed by Respondent was done more than hour after Petitioner's fall and is therefore irrelevant to the issues in this case. Petitioner's injury occurred at work, within the time-period of his employment, at a place where Petitioner could reasonably be expected, and because Petitioner was exposed to gasoline fumes and extreme temperatures causing him to lose consciousness and fall to the ground. The public is not exposed to gasoline fumes nor working in extreme heat. The Arbitrator finds that the accident did arise 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:

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

After smelling fumes emanating from an idling van, as Petitioner was walking to the bathroom, he fainted which caused him to fall to the ground striking his head on the concrete floor. Petitioner was bleeding from his head and estimates a dinner plate size pool of blood on the floor when he came to after his fall. (T. 25-26) Petitioner was taken by ambulance to University of Chicago Emergency Room. A CT scan of his head was read as normal. However, within a few weeks following his fall, Petitioner noted his gait and vision were off and he was not getting better. (T. 31) Petitioner followed up with his primary care physician who performed neurological testing

which Petitioner failed. (PX 5 pp. 58-59) A repeat CT of his head was ordered and performed at Franciscan St. Margaret's Hospital revealing a large subacute subdural hematoma. (PX 6 p. 9) The records from Franciscan St. Margaret's reflect the ER physician suspecting Petitioner had a "bleed shortly after leaving University of Chicago after his fall on July 27 [and] [t]his is likely all sequelae from that." (PX 6 p. 10) Petitioner sustained no other trauma to his head between the accident date and the time of his acute subdural hematoma diagnosis.

Based on the above, the Arbitrator finds that the Petitioner's current condition of ill-being is causally related to his work accident and traumatic brain injury sustained on July 27, 2021.

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 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). Once an injured employee's physical condition stabilizes, she is no longer eligible for temporary total disability benefits. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

The parties stipulated to Petitioner's Average Weekly Wage at the time of the accident to be $1,508.46. (AX 1) The medical records reflect that Petitioner was ordered off work due to his injuries by both NP Koch and Dr. Kaakaji from July 27, 2021 until January 7, 2022. (PX 5 pp. 36, 42, 75; PX 9 pp. 3, 7, 10, 25)

Based on the previous findings above, the Arbitrator finds Respondent liable for 23 3/7 weeks of temporary total disability benefits (July 27, 2021 through January 7, 2022) at a weekly rate of $1,005.64, which corresponds to $23,560.70 to be paid directly to Petitioner.

Issue L, the nature and extent of the injury, the Arbitrator finds as follows:

In determining permanent partial disability benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); *Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 152576WC, ¶ 22, 67 N.E.3d 959. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b).

Under Section 8.1b(b)(i), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The statute does not require the claimant to submit an impairment rating. It only requires that the Commission consider such a report if in

evidence and regardless of which party submitted it. See *Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n*, 2015 IL App (5th) 140445WC, ¶ 17, 43 N.E.3d 556. Therefore, the Arbitrator gives no weight to this factor.

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes that Petitioner was employed as a tire repairman and worked for Respondent since 1988. Petitioner did not return to work for Respondent and voluntarily retired in March of 2022. The Arbitrator therefore gives some weight to this factor.

Under Section 8.1b(b)(iii), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 52 years old at the time of the accident. See *Flexible Staffing Services v. Illinois Workers' Compensation Commission*, 2016 IL App (1st) 151300WC (1st Dist. 2016) (holding that the Commission can make reasonable inferences from the medical evidence as it relates to how the claimant's age affects his disability). The Arbitrator notes that Petitioner is relatively young for a retirement and will live with the effects of his traumatic brain injury for a long time. The Arbitrator gives more weight to this factor.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes that Petitioner voluntarily retired in 2022. The Arbitrator gives some weight to this factor.

Under Section 8.1b(b)(iv), evidence of disability corroborated by the treating medical records, the Petitioner testified to the following disability related to his traumatic brain injury including short- and long-term memory loss, issues with balance and problem solving, forgetfulness, anxiety, increased depression, and mood issues including angering easily, being short fused, and social anxiety. (T. 39-45) Petitioner testified he has suffered from anxiety since his work accident. He admitted to having depression before the accident, but his depression has gotten worse since the accident and that his anxiety and depression feed off each other. (T. 45) Petitioner received several months of therapy for his traumatic brain injury as well as consistent treatment from a neurologist and psychotherapist. (PX 10; PX 12; and PX 13) The Arbitrator notes Petitioner's therapy discharge report from Innovative Physical Therapy and Sport Rehab reflect that Petitioner continues with cognitive, physical, and psychosocial fatigue and that Petitioner will likely continue to benefit from skilled intervention to address barriers to progress in areas known to directly impact Petitioner's abilities, such as anxiety, depression, irritability/anger/aggression, pain, headache, and fatigue. (PX 12 pp. 2-6) Petitioner's neurologist, Dr. Cristea noted Petitioner's anxiety/depression and imbalance and believed Petitioner remained a fall risk and that Petitioner is not likely to have further improvements in function. Dr. Cristea also noted that Petitioner has memory, focus, and concentration difficulties. (PX 11 p. 49) Per a neuropsychological evaluation, Petitioner's cognitive performance indicated a variable pattern of frontal-executive dysfunction and memory weakness. (PX 11 p. 39) Petitioner's psychotherapist, Dr. Heroldt noted although Petitioner had depression on and off for a long time, Petitioner's longest period of consistent depression has been since his work injury. (PX 14 p. 4) Petitioner's medical records corroborate Petitioner's testimony regarding his disability and current state of ill-being. The Arbitrator gives more weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 18% loss of the use of the person-as-a-whole, pursuant to §8(d)2 of the Act which corresponds to 90 weeks of permanent partial disability benefits at a weekly rate of $905.08.

It is so ordered:

Jennifer Bae

Arbitrator Jennifer Bae

January 6, 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC009183
Case Name	Christopher Holmon v. The Swiss Colony
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0256
Number of Pages of Decision	10
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Tracy Jones
Respondent Attorney	Peter Jacobson

DATE FILED: 6/9/2025

/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

Christopher Holmon,
Petitioner,

vs. NO: 21 WC 9183

The Swiss Colony,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 12, 2024 is hereby affirmed and adopted.

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

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

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.

June 9, 2025
O: 06/04/25
CMD/kcb
045

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC009183
Case Name	Christopher Holmon v. The Swiss Colony
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Francis Brady, Arbitrator

Petitioner Attorney	Tracy Jones
Respondent Attorney	Peter Jacobson

DATE FILED: 12/12/2024

/s/Francis Brady, Arbitrator

Signature

INTEREST RATE WEEK OF DECEMBER 10 2024 4.20%

STATE OF ILLINOIS)
)SS.
COUNTY OF WINNEBAGO)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Christopher Holmon
Employee/Petitioner

v.

The Swiss Colony
Employer/Respondent

Case # 21 WC 009183

Consolidated cases: None

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Francis Brady, Arbitrator of the Commission, in the city of Rockford, on October 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. x☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. x☐ Was timely notice of the accident given to Respondent?
F. x☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. x☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. x☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance x☐ TTD
L. x☐ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **December 6, 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 not sustain an accident that arose out of and in the course of employment.

Timely notice of this accident **was not** given to Respondent.

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

In the year preceding the injury, Petitioner earned $**26,208**; the average weekly wage was $**504.00**.

On the date of accident, Petitioner was **35** years of age, ***single*** with **4** dependent children.

Petitioner is unentitled to reasonable and necessary medical services.

Respondent is not obligated for 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

Petitioner did not prove he suffered a compensable accident within the meaning of the Illinois Workers' Compensation Act while under the employ of the Respondent. Therefore, all benefits sought by the Petitioner are hereby 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.

DECEMBER 12 2024

_____
Signature of Arbitrator

STATEMENT OF FACTS:

Christopher Holman, petitioner, "Holman" started working for The Swiss Colony, respondent, "Colony" sometime around the last week in November 2020 but was uncertain on the exact date as it "has been awhile." (TR 13, 14). He had never experienced "any problems with (his) right knee" (TR. 35)

On December 6, 2020, "the accident date" he stood at a conveyor at Colony ". . . basically at waist height" pulling off defectively wrapped packages of ". . .various . . . things. It could be from your household utensils - - I can't - - don't get me wrong I can't remember. It's been a while" weighing ". . . something up to 30, 40 pounds, something all the way up to 2 pounds. It could be - - there's many different things, but they're all wrapped up. So, I don't know exactly, but I just don't know. Some packages could be more than 50, but I would give it around 50 pounds if I'm estimating" (TR. 15, and 16). Donald Thelander," Thelander" was a supervisor for Colony on the accident date and testified that the "heaviest item. . .coming down (Holman's) conveyor belt would be. . . 10 pounds." (TR 41,42, 43).

Holman was "working 10 hours" on the accident date "but . . . more than 10 hours for sure. 10 and 12 hours for sure daily" on a 4-day work week . . . he thought - - ". . . it's been a while." (TR. 17). "(A)ll day long..." he was twisting and bending taking packages off the belt and placing them on the floor or "putting it back up." (TR 17, 18, 49, 50, 51) Thelander testified that if a package is not properly wrapped Homan picks it off the conveyor and with a rightward turn placed it on another conveyor for return (TR 49, 50, 51). Aaron Lehman, "Lehman:" Assistant Manager for Colony on the accident date testified that packages with flawed wrapping should never be placed on the floor, always on the other conveyor (TR 52, 56)

After his shift on the accident date, Holman felt "regular achiness" in his ". . . calves, leg. . . just- - in both . . . legs. . . knees, both of them . . . more in (the) right leg" (TR 19) "So all the way up my legs, just regular achiness from working a long shift. . . I never had any serious injuries so - - I never thought that I had an injury." (id) "That was the last thing on my mind" (TR 20) Holman was thinking nothing of the aching in his legs, but it remained after a shower and was present the next morning when he awakened though he had "less fatigue . . . It wasn't too much. . . it felt a little better" (TR 21) He was off work that day (TR. 21, 25) and later was driving to the gas station to get himself some orange juice when, he "pressed down on the brake, (and) felt pain shoot up (his) leg. . ." taking his breath away and he drove himself to the emergency room "ER" at Saint Anthony's Hospital, "SAH" (TR 21, 22) where his records document he had Chief Complaint" of "Knee Problem" specifically ". . . having pain in right knee yesterday . . . when he puts pressure on his right leg his knee hurts and he feels faint." (PX 2., 21, 23) Later histories contained in the record of this SAH visit confirm that Holman's symptoms of right knee pain began the day before and "progressively worsened. . . "such that ' . . . when he stands up the pain is so severe . . . he feels as though his is going to pass out" (PX 2., 23) "He denie(d) injury" (id) indeed he told "Tina" his pain "just came out of nowhere . . ." he ". . . was at work . . (and) just felt like regular fatigue and just some achiness because (he) worked about 12 hours." (TR 23, PX 2., 23) "Tina" asked ".... so, you got hurt at work?" And Holman replied, "Well, I was at work when I felt the pain . . ." (TR. 23) "Tina" told Holman there was nothing in his x ray and he needed to call his insurance carrier, which he discovered was Aetna (TR 23). Holman's recollection of "Tina's" verbal report is substantiated by the written report of the right knee x ray at SAH on December 6, 2020, demonstrating per Dr. Randall Rhodes,

"Rhodes", "boney structures intact, normal joint space . . . no . . . soft tissue calcification. . . "(PX 2., 28), Rhodes' impression was "negative right knee" (id)

Diagnosis at SAH was "Acute pain of the right knee" without acute findings on x ray. (PX 2., 26) SAH personnel advised Holman his "pain may be caused from strain, and he was given a hinged knee brace and discharged home with pain medication with direction to elevate and ice the leg frequently and follow up with his PCP. (PX 2., 26) He walked with the brace without any problem. (id).

There was no "Tina" involved in his care at SAH on December 6, 2024 (PX. 2., 21 and 22 and 21 – 28); no mention at all was made of his job with Colony (id), and his functionality was not limited. (PX 2., 21 – 28)

As soon as he got home from SAH Holman called Colony and just left a voicemail that he'd seen a doctor and been diagnosed with water on the knee, and he expected to be better by Monday. (TR. 25) Apparently, he mentioned nothing about the cause of his condition. (id)

Holman continued to have "really bad pain in his right knee . . .worse pain (he) ever had" (TR 26) so he called Colony again and spoke with a female, whose name he couldn't remember after "nearly 4 years, maybe close to 5 years" but she was Caucasian sounding. (TR 26, 27, 29, 36) Again he included nothing about how he ended up in the worse pain he'd ever experienced but he told the female he wasn't quitting, just that he physically couldn't do his job. (TR 27, 29)
\
Thereafter at some point, he didn't know when, he got unemployment papers which he filled out (TR 27).

On January 14, 2021, Holman retuned to SAH (TR 29) complaining of lots of bilateral knee pain and fatigue while standing which he thought might be due to fluid. There was right arm pain as well. (PX. 2., 30, 32) His presentation of December 6, 202 was noted, particularly the referral to an orthopedic surgeon and application of the knee brace. (PX. 2., 32). He had not seen an orthopedist and had used the brace "for approximately 3-4 days. . . "(id) SAH personnel recorded Holman again denied injury. (id) X-Rays were done of both knees due to Holman's "chronic pain" and were "normal appearing" (PX. 2., 35) Homan requested, and was provided a hinged brace for his left knee. (PX. 2., 35 He was specifically directed to follow up with an orthopedic specialist. As with his visit of December 6, 2020, the records memorializing his January 14, 2021, presentation are devoid of any mention of work whether as a cause or aggravation of his condition or a physical function he was unable to fulfill. (PX. 2., 29 - 37.)

After this visit to SAH Holman's knee got worse (TR 30.) He was neither working nor able to perform house duties. (id) He sought further care on March 3, 2021, at OSF Rock Cut "Cut" (TR 30; PX. 3., 65 with Dr. Kinda Muslemani, "Muslemani" charting Holman wished to "establish care and follow up on his chronic issues. . . (ongoing bilateral knee pain . . . after starting at . . . Colony. Hx of fluid in right knee" (PX. 3., 65). Muslemani recorded Holman's right knee pain since December resulting in an ER visit and bilateral pain commencing in January, also necessitating presentation at the ER. (id). Holman told Muslemani there had been no trauma to his knees. (id) Muslemani diagnosed chronic pain and had a blood work up performed trying to ascertain the cause (PX.3, 67). An MRI was to be considered if the cause remained elusive. (id; TR. 30, 31) In the meantime. Holman was not scheduled for a return appointment but told to come back if he failed to improve or his symptoms worsened, and he was instructed to follow up with Orthopedic surgery. (PX. 3., 65, 68)

Other than noting there had been no trauma, and characterizing it as chronic, the records documenting the March 3, 2021, Cut visit make no allusion whatsoever to the provenance of Holman's bilateral knee pain. (PX. 65 – 69)

Holman's ongoing right knee pain prompted his return to the Cut on March 18, 2021, where he was treated by Dr Tariq Khan, "Khan" who listed Holman's previous x-rays for bilateral knee pain which were negative for acute findings and MRIs were pending (PX. 3., 70). Holman located his current pain along the medial and lateral joint line, greater on the right but acknowledged the pain was "slowly improving (due to) knee braces for the last three months." (PX. 3., 70, 71). Khan included no refence to Holman's functionality for work in his charting of the March 18, 2021, visit. (PX. 3, 70 – 73) Neither did Khan record any indication that work was considered an etiology for Holman's condition(s) (id)

On March 23, 2021, Holman underwent right knee MRI upon Muslemani' s orders due to ongoing "knee pain" disclosing a "large horizontal tear (of the) medical meniscus posterior horn" (TR., 30, 31 and RX 2., 45). With this MRI result Holman was seen by an orthopedist, Dr Anthony Blint, "Blint" on April 29. 2021 (TR 31; and PX 2., 46) who charted a history of "may planting and twisting mechanism" working at Colony previously in December resulting in medial and lateral -sided pain (PX 2., 46). Blint recommended Holman undergo "right knee arthroscopic partial medical meniscectomy, synovectomy debridement, (and) possible corticosteroid injection", such procedure to be scheduled pending "workman's compensation approval" (PX. 2., 48) Blint fails to document any limitations on Homans physical capacity (PX. 2., 46,47,48)

Surgery consisting of right meniscus repair (arthroscopic meniscectomy and synovectomy) was performed on June 16, 2021, (PX 2., 39) and while it "went successfully", recovery "was hard, was very painful and hard and lengthy." (TR.31). Holman presented at SAH ER on June 22, 2021, complaining chiefly of right lower leg and knee pain worsening after the surgery (PX 2., 38, 39) X Rays of the right knee were negative and ultrasound revealed no evidence of thrombosis in the right leg. (PX 2., 41) ER personnel contacted Blint concerning Holman's visit and he recommended the right knee be wrapped, iced, and elevated and that Holman follow up (with him) outpatient at already scheduled postop appointment" (PX 2., 38, 44). No mention is made of Holman's physical capacity (PX 38 – 44)

Holman saw Blint on June 24, 2021, "8 days status post right knee arthroscopic partial medical meniscectomy, extensive synovectomy and debridement' with Blint noting the June 22, 2021, ER visit secondary to pain resulting in negative DVT scan (PX. 2., 49) Blint recorded Homan had "0 arthritic changes throughout his knee" (id) He prescribed physical therapy "PT" to get the "knee working better"; extensively discussed proper icing compression and elevation; and scheduled Holman for a return appointment in two weeks. (PX. 2., 50). Blint failed to address limitations on Holman's physical functionality (PX. 2., 49 – 52)

On July 15, 2021, Holman returned in a wheelchair causing Blint to observe his presentation was "certainly out of proportion to his previous operation as he had a very slight medical meniscectomy without really a very extensive operation." (PX 2., 53) His level of pain was unjustified by the care he'd undergone, and he needed to be out of the wheelchair as he was developing flexion contracture to his knee. (PX 2., 54). No note was made that Holman's ability to work was considered (TR 2 53 -57, 85). No reference to work activity as a causative element was charted (id)

Holman started PT for his knees on July 28, 2021 (TR 32) telling the therapist "That the initial injury occurred while working at temporary seasonal job at Swiss Colony on 12/6//20 after working a 10 hour shift. (He) denies specific incident causing injury, but felt general muscle fatigue and R knee strain by the end of his shift. . . the pain in his knee increased and (he) was able to drive himself to the hospital for medical assessment. . . (where he) was diagnosed with "fluid on the knee;' (He) was cleared to return to work for the following scheduled day by the MD. . ." but believed himself incapable and never returned to the job per his own decision (PX 3, 80,81) He had right knee surgery on arthroscop9ic repair on June 16, 2021 and used a wheelchair for a month thereafter followed by crutches which he was still employ He was currently not driving and ambulating with difficulty, particularly ascending step (PX 3/., 81) His "rehab potential (was) good" (PX. 3., 84). Holman

continued with PT presenting for sessions on August 2, 2021; August 4, 2021; August 10, 2021; August 26, 2021; September 2, 2021; September 8, 2021; September 23, 2021; September 30, 2021; and October 14, 2021; (TR. 32, 33; RX. 3., 87 – 102 and 105 - 1088) As of August 26, 2021, he was progressing (PX. 3., 98) The therapist further noted improvement on September 8, 2021(PX. 3., 100)

Holman had his last visit with Blint on September 30, 2021 and Blint observed his "exceedingly slow progress the beginning in the face of a quite benign arthroscopy. . . (with) . . . minimal pathology in his knee and overall, the condition of his knee was pristine following his arthroscopy" (PX. 3., 103) Blint prescribed continued PT and" significant home exercise with a dose of oral anti-inflammatory and a return appointment in one month's time (PX. 3., 104) No mention was made of holding Holman off work as all (PX. 3., 103-104)

Homan continued to improve in PT as of October 14, 2021 (PX. 3, 107).

At about this time Holman went back to work but not for Colony (TR 33.) He's been working since but hasn't been able to function in long shifts, ". . . 10 to 12 hours for 5 days in a row. . . "(TR. 35"

On January 19, 2024, Blint, without objection testified, that on April 29, 2021 Holman told him he "planted and twisted while carrying significant weight transferring boxes and he felt a pop in his right knee. . ." and this is "one of the more common mechanisms in which a meniscus can be torn." (PX 4., 109). Holman "had a lot of conversations" with (Blint)" and couldn't "remember everything in detail" (TR 37) "But if I said a pop, then I guess that would be referring to when I felt more pain when I was feeling achiness before that (TR 37)

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:

Holman proved **only** that Blint **believed** he might have torn his meniscus at work for Colony on December 6, 2020, planting and twisting while carrying significant weight as he transferred boxes and his knee popped. Blint's **belief** is wholly unsurprising since that's what Holman told him happened when he initially presented on April 29, 2021.

But Holman gave that version only once. Otherwise, he universally recounted a different story.

Interestingly when Holman took the oath, he said nothing about having an injury at work, he was experiencing only his normal discomfort and fatigue after a long shift. The next day, which he had off from work, after a shower his legs felt better. Later, though as he drove to the gas station to get himself some orange juice, he suffered searing leg pain depressing the brake. Months of treatment followed and at every opportunity Homan not only failed to relate a history of work injury, he also often specifically denied any such thing. (See histories at the SAH ER; the Cut (Muslemani and Khan) and PT detailed under FACTS above). Finally, to the extent Holman felt a pop in his knee he felt it the next day while he was off work driving himself to a gas station on a personal errand.

Prior to April 29, 2021, and for the most part even after, the record is devoid of any evidence that Holman had the kind of knee trauma that Blint relied upon, except maybe driving his car the next day.

The only singular identifiable trauma Holman proved here (if he proved any) transpired in circumstances neither arising out of nor in the course of his employment with Colony.

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Holman's testimony failed to demonstrate he ever claimed any accident on the only two occasions he gave notice to Colony. He didn't specify an approximate date or place let alone did he advise he'd been hurt at work. Such is entirely consistent with his routine (for months) of disconnecting his injury from any work cause.

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

Based on the foregoing facts and conclusion, Holman also failed to prove by a preponderance of the evidence that any work trauma caused or aggravated his condition of ill being.

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

Holman is unentitled to any benefits under the Illinois Workers Compensation Act given his failure to prove by a preponderance of the evidence accident, notice and causation.

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:

Holman is unentitled to any benefits under the Illinois Workers Compensation Act given his failure to prove by a preponderance of the evidence accident, notice and causation.

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

Holman is unentitled to any benefits under the Illinois Workers Compensation Act given his failure to prove by a preponderance of the evidence accident, notice and causation.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC012709
Case Name	Karim Alamdar v. Professional Security
Consolidated Cases	
Proceeding Type	Petition for Penalties
Decision Type	Commission Decision
Commission Decision Number	25IWCC0257
Number of Pages of Decision	12
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Jason Marker
Respondent Attorney	Miles Cahill

DATE FILED: 6/10/2025

/s/Maria Portela, Commissioner

Signature

25IWCC0257

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

KARIM ALAMDAR (KHULMI),

Petitioner,

vs. NO: 17WC012709

PROFESSIONAL SECURITY,

Respondent.

DECISION AND OPINION ON PETITION FOR PENALTIES AND ATTORNEY FEES

This matter comes before the Commission on Petitioner's "Petition for Penalties Under Sections 19(l), 19(k), and Section 16a of the Illinois Worker[s'] Compensation Act for Non[-] Payment of Award" (hereafter "Petition") filed on November 5, 2024.[1] A hearing was held before Commissioner Deborah Simpson on January 6, 2025, in Geneva, Illinois and a record was made.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1) On November 8, 2021, an arbitration hearing was held in this matter and a decision was issued on May 3, 2022.

2) Respondent filed a timely Petition for Review of the Arbitrator's decision.

3) On October 10, 2023, the Commission issued its Decision and Opinion on Review, which affirmed the Arbitrator's award of temporary total disability (TTD) benefits of $341.33 per week for a period of 237-5/7 weeks and also made various corrections including, in relevant part:

[1] CompFile reflects that Petitioner filed two similar petitions. The first was filed on September 10, 2024 and motioned up before Arbitrator Hegarty, which was "continued to disposition." The second was filed on November 5, 2024 and motioned up before Commissioner Portela. This Decision addresses Petitioner's second petition, which was heard by Commissioner Simpson on January 6, 2025 because the hearing was held in Geneva, Illinois.

> 3. Modify the medical award from a specific dollar amount ($50,282.32) to an award of "medical expenses in evidence related to Petitioner's conditions of ill-being that have been found herein to be causally related to his work accident." The Commission notes that we were unable to determine how the Arbitrator arrived at the specific amount that was awarded.

Commission Dec. at 3.

4) Respondent did not file an appeal to the circuit court within 20 days so the Commission Decision became final on October 30, 2023.

5) The following are significant and relevant events from the record. Other correspondence and evidence in the record have been reviewed but only the evidence that is necessary to address Petitioner's Petition is included below.

6) On December 14, 2023, Petitioner's attorney emailed Respondent's attorney requesting an update regarding payment of the award, confirming that medical expenses would pay paid moving forward, and requesting Respondent's calculations of the fee schedule relating to the medical award. *PxC, T.58*.

7) On January 4, 2024, Petitioner's attorney sent a follow up email requesting a status regarding the payment of the award. *Id. at 61.* On January 5th, Respondent's attorney replied, "The claims representative has indicated to me that she is inputting the check and hopes to have the Xpress mailed to your office. I have asked her to provide me with the tracking number as soon as that is accomplished. I hope to be able to give you that tracking number later today or on Monday morning before the pre-trial." *Id.*

8) On January 8th, Petitioner's attorney emailed Respondent's attorney the following:

> Thanks for the update.
> Here is a summary of items we need to discuss/ what I'm asking for moving forward:
>
> 1. A breakdown of how you/the carrier computed the award and payment we are about to receive. I still have gotten no response there. I have no idea how you all are coming up with any number and whether whatever amount [you're] sending me is even accurate without that. I've done my own numbers and am happy to share once I know what you all came up with, but I want to avoid any issues on this. So, please let me know ASAP.
>
> 2. TTD: I need to know/confirm that TTD will be paid from the date of the award to present. Was that factored into your calculation of whatever is being sent to my office? If not, we need that paid.
>
> 3. Adjuster info: Please send me the name of the new adjuster on this file and his/her contact information. We need this moving forward to give medical providers as they are all looking for approval for treatment which the Arbitrator found related.
>
> 4. Medical: I need an assurance from your client the prospective treatment moving

> forward will be approved as found related by the Commission. That means the pending surgery to his arm, treatment for his knees, treatment for his neck and back, treatment his head (post concussion syndrome), and treatment for his depression and anxiety. I'll have to continue to file 19(b)'s/8(a)'s unless your client can assure this will all be done.

Id. at 60.

Later, on January 8th, Respondent's attorney replied with the contact information for the ESIS claims representative, Constance Navarrete. *PxC at 65*.

9) On January 16th, Petitioner's attorney emailed Respondent's attorney, "We have still not received this check. Can you please follow up with your client for an update? If it was sent, what address was it sent to? Hopefully not our old address?" *PxC at 62*.

10) Petitioner's attorney sent Respondent's attorney the following emails on the corresponding dates:

1/23/24	"I never did get any shipment notification/confirmation from you on this. [It's] about the end of the day today also and no check has come to my office. Can you find out what is going on please?" *Id. at 64*.
1/25/24	"What is going on? I had told my client a check would be here Tuesday. Now I'm looking bad. Please help. Thank you." *Id. at 63.*
1/26/24	"Miles?" *Id*.
2/2/24	"I just left you another VM [M]iles. I guess I have no choice but to motion this file up again for fees and penalties." *Id. at 66*.

11) On February 6, 2024, Respondent's attorney emailed Petitioner's attorney, "I got an email that the check was delivered to your old address. I am asking the rep to locate where it is now." *Id. at 67*. Petitioner's attorney replied, "I had clarified this with you and this still happens? It feels like we are just getting jerked around here Miles. Please have them next day overnight/deliver a new check to my office immediately." *Id. at 68*. Petitioner's attorney then emailed Arbitrator Hegarty (with a cc to Respondent's attorney) the following, in relevant part:

> The parties had resolved the matters verbally and we were waiting on payment of the award form [sic] the new adjuster on this file. Miles has confirmed that the adjuster sent payment to our wrong (old) address. The adjuster is waiting to confirm the check has not been cashed before sending a new check, but we anticipate this will happen over the next few days.

Id. at 69.

12) On February 12, 2024, a check was issued by CHUBB (Respondent's insurance carrier) to Petitioner and his attorneys in the amount of $81,139.02 representing 237-5/7 weeks of TTD

benefits. *PxD, T.88*. We note that the check purports to be for the period of "04/20/2017 - 11/18/2021." *Id*. However, we find that the end date is incorrect. The hearing was on November 8, 2021 and the Commission had awarded TTD from April 20, 2017 through November 8, 2021. *PxA, B*. We find that the 237-5/7 weeks of TTD paid in this first check represented full payment of the TTD portion of the Commission's award through the date of the Arbitration hearing on November 8, 2021.

13) On February 13, 2024, Petitioner's attorney emailed Respondent's attorney, in relevant part regarding the unpaid medical award:

> Questions/Items still needed moving forward:
>
> 1. Medical was awarded as well. It was awarded to be paid at the fee schedule rate, but "To Petitioner" if you look at the original Arbitrator's decision. The Commission modified the amounts to simply say "at the fee schedule rates". So - we need to come to resolution on that and a check needs to be sent to our office for all of that medical. As I had mentioned previously, I had computed the outstanding amounts at the fee schedule rate and attached those computations to each of our exhibits, which is how we came up with the total number of $50,282.32, which was awarded by Arbitrator Granada. So, if your client wants to review those exhibits/computations OR do their own, I would ask that you please have them do so ASAP. Frankly, this all should have been done months ago as I think you would agree. Point being that the still owe this amount as well and we need to get that check so we can pay bills.
> …

PxC, T.72.

14) On June 6, 2024, CHUBB issued a check in the amount of $45,396.89 for 133 weeks of TTD. The check indicates it was for the period from "11/19/2021 – 06/07/2024." *PxE, T.90*.

15) On July 8, 2024, Petitioner's attorney emailed Respondent's attorney, "Any word on this file? TTD has not been continuing weekly or bi-weekly. Past Medical not paid. Continued medical not being paid/approved. What's the word on your end or are we just going to trial on 7/29?" *PxC, T.84*.

16) On July 18, 2024, CHUBB issued a check in the amount of $34,235.00 for TTD from "11/19/2021 – 10/19/2023." *PxF, T.92*. We note that this period overlaps the period that had been paid in the June 6th check.

17) On November 5, 2024, Petitioner filed the instant Petition alleging, in part, that Respondent failed to pay the Commission's TTD award for "105 days (15 weeks – or over 3 months) after the Commission's decision went final on 10/30/23" (*Petition at #6*) and that "Respondent has failed to pay ANY of the medical award up to the time of the filing of this petition (as of September 8, 2024). Thus, Respondent has failed to make a payment of any of the medical for 315 days or 45 weeks!" *Id. at #8*.

18) On December 6, 2024, Respondent's attorney emailed Petitioner's attorney the following:

> Attached please find a copy of the fee schedule analysis that was conducted relating to

> medical expenses incurred by the petitioner from 2017 through July of 2024. It does appear that the bills had been identified as having a face value of $200,000 and a fee schedule payable amount of approximately $100,000. I would appreciate your reviewing the analysis to determine if your office has any objection or criticism of the fee schedule calculation completed by the vendor for the insurance carrier. If you do have a dispute as to the fee schedule calculation please let me know. If there is not a dispute concerning the fee schedule calculation I will be requesting that the claims representative issue a payment on the bills in care of your office. Please review this matter and let me know your review and analysis of the claimed medical bills if it differs from the fee schedule review completed by the carrier.

PxI, T.114.

19) On January 3, 2025, Petitioner's attorney emailed Respondent's attorney outlining the discrepancies he had with Respondent's fee schedule amounts. *PxI, T.112.*

20) At the Petition hearing on January 6, 2025, Petitioner's attorney stated that Respondent's fee schedule amounts from 2017 through the Arbitration hearing in November 2021, plus Petitioner's additional claimed fee schedule amounts total $72,565.77. *T.14-15, 30-47; PxI, T.112; PxJ, T.116.*

21) Respondent's attorney did not dispute Petitioner's claim that no payments had been made toward the Commission's medical award. *T.16*. However, Respondent's attorney stated that all TTD payments to date have been made and Respondent is entitled to a credit against future TTD payments. *T.16-17.* He further stated, "the first time the parties had reached an agreement in terms of the fee schedule amounts that have been awarded was January 3, 2025, with the exchange of the December 6th, 2024 fee schedule analysis and Mr. Marker's review of that on January 3, 2025. And the respondent has -- I have forwarded that agreement to the respondent in order to ask that the medical bills be processed. And we already had acknowledged, counsel had already acknowledged an overpayment of the TTD benefits based upon the payments made by the respondent." *T.34*.

22) Petitioner's Exhibit J was admitted into evidence without objection. *T.32, 34*. This document was titled, "ESIS Denied Bills Report." It is a spreadsheet containing multiple columns including "Provider Name," "Service From Date," "Service To Date," "Client Received," "Date Reviewed," "Provider Charges," and "Estimate FS Allowed." It includes service dates from "4/11/2017" through "7/19/2024." On page 1, there is a handwritten notation at the bottom of the "Estimate FS Allowed" column indicating either "$47,785.36" or "$47,755.36." On page 2, there is a handwritten line, indicating a separation between the charges prior to the Arbitration hearing and those incurred after. There is also a handwritten notation of $71,695.44." *PxJ, T.116-19*.

Initially, the Commission notes that the only issues before us on Petitioner's Petition are Respondent's late payment of the Commission's TTD award and the non-payment of the Commission's medical award pursuant to its October 10, 2023 Decision, which became final on October 30, 2023. We are not addressing Respondent's failure to timely pay either of these benefits prior to the Arbitration hearing on November 8, 2021, because penalties and attorney's fees were not

issues at the time of that hearing. Similarly, we are not addressing Respondent's alleged failure to timely pay any benefits which have accrued after November 8, 2021. Those issues were addressed in a subsequent §19(b) decision by Arbitrator Hegarty. That hearing was held on July 29, 2024 and August 20, 2024, and an Arbitration Decision was issued on November 19, 2024. *PxG, T.94*. We note that Respondent has filed a Petition for Review on that Decision, which is currently pending Oral Arguments.

"'Where there is a delay in paying compensation, it is the employer's burden to show it had a reasonable belief the delay was justified'" and "[w]hether the employer's conduct justifies the imposition of penalties is to be considered in terms of reasonableness and is a factual question for the Commission." *Boker v. IC*, 141 Ill. App. 3d 51, 57 (3rd Dist. 1986) (Citations omitted). We find that Respondent did not have any reasonable justification for the delay in payment of the Commission's award. Section 19(l) of the Act provides, in relevant part:

> 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). We find Respondent has unreasonably delayed payment of the medical award for 434 days from October 31, 2023 (day after the Decision became final) through January 6, 2025 (the date of the hearing on this Petition). Based on the provisions of §19(l), Petitioner is entitled to the maximum penalty of $10,000.00. Petitioner's Petition also requests §16 attorney's fees on the §19(l) penalties but "[n]o provision is made in section 16 for an award based upon conduct proscribed in section 19(l)." *Boker* at 58-59; *820 ILCS 305/16*. Therefore, we decline to award attorney's fees on the §19(l) award.

Respondent and its insurance carrier were obligated to issue payment for the Commission's final award in a timely manner without being reminded and pursued by Petitioner's attorney. Due to Respondent's delay, Petitioner's attorney was required to follow up with Respondent's attorney twice (December 14, 2023 and January 4, 2024). Even after Petitioner's December 14, 2023 email inquiry, Respondent's attorney waited 23 days before replying. Respondent's attorney finally responded on January 5, 2024 that "the claims representative has indicated to me that she is inputting the check and hopes to have the Xpress mailed to your office. I have asked her to provide me with the tracking number as soon as that is accomplished. I hope to be able to give you that tracking number later today or on Monday morning before the pre-trial." *PxC, T.61*.

There is no evidence that Respondent's attorney ever provided the tracking number to Petitioner's attorney. Petitioner's attorney had to email Respondent's attorney at least five times (1/16/24, 1/23/24, 1/25/24, 1/26/24 and 2/2/24) before Respondent's attorney finally replied, on February 6, 2024, that "I got an email that the check was delivered to your old address. I am asking the rep to locate where it is now." *PxC, T.67*. The check for the unpaid TTD was finally issued on February 12, 2024. *PxD, T.88*. Respondent's attorney represented to Petitioner's attorney, on January 5, 2024, that "the claims representative has indicated to me that she is inputting the check" and, on February 6, 2024, that Respondent's attorney "got an email that the check was delivered to your old address." However, there is no evidence in the record that either of those representations made by

the claims representative to Respondent's attorney are true.

We find that the delay of 105 days between October 31, 2023 (day after the Decision became final) through February 12, 2024 (when the TTD check was issued) is unreasonable and vexatious under the circumstances in this case. The delay between October 31, 2023 and January 5, 2024, when Respondent's attorney first responded to Petitioner's attorneys inquiries regarding payment of the award is unacceptable. Even more disconcerting is that Respondent's attorney failed to respond to Petitioner's attorney's multiple additional inquiries from January 16, 2024 through February 2, 2024, until Respondent's attorney finally did so on February 6, 2024. We are also greatly disturbed by Respondent's failure to introduce any evidence of its own that would support a finding that the delay was justified. Therefore, we find that Respondent's behavior was unreasonable and vexatious such that it warrants the imposition of penalties under §19(k) of the Act.

We are mindful that, by the time of the hearing on this Petition, Respondent had paid the TTD portion of the Commission's award, had paid all TTD that had accrued after the arbitration hearing and was even entitled to a credit for overpayment. However, those facts are irrelevant to our determination that Respondent's behavior between October 31, 2023 and February 12, 2024 was unreasonable and vexatious. "Section 19(k) penalties and attorney fees pursuant to section 16 may be based on the entire amount of the award that has accrued or only the unpaid portion thereof, as the Commission in its discretion sees fit." *Navistar International Transportation Corp. v. IC*, 331 Ill. App. 3d 405, 415 (1st Dist. 2002). Under the circumstances here, we find that Respondent shall pay 50% of the entire TTD award as penalties under §19(k) as follows:

Commission's TTD award	$81,139.02
§19(k) penalty rate	x 50%
§19(k) penalty for TTD	$40,569.51

Having found that Respondent's failure to timely pay the TTD award was unreasonable and vexatious, we also award attorney's fees pursuant to §16 as follows:

§19(k) penalty amount	$40,569.51
§16 attorney's fees rate	x 20%
§16 attorney's fees for TTD	$ 8,113.90

We next address Respondent's failure to pay the medical expenses awarded in the Commission's Decision. Petitioner's Exhibit J was admitted, without objection, and reflects the fee schedule calculations of Respondent's agent, "ESIS MedBill Impact," which had been emailed by Respondent's attorney to Petitioner's attorney on December 6, 2024. We find that this spreadsheet contains the fee schedule amounts that Respondent believed it was obligated to pay, pursuant to the Commission's Decision, through the date of the Arbitration hearing on November 8, 2021. It also contained fee schedule calculations for additional medical expenses through July 19, 2024. Respondent's fee schedule calculations are contained in the last column titled, "Estimate FS Allowed."

In addition to Respondent's calculations, Petitioner submitted into evidence an email (*PxI,*

T.112), dated January 3, 2025, containing his fee schedule analysis, which claimed greater amounts for certain charges than Respondent had calculated. Respondent did not introduce any exhibits at the hearing on this Petition and did not dispute that Petitioner's attorney's additional-claimed amounts were correct.

We find that the total of the "Estimate FS Allowed" column on the first page of the "ESIS Denied Bills Report" (*PxJ)* is $49,241.36. The total for that column on the second page through the "10/26/2021" date of service is $23,955.08. Adding these together, Respondent's total fee schedule analysis for charges awarded by the Commission through the arbitration hearing on November 8, 2021 is $73,196.44. We find that Petitioner's increased fee schedule calculations for the following charges, as identified in *PxI*, should be added to the amount reflected on Respondent's spreadsheet:

1. Presence Mercy- DOS 4/11/17	$ 51.14
2. Presence Mercy- DOS 6/2/17	145.34
3. IBJI - DOS 10/29/20-	186.18
4. IBJI - DOS-1 /28/21	186.18
5. IBJI - DOS-4/29/21 -	186.18
6. IBJI-DOS-7/29/21 -	223.42
	======
Total additional fee schedule amounts:	$978.44

Therefore, we find that, pursuant to the Commission's decision, Respondent was obligated to pay a total fee-schedule-adjusted amount of $74,174.88 for medical expenses ($73,196.44 from Respondent's fee-schedule calculations plus $978.44 in additional amounts calculated by Petitioner).

We find that Respondent's failure to pay this amount in a timely manner was unreasonable and vexatious under §19(k) of the Act. Petitioner's attorney emailed Respondent's attorney on multiple occasions, since the Commission's Decision became final on October 30, 2023, requesting payment of the medical award. The evidence indicates that Respondent's attorney did not respond specifically regarding the unpaid medical award for over a year. On December 6, 2024 he emailed Petitioner's attorney with Respondent's fee schedule analysis and asked if Petitioner's attorney agreed with those figures. Respondent's attorney wrote, "If you do have a dispute as to the fee schedule calculation please let me know. If there is not a dispute concerning the fee schedule calculation I will be requesting that the claims representative issue a payment on the bills in care of your office." *PxI, T.114*. The implication here is that the only way Respondent would issue a check for the unpaid medical expenses is if Petitioner's attorney acquiesced to Respondent's calculations and, if Petitioner's attorney did have a dispute, then Respondent would not issue a check, even though it had already performed the fee-schedule calculations itself and arrived at an amount that it believed it owed.

We also note that the ESIS report includes a column for "Client Received," which appears to be the date the Respondent, its insurance carrier or its agent "ESIS MedBill Impact" received the provider's bill. It also includes a column, "Date Reviewed," which appears to be the date that ESIS performed the fee schedule calculation. The vast majority of the charges reflect a "Date Reviewed" in 2017, 2018, 2019 or 2020, which indicates that Respondent knew what it believed to be the fee schedule amounts long before the arbitration hearing on November 8, 2021. Some of the charges show a "Date Reviewed" in 2021 but still prior to the arbitration hearing. There are only a few charges

that reflect a "Date Reviewed" after the arbitration hearing but the latest of these is "7/16/2024," which is still almost five months prior to Respondent's attorney's email to Petitioner's attorney containing the fee-schedule analysis.

We find there was no justifiable excuse for Respondent's failure to pay the Commission's medical award. "The employer's delay in paying the uncontested award in the present case served no purpose except to delay compensation to an injured worker, a result that the penalties are designed to prevent. We want to be clear on this point. Any portion of a claimant's benefits which are undisputed must be promptly paid or the employer will be subject to penalties and attorney fees under the Act." *Jacobo v. IWCC*, 2011 IL App (3d) 100807WC, 959 N.E.2d 772, 783. It was unreasonable and vexatious for Respondent to have withheld the undisputed portion of the medical expense award simply because there may have been a dispute about the appropriate fee schedule amount for some of the charges.

Based on our finding that Respondent's failure to timely pay the medical award was unreasonable and vexatious, we find Petitioner is entitled to penalties under §19(k) as follows:

Commission's medical award	$74,174.88
§19(k) penalty rate	x 50%
	========
§19(k) penalty for medical	$37,087.44

Having found that Respondent's failure to timely pay the medical award was unreasonable and vexatious, we also award attorney's fees pursuant to §16 as follows:

§19(k) penalty amount	$37,087.44
§16 attorney's fees rate	x 20%
	========
§16 attorney's fees for medical	$ 7,417.49

Petitioner also requests interest pursuant to Section 19(n) of the Act, which provides:

After June 30, 1984, decisions of the Illinois Workers' Compensation Commission reviewing an award of an arbitrator of the Commission shall draw interest at a rate equal to the yield on indebtedness issued by the United States Government with a 26-week maturity next previously auctioned on the day on which the decision is filed. Said rate of interest shall be set forth in the Arbitrator's Decision. Interest shall be drawn from the date of the arbitrator's award on all accrued compensation due the employee through the day prior to the date of payments. However, when an employee appeals an award of an Arbitrator or the Commission, and the appeal results in no change or a decrease in the award, interest shall not further accrue from the date of such appeal.

The employer or his insurance carrier may tender the payments due under the award to stop the further accrual of interest on such award notwithstanding the prosecution by either party of review, certiorari, appeal to the Supreme Court or other steps to reverse, vacate or modify

the award.

820 ILCS 305/19.

"The Commission has jurisdiction to determine the interest due under a section 19(n) award." *Hughes v. IC*, 196 Ill. App. 3d 143, 145, 553 N.E.2d 113, 114 (4th Dist. 1990). Interest is also applicable to the medical award. *Vulcan Materials Co. v. IC*, 362 Ill. App. 3d 1147, 1152, 842 N.E.2d 204, 208 (1st Dist. 2005). The Arbitration Decision was filed on May 3, 2022 and, as required by the Act, set forth the applicable rate of interest at 1.42%. *PxA at* "*Decision Signature Page*," *T.41*. We find that the applicable daily interest rate is .00389% (1.42% / 365).

May 3, 2022, the date of the Arbitration Decision, through February 11, 2024, the day before Respondent issued the TTD check, is 650 days. We calculate the interest due on the TTD portion of the award as follows:

$81,139.02	TTD accrued as awarded in Arbitration Decision
x .00389%	Daily interest rate
$ 3.1563	Daily interest amount
x 650 days	5/3/22 through 2/11/24
$ 2051.60	§19(n) interest for TTD award

The Commission finds that Respondent has not paid any of the medical award and we calculate §19(n) interest, from the date of the Arbitration Decision on May 3, 2022 through the Petition hearing on January 6, 2025, as follows:

$74,174.88	Medical expenses accrued, pursuant to the fee schedule, as awarded in the Arbitration Decision
x .00389%	Daily interest rate
$2.8854	Daily interest amount
x 980 days	5/3/22 through 1/6/25
$ 2,827.69	§19(n) interest for medical award

In summary, we find Petitioner is entitled to:

Total §19(l) penalty (TTD and medical)		$10,000.00
§19(k) penalty for TTD	$40,569.51	
§19(k) penalty for medical	$37,087.44	
Total §19(k) penalties		$77,656.95

§16 attorney's fees for TTD	$ 8,113.90	
§16 attorney's fees for medical	$ 7,417.49	
Total §16 attorney's fees		$15,531.39
§19(n) interest for TTD	$ 2,051.60	
§19(n) interest for medical	$ 2,827.69	
Total §19(n) interest		$4,879.29
Total penalties, attorney's fees and interest		$108,067.63

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's "Petition for Penalties Under Sections 19(l), 19(k), and Section 16a of the Illinois Worker[s'] Compensation Act for Non[-]Payment of Award" is hereby granted as outlined above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner $10,000.00 for penalties pursuant to §19(l) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner $77,656.95 for penalties pursuant to §19(k) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner $15,531.39 for attorney's fees pursuant to §16 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner $4,879.29 for interest pursuant to §19(n) of the Act.

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.

June 10, 2025

/s/ *Maria E. Portela*

SE/
O: 1/16/25
49

/s/ *Christopher A. Harris*

/s/ *Marc Parker*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC019483
Case Name	Shannon Dobija v. State of Illinois - Department of Juvenile Justice
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0258
Number of Pages of Decision	22
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Scott G. Richmond
Respondent Attorney	Drew Dierkes

DATE FILED: 6/11/2025

/s/ Raychel Wesley, 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

SHANNON DOBIJA,

Petitioner,

vs. NO: 22 WC 19483

STATE OF ILLINOIS-ILLINOIS DEPARTMENT OF JUVENILE JUSTICE,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) and §8(a) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical care, and temporary disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 13, 2024, is hereby affirmed and adopted.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner's lumbar condition of ill-being is causally related to the January 9, 2022 accident, but that this causal relationship ended as of May 1, 2023. Petitioner's lumbar condition reached maximum medical improvement as of May 12, 2023.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner's thoracic condition of ill-being is causally related to the January 9, 2022 accident, but that this causal relationship ended as of May 1, 2023. Petitioner's thoracic condition reached maximum medical improvement as of May 12, 2023.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner failed to prove her cervical condition of ill-being was causally related to the January 9, 2022 accident.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner is not entitled to temporary total disability benefits after May 12, 2023. Respondent shall be given a credit of $37,813.82 for temporary total disability benefits previously paid. If the credit is related to the payment of temporary total disability benefits for a period of time prior to May 13, 2023, this credit is not applicable to any other award in this case. If this credit relates to payment of temporary total disability benefits for a period of time after May 12, 2023, Respondent may be entitled to credit for the amount paid for the period of time subsequent to May 12, 2023. Respondent may not take this credit against a period of temporary total disability that was not being claimed at issue at the June 25, 2024 hearing.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the reasonable and necessary medical expenses related to the treatment of Petitioner's lumbar spine which were incurred on or prior to May 12, 2023, pursuant to §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the reasonable and necessary medical expenses related to the treatment of Petitioner's thoracic spine which were incurred on or prior to May 12, 2023, pursuant to §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that medical expenses related to the treatment of Petitioner's cervical spine are denied.

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

IT IS FURTHER ORDERED BY THE COMMISSION that prospective medical treatment is denied.

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

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

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of the time

for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $1,900.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 11, 2025

/s/ *Raychel A. Wesley*

RAW/wde

O: 5/7/25

/s/ *Stephen J. Mathis*

43

/s/ *Christopher Harris*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC019483
Case Name	Shannon Dobija v. State of Illinois - Department of Juvenile Justice
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	Scott G. Richmond
Respondent Attorney	Drew Dierkes

DATE FILED: 9/13/2024

/s/Paul Cellini,Arbitrator

Signature

INTEREST RATE WEEK OF SEPTEMBER 10 2024 4.53%

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

September 13, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

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

SHANNON DOBIJA Case # **22** WC **19483**
Employee/Petitioner

v.

STATE OF ILLINOIS, DEPARTMENT OF JUVENILE JUSTICE
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Cellini**, Arbitrator of the Commission, in the city of **Geneva**, on **June 25, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **January 9, 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 conditions of lumbar and thoracic ill-being ***were*** causally related to the accident, but that this causal relationship ended as of May 1, 2023.

In the year preceding the injury, Petitioner earned $**43,101.00**; the average weekly wage was $**828.86**.

On the date of accident, Petitioner was **47** 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 $**37,813.82** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits.

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

ORDER

Petitioner's lumbar and thoracic conditions of ill-being were causally related to the January 9, 2022 accident, but this causal relationship ended as of May 1, 2023. Petitioner has failed to prove that her cervical condition of ill-being is causally related to the January 9, 2022 accident. With regard to the lumbar and thoracic conditions, the Arbitrator finds that Petitioner reached maximum medical improvement as of 5/12/23.

Petitioner is not entitled to temporary total disability benefits after 5/12/23.

Respondent shall pay reasonable and necessary medical expenses causally related to treatment of the lumbar and thoracic spine, as provided in Sections 8(a) and 8.2 of the Act, which were incurred on or prior to 5/12/23. Medical expenses related to cervical spine treatment are denied.

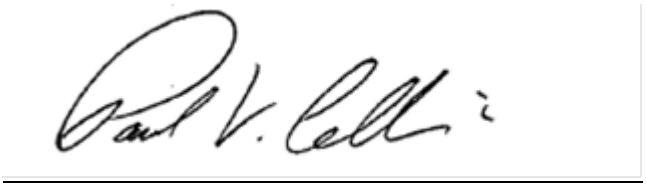
Respondent shall be given a credit towards any awarded medical expenses paid by Respondent prior to the hearing date via either the workers' compensation carrier or the group health carrier, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Prospective medical benefits are denied.

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

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

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



SEPTEMBER 13 2024

Signature of Arbitrator

STATEMENT OF FACTS

Petitioner was employed by the Illinois Youth Center (IYC) on a full time bases since 2018 as an Account Tech I, involving timekeeping data entry for 320 employees. Petitioner estimated that 90-95% of her job involved sitting at a computer. She also worked as a "fill in" waitress on weekends. On 1/9/22, a Sunday, Petitioner testified her supervisor allowed her to work overtime. She arrived at Respondent's facility around 7:55 a.m. and parked in a spot close to the entry door so she could carry in a large box of time sheets and other documents. She slipped when she put her foot down on ice as she got out of her pick-up and landed on her buttocks and right hand. She testified to immediate pain into her toes and swelling in the hand. She also testified she was unable to get up and ultimately two other employees who were waiting to go inside at 8:00 were in the lot and helped her up and into the facility. She asked the gate guard to contact the acting superintendent, Romulus Jordan. She went to her office and completed online notice to the Respondent and emailed her immediate supervisors to report the incident. At this point she testified she was feeling shooting pain down to her right toes, severe right hand swelling, and pain in her neck into the left shoulder. However, it was significant pain from the center of her back into her leg that was causing her to cry. She was taken to the on-site medical facility, where paperwork and witness statements were completed with Tristar.

Petitioner then drove herself to the Delnor Hospital Emergency Room, where she testified she reported back pain into her leg and right hand pain - "I just wanted the pain to stop." The history in the initial ER report was of Petitioner slipping on ice at work, hitting her back on her car, falling on her butt, and complaining of low back pain into the right/left leg and right hand pain. She denied neck pain, weakness, or paresthesias. The report also notes Petitioner stated that she was able to get up by herself after she fell. Neurological exam was normal with no lumbar radiculopathy. Lumbar x-ray reflected some disc height loss with vacuum disc and endplate sclerosis and marginal spurring at L5/S1, as well as additional levels of marginal endplate spurring of the lower thoracic and lumbar spine, and lower lumbar facet hypertrophy. There were no acute findings noted. Right hand x-ray was normal. Petitioner was discharged with medication and was advised to avoid heavy lifting or strenuous activity. (Px1).

Ultimately the Petitioner's right hand swelling resolved on its own. Her testimony acknowledged a history of a degenerative back condition going back to about 2014 and that she had undergone maintenance treatment at Fox Chiropractic since 2014. She described these as visits as "maintenance" because this was how she managed her back pain so it wouldn't be debilitating. She testified she went on more or less a monthly basis. The majority of the month she then felt good with relatively minimal pain and had no need to miss time from work. She denied any missed work prior to 1/9/22 due to back problems. She did need more frequent treatment at times. She testified that her pain was more of a discomfort before the accident with some days worse than others, while after the accident the pain was constantly severe and debilitating to where she couldn't even get out of bed. She

hoped she would improve with time, and now believes any improvement feels more like she has just adjusted to her symptoms. Petitioner testified she didn't have pain radiating down her leg until after the 1/9/22 accident.

Petitioner followed up with her primary provider, Certified Nurse Practitioner (CNP) Barbara DeCarlo, on 1/22/22. Petitioner testified she reported the accident, that her worst pain was low to mid back into the right foot, that it was starting to go down the left leg as well, and that she also noted pain in her neck and shoulder ("And the pain that I was having in my neck, slash, shoulder, I wasn't sure at that point where it was originating"). The 1/12/22 report of CNP DeCarlo notes a history of degenerative disc disease ("X-rays did show loss of disc height however uncertain if this is acute or chronic.") with complaints of pain radiating down the right leg, and the chief complaint section notes "now has thoracic spine pain." She was taking cyclobenzaprine ("She is [sic] taken a higher dose in the past."), but neither that nor naproxen had provided significant relief. Lumbar MRI was ordered, and Petitioner was prescribed Norco to last until prednisone kicked in. She was held off work until 2/23/22. (Px1).

The 1/20/22 lumbar MRI impression was no acute fracture or malalignment, and multilevel spondylitic changes, most significant at L4/5 and L5/S1, overall left greater than right. There was moderate lateral recess and central canal stenosis with mild right and moderate left neuroforaminal stenosis at L4/5. CNP DeCarlo noted the films showed significant degenerative changes and narrowing and annular fissures on MRI that were likely pain generators. Petitioner was referred to a neurosurgeon. (Px1). Petitioner messaged CNP DeCarlo about recommending a neurosurgeon, as she hadn't seen one in "quite a while", and DeCarlo indicated she was referred to Northwestern neurosurgery. On 1/26/22, Petitioner reported very minor improvement and advised she was going to see a neurosurgeon in her group health network. Dr. DeCarlo also advised her to start physical therapy and prescribed Lodine and Norco. On 2/2/22, Petitioner reported significant low back pain and intermittent numbness, mainly on the left side. Gabapentin was prescribed. In a 2/9/22 phone call to CNP DeCarlo, Petitioner reported she has having joint pain in her hips and other areas due to compensation. (Px1).

Petitioner testified she went to Northwestern neurosurgery in February 2022 and began treating with APRN/CNP Laura Guzman, and that she reported: "That the worst pain was down, you know, at the lower part of my back, radiating down my legs, and the neck and bra height pain." On 2/24/22, CPA Guzman reported Petitioner complained of low back pain following her 1/9/22 slip and fall on ice. She reported shooting pain down the right posterior leg to the foot since the incident which had now stopped at the mid-calf. She reported worsening "firework" pain in her hips over the prior few days, "sit" bone pain in the deep right groin, and constant numbness to her left anterolateral thigh. Neurologic exam was normal, but she had limited range of motion due to pain. X-ray and MRI findings were noted, and Petitioner was diagnosed with lumbar spondylosis with disc protrusion and radiculopathy. A Medrol dosepak, L5/S1 epidurals, and chiropractic care were prescribed, along with flexion/extension lumbar and hip/pelvis x-rays. She could walk as tolerated but was to change positions every 20 minutes, avoid bending, and avoid lifting over 10 pounds. While noting these restrictions, CNP Guzman also specifically held Petitioner off work for six weeks. (Px1). The next day Petitioner advised Guzman that she was applying with Respondent for FMLA leave.

3/1/22 bilateral hip and pelvis x-rays showed minor degenerative joint disease. Lumbar flexion/extension films showed similar degenerative findings as was seen in January films without pathologic instability. (Px1). On 3/2/22, Petitioner called Northwestern requesting disability paperwork, as workers compensation was denying her claim, and she was using up her benefit time while off work since the accident. (Px1).

During this time the Petitioner was also treating with Dr. Di Iorio at Fox Chiropractic. The Arbitrator notes that at November and December 2021 visits, the Petitioner was noted as suffering a "flare." At the first post-accident visit of 1/21/22, the doctor noted no specifics other than ongoing back, buttock, and multiple joint pain, and that Petitioner sent a copy of "MRI details." This was basically again noted at the next visit of 2/28/22.

There are neck findings of trigger points, but no reference to the work accident. On 3/2/22, Dr. Di Iorio stated: "The stress has been high, as she has been unable to work. The (work) injury has not been acknowledged. She just wants to feel better." She reported being less active outside of work and gained 40 pounds. She is not doing well and hurts all over." She returned 3 days later with complaints of low back and hip pain, as well as neck pain – "she fell and ever since the pain has been bad." She also noted some inner thigh "feeling" after diving to the floor to break up a dog fight. On 3/11/22, they discussed Petitioner trying a pain doctor, and her indication that "everyone in her family that has gotten a shot said it didn't work" and her mom had side effects. Petitioner saw her chiropractor several more times in March 2022. (Rx3). It appears that 3/5/22 is the first time post-accident that Petitioner referenced neck pain. Additionally, there is no reference in these records to the work accident.

The pre-accident records of Fox go back to 2012 (2 visits), when Petitioner complained of bilateral low back spasm and right hip and sacroiliac pain. In 2013 (4 visits), neck and low back complaints were noted. Petitioner on 2/22/13 noted "unchanged" complaints and a history of bilateral shoulder surgeries. In 2014 (11 visits), Petitioner's low back, thighs, hips, cervical spine, shoulders, and left arm numbness were referenced, as well as that she had undergone cervical and lumbar MRIs and was advised to see a neurosurgeon. In 2015 (10 visits), she initially complained in February of a fall outside her vehicle with an increase in back and neck pain. Chiropractor Dr. Di Iorio referenced various personal stressors Petitioner was going through as well in 2014 and 2015. On 6/9/15, Petitioner reported a motor vehicle accident where she struck a pole with a severe increase in her pain. Se also reported mid-back pain in June. The Arbitrator also notes that while some specific incidents of trauma were noted, the chiropractor repeatedly indicates that her conditions began over time. In 2016 (10 visits), her complaints mainly involved the low back, though cervical findings continued to be noted and treated. Petitioner referenced getting an EMG for suspected bilateral carpal tunnel syndrome and that she had begun waitressing again after 20 years. In 2017 (11 visits), on 3/15/17 it was noted she had a lumbar MRI and was to see a neurosurgeon and that she was to see an orthopedic surgeon for left shoulder pain. Bilateral leg numbness was noted on 5/10/17 and that Petitioner had been treating with CNP DeCarlo was treating her as well. She was continuing to work as a waitress. The vast majority of these records indicate 3/10 to 7/10 pain, but that she her back pain/soreness essentially remained unchanged despite treatment. (Rx3).

In 2018 (12 visits), Petitioner consistently complained of 6/10 to 7/10 pain while continuing to work on her feet, presumably as a waitress. In September, she reported getting a new job with Respondent that was to begin in October, but she continued to work weekends as a waitress. While the reports note cervical findings on exam and treatment, Petitioner's complaints in 2018 appear to reference only low back pain. In 2019 (14 visits), in January she complained of bilateral low back pain and having to sit at work all day. In February she reported bilateral hip discomfort with prolonged sitting. On 7/22/19, Petitioner reported left shoulder pain in addition to low back pain. On 9/18/19, she reported left shoulder pain with a rotator cuff tear related to moving a water heater. She underwent left shoulder surgery in October. In December she began to complain of increased neck pain. In 2020 (7 visits), in January Petitioner reported a "more focused" right hip pain she believed was related to her low back pain. No further visits were noted until June when she reported a more focused left hip pain. In August, she noted it had been too long between visits and she went to the ER for right hip pain, where she was diagnosed with back pain and radiculopathy. She reported her shoulder procedure was more of a "clean out" than a tendon repair, and she continued to report high stress levels. In September she reported neck pain as related to extra hours at work, sitting too much, and stress. In October, she reported back and neck pain, and that she was working from home part time while co-workers worked only from home. She reported increased hours due to the Covid situation. In 2021 (13 visits), Petitioner's complaints included bilateral low back pain, bilateral headache, bilateral neck, weight gain, and an indication her doctor was doing tests for arthritis. On 3/30/21, she reported severe back pain into her right leg after falling walking her dog. On 5/5/21, she noted "weird" groin pain she related to the fall, as well as soreness in all joints. On 8/11/21, she reported low back and buttock pain, general pain all over, and some history of gout, but that arthritis wasn't noted in her blood testing.

The last visit in 2021 was on 12/15/21, as noted above, when she reported ongoing back, buttock, and general joint pain, as well as high stress at home. (Px2; Px4; Rx3).

On 4/11/22, Petitioner reported improved low back pain but night pain that prevented her from sleeping, as well as bilateral hip pain (left greater than right) and bilateral leg numbness. After reviewing the 3/1/22 x-rays, CNP Guzman advised continued chiropractic care with physical therapy and home exercises, epidurals, and a physiatry evaluation for hip pain. Work restrictions were advised, and Petitioner was to follow up in three months. (Px1).

Petitioner then saw Dr. Jozwiak at Northwestern on 4/22/22. The report notes a history of prior back pain "but never anything to this extent" and no prior symptoms down her legs. Since her January work accident, her low back pain now radiated to the bilateral legs, left worse than right, with left leg numbness. Noting stenosis per the MRI, Dr. Jozwiak recommended epidurals at L4/5 to also cover the L5/S1 level and held Petitioner off work. The injection was performed on 5/17/22, and on 5/18/22 Petitioner reported being unable to lift her arm all the way up, which Dr. Jozwiak advised was unlikely to be related to the epidural. On 6/1/22, Petitioner reported no improvement in back pain with the epidural but "did notice for the first 1-2 days that she had less numbness in and tingling over the left anterior leg, which she did not notice much before, but after the first 2 days when that sensation came back she did notice how much she was having that symptom." She continued to have predominantly left sided symptoms with occasional "zingers" to the right. She was advised to follow up with CNP Guzman as the lack of improvement didn't support a second epidural and she had exhausted other conservative measures. (Px1).

At a 6/27/22 telemedicine visit with Guzman, Petitioner reported central low back pain, and left greater than right lumbosacral and hip pain that was severe and constant. Just walking to her mailbox exacerbated her pain and she didn't believe she could tolerate walking through the parking lot or sitting at her desk all day at work. Petitioner was restricted from work with continued chiropractic treatment. CNP Guzman wanted to review chiropractor Dr. Di Iorio's records and advised Petitioner to schedule with a neurosurgeon. (Px1).

Petitioner saw neurosurgeon Dr. Lee on 8/8/22, reporting "her usual state of health" before the 1/9/22 accident, after which she complained of ongoing constant low back pain and fairly constant pain to the left buttock and into the left thigh, sometimes into the right buttock, with constant anterior left thigh numbness. She also noted groin and hip pain. Petitioner also had chronic right hand numbness due to carpal tunnel, noting prior left carpal tunnel surgery. After exam and review of updated x-rays and the prior MRI, Dr. Lee indicated the etiology of the pain was unclear, stating: "She does have some degenerative disease at L5/S1 level; however, it is not clear that this is necessarily the pain generator given the constellation of symptoms." Further injection therapy was recommended, perhaps directly targeting L5/S1. Another option was to evaluate potential hip or SI joint pathology. Weight loss and smoking cessation were also recommended. Surgery was not recommended. Petitioner was continued off work pending a physiatry follow up. (Px1).

On 8/15/22, Petitioner saw physiatrist Dr. Papagiannopoulos, who performed left sided epidurals at L4/5 and L5/S1 on 9/8/22. It was noted Petitioner's pain was decreased to 0 out of 10 (0/10) prior to discharge, and concordant pain was noted during the injection. On 9/21/22, Dr. Papagiannopoulos notes Petitioner had about 75% pain relief for several days with the injection, but the pain then again became severe, which was likely multifactorial (herniated discs at L45 and L5/S1, facet arthropathy). The doctor noted Petitioner's history, exam, and other findings were consistent with "PERSISTENT chronic (1/2022) low back pain with occasional radiation down the (left leg)." Repeat injections were prescribed and performed on 10/6/22, and it was again noted she had 100% pain resolution prior to discharge with concordant findings. Messaged were exchanged between Petitioner and Dr. Papagiannopoulos regarding working from home "as you and I discussed." Petitioner indicated she was told this was a possibility and requested a note from the doctor, which Respondent

indicated was needed, and this was provided. On 10/21/22, Petitioner returned to Dr. Papagiannopoulos and indicated the second injections provided very little relief. He referred her back to Dr. Lee, but Petitioner indicated she wanted a second opinion, so she was referred to either Dr. Kolavo, Dr. Heim, or Dr. Steinke at Northwestern. It was noted that Petitioner's smoking history made it unclear if she would be a good surgical candidate. (Px1).

Petitioner saw orthopedic surgeon Dr. Heim on 11/4/22, who recommended pain management - "I have indicated that I do not believe there is a reasonable likelihood of further symptomatic or functional improvement with surgical intervention at this time." (Px1). Dr. Papagiannopoulos noted neither Dr. Lee nor Dr. Heim recommended surgery, but that Petitioner could look into it again if she worsened neurologically. While she could otherwise continue pain management, he did not recommend she remain off work for any extended period of time. On 11/7/22, Petitioner was advised that Dr. Papagiannopoulos had no other treatment options to offer and recommended pain management. (Px1).

Petitioner saw pain physician Dr. Chen on 11/29/22. He noted complaints of low back pain, hip pain, left neck, and mid-spine pain. The lumbar pain radiated usually to the left and sometimes to the right. Petitioner related a spontaneous onset after her 1/9/22 injury. She was noted to be 280 pounds. Dr. Chen diagnosed lumbar spondylosis and other intervertebral lumbar region disc disorders. Cervical x-ray was requested, and lumbar and possibly cervical facet injections were planned. (Px3). The 11/29/22 cervical x-ray noted marked degenerative disc space narrowing at C5/6 with anterior posterior osteophyte formation, and slight anterior subluxation of C4 over 5 and posterior C5 over C6. (Px1).

On 11/29/22, Petitioner told Dr. Papagiannopoulos' that Dr. Chen advised the referring physician would determine work status for a month until he was able to determine a recommendation. The doctor's office reminded Petitioner about the prior note indicating she shouldn't remain off work. (Px1).

On 12/2/22, Dr. Chen performed bilateral lumbar medial branch nerve blocks at L3 to S1 directed to the facets. (Px3). On that same date, Petitioner requested an off work note from Dr. DeCarlo's office dating back to 11/2/22 and through 2/29/22, and she was told she would need to come in for a visit. At the 12/5/22 visit, Petitioner reported ongoing significant pain and that Respondent would not authorize her to work from home – "She needs a note as she is unable to work in an office environment." CNP DeCarlo indicated she provided a note for Petitioner "and continue to work with Workman's Comp, and provide what patient needs." Petitioner also was prescribed Norco. (Px1). The Arbitrator did not locate this note in the voluminous Northwestern records. On 12/12/22, CNP DeCarlo completed forms indicating "the neck pain, thoracic pain and lumbar pain as well as hip pain." DeCarlo advised Petitioner: "There is documentation for all the spine pain and hip pain**.** Hip x-rays look good so that pain is most likely a result of bursitis, tendonitis, and muscle pain from your limitations from the spinal pain. That primarily means that the primary pain from the spine has to be addressed before there will be much long term improvement in your joint pain." DeCarlo noted she didn't have access to Dr. Chen's records, but she typically would write a 3 month off work slip when the time needed was difficult to determine – "more can be added if necessary and you can also can [sic] be cleared to go back sooner if you are able." (Px1).

There is a 12/12/22 message from Petitioner to CNP DeCarlo complaining that her records focused on her low back – "it is nor has been just my low back, mid back, and neck, and hips!. . ." Petitioner went on: "like I mentioned at my visit… these are the things most everyone else has ignored or had not been able to attempt treatment as My lower back is the first main injury. I would really like the issues I'm fighting be on my record. Main issue or not." (Px1). On 12/14/22, Petitioner and DeCarlo completed paperwork and Petitioner was to return in about 2 months. Petitioner returned on 1/19/23, and DeCarlo recommended neurosurgical evaluation and possible second opinion. (Px1).

On 12/19/22, Petitioner reported 2 or 3 days of improvement in hip pain ("She had a similar response from the LESIs performed by her previous provider."). Weight loss had not been effective. Dr. Chen on 1/24/23 noted complaints of persistent low back pain with left lumbar radiculopathy due to lumbar degenerative disc disease and spondylosis. Lumbar MRI was not yet performed. Petitioner had bilateral leg swelling, noting she was put on Lasix the prior week and "is not being diuressed now." She was to contact her primary provider to optimize diuretics. (Px3).

Petitioner saw chiropractor Dr. Di Iorio over 50 times from April through December 2022, mainly with bilateral low back, buttock, and hip pain, with the main hip pain left sided, and neck pain. As time went on, she also began to note left arm weakness. (Px4;Rx3).

On 1/23/23, it was noted that Petitioner needed an updated MRI before she could schedule her neurosurgical visit. On 1/26/23, Petitioner called DeCarlo's with complaints of leg and facial swelling. On 1/27/23, CNP DeCarlo completed work status paperwork with either specific restrictions or limiting Petitioner to working from home through 3/15/23. (Px1).

On 2/16/23, Petitioner saw CNP Guzman, who ordered a lumbar MRI and cervical and lumbar x-rays prior to Petitioner seeing neurosurgeon Dr. Chennelle. (Px1). She referred Petitioner for an orthopedic hip evaluation, seeing surgeon Dr. Sutter on 2/20/23 and reporting bilateral hip pain. Updated hip x-rays were similar to 3/1/22 films with minimal joint space narrowing and no other abnormalities, but Dr. Sutter could not rule out pathology completely given the persistent symptoms. While lumbar degenerative changes were likely contributory, the focal right groin and bilateral hip symptoms led to an MRI order. Dr. Sutter opined an injection would be indicated if there was evidence of intra-articular abnormality, and if not, the focus would be physical therapy and lumbar treatment. (Px1).

The lumbar MRI was ultimately performed on 3/30/23 and the impression was: 1) mild progression of lumbar spondylosis versus 1/20/22 films with no high grade spinal canal or foraminal stenosis, and 2) increased size of left adrenal gland nodule that indicated possible further testing. There was some increase in an L4/5 disc bulge with mild to moderate spinal canal stenosis and mild bilateral foraminal stenosis. At L5/S1, there was mild canal stenosis with an asymmetric narrowing of the left subarticular zone that may impact the traversing S1 nerve roots with mild to moderate bilateral foraminal stenosis, "no change from prior." (Px1). The 3/20/23 left hip MRI noted a main finding involving geode formation in the acetabulum roof with associated chondromalacia with small pars labral cyst. On the right, there were areas of geode formation along the lateral and anterior acetabulum roof with associated chondromalacia of the roof, as well as a probable degenerative tear of the superior lateral labrum. (Px1).

On 4/3/23, Petitioner returned to CNP DeCarlo, and Norco was continued and "forms completed." (Px1). On 4/4/23, Dr. Sutter's office noted his review of the MRIs showed generally symmetric hips with some early cartilage thinning and degenerative changes. He recommended conservative measures including weight loss and smoking cessation, with consideration of anti-inflammatory hip joint injections, for which Petitioner planned to contact her current pain doctor. (Px1). Also, on 4/4/23, CNP Guzman scheduled Petitioner for a surgical evaluation with Dr. Brayton in lieu of Dr. Chenelle, who was on leave. On 5/8/23, Petitioner reported increased right carpal tunnel symptoms, and "did discuss neck and involvement in symptoms of numbness and pain in wrist." CNP DeCarlo referred her to orthopedics to "follow up as appropriate." (Px1). On 4/11/23, Dr. Chen reviewed the lumbar MRI and performed repeat lumbar facet blocks at L3 to S1 on 4/14/23. (Px3).

Petitioner was examined by orthopedic surgeon Dr. Lopez at Respondent's request (Section 12) on 3/17/23. His 5/1/23 report states that Petitioner reported immediate back and neck pain after her 1/9/22 slip and fall. At the

exam she complained of pain in the bilateral hips and numbness and shooting pains in her legs. While she had pre-accident chiropractic treatment for chronic neck and low back pain, she reported her current pain was more intense and severe. Epidurals and chiropractic care had not relieved her pain. Neurologic exam was essentially normal. There was diffuse tenderness to palpation of the paraspinal cervical and thoracic spine, worst at C7, and no tenderness in the lumbar spine. After noting a summary of Petitioner's medical records and a review of her films, Dr. Lopez referenced Petitioner's prior records reflecting cervical, thoracic, and lumbar pain with radiculopathy. He stated: "This is a patient who has a longstanding history of neck and low back pain that has been treated for years. She has chronic changes throughout her cervical, thoracic, and lumbar spine on radiographs. On MRI scans of the cervical and lumbar region, there is no acute injury and no significant spinal canal stenosis. In the cervical spine on the left side there is moderate foraminal stenosis, however there is no acute disc herniation throughout the cervical or lumbar spine." He opined that while the work incident could have exacerbated the preexisting spinal pathology, "I see no evidence that it would cause long-lasting pain and disability." She had reached maximum medical improvement (MMI) after conservative care and no further treatment was recommended beyond anti-inflammatory medication. Dr. Lopez opined treatment to date was reasonable and that Petitioner was capable of unrestricted work duties, noting Petitioner worked as an office administrator since 2018. (Rx2).

On 5/16/23, Dr. Chen noted Petitioner had no meaningful relief from the last injections. He indicated Petitioner was returning for treatment of persistent mid back pain due to thoracic degenerative disc disease, though this appears to be the initial reference to such pain. Thoracic MRI was ordered and performed on 5/28/23, showing multilevel discogenic degenerative changes with disc height loss, disc desiccation, marginal endplate spurring and mixed Type I and II modic endplate changes with up to moderate canal stenosis. Also noted were degenerative cervical changes in the visualized cervical spine, mild chronic superior endplate compression deformity at T3, and non-specific broad edema seen at the right T5/6 costovertebral junction. (Px1 & Px3).

On 6/5/23, CNP DeCarlo continued a Norco prescription, noting Petitioner was using it judiciously and would be seeing a neurosurgeon. (Px1).

On 6/12/23, Dr. Chen indicated the thoracic MRI showed extensive spondylosis "which was not treated. Her pain started after being aggravated by the fall." Dr. Chen disagreed with Dr. Lopez's determination that Petitioner had reached MMI - "She has never been assessed and treated for her thoracic spinal issues, obviously, she is not in MMI. She will need to have thoracic facet treatments." The injections (medial branch nerve blocks) were performed bilaterally at T8/9, T9/10, and T10/11 on 6/30/23, and on 7/3/23 Petitioner was called and reported no relief, but at her 7/18/23 follow up she reported 50% mid-back improvement for 3 to 4 days from the blocks. Dr. Chen repeated lumbar branch blocks on 7/26/23, this time bilaterally at L4/5 and L5/S1. On 8/24/23, Petitioner reported 50% improvement in her back pain for about 36 hours. Dr. Chen notes Petitioner was there for cervical, thoracic, and lumbar pain but "she has not had any cervical treatment." He performed cervical medial branch blocks on 9/6/23 at left C4 to C7, but Petitioner reported no relief. The last note of Dr. Chen is dated 10/9/23 but the report is essentially blank. (Px3).

On 8/3/23, DeCarlo noted Petitioner was still in pain management and had some relief with the last injection before returning to baseline. She was having difficulty getting further treatment through workers' compensation. (Px1).

Dr. Chen's 8/24/23 narrative report related a history of Petitioner slipping and falling on ice on 1/9/22 with immediate severe pain in her hips and along the cervical, thoracic, and lumbar spine radiating to the legs, left greater than right. She had a poor response to multiple physician treatments. Exam findings appeared to indicate significant tenderness to palpation at all spinal levels and pain with range of motion, but normal neurological findings other than positive straight leg raise at 60 degrees bilaterally. Diagnosis was spondylosis without

myelopathy or radiculopathy n the cervicothoracic and lumbar regions. None of the facet injections performed to date had provided any meaningful and sustainable relief; 7/26/23 epidurals provided moderate relief of low back pain but not the radicular symptoms. Dr. Chen stated: "at this moment, I agree with Dr. Lopez's opinion of (Petitioner) being at MMI for her lumbar condition. But I disagree with Dr. Lopez's opinion on her cervical and thoracic condition due to the injury sustained on 1/9/22 because she has not had much treatment for her cervical and thoracic spinal pain." He recommended cervical and thoracic spinal treatments, such as facet treatment/ablation for her symptoms. He believed the lumbar condition was permanent. (Px3).

On 10/13/23, Petitioner advised CNP DeCarlo of Dr. Chen's opinion. She advised DeCarlo she was unable to work. A 12/8/23 entry from Northwestern Primary Care contained forms completed by CNP DeCarlo indicating Petitioner was on work restrictions as previously noted, including "allow to work from home, from 9/1/23 through 2/1/24. One of the notes was signed on 10/13/23. On 1/12/24, CNP DeCarlo noted Petitioner had a positive ANA screen: "At this level it could still be a false negative but it is high enough that consult with rheumatology is warranted. If an inflammatory arthritis is contributing to your symptoms it needs to be treated differently." Petitioner was referred for this purpose. On 3/20/24, it was noted that Petitioner was having some financial difficulties and DeCarlo was trying assist her with available resources. Petitioner had lost her group insurance coverage. It was also noted that Petitioner was on a waiting list for the Marianjoy Pain Clinic. On 4/29/24, DeCarlo noted Petitioner needed refills of her muscle relaxer and gout medication, and that she was working with her attorney and care management. Petitioner also was diagnosed with diabetes. (Px1).

Anesthesiologist/pain doctor Dr. Chen testified on 12/4/23 via deposition. He initially saw Petitioner on 11/29/22 for neck and back pain she reported since her 1/9/22 injury, with "pain was pretty broad from the neck all the way down with axial back of the neck pain." Her reported history was of widespread left-sided neck pain, mid-back pain and low back pain, with pain into both hips and legs, all starting after the work accident. The initial lumbar MRI findings supported age-related degeneration and no documented trauma-related findings. He agreed that her degenerative lumbar conditions could have been aggravated by the slip and fall. Diagnosis was lumbar spondylosis and disc disorder. He then testified that he believed there was a typo in his report, and it should have indicated both lumbar and cervical disc disorder. Cervical x-rays obtained that day at Northwestern showed marked degenerative disc space narrowing at C/6 with an anterior-posterior osteophyte formation, slight anterior subluxation of C4 over C5 and C5/6. While a degenerative process, Dr. Chen testified the subluxation could have been caused by the accident, though there is no way to say without pre-accident films to review – "I just can't say for sure." The degenerative findings could have been aggravated by a slip and fall. He opined that all of the injections he performed were medically reasonable and necessary, and he normally performs repeat injections for a cumulative dosage. The 3/30/23 lumbar MRI had similar findings to the prior MRI with some "not uncommon" minor progression of degeneration. Repeat lumbar facet injections in April 2023 provided no relief. Based on complaints of mid-back pain he ordered a thoracic MRI ("it was part of the complaints that she came in with in November of 2022."), which also showed extensive thoracic arthritis and disc bulging throughout. Again, while degenerative, the condition could have been aggravated by the slip and fall. Thoracic branch blocks provided 50% improvement for 3 or 4 days. Petitioner reported that 7/26/23 lumbar epidural provided 50% relief for 36 hours. On 9/6/23, Dr. Chen began treating Petitioner's neck, noting again that she came in with neck complaints, but the back was addressed first because that was the most debilitating. Medial cervical branch blocks were performed on 9/6/23. Petitioner reported moderate relief for about a week, so they were repeated on 10/13/23, which didn't really help. All of Petitioner's neck treatment was directed to the left side. He prescribed Medrol dosepak and a muscle relaxer 11/13/23, and that was the last time he saw her. (Px3).

Asked if he believed Petitioner aggravated preexisting lumbar, cervical, and thoracic conditions, Dr. Chen testified "I think so." He agreed with Dr. Lopez that Petitioner reached MMI as to the lumbar spine, as she has been treated and it doesn't appear more treatment will be more beneficial. He opined she is not at MMI as to the

cervical and thoracic spine, as the records available to Dr. Chen indicated she hadn't been treated for these conditions. Petitioner's lumbar condition has a poor prognosis given the lack of response to multiple treatments to date – "I'm not saying it's not surgical, but with multiple degenerations, the surgical management result is also poor." He opined to a poor cervical and thoracic prognosis, though he hasn't seen her since 11/13/23. That said, he opined Petitioner had also reached MMI as to the cervical and thoracic spine given her failure to respond to treatment to date. Dr. Chen testified that Petitioner has suffered permanent injuries to the lumbar, thoracic, and cervical spine due to the aggravation of her condition as a result of the 1/9/22 accident. (Px3).

On cross-exam, Dr. Chen testified the records he reviewed were "The records in my electronic medical record, the image findings in Northwestern system, and Dr. Lopez's independent medical examination." He likely reviewed any diagnostic films obtained from the Northwestern system. Petitioner did report that she had low back, hip, left neck, mid-spine, and left leg pain after spontaneous onset on 1/9/22. He didn't initially see Petitioner until about 11 months post-accident. He didn't discuss Petitioner's prior course of treatment before 11/29/23 but testified he had reviewed records from her other treaters from prior to that date. On further cross, Dr. Chen testified that he would expect to see related symptoms after a slip and fall immediately or up to a few weeks later, so he agreed such onset should be within a month to a few weeks to be considered causally related. Dr. Chen had not reviewed and was not aware that the initial ER records only indicated low back and left leg symptoms, and that she denied neck pain, weakness, or paresthesias. As to her initial 1/12 and 2/24/22 medical visits not mentioning cervical pain, Dr. Chen testified that maybe the pain wasn't documented, or it was not as severe as the low back pain ("Her neck pain seemed to be the least of her complaints, because that's what we treated the last. So I am not quite sure how to categorize that."). Noting records through 6/27/22 continued to note nothing about neck pain, Dr. Chen was asked if he wouldn't have expected some recognition of neck complaints even if overshadowed by the low back – "some people do, some people don't", and it depends on the detail the provider provides, or how bothersome the problem was for her. Chen went from lumbar treatment to thoracic to cervical – "I'm not quite sure if they had the time to address the cervical issue, or I'm not quite sure whether (Petitioner) reported the significance of her neck and the thoracic pain." He was not aware of Petitioner having regular chiropractic treatment between 2012 and the 1/9/22 work injury, as recently as 12/15/21. Whether this would impact his opinions depends how severe the prior symptoms were, the results of the prior treatment. It still can constitute an aggravation as she had more aggressive and frequent treatments after the accident. Petitioner was off work when he started treating her and he sees no evidence that he opined as to her work abilities. His own treatment hasn't been effective. Dr. Chen does not know what Petitioner's regular work duties involve. His causation opinion is based on the aggravation of a preexisting condition, and it was not temporary given the chronicity of symptoms for almost two years. As to Petitioner's pre-accident treatment and whether she ever returned to a baseline level, he testified: "I don't know for sure, but I don't have the record that she was receiving this extensive of invasive treatment from the providers before. So I can only assume that the treatment, the conservative treatments was effective and the pain was not that bad." (Px3).

On redirect, Dr. Chen agrees he doesn't recall and didn't record Petitioner reporting any intervening injuries impacting her cervical or thoracic spine. A slip and fall landing on the buttocks can trigger pain throughout the spine. Petitioner hasn't been able to return to work since the accident and she keeps coming for more invasive treatments, so he assumes her pain was enough to be willing to undergo the treatment and not many people would be willing to fake that. As to working in a seated job, sitting can load the entire spine and prolonged sitting can aggravate the pain. Pain can also make it difficult to focus at work. (Px3).

Dr. Lopez testified on behalf of Respondent on 1/25/24. His entire practice involves spine surgeries. Examination of Petitioner took place on 3/17/23 and involved the entire spine, but her main complaint was lumbar. Petitioner reported a 1/9/22 slip and fall onto her buttocks with immediate cervical, thoracic, and lumbar pain with radiation into her left hip and right hip soreness. Her current complaints included numbness, tingling, shooting pains in her legs, as well as daily back and hip pain. Exam reflected diffuse paraspinal

cervical and thoracic tenderness centered over C7. There was no tenderness to lumbar palpation. Neurologic exam was normal. The lumbar MRI showed nothing acute, just chronic changes, and Dr. Lopez noted this isn't a case where the patient had such changes with no symptoms prior to the injury, as Petitioner had prior treatment including close to the time of the work accident. Dr. Lopez reviewed medical records of Petitioner going back to 2014, when she saw Dr. Jain with lumbar pain and L5/S1 disc degeneration. She had chiropractic treatment between 2012 and 2019 for cervical, thoracic, and lumbar pain. She saw a Dr. Schwartz in 2017 for low back pain. She has seen multiple physicians since her 1/9/22 re-injury. Dr. Lopez opined that Petitioner had chronic cervical, thoracic, and lumbar disc degeneration with chronic cervical and lumbar pain. She had preexisting spinal pathology before 1/9/22. In a situation like this he looks for anything in the MRI that could be considered new or acute, but in this case Petitioner's films showed all chronic lumbar changes, and "because of that I really didn't feel that there was any acute change from before the injury." In some cases, people have such chronic changes but no symptoms until an injury occurs, which may constitute an exacerbation. Here, the Petitioner had been undergoing lumbar treatment prior to the work accident, and close in time to the injury, so its hard for Dr. Lopez to say she suffered anything other than a small exacerbation or lumbar strain that would be expected to return to the pre-injury baseline. The conservative treatment to date has been reasonable, but she has received more than enough treatment at this point and she needs to further treatment. She had the same degenerative conditions before and after the work accident, so there is no reason she couldn't return to her regular job. (Rx2).

On cross examination, Dr. Lopez agreed he found cervical and lumbar tenderness to palpation on exam. He had no specific information on the physical requirements of Petitioner's job. His assumption was she was working unrestricted prior to the accident. Asked if the pre-accident records indicate Petitioner was treated approximately monthly by a chiropractor, Dr. Lopez replied that yes, "it wasn't weekly." Petitioner was cooperative with his exam, and she didn't appear to be over-exaggerating her symptoms or malingering. His opinion was she suffered an exacerbation with the work accident that slight and involved a strain. He believed she had reached MMI as to the lumbar, thoracic, and cervical spine. He wasn't certain he reviewed the thoracic MRI but did review cervical and lumbar MRIs. He did not review Dr. Chen's 8/24/23 narrative report. He noted he didn't "fully disagree" with Chen that Petitioner had not reached MMI as to the cervical and thoracic spine, as most of the prior chiropractic reports were in relation to the lumbar spine, so if conservative treatment hasn't been fully completed it wouldn't be unreasonable to do more cervical therapy. Dr. Lopez was shown the 5/28/23 cervical and thoracic MRI reports, and as to the notes of herniated discs, he testified: "it's a little interesting of a report only because at every level they report herniated discs. So in general usually you can get a CT scan as well to just see if this is just chronic changes to the thoracic spine. The thoracic spine is a very uncommon area to get one disc herniation from an injury. And I'm not saying that they aren't herniated discs obviously without seeing the imaging, but we commonly see disc bulges throughout the thoracic spine because that's how the thoracic spine has aged. And it leans to it a little bit just because it doesn't say there's any severe central canal stenosis. Its mild canal, mild canal, mild canal." He continued: "The cervical spine is different, you know, it - - and the lumbar spine when it comes to herniated discs. The thoracic spine ages a little bit different." He went on to indicate that "She's complained of neck pain since the onset of the injury. He acknowledged that therapy can be directed mainly to the main complaint of several. Per Petitioner and her medical records, her low back was her main complaint, and her cervical and thoracic spine may not have had as much treatment as it should have, so it wouldn't hurt for her to have more therapy for these areas. Her L5/S1 level is not likely to improve much since the disc is gone, from which people can have varying degrees of pain. Without a significant fracture or cord injury the thoracic spine will generally improve. Her cervical spine and C5/6 level will not improve anatomically, though symptoms could improve. He opined that the work accident could have exacerbated Petitioner's cervical and thoracic conditions. On redirect, Dr. Lopez testified that a person generally would complain of cervical or thoracic pain within 2 or 3 weeks of a slip and fall injury and its likely imaging would have been obtained with such complaints. As to whether the work accident exacerbated Petitioner's condition permanently or temporarily, Dr. Lopez testified he would assume the condition would

have returned to baseline by now: "I base it upon just all these things are - - when I look at what has gone on before the injury, you know, have they had treatment before it, was this someone who had treatment before in the month leading up to it, or is this something that they never had treatment for, they had treatment, like, four years before. And you know, unfortunately, she had some relatively recent treatment on her spine and so it makes me believe that she will eventually get back to that same level of pain that she had before the injury." When he examined her, Petitioner had likely reached her pre-accident baseline as to the lumbar spine 12 months after the accident. (Rx2).

Petitioner testified the epidurals she underwent provided some but temporary relief, up to a day, before returning to the baseline level. Petitioner testified her treatment with Fox Chiropractic started in March 2022 with acupuncture, then stimulation, TENS, and heat. Manipulation didn't start until a while later. Home exercises were advised, which she has and continues to perform daily. She acknowledged in about 59 visits with Fox through 2023 she had only temporary relief – "it did give me a day or two of a lot more mobility without as much restriction" from the pain.

Petitioner testified she underwent nerve blocks at all three spinal levels as well as epidurals with Dr. Chen at Top Pain Center over the course of about a year through September 2023, with partial/temporary pain relief of up to 1-2 days at most. She continues to treat monthly with CNP DiCarlo, who initially prescribed pain medications before starting gabapentin for inflammation, then Lidocaine patches. She continues to prescribe Norco and monitor her use. Petitioner doesn't believe she could work in an office environment for Respondent sitting for eight hours without doing things she needs to do to manage her pain, like changing positions. She is able to type. As the day goes on her symptoms get worse. At home, she has the ability to get up and down as needed, and can lie down, take pain medications, and use ice/heat. Her request to Respondent to work from home was denied.

Petitioner testified she has an outstanding $2,500 bill with Fox Chiropractic and has had to pay out of pocket for visits with CNP DeCarlo. She has unpaid bills from Dr. Chen as well. Her group health carrier with Respondent, Aetna, also has paid her medical expenses at times. Petitioner received TTD benefits through 5/12/23 but believes she is entitled to them through 12/4/23, after which she seeks maintenance benefits through the present. Petitioner testified that none of her physicians have released her to return to work for Respondent at the only for work from home. Currently, despite doing what she was advised to do by her medical providers, she never improved much. Anything that helped was temporary.

On cross-examination, Petitioner testified that she discussed her ability to return to work with her union chapter V.P., Angela Kuter, testifying: "I spoke with the Union. I said, okay, this is where I'm at, I got my doctor to approve that I could work from home. I said, in order for me to work in the office, I would need to have this ability; ice, heating pad, my narcotic medications, I have to be able to move pretty much whenever I need to. I would need a standing, you know, one of those like standing retractable desks, so on and so forth. And after talking with my Union rep we, you know, we both kind of said, okay, and I filed the formal form to our superintendent for just work from home status." She didn't request restriction accommodations from Respondent because it "would have needed to be all the possibilities", including the ability to use ice, heat, and Norco, as well as to be able to change positions as needed.

Petitioner agreed she saw Dr. Di Iorio on 12/15/21, three weeks prior to the accident, for "maintenance." She testified she went about once a month for adjustment, heat, and electrical stimulation, but acknowledged there were times she went more often. She also agreed it was possible she'd had about 95 chiropractic visits in the 10 years prior to the work accident. Petitioner testified that she advised CNP Guzman and Dr. Chen about her prior spinal pain and chiropractic treatment, so she wouldn't know why it wasn't referenced by Guzman. She basically testified that they were provided MRIs and her records. She could not say why Dr. Chen testified he

wasn't aware of the prior treatment. He was provided with her medical records, including the MRIs. She testified he didn't ask how far back she's had pain, she just answered his questions and indicated most recently she was only doing maintenance treatment. She agreed that this treatment was focused on lumbar spine.

Asked when she first complained of thoracic/cervical pain, Petitioner testified she did so on the accident date, but the provider focused on her most significant complaints, her low back and right hand. As to the ER note indicating she denied neck pain, Petitioner testified: "Earlier there was a document where I had filled out and showed at the time, I don't know what is considered like where cervical stops and thoracic starts. So it hurt, you know, I did a it hurt here (indicating), I showed them." As to an 8/15/22 pain diagram she completed for Dr. Papagiannopoulos, she reviewed it and noted reference to the low back and hips, as well as pain in the "I don't know if it's actually cervical or thoracic, but an area in the upper back" between the shoulder blades and up to the neck. She can still run errands and shop, but it takes longer. She has not any formal physical therapy outside of her chiropractic treatment, which CNP Guzman felt was basically the same and sufficient. On redirect, Petitioner testified that on 1/22/22 she reported thoracic pain to CNP DeCarlo.

Kathy Borkowski, Respondent's Human Resources representative, shares an office with workers' compensation coordinator, Diana Brill. She testified she was aware of Petitioner as the timekeeper and was aware of Petitioner's claimed work injury. Part of her job involves tracking off work employees, including those on workers' compensation, so she is aware of workers on leave. While she was aware of Petitioner being off work, she was not aware of any specific work restrictions. She knows that a reasonable accommodation was made to Petitioner to allow her to work from home.

Ms. Borkowski testified that in April 2023 she saw the Petitioner in an Aldi parking lot pulling two grocery carts to her pick-up truck and loading the items into the truck. As this seemed unusual to her, she told Brill about it, who recommended she prepare a report (Rx4), which is dated 4/3/23. On cross examination, Ms. Borkowski could not recall if Petitioner's groceries were bagged or not and couldn't say how heavy the items were or if Petitioner was in pain, but the carts were full, and Petitioner didn't appear to be having any difficulty with them. Petitioner had been working regular duty with Respondent prior to the work accident and Borkowski could not recall any prior medical leaves of absence for Petitioner before 1/9/22.

CONCLUSIONS OF LAW

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

The Arbitrator finds that the Petitioner's lumbar condition of ill-being was aggravated by the work accident. At the same time, it does not appear that any true anatomical changes occurred that would be causally related to the 1/9/22 work injury. Overall, the greater weight of the evidence supports that this claimant has had significant complaints throughout her spine, a significant preexisting degenerative condition throughout her spine, and significant chiropractic treatment for her spine for close to a decade prior to the accident. It would be accurate to state that these records mainly note complaints in the low back. While Petitioner testified that she had no leg symptoms prior to the accident date, the records of Dr. Di Iorio prior to 1/9/22 do in fact show complaints at times in the hips and leg(s). Also highly relevant in the Arbitrator's view are complaints that often were up to 7 out of 10 pain, again very similar to her current complaints.

The records in evidence indicate complaints of low back and right hand/wrist pain initially after the accident. The records of Dr. Di Iorio indicate that the Petitioner had a significant, longstanding, chronic lumbar degenerative condition. As noted, the evidence supports that the work accident aggravated that condition. The evidence further indicates that the Petitioner has reached MMI as to the lumbar condition. This is agreed by Dr.

Chen and Dr. Lopez. This is further supported by numerous opinions that the Petitioner is not a surgical candidate given that her complaints were degenerative in nature. Not a single surgeon in this case has recommended lumbar surgery. This is despite failure to improve subjective complaints via various injections and chiropractic treatments.

An important opinion in this case is that of Dr. Papagiannopoulos, who noted neither surgeon Dr. Lee nor surgeon Dr. Heim recommended surgery at that time. He also opined in November 2022 that while pain management could continue, he did not recommend that Petitioner remain off work for any extended period of time. Petitioner thereafter attempted to get various doctors, including Dr. Papagiannopoulos, to provide her with an off work note. This was unsuccessful until she met with CNP DeCarlo. Dr. DeCarlo appears to have issued a note, based on her report as the Arbitrator did not locate an actual note in the record, that the Petitioner was to be off work. This note included a period of time well prior to the actual visit.

Based on the Arbitrator's review, CNP DeCarlo appears to essentially write notes based on the Petitioner's requests which were based on her subjective symptoms. Thus, it seems that the Petitioner was to at least some degree directing her own off work/restricted work status rather than the Physician's Assistant. The Arbitrator notes a message in DeCarlo's records indicating Petitioner also was not happy that DeCarlo's initial records did not include reference to her cervical complaints, and DeCarlo then indicated she wrote the off work note based on all three spinal levels (see 12/12/22). Without DeCarlo's testimony, this just does not seem credible given what is documented in the records, as there is no explanation as to why neck complaints would not have been noted at all in the records. Again, it appears the Petitioner pushes for a note to her liking, and DeCarlo provides same. The Arbitrator references CNP DeCarlo's indication that she didn't have access to Dr. Chen's records but she typically would write a 3 month off work slip when the time needed was difficult to determine – "more can be added if necessary and you can also can be cleared to go back sooner if you are able." This, again, seems to be leaving work status up to the Petitioner.

The records of CNP DeCarlo state that Petitioner should either be off work or should have the ability to work from home. Again, this might carry more weight if the Petitioner's regular job didn't appear to be essentially sedentary, and if she hadn't continued to work that job prior to 1/9/22 despite pain complaints consistently ranging from 3/10 to 7/10 at that time. Petitioner's indication was that she did not request an accommodation from Respondent, as it would have to include her ability to change positions as needed, to lie down if needed, and to take Norco at work. She added that she didn't request these accommodations from Respondent because every one of them would need to be met. Given the similarity of Petitioner's pre- and post-accident complaints in the records in evidence, the Arbitrator does not believe that the Petitioner has made a sufficient effort to return to work in a sedentary capacity, or to provide the Respondent with an opportunity to accommodate any valid restrictions. Thus, in the Arbitrator's view, the Petitioner long ago reached MMI as to the lumbar spine and should have attempted a return to work with Respondent with more significant effort than she has. Additionally, while CNP DeCarlo may well be a competent medical treater, no surgeon has indicated that the Petitioner was to remain off work. DeCarlo had not indicated at any point an understanding of the Petitioner's regular job duties with Respondent. The evidence in the case in favor of Petitioner's argument is not sufficient.

With regard to the Petitioner's cervical condition, the Arbitrator finds that the greater weight of the evidence supports the lack of a causal relationship to the 1/9/22 accident. The Petitioner's testimony that she complained of her neck at the initial ER visit and to CNPs DeCarlo and Guzman, the records in evidence simply do not support such complaints. The Petitioner's efforts at hearing to explain this fell short in the Arbitrator's view. The initial ER report specifically states that Petitioner denied neck pain, weakness, or paresthesias, and the initial records of DeCarlo and Guzman do not reference neck or shoulder complaints. The Petitioner had obvious lumbar and cervical complaints prior to the work accident based on the chiropractic records in evidence. The Northwestern records reviewed by the Arbitrator record no cervical complaints until she initially

saw Dr. Chen almost 11 months after the accident. Petitioner's explanation was that she made cervical complaints but that the focus was on treating her lumbar spine, which was the most painful part of her spine. However, this argument does not carry a lot of weight given the degree of specificity in the medical records. For example, her thoracic complaints, which also began sometime after the work accident, are clearly referenced in the Northwestern records. The idea that she was complaining of neck pain, but it just never was documented does not seem to be a more likely than not scenario.

Petitioner's prior neck complaints included neck pain into the left shoulder, which is very similar to her current complaints. The initial ER report also specifically states that Petitioner said she was able to get up by herself after she fell, while her testimony was that co-workers had to help her up. The Arbitrator notes that this is not necessarily a credibility issue, but it is another thing which seems to indicate the Petitioner may be a poor historian, which would include her testimony of not having prior hip/leg complaints which is belied by the records of Dr. Di Iorio.

It is difficult to give significant weight to the cervical causation opinion of Dr. Chen given his lack of background in Petitioner's preexisting condition, as well as his belief that the Petitioner complained of cervical pain from the start. The records just do not bear this out. It is accurate that she complained of neck pain to Dr. Di Iorio, however this was not until March 2022, almost two months post accident, and his records also do not reference the Petitioner's work accident as a causative factor in the neck pain. There is a reference in CNP DeCarlo's records of thoracic pain, but this is not the same as neck pain based on Petitioner's description, which is more mid-back. Dr. Chen acknowledged, in indicating that Petitioner had not reached MMI as to the cervical or thoracic spine, that Petitioner had not undergone treatment for these conditions. Yet, the records of Dr. Di Iorio appear to indicate she was treated for these conditions. That said, he is accurate in terms of the Northwestern records of multiple physicians that there is no reference to the cervical spine. Dr. Chen testified he would expect to see causally related symptoms within 3 to 4 weeks of the slip and fall at work, and the records in evidence do not show cervical complaints within that time frame.

Section 12 examiner Dr. Lopez also indicated a likely causal relationship of the cervical and thoracic spine, but again this appears to be based solely on the Petitioner's stated history of neck pain since the accident and not the contemporaneous records. Dr. Lopez indicates the Petitioner was treated for these locations since the accident, but again this is not borne out by the records in evidence. Thus, it is difficult to give this cervical causation opinion much weight either. He noted Petitioner had a longstanding history of neck and low back pain that had been treated for years, and chronic changes throughout her cervical, thoracic, and lumbar spine on films, which showed no acute injury and no significant spinal canal stenosis. While the work incident could have exacerbated Petitioner's preexisting spinal pathology, he saw "no evidence that it would cause long-lasting pain and disability."

Supported by the opinions of Dr. Papagiannopoulos and Dr. Lopez, the Arbitrator finds that the causal relationship of Petitioner's lumbar and thoracic conditions to the work accident ended as of the 5/1/23 report of Dr. Lopez. As noted above, the Arbitrator finds that Petitioner's cervical condition of ill-being is not causally related to the 1/9/22 work accident.

The Arbitrator also adds that on 1/12/24, CNP DeCarlo noted a positive ANA screen that appears to posit possible rheumatological or inflammatory arthritis problem that could be contributing to Petitioner's symptoms, noting if that was the case the treatment protocol would be different, and this is noted in the context of multiple medical records referencing Petitioner's complaints of joint pain in a variety of places on her body. It is unclear if this is a factor in her spinal pain, but the possibility does exist and the records do not reference further evaluation of this ANA screen finding.

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 incorporates the findings noted in the "causation" section of this decision. The Arbitrator finds that the Respondent is liable for Petitioner's causally related medical expenses through 5/12/23 but is not liable for any medical expenses incurred thereafter, based on the Arbitrator's causation findings noted above. Additionally, the Respondent is not liable for medical expenses incurred that were related to treatment of the cervical spine. This award of medical expenses is also limited to the medical expenses in evidence within Petitioner's evidentiary exhibits. Any bills not contained within the exhibits cannot be awarded by the Arbitrator.

As to any awarded medical expenses that have been paid either by Respondent directly as workers' compensation or by Petitioner's group health insurance coverage through Respondent, the parties have stipulated that Respondent is entitled to credit for same pursuant to Section 8(j), so long as the Respondent holds Petitioner harmless with regard to the credited expenses.

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

Based on the Arbitrator's findings with regard to causation, noted above, prospective medical treatment is denied.

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:

According to Arbitrator's Exhibit 1, the Petitioner claims entitlement to TTD from 5/13/23 through 12/4/23, while Respondent argues they are not liable for TTD benefits after 5/12/23. Based on the Arbitrator's causation findings, noted above, Petitioner is not entitled to TTD after 5/12/23.

The Arbitrator notes that the Request for Hearing form (Arbx1) indicates an agreed $37,813.82 TTD credit for Respondent. The TTD period in dispute is from 5/13/23 to 12/4/23, which was not awarded. If the credit relates to the payment of TTD benefits for a period of time prior to 5/13/23, this credit is not applicable to any other award in this case. If this credit relates to the payment of TTD for a period of time after 5/12/23, Respondent may be entitled to credit for the amount paid for the period of time subsequent to 5/12/23. The Respondent may not take this credit against a period of TTD that is not being claimed at issue a the 6/25/24 hearing.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC018656
Case Name	Sergio Villota v. Labor Personnel
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0259
Number of Pages of Decision	19
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	James McHargue
Respondent Attorney	Daniel J Levato

DATE FILED: 6/12/2025

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SERGIO VILLOTA,

Petitioner,

vs. NO: 23 WC 18656

LABOR PERSONNEL,

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

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

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

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

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 $30,900.00. 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.

June 12, 2025
O060425
KAD/ldm
042

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC018656
Case Name	Sergio Villota v. Labor Personnel
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	James McHargue
Respondent Attorney	Daniel J Levato

/s/ Paul Seal, Arbitrator SEPTEMBER 5 2024

Signature

INTEREST RATE WEEK OF SEPTEMBER 4 2024 4.645%

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Sergio Villota
Employee/Petitioner

v.

Labor Personnel
Employer/Respondent

Case # 23 WC 018656

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Paul Seal, Arbitrator of the Commission, in the city of Wheaton, on July 1, 2024. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

B. ☐ Was there an employee-employer relationship?

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

D. ☐ What was the date of the accident?

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

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

G. ☐ What were Petitioner's earnings?

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

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

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

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

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

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

N. ☐ Is Respondent due any credit?

O. ☐ Other

FINDINGS

On the accident date, May 2, 2023, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the 2 weeks preceding the injury, Petitioner earned $**31,200.00**; the average weekly wage was $**600.00**

On the date of accident, Petitioner was **39** 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 $**9,011.10** for TTD, $**0** for TPD, $**0** for maintenance, and **$14,047.56** for medical, and **$0**for other benefits, for a total credit of **$.**

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

ORDER

Temporary Total Disability

Respondent shall pay Petitioner and Petitioner's counsel temporary total disability benefits of $400.00 for 60 and 2/7 weeks, commencing May 6, 2023 through July 1, 2024 at a rate of $400.00 as provided in Section 8(b) of the Act.

Medical Benefits

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of Northwestern Delnor, $3,370.25; Northwestern Medicine for Spine Health, $747.20; Fox Valley Orthopedics, $2,550.00.

Prospective Medical

The Arbitrator orders Respondent to authorize the right L5-S1 microdiscectomy and associated care as recommended by Dr. Patel.

Penalties

Penalties and fees are denied.

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

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

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

SEPTEMBER 5 2024

Signature of Arbitrator

FINDINGS OF FACTS

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

Job Duties

Petitioner testified that he was last employed by Respondent, Labor Personnel, which is a staffing agency. TX16. Petitioner testified that he started working for Respondent in May of 2023. Id. Petitioner testified that he was placed at Dynacast by Respondent in August or September of 2022. Id. at 17. Petitioner testified that Dynacast dealt with heavy metal such as aluminum and zinc. Id. at 18. Petitioner's job duties included machine operation, removing garbage from materials, placing metal into machines, moving boxes/pallets with material, and assembling the machines. Id. at 18. Petitioner testified that the heaviest material he had to manually lift was 90 to 100 pounds. Id. at 18-19. Petitioner testified that his typical shift was from 4:00 AM to 12:30 PM, five days per week with occasional overtime. Id. at 19-20.

Petitioner testified that his job included removing heavy metal from machines that would be placed into a container. Id. at 20. Petitioner testified he would lift the containers from the floor to shoulder level. Id. at 20-21.

Accident

Petitioner testified that on May 2, 2023, he was lifting a container filled with material for Respondent from the floor to the pallets when he felt an "electric shock" in his back. Id. at 21-22. Petitioner testified that the container he was lifting was filled with zinc. Id. at 22. Petitioner testified the container was heavy, approximately 35 to 40 kilos (approximately 77 to 88 pounds). Id. at 23. Petitioner testified that he had to lift the container to around chest level when he felt pain in his lower back. Id. at 23. Petitioner testified the accident occurred around 11:00 AM, towards the end of his shift. Id. at 24. Petitioner testified he notified his supervisor, Virginia, and completed his shift. Id. at 24. Petitioner testified he was moved to a lighter position. Id. at 25. Petitioner testified that when he woke up the following morning, he had difficulty getting out of bed. Id. at 25.

Petitioner testified that he went to work the following day and filled out an accident report. Id. at 25-26. Petitioner then went to Respondent's main office where he was sent for medical treatment. Id. at 26.

Summary of Medical Records

On May 3, 2023, Petitioner presented to Physicians Immediate Care with 5/10 back pain, numbness/tingling, and a history consistent with his testimony at trial. PX1. On physical examination to the back, positive Waddell sign, positive push pull test, reduced range of motion,

abnormal gait/posture, and right paraspinal spasm were noted. Id. Petitioner was returned to work with restrictions. Id. Petitioner followed up with Physicians Immediate Care on May 5, 2023 with 6/10 low back pain and radiating pain down his right leg. Id. Similar physical examination findings were noted. Id. Petitioner was recommended physical therapy, which he completed at Physicians Immediate Care from May 23, 2023 through June 28, 2023. Id. Petitioner followed up with Physicians Immediate Care on May 9, 2023 with similar subjective complaints and physical examination findings. Id. Petitioner was recommended to undergo an MRI of his lumbar spine. Id.

On May 17, 2023, Petitioner underwent an MRI of his lumbar spine which showed: (1) straightening of the normal lumbar lordosis either positive or due to muscle spasm; (2) mild diffuse degenerative disc changes with disc desiccation at L4-L5 and L5-S1; (3) L4-L5: small right central disc protrusion. No significant spinal canal or neuroforaminal stenosis; and (4) L5-S1: broad-based right central disc protrusion. Possible abutment of the traversing right S1 nerve. Correlate for right S1 radicular symptoms. Id.

Petitioner followed up on more time with Physicians Immediate Care on May 18, 2023 where he was referred to pain management. Id. On May 31, 2023, Petitioner presented to Dr. Alpert at Fox Valley Orthopedics with right low back pain, cramps in his right hamstring and leg, and a history consistent with the testimony at trial. PX2. On physical examination, Dr. Alpert noted weakness with right thigh flexion. Id. Dr. Alpert diagnosed Petitioner with right sided low back pain and lumbar radiculopathy, placed Petitioner on work restrictions, and referred him to pain management. Id.

Petitioner presented to Dr. Bardfield on June 8, 2023 with low back pain and cramping in his right hamstring. Id. Dr. Bardfield reviewed the lumbar MRI and indicated it showed a disc protrusion rightward at L5-S1 with stenosis most prominent in the lateral recess and to a lesser extent in the neural foramen. Id. Dr. Bardfield noted tenderness over the right paraspinal and right quadratus lumbar musculature. Id. Dr. Bardfield recommended physical therapy and a right sided L5-S1 epidural injection, which Petitioner underwent on June 15, 2023. Id. Petitioner completed a course of physical therapy at Fox Valley Orthopedics from June 9, 2023 through July 17, 2023. Id.

Petitioner followed up with Dr. Bardfield on June 28, 2023 with 50 percent improvement from the injection and 6/10 low back pain, pain radiating down his right leg. Id. Petitioner presented to Dr. Bardfield on July 18, 2023 with similar subjective complaints and was recommended a second injection. Id. Petitioner underwent a right epidural steroid injection at L5-S1 on July 20, 2023. Id. Petitioner followed up with Dr. Bardfield on July 20, 2023 with 20 percent improvement, but still with low back pain and radiating pain down his right leg. Id. Dr. Bardfield recommended a third L5-S1 right epidural steroid injection, which Petitioner underwent on August 17, 2023. Id.

Petitioner then sought treatment with Dr. Papagiannopoulos at Northwestern on September 27, 2023 with low back pain, radiating pain down the posterior aspect of his right lower extremity, and a history consistent with the testimony at trial. PX3. On physical examination to the lumbar spine, Dr. Papagiannopoulos noted tenderness, reduced range of motion, and positive straight leg

raise on the right. Id. Dr. Papagiannopoulos reviewed the MRI and noted a herniated nucleus pulposus with pathology at L4-L5, L5-S1. Id. Dr. Papagiannopoulos noted that if Petitioner's symptoms persisted, he recommended returning to surgeon for potential surgical intervention. Id.

Petitioner last presented to Dr. Bardfield on December 5, 2023 with 7/10 pain with pain radiating down his left leg. PX2. Dr. Bardfield continued to recommend an additional injection at the right L5-S1, and if failure with injections, recommended spine surgeon consultation. Id.

On January 2, 2024, Petitioner presented to a spine surgeon, Dr. Patel, at Northwestern. Id. Dr. Patel noted Petitioner had lifted a "sink" when he felt low back pain and right leg pain thereafter. PX5. Petitioner had subjective complaints of low back pain, radiating pain and numbness/tingling down the right buttock and posterior leg into the plantar foot. Id. Dr. Patel recommended an updated MRI of the lumbar spine. Id.

On January 22, 2024, Petitioner underwent the MRI of his lumbar spine, which showed degenerative disc disease at L4-L5 and L5-S1; diffuse disc bulge at L5-S1 with superimposed central disc protrusion resulting in mild narrowing of the spinal canal, and moderate left and mild right neural foraminal stenosis; findings unchanged compared to MRI from May 17, 2023. Id.

On January 30, 2024, Petitioner presented to the emergency room at Northwestern with low back pain and radiating pain down his right leg. PX7. Petitioner was prescribed prednisone and IM Toradol and discharged. Id. On February 7, 2024, Petitioner had a telephone conversation with Dr. Patel's PA, Linda Sheridan, where Dr. Patel reviewed the lumbar MRI, which showed a right L5-S1 HNP. PX8, Dep Ex. 2. Dr. Patel recommended a right L5-S1 microdiscectomy. Id.

On March 14, 2024, Dr. Patel authored a narrative report after review of additional records from Petitioner's treatment. Id. Dr. Patel diagnosed Petitioner with an L5-S1 disk herniation with resulting in right-sided L5-S1 nerve root compression and lateral stenosis and lumbar disk degeneration at L5-S1. Id. Dr. Patel opined that Petitioner's right leg pain was concordant with both the L5-S1 disk herniation and the L5-S1 disc degeneration. Id. Dr. Patel opined that Petitioner's lifting injury caused the L5-S1 disk herniation and aggravated a preexisting degenerative condition at the L5-S1 level that was previously asymptomatic. Id. Dr. Patel recommended the right L5-S1 microdiscectomy and continued Petitioner's work restrictions. Id.

Independent Medical Examinations

On January 18, 2024, Petitioner presented to Dr. Stanley for an IME at the request of the insurance company. RX1. At the IME, Dr. Stanley noted 4/5 plantar flexion on the right, numbness in the right S1 nerve distribution, and positive straight leg raise on the right. Id. Dr. Stanley reviewed the May 17, 2023 MRI and noted it showed right sided nerve root compression at L5-S1 and arthritis at L4-L5, L5-S1. Id. Dr. Stanley noted that Petitioner developed radiculopathy after the accident with no prior back issues or medical documentation to indicate any prior back issues. Id. Dr. Stanley noted no symptom magnification at the IME. Id. Dr. Stanley opined that Petitioner's physical examination correlated with the nerve compression

seen on the MRI, which substantiated Petitioner's subjective complaints. Id. Dr. Stanley causally related Petitioner's lumbar condition to the work accident and found the physical therapy and injections to be reasonable and appropriate. Id. Dr. Stanley opined that Petitioner could return to work at a sedentary level with a 10-pound weight restriction. Id. Dr. Stanley noted that Petitioner was indicated for microdiscectomy on the right-side at L5-S1. Id. Dr. Stanley found that no further injections were necessary. Id. Dr. Stanley opined that Petitioner's lumbar radiculopathy was related to the work accident. Id.

Dr. Stanley authored an addendum report after review of RX5, RX6, and additional medical records. RX2. Dr. Stanley reviewed the surveillance video and noted that it does not exclude the possibility of Petitioner having radiculopathy at that time. Id. Dr. Stanley opined that the surveillance has no effect on causation. Id. Dr. Stanley noted that whether Petitioner was lifting scraps or a "sink" during the work accident does not change the causation analysis. Id. Dr. Stanley opined that his opinions did not change from the initial report and that Petitioner's lumbar radiculopathy and need for a microdiscectomy were causally related to the work accident. Id. Dr. Stanley opined that Petitioner could return to work in a sedentary level with a 10-pound work restriction. Id.

On June 26, 2024, Dr. Stanley authored a second addendum report where he reviewed RX6, RX7, and the records from Dr. Patel. RX3. Dr. Stanley noted that Dr. Patel's assessment and causation analysis were consistent with his analysis. Id. Dr. Stanley noted that the activities in the surveillance videos by Petitioner indicate that the radiculopathy had resolved, and Petitioner could return to work full duty. Id. Dr. Stanley opined that Petitioner no longer required surgical intervention. Id.

Testimony of Petitioner

Petitioner testified that for physical therapy at Physicians Immediate Care, he had to use a bike and stretching exercises. TX27. Petitioner testified that Respondent was able to accommodate his work restrictions until May 5, 2022. Id. at 28. Petitioner testified that for the light duty position, he had to break parts sitting down. Id. Petitioner testified that he had pain in his low back with predominantly right leg radicular pain (occasionally left). Id. at 30. Petitioner pointed to his low back and his right inner thigh down the posterior aspect of his right leg when describing where he was having pain. Id. at 31. Petitioner testified that he was placed off work by Dr. Bardfield through September 6, 2023. Id. at 31. Petitioner testified he went to the emergency room at Northwestern on January 30, 2024, because he was having difficulty walking and in a lot of pain. Id. at 35-36.

Petitioner testified that his pain varied depending on the day. Id. at 36. Petitioner testified that ice, heat, and exercise including biking helped improve his symptoms. Id. at 36-37. Petitioner testified that his second course of physical therapy at Fox Valley Orthopedics included using the bike, treadmill, and stretching exercises. Id. at 37. Petitioner testified that he wished to proceed with the surgery recommended by Dr. Patel. Id. at 38. Petitioner testified his condition has affected his daily life and activities such as moving. Id. at 39. Petitioner testified that as of the date of trial, he felt pain in his right lower back and pain down his right leg. Id. at 39.

Petitioner testified that he has not had any accidents involving his lower back since the work accident and has not worked since May 5, 2023. Id. at 39-40. Petitioner testified that he rode a bike, as was recommended, to improve mobility in his hips. Id. at 47-48.

Cross examination of Petitioner

Petitioner testified that he was initially performed design work via a computer for Dynacast's owner. Id. at 49-53. Petitioner testified he lifted the heavy material of zinc by himself on May 2, 2023. Id. at 53-54. Petitioner testified that he was lifting the container with zinc to another pallet when he injured himself. Id. at 55-56. Petitioner demonstrated he was lifting the box to about chest height. Id. at 56-57. Petitioner testified that he had to twist and lift the box. Id. at 59. Petitioner testified that he felt pain in his lower back immediately following the work accident. Id. at 61-62. Petitioner testified that his muscles in his upper back "felt tired" the following day as well. Id. at 63-64.

Petitioner testified that his light duty position for the days after the work accident included lifting lighter parts of cars and breaking down materials. Id. at 65-66. Petitioner testified he still had pain in his back and leg after the third injection. Id. at 70. Petitioner testified that Dr. Papagiannopoulos did not recommend any further injections. Id. at 71. Petitioner testified that he did not have any more physical therapy despite being recommended by Dr. Papagiannopoulos because the treatment was not authorized. Id. at 72-73. Petitioner testified he called Dr. Papagiannopoulos in November of 2023 for updated work status notes but was told to go through Dr. Bardfield. Id. at 74. Petitioner testified he wishes to proceed with the surgery because he has difficulty sleeping and wants to return to work. Id. at 74-75.

Petitioner testified that the case of beer in RX5 was lighter than the material he handled for Respondent. Id. at 76-77. Petitioner testified that he had been taking English classes for about three years. Id. at 79. Petitioner testified that he rode his bike to Elgin Community College once. Id at 80-81. Petitioner testified that he has difficulty cleaning due to his condition. Id. at 83-84.

Redirect Examination of Petitioner

Petitioner testified that when working for Respondent, he was lifting materials during the majority of his shift. Id. at 85. Petitioner testified that he only grocery shops once per month. Id.

Surveillance Video of Petitioner

Respondent's Exhibit No. 4 (May 22, 2023) depicted Petitioner getting a key from Respondent for his mail. RX4, TX33. Petitioner testified that his landlord was Respondent. Id.

Respondent's Exhibit No. 5 (June 2, 2023) depicted Sergio grocery shopping and picking up a case of beer. RX5, TX34. Petitioner testified that he lived alone so he had to do his own grocery shopping. TX34.

Respondent's Exhibit No. 6 (June 5, 2024) depicted Petitioner carrying a laptop bag into an orange vehicle. RX6, TX40. Petitioner testified that the vehicle belonged to his girlfriend, who

lives in Pennsylvania. TX40-41. Petitioner testified that the laptop bag contained his laptop and a notebook, which was light. Id. at 41. The video depicted Petitioner carrying an Amazon package with his left arm, dropping it off in the vehicle. Id. at 42. Petitioner testified that the package contained an AC vent kit, which weighed 5.5 pounds. PX11, TX 42-43.

Respondent's Exhibit No. 7 (June 12, 2024) depicted Petitioner riding a bike to and from the library, where he had a tutor for English. RX7, TX43-44.

Respondent's Exhibit No. 8 (June 20, 2024) depicted Petitioner carrying a satchel walking into Elgin College for English classes. RX8, TX45. Petitioner testified that he goes to English classes in addition to tutoring at the library. TX45. The video depicted Petitioner getting gas and grocery shopping, carrying groceries with his left hand. RX8, TX46-47. Petitioner testified that he carried the groceries with his left hand because he does not have much strength with his right side. Id. at 46-47.

Testimony of Dr. Alpesh A. Patel (Treating Physician)

Dr. Patel testified that he is a board-certified neurosurgeon that treats primarily the cervical and lumbar spines. PX8, at 7. Dr. Patel testified Petitioner presented to him on January 2, 2024 with low back pain and right leg radicular pain after a lifting injury at work. Id. at 9. Dr. Patel testified he noted pain with range of motion of the lumbar spine and weakness in the right leg, which is suggestive of a structural issue and nerve compression. Id. at 11-12. Dr. Patel testified he reviewed the May of 2023 MRI, which showed a right-sided disc protrusion at L5-S1 with spinal stenosis. Id. at 13. Dr. Patel testified that the lifting injury that Petitioner had is a competent cause of his disc herniation or an aggravation of Petitioner's lumbar condition. Id. at 14. Dr. Patel testified that the "activity of a heavy lift can create forces in the lower back that can cause a herniation," in addition to the person's posture during the lift and the weight of the object being lifted. Id. at 15. Dr. Patel testified the epidural injections at L5-S1 Petitioner underwent provide diagnostic and therapeutic value. Id. at 16-17.

Dr. Patel testified that Petitioner's condition was likely not going to resolve on its own as Petitioner had continued symptoms despite undergoing physical therapy and three epidural injections. Id. at 17-18. Dr. Patel testified he reviewed the January 22, 2024 MRI, which again showed nerve compression at L5-S1. Id. at 19. Dr. Patel testified he recommended a right L5-S1 microdiscectomy. Id. Dr. Patel testified his review of the January 22, 2024 MRI is similar to the radiologist's impression. Id. at 21. Dr. Patel explained that Petitioner's subjective complaints correlated with his physical examination findings and the diagnostic studies:

> [s]o the symptom location in terms of the location of pain that he describes, back, radiating down the leg, combined with the numbness that he describes, combined with the weakness that he had in his leg would match up to that L5-S1 segment. So there's a pretty strong correlation there. And then on top of that his epidurals given in that area, again, gave him good transient relief. So, again, gives you diagnostic information that we're looking for in the right location.

Id. at 22.

Dr. Patel testified that the L5 nerve root goes from the lower back down the right side of the buttock to the back of the thigh and then occasionally along the side of the lower leg below the knee. Id. at 24. Dr. Patel testified the S1 nerve root goes down the buttock, back of thigh, back of calf, and sometimes around the foot to the bottom of the foot. Id. at 25. Dr. Patel testified that Petitioner's lifting injury was a competent mechanism to cause his lumbar condition and was further supported by Petitioner having no prior symptoms before the work accident. Id. at 26-27. Dr. Patel testified that Petitioner's prognosis is good if he undergoes the surgery being recommended. Id. at 28. Dr. Patel testified that a lifting restriction for Petitioner would be reasonable pending the surgery. Id. at 29. Dr. Patel testified Petitioner's restrictions are causally related to his work accident. Id. at 29-30.

On cross examination, Dr. Patel testified that he reviewed Petitioner's medical records from Physicians Immediate Care, Fox Valley Orthopedics, and Northwestern when authoring his narrative report. Id. at 31-34. Dr. Patel testified that Dr. Papagiannopoulos' recommendations were no further injections, a home exercise program, and a surgical consultation. Id. at 34-35. Dr. Patel testified that his understanding was that Petitioner was lifting a sink when he injured himself. Id. at 36. Dr. Patel testified that it would not change his opinions if Petitioner twisted or not when he had the lifting injury because Petitioner's symptoms of low back pain, radicular pain, and numbness/tingling started after the lifting injury. Id. at 37-38. Dr. Patel testified that his opinion would change if there was no lifting injury at all, "[b]ut if we're talking about relatively small differences in what he was lifting or how he was lifting it, it probably would not change my opinion." Id. at 39. Dr. Patel testified that he felt confident in the opinion that he provided given Petitioner's history. Id. at 41. Dr. Patel testified that day-to-day activities could cause a disc herniation, but there was nothing in Petitioner's "story" that would suggest his day-to-day activities caused Petitioner's disc herniation. Id. at 42.

Dr. Patel testified that it is common for patients to feel 100 percent relief following an injection for a few days and then the pain returns. Id. at 45. Dr. Patel testified that he did not note symptom magnification of Petitioner. Id. at 46. Dr. Patel testified that "HNP" is interchangeably used with protrusion that is causing pressure on the nerve. Id. at 51.

On redirect examination, Dr. Patel testified that as long as Petitioner had a lifting injury with a weight component on the work accident date; the object he was lifting would not change his opinion. Id. at 56. Dr. Patel testified that patients with Petitioner's condition still have to continue performing their activities of daily living. Id. at 57. Dr. Patel testified he would place Petitioner on a lifting restriction, between 10 and 20 pounds and sedentary duty. Id. at 57-58.

CONCLUSIONS OF LAW

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

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

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

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

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

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that an accident did occur that arose out of and in the course of Petitioner's employment by Respondent. Petitioner credibly testified that on May 2, 2023, Petitioner was working for Respondent when he lifted a box filled with "zinc," when he injured his back. Petitioner immediately notified his supervisor and was sent to a lighter position for the day. Petitioner then went to work the following day where he was sent for medical treatment at Physicians Immediate Care. The Arbitrator notes that Petitioner was able to clearly detail exactly how his accident occurred, and that Petitioner sought medical treatment the following day after the work accident.

Petitioner acknowledges that Dr. Patel's history of Petitioner's injury was that he was lifting a "sink." It is completely reasonable that Petitioner lifting "zinc" was confused with "sink" given the similar pronunciations of the word and that Petitioner is a primarily Spanish speaking person.

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

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

Petitioner bears the burden of proving, by a preponderance of the evidence, every element of the claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). To obtain compensation under the Illinois Workers' Compensation Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Causation between the work-related accident and condition of ill-being can be established by showing prior history of good health, followed by a work-related accident in which petitioner is unable to perform his physical duties. *Kawa v. Illinois Workers' Comp. Comm'n*, 991 N.E.2d 430, 448 (2013).

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003).

The Arbitrator finds Petitioner's treating physicians to have been credible in their opinions in the medical records regarding the nature of his injuries and their causal relationship to the claimed injury at work for the Respondent. The Arbitrator specifically finds Dr. Patel to be credible with respect to his opinions in the medical records and testimony and its relationship to the claimed injury at work for the Respondent.

Throughout the majority of Petitioner's treatment at Physicians Immediate Care, he had right-sided low back pain with radiating pain down his right leg. Petitioner then underwent an MRI on May 17, 2023, which showed a disc protrusion on the right at L5-S1 with nerve compression. Petitioner was then referred to Fox Valley Orthopedics where he underwent three epidural injections on the right at L5-S1 with Dr. Bardfield. Petitioner's testimony and the medical records corroborate Petitioner had temporary relief from those injections. Throughout Petitioner's treatment at Fox Valley Orthopedics, he had consistent complaints of right low back pain with right-sided radiculopathy. After seeing another pain management physician, Dr. Papagiannopoulos, Petitioner was told not to undergo any further injections but to seek a surgical consultation.

On January 2, 2024, Petitioner presented to Dr. Patel with low back pain and pain and numbness/tingling radiating down the right buttock and posterior leg into the plantar foot. Dr. Patel reviewed the MRI and noted L5-S1 stenosis with a right-sided disc protrusion. Dr. Patel recommended an updated MRI, which was completed on January 22, 2024. Dr. Patel reviewed that MRI and indicated it still showed the right-sided disc protrusion and nerve compression at L5-S1.

Dr. Patel testified that the lifting injury that Petitioner had is a competent cause for a disc herniation at L5-S1 and for an aggravation of the underlying disc disease at L5-S1. Dr. Patel credibly testified that Petitioner's symptoms correlated with the physical examination finding and the MRIs. Petitioner had right-sided radicular pain and/or numbness/tingling throughout his treatment: May 5, 2023; May 9, 2023; May 18, 2023; May 31, 2023; June 8, 2023; June 28, 2023; July 18, 2023; August 2, 2023; September 27, 2023; January 2, 2024; and January 30, 2024. The Arbitrator notes the totality of Petitioner's medical records are consistent with Dr. Patel's opinions regarding Petitioner's lumbar radiculopathy, which is corroborated by Petitioner's testimony. Further, Dr. Patel testified that Petitioner had no issues or symptoms with his back prior to the work accident, which Petitioner's testimony supported. Respondent introduced no evidence to indicate that Petitioner had any symptoms or treatment for his lumbar spine prior to the work accident.

Respondent intends to rely upon Dr. Stanley's second addendum report to indicate that Petitioner's lumbar radiculopathy had resolved. However, on review of Dr. Stanley's first two reports, he agrees that Petitioner's lumbar condition was causally related to Petitioner's lifting injury and that Petitioner required a microdiscectomy at L5-S1. Dr. Stanley went as far as indicating that it did not matter what Petitioner was lifting on the date of the accident and that would not change his opinions on causation. RX1, RX2.

In the first addendum report, Dr. Stanley reviewed the May 22, 2023 and June 2, 2023 surveillance of Petitioner, which show Petitioner getting keys from his landlord and grocery shopping. After reviewing these videos, Dr. Stanley opined the "surveillance from the summer of 2023 does not change my opinions." RX2. Dr. Stanley continued to causally relate Petitioner's lumbar condition and the microdiscectomy to the work accident.

The only change of opinions by Dr. Stanley is in his third report after he reviewed the surveillance video from June 5, 2024; June 12, 2024; and June 20, 2024. The June 5, 2024 surveillance showed Petitioner carrying a box, which the evidence established weighed approximately 5.5 pounds. The June 12, 2024 surveillance showed Petitioner riding his bike. The June 20, 2024 surveillance showed Petitioner carrying grocery bags. Based upon these videos, Dr. Stanley opined that Petitioner's lumbar radiculopathy seemed to have resolved. However, the videos from 2023 are similar to the videos in 2024 in that both showed Petitioner grocery shopping and performing daily activities. The only major difference between video surveillance in 2023 and 2024 is Petitioner biking in 2024. Petitioner testified that biking was part of his physical therapy and home exercise program as it helped improve his symptoms. Additionally, Dr. Papagiannopoulos specifically noted that Petitioner's pain was improved by exercise.

Therefore, Dr. Stanley changed his opinions in the second addendum report on similar evidence he had in the first addendum report, despite causally relating Petitioner's condition to the work accident in the first addendum report. Therefore, the Arbitrator finds Dr. Stanley's opinion that Petitioner's lumbar radiculopathy had resolved as inconsistent.

Further, Dr. Stanley's opinion that Petitioner's lumbar radiculopathy had resolved was solely based on 2024 surveillance video. Dr. Stanley only performed one physical examination on Petitioner in January of 2024. Thus, Dr. Stanley's opinion that the Petitioner's lumbar radiculopathy had resolved is speculative as it was based on snippets in time of Petitioner's daily life rather than a physical examination of Petitioner. Further, Petitioner lives by himself and has no one to assist him in his daily life and activities such as grocery shopping. The Arbitrator notes that Respondent made three attempts to Dr. Stanley in order to get the opinion that Respondent wanted. Based on the totality of evidence, the Arbitrator finds Dr. Patel as more credible than Dr. Stanley on the issue of causation.

Based on the above, Arbitrator finds that Petitioner's current condition of ill-being related to his lumbar spine is causally related to the work accident.

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

The Arbitrator finds that the medical services provided to Petitioner were reasonable and necessary for the May 2, 2023 work accident. This is supported by Petitioner's medical records from Physicians Immediate Care, Fox Valley Orthopedics, and Northwestern. The Arbitrator finds that the medical opinions and treatment plans set forth in the medical records from Petitioner's treating physicians are both credible and appropriate for his work-related injuries. As Petitioner's treating physicians that saw Petitioner on several occasions, they were the most equipped physicians to diagnose Petitioner and recommend treatment based on Petitioner's subjective complaints and their own objective findings.

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

- Northwestern Delnor, $3,370.25
- Northwestern Medicine for Spine Health, $747.20
- Fox Valley Orthopedics, $2,550.00

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

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

The Arbitrator finds that Petitioner is entitled to the right L5-S1 microdiscectomy as recommended by Dr. Patel. Petitioner attempted all treatment available to him including medication, physical therapy, and injections. Due to the persistence in Petitioner's symptoms, positive physical examination findings, and the confirmed pathology on the diagnostic studies, Dr. Patel recommended surgery.

Dr. Patel explained:

> the purpose of that operation is to relieve pressure off the nerves on the right side for him. That involves removing some of the stenosis that they're describing, the radiologist described that as well, some of the stenosis that's there but also removing that protrusion of disc for him. The goal is to relieve all the pressure on the nerve there to try to help with the back and radiating leg pain that he's got.

PX8, at 23.

Dr. Stanley agreed in his first two IME reports that a microdiscectomy on the right at L5-S1 was reasonable, necessary, and causally related to the work accident. As noted previously, Dr. Stanley's opinions changed in his third report based on surveillance footage without an actual physical examination.

As the Arbitrator found that Petitioner's current condition of ill-being related was caused by the May 2, 2023 work-related accident, the Arbitrator finds that Respondent is liable for right L5-S1 microdiscectomy as recommended by Dr. Patel.

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

Petitioner was initially placed on work restrictions by Physicians Immediate Care on December May 3, 2023. Petitioner worked at Respondent in a light duty capacity until May 5, 2023. Petitioner credibly testified that Respondent was unable to accommodate his restrictions beyond May 5, 2023. Petitioner was placed on work restrictions or off work by Dr. Bardfield through September 6, 2023. Dr. Patel testified that Petitioner required work restrictions of 10 to 20 pounds and sedentary duty pending the recommended surgery. Respondent's own IME physician, Dr. Stanley, agreed with work restrictions in his first two IME reports.

Based on the above, the Arbitrator finds Respondent liable for 60 and 2/7 weeks of TTD benefits (May 6, 2023 through July 1, 2024 at a weekly rate of $400.00, which corresponds to $24,114.29, to be paid directly to Petitioner and Petitioner's counsel. Respondent is entitled to a credit of $9,011.10 in TTD already paid.

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

Penalties and fees are denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC030372
Case Name	Janet Nelson v. Macy's Retail Holdings
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0260
Number of Pages of Decision	17
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Angie Zinzilieta
Respondent Attorney	Emily Schlecte

DATE FILED: 6/12/2025

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Janet Nelson,

Petitioner,

vs. NO. 21WC030372

Macy's Retail Holdings, Inc.,

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

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

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

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

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

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

June 12, 2025

SJM/sj
o-5/21/2025
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC030372
Case Name	Janet Nelson v. Macy's Retail Holdings
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	Edward Lee, Arbitrator

Petitioner Attorney	Angie Zinzilieta
Respondent Attorney	Emily Schlecte

DATE FILED: 6/10/2024

/s/Edward Lee, Arbitrator
Signature

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

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)

Janet Nelson,
Employee/Petitioner

v.

Macy's Retail Holdings, Inc.
Employer/Respondent

Case # **2021** WC **30372**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Urbana**, 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. ☒ Is Petitioner entitled to any prospective medical care?
L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

FINDINGS

On the date of accident, **6/21/2021**, 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 $**65,000.00**; the average weekly wage was $**1,250.00**.

On the date of accident, Petitioner was **64** years of age, ***single*** with **no** 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

Medical Benefits

Respondent shall pay reasonable and necessary medical services of as described in Petitioner's Exhibit 11, as provided in Section 8(a) of the Act.

Petitioner is entitled to prospective medical treatment as described in Dr. Matthew Gornet's deposition and note of July 17, 2023.

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

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

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

Edward Lee
Signature of Arbitrator

June 10, 2024

STATE OF ILLINOIS)
)SS
COUNTY OF SANGAMON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JANET NELSON, Case No. 2021-WC-30372
Employee/Petitioner,

v.

MACY'S RETAIL HOLDINGS, INC., Arbitrator Edward Lee
Employer/Respondent. Urbana, Illinois (Springfield docket)

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

On June 21, 2021, Petitioner, a 64-year-old female, fell backwards after slipping on hand sanitizer while exiting an escalator during her employment with Respondent. Tr. 10:11-11:10. At issue, Petitioner seeks payment for past medical treatment to her neck, low back, and hips, and prospective treatment consisting of surgical intervention for her low back. Arb. 2.

I. TESTIMONY AT ARBITRATION

a. Petitioner's Testimony.

For approximately twenty-two years before the injury at issue, Petitioner was employed by Respondent, and she was a sales manager when the injury at issue occurred. Tr. 17:15-17, 8:1. As part of her duties, Petitioner performed a variety of duties, such as leading fellow employees, cleaning, stocking, and walking. Tr. 8:5-9:6. Prior to June 21, 2021, Petitioner worked approximately 50 to 60 hours per week and was able to fulfill all of the duties associated with her position as a sales manager. Tr. 9:7-13.

Petitioner testified that on June 21, 2021, around 7:00 p.m., she was exiting an escalator to secure money when she slipped on hand sanitizer, striking her head and right backside. Tr. 9:16-10:3, 10:11-11:10, 11:18-12:6. After the fall, Petitioner finished her shift, which ended at 8:00 p.m., as she was the only manager on duty. Tr. 9:16-10:3, 10:11-11:10, 13:16-20. Petitioner immediately felt pain in her head and backside. Tr. 13:10-13. Given her condition, Petitioner asked another employee to make sure the doors were locked on the lower level as she could not complete this duty. Tr. 14:1-14. Petitioner did not seek medical care that night believing that she "would be able to okay" although she was in pain. Tr. 14:15-15:7. Petitioner retuned to work the following day but was moving "a little slow." Tr. 15:8-16.

On June 24, 2021, Petitioner was "unable to get out of bed," and ultimately underwent treatment with Springfield Clinic – Midwest Occupational Health Associates (hereinafter "MOHA") at the direction of Respondent. Tr. 15:13-16:18. Petitioner testified that within a month of her injury, she had difficulties with walking, driving, and putting on her shoes. Tr. 17:11-18:4. Petitioner testified regarding her treatment with several providers as summarized below. Tr. 16:19-22:2. Relative to the issues here, Petitioner testified that she

sought and failed conservative treatment for her lumbar, and Dr. Gornet was recommending surgical intervention for such. Tr. 16:19-22:2. At her last appointment with Dr. Gornet, just a few weeks prior to this hearing, Petitioner testified that her treatment plan remained the same, and she wished to proceed with the treatment. Tr. 29:1-6.

Petitioner also advised that she struggles with activities, like blow-drying her hair, and now hires outside help to do her yardwork. Tr. 18:5-19. Petitioner testified that although conservative treatment has provided her with some relief, it has not had a lasting effect. Tr. 20:5-19. Petitioner advised that due to the ineffectiveness of her conservative treatment, she continues to struggle with walking or sitting for any prolonged length, has trouble sleeping and wakes up in pain, and has difficulty rising from a chair. Tr. 21:2-16. Petitioner also testified that she did not have any injuries to her neck, low back, or hips prior to her workplace injury and has not had any new injuries since her workplace injury. Tr. 22:12-23:7.

II. Medical Evidence.

On June 24, 2021, Petitioner sought treatment with Springfield Clinic – Midwest Occupational Health Associates (hereinafter "MOHA") per Respondent's instructions. PX 1; *see also* Tr. 15:17-16:18. At that visit, Petitioner advised of falling while at work on June 21, 2021, and striking her right hip, back, and head. PX 1. Petitioner rated her pain as 7/10 in the lumbar and right hip areas. Petitioner was diagnosed with pain in the right hip and lumbar, cervicalgia, and contusion to the head. PX 1. As such, she was placed on modified duty, prescribed with pain medications, and referred for x-rays of the lumbar and right hip. PX 1. X-ray images showed mild osteoarthritic changes of the sacroiliac joint and mild disc height narrowing at L1-2 and L2-3. PX 1.

On June 30, 2021, Petitioner followed up with MOHA and continued to rate her pain at 7/10 in the lumbar and right hip regions. PX 1. Given this, an MRI of Petitioner's hip was recommended to be completed as soon as possible. PX 1. Petitioner was advised to continue taking anti-inflammatory medications, to apply a cold pack, and to restrict work to "sit down" only. PX 1.

On July 13, 2021, an MRI of Petitioner's hip indicated a complex tear of the posterosuperior right acetabular labrum and a partial thickness tear in the hamstring. PX 1. At that point, MOHA referred Petitioner to an orthopedic specialist at Springfield Clinic. PX 1.

On July 19, 2021, Petitioner advised MOHA that she had an appointment pending with Dr. Pineda, and MOHA recommended that Petitioner continue with her restrictions and medications. PX 1. Furthermore, MOHA recommended that Petitioner undergo physical therapy for her cervical condition. PX 1.

On August 4, 2021, MOHA noted that Petitioner remained on light duty and continued to take medications. PX 1. She rated er pain as 6/10 in the cervical, right lumbar, and right hip areas. PX 1. MOHA advised Petitioner to start physical therapy as determined by her orthopedic specialist and to complete an MRI of the cervical spine.

On August 13, 2021, Petitioner began physical therapy with Passavant Area Hospital. PX 2. At that initial evaluation, the provider noted that Petitioner had a fall on June 21, 2021, and began to have right hip and low back pain. PX 2. Petitioner advised that she was unable to sleep more than two hours at a time due to pain and had difficulty with walking distances, standing longer than 10 minutes, moving from a seated to standing position, and navigating stairs. PX 2. The provider noted that Petitioner had lumbar range of motion and strength deficiencies and right hip active range of motion and strength deficiencies. PX 2. The provider also noted that Petitioner's movements were very slow and cautious due to pain. PX 2. Petitioner underwent physical therapy

from August 13, 2021, through September 13, 2021. PX 2. During those visits, Petitioner consistently had pain complaint and advised that she "misses being able to do more." PX 2.

On August 31, 2021, Petitioner underwent a cervical MRI which was indicative of a C5-6 disc bulge and disc-osteophyte complexes causing foraminal stenosis, left worse than right, and C2-3 and C4-5 foraminal stenosis. PX 3.

On September 3, 2021, Petitioner continued to follow up with MOHA, and she rated pain in her spine and right hip areas to be as 6/10. MOHA advised Petitioner to continue seeking treatment, to maintain work restrictions, and to follow up with her specialists concerning an injection for her cervical condition. PX 1.

On October 20, 2021, Petitioner sought treatment with Dr. Thomas Lee with Pain & Rehabilitation Specialists. PX 4. At that visit, Petitioner again recounted how her workplace injury occurred, and she also advised of her symptomology, including persistent headaches, low back pain, pain into the gluteus maximus, and groin pain. PX 4. Petitioner also advised Dr. Lee of a prior injury to her ribs. PX 4. Dr. Lee reviewed Petitioner's right hip and cervical MRIs along with prior cervical and lumbar x-rays. PX 4. Upon exam, Dr. Lee noted that Petitioner had limited range of motion in her cervical spine, tenderness in the lumbar spine, particularly towards the L5 region. PX 4. He determined that Petitioner had a right hip labral tear, C4-5/C5-6 herniations, and possible lumbar disc derangement. PX 4. Dr. Lee requested that Petitioner have an MRI of her lumbar done, continue with physical therapy and anti-inflammatory medications, and have a right hip injection performed. PX 4.

Pursuant to Dr. Lee's orders, Petitioner underwent a lumbar MRI on December 14, 2021. PX 5. This MRI reviewed several abnormalities, including disc protrusions at L3-4, L4-5, and L5-S1 and an annular tear at L5-S1. PX 5. On December 16, 2021, Petitioner underwent a right hip injection with Dr. Helen Blake. PX 4.

Following up with Dr. Lee on January 27, 2022, Petitioner advised that she was having trouble concentrating and sleeping and was having neck and back pain to severe levels with a moderate-to-severe baseline. PX 4. Also, upon reviewing the lumbar MRI, Dr. Lee determined that it was indicative of multiple disc protrusions with L4-5 and L5-S1 being more likely symptomatic. PX 4. At that point in time, Dr. Lee believed that cervical condition to be most problematic despite having obvious lumbar injuries as well, and he recommended that Petitioner have a C5-6 epidural injection. PX 4. Said injection was performed by Dr. Blake on March 15, 2022. PX 6.

Despite having injections to her hip and cervical spine, Petitioner reported an increase of symptoms to Dr. Lee on April 7, 2022. PX 4. Petitioner advised that the hip injection "really helped," but she was still having pain in the left glute and lumbosacral junction regions. PX 4. Due to this pain, Petitioner was unable to roll in bed and had to crawl on the floor the prior week. PX 4. However, she also stated that her pain was better but still in the severe range. PX 4. Also, at this visit, Petitioner also told Dr. Lee that she was no longer working with Respondent due to respiratory issues unrelated to her workplace injury. PX 4; *see also* Tr. 7:11-14. Upon examination, Dr. Lee noted that Petitioner had pain with a marked visible response rising from the chair and forward flexing about 60 degrees. PX 4. As such, Dr. Lee referred Petitioner for an epidural steroid injection at L5-S1 with Dr. Blake. PX 4. On May 3, 2022, Dr. Blake performed said injection. PX 6.

Following up with Dr. Lee on June 9, 2022, Petitioner advised that she had been struggling with long-haul COVID symptoms since October of the previous year and was recently treated for unrelated cellulitis. PX 4; *see also* RX 4. However, she also noted that the lumbar injection provided her with some relief, but she did not

receive relief from her cervical injection and her hip pain was coming back. PX 4. Overall, however, Petitioner felt that her neck and back was improving, partially because Petitioner was able to use her daughter's pool for exercises. PX 4. Petitioner noted being happy to have her daughter's help, but she was "ready to get back to work." PX 4. Upon exam, Dr. Lee noted movement patterns with Petitioner's neck and back consistent with restricted motion. PX 4. Dr. Lee advised Petitioner to continue with her pool exercises, and he wanted to follow up with her in six to eight weeks allowing the maximum effect of the pool exercises to take place. PX 4.

On August 2, 2022, Petitioner reported to Dr. Lee that she continued to have severe ongoing symptomology in the low back and right hip, particularly in the right lateral hip area. PX 4. Dr. Lee noted Petitioner's history of injections to her cervical, lumbar, and right hip. PX 4. Again, Dr. Lee noted movement patterns in Petitioner's neck and back which were consistent with restricted movement. PX 4. Because of Petitioner's ongoing severe symptomology, Dr. Lee referred Petitioner to Dr. Corey Solman for her hip to determine whether she was a surgical candidate and Dr. Matthew Gornet for her cervical and lumbar conditions "as there is certainly overlap from her low back condition" and her hip condition. PX 4.

The next day, August 3, 2022, Petitioner presented to the emergency department at Alton Memorial Hospital for a severe exacerbation of her low back pain. PX 7. Specifically, Petitioner complained of back pain radiating into her right leg. PX 7. The physician noted that Petitioner rated her pain to be 8/10, and Petitioner's blood pressure was elevated as a result of that pain. PX 7. The emergency department discharged Petitioner with a prescription for anti-inflammatories, lidocaine patches, and a steroid pack. PX 7.

On August 15, 2022, Petitioner went to her primary medical provider (hereinafter "PCP"), Alton MultiSpecialists, for right hip and leg pain. RX 4. Upon exam, the provider noted that Petitioner was tender at that right lower back into the right buttock area and dorsiflexion of both feet was present. RX 4. Ultimately, her provider noted that she had chronic low back pain and sciatica issues, along with right hip pain. RX 4. Furthermore, Petitioner had an acute exacerbation of this condition with pain radiating down the right leg recently. RX 4. The provider prescribed pain medication and advised Petitioner to follow up with her orthopedic specialist. RX 4.

On August 16, 2022, Dr. Lee noted Petitioner's severe exacerbation of her back pain which radiated into the right lower extremity and foot with associated glute and right groin pain. PX 4. Dr. Lee noted that Petitioner had difficulty securing an appointment with Dr. Solman for her hip, but she was seeing Dr. Gornet for her cervical and lumbar conditions in the near future. PX 4. Dr. Lee also referred Petitioner to Dr. Blake for a lumbar epidural injection, and he prescribed her Tramadol. PX 4.

Petitioner saw her PCP for non-related health issues on August 25, 2022, and she noted that the "burning feeling" and "flushing feeling" in her legs resolved. RX 4. However, she still continued to have back pain. RX 4. The following week, Petitioner reported that she continued to have right low back and hip pain. PX 4. She visited an acupuncturist who noted who blood pressure was elevated and advised her to follow up with her PCP. PX 4. Petitioner's PCP noted that she had an appointment for a pain injection with her orthopedic in the next couple of weeks. PX 4. On September 13, 2022, Petitioner underwent an epidural injection at L5-S1 for indications of lumbar radiculopathy. PX 6.

On September 15, 2022, Petitioner saw Dr. Matthew Gornet for an initial evaluation of her cervical and lumbar conditions. PX 8. Dr. Gornet noted that Petitioner had main complaints of pain at the neck base with a burning sensation to both sides of her neck into the bilateral trapezius and low back pain bilaterally with the right

side being worse and radiating into the right buttock, hip, thigh, posterior calf, and occasionally foot. PX 8. Dr. Gornet then noted how Petitioner's workplace injury occurred which is consistent with Petitioner's description in previous records. PX 8. Dr. Gornet reviewed Petitioner's medical records from MOHA, Passavant Hospital, Dr. Lee, and Dr. Blake. PX 8. Dr. Gornet also reviewed Petitioner's MRIs. PX 8. Petitioner advised Dr. Gornet that she did not recall any significant issues with her low back or neck, but she advised that she did have a work-related fall in approximately December of 2019. PX 8.

At that visit, Petitioner described her symptoms as constant, with her low back pain being worse than her neck pain. PX 8. However, Petitioner advised that her most recent lumbar injection provided her with some relief. PX 8. Petitioner also advised that she had right leg pain, but she did not have significant arm pain (which could be indicative of cervical radiculopathy). PX 8. Dr. Gornet noted that Petitioner's symptoms were made worse by prolonged sitting, standing, bending, reaching, pulling, or maintaining a fixed head position. PX 8.

Upon examination, Dr. Gornet noted that Petitioner had mild decreased range of motion of the cervical spine, and mild bilateral weakness in the in the biceps. PX 8. Regarding her lumbar, Dr. Gornet noted that Petitioner motioned to both sides of her low back but particularly noted the right hip and/or buttock areas. PX 8. Dr. Gornet noted that there was a subtle decrease in ankle dorsiflexion and EHL function bilaterally at 4+/1, and DTRs are 1+ in her knees and trace in her ankles. PX 8.

Dr. Gornet specifically noted that the C5-6 herniation indicated in Petitioner's cervical MRI, and that such correlated with Petitioner's subjective complaints of burning at the base of the neck. PX 8. Regarding her lumbar, Dr. Gornet describes the MRI findings in detail and noted that he believed L5-S1 to be most symptomatic. PX 8. Given his findings, Dr. Gornet recommended that Petitioner have a CT discogram at L3-4, L4-5, and L5-S1. PX 8. He further recommended that Petitioner have a new cervical MRI of diagnostic quality done. PX 8. Dr. Gornet also noted that Petitioner's blood pressure was elevated and would need to be remediated prior having the CT discogram done. PX 8. Dr. Gornet placed Petitioner on restrictions, but he also acknowledged Petitioner was not currently working. PX 8. After completing his examination and reviewing Petitioner's medical records, Dr. Gornet determined that Petitioner's neck and low back condition were related to her workplace injury on June 21, 2021. PX 8.

On October 11, 2022, Petitioner followed up with Dr. Lee for her right hip pain. PX 4. Petitioner advised that her right-sided hip symptoms were mitigated by her recent injection with Dr. Blake. PX 4. However, she felt that her symptoms were shifting to the left side. PX 4. Dr. Lee noted Dr. Gornet's referral for a CT discogram of the lumbar, but that Petitioner was having difficulty controlling her blood pressure. PX 4. Upon examination, Dr. Lee noted that Petitioner had pain in the medial groin region and significant neck and left scapular pain. PX 4. Petitioner had not been able to connect with Dr. Solman's office regarding her hip pain, but Dr. Lee encouraged her to continue to try to set that appointment with Dr. Solman. PX 4.

On May 5, 2023, Petitioner contacted Dr. Gornet's office and advised that she was ready to proceed with the CT discogram of the lumbar as her blood pressure was now under control. PX 8. PA Collins noted that Petitioner failed to conservative treatment and that her pain and symptoms affects her quality of life and all aspect of such. RX 8.

On May 30, 2023, a CT discogram of Petitioner's lumbar as completed and indicated that Petitioner had a non-provocative disc at L3-4 with degeneration and a provocative disc at L4-5 with annular tearing. PX 8; PX 9. Following up, Petitioner saw Dr. Gornet on July 17, 2023, and he noted that treatment for Petitioner's neck was on hold due to her lumbar symptomology. PX 8. Upon exam, Dr. Gornet noted that Petitioner still exhibited

in ankle dorsiflexion bilaterally at 4+/5. Given her history, Dr. Gornet recommended that Petitioner proceed with surgical intervention consisting of a fusion at L5-S1 and two-level disc replacement at the adjacent levels. PX 8.

a. Testimony of Dr. Matthew Gornet.

Dr. Matthew Gornet, of the Orthopedic Center of St. Louis, testified on behalf of Petitioner concerning her past treatment, prospective treatment, and condition. PX 10. Dr. Gornet is a board-certified, fellowship-trained spinal surgeon specializing in treating patients with lower back and neck pain. PX 10, Ex. 1 (C.V. of Dr. Gornet). Dr. Gornet has authored numerous book chapters and research papers and is a national leader in dynamic stabilization, disc replacement, and non-fusion technology development. PX 10, Ex. 1 (C.V. of Dr. Gornet).

Dr. Gornet testified about treating Petitioner for cervical and lumbar pain, as requested by Dr. Lee, providing details consistent with the medical records discussed herein. PX 10, 8:5-10:16. When asked if Petitioner advised whether her symptoms had worsened since her workplace injury, Dr. Gornet testified: "Yes. Only improvement was with the injection, but that was not . . . long lasting." PX 10, 10:18-21. Dr. Gornet discussed how degenerative spinal conditions can manifest symptoms after a traumatic injury, such as Petitioner's fall:

> People at age 66, a hundred percent of the population would have some level of degeneration. An accident such as the one described could easily not only aggravate that underlying condition, but also cause a new injury.

PX 10, 11:9-13.

Dr. Gornet testified that Petitioner's subjective complaints matched his objective findings. PX 10, 11:14-12:9. He performed a CT discogram of Petitioner's lumbar to identify the specific areas contributing to her pain complex, aiding in determining the appropriate treatment. PX 10, 12:15-13:9. The discogram showed that L3-4 was non-provocative, while L4-5 exhibited severe back pain upon injection, consistent with Petitioner's typical symptoms. PX 10, 13:10-22.

Based on his findings, Dr. Gornet recommends surgical intervention, specifically considering two-disc-replacement procedure versus a disc replacement-fusion hybrid procedure. PX 10, 14:4-15. Describing his decision to recommend surgical intervention, Dr. Gornet testified:

> At this point, the patient has failed conservative measures. She's had injections. She's had therapy. She continues to be significantly symptomatic, which has affected her life, her quality of life, and most aspects of her life. So, her options are to live that way versus undergo further treatment.

PX 10, 14:16-24.

Dr. Gornet testified that he believed Petitioner's current condition and subsequent medical treatment described herein, including the recommended lumbar surgery, were related to her workplace injury on June 21, 2021. PX 10, 15:6-16:5.

Dr. Gornet also testified that Petitioner was unable to proceed with surgery due to the lack of approval by Respondent. PX 10,15:1-5. On cross-examination, Dr. Gornet testified that he submitted his bills to Respondent, not any other insurer, as Petitioner's condition has been consistently documented as being work related. PX 10,

19:7-20:10. Dr. Gornet also testified that he replaces approximately 400 discs annually. PX 10, 20:19-23. However, Dr. Gornet advised that not every individual is a candidate for surgical intervention or a disc replacement surgery. PX 10, 21:5-22:12. Regarding Petitioners though, Dr. Gornet advised that she was a candidate of the surgery due to the structural integrity of her spine and bone density testing results. PX 10, 22:14-23:3. On cross-examination, Dr. Gornet informed that parties that Petitioner had just completed a bone density examination, and the results were positive. PX 10, 22:14-23:3.

On cross-examination, Dr. Gornet further described his recommendation for surgical intervention:

> Well, again, the purpose of treating both levels is to cure and relieve the effects of her work-related injury. . . . As you see, her pain down her leg is more nerve-related pain. Although, she has some mild nerve dysfunction, really we're not doing this for severe neurologic impairment because her impairment is, from a neurologic standpoint . . . is mild. We're doing it for associated pain.
>
> Remember, the nerves in your back have – that run down to your legs have three components, pain and temperature, strength, and sensation.
>
> So, she has some mild effect in strength. She has no effect in sensation. And she has some effect in the pain fibers.
>
> But remember, the structure of the disc itself can sense and feel pain. You don't need a pinched nerve. That's what is a common misperception.
>
> If I take your finger and bend it backwards so it touches your wrist, I could say, 'Don't worry about it. I'm not pinching a nerve.' But you would probably be very unhappy.
>
> So, the real reason why you're hurting is because the structure itself can sense and feel injury and pain. So, it's not a pinched nerve. She has really more this type of injury where her disc has been injured, which is, one, causing more structural back pain and buttock pain with some mild nerve pain.

PX 10, 24:4-25:10.

Finally, Dr. Gornet testified that Petitioner is a good candidate for surgery, and he is hopeful that the surgery will "produce what we believe are the desired outcomes." PX 10, 25:13-27:16. Petitioner had a follow up visit with Dr. Gornet on February 15, 2024, to which Petitioner testified, and advised that the treatment plan remained the same. PX 10, 27:19-28:1.

b. Testimony of Dr. Jesse Butler.

Dr. Jesse Butler, an orthopedic surgeon, performed a § 12 records review at Respondent's request. RX 1, 5:11-7:12. Dr. Butler treats spinal conditions, with approximately 60% of his practice devoted to lumbar injuries. RX 1, 7:3-17. Dr. Butler markets his medical-legal services in the context of workers' compensation claims. RX 1, 38:21-39:22. Dr. Butler makes over a million dollars annually performing medical-legal work, and 95% of the time that work is performed on behalf of workers' compensation insurers or employers. RX 1, 27:10-28:2. Dr.

Butler has previously given speeches, lectures, and presentations to workers' compensation defense firms in the Chicago area. RX 1, 28:3-15.

Dr. Butler testified to not personally knowing Dr. Gornet, but Dr. Butler has attended Dr. Gornet's lectures. RX 1, 28:19-29:2. Dr. Butler testified that he performs four (4) disc replacements annually, but he does not perform lumbar disc replacements which are at issue with Petitioner's treatment. RX 1, 29:11- 30:8.

Dr. Butler noted that he reviewed Petitioner lumbar MRI imagining and disagreed with Dr. Ruyle, Dr. Gornet, and Dr. Lee's interpretation of such. RX 1, 45:5-24, 46:12-24 (disagreeing with "every single one" of Dr. Ruyle's MRI report). In sum, Dr. Butler opined that Petitioner's lumbar was relatively normal for her age with no sign of instability and any abnormalities were mild degenerative changes. RX 1, 11:3-12:2, 48:23-49:2. After reviewing Petitioner's medical records and imagining, Dr. Butler concluded that Petitioner's workplace injury was limited to a "low back sprain and neck pain" for which surgery is not indicated, and her lumbar symptomology should have resolved by early 2022. RX 1, 12:24-13:3, 17:4-11. Dr. Butler's testimony discusses Petitioner's cervical condition at length, but it is this Arbitrator's understanding the condition and prospective medical treatment concerning the lumbar are at issue for purposes of this § 19(b) petition and decision. Notably, as to Petitioner's cervical condition, Dr. Butler advised that he could not testify to such "to a certain degree of medical certainty." RX 1, 32:2-15. As such, this Arbitrator focuses on the summarization of Dr. Butler's testimony to regarding the lumbar and prospective treatment for such.

Dr. Butler testified that a CT discogram is done as "the findings on [a] MRI are not specific, and the discogram is designed to pinpoint or localize the level of pain." RX 1, 13:23-15:23. Petitioner's discogram revealed her L3-4 was not symptomatic, but her L4-5 level was symptomatic. RX 1, 13:23-15:23. Dr. Butler also voiced his concerns about the proposed surgery and Petitioner's age and employing a fusion at L5-S1. RX 1, 21:6-23:14. However, Dr. Butler did not review or have knowledge of Dr. Gornet's discussion regarding the option of a fusion at that level versus a fusion, but he also advised that "more information is always good." RX 1, 36:6-17.

Dr. Butler testified that he did not summarize the medical records found in his report, but rather his "office" summarized the records and he reviewed it. RX 1, 38:4-14. On cross-examination, Dr. Butler admitted that he did not have several of Petitioner's medical records, which have been summarized herein, including records from MOHA, the provider with whom Respondent instructed Petitioner to treat. RX 1, 33:4-34:10. Dr. Butler did not have the MOHA records which indicate that Petitioner complained of neck pain since beginning treatment. RX 1, 35:16-20. Dr. Butler did not have the May 5, 2023, note advising that Petitioner had tried and failed conservative treatment and that her condition was affecting her daily life. RX 1, 40:18-

Furthermore, Dr. Butler advised that he was not aware of Petitioner's current cervical and lumbar conditions. RX 1, 35:21-36:2. Dr. Butler does not know the severity of Petitioner's contemporary symptomology. RX 1, 39:23-40:2.

Dr. Butler testified that the workplace injury at issue could aggravate an underlying condition and possibly cause structural injuries to Petitioner's spine. RX 1, 49:3-15. Dr. Butler agreed that asymptomatic pathology can become symptomatic after an injury. RX 1, 49:3-15. 52:7-13.

Dr. Butler testified a person with weakness in the lower extremities which manifests itself as having difficulty walking, climbing stairs, and rising from a chair. RX 1, 54:5-17. Dr. Butler also testified that pain into the thigh can be a sign of radiculopathy.

Petitioner did not receive medical treatment to her spine prior to her workplace injury. RX 1, 43:20-44:21. Dr. Butler noted no other spinal issues other than those occurring after Petitioner's workplace injury. . RX 1, 43:20-44:21. Since February of 2022, Petitioner has consistently complained of pain. RX 1, 37:15-38:14, 55:14-16. ("She's had pain the whole time."). Dr. Butler saw no indication from Petitioner's records which note that she was magnifying her symptoms. 56:5-12.

c. Testimony of Dr. Benjamin Domb.

Dr. Benjamin Domb, an orthopedic surgeon specializing in hip conditions, testified on behalf of Respondent after conducting a records-review pursuant to § 12. RX 2, 4:17-5:21. Dr. Domb testified that Petitioner's hip condition was as described in the MRI report and related to her workplace injury. RX 2, 8:14-9:20, 13:23-14:6. Furthermore, Dr. Domb testified that all of the medical treatment rendered to Petitioner regarding her hip was reasonable and necessary. RX 2, 8:14-9:20. Dr. Domb also found that Petitioner reached MMI regarding her hip injury. 9:24-10:3. Dr. Domb also testified that a lumbar condition could cause buttock pain. RX 2, 13:2-5.

b. Arbitrator Credibility Assessment.

Regarding any medical evidence to the contrary, Dr. Butler performed a record-review pursuant to § 12 of the Act. "Expert opinions must be supported by facts and are only as valid as the facts underlying them." *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, ¶ 24; *see also Sunny Hill of Will County v. Illinois Workers' Compensation Comm'n*, 2014 IL App (3d) 130028WC, ¶ 36. The proponent of expert testimony must lay a foundation sufficient to establish reliability of the bases for the expert's opinion." *Id*. If the expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. *Gross*, 2011 IL App (4th) 100615WC, ¶ 24.

Here, the reasons which Dr. Butler cited in support of his causation opinions do not appear to support his opinion, and some of the facts which Dr. Butler relied upon are contradicted by the medical records and other evidence. Furthermore, Dr. Butler's opinions do not squarely address or refute the medical basis for the opinions of the radiologists, Dr. Gornet, Dr. Blake, Dr. Lee, and/or Dr. Ruyle. Nor did he explain why said physicians' opinions were medically unsound or otherwise flawed. Rather, as shown during his cross-examination, there is sufficient documentation in the record that Petitioner suffered from a workplace injury on June 21, 2021, and that her lumbar condition is more than a strain, which necessitates surgical intervention. In his testimony, Dr. Gornet discussed why Petitioner is a good surgical candidate for her lumbar condition. Dr. Butler's concerns are refuted by Dr. Gornet's testimony.

Furthermore, Respondent has failed to provide any evidence that Petitioner ever suffered with a low back or neck injury prior to the workplace injury. Without anything more, Dr. Butler's testimony must be disregarded.

III. Conclusions of Law:

The Arbitrator finds that Petitioner suffered a workplace injury on June 21, 2021, which arose out of and in the course of her employment by Respondent and is the cause of Petitioner's current condition of illbeing.

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The findings in regard to accident, above, are incorporated herein.

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. *Land and Lakes Co. v. Industrial Comm'n*, 359 Ill.App.3d 582, 592 (2d Dist. 2005). A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill.2d 193, 205 (2003). That is, 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. *Sisbro, Inc.*, 207 Ill.2d at 205; *see also Swartz v. Industrial Comm'n*, 359 Ill.App.3d 1083, 1086 (3d Dist. 2005).

"Every natural consequence that flows from an injury that arose out of and in the course of the claimant's employment is compensable unless caused by an independent intervening accident that breaks the chain of causation between a work related injury and ensuing disability." *Vogel v. Industrial Comm'n*, 354 Ill.App.3d 780, 786 (2d Dist. 2005); *see also Teska v. Industrial Comm'n*, 266 Ill.App.3d 740, 742 (1st Dist. 2004). "That other incidents, whether work-related or not, may have aggravated the claimant's condition is irrelevant." *Vogel*, 354 Ill.App.3d at 786; *see also Lasley Construciton Co. v. Industrial Comm'n*, 274 Ill.App.3d 890, 893 (5th Dist. 1995).

There is no dispute that Petitioner sustained a work-related injury on June 21, 2021, while in the course of her employment with Respondent when she slipped on hand sanitizer. The evidence amply supports that conclusion. The medical record itself demonstrates a sudden manifestation of symptoms, objective findings, medical restrictions, and significant medical intervention following the injury. Furthermore, Petitioner has presented documentary and testimonial evidence that she was working full-time and full duty prior to June 21, 2021.

In support of the Arbitrator's decision relating to whether the medical services that were provided to Petitioner were reasonable and necessary as a result of the accident of June 21, 2021, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The findings in regard to accident and causal connection, above, are incorporated herein.

The right to be compensated for medical costs associated with work-related injuries is at the very heart of the Workers' Compensation Act. *Hagene v. Derek Polling Center*, 388 Ill.App.3d 390 (5th Dist. 2009). The Act's purpose is to place the burdens of caring for the casualties of industry on industry rather than placing this burden on the public or individuals whose misfortunes arise out of the injury. *Shell Oil v. Indus. Comm'n*, 2 Ill.2d 590 (1954). An employee is entitled to recover reasonable medical expenses that are causally related to the accident and are required to diagnose, relieve, or cure the effects of the injury. *F&B Mfg. Co. v. Indus. Comm'n*, 325 Ill.App.3d 527 (2001).

Here, there is no persuasive evidence in the record of unreasonable or unnecessary medical treatment. Respondent's § 12 examiner, Dr. Butler, advises that he does not perform the surgery recommended by Dr. Gornet, but he would not recommend surgery for Petitioner. However, Dr. Butler readily admitted that he was not aware of Dr. Gornet's explanation and reasoning for said procedure as discussed herein. Furthermore, Dr.

Butler does not dispute the amount of medical bills in question nor does he dispute that the bills are the result of medical treatment which Petitioner received for her lower back and neck.

With the exception of Dr. Butler's opinion, which has already been discussed above, there is little support in the record for the proposition that the medical services provided to Petitioner were unnecessary or unrelated to the accidental injury of June 21, 2021. Therefore, based upon the weight of the evidence, this Arbitrator, finds that all medical services provided to Petitioner referenced in Petitioner's Exhibit 11 was reasonable and necessary to cure and relieve the effects of Petitioner's injuries resulting from the workplace injury. Respondent is ordered to pay for the same in accordance with § 8(a) of the Act and continue to pay for further medical treatment as necessary and appropriate pursuant to the Act, including the surgery proposed by Dr. Gornet for Petitioner's lumbar spine. This finding is based upon the medical records introduced into evidence and the testimony of Petitioner and Dr. Matthew Gornet.

The Arbitrator finds that Petitioner is entitled to prospective medical treatment as recommended by Dr. Matthew Gornet, consisting of surgical intervention to the lumbar spine. In support of the Arbitrator's decision relating to whether Petitioner is entitled to any prospective medical treatment, the Arbitrator incorporates the findings above.

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The findings in regard to accident and causal connection, above, are incorporated herein.

The Arbitrator finds that Petitioner is not entitled to penalties.

Regarding Issue (M): Should Penalties or Fees be Imposed upon Respondent, the Arbitrator finds:

The Arbitrator finds that neither penalties nor fees should be imposed upon Respondent. Respondent has paid related medical bills from 6/21/21 – 11/16/23, which is contrary to vexatious or unreasonable delay. Respondent scheduled an IME with Dr. Jesse Butler to address Dr. Gornet's surgical recommendation in a timely manner. Due to Petitioner's no-show, Respondent chose to obtain a records review in lieu of rescheduling the IME appointment to avoid any unnecessary delays. The Arbitrator finds the Respondent was not vexatious or unreasonable and, therefore, does not award penalties and fees.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC031256
Case Name	Gilberto Rodriguez v. TNA Sealants Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0261
Number of Pages of Decision	17
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Joel Block
Respondent Attorney	Ryan Dezonno

DATE FILED: 6/12/2025

/s/Amylee Simonovich, Commissioner

Signature

25IWCC0261

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

Gilberto Rodriguez,

Petitioner,

vs. NO: 21 WC 031256

TNA Sealants, 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, prospective medical 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 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 last sentence of the second paragraph on page 10 of the Arbitration Decision, striking the word "unrelated" and replacing it with "related".

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on November 14, 2024, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $1,015.10/week for 232 1/7 weeks commencing February 25, 2020 through August 6, 2024, the date of arbitration, as provided in Section 8(b) of the Act. Per Stipulation, Respondent is entitled to a credit in the amount of $66,559.89 for temporary total disability benefits paid to Petitioner.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner's unpaid medical bills for the necessary and reasonable treatment of Petitioner's lumbar

spine condition incurred on or prior to August 6, 2024, the date of Arbitration, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses. Per the Parties' stipulation, Respondent is also entitled to a credit in the amount of $83,212.86 for medical bills paid through its group medical plan pursuant to Section 8(j) of the Act. Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent provide and pay for the prospective medical treatment recommended by Dr. Chioffe, including an L3-S1 laminectomy and instrumental fusion, as provided in Sections 8(a) and 8.2 of the Act.

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

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

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.

June 12, 2025
O: 06/10/25
AHS/kjj
051

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC031256
Case Name	Gilberto Rodriguez v. TNA Sealants Inc
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Joel Block
Respondent Attorney	Ryan Dezonno

DATE FILED: 11/14/2024

/s/Ana Vazquez, Arbitrator
Signature

INTEREST RATE WEEK OF NOVEMBER 13 2024 4.31%

STATE OF ILLINOIS)
)SS
COUNTY OF COOK)

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

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

Gilberto Rodriguez
Employee/Petitioner

v.

TNA Sealants, Inc.
Employer/Respondent

Case # **21** WC **031256**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Ana Vazquez**, Arbitrator of the Commission, in the city of **Chicago**, on **August 6, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **February 24, 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 $**79,177.00**; the average weekly wage was $**1,522.65**.

On the date of accident, Petitioner was **62** 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 $**66,559.89** for TTD, $**0** for TPD, $**0** for maintenance, and $**0,** for other benefits, for a total credit of $**66,559.89**.

Respondent is entitled to a credit of $**83,212.86** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $1,015.10/week for 232 1/7 weeks commencing February 25, 2020 through August 6, 2024, the date of arbitration, as provided in Section 8(b) of the Act. Per stipulation, Respondent is entitled to a credit in the amount of $66,559.89 for temporary total disability benefits paid to Petitioner.

Petitioner's claim for unpaid medical bills is granted and all bills for the necessary and reasonable treatment of Petitioner's lumbar spine condition incurred on or prior to the date of arbitration, August 6, 2024, are awarded and Respondent is liable for payment of same, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses. Per the Parties' stipulation, Respondent is entitled to a credit in the amount of $83,212.86 for medical bills paid through its group medical plan pursuant to Section 8(j) of the Act. Ax1 at No. 9. Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit.

Respondent shall authorize and is liable for the prospective medical treatment plan recommended by Dr. Chioffe, including an L3-S1 laminectomy and instrumental fusion, as provided in Sections in 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.

Ana Vazquez

NOVEMBER 14 2024

_____

Signature of Arbitrator

ICArbDec19(b)

PROCEDURAL HISTORY

This matter proceeded to arbitration on August 6, 2024 before Arbitrator Ana Vazquez in Chicago, Illinois pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act ("the Act"). The issues in dispute include: (1) causal connection, (2) unpaid medical bills, (3) prospective medical treatment, and (4) temporary total disability ("TTD") benefits. Arbitrator's Exhibit ("Ax") 1. All other issues have been stipulated. Ax1.

FINDINGS OF FACT

Petitioner was employed at Respondent on February 24, 2020. Transcript of Proceedings on Arbitration ("Tr.") at 10. Petitioner testified that Respondent is a sealant company in the construction field. Tr. at 10-11.

Petitioner testified that he did not have any back problems or receive any treatment for his low back before February 2020, and that he was able to work full duty. Tr. at 22.

Duties

Petitioner testified that he seals windows on high-rise buildings. Tr. at 11.

Accident

Petitioner testified that on February 24, 2020, he was moving heavy scaffolding from one section of a building to the next. Tr. at 11. Petitioner testified that as he was picking up part of the scaffolding, he heard a snap in his lower back. Tr. at 12. Petitioner then experienced a lot of pain in his lower back. Tr. at 12. Petitioner testified that the scaffolding "might be a couple hundred pounds." Tr. at 12. Petitioner was lifting the scaffolding with his partner. Tr. at 12-13. Petitioner testified that the pain in his low back was so severe that he could not straighten up. Tr. at 13. Petitioner finished the workday and went to the emergency department the following day. Tr. at 13.

Medical Records Summary[1]

Petitioner testified that from February 24, 2020 to the time he was seen by Dr. Theodore Fisher, he felt terrible, and he could not straighten up. Tr. at 14. Petitioner testified that the pain was in his low back, on the left side, down to his knee. Tr. at 14.

On February 26, 2020, Petitioner was seen by Dr. Theodore Fisher at Illinois Bone and Joint Institute ("IBJI"). Petitioner's Exhibit ("Px") 6 at 198-199. Petitioner reported a consistent accident history. X-rays of the lumbar spine were obtained and revealed (1) degenerative scoliosis with a 13-degree levoscoliotic curve from L2 to L4, (2) disc space narrowing, worse at L3-4, but also present at L2-3 and L1-2, and (3) grade I spondylolisthesis of L5 on S1 on extension. Px6 at 208. Dr. Fisher's assessments were (1) degenerative scoliosis, (2) L5-S1 grade I spondylolisthesis, and (3) sciatica. Dr. Fisher recommended physical therapy and ordered an MRI of the lumbar spine.

Petitioner underwent an MRI of the lumbar spine on March 3, 2020, which demonstrated (1) levoscoliosis, (2) asymmetric right foraminal stenosis, at L2-3 and L3-4 thickening concavity of the scoliotic curve, and (3) asymmetric left foraminal stenosis at L4-5 and L5-S1, as well as a left foraminal protrusion and superior

[1] Records of Petitioner's treatment at an emergency department on February 25, 2020, as well as records of Petitioner's pain management treatment were not offered.

extruded disc herniation into the left foramen possibly with encroachment upon the exiting L4 nerve root. Px6 at 206-207.

Petitioner again saw Dr. Fisher on March 6, 2020. Px6 at 195-196. Petitioner reported continued low back pain and difficulty standing up straight. Petitioner reported pain in the left lateral trochanter and on the left lateral thigh, lateral knee, and proximal lateral leg. Dr. Fisher noted that the MRI revealed degenerative changes throughout the lumbar spine, slight retrolisthesis of L3 on L4, disc space narrowing and Modic changes at L3-4, broad-based disc herniations from L1 to L5 with varying degrees of central and foraminal stenosis, and intraforaminal disc herniation with resultant at the left L4-5. Dr. Fisher's assessments were (1) lumbar degenerative disc disease, (2) left L4-5 intraforaminal disc herniation, and (3) left trochanteric bursitis. Dr. Fisher administered an injection of Kenalog, lidocaine, and Marcaine to the left greater trochanteric bursa. Dr. Fisher recommended Petitioner continue physical therapy. Dr. Fisher noted that if Petitioner's symptoms continued, he would be sent for a left L4-5 transforaminal epidural steroid injection. Petitioner was kept off work.

Petitioner underwent a physical therapy evaluation on February 27, 2020. Px6 at 231-235. Petitioner attended seven therapy sessions between February 29, 2020 and March 18, 2020. Px6 at 250-251, 260-262, 264. On March 18, 2020, Petitioner's remaining physical therapy visits were canceled due to Covid-19 precautions. Px6 at 216.

On April 15, 2020, Dr. Fisher's assessment was left L4-5 paracentral and intraforaminal disc herniation. Px6 at 193-194. Dr. Fisher recommended an L4-5 transforaminal steroid injection.

On June 10, 2020, Petitioner reported slight improvement of symptoms. Px6 at 191-192. Dr. Fisher recommended a second epidural steroid injection, and prescribed Neurontin.

On July 10, 2020, Dr. Fisher noted modest improvement with the second injection, and recommended a third epidural steroid injection. Px6 at 189-190. Dr. Fisher also discussed surgical intervention; however, Petitioner did not feel ready for surgery at that time.

Petitioner testified that the injections did not help. Tr. at 16.

Petitioner returned to Dr. Fisher on August 12, 2020, at which time he continued to complain of back pain and lower extremity radiculopathy. Px6 at 187-188. Dr. Fisher's assessments were (1) degenerative scoliosis, (2) lumbar radiculopathy, and (3) L4-5 herniated nucleus pulposus. Dr. Fisher recommended a left-sided L4-5 hemilaminotomy and microdiscectomy, given Petitioner's failure to improve with nonsurgical measures.

On September 15, 2020, Petitioner underwent a left L4-5 hemilaminotomy/laminectomy, medial facetectomy, and partial diskectomy. Px6 at 210-211. Petitioner's postoperative diagnosis was L4-5 herniated nucleus pulposus.

Petitioner testified that he felt the same after the first surgery. Tr. at 17. It did not alleviate any of the symptoms that he was experiencing. Tr. at 17-18.

Petitioner followed up with Dr. Fisher on September 25, 2020, at which time Petitioner reported that he was doing better, had less pain in his left thigh and hip, however, he continued to have nerve pain in the left lateral calf and foot. Px6 at 185-186. Petitioner also reported a significant amount of pain and spasm in the back, which he felt was surgical pain. Dr. Fisher noted that Petitioner was ambulating with a cane. On exam, Dr. Fisher noted a well healing incision, 5/5 strength throughout the bilateral lower extremities, and pain produced to the

left lateral buttock with left straight leg raise were noted. X-rays were obtained and revealed (1) slight levoscoliosis with asymmetric disc space narrowing at L3-4 and (2) degenerative disc disease and L5-S1 spondylolisthesis, unchanged from prior imaging. Px6 at 204. Dr. Fisher's assessment was 10-days status post L4-5 microdiscectomy. Dr. Fisher recommended Petitioner continue to increase his walking, adhere to spine precautions, and avoid bending, lifting, or twisting.

Petitioner saw Dr. Fisher on October 23, 2020. Px6 at 183-184. Petitioner reported continued pain in the lower back with radiation down the left lateral leg to the knee. Petitioner reported that the pain was worse than it was a couple of weeks prior. On exam, a well-healed incision, mild tenderness to palpation around the incision, 5/5 strength throughout the bilateral lower extremities, and pain produced to the left buttock and lateral leg with left straight leg raise were noted. Dr. Fisher's assessment was six weeks status post L4-5 microdiscectomy. Dr. Fisher recommended Petitioner begin a course of physical therapy and prescribed a Medrol Dosepak. Dr. Fisher noted that if Petitioner's pain continued over the next few weeks, he would order an MRI of the lumbar spine with and without contrast.

On March 5, 2021, Petitioner reported that he was doing well and progressing with physical therapy, however, he slipped and fell down some stairs onto his buttocks the day prior and had excruciating pain in the low back with radiation down the left posterior leg to the knee. Px6 at 181-182. Petitioner reported that the pain felt similar to the pain he felt prior to surgery and that he was having difficulty standing up straight. Dr. Fisher noted that Petitioner attempted to go to physical therapy on that date but was unable to tolerate it. On exam, tenderness to palpation of the lower lumbar paraspinal muscles, inability to stand upright, 5/5 strength throughout the bilateral extremities, and positive straight leg raise on the left were noted. Dr. Fisher also noted that range of motion was deferred due to pain. X-rays were obtained and demonstrated severe disc space narrowing at L3-4 and L4-5 with grade I spondylolisthesis at L5-S1. Px6 at 203. Dr. Fisher's assessments were L5-S1 spondylolisthesis and lumbar degenerative disc disease, status post microdiscectomy. Dr. Fisher recommended a Medrol Dosepak, tramadol, and tizanidine and physical therapy. Dr. Fisher noted that if Petitioner's symptoms were severe the following week, he would order an MRI to assess any new pathology or re-herniation of the disc. On cross examination, Petitioner recalled having tripped and fallen down stairs on March 5, 2021. Tr. at 27. Petitioner testified that he was doing physical therapy and that he thought he slipped on wet stairs and hit his tailbone. Tr. at 28. Petitioner did not recall if the fall occurred at home. Tr. at 28. On redirect examination, Petitioner testified that the pain in his back was in the same area and was worse after he fell. Tr. at 29.

Petitioner saw Dr. Fisher on March 12, 2021. Px6 at 179-180. Dr. Fisher noted that Petitioner was seen the week prior with an exacerbation of his back pain with radiation down the posterior leg. Dr. Fisher noted that Petitioner continued with physical therapy, however, he continued to have a significant amount of pain in the low back, buttock, and posterior leg to the calf. Petitioner reported that his pain was severe and worse with any activity. Dr. Fisher noted that Petitioner was unable to sit properly on his left side due to pain. Petitioner did not have relief with the Medrol Dosepak. On exam, tenderness to palpation of the lumbar paraspinal muscles and a positive straight leg raise on the left were noted. Dr. Fisher's assessments were (1) L5-S1 spondylolisthesis, lumbar degenerative disc disease, and status post lumbar microdiscectomy and (2) acute on chronic left lower extremity radiculopathy. Dr. Fisher recommended a lumbar spine MRI with and without contrast to assess for re-herniation of the disc, as well as continued use of tizanidine as needed. Dr. Fisher noted that Petitioner may take tramadol sparingly as needed, and continue with therapy, but keep the intensity down.

Petitioner underwent an MRI of the lumbar spine on April 12, 2021, which demonstrated (1) asymmetric bulging of the L4-5 disc with a shallow left paracentral focal protrusion directed toward the left foramen producing mild-to-moderate left foraminal stenosis, improved in comparison to prior preoperative MRI and (2)

mild-to-moderate degenerative disc disease with various degrees of vertebral canal and foraminal stenosis, essentially unchanged, throughout the remaining lumbar spine. Px6 at 201-202.
Petitioner returned to Dr. Fisher on April 16, 2021, and reported improvement since his initial onset of symptoms since his last visit. Px6 at 177-178. Petitioner continued to have significant pain in the low back radiating into the left lateral leg about the knee. Petitioner reported that he could not walk completely upright, as it caused pain and that he was compensating by standing hunched over and leaning to the right side. Dr. Fisher noted that Petitioner stood in a forward flexed position and had some discomfort with standing from a sitting position. On exam, tenderness to palpation of the lumbar paraspinal muscles, pain with extension of the back, 5/5 strength throughout the bilateral lower extremities, and pain produced to the left lateral leg with left straight leg raise were noted. Dr. Fisher noted that the lumbar spine MRI of April 12, 2021 revealed (1) multilevel facet arthropathy throughout the lower lumbar spine with a small left paracentral disc herniation at L4-5, mixed with granulation tissue, and a laminectomy defect at that level, (2) disc desiccation throughout the lumbar spine with Modic changes at the endplates at L3-4, and (3) disc bulge at L3-4 causing moderate to severe right foraminal stenosis and moderate left foraminal stenosis. Dr. Fisher's assessments were (1) lumbar degenerative scoliosis, (2) L5-S1 spondylolisthesis, (3) L4-5 and L3-4 herniated nucleus pulposus with left leg radiculopathy, and (4) status post L4-5 microdiscectomy. Dr. Fisher recommended a left L4-5 and L5-S1 transforaminal epidural steroid injection, as Petitioner had over 30 visits of physical therapy without significant relief. Dr. Fisher noted that if Petitioner felt better after the injection, he would return to physical therapy. Dr. Fisher also noted that he explained to Petitioner that a lumbar fusion was a definitive solution for his condition, however, Petitioner wanted to avoid surgery at that time.

Petitioner attended 36 sessions of physical therapy between October 29, 2020 and April 20, 2021. Px6 at 212-215, 217-230, 236-249, 252-259, 263-275, 276-287. Petitioner testified that he attended probably over 30 physical therapy sessions, and that the therapy would alleviate the pain a little, but not completely. Tr. at 15.

Petitioner attended an IME on October 21, 2020. Tr. at 20. Petitioner testified that he attempted to return to work following the IME, and that he lasted three days. Tr. at 20. Petitioner testified that after working the three days, he felt constant pain in his lower back. Tr. at 20.

Petitioner again saw Dr. Fisher on December 1, 2021, at which time Petitioner reported slight improvement with injections temporarily. Px6 at 166-174. Dr. Fisher noted that Petitioner had 90-percent relief immediately after medial branch blocks. Dr. Fisher noted that Petitioner underwent an IME, and following the IME, had returned to work on Monday of that week. Petitioner reported lifting heavy items throughout the day, as well as bending and stooping a lot. Petitioner reported that since his return to work, he had a substantial amount of low back pain, which was worse with sitting or standing for more than a few minutes. Petitioner also had some discomfort down the left posterior lateral leg; however, the back pain was more severe. Dr. Fisher noted that Petitioner stood in a forward flexed position, and had some discomfort with standing from a seated position. Dr. Fisher also noted that Petitioner walked with an antalgic gait. On exam, tenderness to palpation of the lumbar paraspinal muscles, 5/5 strength throughout the bilateral extremities, and pain produced to the left lateral leg with left straight leg raise were noted. Dr. Fisher also noted that Petitioner was guarded with range of motion due to pain. Dr. Fisher's assessments were (1) lumbar degenerative scoliosis, (2) L5-S1 spondylolisthesis and L4-5 and L3-4 herniated nucleus pulposus with left leg radiculopathy, and (3) status post L4-5 microdiscectomy. Dr. Fisher recommended radiofrequency ablation in the lumbar spine, as Petitioner had transient relief with medial branch blocks. Dr. Fisher prescribed a short course of tramadol, as well as ibuprofen 800mg. Dr. Fisher noted that Petitioner was not able to work due to severe pain. Px6 at 170.

Petitioner next saw Dr. Fisher on June 8, 2022. Px6 at 157-161. Petitioner reported back pain and pain extending down the left lateral thigh. Petitioner reported worsened pain with activity and bending. Dr. Fisher noted that Petitioner was tender over the left greater trochanter. X-rays of the lumbar spine were obtained and

demonstrated (1) grade I spondylolisthesis of L5 on S1, and probable bilateral L5 pars defects, (2) degenerative scoliosis, (3) disc space narrowing at L3-4 greater than L4-5, and (4) anterior osteophytes at L1-5. Dr. Fisher's assessments were (1) degenerative scoliosis, (2) status post lumbar discectomy, (3) L5-S1 spondylolisthesis with L5 spondylolysis, and (4) trochanteric bursitis. Dr. Fisher noted that he discussed with Petitioner the importance of a routine exercise program, the role of injections, and medications. Dr. Fisher noted that Petitioner was to continue taking ibuprofen and tizanidine on an as-needed basis. Dr. Fisher noted that if Petitioner's low back symptoms continued to bother Petitioner daily, the possibility of an L5-S1 PLIF procedure was discussed. Dr. Fisher noted that Petitioner was at maximum medical improvement ("MMI") without further surgical intervention. Petitioner was allowed to return to work light duty with restrictions including no lifting over 10 pounds and no repetitive lifting, bending, or twisting. Px6 at 160-161.

Petitioner testified that Dr. Fisher left IBJI and that Dr. Michael Chioffe took over his care. Tr. at 18.

Petitioner was seen by Dr. Michael Chioffe on March 22, 2023. Px6 at 138-146. Petitioner reported continued back pain and left lateral thigh pain. Dr. Chioffe noted that Petitioner was tender over the left greater trochanter. Dr. Chioffe noted that Petitioner had failed extensive conservative care, and that Petitioner was seeking further treatment for continued severe pain. Dr. Chioffe noted that he reviewed old x-rays of the lumbar spine, which showed a grade I spondylolisthesis at L5-S1, a likely bilateral pars defect at L5-S1, complete height loss and endplate sclerosis cystic formation in the disc base and osteophyte formation at L3-4, and some degenerative disc level and facet arthropathy at L4-5. Dr. Chioffe noted that he reviewed an MRI of the lumbar spine which showed moderate facet arthropathy, disc height loss, lateral recess, and neuroforaminal stenosis at L3-4, as well as bilateral facet arthropathy at the L4-5 and L5-S1 levels, and that the spondylolisthesis appeared reduced. Dr. Chioffe's diagnoses were lumbar spondylolisthesis at L5-S1, facet arthropathy at L3-4 and L4-5, and trochanteric bursitis. Dr. Chioffe recommended a continued home exercise program, and noted that from a surgical standpoint, Petitioner was a candidate for an L3-S1 laminectomy and instrumented fusion. Dr. Chioffe noted that Petitioner would benefit from removing the pathologic disc at L3-4 along with the severe facet arthropathy at that level, and that fusing the L5-S1 level would be beneficial because of the spondylolisthesis at that level. Dr. Chioffe noted that the L4-5 level would also need to be included due to facet arthropathy and its location between the L3 and L5 pathologic levels. Dr. Chioffe noted that he did not believe that fusing the L5-S1 level alone was enough and possibly not the main pain generator. Dr. Chioffe placed Petitioner on restrictions, including no lifting over 10 pounds and no repetitive lifting, bending, or twisting. Dr. Chioffe noted that Petitioner was at MMI. Px6 at 145-146.

TTD Benefits

Petitioner testified that he received benefits weekly beginning on February 24, 2020 until November 5, 2021. Tr. at 19-20, 21-22. Petitioner has not returned to work since seeing Dr. Chioffe. Tr. at 21.

Current Condition

Petitioner testified that if awarded, he would proceed with the surgery recommended by Dr. Chioffe. Tr. at 22.

Petitioner testified that he is in pain, and at times, uses a cane. Tr. at 23. Petitioner takes Tramadol, Tylenol with codeine, and ibuprofen to alleviate the pain, which is prescribed by his primary care doctor. Tr. at 23.

Evidence Deposition Testimony of Dr. Theodore Fisher

Dr. Theodore Fisher testified by way of evidence deposition on August 11, 2022. Px2. Dr. Fisher is a board-certified orthopedic surgeon with a subspecialty in spine surgery. Px2 at 5. Dr. Fisher prepared a Narrative Report dated April 8, 2022. Px2 at 13.

Dr. Fisher read his Narrative Report into the record. Px2 at 14-21. Dr. Fisher opined that Petitioner's diagnosis is degenerative scoliosis with facet arthropathy, L5-S1 spondylolisthesis, and status post lumbar microdiscectomy. Px2 at 20. Dr. Fisher recommended Petitioner proceed with a radiofrequency ablation for more prolonged pain relief, given Petitioner's 90-percent relief from the diagnostic medial branch block. Px2 at 14. Dr. Fisher opined that Petitioner has been temporarily totally disabled from work since the date of the work accident, February 24, 2020. Px2 at 14. Dr. Fisher opined that Petitioner had preexisting degenerative changes in the lumbar spine prior to the February 24, 2020 work accident, and that at the time of the work accident, he accelerated degenerative changes, rendering them symptomatic. Px2 at 14.

Dr. Fisher testified that Petitioner was sent for an MRI after the fall documented in the March 5, 2021 office visit. Px2 at 26-27. Dr. Fisher reviewed the MRI films of April 16, 2021 prior to deposition, and the films showed similar findings to the previous MRI scans, except at the operative level, where there was removal of the previous disc herniation. Px2 at 27. Dr. Fisher testified that the pathology in the lower back on MRI and x-rays after the fall, was the same as the pathology in the pre-fall MRI scan, except for the previous disc herniation which had been removed. Px2 at 28. There was no increased pathology as a result of the fall as compared to the MRI scan from before the fall and the surgery. Px2 at 28.

Dr. Fisher testified that he last saw Petitioner on June 8, 2022, and that at that time they discussed the radiofrequency ablation, medications, exercise, and the possibility of fusion surgery at the L5-S1 level if his symptoms could not be controlled. Px2 at 29. Dr. Fisher testified that on June 8, 2022, his work status stated that Petitioner could return to work with no lifting over 10 pounds and no repetitive lifting, bending, or twisting. Px2 at 31. Dr. Fisher testified that without further treatment, Petitioner was at MMI on June 8, 2022, because he had plateaued in his recovery without the radiofrequency ablation and possible surgeries. Px2 at 31.

On cross examination, Dr. Fisher testified that it was possible that the fall in March 2021 had an effect on accelerating the degenerative changes in Petitioner's lumbar spine. Px2 at 40. Dr. Fisher testified that the reason he thinks that Petitioner did not improve enough after injections, therapy, medications, and the discectomy surgery, is because Petitioner has two ongoing issues, the spondylolisthesis and the facet arthropathy. Px2 at 43-44.

On redirect examination, Dr. Fisher testified that the work accident aggravated the spondylolisthesis. Px2 at 45.

Evidence Deposition Testimony of Dr. Michael Chioffe

Dr. Michael Chioffe testified by way of evidence deposition on October 18, 2023. Px4. Dr. Chioffe testified as to his education and credentials as a board-certified orthopedic spine surgeon. Px4 at 4-6.

Dr. Chioffe began treating Petitioner in March 2023 after his colleague, Dr. Fisher, left the practice. Px4 at 6-7. Dr. Chioffe recommended Petitioner undergo an L3 to S1 laminectomy and instrumented fusion because of all the conservative care that he had failed. Px4 at 8.

Dr. Chioffe prepared a Narrative Report dated June 29, 2023, which he read into the record. Px4 at 10-20. Dr. Chioffe testified that Petitioner's current diagnosis was L3-4 degenerative disc disease with neuroforaminal

stenosis, L5-S1 lumbar spondylolisthesis, and L4-5 facet arthropathy. Px4 at 19. Dr. Chioffe opined that there appeared to be some causal connection between the accident and Petitioner's current condition, and that it seemed that the injury aggravated the underlying condition of degenerative disc disease at L3-4 and the spondylolisthesis at L5-S1 along with the lumbar radiculopathy and facet arthropathy related to the L4-5 microdiscectomy. Px4 at 20.
Dr. Chioffe testified that Dr. Fisher had recommended an L5-S1 laminectomy and instrumented fusion to fix the spondylolisthesis, however, Dr. Chioffe opined that a single-level fusion does not address the complete problem and Petitioner's symptoms may continue. Px4 at 21-22. Dr. Chioffe testified that an L3-S1 laminectomy and fusion is a more complete surgical treatment and that he believes it will eliminate all of Petitioner's symptoms. Px4 at 22.

Dr. Chioffe testified that at the time of his deposition, his opinions remained the same as those of March 22, 2023, the last date that he saw Petitioner. Px4 at 26.

On cross examination, Dr. Chioffe agreed that degenerative scoliosis is probably part of Petitioner's diagnosis, however, Petitioner has multiple diagnoses and issues. Px4 at 33. Dr. Chioffe testified that he did not know why "MMI" was marked on the work status note of March 22, 2023, and that his nurse probably put together the work status note. Px4 at 33-34. Dr. Chioffe did not agree with "MMI" being marked on the March 22, 2023 work status note. Px4 at 34. Dr. Chioffe did not agree that the scoliosis had an impact on Petitioner's current condition of ill-being because it was a mild degenerative scoliosis. Px4 at 34. The mild degenerative scoliosis is part of the disc degenerative process, with very minimal to no part of Petitioner's current condition. Px4 at 35.

Evidence Deposition Testimony of Respondent's Section 12 Examiner Dr. Babak Lami

Dr. Babak Lami testified by way of evidence deposition on December 9, 2022 and March 18, 2024. Respondent's Exhibit ("Rx") 6; Rx8. Dr. Lami testified as to his education and credentials as a board-certified orthopedic spine surgeon. Rx6 at 5-9; Rx8 at 5-7. Dr. Lami's practice focuses on nonsurgical and surgical treatment of spinal conditions. Rx6 at 6; Rx8 at 6. Dr. Lami testified that he examined Petitioner twice and had produced two reports. Rx6 at 10, 17; Rx8 at 7. Dr. Lami reviewed Petitioner's medical records. Rx6 at 12.

i. December 9, 2022

Dr. Lami first examined Petitioner on October 20, 2021. Dr. Lami testified that based upon the history provided to him by Petitioner, his review of Petitioner's medical records, and his physical examination, Petitioner's diagnosis as it related to the work injury was left L4-5 disc herniation or aggravation of same. Rx at 13. Dr. Lami testified that he felt that Petitioner's treatment was reasonable and related to the work injury, but was extremely prolonged. Rx6 at 14, 15. Dr. Lami testified that Petitioner's post-surgery MRI showed resection of the herniation, and there was no reason for Petitioner to continue with treatment from an objective standpoint and still be treating at the time of his examination in 2021 for an injury that occurred in February 2020 with all the treatment he had. Rx6 at 14-15. Dr. Lami testified that at the time of his October 2021 examination, he felt that no further treatment was necessary, and that Petitioner should continue home exercises. Rx6 at 15. Dr. Lami opined that Petitioner was at MMI at the time of his October 20, 2021 examination. Rx6 at 15. Dr. Lami prepared an AMA impairment rating as part of his report and Petitioner's total rating was 10-percent. Rx6 at 15-17.

Dr. Lami reexamined Petitioner on September 19, 2022. Rx6 at 17-19. Dr. Lami reviewed additional medical records. Rx6 at 19-20. Dr. Lami testified that based on the subjective history, his review of additional medical records, and his physical examination, Petitioner's diagnosis at the time was low back pain with nondermatomal left leg symptoms. Rx6 at 20. Dr. Lami testified that he could not support that Petitioner's symptoms still could

be related to the work injury given the time that had passed, the treatment he had, and the successful surgery. Rx6 at 20-21. Dr. Lami testified that he had opined that after his first examination, Petitioner could not benefit from any further treatment and that he did not recommend any further treatment. Rx6 at 21. Dr. Lami testified that he did not believe that Petitioner was a candidate for further treatment after his first examination or the second examination. Rx6 at 21. Dr. Lami testified that no further radiofrequency ablations were medically necessary as a result of the work accident. Rx6 at 23.

On cross examination, Dr. Lami testified that he would not have done a postsurgical diagnostic injection if Petitioner had been his patient because Petitioner's issue was a disc herniation, which had been resected. Rx6 at 30. Dr. Lami testified that he opined that the disc herniation was the pain generator, but it had been resected. Rx6 at 30-31. Dr. Lami testified that the AMA guidelines take into consideration ongoing pain complaints and that he evaluated same when he prepared his rating. Rx6 at 35-36.

ii. March 18, 2024

Dr. Lami testified that he prepared an addendum report dated February 12, 2024 after reviewing additional medical records, as well as Dr. Chioffe's deposition transcript. Rx8 at 8-9. Dr. Lami testified that following his review of the additional medical records and Dr. Chioffe's deposition transcript, his diagnosis for Petitioner remained the same. Rx8 at 9. Dr. Lami testified that Petitioner did not have any clinical symptoms corresponding to the L3-4 or L5-S1 levels at the time he presented after his work injury. Rx8 at 10-11. Petitioner's symptoms clearly correlated to the disc herniation at L4, which is why he underwent surgery at the L4-5 level. Rx8 at 11. Dr. Lami testified that it was true that Petitioner still has complaints of chronic back pain, however, the pain that he verbalized to Dr. Lami on September 19, 2022 was not defined in a particular level at a diffused axial back pain. Rx8 at 11. Petitioner's clinical symptoms never corresponded to L3-4 or L5-S1, and treatment for L3-4 and L5-S1 is not related to the work injury. Rx8 at 11-12. Dr. Lami testified that he did not agree with Dr. Chioffe's recommendation of an L3-S1 depression and fusion regardless of causation, and that there was no compressive pathology in any of those levels of which he had clinical symptoms and no instability to recommend a fusion. Rx8 at 13. Dr. Lami testified that he also did not agree with the recommendation of an L3-S1 laminectomy, which goes along with a surgical fusion. Rx8 at 13-14. A laminectomy removes pressure and a fusion welds vertebra together with screws. Rx8 at 14. Dr. Lami testified that the type of symptoms needed for an L3-S1 decompression fusion and laminectomy include MRI findings of severe stenosis, scoliosis, and instability of the vertebra or weakness in the legs or inability to walk. A fusion is not for back pain. Rx8 at 14, 15. Dr. Lami opined that Petitioner's diagnostics, clinical symptoms, presentation, and lack of response to any past treatment, make him an extremely poor candidate for surgery. Rx8 at 14. Petitioner's MRIs did not show clinically significant stenosis. Rx8 at 15. Dr. Lami testified that an L3-S1 decompression fusion would not be beneficial to Petitioner and would be an aggressive treatment. Rx8 at 15. Dr. Lami opined that the discectomy was the appropriate course of treatment for the herniation. Rx8 at 15-16. Dr. Lami testified that Petitioner had reached MMI, as he stated in his previous reports and deposition. Rx8 at 16. Dr. Lami opined that he could not support a work restriction because his work-related injury had been corrected. Rx8 at 16. Dr. Lami testified that all other conditions are degenerative in nature and not related to the work injury. Rx8 at 16.

On cross examination, Dr. Lami testified that Petitioner would have slightly more degenerative changes than someone of his age because of the spondylolisthesis that he has. Rx8 at 20. Dr. Lami testified that he would not have expected to see any increase of disc desiccation or narrowing above or below the L4-5 level, and that the microdiscectomy Petitioner had should have had no effect on the adjacent levels. Rx8 at 22. Dr. Lami testified that if someone has sciatic nerve pain at the L5-S1 level which is going to be decompressed, a surgeon may add a fusion to that level. Rx8 at 23. Dr. Lami testified that there is no additional treatment that can be offered to Petitioner for his continued lumbar spine pain regardless of causation. Rx8 at 24-25. Dr. Lami agreed that pain

may be a limiting factor for a person to return to full duty work, and that therefore, the person may require some restrictions. Rx8 at 25.

On redirect examination, Dr. Lami agreed that he opined that Petitioner's work injury did not aggravate any of his degenerative conditions or scoliosis. Rx8 at 26. Dr. Lami did not assign Petitioner any work restrictions at the time of his October 10, 2021, September 19, 2022, and February 12, 2024 reports. Rx8 at 26-27.

On recross examination, Dr. Lami testified that no further medical treatment would be beneficial to Petitioner. Rx8 at 28.

CONCLUSIONS OF LAW

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

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

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

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

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

The issue of accident is not disputed. Ax1 at No. 2.

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

The Arbitrator finds that Petitioner's current lumbar spine condition of ill-being is causally related to the February 24, 2020 injury. The Arbitrator relies on the following in support of her findings: (1) the records of Illinois Bone and Joint Institute, (2) the testimony of Dr. Theodore Fisher, (3) the testimony of Dr. Michael Chioffe, and (4) the fact that none of the records in evidence reflect that Petitioner was actively treating for a lumbar spine condition immediately prior to February 24, 2020. The record demonstrates that Petitioner was in condition of good health immediately prior to February 24, 2020, that Petitioner was able to work full duty and without restrictions immediately prior to the work accident, and consistent complaints and continuous symptomology of the lumbar spine after the February 24, 2020 injury, as well as after the September 15, 2020 L4-5 microdiscectomy.

The Arbitrator notes that Respondent's Section 12 examiner, Dr. Babak Lami, agrees that the L4-5 disc herniation or aggravation of same is causally related to the February 24, 2020 injury and that the medical treatment rendered through October 20, 2021 is reasonable and related to the work injury. Dr. Lami, however, disagrees that any ongoing lumbar spine conditions after October 20, 2021 are unrelated to the February 24, 2020 work injury and that Petitioner required no further treatment after October 20, 2021.

The Arbitrator has considered the opinions of Dr. Babak Lami regarding Petitioner's lumbar spine condition of ill-being after October 20, 2021, and finds that they do not outweigh the opinions of Petitioner's treating physicians, Dr. Fisher and Dr. Chioffe. The Arbitrator finds that overall, the record supports Dr. Fisher's opinions that (1) the work accident accelerated degenerative changes of the lumbar spine, rendering them symptomatic, (2) that Petitioner has two ongoing issues, the spondylolisthesis and facet arthropathy, and (3) that the work accident aggravated the spondylolisthesis. The Arbitrator also finds that the overall record supports Dr. Chioffe's opinion that the work accident aggravated the underlying condition of degenerative disc disease at L3-4, the spondylolisthesis at L5-S1, and the lumbar radiculopathy and facet arthropathy related to the L4-5 microdiscectomy.

The Arbitrator acknowledges that Petitioner was involved in a slip and fall, which is documented in Dr. Fisher's March 5, 2021 office visit note. On March 5, 2021, Petitioner reported excruciating pain after falling with radiation down the left leg to the knee. On March 12, 2021, Dr. Fisher noted the exacerbation of back pain after the fall. On April 16, 2021, however, Petitioner reported improvement in his symptoms since his visit on March 12, 2021. The Arbitrator notes that Petitioner consistently complained of pain radiating down the left leg to the knee after surgery and prior to March 5, 2021. The Arbitrator further notes that Dr. Fisher testified that there was no increased pathology as a result of the fall when compared to the MRI scan from prior to the fall and surgery. The Arbitrator further notes that Dr. Lami did not provide any opinions regarding whether the slip and fall incident contributed to Petitioner's lumbar spine condition. Accordingly, the Arbitrator finds that the slip and fall incident of March 2021 did not break the causal chain between the February 24, 2020 work-related lumbar spine injury and Petitioner's current lumbar spine conditions of ill-being.

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

Consistent with the Arbitrator's prior finding regarding the issue of causal connection, the Arbitrator finds that the medical services that were provided to Petitioner for treatment of his lumbar spine condition were reasonable and necessary. As such, the Petitioner's claim for unpaid medical bills is granted and all bills for the necessary and reasonable treatment of Petitioner's lumbar spine condition incurred on or prior to the date of arbitration, August 6, 2024, are awarded and Respondent is liable for payment of same, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses.

Per the Parties' stipulation, Respondent is entitled to a credit in the amount of $83,212.86 for medical bills paid through its group medical plan pursuant to Section 8(j) of the Act. Ax1 at No. 9. Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit.

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

Consistent with the Arbitrator's prior findings, the Arbitrator finds that Petitioner is entitled to prospective medical care as recommended by Dr. Chioffe.

The Arbitrator notes that on March 22, 2023, Dr. Chioffe recommended Petitioner undergo an L3-S1 laminectomy and instrumental fusion. Accordingly, the Arbitrator finds that Petitioner is entitled to treatment as recommended by Dr. Chioffe, including an L3-S1 laminectomy and instrumental fusion, all of which is contemplated as compensable treatment under Section 8(a) of the Act, and therefore, Respondent is responsible for authorizing and paying for same.

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

Petitioner claims that he is entitled to TTD benefits for the period of February 24, 2020 through August 6, 2024, the date of arbitration. Respondent disputes Petitioner's claim, and Respondent claims no liability or disability after October 20, 2021 and TTD benefits paid to Petitioner for the period of February 24, 2020 through November 5, 2021.

Consistent with the Arbitrator's prior findings, the Arbitrator finds that Petitioner is entitled to TTD benefits. The Arbitrator notes that Petitioner worked on February 24, 2020. The Arbitrator also notes that the medical evidence offered demonstrates that Petitioner was kept off work by Dr. Fisher through June 8, 2022.[2] On June 8, 2022, Dr. Fisher allowed Petitioner to return to work light duty with the restrictions of no lifting over 10 pounds and no repetitive lifting, bending or twisting. On March 22, 2023, Dr. Chioffe maintained Petitioner on the same light duty restrictions. There is no evidence that Respondent has accommodated the restrictions assigned to Petitioner by Dr. Fisher and Dr. Chioffe. Petitioner testified that he has not returned to work since seeing Dr. Chioffe, and his testimony is unrebutted. The overall evidence supports an award of TTD benefits for the period of February 25, 2020, the date after the accident, through August 6, 2024, the date of arbitration. Accordingly, the Arbitrator finds that Petitioner is entitled to TTD benefits from February 25, 2020 through August 6, 2024, the date of arbitration.

Per the Parties' stipulation, Respondent is entitled to a credit in the amount of $66,559.89 for TTD benefits paid to Petitioner.

Ana Vazquez

ANA VAZQUEZ, ARBITRATOR

NOVEMBER 14 2024

[2] The Arbitrator acknowledges that sometime after April 16, 2021 and prior to December 1, 2021, Petitioner attempted a full duty return to work for only three days based on the opinions of Respondent's Section 12 examiner, Dr. Lami.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC027846
Case Name	INSURANCE COMPLIANCE v. CASCONI EXTERIORS
Consolidated Cases	
Proceeding Type	
Decision Type	Commission Decision
Commission Decision Number	25IWCC0262
Number of Pages of Decision	6
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Casey Fitzgerald
Respondent Attorney	

DATE FILED: 6/16/2025

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
)
COUNTY OF MADISON)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ILLINOIS DEPARTMENT OF INSURANCE, WORKERS' COMPENSATION INSURANCE COMPLIANCE DIVISION Petitioner, vs. SHANE GRAYLING, AKA SHANE CASCONI D/B/A CASCONI EXTERIORS, Respondent.	)	23 WC 027846, 19 INC 000237

DECISION AND OPINION REGARDING INSURANCE COMPLIANCE

Petitioner, Illinois Department of Insurance, Workers' Compensation Insurance Compliance Division, brings this action, by and through the Office of the Illinois Attorney General, against the above captioned Respondent, alleging violation of Section 4(a) of the Illinois Workers' Compensation Act. Proper and timely notice was provided to Respondent and a hearing was held before Commissioner Marc Parker in Collinsville, Illinois on May 13, 2025. No one appeared on behalf of Respondent. Mr. Casconi, of Casconi Exteriors, was served with timely and proper notice. On May 13, 2025, the State and its witness appeared in person.

Petitioner alleges that Respondent knowingly and willfully lacked workers' compensation insurance coverage from December 16, 2016 through September 20, 2019 in violation of Section 4(a) of the Illinois Workers' Compensation Act. Petitioner seeks the maximum fine allowed under the Act, $500.00 per day for each of the 1,008 days Casconi Exteriors did business and failed to provide coverage for its employees, which totals $504,000.00.

The Workers' Compensation Commission Insurance Compliance Department's Notice of Non-Compliance and Notice of Insurance Compliance Hearing, state that Casconi Exteriors was not in compliance with the requirements of Section 4(a) of the Act from December 16, 2016 through September 20, 2019. After considering the entire record, the Commission finds that Respondent knowingly and willfully violated Section 4(a) of the Act and Section 9100.90 of the Rules Governing Practice before the Illinois Workers' Compensation Commission, from December 16, 2016 through September 20, 2019. The Commission finds, after reasonable notice and hearing, Respondent knowingly and willfully failed or refused to comply with the provisions of Section 4(a) of the Act and 9100.90(b) of the Rules Governing Practice before the Illinois Workers' Compensation Commission. The Commission assesses a civil penalty under Section 4 of the Act in the sum of $504,000.00 against Respondent for the reasons set forth below:

FINDINGS OF FACT

The Commission finds:

1. Petitioner presented Michael Cummins, a Compliance Investigator for the Workers' Compensation Compliance Division of the Illinois Department of Insurance, as a witness at the hearing on May 13, 2025.

2. Investigator Cummins testified he has worked for the Commission for 11 years and his duties include investigating whether or not employers are providing workers' compensation insurance and protection for their employees according to the Illinois Workers' Compensation Act. (T. 5).

3. Investigator Cummins testified he is familiar with Casconi Exteriors because a workers' compensation claim was filed against that company. (T. 6). Upon his investigation, Casconi Exteriors was found not to have workers' compensation insurance. (T. 6).

4. Petitioner's Exhibit 2 is a certified mailing from the Office of the Illinois Attorney General indicating Shane Casconi was serviced with a Notice of Insurance Compliance Hearing on December 12, 2024. (PX2). Petitioner's Exhibit 2 includes a copy of the Notice served upon Mr. Casconi. (PX2).

5. Investigator Cummins testified he conducted several affirmative steps in his investigation of Casconi Exteriors. (T. 6-10). Investigator Cummins searched several databases that indicate employer's revenue and insurance history. (T. 9-10). Investigator Cummins searched the National Council on Compensation Insurance and it indicated Casconi Exteriors was completely without workers' compensation insurance from December 16, 2016 through September 20, 2019. (T. 10). Investigator Cummins concluded that Casconi Exteriors was operating for an extended period of time in violation of the Illinois Workers' Compensation Act.

6. Casconi Exteriors never provided the Workers' Compensation Compliance Division with proof they had workers' compensation insurance for the period of non-compliance.

7. The Workers' Compensation Compliance Division requested insurance information on Casconi Exteriors from the National Council of Compliance Insurance (NCCI). (T. 10). NCCI investigated Casconi Exteriors and certified that Casconi Exteriors did not have workers compensation insurance for the period of December 16, 2016 through September 20, 2019. (PX3, T. 10). The Commission notes the NCCI certification in this case is prima facie proof Respondent did not have the required workers' compensation insurance for the above period. (Rule 9100.90(d)3(D) of the Rules Governing Practice before the Illinois Workers' Compensation Commission).

8. Casconi Exteriors was not registered as a business with the Illinois Secretary of State. (PX4). Casconi Exteriors was not officially incorporated or a licensed business under the auspices of the State of Illinois and was operating on its own. (PX4).

9. The Office of Self-Insurance conducted an investigation and determined Casconi Exteriors was not self-insured with the State of Illinois, such that they would have needed workers' compensation insurance. (PX4). The Office of Self-Insurance provided a certification of this, finding that Casconi Exteriors was not self-insured. (PX 4).

10. Investigator Cummins confirmed that Casconi Exteriors had employees at the time of the underlying accident and during the period of non-compliance with workers' compensation insurance requirements. (T. 13).

11. The Illinois Department of Revenue provided certified records showing Casconi Exteriors was reporting revenue during the period of non-compliance while they were in operation. (PX5). This indicates that Casconi Exteriors was in fact operating and generating revenue during the period of non-compliance.

12. The Workers' Compensation Compliance Division determined that Casconi Exteriors did not have workers' compensation insurance for the period of non-compliance from December 16, 2016 through September 20, 2019 despite the business being in operation during that time.

13. Investigator Cummins testified he is aware of at least one workers' compensation claim filed against Casconi Exteriors. (T. 6).

14. Investigator Cummins found, for the period of non-compliance from December 16, 2016 through September 20, 2019, that Respondent was non-compliant for a total of 1,008 days. (PX6). The fine for this violation is $500 a day as each day is considered a fresh violation of the Act, so the total requested fine for non-compliance is $504,000. (PX6).

15. The total amount of fines being asked to be found against Respondent is $504,000.00.

CONCLUSIONS OF LAW

Respondent knowingly and willfully violated Section 4(a) of the Act. Nevertheless, this Commission analyzes here the culpability of Casconi Exteriors and the applicability of Section 4(a). Section 4 of the Act requires all employers of at least one employee who come within the provisions of Section 3 of the Act, and any other employer who shall elect coverage under Section 2 of the Act, to provide workers' compensation insurance for the protection of their employees. 820 ILCS 305/4. Common law liability of employers to injured employees has been replaced in this State by the workers' compensation system.

The evidence in this case shows Casconi Exteriors had employees during the period of non-compliance. Investigator Cummins testified Casconi Exteriors was engaged in business during the

period of non-compliance, thus bringing Casconi Exteriors within the automatic coverage provisions of the Act as a "business or enterprise in which goods, wares or merchandise are produced, manufactured or fabricated." 820 ILCS 305/3(16).

Under Section 4(a) of the Act, Respondent may elect to apply for approval as a self-insurer, insure his liability to pay such compensation in some insurance carrier authorized to do such insurance business in the State or make other provision, satisfactory to the Commission for the securing of the payment of compensation provided for in the Act. The Respondent in this case did not seek to obtain self-insurer status, obtain traditional workers' compensation insurance, or make other provisions with the Commission.

The next consideration is Casconi Exteriors' knowing violation of Section 4(a) of the Act and the penalty amount appropriate to assess. It is clear that Casconi Exteriors was aware and understood that it was required to obtain workers' compensation insurance for its employees.

This Commission cannot tolerate, nor allow, the taxpayers of this State to endure a business operating without insurance where an employee is injured arising out of his work and in the course of his employment.

In considering the appropriate penalty, other evidence in aggravation includes that the total period of non-compliance is 1,008 days, no brief amount of time. Respondent's failure to carry workers' compensation insurance for a period of almost three years is a flagrant and willful violation of the law that should be punished by the maximum penalty allowed under the Act.

This Commission can, through this case, deter other businesses from disregarding the insurance laws of this State by exacting a severe penalty commensurate with the conduct of Casconi Exteriors. For the forgoing reasons, and after considering the entire record, the Commission finds that Respondent was operating under and subject to the Illinois Workers' Compensation Act under Section 3 and was an employer during the period of non-compliance of December 16, 2016 through September 20, 2019, as denoted in Section 1 of the Act. The Commission finds that Respondent has knowingly and willfully failed to comply with the requirements of Section 4(a) of the Act and shall be assessed penalties under Section 4(d) of the Act. The Commission finds Respondent knowingly and willfully were in non-compliance with Section 4 of the Act for a period of 1,008 days and shall pay a total penalty of $504,000.00 under Section 4 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the prior Order entered by this Commission on May 28, 2025, is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent, Shane Grayling, a/k/a Shand Casconi, d/b/a Casconi Exteriors, pay to the Illinois Workers' Compensation Commission the sum of $504,000.00 pursuant to Section 4(d) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that payment shall be made according to the following procedure: (1) payment of the penalty shall be made by certified check or money order made payable to the Illinois Workers' Compensation Commission; and (2) payment shall be mailed or presented within thirty (30) days of the final order of the Commission or the order of the court of review after final adjudication to:

Illinois Department of Insurance
Attn: Workers' Compensation Compliance
115 S. LaSalle Street, 13th floor
Chicago, Illinois 60603

This decision may be judicially reviewed only as described in Section 19(f). This decision may be enforced in the same manner as a judgment entered by a court of competent jurisdiction and is a debt due and owing to the State and can be enforced to the same extent as a judgment entered by a circuit court. Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 16, 2025

MP
r-5/13/25
68

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	25WC004914
Case Name	INSURANCE COMPLIANCE v. DW TREE LLC AND DREW WELLS (INDIV/PRES) OF DW TREE LLC
Consolidated Cases	
Proceeding Type	
Decision Type	Commission Decision
Commission Decision Number	25IWCC0263
Number of Pages of Decision	6
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Casey Fitzgerald
Respondent Attorney	

DATE FILED: 6/16/2025

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
)
COUNTY OF MADISON)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ILLINOIS DEPARTMENT OF INSURANCE, WORKERS' COMPENSATION INSURANCE COMPLIANCE DIVISION	)	
Petitioner,	)	
vs.	)	25 WC 004914, 23 INC 00136
DREW WELLS, D/B/A DW TREE LLC,	)	
Respondent.	)	

DECISION AND OPINION REGARDING INSURANCE COMPLIANCE

Petitioner, Illinois Department of Insurance, Workers' Compensation Insurance Compliance Division, brings this action, by and through the Office of the Illinois Attorney General, against the above captioned Respondent, alleging violation of Section 4(a) of the Workers' Compensation Act. Proper and timely notice was provided to Respondents and a hearing was held before Commissioner Marc Parker in Collinsville, Illinois on May 13, 2025. No one appeared on behalf of Respondent. Mr. Wells, of DW Tree LLC, was served with timely and proper notice.

Petitioner alleges that Respondent knowingly and willfully lacked workers' compensation insurance coverage from April 9, 2019 through August 19, 2020, August 21, 2021 through August 23, 2021, and August 21, 2022 through February 13, 2024 in violation of Section 4(a) of the Workers' Compensation Act. Petitioner seeks the maximum fine allowed under the Act, $500.00 per day for each of the 1,180 days DW Tress LLC did business and failed to provide coverage for its employees, which totals $590,000.00.

The Workers' Compensation Commission Insurance Compliance Department's Notice of Non-Compliance and Notice of Insurance Compliance Hearing, state that DW Tree LLC was not in compliance with the requirements of Section 4(a) of the Act from April 9, 2019 through August 19, 2020, August 21, 2021 through August 23, 2021, and August 21, 2022 through February 13, 2024. After considering the entire record, the Commission finds that Respondent knowingly and willfully violated Section 4(a) of the Act and Section 9100.90 of the Rules Governing Practice before the Illinois Workers' Compensation Commission, from April 9, 2019 through August 19, 2020, August 21, 2021 through August 23, 2021, and August 21, 2022 through February 13, 2024. The Commission finds, after reasonable notice and hearing, Respondent knowingly and willfully failed or refused to comply with the provisions of Section 4(a) of the Act and 9100.90(b) of the Rules Governing Practice before the Illinois Workers' Compensation Commission. The

Commission assesses a civil penalty under Section 4 of the Act in the sum of $590,000.00 against Respondent for the reasons set forth below:

FINDINGS OF FACT

The Commission finds:

1. Petitioner presented Michael Cummins, a Compliance Investigator for the Workers' Compensation Compliance Division of the Illinois Department of Insurance, as a witness at the hearing on May 13, 2025.

2. Investigator Cummins testified he has worked for the Commission for 11 years and his duties include investigating whether or not employers are providing workers' compensation insurance and protection for their employees according to the Illinois Workers' Compensation Act. (T. 5).

3. Upon Investigator Cummins' investigation, DW Tree LLC was found not to have workers' compensation insurance. (T. 5-6).

4. Petitioner's Exhibit 2 is a certified mailing from the Office of the Illinois Attorney General indicating Drew Wells was serviced with a Notice of Insurance Compliance Hearing on May 5, 2025. (PX2).

5. Investigator Cummins testified that DW Tree LLC was located in Collinsville, Illinois. (T. 7).

6. Investigator Cummins testified he conducted additional steps in his investigation of DW Tree LLC. (T. 8-10). Investigator Cummins searched several databases that indicate employer's revenue and insurance history. (T. 8-10). Investigator Cummins searched the National Council on Compensation Insurance and it indicated that DW Tree LLC was completely without workers' compensation insurance from April 9, 2019 through August 19, 2020, August 21, 2021 through August 23, 2021, and August 21, 2022 through February 13, 2024. (T. 12). Investigator Cummins concluded that DW Tree LLC was operating for an extended period of time in violation of the Workers' Compensation Act. (T. 12).

7. DW Tree LLC never provided the Workers' Compensation Compliance Division with proof they had workers' compensation insurance for the period of non-compliance.

8. The Workers' Compensation Compliance Division requested insurance information on DW Tree LLC from the National Council of Compliance Insurance (NCCI). (T. 12). NCCI investigated DW Tree LLC and certified that DW Tree LLC did not have workers' compensation insurance for the period of April 9, 2019 through August 19, 2020, August 21, 2021 through August 23, 2021, and August 21, 2022 through February 13, 2024. (PX3, T. 11). The Commission notes the NCCI certification in this case is prima facie proof Respondent did not have the required workers' compensation insurance for the above

period. (Rule 9100.90(d)3(D) of the Rules Governing Practice before the Illinois Workers' Compensation Commission).

9. The Office of Self-Insurance conducted an investigation and determined that DW Tree LLC was not self-insured with the State of Illinois, such that they would have not needed workers' compensation insurance. (PX4). The Office of Self-Insurance provided a certification of this, finding that DW Tree LLC was not self-insured. (PX4).

10. Respondent was employing at least two, and likely more, employees during the period of non-compliance. (T. 13).

11. The Illinois Department of Revenue provided certified records showing DW Tree LLC was reporting revenue during the period of non-compliance while they were in operation. (PX5). This indicates that DW Tree LLC was in fact operating and generating revenue during the period of non-compliance.

12. The Worker's Compensation Compliance Division determined that DW Tree LLC did not have workers' compensation insurance for the period of non-compliance from April 9, 2019 through August 19, 2020, August 21, 2021 through August 23, 2021, and August 21, 2022 through February 13, 2024, despite the business being in operation during that time.

13. Investigator Cummins found, for the periods of non-compliance from April 9, 2019 through August 19, 2020, August 21, 2021 through August 23, 2021, and August 21, 2022 through February 13, 2024, that Respondent was non-compliant for a total of 1,180 days. The fine for this violation is $500 a day as each day is considered a fresh violation of the Act, so the total requested fine for non-compliance is $590,000.

14. The total amount of fines being asked to be found against Respondent DW Tree LLC is $590,000.00.

CONCLUSIONS OF LAW

Respondent knowingly and willfully violated Section 4(a) of the Act. Nevertheless, this Commission analyzes here the culpability of DW Tree LLC and the applicability of Section 4(a). Section 4 of the Act requires all employers of at least one employee who come within the provisions of Section 3 of the Act, and any other employer who shall elect coverage under Section 2 of the Act, to provide workers' compensation insurance for the protection of their employees. 820 ILCS 305/4. Common law liability of employers to injured employees has been replaced in this state by the workers' compensation system.

The evidence in this case shows that DW Tree LLC had employees during the period of non-compliance. Investigator Cummins testified DW Tree LLC was engaged in business during the period of non-compliance, thus bringing DW Tree LLC within the automatic coverage provisions of the Act as a "business or enterprise in which goods, wares or merchandise are produced, manufactured or fabricated." 820 ILCS 305/3(16).

Under Section 4(a) of the Act, Respondent may elect to apply for approval as a self-insurer, insure his liability to pay such compensation in some insurance carrier authorized to do such insurance business in the State or make other provision, satisfactory to the Commission for the securing of the payment of compensation provided for in the Act. The Respondent in this case did not seek to obtain self-insurer status, obtain traditional workers' compensation insurance, or make other provisions with the Commission.

The next consideration is DW Tree LLC's knowing violation of Section 4(a) of the Act and the penalty amount appropriate to assess. It is clear that DW Tree LLC was aware and understood that it was required to obtain workers' compensation insurance for its employees.

This Commission cannot tolerate, nor allow, the taxpayers of this State to endure a business operating without insurance where an employee is injured arising out of his work and in the course of his employment.

In considering the appropriate penalty, other evidence in aggravation includes that the total period of non-compliance is 1,180 days, no brief amount of time. Respondent's failure to carry workers' compensation insurance for periods totaling over three years is a flagrant and willful violation of the law that should be punished by the maximum penalty allowed under the Act.

This Commission can, through this case, deter other businesses from disregarding the insurance laws of this State by exacting a severe penalty commensurate with the conduct of DW Tree LLC. For the forgoing reasons, and after considering the entire record, the Commission finds that Respondent was operating under and subject to the Workers' Compensation Act under Section 3 and was an employer during the periods of non-compliance of April 9, 2019 through August 19, 2020, August 21, 2021 through August 23, 2021, and August 21, 2022 through February 13, 2024, as denoted in Section 1 of the Act. The Commission finds that Respondent has knowingly and willfully failed to comply with the requirements of Section 4(a) of the Act and shall be assessed penalties under Section 4(d) of the Act. The Commission finds Respondent knowingly and willfully was in non-compliance with Section 4 of the Act for a period of 1,180 days and shall pay a total penalty of $590,000.00 under Section 4 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the prior Order entered by this Commission on May 28, 2025, is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent, DW Tree LLC, pay to the Illinois Workers' Compensation Commission the sum of $590,000.00 pursuant to Section 4(d) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that payment shall be made according to the following procedure: (1) payment of the penalty shall be made by certified check or money order made payable to the Illinois Workers' Compensation Commission; and (2) payment shall be mailed or presented within thirty (30) days of the final order of the Commission or the order of the court of review after final adjudication to:

Illinois Department of Insurance
Attn: Workers' Compensation Compliance
115 S. LaSalle Street, 13th floor
Chicago, Illinois 60603

This decision may be judicially reviewed only as described in Section 19(f). This decision may be enforced in the same manner as a judgment entered by a court of competent jurisdiction and is a debt due and owing to the State and can be enforced to the same extent as a judgment entered by a circuit court. Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 16, 2025

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r-5/13/25
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/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC008541
Case Name	Allen Webster v. Chicago Cubs Baseball Club
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0264
Number of Pages of Decision	29
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Richard Gordon
Respondent Attorney	Elaine Newquist

DATE FILED: 6/16/2025

/s/Kathryn Doerries,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

ALLEN WEBSTER,

Petitioner,

vs. NO: 21 WC 08541

CHICAGO CUBS BASEBALL CLUB,

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 permanent partial disability and maintenance, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 24, 2024, is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $31,000.00. 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.

June 16, 2025
O060425
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/s/*Kathryn A. Doerries*
Kathryn A. Doerries

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC008541
Case Name	Allen Webster v. Chicago Cubs Baseball Club
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Corrected Decision
Commission Decision Number	
Number of Pages of Decision	26
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Richard Gordon
Respondent Attorney	Elaine Newquist

DATE FILED: 10/24/2024

/s/Ana Vazquez, Arbitrator
Signature

INTEREST RATE WEEK OF OCTOBER 22 2024 4.31%

25IWCC0264

STATE OF ILLINOIS)
)SS.
COUNTY OF Chicago)

☐ 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

Allen Webster
Employee/Petitioner

v.

Chicago Cubs Baseball Club
Employer/Respondent

Case # **21** WC **008541**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Ana Vazquez**, Arbitrator of the Commission, in the city of **Chicago**, on **July 1, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **April 26, 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 $**650,000.00**; the average weekly wage was $**12,500.00**.

On the date of accident, Petitioner was **29** years of age, ***single,*** with **0** dependent children.

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

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

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

ORDER

The Arbitrator finds that Petitioner's right elbow condition of ill-being causally related to the April 26, 2019 work injury is strain or edema/swelling in the muscles on the lateral side of the arm, resolved as of February 26, 2020.

Petitioner's claim for maintenance benefits is **denied**.

Respondent shall pay Petitioner permanent partial disability benefits of **$813.87/week** for **37.95 weeks**, because the injuries sustained caused **15% loss of use of the right arm**, as provided in Section 8(e) of the Act.

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

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

Ana Vazquez

OCTOBER 24 2024

Signature of Arbitrator

PROCEDURAL HISTORY

This matter proceeded to hearing on June 6, 2024 before Arbitrator Ana Vazquez in Chicago, Illinois. The issues in dispute include (1) accident, (2) causal connection, (3) maintenance benefits, and (4) the nature and extent of the injury. Arbitrator's Exhibit ("Ax") 1. All other issues have been stipulated. Ax1.

FINDINGS OF FACT

Petitioner started a landscape business, named Allen's Custom Enhancements, LLC, two years prior to arbitration. Tr. at 13-14. Prior to starting a landscape business, Petitioner was a professional baseball pitcher, having last worked with the Washington Nationals ("Nationals"). Tr. at 14. On April 26, 2020, Petitioner was a29 years of age, single, with no dependent children. Ax1 at No. 6.

Petitioner graduated from McMichael High School in Madison, North Carolina in 2008. Tr. at 14-15. Petitioner played baseball in high school. Tr. at 15-16. After high school, Petitioner was a professional baseball player for the Los Angeles Dodgers ("Dodgers"), having been drafted in the 18th round by the team. Tr. at 15, 16. Petitioner did not attend college. Tr. at 15. After being drafted by the Dodgers, Petitioner started in rookie ball, and went up one level each year until he was traded to the Boston Red Sox ("Red Sox") in 2012.[1] Tr. at 18. Petitioner made it to MLB in 2013 while with the Red Sox. Tr. at 18-19. Petitioner was then traded to the Arizona Diamondbacks ("Diamondbacks") in December 2014. Tr. at 24. Petitioner's contract with the Diamondbacks was then purchased by the Pittsburgh Pirates ("Pirates") in November 2015. Tr. at 24. Petitioner testified that he was not playing with the Pirates in 2015, and that South Korea bought out his contract from the Pirates. Tr. at 25. Petitioner played one year in South Korea. Tr. at 25, 26. Petitioner then signed with the Texas Rangers ("Rangers") as a free agent in November 2016, and played on its Triple-A team.[2] Tr. at 26, 27. Petitioner's contract with the Rangers expired in 2017, and Petitioner signed a contract with Respondent in March 2018. Tr. at 36.

Petitioner explained that pitching is the ability to throw the baseball across the plate with movement. Tr. at 19. Petitioner is right-handed. Tr. at 19, 93. Petitioner testified that his changeup and slider were the pitches that got him the most looks and helped him go up through the system. Tr. at 19-20. Petitioner demonstrated the mechanics of a pitch and explained that at the end of a pitch, you turn your wrist and your forearm to the right or to the left while pulling with the first and second fingers on the baseball, and that you snap your elbow as you are throwing. Tr. at 20-21. Petitioner agreed that his four key pitches were a slider, a four-seamer, a changeup, and a sinker, as well as a curveball. Tr. at 99-100. The slider was the pitch most frequently thrown by Petitioner. Tr. at 100. Petitioner testified that he threw a 100.2 mph fastball in 2012 while in spring training with the Red Sox. Tr. at 100. Petitioner testified that his pitches remained mostly in the 90s mph. Tr. at 101. Petitioner testified that his velocity decreased "[m]aybe a couple miles an hour" between 2017 and 2019. Tr. at 101. Petitioner testified that besides velocity, other data that is considered in pitching is location, where and how the ball moves. Tr. at 144.

Petitioner testified that each MLB team he worked with had athletic trainers that he worked with. Tr. at 101. Petitioner explained that he would go to a trainer if something was bothering him, and that they would give their opinion on how to best make him feel better, and athletic trainers would also help with recovery. Tr. at 102.

[1] Major League Baseball ("MLB") has minor league affiliates, and there are different minor league levels. Tr. at 17-18.
[2] A Triple-A team is one level below MLB. Tr. at 27.

Prior Injuries/Treatment

On June 22, 2007, Petitioner underwent a right elbow MRI at Greensboro Radiology, which demonstrated (1) findings most compatible with olecranon apophysitis, with no discrete stress fracture demonstrated; (2) mild stress reaction in the medial humeral epicondyle, with the collateral ligaments and elbow tendons appearing normal, and (3) prominent synodical fringe noted. Rx16 at 1. Petitioner testified that the June 22, 2007 MRI occurred after his junior year in high school, and that he pitched during his senior year of high school. Tr. at 21.

Petitioner testified that from 2008 through 2013, he did not have any noticeable pain or discomfort in his right elbow while pitching and that he did not have any surgical procedures on his right elbow. Tr. at 21-22, 23-24. When asked if he was a starting pitcher or a relief pitcher from 2008 to 2013, Petitioner testified that he was a relief pitcher when he first began, but he was moved to a starting pitcher position where he stayed for most of his career until the last couple of years with Respondent. Tr. at 22. Petitioner testified that as a starting pitcher, you pitch multiple innings of a baseball game, and that he would generally throw around 100 pitches, but never more than 120 pitches. Tr. at 22-23. Petitioner testified that as a starting pitcher, he would pitch once every five days, and would prepare to pitch during the four days that he was not pitching. Tr. at 23.

On February 11, 2015, Petitioner underwent a right elbow MRI, which demonstrated (1) thick proximal UCL and prominent medial humeral epicondyle with cortical irregularity and sclerosis, stress/overuse changes in a pitcher, and no tear, retraction, ligament edema, or T sign, (2) moderate ulnotrochlear chondrosis/VEO in an overhead athlete; 3cm/60% chondral thinning with 7x9mm coronal and sagittal high-grade near full-thickness chondral defect, subchondral cysts, and sclerosis posteromedial trochlear margin; 6mm spur with bulbous, slightly fragmented olecranon tip; 2x3mm chondral loose body anterior, coronoid fossa and small chondral flap central ulnar articular surface, likely chronic; no spur fracture; and radiocapitellar articular cartilage intact, and (3) intact lateral collateral ligament complex, extensor, biceps, and triceps tendons; ulnar, median, and radial nerve branches unremarkable; no stress fracture, forearm muscle atrophy, neurogenic edema, or significant effusion. Px1 at 115; Px5 at 3-9. Petitioner also underwent an MRI of the right shoulder on February 11, 2015, which demonstrated (1) mild supraspinatus and infraspinatus tendinopathy, (2) mild subscapularis tendinopathy, (3) shallow tear posterosuperior labrum 9-12:00, (4) thickening axillary pouch IGHL with focal thinning and ill-defined signal at glenoid attachment, post-traumatic or stress, and (5) normal acromioclavicular alignment with type I acromion. Px5 at 10-16.

On April 21, 2015, Petitioner underwent an MRI of the right shoulder, which demonstrated (1) favorable change capsular edema and thickening SGHL and IGHL, since prior MRI, resolved strain or capsulitis, (2) slight increase rotator cuff tendinopathy and internal impingement, (3) no change mild proximal biceps tendinopathy, (4) no change posterior labral tear 9-12:00 labral attachment, chronic posterior SLAP with spur and sclerosis posterior glenoid margin 8-10:00, stress-related throwers Bennett, with rotator cuff and labral changes consistent with internal impingement in an overhead athlete, and (5) normal acromioclavicular alignment with type I, laterally down sloping acromion. Px1 at 99-100; Px5 at 19-23. On April 21, 2015, Petitioner was diagnosed with (1) mild-to-moderate rotator cuff tendinopathy, (2) Hill-Sachs lesion with surrounding marrow edema, and (3) probable tear of the superior labrum and biceps labral anchor. Px1 at 97.

Petitioner did not recall having any right elbow problems while pitching in South Korea in 2015. Tr. at 25. Petitioner did not notice any right elbow problems between 2015 and the start of the 2017 season. Tr. at 27. On June 6, 2017, Petitioner was the starting pitcher for the Rangers' Triple-A team, he pitched deep into the game, and at the end of the game, he felt a burning sensation in his right elbow. Tr. at 28. Petitioner was sent for an MRI of the right elbow by the team's training staff on June 8, 2017. Tr. at 28-29.

On June 8, 2017, Petitioner underwent a right elbow MRI at Colorado Springs Orthopaedic Group, which demonstrated (1) ulnar collateral ligament sprain and partial-thickness tear/detachment from the sublime tubercle and (2) flexor digitorum superficialis muscle strain. Px1 at 91-93; Rx17 at 1.

On June 9, 2017, Petitioner saw Dr. Keith Meister at TMI Sports Medicine, for a history of onset of right medial elbow discomfort on June 6, 2017. Px1 at 81-83, 86-88, 201-203, 205-207; Rx18 at 1-6. Petitioner also complained of longstanding left anterior knee pain. X-rays were obtained and demonstrated no significant bony abnormalities. Petitioner's left knee exam was consistent with patella tendonitis. Dr. Meister's diagnosis was right elbow, grade 2 UCL sprain. Dr. Meister noted that treatment options were discussed, including stem cell injection versus reconstruction. Dr. Meister noted that Petitioner had some chronic changes within the ligament and that the tear concerned him, as to whether Petitioner could recover from such. He noted a two-to-three-month recovery for stem cell injection treatment, otherwise, a standard UCL reconstruction.

On June 21, 2017, Petitioner underwent (1) right elbow arthroscopy with debridement of the posterior elbow compartment, (2) removal of loose body, and (3) medial ulnar collateral ligament reconstruction using ipsilateral palmaris tendon graft. Px1 at 76-78, 197-199; Px6 at 26-29; Rx18 at 7-9. Petitioner's postoperative diagnoses were (1) torn medial ulnar collateral ligament, (2) posterior elbow impingement with olecranon osteophyte, and (3) posterior compartment loose body. Petitioner testified that he also underwent left knee surgery as well in 2017. Tr. at 32-34; Px6 at 4-5. Petitioner followed up with Dr. Meister on August 15, 2017. Px1 at 191-192, 194-195; Rx18 at 10. Dr. Meister assessed (1) ulnar collateral ligament sprain, (2) impingement syndrome, and (3) loose bodies of the right elbow joint. Petitioner was instructed to continue physical therapy and wearing a postoperative hinged brace for six weeks.

Petitioner attended 29 physical therapy sessions at Southeastern Orthopaedic Specialists between July 2017 and September 2017. Px1 at 1039-1040, 1044-104, 1046-1050, 1046; Rx19.

Petitioner returned to Dr. Meister on February 6, 2018, at which time Dr. Meister noted that Petitioner had begun throwing a week prior and had ramped up his throwing rather quickly to 90 feet and noticed soreness a day later. Px1 at 188; Rx18 at 11. Dr. Meister's assessment was (1) right elbow, doing well postoperatively and (2) left knee, improving postoperatively with quad atrophy. Dr. Meister noted that he told Petitioner that he needed to be much less aggressive with his throwing program as he ramps up again and that Petitioner had a prolonged rehab for the right elbow. Petitioner was to follow up in two months.

Petitioner underwent a right upper extremity MRI without contrast at SimonMed on February 19, 2018, which demonstrated (1) UCL reconstructive surgery, (2) ulnar nerve mild enlargement and increased signal intensity proximal to the ACL graft; nonspecific, correlate with pain, and (3) posterior medial trochlear superior peripheral margin chondrosis without bone marrow edema or joint effusion and without significant interval change compared to February 11, 2015; posterior medial trochlear grade 4 chondral wear 6x7 mm; posterior medial olecranon tip subcortical sclerosis with a thin 2mm spur. Px1 at 41-49; Px5 at 30-38; Rx8 at 4. X-rays of the right elbow were also obtained, and demonstrated (1) postoperative changes from prior UCL repair, no acute bony findings, and (2) mild bony sclerosis in the olecranon process, no evidence for an adjacent olecranon fatigue fracture. Px1 at 29; Px5 at 26-27; Rx8 at 5.

Petitioner testified that he had not yet been cleared to play professional baseball when he signed with Respondent in March 2018. Tr. at 36. Petitioner was sent to Respondent's spring training facility in Arizona in March 2018 to continue rehabbing his right elbow, Tr. at 38-44. Petitioner testified that between March 2018 and July 2018, before pitching in any games, his elbow felt "perfect," and that he did not have any setbacks in rehabbing his right elbow after the 2017 surgery. Tr. at 43, 109, 110. Petitioner's elbow felt fine throwing the

slider and curveball. Tr. at 44. Petitioner began a rehab assignment, or throwing in actual games, on July 14, 2018. Tr. at 44.

On August 8, 2018, Dr. Benson A. Scott evaluated Petitioner for his right elbow and left knee injuries. Px1 at 180-181. Dr. Scott noted that Petitioner had reached MMI and was released to return to work and/or full baseball activities with no restrictions, with no further treatment necessary. Petitioner was released from Dr. Scott's care. Petitioner testified that after Dr. Scott cleared him to play, Respondent sent him to Tennessee to continue his rehab with Respondent's Double-A team because he was not game ready for MLB. Tr. at 46. Petitioner then began pitching for Respondent's Double-A team, and his elbow felt great as he pitched. Tr. at 46-47. Petitioner was then sent by Respondent to Iowa, where he pitched four games with Respondent's Triple-A team. Tr. at 47-48. After pitching in Iowa, Petitioner was sent home by Respondent for one week, and then was called to pitch for Respondent's MLB team on September 19, 2018. Tr. at 48, 110. Petitioner pitched in two MLB games for Respondent in September 2018, and his elbow felt "perfectly fine." Tr. at 48-49. Petitioner later agreed that he played in three games, pitching one inning each, in September 2018. Tr. at 110. Petitioner agreed that he pitched in those three games without needing medical attention. Tr. at 111. Petitioner's contract with Respondent expired at the end of 2018, however, Respondent offered Petitioner a contract for the 2019 season, which he signed. Tr. at 49; Px9. Petitioner understood that he was not guaranteed a position on Respondent's MLB team for the 2019 season, however, if he was on Respondent's MLB team for the 2019 season, he would earn $650,000.00 annually. Tr. at 50. Petitioner was put on Respondent's minor league roster on February 18, 2019 and reported to spring training on February 24, 2019. Tr. at 115.

Petitioner testified that between October 2018 and the start of the 2019 season, he trained at home with his trainer, and that he would start throwing around November every year. Tr. at 51, 112. Petitioner testified that he would start slow, and then build up his throwing so that he was close to game ready when spring training began in mid to end February. Tr. at 51. Petitioner would build up the entire body. Tr. at 112-113. Petitioner testified that Dr. Meister and Dr. Gryzlo encouraged Petitioner to not pitch in October through the start of November, and that he always thought it was right to give his arm a little rest at the end of the season. Tr. at 52. Petitioner had his physical examination with Respondent on January 23, 2019, and Petitioner did not recall having any problems with his right elbow at that time. Tr. at 52-53. Petitioner testified that he was throwing between 100 feet and 120 feet, as well as bullpens, by the time he got to spring training in 2019. Tr. at 114. Petitioner testified that spring training goes from mid to late February through the end of March, and that spring training 2019 went great for him. Tr. at 53, 54. Petitioner's right elbow was perfect during spring training 2019. Tr. at 54-55. Petitioner was in spring training between February 24, 2019 and March 24, 2019, and pitched 163 pitches. Tr. at 116. Petitioner was not called onto Respondent's MLB roster off of spring training but was called onto its MLB team between April 4, 2019 and April 6, 2019. Tr. at 56, 116-117. Petitioner pitched for Respondent's MLB team on April 6, 2019. Tr. at 56. Petitioner pitched in five games from April 6, 2019 to April 17, 2019, and his right elbow was feeling great during this time. Tr. at 57. Petitioner played in nine games and pitched 121 pitches between April 6, 2019 and April 28, 2019. Tr. at 116. Petitioner pitched six pitches on April 6, 2019. Tr. at 117.

Accident

Petitioner's first bad game of the 2019 season was on April 20, 2019. Tr. at 57, 118. Petitioner pitched 36 pitches on April 20, 2019. Tr. at 118. Petitioner next pitched six days later and testified that he did not pitch for six games because he was a little tight in his elbow. Tr. at 58. Petitioner then pitched on three consecutive days, April 26, 2019, April 27, 2019, and April 28, 2019. Tr. at 58. Petitioner did not recall pitching 17 pitches on April 26, 2019, however, he recalled being taken out of the game and reported moderate right forearm and elbow pain on April 27, 2019. Tr. at 118. Petitioner testified that he noticed that his elbow was getting worse every time he pitched during the three-day period and that he had pain in his elbow that was becoming unbearable. Tr. at 58-59. Petitioner testified that he felt the pain in the muscle at the top of where the right elbow

meets the right forearm. Tr. at 59. Petitioner agreed that the pain in his right elbow in 2017, after the UCL injury, was on the inner part of the elbow, while the pain he felt in April 2019 was on the outer side of the elbow. Tr. at 60-61. Petitioner testified that in April 2019, he would lose strength in his right hand and that he could not really feel the ball. Tr. at 60. Petitioner reported the symptoms he was experiencing in his right elbow to Respondent's training staff. Tr. at 61. Petitioner agreed that the first note of his reports of right lateral elbow pain beginning on April 26, 2019 was documented by training staff on April 27, 2019. Tr. at 61, 118. Petitioner pitched again on May 1, 2019, May 4, 2019, and May 10, 2019. Tr. at 62. Petitioner testified that the pain in his right elbow worsened when he pitched during the three May 2019 games. Tr. at 62, 149. Petitioner testified that the pain was unbearable, that he could not feel the ball, and that he could not throw the ball where he needed to, or perform. Tr. at 62-63. Petitioner testified that in May 2019, he experienced pain in his right elbow when waking up, when picking up luggage or something off his desk, and when holding his I-pad. Tr. at 63-64. Petitioner testified that he chose to continue pitching at the end of April 2019 and in early May 2019 because he wanted to pitch in the MLB, "[a]nd if you're not pitching, somebody else is gonna take the spot." Tr. at 64. Petitioner did not pitch after May 10, 2019. Tr. at 64-65.

Medical Records Summary

On April 27, 2019, Petitioner reported mild/moderate lateral forearm/lateral epicondyle pain/discomfort over his right lateral elbow to therapist/trainer, PJ Mainville. Px1 at 403. Petitioner reported that the symptoms had been bothering him for the past several days, and that he felt normal after warming up throwing. Mild/moderate point tenderness over the lateral elbow along the radiocapitellar joint was noted, as well as full AROM and no limitation in strength. Petitioner was assessed with possible inflammation of the right lateral radiocapitellar joint, and was treated with manual therapy and shockwave therapy. It was noted that Petitioner reported improvement in overall symptoms of the lateral right elbow discomfort on April 27, 2019, stating that "I feel better today than other days after having pitched the day before, I'm good to pitch," regarding the April 27, 2019 game.

Petitioner saw Dr. Charles Peterson on April 27, 2019 for complaints of lateral elbow pain. Px1 at 172-173, 236; Rx7 at 2. Dr. Peterson noted that Petitioner had two weeks of lateral elbow pain, achy proximally and lateral upper arm above the lateral epicondyle. Dr. Peterson noted that pain was provoked with resisted ER of the shoulder. Petitioner denied numbness, tingling, and weakness. Petitioner was diagnosed with right elbow pain most consistent with superficial branch radial nerve irritation. Petitioner was instructed to continue with conservative management, however, if symptoms persisted, a hydrodissection of the nerve would be considered.

On April 28, 2019 and April 30, 2019, Petitioner reported continued improvement in overall symptoms of lateral elbow discomfort. Px1 at 401-402; Rx7 at 4-5. It was noted that Petitioner completed shockwave therapy and radial nerve glide work but would continue with symptomatic treatment. On May 1, 2019, Petitioner reported continued symptoms of lateral right elbow discomfort, stating that he felt the same, but was good to pitch. Px1 at 400; Rx7 at 6. On May 3, 2019, it was noted that Petitioner reported to the ballpark with improved symptoms, stating that he felt a little tight along the top (brachioradialis), but had no more radial nerve symptoms on the outside of his arm. Petitioner threw his normal throwing program without complaints and was available for the game. Px1 at 398; Rx7 at 8.

On May 4, 2019, Petitioner saw Dr. Stephen Gryzlo for one-week right elbow lateral soreness with pitching, gradual development and no loss of ROM or nerve irritation. Px1 at 170; Rx7 at 9. Dr. Gryzlo's diagnosis was right elbow lateral strain. Dr. Gryzlo recommended NSAIDs, stretches, modalities, and ice. On May 4, 2019, it was noted that Petitioner reported to the ballpark with continuation of right forearm soreness symptoms, stating that he still had tightness along the top (brachioradialis). Px1 at 397; Rx7 at 10. Petitioner threw his normal throwing program with no major complaints post-game. Petitioner reported continued symptoms of right

forearm soreness with tightness along the top (brachioradialis) on May 5, 2019 and May 6, 2019. Px1 at 395-396; Rx7 at 11, 12. Petitioner threw his normal throwing program on both dates, without major complaints.

Petitioner reported improvement of symptoms on May 7, 2019, and continued improvement of symptoms on May 8, 2019, May 9, 2019, and May 10, 2019. Px1 at 391-394; Rx7 at 13-15. On May 7, 2019, May 8, 2019, and May 9, 2019, Petitioner threw his normal throwing program without major complaints. On May 10, 2019, Petitioner threw in the game and no specific comment of symptoms was noted post-outing.

On May 11, 2019, it was noted that in conversation with Dr. Gryzlo on May 11, 2019, Petitioner was evaluated on May 7, 2019 with slowly improving symptoms, no significant exam change, and diagnosed with a lateral elbow strain. Px1 at 168, 234, 390; Rx7 at 17-18. Some improvement was noted with medication change. Petitioner reported continuation of persistent right lateral elbow symptoms after having pitched 39 pitches in 1.2 innings on May 10, 2019, and presented with persistent tightness/discomfort along the brachioradialis muscle. Petitioner's diagnosis was right lateral elbow strain. An MRI was recommended to evaluate the right lateral elbow/upper arm.

On May 11, 2019, Petitioner underwent a right elbow MRI which demonstrated (1) brachialis insertional grade I strain, (2) palmaris longus grade I strain, (3) coronoid process marrow edema possibly reactive or related to stress injury, and (4) high-grade cartilage loss involving the ulnar aspect of the ulnotrochlear articulation. Px1 at 10-11, 14-15, 159-160; Px4 at 30-31.

Petitioner reported continued symptoms, including minimal tenderness over the lateral elbow on May 12, 2019, May 13, 2019, May 14, 2019, and May 15, 2019. Px1 at 386-389; Rx7 at 20-23. On May 14, 2019, it was noted that Petitioner performed heavy arm routine without issues.

Petitioner reported improvement of symptoms on May 16, 2019, May 17, 2019, May 18, 2019, and May 19, 2019. Px1 at 382-385; Rx7 at 24-27. On May 17, 2019, it was noted that Petitioner felt overall 80-percent improved. On May 19, 2019, it was noted that Petitioner performed shoulder and forearm BFR and soft tissue work and reported that he felt around 90-percent improvement overall.

Petitioner again saw Dr. Gryzlo on May 20, 2019. Rx7 at 28. Dr. Gryzlo noted that Petitioner was slowly improving and was roughly 90-percent improved. Dr. Gryzlo's diagnoses were right elbow brachialis strain and coronoid stress. Dr. Gryzlo recommended continued active rest and no throwing until pain-free. Petitioner testified that he was actively resting through mid-May 2019 and was not throwing, and that Dr. Gryzlo told him not to throw until he was pain free. Tr. at 65-66.

Petitioner reported continued improvement of symptoms on May 20, 2019 (90-percent), May 21, 2019 (90-percent), May 22, 2019 (95-percent), and May 23, 2019 (95-percent). Px1 at 233, 378-381; Rx7 at 29-32. On May 23, 2019, it was noted that Petitioner completed a heavy arm routine without issues.

Petitioner saw Dr. Christopher Hogrefe on May 24, 2019. Px1 at 165-166; Rx7 at 33-34. It was noted that Petitioner returned to the training room for reevaluation of his right elbow pain. Petitioner reported that he had not been throwing for the past two weeks, however, had been lifting weights with his lower extremities and using some resistance bands with his upper extremities, which had not exacerbated his right elbow pain. Petitioner had not been lifting weights with his upper extremities. Petitioner reported that his improvement had plateaued until two days prior, and that he felt that he was at his baseline. It was noted that Petitioner had noted pain with resisted external rotation localized to the anterior lateral aspect of the right elbow with radiation, however, this no longer bothered Petitioner. Petitioner denied any new injuries to his right elbow. Petitioner estimated that he was almost at 100-percent, but for the fact that he had not resumed throwing. Petitioner denied

erythema, ecchymosis, swelling, atrophy, clicking, locking, popping, numbness, tingling, weakness, and/or gross instability of the right elbow. On exam, Petitioner had no tenderness to palpation over the anterior lateral aspect of the elbow, and it was noted that at palpation of the same location of the left elbow, Petitioner reported that the left elbow hurt more than the right, though neither was overtly painful. Petitioner had no other bony and/or joint line tenderness to palpation. Petitioner had full flexion of the right elbow, lacking 15-degress of elbow extension, which was noted to be his baseline, and full supination and pronation. Petitioner had no pain with resisted range of motion, including with resisted external rotation of the right shoulder. Petitioner's strength was 5/5. Petitioner's diagnoses were right elbow brachialis strain and coronoid stress reaction. Dr. Hogrefe noted that Petitioner's physical examination was normal, and that Petitioner reported feeling well overall. Dr. Hogrefe noted that Petitioner did not have a history of stress reactions/fractures, and that he would look to start a rehabilitation assignment, gradually increasing his strength in the right arm over the coming weeks, and at that time he would initiate bullpen sessions.

Petitioner reported continued improvement of symptoms, with no right forearm achiness on May 24, 2019, May 25, 2019, and May 26, 2019. Px1 at 375-377; Rx7 at 35-36, 38. On May 24, 2019, it was noted that Petitioner would begin an interval throwing program on May 25, 2019 and that he would travel to Arizona for continued rehab on May 26, 2019. Petitioner testified that he was sent by Respondent to Arizona to rehab. Tr. at 67.

On May 27, 2019, May 28, 2019, and May 29, 2019, Petitioner reported to Respondent's training complex in Arizona with no symptoms of right forearm achiness. Px1 at 372-374; Rx7 at 37, 39-40. It was noted that Petitioner completed a throwing program with normal intensity and no reported complaints. It was also noted that Petitioner completed shoulder and forearm exercises without issues on May 27, 2019 and May 29, 2019. On May 30, 2019, Petitioner reported feeling "a little sore" following throwing on May 29, 2019, but felt "pretty good" before leaving the training facility. Px1 at 370; Rx7 at 41-42. Petitioner reported no symptoms of right forearm achiness on May 31, 2019. Px1 at 369; Rx7 at 43. It was noted that Petitioner completed a throwing program with normal intensity without incident, and that he reported that his elbow felt good after the throwing program.

Petitioner testified that for rehab, he started throwing short distances that were spread out, and that ultimately, he started throwing side sessions in June 2019. Tr. at 67. Petitioner testified that his right elbow was starting to get a little better as he rehabbed in May 2019, June 2019, and July 2019. Tr. at 68. Petitioner, however, was not throwing with 100-percent strength. Tr. at 68.

On June 1, 2019, Petitioner reported feeling "good" on arrival. Px1 at 367; Rx7 at 47-48. It was noted that Petitioner was able to throw to 60 feet as planned without limitations. It was noted that Petitioner reported feeling "great, everything loosened up nice" after the throwing program. On June 3, 2019, it was noted that Petitioner reported no issues on arrival, that he was able to throw to 105 feet without limitations, and that Petitioner reported that his elbow felt good after the throwing program. Px1 at 365; Rx7 at 49. Petitioner was able to throw to 120 feet with a FG on June 5, 2019 without limitations or complaints. Px1 at 362; Rx7 at 53. On June 6, 2019, Petitioner was able to throw to 75 feet without limitations. Px1 at 361. Petitioner was able to throw to 120 feet with a flat ground on June 8, 2019, at which time it was noted that Petitioner tolerated throwing well. Px1 at 358; Rx7 at 55. On June 9, 2019, Petitioner was able to throw 75 feet without limitations. Px1 at 356; Rx7 at 58-59. On June 11, 2019, Petitioner was able to throw a side (20p FB) without limitations, and reported feeling great after throwing the side. Px1 at 354-355; Rx7 at 61-62. On June 12, 2019, Petitioner was able to throw 90 feet without limitations. Px1 at 353; Rx7 at 60. On June 13, 2019, Petitioner was able to throw a long toss (200 feet) without issues. Px1 at 351-352; Rx7 at 63. On June 14, 2019, Petitioner was able to throw a side (25p) without limitations, and reported that his body felt good after throwing. Px1 at 350; Rx7 at 64. On June 15, 2019, Petitioner was able to throw to 90 feet without limitations. Px1 at 348-349; Rx7 at 67. On June 17, 2019, Petitioner was able to throw a side (35p) without limitations, and reported that his arm felt good

after the side. Px1 at 346-347; Rx7 at 68. On June 19, 2019, Petitioner was able to throw a long toss (200 feet) and flat ground (15p) without limitations. Px1 at 344; Rx7 at 70. Petitioner was able to throw 90 feet without limitations on June 20, 2019. Px1 at 342-343; Rx7 at 72, 74. On June 21, 2019, Petitioner was able to throw a side (35p) without limitations, however, he reported some elbow achiness at the end of the day. Px1 at 341; Rx7 at 73.

On June 22, 2019, Dr. Gryzlo refilled Petitioner's Indomethacin 75mg prescription to help with post throwing achiness. Px1 at 229; Rx7 at 75. Petitioner was able to throw 75 feet, as planned, without limitations. Px1 at 339-340; Rx7 at 76-77. Petitioner was able to throw a long toss, as planned, without limitations on June 24, 2020, and reported feeling "much better" after the throwing program. Px1 at 337-338; Rx7 at 78, 80. Petitioner completed a throwing program (live BP 22p) without incident on June 25, 2019, stating that he felt good while throwing, but a little tight as he cooled down afterwards. Px1 at 336; Rx7 at 79. On June 26, 2019, Petitioner reported feeling no soreness or tightness that morning, and was able to complete a throwing program (90 feet) without incident. Px1 at 334; Rx7 at 81. On June 27, 2019, Petitioner reported no issues on arrival and completed a throwing program (175 feet/FG 12p) without incident. Petitioner reported that he "felt fine, not great" post-throwing, as well as "[d]oesn't hurt me throwing, I could throw like this if it doesn't get worse." Px1 at 332-333; Rx7 at 83, 85. On June 28, 2019, Petitioner completed a throwing program (90 feet) without incident, and reported feeling better than the day prior, June 27, 2019. Px1 at 331-332; Rx7 at 85. On June 29, 2019, Petitioner completed a throwing program (live BP 22p), and reported that "it felt good throwing and so far its stayed loose; better than last time." Px1 at 330; Rx7 at 86. Petitioner completed a throwing program (60 feet) without incident on June 30, 2019, and reported that his elbow felt good. Px1 at 328; Rx7 at 87.

On July 1, 2019, Petitioner was able to throw a long toss (105 feet) without incident, and reported feeling fine after throwing and did not report any concerns before departing for the day. Px1 at 327; Rx7 at 89. On July 2, 2019, Petitioner completed a pre-throw routine, and was able to initiate a rehabilitation assignment with AZL 1 and pitched one inning of 14 pitches without incident. Px1 at 325-3226; Rx7 at 90, 91. Petitioner reported that everything felt good after the game. Petitioner was able to complete a pre-throw routine, as well as a throwing program (90 feet) without incident on July 3, 2019. Px1 at 324; Rx7 at 92. Petitioner reported feeling "pretty good, I didn't feel anything at all" after the throwing program. On July 4, 2019, Petitioner reported to rehab with no physical complaints and was able to throw a long toss (150 feet) without incident, with reports of feeling good after the throwing program. Px1 at322-323. On July 5, 2019, Petitioner continued his rehabilitation assignment with AZL 1 and pitched 19 pitches in .2 innings without incident. Petitioner reported that he "[f]elt pretty good today, I was really trying to let it go out there" after the game. Px1 at321. On July 6, 2019, it was noted that Petitioner felt "great" on arrival, that he was able to complete a throwing program (90 feet) without incident, and that he felt good after the throwing program. Px1 at319-320; Rx7 at 96-97. It was noted that Petitioner would travel to Montgomery on July 7, 2019 to continue his rehab assignment with AA Tennessee, and that he would throw on July 8, 2019.

Petitioner testified that he was sent to Respondent's Double-A team in Tennessee on July 8, 2019, and that he pitched a couple of games. Tr. at 69. Petitioner testified that the pain in his elbow came back and got worse while pitching for the Double-A team. Tr. at 69.

On July 8, 2019, Petitioner reported to Respondent's AA team with no physical complaints. Px1 at 317; Rx7 at 98. Petitioner received therapeutic maintenance and completed regular prep routing prior to pre-game throwing (90 feet). Petitioner reported developing mild right low back tightness following conditioning activity. Petitioner then received further therapeutic treatment and reported feeling "good to go" for the scheduled night outing. Petitioner pitched 17 pitches in one inning. Following the inning, Petitioner reported that his arm felt great, but reported continued low back symptoms.

On July 9, 2019, Petitioner reported not physical complaints regarding the right arm and improved, continued non-limiting right low back symptoms. Px1 at 315-316; Rx7 at 100-101. Petitioner completed all on-field activity, including a pre-game throwing program and reported that his arm felt great and that his back felt a little better. Petitioner reported improved low back symptoms on July 10, 2019. Px1 at 315; Rx7 at 101.

On July 11, 2019, Petitioner reported no physical complaints regarding the right arm and improved low back symptoms. Px1 at 312-313; Rx7 at 103. Petitioner completed prep routine prior to activity with no issues. Petitioner also completed a pre-game throwing program (long toss 150 feet with 10p FG) and reported feeling great regarding the right arm. Petitioner reported low back symptoms, but that he could pitch in that evening's game. Petitioner received further therapeutic maintenance to address the low back symptoms, as well as therapeutic shoulder strengthening. The decision was made to delay the scheduled game outing (1 inning/20p) until July 12, 2019 after considering status and environmental factors for that evening's game.

Petitioner had no physical complaints regarding the right arm or low back on July 12, 2019. Px1 at 310-311; Rx7 at 105-106. Petitioner completed regular prep routing prior to pre-game throwing (90 feet). Petitioner then received further therapeutic maintenance following throwing and reported feeling "ready to pitch tonight." Petitioner completed all on-field activity, including 15 pitches in one inning, and reported feeling great physically following the outing. Petitioner completed therapeutic strengthening following on-field activity without issues. Petitioner reported "just general soreness" following the prior night's outing on July 13, 2019. Px1 at 308-309; Rx7 at 108-109. Petitioner completed regular prep routine prior to pre-game throwing (90 feet). Petitioner then received further therapeutic maintenance, including soft-tissue mobilization techniques to address chronic restrictions, following throwing. Petitioner reported feeling good, and "ready to go again tomorrow" at the end of the day. On July 14, 2019, Petitioner reported no physical complaints. Px1 at 306-307; Rx7 at 107, 111. Petitioner completed regular prep routing prior to pre-game throwing (90 feet), then received further therapeutic maintenance, including manual soft-tissue mobilization techniques to address chronic restrictions. Following throwing, Petitioner reported feeling "good" and reported that he felt "good to go for tomorrow" at the end of the day.

On July 15, 2019, Petitioner reported with no physical complaints. Px1 at 304-305; Rx7 at 110, 113. Petitioner completed regular prep routine prior to pre-game throwing (90 feet). Petitioner received further therapeutic maintenance following the throwing program and reported feeling "ready to pitch tonight." Petitioner pitched in the July 1, 2019 game (1 inning/13p), and after, reported that he felt great with no physical problems.

On July 16, 2019, Petitioner reported feeling general tightness following the prior night's outing. Px1 at 303; Rx7 at 112. He received therapeutic maintenance and completed regular prep routine prior to activity. Petitioner completed all pre-game activity, including a throwing program (90 feet), with no additional issues. Petitioner had no physical complaints on July 18, 2019. Px1 at 301; Rx7 at 114. Petitioner completed regular prep routine prior to pre-game throwing, received therapeutic maintenance prior to the game, and reported feeling "good to go for tonight." Petitioner completed one inning (8p) as scheduled, and reported that he felt good after. On July 19, 2019, Petitioner reported no physical complaints following the prior night's outing. Px1 at 299; Rx7 at 116, 118. Petitioner received therapeutic treatment and completed prep routine prior to activity with no reported issues. Petitioner completed pre-game throwing (120 feet) and reported right forearm tightness after five throws. Petitioner received multiple rounds of therapeutic treatment following throwing, including manual soft-tissue mobilization techniques to address restrictions. Petitioner reported feeling a little better regarding the right arm.

Petitioner reported feeling "pretty good today" on July 20, 2019. Px1 at 298; Rx7 at 117. Petitioner reported a subjective decrease in the previous day's forearm symptoms overnight and that he was "ready to pitch tonight." Petitioner received therapeutic treatment and completed prep routing prior to activity without any issues. Petitioner completed a pre-game throwing program (90 feet) and reported feeling "better than yesterday." On

July 21, 2019, Petitioner reported feeling the same as July 20, 2019. Px1 at 296; Rx7 at 120. Petitioner completed a prep routine prior to activity with no issues. Petitioner completed a pre-game throwing program (90 feet FB/CH/CB) and after, reported "I didn't feel anything at all." On July 22, 2019, Petitioner reported feeling "fine." Px1 at 294-295; Rx7 at 119, 123. Petitioner completed a prep routine prior to activity with no issues. Petitioner completed a pre-game throwing program (140 feet with 10p T+F) and after, reported "I didn't feel anything at all." On July 23, 2019, Petitioner reported feeling "about the same as the last few days." Px1 at 293; Rx7 at 122. Petitioner received therapeutic maintenance and completed a prep routing prior to activity with no issues. Petitioner completed a pre-game throwing program (light toss 75 feet) and reported feeling symptoms in the right forearm that improved slightly over the final few throws. Petitioner then completed therapeutic strengthening and further treatment, including manual soft-tissue mobilization techniques to address chronic restrictions. Petitioner reported feeling better after symptomatic treatment.

On July 24, 2019, Petitioner reported feeling "good, better than yesterday." Px1 at 291; Rx7 at 124. Petitioner completed a prep routine prior to activity with no issues. Petitioner completed a pre-game throwing program (intermediate 105 feet) with only mild symptoms reported on one throw. Petitioner reported feeling "a lot better today." On July 25, 2019, Petitioner reported feeling "better than yesterday." Px1 at 289; Rx7 at 126. Petitioner completed a prep routine prior to activity with no issues. Petitioner completed a pre-game throwing program (135 feet, side 15p) with no symptoms reported. Petitioner reported feeling great after throwing. On July 26, 2019, Petitioner reported feeling "not quite as good as yesterday." Px1 at 287-288; Rx7 at 128. Petitioner completed a prep routine with no issues. Petitioner completed a pre-game throwing program (75 feet) and reported the recurrence of anterior/lateral forearm discomfort similar to what he experienced on July 22, 2019 after T& F. Petitioner then received therapeutic strengthening and treatment and reported feeling "fine" after.

Petitioner reported feeling better on July 27, 2019, July 28, 2019, and July 29, 2019 regarding right forearm symptoms, reported feeling "about the same on July 30, 2019, and that he had not "really felt it at all today" on July 31, 2019. Px1 at 279284; Rx7 at 131, 133, 135, 136, 138. Petitioner received therapeutic treatment and completed a prep routine without issues. Petitioner completed modified on-field activity (stretch, conditioning) with no reported issues. Petitioner then received therapeutic strengthening and recovery treatment and reported feeling good after. It was recommended that Petitioner begin a prednisone 5mg taper. Rx7 at 129.

Petitioner testified that while pitching in July 2019 and August 2019, his elbow was "better and worse." Tr. at 70. Petitioner testified that his elbow was not too bad pitching fastballs, but the pain would return when throwing sliders, and each time he threw a slider, the pain was worse. Tr. at 70. Petitioner testified that in August 2019, grabbing his laptop from his lap to set it on the nightstand would be painful, as well as holding his phone or I-pad for an extended amount of time. Tr. at 71. Petitioner testified that while he pitched in minor league games in July 2019 and August 2019, the pain would flare up, and the trainers would shut him down for a couple weeks, and when he would return to pitch, the pain would flare up again. Tr. at 159. Petitioner testified that when he told trainers that he was feeling good or great or able to throw, he meant that he was physically able to throw a ball against batters, and not that his elbow was better than it had been prior to April 20, 2019. Tr. at 153.

Petitioner reported feeling great on August 1, 2019, and reported no symptoms in the right forearm. Petitioner received therapeutic treatment and completed a prep routing prior to modified on-field activity (stretching, conditioning) with no issues. Px1 at 278; Rx7 at 139. Petitioner then completed additional therapy and strengthening, reported that he felt ready to throw prior to departure. Petitioner reported feeling "ready to throw" on August 2, 2019. Px1 at 276-277; Rx7 at 141. Petitioner completed a prep routine prior to a pre-game throwing (90 feet) with no recurrence of right forearm symptoms. Petitioner reported feeling "very happy with today" prior to departure. On August 3, 2019, Petitioner reported no new or recurring right forearm symptoms. Px1 at 275; Rx7 at 143. Petitioner completed all pre-game activity, including a throwing program (light toss 90

feet), and reported feeling "even better than yesterday." Petitioner reported no new or recurring right forearm symptoms on August 4, 2019, and completed modified pre-game activity (stretching, conditioning) with no issues. Px1 at 273-274; Rx7 at 144. On August 5, 2019, Petitioner reported no new or recurring right forearm symptoms, and completed all pre-game activity, including throwing progression (105 feet), and reported feeling "really great today." Px1 at 272-273; Rx7 at 145-146. On August 7, 2019, Petitioner reported feeling "really, really great today" after completing a pre-game throwing program (long toss with FG 10p). Px1 at 270; Rx7 at 147. On August 8, 2019, Petitioner reported no new or recurring right forearms symptoms, and reported feeling good after completing a pre-game throwing program (light toss). Px1 at 268-269; Rx149-150. Petitioner reported no new or recurrent right forearm symptoms on August 9, 2019, and reported feeling great after completing a pre-game throwing program (long toss). Px1 at 267; Rx7 at 151. On August 10, 2019, Petitioner reported feeling great after completing a pre-game throwing program (Side 19p) with no new or recurrent symptoms. Px1 at 265-266. Petitioner reported no new or recurrent right forearm symptoms on August 11, 2019, and reported feeling great after completing a pre-game throwing program (light toss 105 feet). Px1 at 264-265; Rx7 at 152-153. On August 13, 2019, Petitioner reported feeling great. Px1 at 261-262; Rx7 at 16. He completed all pre-game activity, including side (23p) as scheduled, and reported feeling great with no issues after. Petitioner reported no new or recurrent right forearm symptoms on August 14, 2019, and completed a pre-game throwing program (light toss) as scheduled with no issues. Px1 at 260; Rx7 at 158. On August 15, 2019, Petitioner completed a pre-game throwing program (long toss) without issues and did not report any new or recurrent right forearm symptoms. Px1 at 258-259; Rx7 at 159.

On August 16, 2019, Petitioner reported no new or recurrent right forearm symptoms. Px1 at 257; Rx7 at 160. Petitioner completed a regular prep routine, as well as pre-game throwing (90 feet), and reported feeling great and "ready to go for tonight." Petitioner completed all on-field activity, including 14 pitches in one inning, and reported feeling good after. On August 17, 2019, Petitioner reported feeling good, and mild shoulder/general arm soreness. Px1 at 255; Rx7 at 162. Petitioner completed a pre-game throwing program (90 feet), and reported feeling "not bad" after. On August 18, 2019, Petitioner completed a pre-game throwing program (120 feet) and reported feeling good after. Px1 at 254; Rx7 at 164. On August 19, 2019, Petitioner completed a pre-game throwing program (90 feet) and reported feeling "ready to pitch" after. Px1 at 252; Rx7 at 165. That night, Petitioner pitched 19 pitches in 0.2 innings in relief and reported feeling fine after the outing. Petitioner reported general soreness following the prior night's outing on August 20, 2019. Petitioner completed pre-game throwing (75 feet) and after, reported feeling "better than I thought I would, but still a little sore." Px1 at 251.

On August 21, 2019, Petitioner reported no physical complaints at rest. Px1 at 249;Rx7 at 170-171. Petitioner reported right elbow/forearm symptoms with ADL developing over the last few days. Petitioner received therapeutic treatment and completed regular prep routine, as well as a throwing program (120 feet) with good intensity. Petitioner reported feeling "a lot better than I expected" with no symptoms in the right elbow/forearm.

On August 22, 2019, a Workers' Compensation report notes continuation of right elbow symptoms, as well as Petitioner describing the inability to recover between one inning stints during his rehab assignments. Px1 at 222-224; Rx7 at 169. It was noted that Petitioner would see Dr. Gryzlo on August 26, 2019. Petitioner reported continued right elbow/forearm symptoms on August 23, 2019, August 24, 2019, and August 25, 2019. Px1 at 246-248; Rx7 at 172, 173, 177.

Petitioner underwent a right elbow MRI on August 26, 2019, which demonstrated (1) first-degree strain in the anconeus muscle, a new finding since prior study of May 11, 2019, (2) brachialis insertional grade I strain slightly improved since prior study of May 11, 2019, (3) bone marrow edema in the coronoid process of the ulna slightly improved since previous study of May 11, 2019, (4) thickening and susceptibility artifact in the medial collateral ligament from prior surgery, (5) worsening of muscle edema in the palmaris longus muscle since prior study of May 11, 2019, and (6) severe focal articular cartilage loss posteriorly and medially. Px4-5.

Petitioner was seen by Dr. Gryzlo on August 26, 2019. Px1 at 8-9, 157-158; Px4 at 17-18. Dr. Gryzlo noted that Petitioner was 29 years old, right-hand dominant, and underwent ulnar collateral ligament reconstructive surgery with ipsilateral palmaris longus tendon graft two years prior and was signed by Respondent in the off-season. He noted that Petitioner had a baseline MRI in February and had pitched for Respondent and developed anterior and anterolateral elbow pain in May. Petitioner was shut down. Dr. Gryzlo noted that the May 2019 MRI revealed palmaris longus strain grade 1, brachioradialis strain grage 1, a bone contusion, and a stress reaction coronoid process of olecranon. Dr. Gryzlo noted that the ligament looked good and that there was no significant intraarticular pathology. Dr. Gryzlo noted that Petitioner had had no bouts of discomfort during treatment and rehab, however, over the last three weeks, the discomfort over the anterior anterolateral aspect of the elbow had returned. Dr. Gryzlo noted that there had been some difficluties with Petitioner's cut fastball and slider, but just no rest pain, and some discomfort when he tried to pick up his laptop on a chair next to him. Petitioner reported that his symptoms were the same as those he had in May. Dr. Gryzlo noted that the August 2019 MRI revealed the persistence of the brachialis strain, somewhat worsening of the stress reaction in the proximal ulna, coronoid process. Dr. Gryzlo noted that there was no obvious evidence of ligamentous change of the UCL reconstruction, and that there was still some strain of the palmaris longus muscle that may be due to harvesting of the tendon. There was no obvious injury to the radial nerve, and mild fluid around the ulnar nerve at the area of surgery. Dr. Gryzlo noted that overall, there was no significant change since Petitioner's May MRI. Dr. Gryzlo's impressions were anterior and anterolateral soreness, more likely related to the stress reaction that is still present in the bone and the brachialis, and the possibility of underlying radial nerve entrapment. Dr. Gryzlo imposed a four-week rest period to let the bone calm down, and recommended a possible hydrodissection of the radial nerve for diagnosis exclusion of radial nerve entrapment. Dr. Gryzlo noted that regarding the radial nerve entrapment, there was no clear indication of it, except tightness above the elbow laterally, and Petitioner's symptoms did not necessarily point to that diagnosis.

On August 27, 2019, it was noted that Petitioner was seen by Dr. Gryzlo and that MRI imaging revealed a bone bruise larger than noted in May 2019. Px1 at 9; Rx7 at 177, 179. Petitioner's treatment plan consisted of active rest for four weeks, during which Petitioner would undergo a hydrodissection of the radial nerve by Dr. Peterson.

Petitioner underwent a hydrodissection of the right elbow radial nerve on September 9, 2019 for the diagnosis of radial nerve compression and neuritis. Px1 at 3-5, 153-155; Px7 at 3-5; Rx7 at 182, 184. On September 10, 2019, Petitioner reported feeling good after the procedure. Px1 at 240; Rx7 at 185. On September 11, 2019, Petitioner feeling good, and it was noted that Petitioner continued to do well following the hydrodissection of the radial nerve. Px1 at 239;Rx7 at 186. It was noted that Petitioner would travel home that afternoon and begin the off-season. Petitioner testified that he was sent home for the remainder of the season after the September 9, 2019 hydrodissection procedure. Tr. at 73-74.

On October 19, 2019, Petitioner reported no complaints of elbow/forearm discomfort following the September 9, 2019 hydrodissection procedure. Px1 at 238; Rx7 at 187. It was noted that Petitioner was at home and was scheduled to begin playing light catch in mid-November.

Petitioner testified that in September 2019, October 2019, and November 2019, there was mild pain in the elbow and that he was not doing anything with his arm. Tr. at 74. Petitioner testified that he started throwing around November 2019, the same time of year that he would start throwing to get ready for the upcoming season or to try to make or get another contract. Tr. at 76.

Petitioner testified that his contract with Respondent expired on November 4, 2019. Tr. at 75.

On November 6, 2019, via phone consult, Petitioner reported that he had been working out, total body, for the past couple of weeks. Px1 at 237; Rx7 at 188. Petitioner denied any discomfort with strength training. Petitioner reported general muscle soreness post-workout but resolved. Petitioner denied the soreness being directly related to the elbow/forearm. It was noted that Petitioner was scheduled to begin throwing mid-November as recommended by Drs. Gryzlo and Peterson. Petitioner testified that Dr. Gryzlo and Dr. Peterson had cleared him to start his off-season buildup for the following season in November 2019. Tr. at 133. Petitioner testified that his build up was slower this time, however, it was his choice to take his time. Tr. at 133. Petitioner testified that his build up was similar in strength and conditioning as years prior, but his throwing was lighter, which was his choice. Tr. at 133-134.

Petitioner signed a contract with the Washington Nationals ("Nationals") in February 2020. Tr. at 75.

Petitioner testified that his elbow felt okay between November 2019 and February 2020. Tr. at 76. Petitioner testified that he "never got built up to be game ready when I ended up, when I signed with the Nationals. It was a - - it was harder for me to get signed that year. And I ended up having to use a favor of a guy that I knew…And they knew they were going to have to build me up real slow as I was in spring training." Tr. at 76.

Petitioner underwent a physical examination on February 26, 2020, at which time Petitioner reported that he had been throwing normally for three months pain-free. Rx10 at 4. Petitioner underwent a fluoroscopic guided arthrogram of the right elbow, as well as a right elbow MRI. Px1 at 148; Px8 at 18; Rx15 at 18. The right elbow MRI demonstrated (1) intact UCL, (2) localized moderate chondral thinning with small spurring and subcortical marrow edema posteromedial ulnotrochlear articulation, correlate for valgus overload syndrome, and (3) palmaris longus mild myotendinous edema and fatty atrophy suggesting subacute to chronic denervation, underlying low-grade strain not excluded. Px1 at 148; Px8 at 17-18; Rx15 at 18-19, 30. The flexor and extensor tendons, triceps, biceps, and brachialis tendons were normal, as well as visualized portions of the ulnar nerve well located within the cubital tunnel. The ulnar collateral ligament appeared intact without evidence of tear, and the radial collateral ligament and annular ligament were normal as well. Petitioner testified that he was cleared to play by the Nationals. Tr. at 135. Petitioner agreed that he told the Nationals that he had been throwing for three months prior to his physical examination on February 26, 2020 without issues and that he had no pain in his right elbow. Tr. at 134.

Petitioner signed with the Nationals on or about February 29, 2020. Tr. at 77. Petitioner was sent to spring training by the Nationals, but Petitioner did not get through spring training with the Nationals because of the COVID-19 pandemic. Tr. at 79-80. Regarding how his elbow felt in February 2020 through the first couple of weeks in March 2020 during spring training, Petitioner testified "I could tell [the pain] was still there. But I wasn't game ready. I wasn't throwing sliders or anything like that." Tr. at 79. Petitioner testified that throwing a baseball would cause him to feel pain in his elbow, and that he had not yet started throwing curveballs or sliders. Tr. at 79-80. On March 7, 2020, it was noted that Petitioner had completed arm care post side. Rx10 at 12-13. On March 12, 2020, it was noted that Petitioner had completed arm care post live. Rx10 at 14. On March 26, 2020, Petitioner was flagged for daily injury report, with the injury noted as an acute upper respiratory infection. Px1 at 150, 221; Rx10 at 17-19.

Petitioner agreed that the Nationals signed him to one of its minor league teams. Tr. at 80. Petitioner testified that he did not pitch in a spring training game or minor league game in 2020, and that there were not any spring training games in 2020 because everyone was sent home. Tr. at 80. Petitioner testified that in 2020, while throwing bullpen sessions during spring training, he noticed that he was not 100-percent, and that he never tried to throw 100-percent. Tr. at 153. Petitioner testified that it was a light bullpen early in spring training and that he was out there trying to get a feel for the slope and being outside throwing a couple of bullpens. Tr. at 153. Petitioner testified that the light bullpen sessions created pain in his elbow. Tr. at 154. Petitioner testified that

when he told the trainer that he had no pain while throwing during the three months prior to spring training, he was not throwing 100-percent. Tr. at 154.

Petitioner testified that while at home in 2020, he lifted weights, ran, exercised, and threw to stay in baseball shape. Tr. at 80-81. Petitioner testified that while at home and keeping in shape throwing, he noticed the same as before, pain "[a]s soon as I would build back up." Tr. at 81. Petitioner testified that he would then take time off, but that the pain would return when he built back up. Tr. at 81.

Petitioner was released by the Nationals on May 31, 2020 due to the COVID-19 pandemic, which was around the same time that the minor league season was canceled. Px1 at 1378; Tr. at 81, 136. It was noted that there were no known issues upon Petitioner's release. Rx10 at 20,

Petitioner agreed that no doctor ever told him that he could not attempt to return to major league play. Tr. at 158.

Current Condition

Petitioner has not signed a contract to play professional baseball at any level since his release by the Nationals on May 31, 2020. Tr. at 82. Petitioner did not play in a single game for the Nationals. Tr. at 82. Petitioner last played in a game for Respondent. Tr. at 82. Petitioner has not been contacted by any team since May 2020 asking him to try out for an MLB or minor league game. Tr. at 82. Petitioner testified that he is not aware of a team contacting his agent to potentially sign him to a contract since 2020. Tr. at 82. Petitioner testified that he made the decision to no longer play professional baseball in mid-2021. Tr. at 83. Respondent has not reached out to Petitioner to offer him a job in any capacity with its organization. Tr. at 161.

Petitioner testified that he started his own landscaping business, Allen's Custom Enhancements, which also goes by the name of ACE Hardscapes. Tr. at 83. Petitioner testified that his only job since March 2020 has been with Allen's Custom Enhancements/ACE Hardscapes. Tr. at 84. Petitioner has not looked for employment elsewhere. Tr. at 140. Petitioner testified that he began his landscaping business instead of looking for other work because he enjoys it. Tr. at 156. Petitioner filed tax returns in 2022 and 2023, and he did not have any other sources of income besides Allen's Custom Enhancements/ACE Hardscapes. Tr. at 84. In 2022, Allen's Custom Enhancements/ACE Hardscapes reported gross receipts of $34,000.00. Tr. at 85. In 2023, Allen's Custom Enhancements/ACE Hardscapes reported gross receipts of a little over $134,000.00, and Petitioner's gross profit or income that he made was a little over $47,000.00. Tr. at 85. Petitioner testified that he averages 50 hours per week and starts work at 6:30 a.m. and returns home after 5 p.m. Tr. at 86. Petitioner has not received any additional education since leaving professional baseball in 2020. Tr. at 86-87. Petitioner enjoys being outside and designing outdoor living spaces. Tr. at 86. Petitioner performs the physical labor involved with his landscaping business and works outside in the field. Tr. at 86-87, 139, 154. Petitioner testified that his injury does not impair his ability to do work for Allen's Custom Enhancements/ACE Hardscapes. Tr. at 154. Petitioner agreed that his landscaping work includes digging out, leveling, and laying stonework, which is mostly done by equipment such as a skid-steer and track loader. Tr. at 138. Petitioner uses the track loader to move the stone close to where they are going to be, and then he places them where they need to be. Tr. at 139. Petitioner has also built pergolas. Tr. at 139.

Petitioner testified that while performing the physical labor involved in landscaping, the pain in his elbow is always there, but it is not as bad as it was when he was pitching. Tr. at 87. Petitioner described the pain as it "feeling[ing] like someone's pushing on the spot constantly every day." Tr. at 87. Petitioner testified that holding a weed eater or weed whacker for an extended amount of time triggers the pain in his right elbow, as well as using a hammer. Tr. at 87-88. Petitioner testified that his forearm and hand "lock up" when using a weed

whacker for an extended amount of time. Tr. at 88. Petitioner testified that the more he pushes his elbow, his right hand and fingers cramp up. Tr. at 88-89.

Petitioner testified that the 2019 injury affected his ability to locate the ball and spin the ball 100-percent. Petitioner testified that he could not get his slider to where it was before, and the more he threw a slider, the pain in his elbow would worsen. Tr. at 145. Petitioner did not have any other injuries to his right arm in 2018 or 2019. Tr. at 145-146. Petitioner testified that he can no longer play professional baseball because of his elbow and the radial nerve injury. Tr. at 148.

Testimony of Charles Baughman

Respondent called Mr. Charles Baughman as a witness in its case in chief. Tr. at 162. Mr. Baughman is employed as the manager of medical administration at Respondent. Tr. at 163. Mr. Baughman has oversight of electronic medical records, budgets, amateur draft medical, OSHA, and free agent medical reviews. Tr. at 163. As the manager of medical administration, Mr. Baughman obtains medical information regarding prospective players and tracks medical information for current players. Tr. at 163-164. The medical information is accumulated by MLB. Tr. at 164. Mr. Baughman is not an "analytics guy" for Respondent or any other MLB team. Tr. at 174. In his capacity with Respondent, Mr. Baughman is aware of the data that is tracked for players, and with a pitcher, the data tracked includes the number of pitches thrown, the type of pitch thrown, and the velocity of the pitch. Tr. at 174. Mr. Baughman is not a medical doctor. Tr. at 176.

In 2019, Mr. Baughman was the minor league medical coordinator for Respondent. Tr. at 165. As the minor league medical coordinator, his duties were similar to those of the manager of medical administration and included oversight of the minor league athletic training staff and rehabilitation with Respondent. Tr. at 165. A player who achieves MLB status can be sent down to the minor leagues for rehab assignment, and Mr. Baughman would keep track of entries made at the minor league level. Tr. at 166. Mr. Baughman testified that Respondent has a rookie ball team, a Low-A ball team, a High-A team, a Double-A team, and a Triple-A team. Tr. at 167-168. The type of pitching required at each level differs in performance, which can be translated to intensity. Tr. at 167-168. Mr. Baughman explained that a player who is starting in an initial rehab assignment may start at a lower level, such as rookie ball or A ball team, then elevate to a higher level as their performance becomes better. Tr. at 168. Mr. Baughman did not recall if he interacted with Mr. Webster personally at the end of April 2019. Tr. at 168.

Mr. Baughman also oversees and has access to electronic medical record entry for Respondent, and Respondent's athletic trainers make entries into Respondent's system. Tr. at 164-165. Mr. Baughman testified that athletic trainers are directed to include quotes from the athlete, to place what type of intervention or treatment would be put in place, and the plan for the next day or two in their entries. Tr. at 170. Mr. Baughman agreed that athletic trainers are not doctors and testified that entries are made in conjunction with medical personnel. Tr. at 170. Mr. Baughman testified that physical comments made by the player as well as performance as dictated by the pitching coach determines the progress in terms of what a player is allowed to do. Tr. at 171. Athletic trainers record pre- and post-game responses to gauge a player's progress through rehab. Tr. at 171-172. An athletic trainer in correlation with a pitching coach determine how far a pitcher is going to throw as part of rehab. Tr. at 172. Mr. Baughman was not the athletic trainer that worked with Petitioner as Petitioner progressed through rehab in July 2019 and August 2019. Tr. at 173.

Mr. Baughman recalled having a conversation with Petitioner on November 1, 2019. Tr. at 173. Mr. Baughman explained that at the conclusion of the season, they contact the players during the off-season to inquire as to physical status and any off-season workout plans to gauge their health status. Tr. at 173. Mr. Baughman recalled that Petitioner told him that he was feeling good, that he was having some general muscle soreness from

workouts, and that he had not yet begun his throwing progression. Tr. at 174. Mr. Baughman has not had any interactions with Petitioner since November 1, 2019. Tr. at 174, 176.

Evidence Deposition Testimony of Petitioner's Section 12 Examiner, Dr. Howard I. Freedberg

Dr. Freedberg testified by way of evidence deposition on October 17, 2023. Px2. Dr. Freedberg testified as to his education and credentials as a board-certified general orthopedic surgeon, with fellowship training in sports medicine and reconstructive surgery. Px2 at 6-12. Elbow surgeries are a part of Dr. Freedberg's practice. Px2 at 12.

Dr. Freedberg performed an independent medical evaluation of Petitioner and authored a report dated December 14, 2021. Px2 at 13. Dr. Freedberg examined Petitioner and reviewed records in preparation of his report. Px2 at 13.

Dr. Freedberg testified that the strain on the elbow is significant when pitching over 90-mph, and that it exceeds the ultimate tensile strength of the ulnar ligament, which is the ligament that Petitioner had surgery on in 2017. Px2 at 15. Dr. Freedberg testified that Petitioner reported to him that he began to experience pain in his elbow on April 26, 2019 while pitching, that he pitched three days in a row after the onset of symptoms, and that he noticed weakness and tingling in his right hand after April 26, 2019. Px2 at 15-16. Dr. Freedberg was not aware of symptoms of tingling or weakness in the right hand prior to April 26, 2019. Px2 at 16. Dr. Freedberg testified that weakness generally is a sign that there is some pathology coexisting within the elbow joint, and that numbness and tingling is related to "kind of" a loss of biomechanics in the elbow which probably represents an issue with the ulnar nerve, called cubital tunnel syndrome. Px2 at 17. Dr. Freedberg testified that cubital tunnel syndrome would be a significant issue because it represents the breakdown of the ability of the homeostasis of the elbow, which is the ability of a joint to adapt to the stresses applied to it. Px2 at 17. Dr. Freedberg testified that Petitioner reported to him that he was not able to finish the 2020 season, that he was sent home, and that he was released four months later. Px2 at 17-18. Petitioner also reported that he tried to build his pitching velocity up in 2021, the pain recurred, he rested, then tried again, but the pain recurred, and at that point, "he threw in the towel" and decided to retire. Px2 at 18. Dr. Freedberg testified that the significance of the recurrent pain was that the elbow was unable to withstand the stresses applied to it. Px2 at 18. Dr. Freedberg described the mechanics of the elbow involved with pitching as valgus stress to the elbow, which is when there is valgus overload to the elbow which occurs when you get posteromedial osteophytes and other issues with chondromalacia. Px2 at 19. Dr. Freedberg further explained that when pitching a slider, the rotation necessary of the fingers and wrist produces more of a torquing mechanism to the elbow which produces a stress that is beyond that produced by a fastball. Px2 at 19. Dr. Freedberg testified that the slider and fastball at maximum velocity are the two culprits that destroy the careers of baseball players. Px2 at 19. Petitioner told Dr. Freedberg that he pitched sliders. Px2 at 19-20.

Dr. Freedberg testified that Petitioner told him that he did not experience "huge" relief after the hydrodissection injection, and that he noticed flare up of the pain when training for another team, and that his pain would flare up with any activity. Px2 at 20. Dr. Freedberg testified that the velocity of a throw produces a torque on the elbow, such that all sorts of sundry issues can occur, and in this case, an inflammation, a scarring, and fibrosis of the radial nerve that was treated with a hydrodissection. Px2 at 21-22. Dr. Freedberg testified that a vast majority of pitchers that undergo an ulnar collateral ligament reconstruction are able to return to professional pitching and pitch up to where they were prior to surgery. Px2 at 23-24. Petitioner was doing well after the 2017 surgery. Px2 at 24-25.

On examination, Petitioner had normal valgus, and a range of motion of minus 5 extension to 160 of flexion, 80 degrees of supination, and 80 degrees of pronation. Px2 at 25. Dr. Freedberg testified that Petitioner's physical

examination findings were normal, and that Petitioner had normal range of motion, however, the minus 5 extension represents issues with the elbow. Px2 at 26. Dr. Freedberg also testified that Petitioner had a little weakness and was tender to palpation of the brachioradialis at the junction of the distal biceps tendon. Px2 at 27-28. Dr. Freedberg testified that his physical exam findings of December 2021, in whole or in part, might or could have been related to Petitioner's April 2019 injury. Px2 at 28. Dr. Freedberg testified that the May 2019 MRI showed edema in the coronoid process of the olecranon, high grade chondral loss of the ulnar aspect of the ulnotrochlear joint with reactive subchondral marrow edema, and a feathery brachioradialis insertional intramuscular edema. Px2 at 30. The impression was brachioradialis insertional grade 1 strain, palmaris grade 1 strain, coronoid process marrow edema, which could be a stress injury, with high cartilage loss involving the ulnar aspect of the ulnotrachlear articulation. Px2 at 30. Dr. Freedberg testified that the chondral, or cartilage, loss was preexisting. Px2 at 30. Dr. Freedberg testified that it was certainly probable that the chondral loss noted on the May 2019 MRI might have been aggravated or exacerbated by the method of injury to Petitioner in April 2019. Px2 at 31. Dr. Freedberg testified that marrow edema within the coronoid process represents probably a stress reaction, or overload phenomenon, that is always related to overuse activity. Px2 at 31-32. Dr. Freedberg testified that the MRI findings of feathery brachioradialis insertional intramuscular edema and the grade 1 strain of the brachioradialis insertional and palmaris longus are related to the overuse and repetitive nature of throwing a baseball, which is the only injury known of in this case. Px2 at 32. Dr. Freedberg testified that the findings of the May 2019 MRI might or could have been aggravated exacerbated in whole or in part by the history Petitioner gave him of how he injured his elbow in April 2019.Px2 at 32-33. Dr. Freedberg testified that the elbow was not improving as of August 26, 2019, and that the significance is the concern of whether Petitioner would regain the function to be a professional pitcher again. Px2 at 35-37. Dr. Freedberg testified that the February 26, 2020 MRI showed improvement, but not resolution of the issues caused from the 2019 flare-up injury. Px2 at 37-38.

Dr. Freedberg testified that the 2017 surgery was not part of Petitioner's symptomology in 2019 and 2020. Px2 at 38-39. Dr. Freedberg testified that most findings of the February 26, 2020 MRI were in part related to the April 26, 2019 injury. Px2 at 39. Dr. Freedberg testified that he believed that the hydrodissections performed in 2019 were related to in whole or in part to the April 26, 2019 injury. Px2 at 40. Dr. Freedberg testified that the April 26, 2019 injury diminished Petitioner's pitching skills as they relate to his ability to play professional baseball, and that it was the culprit that prevented Petitioner from maintaining his role as a pitcher. Px2 at 41-42. Dr. Freedberg testified that Petitioner's diminished pitching skills were permanent and that he did not think that they were going to resolve to the point where he could ever throw again at that level. Px2 at 42. Dr. Freedberg testified that the condition of Petitioner's elbow in December 2021, when he examined Petitioner, might or could have been related in whole or in part to the way that Petitioner injured his elbow in April 2019. Px2 at 42-43. Dr. Freedberg testified that treatment of the elbow could be required in the future, and that Petitioner would more likely than not need a total elbow arthroplasty in the future. Px2 at 43-45. Dr. Freedberg testified that his review of the MRI films, after issuing his December 2021 report, did not change any of his December 14, 2021 opinions. Px2 at 45. Dr. Freedberg testified that after the April 2019 injury, Petitioner was never able to pitch a fastball at 95-mph or a slider, and that Petitioner lost the ability of the elbow joint to adapt to the stresses applied to it. Px2 at 46.

On cross examination, Dr. Freedberg testified he was an assistant team physician for the professional baseball team and football team in Cincinnati during his fellowship year in 1987. Px2 at 48-49. Dr. Freedberg testified that he has not had a formal relationship with any major league teams since then, and that he has had only a relationship with the players associations of the NFL and MLB. Px2 at 48-49. Dr. Freedberg testified that it was his understanding that Petitioner pitched three days in a row which produced the symptoms, and that it was those three days that produced repetitive overuse that produced the stress reaction in the elbow that started the "snowball effect" of the pain with the brachioradialis strain that Petitioner has never recovered from. Px2 at 52-53. Dr. Freedberg testified that he believed that Petitioner had thrown multiple pitches in each of the three

successive games, but he did not ask Petitioner how many pitches he threw. Px2 at 53. Dr. Freedberg testified that he assumed that Petitioner threw multiple pitches in each of the three successive games in forming his causation opinion. Px2 at 53. When asked if knowing that Petitioner pitched on April 27, 2019 and April 28, 2019 that would impact his opinion, Dr. Freedberg testified that any information could potentially change his opinion, and it could be that Petitioner tried to pitch through the pain on April 27, 2019. Px2 at 54. Dr. Freedberg did not review any records from prior to the 2017 surgery. Px2 at 58. Dr. Freedberg did not have an independent recollection of whether he reviewed the February 2015 MRI or x-rays done through June 2017. Px2 at 58-59, 63. Dr. Freedberg testified that his understanding of Petitioner's medical history based off the 2017 surgery, was enough information for him to examine and opine as he has. Px2 at 59. Dr. Freedberg did not have information that Petitioner had right elbow problems when he was 17 years of age. Px2 at 60. Dr. Freedberg was not aware of any prior right shoulder problems or treatment. Px2 at 65. Dr. Freedberg testified that a right shoulder problem could impact Petitioner's throwing mechanism and/or his right elbow. Px2 at 65. Dr. Freedberg understood Petitioner to have pain in his elbow in 2017 and prior to that, requiring surgery, and that he was doing fine in 2018 and early 2019 when he was pitching. Px2 at 69. Dr. Freedberg testified that by the time he saw Petitioner on December 14, 2021, Petitioner did not have a problem with the radial nerve. Px2 at 70. Dr. Freedberg agreed that because the 2020 season did not commence, there is no record of exactly what Petitioner might have been able to do that season. Px2 at 76. Dr. Freedberg testified that he did not know if Petitioner sought employment after 2020 and knew only that he elected to retire in 2021. Px2 at 76. Dr. Freedberg agreed that there has not been any medical care for the right elbow since 2019. Px2 at 76. Dr. Freedberg testified that one could make the opinion that the April 26, 2019 injury temporarily aggravated a preexisting condition in the right elbow, however, that was not his opinion. Px2 at 77.

On redirect examination, Dr. Freedberg testified that being "cleared to play" or "cleared" means that there is no contraindication for the athlete to resume the sport in question. Px2 at 79. It does not mean that the individual is physically as good or better than he or she was prior to the injury. Px2 at 80. Dr. Freedeberg reviewed the MRI images of May 11, 2019, August 26, 2019 (MRI arthrogram), February 19, 2018, April 21, 2015 (shoulder), and February 11, 2015, as well as the x-rays of February 19, 2018. Px2 at 80-81.

Evidence Deposition Testimony of Respondent's Section 12 Examiner, Dr. Mark Cohen

Dr. Cohen testified by way of evidence deposition on February 5, 2024. Rx12. Dr. Cohen testified as to his education and credentials as an orthopedic surgeon specializing in disorders of the upper extremities, namely the hand, wrist, forearm, and elbow. Rx12 at 6-12. Dr. Cohen has a particular interest in the elbow, which makes up close to half his practice. Rx12 at 6-7. Dr. Cohen has treated professional baseball players and he has been a treating physician for the White Sox since 2005. Rx12 at 8.

Dr. Cohen performed a records review in this matter and generated a report dated March 20, 2023. Rx12 at 7, 9. Dr. Cohen testified that in 2007, Petitioner had an MRI of the elbow that "simply" showed inflammation of the bone, which is not uncommon in younger, throwing athletes. Rx12 at 11. Dr. Cohen testified that the more significant prior imaging study was from April 11, 2015, when Petitioner was age 25, which showed advanced changes in his elbow. Rx12 at 11-12. Dr. Cohen testified that the April 11, 2015 MRI of the elbow showed loss of cartilage, which is termed "arthritis," as well as a broken loose piece of bone floating around the elbow and cysts in his bone beneath the cartilage surface, which occur because the cartilage covering gets worn down and some of the joint fluid herniates chronically into the bone. Rx12 at 12. Petitioner also had spurs and "fragmentation" of part of his elbow. Rx12 at 12. Dr. Cohen explained that spurs form due to abnormal stress and can break. Rx12 at 12. Dr. Cohen testified that at the age of 25, Petitioner's MRI showed significant advanced changes of arthritis in his joint, or a "sick" elbow. Rx12 at 12. Dr. Cohen reviewed a third MRI of the elbow from June 8, 2017, and noted that Petitioner had torn the medial ligament of his elbow, for which he underwent reconstructive surgery on June 21, 2017. Rx12 at 13. Dr. Cohen testified that approximately between

60-percent and 90-percent of pitchers can return to pitching after undergoing the surgery that Petitioner underwent on June 21, 2017. Rx12 at 14. Dr. Cohen noted, however, that the prognosis is worse where the bone had already suffered damage, such as in Petitioner's case. Rx12 at 14. Petitioner returned to professional baseball and pitching after the procedure in March 2018 for Respondent's minor league team. Rx12 at 14-15. Dr. Cohen testified that after the June 21, 2017 procedure, there are notes throughout the record that Petitioner did not have full elbow extension, which is expected based on the degenerative changes dating back to 2015. Rx12 at 16.

Dr. Cohen testified that Petitioner reported a two-week history of lateral elbow pain on April 27, 2019, and that Petitioner was diagnosed with right elbow pain consistent with irritation of the superficial branch of the radial nerve. Rx12 at 17. Dr. Cohen testified that he had never heard of the diagnosis of irritation of the superficial branch of the radial nerve, did not know what it is, or what can cause it. Tr. at 18. On May 4, 2019, Dr. Gryzlo diagnosed Petitioner with a lateral elbow strain. Rx12 at 22. The stress findings of the muscles on the May 11, 2019 MRI could be recent, while the degenerative changes noted were chronic. Rx12 at 24. Petitioner was given a cortisone injection on May 12, 2019, and as of May 24, 2019, Petitioner was nearly 100-percent. Rx12 at 25. By August 2019, Petitioner was doing well, but the note of August 26, 2019 suggests that Petitioner had a setback where he had recurrent symptoms three weeks prior. Rx12 at 25. Petitioner underwent another elbow MRI on August 26, 2019, which showed that the inflammation in the brachialis muscle had resolved, the inflammation in the bone had improved to the point where it was almost nonexistent, and there was a new focus of signal in an unimportant muscle on the lateral side of the elbow termed "anconeus." Rx12 at 25-26. Dr. Cohen testified that for the most part, the elbow MRI of August 26, 2019 showed the elbow was markedly improved when compared to the May 11, 2019 MRI. Rx12 at 26.

Dr. Cohen testified that Petitioner manifested symptoms to his arthritic and reconstructed elbow in April 2019. Rx12 at 26-27. Regarding a diagnosis, Dr. Cohen testified that the notes reflect tenderness around the muscles on the outside of the arm and the MRI suggests some strain or edema or swelling in the muscles on the lateral side of the arm, and that those changes had resolved by February 26, 2020 when the final MRI demonstrated those findings were gone. Rx12 at 27. Dr. Cohen noted that the February 26, 2020 MRI was occasioned by his preemployment physical with the Nationals and that the notes suggested that Petitioner reported that at that time, he had been throwing for three months without pain. Rx12 at 27. When asked if there was anything in "that" to suggest that Petitioner would be unable to resume his professional baseball career, Dr. Cohen responded, "I do not believe so." Rx12 at 28. Dr. Cohen testified that he did not feel that any permanent injury was sustained as a result of anything diagnosed in April 2019 and that the notes and imaging would reflect otherwise. Rx12 at 28.

On cross examination, Dr. Cohen testified that he did not physically examine Petitioner, and that he did not think that he was asked to comment on Petitioner's current capability. Rx12 at 29. Dr. Cohen testified that it would not surprise him if Petitioner testified that he is no longer able to throw a baseball 90 mph, based on the records he reviewed. Rx12 at 29. Dr. Cohen testified that examining Petitioner in 2021would provide no benefit or information that would help with his opinions regarding causality for something that happened in 2019. Rx12 at 29-30. Dr. Cohen testified that he uses a grip meter to test strength for objective numbers, and that he did not believe that there were any objective numbers regarding grip strength in the records that he reviewed. Rx12 at 30. Dr. Cohen agreed that the mechanics involved in throwing a 90-mph fastball, as well as a slider, put a significant strain on the elbow. Rx12 at 40. Dr. Cohen testified that to his knowledge, there were no reports of numbness or tingling in Petitioner's hand prior to April 2019 or after. Rx12 at 40. Dr. Cohen did not review records from 2021, other than Dr. Freedberg's IME, and did not review records from 2020, other than the February 26, 2020 record. Rx12 at 41. Dr. Cohen testified that there was not a recommendation made for a hydrodissection of the radial nerve prior to April 2019. Rx12 at 42. Dr. Cohen testified that there were not any radial nerve issues identified in the medical records prior to April 2019 or after. Rx12 at 42. When asked if he

would agree that Petitioner is unlikely to regain the function that he had prior to April 2019, Dr. Cohen testified that he did not know, and that as of February 2020, it sounded like Petitioner was doing well. Rx12 at 42. Dr. Cohen did not have an opinion regarding whether Petitioner is able to play professional baseball. Rx12 at 42-43. Dr. Cohen testified that there can be a temporary aggravation of a degenerative condition by acute stresses, including the repetitive nature of throwing a 90-mph slider. Rx12 at 44, 45. Dr. Cohen testified that the records did not reflect that Petitioner had a long-standing aggravation due to acute traumatic insult to a degenerative condition. Rx12 at 44. Dr. Cohen testified that if someone has a significant traumatic event on top of an arthritic joint, it can cause irreversible changes. Rx12 at 44, 45. Dr. Cohen agreed that the action of throwing a 90-mph slider is not a natural action of the arm. Rx12 at 44. Dr. Cohen explained that Petitioner had a degenerative elbow that had undergone reconstruction, he had ups and downs throughout his postsurgical recovery, and the symptoms that Petitioner had in April 2019 were simply a manifestation of his arthritic elbow, not an "injury." Rx12 at 45-46. Dr. Cohen further explained that all of the abnormalities and occurrences from April 2019 ultimately resolved clinically, as well as on imaging, and so, there is no other way to conclude that the changes from April 2019 were temporary. Rx12 at 46. Dr. Cohen testified that he treats radial nerve and nerve pathology and that the diagnosis of a radial sensory nerve branch without sensory disturbance in the distribution of the nerve cannot be made. Rx12 at 46. Dr. Cohen testified that he did not understand the diagnosis regarding the radial nerve, that he never heard of the diagnosis, and that he did not see any evidence that the diagnosis is supported in the medical records. Rx12 at 46. Dr. Cohen testified that the May 2019 MRI showed edema termed as "insertional grade one strain of the brachialis muscle," and not a potentially acute traumatic muscle injury. Rx12 at 46-47. Dr. Cohen testified that he believed that the grade one strain might or could have been caused or aggravated by petitioner's pitching in April 2019. Rx12 at 47. Dr. Cohen testified that it was probably more likely than not that Petitioner would at some point in his life seek treatment for his arthritic elbow. Rx12 at 48-49.

On redirect examination, Dr. Cohen testified that Petitioner fully recovered from an aggravation of a preexisting arthritic elbow in late 2019. Rx12 at 50. Dr. Cohen explained that the August 26, 2019 MRI showed almost complete resolution of any acute changes, that the records of October and November 2019 suggested that he had no elbow complaints, and that as of February 2020, Petitioner reported throwing for three months without pain. Rx12 at 50.

CONCLUSIONS OF LAW

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

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

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

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

Issue C, whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

Having considered all the evidence, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that he sustained an accident that arose out of and in the course of his employment with Respondent on April 26, 2019. In support of her finding, the Arbitrator relies on Petitioner's credible testimony, as well as the medical/treatment records in evidence, which corroborate Petitioner's testimony and document a complaint of right elbow pain beginning on April 26, 2019 while performing his duties as a professional baseball pitcher with Respondent's MLB team. The Arbitrator notes that Petitioner's testimony is unrebutted.

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

Having considered all the evidence, the Arbitrator finds that Petitioner's right elbow condition of ill-being is causally related to the April 26, 2019 injury. The Arbitrator acknowledges that Petitioner sustained an injury to the right ulnar collateral ligament in 2017, for which Petitioner underwent reconstructive surgery on June 21, 2017. The Arbitrator notes, however, that the overall evidence demonstrates that Petitioner was in condition of good health relative to his right elbow prior to April 26, 2019, where Dr. Benson A. Scott determined Petitioner had reached MMI and released Petitioner to return to full baseball activities with no restrictions on August 8, 2018.

The Arbitrator has considered the opinions of Dr. Freedberg and Dr. Cohen and finds Dr. Cohen's opinions more persuasive than those of Dr. Freedberg. The Arbitrator finds that overall, the record supports Dr. Cohen's opinion that Petitioner sustained a strain or edema/swelling in the muscles of the lateral side of the arm, which had resolved as of February 26, 2020, when those findings were no longer present on MRI. The Arbitrator notes that Dr. Cohen's opinions are most consistent with the medical evidence and the opinions of Petitioner's treating physicians, Dr. Stephen Gryzlo, Dr. Charles Petersen, and Dr. Christopher Hogrefe.

Petitioner initially reported right elbow symptoms on April 27, 2019 beginning on April 26, 2020. On April 27, 2019, Dr. Petersen noted that Petitioner denied numbness and tingling, and diagnosed right elbow pain consistent with superficial branch radial nerve irritation. He recommended a hydrodissection be considered if Petitioner's symptoms persisted. The Arbitrator notes that Petitioner pitched on May 1, 2019 and May 4, 2019. On May 4, 2019, Dr. Gryzlo noted no nerve irritation, and diagnosed Petitioner with a right elbow lateral strain. The Arbitrator notes that Petitioner pitched on May 10, 2019. A right elbow MRI taken on May 11, 2019 demonstrated (1) brachialis insertional grade I strain, (2) palmaris longus grade I strain, (3) coronoid process marrow edema possibly reactive or related to stress injury, and (4) high-grade cartilage loss involving the ulnar aspect of the ulnotrochlear articulation. On May 20, 2019, Dr. Gryzlo's diagnoses were right elbow brachialis strain and coronoid stress. On May 24, 2019, Dr. Hogrefe noted that Petitioner denied numbness, tingling and weakness, and diagnosed Petitioner with a right elbow brachialis strain and coronoid stress reaction. Dr. Hogrefe noted that Petitioner should look to start a rehabilitation assignment, which Petitioner began on or about May 25, 2019. The Arbitrator notes that the trainers' notes contemporaneous with Petitioner's rehab assignment during May 2019, June 2019, July 2019, and early August 2019, document improvement, and few complaints of discomfort regarding the right elbow/forearm. Petitioner's few reports of discomfort, however, did not prevent Petitioner from pitching, and Petitioner was subsequently sent to its Double-A team on July 8, 2019, indicating progress.

On August 22, 2019, continued symptoms of the right elbow are documented, and Petitioner underwent an MRI of the right elbow on August 26, 2019. The August 26, 2019 MRI demonstrated (1) first-degree strain in the anconeous muscle, new finding, (2) brachialis insertional grade I strain, slightly improved, (3) bone marrow edema in the coronoid process of the ulna, slightly improved, (4) thickening and susceptibility artifact in the medial collateral ligament from prior surgery, (5) worsening muscle edema in the palmaris longus muscle, and (6) severe focal articular cartilage loss posteriorly and medially. Petitioner also saw Dr. Gryzlo on August 26, 2019, at which time Dr. Gryzlo noted that the August 26, 2019 MRI revealed the persistence of a brachialis strain, somewhat worsening of the stress reaction in the proximal ulna, and some strain of the palmaris longus muscle, which may be due to harvesting of the tendon. Dr. Gryzlo noted that there was no obvious injury to the radial nerve, however, he recommended a hydrodissection for exclusion of the diagnosis of radial nerve entrapment. Dr. Gryzlo diagnosed Petitioner with anterior and anterolateral soreness, most likely related to the stress reaction present in the bone and brachialis and possibility of radial nerve entrapment. Petitioner underwent a hydrodissection on September 9, 2019. On September 10, 2019 and September 11, 2019, Petitioner reported feeling good after the procedure. Petitioner was then sent home for the off-season. On October 19, 2019, Petitioner reported no complaints of the right elbow or forearm following the hydrodissection. Petitioner's contract with Respondent expired on November 4, 2019. On November 6, 2019, via phone consult, Petitioner reported general soreness, but denied that the soreness was directly related to the right elbow/forearm.

On February 26, 2020, Petitioner presented for a preemployment physical examination with the Nationals and reported that he had been throwing normally for the past three months pain-free. A right elbow MRI was obtained, and demonstrated (1) intact UCL, (2) localized moderate chondral thinning with small spurring and subcortical marrow edema posteromedial ulnotrochlear articulation, to be correlated for valgus overload syndrome, and (3) palmaris longus mild myotendinous edema and fatty atrophy suggesting subacute to chronic denervation, underlying low grade strain not excluded. The brachialis tendon and radial collateral ligament were normal. On February 29, 2020, Petitioner signed a contract to pitch with the Nationals. Petitioner was subsequently released by the Nationals on May 31, 2020 due to the COVID-19 pandemic, around the time that the minor league season was canceled.

The Arbitrator notes that the overall evidence demonstrates that following the April 26, 2019 injury, Petitioner resumed pitching with the Nationals, and that he was not unemployable, as recognized by the Nationals. Further, the Arbitrator notes that no treating physician has opined that Petitioner could not return to pitching after the April 26, 2019 injury. The Arbitrator acknowledges that while Petitioner was released by the Nationals on May 31, 2020, the evidence demonstrates that he was released because of the COVID-19 pandemic, and not because of any performance issues related to the right elbow. The Arbitrator notes that the May 31, 2020 release note reflects that there were no known issues upon Petitioner's discharge from the Nationals.

Having considered all the evidence, the Arbitrator finds that Petitioner's right elbow condition of ill-being causally related to the April 26, 2019 work injury is strain or edema/swelling in the muscles on the lateral side of the arm, resolved as of February 26, 2020.

Issue K, whether Petitioner is entitled to maintenance benefits, the Arbitrator finds as follows:

Petitioner claims that he is entitled to maintenance benefits for the period of May 31, 2020 through July 1, 2024, the date of arbitration. Ax2 at No. 8. Respondent disputes Petitioner's claim for maintenance benefits and claims no compensable lost time. See Ax2 at No. 8.

Consistent with the Arbitrator's prior findings as to accident and causation, the Arbitrator finds that Petitioner is not entitled to maintenance benefits for the period of May 31, 2020 through July 1, 2024, the date of arbitration. The Arbitrator notes that Petitioner's right elbow condition of ill-being resolved as of February 26, 2020. The

Arbitrator further notes that the evidence demonstrates that Petitioner resumed pitching and was not unemployable as a pitcher, where he signed a contract to pitch with the Nationals on February 29, 2020. The Arbitrator notes that while Petitioner was released by the Nationals on May 31, 2020, the evidence demonstrates that Petitioner was released because of the COVID-19 pandemic and not because of any performance issues related to Petitioner's right elbow condition. Accordingly, Petitioner's claim for maintenance benefits is denied.

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 29 years of age and was a professional baseball pitcher with Respondent. The Arbitrator notes that the April 26, 2019 injury did not prevent Petitioner from pitching, and he resumed pitching with the Nationals on February 29, 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 April 26, 2019 injury, as Petitioner resumed pitching with the Nationals, signing a contract with the Nationals for a similar salary on February 29, 2020. The Arbitrator notes that while Petitioner was released by the Nationals on May 31, 2020, his release was due to the COVID-19 pandemic and not because of any performance issues related to his right elbow. The Arbitrator assigns some weight to this factor.

With regard to Subsection (v) of Section 8.1b(b), the Arbitrator has relied on the opinions of Dr. Cohen, which are most consistent with the medical evidence and the opinions of Petitioner's treating physicians. Accordingly, the Arbitrator has found that Petitioner sustained a strain or edema/swelling in the muscles in the lateral side of the arm, resolved as of February 26, 2020. The Arbitrator notes that (1) Petitioner underwent a hydrodissection on September 9, 2019, (2) Petitioner reported no complaints of the right elbow or forearm following the procedure in October 2019 or November 2019, and (3) Petitioner has not sought treatment for his right elbow or forearm since September 9, 2019. The Arbitrator further notes that during a preemployment physical examination with the Nationals on February 26, 2020, Petitioner reported that he had been throwing pain-free for the past three months. Petitioner resumed pitching with the Nationals on February 29, 2020. 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 15% loss of use of the right arm, pursuant to Section 8(e) of the Act.

Ana Vazquez **OCTOBER 24 2024**

ANA VAZQUEZ, ARBITRATOR

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC024650
Case Name	Jessica Mendoza v. Express Employment Professionals
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0265
Number of Pages of Decision	12
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Melvyn Romanoff, David Feuer
Respondent Attorney	Edward Jordan

DATE FILED: 6/16/2025

/s/Marc Parker, Commissioner

Signature

23 WC 024650
Page 1

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jessica Mendoza,

Petitioner,

vs. NO: 23 WC 24650

Express Employment Professionals,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 21, 2024, is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $26,400.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 16, 2025
MP:yl
o 6/12/25
68

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC024650
Case Name	Jessica Mendoza v. Express Employment Professionals
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision Remand Arbitration
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Melvyn Romanoff, David Feuer
Respondent Attorney	Edward Jordan

DATE FILED: 10/21/2024

/s/Elaine Llerena, Arbitrator
Signature

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

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

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

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

Jessica Mendoza Case # **23** WC **024650**
Employee/Petitioner
v.
Express Employment Professionals
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 28, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **July 19, 2023**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**11,386.89**; the average weekly wage was $**569.35**.

On the date of accident, Petitioner was **42** 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 $**0** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $379.57 per week for 49 & 2/7 weeks, commencing September 19, 2023, through August 28, 2024, as provided in Section 8(b) of the Act.

Respondent shall pay all unpaid reasonable and necessary medical services as provided in Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for medical expenses it has paid.

Respondent shall authorize and pay for prospective medical care in the form of left wrist arthroscopy and debridement as recommended by Dr. William Heller 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

October 21, 2024

ICArbDec19(b)

FINDINGS OF FACT

This matter proceeded to hearing on August 28, 2024, in Chicago, Illinois before Arbitrator Elaine Llerena. The issues in dispute were accident, causal connection, medical expenses, temporary total disability benefits and prospective medical care. Arbitrator's Exhibit 1 (AX1).

Petitioner's Prior Condition

On March 23, 2021, Petitioner sought treatment with Dr. Eugene Lipov regarding neck pain with bilateral upper extremity pain. (RX3) Petitioner complained of a work-related injury on February 26, 2021. Petitioner reported that she had worked as a general laborer for Deslauriers for one year and three months doing repetitive work on the line consisting of bending, turning, lifting overhead and twisting. Petitioner felt acute pain in her neck that radiated down her bilateral upper extremities with numbness and tingling and bilateral shoulder pain. Petitioner reported she had been undergoing physical therapy since March 5, 2021, with no improvement. Petitioner also reported numbness and tingling in her bilateral digits. Dr. Lipov diagnosed Petitioner as having cervical neck pain with associated bilateral upper extremity pain, continued physical therapy, prescribed pain medications, ordered a cervical MRI and restricted Petitioner to lifting no more than 2 pounds and no lifting overhead. Petitioner underwent the cervical MRI on March 29, 2021, the results of which revealed straightening of cervical curvature, most likely secondary to muscular spasm, disc dehydration at multiple levels, posterior osteophyte disc complex causing mild indentation of thecal sac at C4-C5. On April 14, 2021, Dr. Lipov diagnosed Petitioner as having cervical disc degenerative disease and cervical spondylosis. Dr. Lipov took Petitioner off work, continued physical therapy and ordered an epidural steroid injection.

Petitioner continued to follow up with Dr. Lipov and complained of continued arm pain, weakness, numbness and tingling. On July 10, 2021, Petitioner underwent an EMG/NCV study, the results of which revealed an abnormal study with findings consistent with mild left C6 and non-localized right cervical radiculopathy and mild left wrist carpal tunnel syndrome. On September 10, 2021, Petitioner saw Dr. Kevin Koutsky complaining of neck pain with radiation down both upper extremities with numbness and tingling. Dr. Koutsky diagnosed Petitioner as having cervical radiculopathy. On October 22, 2021, Dr. Koutsky noted numbness along the lateral border of Petitioner's right forearm extending to the thumb and also in the left forearm. On November 12, 2021, Petitioner saw Dr. Chintan Sampat for a second opinion. Dr. Sampat found Petitioner had C5-C6 stenosis with concordant radiculopathy and recommended a cervical discectomy if Petitioner could not live with the symptoms.

Petitioner filed a workers' compensation claim for the February 26, 2021, work accident and settled the matter on September 26, 2022. (RX4) The nature of injury was listed as: Right shoulder strain, cervical disc degeneration & cervical spondylosis at C4-5 & C5-6.

Job Duties and Accident

Petitioner was employed by Respondent as a general laborer. (T. 10) On July 19, 2023, Petitioner was assigned to work at Element Food Solutions. *Id.* Petitioner testified that she was removing labels from containers in a continuous and rapid manner. (T. 11) She grabbed a jar with her right hand, held the jar against her chest, and removed the labels with her left hand. *Id.* Petitioner explained that because she was performing this task quickly and continuously, she twisted her wrist while removing the label and, with the pressure that she applied, the jar hit her hand and she hit her wrist against the table. *Id.* Right after that, the hourly change of assignment occurred, and Petitioner was assigned to packing. *Id.* This job involved removing two jars quickly and turning them around, which Petitioner had to do in a fast and continuous way. *Id.* Petitioner testified that this caused her wrist to become very painful. (T. 11-12) Petitioner reported her wrist injury to Carolina, the

room leader. (T. 12-14) Petitioner continued working since Carolina indicated she had to continue working and the human resources person she was supposed to speak with was not there. *Id.* Petitioner then reported the accident and her pain to Javier, her supervisor at Element Foods, on July 24, 2023. (T. 27) Petitioner was ultimately referred to Concentra for treatment by Respondent. (T. 16)

Minerva Chari, the Human Resources Manager at Element Foods, testified that she became aware of Petitioner's work accident on July 25, 2023. (T. 72-73) Ms. Chari testified that Petitioner reported that she injured her left wrist on July 19, 2023, while removing labels from jars. (T. 74) Ms. Chari testified that Petitioner explained that she was holding a jar with her right hand and removing labels with her left hand and when a label did not initially come off, she injured her left wrist. (T. 79-80) According to Ms. Chari, Petitioner's job rotated every two hours. (T. 62-63) Ms. Chari did not know how long Petitioner removed labels from jars on July 19, 2023. (T. 90)

Summary of Medical Records

Petitioner sought treatment at Concentra on July 26, 2023. (PX1) Petitioner saw Dr. Eric Griffin and communicated with him through an interpreter. Petitioner reported that she sustained a direct blow to her left wrist when a cannister she was attempting to remove labels off of slipped and fell on her left wrist. Petitioner complained of left wrist pain and stiffness since the accident that had worsened following the accident. Petitioner also complained that the pain was sharp and aching in nature and it radiated into her left hand. Dr. Griffin noted grip weakness and decreased range of motion and diagnosed Petitioner as having contusion of the left wrist. Dr. Griffin prescribed pain medication and a universal wrist wrap and released Petitioner to return to work without restrictions.

Petitioner followed up at Concentra on July 28, 2023. Dr. Cynthia Ross noted that Petitioner had a chaperone present, and that Petitioner complained of continued left wrist pain. Dr. Ross diagnosed Petitioner as having left wrist contusion and strain and ordered physical therapy. Petitioner began physical therapy on August 11, 2023, and continued to follow up at Concentra.

On September 15, 2023, Petitioner underwent an MRI of the left wrist, the results of which revealed periarticular posttraumatic soft tissue contusion (acute); marrow edema/contusion at the left scaphoid, distal radius, left trapezium and trapezoid bones (acute); ulnar, radial collateral, radiocarpal, ventral, and dorsal, intercarpal ligament signal alteration suggesting posttraumatic tears (acute); grade one myogenic strain of the left pronator quadratus muscle (acute); tenosynovitis/partial tear of the left extensor carpal ulnaris tendon (acute); left abductor pollicis longus tenosynovitis/partial tear (acute); and mild radiocarpal, intercarpal and carpometacarpal synovial effusion (indeterminate). (PX2)

On September 19, 2023, Petitioner saw Clair Hopkins PA-C, who referred Petitioner to an orthopedic specialist and released Petitioner to return to work modified duty. (PX1) Petitioner saw Dr. William Heller on October 2, 2023. Petitioner reported that she sustained work injury when she struck the dorsal aspect of her left wrist while working with cans and complained of continued left wrist pain. Dr. Heller reviewed the MRI, diagnosed Petitioner as having a left wrist sprain and contusion, administered a left wrist steroid injection and ordered occupational therapy. Dr. Heller opined that Petitioner sustained an injury to the left wrist that arose out of and was caused by her work on July 19, 2023. Petitioner began therapy that same day and continued to follow up with Dr. Heller.

On November 3, 2023, Petitioner underwent a Section 12 examination (IME) with Dr. M. Bryan Neal at Respondent's request. (RX2-EDX2) Petitioner's history was taken and her physical examination performed with the assistance of an interpreter. Petitioner described her job for Respondent as general laborer and

explained that her job entailed packing, removing labels and lifting between 25-50 lbs. Petitioner reported that the work accident occurred when she was removing labels from buckets and felt a pop in her left wrist. Petitioner complained of continued left wrist pain and problems. Dr. Neal examined Petitioner and reviewed her medical records. Dr. Neal diagnosed Petitioner as having medically unexplainable left forearm/wrist/hand/digit pain of unknown etiology. Dr. Neal opined that Petitioner's complaints were not causally related to the work injury and that Petitioner did not require any further medical treatment to the left hand or wrist. Dr. Neal opined that Petitioner was at maximum medical improvement (MMI) and that Petitioner could return to work without restrictions.

On November 13, 2023, Dr. Heller noted that Petitioner had worsening symptoms despite appropriate conservative treatment. (PX1) Dr. Heller recommended left wrist arthroscopy and debridement and kept Petitioner on light duty with no use of the left hand.

On July 19, 2024, Dr. Neal issued an addendum IME report after reviewing additional medical records for Petitioner from the 2021 work accident and the videos taken at Elemental Foods. (RX2-EDX3) Dr. Neal found that Petitioner had symptoms consistent with left carpal tunnel syndrome as conformed by diagnostic testing prior to July 19, 2023. Dr. Neal did not find that the activity demonstrated on the video likely produced significant wrist joint injury. Dr. Neal found that Petitioner's work activities caused, at most, a temporary manifestation of a preexisting left-sided wrist/hand condition, did not cause a discrete orthopedic condition, did not permanently worsen or aggravate her preexisting condition and did not accelerate the clinical rate of deterioration in her left hand/wrist. Dr. Neal reiterated his opinions that there was no causal connection between Petitioner's left hand/wrist condition and the July 19, 2023, work accident and that Petitioner did not require additional treatment or restrictions. Dr. Neal testified via evidence deposition on August 8, 2024. (RX2) Dr. Neal's testimony was consistent with the findings and opinions in his IME and addendum IME reports.

Videos

Respondent provided two videos as Respondent's Exhibit 10. The videos show Ms. Chari depicting the job of removing labels from jars in the same location where Petitioner was working at the time of the accident.

Petitioner denied that the videos accurately showed the job of removing labels and explained that the job is done at a faster pace than showed on the video. (T. 98-99) Petitioner testified she would have a table was full of jars, she would grab a jar, take off a label quickly, and then place the container back on the table. (T. 100) Petitioner further testified that the machine moved rapidly and continuously and that she had to work at a much quicker pace than shown on the videos. (T. 99)

Petitioner's Current Condition

Petitioner testified that her left hand is very weak, she cannot twist it or grab things with it and hold them for a long time. (T. 18) Petitioner cannot do things how she used to before, like shower or dress herself. *Id.* Her left hand bothers her a lot and she is always asking her son or her friend, who lives with her, for help. *Id.* Petitioner cannot drive for a long period of time because if she tries to turn the steering wheel, her left hand bothers her. (T. 19) Petitioner explained that her left wrist hurts when she uses it for repetitive motions or twists it. *Id.* The pain starts in her left wrist and goes up her arm to her shoulder. *Id.* Petitioner testified that when she tries to make too much of an effort or do something that requires strength with her left hand, she has pain. *Id.* Respondent dismissed Petitioner from its employ on August 2, 2023. (T. 21) Petitioner has not worked anywhere since August 2, 2023. (T. 23)

CONCLUSIONS OF LAW

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

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner bears the burden of showing, by a preponderance of the evidence, that she sustained accidental injuries arising out of and in the course of her employment. *820 ILCS 305/1(b)3(d)*. It is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give the testimony and resolve conflicts in the evidence, particularly medical opinion evidence. *Hosteny v. Illinois Workers' Compensation Commission*, 397 Ill. App. 2d, 665 675 928 N.E. 2d 474, 340 Ill.Dec. 475 (2009).

The Arbitrator notes that Petitioner testified that while removing labels from jars, she struck her wrist against the table. When she sought treatment at Concentra, Petitioner reported that she sustained a direct blow to her left wrist when removing labels from cannisters. When she started treating with Dr. Heller, Petitioner reported that she sustained a work injury when she struck the dorsal aspect of her left wrist while working with cans. While undergoing an IME with Dr. Neal, Petitioner reported that she was removing labels from buckets and when pulling on a label she felt immediate pain in her left wrist. The Arbitrator also notes that Petitioner sought treatment a few days following the work accident and, in both her testimony and history to doctors, indicated that she was not having any left wrist pain prior to July 19, 2023. Based on Petitioner's testimony and the descriptions Petitioner provided of how the work accident occurred to different medical personnel, the Arbitrator finds that Petitioner's history of the work accident has been essentially consistent throughout. Petitioner has consistently described an acute injury to her left wrist while removing labels on July 19, 2023. As such, the Arbitrator finds Petitioner's testimony regarding the July 19, 2023, work accident credible.

Based on the above, the Arbitrator finds that Petitioner sustained accidental injuries arising out of and in the course of her employment with Respondent on July 29, 2023.

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

"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). This causal inference applies even if the claimant was not in good health before the accident, provided that the claimant's health declines following an accident: "[I]f 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' Compensation Comm'n*, 2017 IL App (4th) 160192WC ¶ 26.

The Arbitrator notes that Petitioner had pain, numbness and tingling in her left wrist in 2021 and that a July 10, 2021, EMG/NCV study found that Petitioner had mild left carpal tunnel syndrome. The Arbitrator further notes that on July 19, 2023, Petitioner did not have any left wrist pain until the work accident that day. Petitioner had been working full duty, without problems prior the July 19, 2023, work

accident. The Arbitrator also notes that the September 15, 2023, MRI of the left wrist revealed periarticular posttraumatic soft tissue contusion (acute); marrow edema/contusion at the left scaphoid, distal radius, left trapezium and trapezoid bones (acute); ulnar, radial collateral, radiocarpal, ventral, and dorsal, intercarpal ligament signal alteration suggesting posttraumatic tears (acute); grade one myogenic strain of the left pronator quadratus muscle (acute); tenosynovitis/partial tear of the left extensor carpal ulnaris tendon (acute); left abductor pollicis longus tenosynovitis/partial tear (acute); and mild radiocarpal, intercarpal and carpometacarpal synovial effusion (indeterminate). Further, the Arbitrator notes that Dr. Heller opined that Petitioner sustained an injury to the left wrist that arose out of and was caused by her work on July 19, 2023. Dr. Neal did not find that Petitioner's left wrist condition was not causally related to the work accident. Based on the medical records and diagnostic findings, the Arbitrator finds the findings and opinions of Dr. Heller more persuasive than those of Dr. Neal.

Based on the above, the Arbitrator finds that Petitioner's condition of ill-being is causally related to the July 19, 2023, work accident.

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

The Arbitrator notes her finding above that Petitioner's condition of ill-being is causally related to the July 19, 2023, work accident. The Arbitrator further notes that Petitioner underwent conservative treatment recommended by her treating physician to alleviate the symptoms caused by the July 19, 2023, work accident.

Based on the above, the Arbitrator finds that Respondent shall pay all unpaid reasonable and necessary medical services as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive a credit for any medical expenses paid.

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

The Arbitrator notes her finding above that Petitioner's condition of ill-being is causally related to the July 19, 2023, work accident. The Arbitrator further notes that Dr. Heller, finding that conservative treatment has failed to permanently alleviate Petitioner's ongoing and worsening condition of ill-being caused by the July 19, 2023, work accident, has recommended left wrist arthroscopy and debridement. The Arbitrator also notes that Dr. Neal opined that Petitioner does not require any additional treatment for the left wrist. As previously stated, the Arbitrator finds the findings and opinions of Dr. Heller more persuasive than those of Dr. Neal.

Based on the above, the Arbitrator finds that Respondent shall authorize and pay for prospective medical care in the form of left wrist arthroscopy and debridement as recommended by Dr. Heller 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:

The Arbitrator notes her finding above that Petitioner's condition of ill-being is causally related to the July 19, 2023, work accident. The Arbitrator further notes that Respondent dismissed Petitioner from its employ on August 2, 2023. On September 19, 2023, physician's assistant Hopkins released Petitioner to return to work modified duty. These restrictions have not been lifted.

Based on the above, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from September 19, 2023, through August 28, 2024, as provided in Section 8(b) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC009013
Case Name	Zerafin Estrada v. Josephs Fresh Market, LLC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0266
Number of Pages of Decision	22
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Jason Marker
Respondent Attorney	Kenneth Smith

DATE FILED: 6/16/2025

/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

Zerafin Estrada,

Petitioner,

vs. NO: 24 WC 009013

Joseph's Fresh Market, LLC,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, notice, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 6, 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 Circuit Court.

June 16, 2025
MP:yl
o 6/12/25
68

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC009013
Case Name	Zerafin Estrada v. Josephs Fresh Market, LLC
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	James Byrnes, Arbitrator

Petitioner Attorney	Jason Marker
Respondent Attorney	Kenneth Smith

DATE FILED: 11/6/2024

/s/James Byrnes, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF November 6, 2024 4.26%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

ZERAFIN ESTRADA
Employee/Petitioner

v.

JOSEPH'S FRESH MARKET, LLC
Employer/Respondent

Case # **24** WC **009013**

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 **James Byrnes**, Arbitrator of the Commission, in the city of **Chicago**, on **August 12, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **3/23/2024**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**27,716.00**; the average weekly wage was $**533.00**.

On the date of accident, Petitioner was **44** 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**.

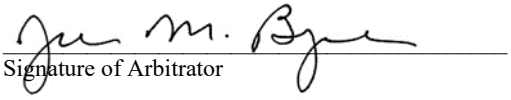
Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

Because Petitioner failed to prove by a preponderance of the evidence that he sustained an accident that arose out of and in the course of his employment with Respondent Joseph's Fresh Market, LLC, the claim for compensation is hereby denied.

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

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



Signature of Arbitrator

November 6, 2024

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ZERAFIN ESTRADA, Petitioner, v. JOSEPH'S FRESH MARKET, LLC, Respondent.	)	Case No. 24WC009013

MEMORANDUM OF DECISION OF ARBITRATOR

PROCEDURAL HISTORY

This matter was initially set for hearing on June 12, 2024, pursuant to a Section 19(b) Petition for Immediate Hearing filed by Petitioner. On Petitioner's Motion for Continuance, the matter was reset for trial on August 12, 2024.

This matter proceeded to hearing on August 12, 2024, in Chicago, Illinois before Arbitrator James Byrnes on the Section 19(b) Petition for Immediate Hearing. Issues in dispute include accident, notice, causal connection, medical bills, TTD benefits, prospective medical treatment and penalties/fees. Arbitrator's Exhibit 1 (AX 1).

FINDINGS OF FACT

Job Duties

On March 23, 2024, Petitioner, a 44-year-old divorced male with no dependents, was employed by Respondent in the meat department. (T 70-72) He started working for the grocery store full time in August of 2023. (T 72) His schedule was posted each week by his employer. (T 73) He confirmed RX 2B was a copy of his schedule posted for the week of March 17 through 23, 2024 and he was scheduled to work on Saturday March 23, 2024, from 1:00 pm to 9:00 pm. (T 75)

He described his job duties as a butcher in the meat department, including cutting and packaging meat that would arrive in the morning, taking the packaged meat to the shelves for customers, as well as unloading shipments of fresh meat which arrived in boxes and stacking the boxes onto racks in the cooler. (T 75-77) The weight of the boxes of meat would vary but would

be noted with the date on the side of the box. (T 78) The racks in the cooler were at various levels, high, medium, and low. (T 77)

The supervisor in the meat department was named Rene, and he would typically work from 6:00 am to 2:30 pm. (T 78) He testified no other manager would be there after 2:30 p.m. (*Id.*)

Accident

Testimony of Petitioner

The Petitioner testified that on March 23, 2024, he was scheduled to work from 1:00 p.m. to 9:00 p.m. (T 80) Sometime between 3:00 p.m. and 4:00 p.m., he was stocking meat, grabbed a box, picked it up and slipped, and fell backwards on top of a skid, with the box falling on top of him. (*Id.*) Specifically, he lifted a box weighing 98 pounds over his head to put it onto a rack. (T 81) At the moment of putting the box on the shelf, he slid and fell backwards to the ground, with the box falling on top of him and his lower back hitting a skid. (T 81-82)

The Petitioner further testified that after falling, he rolled over to get up but could not. (T 80) A co-worker named "Efrain" was walking in, saw him on the ground, and helped him get up. (*Id.*) The incident occurred about five to six feet inside the cooler. (T 82)

According to Petitioner, prior to the incident taking place, he was engaged in a conversation with Efrain, who works in the seafood department. (T 82-83) The seafood department is not located next to the meat department, but Efrain was walking through the cooler to go to a room where employees keep their coats and belongings. (T 83-84) The conversation with Efrain was quick, with Efrain advising Petitioner that he was leaving, Petitioner telling Efrain he still had a lot of work to do, and Efrain telling Petitioner give it his all. (T 83) After he fell, Efrain helped him up and told him to go to the front to tell a manager, which he did, but Efrain did not go with him. (T 84-85)

The Petitioner testified that immediately after the accident, he went to the front of the store to report the incident to a manager. (T 85) He was accompanied by "Alejandro," whose job is to clean the store, and speaks both Spanish and English; Alejandro went with him to interpret. (T 86) According to Petitioner, he went to the front registers and told "Janna" that he had fallen while stocking meat, and that his back hurt and needed medical treatment. (T 87) He was told by Janna that he was fine and should go back to work. (*Id.*) Rather than going back to work, however, he went to the room for his things, punched out and left. (*Id.*)

The Petitioner testified that the accident took place between 3:00 and 4:00 p.m., and that he left work about 35 minutes thereafter. (T 110-111) He agreed, however, that the timesheet shows that he punched out of work at 5:30 p.m. (T 111) He testified that all employees punch out using their thumb, and that he disputed the information on the timecard showing that he punched out at 5:30 p.m., but he offered no explanation for why this information was incorrect. (T 111-112)

Petitioner's next scheduled day of work was Monday, March 25, 2024, and he did not work because he was waiting for his employer to call him to send him to a doctor. (T 88) He was in a lot of pain in his lower back and right leg. (T 88-89) The pain was going down to just above the right knee and it started immediately after the fall. (T 89) He called Rene, his department manager, on March 25 to tell him he was not coming in because he was in a lot of pain. (T 89-91). He testified Rene told him "to wait, that they perhaps would call me later." (T 90) He was scheduled to work March 25, March 26, and March 27. (RX 2C) He placed calls into Rene for each of the three days that he did not work. (T 90-91)

The Petitioner eventually sought medical treatment for the first time on March 28, 2024, when his attorney sent him. (T 90) At his first office visit with Dr. Darwish, the doctor ordered diagnostic testing (x-rays and an MRI scan) of the lumbar spine, as well as physical therapy. (T 92) He was also given an off work note (PX 2), and he testified he brought the off work into work and gave it to Janna Rich at her office in the store. (T 93-94) He did not have a conversation with Janna, he just turned it in and turned around and went home. (T 94) He testified Janna does not speak Spanish. (R 94) Prior to that date, he never received any documents in the mail from his store for any reason, nor had he received a call from his employer between March 23 and March 28 when he gave them the doctor's note. (T 94-95)

Petitioner received a termination letter (PX 3) from his employer about twenty (20) days after his accident. (T 96) Petitioner denied that he abandoned his job due to no show/no call. (T 95) The letter stated his employment with Respondent ended effective March 23, 2024. (*Id.*)

The Petitioner was asked about his employment eligibility and reviewed the I-9 form he completed for Respondent, and agreed it was his signature on that form. (T 103) He agreed that he checked off that he was a U.S. citizen, and he provided a Social Security number, but conceded he did not receive the Social Security card from the U.S. government and that it was a fraudulent document. (T 103-105)

Sometime around January or February of 2024, the employment office called him, advising him they needed additional documentation to prove his employability. (T 107) At this point in time, he provided them with a Social Security card that was false. (T 108) After he gave the fake Social Security card, they told him to come back and to give them additional information, and he gave them the same Social Security card he did before. (T 108) Within a week or two before the alleged accident, the company gave him an ultimatum that if he did not provide updated information, he would be terminated. (T 108) The meetings he attended with HR were conducted in Spanish. (T 109)

Testimony of Efrain Nava

Efrain Nava testified that in March of 2023, he was employed by Living Fresh Market as a seafood clerk. (T 126-127) At that time, the supervisor of both the seafood and meat departments was "Rene." (T 127-128) Mr. Nava reviewed RX 2B and confirmed it was a schedule for the week of March 17 through March 23, 2023, and that it showed he was scheduled to work on March 23 from 7:00 a.m. to 3:00 p.m. (T 129-130)

Mr. Nava testified that he had a conversation with Petitioner around 3:00 to 3:15 p.m. on March 23, because he was leaving work at 3:30 p.m. (T 132) He was walking from the locker room toward the cooler in which Petitioner was working. (*Id.*) He had just dropped off his work clothes in the locker room when he came across Petitioner working in the cooler. (T 134) He stopped and had a five-to-ten-minute conversation with Petitioner, who was picking up a box. (*Id.*) Mr. Nava estimated he was standing inside the cooler with Petitioner during this conversation, about 5 to 10 feet away, off to Petitioner's side. (T 136-137)

During this conversation, Petitioner was picking up a box, "and all of a sudden he just slipped. He fell on top of the skid. I just went up to him and just moved the box. And I say, you better report this, man. Say hey, I gotta go. I just walked." (T 137) He moved the box off Petitioner, gave him a hand to get up, and left work through the front entrance. He did not see any managers on his way out of the store. (T 138)

On cross-examination, Mr. Nava testified that the seafood department is not close to the meat department, but the locker where he would put his work clothes was in the back of the meat department. (T 140) On the date of the accident, he dropped off his work clothes, walked through the meat cooler and engaged in conversation with the Petitioner. (T 141) During this conversation, he saw the Petitioner fall backwards onto a skid that was behind him. (T 142) He saw the Petitioner pick up the box off a skid, lifted it high over "on top of him," "and just slid and boom, it fell on top of him." (T 142-143) He was standing to Petitioner's side at the time. (T 143) Mr. Nava was unsure of the weight of the box but testified such boxes usually "come in" 25- or 40-pound sizes. (T 144) Mr. Nava threw the box on Petitioner off to the side, grabbed his hand and picked him up. (T 145) He then left the store without telling anyone about the incident. (*Id.*)

Mr. Nava testified that prior to the hearing on August 12, 2024, he had received a letter (subpoena) advising him of his duty to testify, and received this letter while he was still employed with Respondent, but he forgot to come in to testify. (T 148) He did not tell his employer about the letter because he felt it was "none of my business." (*Id.*) He subsequently spoke with the Petitioner's attorney's office twice regarding the subpoena and was told about coming to court to testify. (T 149) He also spoke with the Petitioner's attorney during the lunch hour on August 12, 2024, but denied that the attorney told him about Petitioner's testimony that morning. (*Id.*)

The Petitioner gave Mr. Nava a ride to court on August 12, 2024. (T 150) The two of them talked on the ride to the courthouse and according to Mr. Nava, Petitioner told him to "just tell them what happened." (T 151)

Mr. Nava denied that he was asked by his employer to fill out an incident report, nor was he asked to give a recorded statement to an investigator. (T 151) He quit working for Respondent on June 18, 2024, after an argument with "Curtis" about his work duties, specifically being asked to help in the meat department and his feeling there was not enough help in the seafood department. (T 151- 153) When asked whether the termination of his employment ended on a "bad note," he testified that "they" were harassing him too much, that the guy in charge ("David") would come over "running his big mouth," and by June 18 he had had enough. (T 154-155) He was subpoenaed to testify prior to quitting his job but he "forgot to come to court." (T 155)

On redirect examination, Mr. Nava testified that he was never contacted by a store manager to ask about the incident involving Petitioner, that no one ever called him to talk about the incident, and that Petitioner's attorney instructed him to not talk to anyone about the case, including Petitioner or his attorney. (T 156)

Testimony of Jorge Alamo

Jorge Alamo testified that he is currently employed with Travelers Insurance as a staff counsel investigator. (T 158) He testified that he was given a Social Security number to verify and used a database called LexisNexis Accurint for that purpose. (T 159) The verification showed the Social Security number in question was issued to a person by the name of Walter Trusick, who was born in 1905, and did not show anything in relation to the Petitioner. (*Id.*) He testified that RX 3 is the first page from the Accurint report. (T 159-160)

Mr. Alamo testified that another one of his job duties is to secure recorded statements, and that as part of this case, he was asked to secure the recorded statement of Mr. Nava. (T 160-161) He first sought to speak with Mr. Nava in person at the Forest Park Bakery on June 24, 2024, and thereafter sought to contact Mr. Nava via telephone on three subsequent occasions. (T 161) Mr. Nava never responded to his inquiries. (*Id.*)

Testimony of Janna Rich

Janna Rich testified that she is the current store director for Living Fresh Market, a grocery store, and has been employed there since October of 2023. (T 207) She testified that Joseph's Fresh Market, LLC, is the business name, which does business as Living Fresh Market. (T 10) As store director, she is responsible for overseeing day-to-day operations of all departments. (T 207)

Ms. Rich testified the company has a policy of completing an incident report for work-related injuries. (T 207-208) Specifically, the injured employee is to report the incident to the "MOD" (Manager on Duty), including identifying any witnesses, and the MOD would fill out the incident report. (T 208) Employees are trained as to how to report work accidents during Monday morning meetings with the managers. (T 209) She identified RX 8 as the incident report that was used at the time of the alleged accident in March of 2024. (*Id.*)

If an employee reported an injury to her, she was required to notify the head of HR, Cheryl Dixon and senior executive, Melody Winston. (T 15) If an injury was reported, no matter how minor, she agreed she was required to complete the incident report and send that to HR. (T 15) She knew the name of the company's workers' compensation carrier (Travelers) but testified she had never communicated with them on a case before. (T 16) If an accident was reported to her, she stated HR and IT would be responsible for investigating the claim. (T 17) She testified there are over 70 cameras in the store, but not one inside the meat department cooler. (T 17-18)

Ms. Rich was shown RX 2D and E and confirmed those were the schedules for the managers on duty for the dates of March 17 through Saturday March 23, 2024. (T 20-21) She testified that per the schedule, she was to work Saturday March 23, 2024, from 7:00 am to 2:00

pm. (T 22) When asked if she ever worked longer than her scheduled time, she stated, "Yes, 95% of the time. But not that day." (T 22) As part of her job, Ms. Rich testified she attended meetings outside of the store and that she attended such a meeting from March 24 through March 26 in Kansas City. (T 23-24). Ms. Rich testified that on March 23, 2024, she arrived at 6:30 a.m. to unlock the store, and left at 2:06 p.m. with two other managers, Curtis West and Paige Jackson. (T. 212) She left at 2:06 p.m. that day because she had closed the store the night before and had not packed for her flight to Kansas City the next morning. (*Id.*)

At the time she left on March 23, 2024, other managers were in the store, including "Sean C.," who was scheduled to work from 12:00 p.m. through 9:00 p.m. (T 23) In addition to Sean, other supervisory personnel were in the store, such as department leads, including Rene, the department lead for the meat department. (T 25-26) Ms. Rich reviewed the time sheet for March 23, 2024, and believes it shows that Rene arrived at the store between 6:00 and 6:30 a.m. and left at 3:30 p.m. (T 28)

Ms. Rich testified she was at the conference for three days and flew home on March 27. (T 213) She denied that Petitioner told her of any work injury on March 23 (T 213) and denied meeting in person with Petitioner and Alejando on that date. (T 30) She stated she would not have been in the building between 3:00 and 4:00 pm on March 23. (T 215) She testified she had no other conversations with Petitioner after March 23. (T 214) When asked why she did not complete an incident report, she stated:

> "I had no knowledge of any incident. I did talk to my management team. Not any of the management team had had a conversation with Mr. Estrada about an injury, nor did we have any witness that came forward and said that there was an incident. And the MOD that was present that day after I left had no knowledge of any incident." (T 214)

Ms. Rich returned to work on March 28, 2024. (T 33) She first became aware that Petitioner was claiming a work injury when she received a call from Cheryl of HR on March 28. (T 29, 215) She denied receiving any off-work notes from Petitioner personally on March 28, 2024. (T 30, 216) She did learn from the MOD that Petitioner had not reported for work on March 25, March 26, and March 27, so discipline forms were completed. (T 216) She confirmed that RX 7, RX 7A and RX 7B were the letters sent to Petitioner concerning his failure to show up for work during that period. (T 215-216)

Ms. Rich testified that after finding out from Cheryl of Petitioner's claim of a work injury on March 28, she spoke to her co-director Curtis West, and another manager David Dew, and did not recall speaking to anyone else. (T 33-35) She did not speak to petitioner as she believed he was terminated by then and that no call/no show three days in a row is termination. (T 35)

She testified that she asked managers to pull videos regarding Petitioner's work activities on March 23 she could not find any that looked into the cooler in the meat department. (T 220-221). They did find a video of him leaving the store and that was submitted into evidence as RX 4. The video was from March 23, 2024, and shows Petitioner walking through an aisle toward the front of the store at 5:28 pm, in the front of the store where the time clock is located. (T 222) The video also shows Petitioner clocking out via a biometric clock at 5:31 p.m. – the clock is in front

of the customer service desk, "and that is Xavier behind the desk, and he did not report anything to Xavier either." (*Id.*) Ms. Rich reviewed Petitioner's timecard for March 23, 2024, and it shows that he clocked out at 5:31 p.m., which was confirmed by the video. (T 222-223)

Ms. Rich testified that in February 2024, the store went through an audit in which they were verifying employees' work status, and she was notified that Mr. Estrada had a red flag regarding his work documentation. (T 210) All employees impacted by the audit were notified during the first week of March 2024. In some cases, she walked the employees over to the HR department to talk to Cheryl and with Nadia Allison who is the Spanish translator. (*Id*.) During this meeting they went through the I-9 form and the documents that would be acceptable for eligibility for being able to work in the U.S. (T 211) She was made aware on March 8, 2024, that Mr. Estrada was given additional time to provide the documents to verify his employability, and if such documents were not provided to HR, his last day of employment would be March 27, 2024. (T 211-212)

Ms. Rich was asked about meat deliveries to the store and testified that such deliveries typically take place on Monday and Thursday nights - the store does receive deliveries on Saturdays, but typically from the bread vendors. (T 225) As far as weights of the boxes, she said they vary from 15 pounds to 70 pounds and there are some that are 90 pounds, but that is not the norm. (*Id.*) She further testified that when a meat delivery arrives, you have to break the load off the pallet onto the shelf the same day. (*Id.*) She testified the shelving in the meat cooler was "not seven or eight feet" tall, and noted it was not as high as a volleyball net. (R 225)

Ms. Rich testified that she was familiar with Mr. Nava, who was an employee of the store until June 21, 2024. (T 218) Mr. Nava was scheduled to work on June 20, but called off work that day, and then came to the store to pick up his paycheck on June 21. (T 219) Ms. Rich met with him at that time and asked why he was quitting, and his response was "because." (*Id.*) Mr. Nava did not provide an explanation to her for why he was quitting, nor did he give written notice or put anything in writing when she asked whether he wished to do so. (T 219-220)

Finally, Ms. Rich testified there is a small room with a laundry bin behind the meat cut room, used by both the meat and seafood departments, where employees can retrieve and drop off aprons and coats to wear while working. (T 223-224) There is also a bin in the front of the store where employees can drop off their coats and aprons when clocking out for the day. (T 224)

Testimony of Cheryl Dixon

Cheryl Dixon testified that she is the HR manager for the Living Word Christian Center, and Living Fresh Market is one of the entities of Living Word Christian Center. (T 42) She has worked for Living Word since 2003. (*Id.*) She became responsible for overseeing the human resources function for Living Fresh Market in early 2023. (T 43)

Ms. Dixon testified that part of her job duties as HR manager for Living Fresh Market would be to obtain an incident report from the management team where the incident occurred, and then report the injury to the insurance carrier. (T 44) The workers' compensation carrier for Living Fresh Market in March of 2024 was Travelers Insurance. (T 47-48) If an injury occurs,

one of the store managers would complete the incident report and it would be her responsibility to report the injury to the carrier, no matter how minor or major the injury. (T 48) Ms. Dixon does not directly discuss the accident with the injured employee, but rather it is to be reported to the management team for the employee's department, and the management team reports the incident to her using the incident report form. (T 173-174) At no point in time did the management team report to Ms. Dixon that Petitioner suffered or reported a work accident which occurred on March 23, 2024. (T 174)

Ms. Dixon testified she first became aware of Petitioner's alleged work injury in March of 2024, when she was contacted by a health provider asking for a claim number for the alleged incident. (T 174, 182-183) She was also contacted by Travelers Insurance, requesting information about the alleged incident, but she had no information to give them, as she had no knowledge whatsoever that Petitioner was claiming a work injury. (T 49-50, 177) Nor did she have a conversation with Janna Rich regarding a doctor's off-work note dropped off by the Petitioner on March 28, 2024. (T 51)

Upon learning of the alleged accident, she reached out to a manager of the store, Xavier Pete, on March 28, 2024. (T 175) Mr. Pete advised her that there was no report of an injury or accident and the worker had not said anything to store management about such an accident. (T 175-176) She only spoke to Mr. Pete on March 28, and no other managers, on that date. (T 194) She subsequently discussed the issue with Janna Rich, after March 28, and was told by Ms. Rich that she (Ms. Rich) had no knowledge of a work injury by Petitioner. (T 197)

Ms. Dixon also testified regarding an audit she conducted of the entire store, beginning in February of 2023, to gain an understanding of the staff and any compliance issues. (T 166-167) While conducting this audit, she became aware of employee eligibility issues and notified store management. (T 167)

One of the employees with an employment eligibility issue was the Petitioner, Zerafin Estrada. (T 167-168) Ms. Dixon testified that the I-9 Form completed by Petitioner indicated that he was a U.S. citizen, and so she had her Spanish-speaking assistant contact Petitioner to confirm his citizenship. (T 16-170) A meeting with Petitioner took place on March 6, 2024, and during this meeting, Petitioner was advised of the list of acceptable documents, per Homeland Security, to verify the information on the I-9 form. (T 171) This was explained to him in both English and Spanish, and he was also given a list of such documents in English and Spanish, and he was to return to her office on March 11, 2024, with the acceptable documents. (T 172)

The Petitioner did not return with documentation on March 11 and was called on March 13, to remind him of the need to produce the requested documentation. (T 172) Petitioner subsequently produced a copy of a Social Security card, which did not appear to be authentic, since the number on the document did not match the Social Security number he reported on his employment application. (T 173)

Regarding Petitioner's termination, Ms. Dixon testified that when she reached out to Xavier Pete to inquire as to the alleged work accident, she was also told that the Petitioner had not worked since March 23, 2024. (T 177-179) Specifically, she was told by Mr. Pete that

Petitioner had missed three days of work, and three days of no show/no call is job abandonment, effective March 28, 2024. (T 178-179; *see also* RX 5) The Petitioner's termination letter, dated March 23, 2024, was sent to him on or after March 28, 2024, after Ms. Dixon had received the information from the store concerning his job abandonment. (T 180-181; *see also* PX 3) The Petitioner's termination date was March 23, 2024, because that was the last day he worked, and he didn't show up after that date. (T 205)

Testimony of Marisol Castillo

Ms. Castillo is the paralegal of petitioner's law firm, Marker & Crannell, and has been working as a paralegal in the workers compensation field for 17 years. (T 242) As part of her job duties opening a file, she reviews the insurance database on the IWCC website to determine what insurance carrier has coverage. (T 242)

In this case, she was asked to check the database to determine the insurance carrier for Living Fresh Market. (T 243) When she did so, nothing came up. (T 244) On March 28, a representative from the doctor's office called asking for the workers compensation insurance information. (T 244) She notified the representative that she did not have insurance information and the representative notified her that after contacting Cheryl from HR, they were told Travelers was the carrier. (T 245) Based upon that information, she contacted Cheryl to obtain the claim number for Travelers and she spoke to Cheryl personally. (T 246) The conversation happened on April 1, 2024, and Cheryl did not provide her any information for Travelers and was uncooperative and hung up. (T 246-7) She then contacted Travelers that same day to open up a claim. (T 247) When opening the claim, she spoke to Jovin Vincent, representative of Travelers. (T 247) Jovin didn't have a policy number and stated he would have to call Cheryl to verify insurance. (T 248)

Ms. Castillo then received a phone call back from Jovin the following day, April 2, 2024. (T 249) When a phone call message comes into the law office phones, every call gets transcribed by the electronic system and that was done with this call. (T 249) Petitioner introduced the transcribed message into Ms. Castillo's email as PX 7. That document shows a voice mail from Jovin to Ms. Castillo stating, "Yeah, spoke to Cheryl at Living Word Christian Center. Yeah, she was not wholly helpful as you indicated earlier, but she did say they do not have coverage with Travelers. So, I'm not sure what is going on, but she did not tell me who their carrier was either." (PX 7)

Video Surveillance

Ms. Rich testified that she asked managers to pull videos regarding Petitioner's work activities on March 23 she could not find any that looked into the cooler in the meat department. (T 220-221). They did find a video of him leaving the store and that was submitted into evidence as RX 4. The video was from March 23, 2024, and shows Petitioner walking through an aisle toward the front of the store at 5:28 pm, in the front of the store where the time clock is located. (T 222) The video also shows Petitioner clocking out via a biometric clock at 5:31 p.m. – the clock is in front of the customer service desk, "and that is Xavier behind the desk, and he did not report anything to Xavier either." (*Id.*) Ms. Rich reviewed Petitioner's timecard for March 23,

2024, and it shows that he clocked out at 5:31 p.m., which was confirmed by the video. (T 222-223)

Summary of Medical Records

The Petitioner was initially seen for treatment on March 28, 2024, when he presented to Dr. Ashraf Darwish at Illinois Bone & Joint Institute ("IBJI"). He provided a history of suffering a work injury on March 23, 2024, specifically relating that he was grabbing a box of meat weighing approximately 94 pounds when he slipped on a pallet and fell backwards. (PX 5, p. 4) The Petitioner reported immediate pain in his lower back on the right side with right lower extremity pain and was complaining on March 28 of constant pain across his lower back. (*Id.*) He also reported numbness and a burning sensation in the back of his right leg and back of his right knee, with increased pain when sitting and difficulty getting up from laying down on his back. (*Id.*) He denied any lumbar spine or radiculopathy symptoms prior to the work accident. (*Id.,* pp. 4-5)

The Petitioner advised that he was taking ibuprofen as needed for pain, had not had any other treatment for his lower back, and was referred to IBJI by his attorney's office. (PX 5, p. 5)

The physical examination by Dr. Darwish noted 50% limitation of flexion and extension in the lumbar spine, with low back pain. (PX 5, p. 5) Tenderness was also present over the left and right paraspinal muscles, but no tenderness was present over the spinal process, the right and left SI joints or the buttocks. (*Id.*) Seated straight leg raising was positive on the right and negative on the left. (*Id.*, p. 6) Strength testing was normal and sensation to light touch was decreased in the right anterior thigh. (*Id.*)

Based on the Petitioner's clinical presentation, Dr. Darwish diagnosed low back pain and lumbar radiculopathy. (PX 5, p. 6) He recommended a course of physical therapy and ordered an MRI scan of the lumbar spine. (*Id.*, pp. 6-7) Dr. Darwish also provided Petitioner with a work status note, indicating that Petitioner should remain off work at that time and follow-up in 6 weeks or sooner once the MRI was completed, in order to review the findings with Dr. Darwish. (*Id.*, p. 10)

An MRI scan of Petitioner's lumbar spine was conducted at Fox Valley Imaging on May 10, 2024. The results showed disc bulging from L3-S1, with diffuse disc bulging with broad-based posterior herniation effacing/mildly impinging the thecal sac at L4-5, bilateral neuroforaminal stenosis and diffuse disc/osteophyte complex at L5-S1, dextroscoliosis and Grade 1 retrolisthesis of L5 on S1. (PX 6, pp. 2-3)

The Petitioner returned to see Dr. Darwish on May 16, 2024. His symptoms remained unchanged from the initial office visit on March 28, 2024. (PX 5, p. 21) His physical examination findings were the same as well. (*Id.,* pp. 21-22) Based on his review of the MRI scan, Dr. Darwish recommended a right L5-S1epidural steroid injection and provided a referral to pain management for that purpose. (*Id.*, p. 23) He was advised to remain off work and follow-up in 6 weeks. (*Id.*, p. 25)

The Petitioner participated in physical therapy at Illinois Bone & Joint Institute Rehabilitation Services between April 12, 2024, and May 24, 2024. At the initial evaluation on April 12, 2024, Petitioner provided a history of the work injury and complained of pain in the low back "all the time." (PX 5, p. 52) He also reported feeling pressure in the low back while sitting, and that sitting is worse than standing and walking. (*Id.*) He also reported that getting up from a seated position was painful and that sleeping was an issue. (*Id.*) The low back pain was across the low back and into the back of the right leg and the right thigh feels numb. He had no pain into his feet. (*Id.*)

The assessment at the initial physical therapy evaluation was decreased lumbar ROM, decreased core strength, tightness to the lumbar paraspinals, slow and guarded movements and pain. (PX 5, p. 54) It was recommended that he participate in a course of physical therapy to address his deficits and assist with full recovery of function. (*Id.*)

The Petitioner was last seen for therapy on May 24, 2024. He reported being "a lot better than I was," and that he could move more easily without pain. (PX 5, p. 48) He was walking more and was able to wash dishes, mop and sweep. (*Id.*) According to the therapist's assessment, the Petitioner reported 80% improvement to date, and was progressing with improved mobility and improved strength in the right lower extremity. He was still reporting pain in the central lumbar spine region. (*Id.*, p. 48)

The Petitioner was most recently seen by Dr. Darwish on June 18, 2024. The history, symptoms, and physical examination findings were the same as noted in the previous medical reports. (PX 5, pp. 56-58) Dr. Darwish provided an updated work status report, allowing Petitioner to return to work with a 20-pound lifting restriction. (*Id.,* p. 58) The doctor continued to recommend the right L5-S1 ESI with pain management and advised Petitioner to follow-up in 6 weeks. (*Id.*)

Petitioner's Current Condition

The Petitioner testified when he last saw Dr. Darwish on June 18, 2024, the doctor continued to recommend he undergo an epidural steroid injection, and he wishes to proceed with that injection. (T 97-98) He has not worked for Respondent since March 23, 2024, and has not received any payments from his employer or Travelers Insurance while off work, and his medical bills remain unpaid. (T 98-99)

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 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).

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

Regarding Issue (C), did an accident occur that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. *820 ILCS 305/1(b)3(d)*. It is well established that the Petitioner bears the burden of proof by a preponderance of the evidence that his injury arose out of and in the course of his employment. *First Cash Financial Services v. Industrial Commission*, 367 Ill. App.3d 102, 105, 853 N.E. 2d 799, 803 (1st Dist. 2006).

Whether the claimant sustained an accidental injury that arose out of and in the course of his employment is a question of fact. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). In resolving disputed issues of fact, 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. *Id.* at 675; *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041 (1999); *Swartz v. Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086 (2005).

After weighing all the evidence presented, including both testimony and documentary evidence, the Arbitrator is not persuaded that the Petitioner sustained an accident arising out of and in the course of his employment with Respondent on March 23, 2024. The Arbitrator finds the Petitioner's testimony lacked credibility and specifically relies on the following in support of this conclusion:

- The Petitioner claims that a 98-pound box he was lifting over his head fell on top of him, as he fell backwards:
    - Mr. Nava, Petitioner's witness, who claims to have lifted the box off of Petitioner, was unsure of the weight of the box and noted such boxes of meat typically weigh between 25 to 40 pounds.
    - Ms. Rich testified boxes of meat can weigh anywhere from 15 to 70 pounds and occasionally up to 90 pounds, but that is unusual. In addition, meat deliveries typically take place on Mondays and Thursdays, not on a Saturday (March 23, 2024, was a Saturday (RX 2B))

- Despite having a 98-pound box of meat fall upon him (from an overhead height), Petitioner reported no chest or abdominal pain, either during his testimony or at IBJI.
- The initial examination at IBJI is silent as to any contusions or abrasions on Petitioner's chest or low back.

- The Petitioner testified the accident took place between 3:00 and 4:00 p.m. on March 23, and that he immediately reported the accident to Janna Rich, who testified that she left the store shortly after her shift ended on 2:00 p.m. The LEF Managers schedule confirms that Ms. Rich was only scheduled to work until 2:00 p.m. (RX 2E)

- The Petitioner testified he reported the accident to Mr. Rich in the presence of Alejandro, who was serving as a translator for him. (T 86) Alejandro was not called as a witness to corroborate this testimony.

- The LEF Managers schedule does show another manager was present until 9:00 p.m. on March 23 ("Sean C."), but Petitioner does not claim to have reported the accident to this manager.

- The Petitioner's department manager, Rene Oseguera Angon, worked until 4:02 p.m. on March 23, but Petitioner does not claim that he reported the accident to him. Petitioner also testified that Mr. Angon ("Rene") was not present in the store after 2:30 p.m., but this testimony is contradicted by the timecard record. (T 78; RX 2)

- The Petitioner claims to have called Mr. Angon on March 24, 25 and 26, to report that he was not coming to work due to his work injury; Mr. Angon was not called as a witness to confirm that such discussions took place.

- The Petitioner testified that he left work about 35 minutes after the work accident took place on March 23, and that said accident took place between 3:00 and 4:00 p.m. As such, he would have punched out of the store by 4:35 p.m. at the latest. The weekly time card report shows, however, that he punched out at 5:31 p.m. on that date. (RX 2A) This was also confirmed by the video which shows Petitioner leaving the store at that time. (RX 4)

- The Petitioner testified that he told Ms. Rich about the accident immediately after it occurred, and he called Mr. Nava as his witness, but there was no testimony offered by Petitioner that he informed Ms. Rich (or any other manager or supervisor) that Mr. Nava witnessed the incident, such to allow for an interview of Mr. Nava by store management.

- The Petitioner testified that he was aware of his impending termination if he did not provide the requisite documentation to HR to prove his eligibility to work in the U.S. The meetings and discussions with HR took place during the month of March 2024, and Petitioner admitted that he never provided such documentation to HR. Ms. Rich testified it was her understanding Petitioner's last day of employment would be March 27, 2024, if he failed to provide the requisite documentation.

- Upon learning of the alleged accident, Cheryl Dixon contacted store management on March 28, 2024. In the emails admitted as RX 5, Ms. Dixon asks Front End Manager Xavier Pete if there is any update regarding the alleged incident on March 23, 2024, and he advises that "it was not reported to any member of management. We have no knowledge of it. He has not called or spoken to a member of management regarding the incident or to report his absences." (RX 5)

- The Petitioner testified that he dropped off his work status note of March 28, 2024, with Ms. Rich, but that he did not have a conversation with her (or apparently even attempt to have a conversation with her) at that time; he simply dropped off the note and left. He also testified that he had been waiting to hear from store management about his medical treatment since the date of the accident five days prior (Ms. Rich denies that he came to the store and left the work status note with her on March 28). The Arbitrator questions why, if Petitioner was anxious to see a doctor and was waiting for direction from management in that regard, he didn't attempt to discuss this issue with Ms. Rich on March 28, if he in fact came to the store on that date.

- The Arbitrator also finds the testimony of Efrain Nava lacked credibility:

    - He denied telling anyone in management about the accident and Petitioner did not testify that he told management that Mr. Nava witnessed the accident (which explains why management didn't initially seek to interview Mr. Nava). Similarly, Mr. Nava did not advise store management that he had received a subpoena from Petitioner's attorney.
    - When Respondent learned that he was a potential witness, an investigator for Respondent, Jorge Alamo, attempted to take a statement from Mr. Nava on four separate occasions, but he was not cooperative and never returned Mr. Alamo's calls.
    - Mr. Nava testified that he spoke with Petitioner's attorney on two occasions prior to trial and was given a ride to and from court by Petitioner on the date of the hearing (August 12, 2024).
    - The Petitioner testified the accident took place between 3:00 and 4:00 p.m., and Mr. Nava testified that he spoke with Petitioner between 3:00 and 3:15 p.m., because he was to work until 3:30 p.m. (T 132), but the schedule shows that Mr. Nava's shift ended at 3:00 p.m. on March 23, 2024. He testified he "gets the 7:00 to 3:30 so I can make the 40 hours," but the schedule shows he was scheduled to work five 8-hour shifts, from 7:00 a.m. to 3:00 p.m., between March 17 and March 23, which would have accounted for his desire to "make the 40 hours." (RX 2B) His testimony that he was scheduled to work until 3:30 p.m. on March 23, 2024, is not corroborated by the work schedule.
    - Mr. Nava testified that he "was just in a hurry" on March 23: "I just leave my stuff and just run out." (T 134, 141) He also testified the locker where he dropped off his work clothes is near the meat department (T 140) and the seafood department (where he works) "is kind of far" from the meat department. (T 139) His stated desire to leave work in a hurry on March 23 is not supported by his alleged actions

of taking a longer route to leave the store, where he could drop off his work clothes near the time clock at the front of the store. (*See* T 224)

- Mr. Nava's demeanor during the hearing gave the impression that he was not an unbiased witness, specifically regarding the circumstances of his termination, in which he testified about an argument with a store manager and that he quit because he felt "they" were harassing him too much at work.

- The Arbitrator finds the testimony of Respondent's witnesses, Janna Rich and Cheryl Dixon (as well as Jorge Alamo), to overall be credible and supported by the documentation. The Arbitrator compared the witnesses' testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witnesses to be unreliable.

- Finally, the Arbitrator does not find the issue of Ms. Dixon's discussion with the Travelers Insurance adjuster (Jovin Vincent) in which she denies that Travelers is the workers' compensation carrier, to be particularly relevant, given that in her role with Living Word Christian Center, she apparently deals with different insurance carriers (e.g., Church Mutual Insurance) for the different entities in the organization. (T 46-47)

Taking all the above into account, the Arbitrator finds the testimony of Respondent's witnesses, as well as the various documents submitted as evidence (i.e., RX 2-2E, RX 4, RX 5) to be more persuasive than the testimony of the Petitioner and his witness, Efrain Nava.

The Arbitrator therefore finds Petitioner failed to prove by a preponderance of the evidence that he sustained an accident that arose out of and in the course of his employment with Respondent Joseph's Fresh Market, LLC, on March 23, 2024.

Regarding Issue (E), was timely notice of the accident given to Respondent, the Arbitrator finds as follows:

Having found that Petitioner failed to prove that he sustained an accident arising out of and in the course of employment on March 23, 2024, all other issues are moot, and all benefits for Petitioner are hereby denied.

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

Having found that Petitioner failed to prove that he sustained an accident arising out of and in the course of employment on March 23, 2024, all other issues are moot, and all benefits for Petitioner are hereby denied.

Regarding 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:

Having found that Petitioner failed to prove that he sustained an accident arising out of and in the course of employment on March 23, 2024, all other issues are moot, and all benefits for Petitioner are hereby denied.

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

Having found that Petitioner failed to prove that he sustained an accident arising out of and in the course of employment on March 23, 2024, all other issues are moot, and all benefits for Petitioner are hereby denied.

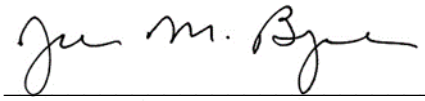
Regarding Issue (L), what temporary benefits are in dispute, the Arbitrator finds as follows:

Having found that Petitioner failed to prove that he sustained an accident arising out of and in the course of employment on March 23, 2024, all other issues are moot, and all benefits for Petitioner are hereby denied.

Regarding Issue (M), should penalties or fees be imposed upon Respondent, the Arbitrator finds as follows:

Having found that Petitioner failed to prove that he sustained an accident arising out of and in the course of employment on March 23, 2024, all other issues are moot, and all benefits for Petitioner are hereby denied.

IT IS SO ORDERED:



James M. Byrnes, Arbitrator

November 6, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC022487
Case Name	Martin Vega v. Source One Staffing
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0267
Number of Pages of Decision	11
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	Michael J. Danielewicz

DATE FILED: 6/16/2025

/s/Christopher Harris,Commissioner
Signature

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

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARTIN VEGA,

Petitioner,

vs. NO: 21 WC 22487

SOURCE ONE STAFFING,

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 (TTD) benefits and permanent partial disability (PPD) benefits, and being advised of the facts and applicable law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator which is attached hereto and made a part hereof.

The Commission affirms the Arbitrator's award of PPD benefits in this claim, but assigns no weight to the first factor under Section 8.1b(b) of the Act. Neither party submitted an AMA impairment rating for consideration.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 5, 2024 is hereby modified as stated and otherwise affirmed and adopted.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $38,500.00. 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 the Circuit Court.

June 16, 2025

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

CAH/pm
d: 6/12/25
052

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC022487
Case Name	Martin Vega v. Source One Staffing
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	James McHargue
Respondent Attorney	Michael J. Danielewicz

/s/Paul Seal, Arbitrator SEPTEMBER 5 2024

Signature

INTEREST RATE WEEK OF SEPTEMBER 4 2024 4.645%

STATE OF ILLINOIS)
)SS.
COUNTY OF DuPAGE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Martin Vega
Employee/Petitioner

v.

Source One Staffing
Employer/Respondent

Case # **21** WC **22487**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Seal**, Arbitrator of the Commission, in the city of **Wheaton**, on **July 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 **6/18/21**, 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 $**3,514.03**; the average weekly wage was $**439.25**.

On the date of accident, Petitioner was **53** years of age, ***single*** with **0** dependent children.

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

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

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

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 as listed below, as provided in Sections 8(a) and 8.2 of the Act.

ION	$288.74
Suburban Orthopedics	$1,479.00
North Lake Therapy & Rehab	$17,445.00
Midwest Specialty Pharmacy	$1,315.85

Respondent shall pay Petitioner temporary total disability benefits of $293.33/week for 35 and 6/7 weeks, commencing 6/23/21 through 3/1/22, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $293.33/week for 25 weeks because the injuries sustained caused 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.

SEPTEMBER 5 2024

Signature of Arbitrator

Martin Vega, Petitioner, testified that on June 18, 2021, he was employed by a company called Source One Staffing, Respondent. Tx10. He is not sure when he first started working for Respondent. Id. On June 18, 2021, Petitioner was working for Respondent at a facility where he was required to unload trucks. Id. at 11. On that date, he was moving a pallet of items out of a truck. Id. The pallet had boxes on it, and the boxes fell onto Petitioner's neck, back, and left shoulder. Id. at 12.

Immediately after the incident, Petitioner felt "warm" but did not have pain until the following day. Tx12. On June 23, 2021, Petitioner was seen at Tyler Medical Center. Tx13. The history taken was as follows - "The patient presents today for initial evaluation of an injury to his back, cervical and lumbar region, and left shoulder…Last Friday 06/18/2021, he was pulling a pallet full of boxes, unknown weight, when the boxes tipped over and struck him in the back of the shoulder, neck, and low back." Px1 at 7. The evaluation that day was conducted through a Spanish interpreter. Id. X-rays of the cervical spine, lumbar spine and left shoulder were normal. Id. The diagnosis was cervical and lumbar strain with spasm, and left shoulder sprain. Id. Petitioner was given medication and work restrictions. Id. at 8.

Petitioner was seen again on July 1, 2021. Id. at 6. He still had 4/10 pain, mostly in his shoulder. Id. Tenderness in the neck and back were improved, but there was still tenderness in the posterior left shoulder. Id. The jobe's/empty can test was positive. Id. Other shoulder orthopedic testing was normal. Id. Medication was again dispensed, and light duty was again instructed. Id. Petitioner was not working during this time. Tx13.

Petitioner returned to Tyler Medical again on July 9, 2021. Px1 at 5. The neck and back were doing better, but the left shoulder pain persisted. Id. It was at a 7/10. Id. Orthopedic testing was the same as on July 1. Id. A local corticosteroid injection into the shoulder was discussed, but Petitioner declined. Id. Dr. Pappas recommended four sessions of physical therapy, and continued the same work restrictions. Id.

Petitioner's final followup with Tyler was on July 30, 2021. Id. at 4. The four sessions of physical therapy had been completed. Id. The Jobe's/empty can test was now negative. Id. Dr. Pappas recommended continued medication, the same work restrictions, and four more sessions of physical therapy. Id.

Petitioner then presented to Dr. Sajjad Murtaza at Illinois Orthopedic Network on August 4, 2021. Px2 at 4. His history was consistent. Id. He complained of neck, back, and left shoulder pain with some upper extremity weakness. Id. Cervical spine exam was positive for tenderness to palpation, with limited range of motion looking right hand left. Id. at 5. Spurling's test was negative. Id. Shoulder exam was positive for reduced flexion and abduction and a positive Jobe's/empty can test. Id. The low back showed full range of motion, but increased pain with motion. Id. Dr. Murtaza recommended medication and an MRI of the left shoulder. Id. He took Petitioner off of work. Id.

MRI of the left shoulder was taken on August 11, 2021 and was positive for tendinosis at the critical zone of the left supraspinatus tendon, a mild left glenohumeral effusion, and a small subcoracoid bursal fluid collection. Id. at 9-10. On August 17, 2021, Petitioner was seen by Dr. Howard Freedberg on referral from ION. Id. at 11. Dr. Freedberg recorded that the pain in the low back and shoulder were greater than the neck. Id. There was radiating pain down the left arm and down the left hamstring. Id. Straight leg raise was positive on the left. Spurling's test was positive on the left. Id. Multiple left shoulder tests were positive. Id. at 13. Dr. Freedberg recommended MRI scans of the lumbar and cervical spine. He kept Petitioner off work. Id. A steroid injection was discussed, but not performed. Id. at 13.

On August 31, 2021, Petitioner was again seen by Dr. Murtaza. Id. at 16. Dr. Murtaza noted ongoing neck, left shoulder, and back pain. He agreed with the recommendation for cervical and lumbar MRI scans, continued medication, and kept the claimant off work. Id. at 17. The Lumbar MRI was performed September 28, 2021 and was positive for protrusions from L2-S1, with osteophyte formation and indentation of the thecal sac at multiple levels. Id. at 26. The Cervical MRI likewise showed multilevel disc osteophyte complexes indenting the thecal sac at C3-4 and C5-7. Id. at 27.

On October 5, 2021, Dr. Murtaza recommended a lumbar epidural steroid injection at the L3-4 level, based on the large 6.1mm protrusion at that level seen on the MRI causing bilateral radicular compression. Id. at 26, 30. Petitioner did not want to proceed with this injection, and Dr. Murtaza was worried about possible psychological issues based on some strange statements made by the Petitioner. Id. at 30. Dr. Murtaza was concerned that the introduction of steroids might exacerbate a psychiatric condition. Id.

On October 12, 2021, Dr. Freedberg performed a left shoulder injection. Id. at 35. He commented that the cervical spine seemed to be a greater pain generator than the shoulder. Id. On November 9, Dr. Freedberg recorded that the shoulder injection improved Petitioner's complaints 75%. Id. at 40. He felt the remaining issues were with the cervical spine. He kept the claimant off work. Id.

On January 10, 2022, Petitioner again met with Dr. Murtaza. Id. at 57. Dr. Murtaza noted the neck pain was resolved. Id. He noted there was still back pain, but that Petitioner did not wish to undergo a lumbar injection. Id. Dr. Murtaza placed the claimant at MMI and released him back to work. Id. at 57.

On February 1, 2022, Dr. Freedberg again met with Petitioner. Id. at 60. He noted ongoing numbness and tingling in the neck and low back. Id. At this time, the records indicate Petitioner changed his mind and was willing to undergo spinal injections. Id. at 63. He kept the claimant off work. Id. Records end here.

During this time, Petitioner underwent physical therapy care with North Lake Therapy and Rehab from August 10, 2021 through January 26, 2022. Px4 at 11. Petitioner testified that this was helpful a "very little." Tx 13-14.

Petitioner testified he has not worked since the date of the accident. Id. at 15. He is surviving on help from his family. Id. He had no problems with his neck, back, or left shoulder before this injury. Id. at 16. He noted ongoing pain in his lumbar spine. Id. at 16. He testified that his back hurts when he bends down. Id. at 17. His neck hurts when he moves it a lot. Id. He states he has had no new accidents or injuries to these body parts since the subject work accident. Id.at 18. On cross, he agreed that he has not seen any other doctors for these conditions and has not been given any work restrictions since February 1, 2022. Id. at 27.

Respondent presented the Section 12 opinions of Dr. Matthew Coleman, who evaluated the claimant on December 4, 2021. Rx1. Dr. Coleman noted a positive Neer's and Hawkin's sign on the left shoulder. Id. Other orthopedic testing was normal. Id. He diagnosed cervical, lumbar, and shoulder contusions with possible cervical and lumbar neuropraxia which were causally related to the work accident. Id. He agreed that treatment to date had been reasonable and necessary, though he would have stopped physical therapy after eighteen sessions. Id. He agreed a lumbar ESI would be reasonable. Id. He placed the claimant at maximum medical improvement and full duty as of October 12, 2021, the date of the left shoulder steroid injection. Id.

CAUSAL CONNECTION

The Arbitrator finds Petitioner's diagnoses to be a lumbar strain with radiculopathy, a cervical strain, and a right shoulder strain. These conditions are causally related to the work accident. The Arbitrator relies on the credible testimony of the Petitioner, taken together with the opinions of the treating physicians, as well as the opinion of Dr. Coleman, Respondent's Section 12 examiner.

There is no dispute in the records that Petitioner suffered cervical and left shoulder strains. Dr. Murtaza and Dr. Coleman both agreed that a lumbar epidural steroid injection would have been reasonable, leading to the conclusion that both doctors agree on the lumbar radiculopathy. The Arbitrator finds that Petitioner reached MMI for all conditions on March 1, 2022, one month after his last followup appointment with Dr. Freedberg.

TEMPORARY TOTAL DISABILITY

The Arbitrator finds Petitioner is entitled to TTD benefits from June 23, 2021 through March 1, 2022. The Arbitrator relies on the credible testimony of the Petitioner and the credible opinions of the treating doctors. The Arbitrator does not find Dr. Coleman's opinions on this issue credible or persuasive.

Dr. Coleman stated Petitioner could work full duty as of October 12, 2021. Petitioner was released to full duty by Dr. Murtaza on January 10, 2022. Dr. Freedberg kept Petitioner off work as of his February 1, 2022 appointment, pending a lumbar epidural steroid injection. The Arbitrator finds that Dr. Freedberg's final opinion is the most credible, as even Dr. Coleman

agreed a lumbar epidural steroid injection would be reasonable. Petitioner was not seen by Dr. Freedberg after February 1, 2022. Thus, the Arbitrator awards TTD through March 1, 2022, and finds Petitioner to have been at MMI on that date. No doctor has opined on work status after that date. TTD benefits to be paid at the applicable minimum rate of $293.33.

PAST MEDICAL

The Arbitrator award past medical as claimed by Petitioner. Dr. Coleman, the Section 12 examiner, agreed that treatment rendered the date of his evaluation had been "reasonable and necessary thus far" despite the fact that he placed Petitioner at MMI two months earlier than the date of his evaluation. Thus, his opinions are suspect. Dr. Coleman also would have terminated physical therapy after eighteen sessions. However, Dr. Coleman was incorrect in placing the claimant at MMI on October 12, 2021. Dr. Coleman believed that a lumbar epidural would have been reasonable, even though a lumbar epidural was recommended on October 5, just seven days prior. Dr. Coleman's opinions are contradictory and make little sense. The Arbitrator cannot place any reliance upon them. As a result, the Arbitrator awards all bills as claimed by Petitioner.

PERMANENT PARTIAL DISABILITY

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no opinion comporting with the specific requirements of §8.1b(a) was submitted into evidence. However, the Arbitrator has considered the doctor's comments as a factor in the evaluation of Petitioner's permanent partial disability as required by §8.1b(b)(i). Dr. Freedberg never released Petitioner. Dr. Murtaza released him to full duty. The Arbitrator notes no ongoing specific commentary on ongoing disability.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a laborer at the time of the accident and that he is able to return to work in his prior capacity as a result of said injury. The Arbitrator notes Petitioner has not returned to work, but no physician is currently opining on his work ability. Because of the lack of permanent restrictions, the Arbitrator therefore gives some weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 53 years old at the time of the accident. Because of his advanced age, the Arbitrator therefore gives some weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes there is no documentation of any loss of future earnings capacity. Because of the lack of loss, the Arbitrator therefore gives less weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner was never formally released. Because of the ongoing disability when Petitioner stopped treating, the Arbitrator therefore gives some weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 5% loss of use of the person as a whole pursuant to §8(d)(2)of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC012658
Case Name	Phillip Sikanich v. City of Chicago
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0268
Number of Pages of Decision	11
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Charles Romaker
Respondent Attorney	Austin Friedrich

DATE FILED: 6/16/2025

/s/Christopher Harris,Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PHILLIP SIKANICH,
Petitioner,

vs. NO: 22 WC 12658

CITY OF CHICAGO,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues accident, causation, temporary total disability benefits, permanent partial disability benefits, evidentiary rulings, the designation of Petitioner as permanently and totally disabled (in a companion case), and the imposition of penalties/fees (in a companion case), and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 9, 2024, is hereby affirmed and adopted.

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

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

There is no bond for the removal of this cause to the Circuit Court by Respondent pursuant to §19(f)(2) of the Act. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 16, 2025
o: 5/7/25
CAH/dw
052

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC012658
Case Name	Phillip Sikanich v. City of Chicago
Consolidated Cases	21WC005207;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Charles Romaker
Respondent Attorney	Elaine Newquist

DATE FILED: 10/9/2024

/s/Ana Vazquez, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF OCTOBER 8, 2024 4.305%

STATE OF ILLINOIS)
)SS.
COUNTY OF Chicago)

☐ 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

Phillip Sikanich
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # **22** WC **012658**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Ana Vazquez**, Arbitrator of the Commission, in the city of **Chicago**, on **July 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 **whether Petitioner is permanently and totally disabled, addressed under Issue L**

FINDINGS

On **May 10, 2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**84,485.00**; the average weekly wage was $**1,586.25**.

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 $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**. See Ax2, No. 9.

ORDER

Respondent shall pay for the reasonable and necessary medical services provided to Petitioner for the treatment of his cervical spine condition at Northwestern Memorial Hospital on May 11, 2022 and with Dr. Nolden on May 18, 2022 and June 8, 2022, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses, including credit for such payments reflected in Rx1. Per the Parties' stipulation, Respondent is entitled to a credit for any awarded bills paid by through its group medical plan pursuant to Section 8(j) of the Act. Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit.

Respondent shall pay to Petitioner temporary total disability benefits of **$1,057.50/week** for **3 1/7 weeks**, commencing **May 18, 2021** through **June 8, 2022**, as provided in Section 8(b) of the Act. The Arbitrator notes that the awarded period of TTD benefits under the instant claim, is included in the period of TTD benefits claimed by Petitioner in companion claim 21WC005207, for which a separate decision has been issued.

Petitioner's claim for maintenance benefits is denied.

Respondent's claim for a credit for nonoccupational indemnity benefits paid to Petitioner is denied.

Respondent shall pay Petitioner permanent partial disability benefits of **$937.11/week** for **75 weeks**, because the injuries sustained caused **15% loss of the person as a whole**, as provided in Section 8(d)2 of the Act.

Petitioner's claim for penalties/attorney's fees under Sections 19(k), 19(l) and 16 is more appropriately addressed under companion claim 21WC005207.

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

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

Signature of Arbitrator

October 9, 2024

PROCEDURAL HISTORY

This matter proceeded to arbitration on July 2, 2024 before Arbitrator Ana Vazquez in Chicago, Illinois. This matter is consolidated with claim 21WC005207. The issues in dispute include: (1) causal connection, (2) unpaid medical bills, (3) temporary total disability ("TTD") benefits and maintenance benefits, (4) the nature and extent of the injury, and (5) penalties/attorney's fees under Sections 19(k), 19(l) and 16 of the Act. Arbitrator's Exhibit ("Ax") 2. All other issues have been stipulated. Ax2.

FINDINGS OF FACT

On February 17, 2021, Petitioner was 41 years of age, single, with two dependent children. Ax2 at No. 6. Petitioner testified that he graduated from high school and did not attend any other schooling. Transcript of Proceedings on Arbitration ("Tr.") at 69. Petitioner began working for Respondent on August 17, 1999. Tr. at 67. Petitioner was employed by Respondent on February 17, 2021 and May 10, 2022 as an asphalt helper. Tr. at 67. Petitioner last worked at Respondent on May 10, 2022. Tr. at 67. Petitioner has not worked at any other jobs, besides his job at Respondent. Tr. at 69.

Duties

Petitioner testified that as an asphalt helper, one of his duties was shoveling asphalt. Tr. at 68. The weight of the shovel while he shoveled asphalt was 50 pounds. Tr. at 68. Petitioner shoveled all day long. Tr. at 68. Petitioner would also cover potholes and other deviations with asphalt, and shovel salt. Tr. at 68. Petitioner would also use a jackhammer to break up asphalt, which weighed 120 pounds, and would throw the broken-up sidewalk into the back of a truck. Tr. at 69.

Prior Injuries/Treatment

Petitioner testified that he did not receive medical treatment for his neck in the five years prior to February 17, 2021. Tr. at 70, 128.

Prior to May 10, 2022, Petitioner was treating for left shoulder, low back, left knee, and left hip conditions, as well as a traumatic brain injury, which are the subject of companion claim 21WC005207, for which a separate decision has been issued.

May 10, 2022 Accident

Petitioner was working full duty on May 10, 2022. Tr. at 74, 75, 132, 133. On May 10, 2022, Petitioner was shoveling asphalt and his left hip and arm started going numb and hurt more, his upper neck hurt bad, and his left arm was numb down to the fingertips. Tr. at 75-76, 134-135. Petitioner testified that he had left-sided neck pain radiating down his left arm to his hand immediately after the May 10, 2022 accident. Tr. at 98. Petitioner testified that the May 10, 2022 accident aggravated his neck condition. Tr. at 98.

Medical Records Summary[1]

On May 11, 2022, Petitioner reported to the Emergency Department of Northwestern Memorial Hospital complaining of new left-sided neck pain. Petitioner explained that the pain began the day before while working.

[1] Petitioner continued to treat for conditions which are the subject of companion claim 21WC005207 after May 10, 2022, while also treating with Dr. Nolden for neck symptoms.

Px2, Case 2, at 1-12. The pain was primarily in his left posterior neck with sharp shooting pain down his left arm with associated weakness and numbness/tingling. Dr. Emilie Powell noted that Petitioner had presented at the Emergency Department of Rush within the past month with similar complaints.[2] Petitioner left the emergency department against the advice of hospital staff, however, an MRI of the cervical spine was obtained and reviewed by Dr. Powell. Dr. Powell noted that the cervical spine MRI demonstrated (1) multilevel advanced degenerative changes of the cervical spine superimposed on a developmentally slender spinal canal. Findings worst at C5-C6 where a posterior disc osteophyte complex asymmetric to the right, uncovertebral hypertrophy, and facet arthropathy result in severe spinal canal stenosis with moderate mass effect of the right aspect of the central spinal cord, severe right neural foraminal narrowing, and moderate to severe left foraminal narrowing, (2) questionable STIR signal hyperintensity within the spinal cord from C5-C7, which may be artifactual. Evaluation of the spinal cord was limited on axial MEDIC sequences due to motion artifact, and (3) abnormal marrow edema involving the vertebral endplates from C3-C7, particularly prominent at the inferior endplate of C4. These findings were favored to relate to Modic type I degenerative endplate changes. If there was a history of trauma or any concern for fracture, a CT scan of the cervical spine was recommended for further evaluation to exclude fracture.

On May 18, 2022, Petitioner was seen by Dr. Mark Nolden at Northshore Evanston Hospital for neck pain. Px5A, Case 2, at 1-34. Petitioner recounted that on May 10, 2022, he began to experience significant neck pain radiating into the forearm and hand while working. Petitioner reported continued weakness and numbness. Dr. Nolden reviewed the cervical spine MRI and noted advanced subaxial cervical spondylosis with moderate to severe canal stenosis from C3-C6 with severe left-sided neural foraminal stenosis at the same levels and left-sided cervical spondylitis polyradiculopathy with weakness. Dr. Nolden recommended an anterior cervical diskectomy and fusion from C3-C6, however, Dr. Nolden ordered left upper extremity neurodiagnostic studies and a new CT scan of Petitioner's cervical spine before moving further. Petitioner was kept off work.

Petitioner had a telemedicine follow-up visit with Dr. Nolden on June 8, 2022. Px5A, Case 2, at 35-59. Petitioner's CT scan and EMG/NCV study were reviewed, the latter of which was unremarkable. The CT scan showed significantly advanced degenerative changes for someone of Petitioner's age and sex, consistent with what was shown in the MRI. Petitioner continued to complain of significant left-sided neck pain radiating into the left shoulder with shakiness in his left upper extremity and weakness throughout. Dr. Nolden's surgical recommendation continued.

Current Condition

Regarding his neck, Petitioner testified that he does not have range of motion, it hurts, it swells, he cannot move left to right, and he cannot sleep. Tr. at 120.

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).

[2] Treatment records from the Emergency Department of Rush University Medical Center were not offered.

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

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

Issue C, whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

Having considered all the evidence, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that he sustained an accident that arose out of and in the course of his employment with Respondent on May 10, 2022. In support of her finding, the Arbitrator relies on Petitioner's credible testimony that: (1) he was employed as an asphalt helper with Respondent on May 10, 2022, (2) his duties as an asphalt helper included shoveling asphalt onto the street, and (3) on May 10, 2022, he felt pain in his neck, left hip, and left arm while at work shoveling asphalt. The Arbitrator also relies on the treatment records in evidence, which corroborate Petitioner's testimony and document treatment beginning on May 11, 2021. The Arbitrator notes that Petitioner's testimony is unrebutted.

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

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

Having considered all the evidence, the Arbitrator finds that Petitioner's cervical spine condition of ill-being is causally related to the May 10, 2022 injury. The Arbitrator relies on the following in support of her findings: (1) the medical records of Dr. Mark T. Nolden and Northshore Evanston Hospital, (2) the fact that none of the records in evidence reflect any cervical spine treatment prior to May 10, 2022, and (3) Petitioner's credible testimony that he did not treat for any cervical spine conditions in the five years prior to February 17, 2021. The Arbitrator acknowledges that following a work injury on February 17, 2021, which is the subject of companion claim 21WC005207, Petitioner complained of neck pain on February 24, 2021. The Arbitrator notes, however, that the medical evidence offered does not reflect any cervical spine treatment until after the May 10, 2022 work accident. Following the May 10, 2022 work accident, Petitioner presented at the Emergency Department of Northwestern Memorial Hospital with cervical spine complaints, and thereafter sought treatment with Dr. Nolden on May 18, 2022 and June 8, 2022. The overall evidence demonstrates that Petitioner was in condition

of good health relative to his cervical spine and was working full duty immediately prior to the May 10, 2022 work accident. Further, the medical evidence offered was unrebutted.

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

Consistent with the Arbitrator's prior findings, the Arbitrator finds that the medical services that were provided to Petitioner for treatment of his cervical spine condition were reasonable and necessary. As such, the Arbitrator awards bills for the necessary and reasonable treatment of Petitioner's cervical spine at Northwestern Memorial Hospital on May 11, 2022 and with Dr. Nolden on May 18, 2022 and June 8, 2022. Respondent is liable for payment of these bills, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses.

Additionally, Petitioner claims unpaid medical bills from Northshore Evanston Hospital ($64,465.25) for dates of service from October 6, 2022 through October 10, 2022 and from Northshore Skokie Hospital ($11,001.00) for dates of service of October 6, 2022 and October 7, 2022, which the Arbitrator finds are more appropriately addressed under companion claim 21WC005207, for which a separate decision has been issued.

Regarding a Section 8(j) credit, at arbitration, Petitioner stipulated that Respondent is entitled to credit for medical bills that have been paid through its group medical plan. Tr. at 13.

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

Petitioner claims that he is entitled to TTD benefits for the period of May 10, 2024 through June 24, 2024. Ax2 at No. 8. Respondent disputes Petitioner's claim for TTD benefits and claims no compensable lost time. See Ax2 at No. 8. Petitioner claims that he is entitled to maintenance benefits for the period of June 25, 2024 through July 2, 2024, the date of arbitration. See Ax2, No.8. Respondent disputes Petitioner's claims for maintenance and demands strict proof thereof. See Ax2, No. 8.

Petitioner was taken off work until further notice by Dr. Nolden on May 18, 2022. Petitioner next saw Dr. Nolden on June 8, 2022, however, Dr. Nolden did not address Petitioner's work status at that time. Petitioner did not return to Dr. Nolden after June 8, 2022. The Arbitrator finds that the medical evidence supports an award of TTD benefits for the period of May 18, 2022 through June 8, 2022. The Arbitrator notes that the awarded period of TTD benefits, May 18, 2022 through June 8, 2022, is included in the period of TTD benefits claimed by Petitioner under companion claim 21WC005207, for which a separate decision has been issued. Additionally, there is no evidence that supports an award for maintenance benefits. Accordingly, Petitioner's claim for maintenance benefits is denied.

Respondent claims an amount "TBD" in nonoccupational indemnity benefits paid to Petitioner. See Ax2, No. 9. Petitioner disputes Respondent's claim. Ax2, No. 9; Tr. at 12-13. There was no evidence offered to support Respondent's claim for an amount "TBD" in nonoccupational indemnity benefits paid to Petitioner. Accordingly, Respondent's claim for a credit for nonoccupational indemnity benefits paid to Petitioner is denied.

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 41 years of age and was employed at Respondent as an asphalt helper/laborer. On May 18, 2022, Dr. Nolden recommended an anterior cervical diskectomy and fusion from C3-6 and kept Petitioner off work until further notice. Petitioner again saw Dr. Nolden on June 8, 2022, at which time Dr. Nolden continued to recommend an anterior cervical diskectomy and fusion from C3-6. The Arbitrator notes that Petitioner was also off work during the same period for conditions which are the subject of companion claim 21WC005207, for which a separate decision has been issued. Petitioner has not returned to work since May 10, 2022. 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 May 10, 2022 accident and there is no evidence of reduced earning capacity as a result of the May 10, 2022 accident 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 following the May 10, 2022 injury, Dr. Nolden recommended that Petitioner undergo an anterior cervical diskectomy and fusion from C3-6 and kept Petitioner off work until further notice. Petitioner has not returned to work since May 10, 2022. The record demonstrates that Petitioner last sought treatment for his cervical spine on June 8, 2022 with Dr. Nolden. Regarding his neck, Petitioner testified that at the time of arbitration, he does not have range of motion, it hurts, it swells, he cannot move his neck left to right, and that he cannot sleep. Tr. at 120. 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 15% loss of the person as a whole, pursuant to Section 8(d)2 of the Act.

Issue M, whether penalties/attorney's fees should be imposed upon Respondent, the Arbitrator finds as follows:

Petitioner claims penalties/attorney's fees pursuant to Sections 19(k), 19(l), and 16 of the Act. Petitioner's claim for penalties/attorney's fees is more appropriately addressed under companion claim 21WC005207, for which a separate decision has been issued.

Ana Vazquez

ANA VAZQUEZ, ARBITRATOR

October 9, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC005207
Case Name	Phillip Sikanich v. City of Chicago Department of Transportation
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0269
Number of Pages of Decision	29
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Charles Romaker
Respondent Attorney	Austin Friedrich

DATE FILED: 6/16/2025

/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: Down	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PHILLIP SIKANICH,

Petitioner,

vs. NO: 21 WC 5207

CITY OF CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, temporary total disability benefits, the designation of Petitioner as permanently and totally disabled, and the imposition of penalties and fees, and being advised of the facts and law, modifies the Decision of the Arbitrator, as specified below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and a made part hereof.

Findings of Fact

Petitioner worked for the City of Chicago Department of Transportation. On February 17, 2021, he was on the back of a dump truck breaking up salt to shovel onto the street. Petitioner was facing backward, the truck moved forward, the back of Petitioner's head struck a viaduct, and he fell on his left side. He momentarily lost consciousness and was taken to an Emergency Room. There, a CT of the pelvis showed a minimally comminuted and distracted fracture of the lateral wall of the left acetabulum and mild bilateral hip osteoarthritis. A CT of the brain showed no acute intracranial hemorrhage. Petitioner asked for MRIs of his joints, but it was deemed unnecessary to the treatment plan. Dr. Patel diagnosed left nondisplaced acetabular fracture and left shoulder strain and noted he was already on pain medication for chronic back pain.

On March 7, 2022, Petitioner presented to Dr. Puri with a long-standing history of severe progressive left hip pain since February 17, 2021. He reported the accident and that he developed "severe posttraumatic arthritic change of the hip" and came in to discuss hip arthroplasty. A §12 medical examiner released him to work and Respondent denied coverage for the arthroplasty. X-rays showed severe arthritis of the left hip which Dr. Puri described as bone-on-bone. Dr. Puri concluded that Petitioner had failed conservative treatment and hip replacement was indicated. Petitioner wished to proceed.

The left hip arthroplasty was performed on May 12, 2022. On September 9, 2022, Petitioner apparently fell and dislocated the prosthetic hip. Attempts to reduce the hip were unsuccessful and another arthroplasty was performed. Petitioner also had hip dislocations and subsequent revision hip arthroplasty surgeries on September 23, 2022, October 7, 2022, and November 14, 2022. In total, Petitioner had five total hip arthroplasty surgeries. The last arthroplasty was a "constrained" hip arthroplasty which limits movement, but is more difficult to dislocate. In addition, after the last arthroplasty, Petitioner noted left foot drop, which is believed to be permanent and most likely related to nerve damage caused by the hip surgeries.

Incidentally, the Commission notes that in mid-November of 2021, when Respondent required Petitioner to return to work at his regular job after its §12 medical examiner released him to work as a laborer without restriction, it did so even though a treating medial provider restricted him to sedentary duty only at the time. Petitioner alleged another accident on May 10, 2022, in which he was shoveling asphalt and his "left hip and [his] arm, they started going numb and hurting even more." His upper back was "hurting so bad," and his "left arm went numb down to the fingertips." He went to an Emergency Room.

There, Dr. Powell ordered an MRI due to those complaints and "objective neuro deficits." The MRI showed multilevel advanced cervical degenerative disc disease worst at C5-6 where there was severe spinal cord stenosis, severe right foraminal narrowing, and moderate-to-severe left foraminal narrowing. In addition, there was abnormal narrowing edema of endplates C3-7 particularly at C4, which apparently may be associated with trauma. A cervical CT showed multilevel degenerative disc disease but no acute fracture. Petitioner was prescribed Medrol Dosepak and provided a cervical collar.

Petitioner discharged himself from the Emergency Room against medical advice to be admitted to the hospital because hip replacement surgery (the first of his five arthroplasties) was already scheduled for the next day. This incident was the subject of another Workers' Compensation claim, 22 WC 12658, which was consolidated and arbitrated with the instant claim. There, the Arbitrator found Petitioner proved a compensable accident on May 10, 2022 and awarded him additional medical expenses submitted into evidence, an additional 3&1/7 weeks of temporary total disability benefits, and 75 weeks of permanent partial disability benefits representing loss of 15% of the person-as-a-whole. Upon review initiated by Respondent, that decision was affirmed and adopted by the Commission under separate opinion.

In the instant claim, Jacky Ormsby, a certified vocational rehabilitation counselor, testified at arbitration that there was no stable labor market for Petitioner because of his lack of transferrable skills and physical limitations. Petitioner's §12 medical examiner, Dr. Treister, testified by deposition and opined that Petitioner was permanently restricted from gainful employment because of the permanent left foot drop, constrained left hip arthroplasty, residual symptoms of his traumatic brain injury, and his cervical spine condition. He testified that hip dislocation is the most common complication of hip replacements and once an artificial hip dislocates, the chances are 50% to 70% for another dislocation. Finally, Dr. Treister opined that Respondent's requirement that Petitioner return to work despite his residual brain injury, deteriorating left hip, and cervical spine flexion injury/moderate-to-severe stenosis, almost certainly "caused substantial additional injuries."

Respondent's first §12 medical examiner, Dr. Shadid, examined Petitioner and issued a report on October 11, 2021 in which he opined that Petitioner's hip fracture was pre-existing and there was substantial evidence of symptom magnification. He also opined the accident on February 17, 2021 could have temporarily exacerbated his left-hip arthritic condition, there were no acute findings, and the Emergency Room did not find any significant injury.

Respondent had another §12 medical examiner, Dr. Chahla, review Petitioner's medical records. He testified by deposition on June 24, 2024. Dr. Chahla testified that the imaging showed a progression of his arthritis. He could not say for certain what caused the worsening arthritic condition, but "if he did not complain about hip issues before, this is certainly a reaggravation of a pre-existing condition." He did not know why Petitioner's hip dislocated on September 12, 2022. Dislocation of a natural hip is traumatic, but with a prosthetic hip "it also can be based on different things they might do." Dr. Chahla agreed that once a person had a hip dislocation they are more susceptible to additional such dislocations. Dr. Chahla also noted Petitioner suffered exacerbation or aggravation of his hip arthritis from the accident; "if he didn't have any symptoms before, and started to have symptoms after, certainly, this action aggravated his condition from a symptomatic perspective as well." He couldn't "say with certainty that that led to the replacement *** moving forward. But certainly could have caused symptoms to be aggravated, and potentially, the replacement in the future."

Conclusions of law

The Arbitrator found Petitioner sustained his burden of proving the accident caused his current conditions of ill-being of the left hip/knee/shoulder, low back, and a mild traumatic brain injury, which had since resolved. She noted that the traumatic brain injury, knee, shoulder, and low back involved limited treatment and did not substantially affect Petitioner's level of disability. The Arbitrator awarded Petitioner medical expenses submitted into evidence, 139&3/7 weeks of temporary total disability benefits, found Petitioner permanently and totally disabled as of April 19, 2024, the date of a report from Ms. Ormsby, and imposed §19(k) penalties of $95,388.09, §19(l) penalties of $10,000.00, and §16 attorney fees of $38,155.24.

The Commission concurs with the Arbitrator on the issues of causation, medical expenses, temporary total disability benefits, and the designation of Petitioner as permanently and totally disabled. Therefore, we affirm and adopt those aspects of the Decision of the Arbitrator. In awarding penalties, the Arbitrator noted that while Respondent relied on the opinions of Dr. Shadid in suspending benefits, it then essentially abandoned his opinions and had another §12 medical evaluation performed by Dr. Chahla. Then, Dr. Chahla opined that the accident aggravated Petitioner's left-hip condition and thereafter Respondent had no basis upon which to deny medical and other benefits. She then calculated §§19(k)/19(l) penalties from September 30, 2021 through November 15, 2021 – coinciding with Petitioner's hip arthroplasties, and May 12, 2022 through April 18, 2024 – the day before Petitioner was found to be permanently and totally disabled. However, Dr. Chahla did not issue his report on May 12, 2022, from whence the Arbitrator assessed penalties.

The Commission does not agree to the extent which the Arbitrator awarded penalties. In reviewing the record and the representations of parties before the Commission, the substitution of Petitioner's Counsel, a negotiated temporary total disability advance, difficulty in scheduling Respondent's §12 examinations, and Petitioner's voluntary withdrawal of two §19(b) motions in 2023, reflect understandings between the parties during litigation which would militate against any assertion of unreasonable or vexatious delay by the Respondent.

However, the Commission agrees with the Arbitrator that once Dr. Chahla issued his §12 report on December 28, 2023[1], which effectively concurred with Dr. Treister's assessment that Petitioner's current conditions of ill-being of his left hip/foot were causally related to his accident, Respondent's refusal to pay benefits became unreasonable and vexatious. At his deposition Dr. Chahla testified that he issued his report on December 28, 2023 and at oral argument, the parties stipulated that the report was issued on that date. Therefore, the Commission will use the date of December 28, 2023 to begin calculation of penalties and fees.

The Commission calculates that the period of time between December 28, 2023 through April 18, 2024 is 16 weeks or 112 days. Therefore, the Commission modifies the award of §19(l) penalties to $3,360.00 (112 days x $30). On the issue of penalties pursuant to §19(k), the Commission notes that in his latest Petition for Penalties and Fees, Petitioner alleged non-payment of medical bills in the amount of $77,839.79, all of which pre-dated Dr. Chahla's December 28, 2023 report. Therefore, the Commission denies the imposition of penalties pursuant to §19(k) for non-payment of these medical bills. However, the Commission finds Respondent improperly withheld 16 weeks of temporary total disability benefits from December 28, 2023 through April 18, 2024 totaling $16,920.00. Therefore, Petitioner is entitled to 50% thereof, or $8,460.00 in penalties pursuant to §19(k) for non-payment of those temporary total disability benefits. In addition, Petitioner is entitled to attorney fees of $1,692.00 pursuant to §16 of the Act, representing 20% of the §19(k) penalties imposed.

[1] The parties stipulated to the date of the report at Dr. Chahla's deposition on June 24, 2024, and Dr. Chahla's deposition testimony, was based upon said report.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated October 9, 2024 is hereby modified as specified above and otherwise affirmed and adopted, which is attached hereto and made a part hereof.

IT IS FURTHER ORDERED BY THE COMMISSOIN that the Arbitrator's award of penalties and fee is vacated and in *lieu* thereof Respondent shall pay Petitioner $8,460.00 in penalties pursuant to §19(k) for non-payment of temporary total disability benefits, $3,360.00 in penalties pursuant to §19(l) for delay in payment of medical expenses, and $1,692.00 in attorney's fees pursuant to §16 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."

There is no bond for the removal of this cause to the Circuit Court by Respondent pursuant to §19(f)(2) of the Act. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 16, 2025

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

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

CAH/dw
O-5/7/25
52

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC005207
Case Name	Phillip Sikanich v. City of Chicago Department of Transportation
Consolidated Cases	22WC012658;
Proceeding Type	Petition for Penalties
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	23
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Charles Romaker
Respondent Attorney	Elaine Newquist

DATE FILED: 10/9/2024

/s/Ana Vazquez, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF OCTOBER 8, 2024 4.305%

STATE OF ILLINOIS)
)SS.
COUNTY OF Chicago)

☐ 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

Phillip Sikanich
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # **21** WC **005207**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Ana Vazquez**, Arbitrator of the Commission, in the city of **Chicago**, on **July 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 **whether Petitioner is permanently and totally disabled, addressed under Issue L**

FINDINGS

On **February 17, 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 $**84,485.00**; the average weekly wage was $**1,586.25**.

On the date of accident, Petitioner was **40** 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 $**34,355.20** for TTD, $**0** for TPD, $**0** for maintenance, and $**10,000.00** for other benefits, for a total credit of $**44,355.20**. See Ax1, No. 9.

ORDER

Respondent shall pay for the reasonable and necessary medical services, as provided in (1) Px2, Case 1, (2) Px3B, Case 1, (3) Px4, Case 1, and (4) Px3B, Case 2, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses, including credit for such payments reflected in Rx1. Per the Parties' stipulation, Respondent is entitled to a credit for bills paid by through its group medical plan pursuant to Section 8(j) of the Act. Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit. Petitioner's claim for unpaid bills from Illinois Bone and Joint Institute-Physical Therapy ($1,853.00) is denied.

Respondent shall pay to Petitioner temporary total disability benefits of **$1,057.50/week** for **139 3/7 weeks**, commencing **February 18, 2021** through **November 12, 2021** and from **May 12, 2022 through April 18, 2024**, as provided in Section 8(b) of the Act. The Arbitrator does not award maintenance benefits.

Respondent's claim for a credit for nonoccupational indemnity benefits paid to Petitioner is denied.

Respondent shall pay **$95,388.09** in penalties pursuant to Section 19(k) of the Act, **$10,000.00** in penalties pursuant to Section 19(l) of the Act, and **$38,155.24** in attorney's fees pursuant to Section 16 of the Act.

Permanent Total Disability

Respondent shall pay Petitioner permanent and total disability benefits of **$1,057.50/week** for life commencing **April 19, 2024**, as provided in Section 8(f) of the Act.

Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, 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.

Ana Vazquez

Signature of Arbitrator

October 9, 2024

PROCEDURAL HISTORY

This matter proceeded to arbitration on July 2, 2024 before Arbitrator Ana Vazquez in Chicago, Illinois. This matter is consolidated with 22WC012658. The issues in dispute include: (1) causal connection, (2) unpaid medical bills, (3) temporary total disability ("TTD") benefits and maintenance benefits, (4) the nature and extent of the injury, and (5) penalties/attorney's fees under Sections 19(k), 19(l) and 16 of the Act. Arbitrator's Exhibit ("Ax") 1. All other issues have been stipulated. Ax1.

FINDINGS OF FACT

On February 17, 2021, Petitioner was 40 years of age, single, with two dependent children. Ax1 at No. 6. Petitioner testified that he graduated from high school and did not attend any other schooling. Transcript of Proceedings on Arbitration ("Tr.") at 69. Petitioner began working for Respondent on August 17, 1999. Tr. at 67. Petitioner was employed by Respondent on February 17, 2021 and May 10, 2022 as an asphalt helper. Tr. at 67. Petitioner last worked at Respondent on May 10, 2022. Tr. at 67. Petitioner has not worked at any other jobs, besides his job at Respondent. Tr. at 69.

Duties

Petitioner testified that as an asphalt helper, one of his duties was shoveling asphalt. Tr. at 68. The weight of the shovel while he shoveled asphalt was 50 pounds. Tr. at 68. Petitioner shoveled all day long. Tr. at 68. Petitioner would also cover potholes and other deviations with asphalt, and shovel salt. Tr. at 68. Petitioner would also use a jackhammer to break up asphalt, which weighed 120 pounds, and would throw the broken-up sidewalk into the back of a truck. Tr. at 69.

Prior Injuries/Treatment

Petitioner testified that he did not have a left hip injury or receive medical treatment for his left hip prior to February 17, 2021. Tr. at 70. Petitioner did not have pain in his left hip on February 16, 2021. Tr. at 70. Petitioner testified that he believed that he had a low back injury six or seven years prior to February 17, 2021. Tr. at 83, 129. Petitioner testified that the pain he was experiencing in his low back prior to February 17, 2021 was in the lower disks with pain going down his right side. Tr. at 129. Petitioner testified that prior to February 17, 2021, he did not have difficulty remembering things. Tr. at 84-85.

February 17, 2021 Accident

On February 17, 2021, at approximately 1:30 p.m., Petitioner was shoveling salt from inside the bed of Respondent's truck. Tr. at 70-72. He was standing in the bed of the truck while shoveling salt onto the sidewalks by a Metra bridge. Tr. at 71. He was facing the back of the truck. Tr. at 71. Petitioner testified that while standing in the bed of the truck shoveling salt onto the sidewalk, "the truck started going real fast. And at that time, I got – the truck went underneath a bridge, and I got hit from the back with the truck going fast." Tr. at 71-72. Petitioner hit his head, neck, and upper back on the steel bridge, and he went forward and fell inside the truck, hitting his left hip. Tr. at 72. Petitioner briefly lost consciousness. Tr. at 72. Petitioner testified that immediately after the accident, his left hip hurt a lot, it was stiff, and he could not walk. Tr. at 73. Petitioner's brother, Steven Sikanich, helped him out of the truck. Tr. at 73. Steven Sikanich was working on the same crew as Petitioner at the time of the accident and saw the accident. Tr. at 73. Steven Sikanich took Petitioner to Northwestern Memorial Hospital. Tr. at 74, 77. Petitioner was off work following the February 17, 2021 accident through mid-November 2021. Tr. at 74.

Medical Records Summary[1]

On February 17, 2021, Petitioner was seen by Dr. Sanjeev Malik in the Emergency Department of Northwestern Memorial Hospital. Petitioner's Exhibit ("Px") 1, Case 1. Petitioner reported a consistent work accident. Petitioner complained of pain in his left shoulder, left hip, and lower back. Petitioner reported that he was under the care of a pain specialist for a L4-L5-S1 and cervical spine bulging discs. A CT scan of the bony pelvis was obtained and demonstrated a minimally comminuted and minimally distracted fracture of the lateral posterior wall of the left acetabulum. X-rays of Petitioner's left shoulder were obtained and showed no acute osseous finding and a well-corticated fragment at the inferior aspect of the glenoid rim likely related to remote trauma. X-rays of Petitioner's left knee were obtained and showed small exostosis at the lateral aspect of the proximal fibula possibly related to a healed fibular fracture or a broad based osteochondroma, but no acute fracture. X-rays of Petitioner's left hip were obtained and demonstrated a suspected non-displaced fracture of the left posterior acetabulum and mild left greater than right hip osteoarthritis. A CT scan of the brain demonstrated no acute intracranial hemorrhage. Petitioner was discharged with instructions to follow up with orthopedic doctors. On cross examination, Petitioner testified that he was given a cane at discharge. Tr. at 129-130.

On February 24, 2021, Petitioner was seen by PA Charisse Hartwig at Midwest Anesthesia and Pain Specialists, SC ("MAPS"). Px2, Case 1, at 2-7. Petitioner reported a consistent accident history. Petitioner reported that while he had chronic low back pain before the accident, the pain was exacerbated and was much worse than before. Petitioner also reported pain in his neck, low back, pelvis, bilateral shoulders, and left knee with pain traveling to his upper and lower extremities bilaterally. Petitioner had also been having headaches and memory problems. Petitioner remarked that he thought that he also had torn his bilateral rotator cuffs. PA Hartwig attempted to perform a physical examination of Petitioner but was unable to due to his severe pain and guarding. PA Hartwig ordered MRIs for the bilateral shoulders and lumbar spine and recommended referrals to an orthopedic surgeon and a neurologist. Petitioner was prescribed physical therapy and lidocaine patches. Petitioner was instructed to continue pain medications for his prior chronic low back pain. PA Hartwig kept Petitioner off work.

Petitioner followed up with PA Hartwig on March 10, 2021. Px2, Case 1, at 16-19. Petitioner reported no improvement in symptoms. PA Hartwig noted that Petitioner was wearing a lumbar brace and left knee brace that he bought himself and asked for a cane to help him ambulate better. Petitioner continued to rate his pain a 10/10. None of the imaging ordered at the previous appointment had been completed. Petitioner was kept off work.

On March 11, 2021, Petitioner had a telehealth visit with PA Angie Osmanski at MAPS. Px2, Case 1. Petitioner reported the work accident. Petitioner reported that he was in severe pain and that nothing was helping. PA Osmanski noted that Petitioner was prescribed Norco 10/325 up to five times a day, however, Petitioner admitted taking as many as nine a day. PA Osmanski noted that the Norco would not be refilled early nor would the dosage or quantity be increased.

On March 11, 2021, Petitioner was seen by Dr. Jeffery Ackerman at Illinois Bone and Joint Institute ("IBJI"). Px3A, Case 1, at 1-4. Petitioner reported a consistent accident history. Petitioner reported being in severe and constant diffuse pain since the accident. Petitioner reported that he was treated for chronic low back pain at Midwest Orthopaedics at Rush[2] and rated his pain an 8/10. Dr. Ackerman noted that Petitioner was prescribed over 100 Norco pills a month. Dr. Ackerman's diagnoses were (1) left hip nondisplaced posterior acetabular wall fracture with severe underlying hip arthritis, (2) left shoulder injury, concern for underlying rotator cuff

[1] Petitioner's Exhibit 4 consists of operative reports for the left hip related surgical procedures.

[2] Treatment records from Midwest Orthopaedics at Rush were not offered.

injury, (3) left knee contusion, and (4) concussion. Petitioner was kept off work until the shoulder MRI was completed. Dr. Ackerman referred Petitioner to a neurologist to evaluate his head injury. Petitioner testified that Dr. Ackerman discussed the potential need for a left total hip replacement at this visit. Tr. at 81-82.

On March 24, 2021, Petitioner was seen by neurologist, Dr. Anthony Savino, at IBJI. Petitioner reported a consistent accident history and that he could not remember what happened at the Northwestern Emergency Department. Px3A, Case 1, at 9-12. Petitioner reported ongoing but improving symptoms including head pain, cognitive difficulties, poor sleep, and limited cervical range of motion. Dr. Savino opined that Petitioner likely sustained a traumatic brain injury because of the work accident and recommended physical therapy for the cervical spine but deferred until orthopedic evaluation.

On April 2, 2021, Petitioner was seen by orthopedic surgeon, Dr. Theodore Fisher, at IBJI. Px3A, Case 1, at 13-15. Petitioner reported a consistent accident history and complained of lumbago and left lower extremity radiculopathy. Dr. Fisher noted that Petitioner was using a back brace and cane. X-rays of Petitioner's lumbar spine were obtained, and Dr. Fisher noted that they demonstrated disc space narrowing at L2-L3 and L3-L4 with small anterior osteophytes at these levels, as well as L4-L5 and slight retrolisthesis of L2 on L3. Dr. Fisher also reviewed the pelvic x-rays taken on March 11, 2021, and noted that they demonstrated a nondisplaced posterior wall acetabular fracture on the left and joint space narrowing, left greater than right, consistent with degenerative joint disease. Dr. Fisher's diagnoses were (1) lumbago, (2) left hip pain, (3) bilateral hip arthritis, left greater than right, (4) left acetabular fracture, (5) shoulder injury, (6) chronic opioid use, and (7) post-concussion syndrome. Dr. Fisher recommended a new MRI of the lumbar spine and that Petitioner follow up with pain management for evaluation for control of his medications and possible future injections.

Petitioner returned to Dr. Ackerman on April 9, 2021. Px3A, Case 1, at 17-19. After reviewing Petitioner's symptoms, Dr. Ackerman opined that his hip injury was the most significant and recommended physical therapy with posterior hip precautions. Dr. Ackerman noted that Petitioner may need a total hip arthroplasty in the future, but his other symptoms would need to improve first. Petitioner's pain medication regimen was also discussed, with Dr. Ackerman explaining that he would not be prescribing any narcotics given Petitioner's history of narcotic use. Dr. Ackerman continued to keep Petitioner off work.

Petitioner followed up with Dr. Savino on April 14, 2021. Px4 at 22-26. Petitioner reported ongoing symptoms including difficulty with balance and movement, eye pain, poor sleep, irritable mood, and difficulty with word retrieval and memory. Dr. Savino referred Petitioner to a neuropsychologist and noted that Petitioner was temporarily totally disabled due to ongoing reports of cognitive symptoms.

Petitioner returned to Dr. Fisher on April 21, 2021. Px3A, Case 1, at 27-28. Dr. Fisher examined Petitioner's low back and noted tenderness at the L3 to S1 levels. Dr. Fisher again ordered a lumbar spine MRI and physical therapy.

On April 28, 2021, Petitioner saw psychiatrist, Dr. Ronald Rempfer, at Uptown Psych of Illinois. Px4 at 3-5; Rx5a at 32-34. Petitioner reported the February 2021 work accident. Petitioner reported that he had trouble sleeping since the accident. Petitioner reported that during the day, he experienced bouts of hyperventilation, tachycardia, sweating, and nausea accompanied by a feeling of dread or dying. Dr. Rempfer diagnosed Petitioner with (1) panic disorder, (2) attention deficit/hyperactivity disorder, (3) unspecified neurocognitive disorder, and (4) acute stress disorder, and prescribed alprazolam.

Petitioner next saw Dr. Ackerman on May 7, 2021. Px3A, Case 1, at 29-31. Dr. Ackerman noted that Petitioner had severe underlying arthritis of the hip which was aggravated by the work accident. The fracture was healing; however, the majority of Petitioner's symptoms were emanating from his hip arthritis. Dr. Ackerman noted that

Petitioner was unable to return to work. Petitioner followed up with Dr. Ackerman on June 3, 2021. Px3 at 33-34. Dr. Ackerman's diagnosis was aggravation of left hip arthritis with healing of nondisplaced posterior wall acetabular fracture.

On June 8, 2021, Petitioner underwent an MRI of his left shoulder which demonstrated (1) suspected soft tissue contusion, less likely inflammation, hemangioma, involving the dorsal subcutaneous tissues overlying the scapular spine, (2) low-grade interstitial partial tearing of the infraspinatus, subscapularis tendons, intact supraspinatus tendon, (3) no high-grade/full thickness rotator cuff tear or muscle atrophy, (4) moderate acromioclavicular osteoarthritis, and (5) degeneration, fraying of the superior labrum. Px3A, Case 1, at 35-36. Petitioner followed up with Dr. Fisher on June 18, 2021. Px3 at 37-38.

Petitioner again saw Dr. Savino on June 23, 2021. Px3A, Case 1, at 39-42. Petitioner reported continued difficulty with sleep, cognitive symptoms, and increased anxiety. Dr. Savino prescribed Petitioner lorazepam as his psychiatrist had recently left practice, noting that Petitioner would need to find a new provider for medication management. Dr. Savino also prescribed Trazadone for sleep.

Petitioner underwent a neuropsychological evaluation by Dr. Matthew Landstrom, at the Landstrom Center, on July 2, 2021. Rx6. Dr. Landstrom noted that he had indication of noncredible effort across multiple measures at a basic level, and therefore, the entirety of the cognitive data could not be trusted. Due to the Performance Validity Tests failures, Dr. Landstrom could not in "good conscience" use the cognitive data to provide a diagnosis. He noted that Petitioner was endorsing symptoms suggestive of somatization disorder, which is best diagnostically classified as unspecified somatic symptom and related disorder. Dr. Landstrom encouraged Petitioner to consider psychotherapy with a Health Psychologist.

On July 22, 2021, Petitioner followed up with Dr. Ackerman. Px3A, Case 1, at 43-54. Petitioner reported continued multiple severe musculoskeletal complaints. Petitioner expressed interest in an intra-articular hip cortisone injection and a left shoulder subacromial cortisone injection. Dr. Ackerman released Petitioner to return to work with sedentary work restrictions. Petitioner testified that Dr. Ackerman suggested that he undergo a left hip injection on June 3, 2021 and July 22, 2021, which was not authorized by Respondent. Tr. at 88. Petitioner testified that he did not undergo the left hip injection recommended by Dr. Ackerman. Tr. at 88. Respondent did not accommodate Petitioner's sedentary work restrictions. Tr. at 89. Petitioner followed up with Dr. Fisher on July 28, 2021. Px3A, Case 1, at 64-65.

Petitioner returned to Dr. Savino on August 11, 2021. Px3A, Case 1, at 69-81. Petitioner reported doing better overall. Petitioner had tapered his lorazepam and trazadone use, and his anxiety was better under control and his cognition had improved. Sleep continued to be an issue. Dr. Savino noted Petitioner's difficulty with being seen by a new psychiatrist. Dr. Savino updated Petitioner's work restrictions to include light duty work.

Petitioner attended physical therapy at IBJI from May 13, 2021 through August 26, 2021. Px5A, Case 1, at 1-25. Despite having overall improvement in functional mobility, Petitioner reported that he continued to be in a lot of pain and wished to discontinue physical therapy while awaiting approval for more treatment. Petitioner testified that he attended physical therapy two to three times a week, and that the physical therapy did not improve his left hip condition. Tr. at 87.

Petitioner again saw Dr. Ackerman on November 22, 2021. Px3A, Case 1, at 82-99. Petitioner continued to complain of significant hip pain, however, Dr. Ackerman noted that based on recent imaging, the hip fracture was healed, and the pain stemmed from Petitioner's underlying hip arthritis. Dr. Ackerman continued Petitioner's sedentary work restrictions. Petitioner testified that Dr. Ackerman again recommended a left hip injection, which was not authorized by Respondent. Tr. at 90. Petitioner testified that Dr. Ackerman also

recommended and discussed Petitioner having a left total hip replacement on November 22, 2021. Tr. at 90. Petitioner testified that the left total hip replacement recommended by Dr. Ackerman was not authorized by Respondent. Tr. at 90.

Petitioner returned to work at Respondent in mid-November 2021 shoveling asphalt, as well as salt when needed. Tr. at 74, 133. His left hip still hurt. Tr. at 75. Petitioner returned to work because his benefits were terminated by Respondent. Tr. at 75, 132. Petitioner worked eight hours a day, as well as some overtime, between November 16, 2021 and May 10, 2022. Tr. at 133. During this period, Petitioner was allowed to sit in a truck when his hip hurt. Tr. at 147.

Petitioner next saw Dr. Fisher on December 15, 2021. Px3A, Case 1, at 103-107. Petitioner continued to complain of low back pain, and he reported continued numbness and tingling in the left posterior lateral thigh, leg, and occasionally in the foot. Dr. Fisher's diagnoses were (1) lumbar degenerative disc disease, recurrent sciatica; (2) left hip arthritis, (3) non-displaced posterior wall acetabular fracture, (4) left shoulder internal derangement, and (5) post-concussion syndrome. Dr. Fisher recommended that Petitioner continue his exercise program and ordered another MRI of the lumbar spine to evaluate Petitioner's back pain and his lower extremity symptoms. Petitioner's sedentary work restrictions were continued. Petitioner testified that he was required to continue working full duty despite Dr. Fisher's sedentary restrictions. Tr. at 91.

On March 7, 2022, Petitioner saw Dr. Lalit Puri at Northshore University Healthcare. Px6, Case 1, at 1-16. Petitioner reported a consistent accident history and denied preexisting hip pain. X-rays were obtained and reviewed by Dr. Puri. Dr. Puri's diagnosis was severe symptomatic degenerative joint disease of the left hip. Dr. Puri recommended a hip arthroplasty. Petitioner testified that he saw Dr. Puri on his own using group insurance, because Respondent did not authorize the left total hip replacement recommended by Dr. Ackerman. Tr. at 93.

Petitioner testified that on May 10, 2022, while at work, he was shoveling asphalt and his left hip and arm started going numb and hurt more, his upper neck hurt bad, and his left arm was numb down to the fingertips. Tr. at 75-76, 134-135. Petitioner went to the emergency room at Northwestern Memorial Hospital after the May 10, 2022 accident. Tr. at 76. Petitioner testified that at the time of the May 10, 2022 accident, he had a left total hip replacement scheduled on May 12, 2022 with Dr. Puri. Tr. at 77. Dr. Puri scheduled the left total hip replacement on March 7, 2022. Tr. at 77. Petitioner testified that he had difficulty walking and pain in his left hip during the period of November 2021 through May 2022. Tr. at 92. Petitioner testified that he took pain medication during this time. Tr. at 92.

On May 11, 2022, Petitioner reported to the Emergency Department of Northwestern Memorial Hospital complaining of new left-sided neck pain. Petitioner explained that the pain began the day before while working. Px2, Case 2, at 1-12. The pain was primarily in his left posterior neck with sharp shooting pain down his left arm with associated weakness and numbness/tingling. Dr. Emilie Powell noted that Petitioner had presented at the Emergency Department of Rush within the past month with similar complaints.[3] Petitioner left the emergency department against the advice of hospital staff, however, an MRI of the cervical spine was obtained and reviewed by Dr. Powell. Dr. Powell noted that the cervical spine MRI demonstrated (1) multilevel advanced degenerative changes of the cervical spine superimposed on a developmentally slender spinal canal. Findings worst at C5-C6 where a posterior disc osteophyte complex asymmetric to the right, uncovertebral hypertrophy, and facet arthropathy result in severe spinal canal stenosis with moderate mass effect of the right aspect of the central spinal cord, severe right neural foraminal narrowing, and moderate to severe left foraminal narrowing, (2) questionable STIR signal hyperintensity within the spinal cord from C5-C7, which may be artifactual.

[3] Treatment records from the Emergency Department of Rush University Medical Center were not offered.

Evaluation of the spinal cord was limited on axial MEDIC sequences due to motion artifact, and (3) abnormal marrow edema involving the vertebral endplates from C3-C7, particularly prominent at the inferior endplate of C4. These findings were favored to relate to Modic type I degenerative endplate changes. If there was a history of trauma or any concern for fracture, a CT scan of the cervical spine was recommended for further evaluation to exclude fracture.

Petitioner underwent a left total hip arthroplasty on May 12, 2022. Px6, Case 1, at 78-79. Petitioner testified that Dr. Puri kept him off work following the May 12, 2022 surgery. Tr. at 96. Petitioner testified that Dr. Puri ordered physical therapy for his left hip on May 12, 2022, which was not authorized by Respondent. Tr. at 96, 148. Petitioner testified that he followed Dr. Puri's postoperative instructions. Tr. at 136. Petitioner did not attend postoperative physical therapy. Tr. at 137.

On May 18, 2022, Petitioner was seen by Dr. Mark Nolden at Northshore Evanston Hospital for neck pain. Px5A, Case 2, at 1-34. Petitioner recounted that on May 10, 2022, he began to experience significant neck pain radiating into the forearm and hand while working. Petitioner reported continued weakness and numbness. Dr. Nolden reviewed the cervical spine MRI and noted advanced subaxial cervical spondylosis with moderate to severe canal stenosis from C3-C6 with severe left-sided neural foraminal stenosis at the same levels and left-sided cervical spondylitis polyradiculopathy with weakness. Dr. Nolden recommended an anterior cervical diskectomy and fusion from C3-C6, however, Dr. Nolden ordered left upper extremity neurodiagnostic studies and a new CT scan of Petitioner's cervical spine before moving further. Petitioner was kept off work.

Petitioner had a telemedicine follow-up visit with Dr. Nolden on June 8, 2022. Px5A, Case 2, at 35-59. Petitioner's CT scan and EMG/NCV study were reviewed, the latter of which was unremarkable. The CT scan showed significantly advanced degenerative changes for someone of Petitioner's age and sex, consistent with what was shown in the MRI. Petitioner continued to complain of significant left-sided neck pain radiating into the left shoulder with shakiness in his left upper extremity and weakness throughout. Dr. Nolden's surgical recommendation continued.

Petitioner testified that he dislocated his left hip on September 11, 2022. Tr. at 99. Petitioner testified that he was walking normally, his left hip dislocated, and he fell to the ground. Tr. at 99, 148. Petitioner fell on the sidewalk into grass. Tr. at 148-149. Petitioner could not get up. Tr. at 99, 100. Petitioner testified that he did not take any heroin on September 11, 2022, or overtake a prescription. Tr. at 100, 138-139. Petitioner did not believe that he took any of his prescribed medications on September 11, 2022. Tr. at 139. Petitioner testified that he was taking oxycodone and Lyrica at this time as prescribed by his doctors. Tr. at 100-101. Petitioner agreed that he was also taking Xanax, Flexeril, gabapentin, and oxycontin as also prescribed by his doctors. Tr. at 101.

On September 11, 2022, Petitioner was taken to Resurrection Medical Center via ambulance after being found on the ground by bystanders. Px6, Case 2; Rx9; Rx10. An opioid overdose was suspected and Narcan was administered. EMS noted that Petitioner became more alert after administering Narcan and complained of left hip pain. X-rays confirmed dislocation of the left hip prosthesis. Petitioner reported taking gabapentin and Flexeril and denied any narcotic use. A drug screen was positive for opioids. Petitioner was given fentanyl for pain. A closed hip reduction was unsuccessful. Petitioner was admitted for an open hip reduction surgery the next day under general anesthesia. On September 12, 2022, Petitioner underwent an attempted closed reduction, open reduction left total hip arthroplasty to treat dislocation of left total hip arthroplasty by Dr. Brian McCall. Petitioner testified that he was drowsy and falling asleep when being picked up one hour prior to the September 12, 2022 surgery, and that he had episodes of drowsiness and falling asleep since the February 17, 2021 accident. Tr. at 103. Petitioner was discharged on September 14, 2022, and was prescribed Norco for pain but was advised that the prescription would not be refilled. Petitioner testified that he was kept off work by Dr. McCall following discharge. Tr. at 104. Petitioner testified that he was conscious when the paramedics arrived

on September 11, 2022. Tr. at 139. Petitioner recalled being given Narcan by the paramedics on September 11, 2022 and testified that he was "fine" and "the same" after being given Narcan, that he was in pain, and that the Narcan did not do anything. Tr. at 140. Petitioner did not recall telling the paramedics that he received a prescription for naloxone a month earlier, and testified that he was told by his doctor that it was a good idea to have naloxone because he was taking opioids. Tr. at 141-142.

Petitioner testified that he dislocated his hip again on September 22, 2022 when he stepped out of bed. Tr. at 105. On September 22, 2022, Petitioner presented at Northshore Evanston Hospital complaining of continued hip pain that was acutely worse. Px3A, Case 2, at 304. X-rays were obtained and confirmed dislocation of the hip, specifically, superior and lateral dislocation of the left femoral head prothesis with no definite fracture identified. A closed hip reduction was unsuccessful. An open hip reduction was performed by Dr. Puri on September 23, 2023. Petitioner was discharged on September 28, 2022. Petitioner testified that Dr. Puri kept him off work. Tr. at 105.

Petitioner followed up with Dr. Puri on October 3, 2022. Px6, Case 1, at 84-85. X-rays were obtained and showed no fracture or dislocation of the left hip prothesis and arthritic changes in the right hip. Dr. Puri recommended Petitioner begin outpatient physical therapy, continue strict hip precautions for 12 weeks, and continue wearing a knee immobilizer for 6 weeks.

Petitioner testified that he dislocated his hip again on October 6, 2022. Tr. at 106. Petitioner testified that he was simply walking, he heard some clicking, and he felt his hip pop out and dislocate. Tr. at 106. On October 6, 2022, Petitioner returned to Northshore Evanston Hospital complaining of leg pain that had increased in the previous two days and a clicking in his hip. Px3A, Case 2, at 850. X-rays were obtained and a hip dislocation was confirmed. A closed reduction was unsuccessful, and an open hip reduction was performed by Dr. Anard Srinivasan on October 7, 2023. Petitioner was discharged on October 10, 2022. After consulting with Dr. Eun-Kyu Koh, Petitioner was discharged with only a week's supply of oxycodone and was advised that any refills would be a weaning dose. Petitioner testified that Dr. Srinivasan kept him off work. Tr. at 106.

On October 17, 2022, Dr. Puri noted well-positioned components in the left hip, as well as moderate to severe degenerative disease involving the right hip joint associated with femoral acetabular impingement. Px6, Case 1, at 106-108. It was noted that Petitioner explained that he was going through withdrawal when his most recent dislocation occurred. Dr. Puri explained to Petitioner the risks of his hip dislocating. Dr. Puri noted that it was unclear if Petitioner had been wearing his hip immobilizer and could not get a definitive answer when asked. Petitioner was instructed to return every couple of weeks to make sure that pain was managed.

Petitioner returned to Dr. Puri on November 2, 2022 and November 7, 2022. Px6, Case 1, at 123-15, 127-128. On November 7, 2022, it was noted that Petitioner's medications included oxycodone prescribed by Dr. Koh to be taken for moderate to severe pain. Petitioner testified that Dr. Puri kept him off work. Tr. at 111.

Petitioner testified that his hip dislocated again on November 13, 2022, while getting off a Pace bus. Tr. at 107. Petitioner testified that he was walking down the steps normally to get off the bus, stepped on the asphalt, and his hip dislocated. Tr. at 107-108. On November 13, 2022, Petitioner presented at Northshore Hospital following another dislocation. Px7, Case 2, at 1-17. An MRI of the lumbar spine was obtained, which was limited, and demonstrated (1) previously present multilevel degenerative changes not appreciably changed from the prior study, including mild-to-moderate spinal canal stenosis at L3-L4 and L4-L5 and mild spinal stenosis at L2-L3, (2) varying degrees of up to moderate foraminal narrowing were also present, and (3) edema and/or hemorrhage within the left iliopsoas musculature. Dr. Puri noted that there continued to be instability with the left hip and that an MDM head liner was trialed and provided no greater stability. After consulting with colleagues, Dr. Puri and Petitioner decided to try a constrained head liner. Dr. Puri noted Petitioner's history of

substance abuse and was concerned that it was contributing to inconsistent adherence to hip precautions and frequent dislocations. Petitioner testified that he first noticed a left foot drop on November 13, 2022. Tr. at 108. Petitioner testified that his left foot was not working, it was paralyzed, it was numb, he could not pick it up, and he could not move it. Tr. at 108-109. Petitioner could not lift his foot up when he walked. Tr. at 109. On November 14, 2022, Petitioner underwent a left hip open reduction with conversion to a constrained liner, noting the 8+ head was modularly revised to a +0 28 and an X3 polyethylene liner revised to a constrained liner. Petitioner was discharged on November 17, 2021. Px7, Case 2, at 1-17. Petitioner testified that he noticed less mobility and range of motion after the November 14, 2022 surgery. Tr. at 109-110. Petitioner testified that Dr. Puri kept him off work after the November 14, 2022 surgery. Tr. at 110. Petitioner testified that Dr. Puri recommended a left foot brace on November 14, 2022. Tr. at 114-115.

Petitioner followed up with Dr. Puri on December 12, 2022, January 4, 2023, January 18, 2023, and March 20, 2023. Px6, Case 1, at 131-134, 148-151, 160-162, 167-168. On January 18, 2023, Dr. Puri noted that Petitioner was unable to return to work due to limited range of motion. On March 20, 2023, Dr. Puri noted that Petitioner could walk well without the hip brace, however, Petitioner was instructed to continue wearing the hip brace until May 2023. Petitioner testified that Dr. Puri kept him off work. Tr. at 111.

Petitioner next saw Dr. Puri on May 15, 2023. Px6, Case 1, at 187-196. X-rays were obtained and showed a well-positioned total left hip arthroplasty and advanced degenerative disease involving the right hip joint. Petitioner agreed to wear the hip brace indefinitely. Dr. Puri noted that Petitioner had been unable to work due to his restrictions, recovery, and therapy, and would remain off work until further notice.

Petitioner returned to Dr. Puri on September 25, 2023. Px6, Case 1, at 211. X-rays of the bilateral hips were obtained, and Dr. Puri noted that the left hip arthroplasty remained well positioned but the right hip x-rays showed severe degenerative joint disease. Dr. Puri's impressions were degenerative changes present in the right hip and satisfactory postoperative left hip. Dr. Puri discharged Petitioner from his care for the left hip and noted that Petitioner would need to find another provider for treatment of the right hip. Petitioner has not sought treatment for his right hip. Tr. at 145.

On October 25, 2023, Petitioner was seen by Dr. Kevin Tu at G & T Orthopaedics and Sports Medicine. Px8, Case 2, at 2-3. Petitioner recounted his orthopedic history dating back to the February 2021 accident. Petitioner reported that following his third hip dislocation, he started having weakness in his left foot where he could not dorsiflex his foot. Another acetabular procedure and revision hip surgery and another dislocation followed. At this visit, Petitioner complained of limited range of motion in his left hip and an inability to fully dorsiflex his left foot. Petitioner denied any symptoms prior to February 17, 2021. Dr. Tu diagnosed Petitioner with left foot drop and left hip status post total hip arthroplasty with subsequent revision to constrained hip prothesis. Dr. Tu explained that there were few treatment options for the left foot drop except for ankle-foot orthosis. Dr. Tu noted that Petitioner would not be able to return to his normal activities, remarking that Petitioner could walk only for four minutes, and that work restrictions should include sitting 90% of the time.

Petitioner again saw Dr. Tu on April 17, 2024. Px8, Case 2, at 4-5. Dr. Tu noted that Petitioner continued to have significant dysfunction in his left lower extremity, wearing both a hip arthrosis and a left ankle-foot arthrosis. Petitioner had difficulty with ambulation. There was no change in Petitioner's diagnoses. Dr. Tu noted that he was unable to offer Petitioner much in the form of treatment and maintained Petitioner on a 90% sitting work restriction.

Current Condition

Petitioner testified that he has worn a hip brace since May 12, 2022. Tr. at 97, 122. Petitioner testified that he wears a hip brace so that his hip does not dislocate and because it helps him walk. Tr. at 114. Petitioner testified that after the November 14, 2022 surgery, he cannot open his left hip to get out of a chair. Tr. at 110. Petitioner testified that he has been wearing a left foot brace since November 14, 2022. Tr. at 115, 122. Petitioner testified that the brace keeps his foot up while walking so that he does not trip. Tr. at 115.

Regarding his left hip, Petitioner testified that he does not have range of motion and he has a lot of pain. Tr. at 117. Petitioner testified that he cannot do the physical activities he once did. Tr. at 117. Petitioner takes gabapentin, Flexeril, and ibuprofen, as well as oxycontin if he is in severe pain. Tr. at 117-118, 119. Petitioner testified that he can maybe stand a few minutes before having to sit down. Tr. at 118. Petitioner testified that he cannot walk fast or run, and that he cannot shovel 50 pounds of asphalt. Tr. at 118. Petitioner testified that he cannot lift anything over 10 pounds. Tr. at 119. Regarding his left foot, Petitioner testified that it is not getting better, it hurts, and that his whole leg hurts. Tr. at 119. Petitioner cannot move his foot on his own. Tr. at 120. Petitioner testified that the medications he takes affect his ability to concentrate, and that he is tired and falls asleep often. Tr. at 120-121. Petitioner testified that he was not on any medications at the time of hearing, because he was told to not take any. Tr. at 121. Petitioner testified that he has difficulty sleeping and wakes up in the middle of the night with pain in his hips, neck, and back. Tr. at 121.

Testimony of Steven Sikanich

Petitioner called his brother, Mr. Steven Sikanich, as a witness. Tr. at 19. Mr. Sikanich was employed by Respondent as an asphalt laborer on February 17, 2021. Tr. at 19-20. Mr. Sikanich testified that prior to February 17, 2021, he did not ever observe Petitioner to have pain in his left hip and Petitioner did not otherwise indicate that he had pain in his left hip. Tr. at 20.

Mr. Sikanich was working the same job assignment as Petitioner on February 17, 2021. Tr. at 20, 25. Mr. Sikanich and Petitioner were directed by their supervisor to throw salt off the back of Respondent's truck onto a sidewalk near 3300 N. Ravenswood under a Metra viaduct. Tr. at 20. Mr. Sikanich was present at the time of Petitioner's accident. Tr. at 20-22. Mr. Sikanich testified that Petitioner was standing in the bed of Respondent's truck on top of a "mountain" of salt, shoveling salt from the truck to the sidewalk. Tr. at 22, 26. Petitioner was facing towards the gate of the truck. Tr. at 22, 27-28. Mr. Sikanich testified that the driver of the truck moved the truck and that Petitioner hit the back of his head on the Metra viaduct and then he flipped forward into the truck bed. Tr. at 22-23. Mr. Sikanich saw Petitioner flip forward. Tr. at 29-30. Mr. Sikanich testified that he believed that Petitioner's legs hit the back of the gate of the bed of the truck. Tr. at 30. Petitioner was rendered unconscious. Tr. at 23, 31. Mr. Sikanich testified that at the time of Petitioner's accident, he was about to get on top of the bed of the truck to help Petitioner shovel. Tr. at 27. The truck was stopped when he was about to climb onto the truck, but then the truck moved. Tr. at 29. Mr. Sikanich testified that the truck moved "more than a couple feet." Tr. at 29. The truck went underneath the viaduct. Tr. at 29. Mr. Sikanich testified that he had to scream for the truck to stop moving. Tr. at 30. Mr. Sikanich testified that the foreman, Neil Ludwig, was also on the crew, but was not around at the time of the accident. Tr. at 30-31. Mr. Sikanich assisted Petitioner to the emergency room at Northwestern Memorial Hospital. Tr. at 23, 24. Mr. Sikanich testified that after the accident, Petitioner could not walk. Tr. at 24. Mr. Sikanich recalled picking Petitioner up and throwing him over his shoulder, then jumping over the truck, and putting Petitioner in his car to take him to the hospital. Tr. at 31-32. Mr. Sikanich testified that Petitioner was in and out of consciousness while on the way to the hospital. Tr. at 32-33.

Testimony of Certified Vocational Counselor Jacky Ormsby

Petitioner called Ms. Jacky Ormsby as a witness. Tr. at 37. Ms. Ormsby testified as to her education and credentials as a certified vocational counselor. Tr. at 37-40.

Petitioner was referred to Ms. Ormsby for a vocational evaluation in July 2023. Tr. at 40. Ms. Ormsby prepared three reports dated July 25, 2023, April 19, 2024, and May 21, 2024[4]. Tr. at 41. Ms. Ormsby was provided with medical documents for preparation of her reports and met with Petitioner telephonically on July 20, 2023. Tr. at 41. Ms. Ormsby also reviewed Dr. Treister's IME in preparation of her report. Tr. at 44.

Ms. Ormsby testified that Petitioner was a laborer for Respondent, which is classified as a medium physical demand level position. Tr. at 46. Ms. Ormsby testified that Petitioner had only a high school degree, which he obtained in 1998 from Carl Schurz Highschool. Tr. at 47, 48. Ms. Ormsby testified that Petitioner did not have any other education, training, or certifications, and that Petitioner learned everything at his job with Respondent. Tr. at 47. Petitioner worked for Respondent from 1999 until May 10, 2022 and it was the only job he ever had. Tr. at 47-48. Ms. Ormsby testified that Petitioner stated that he did not have any computer skills, did not own a computer, and was a "one-finger slow typer." Tr. at 48. Ms. Ormsby testified that at the time of her July 25, 2023 report, Petitioner did not have a work release, and so, she felt that Petitioner was unable to work at that time. Tr. at 49. Ms. Ormsby testified that Petitioner did not really have any transferrable skills even if he had a work release at that time. Tr. at 49. Ms. Ormsby testified that Petitioner was not a competitive employee and that nobody would hire him without a work release. Tr. at 49. Ms. Ormsby testified that Petitioner was also not a competitive employee because of his injury, lack of education and training, limited skills, and no computer skills. Tr. at 50. Ms. Ormsby testified that at the time of her July 25, 2023 report, she opined that there was no stable labor market for Petitioner. Tr. at 50.

Ms. Ormsby testified that she reviewed additional information in preparation of her April 19, 2024 report. Tr. at 50. Ms. Ormsby testified that Dr. Treister felt that Petitioner was permanently restricted from gainful employment because of his injuries and that Petitioner may be unable to focus or thought process properly as a result of the brain injury. Tr. at 50-51. Ms. Ormsby testified that her opinions at that time were the same as those of her July 25, 2023 opinions, and that Petitioner did not have a work release at that time. Tr. at 51. Ms. Ormsby testified that her opinion at that time was that there was no stable labor market for Petitioner. Tr. at 51-52. Ms. Ormsby testified that Petitioner would have difficulty performing a job if he has memory issues. Tr. at 53. Ms. Ormsby testified it was her understanding that Petitioner was taking pain medication at the time that she spoke with him, and that would also affect his concentration and ability to work. Tr. at 53. Ms. Ormsby testified that she did not think that anyone would hire Petitioner in his current state. Tr. at 53.

On cross examination, Ms. Ormsby testified that she met with Petitioner only in July 2023, and that her subsequent reports of April 2024 and May 2024 were in response to Dr. Treister's reports or information. Tr. at 54-55. Ms. Ormsby was not provided with and did not review Dr. Landstrom's report or Dr. Allen's report. Tr. at 55. Regarding Petitioner's brain injury, Ms. Ormsby relied on Dr. Treister's reports and Dr. Tu's work release of April 17, 2024. Tr. at 55-57, 62. Ms. Ormsby testified that her opinions are in part predicated on what she perceived Petitioner's cervical spine condition to be in July 2023. Tr. at 58. The last record reviewed by Ms. Ormsby of Dr. Puri's was Dr. Puri's July 2023 record. Tr. at 59. She did not have Dr. Puri's discharge record or release regarding the hip. Tr. at 59. Ms. Ormsby testified that she did not know if Dr. Puri imposed any permanent restrictions for the hip. Tr. at 59. Ms. Ormsby testified that she was not 100-percent sure who prescribed Petitioner the left leg brace. Tr. at 60. Ms. Ormsby was not aware that Dr. Puri had limited the period

[4] The Vocational Reports prepared by Jacky Ormsby dated July 25, 2023, April 19, 2024, and May 21, 2024 were admitted as Px11, Case 2.

Petitioner was to wear the brace. Tr. at 60. Ms. Ormsby testified that a portion of her opinions regarding Petitioner's employability are predicated on his continued use of a leg brace. Tr. at 60. Ms. Ormsby testified that someone with a limited intellect can work in some capacity. Tr. at 60. Ms. Ormsby testified that it depends on the employer whether someone with limited walking or standing ability can work. Tr. at 60. Ms. Ormsby agreed that there are jobs available for individuals in wheelchairs and with canes. Tr. at 60-61. Ms. Ormsby testified that a person can be trained to use a computer. Tr. at 61. Ms. Ormsby testified that someone with difficulty walking or driving long distances can be employed from home, but that it was harder to obtain that kind of job. Tr. at 61. Ms. Ormsby testified that she was having difficulty finding at-home jobs, and that it was a short-lived trend post-COVID. Tr. at 61. Ms. Ormsby provides vocational retraining and placement services. Tr. at 62-63.

On redirect examination, Ms. Ormsby testified that typically the requirement of sitting 90-percent of the time would require some type of computer work, and that with sedentary jobs, if you do not have computer skills, "there's not going to be a whole lot." Tr. at 65. Ms. Ormsby testified that in customer service, "[i]t's not going to be just telephone work. You're going to be possibly inputting information into a computer." Tr. at 65. Ms. Ormsby testified that she has done a study regarding similar jobs, and that even a receptionist position requires working on a computer. Tr. at 65. Ms. Ormsby testified that "sedentary jobs and computer experience I think are key to getting employment. And not everybody is good with computers." Tr. at 65. Ms. Ormsby testified that she did not think it was likely Petitioner would get a "computer at-home job." Tr. at 66.

Section 12 Examination by Dr. Neil Allen

Dr. Neil Allen's Independent Medical Examination report dated June 2, 2022 was admitted as Rx7,Case 1, subject to stipulations made by the Parties at trial. See Tr. at 179-182.

Petitioner was examined by Dr. Allen on May 9, 2022. Dr. Allen noted that there were no objective findings for headache or focal findings suggesting brain injury or damage on MRI scans or on the examination. Dr. Allen opined that Petitioner's diagnosis was (1) mild traumatic brain injury, resolved, and (2) headaches, resolved. Dr. Allen further opined that the diagnoses of headache, thought problems, and anxiety were partially causally related to the work accident, but had largely resolved according to Dr. Savino's examination. Dr. Allen opined that the conditions of headache, anxiety, dizziness, and cognitive problems did not preexist the work accident. Dr. Allen noted that he did not believe that the work accident had any effect on any preexisting conditions from a neurological point of reference. Dr. Allen opined that Petitioner's headaches had improved to the point where they no longer would affect his returning to work. Dr. Allen also opined that Petitioner's cognitive processing had improved to the point where he would be able to perform his job without any restrictions based on his examination, Dr. Landstrom's examination, and Dr. Savino's work release. Dr. Allen opined that Petitioner's treatment, testing, and therapy had been reasonable, necessary, and related to the work accident and that further diagnostic testing and treatment were no longer indicated. Dr. Allen further opined that while Petitioner's headaches and cognitive processing were improving, his sleep dysfunction and anxiety were not, and that Petitioner would benefit from psychiatric and psychological care based on his anxiety. Dr. Allen opined that as far as cognitive functioning, headache, and vestibular function, no further treatment was indicated. Dr. Allen further opined that Petitioner had no work restrictions based on headaches, vestibular function, and cognitive processing, and that Petitioner had reached MMI for these conditions on or about August 11, 2021, the date that he was cleared for light duty by Dr. Savino.

Evidence Deposition Testimony of Dr. Michael Treister

Dr. Michael Treister testified by way of evidence deposition on September 21, 2023 and June 25, 2024. Px9, Case 2; Px10, Case 2. Dr. Treister testified as to his education and credentials as a board-certified orthopedic surgeon. Px9, Case 2 at 6-8; Px10, Case 2 at 5. Dr. Treister has performed spine surgeries, hand surgeries,

rotator cuff and other shoulder surgeries, and arthroscopic and total joint surgeries, including hips and knees. Px9, Case 2 at 8.

Dr. Treister examined Petitioner on April 28, 2023, at Petitioner's request. Px9, Case 2 at 10-11. Dr. Treister generated a report dated May 2, 2023 after his examination of Petitioner and review of Petitioner's medical records. Px9, Case 2 at 10, Exhibit 2. Dr. Treister's testimony of September 21, 2023 is consistent with his May 2, 2023 report.

Dr. Treister generated an addendum report on April 17, 2024 after his review of Dr. Jorge Chahla's Independent Medical Examination report. Px10, Case 2, at 5, 6. Dr. Treister's testimony of June 25, 2024 is consistent with his April 17, 2024 addendum report.

Evidence Deposition Testimony of Respondent's Section 12 Examiner, Dr. Jorge Chahla

Dr. Jorge Chahla testified by way of evidence deposition on June 24, 2024. Rx11, Case 2. Dr. Chahla testified as to his education and credentials as an orthopedic surgeon with specialization in hip, knee, and shoulder pathology, mainly in sports medicine. Rx11, Case 2, at 7-13.

Dr. Chahla performed an expert review addressing Petitioner's left hip condition. Rx11, Case 2, at 13, 16. As part of his expert review, Dr. Chahla reviewed medical records from Northwestern Hospital, Dr. Ackerman, Dr. Puri, Amita Health Resurrection Center, and Evanston Hospital for treatment from February 17, 2021 through May 17, 2023 and imaging studies, including films. Rx11 at 14, 16, 20, 25, 29. Dr. Chahla reviewed the CT scan of the left hip of February 17, 2021 and testified that it showed a fragment on the back wall of the acetabulum with rounded borders, which "happens when you have something chronically." Rx11 at 18. Dr. Chahla testified that he consulted with his partners, and that the fracture did not appear to be acute. Rx11 at 18-19. Dr. Chahla testified that it was difficult to ascertain whether the fracture was acute or chronic without an MRI. Rx11 at 33-34. Dr. Chahla testified that the x-rays and CT scan of the left hip demonstrated mild to moderate arthritis. Rx11 at 20. Dr. Chahla reviewed the March 11, 2021 x-rays of the left hip and testified that they showed more arthritis. Rx11 at 20-21. Dr Chahla agreed with the radiologist's interpretation of the March 11, 2021 x-rays. Rx11 at 21. Dr. Chahla reviewed the April 9, 2021 left hip x-rays and testified that they showed severe end-stage osteoarthritis with bone-on-bone degenerative changes. Rx11 at 22. Dr. Chahla also reviewed the left hip x-rays of May 7, 2021, and testified that Dr. Ackerman's interpretation was that they showed a less pronounced left acetabular posterior wall fracture line indicative of evidence of early healing. Rx11 at 23. Dr. Chahla, however, testified that he could still see the fracture line on the x-ray when he reviewed them. Rx11 at 23. Dr. Chahla reviewed the operative report of May 12 2022, as well as postoperative left hip x-rays. Rx11 at 26, 29, 30, 31. Dr. Chahla testified that Petitioner's left foot drop was noticed on November 13, 2022, and that a left foot drop can have multiple causes, including nerve damage. Rx11 at 31. The last record reviewed by Dr. Chahla was Dr. Puri's office visit note of May 17, 2023. Rx11 at 32.

After review of Petitioner's treatment records and imaging studies, Dr. Chahla opined that Petitioner's left hip fracture was not acute. Rx11 at 33-34, 35. Dr. Chahla testified that the left hip x-rays of February 17, 2021, March 11, 2021, and April 9, 2021 showed osteoarthritic progression. Rx11 at 35. Regarding whether the accident caused Petitioner's left hip arthritic condition to increase, Dr. Chahla testified that he could not say with certainty, however, "if [Petitioner] did not complain about hip issues before, this is certainly a reaggravation of a preexisting condition." Rx11 at 35. Dr. Chahla testified that a hip dislocation of a prosthetic hip can be a traumatic injury and that a hip dislocation is an acute injury. Rx11 at 36-37. Regarding the left foot drop, Dr. Chahla testified that the importance of it noted on November 13, 2022 was that (1) if you have a foot drop and are not using a device to not let the foot drop, you are more prone to accidents because your leg can get caught while walking and (2) there are multiple causes for a foot drop, including "in one of the dislocations,

if the dislocation is posterior as they mentioned in one of the notes, that can hit the sciatic nerve. And—and for the most part, the most affected nerve is the common peroneal branch of the nerve, which will cause the foot drop." Rx11 at 38. Regarding whether the left foot drop was related to an operative procedure, Dr. Chahla testified that without other notes, it was difficult for him to say with an excellent degree of certainty. Rx11 at 39. Regarding whether the acetabular fracture sustained on February 17, 2021 worsened to the point that Petitioner needed a hip replacement, Dr. Chahla testified that he was not certain it was an acute fracture, however, if Petitioner had no other reported hip issues before the accident and complained about his hip after and since the accident, it was clearly an aggravation of the preexisting osteoarthritis. Rx11 at 39.

On cross examination, Dr. Chahla agreed that he did not examine Petitioner in preparation of his report dated December 28, 2023. Rx11 at 41. Dr. Chahla did not receive any records indicating that Petitioner had any left hip issues prior to February 17, 2021. Rx11 at 41. Dr. Chahla was not aware that the initial reading of the February 17, 2021 CT scan indicated that Petitioner had a comminuted fracture. Rx11 at 42-45. Dr. Chahla testified that he did not see a comminuted fracture on the left hip CT scan. Rx11 at 45. Dr. Chahla agreed that "nobody" discussed rounded edges being present on the left hip CT scan or x-rays that he saw. Rx11 at 45. Dr. Chahla did not agree that the x-rays he reviewed showed a rapid progression of osteoarthritis over several months. Rx11 at 49. Dr. Chahla testified that when you have one dislocation, subsequent dislocations are much easier than the first, and that walking is not usually a high-risk activity for the hip. Rx11 at 53-54. It is very difficult for a hip to dislocate by just walking. Rx11 at 54. Dr. Chahla testified that with an anterior or posterior approach, where "everything" is opened on the back or the front to insert the prothesis, there is a higher chance of dislocation. Rx11 at 55. Petitioner's first surgery was posterior, and the hip dislocated posteriorly. Rx11 at 55-56. Dr. Chahla testified that posterior approaches have a potential complication of posterior dislocations. Rx11 at 56. Dr. Chahla agreed that a constrained liner can limit functional motion. Rx11 at 57. Dr. Chahla agreed that the posterior dislocation could be related to the initial posterior surgical procedure. Rx11 at 58. Dr. Chahla testified that he "would say for sure all the dislocations were related to the first case, for the – you know, to the surgery itself." Rx11 at 58. Dr. Chahla agreed that it was more likely than not that the left foot drop was related to either damage during a dislocation or during one of the surgeries for the dislocations. Rx11 at 59.

On redirect examination, Dr. Chahla testified that it was not his testimony that a posterior dislocation was related to the original accident and testified that once you have a posterior approach for a hip replacement and have one episode of dislocation, it is more likely that you will continue to have more dislocations. Rx11 at 60. Dr. Chahla clarified that if you have an anterior approach, the dislocation will go through the front, and if you have a posterior approach, it will dislocate through the back. Rx11 at 60-61.

CONCLUSIONS OF LAW

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

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

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

Issue F, whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows[5]:

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

Having considered all the evidence, the Arbitrator finds that Petitioner's current left hip, left knee, left foot, left shoulder, low back, and neurological (specifically, a traumatic brain injury) conditions of ill-being are causally related to the February 17, 2021 injury. The Arbitrator relies on the following in support of her findings: (1) the records of Northwestern Memorial Hospital, (2) the records of Midwest Anesthesia and Pain Specialists, (3) the records of Illinois Bone and Joint Institute, (4) the records of Northshore University Healthcare, (5) the records of Northshore Evanston Hospital, (6) the records of Resurrection Medical Center, (7) the records of G&T Orthopaedics, (8) the testimony of Dr. Michael Treister, (9) the fact that none of the records in evidence reflect that Petitioner was actively treating for a left hip, a left foot, a left knee, a left upper extremity/shoulder, a low back, or a traumatic brain injury immediately prior to February 17, 2021, and (10) Petitioner's credible testimony that he did not have a left hip injury or receive medical treatment for a left hip condition prior to February 17, 2021. The Arbitrator acknowledges that while the evidence demonstrates that Petitioner may have had a preexisting low back condition, no medical records were offered regarding any preexisting low back conditions. Additionally, on February 24, 2021, Petitioner reported to PA Hartwig, at MAPS, that while he suffered from chronic low back pain, the February 17, 2021 injury exacerbated the pain and that his low back pain was much worse. Petitioner then began consistently treating for his low back with Dr. Fisher. Overall, the record demonstrates that Petitioner was in condition of good health immediately prior to February 17, 2021 and that Petitioner was able to work full duty and without restrictions immediately prior to the work accident.

Regarding Petitioner's current left hip and left foot conditions of ill-being, the Arbitrator has considered the opinions of Dr. Jorge Chahla and finds Dr. Chahla's opinions less persuasive than the opinions of Dr. Michael Treister as to Petitioner's current left hip and left foot conditions of ill-being. The Arbitrator finds that overall, the record supports Dr. Treister's opinions that the left hip posterior acetabular wall fracture was acute, and that the Petitioner developed post-traumatic arthritis that caused the need for the May 12, 2022 left total hip replacement. The Arbitrator notes that Dr. Chahla performed only a records review and did not examine Petitioner. The Arbitrator further notes that while Dr. Chahla testified that the acetabular fracture was chronic, he conceded that the accident was "certainly" a reaggravation of a preexisting condition if Petitioner had no left hip-related complaints prior to February 17, 2021. There is no evidence that Petitioner complained of, sought treatment for, or was actively treating for a left hip condition prior to February 17, 2021. Instead, the evidence

[5] Dr. Shadid's IME Report was not considered in the Arbitrator's determination of the issue of causation.

demonstrates that any preexisting left hip conditions were asymptomatic prior to the February 17, 2021 injury, and that after the February 17, 2021 injury, Petitioner had consistent left hip related complaints and symptoms. The Arbitrator further notes that Dr. Chahla agrees that the x-rays of Petitioner's left hip obtained prior to the left total hip arthroplasty showed progression of arthritis, testifying that the February 17, 2021 x-rays showed mild-to-moderate arthritis, that the March 11, 2021 x-rays showed "more" arthritis, and that the April 9, 2021 x-rays showed severe end-stage osteoarthritis with bone-on-bone degenerative changes. Dr. Chahla also did not specifically opine that Petitioner's need for a left total hip replacement was not causally related to the February 17, 2021 injury, and instead, only noted that the injury was an aggravation of the preexisting left hip condition if Petitioner had no prior left hip complaints. Regarding Petitioner's left hip dislocations, the Arbitrator does not find that there was an intervening event that would sever the chain of causation. The courts have consistently recognized that when the claimant's condition is weakened by a work-related accident, a subsequent accident that aggravates the condition does not break the causal chain. *Vogel v. Ill. Workers' Compensation Commission*, 354 Ill. App. 3d 780, 786-787 (2nd Dist. 2005). The Arbitrator finds that the overall evidence supports Dr. Treister's opinion that the multiple left hip dislocations were the result of left hip muscle weakness and are all causally related to the February 17, 2021 injury. The Arbitrator notes that Dr. Chahla agrees that all the left hip dislocations are related to the initial left total hip arthroplasty. Further, both Dr. Treister and Dr. Chahla agree that once there has been one dislocation, it is easier or more likely for another dislocation to occur. Accordingly, Petitioner's February 17, 2021 work injury remains a causative factor in his current left hip condition of ill-being. Regarding Petitioner's left foot condition of ill-being, the Arbitrator notes that both Dr. Treister and Dr. Chahla agree that the left foot drop is related to damage during a dislocation or one of the surgeries for the dislocations.

Regarding Petitioner's traumatic brain injury, the Arbitrator has considered the opinions of Dr. Neil Allen, and finds them more persuasive than Dr. Treister's opinions as to Petitioner's traumatic brain injury. The Arbitrator notes that Dr. Treister is an orthopedic surgeon that has specifically treated spine, knee, and shoulder conditions, and has performed total hip arthroplasties. The Arbitrator acknowledges that while Dr. Treister testified that he triaged traumatic brain injuries during his military service, he also testified that he did not treat traumatic brain injuries on a long-term basis. The Arbitrator notes that Petitioner last sought treatment for his traumatic brain injury with Dr. Savino on August 11, 2021, at which time Petitioner reported improved symptoms. Accordingly, the Arbitrator finds and adopts Dr. Allen's opinion that Petitioner sustained (1) a mild traumatic brain injury, resolved and (2) headaches, resolved, as a result of the February 17, 2021 work accident.

Regarding Petitioner's left shoulder, left knee, and low back conditions of ill-being, the Arbitrator notes that Petitioner underwent minimal treatment for the left shoulder, left knee, and low back after the February 17, 2021 injury. The medical evidence demonstrates that Petitioner last sought treatment for a left knee contusion on March 11, 2021 and that Petitioner last sought treatment for left shoulder and low back conditions on December 15, 2021. The Arbitrator further notes that Dr. Treister opined that Petitioner's left shoulder and left knee injuries had resolved. Accordingly, the Arbitrator finds causation for Petitioner's left shoulder, left knee, and low back conditions of ill being as to the need for the minimal treatment received after the February 17, 2021 work accident, however, the Arbitrator does not view these conditions or minimal treatment for these conditions as significantly contributing to Petitioner's current disability.

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

Consistent with the Arbitrator's prior finding regarding causal connection, the Arbitrator finds that Petitioner's medical treatment has been reasonable and necessary, and that Respondent has not yet paid all appropriate charges. At arbitration, Petitioner claimed the following unpaid medical bills: (1) Midwest Anesthesia & Pain

Specialists ($400.00), (2) Illinois Bone and Joint Institute ($686.00), (3) Uptown Psych of Illinois (165.00), (4) Illinois Bone and Joint Institute-Physical Therapy ($1,853.00), and (5) Northshore Evanston Hospital ($75,466.25). Ax1 at No. 7. The Arbitrator notes that under companion claim 22WC01658, Petitioner claims unpaid medical bills from (1) Northshore Evanston Hospital ($64,465.25) for dates of service from October 6, 2022 through October 10, 2022 and from Northshore Skokie Hospital ($11,001.00) for dates of service of October 6, 2022 and October 7, 2022, which are also claimed by Petitioner in the instant claim. As the Arbitrator has found that Petitioner's treatment has been reasonable and necessary, the Arbitrator further finds that all bills, as provided in (1) Px2, Case 1, (2) Px3B, Case 1, (3) Px4, Case 1, and (4) Px3B, Case 2, are awarded and that Respondent is liable for payment of these bills, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses. The Arbitrator notes that Px5B, bills related to Petitioner's claim for unpaid bills from Illinois Bone and Joint Institute-Physical Therapy ($1853.00), was withdrawn by Petitioner, and as such, Petitioner's claim for said bills is denied.

Regarding a Section 8(j) credit, at arbitration, Petitioner stipulated that Respondent is entitled to credit for medical bills that have been paid through its group medical plan. Ax1 at No. 7; Tr. at 8.

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

Petitioner claims that he is entitled to TTD benefits for the period of February 17, 2021 to November 12, 2021 and from May 12, 2022 to June 24, 2024. See Ax1, No. 8. Respondent disputes Petitioner's claim for TTD benefits and claims no compensable lost time after September 29, 2021. See Ax1, No. 8. Petitioner claims that he is entitled to maintenance benefits for the period of June 25, 2024 through July 2, 2024, the date of arbitration. See Ax1, No. 8. Respondent disputes Petitioner's claim and demands strict proof thereof. See Ax1, No. 8.

Consistent with the Arbitrator's prior findings, the Arbitrator finds that Petitioner is entitled to TTD benefits. The Arbitrator finds that the medical evidence supports an award for TTD benefits from February 18, 2021 through November 12, 2021 and from May 12, 2022 through April 18, 2024, noting that Petitioner was permanently and totally disabled as of April 19, 2024. The Arbitrator notes that there is no evidence that Respondent accommodated the sedentary restrictions given to Petitioner by Dr. Ackerman on July 22, 2021 or November 22, 2021 nor the sedentary restrictions given to Petitioner by Dr. Tu on October 25, 2023 or April 17, 2024. Because the Arbitrator finds that Petitioner was permanently and totally disabled as of April 19, 2024, a date that predates the period of maintenance benefits claimed by Petitioner, the Arbitrator does not award maintenance benefits.

Additionally, Respondent claims the following credits: (1) $34,355.20 for TTD benefits paid to Petitioner, (2) "TBD" in nonoccupational indemnity benefits paid to Petitioner, and (3) $10,000.00 for other benefits paid to Petitioner. See Ax1, No. 9. Petitioner stipulated that Respondent is entitled to a credit in the amount of $34,355.20 for TTD benefits paid to Petitioner and a credit in the amount of $10,000.00 for other benefits paid to Petitioner. Tr. at 9-10. Petitioner, however, disputes Respondent's claim for "TBD" in nonoccupational indemnity benefits paid to Petitioner. Tr. at 9-10. There was no evidence offered to support Respondent's claim for an amount "TBD" in nonoccupational indemnity benefits paid to Petitioner. Accordingly, Respondent's claim for a credit for nonoccupational indemnity benefits paid to Petitioner is denied.

Issue L, with respect to the nature and extent of the injury, the Arbitrator finds as follows:

A claimant is totally and permanently disabled when he is unable to make some contribution to the work force sufficient to justify the payment of wages. *Ceco Corp. v. Industrial Comm'n*, 95 Ill. 2d 278, 286 (1983). A

claimant, however, need not be reduced to total physical incapacity before a permanent total disability award may be granted. *Id*. Instead, the claimant must show that he is unable to perform services, except those that are so limited in quantity, dependability, or quality that there is no reasonable stable market for him. *A.M.T.C. of Illinois, Inc., Aero Mayflower Transit Co. v. Industrial Comm'n*, 77 Ill. 2d 482, 487 (1979).

Where a claimant's disability is of a limited nature such that he is not obviously unemployable, or where there is no medical evidence to support a claim of total disability, the claimant has the burden of establishing that he falls into the "odd-lot" category. *Ceco Corp*., 95 Ill. 2d at 287. There are two ways a claimant can ordinarily satisfy his burden of proving that he fits into the "odd-lot" category: (1) by showing a diligent but unsuccessful job search, or (2) by demonstrating that because of his age, training, education, experience, and condition, he is unable to engage in stable and continuous employment. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 544 (2007). Once the claimant has initially established the unavailability of employment to a person in his circumstances, the burden then shifts to the employer to show that suitable work is regularly and continuously available to the claimant. *Economy Packing Company v. IWCC*, 387 Ill. App. 3d 283, 293 (2008).

Petitioner was assigned permanent restrictions by Dr. Tu on April 17, 2024, including sitting 90-percent of the time. The Arbitrator finds that the overall evidence demonstrates that Petitioner's physical abilities do not meet the physical requirements of his job as an asphalt helper/laborer with Respondent and that the accident caused an ongoing condition which prevented Petitioner from returning to his job as an asphalt helper/laborer at Respondent.

Petitioner testified that he obtained a high school diploma and has not had any further schooling. Petitioner testified that he had worked at Respondent as an asphalt helper/laborer since August 17, 1999, and that he had not held any other jobs.

Petitioner offered the opinions of Certified Vocational Counselor, Jacky Ormsby. On July 25, 2023 and April 19, 2024, Ms. Ormsby noted that Petitioner did not have any computer skills, that Petitioner did not have any transferrable skills, and that Petitioner was not a competitive employee. On July 25, 2023 and April 19, 2024, Ms. Ormsby opined that there is no stable labor market for Petitioner. The Arbitrator acknowledges that Ms. Ormsby testified that Petitioner did not have a work release at the time of her April 19, 2024 report, however, Ms. Ormsby also testified that she had reviewed Dr. Tu's work release of April 17, 2024 and that Petitioner was not employable in his current state. Additionally, Ms. Ormsby testified that sedentary positions falling within the restriction of sitting 90-percent of the time would require some computer skills, and that she did not think that it was likely that Petitioner would be able to acquire a remote job that allows him to work from home. The Arbitrator notes that Respondent did not offer any evidence that contradicts Ms. Ormbsy's opinions. Respondent also did not offer any evidence that a viable and stable labor market exists for Petitioner. Therefore, the record establishes that due to Petitioner's age, training, education, experience, and condition, Petitioner is unable to engage in stable and continuous employment.

Having considered all the evidence, the Arbitrator finds that Petitioner has met his burden in satisfying an odd-lot permanent total disability award pursuant to Section 8(f) of the Act and that Respondent failed to prove the existence of a stable labor market available to Petitioner. Therefore, Respondent shall pay Petitioner permanent and total disability benefits of $1,057.50/week for life, commencing April 19, 2024, as provided in Section 8(f) of the Act. Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the Rate Adjustment Fund, as provided in Section 8(g) of the Act.

Issue M, whether penalties/attorney's fees should be imposed upon Respondent, the Arbitrator finds as follows:

Petitioner filed a Petition for Penalties and Attorney's Fees under Sections 19(k), 19(l), and 16 of the Act ("Petition for Penalties and Attorney's Fees"). Respondent has not filed a Response.

The award of Section 19(l) penalties is mandatory '[i]f the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay." *McMahan v. Industrial Commission*, 183 Ill.2d 499, 514-15 (1998). The employer bears the burden of justifying the delay and its justification is sufficient only if a reasonable person in the employer's position would have believed the delay was justified. *Board of Education of the City of Chicago v. Industrial Commission*, 93 Ill.2d 1, 9-10 (1982). Section 19(l) penalties are awardable at the rate of $30.00 per day "for each day that the benefits under Section 8(a) or Section 8(b)" were "withheld or refused," up to a maximum of $10,000.00. A delay in payment of 14 days or more creates a rebuttable presumption of unreasonable delay.

In this case, the evidence demonstrates that Respondent has delayed or withheld payment of Section 8(a) and Section 8(b) benefits to Petitioner. The Arbitrator acknowledges that while Respondent may have relied on the opinions of Dr. Shadid in delaying or withholding payment, Respondent then solicited the opinions of Dr. Chahla, essentially abandoning the opinions of Dr. Shadid. Among his opinions, Dr. Chahla opined that the February 17, 2021 accident aggravated Petitioner's preexisting left hip osteoarthritis. The Arbitrator finds that Respondent did not offer an adequate justification for denial of payment. The Arbitrator acknowledges that Respondent paid Petitioner TTD benefits through September 29, 2021 and that the Parties' have stipulated to a credit in the amount of $34,355.00 for TTD benefits paid to Petitioner by Respondent. The Arbitrator also acknowledges that Petitioner returned to work at Respondent on November 16, 2021 and was again taken off work on May 12, 2022, the date that he underwent the left total hip arthroplasty. The Arbitrator finds Petitioner's TTD benefits began to accrue on September 30, 2021 and that Respondent withheld payment through November 15, 2021 and that Petitioner's TTD benefits again began to accrue on May 12, 2022 and that Respondent withheld payment through April 18, 2024, a total period of 755 days. The Arbitrator further finds Petitioner is entitled to Section 19(l) penalties in the maximum amount of $10,000.00, as the associated calculation ($30 x 755 days = $22,650.00) exceeds the statutory maximum.

The Arbitrator further finds it appropriate to award Section 19(k) penalties and Section 16 attorney fees, which are discretionary rather than mandatory. They are "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." *McMahan*, 183 Ill.2d at 514-516. The employer bears the burden of proving that it acted in an objectively reasonable manner in denying a claim under all of the existing circumstances. *Consolidated Freightways, Inc. v. Industrial Commission*, 136 Ill.App.3d 630 (1985).

In this case, the Arbitrator finds that Respondent had no objectively reasonable basis to delay or deny payment of benefits and exercises her discretion and awards Section 19(k) penalties, as well as Section 16 attorney's fees. The Arbitrator finds Respondent refused to pay $190,776.18 in benefits, representing $76,717.25 in medical benefits and $114,058.93 in TTD benefits (107 weeks 6/7 days x $1,057.50). Accordingly, the Arbitrator finds that Petitioner is entitled to 19(k) penalties of $95,388.09. The Arbitrator further finds that Respondent is entitled to Section 16 attorney fees in the amount of $38,155.24, representing 20% of the awarded benefits.

ANA VAZQUEZ, ARBITRATOR

October 9, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC018311
Case Name	Timothy Miller v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0270
Number of Pages of Decision	12
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Mark Fromm
Respondent Attorney	Barrett Long, Elizabeth Meyer

DATE FILED: 6/17/2025

/s/Christopher Harris, Commissioner

Signature

DISSENT

/s/Christopher Harris, Commissioner

Signature

	)	☐ 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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TIMOTHY MILLER,

Petitioner,

vs. NO: 23 WC 18311

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 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, 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 finds that the $40.00 fee charged by Chicago Center for Sports Medicine and Orthopaedics for each missed or late cancellation on May 23, 2024, June 6, 2024 and June 10, 2024 is neither reasonable nor necessary under to Section 8(a) of the Act. Accordingly, reimbursement of the $120.00 is denied. All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 24, 2024 is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $1,005.00 per week for a period of 75-4/7 weeks, February 16, 2023 through July 30, 2024, that being the period of temporary total incapacity for work under §8(b), and that as provided in §8(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 shall be given a credit of $65,325.00 for temporary total disability benefits paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $45,054.65 for medical expenses pursuant to Sections §8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for prospective medical care in the form of physical therapy and treatment with a pain specialist and a spine specialist as recommended by Dr. Gregory Primus, pursuant to Sections 8(a) and 8.2 of the Act.

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

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

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

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.

June 17, 2025

CAH/tdm
6/12/25
052

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

/s/ *Marc Parker*
Marc Parker

DISSENT

I respectfully dissent from the Majority's finding that Petitioner's condition of ill-being is causally related to the February 15, 2023 bus accident. The Majority's reliance on the MRI findings that show both chronic and acute changes does not establish ongoing causation and is outweighed by the video footage and the credible medical opinion provided by Dr. Bernstein.

The Petitioner testified that he was tossed in his seat and had to fight to control the bus after impact. Based on his account, Dr. Munoz opined that Petitioner sustained blunt trauma and torsional, rotational forces that typically affect the cervical spine, lumbar spine, legs and hip during the collision. Dr. Primus also agreed that Petitioner's injuries were related to the accident. However, the surveillance footage undermines both Petitioner's testimony and the opinions offered by Dr. Munoz and Dr. Primus. While the collision is visible on the footage, there is no persuasive evidence that the mechanism of injury was sufficient to cause the conditions alleged.

Dr. Bernstein credibly found the accident to be unimpressive and that it did not cause any structural injury to the cervical or lumbar spine. His opinion that Petitioner may have suffered, at most, a mild cervical strain, and that no further treatment was necessary beyond six weeks, is consistent with the nature of the event observed and the examination findings during his April 22, 2024 Section 12 examination.

Accordingly, I would adopt Dr. Bernstein's well-reasoned opinion and find that Petitioner reached MMI as of April 22, 2024 and deny benefits thereafter.

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

JUNE 17 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC018311
Case Name	Timothy Miller v. Chicago Transit Authority
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	Elaine Llerena, Arbitrator

Petitioner Attorney	Mark Fromm
Respondent Attorney	

DATE FILED: 9/24/2024

/s/Elaine Llerena, Arbitrator
Signature

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

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

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

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

Timothy Miller Case # **23** WC **018311**
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 **July 30, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **February 15, 2023**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**78,390.00**; the average weekly wage was $**1,507.50**.

On the date of accident, Petitioner was **53** years of age, ***single*** with **1** dependent children.

Respondent shall be given a credit of $**65,325.00** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**65,325.00**.

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 $1,005.00 per week for 75-4/7 weeks, commencing February 16, 2023, through July 30, 2024, as provided in Section 8(b) of the Act. Respondent shall be given a credit of $65,325.00 for temporary total disability benefits paid.

Respondent shall pay unpaid reasonable and necessary medical services of $3,498.30 to South Shore Hospital, $2,889.00 to City of Chicago EMS, $18,383.91 to WorkCare Medical Center and Dr. Luis Munoz, $19,433.44 to Chicago Center for Sports Medicine and Orthopaedics, and $970.00 to Midwest Anesthesia and Pain Center, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for medical services paid.

Respondent shall authorize and pay for prospective medical care in the form of physical therapy and treatment with a pain specialist and a spine specialist as recommended by Dr. Gregory Primus, 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

September 24, 2024

ICArbDec19(b)

FINDINGS OF FACT

This matter proceeded to hearing on July 30, 2024, in Chicago, Illinois before Arbitrator Elaine Llerena. The issues in dispute were causal connection, medical expenses, temporary total disability benefits, and prospective medical care. Arbitrator's Exhibit 1 (AX1).

Job Duties

Petitioner has worked for Respondent as a bus operator for 27 years. (T. 28) Petitioner's job consists of driving a bus. *Id.*

Prior Medical Condition

Petitioner testified that he had not had any lower back problems in the 5 years before the February 15, 2023, accident. (T. 17) Petitioner further testified that he had not had any problems with any other body parts in the 5 years before the February 15, 2023, accident. *Id.* Petitioner testified that he injured his back at work about 15-20 years before the February 15, 2023, accident. (T. 45-46) Petitioner explained that he underwent about 6-9 months of treatment and then returned to work as a bus driver. (T. 46) Petitioner testified that he had not sought additional treatment for his back or any treatment for his neck since the accident 20 year ago. (T. 46-47) Petitioner agreed that the prior work accident which resulted in a back injury occurred in August of 2006. (T. 54-55)

Accident

On February 15, 2023, Petitioner was driving an accordion bus with passengers on it. (T. 10-11) As Petitioner entered an intersection, a vehicle ran a red light and struck Petitioner's bus on the left front side. (T. 12-13) Petitioner testified that the impact tossed him around in his seat as he fought to control the bus and avoid running pedestrians over. (T. 14) Petitioner then pulled the bus over to the curb and stopped the bus. (T. 15) After bringing the bus to a stop, Petitioner felt scared, was concerned for the passengers on the bus, and felt back pain. (T. 15-16) Petitioner was taken by ambulance to South Shore Hospital. (T. 16-17)

Summary of Medical Records

Petitioner was treated at South Shore Hospital on February 15, 2023. (PX1) Petitioner described the accident and complained of lower back pain. At discharge, Petitioner complained of neck pain. X-rays of the lumbosacral spine were unremarkable, and x-rays of the cervical spine showed degenerative changes but no fracture or dislocation. Petitioner was prescribed pain medication and referred for follow-up care.

On February 16, 2023, Petitioner followed up with Dr. Luis Munoz at WorkCare Occupational Medicine Center. (PX2) Petitioner reported the accident and complained of neck, left leg, lower back and right hip pain and spasm that had started immediately following the accident. Petitioner recalled hitting the left side of his body, left neck and left leg on the interior of the bus. Dr. Munoz diagnosed Petitioner as having left cervical spine sprain, cervical contusion, left femur-tibial sprain/strain/contusion, lumbar spine sprain/contusion, right hip sprain contusion and concussion-headaches. Dr. Munoz ordered physical therapy, prescribed pain medication and a lumbar spine brace, and took Petitioner off work. Dr. Munoz determined that Petitioner's injuries were a direct result of his work activities for Respondent and found that when he was struck by the vehicle, Petitioner sustained blunt trauma and torsional, rotational forces that typically affect the cervical spine, lumbar spine, legs and hip. Petitioner began physical therapy at Midway Rehab Center on February 16, 2023.

Petitioner continued to follow up with Dr. Munoz who noted Petitioner's symptoms remained the same. On April 26, 2023, Dr. Munoz ordered MRIs of the lumbar and cervical spine. Dr. Munoz kept Petitioner off work.

On June 19, 2023, Petitioner underwent MRIs of the lumbar and cervical spine. (PX4) MRI of the lumbar spine in flexion and extension positions showed degenerative lumbar disc disease (chronic) and a restriction of movement in the fully flexed and extended positions (chronic/acute on top of chronic). MRI of the lumbar spine in a neutral upright position revealed spastic paraspinal muscles (indeterminate); degenerative lumbar disc disease (chronic); multiple radial, concentric, and transverse annular fissures (acute/acute on top of chronic); arthropathic facet joints at L1-L2 through L5-S1 levels (chronic, acute on top of chronic); posteriorly oriented subcutaneous edema opposite the lumbar and sacral vertebrae which could represent orthostatic subcutaneous edema vs. posttraumatic soft tissue contusion (chronic/acute on top of chronic); annular bulge at L3-L4 and L4-L5 levels (chronic); central protrusion at L5-S1 level (chronic); and multilevel lumbar disc pathologies at the L3-L4, L4-L5, and L5-S1 levels indenting the anterior epidural fat (chronic). MRI of the cervical spine in flexion and extension positions showed spondylodegenerative cervical disc disease (chronic), restriction of movement in the fully flexed and extended positions (chronic/acute on top of chronic), and subtle degenerative retrolisthesis at the C5-C6 level showing no appreciable change in the fully flexed and extended positions (chronic).

Petitioner returned to Dr. Munoz on June 27, 2023, who reviewed the MRIs and reiterated his prior diagnoses. Dr. Munoz continued physical therapy and kept Petitioner off work. On August 16, 2023, Dr. Munoz ordered an EMG/NCV study, which Petitioner underwent on October 5, 2023, and Dr. Munoz reviewed on November 1, 2023, the results of which revealed bilateral carpal tunnel syndrome. On December 20, 2023, Petitioner continued to complain of lumbar pain and spasm, and neck pain with limited range of motion. Dr. Munoz ordered an EMG/NCV of the lumbar spine and lower extremities. (Dr. Munoz passed away after this visit. T. 32)

On January 19, 2024, Petitioner saw Dr. Gregory Primus at Chicago Center for Sports Medicine and Orthopedic Surgery. (PX3) Petitioner reported the February 15, 2023, work accident and complained of low back and neck pain. Dr. Primus diagnosed Petitioner as having ligament sprain of the lumbar spine, nerve root injury of the lumbar spine, lumbar radiculopathy, cervicalgia, cervical radiculopathy, and neck muscle strain. Dr. Primus ordered physical therapy, kept Petitioner off work and opined that Petitioner's injuries were causally related to the work accident. Petitioner began physical therapy on February 13, 2024.

On April 22, 2024, Petitioner underwent a Section 12 examination (IME) with Dr. Avi Bernstein at Respondent's request. (RX1) Petitioner described the work accident and complained of neck pain with radiation down the right arm, numbness in all the digits of his right hand and around his mouth. Petitioner also reported that when he raises his right arm, his ear will pop. Petitioner complained of low back pain with numbness in his toes, feet and up-and-down his legs in a non-dermatomal distribution, and anxiety since the accident. Dr. Bernstein reviewed the MRIs and EMG and noted that while the findings in the lumbar spine MRI were benign, the findings in the cervical spine MRI revealed multilevel small central disc protrusions and a degenerative bulge greater to the left side at the C5-6 level, but noted that there is no distinct disc herniation causing right-sided nerve root compression. Dr. Bernstein also reviewed video surveillance of the work accident. Dr. Bernstein concluded that Petitioner may have suffered a mild sprain or strain of the cervical spine because of the accident, but that he did not suffer a permanent injury. Dr. Bernstein opined that Petitioner would have reached MMI at about six weeks from the time of the accident and found no medical reason why Petitioner could not return to work without restrictions.

Petitioner returned to Dr. Primus on May 2, 2024, and reported having undergone an IME. (PX3) Petitioner reported that the examiner shook his hand so hard that he strained his right shoulder and aggravated his neck pain, causing him to go to the ER. Petitioner further reported that x-rays were taken and were normal. (Records of this ER were not entered into evidence.) Dr. Primus continued physical therapy and referred him to a pain specialist for possible injections. On May 30, 2024, Petitioner reported that his symptoms remained unchanged, however, while participating in physical therapy, his neck symptoms are worse with right upper extremity numbness and associated right ear ringing.

On June 17, 2024, Petitioner saw Daniel Drag, NP, at Midwest Anesthesia and Pain Specialists. (PX4) Petitioner described the February 15, 2023, work accident and complained of radicular symptoms to the bilateral upper and lower extremities. Drag noted that Petitioner's pain was more associated with a strain/sprain type of injury along with facet-oriented pain. Drag sought the EMG and MRI results from 2023 and withheld determining a plan of care until they were received. Drag opined that the injuries reviewed were causally related to the February 2023 work accident and that Petitioner should remain off work. (The records from Midwest Anesthesia and Pain Specialists include the MRIs and EMG Drag sought to review, but it does not appear that Petitioner returned to this practice.)

Petitioner returned to Dr. Primus on June 27, 2024. (PX3) Petitioner reported continued tingling and numbness in the hands and feet, ringing in the right ear that he described as a fluttering, numbness and tingling and radiating pain down his legs, worse on the left, worsening sciatica, and increased pain with shoulder instability with subluxations. Dr. Primus noted that, due to the ringing in the ear, Petitioner needed to see a neurologist. On July 25, 2024, Petitioner reported numbness that radiated into the right hand, popping of the right shoulder and knee, and pain in lower back and neck. Dr. Primus continued physical therapy and recommended Petitioner see a spine specialist due to his persistent pain and request for medications.

Surveillance Video of the February 15, 2023, accident

The surveillance video from the bus on February 15, 2023, shows when the bus was struck. (RX5) The video shows Petitioner and passengers on the bus affected by the impact and physically moved/shaken from side to side as a result. The video further shows Petitioner pulling over after the accident and exiting the bus, along with the passengers.

Petitioner's Current Condition

Petitioner continues to have pain, numbness and difficulty performing activities of daily living. (T. 44)

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 Petitioner did not have any lumbar or cervical problems prior to the February 15, 2023, work accident. The Arbitrator further notes that cervical and lumbar MRIs taken after the accident shows both chronic and acute findings, specifically acute findings over chronic findings. If Petitioner had a pre-existing, degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193 (2003). Dr. Munoz determined that Petitioner's injuries were a direct

result of his work activities for Respondent and found that when he was struck by the vehicle, Petitioner sustained blunt trauma and torsional, rotational forces that typically affect the cervical spine, lumbar spine, legs and hip. Dr. Primus also opined that Petitioner's injuries were causally related to the work accident. Dr. Bernstein also acknowledged that Petitioner may have suffered a mild sprain or strain of the cervical spine because of the accident.

Based on the above, the Arbitrator finds that Petitioner's conditions of ill-being are causally related to the February 15, 2023, work accident.

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

The Arbitrator notes her finding as to causation above. Additionally, the Arbitrator notes Petitioner was treated immediately after the accident and reported pain and problems as a result of the work accident.

Based on the above, the Arbitrator finds that Respondent shall pay unpaid medical expenses of $3,498.30 to South Shore Hospital, $2,889.00 to City of Chicago EMS, $18,383.91 to WorkCare Medical Center and Dr. Luis Munoz, $19,433.44 to Chicago Center for Sports Medicine and Orthopaedics, and $970.00 to Midwest Anesthesia and Pain Center, as provided in 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 finding as to causation above. Further, the Arbitrator notes that Petitioner has undergone conservative treatment and continues to have pain, numbness and problems as a result of the February 15, 2023, work accident. Dr. Primus recommended continued physical therapy and that Petitioner see a spine specialist. Additionally, Dr. Primus also recommended that Petitioner see a pain specialist, whom Petitioner saw on June 17, 2024, and who withheld determining a plan of care until he received diagnostic records. The medical records from pain specialist Drag show that he received the diagnostic records, but no plan was ever created and that Drag did not see Petitioner after receipt of those records.

Based on the above, the Arbitrator finds that Petitioner is entitled to prospective medical care as recommended by Dr. Primus in the form of physical therapy and treatment with a pain specialist and spine specialist, 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:

The Arbitrator notes her finding as to causation above. Further, the Arbitrator notes that Petitioner has been kept of work by his treating physicians since February 16, 2023. The Arbitrator notes that Dr. Bernstein opined that Petitioner may have suffered, at most, a mild sprain or strain of the cervical spine and could return to work without restrictions. However, the Arbitrator also notes that the MRIs show acute findings in the lumbar and cervical spine and that Petitioner continues to have pain and numbness

as a result of the work accident. Therefore, the Arbitrator finds the findings and opinions of Dr. Primus more persuasive than those of Dr. Bernstein.

Based on the above, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from February 16, 2023, through July 30, 2024. Respondent is entitled to a credit of $65,325.00 for temporary total disability benefits paid.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC019393
Case Name	Bernardo Batula v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0271
Number of Pages of Decision	20
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Daron Romanek
Respondent Attorney	Daniela Roehm

DATE FILED: 6/17/2025

/s/Christopher Harris, 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

BERNARDO BATULA,

Petitioner,

vs. NO: 17 WC 19393

CHICAGO TRANSIT AUTHORITY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, the reasonableness and necessity of the medical treatment and charges, temporary total disability, 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 September 12, 2024 is hereby affirmed and adopted.

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

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

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.

June 17, 2025

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

CAH/tdm
O: 05/15/25
052

/s/ *Marc Parker*
Marc Parker

DISSENT

I disagree with the Majority's conclusion that Petitioner sustained accidental injuries arising out of and in the course of his employment. Contrary to the Arbitrator's adopted conclusion, the bus surveillance footage does not support a finding that the Petitioner attempted to de-escalate the situation. On the contrary, the surveillance clearly shows that the Petitioner was the aggressor in both incidents.

Petitioner herein denied initiating any of the confrontations that occurred on May 26, 2017. He specifically testified that after the collision, Mr. Seals began screaming, swearing and threatening him from outside the bus. Mr. Seals then boarded the bus after Petitioner pulled over and continued his verbal assault as people exited the bus. Petitioner confirmed several times that Mr. Seals was waving his phone right in front of Petitioner's face and screaming. Petitioner testified that he "touched" Mr. Seals' phone and it fell on the floor of the bus, and Mr. Seals responded by punching Petitioner in the eye. Petitioner testified that he then shoved Mr. Seals off the bus and a physical fight ensued. He stated that he tried to keep away from Mr. Seals but that Mr. Seals "bull rushed" him and they fell to the ground. The fight was eventually broken up by people on the street. Petitioner returned to the bus and closed the door. A second altercation followed after Petitioner tried to record Mr. Seals with his phone. Petitioner testified that he opened the bus door to get a clearer picture of Mr. Seals and Mr. Seals aggressively slapped and hit Petitioner's hand, causing his phone to fall outside the bus. As Petitioner attempted to pick up his phone, Mr. Seals began to punch and attack him.

The surveillance footage does not support Petitioner's narrative whatsoever. People were not exiting the bus when Mr. Seals boarded. Mr. Seals did not have his phone in "Petitioner's face". The video does not clearly indicate whether Petitioner knocked Mr. Seals' phone from his hand by accident, but it showed that Petitioner first pushed Mr. Seals off the bus. Mr. Seals then punched Petitioner in the face and as the men fought outside, Mr. Seals was seen backing up as Petitioner followed him. In the second encounter, the footage showed Petitioner, at points in time, opening and closing the bus door and standing in the doorway while Mr. Seals paced outside on his phone. Petitioner opened the door again to record Mr. Seals with his phone. After Mr. Seals slapped the phone out of his hand, Petitioner immediately attacked him.

Given the ubiquity of filming social interactions, the fact that the phone was not "in his face", and Petitioner's overall distortion, if not outright departure, from the truth when juxtaposed with the video, it is apparent that Petitioner was the aggressor. I therefore dissent.

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

JUNE 17 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC019393
Case Name	Bernardo Batula v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Jennifer Bae, Arbitrator

Petitioner Attorney	Daron Romanek
Respondent Attorney	Daniela Roehm

/s/ Jennifer Bae, Arbitrator SEPTEMBER 12 2024

Signature

INTEREST RATE WEEK OF SEPTEMBER 10 2024 4.53%

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Bernardo Batula
Employee/Petitioner

v.

Chicago Transit Authority
Employer/Respondent

Case # **17** WC **019393**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jennifer Bae**, Arbitrator of the Commission, in the city of **Chicago**, on **July 10, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **May 26, 2017**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**68,312.92**; the average weekly wage was $**1,313.71**.

On the date of accident, Petitioner was **54** years of age, ***married*** with **0** dependent child.

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

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

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

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

ORDER

Medical Bills

Respondent shall pay reasonable and necessary medical services to the following medical providers pursuant to the Medical Fee Schedule, as provided in Sections 8(a) and 8.2 of the Act: Mercy Hospital and Medical Center, City of Chicago – EMS, Radiological Physicians, Ltd., Concentra – Franklin Park, Romano Orthopaedics, Metropolitan Advanced Radiological Services, Ltd. Respondent shall reimburse Petitioner $656.00 for his out-of-pocket co-pay to Romano Orthopaedics.

TTD

Respondent shall pay Petitioner temporary total disability benefits of $875.81/week for 36 2/7 weeks, commencing May 27, 2017 through February 4, 2018, as provided in Section 8(b) of the Act.

PPD

Respondent shall pay Petitioner permanent partial disability benefits of $775.18/week for 75 weeks, because the injuries sustained caused 15% loss of the person as a whole, as provided in Section 8(d)(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.

Jennifer Bae **SEPTEMBER 12 2024**

Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

BERNARDO BATULA,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 17WC019393
CHICAGO TRASIT AUTHORITY,	)	
	)	
	)	
Respondent.	)	

MEMORANDUM OF DECISION OF ARBITRATOR

I. PROCEDURAL HISTORY

Mr. Bernardo Batula ("Plaintiff"), by and through his attorney, filed an Application for Adjustment of Claim for benefits under the Workers' Compensation Act ("Act"). 820 ILCS 305/1 et seq. (West 2014) Petitioner alleged that he sustained an accidental injury on May 26, 2017 while employed by Chicago Transit Authority ("Respondent"). A hearing was held on July 10, 2024 on the following Issues: accident, causation, medical bills, temporary total disability, and nature and extend.

Petitioner testified in support of his claim. The parties requested a written decision, including findings of fact and conclusions of law pursuant to the Act. (AX 1)

II. FINDINGS OF FACT

Job Duties

Petitioner lives in Elmwood Park, Illinois with his wife and a son. (T. 9) He obtained an associate degree in electronics from DeVry Institute of Chicago. (T. 10) He was hired as a bus operator on December 28, 2000. (T. 10) For 16 ½ years, Petitioner worked as a bus driver for Respondent. (T. 10-11)

Accident

On May 26, 2017, Petitioner was driving a 60-footer bus. (T. 11) At about 9 am, he was involved in a collision at 240 West LaSalle Street, Chicago, near the intersection of LaSalle and Wacker. (T. 11-12) Petitioner testified that he was in the turning lane on Wacker attempting to make a turn on LaSalle, and as he was turning, a vehicle that was very closed to the bus hit the passenger side

mirror of the vehicle. (T. 11-12) It damaged the vehicle but it did not damage the bus. (T. 12-13) Petitioner testified that immediately after the collision, the driver of the vehicle, Mr. Gene Seals ("Seals"), pulled next to the driver's side of the bus and started recording him stating, "You're going to pay for this damage." (T. 13) Petitioner claimed that Seals called him "a dumb ass motherfucker." (T. 14) Petitioner testified that he told Seals, "I'm going to pull over to the bus stop, let the people off, and then I'm going to call control and let them know that there's an accident." (T. 14)

Petitioner then testified that he pulled up on the western side of the LaSalle and informed the passengers that he was involved in an accident and needed them to step off the bus to transfer to the next bus. (T. 14-15) He told the passengers that he would be assisting them in transferring to another bus. (T. 15) He opened both the front and the back doors to allow the passengers to get off the bus. (T. 15-16) As Petitioner was sitting in the driver's seat, Seals approached the front door screaming at him. (T. 16) Petitioner testified that he told Seals, " Sir, you need to go back to your car. I already called control." (T. 16) Seals then stepped on the bus as the passengers were getting off. (T. 16-17) Seals screamed, "you motherfucker, you're going to pay for the damage" as he was waving his phone in front of Petitioner's face. (T. 17) As Seals was waiving his phone, Petitioner stood up and told Seals, "Sir, you cannot be on my bus, and you cannot do that, what you're doing. Remove your phone from my face." (T. 18) Petitioner testified that he waived his hand to remove Seals' phone away from his face causing the phone to fall on the floor of the bus. (T. 18-19) Again, Petitioner told Seals, "You can't be on my bus, sir. You need to step off." (T. 19) Seals then punched Petitioner's right eye with a skull ring on his finger. (T. 19) After being punched, Petitioner "shoved" Seals off the bus. (T. 21) On the western side of LaSalle, there was an altercation. (T. 21-22) As he was defending himself, Petitioner testified Seals "bull rushed" him. (T. 22) Petitioner testified that they both fell on the ground and he felt a pop in his left shoulder. (T. 22-23)

Petitioner testified that a couple of ladies on the street help break up the first altercation. (T. 23) After the first altercation, Petitioner testified that he went back on the bus to call the control again for assistance from his supervisor and police. (T. 23-24) During this time, Petitioner testified that Seals was walking back and forth in front of the bus talking to someone on the phone. (T. 24) Petitioner testified that he felt threatened and wanted to take a picture of Seals. (T. 24) When Petitioner took his phone out to take a picture of Seals, Seals attempted to hide from him. (T. 25) Then, Petitioner open the door of the bus to take a picture of Seals. (T. 25) Seals slapped and hit Petitioner's hand knocking the phone out which landed outside of the bus. (T. 26) When Petitioner got off the bus to retrieve his phone off the street, Seals punched him again. (T. 26-27) Both wrestled down on the street in front of the bus when another CTA bus operator came to help Petitioner. (T. 27) Police showed up at the same time. (T. 27) Petitioner testified that a police officer removed Seals from top of hm. (T. 28) Petitioner claimed that he never punched or touched Seals first. (T. 29) Petitioner was taken to the police station thereafter. (T. 29) Petitioner testified that his right eye was burning and his shoulder was hurting. (T. 29) He requested to be taken to the emergency room from the police station. (T. 29) Petitioner testified that he was not placed under arrest and was taken to the emergency room at Mercy Hospital by an ambulance. (T. 30-31)

On cross-examination, Petitioner testified that he believed that Seals approached the bus because he made a contact with the vehicle and attempted to take a picture of the Petitioner. (T. 55-56)

Petitioner did not want Seals to take a picture of him but at some point, he attempted to take a picture of Seals. (T. 56) Petitioner said Seals was an Uber driver with a passenger in his vehicle. (T. 56) Petitioner denied pushing Seals while Seals was on the bus. (T. 57) Instead, Petitioner said that he pointed outside the bus, saying, "You need to step out of the bus." (T. 57) Petitioner said that he was no longer treating for any of the injuries he sustained. (T. 58)

RX 4 was a copy of the dismissal letter from Respondent that was issued after a hearing that Petitioner participated in with two union representatives. (T. 59)

In Respondent's "Employee's Report of Injury on Duty," Petitioner noted that he sustained "left shoulder headache right eye blurry vision" in response to "type of injury and parts of body affected." (RX 3)

Chicago Police Officers took Seals from the scene to the lock up at the First District of the Chicago Police Department. (PX 7 p. 13) After being advised of his Miranda Warnings and stating that he understood his rights, Seals agreed to speak with the officers. (PX 7 p. 13) Seals stated he was working as an UBER driver when he became involved in a traffic accident with a CTA bus. (PX 7 p. 13) Seals explained that he let his fare out and pulled his vehicle over to confront the driver. (PX 7 p. 13) Seals stated that he went up to the driver with his cell phone in his hand and entered the bus. (PX 7 p. 13) According to Seals, the bus driver pushed Seals' hand and cell phone away and then a "scuffle" ensued. (PX 7 p. 13) Seals said that he was pulled off the Petitioner by bystanders. (PX 7 p. 13) Seals stated that moments later he went back into the bus and another "scuffle" ensued and he was pulled off Petitioner by the police and transported to police station. (PX 7 p. 13)

On May 26, 2017, Cook County State's Attorney's Felony Review was contacted and charges were approved against Seals for Aggravated Battery to a CTA Employee. (PX 7 p. 13)

On June 26, 2017, Seals pleaded guilty in the Circuit Court of Cook County to Aggravated Battery/Transit Employee and sentenced to probation. (PX 8 pp. 1-2)

Summary of Medical Records

City of Chicago Fire Department ("CFD") arrived at the First District Police Station to take Petitioner to the hospital at 10:36 am on May 26, 2017. (T. 29-30; PX 1) According to the CFD Incident report, Petitioner had abrasions on his face, Petitioner complained of left shoulder pain and right eye pain. (PX 1) The medical technician noted that Petitioner's right eye "…was very red and bloodshot looking." (PX 1)

On May 26, 2017, Petitioner arrived at Mercy Hospital in a CFD ambulance with a left shoulder pain, vision problems in his right eye, and scratch marks and scabs all over his face. (T. 30) Petitioner had a CT scan completed of his face (maxillofacial region) and x-rays of left shoulder and right hand. (T. 30; PX 1 pp. 29-34, 38-40, 47-49) Petitioner's diagnosis in the emergency room were abrasion of right knee, contusion of right hand, facial abrasion, facial contusion, left shoulder pain and subconjunctival hemorrhage of the right eye. (PX 1 p. 26)

Once he was discharged from Mercy Hospital Emergency Room on May 26, 2017, Petitioner was driven back to the CTA garage by another CTA employee. (T. 30-31)

On May 27, 2017, Petitioner testified that Respondent sent him to Concentra Clinic in Franklin Park where he began treating. (T. 31; PX 2 pp. 1-4) Petitioner testified that his sharp left shoulder pain traveled to his left neck and his right eye was painful and blurry. (T. 31; PX 2) Petitioner testified that Concentra placed him on restrictions which included not driving due to functional limitations. (T. 31; PX 2 p. 3) The same restrictions continued to May 30, 2017 and then to June 6, 2017. (T. 32) Respondent did not provide any work for Petitioner that would fit within the restrictions placed by Concentra. (T. 32)

On June 7, 2017, Petitioner went to Romano Orthopaedics for the first time. (T. 33; PX 3 pp. 12-16) Dr. Victor Romano's treatment plan for Petitioner included physical therapy and an MRI of Petitioner's left shoulder. (T. 34; PX 3 p. 16) Dr. Romano advised Petitioner to follow up with him after Petitioner's left shoulder MRI. (PX 3 p. 16) Dr. Romano took Petitioner off work on June 7, 2017. (T. 34; PX 3 p. 16)

Petitioner went to see Dr. David Springer at OP West Suburban Eye Associates for his right eye blurred vision. (T. 33; PX 4 pp. 7-9) Dr. Springer noted that Petitioner had blurry vision in his right eye since a fist struck Petitioner's right eye on May 26, 2017. (PX 4 p. 7)

On June 13, 2017, Petitioner's restrictions continued to be no driving buses and Respondent did not provide any work that would fit within the restrictions. (T. 33; PX 2 p. 28) Petitioner testified that Respondent never placed him in any position after May 26, 2017 accident. (T. 34)

On June 20, 2017, Concentra placed Petitioner at maximum medical improvement and returned him to work without any restriction. (T. 34; PX 2 p. 31)

Between May 30, 2017 and June 12, 2017, Petitioner testified that he had five sessions of physical therapy at Concentra for his left shoulder. (T. 35; PX 2 pp. 7-8, 12-15, 19-26) Petitioner claimed the five sessions he had did not help his left shoulder. (T. 35) Petitioner testified that no doctors at Concentra sent him for an MRI of his left shoulder. (T. 35)

On June 20, 2017, Petitioner had an MRI done on his left shoulder. (T. 35; PX 3 pp. 18-21) The impression from Petitioner's left shoulder MRI revealed high-grade partial-thickness to full-thickness tear of the supraspinatus, high-grade partial-thickness infraspinatus tear, superior labral degeneration and tearing, likely long head biceps tendon longitudinal extra articular split tear with potential complete tear of the intra-articular component, medial split tendon appears to extend into the fibers of the superior subscapularis, grade 1 infraspinatus muscle strain, glenohumeral arthritis, AC joint arthropathy, and subacromial spurring. (PX 3 p. 20) Dr. Romano kept Petitioner off work on June 21, 2017 and June 22, 2017. (T. 35; PX 3 pp. 26, 40)

On June 27, 2017, Petitioner saw Dr. Springer because he had blurred vision on his right eye. (T. 36; PX 4 pp. 10-11)

On July 3, 2017, Dr. Romano informed Petitioner that he required a surgery to repair his left rotator cuff. (T. 36; PX 3 p. 29) Because Petitioner was a diabetic, Dr. Romano wanted to monitor his blood sugar before the July 21, 2017 scheduled surgery. (T. 36; PX 3 p. 30) Petitioner's blood sugar levels were monitored on July 10th, 11th, 12th, 16th, 17th, 18th, and 19th at Rush Oak Park Hospital. (T. 36; PX 3 pp. 44-49, 59; PX 5 pp. 803-871) Petitioner was placed on off work on July 3, 2017 by Dr. Romano. (PX 3 pp. 54-56)

On July 20, 2017, Petitioner received a clearance to proceed to surgery. (T. 37; PX 5 pp. 794-802) On July 21, 2017, Dr. Romano performed left shoulder arthroscopy with rotator cuff repair and subacromial decompression on Petitioner's left shoulder at Rush Oak Park Hospital. (T. 37) Dr. Romano's post-operative diagnosis for Petitioner's left shoulder was rotator cuff tear of the left shoulder with impingement and biceps tendon tear. (T. 37; PX 3 pp. 63-64; PX 5 pp. 628-629)

Petitioner remained off work on August 2, 2017 when he returned to Roman Orthopaedics for his postoperative visit. (T. 37; PX 3 p. 67)

On September 20, 2017, Petitioner returned to Dr. Springer for blurry and sensitive to light right eye. (T. 37; PX 4 pp. 13-15) When he returned to see Dr. Springer on October 3, 2017, Petitioner informed him that he still had blurry vision since the accident. (T. 37-38; PX 4 pp. 16-18)

Dr. Romano kept Petitioner off work on October 4, 2017, on November 16, 2017, and on January 4, 2018. (T. 38; PX 3 pp. 138-139, 181, 184, 205, 226)

Petitioner testified that he received a total of forty sessions of physical therapy beginning July 12, 2017 to January 30, 2018 for his left shoulder at Romano Orthopaedics. (T. 38-39; PX 3 pp. 73, 80-86, 94-95, 107-110, 123-124, 140-141, 146-147, 170-171, 174-175, 182-183, 185-190, 195-196, 209, 212-219, 224-225, 227-230) Petitioner claimed that this helped his left shoulder but he was not at 100 percent. (T. 39)

Petitioner saw Dr. Romano for his left shoulder for the final time on February 1, 2018. (T. 38; PX 3 pp. 231-233) Dr. Romano returned Petitioner to full duty work, without any restrictions beginning February 5, 2018. (T. 38; PX 3 pp. 232-234)

On September 10, 2018, Petitioner returned to Dr. Springer with still having blurred vision in his right eye. (T. 39; PX 4 pp. 19-21) He informed Dr. Springer that "it had been hard…to focus since 2017." (T. 39; PX 4 p. 19)

As of March 11, 2020, Petitioner informed Dr. Springer that he still had blurred vision in his right eye. (T. 40; PX 4 pp. 22-25)

On September 8, 2020, Petitioner informed Dr. Springer that his vision in his right eye was slowly improving. (T. 40; PX 4 pp. 33-34)

On October 13, 2020, Petitioner informed Dr. Springer that his vision in his right eye continued to improve. (T. 40; PX 4 pp. 35-36)

Petitioner saw Dr. Springer for the final time on December 27, 2022 and still had some blurred vision in his right eye. (T. 40; PX 4 pp. 48-50) Dr. Springer noted "Resolved retinal edema. Residual damage to right retina from 5/26/17 trauma is possible, even if not apparent on exam." (PX 4 p. 49)

Petitioner testified that he still had $100 balance for his emergency room visit, $654.77 balance for ambulance, $161.06 balance from Radiological Physicians Limited from Mercy Hospital after his group health insurance covered. (T. 41-42) He had a balance of $1,734.31 from Concentra Clinic and $390.91 balance from Romano Orthopaedics. (T. 43) Petitioner would like to be reimbursed for $656 that he paid to Romano Orthopaedics. (T. 43) He further had a balance of $40.76 from Metropolitan Advanced Radiological Services. (T. 43)

Petitioner's Current Condition

Respondent terminated Petitioner on March 1, 2018. (T. 44; RX 4 pp. 1-5) Respondent concluded that Petitioner "…committed a Gross Misconduct/Behavioral violation when [he] engaged in a verbal argument with a motorist that led to a physical altercation. A review of the CTA station video footage confirmed the incident.…" (RX 4 p. 1) Respondent went on to inform Petitioner on March 1, 2018 that his "…actions were not in keeping with an efficient operation and contrary to the Authority's Mission. We therefore inform you that effective March 1, 2018 you are hereby discharged from employment with the Chicago Transit Authority…." (RX 4 p. 2)

Petitioner testified that he worked for Windy City Limousine as a coach bus driver from March 2018 to November 2018. (T. 45) He worked for Cook Continental Airport Transport as a shuttle bus driver until April of 2022. (T. 45-46) He then worked for Alliance Ground International starting April 2022 to June of 2023 as a CDL class A truck driver. (T. 46) In June of 2023, Petitioner began working for Quality Custom Distribution in Franklin Park as a delivery driver. (T. 46-47) Petitioner testified that he had a limited lifting ability. (T. 47) At Quality Customer Distribution, he was required to pick up crates of milk, sandwiches, and other stuff for Starbucks. (T. 47) Petitioner said he was unable to pick up the crates above or over his head because they were "too heavy every time." (T. 48) Prior to his injury that occurred on May 26, 2017, Petitioner said he did not have any problems lifting. (T. 48) Petitioner stopped working for Quality Customer Distribution in December of 2023. (T. 48)

Petitioner testified that he then went to work for 10 Roads Express as a CDL Class A truck driver. (T. 48) Petitioner was not required to lift with 10 Roads Express. (T. 48-49)

Prior to May 26, 2017, Petitioner testified that he had never treated for left shoulder or had any problems with his right eye including blurry vision. (T. 49) Petitioner testified that he currently has difficulty driving a truck since he has to rotator his shoulder when turning. (T. 50) When he worked for Quality Customer Distribution, Petitioner claimed that he had to take painkiller or Tylenol for pain in his left shoulder. (T. 50-51)

Petitioner testified that his left shoulder caused problems when sleeping, especially in the winter. (T. 51) He must take Tylenol for pain and discomfort. (T. 51) Petitioner testified that he stretches his left shoulder to loosen up and get ready for work every day. (T. 51) Prior to May 26, 2017,

Petitioner claimed that he did not have to stretch his left shoulder. (T. 51) Currently, Petitioner has a sharp pain, like stabbing on top of his left shoulder two to three times a night that wakes him up. (T. 51-52) Petitioner stated he no longer has the blurred vision in his right eye. (T. 52)

III. CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. *820 ILCS 305/1.1(e).* Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

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

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him be a credible witness. Petitioner was candid when explaining the altercations that occurred on May 26, 2017. He was truthful regarding his medical treatments and level of disability and/or functional limitations he noticed about himself without exaggeration.

The Arbitrator viewed the video tape of the incident. (RX 1) The Arbitrator notes that Petitioner's testimony and the content of the video are very similar. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

Issue C, whether the accident arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848, ¶ 34. A compensable injury occurs 'in the course of' employment when it is sustained while he performs reasonable activities in conjunction with his employment. *Id.*

"The 'arising out of' component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Id.* at ¶ 36. To determine whether a claimant's injury arose out of his employment, the risks to which the claimant was exposed must be categorized. *Id.* The three categories of risks are "(1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics." *Id.* at ¶ 38. "A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties." *Id.* at ¶ 46.

When determining whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent and a physical altercation is at issue, who makes first contact is not the decisive factor in determining the aggressor. Instead, the parties conduct must be examined within the context of the entire situation. *Anthony Bridges vs. Chicago Transit Authority*, 19 IWCC 0538, pp. 3-4.

Anthony Bridges vs. Chicago Transit Authority, 19 IWCC 0538 is enlightening and instructive when analyzing the instant case. In *Bridges*, on the accident date, Petitioner, a bus driver, arrived at a turnaround where his supervisor knocked on the driver's side window to tell Petitioner that there was a threatening man and the police had been called to remove this threatening man, and not to allow this threatening man on the bus. After Petitioner in *Bridges* exited the bus, the threatening man confronted Petitioner and this resulted in a physical fight while Petitioner tried to keep the threatening man off the bus. Respondent contended that Petitioner made the first contact; therefore, Petitioner was the aggressor and should not recover for his injuries. *Anthony Bridges vs. Chicago Transit Authority*, 19 IWCC 0538, pp. 1-2.

As to the accident question in *Bridges*, the Arbitrator found in *Bridges* that an accident did not occur. The Commission reversed the Arbitrator's Decision and found in *Bridges* that an accident did occur that arose out of and in the course of Petitioner's employment by Respondent. *Anthony Bridges vs. Chicago Transit Authority*, 19 IWCC 0538, p. 3. The Commission concluded in *Bridges* that "While Respondent asserts that Petitioner made the first contact with the man, there is no evidence establishing as much, and it is nonetheless not dispositive on the issue of compensability. Petitioner was threatened and physically engaged by a man attempting to trespass onto Respondent's property." *Anthony Bridges vs. Chicago Transit Authority*, 19 WC 0538, pp. 3-4.

In the instant case, Petitioner testified that he attempted to move Seals' phone from his face and did not make any physical contact with Seals. (T. 17-20) It is unclear in the video tape as to whether Petitioner touched Seals' arm that contained Seals' phone or whether Petitioner only attempted to remove Seals' phone from his face. (RX 1) What is very clear in the video tape is that immediately after Petitioner removed Seals' phone from his face, Seals punched Petitioner in the face and right eye. (RX 1) And thereafter, Petitioner removed Seals from the bus. (T. 21; RX 1)

Just as in *Bridges*, there is no reliable evidence that Petitioner made first contact with Seals, however, whether Petitioner made first contact with Seals is not dispositive on the issue of compensability in the instant case because when the parties conduct is examined in the context of the entire situation. Here, Seals aggressively entered the bus without permission, screamed at Petitioner and used profane and threatening language. (T. 14-23, 57) Moreover, Seals refused to exit the bus after Petitioner asked him to leave the bus more than once. (T. 14-23, 57) Just as in *Bridges*, the instant Petitioner was threatened and physically engaged by a man who trespassed onto Respondent's property. (T. 13-14, 16-21, 26-28)

The second altercation began when Seals aggressively and belligerently slapped Petitioner's hand holding his phone as he attempted to photograph Seals. (T. 26-28; PX 7 pp. 12-13; RX 1) This description of the second altercation between Petitioner and Seals is supported not only by the video tape of both altercations, but also by the interview conducted by the Chicago Police Department shortly after the altercation on May 26, 2017 wherein Detective Ron Rempas noted that according to Seals, moments after the initial altercation ended, Seals "…went back into the bus and another "scuffle" ensued and [Seals] was pulled off by police and brought to the station." (PX 7 p. 13)

Based on the Arbitrator's review of the video tape (RX 1), the Arbitrator disagrees with Respondent's characterization of the video tape that on May 26, 2017 Petitioner "…committed a Gross Misconduct Behavioral violation when [he] engaged in a verbal argument with a motorist that led to a physical altercation." (RX 4 p. 1) The Arbitrator disagrees with Respondent's characterization and assessment of the video tape because Petitioner never invited Seals onto the bus, nor did Petitioner initially engage Seals in a verbal argument either on the bus or off the bus. (T. 14, 17, 20-21) The Arbitrator observed in the video tape that Petitioner continued to try to deescalate the aggressor, Seals, to prevent an altercation. (RX 1) As Petitioner tried to deescalate Seals, Seals kept threatening and screaming at Petitioner while Seals used inflammatory and abusive language. (T. 16-19) And, as all this ensued, Petitioner kept asking Seals to exit the bus and Seals continued to refuse. (T. 16, 18-19, 57)

As to the issue of accident, the Arbitrator is also persuaded by Seals' guilty plea. (PX 8) Seals pleaded guilty to committing an aggravated battery on Petitioner while Petitioner was "…performing his…official duties." Seals' guilty plea represents Seals' admission that during each of these altercations, Seals was the offender and the aggressor while Petitioner became Seals' victim. (See PX 7 pp. 1-2, 5-6, 8,-9, 12-14, 23)

Finally, the Arbitrator notes that during the trial, Respondent's counsel showed the portion of the video tape in which Petitioner removed Seals from the bus. (T. 21, 54-58) After viewing the entire video tape, the Arbitrator further notes that Petitioner removed Seals from the bus, but only after Seals punched Petitioner's right eye causing injury. (T. 19-21; PX 4 pp. 24, 27, 29, 46, 49; RX 1)

Based upon all of the above, the Arbitrator concludes that on May 26, 2017, Petitioner sustained accidental injuries that arose out of and in the course of Petitioner's employment by Respondent.

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

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

Once Petitioner and Seals left the bus during the first altercation on May 26, 2017, Petitioner testified that Seals "bull rushed" him causing Petitioner to fall to the sidewalk and when Petitioner fell to the sidewalk, Petitioner felt something pop in his left shoulder. (T. 22-23)

Petitioner testified that he had no problems of any kind lifting with his left shoulder prior to May 26, 2017. (T. 48) Petitioner testified that he had no problems with his left shoulder when he drove prior to May 26, 2017. (T. 50) Currently, Petitioner must perform stretch exercises to loosen up his left shoulder to get ready for work every day. (T. 51) Petitioner did not have to stretch his left shoulder prior to May 26, 2017. (T. 51) Currently, Petitioner experiences a sharp, stabbing pain on top of his left shoulder that wakes him up while sleeping, once, twice, and sometimes three times a night. (T. 51-52) Petitioner did not experience pain in his left shoulder that woke him up prior to May 26, 2017. (T. 52)

Petitioner sought immediate treatment for his left shoulder after his May 26, 2017 work accident. Initially at Mercy Hospital and Medical Center and then at Concentra on May 27, 2017. (PX 1; PX 2) Petitioner had a left shoulder MRI on June 20, 2017. (T. 35; PX 3 pp. 18-21) The doctors Petitioner saw at Concentra between May 27, 2017 and June 20, 2017 did not send him for an MRI of his left shoulder. (T. 35; PX 2) The impression from Petitioner's June 20, 2017 left shoulder MRI included a high-grade partial-thickness to full-thickness tear of the supraspinatus, high-grade partial-thickness infraspinatus tear, superior labral degeneration, tearing and a likely long head biceps tendon, and articular split tear with potential complete tear of the intra-articular component. (PX 3 p. 20)

Dr. Romano performed a left shoulder arthroscopy with rotator cuff repair and subacromial decompression on Petitioner's left shoulder on July 21, 2017. (T. 37; PX 3 pp. 63-64; PX 5 pp. 628-629) Dr. Romano's post-operative diagnosis for Petitioner's left shoulder on July 21, 2017 stated, "Rotator cuff Tear of the left shoulder with impingement and biceps tendon tear." (PX 3

pp. 63-64; PX 5 pp. 628-629) According to Dr. Romano, Petitioner suffered a work-related injury to his left shoulder on May 26, 2017. (PX 3 pp. 12, 22, 206) According to Dr. Springer, Petitioner suffered a work-related injury to his right eye on May 26, 2017. (PX 4 pp. 24, 27, 29, 46, 49)

After reviewing the medical records, video tape, witness testimony and record as a whole, the Arbitrator finds no inconsistent history. Therefore, the Arbitrator finds that Petitioner's current condition of ill-being in his left shoulder and right eye are causally related to his work accident that occurred on May 26, 2017.

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

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

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

Overall, the Arbitrator finds Petitioner's treatment to be reasonable and necessary. Petitioner testified that most of his bills were paid by his group health insurance that Petitioner received through his employment with Respondent. (T. 40-44) As such, the Arbitrator orders Respondent to pay for the following outstanding medical service balances and reimburse Petitioner for $656.00 out of pocket co-pay to Romano Orthopaedics, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act:

Mercy Hospital (balance)	$100.00
City of Chicago - EMS (balance)	$654.79
Radiological Physicians (balance)	$161.06
Concentra (balance)	$1,734.31
Romano Orthopaedics (balance)	$390.91
Romano Orthopaedics (out of pocket co-pay)	$656.00
Metropolitan Advance Radiological Services (balance)	$40.76
Total	$3,737.67

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

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Westin Hotel v. Indus. Comm'n*, 372 Ill.App.3d 527, 542 (1st Dist. 2007).

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n*, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

The doctors at Concentra returned Petitioner to restricted work beginning on May 27, 2017 and concluding on June 20, 2017. (T. 31-33; PX 2 pp. 3, 11, 18, 28) Petitioner testified that during this time, Respondent did not provide any work for him that would have fit within the restrictions placed by Concentra. (T. 32-33)

Dr. Romano initially took Petitioner off work on June 7, 2017 and Dr. Romano kept him off work until February 4, 2018. (T. 34-35, 37-38; PX 3 pp. 16, 26, 40, 54-56, 67, 138-139, 181, 184, 205, 226, 232, 234)

Based upon this evidence, as well as the Arbitrator finding that Petitioner's accident arose out of and occurred in the course of Petitioner's employment by Respondent and that Petitioner's current condition of ill-being is causally related to this injury, the Arbitrator hereby awards Petitioner temporary total disability benefits beginning on May 27, 2017 and concluding on February 4, 2018, for a total of 36 2/7 weeks.

Issue L, the nature and extent of the injury, the Arbitrator finds as follows:

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

In determining permanent partial disability ("PPD") benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." *820 ILCS 305/8.1b(b)*; *Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 152576WC, ¶ 22, 67 N.E.3d 959. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b).

Under Section 8.1b(b)(i), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The statute does not require the claimant to submit an impairment rating. It only requires that the Commission consider such a report if in evidence and regardless of which party submitted it. *See Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n*, 2015 IL App (5th) 140445WC, ¶ 17, 43 N.E.3d 556. Therefore, the Arbitrator gives no weight to this factor.

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes that Petitioner works as a Class A truck driver in which he does not do any lifting. (T. 48-49) The Arbitrator finds that there is no difference from a bus driver to being a Class A truck driver. the Arbitrator gives no weight to this factor.

Under Section 8.1b(b)(iii), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 54 years old at the time of the accident. See *Flexible Staffing Services v. Illinois Workers' Compensation Commission*, 2016 IL App (1st) 151300WC (1st Dist. 2016) (holding that the Commission can make reasonable inferences from the medical evidence as it relates to how the claimant's age affects his disability). The Arbitrator finds that Petitioner's age may increase his level of permanent partial disability because he may live with the effects of his left rotator cuff tear with impingement and biceps tendon tear. (PX 3) The Arbitrator gives more weight to this factor.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes that Petitioner did not present any evidence that his earning capacity was changed in any way. The Arbitrator gives no weight to this factor.

Under Section 8.1b(b)(v), evidence of disability corroborated by the treating medical records, Petitioner offered uncontroverted and credible testimony regarding his disability relative to his left shoulder. Petitioner explained while he worked for Quality Custom Distribution, he had problems lifting crates containing milk, sandwiches and various items needed for Starbucks stores. (T. 47-48) When Petitioner worked for Quality Custom Distribution, his left shoulder hurt every night that required him to take over-the-counter medication to relieve the pain. (T. 50) Prior to injuring his left shoulder on May 26, 2017, Petitioner had no problems lifting. (T. 48) Petitioner testified that his left shoulder is problematic when he drives a truck because he must place both hands on the steering wheel and rotate his shoulders to turn the truck. (T. 49-50) Petitioner had no problems with his left shoulder when he drove prior to May 26, 2017. (T. 50) Petitioner's left shoulder pain typically wakes him up once, twice, and sometimes three times a night. (T. 51-52) Petitioner described a sharp stabbing pain he feels on top of his left shoulder that wakes him up. (T. 51-52) Petitioner takes Tylenol because of the pain and discomfort he feels in his left shoulder while he sleeps. (T. 51) Left shoulder pain never woke Petitioner up while he slept prior to May 26, 2017. (T. 52) And today, every day before he goes to work, Petitioner performs stretch exercises to loosen up his left shoulder when getting ready for work. (T. 51) Prior to May 26, 2017, Petitioner did not engage in any stretch exercises for his left shoulder when getting ready for work. (T. 51)

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained PPD to the extent of 15 percent, pursuant to Section 8(d)(2) of the Act which corresponds to 75 weeks of PPD benefits at a weekly rate of $775.18, because the injuries sustained caused 15 percent loss of the person as a whole, as provided in Section 8(d)(2) of the Act.

It is so ordered:

Jennifer Bae **SEPTEMBER 12 2024**

Arbitrator Jennifer Bae

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC020271
Case Name	INSURANCE COMPLIANCE v. G&S REFRIGERATED TRANSPORT
Consolidated Cases	
Proceeding Type	
Decision Type	Commission Decision
Commission Decision Number	25IWCC0272
Number of Pages of Decision	7
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	
Respondent Attorney	Brett Kolditz

DATE FILED: 6/18/2025

/s/Amylee Simonovich,Commissioner

Signature

STATE OF ILLINOIS)
)
COUNTY OF CHAMPAIGN)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

State of Illinois
Department of Insurance,
Insurance Compliance Department[1], Case # **19WC020271**
Petitioner,

v.

Gregory Miller, individually, and as President
G&S Refrigerated Transport, Inc.,
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 2079 days. On April 9, 2025, after timely notice to Respondents, a hearing was held before Commissioner Simonovich in Urbana, 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 2079 days during the period of from July 20, 2005, through August 21, 2008, and August 23, 2009 through March 29, 2012, when Respondents did business and failed to provide coverage for its employees. In addition, Petitioner seeks reimbursement for the liability incurred by the Injured Workers' Benefit Fund in case no. 11 WC 008721 in the amount of $101,991.60. Petitioner seeks a total award of $1,145,679.80.

The Commission, after considering the record in its entirety, and being advised of the applicable law, finds that Respondents knowingly and willfully violated section 4 of the Act and section 9100.100 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 section 4 of the Act in the sum of $519,750.00, representing $250.00 per day for each of the 2079 days during the period from July 20, 2005, through August 21, 2008, and August 23, 2009 through March 29, 2012, and orders Respondent to reimburse the Injured Workers' Benefit Fund in the amount of $101,991.60, for a total of $725,691.60.

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

I. Findings of Fact

The State of Illinois, Department of Insurance, Insurance Compliance Department, initiated an insurance compliance investigation after the Injured Workers' Benefit Fund (IWBF) had been named as an additional party in the matter of *Todd Beatty vs. Michael R. Craft/C&M Express, Inc., Greg Miller/G&S Refrigerated Transport, Inc., and the Illinois State Treasurer as ex officio Custodian of the Illinois Injured Workers Benefit Fund*, No. 11 WC 008721. The claimant in that case alleged a work-related accident arising out of and in the course of employment on January 22, 2011. 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.

Investigator Matthew Haslam personally served Respondent Gregory Miller with a Notice of Non-Compliance Hearing on March 3, 2025. (R.1).

Michael Cummins, an Investigator for Insurance Compliance for the Illinois Department of Insurance, testified at the hearing.

Mr. Cummins testified that Respondent Gregory Miller contacted him and confirmed that he had received notice of the April 9, 2025, hearing. Mr. Miller declined to attend as he lacked transportation.

Mr. Cummins testified that Respondent G&S Refrigerated Transport, Inc., was engaged in the business of refrigerated trucking. This is corroborated by the testimony of Todd Beatty in his claim against the Respondent.

Mr. Cummins further testified that he researched G&S Refrigerated Transport, Inc., and found that they did not have workers' compensation insurance for the periods stated in the notice of non-compliance. Petitioner introduced a certified statement from the National Council of Compliance Insurance (NCCI) in Boca Raton, Florida. (R.3). The NCCI certified that it is the agent designated by the Commission for the purpose of collecting proof of insurance coverage information on Illinois employers. The certificate indicates that said records do not show policy information was filed showing proof of workers' compensation insurance for G&S Refrigerated Transport, Inc. for the periods from July 20, 2005, through August 21, 2008, and August 23, 2009 through March 29, 2012.

An exhibit to the NCCI statement showed Respondent had purchased a workers' compensation insurance policy effective from August 22, 2008, and expiring August 22, 2009. (R.3 Ex 1)

Further investigation showed that they were not a self-insured entity during this period. A report from the Department of Self-Insurance states that G&S Refrigerated Transport, Inc. were not self-insured. The document indicates that no certificate of approval to self-insure was issued to G&S Refrigerated Transport, Inc. (R.6)

The Commission takes judicial notice of the Arbitration Decision in *Todd Beatty vs. Michael R. Craft/C&M Express, Inc., Greg Miller/G&S Refrigerated Transport, Inc., and the*

Illinois State Treasurer as ex officio Custodian of the Illinois Injured Workers Benefit Fund, No. 11 WC 008721. In that case, the Arbitrator concluded that petitioner Todd Beatty was a loaned employee of Michael Craft d/b/a C&M Express being borrowed by Greg Miller d/b/a G&S Refrigerated Transport under §1(a)(4) of the Act. The Arbitrator further concluded that all respondents were uninsured on the accident date of January 22, 2011. The Arbitrator awarded the petitioner medical expenses and permanent total disability benefits. (R.10).

Mr. Cummins testified that after Respondent in this matter failed to pay the award in 11 WC 008721, the Injured Workers' Benefit Fund ultimately paid out approximately $101,991.60 in benefits to the injured claimant, Todd Beatty.

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: "Carriage by land, water or aerial service and loading or unloading in connection therewith, including the distribution of any commodity by horsedrawn or motor vehicle where the employer employs more than 2 employees in the enterprise or business." 820 ILCS 305/3(3).

The Commission finds that Respondents' business falls within Section 3(3) of the Act. The Commission takes judicial notice of the findings by the Arbitrator in this regard as contained in the Decision rendered in *Todd Beatty vs. Michael R. Craft/C&M Express, Inc., Greg Miller/G&S Refrigerated Transport, Inc., and the Illinois State Treasurer as ex officio Custodian of the Illinois Injured Workers Benefit Fund*, No. 11 WC 008721. The testimony therein established that the claimant was employed under §1(a)4 of the Act as a borrowed truck driver by Michael R. Craft d/b/a C&M Express, Inc., and Greg Miller d/b/a G&S Refrigerated Transport, and engaged in the business of the distribution of commodities by driving a truck. The testimony showed G&S had other borrowed employees also engaged in driving. Accordingly, the Commission finds that the work Respondents engaged in automatically subjected them to the provisions of the Illinois Workers' Compensation Act.

Pursuant to section 4(a) of the Act, all employers who come within the auspices of the Act are required to provide workers' compensation insurance. See 820 ILCS 305/4(a) (West 2004). Section 9100.90(a) of the Rules similarly provides that any employer subject to section 3 of the Act shall insure payment of compensation required by section 4(a) of the Act "by obtaining approval from the Commission to operate as a self-insurer or by insuring its entire liability to pay the compensation in some insurance carrier authorized, licensed or permitted to do such insurance business in Illinois." 50 Ill. Adm. Code 9100.90(a) (1986). Section 9100.90(d)(3)(E) of 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 Section 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 Section 2 of the Act, provide workers' compensation insurance for the protection of their employees. 820 ILCS 305/4.

In this case, Petitioner submitted a certified finding from the Department of Self-Insurance that no certificate of approval to self-insure was issued to G & S Refrigerated Transport, Inc. (R.6) At hearing, Petitioner sought a fine from July 20, 2005, through August 21, 2008, and August 23, 2009 through March 29, 2012. The NCCI certification provided by Petitioner shows there was no policy information showing proof of workers' compensation insurance for the period from July 20, 2005, through August 21, 2008, and August 23, 2009 through March 29, 2012. Furthermore, the Commission finds that Respondent was uninsured on the accident date of January 22, 2011, pursuant to the previous finding of no insurance by the Commission in *Todd Beatty vs. Michael R. Craft/C&M Express, Inc., Greg Miller/G&S Refrigerated Transport, Inc., and the Illinois State Treasurer as ex officio Custodian of the Illinois Injured Workers Benefit Fund*, No. 11 WC 008721. The Commission now finds that there was no policy information showing proof of workers' compensation insurance for the claimed periods. Respondents did not attend the hearing and thus presented no evidence indicating that they provided workers' compensation insurance of any kind during the claimed periods. 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 July 20, 2005, through August 21, 2008, and August 23, 2009 through March 29, 2012.

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

> "Upon a finding by the Commission, after reasonable notice and hearing, of the knowing and willful failure or refusal of an employer to comply with any of the provisions of paragraph (a) of this Section ***, the Commission may assess a civil penalty of up to $500 per day for each day of such failure or refusal after the effective date of this amendatory Act of 1989. The minimum penalty under this Section shall be the sum of $10,000. Each day of such failure or refusal shall constitute a separate offense. The Commission may assess the civil penalty personally and individually against the corporate officers and directors of a corporate employer, the partners of an employer partnership, and the members of an employer limited liability company, after a finding of a knowing and willful refusal or failure of each such named corporate officer, director, partner, or member to comply with this Section. The liability for the assessed penalty shall be against the named employer first, and if the named employer refuses to pay the penalty to the Commission within 30 days after the final order of the Commission, then the named corporate officers, directors, partners, or members who have been found to have knowingly and willfully refused or failed to comply with this Section shall be liable for the unpaid penalty or any unpaid portion of the penalty." 820 ILCS 305/4(d) (West 2004).

Section 9100.90(b) of the Rules similarly provides that penalties may be assessed for non-compliance after a reasonable notice and hearing. 50 Ill. Adm. Code 9100.90(b) (1986). Section 9100.90(c) of the Rules describes the proper notice of non-compliance to be served upon the employer and provides that the employer may request an informal conference to resolve the matter.

50 Ill. Adm. Code 9100.90(c) (1986). Section 9100.90(d) of the Rules describes the manner of notice and service for an insurance compliance hearing and the procedure for conducting the hearing. 50 Ill. Adm. Code 9100.90(d) (1986).

In this case, Petitioner submitted into evidence the Notice of Non-Compliance delivered to Gregory Miller, individually, in the form prescribed by the Rules. Moreover, Mr. Cummins testified that Mr. Miller contacted him and confirmed his awareness of the hearing date and his intention to not attend. The insurance compliance hearing allowed the Petitioner to introduce evidence and testimony, and afforded Respondents the opportunity to do the same, had they chosen to attend personally or through counsel. Accordingly, the Commission concludes that reasonable and proper notice and hearing was provided to Respondent.

On the merits, the Commission has considered the following factors in assessing penalties against an uninsured employer: (1) the length of time the employer had been violating the Act; (2) the number of workers' compensation claims brought against the employer; (3) whether the employer had been made aware of his conduct in the past; (4) the number of employees working for the employer; (5) the employer's ability to secure and pay for workers' compensation coverage; (6) whether the employer had alleged mitigating circumstances; and (7) the employer's ability to pay the assessed amount. See, *e.g.*, *State of Illinois v. Murphy Container Service*, Ill. Workers 'Comp. Comm'n, No. 03 INC 00155, 7 IWCC 1037 (Aug. 2, 2007).

The Commission finds that the period of time during which the Respondents violated the Act by failing to obtain workers' compensation insurance was significant. The Respondents failed to have insurance for 2079 days, from July 20, 2005, through August 21, 2008, and August 23, 2009 through March 29, 2012. In the *Todd Beatty vs. Michael R. Craft/C&M Express, Inc., Greg Miller/G&S Refrigerated Transport, Inc., and the Illinois State Treasurer as ex officio Custodian of the Illinois Injured Workers Benefit Fund*, No. 11 WC 008721, Decision, the parties' testimony and exhibits established that Respondent had multiple employees who were contractually loaned out to other employers under §1(a)(4) of the Act. As Respondents failed to have workers' compensation insurance, the Injured Workers' Benefit Fund paid benefits to that claimant as a result of the injury. In mitigation, the Commission notes that testimony was elicited that Michael R. Craft d/b/a C&M Express, Inc., the §1(a)(4) loaning employer, had agreed pursuant to that section of the Act to provide workers compensation insurance for the borrowed employees. The Commission notes that §1(a)(4) provides joint liability regardless of the agreement of the employers, and this is only a mitigating circumstance. No evidence was introduced that the Respondent lacked the ability to pay the assessed amount.

The evidence established that Respondents maintained workers' compensation insurance from August 22, 2008, through August 22, 2009, and permitted the policy to be cancelled without procuring a new policy. 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 $519,750.00 against Respondents, that being $250 per day for the period of 2079 days between July 20, 2005, through August 21, 2008, and August 23, 2009 through March 29, 2012. Pursuant to Section 9100.85(a)(1) of the Rules, the Commission is also entitled to obtain reimbursement from Respondents in the amount of $101,991.60, representing the compensation obligations paid by the Injured Workers' Benefit Fund in the claim of *Todd Beatty vs. Michael R. Craft/C&M Express, Inc., Greg Miller/G&S Refrigerated Transport, Inc., and the Illinois State Treasurer as ex officio Custodian of the Illinois Injured Workers Benefit Fund*, No. 11 WC 008721.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondents, Gregory Miller, individually, and as President of G&S Refrigerated Transport, Inc., pay to the Illinois Workers' Compensation Commission the sum of $621,741.60 pursuant to Section 4(d) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that payment shall be made according to the following procedure: (1) payment of the penalty shall be made by certified check or money order made payable to the Illinois Workers' Compensation Commission; and (2) payment shall be mailed or presented within thirty (30) days of the final order of the Commission or the order of the court of review after final adjudication to:

Illinois Department of Insurance
Attn: Workers' Compensation Compliance
115 S. LaSalle Street, 13th 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.

June 18, 2025

H: 04/09/25
AHS/pcs
051

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC010321
Case Name	Sha-Ree Swallers v. State of Illinois - Chester Mental Health
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0273
Number of Pages of Decision	26
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Kenton Owens

DATE FILED: 6/18/2025

/s/Kathryn Doerries,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: Down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SHA-REE SWALLERS,

Petitioner,

vs. NO: 23 WC 10321

STATE OF ILLINOIS – CHESTER MENTAL HEALTH CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability benefits ("TTD"), and medical expenses both current and prospective, and being advised of the facts and law, corrects the Decision of the Arbitrator as specified below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. 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).

Petitioner was a Security Therapy Aid for Respondent. She was involved in trying to restrain a combative patient and was injured. The Arbitrator found the Petitioner proved a compensable accident on November 6, 2022 causing a current condition of ill-being of her cervical spine. She awarded Petitioner medical expenses submitted into evidence, noted all TTD had been paid, and ordered Respondent to authorize and pay for prospective cervical disc replacement surgery at C4-5, C5-6, and C6-7 recommended by Dr. Gornet.

The Commission agrees with the causation finding of the Arbitrator as well as her awards of TTD and medical expenses both current and prospective. Therefore, the Commission affirms and adopts the awards by the Arbitrator. However, we note what appears to be a clerical error on page 15 of the Decision of the Arbitrator. In her framing of the question of causation she wrote:

"Issue (F): Is Petitioner's current condition of ill-being, specifically her cervical spine condition experienced after September 9, 2018, causally related to the accident?"

The Commission is unaware of any significance to the date September 9, 2018 in this claim. Petitioner and Respondent concur that the instant incident occurred on November 6, 2022. Therefore, in the interests of clarity, the Commission corrects the date of accident in the heading for Issue (F) on page 15 of the Decision and strikes "September 9, 2018," and replaces it with "November 6, 2022."

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 21, 2024 is hereby corrected as specified above and otherwise affirmed and adopted, which is attached to and made a part hereof.

IT IS FURTHER ORDERED BY THE COMMISSION 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, which will be paid directly to the service providers as stipulated by the parties.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for the prospective treatment recommended by Dr. Gornet, including, but not limited to disc replacement surgery at C4-5, C5-6, and C6-7 and any necessary follow-up treatment.

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

IT IS FURTHER ORDERED BY THE COMMISSION that 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, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980).

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.

June 18, 2025
O-5/21/25
KAD/dw
042

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC010321
Case Name	Sha-Ree Swallers v. State of Illinois - Chester Mental Health
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	22
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Kenton Owens

DATE FILED: 6/21/2024

/s/ Jeanne AuBuchon, Arbitrator

Signature

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

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

June 21, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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)

SHA-REE SWALLERS
Employee/Petitioner

v.

STATE OF IL/CHESTER MENTAL HEALTH
Employer/Respondent

Case # **23** WC **10321**

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 **April 29, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **November 6, 2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**67,383.92**; the average weekly wage was $**1,295.84**.

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

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

Respondent shall be given a credit of $**ALL PAID** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits, for a total credit of $**ALL 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 group exhibit, as provided in Sections 8(a) and 8.2 of the Act, which will be paid directly to the service providers as stipulated by the parties.

Respondent shall be given a credit for medical benefits that have been paid and shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving 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 disc replacement surgery at C4-5, C5-6, and C6-7 and any necessary follow-up treatment.

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

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

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

Jeanne L. AuBuchon

Signature of Arbitrator

June 21, 2024

ICArbDec19(b)

PROCEDURAL HISTORY

This matter proceeded to trial on April 29, 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; and 3) entitlement to prospective medical care to the Petitioner's cervical spine.

The parties stipulated that if medical bills were awarded, the Respondent would pay the providers directly.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 41 years old and employed by the Respondent as a security therapy aide. (AX1, T. 11) On November 6, 2022, the Petitioner was in an altercation with a patient during which the patient grabbed her by the back of the head by her hair and was swinging her back and forth, hitting the back of her head on the wall and the front of her head on a desk. (T. 11-12) She testified that the next morning she woke up hurting, very stiff and had a very bad headache and bruising. (T. 13) She said she worked her shift – getting more stiff as the day went on – and saw a facility doctor, who took her off work and sent her to her regular doctor. (T. 14)

The Petitioner had a prior injury on December 28, 2013, while working for the Respondent as a security therapy aide. (RX5, T. 28) That claim – 14WC1582 – was denied by the Arbitrator, who found that the Petitioner failed to prove her condition of ill-being in her cervical spine was causally related to her work accident and denied prospective medical treatment. (RX5) The Arbitrator based her decision on the lack of notation regarding complaints of neck pain at the time of the initial post-accident emergency room presentation and records from her primary care

physician following the accident and due to her symptoms migrating between the right and left upper extremities. (Id.) In 18IWCC573, the Commission affirmed the Arbitrator's decision. (Id.)

At the arbitration hearing, the Petitioner testified following that 2013 accident, her symptoms included pain and tingling in her neck to her shoulders, more so down her right extremity depending on her level of activity. (RX6) Dr. Matthew Gornet, a spine surgeon at the Orthopedic Center of St. Louis, testified in that case that when Petitioner presented to him on July 28, 2014, she complained of neck pain to the right trapezius, right shoulder, down the right arm to her hand with numbness and tingling in her right hand, with some soreness and pain on the left side, which was not as great of a problem for her as her right-sided symptoms. (RX7) Dr. Gornet testified he placed Petitioner on light duty restrictions for her injuries and had eventually recommended disc replacements at C4-5 and C5-6. (Id.)

The Petitioner testified that she never had the surgery Dr. Gornet recommended. (T. 29) She said she followed up at The Orthopaedic Center of Southern Illinois and underwent injections in 2018 and 2019 and a radiofrequency ablation (RFA) on January 21, 2019. (Id.) She said she had additional RFAs, with the last being on March 17, 2021. (T. 30) She said she did not go to the doctor or seek any treatment for her neck or cervical spine between March 2021 and the date of the work accident on November 6, 2022. (Id.) She said that during that period, she was working full duty as a security therapy aide. (Id.) She said that if she were having symptoms or her if her complaints were increased, she would have gone back to the doctor. (Id.) On cross-examination, the Petitioner did not dispute that on November 6, 2020, she told her doctors she was ready to have surgery. (T. 37)

As to the injury at issue currently, the Petitioner sought treatment on November 10, 2022, from Nurse Practitioner Michaela Davis at the Christopher Rural Health Planning Corporation Rea

Clinic. (PX3) A physical examination revealed: limited range of motion in the neck and shoulder due to pain; pain affecting the left sided neck with extension, flexion, right, and left rotation; pain with shoulder flexion and abduction; and inability to lift her shoulders above 90 degrees. (Id.) She was diagnosed with injuries to her neck, left shoulder and head injury and a stress reaction. (Id.) She was referred for MRIs of her left shoulder and neck and a CT scan of her head. (Id.) She was prescribed a muscle relaxant, an anti-inflammatory and an anti-anxiety medication and was taken off work. (Id.)

Petitioner returned to the Rea Clinic on November 17, 2022, and reported that the medication helped her rest and that her range of motion had improved, as she could now drive, look both ways, and could lift both of her arms to wash her hair. (Id.) An examination showed mild discomfort with neck range of motion, minimal discomfort affecting the left sided neck with extension and flexion, and left shoulder range of motion with minimal discomfort. (Id.) She had not yet had her imaging completed, and it was recommended to continue taking her medications. (Id.) The records noted that the Petitioner had been offered another job that started on December 1, 2022, and if she was not released back to work without restrictions, she would not be able to move forward with her new position. (Id.) She reported feeling like she could adequately perform her duties at that time for her last three shifts with the Respondent. (Id.) A work release was provided. (Id.) The Petitioner testified consistently with this, adding that the union contract required that the Petitioner was to work full duty. (T. 16) The Petitioner started her new job on December 1, 2022, for the State of Illinois Department of Human Services, Jackson County FCRC, which she said was not as physically demanding as a security therapy aide, and a majority of her work was from home, giving her the freedom to get up and move around so that she was not stuck in one position. (T. 10, 21)

On January 2, 2023, the Petitioner returned to the Rea Clinic and complained neck soreness and episodes of soreness between her neck and shoulders. (Id.) She continued to take medications. (Id.) The records noted that a "WC agent" told the nursing staff that the imaging orders would not be approved because the Petitioner returned to work. (Id.) The imaging studies were cancelled at that time. (Id.)

Petitioner returned to the Rea Clinic on April 3, 2023, and reported that she stopped taking the anti-inflammatory upon recommendation of her gastrointestinal doctor and stopped taking the muscle relaxers every night due to fatigue the following day. (Id.) She said she woke up that morning and was unable to move her neck due to pain. (Id.) She was recommended to reduce her muscle relaxant and start a pain medication. (Id.) The Petitioner requested a referral to an orthopedist for further evaluation. (Id.)

The Petitioner testified that she ultimately made an appointment to see Dr. Gornet. (Id.) She said she was in a lot of pain, having spasms in her neck and stopped taking her medication because of stomach issues. (T. 24-25)

On June 1, 2023, Petitioner presented to Dr. Gornet and complained of neck pain to both sides and both trapezius stopping at the shoulder and frequent headaches. (PX4) Dr. Gornet noted her current problem, at least in its level of severity, began on November 6, 2022, when she was grabbed at the back of her head and rag-dolled by a patient who struck her head against the wall multiple times. (Id.) He said she attempted to return to work, but her pain became more severe. (Id.) He noted the Petitioner's new job, where she worked full duty but had continued pain. (Id.)

Dr. Gornet mentioned his prior treatment of the Petitioner and stated that her last follow-up visit was on May 21, 2018, when the Petitioner reported she had been managed with intermittent

pain management since that time. (Id.). Dr. Gornet noted her last treatment was cervical RFAs in March 2021. (Id.)

The Petitioner reported to Dr. Gornet that her current symptoms were constant and much worse than anything she experienced in the past. (Id.) She said the pain was more to both sides equally and that she had a sharpness that was not present before. (Id.) A physical examination revealed pain into her neck to both sides, limited range of motion in rotation particularly to the left, and a mild decrease in biceps and wrist dorsiflexion on the left. (Id.) X-rays showed mild loss of disc height at C5-6 with no evidence of fracture. (Id.) Dr. Gornet said he discussed with the Petitioner how an accident such as the one described could easily aggravate an underlying condition or cause additional injury. (Id.) He recommended a cervical CT scan and MRI. (Id.)

The scans were performed that day, and Dr. Gornet saw structural disc pathology centrally at C3-4, 4-5, 5-6 and 6-7; a large herniation on the right side at C5-6 into the right foramen, a central component with a tear in the disc at C4-5; and left-sided structural disc pathology at C3-4, 4-5, 5-6, and 6-7. (PX4, PX5, PX6) (Id.) He compared the images to the previous MRI from September 29, 2014, and noted that it showed similar structural disc pathology and potentially a progression in the central tear in her disc at C3-4. (Id.) Dr. Gornet diagnosed an aggravation of an underlying condition at C4-5, C5-6, and C6-7. (Id.) He recommended she continue working full duty in her sedentary job and prescribed pain medication, a muscle relaxant, calcium and vitamin D3. (Id.) He recommended physical therapy and a steroid injection at C5-6. (Id.)

The Petitioner underwent physical therapy with Athletico Physical Therapy from July 5, 2023, through August 9, 2023. (PX9) At her last visit, the Petitioner reported her problems were not getting better. (Id.) She achieved goals of decreased nightly disturbances due to pain, being independent with an individualized home exercise program and being able to reach forwards and

overhead lifting/grabbing up to 5 pounds without discomfort. (Id.) She did not achieve goals of having sufficient range of motion and strength without discomfort and performing common medium to heavy household activity without discomfort. (Id.) She received an epidural steroid injection at C5-6 on July 18, 2023, performed by pain management specialist Dr. Helen Blake. (PX7, PX8)

The Petitioner returned to Dr. Gornet on August 14, 2023, and reported the injection gave her a brief episode of relief, however, her symptoms returned. (PX4) She complained of headaches and neck pain going into both trapizius. (Id.) She said physical therapy did not help, and she remained symptomatic while working full duty. (Id.) Dr. Gornet recommended an anterior cervical disc replacement at C4-5, C5-6, and C6-7. (Id.) He noted that while the Petitioner had small protrusions at C3-4, he believed the majority of her symptoms were emanating from C4-5, 5-6, and 6-7. (Id.)

On October 26, 2023, Petitioner followed up with Dr. Gornet and complained of continued neck pain, headaches and pain into both trapezius, shoulders and arms. (Id.) Her physical examination revealed weakness of the biceps and wrist dorsiflexion bilaterally with the right side being a touch worse. (Id.) Dr. Gornet continued to believe her symptoms, at least in their level of severity, and the requirement for treatment was related to the accident of November 6, 2022. (Id.)

The Petitioner underwent a Section 12 examination on December 12, 2023, performed by Dr. Robert Bernardi, a neurosurgeon at Olive Surgical Group. (RX3) Dr. Bernardi took a history from the Petitioner, reviewed medical records, performed an examination and reviewed imaging studies. (Id.) In the history Dr. Bernardi recorded, he noted that the Petitioner denied any prior history of significant or sustained neck pain and said she had never seen a doctor before for cervical spine symptoms. (Id.) She had said the current claim was the only one she had filed. (Id.) As to

the Petitioner's request to return to full duty work in November 2022, she told Dr. Bernardi that she could not have restrictions to start her new job. (Id.) She realized that her records reflected that she reported feeling much better at that time but told Dr. Bernardi that she was not feeling much better but wanted the new job. (Id.)

On the cervical MRI, Dr. Bernardi noted mild multilevel degenerative disc disease more pronounced at C4-5 and C5-6 with a slight reversal of normal lordosis, loss of disc hydration, bulging and perhaps some slight loss of height. (Id.) He saw no spinal cord compression and stated that the degenerative disc disease was lateralized to the right at C5-6, producing mild central stenosis on the right along with mild right C6 foraminal narrowing. (Id.) On the CT scan, Dr. Bernardi's findings were similar to those on the MRI but with bone spur formation at C5-6 and C6-7.

In his opinions, Dr. Bernardi pointed out that the gap between the time the Petitioner had facet rhizotomies (RFAs) in March 2021 and the time of the accident in 2022 that Dr. Gornet thought distinguished the prior symptoms from the current reports. (Id.) Dr. Bernardi said it seemed unlikely to him that after seven years of treatment that her neck, the rhizotomies completely resolved the Petitioner's neck symptoms. (Id.) In a footnote in his report, Dr. Bernardi criticized Dr. Gornet for using RFAs, stating that facet mediated pain is a contraindication to disc replacement and, if Dr. Gornet believed RFAs were warranted, the Petitioner would not be a candidate for a three-level disc replacement. (Id.)

Dr. Bernardi said that the only objective abnormality on his physical examination of the Petitioner was palpable tautness in the muscles. (Id.) He stated that there were no objective or subjective abnormalities on the neurological examination. (Id.) He was unable to identify the weakness documented by Dr. Gornet and could not explain Dr. Gornet's findings on the imaging

studies. (Id.) He said the objective findings on the imaging studies were all degenerative and age appropriate. (Id.)

Dr. Bernardi pointed to aspects of the Petitioner's presentation as troublesome, mostly dealing with the Petitioner's denial of neck symptoms, treatment or a prior workers' compensation claim despite medical records reflecting such a history. (Id.) He also found that the Petitioner was intentionally deceptive by telling the nurse practitioner at Rea Clinic on November 17, 2022, that she felt like she could adequately perform her job duties with the Respondent while she told him that she was not feeling better and only said she was better to secure her new employment. (Id.) Dr. Bernardi also related confusion as to the Petitioner again reporting doing well on January 2, 2023, when she already was at her new job for a month and had nothing to lose by reporting significant pain, as she reported to him. (Id.) Dr. Bernardi found an "interesting" contradiction between the Petitioner telling him that she already made an appointment with Dr. Gornet before starting her new job and the medical records showing she requested a referral to Dr. Gornet on April 3, 2023. (Id.)

Dr. Bernardi diagnosed multilevel degenerative disc disease, mild right C6 degenerative foraminal stenosis and neck pain of uncertain etiology. (Id.) He opined that there was no causal relationship between the findings on the imaging studies and the work accident, adding that they were degenerative and present prior to the accident. (Id.) He said the disc herniation on the right side at C5-6 that Dr. Gornet saw was actually an uncovertebral spur, which was asymptomatic. (Id.) He explained that foraminal pathology expresses itself by irritating the adjacent nerve root, producing radiculopathy, which he said the Petitioner didn't have. (Id.) He acknowledged that the Petitioner could have suffered an aggravation of her pre-existing degenerative disc disease or

a myofascial sprain/strain and would have recovered within a matter of days or at most weeks. (Id.)

As to treatment, Dr. Bernardi stated that he would not have recommended the epidural injection performed on July 18, 2023, as such injections are of no proven benefit in the management of neck pain that is not associated with neurological features. (Id.) He did not believe the vitamin D supplement was justifiable because the Petitioner's vitamin D level was not tested. (Id.) He said Dr. Gornet's prescription of an antibiotic was not reasonable or necessary following an uncomplicated operation such as a cervical disc replacement. (Id.) He said use of an anti-inflammatory and muscle relaxant was reasonable but did not think it could be attributed to the work accident. (Id.)

Although he stated that the Petitioner had exhausted reasonable non-operative treatment, Dr. Bernardi said he would not recommend a three-level disc replacement because the Petitioner did not have radiculopathy or myelopathy. (Id.) He cited medical publications stating that surgery is of no proven benefit in managing neck pain that is not associated with neurological features and publications suggesting that disc replacement for greater than two levels is contraindicated. (Id.)

Dr. Bernardi believed the Petitioner was at maximum medical improvement from the perspective of the work accident as of January 2, 2023. (Id.) He saw no basis for activity restrictions. (Id.)

The Petitioner disagreed with Dr. Bernardi's statement that she was not up front with her doctor and lied to her about accepting the new position on December 1, 2022. (T. 33-34) She said her doctor knew she was waiting on the call to accept this position and knew that the way the union contract was written, she would have to be back to full duty without restrictions to accept the new position. (T. 34) She said her doctor and employer were on board with this plan so she could

transition to the new job. (Id.) The Petitioner also disagreed with Dr. Bernardi's statement that she was not forthcoming about her prior injuries or treatment. (T. 35) She said Dr. Bernardi asked if she ever sustained injuries at the facility, she told him yes, that she had been kicked, bit, scratched, punched and pretty well every kind of injury one could imagine. (Id.) She said Dr. Bernardi asked if any of those injuries resulted in a work comp case, and she answered that her neck had been the only injury that substantiated the need for ongoing treatment. (Id.) She said Dr. Bernardi did not ask any follow-up questions about prior work comp claims for her neck. (Id.)

Dr. Bernardi testified consistently with his report at a deposition on February 23, 2024. (RX4) He stated that he does not perform disc replacements, which he said provide no better outcomes than cervical fusion. (Id.) He agreed that a person with degenerative findings in their spine, if they're symptomatic, can have symptoms that wax and wane and can have flare-ups then go back to baseline. (Id.) He said it was more likely that the Petitioner's pain related back to her ongoing chronic pain since 2013 than it does to any accident in 2022.

As to the statement in his report that what Dr. Gornet characterized as a large herniation at C5-6 was not a herniation, Dr. Bernardi said the Petitioner's symptoms were completely incompatible with a disc herniation in that she did not have pain around her shoulder blades, pain radiating down her arm or weakness in the muscles supplied by C6. (Id.) He said the Petitioner had a disc bulge with an associated bone spur that was chronic and arthritic. (Id.)

Regarding his opinion that cervical disc replacement is not an appropriate treatment, Dr. Bernardi said the procedure is not indicated to treat neck pain that is not associated with neurological features, specifically radiculopathy or myelopathy, of which the Petitioner had neither. (Id.) He said there is no spine society that recommends either fusion or disc replacement for a neck ache associated with degenerative disc disease. (Id.) He said a review of the world

literature on the subject does not show disc replacement is beneficial to treat neck pain, and even more recent articles have shown that the worst outcomes in disc replacement surgery are when it is done to treat a neck ache. (Id.) He said the U.S. Food and Drug Administration (FDA) has not approved disc replacement for three- or four-level procedures, and disc replacements for anything more than two-level disease have not been tested. (Id.) He acknowledged that doctors give treatments not approved by the FDA that are perfectly reasonable. (Id.)

On cross-examination, Dr. Bernardi acknowledged that on the intake form that the Petitioner filled out, he does not ask if the Petitioner had otherwise seen a doctor for symptoms related to the cervical spine. (Id.) He agreed that the attack at work on November 6, 2022, that the Petitioner described was a mechanism of injury that could cause or aggravate a cervical disc injury. (Id.) He also agreed that although the Petitioner reported to the nurse practitioner at REA Clinic on November 17, 2022, that she felt she improved and could adequately perform her job duties in her new position, that did not mean she was not still having neck pain. (Id.)

Dr. Bernardi said he did not review any MRIs from prior to the June 1, 2023, MRI. (Id.) Regarding what he saw on the June 1, 2023, MRI, he said the Petitioner's complaints were not compatible with right C6 foraminal or central stenosis, but the degenerative disease at any level of the neck could cause symptoms similar to what the Petitioner described, but he thought that was very unlikely. (Id.)

Dr. Bernardi acknowledged that prior to his examination, he had reviewed the medical records, including the note by Dr. Gornet that said he previously treated the Petitioner and saw prior films, but he maintained he was unaware of any prior treatment, so he could not ask the Petitioner about prior treatment. (Id.) He said he could not say what the Petitioner's pre-injury baseline was. (Id.)

Regarding the medical literature on disc replacements that Dr. Bernardi described in his report, he thought he read an abstract of a study by Dr. Gornet. (Id.) Dr. Bernardi said he knew of one, and maybe two, surgeons who treat axial neck pain with surgery. (Id.)

At a deposition on March 7, 2024, Dr. Gornet testified consistently with his records. (PX10) He reviewed Dr. Bernardi's report and said Dr. Bernardi left out significant issues of tears and central herniation – just calling them degenerative disc disease. (Id.) Dr. Gornet said that from the intraoperative imaging and treatment of similar patients, the central tears and herniation were the source of the Petitioner's current complaints. (Id.) He characterized the Petitioner's condition as disc injuries in the face of disc degeneration. (Id.)

Dr. Gornet disagreed with Dr. Bernardi's statement that surgery is of no proven benefit for neck pain not associated with neurological features. (Id.) He said that his research involving more than 1,000 patients, patients with axial neck pain did equally well. (Id.) He noted subsequent other papers looking at axial neck pain treatment with similar results. (Id.) He said that while he appreciated Dr. Bernardi's opinions, Dr. Bernardi was simply not up to date in the medical literature. (Id.) Dr. Gornet stated that he performed hundreds of multilevel disc replacement surgeries since 2008 and authored the largest publication on three- and four-level cervical disc replacements and the largest publication on prospective randomized two-level disc replacement versus three. (Id.) His said his outcomes with multilevel cervical disc replacement has been uniformly very good and – compared to controlled fusion patients – is substantially better with lower complication rates and clearly better outcomes. (Id.)

As to the prescriptions to the Petitioner that Dr. Bernardi criticized, Dr. Gornet explained the vitamin D calcium was a buildup in lieu of surgery and the antibiotic was a prophylactic prior to surgery. (Id.)

On cross-examination, Dr. Gornet testified that the pathology on the 2023 MRI was for the most part similar to that seen in 2014. (Id.) He explained that there were different images available on the later scan such that the two scans could not be completely compared exactly. (Id.) He acknowledged that in his treatment of the Petitioner prior to the accident at issue herein included a recommendation for a two-level disc replacement for axial neck pain, which he described pain into the neck to both sides, both trapezius and sometimes into the upper back, center of the upper back and headaches. (Id.) He stated that the Petitioner's symptoms were different in 2014 – more radicular symptoms predominantly to the right – down her right arm with numbness and tingling and some weakness. (Id.) He said he understood that after her last visit to him in 2018, the Petitioner was still symptomatic at times but it was tolerable and she was working full duty. (Id.)

As to whether the Petitioner's symptoms improved since November 6, 2022, Dr. Gornet stated that he believed she had some transient improvement, but her symptoms remained significant in affecting her quality of life in a very dramatic way, particularly the headaches. (Id.)

The Petitioner testified that the neck symptoms she had prior to the most-recent work accident changed after that accident in that her mobility and strength worsened. (T. 42) She said that so simple as blow-drying her hair is very hard. (T. 21) She said that when she goes into the office, she has to interact with people and is constantly turning her neck back and forth and is limited on being able to get up and move around and rest. (T. 22) She said she ends up more tense and sore than if she were to be at home. (Id.) She stated that if she had not accepted her current position, she did not believe she would be capable of working full duty as a security therapy aide in her current condition because she is limited on her mobility and lost a lot of strength. (T. 22-23) She did not believe she could protect herself or her coworkers. (T. 23) The Petitioner said she wanted to have the surgery because she felt it would give her quality of life back and she would

be able to have more mobility, hopefully get her strength back and be able to get off her medications. (T. 32)

CONCLUSIONS OF LAW

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

As a preliminary issue, the Arbitrator finds the Petitioner to be credible. Her testimony and reports to her medical providers were consistent. Although Dr. Bernardi believed the Petitioner was not honest, the Arbitrator disagrees.

First, Dr. Bernardi said the Petitioner was being dishonest by telling PA Davis that she felt she could perform her job in order to get released to work so that she could take a new job while telling him she still had symptoms. Although there is some element of dishonesty, the Petitioner acknowledged that she did this in order to get her new job, which was less physically demanding and did not involve contact with violent patients. The Arbitrator does not find that this affects her credibility.

Second, Dr. Bernardi said the Petitioner was not honest with him about her prior injury. However, he acknowledged that his intake form did not ask about prior treatment and that he did not specifically ask her questions about her prior injury and treatment, claiming that he did not know about it. But he testified that before seeing the Petitioner, he reviewed her medical records, which contained references to the prior injury and treatment. There is no explanation for this incongruity.

Lastly, Dr. Bernardi noted that the Petitioner told him she had sought an appointment with Dr. Gornet before she went back to work while there was no reference in the medical records to seeking a referral until afterwards. This could have been a mistake on the Petitioner's part. The

Arbitrator finds the Petitioner had nothing to gain by saying this to Dr. Bernardi and gives this little weight.

Issue (F): Is Petitioner's current condition of ill-being, specifically her cervical spine condition experienced after September 9, 2018, 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. Even in cases where surgery for a pre-existing condition has been recommended, causal connection has been found with a subsequent accident. See e.g. *Schroeder v. Illinois Workers' Comp. Comm'n*, 2017 IL App (4th) 160192WC, 79 N.E.3d 833; *Clutterbuck v. UPS*, 15 I.W.C.C. 46; *Wheaton v. State of Illinois/Choate Mental Health Center*, 13 I.W.C.C. 467.

Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still

perform immediately after accident. *Pulliam Masonry v. Industrial. Comm'n*, 77 Ill. 2d 469, 471-472, 397 N.E.2d 834, 34 Ill.Dec. 162 (1979); *Gano Elec. Contracting v. Industrial Comm'n*, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724, 197 Ill.Dec. 502 (4th Dist. 1994); *International Harvester v. Industrial Com.*, 93 Ill.2d 59, 63-64, 442 N.E.2d 908, 66 Ill.Dec. 347 (1982).

The Petitioner had both degenerative disc disease and a prior injury, for which surgery was recommended. Dr. Gornet treated the Petitioner for both injuries. Regarding the injury in 2013, Dr. Gornet found the Petitioner had axial neck pain with radicular symptoms had recommended a two-level disc replacement. This time, he found only axial neck pain and recommended a three-level disc replacement. Dr. Bernardi found only degenerative conditions. While he referred to the MRI showing only bulges, Dr. Gornet found them to be herniations and tears. The Arbitrator notes that Dr. Bernardi did not compare the MRIs from before and after the accident, while Dr. Gornet did. Dr. Bernardi also acknowledged that he did not know the Petitioner's baseline condition before the 2022 accident. As the Petitioner's treating physician, Dr. Gornet had more opportunities to become familiar with the Petitioner and her condition over the course of several years, and his opinion deserves greater weight.

The circumstantial evidence also supports Dr. Gornet's opinions. The Petitioner sought no treatment for her neck from March 2021 until the work accident on November 6, 2022, and was able to work full duty. After the accident, she was having considerable symptoms that she did not have before. Although the Petitioner said she was feeling better when she asked that her work restrictions be removed to qualify for her new job, the medical records from January 3, 2023, and forward indicated that she was still symptomatic.

While Dr. Bernardi pointed out various inconsistencies in the medical records and what the Petitioner told him, the Arbitrator notes that Dr. Bernardi's report was not without inconsistencies,

such as those noted above regarding the Petitioner's credibility. In addition, in his report, Dr. Bernardi assumed that the Dr. Gornet prescribed the RFAs the Petitioner underwent from 2019-2021 and criticized him for such. If Dr. Bernardi had questioned the Petitioner about this treatment, he would have discovered that they were performed at the behest of the Orthopaedic Center of Southern Illinois and not Dr. Gornet.

The Arbitrator finds that Dr. Bernardi focused on details that, in isolation, could cause some doubt as to the Petitioner's condition and its causation. However, in looking at the evidence as a whole it is apparent that the 2022 accident resulted in symptoms different from those from the 2013 accident and involvement of an additional cervical disc for which surgery is now recommended. Thus, the Arbitrator finds that the accident aggravated or accelerated the Petitioner's pre-existing conditions.

Therefore, the Arbitrator finds that the Petitioner's current cervical spine condition is causally related to the November 6, 2022, work accident.

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

The 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).

While Dr. Berardi criticized some aspects of the Petitioner's treatment – such as the injection and prescriptions – Dr. Gornet explained the reasonableness and necessity for the treatment. As stated above, the Arbitrator gives more weight to Dr. Gornet's opinions and his judgment in treating the Petitioner. In light of this, the findings above regarding causation and

review of the medical records, the Arbitrator finds medical expenses for the evaluation, diagnosis and treatment of the Petitioner's cervical spine condition were reasonable and necessary.

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

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

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

When it comes to disc replacement, Dr. Gornet's pedigree is superior to that of Dr. Bernardi. Dr. Bernardi does not perform disc replacements, while Dr. Gornet has performed hundreds of multi-level disc replacements. Dr. Bernardi referred to medical publications stating that surgery is of no proven benefit in managing neck pain that is not associated with neurological features and publications suggesting that disc replacement for greater than two levels is contraindicated. However, Dr. Gornet himself has authored publications and performed clinical trials that led him to the opposite conclusion. Therefore, the Arbitrator gives Dr. Gornet's opinion as to the appropriateness of a three-level disc replacement greater weight. Furthermore, Dr. Gornet's explained the need for this procedure for the Petitioner.

An important function of the Act is to give workers the treatment necessary to try to return them to the conditions they were in prior to their work accidents. Although efforts have been made to return the Petitioner to her pre-accident state, this has not been accomplished, and treatment options have not been exhausted. Therefore, the Arbitrator finds that the Petitioner is entitled to prospective medical care, specifically cervical disc replacements 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	15WC021448
Case Name	Nicole Koszuta v. Bloomingdale School District 13
Consolidated Cases	
Proceeding Type	8(a)/19(h) Petition
Decision Type	Commission Decision
Commission Decision Number	25IWCC0274
Number of Pages of Decision	8
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Mark Maritote
Respondent Attorney	Justin Schooley

DATE FILED: 6/18/2025

/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

NICOLE KOSZUTA,

Petitioner,

vs. NO: 15 WC 21448

BLOOMINGDALE SCHOOL DISTRICT, #13,

Respondent.

DECISION AND OPINION ON REVIEW PURSUANT TO §8(a) OF THE ACT

This matter is before the Commission pursuant to the Petitioner's Petition under Section 8(a) of the Act seeking reimbursement for the following expenses:

1) $76,987.94 (2024 BMW X5 xDrive40i)
2) $4,712.84 (Mobility Scooter Lift)
3) $5,229.44 (Mobility Scooter)
4) $278.41 (Additional Parts)
5) $14,510.00 (Architectural Services for Home Modifications)

Based on functional limitations and progressive nature of Petitioner's condition, the Commission finds that the extraordinary relief sought by the Petitioner is partially recoverable under the Act and, therefore, grants the Petition in part and denies it in part.

PROCEDURAL HISTORY

This case was originally heard by Arbitrator Frank Soto ("Arbitrator Soto") on October 15, 2019. The Petitioner was injured on December 17, 2012 after tripping on carpet and failing onto her right side, dislocating and shattering her right elbow. She had surgery on December 21, 2012 followed by a second surgery on April 18, 2013. She was later diagnosed with complex regional pain syndrome ("CRPS") and began treating with Dr. Timothy Lubenow ("Dr. Lubenow") for pain management. In December 2016, the Petitioner received a spinal cord stimulator, which did not relieve her symptoms and primarily impacted her legs more than her right arm.

The Arbitrator found that Petitioner's right arm injury and CRPS were causally related to her work accident and awarded prospective medical treatment consisting of a CT scan of the cervical spine and either a DRG stimulation or an intraspinal drug delivery system depending on the CT scan results. Respondent appealed to the Commission. On November 24, 2021, the Commission affirmed and adopted the decision and remanded it back to the Arbitrator.

A permanency hearing took place before Arbitrator Soto on August 18, 2023 and October 13, 2023. Arbitrator Soto adopted Dr. Lubenow's opinion that Petitioner's overall condition had worsened due to the spread of CRPS to her lower extremities. The Arbitrator noted Respondent's Section 12 examiner, Dr. Konowitz confirmed the CRPS was related to her accident and had progressed to her legs. He stated her condition was permanent. Dr. Lubenow stated that the Petitioner may need a scooter, a motor vehicle with a lift, and an ADA accessible home. She was found to be permanently and totally disabled as of August 19, 2023. No appeal was taken by Respondent.

After the permanency hearing, the Petitioner filed a Section 8(a) Petition requesting reimbursement for related expenses. A hearing on this Petition was held before Commissioner Simpson[1] on March 18, 2025 and April 25, 2025.

FINDINGS OF FACT

During the 8(a) hearing, Petitioner testified as to her need for the mobility scooter, the need for an autonomous vehicle with a lift, and the need for home renovations to make her home accessible for her mobility scooter.

The Petitioner testified she takes Oxycodone 4 to 5 times a day and is bedbound without her medication. (T.62.) She also takes Tizanidine, which is a muscle relaxer, and occasionally Xanax to help her sleep. (T.63.) She averages 2 to 4 hours of sleep a night. (*Id.*) In addition to CRPS, she has chronic migraines that she treats with medication. (*Id.*) She also has two spinal cord stimulators; one for her right arm and the second is a DRG stimulator for both legs. (T.64.) She has pain in her entire right arm, both legs, entire back, and right hip, and tremors in her right arm and occasionally in her right leg. (*Id.*)

Petitioner testified that her pain never gets better than a 7 or 8 out of 10 despite medication and the lack of a scooter has inhibited her ability to get around as any movement causes her a great deal of pain. (T.66-67.) She previously purchased a mobility scooter; however, she needed help getting it in and out of her car and cannot use it in her home. (T.68.)

With respect to driving, she had to use her left hand to drive her old car, which is her non dominate hand. This would cause her to lose control of her vehicle and run into curbs. (T.70.) Due to these issues, she looked for a semiautonomous vehicle with automatic braking, automatic lane changing capability, parking assist, hand controls, and a large trunk. (T.74-77.) She purchased a BMW as it had all the necessary features and provided the most driving assistance. (T.81-84.) She

[1] Commission Simpson retired effective April 30, 2025.

then had a mobility scooter lift installed. (T.84.) Petitioner stated that this vehicle has greatly increased her ability to function independently. (T.86.)

Petitioner testified that her home is not scooter accessible, which limits her ability to move freely in her home as she can only take a few steps at a time. (T.96, 98.) Specifically, she stated that she cannot reach the top of her cabinets, the doorways are too narrow, her laundry room, kitchen and bathrooms are not spacious enough for a scooter, and she cannot access her basement or the yard from her deck as she cannot use the stairs. (T.96-103.)

Petitioner obtained a proposal for home modifications from Senga Architects, Inc. on August 16, 2023. The requested modifications included: 1) a new concrete ramp at the front entrance, 2) reconfiguring the rear deck to allow for a chair lift, 3) installing a lift and landing in the garage, 4) reconfiguring the stairs to allow for the addition of an elevator to the basement, 5) expanding and reconfiguring the primary suite to allow for an accessible toilet, sink, and shower, 6) replacing all hardware with accessible hardware, 7) reconfiguring the kitchen and kitchen counters to allow for ADA access, 8) reconfiguring the laundry room, 9) installing curtains in place of doors, 10) expanding and reconfiguring the basement bathroom, 11) reconfiguring the second bathroom as a result of the stair configuration, and 12) performing construction in the basement to allow for the elevator. The total cost of the above renovations is $415,000.00. (PX.5.)

Firmin Senga ("Mr. Senga") is a licensed architect and was hired by the Petitioner to prepare the above proposal. (T.26.) Specifically, he noted that the kitchen does not provide a sufficient turning radius for a scooter, the counters are too high, the laundry area is too narrow, and the doors and hardware are not accessible. He further recommended an elevator as there was not enough clearance for her to get to the basement, a scooter lift on the deck to provide access to the back yard, and a ramp into the house. (T.34-39.) The estimate to remodel the house is $415,000.00. (T.41.)

On September 21, 2023, Dr. Timothy Lubenow ("Dr. Lubenow") wrote a script noting Petitioner requires an autonomous vehicle with full self-driving capabilities, a scooter lift to help increase her mobility and functionality due to her CRPS, and a level one ADA handicapped accessible home due to her CRPS. (PX.7.)

Dr. Lubenow is board-certified in pain medicine and was deposed September 18, 2024. He stated that the Petitioner remains permanently disabled. (PX.9. pg.8.) He stated that ADA living arrangements are reasonable and necessary due to Petitioner's physical, mental and occupational rehabilitation. (*Id.*) His opinion is based on the severity of her pain, and impairments regarding the function of her body. She has pain in her right lower and right upper extremity, which makes activities of daily living difficult. (*Id.*) He previously prescribed an electric scooter to help with her mobility, which is reasonable and necessary. (PX.9. pg.9.) She also needs a vehicle with autonomous driving assistance and a scooter lift, both of which are reasonable and necessary. (PX.9. pg.9-10.)

On cross-examination, he acknowledged that Petitioner's condition has not substantially changed since September 2023. (PX.9. pg.11.) He wrote a prescription on September 21, 2023 for an autonomous vehicle equipped with full self-driving capabilities. She needed this technology as

she has impairments of the right upper and right lower extremities. (PX.9. pg.13.) He did not specifically prescribe a BMW and stated that an updated sound system, leather seats, illuminated grille, and color choice are not medically necessary. (PX.9. pg.12.) She is ambulatory with diminished ability to tolerate walking and uses a wheelchair. (*Id.*) She can take between 10 and 20 steps. (PX.9. pg.14.) The house needs to accommodate the mobility of a wheelchair. (*Id.*)

Respondent obtained a home assessment from CorHome on November 19, 2024. The report indicated that Petitioner's condition has progressed with chronic nerve pain, and she was diagnosed with CRPS. The recommendations were based on assessments of the home and written summaries of Petitioner's functional level as stated during the August 2023 deposition as she was not present during the consultation despite having 8 days of notice. While Petitioner's brother and her attorney were present, neither were able to answer any questions regarding the use of her space or provide any specifics of problem areas in the home except to state that the basement was primarily used for storage and her scooter was not useable in the home. (RX.1.)

Based on the assessment, CorHome recommended installation of a ramp to the front door, swing-clear hinges for the entry door and a recessed wall pocket for bedroom 2. No modifications for the second bathroom were made as Petitioner was still able to ambulate with a cane and the primary bathroom would be made accessible. For the primary bathroom and closet, it was recommended to widen the closet doors, remove the swing doors into the bathroom and replace with a pocket door, remove the tub, shower and vanity, shorten the half wall by the toilet, install a grab bar and corner shelving, construct a corner shower, add universal dual shower trim, reconstruct the current linen closet, install a standard height vanity with a single sink with side storage, and replace flooring throughout. For the kitchen, it was recommended to install an electric countertop stove adjacent to the sink. For the laundry room, it was recommended to replace the door between the kitchen and laundry room with a pocket door, eliminate the laundry closet and install a corner shelf panty, and replace the flooring. No recommendations were made for the office, family room, dining room, or living room as those rooms were large enough to maneuver around with a power scooter. No recommendation was made for the patio, back deck and yard as she was still ambulatory and able to get back there. No recommendations were made for the basement as there was no medical necessity for her to enter the basement. If it was medically necessary, however, a mechanical chair lift could be installed. If she is transporting the scooter, then a garage ramp would also be needed. (RX.1.)

Michelle Goshert ("Ms. Goshert") is a home accessibility consultant for CorHome and performed the above home assessment. (T.133.) She stated that the Petitioner was not present during the inspection despite providing notice 8 days prior to the consultation. (T.138.) Her knowledge of the Petitioner's condition was from Petitioner's August 2023 testimony.

On cross-examination, she did not tell anyone that she wanted Petitioner present. (T.165.) She stated Petitioner's CRPS has progressed. (T.177.) She knew Petitioner's CRPS has progressed to her legs, that Petitioner had no use of her right arm and that her arm tremors affected her 24-hours a day, 7 days a week. (T.178.) She knew Petitioner could walk a few steps with a cane before having to stop. (T.183.) Further, there is a lot of construction in Petitioner's neighborhood and she needs a scooter of more substance for outdoor use. (*Id.)* She was not aware that Petitioner's basement flooded in 2022 and that she needed to go downstairs. (T.178.)

David Dunteman was deposed April 3, 2025. He stated that the total cost to perform the renovations contained within CorHome's assessment total $57,942.35. (RX.3 & RX5.)

Petitioner seeks reimbursement of the following expenses: 1) Baja Wrangler Scooter totaling $5,229.44 (PX.1.); 2) parts for the mobility scooter totaling $278.41 (PX.2.); 3) BMW totaling $76,987.94 (PX.3.); 4) lift kit totaling $4,505.00 (PX.4.); and 5) architectural services totaling $14,510.00. (PX.5.)

CONCLUSIONS OF LAW

The issue of home renovations pursuant to Section 8(a) of the Act was addressed in *Zephyr, Inc. v. Industrial Comm'n*, 215 Ill. App. 3d 669 (1991). There, the court affirmed the Commission's authority to order home modifications, holding that such relief falls within the scope of Section 8(a). However, the court cautioned that "only unusual cases warrant the extraordinary relief granted." *Id*. at 679.

Section 8(a) provides in pertinent part:

> The employer shall also pay for treatment, instruction and training necessary for the physical, mental and vocational rehabilitation of the employee, including all maintenance costs and expenses incidental thereto. If as a result of the injury the employee is unable to be self-sufficient the employer shall further pay for such maintenance or institutional care as shall be required.

In the present case, Petitioner sustained a work-related injury and was diagnosed with complex regional pain syndrome ("CRPS") in her right upper extremity, which subsequently progressed to both lower extremities. She was determined to be permanently and totally disabled—a finding not contested by the Respondent.

At the 8(a) hearing, Petitioner credibly testified that her condition severely limits her mobility, requiring the use of a mobility scooter. She rated her pain as a 7 to 8 out of 10 despite medication. This testimony was not rebutted. Dr. Lubenow, her treating physician, opined that due to the work-related injury, Petitioner requires a mobility scooter, an autonomous vehicle with a lift, and home modifications to make her residence accessible. Receipts for the purchase of a mobility scooter, an autonomous vehicle with a lift, and a proposal for home modifications were submitted into evidence. While Respondent did not challenge the reasonableness or necessity of the scooter, vehicle or lift, they did present an alternative home modification plan.

Mobility Equipment Reimbursement

Based on the unrebutted medical testimony of Dr. Lubenow and the Petitioner's account of her functional limitations, the Commission finds that Petitioner is entitled to reimbursement of the following expenses, which are reasonable, necessary, and causally related to the work injury:

1) Mobility scooter: $5,229.44
2) Scooter lift: $4,712.84

3) Additional scooter parts: $278.41

Total mobility equipment reimbursement: $10,220.69.

Vehicle Reimbursement

Petitioner seeks reimbursement of $76,987.94 for the purchase of a 2024 BMW X5 xDrive40i. She testified that she experiences tremors in her right arm, making it unsafe to operate a standard vehicle. After researching autonomous vehicles, she determined that this model met her unique medical needs. Dr. Lubenow confirmed that such a vehicle was medically reasonable and necessary while conceding that certain features were not. Respondent offered no rebuttal evidence or proposed alternative transportation options.

The Commission has reviewed the vehicle purchase agreement and finds that the base vehicle, including certain safety and accessibility features, is reasonably required due to her condition. Accordingly, the Commission finds Petitioner is entitled to reimbursement of $57,500.00, plus applicable tax, title, and licensing fees. The following optional features are found not to be medically necessary and are therefore denied:

1. $650 – Mineral White Metallic paint
2. $1,950 – Tartufo Extended Merino Leather
3. $2,750 – M Sport Package
4. $1,650 – M Sport Professional Package
5. $4,450 – Executive Package
6. $1,350 – Climate Comfort Package
7. $250 – Space Saver Spare
8. $750 – Multi-Contour Seats
9. $120 – Wheel Locks
10. $215 – Black All Weather Floor Mats
11. $45 – BMW First Aid Kit
12. $995 – Destination Charge

Total excluded: $15,175.00

The following features are found to be medically necessary and are included in the reimbursement:

1. $2,100 – Driving Assistance Pro Package
2. $900 – Parking Assistance Package

Total included: $3,000.00

Based on a total purchase price of $70,500.00 and a trade-in value of $13,000.00, the Petitioner is entitled to reimbursement in the amount of $57,500.00, exclusive of tax, title, and license fees.

Home Modification

Petitioner also seeks reimbursement for home modifications. Dr. Lubenow testified that modifications are necessary to accommodate her mobility scooter and to make the home accessible given her condition. Two proposals were submitted: one by Senga Architects, Inc., and another by CorHome. After evaluating both, the Commission finds CorHome's proposal, totaling $57,942.35, to be more reasonable and adequately tailored to Petitioner's current functional limitations.

Petitioner's assertion that she was unaware of the need to be present during CorHome's consultation is unpersuasive. It is unreasonable to believe that her input would not be essential in assessing her needs within her own home. Therefore, the Commission approves the CorHome modifications and denies Petitioner's request for reimbursement of architectural services and renovations proposed by Senga Architects.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Petition under Section 8(a) is hereby granted, in part, and denied, in part.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner is entitled to reimbursement of 1) $10,220.69 for the mobility scooter, lift and associated parts, 2) $57,500.00 plus tax, title, and licensing fee for the vehicle, and 3) $57,942.35 for home renovations as proposed by CorHome. All other expenses are 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 other amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

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

June 18, 2025

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

CAH/tdm
d: 6/17/25
052

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC003644
Case Name	INSURANCE COMPLIANCE v. TITAN PERSONNEL
Consolidated Cases	
Proceeding Type	
Decision Type	Commission Decision
Commission Decision Number	25IWCC0275
Number of Pages of Decision	8
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Megan Murphy
Respondent Attorney	

DATE FILED: 6/20/2025

/s/Amylee Simonovich,Commissioner

Signature

STATE OF ILLINOIS)
)
COUNTY OF Cook)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Illinois Department of Insurance,
Insurance Compliance Department,
Petitioner,

Case # 21WC003644

v.

Chicago, IL

Titan Personnel, Inc., Eric Welch, Lourdes Resendiz, Luis E. Perez, Johanna Dreisbach, Gaylynn Carnello, Robert Wertz, Madison Miner, Anthony Williams, Julie Schlotterback, Michael Morris, and Ulises Jauregui as officers.
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 1,329 days. A hearing was held before Commissioner Simonovich in Chicago, Illinois on September 17, 2024 and March 12, 2025. Proper and timely notice was provided to Respondents. PX1. Petitioner was represented by the Office of the Attorney General. Respondents did not appear in person or through counsel. A record was taken.

Petitioner seeks the maximum fine allowed under the Act, $500.00 per day for each of the 1,329 days, from 10/29/14-3/31/15 and 4/2/16-6/20/19, when Respondents did business and failed to provide coverage for their employees. Petitioner seeks a total award of $664,500.00.

The Commission after considering the record in its entirety and being advised of the applicable law, finds that Respondents knowingly and willfully violated section 4(a) of the Act and section 9100.100 of the Rules Governing Practice before the Illinois Workers' Compensation Commission (Rules) during the period from 10/29/14-3/31/15 and 4/2/16-12/31/17. As a result, Respondents shall be held liable for non-compliance with the Act and shall pay a penalty in accordance with Section 4(d) of the Act. For the following reasons, the Commission assesses a civil penalty against the Respondents under Section 4 of the Act in the amount of $237,900.00, representing $300.00 per day for 793 days.

I. Findings of Fact

On August 26, 2024, Investigator Ray Espinosa personally served Christa Louis-Charles, who accepted service for Pacific Registered Agents, Inc., the registered agent for Respondent Titan Personnel, Inc. with a Notice of Insurance Compliance Hearing. PX1, p.1-3.

Notices of Insurance Compliance Hearing were sent via certified mail to Titan Personnel, Inc. and Eric Welch, Lourdes Resendiz, Luis E. Perez, Veronica Lake, Johanna Dreisbach, Gaylynn Carnello, Robert Wertz, Madison Miner, Anthony Williams, Julie Schlotterback, Michael Morris, and Ulises Jauregui. PX1, p.4-7.

Antonio Smith, an Investigator for the Illinois Department of Insurance, Insurance Compliance Department, testified at the hearing.

Investigator Smith identified Petitioner's Exhibit 2 as a Notice of Non-Compliance mailed to Luis Perez and Madison Miner, both individually and as officers of Titan Personnel. The notice states that the Commission's records indicated that Titan Personnel was not in compliance with the requirements of the Section 4(a) for the period from May 20, 2014 to June 20, 2019. The notice includes an affidavit indicating service by mail on June 25, 2019. PX2.

Investigator Smith identified Petitioner's Exhibit 3 as a Request for Informal conference mailed to Luis Perez and Madison Miner, both individually and as officers of Titan Personnel. The notice states that the Commission's records indicated that Titan Personnel was not in compliance with the requirements of the Section 4 for the period from May 20, 2014 to June 20, 2019. The notice includes an affidavit indicating service by mail on June 24, 2019. PX3.

Investigator Smith identified Petitioner's Exhibit 4 as an LLC File Detail Report from the Illinois Office of the Secretary of State. The Report indicates that Titan Personnel, Inc. was formed on May 20, 2014, and was not in good standing. The report also indicates that Ulises Jauregui was the president of Titan Personnel, Inc., Eric Welch was the secretary of Titan Personnel, Inc. and that there was no registered agent. PX4.

Investigator Smith identified Petitioner's Exhibit 10 as an updated LLC File Detail Report from the Illinois Office of the Secretary of State. The Report indicates that Titan Personnel, Inc. was formed on May 20, 2014, and its status was revoked on July 18, 2024. The report also indicates that Ulises Jauregui was the president of Titan Personnel, Inc. and that there was no registered agent. PX10.

Investigator Smith testified that in the regular course of his investigation, he also obtained the Annual Reports related to Titan Personnel, Inc. from the Illinois Secretary of State, which were identified as Petitioner's Exhibit 5. The Reports indicate that from 2016-2023, Pacific Registered Agents was the registered agent. In 2016, Luis Perez was the president and director, and Veronica Lake was the secretary for Titan Personnel. In 2017, Eric Welch was the president and director, Lourdes Resendiz was the secretary, Luis Perez was the CEO and director, and Johanna Dreisbach, Gaylynn Carnello, and Robert Wertz were all directors. In 2018, Luis Perez was president and director, Madison Miner was secretary, Anthony Williams was CFO, and Robert Wertz, Gaylynn Camello, Julie Schlotterback, and Michael Morris were all directors. In 2019, Lou Perez was the president and director, Madison Miner was the secretary, and Gaylynn

Carnello and Robert Wertz were both directors. In 2020, Ulises Jauregui was the president and secretary, and Lou Perez was the director. In 2021, Ulises Jauregui was the president, secretary, and director. In 2022, Eric Welch was the president, secretary, and director. In 2023, Ulises Jauregui was the president, and Eric Welch was the secretary and director. PX5.

Investigator Smith testified that Titan Personnel, Inc. is a service entity. T. 9/17/24, p. 16.

Investigator Smith further testified that Petitioner requested insurance information regarding the Respondents from the National Council of Compliance Insurance (NCCI) in Boca Raton, Florida. PX6. The NCCI certified that it is the agent designated by the Commission for the purpose of collecting proof of insurance coverage information on Illinois employers and that Titan Personnel, Inc. did not file policy information showing proof of workers' compensation insurance at any time from October 29, 2014 through March 31, 2015, and April 2, 2016 through June 20, 2019. PX6.

Investigator Smith further testified that Petitioner's Exhibit 7 was a certified finding from the Illinois Workers' Compensation Department of Self-Insurance that Respondents were not self-insured with the State of Illinois during the dates indicated and that it was the type of document requested in the ordinary course of Petitioner's investigations. The document indicates that no certificate of approval to self-insure was issued to Titan Personnel, Inc. for the period of May 20, 2014, to June 20, 2019. PX7.

Investigator Smith further testified that in the regular course of his investigation, Petitioner requested information regarding the Respondents from the Illinois Department of Revenue. Petitioner submitted Petitioner's Exhibit 8 comprised of certified records of Illinois Withholding Income Tax Returns from the Department of Revenue filed by Titan Personnel, Inc. for filing periods April 1, 2014 – March 31, 2019, and Illinois Small Business Corporation Replacement Tax Returns for 2014 to 2018. PX8. These records demonstrate no withholding income tax was reported from January 1, 2018 through March 31, 2019. PX8, p.30-39. No withholding income tax returns were introduced after March 31, 2019.

Investigator Smith provided further testimony regarding Petitioner's Exhibit 9. The Exhibit included a certification from the Commissioner of Unemployment Insurance in the Illinois Department of Employment Security ("IDES"). PX9. The certified records were Employer's Quarterly Wage Reports for Titan Personnel, Inc. for the first quarter of 2014 through the fourth quarter of 2017 and estimated Monthly and Quarterly Wage Reports for the first quarter of 2018 through the third quarter of 2020. *Id.* The quarterly reports demonstrate the number of employees employed by Titan Personnel, Inc. and the total wages the company reported to IDES as having been paid during each quarterly period. *Id.* Investigator Smith testified that the records demonstrated that Respondent had employed roughly between 1 and 404 employees between 2018 and 2024. T.16. However, the certified records themselves demonstrate that between January 2014 and December 2017 the company reported between 1 and 428 employees quarterly. PX9, p.1-126. The records show no wages or employees listed from January 1, 2018 through June 30, 2019. PX9, p.127-133.

Investigator Smith testified that based upon his investigation, Petitioner determined that Respondent did not have workers' compensation insurance for the period for which it requests relief, from October 29, 2014 to March 31, 2015, and April 2, 2016 to June 20, 2019.

Investigator Smith identified Petitioner's Exhibit 11 as printouts of the case dockets of the Illinois Workers' Compensation Commission for pending cases 17WC36493, Roxana Saucedo v. Titan Personnel & IWBF and 18WC004613, Roberto Garcia v. Titan Personnel, Inc. & IWBF. PX11.

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 sell services to the public at large. 820 ILCS 305/3(17)(a) (West 2004).

The Commission finds that Respondents' business falls within Section 3(17)(a) of the Act. This finding is based on Investigator Smith's testimony that they were a service entity combined with the title of the company and amount of employees listed in their quarterly reports to IDES, indicate the company is a staffing agency. Accordingly, the Commission finds that the work Respondents engaged in automatically subjected them to the provisions of the Illinois Workers' Compensation Act.

Pursuant to section 4(a) of the Act, all employers who come within the auspices of the Act are required to provide workers' compensation insurance. See 820 ILCS 305/4(a) (West 2004). Section 9100.90(a) of our Rules similarly provides that any employer subject to section 3 of the Act shall insure payment of compensation required by Section 4(a) of the Act "by obtaining approval from the Commission to operate as a self-insurer or by insuring its entire liability to pay the compensation in some insurance carrier authorized, licensed or permitted to do such insurance business in Illinois." 50 Ill. Adm. Code 9100.90(a) (1986). Section 9100.90(d)(3)(E) of our Rules similarly provides that a certification from a Commission employee "that an employer has not been certified as a self-insurer shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D) (1986). Section 9100.90(d)(3)(D) of our Rules provides that "[a] certification from an employee of the National Council on Compensation Insurance stating that no policy information page has been filed in accordance with Section 9100.20 shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D) (1986).

The Commission analyzes here the culpability of Respondents and the applicability of Section 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 Section 2 of the Act, provide workers' compensation insurance for the protection of their employees. 820 ILCS 305/4.

In this case, Petitioner submitted a certified finding from the Department of Self-Insurance that no certificate of approval to self-insure was issued to Titan Personnel, Inc. for the period of May 20, 2014 to June 20, 2019. PX7. Petitioner also submitted the NCCI certification that Titan Personnel, Inc. did not file policy information showing proof of workers' compensation insurance at any time from October 29, 2014 to March 31, 2015 and from April 2, 2016 to June 20, 2019. PX6.

Investigator Smith testified that based upon his investigation, Petitioner determined that Respondents did not provide workers' compensation insurance for the period for which it requested relief, from October 29, 2014 to March 31, 2015 and from April 2, 2016 to June 20, 2019. T. 24-25. Titan Personnel, Inc. was also a named respondent in two pending cases before the Illinois Workers' Compensation Commission for dates of accident October 11, 2017 and December 12, 2017. PX11.

Respondents did not attend the hearing and thus presented no evidence indicating that they provided workers' compensation insurance of any kind during this period.

However, the Commission notes that despite Investigator Smith's testimony that Petitioner's Exhibit 9 demonstrated Petitioner had reported employees for the period of 2018 through 2024, this did not match with the records contained in Petitioner's Exhibit 9. The records demonstrate a list of employees and wages quarterly, only up until December 31, 2017. The quarterly reports list the number of employees per quarter, the wages provided for that quarter, and the names of the employees. As of the first quarterly report in 2018, the reports do not demonstrate any employees or wages through June 2019. PX9, p.127-133. The Commission likewise notes that the Petitioner's Exhibit 8 demonstrates an absence of any withholding for the period of January 1, 2018 through March 31, 2019, which would suggest there were no employees during this time period. PX8, p.30-39.

The purpose of Section 4(a) of the Act is to protect employees from working without workers' compensation insurance coverage. Petitioner failed to show that Respondent had any employees working for them for the full period requested. The Commission does not see fit to penalize Respondent for their non-compliance during a period that there is no evidence that Respondent had active employees who needed coverage under the Act. Accordingly, the Commission concludes that Petitioner proved that Respondents failed to comply with the legal obligations imposed by Section 4(a) of the Act from October 29, 2014 to March 31, 2015 and from April 2, 2016 to December 31, 2017.

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

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

or failed to comply with this Section shall be liable for the unpaid penalty or any unpaid portion of the penalty." 820 ILCS 305/4(d) (West 2004).

Section 9100.90(b) of the Rules similarly provides that penalties may be assessed for non-compliance after a reasonable notice and hearing. 50 Ill. Adm. Code 9100.90(b) (1986). Section 9100.90(c) of the Rules describes the proper notice of non-compliance to be served upon the employer and provides that the employer may request an informal conference to resolve the matter. 50 Ill. Adm. Code 9100.90(c) (1986). Section 9100.90(d) of the Rules describes the manner of notice and service for an insurance compliance hearing and the procedure for conducting the hearing. 50 Ill. Adm. Code 9100.90(d) (1986).

In this case, the period for which Petitioner is seeking penalties stretches over five years. The individual officers and directors listed as parties to the pending action did not serve continuously throughout that time period. According to Petitioner's Exhibit 5, Respondent submitted a Domestic/Foreign Corporation Annual Report of its officers and directors to the Illinois Secretary of State from 2016 through 2023. As we find Petitioner was able to prove non-compliance from October 29, 2014 to March 31, 2015 and from April 2, 2016 to December 31, 2017, only the officers and directors for 2014 through 2017 shall be held liable for the unpaid penalty or any unpaid portion of the penalty. The Commission finds that pursuant to Section 4(d) of the Act, the liability for penalties should extend to Eric Welch, Lourdes Resendiz, Luis E. Perez, Johanna Dreisbach, Gaylynn Carnello and Robert Wertz, as they were the only named officers and directors during the period of 2014 through 2017[1].

With regard to reasonable notice and hearing, Petitioner submitted into evidence the June 1, 2019 Notice of Non-Compliance mailed to Luis Perez and Madison Miner, individually and as officers of Titan Personnel, Inc, in the form prescribed by our Rules and including an affidavit of service. PX2. Respondents did not request an informal conference in this matter. Petitioner also submitted the notices for the September 17, 2024, insurance compliance hearing, in the form prescribed by our Rules, accompanied by signed investigative reports indicating that Titan Personnel, Inc. was personally served via its registered agent on August 26, 2024, as well as by certified mail, and that the individual defendants, including the officers and directors listed above, were all served via certified mail to their last known addresses. PX1. The insurance compliance hearing allowed the Commission to introduce evidence and testimony, and afforded Respondents the opportunity to do the same, had any of them chosen to attend personally or through counsel. Accordingly, the Commission concludes that reasonable and proper notice and hearing was provided to Respondents.

On the merits, the Commission has considered the following factors in assessing penalties against an uninsured employer: (1) the length of time the employer had been violating the Act; (2) the number of workers' compensation claims brought against the employer; (3) whether the employer had been made aware of his conduct in the past; (4) the number of employees working for the employer; (5) the employer's ability to secure and pay for workers' compensation coverage; (6)whether the employer had alleged mitigating circumstances; and (7) the employer's ability to pay

[1] These were the only named officers and directors for that period who were actively listed as parties to the action. The Commission notes that Veronica Lake was also listed as an officer in 2016 (PX5, p.1) and was served a copy of the Notice of Insurance Compliance Hearing. (PX1, p.6). However, as she was not listed as a named party in the action, we do not find she was given proper notice of her potential liability at the time of the insurance compliance hearing. We decline to include her in the named corporate officers and directors liable under Section 4(d).

the assessed amount. See, *e.g.*, *State of Illinois v. Murphy Container Service*, Ill. Workers' Comp. Comm'n, No. 03 INC 00155, 7 IWCC 1037 (Aug. 2, 2007).

The Commission finds that the period of time during which the Respondents violated the Act by failing to obtain workers' compensation insurance was significant. The Respondents failed to have insurance for 793 days, from October 29, 2014 to March 31, 2015 and April 2, 2015 to December 31, 2017. IDES records show that Respondents employed hundreds of employees through the end of 2017. The Commission finds no evidence as to Respondent's inability to secure and pay for workers' compensation coverage. While there is evidence of two pending Illinois workers' compensation cases, with dates of injury in October 2017 and December 2017, the Commission notes Respondent went from hundreds of employees in the 2017 to zero employees in 2018. We decline to award the maximum penalty allowable under Section 4(d).

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 $237,900.00 against Respondents, Titan Personnel, Inc. and Eric Welch, Lourdes Resendiz, Luis E. Perez, Johanna Dreisbach, Gaylynn Carnello, and Robert Wertz individually and as officers of Titan Personnel, Inc.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondents, Titan Personnel, Inc. and Eric Welch, Lourdes Resendiz, Luis E. Perez, Johanna Dreisbach, Gaylynn Carnello, and Robert Wertz individually and as officers of Titan Personnel, Inc., pay to the Illinois Workers' Compensation Commission the sum of $237,900.00 pursuant to Section 4(d) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that payment shall be made according to the following procedure: (1) payment of the penalty shall be made by certified check or money order made payable to the Illinois Workers' Compensation Commission; and (2) payment shall be mailed or presented within thirty (30) days of the final order of the Commission or the order of the court of review after final adjudication to:

Department of Insurance
Attn: Insurance Compliance
115 S. LaSalle Street, 13th 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.

June 20, 2025
O: 06/02/25
AHS/
051

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC010564
Case Name	Seamus Cox v. US Fire Protection, Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0276
Number of Pages of Decision	20
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Kevin Veugeler
Respondent Attorney	JASON ALLAIN

DATE FILED: 6/20/2025

/s/Maria Portela, Commissioner

Signature

25IWCC010564

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SEAMUS COX,

Petitioner,

vs. NO: 20WC010564

U.S. FIRE PROTECTION, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issue(s) of causation, temporary total disability, medical expenses, penalties and fees, nature and extent, and "credit," 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.

We modify the Decision to reflect that Petitioner sustained a patellofemoral left knee injury in the accident, which resolved as of November 1, 2018. The May 14, 2018 left knee x-ray showed mild prepatellar soft tissue swelling. *Px1, T.142*. On May 25, 2018, the pain was under Petitioner's kneecap. *Px2, T.232*. On November 1, 2018, Dr. Levin wrote, "from the left knee standpoint he has resolved any knee discomforts." *Px3, T.310*. As of December 6, 2018, Dr. Levin's records no longer mention the localized knee pain. *Id. at 305*.

We modify the Decision to reflect that Petitioner's right shoulder symptoms had resolved as of July 19, 2018. *T.59, Px2, T.227*. However, for the purposes of a permanency award, his right shoulder condition remains causally related to his work accident.

We clarify that, while Petitioner sustained a myofascial strain and aggravation of a pre-existing degenerative lumbar condition, the accident did not cause acute herniations at L2-3 and L3-4.

We modify the Decision to find Petitioner's tinnitus was aggravated by his Post Traumatic

Stress Disorder (PTSD), which is related to the accident. Based on this finding, we affirm the award of Dr. Gulati's bill.

We reduce the award to Dyer Family Medical from $1,304.00 to $938.00 and deduct those bills in the amount of $366.00 that were incurred prior to the accident. We find the total award for Dyer Family Medical is $938.00 for medical expenses under §8(a) of the Act subject to the fee schedule in §8.2 of the Act, including the provision regarding the negotiated rate.

We modify the award for the Clarity Clinic bills because the charges after December 18, 2023 are not supported by treating records in evidence. We deduct the charges from January 2, 2024 through March 11, 2024 ($2,250.00) from the amount awarded by the Arbitrator ($49,922.00) and find that Respondent shall pay $47,672.00 for medical expenses under §8(a) of the Act subject to the fee schedule in §8.2 of the Act, including the provision regarding the negotiated rate.

A summary of the medical bills awarded is as follows:

Dyer Family Medical:	$ 938.00
Kartike Gulati, DO:	285.00
Clarity Clinic:	47,672.00

Total	$48,895.00

Regarding permanency, we affirm the award of 20% loss of use of the person as a whole for the psychological injuries including PTSD, anxiety and aggravation of tinnitus. We affirm the award of 5% loss of use of the person as a whole for the right shoulder, which has resolved. We affirm the award of 5% loss of use of the left leg for the acute patellofemoral injury, which has also resolved. However, we reduce to 10% loss of use of the person as a whole the award for the lumbar myofascial pain and aggravation of a pre-existing degenerative condition. We note that Petitioner was released with no orthopedic restrictions. We also find that Petitioner is entitled to the maximum permanent partial disability rate in effect at the time of his accident, which was $790.64 per week.

Finally, Respondent argues the Arbitrator did not address its claim of credit for Petitioner's third-party settlement under §5(b) of the Act. Petitioner counters that Respondent is not entitled to a credit, at this time, because Respondent has not made any payments. Section 5(b) of the Act states, in relevant part:

> Where the injury or death for which compensation is payable under this Act was caused under circumstances creating a legal liability for damages on the part of some person other than his employer to pay damages, then legal proceedings may be taken against such other person to recover damages notwithstanding such employer's payment of or liability to pay compensation under this Act. In such case, however, if the action against such other person is brought by the injured employee or his personal representative and judgment is obtained and paid, or settlement is made with such other person, either with or without suit, then from the amount received by such employee or personal representative there shall be paid

> to the employer the amount of compensation paid or to be paid by him to such employee or personal representative including amounts paid or to be paid pursuant to paragraph (a) of Section 8 of this Act [820 ILCS 305/8].
>
> Out of any reimbursement received by the employer pursuant to this Section the employer shall pay his pro rata share of all costs and reasonably necessary expenses in connection with such third-party claim, action or suit and where the services of an attorney at law of the employee or dependents have resulted in or substantially contributed to the procurement by suit, settlement or otherwise of the proceeds out of which the employer is reimbursed, then, in the absence of other agreement, the employer shall pay such attorney 25% of the gross amount of such reimbursement.

820 ILCS 305/5.

In *Zuber v. Illinois Power Co.*, 135 Ill. 2d 407 (1990), the Supreme Court found:

> the reimbursement in the second paragraph of section 5(b) is not limited to amounts accrued by the time of judgment or settlement, but rather includes as well the future compensation payments the employer is relieved from making by reason of the third-party recovery. An employer benefits from the third-party recovery both when it is repaid workers' compensation benefits already paid to the plaintiff and when it is relieved of its obligation to make compensation payments in the future. It is appropriate to impose fees and costs in relation to both benefits, and clearly section 5(b) was intended to achieve that end.

Id. at 416.

In *Zuber*, the appellate court had previously ordered:

> the employer to make payments of [the statutory 25% attorney's fees plus pro-rata share of costs] to the plaintiff on a weekly basis. The appellate court explained that it ordered payment of the attorney fees to plaintiff rather than to her attorneys because "plaintiff's attorney at oral argument stated that the attorneys make no claim to additional attorney fees" apart from the fees already received by them. [Citation omitted.]

Id. at 412-13. In a supplemental opinion, the appellate court explained:

> the weekly payments of attorney fees must be made to the plaintiff rather than to her attorneys. [Citation omitted.] The appellate court explained that the attorneys could not claim any additional fee from the employer because the plaintiff had already paid counsel in full for the settlement of her action against Illinois Power Company. "To hold otherwise," the court stated, "would mean that plaintiff's attorneys would end up recovering fees twice for the same services, once from plaintiff and once from the employer." [Citation omitted.]

Id. at 413.

The Supreme Court rejected the employer's argument that "instead of being required to remit weekly payments of fees and costs, as the appellate court ordered, it should be allowed to deduct those sums from the amount of its credit." *Id. at 418*. The Court wrote, with approval, "Under the approach adopted by the appellate court here, the duration of the employer's weekly payments of fees and costs will correspond to the period during which the plaintiff would have received compensation benefits but for the third-party recovery. In this way, then, the employer will pay for the benefit it receives from the third-party recovery as that benefit accrues." *Id. at 419*.

In *Bayer v. Panduit Corp. Area Erectors*, 407 Ill. Dec. 458 (2016), the Supreme Court extended its holding in *Zuber* to future medical expenses. The Court also wrote:

> We note in this regard that because the statutory 25% attorney fee owed by Area Erectors represents the company's share of the total fee paid by Bayer in the third-party action, not a separate fee, and because Bayer has already paid the fee in full, it would have been appropriate for the circuit court to have ordered Area Erectors' share of the fees to be paid directly to Bayer himself, as Bayer's attorneys requested in their motion. That this was not done, however, is not problematic under the circumstances of this case. While the circuit court ordered Area Erectors to tender payment of its share of the fees to Bayer's lawyers rather than to Bayer himself, it did so with the caveat that there "shall be no double recovery of attorney's fees" and that the statutory fees paid by Area Erectors to Bayer's attorneys were to assist Bayer in paying the fees he owed those attorneys under the contingency agreement he had with them with respect to the recovery against Panduit. Bayer has not challenged this ruling, and his lawyers have made clear that they understand that the fees Area Erectors pays them based on Bayer's future medical expenses will be forwarded to Bayer.

Id. at 469.

Therefore, the Commission finds that Respondent is entitled to receive credit for future permanency payments and medical expenses under §5(b) of the Act. However, the practical application of §5(b) is difficult in this case because neither party introduced a copy of the third-party settlement contract. As such, we do not know what costs were associated with the litigation in order to apportion Respondent's pro-rata share. The evidence only indicates that the total settlement was in the amount of $1,219,592.35. *Px18, T.2053; T.74.*

We find that Respondent is entitled to credit under §5(b) of the Act, pursuant to the provisions of that section and subject to its limitations, and Respondent's obligations to make payments for permanency benefits and future medical expenses are suspended until the credit is exhausted. However, Respondent must still pay its contribution for attorney's fees and pro-rata share of costs as the credit accrues. To the extent Petitioner's attorneys have received or will receive their total fee under the settlement agreement, Respondent shall pay directly to Petitioner a weekly amount equal to 25% for statutory attorney's fees plus its pro-rata share of costs as contribution for the credit Respondent is receiving for the future permanency payments. Respondent shall pay the same percentages directly to Petitioner for all future medical expenses

which it is obtaining credit under §5(b). If Petitioner's attorneys have not received and will not receive their fee on the total amount of the third-party settlement, then Respondent shall remit the above fees to Petitioner's attorney. Under no circumstances will there be double recovery of attorney's fees.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $790.64 per week for a period of 175 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 20% loss of use of the person as a whole for the psychological condition, 10% loss of use of the person as a whole for the lumbar condition and 5% loss of use of the person as a whole for the right shoulder.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $790.64 per week for a period of 10.75 weeks, as provided in §8(e)12 of the Act, for the reason that the injuries sustained caused the 5% loss of use of the left leg.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $48,895.00 for medical expenses under §8(a) of the Act subject to the fee schedule in §8.2 of the Act including the provision regarding the negotiated rate.

IT IS FURTHER ORDERED BY THE COMMISSION that, pursuant to §5(b) of the Act, Respondent's obligations to make payments for permanency benefits and future medical expenses are suspended until the §5(b) credit is exhausted. However, Respondent must still pay, on a weekly basis and as otherwise outlined above, its contribution for attorney's fees and pro-rata share of costs as the credit accrues.

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.

June 20, 2025 /s/ *Maria E. Portela*

SE/ /s/ *Amylee H. Simonovich*
O: 5/20/25
49 /s/*Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC010564
Case Name	Seamus Cox v. US Fire Protection, Inc
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Kevin Veugeler
Respondent Attorney	Jason Allain

DATE FILED: 4/24/2024

/s/ Paul Seal, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF APRIL 23, 2024 5.16%

STATE OF ILLINOIS)
)SS.
COUNTY OF DuPAGE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

SEAMUS COX Case # **20** WC **010564**
Employee/Petitioner
v.
U.S. FIRE PROTECTION, 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 Paul Eric Seal, Arbitrator of the Commission, in the city of Wheaton, on March 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. *X* Is Petitioner's current condition of ill-being causally related to the injury?
G. What were Petitioner's earnings?
H. What was Petitioner's age at the time of the accident?
I. What was Petitioner's marital status at the time of the accident?
J. *X* Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. What temporary benefits are in dispute?
____TPD ___Maintenance __TTD
L. X What is the nature and extent of the injury?
M. X Should penalties or fees be imposed upon Respondent?
N. X Is Respondent due any credit?

FINDINGS

On the date of accident, **5/9/2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**83,360.00**; the average weekly wage was $**2,084.00**.

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

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

ORDER

Medical Benefits

- The respondent shall pay the sum of **$51,511.00** for reasonable and necessary medical services pursuant to the medical fee schedule directly to Petitioner as provided by the Section 8(a) and 8.2 of the Act.

Nature and Extent

- The respondent shall pay Petitioner permanent partial disability benefits of 20% loss of a person as a whole (for anxiety disorder/PTSD), plus 20% loss of a person as a whole (for back injury) plus 5% loss of a person as a whole (for shoulder pain) plus 5% loss of a left leg (for leg pain).

Penalties

- Penalties and fees are denied.

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

RULES REGARDING APPEALS Unless a party 1) files a *Petition for Review* within 30 days after receipt of this decision; and 2) certifies that he or she has paid the court reporter the final cost of the arbitration transcript and attaches a copy of the check to the *Petition*; and 3) perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

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

Signature of Arbitrator

April 24, 2024

Findings of Facts

The Petitioner testified that he has worked as a sprinkler fitter for 28 years. (Tr. P. 19). Sprinkler Fitters install overhead fire protections systems, using wrenches and drills to install pipes, valves, sprinkler heads, and fire pumps. (Tr. P. 19-21, PX17). Photographs received into evidence depict the size and type of materials used by Mr. Cox as a sprinkler fitter. (PX17). The material and equipment weigh from several pounds to more than one hundred pounds. (PX17).

According to a job description received in evidence, *Sprinkler Fitter Job Elements*, when installing pipe, sprinkler fitters will bend over and pick up a piece of pipe, average length of twelve feet, and hold it overhead while attaching it to a fitting. (PX17). A hanger is attached to the ceiling using a Hilti drill and a pipe wrench is used to tighten the pipe sufficiently to hold 200 p.s.i. of water pressure. (PX17). This process is repeated 80-125 times in an average workday. (PX17). A sprinkler fitter must be able to lift tools and materials that weigh in excess of 100 pounds. (PX17).

Petitioner has been employed as a sprinkler fitter foreman with Respondent for the last 25 years of his 28-year career. (Tr. P. 18). Petitioner testified that in addition to being a General Foreman, he was also an after-hours Emergency Superintendent. (Tr. P. 19). He explained his additional duties involved responding to any emergency service calls from 3:30 p.m. to 7:00 a.m. the next morning. (Tr. P. 21). He was provided with a service truck for this purpose. (Tr. P. 21). Petitioner's job duties required him to be dispatched for emergencies five to ten times a night to various jobsites driving the company service truck. (Tr. P. 21).

Petitioner testified that prior to May of 2018, he did not have any issues or problems with his low back, right shoulder, or left knee. Petitioner testified that prior to May of 2018, he had not received any medical treatment to his low back, right shoulder, or left knee. Petitioner testified that

prior to May of 2018, he did not have any mental health issues. (Tr. P. 22-23). Finally, Petitioner testified that in May of 2018, he was not under any doctor's care for his low back, right shoulder, left knee, or mental health. (Tr. P. 23).

Petitioner testified that on May 9, 2018, while driving his service vehicle for work, he was involved in a multicar pileup on I-294. (Tr. P. 23-25). While driving along the highway, a semi-truck driving in front of Petitioner slammed on its brakes. (Tr. P. 23-24). Petitioner was able to avoid a collision with that vehicle, however, he saw another truck bearing down on him. (Tr. P. 24). Petitioner testified the van he was driving was hit from behind, causing him to spin around and crash into the median. (Tr. P. 25).

An Illinois Traffic Crash Report received into evidence indicates several vehicles crashed into Petitioner's service truck. (PX12). Multiple semi-trucks and service vehicles were also involved in the collision. (Tr. P. 24-25, PX12). Photographs taken at the scene depict the extensive damage to Plaintiff's red United States Alliance service truck. (PX13). The scene photographs also depict extensive damage to the other vehicles involved in the collision. (PX13).

Respondent submitted additional deposition testimony from Petitioner. (RX2). Petitioner recounted a semi came to a stop in front of him and he stopped to avoid a collision. (RX2, P. 34). While stopped, Petitioner saw the face of the driver of a box truck behind him in his driver side mirror as it collided hard with his work truck. (RX2, P. 36-38, 40). Next, a second impact from behind from a semi tractor trailer threw his work truck into another lane of traffic and he was hit again by an Acadia van. (RX2, P. 37-42). After that impact, Petitioner hit the median wall twice, and was struck again by a white Subaru. (RX2, P. 41-44, 46). Petitioner's left knee struck the

window crank or armrest, his right wrist struck a plywood partition, and his shoulder was impacted. (RX2, P. 48-49, 79, 99).

After the collisions, Petitioner heard the driver of the box truck that struck him screaming about his legs being trapped. (RX2, P. 53-54). The driver of the Acadia was also screaming. (RX2, P. 54). Petitioner described the scene as traumatic. (PX2, P. 190).

On May 11, 2018, Petitioner presented to his family physician at Dyer Family Medical. (Tr. P. 26, PX2). Notes from that visit indicate Petitioner was "…48 y.o. male who presents for evaluation after an MVA," with complaints of right shoulder, right wrist, left knee and generalized body pain." (PX2). "He was driving on the expressway and a car hit him from behind and pushed him into a semi in front of him and then he was pushed into the left lane and was struck twice by other drivers and then hit the cement." (PX2). He was prescribed anti-inflammatories and x-rays of the knee and shoulder. (Tr. P. 26, PX2). Petitioner returned to Dyer Family Medical on May 25, 2018. (Tr. P. 27, PX2). At that time, Petitioner's left shoulder and right wrist pain had improved, but his left knee pain had not. (Tr. P. 27, PX2). Petitioner was prescribed additional anti-inflammatories, taken off work, and instructed to return to the clinic. (Tr. P. 27, PX2).

Petitioner next visit at Dyer Family Medical was June 5, 2018 for "follow-up after MVA," with chief complaint "trauma." (PX2). Petitioner was discharged from care and instructed to return as necessary. (PX2). Petitioner returned to Dyer Family Medical on July 5, 2018 complaining of continued knee pain and low back pain. (PX2). Medication and x-rays were prescribed. (PX2). On July 19, 2018, he presented with back pain, left thigh numbness, and left leg and knee pain. (PX2). He was prescribed an MRI of the low back, Norco, and taken off work. (Tr. P. 27, PX2). It was noted Petitioner had "back pain ongoing from car accident." (PX2).

Petitioner testified he continued to work for Respondent, in a light duty capacity from home. (Tr. P. 28). This was confirmed by the contemporaneous medical records that indicated Petitioner was "still working from home at a computer." (7/19/18 visit, PX2).

An MRI on July 25, 2018 revealed disc protrusions at L3-L4 and L2-L3. (Tr. P. 29, PX1). Petitioner's employer directed him to follow up with Dr. Mark Levin at Barrington Orthopedics. (Tr. P. 29).

Petitioner first saw Dr. Levin on August 9, 2018. (Tr. P. 29, PX3). Dr. Levin's records indicate "Petitioner had left knee and back pain due to a work injury on May 8, 2018." ((sic), PX3). Petitioner complained of left knee pain and numbness as well as pain in the lumbar spine radiating to the left leg. (Tr. P. 29, PX3). Dr. Levin recommended a home exercise program, and work restrictions of no lifting greater than 10 lbs. and no driving longer than 15 minutes. (Tr. P. 30, PX3).

Petitioner returned to Dr. Levin on August 27, 2018. (Tr. P. 31, PX3). Dr. Levin diagnosed low back and left knee pain and prescribed physical therapy and continued light duty. (Tr. P. 31, PX3).

On September 14, 2018, Petitioner returned to Dr. Levin complaining of difficulty sleeping. (Tr. P. 31, PX3). Petitioner testified he was having awful nightmares about the May 9, 2018 accident. (Tr. P. 31). He was also having mental health issues, major issues with driving, and becoming reclusive. (Tr. P. 32).

Petitioner testified he continued to treat with Dr. Levin for his left knee and low back pain through September, October, November, and December of 2018. (Tr. P. 32, PX3). Dr. Levin continued to recommend physical therapy, light duty work, and limited driving. (Tr. P. 32, PX3).

Dr. Levin's notes from Petitioner's December 20, 2018 visit indicate Petitioner was "waking up in the middle of the night with panic attacks" as well as "difficulty sleeping in general and …emotional difficulties." (PX3). Petitioner testified Dr. Levin recognized his mental health issues and contacted his employer to access Respondent's employee assistance program. (Tr. P. 32-33). Respondent directed Petitioner to Aspire Counseling Services. (Tr. P. 34).

Petitioner first presented to Aspire Counseling Services on December 28, 2018. (Tr. P. 33, PX6). Notes from that visit indicate "Paces in the middle of the night. Middle insomnia. Is having memory impairment. Feeling unfocused. Can't concentrate on things." (PX6).

Petitioner testified his nightmares would focus on the truck behind him that struck him in the accident. (Tr. P. 34).

Petitioner returned to Dr. Levin on January 7, 2019. Notes from that visit indicate "He mentions having some difficulty sleeping. He states he has been seeing a psychiatrist." (Tr. P. 35, PX3). Dr. Levin recommended continued physical therapy and light duty restrictions. (Tr. P. 35, PX3).

Petitioner continued to treat with Aspire Counseling Services in January and February of 2019. (Tr. P. 35, PX6). He was diagnosed with posttraumatic stress disorder over car accident. (Tr. P. 35, PX6).

Upon completion of physical therapy, Petitioner returned to Dr. Levin on February 18, 2019. (Tr. P. 35-36, PX3). At that time, Dr. Levin released Petitioner to return to work full duty. (Tr. P. 36, PX3). Discharge notes from Athletico physical therapy indicate Petitioner had completed 55 therapy sessions with no missed appointments. (PX3, P. 2). He still exhibited signs and symptoms consistent with his diagnosis of acute left-sided low back pain with left sided sciatica, weakness of left lower extremity, and decreased sensation of lower extremity. (PX3, P. 2). It was noted that Petitioner had a lifting capacity of 50lbs, below the lifting requirements outlined in the *Sprinkler Fitter Job Elements*. (Tr. P. 36, PX3, P. 2, PX17).

Petitioner testified Respondent continued to accommodate his previous light duty work restrictions. (Tr. P. 36-37). He never returned to full duty work in the field as a sprinkler fitter. (Tr. P. 37).

Petitioner returned to Dr. Levin on March 4, 2019. (Tr. P. 37, PX3). Dr. Levin noted he continued to work light duty and recommended he contact Respondent's work intelligence program for mental health issues. (Tr. P. 37, 61, PX3). Petitioner testified through that program, he was directed to Clarity Clinic. (Tr. P. 38).

Petitioner's first visit to Clarity Clinic was on March 26, 2019. (Tr. P. 38, PX8). He was diagnosed with posttraumatic stress disorder and anxiety disorder as a result of the motor vehicle accident and recommended for weekly mental health therapy. (Tr. P. 38, PX8, P.6). Petitioner has remained in therapy with Clarity Clinic once or twice a week since March, 2019. (Tr. P. 40, PX8). A review of the Clarity Clinic notes indicates continued difficulty with driving. (PX8). For example, on August 28, 2019, it was noted that Petitioner reported symptoms of PTSD such as insomnia, irritability and re-experiencing the traumatic event, that was triggered by driving. (PX8,

P. 21). A January 20, 2021 note indicates an increase in panic and fight or flight urges due to increasingly bad weather conditions on the road. (PX8, P. 92). On May 26, 2021, it was noted Petitioner "tends to avoid certain driving scenarios due to traffic related fears." (PX8, P. 79). Petitioner reported an increase in symptoms due to an "incident of an unsafe driver on the way home from work" on March 28, 2023. (PX8, P. 206).

Petitioner testified that when his PTSD is triggered, he would have a piercing ringing in his ears. (Tr. P. 40). His primary care physician referred him to Dr. Kartike Gulati. (Tr. P. 40). Petitioner saw Dr. Gulati on December 9, 2019 (Tr. P. 39, PX 5). He was diagnosed with bilateral tinnitus and decreased hearing. (PX5).

Petitioner continued to experience pain in his low back and left leg. On May 6, 2021, he saw Dr. Gregory McComis at North Point Orthopaedics. (Tr. P. 47, PX7). At that time, Dr. McComis recommended continued home therapy program. (Tr. P. 47, PX7).

Currently, Petitioner continues to treat with Clarity Clinic on a weekly basis. (Tr. P. 40, PX8). Petitioner still experiences symptoms of PTSD and anxiety. Petitioner testified that his PTSD often causes "startle syndrome." (Tr. P. 41, PX8). For the most part, he no longer drives. (Tr. P. 41). Occasionally, he will drive very short distances if necessary and only using side streets. (Tr. P. 44). Petitioner testified he still has problems with nightmares, sleeping and avoids driving. (Tr. P. 43-44).

Petitioner also described his injuries during the deposition Respondent submitted. (RX2). His right wrist and right shoulder on his dominant right arm were injured. (RX2, P. 79-82). In addition, Petitioner was questioned about low back pain, left knee pain, and mental health issues.

(RX2, P. 79-86, 99-109, 123-128, 131-146). The right shoulder pain, left knee pain, low back pain, and mental health issues never resolved. (RX2, P. 81, 85, 95, 109-110, 119-120, 128, 140).

At the time of trial, Petitioner testified he still experiences low back pain along with radiating pain into his left leg. (Tr. P. 49). As a result, he is unable to sit for long periods of time. (Tr. P. 50). Petitioner has never returned to work in a full duty capacity. (Tr. P. 37). He currently works in a supervisory position from home for a new employer, using a standing desk. (Tr. P. 44-45,50). In this new position, Petitioner does not work in the field physically working on sprinkler systems, but rather works from home managing five employees that are on site at the University of Chicago. (Tr. P. 44-45, 81-82).

Also received into evidence were the depositions of Dr. Geoffrey Shaw, a board-certified psychiatrist, and Jessica Masbaum, a Licensed Clinical Social Worker. (PX14, PX15). Dr. Shaw confirmed that Petitioner's anxiety disorder and posttraumatic stress disorder were the result of the May 9, 2018 pileup, that the condition is permanent and requires ongoing treatment. (PX14, P. 75-76, 88-89, 111, 113). Similarly, Ms. Masbaum testified that Petitioner's PTSD and anxiety disorder were a result of his May 9, 2018 motor vehicle accident, and that his symptoms have not resolved and require continued treatment. (PX15, P. 131, 135-138, 141, 150).

Conclusions of Law

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

It is well-settled that an employee need only show that some act of employment was a causative factor, not the sole or principal cause, of his injury. Alderson v. Select Beverage, Inc., 06 I.W.C.C. 0095, 01 W.C. 33435 (2006). An injury arises out of a claimant's employment where it "had its origin in some risk connected with, or incidental to, the employment so as to create a

causal connection between the employment and the accidental injury." Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 203 (2003).

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. Hopkins v. WSNS Telemundo, 02 IIC 0946, 99 W.C. 42128 (2002). In determining that an employee was entitled to compensation for aggravation of a preexisting injury in Hopkins, the Commission noted that petitioner was in good health prior to the fall, he had no restrictions prior to his fall, and following his fall he suffered a marked decrease in his health and ability to function at work.

Petitioner testified that, after the accident, he began to experience pain in his low back, left knee, and right shoulder. This was confirmed by the medical records submitted into evidence. Prior to the accident on May 9, 2018, Petitioner had not had any complaints or treatment to his low back, left knee or right shoulder. Petitioner also testified that, immediately following the accident, he began to experience symptoms of anxiety and posttraumatic stress disorder including insomnia, difficulty sleeping and nightmares. This was also confirmed by the medical records submitted into evidence. Prior to the accident on May 9, 2018, Petitioner had never received any mental health treatment. The Arbitrator further finds Petitioner's testimony to be highly credible.

Respondent failed to offer any medical evidence to dispute Petitioner's diagnoses, causation or need for medical treatment. In fact, Respondent directed Petitioner's orthopedic care to Dr. Levin and his mental health care to Clarity Clinic. Respondent's orthopedic Dr. Levin noted Petitioner's mental health issues and recommended evaluation and treatment.

The Arbitrator finds that Petitioner's herniated discs at L2-L3 and L3-L4 and resulting low back pain radiating to the left knee and right shoulder pain, as well as his diagnosis of anxiety and posttraumatic stress disorder, are causally connected to the motor vehicle accident on May 9, 2018. The Arbitrator also specifically finds that the accident caused the need for his continued mental health therapy at Clarity Clinic.

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?

Petitioner submitted the following medical expenses without objection concerning reasonableness and necessity:

Exhibit 9 – Dyer Family Medical: $1,304.00
Exhibit 10 – Kartike Gulati, DO: $285.00
Exhibit 11 – Clarity Clinic: $49,922.00

The Arbitrator awards the above medical bills in the amount of $51,511.00 to be paid directly to Petitioner.

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

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, Petitioner returned to light duty work. The arbitrator gives this factor more weight.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes Petitioner's age and that he will continue to suffer the effects of his injuries for some time. The arbitrator gives this factor some weight.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the petitioner sustained no earnings diminution, the arbitrator gives this factor less weight.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, Petitioner has continued need for mental health therapy and returned to work in a light duty capacity. The Arbitrator finds Petitioner suffered 20% loss use of a person as a whole as a result of the posttraumatic stress disorder, 20% loss use of a person as whole as a result of the low

back injury, and 5% loss use of a person as a whole as a result of the right shoulder pain, and 5% loss use of a leg for the left knee pain.

M. Should penalties or fees be imposed upon Respondent?

Penalties and fees are denied.

N. Is Respondent due any credit?

On the Request for Hearing form, Respondent claims that it is entitled to a credit for amounts paid. (Arb.X1). §8(j) of the Act states Respondent is entitled to a credit "in the event the injured employee receives benefits, including medical, surgical or hospital benefits under any group plan covering non-occupational disabilities contributed to wholly or partially by the employer, which benefits should not have been payable if any rights of recovery existed under the Act." 820 ILCS 305/8(j). §8(j) credit "does not apply to payments made under any group plan which would have been payable irrespective of an accidental injury under this Act." Id. However, an employer has the burden of establishing its entitlement to a credit. Elgin Board of Education School District U-46 v. Illinois Workers' Compensation Commission, 409 Ill.App.3rd 943 (1st Dist. 2011). The right to a credit is to be narrowly construed. Id. In this case, Respondent failed to present any evidence that Respondent paid any benefits. Further, Respondent failed to present any evidence that any medical payments made on behalf of Petitioner would have been made irrespective of an accidental injury under the Illinois Workers' Compensation Act. Therefore, the Arbitrator finds that Respondent has not met its burden of proof establishing entitlement to a credit for any paid benefits.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	11WC041652
Case Name	Christopher Johnson v. Greyhound Lines, Inc.
Consolidated Cases	13WC023566
Proceeding Type	Remand
Decision Type	Commission Decision
Commission Decision Number	25IWCC0277
Number of Pages of Decision	5
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Steven Seidman
Respondent Attorney	Courtney Cronin

DATE FILED: 6/26/2025

/s/Christopher Harris,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHRISTOPHER JOHNSON,

Petitioner,

vs. NO: 11 WC 41652

GREYHOUND,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the Circuit Court of Cook County, which set aside the Commission's January 26, 2024 decision for failing to apply the correct legal standard. The Circuit Court instructed the Commission to determine "whether Petitioner has proven Permanent Total Disability by showing he has made diligent but unsuccessful attempts to find work OR by demonstrating that because of his age, training, education, experience and condition, there are no jobs available for a person in his circumstance."

This matter was consolidated at arbitration with claim 13 WC 23566. A separate Decision and Opinion on Remand has been issued for claim 13 WC 23566. There is only one bond comprising both claims in the amount of $3,800.00 as both claims share the same award.

Procedural Background:

This case was originally tried before Arbitrator Douglas Steffenson on April 4, 2016. He denied benefits finding no causal connection between the accident and the Petitioner's contact dermatitis and rejected the need for vocational rehabilitation. The Arbitrator concluded the Petitioner showed no motivation to return to work, never searched for a job and failed to meet with vocational expert Ms. Tytiana Brown ("Ms. Brown"), who had identified viable job options available to the Petitioner. The Arbitrator also found the testimony of Petitioner's expert, Mr. Edward Pagella ("Mr. Pagella"), unpersuasive.

On appeal, the Commission modified the decision on April 13, 2018, and found causal connection but agreed the Petitioner failed to prove he could only work in environments free of nickel, cobalt, carbamates, and thiuram or that vocational services were necessary. The Circuit Court affirmed, and the Appellate Court found the appeal interlocutory and remanded the case for permanency.

A subsequent hearing was held before Arbitrator Nath Rivera on January 11, 2023. Ms. Susan Entenberg ("Ms. Entenberg") was retained by Petitioner's counsel and concluded there was no reasonable, stable labor market available to him based on his age, education, work history, transferrable skills, lack of computer and office skills, and his medical limitations. The Arbitrator found the Petitioner failed to show he actively sought employment or that he met the criteria for permanent total disability ("PTD") under Section 8(f) of the Act. The Arbitrator awarded 35% loss the use of the person-as-a-whole. The Commission affirmed this decision on January 26, 2024. The Circuit Court set aside the decision and remanded the matter back to the Commission.

Conclusions of Law:

The issue of whether a claimant is permanently and totally disabled presents a question of fact to be determined by the Commission. *Economy Packing Co. v. Illinois Workers' Compensation Comm'n*, 387 Ill. App. 3d 283, 293, 901 N.E.2d 915, 327 Ill. Dec. 182 (2008). "In resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *Hosteny v. Illinois Workers' Compensation Comm 'n*, 397 Ill. App. 3d 665, 674, 928 N.E.2d 474, 340 Ill. Dec. 475 (2009).

An employee need not be reduced to complete physical incapacity to be entitled to PTD benefits. *Ceco Corp. v. Industrial Comm'n*, 95 Ill. 2d 278, 286, 447 N.E.2d 842, 845, 69 Ill. Dec. 407 (1983). Instead, a PTD award is proper when the employee can make no contribution to industry sufficient to earn a wage. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 544, 865 N.E.2d 342, 357, 310 Ill. Dec. 18 (2007). "The focus of the Commission's analysis must be upon the degree to which the claimant's medical disability impairs his employability." *Alano* v. *Industrial Comm'n*, 282 Ill. App. 3d 531, 534, 668 N.E.2d 21, 24, 217 Ill. Dec. 836 (1996). A person is not entitled to PTD benefits if he is qualified for and capable of obtaining gainful employment without seriously endangering his health or life. *Interlake, Inc. v. Industrial Comm'n*, 86 Ill. 2d 168, 176, 427 N.E.2d 103, 107, 56 Ill. Dec. 23 (1981).

"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*, 372 Ill. App. 3d at 544, 865 N.E.2d at 357. If the claimant establishes that he fits into the odd-lot category, the burden shifts to the employer to prove that the claimant is employable in a stable labor market and that such a market exists. *Id.*

The Commission questions Petitioner's sincerity. Although Petitioner alleges severe symptoms, he has only seen his primary care physician, has not consulted an allergist or

dermatologist as recommended, and has only been prescribed ointments since 2016. He has not received any active treatment for his contact dermatitis and has no plans for future care. When questioned regarding his job search, Petitioner was unable to identify specific employers he contacted, provided no documentation of his job search, and admitted that he has not applied for any remote work positions. In total, the full extent of Petitioner's disability is speculative. This speculation permeates through the vocational opinions from Ms. Entenberg and Mr. Pagella.

Ms. Entenberg testified that she was not retained to conduct a job search, did not perform a labor market survey, and did not contact any employers. She further admitted she has not reviewed any medical records after 2016 and based her opinion on an interview with Petitioner. She acknowledged that Petitioner's sole restriction was the need to wear vinyl gloves and that no doctor had stated he was unable to work. Simply stated, Ms. Entenberg's opinion seems more predicated on speculation (i.e. the likelihood of a dermatological episode) than fact. Based on the record in its entirety, the Commission finds Ms. Entenberg's opinion that because of his age, skills, training, and work history, Petitioner will not be regularly employed in a well-known branch of the labor market, unpersuasive.

Mr. Pagella opined that vocational rehabilitation services were necessary but did not perform a labor market survey or provide vocational rehabilitation. Despite this, he concluded that Petitioner was not employable. The Commission finds their opinions speculative and unpersuasive due to the absence of a thorough analysis of the labor market and therefore assigns them no weight.

In contrast, the Commission finds Ms. Brown's opinion persuasive. Ms. Brown previously provided a transferrable skills analysis and identified multiple positions the Petitioner could pursue. Her testimony establishes that Petitioner is employable without the need for vocational rehabilitation. Despite the availability of positions identified by Ms. Brown, the record establishes that Petitioner has made no credible effort to find work. His lack of motivation and failure to demonstrate a good faith job search further undermines his claim of unemployability.

Given the absence of a diligent job search as previously found by the Commission, and the absence of a credible opinion that Petitioner is unemployable because of his age, skills, training, and work history, the Commission finds Petitioner has not established that he is permanently and totally disabled under the "odd-lot" theory of recovery and reaffirms its prior award of 35% loss of the person-as-a-whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed March 3, 2023, is hereby modified as stated above and otherwise affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $3,800.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 26, 2025

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

CAH/tdm
d: 6/25/25
052

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC023566
Case Name	Christopher Johnson v. Greyhound Lines, Inc.
Consolidated Cases	11WC041652
Proceeding Type	Remand
Decision Type	Commission Decision
Commission Decision Number	25IWCC0278
Number of Pages of Decision	5
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Steven Seidman
Respondent Attorney	Courtney Cronin

DATE FILED: 6/26/2025

/s/Christopher Harris,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHRISTOPHER JOHNSON,

Petitioner,

vs. NO: 13 WC 23566

GREYHOUND,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the Circuit Court of Cook County, which set aside the Commission's January 26, 2024 decision for failing to apply the correct legal standard. The Circuit Court instructed the Commission to determine "whether Petitioner has proven Permanent Total Disability by showing he has made diligent but unsuccessful attempts to find work OR by demonstrating that because of his age, training, education, experience and condition, there are no jobs available for a person in his circumstance."

This matter was consolidated at arbitration with claim 11 WC 41652. A separate Decision and Opinion on Remand has been issued for claim 11 WC 41652. There is only one bond comprising both claims in the amount of $3,800.00 as both claims share the same award.

Procedural Background:

This case was originally tried before Arbitrator Douglas Steffenson on April 4, 2016. He denied benefits finding no causal connection between the accident and the Petitioner's contact dermatitis and rejected the need for vocational rehabilitation. The Arbitrator concluded the Petitioner showed no motivation to return to work, never searched for a job and failed to meet with vocational expert Ms. Tytiana Brown ("Ms. Brown"), who had identified viable job options available to the Petitioner. The Arbitrator also found the testimony of Petitioner's expert, Mr. Edward Pagella ("Mr. Pagella"), unpersuasive.

On appeal, the Commission modified the decision on April 13, 2018, and found causal connection but agreed the Petitioner failed to prove he could only work in environments free of nickel, cobalt, carbamates, and thiuram or that vocational services were necessary. The Circuit Court affirmed, and the Appellate Court found the appeal interlocutory and remanded the case for permanency.

A subsequent hearing was held before Arbitrator Nath Rivera on January 11, 2023. Ms. Susan Entenberg ("Ms. Entenberg") was retained by Petitioner's counsel and concluded there was no reasonable, stable labor market available to him based on his age, education, work history, transferrable skills, lack of computer and office skills, and his medical limitations. The Arbitrator found the Petitioner failed to show he actively sought employment or that he met the criteria for permanent total disability ("PTD") under Section 8(f) of the Act. The Arbitrator awarded 35% loss the use of the person-as-a-whole. The Commission affirmed this decision on January 26, 2024. The Circuit Court set aside the decision and remanded the matter back to the Commission.

Conclusions of Law:

The issue of whether a claimant is permanently and totally disabled presents a question of fact to be determined by the Commission. *Economy Packing Co. v. Illinois Workers' Compensation Comm'n*, 387 Ill. App. 3d 283, 293, 901 N.E.2d 915, 327 Ill. Dec. 182 (2008). "In resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *Hosteny v. Illinois Workers' Compensation Comm 'n*, 397 Ill. App. 3d 665, 674, 928 N.E.2d 474, 340 Ill. Dec. 475 (2009).

An employee need not be reduced to complete physical incapacity to be entitled to PTD benefits. *Ceco Corp. v. Industrial Comm'n*, 95 Ill. 2d 278, 286, 447 N.E.2d 842, 845, 69 Ill. Dec. 407 (1983). Instead, a PTD award is proper when the employee can make no contribution to industry sufficient to earn a wage. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 544, 865 N.E.2d 342, 357, 310 Ill. Dec. 18 (2007). "The focus of the Commission's analysis must be upon the degree to which the claimant's medical disability impairs his employability." *Alano* v. *Industrial Comm'n*, 282 Ill. App. 3d 531, 534, 668 N.E.2d 21, 24, 217 Ill. Dec. 836 (1996). A person is not entitled to PTD benefits if he is qualified for and capable of obtaining gainful employment without seriously endangering his health or life. *Interlake, Inc. v. Industrial Comm'n*, 86 Ill. 2d 168, 176, 427 N.E.2d 103, 107, 56 Ill. Dec. 23 (1981).

"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*, 372 Ill. App. 3d at 544, 865 N.E.2d at 357. If the claimant establishes that he fits into the odd-lot category, the burden shifts to the employer to prove that the claimant is employable in a stable labor market and that such a market exists. *Id.*

The Commission questions Petitioner's sincerity. Although Petitioner alleges severe symptoms, he has only seen his primary care physician, has not consulted an allergist or

dermatologist as recommended, and has only been prescribed ointments since 2016. He has not received any active treatment for his contact dermatitis and has no plans for future care. When questioned regarding his job search, Petitioner was unable to identify specific employers he contacted, provided no documentation of his job search, and admitted that he has not applied for any remote work positions. In total, the full extent of Petitioner's disability is speculative. This speculation permeates through the vocational opinions from Ms. Entenberg and Mr. Pagella.

Ms. Entenberg testified that she was not retained to conduct a job search, did not perform a labor market survey, and did not contact any employers. She further admitted she has not reviewed any medical records after 2016 and based her opinion on an interview with Petitioner. She acknowledged that Petitioner's sole restriction was the need to wear vinyl gloves and that no doctor had stated he was unable to work. Simply stated, Ms. Entenberg's opinion seems more predicated on speculation (i.e. the likelihood of a dermatological episode) than fact. Based on the record in its entirety, the Commission finds Ms. Entenberg's opinion that because of his age, skills, training, and work history, Petitioner will not be regularly employed in a well-known branch of the labor market, unpersuasive.

Mr. Pagella acknowledged that vocational rehabilitation services were necessary but did not perform a labor market survey or provide vocational rehabilitation. Despite this, he concluded that Petitioner was not employable. The Commission finds their opinions speculative and unpersuasive due to the absence of a thorough analysis of the labor market and therefore assigns them no weight.

In contrast, the Commission finds Ms. Brown's opinion persuasive. Ms. Brown previously provided a transferrable skills analysis and identified multiple positions the Petitioner could pursue. Her testimony establishes that Petitioner is employable without the need for vocational rehabilitation. Despite the availability of positions identified by Ms. Brown, the record establishes that Petitioner has made no credible effort to find work. His lack of motivation and failure to demonstrate a good faith job search further undermines his claim of unemployability.

Given the absence of a diligent job search as previously found by the Commission, and the absence of a credible opinion that Petitioner is unemployable because of his age, skills, training, and work history, the Commission finds Petitioner has not established that he is permanently and totally disabled under the "odd-lot" theory of recovery and reaffirms its prior award of 35% loss of the person-as-a-whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed March 3, 2023, is hereby modified as stated above and otherwise affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $3,800.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 26, 2025

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

CAH/tdm
d: 6/25/25
052

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC028072
Case Name	INSURANCE COMPLIANCE v. ST MICHAEL'S COUNSELING CENTER - GEORGE GIKOPOULOS
Consolidated Cases	
Proceeding Type	
Decision Type	Commission Decision
Commission Decision Number	25IWCC0279
Number of Pages of Decision	9
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Chase Riddle
Respondent Attorney	

DATE FILED: 6/30/2025

/s/Kathryn Doerries,Commissioner

Signature

STATE OF ILLINOIS)
)
COUNTY OF Cook)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

State of Illinois, Illinois Department of Insurance,
Insurance Compliance Department,

No. 18 WC 028072

Petitioner,

vs.

St. Michael's Counseling Center, Inc. and
George Gikopoulos, Individually and
as President of St. Michael's Counseling Center, Inc.,

Employers/Respondents.

DECISION AND OPINION REGARDING INSURANCE COMPLIANCE

Petitioner, the State of Illinois, Illinois Department of Insurance, Insurance Compliance Department, brings this action by and through the Office of the Illinois Attorney General against the Respondents, St. Michael's Counseling Center, Inc., and George Gikopoulos, Individually and as President of St. Michael's Counseling Center, Inc., 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 1,257 days during the period of November 6, 2012 through April 15, 2016. A hearing was held before Commissioner Doerries in Chicago, Illinois, on April 23, 2025. Proper and timely notice was provided to Respondents. Petitioner was represented by the Office of the Attorney General. Respondents did not appear in person or through counsel. A record was taken.

Petitioner seeks the maximum fine allowed under the Act, $500.00 per day for each day when Respondents did business and failed to provide coverage for their employees, or $628,500.00. Petitioner also seeks reimbursement for payments made by the Injured Workers Benefit Fund (hereinafter "IWBF") to an employee of the Respondent in Case No. 14 WC 033647, in the amount of $3,253.58. Petitioner seeks a total award of $631,753.58.

The Commission after considering the record in its entirety and being advised of the applicable law, finds that Respondents knowingly and willfully violated section 4(a) of the Act and section 9100.100 of the Rules Governing Practice before the Illinois Workers' Compensation Commission (Rules) during the period in question. As a result, Respondents shall be held liable for non-compliance with the Act; however, we assess a lower penalty in the amount of $300.00 per day and order Respondents to pay a penalty in according with section

4(d) of the Act in the sum of $377,100.00 and reimburse the IWBF in the amount of $3,253.58, for a total amount of $380,353.58.

Findings of Fact

The Department of Insurance, Insurance Compliance Division, initiated an insurance compliance investigation upon learning that the IWBF had been named as an additional party in the matter of *Janet Kaiser vs. St. Michael's Counseling Center, Inc. and the Illinois State Treasurer as ex officio Custodian of the IWBF*, No. 14 WC 033647. The claimant in that case alleged a work-related accident arising out of and in the course of employment on August 22, 2014. The department's investigation determined that Respondents' business was subject to the Worker's Compensation Act by virtue of §3 of the Act and had failed to provide insurance coverage for its employees. The department further determined Respondents' business was not self-insured.

Notices of the Insurance Compliance Hearing for today's hearing were sent via certified mail to St. Michael's Counseling Center, Inc. and George Gikopoulos at 7124 West Grand Ave, Chicago, Illinois 60707 and 501 Dulles Road, Des Plaines, Illinois 60016. (PX1)

The Department of Insurance introduced into evidence the arbitration decision of *Janet Kaiser vs. St. Michael's Counseling Center, Inc. and the Illinois State Treasurer as ex officio Custodian of the IWBF*, No. 14 WC 033647. (PX10) In that decision, issued on October 22, 2018, the Arbitrator found that an employer-employee relationship existed between the parties. The Arbitrator further found that Respondent was operating as a for-profit methadone clinic, which was sufficient to subject Respondents to the automatic coverage provisions of Section 3 of the Act. (PX10 at 4, 6) The arbitrator also found that Respondents were uninsured on the accident date. (PX10 at 4) An award for medical expenses and permanent partial disability benefits was entered on behalf of the Petitioner, Janet Kaiser, and against St. Michael's Counseling Center, Inc. (PX10 at 3) The award was also entered against the IWBF to the extent permitted and allowed under §4(d) of the Act. (PX10 at 3)

On December 14, 2021, the Injured Workers' Benefit Fund issued a check to Janet Kaiser in the amount of $3,253.58. (PX11) The check indicated the payment was full and final and satisfied its obligation to pay the award for case number 14 WC 044647.

Antonio Smith, an investigator for the Illinois Department of Insurance, Insurance Compliance Department, testified at the hearing. Mr. Smith has been employed as an investigator for seven and a half years and he conducted the insurance non-compliance investigation of the Respondents named herein. (T. 11)

Mr. Smith identified Petitioner's Exhibit 2 as a Notice of Insurance Compliance Hearing scheduled for March 15, 2018, personally served on George Gikopoulos, both individually and as president of St. Michael's Counseling Center, Inc. The notice states that the Commissions' records indicated that St. Michael's Counseling Center, Inc. was not in compliance with the requirements of section 4(a) for the period from November 6, 2012 through April 15, 2016. The notice includes an affidavit indicating service by mail on January 11, 2018. (PX2)

Mr. Smith identified Petitioner's Exhibit 3 as a second Notice of Insurance Compliance Hearing scheduled for June 28, 2018, personally served on George Gikopoulos, both individually and as president of St. Michael's Counseling Center, Inc. The notice states that the Commission's records indicated that St. Michael's Counseling Center, Inc. was not in compliance with the requirements of section 4(a) for the period from November 6, 2012 through April 15, 2016. The notice includes an affidavit indicating service by mail on March 16, 2018. (PX 3)

Mr. Smith identified Petitioner's Exhibit 4 as a Notice of Non-Compliance mailed to George Gikopoulos, both individually and as president of St. Michael's Counseling Center, Inc. The notice states that the Commission's records indicated that St. Michael's Counseling Center, Inc. was not in compliance with the requirements of section 4(a) for the period from November 6, 2012 through April 15, 2016. (PX 4) This Notice of non-compliance was dated August 15, 2016. (PX4)

Mr. Smith identified Petitioner's Exhibit 5 as a Notice of Insurance Compliance Informal Conference mailed to George Gikopoulos, both individually and as president of St. Michael's Counseling Center, Inc. on October 11, 2016. The notice states that the Commission's records indicated that St. Michael's Counseling Center, Inc. was not in compliance with the requirements of section 4(a) for the period from November 6, 2012 through April 15, 2016, and that this would be the final official notice of the alleged non-compliance. (PX 5)

Mr. Smith identified Petitioner's Exhibit 6 as the results from a search of the Office of the Secretary of State Business Entity records for Respondent, St. Michael's Counseling Center, Inc. The records indicated that St. Michael's Counseling Center, Inc. was formed on November 6, 2012 as a domestic corporation and was not in good standing. The records also indicated that Alex Zaharopoulos was the president of St. Michael's Counseling Center, Inc. George Gikopoulos was the registered agent. (PX 6)

Mr. Smith testified that in the regular course of his investigation, he also obtained the Domestic Corporation Annual Reports related to St. Michael's Counseling Center, Inc. from the Illinois Secretary of State. A report filed on February 3, 2016 indicated that George Gikopoulos was the registered agent. (PX7 at 3) George Gikopoulos was also identified as the president for St. Michael's Counseling Center, Inc. (PX 7 at 5)

Mr. Smith further testified that Petitioner requested insurance information regarding the Respondents from the National Council of Compliance Insurance (NCCI) in Boca Raton, Florida. (PX 8) The NCCI certified that it is the agent designated by the Commission for the purpose of collecting proof of insurance coverage information on Illinois employers and that St. Michael's Counseling Center, Inc. did not file policy information showing proof of workers' compensation insurance at any time from November 6, 2012 through April 15, 2016. (PX 8)

Mr. Smith further testified that Petitioner's Exhibit 9 was a certified finding from the Department of Self-Insurance that Respondents were not self-insured with the State of Illinois during the dates indicated and that it was the type of document requested in the ordinary course

of Petitioner's investigations. The document indicates that no certificate of approval to self-insure was issued to St. Michael's Counseling Center, Inc. for the period of November 6, 2012 through April 15, 2016. (PX 9)

Mr. Smith identified Petitioner's Exhibit 10 as the aforementioned Arbitration Decision in the case of *Janet Kaiser vs. St. Michael's Counseling Center and the IWBF*, Case No. 14WC033647. PX 10. Mr. Smith testified that the arbitration decision awarded Janet Kaiser $5,720.28 for medical expenses and permanent partial disability benefits of $312.60 per week for 17.5 weeks as she sustained a loss of 3.5% of the person as a whole. (PX 10) The decision was also entered against the IWBF which was to be reimbursed by the employer-respondent, St. Michael's Counseling Center, Inc. Mr. Smith testified that St. Michael's Counseling Center, Inc. did not pay the award. (T. 31) The IWBF then issued payment to Janet Kaiser. (T. 31) Mr. Smith identified Petitioner's Exhibit 11 as a check paid by the IWBF to Janet Kaiser in the amount of $3,353.58. (PX 11)

Mr. Smith further testified that in the regular course of his investigation, Petitioner requested information regarding the Respondents from the Illinois Department of Revenue. Petitioner submitted Petitioner's Exhibit 12 which was comprised of certified records of Illinois Withholding Income Tax Returns obtained from the Department of Revenue filed by St. Michael's Counseling Center, Inc. for filing periods of the fourth quarter of 2014 through the first quarter of 2016, and Illinois Small Business Corporation Replacement Tax Returns for 2014 to 2016. (PX 12)

Mr. Smith further identified Petitioner's Exhibit 13 as certified records of Employer's Quarterly Contribution and Wage Reports for St. Michael's Counseling Center, Inc. for the third quarter of 2014 through the first quarter of 2016 from the Department of Employment Security. St. Michael's Counseling Center, Inc. reported covered workers for each of the reporting periods in these reports. (PX 13)

Mr. Smith testified that based upon his investigation, Petitioner determined that Respondent did not have workers' compensation insurance for the period for which it requests relief, from November 6, 2012 through April 15, 2016. The above described exhibits were all admitted as evidence.

Conclusions of Law

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

The Commission first 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 types of businesses, including those "engaged in any department of the following enterprises or businesses which are declared to be extra hazardous, namely:

> 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. (Emphasis added.) 820 ILCS 305/3(17) (West 2016).

The Commission takes judicial notice of the findings by the Arbitrator in this regard as contained in the Decision rendered in *Janet Kaiser vs. St. Michael's Counseling Center, Inc. and the Illinois State Treasurer as ex officio Custodian of the IWBF*, No. 14 WC 033647. (PX10) The claimant's testimony therein established she was employed as a registered nurse and that St. Michael's Counseling Center was a provider of healthcare services and in particular was operating as a methadone clinic. The Commission therefore finds that Respondents' business falls within the purview of section 3(17) of the Act. This finding is also based on Mr. Smith's testimony. Accordingly, the Commission finds that the work Respondents engaged in automatically subjected them to the provisions of the Illinois Workers' Compensation Act.

Pursuant to section 4(a) of the Act, all employers who come within the provisions of the Act are required to provide workers' compensation insurance. See 820 ILCS 305/4(a) (West 2016). Section 9100.90(a) of our Rules similarly provides that any employer subject to section 3 of the Act shall insure payment of compensation required by section 4(a) of the Act "by obtaining approval from the Commission to operate as a self-insurer or by insuring its entire liability to pay the compensation in some insurance carrier authorized, licensed or permitted to do such insurance business in Illinois." 50 Ill. Adm. Code 9100.90(a) (1986). Section 9100.90(d)(3)(E) of our Rules similarly provides that a certification from a Commission employee "that an employer has not been certified as a self-insurer shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D). Section 9100.90(d)(3)(D) of our Rules provides that "[a] certification from an employee of the National Council on Compensation Insurance stating that no policy information page has been filed in accordance with Section 9100.20 shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D).

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 St. Michael's Counseling Center, Inc. for the period of November 6, 2012 through April 15, 2016. Petitioner also submitted the NCCI certification that St. Michael's Counseling Center, Inc. did not file policy information showing proof of workers' compensation insurance at any time from November 6, 2012 through April 15, 2016. Mr. Smith testified that based upon his investigation, Petitioner determined that Respondents did not provide workers' compensation insurance for the period for which it requested relief, from November 6, 2012 through April 15, 2016.

Respondents did not attend the hearing and thus presented no evidence indicating that they provided workers' compensation insurance of any kind during this period. Accordingly, the Commission concludes that Respondents failed to comply with the legal obligations imposed by §4(a) of the Act during this time period.

In Case No. 14 WC 033647, the Commission found St. Michael's Counseling Center, Inc. liable for injuries to Janet Kaiser. (PX 10) The IWBF paid $3,253.58 of the amount awarded to Kaiser. (PX 11)

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 2016).

Section 9100.90(b) of the Rules similarly provides that penalties may be assessed for non-compliance after a reasonable notice and hearing. 50 Ill. Adm. Code 9100.90(b). Section 9100.90(c) of the Rules describes the proper notice of non-compliance to be served upon the employer and provides that the employer may request an informal conference to resolve the matter. 50 Ill. Adm. Code 9100.90(c). Section 9100.90(d) of the Rules describes the manner of notice and service for an insurance compliance hearing and the procedure for conducting the hearing. 50 Ill. Adm. Code 9100.90(d).

In this case, Petitioner submitted into evidence the Notice of Non-Compliance mailed to George Gikopoulos, individually and as president of St. Michael's Counseling Center, Inc., in the form prescribed by our Rules and including an affidavit of service. Respondents did not request an informal conference in this matter. Petitioner also submitted the notices for the insurance compliance hearings scheduled for March 15, 2018 and June 28, 2018, in the form prescribed by our Rules, accompanied by signed investigative reports indicating that St. Michael's Counseling Center, Inc. was personally served via its registered agent, as well as by

certified mail, and that the individual Respondent was personally served and served via certified mail. The insurance compliance hearing allowed the Petitioner to introduce evidence and testimony, and afforded Respondents the opportunity to do the same, had any representative chosen to attend personally or through counsel. Accordingly, the Commission concludes that reasonable and proper notice and hearing was provided to Respondents.

The Commission considers the following factors in assessing penalties against an uninsured employer: (1) the length of time the employer had been violating the Act; (2) the number of workers' compensation claims brought against the employer; (3) whether the employer had been made aware of his conduct in the past; (4) the number of employees working for the employer; (5) the employer's ability to secure and pay for workers' compensation coverage; (6)whether the employer had alleged mitigating circumstances; and (7) the employer's ability to pay the assessed amount. See, *e.g.*, *State of Illinois v. Murphy Container Service*, Ill. Workers' Comp. Comm'n, No. 03 INC 00155, 7 IWCC 1037 (Aug. 2, 2007).

The Commission finds that the period of time during which the Respondents violated the Act by failing to obtain workers' compensation insurance was significant. The Respondents failed to have insurance for 1,257 days, from November 6, 2012 through April 15, 2016. IDES records show that Respondents employed numerous employees. Moreover, having reviewed the record, the Commission finds no evidence as to Respondents' inability to secure and pay for workers' compensation coverage and no evidence of mitigating circumstances. The Commission concludes that Respondents knowingly and willfully failed to comply with the Act. Based on the significant period of time that Respondents failed to comply with the Act, the Commission assesses a penalty of $377,100.00 against Respondents, St. Michael's Counseling Center, Inc., and George Gikopoulos, individually and as officers of St. Michael's Counseling Center, Inc. The Commission also find Respondents responsible for the $3,253.58 paid by the IWBF in Case No. 14 WC 033647.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondents, St. Michael's Counseling Center, Inc., and George Gikopoulos, individually and as president of St. Michael's Counseling Center, Inc., pay to the Illinois Workers' Compensation Commission the sum of $380,353.58 pursuant to Section 4(d) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that payment shall be made according to the following procedure: (1) payment of the penalty shall be made by certified check or money order made payable to the Illinois Workers' Compensation Commission; and (2) payment shall be mailed or presented within thirty (30) days of the final order of the Commission or the order of the court of review after final adjudication to:

Department of Insurance
Attn: Insurance Compliance
115 S. LaSalle, 13th Floor
Chicago, Illinois 60603

IT IS FURTHER ORDERED BY THE COMMISSION that the Commission's final decision imposing penalties is a debt due and owing to the State and can be enforced to the same extent as a judgment entered by a circuit court, as provided in Public Act 103-0590, effective June 5, 2024, amending Section 4(d) of the Act.

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.

June 30, 2025
H: 04/23/25
KAD/swj
042

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

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

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