ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC008064
Case Name	Douglas Robinson v. State of Illinois - Illinois Secretary of State
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0089
Number of Pages of Decision	17
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Joseph L. Moore

DATE FILED: 3/3/2025

/s/Kathryn Doerries,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DOUGLAS ROBINSON,

Petitioner,

vs. NO: 22 WC 008064

ILLINOIS SECRETARY OF STATE,

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, causation, medical, TTD, and nature and extent of disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 10, 2023, is hereby affirmed and adopted.

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

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

Pursuant to Section 19(f)(1) of the Act, this decision is not subject to judicial review. *820 ILCS 305/19(f)(1) (West 2013)*. Therefore, no appeal bond is set in this case.

March 3, 2025

KAD/swj
011425
42

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC008064
Case Name	Douglas Robinson v. Illinois Secretary of State
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Suzanne Borland

DATE FILED: 7/10/2023

THE INTEREST RATE FOR THE WEEK OF JULY 5, 2023 5.26%

/s/ Jeanne AuBuchon, Arbitrator

Signature

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

July 10, 2023

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Douglas Robinson,
Employee/Petitioner

v.

Illinois Secretary of State,
Employer/Respondent

Case # **22** WC **008064**

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 AuBuchon**, Arbitrator of the Commission, in the city of **Springfield**, on **May 23, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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 **July 28, 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 **is not addressed**.

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

In the year preceding the injury, Petitioner earned **$44,057.15;** the average weekly wage was $**847.25**.

On the date of accident, Petitioner was **63** years of age, ***single*** with **0** dependent children.

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

Respondent ***has*** 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

No benefits awarded.

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

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

Jeanne L. AuBuchon

Signature of Arbitrator

JULY 10, 2023

PROCEDURAL HISTORY

This matter proceeded to trial on May 23, 2023, on all disputed issues. The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of his employment; 2) whether the Respondent was given notice of the accident within the time limits stated in the Act; 3) the causal connection between the accident and the Petitioner's left hand and arm conditions; 4) payment of medical expenses; 5) entitlement to temporary total disability (TTD) benefits from November 3, 2020, through November 11, 2020; and 6) the nature and extent of the Petitioner's injuries.

FINDINGS OF FACT

At the time of the accident, the Petitioner, who was right-hand dominant, was 45 years old and employed with Respondent as an operations associate. (AX1, T. 9, 19) He had worked for the Respondent for 20 years – mostly in data entry positions. (T. 10) In July 2020, he was entering walk-in applicants' paperwork for registering commercial and farm trucks. (T. 11) At arbitration, the Petitioner demonstrated how he transcribed paperwork onto a computer in his cubicle. (T. 12-13) He said he performed data entry six hours out of a seven-and-a-half-hour day. (T. 13) He said his cubicle was set up the way he demonstrated for 10 years and he was in similar setup without a cubicle for the 10 years before that. (T. 14) He also testified that he was not in the same office space for the 10 years before the summer of 2020. (T. 53) He acknowledged having a wrist pad to support his wrists in an ergonomic fashion but said he found it to be kind of detrimental because of the elevation of the work station and inconsistencies with different tables or cubicles. (T. 52-53) In several instances while testifying on cross-examination, the Petitioner appeared to avoid directly answering questions such as whether he complained to anyone about his work station, stating that wasn't allowed. (T. 52-55)

The Respondent introduced as evidence a position description for IRP, mileage and fleet processing, which the Petitioner said was for over-the-road trucks. (RX3, T. 43) The exhibit also contained a job requirements questionnaire for the commercial and farm truck division, which the Petitioner acknowledged was the job he had in the summer of 2020 until May 1, 2021. (RX3, T. 42) Under "Flexibility," the questionnaire said repeating the same hand, arm or finger motion many times (e.g. typing) was classified as occasional and essential, and typing non-stop was listed as not applicable. (RX3) The Petitioner said the job description was very vague and that the not applicable typing non-stop was not accurate. (T. 42-44) He said the difference between the job description and the work he actually performed was "night and day." (T. 71)

The Petitioner testified that he had a cerebral hemorrhage on March 24, 1980, from which he had recovered. (T. 16-17) He said that leading up to July 2020, his right upper extremity stopped working, which he assumed was related to the cerebral hemorrhage. (T. 17-18) He said that in early 2020, he began using his left upper extremity solely because of loss of coordination and finger dexterity on the right side. (T. 18)

On February 24, 2020, the Petitioner saw his primary care physician, Dr. James Stegeman at Springfield Clinic and reported that he "maxed out" on an inclined bench at the gym and felt discomfort, numbness and tingling in the arm and discomfort of the shoulder, which Dr. Stegeman believed was a recurrence of an old brachial plexus injury. (RX4) The Petitioner denied making this report. (T. 55-57) On May 1, 2020, the Petitioner saw Dr. Stegeman for overuse strain of his left shoulder, reporting that he had been working in his yard driving his car tractor, which he did completely with his left arm. (RX4) Dr. Stegeman recommended exercises and anti-inflammatories and gave the Petitioner a steroid shot. (Id.) The Petitioner's records showed he had hypertension, smoked and abused alcohol on different occasions. (PX3, RX4)

The Petitioner said that when he started using his left side for data entry, he noticed pain and discomfort, including aches and throbbing, in his left wrist and forearm, along with numbness and tingling in his fingers. (T. 19-20) He said that in 2019 or 2020 he told Scott Tucker, who he believed was his supervisor at the time, of his issues with his left upper extremity. (T. 20, 22, 72)

On cross-examination, the Petitioner acknowledged that Kimberly Rebbe was his supervisor in July 2020. (T. 34-35) He did not remember any conversations with her about his left upper extremity. (T. 73) He said he told Amanda Dunkel about the injury in the fall of 2021. (T. 35) He said he told several supervisors when his symptoms started in 2019 or 2020 but acknowledged that Ms. Dunkel was not his supervisor in 2019 or 2020. (T. 35-36) He agreed that he had a previous workers' compensation claim in 2005 regarding a fall and followed a process to report the injury. (T. 36-37) Ms. Dunkel testified that she had worked with the Petitioner for a period in January 2000, left that department soon after and became the Petitioner's supervisor in November 2021. (T. 75) She said the Petitioner never reported a work-related repetitive trauma injury to her. (T. 76)

Garrett Stevens, the Respondent's workers' compensation coordinator for the past five years, testified as to the process for reporting a work-related injury and said the process is outlined in the department's policy manual and on the department's internet web portal. (T. 80-83) He said the first time he became aware the Petitioner was alleging an injury to his left upper extremity was in March 2022, which he received written correspondence from the Petitioner's attorney indicating that they filed an Application for Adjustment of Claim. (T. 83) He said he then sent an email to the Petitioner's department asking for information regarding the claim, to which the response was that there was no record of the claim. (T. 84) Mr. Stevens testified that the Petitioner's failure to properly report the injury resulted in negative ramifications for the

Respondent in that there were no supervisors in the Petitioner's chain of command from that time period that he could speak to in investigating the claim, and he had no opportunity to review the ergonomics of the Petitioner's work station from that time. (T. 87-88) Mr. Stevens said the Petitioner used vacation time when he had surgery, and he had no knowledge of any medical procedure. (T. 88-89) Mr. Stevens said the Petitioner's testimony that workers were not allowed to request modifications to their work stations was inaccurate, stating that there is a process for accommodation requests. (T. 90-91)

The Petitioner saw Dr. Stegeman on July 1, 2020, and reported a number of health issues, including numbness and tingling in his little and ring fingers of his left hand and loss of coordination in both arms. (PX2) Dr. Stegeman diagnosed ulnar neuritis and recommended a neurology consultation. (Id.) On July 28, 2020, the Petitioner saw Dr. Stegeman's physician assistant, Megan Griggs, with complaints of right-sided weakness and discoordination and said he was no longer able to write or type with his right hand and denied numbness or tingling in his right arm or hand. (Id.) On the same day, the Petitioner saw Dr. Cecile Becker, a neurologist at Springfield Clinic, who performed electromyography (EMG) and nerve conduction study (NCS) that showed mild carpal tunnel syndrome of the left wrist and moderate ulnar mononeuropathy at both elbows. (Id.) The Petitioner had reported to Dr. Becker that he had numbness and tingling in his fingers on both hands and said his symptoms, which started in the fall of 2018 and worsened, were worse on the right than the left. (Id.)

The Petitioner followed up with Dr. Gary Western, a sports and family physician at Springfield Clinic, on August 19, 2020, and complained of bilateral elbow pain and some numbness and tingling in the fourth and fifth digits on the left hand with some weakness, as well as progressive loss of coordination and function on his right side. (Id.) Dr. Western referred the

Petitioner to an upper extremity specialist. (Id.) An orthopedic patient history form from that date noted that the date of injury/onset was February, and the history of the complaint stated: "unknown what started happening." (RX4)

On September 28, 2020, the Petitioner saw Dr. Chris Wottowa, an orthopedic surgeon at Springfield Clinic, for left carpal tunnel, bilateral elbows and shoulder pain. (Id.) The Petitioner reported on an intake form that the injury occurred at work from overuse using a computer, that he had the symptoms over a period of years, and they started gradually. (Id.) He described his pain as aching, constant and radiating from his elbow to his hand. (Id.) He reported numbness or tingling in his elbow and pinky fingers. (Id.) Dr. Wottowa noted that the Petitioner had a cerebral arteriovenous (AV) malformation (abnormal connection between the arteries and veins in the brain) that caused a stroke that affected his right side, most specifically his right hand, but he continued to write with his right hand. (Id.) The Petitioner said he lost the function of his right foot. (Id.) The Petitioner reported that in the past six months or so, he had increasing symptoms – loss of coordination to his right hand, some bilateral shoulder pain, difficulty sleeping, having to switch to writing with his left hand because of loss of coordination, not being able to golf recently, having some discomfort in both upper extremities and having numbness and tingling most specifically to the left fifth digit. (Id.)

Dr. Wottowa concluded that some of the Petitioner's symptoms on the right side were related from his prior AV malformation. (Id.) He said that on top of that, the Petitioner had compression of the ulnar nerve of the right and left elbows and the median nerve in the left wrist. (Id.) The Petitioner agreed to undergo left cubital and carpal tunnel releases. (Id.)

When the Petitioner saw Dr. Stegeman for a preoperative examination on October 16, 2020, he was not sure he wanted to go through with the surgery at that time because he felt it was

work-related and wanted to wait until he was sure workers' compensation would pay for the surgery and time off. (Id.) When asked what changed at work that he felt was causing the carpal tunnel, the Petitioner said it was because he had to shift what he used to do with his right hand to his left hand due to his right-hand trouble. (Id.) Dr. Stegeman reported that the Petitioner had been seeing orthopedics, that they referred him to neurology and that the Petitioner had been "working on this" over the past year. (Id.) Dr. Stegeman referenced an EMG in 2015 that showed mild left ulnar neuropathy. (Id.) The Petitioner reported recent unexplained weakness where he could not play golf and hold a golf club properly anymore because of his right hand. (Id.) Dr. Stegeman wrote that the Petitioner did not have any work change or work activities that seemed to be associated with his change in the right side, and his change in his left side he attributed to the change in the right side, not due to a change in work. (Id.)

Dr. Stegeman opined that the Petitioner's left carpal tunnel syndrome and ulnar neuropathy appeared to be related to his right hand more than related to work, and he would not recommend risking permanent nerve injury on his good arm by delaying surgical relief to try to press for workers' compensation – especially when he did not believe it was work related. (Id.) Dr. Stegeman added that he believed the Petitioner's left-hand symptoms were made worse because job shifting from his right hand to his left hand because of his right-hand problems. (Id.)

Dr. Wottowa performed left-sided carpal and cubital tunnel releases on November 3, 3030. (Id.) At follow-up visits, the Petitioner reported that his numbness and tingling went away. (Id.) He was released from care on December 9, 2020. (Id.) The Petitioner said he had not been seen by Dr. Wottowa or his staff since then. (T. 29)

Dr. Wottowa testified consistently with his records at a deposition on February 27, 2023. (PX3) In testifying about the Petitioner losing function and coordination in his right hand and

using his left hand, Dr. Wottowa characterized the left-hand use as "a little bit more than his right hand," adding that he couldn't tell degrees of which. (Id.) Dr. Wottowa was asked his opinion on causation via a hypothetical if it were shown at trial that the Petitioner performed primarily data entry work for 21-plus years with his hands and elbows pressed flat on a hard surface at a workstation that essentially stayed the same throughout his career and that in the months leading up to his first visit, the Petitioner lost significant coordination in his right side and was using his left side to perform his duties, at which time his left hand, wrist and elbow would be pressed flat on a combination of his desk or his chair creating some form of compression over the median and ulnar nerve with his left-sided symptoms coming on gradually. (Id.) In response, Dr. Wottowa said that for cubital tunnel, direct compression and flexion can be an aggravating factor. (Id.) For carpal tunnel, he said it has to be more extremes of flexion-extension and perhaps with forced grip. (Id.) He added that he had no documentation from his visit with the Petitioner whether either of those scenarios was the case. (Id.) He also said he did not know what the Petitioner's workstation was like. (Id.)

As to the difference between the ulnar nerve and median nerve, Dr. Wottowa testified that the ulnar nerve is more superficial and putting pressure on the nerve with an object will more easily affect the function of the ulnar nerve than the median nerve, which sits much deeper. (Id.) He added that there have been no really good studies that say just keyboard use alone leads to carpal tunnel. (Id.) Dr. Wottowa also said carpal and cubital tunnel syndromes are multifactorial with comorbidities of female gender, age in the 40s and 50s, obesity, pregnancy, uncontrolled hypertension, uncontrolled thyroid disorder, diabetes, cigarette smoking, amyloidosis, chronic alcohol abuse and weightlifting. (Id.)

On cross-examination, Dr. Wottowa admitted that he did not ask the Petitioner questions about his job, nor looked at a job description, nor had any idea what the Petitioner's workstation looked like. (Id.) Dr. Wottowa also said he did not know the date the Petitioner switched to using his left hand more than his right. (Id.)

The Petitioner testified that at the time of arbitration he was continuing to work for the Respondent and had changed positions to record inquiry but said he was still performing data entry. (T. 30) He said he left hand and elbow still ached. (T. 30-31) He said he thought he could still perform his required job duties. (T. 31) He admitted that he was making more money than in 2020. (T. 69) He said he has to do activities of daily living really slowly and no longer played golf since November 1, 2019. (T. 32)

CONCLUSIONS OF LAW

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

The first issue to consider that impacts all other issues in this case is the Petitioner's credibility. The Arbitrator finds that the Petitioner's testimony and reports to his doctors were inconsistent. These inconsistencies, as seen in the facts recited above, include: 1) to whom at work and when the Petitioner reported his injuries; 2) when his symptoms began; 3) when he was solely using his left upper extremity; 4) alleging wrist, forearm and finger issues but not reporting them at doctors' visits in February and May 2020; 5) reporting to his doctor that the history of his complaint was unknown after the alleged accident (manifestation date); 6) complaining of pinky and ring finger numbness and tingling to Drs. Stegeman and Western and later only complaining of pinky numbness and tingling to Dr. Wottowa; and 7) when he was last able to play golf. In

addition, the Petitioner was evasive in answering questions on cross-examination. Therefore, the Arbitrator finds the Petitioner's testimony and reports to his doctors to be unreliable and not credible.

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

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

There is no standard threshold that a claimant must meet in order for his job to classify as sufficiently "repetitive" to establish causal connection. *Edward Hines Precision Components v. Indus. Comm'n*, 365 Ill.App.3d 186, 825 N.E.2d 773, 292 Ill.Dec. 185 (Ill.App.2d Dist. 2005). In that case, the Court stated: "There is no legal requirement that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma." *Id.* at N.E.2d 780.

In this case, the Petitioner's testimony that he typed for six hours out of a seven-and-a-half-hour day is contradictory to the job description and questionnaire introduced by the Respondent. Although the Petitioner said the job description was vague, he acknowledged that it did include

duties required of him in his job. Based on the job description and the issues with the Petitioner's credibility as described above, the Arbitrator does not believe the Petitioner typed for six hours a day while still performing his other duties.

In repetitive-trauma cases, the claimant generally relies on medical testimony establishing a causal connection between the work performed and claimant's disability. *Williams v. Industrial Comm'n*, 244 Ill. App. 3d 204, 209, 614 N.E.2d 177, 180, 185 Ill. Dec. 43 (1993). The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, ¶ 24, 960 N.E.2d 587, 355 Ill. Dec. 705. "If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable." *Id*. "Expert opinions must be supported by facts and are only as valid as the facts underlying them." *In re Joseph S.*, 339 Ill. App. 3d 599, 607, 791 N.E.2d 80, 274 Ill. Dec. 284 (2003).

Dr. Wottowa's causation opinion was based solely on a hypothetical posed to him in his deposition. The Petitioner did not describe nor demonstrate his work for Dr. Wottowa, nor did Dr. Wottowa review a job description. The Petitioner demonstrated his positioning at arbitration, but the Arbitrator is not qualified to determine what degrees of flexion of or amount of pressure on the wrists and elbows is sufficient to be a causative factor for the Petitioner's carpal and cubital tunnel syndromes.

Although Dr. Stegeman opined that the Petitioner's left-sided conditions were unrelated to his work, the Arbitrator does not place any weight on that opinion because it appears it was based on a belief that overuse of the left hand and arm was a result of the failure of the right side. Dr. Stegeman did not consider that overuse of the left hand, in and of itself, could be qualified as a

contributing factor of the Petitioner's injuries. In addition, Dr. Stegeman did not testify in order to clarify his opinions.

The Arbitrator finds the basis of Dr. Wottowa's opinion was grounded in guess or surmise and was too speculative to be reliable. Therefore, the Petitioner failed to lay a foundation sufficient to establish the reliability of the bases for Dr. Wottowa's opinions as to causation.

For all these reasons, the Arbitrator finds that the Petitioner has failed to prove by a preponderance of the evidence that his injuries arose out of and in the course of his employment.

Because the findings on the issue of accident are dispositive of the case, the Arbitrator does not reach the remaining issues.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC042018
Case Name	Everardo Aguilar v. Castro's Landscaping, Inc & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0090
Number of Pages of Decision	17
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Jonathan Currie
Respondent Attorney	Miguel Castro, Benjamin Pryde

DATE FILED: 3/4/2025

/s/Maria Portela,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Everardo Aguilar,

Petitioner,

vs. NO: 10 WC 042018

Castro's Landscaping, Inc.
and the Illinois State Treasurer as ex-officio custodian of the
Injured Workers' Benefit Fund,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent Castro's Landscaping, Inc., herein and notice given to all parties, the Commission, after considering the issue of accident 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 Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund was named as a co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under §4(d) of the Act, in the event of the failure of Respondent-Employer to pay the benefits due and owing the Petitioner. Respondent-Employer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent-Employer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 12, 2023 is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $38,300.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:
o012825
MEP/yp
049

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC042018
Case Name	Everardo Aguilar v. Castro's Landscaping, Inc. and the Illinois State Treasurer as ex-officio custodian of the Injured Workers' Benefit Fund
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Roma Dalal, Arbitrator

Petitioner Attorney	Jonathan Currie
Respondent Attorney	Chris Zarek

DATE FILED: 10/12/2023

THE INTEREST RATE FOR THE WEEK OF OCTOBER 11, 2023 5.32%

/s/ Roma Dalal, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF WILL)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Everado Aguilar
Employee/Petitioner

Case # **10** WC **42018**

v.

Consolidated cases:

Castro's Landscaping, Inc.
and the Illinois State Treasurer as *ex-officio*
custodian of the Injured Workers' Benefit Fund
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 **Roma Dalal**, Arbitrator of the Commission, in the city of **Joliet**, on **August 10, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **October 8, 2010**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $2100.00; the average weekly wage was $**300.00**.

On the date of accident, Petitioner was **32** years of age, **single** with **0** children under 18.

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

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

Respondent shall be given a credit of $**00.00** for TTD, for a total credit of $**00.00**.

Respondent is entitled to a credit of $**00.00** under Section 8(j) of the Act.

ORDER

Respondent-employer shall pay Petitioner temporary total disability benefits of $220.00/week for 37 1/7 weeks, commencing December 1, 2010 through August 17, 2011 as provided in Section 8(b) of the Act.

Respondent-employer shall pay Petitioner permanent partial disability benefits of $220.00/week for 17.5 weeks because the injuries sustained caused the 3.5% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay reasonable and necessary medical services submitted into evidence in the amount of $30,544.51, pursuant to the medical fee schedule regarding Petitioner's conditions as provided in Sections 8(a) and 8.2 of the Act.

Injured Workers' Benefit Fund

The Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund was named as a co-respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award, if any, is hereby entered as to the IWBF to the extent permitted and allowed under §4(d) of the Act. In the event the Respondent/Employer/Owner/Officer fails to pay the award, the IWBF has the right to recover the benefits paid by it to the Petitioner pursuant to Section 5(b) and 4(d) of this Act. The IWBF's payment of medical costs awarded in this matter is limited to only those that are reasonable, related to this injury and that remain currently due and owing at the time of IWBF disbursement. Respondent/Employer/Owner/Officer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer that are paid to the Petitioner from the Injured Workers' Benefit Fund. The Employer-Respondent's obligation to reimburse the IWBF, as set forth above, in no way limits or modifies its independent and separate liability for fines and penalties set forth in the Act for its failure to be properly insured.

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

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

OCTOBER 12, 2023

Signature of Arbitrator

STATE OF ILLINOIS)
)
COUNTY OF WILL)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Everado Aguilar
Petitioner/Employee

v. Case#: 10 WC 42018

Castro's Landscaping, Inc.
and the Illinois State Treasurer as *ex-officio*
custodian of the Injured Workers' Benefit Fund
Respondent/Employer

PROCEDURAL HISTORY

This matter proceeded to hearing on August 10, 2023, in Joliet, Illinois before Arbitrator Roma Dalal on Petitioner's Request for Hearing. Petitioner-Employee, Everado Aguilar ("Petitioner"), was represented by Attorney Jonathan R. Currie of Katz, Friedman, Einstein, Johnson, Bareck & Bertuca. Respondent-Employer, Castro's Landscaping, Inc. ("Castro's" or "Respondent-Employer") was not present at the trial. Assistant Attorney General Chris Zarek, of the Illinois Attorney General's Office represented the Illinois State Treasurer as *ex-offico* custodian of the Injured Workers' Benefit Fund ("IWBF", or "Respondent"). All issues were in dispute. (Arb. Ex.1).

The Arbitrator notes Petitioner's attorney made a motion to amend the Application date *instanter* to reflect an accident date of October 8, 2010, in congruence with the stip sheet that was submitted at the beginning of proceedings. Respondent's attorney voiced no objection to the amendment of the application.

FINDINGS OF FACT

Everardo Aguilar ("Petitioner") testified he was born on July 1, 1978, single, with no dependents under the age of 18.

On the date of the accident, Petitioner testified he had been working for Castro's Landscaping ("Respondent-Employer") for the past ten years as a landscaper. His job entailed mostly mowing and maintaining lawns using various appliances and cutting tools. On October 8, 2010, he was working from 7 am to 7 pm. He testified while lifting a mower at the job site, he felt pain in his low back. Shortly after, when he pulled the starter cord on the lawnmower, it snapped back forward and jerked his arm, causing pain throughout his right arm, right shoulder, and neck.

Petitioner testified that prior to that day he never had any symptoms. Following the onset of symptoms, that same day, Petitioner notified his supervisor, Miguel Castro, that he had sustained injuries.

Mr. Castro was the owner of the business but was also the supervisor. He continued to work the rest of his shift but continued to feel symptoms. The following day, October 9, 2010, Petitioner worked a full shift despite symptoms and was subsequently terminated by Mr. Castro. This was the last day Petitioner worked for the Respondent-Employer.

Petitioner indicated he first treated with Grandview Health Partners in October of 2010. On October 27, 2010, Petitioner presented for an initial evaluation at Grandview Health Partners indicating he injured his low back at work after bending forward and pulling the starter cord on a lawnmower. Petitioner continued working in pain for one week and was fired. Petitioner denied previous treatment for this condition. (PX4, p.6). The records indicate Petitioner had symptoms in his neck and right shoulder as well. *Id.* at 5.

Petitioner returned on December 1, 2010 indicating his low back pain was the same since his consultation. Petitioner was taken off work and recommended therapy. (PX4, p.8-9). In a December 17, 2010 follow up Petitioner stated he was improving in his symptoms. Petitioner was provided restrictions. (PX4, p.12-14).

Petitioner returned on January 12, 2011. Petitioner stated he was 70% improved with lifting, bending forward, sleeping, standing, sitting, and walking. He no longer had numbness in his arms or legs. Petitioner was provided light duty. (PX4, p.17-20).

On January 24, 2011, Petitioner underwent MRIs of his lumbar and cervical spine at Preferred Open MRI. (PX5). Petitioner's cervical MRI revealed central protrusions at C4-C5 and C5-C6 and at C3-C4 a left central protrusion effacing the subarachnoid space with early uncovertebral proliferative change. *Id.* at 7. The MRI of his lumbar spine revealed a right central extrusion at L4-L5 with caudad migration compromising the canal and thecal sac. In addition, there was also suggestion of L3-L4 disc bulging with early synovial cyst on the right side and noted left-sided ligamentum flavum thickening at L5-S1. *Id.* at 10. The Arbitrator notes that both MRIs were reviewed by chiropractors. (PX5).

On February 4, 2011 Petitioner presented to Dr. Neeraj Jain at the Chicago Pain and Orthopedic Institute. Petitioner was a 32-year-old male who was injured in 2010 when he was pulling the starter on a lawnmower that got stuck. He injured his low back, neck, and right arm. Petitioner described severe neck and right upper extremity pain and moderate to severe back and right lower extremity pain. Petitioner was recommended an epidural steroid injection and a right-sided lumbar transforaminal for his low back. Petitioner remained off work. (PX6, p.4-5).

Petitioner followed up with Grandview on February 7, 2011 noting 80% improvement. Petitioner was recommended a work conditioning program. (PX4, p.22). Petitioner followed up with Grandview on March 9, 2011. Petitioner finished 12 visits of work conditioning and stated he was 100% improved with neck movements. Petitioner was released to full duty work. (PX4, p.27-29).

Petitioner followed up with Dr. Jain on March 18, 2011. Petitioner was recommended injections as well as an EMG. Petitioner remained off work. (PX6, p.7-9). Petitioner returned to Dr. Jain on April 29, 2011. Petitioner's stated the injections were not authorized. He further noted he was released from therapy because he had full range of motion; however, he still had persistent neck and back pain. Petitioner was still recommended injections. (PX6, p.10).

Petitioner followed up on June 28, 2011. Petitioner returned with continued pain. Petitioner's injections were recommended again. Petitioner was to remain on light duty restrictions. (PX6, p.14). Petitioner followed up again on July 20, 2011 with same recommendations. *Id.* at 16. Petitioner was last seen on August 17, 2011. Petitioner was still recommended injections. *Id.* at 18. Petitioner testified he voluntarily stopped treatment after August 18, 2011.

On Cross-Examination, Petitioner testified he worked for Respondent-Employer for 10 years. He did not sign an employment contract. A typical season was March 15 to December 15. Petitioner typically worked 60 hours per week between the hours of 7 a.m. and 7 p.m. The Owner, Mr. Castro, was responsible for setting Petitioner's schedule. Petitioner was not required to clock in and out. Mr. Castro would give Petitioner the time and location of where to be for work. Petitioner received a W-2 from Castro's each year. Petitioner was paid by check every 8 days and taxes were withheld by Respondent-Employer. Petitioner was paid hourly but was unsure of his wage.

Petitioner stated that he is currently employed for a yard company doing the same work but with restrictions. He further indicated he still has issues with his back and shoulder.

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 his testimony to be persuasive. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and finds the witness reliable. While the Arbitrator did note some inconsistencies, the Arbitrator finds that any inconsistencies in his testimony are not attributed to an attempt to deceive the finder of fact.

Issue A, whether Respondent was operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act, the Arbitrator finds as follows:

The Illinois Workers' Compensation Act ("ACT") defines those businesses that are considered "employers" and come under its jurisdiction. Various types of businesses automatically come under the Act's jurisdiction due to their business activities. 820 ILCS 305/3.

The Arbitrator finds that at the time of injury, the Respondent-Employer Castor's Landscaping, Inc., was operating under and subject to the Illinois Workers' Compensation Act. Pursuant to Section 3 of the Illinois Workers' Compensation Act, the Act automatically applies to a Respondent-Employer who meets any one of the seventeen listed "extra-hazardous" activities. Testimony at trial established that Respondent-Employer made use of lawn mowers, weed whackers, and other motorized instruments falling under Section (15) that utilize electric, gasoline, or other power-driven equipment. No evidence was presented to dispute this issue.

The Arbitrator finds Respondent-Employer was operating under and subject to the Illinois Workers' Compensation or Occupational Disease Act at the time of injury.

Issue B, whether there was an employee-employer relationship, the Arbitrator finds as follows:

The existence of an employer-employee relationship between Petitioner and Respondent-Employer is a prerequisite to determining further compensability of the claim.

The Arbitrator finds the evidence presented shows that an employee / employer relationship did exist. The law in Illinois provides no specific litmus test for determining whether an employer-employee relationship exists. Rather, such a relationship, if one exists, must be inferred from the conduct of the parties, the right to control work being the primary factor in determining an employment relationship. There are multiple factors to consider in assessing the nature of the relationship between the parties. *Ware v. Indus. Comm'n*., 318 Ill. App. 3d 1117, 1122, (1st Dist. 2000). Among these are: (1) whether the employer may control the manner in which the person performs the work; (2) whether the employer dictates the person's schedule; (3) whether the employer pays the person hourly; (4) whether the employer withholds income and social security taxes from the person's compensation; (5) whether the employer may discharge the person at will; (6) whether the employer supplies the person with the needed instrumentalities; and (7) whether the employer's general business encompasses the person's work. *Roberson v. Indus. Comm'n,* 225 Ill. 2d 159, 175 (2000). Other relevant factors include: (8) the label the parties place on their relationship; and (9) whether the parties' relationship was "long, continuous, and exclusive." *Ware*, 318 Ill. App. 3d at 1122, 1126. "The single most important factor determining whether a party is an employee, or an independent contractor is the right to control the manner in which one's work is done ... an independent contractor is one who undertakes to produce a given result, without being controlled as to the method by which he attains the result." *Bryant v. Fox*, 162 Ill. App. 3d 46 (1st Dist. 1987). "No single factor is determinative, and the significance of these factors will change depending on the work involved." The determination rests on the totality of the circumstances. *Roberson*, 225 Ill. 2d at 175.

The evidence introduced at trial clearly shows that an employee-employer relationship existed. Petitioner testified Mr. Castro determined his job duties and provided him with the location and hours he worked each week. Petitioner also indicated his job entailed going to job sites with Respondent-Employer's owned vehicles and landscaping tools. Petitioner never utilized his own equipment. In addition, Petitioner testified that he was paid hourly, and his payroll records reflect deductions taken from

his checks for FICA and Illinois state taxes. Petitioner also testified that he was terminated at will by Respondent-Employer on October 9, 2010, the day following the date loss, demonstrating Respondent-Employer's clear ability to terminate Petitioner at will. The medical records corroborate Petitioner was fired a day after his alleged work injury. Lastly, Petitioner testified he was an employee which was uncontradicted. He further testified he worked for Respondent-Employer for 10 years prior to termination which is evidenced by Petitioner's Exhibit 9.

Based on the same, the Arbitrator finds there was an employee-employer relationship between Petitioner and Respondent-Employer.

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 incorporates by reference the above Findings of Fact and refers to them by reference herein. The claimant bears the burden of showing that he has suffered a disabling injury which arose out of and in the course of his employment. *Sisbro v. Industrial Commission, 207 Ill. 2d 193, 203, (2003).* Generally, an injury occurs within the course of employment if the injury occurs within the time, place, and space boundaries of the employment. *Id.* Typically, an injury "arises out" from an employee's employment when the employee was performing acts reasonably expected to be performed relating to his assigned duties and instructed to perform by his employer. *Id.* The injury must have 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 203-203.

In this case, Petitioner testified he testified while lifting a mower at the job site, he felt pain in his low back. Shortly after, when he pulled the starter cord on the lawnmower, it snapped back forward and jerked his arm, causing pain throughout his right arm, right shoulder, and neck. The Arbitrator finds Petitioner was in the course of his employment while preparing the lawnmower to start his job-related tasks. Petitioner's testimony, supported by the medical records, provides sufficient evidence that his lower back, neck, and shoulder were injured while unloading equipment and attempting to use the same equipment to perform his job duties. The Arbitrator notes the injury sustained by Petitioner came from a risk distinctly associated with employment. Therefore, the Arbitrator finds Petitioner's accident arose of and in the course of employment with Respondent-Employer.

Issue D, the date of the accident, the Arbitrator finds as follows:

Petitioner testified the accident occurred on October 8, 2010. The Arbitrator finds Petitioner's testimony to be credible. Petitioner's testimony is further supported by medical records that document an early October accident date. Thus, the Arbitrator finds Petitioner sustained a work-related injury on October 8, 2010.

Issue E, whether timely notice of the accident was given to Respondent, the Arbitrator finds as follows:

Pursuant to Section 6(c) of the Act, a claimant is required to give notice to his or her employer within 45 days of a work-related accident. 820 ILCS 305/6(c). The Arbitrator finds notice of the accident was timely given to the Respondent-Employer. The Arbitrator finds Petitioner's unrebutted testimony

established he told Miguel Castro, his supervisor, that he sustained an injury earlier that day. In addition, the medical records document Petitioner was terminated from his job within one week of the alleged injury. Specifically, a record from Grandview Health Partners on October 27, 2010 stated Petitioner was fired. Accordingly, the Arbitrator finds Petitioner provided timely notice of an accident to Respondent-Employer.

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

The Arbitrator incorporates by reference the above Findings of Fact and refers to them by reference herein. To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim (*O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253 (1980) including that the accidental injury both arose out of and occurred in the course of his employment (*Horvath v. Industrial Commission*, 96 Ill.2d. 349 (1983)) and that there is some causal relationship between the employment and her injury. *Caterpillar Tractor Co. v. Industrial Commission*, I29 Ill. 2d 52, 63 (1998). 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. "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). Prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Commission*, 315 Ill. App. 3d 1197, 1205, 248 Ill. Dec. 609, 734 N.E.2d 900 (2000).

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).

Petitioner testified that prior to the October 8, 2010 accident, he had no medical issues with his neck, right shoulder, back, or right leg. Petitioner stated on the date of accident, he sustained injuries while working with a lawnmower. Following the injury, Petitioner underwent treatment with Grandview Health Partners, where he was diagnosed with radiculopathy of his cervical spine and lumbar spine. There is no indication in the record Petitioner suffered any other injury to his neck, right shoulder, right arm, back, or right leg, either prior to or subsequent from the accident. As such, the Arbitrator finds Petitioner's current condition of ill-being is causally related to the injury.

Issue G, Petitioner's earnings, the Arbitrator finds as follows:

Petitioner testified he received a W-2 from Castro's each year. Petitioner was paid by check every 8 days and taxes were withheld by Respondent-Employer. Petitioner was paid hourly but was unsure of his wage but believed he worked about 60 hours per week.

Petitioner's stipulation sheet lists the average weekly wage as $315.00. As Petitioner was unsure of how much he made with Respondent-Employer the Arbitrator must rely on Petitioner's Exhibit 9 containing wage information from 2003, 2006, 2007, 2008, and 2010, as well as W2's from 2003 and 2008. (PX9). The Arbitrator notes Petitioner testified a season was from March 15 to December 15 and that he injured himself on October 8, 2010. The Arbitrator also notes that Petitioner's last check ending

on October 8, 2010 showed gross earnings for the year of $6,600. (PX9). The Arbitrator cannot speculate how many weeks Petitioner worked. Based on the same, the Arbitrator will utilize the 2010 pay periods submitted into evidence.

Utilizing the 2010 pay periods only, the following were submitted into evidence:

- 05/24/2010 to 05/28/2010: $300
- 06/21/2010 to 06/25/2010: $300
- 07/24/2010 to 07/30/2010: $300
- 08/09/2010 to 08/13/2010: $300
- 08/28/2010 to 09/03/2010: $300
- 09/07/2010 to 09/10/2010: $300
- 10/02/2010 to 10/08/2010: $300
- Total 7 weeks, $2100

Utilizing the 7 weeks of wages that were placed into evidence, yields an average weekly wage of $300.00, rendering a minimum TTD and PPD rate of $220.00. Based on the same the Arbitrator finds Petitioner's average weekly wage is $300.00.

Issue H, Petitioner's age at the time of the accident, the Arbitrator finds as follows:

The Arbitrator finds Petitioner testified his date of birth is July 1, 1978. Petitioner's medical records further support Petitioner's testimony. As such, the Arbitrator finds Petitioner presented sufficient, credible evidence that on the date of accident he was 32 years old.

Issue I, Petitioner's marital status at the time of accident, the Arbitrator finds as follows:

Petitioner testified on the date of accident he was single with no dependents. As such, the Arbitrator finds Petitioner presented sufficient, credible evidence that at the time of the injury he had no dependent children and was single.

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

The Arbitrator incorporates by reference the above Findings of Fact and refers to them by reference herein. In reviewing the medical services provided to Petitioner, the Arbitrator finds Respondent-Employer has not paid all appropriate charges for all reasonable and necessary medical services. The Arbitrator finds the medical services provided to Petitioner were reasonable and necessary.

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

Petitioner began his treatment through Grandview Health Partners on October 27, 2010, where he was seen for an initial consultation. Petitioner had several follow-up appointments with Grandview Health Partners over the following months. Petitioner was prescribed physical therapy and continued to treat conservatively. Petitioner was ordered to undergo MRI exams of his lumbar spine and cervical spine. Petitioner then entered the care of Dr. Neeraj Jain who continued to treat Petitioner until August 2011.

The Arbitrator finds the treatments sought by Petitioner immediately after the accident and in the following months were reasonable and necessary. All treatments received by Petitioner was directly related to the treatment of his neck, right shoulder, right arm, back, and right leg conditions as a result of the October 8, 2010 work accident. The Arbitrator finds no evidence Petitioner sought or received excessive or unnecessary treatment.

Petitioner submitted several exhibits for medical bills incurred as a result of the October 8, 2010 accident. No evidence of payment was entered into evidence. The Arbitrator finds Respondent-Employer shall pay Petitioner reasonable, necessary, and causally related medical expenses of $30,544.51 or the corresponding fee schedule amount incurred in the care and treatment of his causally related injury pursuant to Sections 8 and 8.2 of the Act.

Issue K, whether Petitioner is entitled to TTD benefits, the Arbitrator finds as follows:

In order to prove entitlement to TTD benefits, a claimant must establish not only that he did not work, but that he was unable to work. *Sharwarko v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 131733WC. An employee is temporarily totally disabled from the time that 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. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118 (1990). Once an injured employee's physical condition stabilizes or he has reached MMI, he is no longer eligible for temporary total disability benefits. *Archer Daniels Midland Co.*, 138 Ill. 2d at 118.

Petitioner is claiming TTD benefits beginning on December 1, 2010 through August 17, 2011 which encompasses when Petitioner received medical treatment. On December 1, 2010, Petitioner received his first off work note. Petitioner was released to light duty work from December 17, 2010 until February 4, 2011. No testimony was provided indicating Respondent-Employer was able to accommodate Petitioner's restrictions as he was previously terminated. As such the Arbitrator notes Petitioner had no job to return to. Petitioner was then placed off work once more until March 9, 2011 when he was again returned to light duty work through the remainder of his treatment with Dr. Jain. (PX4, PX6). The Arbitrator finds Petitioner's physicians did not allow him to return to unrestricted work during the period of time.

Based on the same, TTD benefits are awarded for 37 1/7 weeks, commencing December 1, 2010 through August 17, 2011 as provided in §8(b) of the Act.

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

At the present time, Petitioner continues to complain of issues with his back and shoulder. Petitioner is current working with another company where he performs landscaping duties. He testified

he restricts himself from performing the full extent of his job duties. He testified he does not carry heavy machinery anymore to avoid flares up to his injured body parts.

The Arbitrator finds the records and Petitioner's testimony reflect Petitioner's final treatment date is August 17, 2011. Petitioner testified he voluntarily discontinued treatment. The Arbitrator further notes that when Petitioner followed up with Grandview on March 9, 2011, he stated he was 100% improved with neck movements. Petitioner was released to full duty work. (PX4, p.27-29).

Petitioner was 32 years old at the time of the accident capable of working as demonstrated by Petitioner working in the same role at the age of 45. The Arbitrator notes Petitioner has not sought out medical treatment for over thirteen years. Furthermore, Petitioner is currently working in the landscaping business in a similar role. While he testified to self-limiting restrictions there has been no determination of current restrictions by a medical provider.

Petitioner further testified he is working less hours at his current employer, working a 40-hour work week instead of a 60-hour work week; however, the Arbitrator notes that this 60-hour work week is not corroborated by any of his wage documentation.

Based upon the above this Arbitrator finds Petitioner sustained a 3.5% loss of person as a whole. Since the injury happened before September 1, 2011, no analysis under Section 8(1)(b) is required.

Issue M, whether penalties or fees should be imposed upon Respondent, the Arbitrator finds as follows:

The Arbitrator finds that no claim has been made and no evidence submitted related to penalties and fees and therefore none are awarded.

Issue N, whether Respondent is due any credit, the Arbitrator finds as follows:

Respondent-Employer has not claimed any type of credit under Section 8(j) of the Act. Therefore, the Arbitrator finds that Respondent-Employer is not owed any credit.

Issue O, Insurance Coverage and Liability of the Injured Workers' Benefit Fund, the Arbitrator finds as follows:

The Arbitrator finds Petitioner submitted sufficient credible evidence that Respondent-Employer was not insured at the time of the injury. The NCCI shows Respondent-Employer's coverage ended on November 13, 2009. As such Respondent-Employer lacked workers' compensation insurance on the date of injury, October 8, 2010. (PX8). Such evidence consists of the National Council on Compensation Insurance Certificate. (PX8). Further, Petitioner provided sufficient, credible evidence that notice of the proceedings were provided to the Respondent-Employer. (PX11).

The Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund was named as a co-respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered as to the IWBF to the extent permitted and allowed under §4(d) of the Act. In the event the Respondent/Employer/Owner/Officer fails to pay the award, the IWBF has the right to

recover the benefits paid by it to the Petitioner pursuant to Section 5(b) and 4(d) of this Act. The IWBF's payment of medical costs awarded in this matter is limited to only those that are reasonable, related to this injury and that remain currently due and owing at the time of IWBF disbursement. Respondent/Employer/Owner/Officer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer that are paid to the Petitioner from the Injured Workers' Benefit Fund. The Employer-Respondent's obligation to reimburse the IWBF, as set forth above, in no way limits or modifies its independent and separate liability for fines and penalties set forth in the Act for its failure to be properly insured.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC009018
Case Name	Lawrence Finney v. AT&T Services Inc
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0091
Number of Pages of Decision	16
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	Thomas Flaherty

DATE FILED: 3/5/2025

/s/Deborah Simpson,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with 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

Lawrence Finney,

Petitioner,

vs. NO: 18 WC 9018

AT&T Services,

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, medical expenses, vocational rehabilitation and temporary disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 31, 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.

There is no bond for the removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

March 5, 2025

o: 2/19/25
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC009018
Case Name	Lawrence Finney v. AT&T Services Inc
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	Thomas Flaherty

DATE FILED: 5/31/2024

/s/Elaine Llerena, Arbitrator
Signature

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

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

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

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

Lawrence Finney
Employee/Petitioner
v.
AT&T Services
Employer/Respondent

Case # **18** WC **009018**

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 **December 22, 2022 & October 30, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **September 29, 2017**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

In the year preceding the injury, Petitioner earned $**92,750.97**; the average weekly wage was $**1,783.68**.

On the date of accident, Petitioner was **52** years of age, ***married*** with **0** dependent children.

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

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

ORDER

Petitioner failed to prove that he sustained an accident that arose out of and in the course of his employment with Respondent on September 29, 2017. All other issues are moot.

No benefits are awarded.

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

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

Signature of Arbitrator

ICArbDec19(b)

May 31, 2024

FINDINGS OF FACT

This matter proceeded to hearing on December 22, 2022, and proofs were closed on October 30, 2023, in Chicago, Illinois before Arbitrator Elaine Llerena on Petitioner's Petition for Immediate Hearing under Sections 19(b)/8(a). The issues in dispute were accident, causation, medical expenses, temporary total disability benefits, prospective medical care, vocational rehabilitation, and penalties. Arbitrator's Exhibit 1 (AX1).

Testimony

Testimony of Petitioner

Petitioner testified that on September 29, 2017, he was a Senior Admin for Environmental Health and Safety, commonly referred to as a safety manager, for Respondent. (T. 8, 68) His job duties primarily focused on workplace safety and investigations for the purpose of improving workplace safety. (T. 9) His job duties included investigating work accidents, including interviews with the employees involved. (T. 68) Petitioner investigated around 100 accidents per year. (T. 73) His responsibility was to see what the root cause of the accident was, and how it could be prevented from reoccurring. (T. 74) Petitioner testified that he has some familiarity with workers' compensation issues. (T. 10)

On September 29, 2017, Petitioner was scheduled to lead a meeting at one of Respondent's work centers in Palatine. *Id.* Petitioner invited a union steward to the meeting named Stokes and an employee who was being investigated regarding a workplace safety issue. *Id.* Normally, the employee's manager would be present, but the manager had the day off, and another manager sat in that person's place. *Id.*

Present at the meeting as John Dolsen, Respondent's Business Representative, whom Petitioner was surprised to see at the meeting since he usually was not present for these types of meetings. (T. 12) Petitioner did not invite Mr. Dolsen to the meeting, and did not know why he was there. (T. 13)

The meeting proceeded normally. (T. 16-18) During Petitioner's questioning of the employee, Mr. Dolsen began objecting to his questions. (T. 19) Petitioner requested that he and Mr. Dolsen leave the room to discuss the issue privately. Id. The two men went into an office down the hall, at which point, according to Petitioner, Mr. Dolsen began yelling in his face and stating that he was going to file a complaint against Petitioner. (T. 20) Petitioner testified that there was no one else in the room. Id. Mr. Dolsen suggested including Terry McKeown, Petitioner's manager, in the complaint. (T. 21) Petitioner characterized Mr. Dolsen's conduct as aggressive, but not violent, although he stated that Mr. Dolsen's demeanor was violent and aggressive. (T. 85) Petitioner then pulled out his cell phone and called Mr. McKeown and placed the phone on speaker. (T. 21-22) Petitioner testified that about a minute into the conversation between the three men, Mr. Dolsen took the cell phone out of Petitioner's hand and retreated to a corner to speak to Mr. McKeown in private. (T. 23) As the two men spoke privately, Petitioner began to feel faint, and collapsed into an office chair. *Id.* Petitioner testified that during this encounter, he was wearing a personal fitness device that tracked his heart rate, and that his heart rate spiked to over 150 beats per minute. (T. 27-28) Petitioner testified there was no physical contact between himself and Mr. Dolsen, other than Mr. Dolsen taking the phone out of his hand. (T. 28) According to Petitioner, Mr. Dolsen got within six inches of his face while yelling, and that Mr. Dolsen's face was flushed. (T. 29) Petitioner testified that as this was going on, he was fearful of being fired, got worked up and collapsed. (T. 31)

Petitioner testified that his heart began pounding in his chest during this interaction. (T. 85) He felt defenseless and out of control of the situation. *Id.* Petitioner explained that he felt well the day before this interaction, though his heart rate was elevated the day before the meeting. (T. 86-87) He felt fine just prior to

the start of the meeting. (T. 87) He acknowledged undergoing a quadruple bypass surgery in 2009, and acknowledged a history of hypertension and high blood pressure. (T. 88)

Petitioner believed he lost consciousness after collapsing into the chair. (T. 32) The next thing he remembered was people helping him get downstairs via stairs to take him to a hospital. *Id.* Petitioner did not recall who helped him down the stairs, but it was at least three people. (T. 33) Petitioner indicated he collapsed again while being helped down the stairs. (T. 34) He testified he was placed in the front seat of a vehicle, but was not driven to a hospital, as an ambulance had been called. *Id.* The ambulance took Petitioner to Northwest Community Hospital, where he stayed until October 6, 2017. (T. 35) Petitioner testified he had no further interactions with Mr. Dolsen that day, but met with Mr. McKeown at the hospital where they discussed the incident. (T. 36)

Petitioner testified that when he was discharged from the hospital, he was still unable to stand and did not have any feeling in his legs from the knees down. (T. 38) He had excruciating pain in his thighs and would feel a burning pain when he touched his legs. *Id.* His legs could not hold his weight. *Id.* Petitioner testified that he was in-and-out of several hospitals and nursing facilities through the end of 2017. (T. 38-39) Petitioner testified that during his convalescence, he had conversations with Eddie Eno, the workers' compensation claims adjuster assigned to his claim. (T. 39) Petitioner indicated that he demanded payment of workers' compensation benefits from Mr. Eno, and that he provided medical records to Mr. Eno. (T. 40)

At trial, Petitioner was ambulating in a wheelchair. (T. 57) He testified that he requires the use of a wheelchair, and did not require a wheelchair prior to September 29, 2017. *Id.* Petitioner testified that he has constant pain in his legs, for which he takes large quantities gabapentin and Tylenol. *Id.* He also suffers from loss of muscle control in his arms, has limited use of his legs, but cannot stand or walk. (T. 58) He also suffers from a stutter, which he did not have prior to the incident. (T. 58-59) He testified that he has received benefits in the form of Short-Term Disability, Long-Term Disability, and Social Security Disability. (T. 59) He testified that he did some work for Respondent in the first month or so of his convalescence after the incident, but was advised to stop by Mr. McKeown. (T. 60) He testified he has not worked for any other employers since the incident, but is interested in returning to the workforce. *Id.* Petitioner testified that he was in generally good health prior to the incident. (T. 61, 78) He underwent heart surgery in 2009, and was also diagnosed with sleep apnea approximately 20-25 years ago. *Id.* He also developed Type 2 diabetes after the incident. *Id.*

Prior to working for Respondent, Petitioner worked for a geological technology engineering firm and in other laboratories. (T. 62-63) Petitioner studied engineering and accounting at the University of Texas El Paso. (T. 64) Petitioner worked as a technician for Advanced Solutions, Inc., and eventually went to work for Respondent as a systems tech. (T. 66) He installed DSL and dark fiberoptic connections. *Id.* In 2008, he became a manager, with between twelve and nineteen technicians working under him. *Id.* He then became a manager for Southwestern Bell in Texas, then transferred to Illinois with the same general position, then migrated to Respondent. (T. 67)

The meeting of September 29, 2017, was the only time in Petitioner's career as a safety manager that he stepped away from the table to meet individually with someone else. (T. 77) He testified he was truthful in his statements to both Dr. Fletcher and Dr. Landre. (T. 78)

Testimony of John Dolsen

Mr. Dolsen testified he worked for Respondent as a Customer Service Technician and a business representative for IBEW Local 21. (T. 93) Mr. Dolsen was set to retire in five days. *Id.* His job duties for IBEW Local 21 included negotiating contracts and contract language, and representing union members in investigation

and disciplinary proceedings. (T. 94) Prior to September 2017, Mr. Dolsen was involved in twenty-five or fifty accident investigations with Petitioner. (T. 95) Mr. Dolsen believed he attended maybe fifty accident investigation meetings per year. (T. 96) Mr. Dolsen testified that, during the time of the relevant meeting, he was attending investigation meetings more often, as his chief steward was out on disability. (T. 97) He testified that the attendees at the meeting were Petitioner, a shop steward named Tim Stall, a manager whose name Mr. Dolsen did not recall, and an employee named Rob. (T. 98)

Mr. Dolsen testified the meeting was held in a second-floor conference room. *Id.* He was sitting next to Rob, and Petitioner was seated across from them both, and the manager was sitting at the end of the table. *Id.* According to Mr. Dolsen, the meeting began with small talk, and Petitioner told him that he was not feeling well, that he had some heart issues. (T. 100-101) He observed that Petitioner did not look well. *Id.*

Mr. Dolsen testified he would often raise concerns or objections to certain questions in such meetings. (T. 102) Mr. Dolsen testified he objected to some of Petitioner's questions. (T. 102-104) He testified the meeting was proceeding normally at that point, and that Petitioner seemed okay. *Id.* Mr. Dolsen and Petitioner argued a bit over the questions, and Mr. Dolsen suggested calling Terry McKeown. (T. 105) He testified that he, Petitioner, and the field manager left the conference room and went to a spare office. *Id.* He testified that Petitioner called Mr. McKeown, and set his cell phone on the table. (T. 106) Mr. Dolsen testified he expressed his concerns to Mr. McKeown, and that Petitioner was yelling over him. (T. 107) Mr. Dolsen testified he picked up the phone off the table and stepped aside so he could speak to Mr. McKeown. *Id.* He denied physically touching Petitioner. *Id.* He testified he noticed Petitioner was red and sweating, and that Petitioner then stumbled into the table and sat down. *Id.* He testified he told Mr. McKeown that Petitioner was in trouble, and hung up the phone. *Id.*

Mr. Dolsen testified he instructed the manager to call paramedics, and that Petitioner objected, so no call to the paramedics was made at that point. (T. 109) Mr. Dolsen explained that Petitioner agreed to go to the hospital, and the manager was going to drive him. *Id.* Mr. Dolsen assisted Petitioner down the stairs. *Id.* Mr. Dolsen testified that Petitioner panicked, and would not get into the car, at which point, paramedics were called to take Petitioner to the hospital. (T. 110) Mr. Dolsen testified he was not reprimanded for his conduct during the meeting. *Id.* Mr. Dolsen had no control over Petitioner and no ability to fire him. *Id.* Mr. Dolsen has had no contact with Petitioner since this incident. (T. 111)

Mr. Dolsen acknowledged that he raised his voice during the conversations, but denied using profanity or threats against Petitioner's job. (T. 116) He testified that the only yelling that occurred happened in the conference room. (T. 118) He explained he was unable to hear Mr. McKeown on the phone because Petitioner was shouting. *Id.* Mr. Dolsen has had some ongoing contact with Mr. McKeown, but they did not discuss this incident, other than asking how Petitioner was doing. (T. 120)

Testimony of Terry McKeown

Mr. McKeown had retired. (T. 123) Prior to his retirement, he worked for Respondent as an Area Manager of the Safety Team for U-verse Field Operations. (T. 124) He summarized this position as a Manager of Safety Managers. (T. 125) He described accident investigations in the same general terms as Petitioner and Mr. Dolsen. *Id.* He became Petitioner's supervisor in 2014. (T. 126) He testified Petitioner would have conducted between seventy-five and one hundred investigations per year. (T. 128) He testified that in addition to the safety manager and the employee, such meetings could include a field area manager, a union steward, and perhaps those individuals' bosses. *Id.*

On September 29, 2017, Mr. McKeown was working from his home office. (T. 131) He took a phone call from Petitioner sometime before 10:00 a.m. (T. 132-133) He described the call as somewhat short since Petitioner was having some sort of medical incident. (T. 133) He testified Mr. Dolsen cut the call short to assist Petitioner. (T. 134) He believed he was on the phone with Petitioner and Mr. Dolsen for less than five minutes, maybe one or two minutes. (T. 143) He agreed that Mr. Dolsen seemed a little bit agitated on the call. (T. 144) He stated that union representatives, such as stewards, will raise concerns in such meetings about the questions being asked, to protect their constituents/union members. (T. 135) He stated that the union raising questions and objections is part of the meeting. (T. 136) He testified that Mr. Dolsen had no ability to discipline him or Petitioner, but acknowledged that acknowledged that Mr. Dolsen could potentially make Mr. McKeown and Petitioner's professional lives difficult. (T. 137, 146)

Mr. McKeown testified he was aware that Petitioner had some cardiac and blood pressure issues in his past, and that an incident occurred the day before the meeting. (T. 138) According to Mr. McKeown, on September 28, 2017, Petitioner called him and indicated he was not feeling well. *Id.* Mr. McKeown testified he met personally with Petitioner and assisted him in checking his blood pressure. *Id.* He did not recall what Petitioner's blood pressure was on September 28, 2017. (T. 151-152) Petitioner worked the rest of the day from home. (T. 139)

Mr. McKeown learned after his phone call with Petitioner and Mr. Dolsen on September 29, 2017, that Petitioner was in the hospital. *Id.* He went to the hospital to see Petitioner, but did not recall what they discussed. *Id.* He testified that at some point after the incident, he discussed the incident with Mr. Dolsen. (T. 141) Mr. McKeown testified that, as far as he was aware, an investigation was not conducted of the September 29, 2017, work incident. (T. 151)

Summary of Medical Records

On September 29, 2017, Petitioner was treated at the Emergency Department at Northwest Community Hospital. (PX1, pg. 24) Petitioner reported that on September 28, 2017, he had a stressful event at work with shortness of breath and an elevated heart rate, and that his Fitbit showed 110 to 120 heartbeats per minute. Petitioner explained that his symptoms did not go away, and he sought treatment at an Urgent Care facility. Petitioner then reported a similar stressful event that morning with elevated heart rate with diaphoresis, nausea, shortness of breath, and lightheadedness. The records show that Petitioner had a cardiac history, with a diagnosis of chest pain, coronary artery disease, hypertension, obstructive sleep apnea, and obesity, Class III, BMI 40-49.9 (morbid obesity). Petitioner was admitted into the hospital.

Petitioner underwent an ICU consultation on October 3, 2017. (PX1, pg. 14) Petitioner was diagnosed as having chest pain with a history of coronary artery disease. (PX1, pg. 19) On October 5, 2017, Petitioner underwent a consultation for chest pain and shortness of breath to rule out bronchial spasm. (PX1, pg. 8) Petitioner underwent a variety of tests. He had a negative CT for pulmonary embolism. A cardiac catheterization showed no substantial coronary artery disease. EKG showed sinus tach with nonspecific ST changes. Cardiology notes indicated that Petitioner's pain was potentially related to uncontrolled hypertension. It was also noted that Petitioner had GERD. Petitioner reported shortness of breath when speaking for a long time, which he described as a new symptom, and described pain including substernal and tightness that later changed to pain that moved from the sternal area to his back. Petitioner also reported that his arms were shaking without any clear reasoning. Petitioner was diagnosed as having atypical chest pain. (PX1, pg. 10) The consultation notes noted that cardiology notes indicated that Petitioner's pain could be the result of elevated blood pressure, but also noted other possibilities, such as reflux, and that it was compelling that Petitioner seemed to have had relief with Nitroglycerin, which can improve esophageal-related pain in addition to pain related to the heart. (PX1, pg. 12) Petitioner was diagnosed with shortness of breath, spikes in high blood pressure, morbid obesity

and questionable anxiety. The discharge report had Petitioner's final diagnosis as chest pain, possible to GERD and unlikely cardiac per cardiology consult, coronary artery disease, morbid obesity, obstructive sleep apnea hypertension and hyperlipidemia. (PX1, pg. 2)

On October 16, 2017, Petitioner saw Dr. Robert Small from Advocate Health Care. (PX6, pgs. 5-7) Dr. Small diagnosed Petitioner as having Type 2 diabetes, hyperlipidemia, hypertension, obesity, sleep apnea, metabolic syndrome, coronary artery disease, low serum testosterone, hiatal hernia, elevated liver enzymes, and anxiety. Dr. Small set up a treatment plan for Petitioner's diabetes, hyperlipidemia, hypertension, obesity, sleep apnea, coronary artery disease, elevated liver enzymes and low serum testosterone. Petitioner continued to follow up with Dr. Small through July 12, 2023. (PX6, pgs. 5-137)

Petitioner underwent treatment at Wauconda Heath Care from October 17, 2017, through November 22, 2017. (PX2) A note from October 27, 2017, indicates that Petitioner had been in and out of the hospital for multiple events due to chest pain, anxiety, difficulty breathing and fatigue. (PX2, pg. 344) Petitioner complained of difficulty walking with weakness in both of his legs and lower leg numbness with tingling and burning of his feet which started a few weeks ago and persisted. Petitioner denied any back injury or radicular pain. Petitioner reported that from July through September, he had been very active in landscaping in his yard and building a brick flowerbox by himself, but now was having difficulty getting out of bed and walking a few feet. He complained of lower extremity burning with numbness and tingling. Petitioner also reported frontal dull headaches with intermittent bilateral throbbing pain and occasional blurred vision lasting for a few seconds. Petitioner denied any neurological symptoms such as headache changes, speech, or vision. A progress note, dated November 22, 2017, stated that Petitioner was having recurrent episodes of chest pain, shortness of breath, heavy sweating and epigastric pain. (PX2, pg. 818) Petitioner had been admitted to multiple hospitals, including Northwest Community Hospital, Northwestern Memorial Hospital, Good Shepherd Hospital, and Edwards Hospital, and had been through multiple cardiac, neurological, and respiratory evaluations and investigations. Those tests had not yielded any definite diagnosis, except for possibly small coronary artery disease that may require stenting. Petitioner complained of difficulty with his speech and stuttering. Petitioner was to follow-up with his neurologist from Edwards Hospital.

Petitioner was admitted for inpatient rehabilitation care at CHM with Dr. Kelly Gustafson, PSY.D. on December 1, 2017. (PX4) Dr. Gustafson noted Petitioner was admitted due to a diagnoses of cervical spondylosis, diabetic neuropathy, generalized anxiety disorder, and panic disorder without agoraphobia. (PX4, pg. 2) Dr. Gustafson noted Petitioner displayed excessive anxiety. Petitioner reported experiencing physical symptoms immediately after two stressful work events which included an increased heart rate, high blood pressure, chest pain, dizziness, weakness in his lower extremities and shortness of breath. All findings after his first hospitalization were normal and he was released home. Petitioner's physical symptoms worsened, and he was then sent to the hospital. The results of all medical testing were normal. Petitioner's symptoms worsened to include temporary blindness, numbness of the lower extremity, body stiffness and unresponsiveness. After medical stabilization with no apparent findings, he was transferred to a subacute rehabilitation center. It was noted that Petitioner had some stenosis in his upper and lower spine which could be related to his numbness. New symptoms experienced during hospitalization included stuttering and mild dysphagia. Dr. Gustafson found that, given there were no reported psychological symptoms/disorders prior to the work events, Petitioner's current condition appeared to be related to work stress with increased manifestations of new and worsening psychological and physical symptoms. Petitioner was discharged on December 19, 2017. (PX4, pg. 9) Dr. Gustafson noted Petitioner's speech was improving and Petitioner felt physically able to perform most activities of daily living.

Petitioner had home health care from Bowes Home Care from December 20, 2017, through April 18, 2018. (PX3) Petitioner's diagnoses were polyneuropathy, spondylolisthesis with radiculopathy in the cervical

region, spinal stenosis of the thoracis lumbar region, essential hypertension, prediabetes, heart disease, generalized anxiety disorder, panic disorder, obstructive sleep apnea, gastroesophageal reflux disease, adult onset of fluency disorder, and long term use of anticoagulants. Petitioner was provided home-based physical, occupational and speech therapies.

Petitioner underwent a Section 12 examination (IME) with Dr. Nancy Landre, a clinical psychologist, on May 31, 2018, at Respondent's request. (RX1) Dr. Landre examined Petitioner and reviewed Petitioner's medical records. Petitioner reported he had been verbally attacked at work and began experiencing chest pain and fell, twisting his ankle. Petitioner complained of injury-related residual symptoms of inability to walk, increased heart rate and blood pressure when stressed, stuttering, bilateral arm numbness, pain, memory and concentration issues, and inability to perform most activities. Dr. Landre noted that Petitioner arrived in and remained in a wheelchair during the examination. Cognitive tests were within normal limits. Symptom Validity Assessment revealed possible exaggeration and/or feigning of injury related psychological symptoms. Psychological testing suggested long-standing personality dysfunction, somatization tendencies and anxiety disorders. Dr. Landre diagnosed Petitioner with somatic symptom disorder and possible malingering. Dr. Landre noted that Petitioner did not appear to be benefiting from psychological treatment, but might respond to a course of intensive outpatient treatment at a chronic pain program or intensive outpatient psychiatric day treatment program. Dr. Landre opined that Petitioner's current condition of ill-being was not causally related to the September 29, 2017, incident. Dr. Landre did not feel that Petitioner's hospitalizations were related to the September 29, 2017, incident and that Petitioner was capable of working without restrictions.

According to Petitioner, Dr. Landre's psychometrician completed the actual neuropsychological testing with him. (T. 49) Petitioner did not believe that the psychometrician accurately recorded his answers to the testing. (T. 51)

Petitioner underwent an IME with Dr. Tony Fletcher, a forensic psychologist, on September 19, 2018, and October 19, 2018, at the request of Petitioner's attorney. (PX8) Dr. Fletcher issued his report on October 26, 2018. Dr. Fletcher examined Petitioner and reviewed Petitioner's medical records. Petitioner described the September 29, 2017, incident to Dr. Fletcher. Personality testing revealed that Petitioner had features of histrionic and narcissistic traits and that he was expected to be overly dramatic, with a strong need to be the center of attention. Psychological testing revealed possible conversion disorder, cognitive disorder NOS (not otherwise specified), somatization disorder and personality disorder NOS, mixed with personality disorder with borderline narcissistic and obsessive-compulsive features. Dr. Fletcher diagnosed Petitioner with generalized anxiety disorder with panic attacks, dysthymia related to his current situation, history of posttraumatic stress disorder, personality disorder NOS and functional neurological symptom disorder (FND). Dr. Fletcher explained that FND is a medical condition where there is a problem with the function of the nervous system and how the brain and body sends and/or receives signals, rather than a structural disease process such as multiple sclerosis or stroke. According to Dr. Fletcher, FND can encompass a wide variety of neurological symptoms, such as limb weakness or seizures. Conventional testing such as brain MRIs or EEGs are usually normal in people with FND. Dr. Fletcher indicated that FND is a common cause of disability and distress, which may overlap with other problems such as chronic pain and fatigue. Dr. Fletcher explained that a combination of physiotherapy, occupational therapy and cognitive behavioral therapy may be the best combination of treatment for people with severe and chronic FND.

Dr. Landre reviewed Dr. Fletcher's report and on January 6, 2019, issued a report disagreeing with Dr. Fletcher's conclusions that Petitioner developed posttraumatic stress disorder, generalized anxiety disorder and dysthymia as a result of the September 29, 2017, incident. (RX2) Dr. Landre agreed with Dr. Fletcher that Petitioner had personality and somatoform disorders and opined that these disorders were preexisting and that treatment for these disorders would not be causally related to the September 29, 2017, incident.

Petitioner saw Barbara Webb, LCSW from Mathers Clinic from July 2, 2019, through September 17, 2019. (PX5) Webb diagnosed Petitioner as having major depressive disorder (recurrent, moderate), chronic obstructive pulmonary disease with acute exacerbation, gastroesophageal reflux disease with esophagitis, hypertension, conversion disorder with motor symptom or deficit, and other stressful life events affecting family and household.

On June 14, 2020, Dr. Fletcher reviewed Dr. Landre's second report and issued another report. (PX9) Dr. Fletcher opined that Petitioner was involved in a contentious conversation at work on September 29, 2017, during which he experienced extreme anxiety, heart palpitations and shortness of breath, and then developed symptoms consistent with posttraumatic stress disorder. Dr. Fletcher did not agree with Dr. Landre's diagnosis of somatic symptom disorder and possible malingering, noting that Dr. Landre did not perform further feigning/malingering tests as indicated by the SIMS manual.

Dr. Landre issued a third report on December 2, 2020. (RX3) Dr. Landre reviewed Dr. Fletcher's June 14, 2020, report and noted that while Dr. Fletcher criticized her for not completing further testing per the SIMS manual, Dr. Fletcher did not address whether Petitioner's somatic symptom disorder was causally related to the September 29, 2017, incident. Dr. Landre further noted that while Dr. Fletcher diagnosed Petitioner with posttraumatic stress disorder that resolved to ongoing depression and anxiety and FND, he failed to causally link those diagnosis to the September 29, 2017, incident. Dr. Landre explained that FND, known as conversion disorder, is a mental disorder and opined that it is a mental condition.

Dr. Fletcher's evidence deposition was taken on September 28, 2021. (PX7) Dr. Fletcher's testimony was consistent with the findings and opinions in his report. Dr. Landre's evidence deposition was taken on October 28, 2021. (RX4) Dr. Landre's testimony was consistent with the findings and opinions in her report.

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:

The Arbitrator notes that to obtain compensation under the Act, an employee bears the burden of showing, by a preponderance of 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). An injury is compensable under the Act only if it "arises out of" and "in the course of" the employment. (Ill.Rev.Stat.1985, Ch. 48, par. 138.2.) The phrase "in the course of" refers to the time, place, and circumstances under which the accident occurred. *Orsini v. Industrial Commission* (1987), 117 Ill.2d 38, 44, 109 Ill.Dec. 166, 509 N.E.2d 1005; *Chmelik v. Vana* (1964), 31 Ill.2d 272, 278, 201 N.E.2d 434. The words "arising out of" refer to the origin or cause of the accident and presuppose a causal connection between employment and the accidental injury. *Caterpillar Tractor Co. v. Industrial Commission* (1989), 129 Ill.2d 52, 57, 133 Ill.Dec. 454, 541 N.E.2d 665; *Chmelik*, 31 Ill.2d at 277, 201 N.E.2d 434. Both elements must be present at the time of the accidental injury in order to justify compensation. *Caterpillar,* 129 Ill.2d at 57, 133 Ill.Dec. 454, 541 N.E.2d 665; *Orsini,* 117 Ill.2d at 45, 109 Ill.Dec. 166, 509 N.E.2d 1005; *Eagle Discount Supermarket v. Industrial Comm'n* (1980), 82 Ill.2d 331, 337, 45 Ill.Dec. 141, 412 N.E.2d 492.

The Arbitrator finds that Petitioner was in the course of his employment on September 29, 2017, when the incident with Mr. Dolsen took place. As to whether Petitioner's accident arose out of the incident on September 29, 2017, the Arbitrator notes that Petitioner's theory of recovery is based on mental trauma. In Illinois there are three types of mental injuries: physical-mental, mental-mental and mental-physical. Physical-mental claims involve a physical injury followed by the development of a mental condition related to the work injury. The Arbitrator finds that there is no evidence of a physical trauma to Petitioner resulting in a mental condition of ill-being.

Mental-mental claims occur when an employee is exposed to a sudden and severe emotional shock traceable to a definite time and place and which causes psychological harm with no physical trauma. *Pathfinder v. Indus. Comm'n,* 62 Ill. 2d 556 (1976). In *Pathfinder,* the claimant witnessed a co-worker catch her hand in a punch press. The claimant reached into the machine to assist her co-worker in extricating her hand, but the hand was already severed. The claimant pulled the severed hand from the machine and fainted. She recalled waking in the hospital the next day, and hospital records documented that Petitioner lost consciousness. She was diagnosed with anxiety and subsequently sought care and treatment for complaints of numbness and headaches. The Court held that an employee who suffers a sudden severe emotional shock traceable to a definite time and place to a readily perceivable cause which produces psychological disability can recover under the Act even where there is no physical harm.

The shock must be sudden and singular. In *Chicago Board of Education v. Industrial Commission*, the court found that the claimant, a teacher, who suffered multiple incidents of workplace stress, including assaults and verbal abuse, did not suffer a compensable accident, as the gradual deterioration of mental processes over time and outside of trauma must arise from "a situation of greater dimensions than the day-to-day emotional strain and tension which all employees must experience." 169 Ill.App.3d 459, 523 N.E.2d 912, 120 Ill. Dec. 1 (1st Dist. 1988). Petitioner was at one of the many safety meetings he had been at throughout his employment with Respondent and dealing with someone who did not agree with him. Mr. Dolsen admitted to yelling at Petitioner, however, the Arbitrator does not find that someone being yelled at while at work constitutes a situation of greater dimensions than day-to-day emotional strain and tension. Further, the Arbitrator notes that Petitioner, Mr. Dolsen and Mr. McKeown all agreed that Mr. Dolsen could not fire Petitioner. Petitioner testified that Mr. Dolsen indicated that he was going to file a complaint against Petitioner. Again, having a complaint filed against you at work is not a situation that falls out the realm of the everyday in a work environment. Mr. Dolsen's claim that he was going to file a complaint against Petitioner could possibly cause Petitioner some stress and tension, but not anything beyond the emotional strain and tension experienced daily in a work environment. The Arbitrator notes that the court in *Skidis v. Industrial Commission* found that "the routine involuntary termination of employment, although traumatic, does not, of itself, constitute an event sufficient to bring it within the confines of *Pathfinder*." *Skidis v. Industrial Comm'n (City of Fairview Heights Police Dep't)*, 309 Ill. App. 3d 720, 723, 722 N.E.2d 1163, 1166, 1999 Ill. App. LEXIS 827, *7, 243 Ill. Dec. 94, 97 (1999). As such, the Arbitrator finds that it is even less likely that the threat of someone filing a complaint against Petitioner at work would bring this case within the confines of *Pathfinder*. Therefore, the Arbitrator finds that the September 29, 2017, incident between Petitioner and Mr. Dolsen did not amount to a sudden and severe emotional shock traceable to a definite time and place which caused psychological harm with no physical trauma.

Regarding mental-physical cases, the Court in *Bagget. v. Industrial Commission*, 201 Ill. 2d 187, 195-196, 775 N.E.2d 908, 913, 266 Ill.Dec. 836, 841 (2002), quoting *County of Cook v. Industrial Commission*, 69 Ill. 2d 10, 12 Ill.Dec. 716, 370 N.E.2d 520 (1977), found that if an employee's physical structure gives way under the stress of his usual labor, then the injury sustained arose out of his employment, and that the sole limitation to this rule is where it is shown that the employee's health has so deteriorated that any normal daily activity would be an overexertion or where it is shown that the activity engaged in presented risks not greater

than those to which the general public is exposed. Applying the mental-physical analysis, the Arbitrator again notes that at the time of the incident, Petitioner was participating in one of the many accident investigations he had participated in for years during his employment with Respondent. Further, being yelled at and having disagreements with co-workers are not risks greater than those to which the general public is exposed.

Regarding medical opinions, the Arbitrator notes that Dr. Landre diagnosed Petitioner with somatic symptom disorder and possible malingering and opined that Petitioner's current condition of ill-being was not causally related to the September 29, 2017, incident. The Arbitrator further notes that while Dr. Fletcher opined that Petitioner was involved in a contentious conversation at work on September 29, 2017, during which he experienced an incident of extreme anxiety, heart palpitations and shortness of breath, and subsequently developed symptoms consistent with posttraumatic stress disorder, he agreed to a lesser degree with Dr. Landre's somatic symptom disorder, which seems to contradict his earlier opinion. Additionally, Dr. Fletcher did not specifically find that the contentious conversation at work caused Petitioner's condition of ill-being, but merely pointed out that Petitioner was in a contentious conversation and then started to experience palpitations, shortness of breath and anxiety and eventually developed symptoms consistent with posttraumatic stress disorder. Therefore, the Arbitrator finds the opinions of Dr. Landre more persuasive than those of Dr. Fletcher. Further, the Arbitrator finds that Petitioner did not sustain a mental-physical injury on September 29, 2017.

Based on the above, the Arbitrator finds that Petitioner failed to prove that he sustained an injury which arose out of and in the course of his employment with the Respondent on September 29, 2017.

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

Based on the Arbitrator's finding above that Petitioner's did not sustain an injury arising out of and in the course of his employment with Respondent on September 29, 2017, the issue of causation is moot.

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

Based on the Arbitrator's finding above that Petitioner's did not sustain an injury arising out of and in the course of his employment with Respondent on September 29, 2017, the issue of prospective medical care is moot.

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:

Based on the Arbitrator's finding above that Petitioner's did not sustain an injury arising out of and in the course of his employment with Respondent on September 29, 2017, the issue of temporary total disability benefits is moot.

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES BE IMPOSED UPON THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's finding above that Petitioner's did not sustain an injury arising out of and in the course of his employment with Respondent on September 29, 2017, the issue of penalties is moot.

WITH RESPECT TO ISSUE (O), THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's finding above that Petitioner's did not sustain an injury arising out of and in the course of his employment with Respondent on September 29, 2017, the issue of vocational rehabilitation is moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC019859
Case Name	Suzann Maxheimer v. State of Illinois - AOIC
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0092
Number of Pages of Decision	16
Decision Issued By	Amylee Simonovich, Commissioner with Concurrence by Commissioner Doerries

Petitioner Attorney	Francis Lynch
Respondent Attorney	Joseph L. Moore

DATE FILED: 3/5/2025

/s/Amylee Simonovich,Commissioner

Signature

25IWCC0092

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

Suzann Maxheimer,

Petitioner,

vs. NO: 21 WC 019859

State of Illinois - AOIC,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission modifies the heading for Issue (F) on page 5 of the Decision, striking "tennis elbow and cubital tunnel syndrome", and replacing it with "left ankle/knee".

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on December 22, 2023, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay for reasonable and necessary services medical services listed in Petitioner's Exhibit 7, pursuant to the medical fee schedule, as provided in Section 8(a) of the Act. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act. Respondent shall further pay Petitioner $2,028.85 for her co-pays, deductibles and out-of-pocket expenses.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay Petitioner temporary total disability benefits of $886.21/week for 2 2/7ths weeks, commencing 12/23/20 through 1/7/21, as provided in Section 8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay

Petitioner permanent partial disability benefits of $797.59/week for 54.31 weeks, because the injuries sustained caused the 30% loss of use of the left foot and 2% loss of use of the left leg, as provided in Section 8(e) 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.

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

March 5, 2025

O: 1/14/25
AHS/kjj
051

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

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

CONCURRENCE

I agree with the majority's award of temporary total disability, medical, and permanent partial disability, however, while I agree with the outcome, I respectfully disagree with my colleagues' reasoning stated in the Conclusions of Law, under Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? I would find Petitioner sustained her burden of proving her accident occurred in the course of her employment under the personal comfort doctrine and because Petitioner testified that she slipped on a wet tile bathroom floor adjacent to her office after she cleaned up her food utensils, a clear employment-related risk, the slip and fall accident arose out of her employment.

I agree with the majority's statement of the law that "[i]In order to obtain compensation under the Act, a claimant bears the burden of proving by a preponderance of the evidence two elements: (1) that the injury occurred in the course of the claimant's employment and (2) that the injury arose out of the claimant's employment." *McAllister v. Ill. Workers' Comp. Comm'n,* 2020 IL 12484, ¶ 32.

Petitioner testified that her immediate supervisor employer is the Chief Judge in the Seventh Circuit. (T. 11) Petitioner further testified that her lunch hour is scheduled from "12 to 1." (T. 53) A meeting in her office was to take place at 1:00 p.m. between an associate judge and a Guardian Ad Litem (GAL), court appointed lawyer. (T. 14) Most meetings in her office take place between 11:30 p.m. and 1:30 p.m. when judges are more available for meetings. (T. 19) Her habit was to eat in her office and to make an effort to clean things up for meetings. *Id.* Petitioner testified that on the date in question, she ate early, not "lunch per se as much as it was a brunch" at approximately the time of her 15 minute break at 10:00 a.m., 10:15 p.m. (T. 55) Petitioner testified that she then washed her dishes in the bathroom sink next to her office before the

scheduled meeting. (T. 56) She came back around and there was another piece of utensil laying on her desk, and she picked it up and headed back into the restroom where she hit the water, hyperextended her knee and went down and hit the door and turned her ankle. (T. 20, 23-24) She saw the water after she fell. (T. 58)

Respondent's Exhibit 1 (RX1) confirms that Petitioner's slip and fall occurred at 9:45 a.m. Although the accident reports differ by 15 minutes, Petitioner's credible testimony confirmed that she ate lunch at the time of her morning break and she cleaned up because of the scheduled meeting between the associate judge and the court appointed lawyer at 1:00 p.m. Her lunch hour was scheduled at the same time judges routinely held meetings in her office, thus Petitioner's habit was to clean up after she ate in anticipation of the frequent meetings scheduled during her lunch time. On the day of the accident, Petitioner cleaned up her utensils in her adjoining bathroom and she splashed water that went unnoticed until she put the lone utensil left on her desk in the bathroom, which was done in preparation for the 1:00 meeting. Petitioner credibly testified how her left foot hit the water and she slipped and fell.

As the Appellate Court explained:

> According to the personal-comfort doctrine, an employee, while engaged in the work of his or her employer, may do those things that are necessary to his or her health and comfort, even though personal to himself or herself, and such acts will be considered incidental to the employment. See *Hunter Packing Co. v. Industrial Comm'n,* 1 Ill. 2d 99, 104, 115 N.E.2d 236, 239 (1953); see also *Union Starch,* 56 Ill. 2d at 277, 307 N.E.2d at 121. Using the restroom to meet the demands of personal health or comfort certainly falls within those acts considered incidental to the employment and therefore is considered to be in the course of the employment. See *Hunter Packing Co.,* Ill. 2d at 104, 115 N.E.2d at 239. Incidental acts are not within the course of employment only if done in an unusual, unreasonable or unexpected manner. *Eagle Discount Supermarket,* 82 Ill. 2d at 340, 412 N.E.2d at 497; *Union Starch,* 56 Ill. 2d at 277, 307 N.E.2d at 121. *Illinois Consol. Tel. Co. v. Industrial Comm'n*, 314 Ill. App. 3d 347, 350, 732 N.E.2d 49, 52, (2000).
>
> The personal comfort doctrine provides:
>
> "Employees who, within the time and space limits of their employment, engage in acts which minister to personal comfort do not thereby leave the course of employment, unless the * * * method chosen is so unusual and unreasonable that the conduct cannot be considered an incident of the employment." 2 A. Larson & L. Larson, Workers' Compensation Law § 21.00, at 5-5 (1998). *Karastamatis v. Industrial Comm'n* (Annunciation Greek Orthodox Church), 306 Ill. App. 3d 206, 211, 713 N.E.2d 161, 165, (1999).
>
> Since eating is deemed to be an act of personal comfort, the personal comfort doctrine has been applied to cases involving lunchtime injuries. Under the personal comfort doctrine, the course of employment is not considered broken by certain acts relating to the personal comfort of the employee. (See generally, 1A A. Larson,

Workmen's Compensation secs. 21.00 to 21.84, at 5 -- 4 [*340] through 5 -- 70 (1979).) Other acts during a break time in the employment besides the act of eating have also been held to be acts of personal comfort. (See, e.g., *Sparks Milling Co. v. Industrial Com*. (1920), 293 Ill. 350 (getting fresh air*); Union Starch v. Industrial Com*. (1974), 56 Ill. 2d 272 (seeking relief from heat); *Scheffler Greenhouses, Inc. v. Industrial Com*. (1977), 66 Ill. 2d 361 (seeking relief from heat and humidity); *Chicago Extruded Metals v. Industrial Com*. (1979), 77 Ill. 2d 81 (showering in locker room provided by employer).)

In the lunch hour cases, the most critical factor in determining whether the accident arose out of and in the course of employment is the location of the occurrence. Thus, where the employee sustains an injury during the lunch break and is still on the employer's premises, the act of procuring lunch has been held to be reasonably incidental to the employment. (*Mt. Olive & Staunton Coal Co. v. Industrial Com.* (1934), 355 Ill. 222; *Humphrey v. Industrial Com.* (1918), 285 Ill. 372.) (See I. Greenfield, *Injuries Arising Out of and in the Course of the Employment*, 1957 U. Ill. L.F. 191, 206-08.) This rule remains true even where the injury was not actually caused by a hazard of the employment. (See F. Wiedner, *The Workmen's Compensation Act*, 1967 U. Ill. L.F. 21, 36-37.) The rule is also unchanged by the fact that the employee receives no pay for the lunch break and is not under the employer's control, being free to leave the premises. (1A A. Larson, Workmen's Compensation sec. 21.21(a), at 5 -- 5 (1979); F. Wiedner, *The Workmen's Compensation Act*, 1967 U. Ill. L.F. 21, 36-37.) See generally comment, *Workmen's Compensation: The Personal Comfort Doctrine*, 1960 Wis. L. Rev. 91, 91-98; Note, *Workmen's Compensation: Personal Comfort in Practical Perspective*, 1917 Law and Soc. Ord. 823, 829-30. *Eagle Discount Supermarket v. Industrial Comm'n*., 82 Ill. 2d 331, 339, 412 N.E.2d 492, 496-497 (1980).

It is clear to me that this Petitioner frequently had to accommodate the availability of her judges during 11:30 to 1:00 p.m. which included eating early and cleaning up her office before her regularly scheduled lunch hour. Thus, I would find that on the day of accident this Petitioner's acts of eating what she described as "brunch," (T. 55) cleaning up her utensils in the bathroom and returning to clean a stray utensil, were acts of personal comfort, thus satisfying the "in the course of" prong of proving accident. Slipping on the wet floor was a hazard of the employment, thus, Petitioner satisfied the "arising out of" prong of proving accident as well. Therefore, I disagree with my colleagues' reasoning, not the outcome, based upon all of the foregoing testimony, facts and case law.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC019859
Case Name	Suzann Maxheimer v. State of Illinois AOIC
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Francis Lynch
Respondent Attorney	Joseph L. Moore

DATE FILED: 12/22/2023

THE INTEREST RATE FOR THE WEEK OF DECEMBER 19, 2023 5.13%

/s/ Jeanne AuBuchon, Arbitrator
Signature

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

December 22, 2023

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

SUZANN MAXHEIMER
Employee/Petitioner

v.

STATE OF ILLINOIS AOIC
Employer/Respondent

Case # **21** WC **019859**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Springfield**, on **11/27/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. **XX** 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. **XX** 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. **XX** 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. **XX** What temporary benefits are in dispute?
XX TPD ☐ Maintenance **XX** TTD
L. **XX** 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 **12/8/20**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**69,124.64**; the average weekly wage was $**1,329.32**.

On the date of accident, Petitioner was **54** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**0.00** 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 $**107,786.25** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services listed in Petitioner's Exhibit 7, pursuant to the medical fee schedule, as provided in Section 8(a) of the Act. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act. Respondent shall further pay Petitioner $2,028.85 for her co-pays, deductibles and out-of-pocket expenses.

Respondent shall pay Petitioner temporary total disability benefits of $886.21/week for 2 and 2/7ths weeks, commencing 12/23/20 through 1/7/21, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $797.59/week for 54.31 weeks, because the injuries sustained caused the 30% loss of use of the left foot and 2% loss of use of the left leg, as provided in Section 8(e) of the Act.

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

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

Jeanne L. AuBuchon **DECEMBER 22, 2023**

Signature of Arbitrator

PROCEDURAL HISTORY

This matter proceeded to trial on November 27, 2023, on all issues. The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of her employment; 2) the causal connection between the accident and the Petitioner's left ankle and knee conditions; 3) liability for medical bills; 4) entitlement to temporary total disability (TTD) benefits based on liability; and 5) the nature and extent of the Petitioner's injury.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 54 years old and had been employed by the Respondent as a trial court administrator for the Seventh Circuit Court, planning schedules, providing equipment and materials for judges, escorting jurors, preparing courtrooms and acting as a liaison between judges and stakeholders. (AX1, T. 9,11-13)

On December 8, 2020, the Petitioner had a meeting between an associate judge and a court-appointed attorney scheduled for 1:00 p.m. in her office, which was a common practice. (T. 12-14) The Petitioner testified that she had a bathroom accessible from her office and was expected to keep her office tidy and organized. (T. 16-17) She said she ate lunch in her office that day, as was her habit to be available for judges and court personnel. (T. 18-19) She said she had taken whatever dishware, glassware or utensils to the bathroom to clean up and noticed a utensil on her desk that she picked up and took back to the bathroom. (T. 20) She said there was water on the tile floor of the bathroom after she had done her dishes, and when she went back into the bathroom with the utensil, her left foot hit the water, she hyperextended her knee and turned her ankle. (T. 22-24) Coworkers helped her get back to her desk. (T. 25) She said she noticed pain and swelling in her left knee and ankle. (Id.) She borrowed a pair of crutches, and a coworker took her to the orthopedic walk-in clinic at Springfield Clinic. (T. 26)

The Petitioner underwent X-rays at Springfield Clinic and was diagnosed with a left ankle fracture. (PX4) She was ordered off work from December 8, 2020, until December 10, 2020, at which time she was to perform desk work only, given a walking boot and medication and instructed to return to the clinic to see orthopedic surgeon Dr. Benjamin Stephens. (Id.) Dr. Stephens ordered additional X-rays. (Id.) The Petitioner testified that on her way home from this visit, she received a phone call from Dr. Stephens' office indicating that she needed to be scheduled for surgery. (T. 31) Dr. Stephens scheduled her for surgery on December 23, 2020, at which time she underwent an open reduction and internal fixation (ORIF) of the left distal fibula, left superior peroneal retinacular reconstruction and left peroneus brevis tenosynovectomy. (PX4, PX5)

The Petitioner was off work from the date of surgery through her release to work at half days on January 7, 2021. (PX4) The Petitioner testified that she worked half days but did not state whether she was paid for a whole day or just the half. (T. 37) She testified that she resumed full duty work on February 2, 2021. (Id.) The medical records reflect that her first day of full-duty work was to be February 3, 2021. (PX4) Her post-operative care by Dr. Stevens included regular examinations, physical therapy, pain medication and anti-inflammatories. (Id.) The Petitioner underwent physical and aquatic therapy at Springfield Clinic and Lincoln Memorial Hospital. PX4, PX6)

On April 13, 2021, the Petitioner saw Dr. Christopher Martinek, a family medicine doctor at Springfield Clinic, because of knee swelling and concern for a blood clot. (PX4) After an ultrasound, he ruled out a blood clot and recommended that the Petitioner see orthopedics. (Id.)

The Petitioner saw Dr. Brett Wolters, another orthopedic surgeon at Springfield Clinic, for a knee evaluation on June 23, 2021. (Id.) He diagnosed left knee hyperextension injury, likely resulting in an anterior cruciate ligament (ACL) tear and possible meniscus tear. (Id.) He ordered

X-rays and an MRI. (Id.) At a follow-up visit on July 9, 2021, Dr. Wolters read the X-rays and MRI as showing mild bone contusions of the patella and medial femoral condyle, while the ACL appeared to be slightly relaxed but intact. (Id.) He ordered physical therapy and patellar taping. (Id.)

The Petitioner testified that she continued to have pain and symptoms associated with her ankle and knee. (T. 40-41) She decided that because she had good results from the aquatic therapy, she joined Fit Club for water aerobics. (T. 41) Although she experienced improvement, she was still having problems walking on uneven ground. (T. 41-42) She said she wears a specific type of shoe to give her stability. (T. 43) She said she has difficulty with stairs at work and takes the elevator more. (Id.) She said she is more cautious when she walks and carries half the amount of files than she normally did. (T. 44-46) She works out to keep her mobility. (T. 46) She said the injuries have slowed down her activities of daily living, such as working around her farm and riding horses. (T. 46-49) She also said she can no longer run. (T. 49) She said she has stability issues with her knee and twinges depending on how she steps or moves. (T. 50) She said she has pain in her ankle. (Id.) On cross-examination, the Petitioner stated that her condition had not gotten worse than the last time she saw Dr. Stevens. (T. 65) She said she takes Aleve as needed. (T. 66-67)

The Petitioner testified that she incurred $2,028.85 in out-of-pocket medical expenses. (T. 10)

CONCLUSIONS OF LAW

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

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

In order to obtain compensation under the Act, a claimant bears the burden of proving by a preponderance of the evidence two elements: (1) that the injury occurred in the course of the claimant's employment and (2) that the injury arose out of the claimant's employment. *McAllister v. Ill. Workers' Comp. Com'n,* 2020 IL 12484, ¶ 32.

The phrase "in the course of employment" refers to the time, place and circumstances of the injury. *Id.* at ¶34. In this case, the Petitioner fell in the bathroom of her office while cleaning up her office for a meeting that was to occur there. This evidence was unrebutted. Therefore, the Arbitrator finds the Petitioner proved by a preponderance of the evidence that her injuries occurred in the course of her employment.

The "arising out of" component is primarily concerned with causal connection. *Id.* at ¶ 36. To satisfy this requirement, it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. *Id.* The three categories of risk are: (1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics. *Id.* at ¶38.

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. In this case, the Arbitrator finds the Petitioner was performing acts that she might reasonably be expected to perform incident to her assigned duties. Part of her duties was holding meetings in her office. There was no evidence to contradict the Petitioner's testimony that she was

allowed to have lunch in her office, conduct meetings there and tidy up her office in preparation for such meetings. The Arbitrator finds the Petitioner might reasonably be expected to clear dishes and utensils from her office so that it would be an appropriate and tidy setting for meetings.

Next is the requirement that the risk created a causal connection between the employment and the accidental injuries. There is no evidence to suggest that the Petitioner sustained her injuries in any manner other than falling on the tile floor while tidying up her office in preparation for the meeting.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that her injuries had their origin in a risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury.

When a claimant is injured due to an employment-related risk, it is unnecessary to perform a neutral-risk analysis to determine whether the claimant was exposed to a risk of injury to a greater degree than the general public. *Steak 'n Shake v. Ill. Workers' Comp. Comm'n,* 216 IL App 3d 150500WC at ¶38. Because the Arbitrator finds that an employment risk was present, no further analysis is necessary.

Thus, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that her injuries occurred in the course of and arose out of her employment.

Issue (F): Is Petitioner's current condition of ill-being, specifically her tennis elbow and cubital tunnel syndrome, causally related to the accident?

This issue is addressed above in the analysis of whether the Petitioner's injuries arose out of and in the course of her employment, and the findings above are incorporated herein.

Therefore, the Arbitrator finds that the Petitioner's left ankle and knee conditions are causally related to the work accident.

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

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

Based on the findings above regarding accident and causation, the medical services listed in Petitioner's Exhibit 7 are found to be reasonable and necessary. Therefore, the Arbitrator orders the Respondent to pay the medical expenses contained therein pursuant to Section 8(a) of the Act and in accordance with medical fee schedules. The Respondent shall have credit for any amounts already paid or paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

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

According to the Request for Hearing (AX1), the parties dispute TTD benefits from the date of her injury on December 8, 2020, through February 3, 2021, when she returned to work.

An employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

The medical records showed the Petitioner was ordered off work from the date of surgery on December 23, 2020, through her release to work at half days on January 7, 2021. The Petitioner testified that she worked half days but did not state whether she was paid for a whole day or just the half. Therefore, the Arbitrator finds the Petitioner is entitled to TTD benefits for 2 and 2/7 weeks from December 23, 2020, through January 7, 2021.

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

Pursuant to Section 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." *Id.*

(i) **Level of Impairment.** Neither party submitted an AMA rating. Therefore, the Arbitrator uses the remaining factors to evaluate the Petitioner's permanent partial disability.

(ii) **Occupation.** The Petitioner continues to work for the Respondent in her same position, which is clerical in nature and does not require much physical exertion except for walking, traversing stairs and carrying files. The Arbitrator places some weight on this factor.

(iii) **Age.** The Petitioner was 54 years old at the time of the injury. She has several work years left during which time she will need to deal with the residual effects of her injuries. The Arbitrator places some weight on this factor.

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

(v) **Disability.** The Petitioner testified that she continues to have pain in her ankle and twinges and stability issues with her knee. She performs water aerobics to help her and takes over-the-counter medication as needed. She has problems walking on uneven ground and has modified her activities and her footwear to compensate. The Arbitrator puts significant weight on this factor.

Based on the foregoing evidence and factors, the Arbitrator finds that the Petitioner sustained serious and permanent injuries that resulted in the 2% loss of her left leg and 30% loss of her left foot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC036203
Case Name	Teresa A. Gaddy v. Niemann Foods Inc dba County Market
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0093
Number of Pages of Decision	9
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Kathy Olivero
Respondent Attorney	Jessica Bell

DATE FILED: 3/6/2025

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)) SS. COUNTY OF SANGAMON)	☐ Affirm and adopt (no changes) ☐ Affirm with changes ☒ 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

TERESA A. GADDY,

Petitioner,

vs. NO: 16 WC 036203

NIEMANN FOODS, INC. DBA COUNTY MARKET,

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, causal connection, medical expenses, temporary total disability, and permanent partial disability, and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below.

I. FINDINGS OF FACT

A. Accident and Medical Treatment

Petitioner, a 49-year-old bakery employee, testified she slipped on a greasy floor after changing oil in a fryer on September 4, 2016 and felt immediate pain in her low back, left hip, and left leg. Petitioner reported the incident to her manager and the nurse on call. Per the nurse's instruction, she went home, washed her clothes, applied heat/ice to her injuries, and went to sleep. The following day, she was transported to the emergency room with chest pain and shortness of breath. Petitioner was released with instructions to follow-up with her cardiologist. Petitioner returned to the emergency room on September 6, 2016, with severe pain in her left lower back radiating into her left leg, left knee, and left hip following a fall at work two days before. Petitioner reported using a heat pad for two days without relief. Petitioner was released with knee, hip, and back strains.

Petitioner followed up with her primary care provider on September 12, 2016 for radiating low back pain and left hip pain after a fall at work. Petitioner was diagnosed with

lumbago with left sided sciatica. Treatment included medication, physical therapy, and injections. Petitioner continued to follow up with her primary care provider with shooting back pain, along with joint pain, numbness, and tingling in the legs. She returned to the emergency room on November 4, 2016, with shooting/stabbing pain radiating into her left thigh and knee since a fall at work in September. Petitioner continued in physical therapy and underwent a lumbar MRI on January 5, 2017, which showed foraminal encroachment on the right at L4/5 and microtrabecular fractures on the facet articulations.

Petitioner presented to Dr. Espinosa, a neurosurgeon, on March 9, 2017, with continuing back pain, pain in her left hip, and pain down her left lower extremity which began after a fall at work on September 4, 2016. Dr. Espinosa ordered a CT of the lumbar spine and an EMG. Both were interpreted as normal. Petitioner was referred to orthopedist, Dr. Wu, for left hip treatment. Petitioner underwent injections to the left hip with temporary relief.

Petitioner presented to Dr. DeGrange for a section 12 examination on June 8, 2017. Petitioner reported a slip and fall at work on a greasy floor on September 4, 2016. Petitioner described immediate pain in her left hip. She was treated in the emergency room and continued treatment for her lower back, left hip, and left leg. On exam, Petitioner complained of pain in the left lumbar spine, left buttock, and left hip area with pain into the left lateral thigh. Dr. DeGrange diagnosed Petitioner with a resolved lumbar strain and left hip contusion. He opined Petitioner was at MMI three months after the work accident, required no additional treatment, and could return to work full duty.

Petitioner treated with Dr. El-Ansary, a pain management specialist, from December 13, 2017, through May 23, 2019, with low back, left leg, and left hip pain. Petitioner indicated her pain began at work on September 4, 2016. Petitioner underwent multiple injections with Dr El-Ansary, including left SI injections, left piriformis muscle injections, trochanteric bursa injections, and bilateral L4/5 ESI injections for back and leg pain. Dr El-Ansary performed left and right medial branch blocks and radiofrequency ablations at L3/4, L4/5, and L5/S1 for bilateral lumbar pain and leg pain, which provided significant but temporary pain relief. Dr El-Ansary opined Petitioner's treatment was reasonable and necessary and her injuries were causally related to a traumatic fall. Specifically, Petitioner had ongoing symptoms that were not present before the work accident and she had a fracture/bone bruise on her MRI, which was indicative of a traumatic fall.

Petitioner presented to Dr. Rahman, a neurosurgeon, on January 23, 2018, for low back, left hip, and bilateral extremity pain following a fall at work on September 4, 2016. Dr. Rahman recommended an updated MRI which showed central stenosis at L4/5 and correlated with her symptoms. Petitioner also had pain and treatment to her cervical spine, which was not at issue in this case. Petitioner continued treatment with Dr. Rahman for low back pain that radiated into her bilateral hips and thighs. A third MRI showed degenerative changes and moderate foraminal encroachment on the right at L4/5. Dr. Rahman recommended L4/5 and L5/S1 decompressive laminectomy, which Petitioner did not wish to undergo. On October 23, 2018, Petitioner told Dr. Rahman she was involved in a motor vehicle accident and had increased cervical symptoms with continued pain in her lower back and legs. Dr. Rahman opined Petitioner's treatment and need for surgery was causally related to the September 4, 2016, work accident. The basis of his

opinion was that Petitioner reported no chronic lumbar or radicular symptoms before the work accident and had a change or worsening in these symptoms following the work accident.

Petitioner continued pain management treatment with Millenium Pain Clinic through December 28, 2022, with ongoing lumbar pain, left hip pain, bilateral extremity pain, more in the left than the right. Petitioner underwent multiple injections, medial branch blocks, and radiofrequency ablations, which provided significant but temporary relief.

B. Additional Information

Petitioner testified and the evidence supported she had minimal to no lumbar, left hip, left leg, or radicular pain prior to the September 4, 2016, work accident. Petitioner presented to the emergency room on September 1, 2011, with pain from her tailbone to her neck after a fall. Petitioner denied radiating leg pain and was discharged with no further treatment. Additionally, Petitioner presented to Crossing Healthcare on October 29, 2014, for low back and knee pain but denied radiating pain into her legs. Petitioner was prescribed medication and had no additional treatment until after the work accident.

Petitioner testified she applied and began receiving social security disability in 2018. She had not sought employment since that time.

Regarding her current condition of ill-being, Petitioner testified she had continued pain in her left hip and lumbar spine. She had numbness and tingling into her left leg. She had difficulty walking. She continued to take medication and apply heat. At the time of trial, Petitioner lived alone with two dogs.

Petitioner testified to various falls and a motor vehicle accident after the September 4, 2016 work accident. Following those accidents, Petitioner continued to have lumbar pain, left hip pain, and bilateral radicular leg pain, more significant in the left leg.

II. CONCLUSIONS OF LAW

A. Accident

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

The Commission views the evidence differently than the Arbitrator and concludes that

the evidence supports a finding Petitioner sustained an accident that arose out of and in the course of her employment. Petitioner's undisputed testimony was she slipped on oil which spilled on the floor while she was making donuts, which was part of her job duties. Petitioner testified she immediately experienced left sided lumbar, left hip, and left leg pain. She reported the incident to her manager, completed paperwork, and notified the on-call nurse. She testified she went home and applied ice/heat to her injuries. The evidence shows Petitioner presented to the emergency room two days after the work accident with pain in her left lumbar spine, left hip, and left leg consistent with her fall. She reported a fall at work two days prior. The medical records indicate she had been applying a heat pad for two days, but her pain persisted. Following her release from the emergency room, Petitioner continued to treat with multiple providers for her left hip and left lumbar pain. She consistently reported her symptoms began after a slip and fall at work on September 4, 2016.

Respondent admitted no evidence to refute Petitioner's testimony about the accident and her subsequent symptoms. Respondent's witness, Cathy Robertson, did not dispute any of Petitioner's testimony. Ms. Robertson testified she was notified of Petitioner's claim a few days after it occurred and had been involved in the claim since the beginning. Ms. Robertson testified she reviewed the claim documents the week before trial but could not recall the details. She did not bring any documents to trial.

The Commission recognizes Petitioner went to the emergency room on September 5, 2016, with a suspected cardiac emergency and failed to report the work accident, however, we do not find her failure to report the incident under those circumstances dispositive on the issue of accident. Accordingly, the Commission finds Petitioner's testimony and the medical records sufficiently proved an accident that arose out of and in the course of her employment and Respondent offered no evidence to rebut her testimony.

B. Causal Connection

The Commission next considers whether Petitioner proved a causal connection to her current condition of ill-being. 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. Ind Comm'n*, 93 Ill. 2d 59, 63-64. (1982). If a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration. The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been. *Schroeder v. Illinois Workers Compensation Commission*, 79 N.E. 3d 833, 839 (4th Dist. 2017).

The Commission finds Petitioner's bilateral lumbar pain, left lumbar radiculopathy, and left hip conditions are causally related to the work accident based on a chain of events analysis, and the opinions of Dr. El-Ansary and Dr. Rahman.

Prior to the work accident, Petitioner had minimal pain and treatment for lumbar spine and no history of symptoms or treatment to her left hip or for pain radiating down her left leg.

The medical records admitted into evidence show Petitioner treated for lumbar pain in 2011 and 2014 however, her treatment was limited to two evaluations, and she was released with medication. Petitioner had no regular or consistent treatment for her lumbar spine before the work accident. Petitioner had no injections or MRIs before the work accident. Petitioner never attended physical therapy for her low back or left hip before the work accident. Petitioner testified she had no complaints to her left hip, left leg, or lumbar spine in the one and half years before the work accident and she was able to bend, twist, and squat without difficulty.

Two days after the work accident, Petitioner presented to the emergency room with complaints of lumbar pain, left leg pain, and left hip pain. Her medical records show she had tenderness to palpation of the lumbar spine, left knee, and left hip, consistent with her testimony and mechanism of injury. Following her September 6, 2016, ER visit, Petitioner continued to experience significant low back pain and presented to her primary care provider with "crucial back pain" radiating into her left leg following a fall at work. Petitioner returned to the emergency room on November 4, 2016, with "severe low back pain that radiated into her left thigh and left knee since a fall at work in September."

Following her second emergency room visit, Petitioner consistently treated for pain in her lumbar spine and left hip radiating into her left leg. Petitioner consistently reported that her symptoms began after a fall at work in September 2016 to multiple providers including her primary care provider at Crossing Healthcare; Dr. Espinosa, neurosurgeon with SIU Healthcare; Dr. Wu, orthopedic surgeon; Dr. El-Ansary, pain management specialist; Dr. Rahman, neurosurgeon; and Dr. Degrange, Section 12 examiner. Petitioner consistently had positive exam findings, including trigger point spasms in the bilateral paraspinous muscles, positive straight leg test on the left side, positive Patrick's test bilaterally, positive thigh thrust test, and Fortin finger test, that were not documented before the work accident. Following the work accident, Petitioner had difficulty bending, twisting, squatting, and walking she did not have before the work accident.

Both Dr. El-Ansary and Dr. Rahman opined Petitioner's condition was causally related to her fall in September 2016. Dr. El-Ansary's initial patient questionnaire indicated Petitioner sustained a fall at work on September 4, 2016. Dr. El-Ansary testified Petitioner's left trochanteric bursitis, left sacroiliitis, lumbar pain, and lumbar radiculitis were related to a traumatic fall based on Petitioner's positive exam findings and MRI that correlated with her subjective complaints, Petitioner's positive response to the administered injections, and her lack of symptoms or treatment before the work accident. Additionally, Dr. El-Ansary testified Petitioner had evidence of a bone bruise on her January 20, 2017, and April 20, 2018, MRI, indicative of a traumatic fall. The Commission notes was no evidence of an intervening accident between September 4, 2016 and January 20, 2017 admitted at trial. Dr. Rahman also opined Petitioner's condition was related to the work incident based on Petitioner's worsening symptoms following the accident and her MRI findings of stenosis at L4/5.

Finally, there is no dispute Petitioner had various falls and accidents after the work accident. However, for an employer to be relieved of liability by virtue of an intervening cause, the intervening cause must completely break the causal chain between the original work-related injury and the ensuing condition." *Global Products, 392 Ill. App. 3d at 411.* As long as there is a

"but for" relationship between the work-related injury and subsequent condition of ill-being, the first employer remains liable. *Global Products, 392 Ill. App. 3d at 412. PAR Electric v. Illinois Workers' Compensation Commission, 2018 IL App (3d) 170656WC, P 63, 118 N.E.3d 681, 696* (Emphasis added). Petitioner immediately reported pain in her left lumbar spine, left hip, and down her left leg following the work accident and consistently treated those symptoms through 2022, when she was referred to a third neurosurgeon for ongoing pain in her lumbar spine and down her left leg. Despite the subsequent accidents, those symptoms remained present and consistent throughout her treatment. Accordingly, the Commission finds the causal chain was not broken.

C. Medical Expenses

The Commission also considers Petitioner's claimed medical expenses. The Commission orders Respondent to pay to the Petitioner, pursuant to Sections 8(a) and 8.2 of the Act, the medical expenses listed in Petitioner's Exhibit 10, except for expenses from Millenium Pain Clinic and Decatur Memorial Hospital incurred after August 8, 2019,

D. Temporary Total Disability

The Commission further considers Petitioner's claim for temporary total disability (TTD) benefits. Having reviewed the evidence, the Commission awards TTD from September 20, 2016, through September 26, 2016; October 4, 2016 through October 10, 2016; October 14, 2016 through October 15, 2016; December 29, 2016 through January 11, 2017; and February 7, 2017 through July 15, 2017 and temporary partial disability (TPD) benefits from January 12, 2017 through February 4, 2017. The Commission therefore orders Respondent to pay Petitioner the sum of $233.35 per week for a period of 26 2/7 weeks in temporary total disability benefits per Section 8(b) of the Act. Respondent will be given a credit for TTD and TPD previously paid.

E. Permanent Partial Disability

Lastly, the Commission considers Petitioner's claim for permanent partial disability (PPD) benefits. Petitioner requests a PPD award representing a 12.5% loss of use of the left leg for injuries Petitioner's left hip and 20% loss of use of the body as a whole for injuries to her lumbar spine. When considering PPD, the Commission considers the following factors: (i) the level of impairment contained within a permanent partial disability impairment report; (ii) the claimant's occupation; (iii) the claimant's age at the time of injury; (iv) the claimant's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. *See* 820 ILCS 305/8.1b(b) (West 2022). "[N]o single enumerated factor shall be the sole determinant of disability." *Id*. § 305/8.1b(b)(v).

Regarding factor (i), no permanent partial disability impairment report or opinion was submitted, and no weight should be given to this factor.

Regarding factor (ii), Petitioner was employed in the bakery department at the time of the accident and was able to return to work in her prior capacity until early 2017. She testified she had difficulty bending, twisting, and squatting after the work accident which made her job duties

more difficult. The Commission places moderate weight on this factor.

Regarding factor (iii), Petitioner was 49 years old at the time of the accident. Although she is currently receiving social security disability, if she returns to the work force, she will have to work with her ongoing deficits for several years. The Commission places some weight on this factor.

Regarding factor (iv), no evidence was presented of any loss of future earnings. The Commission places no weight on this factor.

Regarding factor (v), Petitioner testified without rebuttal regarding the ongoing pain and functional deficits in her left hip and lumbar spine. Petitioner was diagnosed with trochanteric bursitis and left sacroiliitis because of the work accident and received multiple injections to the left hip and piriformis muscle. Petitioner continued to have pain in her left hip. Petitioner also suffered lumbar pain with radiculopathy down the left leg after the work accident, which was treated with multiple injections, medial branch blocks, and radiofrequency ablations. A lumbar laminectomy and decompression at L4/5 and L5/S1 were recommended but Petitioner chose not to undergo surgery. At the time of trial, Petitioner continued to take medication and use ice/heat. She testified she continued to have difficulty bending, twisting, squatting, standing, and walking. She continued to have lumbar pain and left radicular symptoms. The Commission places great weight on this factor.

Based on the above factors, and the record taken as a whole, the Commission concludes that Petitioner sustained permanent partial disability to the extent of 10% loss of use of the left leg for injuries sustained to her left hip pursuant to Section 8(e)12 of the Act and 10% loss of use of the body as a whole for injuries sustained to Petitioner's lumbar spine pursuant to Section 8(d)2 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed on October 30, 2023, is reversed for the reasons stated above.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner sustained an accident on September 4, 2016, that arose out of and occurred in the course of employment.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner's current condition of ill-being is causally related to the accident.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner's reasonable, necessary, and causally related medical expenses, except for expenses from Millenium Pain Clinic and Decatur Memorial Hospital after August 8, 2019, pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall have credit for all amounts previously paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $233.35 per week commencing September 20, 2016 through September 26, 2016; October 4, 2016 through October 10, 2016; October 14, 2016 through October 15, 2016; December 29, 2016 through January 11, 2017; and February 7, 2017 through July 15, 2017, for a

period of 26 and 2/7th weeks in temporary total disability benefits per Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $177.45 per week commencing January 12, 2017 through February 4, 2017, for a period of 3 and 3/7th weeks in temporary partial disability (TPD) benefits per Section 8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $220.00 per week for a period of 21.5 weeks, as provided in Section 8(e)12 of the Act, for the injuries sustained caused a 10% loss of use of the left leg.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $220.00 per week for a period of 50 weeks, as provided in Section 8(d)2 of the Act, for the injuries sustained caused a 10% loss of use of the body as a whole.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $53,500.00 The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

MARCH 6, 2025

o: 1/16/25
MP/ns
060

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC005709
Case Name	Mark Smith v. Mach Mining, LLC
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0094
Number of Pages of Decision	21
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Casey VanWinkle
Respondent Attorney	Kenneth Werts, Julie Webb

DATE FILED: 3/6/2025

/s/ Raychel Wesley, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARK SMITH,

Petitioner,

vs. NO: 20 WC 05709

MACH MINING, LLC

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 occupational disease, nature and extent, legal error, evidentiary error, and §1(d) to §1(f) of the Occupational Diseases Act, 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 31, 2023 is hereby affirmed and adopted.

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

IT IS FURTHER ORDERED BY THE COMMISSION that 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 §19(f)(2) of the Act is applicable only when "the Commission shall have entered an award for the payment of money." 820 ILCS 305/19(f)(2). Based upon the denial of compensation herein, no bond for the removal of this cause to the Circuit Court is required. 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.

MARCH 6, 2025

/s/ *Raychel A. Wesley*

RAW/wde

O: 1/15/25

/s/ *Stephen J. Mathis*

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/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC005709
Case Name	Mark Smith, v. Mach Mining, LLC,
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	Kirk Caponi
Respondent Attorney	Kenneth Werts

DATE FILED: 10/31/2023

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

/s/Maureen Pulia, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MARK SMITH,
Employee/Petitioner

v.

MACH MINING, LLC,
Employer/Respondent

Case # **20** WC **5709**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Herrin**, on **10/4/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Whether petitioner proved timely disablement pursuant to Sections 1(e) and 1(f) of the Occupation Diseases Act.**

FINDINGS

On **11/17/17**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

In the year preceding the injury, Petitioner earned $**43,680.00**; the average weekly wage was $**840.00**.

On the date of accident, Petitioner was **59** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**00.00** for TTD, $**00.00** for TPD, $**00.00** for maintenance, and $**00.00** for other benefits, for a total credit of $**00.00**.

Respondent is entitled to a credit of $**00.00** under Section 8(j) of the Act.

ORDER

The petitioner has failed to prove by a preponderance of the evidence that he suffered from coal workers' pneumoconiosis, chronic bronchitis or any other occupational disease. The petitioner's claim for compensation is denied.

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

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

OCTOBER 31, 2023

Signature of Arbitrator

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 59 year old coal miner, alleges he sustained an occupational disease that arose out of and in the course of his employment by respondent 11/17/17. Petitioner was born on 9/11/58. He graduated from Herrin High School and obtained an Associates Degree in Industrial Technology from John Logan College.

Petitioner worked in the coal mines for about 32 years, with 21 years spent underground, and 11 years on the surface. Petitioner testified that while in the mines he was exposed to coal dust, rock dust, silica dust, roof bolting glue fumes, and diesel fumes. On 11/17/17 petitioner was a surface supply man and was still exposed to coal dust and float dust, and drove an end loader around.

Petitioner began working in the mines on 11/28/78 at Old Ben Coal. He worked as a laborer. His duties included rock dusting. Petitioner testified that rock dusting is pulverized lime stone that is spread around the mine walls, and cuts down the explosibility of the coal. He stated that he would hand toss and blow the dust with a hose, which created a lot of dust in the air. He also shoveled coal back onto the belt that had spilled off. After a year as a laborer, petitioner worked on the scoop job. This job involved hauling the equipment and supplies in and out of the mine to the working sections. Petitioner did this job for at least 10 years. During his time at Old Ben Coal he was laid off a few times. He remained until the mine shut down,

In February of 1999 he began working at American Coal as a laborer. He performed the same duties as he did at Old Ben Coal and was exposed to the same elements. Petitioner was laid off in September of 2017 due to a shut down.

After being laid off from American Coal in September of 2017 petitioner began working for Mach Mining. Petitioner only worked there for 5 days before quitting. Petitioner worked as a surface supply man. His duties included loading and unloading trucks, and taking supplies to the miners. Petitioner testified that he quit because he could not handle the bouncing around on the end loader.

Petitioner testified that he was exposed to coal dust on the surface. Petitioner testified that prior to working for respondent he began working for Lovisa Medial Transport and had already started transporting psych patients to the hospital. Petitioner testified that his breathing is not affected by this job. Petitioner still works for Lovisa Medical Transport 30-35 hours a week, and makes about $20.00/hour.

Petitioner testified that in early 2000 he began having breathing problems in the mine. He stated that he went to his primary care physician at that time and underwent a spirometry test. He testified that while he continued working in the mines his breathing remained the same. Petitioner stated that his breathing problems got worse after he left the mine. Petitioner testified that he was active in sports. He testified that he can walk

on level ground, and walks a 2 mile loop daily. He also testified that when he walks on the treadmill he can't do it like he used to. Currently, petitioner walks 2 miles on the treadmill every night, and tries to do it every morning for about 10-15 minutes. He also testified that in December of 2017 he was going to the gym every morning, but had to stop going when the gym shut down due to COVID in March of 2020. When he was at the gym he would walk on the treadmill and lift weights. He testified that he was there for about 30 minutes each morning. Petitioner stated that at home he uses a pull up bar, and does stretching and sit-ups. He stated that he has some shortness of breath when he is done. He also reported shortness of breath after he mows by hand his double lot. He testified that it takes 45 minutes to mow his lots with a self-propelled mower.

Petitioner testified he has no real hobbies. He stated that for recreation he watches a lot of sports on TV. Petitioner does not hunt or fish. He stated that he used to travel to Florida with a friend, but that friend passed away last year, and he has not traveled to Florida since.

Petitioner testified that he no longer drinks, and that he stopped smoking 15 years ago. Petitioner stated that he started smoking when he drank at the age of 30, and smoked about a pack a week. Petitioner testified that he has not talked about his breathing problems with his primary care physician, Dr. Mark Korte. Petitioner takes no medication except for a sleeping pill.

Petitioner testified that when he applied for work with respondent, he had a chest x-ray and physical on 11/8/17. He agreed that every 5 years he was in the mine he underwent NIOSH chest x-ray screening for black lung.

Dr. Istanbouly

On 10/21/21 petitioner was evaluated by Dr. Suhhail Istanbouly, at the request of his attorney. Dr. Istanbouly specializes in pulmonary, critical care and sleep medicine. He currently works at Hines VA in the Chicago area, but he has a satellite clinic at Southern Illinois. Dr. Istanbouly worked in Southern Illinois from April 2003 until April 2019. He also worked a number of years at the Black Lung Clinic in Southern Illinois. Dr. Istanbouly testified that between inpatient and outpatient he was taking care of coal miners on a daily basis so they made up roughly 10 to 20% of his practice. Dr. Istanbouly testified that he performs pulmonary function tests and interprets the same. He also interprets chest x-rays in the care and treatment of his patients. Dr. Istanbouly testified that some of his patients at Hines VA have occupational diseases of various sorts, particularly veterans who were exposed to smoke. He testified that those patients do not exceed five percent of his practice.

Petitioner reported that he was a coal miner for 39 years with 28 years being underground and 11 years on the surface. The last month of his coal mine employment was November 2017. In the last year of employment he was a hoisting engineer. This job required him to be on his feet most of the shift and required him to load and unload shuttles, shovel and lift heavy weights. Petitioner told Dr. Istanbouly he quit coal mining because the coal mine shut down. Petitioner denied chronic daily cough, but reported an intermittent and occasional cough, which had been going on for years. The cough was mild in intensity and sometimes productive with slight clear sputum. His cough was aggravated by irritating smells, including dust inhalation, cats and dog exposure and mowing the lawn. Petitioner reported mild exertional dyspnea, and that he would get short of breath by walking half a mile to one mile. Petitioner denied any worsening of his physical capacity over the prior year. Petitioner complained of a runny nose and post nasal drip, which was well controlled on cetirizine.

Dr. Istanbouly performed a Spirometry that was within normal range. Dr. Istanbouly testified that the chest x-ray petitioner had on 1/28/20, revealed mild interstitial changes more prominent in the mid and lower lung zones consistent with simple coal workers' pneumoconiosis with a profusion of 1/0 per the B-reader, Dr. Henry Smith. Petitioner's lung examination revealed good air entry bilaterally. Petitioner had no wheezing or rales. Dr. Istanbouly's assessment was simple coal workers' pneumoconiosis, early stage which was related to long history of coal dust inhalation. He also testified that there was a good correlation between petitioner's history of long term coal dust inhalation and his current respiratory symptoms, chronic intermittent cough with occasional sputum production and exertional dyspnea. Dr. Istanbouly was of the opinion that petitioner met the criteria for chronic bronchitis. Dr. Istanbouly was also of the opinion that long term coal dust inhalation was a significant contributor to petitioner's chronic bronchitis. Dr. Istanbouly believed petitioner suffers impairment in the function of his pulmonary system as a result of his chronic bronchitis and significant lung damage related to coal workers' pneumoconiosis. Dr. Istanbouly was of the opinion that as a result of his coal workers' pneumoconiosis and chronic bronchitis, petitioner could not have any further exposure to the environment of a coal mine without endangering his health.

Dr. Istanbouly testified that a miner can have radiographic abnormality of coal workers' pneumoconiosis on his chest x-ray but just not enough to be positive for coal workers' pneumoconiosis. He testified that a negative chest x-ray is not enough to rule out coal workers' pneumoconiosis. Dr. Istanbouly testified that it would be very unusual for a miner working 30 or 40 years in a mine to not have a single opacity of coal workers' pneumoconiosis on his x-ray.

Petitioner related to Dr. Istanbouly no past history of respiratory disease. Petitioner denied daily cough. Dr. Istanbouly noted that when petitioner coughed it would sometimes be productive. Dr. Istanbouly testified that for him to diagnose chronic bronchitis, he usually charts chronic daily cough in his reports. Petitioner was taking no breathing medications at the time of Dr. Istanbouly's examination and based upon the history he obtained, petitioner had not taken any in the past. Dr. Istanbouly testified that petitioner had a past medical history that was positive for allergic rhinitis and was taking Zyrtec to control symptoms. Dr. Istanbouly testified that petitioner left the coal mine at the time he did because the mine shut down. He did not relate to Dr. Istanbouly leaving the mine at the time he did due to an inability to perform his job duties or the diagnosis of respiratory disease. Petitioner related to Dr. Istanbouly mild exertional dyspnea. Dr. Istanbouly testified that there are causes for mild exertional dyspnea other than respiratory disease. Those causes would include heart disease and deconditioning. Dr. Istanbouly testified that he reviewed no treatment records regarding petitioner.

Dr. Istanbouly testified that with regard to the spirometry he performed on petitioner there was no indication of restriction. Dr. Istanbouly testified that he could not rule out restrictive defect based on petitioner's spirometry because they were close to low normal. Dr. Istanbouly testified that it was possible that if he had measured total lung capacity it would show restrictive defect. He testified that he did not measure Petitioner's total lung capacity. Dr. Istanbouly testified that the range of predicted for petitioner's FEV1/FVC ratio was 65.4% to 84.7%. Petitioner's FEV1/FVC ratio was 74%. Dr. Istanbouly testified that it was 98% of predicted. Dr. Istanbouly testified that there was no evidence of obstruction in petitioner per the ATS guidelines.

Dr. Istanbouly testified that when he met with petitioner, he was presented with a chest x-ray dated January 28, 2020, along with the interpretation of same by Dr. Henry Smith. Dr. Istanbouly testified that he saw interstitial changes throughout all lung zones on the film he reviewed. Dr. Istanbouly testified that he did not see any other chest imaging or interpretations of chest imaging other than the chest x-ray of January 28, 2020, and the interpretation of the study by Dr. Smith. Dr. Istanbouly testified that he is not an A or B-reader of films. Dr. Istanbouly does not provide profusion ratings on the films he interprets for black lung. Dr. Istanbouly testified that when he interprets a study for black lung, he determines whether it is positive or negative for same, and if it is positive, he characterizes what he sees as either mild or early pneumoconiosis, moderate or severe. Dr. Istanbouly opined that petitioner has mild or early coal workers' pneumoconiosis and meets the criteria for chronic bronchitis, and related them both to long term coal dust inhalation due to his job in the coal mine. Dr. Istanbouly was of the opinion that petitioner suffers from significant lung damage related to coal workers' pneumoconiosis. Dr. Istanbouly testified that he could not say whether the chest x-ray had a profusion of 1/0 or

0/1. Dr. Istanbouly did not do a side by side reading of petitioner's film with the standard ILO films. Dr. Istanbouly's sole assessment for petitioner in his report was simple coal workers' pneumoconiosis. Dr. Istanbouly testified one must be a susceptible host to develop coal workers' pneumoconiosis and that not all coal miners develop coal workers' pneumoconiosis.

Dr. Henry K. Smith

On 2/9/20 Dr. Henry K, Smith, a board certified radiologist and B-Reader, interpreted petitioner's Grade 1 chest x-ray performed 1/28/20, at the request of the petitioner's attorney. Dr. Smith found interstitial fibrosis of classification p/p, mid and lower zones involved bilaterally of a profusion 1/0. He noted on chest wall plaques of calcifications. His impression was simple coal workers' pneumoconiosis with small opacities p/p, mid and lower zones involved of profusion 1/0.

NIOSH -rays

Respondent offered into evidence petitioner's x-ray interpretations from NIOSH. On 3/16/79 petitioner's chest x-ray was interpreted by an A-reader as being negative. On 6/11/84 petitioner's chest x-ray was interpreted by an A-reader as being negative. On 1/27/99 petitioner's chest x-ray was interpreted by Dr. H.T. Youssef, an A-reader, as being negative. On 6/20/20 petitioner's x-ray was interpreted by a B-reader as being negative. On 9/13/06 petitioner's chest x-ray was interpreted by a B-reader as having no parenchymal abnormalities consistent with pneumoconiosis. On 5/3/07 petitioner's chest x-ray was interpreted by two B-readers as not having any parenchymal abnormalities consistent with pneumoconiosis. On 2/18/11 petitioner's chest x-ray was interpreted by Dr. Youssef and a B-reader as having no parenchymal abnormalities consistent with pneumoconiosis. On 11/10/15 petitioner's chest x-ray was interpreted by Dr. Youssef and a B-reader as having no classifiable parenchymal abnormalities. On 11/8/17 petitioner's chest x-ray was interpreted by Dr. Youssef and by a B-reader as having no classifiable parenchymal abnormalities.

Medical Records of Stat Care

A pulmonary function test dated 11/30/21 revealed that petitioner's diffusion capacity was normal.

Medical Records of Logan Primary

Respondent offered into evidence petitioner's records form Logan Primary Care. On 1/9/03 petitioner reported chest pain. The 1/9/03 record indicated that petitioner smoked 2-3 packs of cigarettes per week, but

also indicated that he smoked one pack of cigarettes a week. An examination of the chest on 1/9/03 revealed the lungs were clear to auscultation. On 1/10/03 petitioner underwent a cardiolite stress test that revealed normal myocardial profusion with no evidence of reversible ischemia or previous infarction. On 5/2/03 he reported a sore throat, and his chest was congested. A chest examination revealed crackles in the left base, and a chest x-ray performed that day was interpreted as normal. He was assessed with pneumonia. On 11/13/06 an examination of the chest revealed the lungs clear to auscultation. He was assessed with pleurisy. On 10/19/09 and 7/7/11 a chest examination showed his lungs were clear to auscultation.

On 1/16/12 petitioner again reported a sore throat, congestion, cough and sneezing. He reported a smoking history. His lungs were clear to auscultation, and he was assessed with an upper respiratory infection. On 2/24/12 a chest exam revealed that his lungs were clear to auscultation with no adventitious sounds, and a CT of the pelvis showed clear lung bases. On 8/19/13 petitioner presented with an upper respiratory infection and tobacco abuse disorder. On 9/17/13 he also presented with an upper respiratory infection. His assessment was allergic rhinitis environmental and acute sinusitis. On 6/12/14 petitioner was seen for tightness in his left upper chest and shortness of breath. His lungs were clear to auscultation with no adventitious sounds. His chest x-ray was normal. He was assessed with dyspnea and restrictive lung disease. A stress test on 6/17/14 was interpreted as negative ECG response to exercise with normal myocardial perfusion without stress induced ischemia. Petitioner achieved 14.3 METS of physical activity. On 12/12/14 petitioner was noted suffered from tobacco use disorder and restrictive lung disease. A chest examination revealed the lungs were clear to auscultation with no adventitious sounds.

On 7/26/15 an exam of his chest revealed that his lungs were clear to auscultation with no adventitious sounds. Petitioner denied any shortness of breath. An examination of his chest revealed the lungs clear to auscultation with no adventitious sounds. On 3/10/16 petitioner had no cough, and denied any shortness of breath. His major problems were identified as tobacco abuse disorder and restrictive lung disease. An examination of the chest revealed the lungs were clear to auscultation. On 4/15/16 petitioner was diagnosed with an upper respiratory infection, sore throat and cough for 2-3 days. He denied shortness of breath. An examination of the chest revealed the lungs clear to auscultation. He was assessed with an acute upper respiratory infection. At his annual examination on 5/5/16 it was noted that petitioner exercised three to four times a week and was trying to stay healthy. His major problems were tobacco abuse disorder and restrictive lung disease. An exam of the chest revealed the lungs clear to auscultation with no adventitious sounds. He was assessed with rhinitis and hyperlipidemia. It was noted that petitioner was not a current smoker. On 4/11/17 petitioner complained of a cough, congestion, runny nose and sore throat for 3 days. His past medical history

was positive for allergies and sinusitis. An examination of the chest revealed the lungs clear to auscultation. He was assessed with acute sinusitis and cough. On 12/21/17 it was noted that he was recently laid off, and that he went to the gym every day but was not near as active as he was at the mine. A chest examination revealed normal effort and breath sounds with no adventitious sounds. On 9/13/18 petitioner had his annual examination and his chest examination revealed normal effort and breath sounds. His assessment included restrictive lung disease and seasonal allergic rhinitis due to pollen. On 10/25/18 petitioner reported an upper respiratory infection for the past week. His symptoms included congestion, cough, facial pain and rhinorrhea. The cough was nonproductive. Petitioner was noted to be a former smoker. A chest examination revealed normal effort and breath sounds. On 10/16/19 petitioner had another annual exam. A chest examination revealed normal effort and breath sounds.

At his next annual exam on 10/21/20 his pulmonary examination pulmonary effort and breath sounds were normal. On 1/3/22 petitioner called his physician and reported that he tested positive for COVID on a home test. On 5/12/22 he presented with complaints of upper respiratory infection with cough and chest congestion for the last week, that had waxed and waned. He had a history of allergies and sinusitis. His cough was productive. Petitioner was noted to be a former smoker. Past medical history was positive for seasonal allergies. A chest examination of the chest revealed normal effort and breath sounds. He was assessed with a cough, acute non-recurrent maxillary sinusitis and post nasal drip. On 7/28/22 petitioner complained of an upper respiratory infection that started 7 days ago, and was getting worse. He had no coughing. An examination of his respiratory system was negative for cough and shortness of breath or wheeze. An examination of the chest revealed normal effort with normal breath sounds and no adventitious sounds. He was assessed with an acute non-recurrent sinusitis. On 10/22/21 petitioner had his annual exam. He was doing great overall. He related a lot of nasal dripping in the morning. Zyrtec helped some. His examination of the chest revealed normal effort and breath sounds. On 10/24/22 petitioner was noted to be doing well overall, but had some sinus congestion, pressure and drainage. His chest examination revealed normal effort and breath sounds. His assessment was a well adult exam.

Medical Records of Harrisburg Medical Center

Respondent offered into evidence the medical records of Harrisburg Medical Center. On 2/18/11 petitioner underwent a screening chest x-ray while working at American Coal. The chest x-ray was interpreted as revealing no evidence for pneumoconiosis. Petitioner underwent another chest x-ray on 11/10/15. It was interpreted by Dr. Youssef as revealing mild bibasilar subsegmental atelectasis. There was no mention of any

pneumoconiosis. On 10/12/21 petitioner was assessed with simple coal workers' pneumoconiosis (early stage) related to long history of coal dust inhalation. It was further noted that there was a good correlation between the petitioner's history of long term coal dust inhalation and his current respiratory systems of chronic intermittent cough, occasional sputum production and external dyspnea. It was noted that it was advisable for petitioner to avoid any further coal dust inhalation to prevent the progression of his lung damage and respiratory systems.

Dr. Cristopher Meyer

Dr. Christopher Meyer, a board certified radiologist since 1992, and B-Reader, reviewed chest x-rays for the petitioner at the request of respondent. Dr. Meyer reviewed a chest x-rays dated 11/10/15, 11/8/17, and 1/28/20. He found the x-rays to be of diagnostic quality. Dr. Meyer was of the opinion that the chest x-ray date 11/0/15 was quality 2 due to under inflation; that the chest x-ray dated 11/8/17 was quality 2 due to overlap of the shoulder blades; that the chest x-ray dated 1/28/20 was quality 1. Dr. Meyer interpreted all of the films as having no radiographic evidence of coal workers' pneumoconiosis. He was of the opinion that the 11/10/15 chest x-ray had low lung volumes with plate atelectasis at the left lung base, and the 11/8/17 and 1/28/20 were normal. Dr. Meyer was of the opinion that pneumoconiosis is a chronic process, and that often times early films may be fairly subtle and later films may be more severe or there may be no changes over time.

Dr. Meyer was asked to take the B-reading exam by Dr. Jerome Wiot who was part of the original committee that designed the teaching course which is called the B-reader program. Dr. Meyer testified that there are several ways to study for the B-reader examination. He testified that there is a course module that contains a whole series of films that NIOSH will send or the American College of Radiology runs a B-reading course. Dr. Meyer has participated in the course previously in studying for the examination and was recently asked to have a more active academic role in creating the new syllabus, and designing the new B-reader exam. Dr. Meyer is currently co-director of the ACR B-reader course. He testified that as a member of the ACR Pneumoconiosis Task Force, he helped complete a new syllabus for the course as well as the test that was delivered to NIOSH in 2017.

Dr. Meyer testified that the B-reading training course is a weekend training course in which there are a series of lectures describing the B-reading classification system. He testified that the old certifying exam was six hours long with 120 chest x-rays to be categorized. The pass rate for that examination ran roughly 60%. The current exam is 24 multiple choice questions and 72 cases in five hours. Dr. Meyer testified that generally radiologists have about 10% higher pass rate than other specialties. In Dr. Meyer's opinion radiologists have a

better sense of what the variation of normal is. Dr. Meyer testified that one of the most important parts of the B-reading training and examination is making the distinction between a film with profusion of 0/1 which is a normal examination from 1/0 which is an almost normal but slightly abnormal examination. Dr. Meyer testified that making that distinction is a critical component of the B-reader examination and is a point of emphasis in the B-reading course as well.

Dr. Meyer was of the opinion that coal workers' pneumoconiosis is characteristically described as small round opacities. Coal workers' pneumoconiosis is typically an upper lung zone predominant process. Idiopathic pulmonary fibrosis or asbestosis is a basilar or linear process. The last component of the interpretation is the extent of the lung involvement or so-called profusion. Dr. Meyer testified that very rarely will opacities be found in the mild and lower lung zones and not the upper lung zones.

Dr. Meyer testified that when he wants to determine the existence of lung disease, the gold standard is pathologic review of the tissue itself rather than radiology. Dr. Meyer testified that when he does B-readings, he just wants to look at the film and answer the simple question: Is there anything on there that is consistent with the abnormalities of coal workers' pneumoconiosis. He testified that his assumption when he is asked to do a B-reading is that the worker has an appropriate exposure history to warrant having the chest x-ray. Dr. Meyer testified that part of trying to figure out whether or not there is an abnormality in the lung is recognizing the large spectrum of normal which is why someone like him spends his entire career as a chest radiologist devoted to looking at chest radiographs day in and day out to establish that spectrum of normal. Dr. Meyer testified that on average he performs 150 to 250 B-readings per month. Depending on the month, he reads between 10 and 20 CT scans for the purpose of determining the presence, absence or severity of an occupational lung disease.

Dr. Meyer testified that if he reads an x-ray as positive and the worker had a sufficient history to cause coal workers' pneumoconiosis that would warrant a finding of coal workers' pneumoconiosis. He testified that if he finds a chest x-ray negative that would not necessarily rule out that the miner may have pneumoconiosis pathologically. Dr. Meyer testified that it would be fair to say that all long term coal miners are going to come out with some dust deposit trapped in their lungs, however, the majority of those will not have changes in their lungs that qualify for coal workers' pneumoconiosis. Dr. Meyer testified that it is not possible to have coal workers' pneumoconiosis without having a tissue reaction to the coal dust. In category 1 pneumoconiosis there would be some change in the function of the lung at the very site of the tissue reaction which probably could not be measured. Dr. Meyer testified that simple pneumoconiosis typically will not progress once exposure ceases. Dr. Meyer testified that the macule of coal workers' pneumoconiosis is a permanent abnormality, that can

progress either by the individual macule becoming larger itself or by more coal dust or mixed dust that is trapped in the lungs causing additional macules or the macules coalescing. Dr. Meyer was of the opinion that if a person has coal worker's pneumoconiosis at any time in their life, inasmuch as the only thing causes coal workers' pneumoconiosis is coal mine exposure, it would be true that they probably had that coal workers' pneumoconiosis at some level when they left the mine.

Dr. David Rosenberg

Dr. David Rosenberg, a board certified internist since 1977, did a pulmonary fellowship at the National Institute of Health in Bethesda, Maryland. Following that he received his board certification in pulmonary disease in 1980, his board certification in occupational medicine in 1995, and his B-Reader certification in July of 2000, conducted a review of petitioner's medical records and chest x-rays on 3/29/22. Dr. Rosenberg is a member of the American Thoracic Society and American College of Chest Physicians, and has lectured on interstitial disease, chronic obstructive lung disease, pulmonary stress testing, pulmonary function testing, exercise testing and occupational lung disease. Dr. Rosenberg has black lung patients in his practice.

Dr. Rosenberg reviewed petitioner's chest x-rays dated 11/10/15, 11/8/17, and 1/28/20. Dr. Rosenberg was of the opinion that all the films were considered 0/0 profusion without any evidence of parenchymal changes of pneumoconiosis. He was of the opinion that the 2015 study revealed slight atelectasis in the left costophrenic angle. Dr. Rosenberg testified how he performs a proper reading of a chest x-ray for pneumoconiosis. He noted that if there are any large opacities he gauges the opacities by comparing them side by side with the standard ILO x-rays. He stated that he performed that process in petitioner's case.

Dr. Rosenberg testified that a 0/1 profusion is considered a negative x-ray. For a film to be positive for pneumoconiosis, it has to be a profusion of 1/0 or higher. Dr. Rosenberg testified that all B-readers or A-readers know what a profusion of 1/0 means. Dr. Rosenberg testified that he did not see emphysema on petitioner's chest x-rays. He testified that none of the A or B-readers who looked at petitioner's films saw emphysema because Section 4 which is where the reader marks other abnormalities was not marked in petitioner's case.

Dr. Rosenberg testified that it is unlikely for coal workers' pneumoconiosis to progress once the exposure ceases. Dr. Rosenberg agrees with the American Thoracic Society that an older worker with a mild pneumoconiosis may be at low risk for working in the mine at currently permissible dust level until he reaches

retirement age. Dr. Rosenberg testified that a cough is not considered an objective determinant of pulmonary impairment. Dr. Rosenberg testified that if one wants to know whether an individual suffers from impairment in respiratory function, one looks to valid pulmonary function test results to determine same. Dr. Rosenberg is familiar with the AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition, Chapter 5, The Pulmonary System, and was of the opinion that chest imaging under the Guides is not a factor, let alone a key factor, in the assessment of pulmonary impairment. Dr. Rosenberg agrees with the Guides that the correlation of chest x-ray interpretations and physiologic measures of impairment is poor.

Dr. Rosenberg testified that the history petitioner provided to Dr. Istanbouly where he denied chronic daily cough but related occasional cough, sometimes productive, was not sufficient to meet the diagnosis of chronic bronchitis. Dr. Rosenberg testified that the treatment records he reviewed did not contain the diagnosis of chronic bronchitis. Dr. Rosenberg testified that an individual needs to be a susceptible host to develop coal workers' pneumoconiosis. Dr. Rosenberg testified that a majority of coal miners do not develop coal workers' pneumoconiosis. Dr. Rosenberg testified that if an individual is not a susceptible host, the duration or intensity of the exposure does not have any significance in terms of the development of coal workers' pneumoconiosis. Dr. Rosenberg testified that he reviewed A and B-readings from NIOSH for 13 different chest x-rays of petitioner spanning from January 1999 through November 2017, and every single film that was interpreted by NIOSH A and B-readers was given a 0/0 profusion.

Dr. Rosenberg testified that the results from the spirometry he performed on petitioner ruled out the presence of obstruction. Dr. Rosenberg testified that the medical records of petitioner that he reviewed contained the diagnosis of restriction. He testified that in looking through the medical records for petitioner the diagnosis does not appear to have been based upon lung volume testing. Dr. Rosenberg was not sure what the diagnosis was based on. Dr. Rosenberg testified that the lung volume testing is the gold standard to determine whether a restriction exists. Petitioner's lung volume was measured at the testing performed at StatCare on 11/30/21, and his total lung capacity was 90% which ruled out the presence of restriction in petitioner. Dr. Rosenberg testified that there is not any clinical significance to subradiographic pneumoconiosis. Petitioner underwent diffusion capacity testing at StatCare and his diffusion capacity was 82%, which is normal. Dr. Rosenberg testified that the diffusion capacity testing results would indicate that should subradiographic pneumoconiosis be present in petitioner, it is not of any clinical significance. Dr. Rosenberg testified that based upon the objective testing performed on petitioner, he would be capable of heavy manual labor from a respiratory standpoint.

Dr. Rosenberg testified that petitioner underwent a stress test on 6/17/14, and petitioner achieved a MET level of 14.3 METs. Dr. Rosenberg testified that this indicated that petitioner was able to achieve a very high workload. Dr. Rosenberg testified that this supports his conclusion that petitioner had no significant impairment in his physical capacity.

Dr. Rosenberg noted that petitioner has had intermittent respiratory infections over the years for which he has been treated. He was reported to have a slight restriction. However, his FVC was greater than the lower limit of normal and he has no evidence of exercise limitations with a normal exercise test in the past. Dr. Rosenberg testified that petitioner does not have evidence of chronic cough, sputum production or chronic bronchitis. Dr. Rosenberg testified that petitioner does not have chronic bronchitis, but rather intermittent and acute cough and sputum production over the years related to respiratory tract infections. Petitioner is not disabled from a pulmonary perspective in performing his previous coal mine work. Petitioner does not have any pneumoconiosis or respiratory disorder developing consequent to his employment in the coal mines.

Dr. Rosenberg testified that a tissue reaction to the trapped coal mine dust is required either in the airways or in the parenchyma to have coal workers' pneumoconiosis. He testified that this tissue reaction can be called scarring or fibrosis. Dr. Rosenberg testified that it is possible that the scar tissue of coal workers' pneumoconiosis may not work correctly, but most patients with simple disease have preserved lung function.

Dr. Rosenberg testified that for someone who has a category 1 pneumoconiosis, he would not anticipate there being a restriction due to same. Dr. Rosenberg testified that the spirometry performed by Dr. Istanbouly would place petitioner in Class 0 impairment per the AMA Guides. He testified that he would attribute the across the board decline in spirometry just five weeks later at StatCare to effort and test performance. He testified that same would not be related to coal workers' pneumoconiosis, which is a slow developing chronic process. Dr. Rosenberg testified that the chest x-ray that was taken by NIOSH on 11/8/17, was performed just nine days before petitioner retired from the coal mine. Dr. Rosenberg testified that it would be very unlikely that petitioner would develop pneumoconiosis in nine days if he had not done so throughout his coal mining career. However, he did admit that a person can have coal worker's pneumoconiosis with PFTs in the normal range. He further testified that it is possible to have radiographically significant coal workers' pneumoconiosis yet have normal pulmonary function tests, normal blood gases, normal physical examination of the chest, and in fact no symptoms. Dr. Rosenberg was of the opinion other exposures in the environment of the coal mine that can cause injury to the lung include silica and diesel fumes.

C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

During the course of his employment, and afterwards, petitioner underwent 11 chest x-rays from 3/16/79 through 11/8/17 that were read by B-Readers. Ten of them were performed by NIOSH B-Readers and all were found to be negative and/or without any classifiable parenchymal abnormalities. The last chest x-ray taken by NIOSH was nine days before petitioner retired from the coal mine. Dr. Rosenberg testified that it would be very unlikely that petitioner would develop pneumoconiosis in nine days if he had not done so throughout his coal mining career. The chest x-rays performed 11/10/15 and 11/8/17 were also reviewed by Dr. Meyer and Dr. Rosenberg who found to contain no radiographic evidence of coal workers' pneumoconiosis. Petitioner also underwent a chest x-ray on 11/28/20 that were reviewed and interpreted by B-Readers Drs. Meyer, Rosenberg, and Smith. Dr. Meyer and Dr. Rosenberg found no radiographic evidence of coal workers' pneumoconiosis. The only B-Reader to interpret any of the 11 chest x-rays as positive for coal workers' pneumoconiosis was Dr. Smith who found interstitial fibrosis of classification p/p, mid and lower zones involved bilaterally of a profusion 1/0. Dr. Istanbouly, who is not an A or B Reader also reviewed the chest x-ray of 1/28/20 and saw interstitial changes throughout all lung zones on the film he reviewed.

Dr. Rosenberg testified that profusion tells the reader the intensity of the findings of opacities in the lungs and is the measure by which determination is made as to whether or not the x-ray is positive or negative for pneumoconiosis. Dr. Istanbouly did not follow this protocol and did not know the profusion of the film that he reviewed.

Dr. Meyer testified to the training and examination required to become a B-reader. Dr. Istanbouly is not an A or B-reader of films. Although one does not have to be an A or B-reader to interpret films for the presence of coal workers' pneumoconiosis, such certification lends credibility to a physician's interpretation. Dr. Istanbouly testified that when he interprets a film for black lung, he determines whether it is positive or negative and if it is positive, he classifies it as mild, moderate or severe. He classified what he saw on petitioner's chest x-ray as early or mild pneumoconiosis. Dr. Istanbouly could not say that the chest x-ray that he reviewed had a profusion of 1/0 or 0/1. Dr. Rosenberg testified that the use of profusion ratings avoids imprecise descriptive terms of what is seen on a chest x-ray such as early or mild pneumoconiosis. He testified that what mild or early pneumoconiosis means to one person may not be the same as what it means to another. He testified that all B-readers or A-readers know what a profusion of 1/0 means. Therefore, the arbitrator finds Dr. Istanbouly's interpretation of petitioner's 1/28/20 chest x-ray less than persuasive.

Dr. Smith interpreted the chest x-ray of 1/28/20, as positive for pneumoconiosis of profusion 1/0 with p/p opacities in the bilateral mid and lower lung zones. Dr. Smith found no opacities in the upper lung zones according to his B-reading form. Drs. Meyer and Rosenberg interpreted the same chest x-ray as negative for pneumoconiosis. Dr. Meyer testified that coal workers' pneumoconiosis is typically an upper lung zone predominant process and very rarely is coal workers' pneumoconiosis found in the mid and lower lung zones and not in the upper lung zones. Based on the above, the arbitrator finds Dr. Smith's opinions not very persuasive given that they are not consistent with the general presentation and progression of coal workers' pneumoconiosis.

Drs. Meyer and Rosenberg interpreted the chest x-rays dated 11/10/15 and 11/8/17, as negative for pneumoconiosis. Dr. Meyer testified that it is of value to have serial chest x-rays because pneumoconiosis is a chronic process. He testified that being able to see multiple images over a series of years allows the reader to decide what is acute and what is chronic. On petitioner's chest x-ray of 11/15/15, Dr. Meyer and Dr. Rosenberg noted plate atelectasis in the left lung base. Dr. Meyer testified that the 11/8/17 and 1/28/20 chest x-rays were clear. He described subsegmental atelectasis as a tiny band where the lung has not completely expanded when the individual took a breath and so there is a little line of volume loss in that location. Same was not present on the later chest x-rays.

The Arbitrator finds the opinions of Dr. Meyer to be more persuasive that Dr. Smith given that Dr. Meyer is not only a certified B-reader, but he also served on the ACR Pneumoconiosis Task Force which completed a new syllabus for the B-reading course as well as the test that was delivered to NIOSH in 2017 to be used for certification as a B-reader. Dr. Meyer is currently co-director of the ACR B-reader course. Based on the B-readings by Drs. Meyer and Rosenberg which are supported by the NIOSH interpretations, the Arbitrator finds that petitioner does not suffer from coal workers' pneumoconiosis.

The Arbitrator notes the testimony of Drs. Meyer and Rosenberg that a negative chest x-ray would not rule out that Petitioner could have coal workers' pneumoconiosis pathologically. The Arbitrator finds that such testimony is not the same as saying that petitioner in fact suffers from the disease. Woolard v. The American Coal Co., 21 IWCC 0154, p. 17. It is not respondent's duty to produce evidence that petitioner did not have coal workers' pneumoconiosis. Rather the issue was whether petitioner has proven that he does. Quinn v. The American Coal Co., 20 IWCC 0326.

Dr. Istanbouly testified that petitioner met the criteria for chronic bronchitis. He testified that petitioner reported an intermittent and occasional cough which had been going on for years. The cough was sometimes productive of white clear sputum. Dr. Rosenberg testified that the history provided to Dr. Istanbouly by petitioner wherein he denied chronic daily cough but related an occasional cough, sometimes productive, was not sufficient to meet the diagnosis of chronic bronchitis. Dr. Rosenberg testified that the treatment records he reviewed did not contain the diagnosis of chronic bronchitis. Dr. Rosenberg testified that petitioner had intermittent and acute cough and sputum production over the years related to respiratory tract infections. Dr. Rosenberg testified that the medical records he reviewed contained the diagnosis of restriction. Dr. Rosenberg did not see anything in the medical records for petitioner that would support the diagnosis of a restriction. Dr. Rosenberg testified that the lung volumes measured at the testing performed at StatCare ruled out the presence of restriction in petitioner. Dr. Istanbouly's spirometry testing of petitioner was also normal. Dr. Rosenberg testified that to develop a restriction due to pneumoconiosis one would generally have to have high grade profusion changes of 3/3 or complicated disease. He testified that generally restriction is not present with any degree of simple coal workers' pneumoconiosis. He testified that for someone who has a category 1 pneumoconiosis, he would not anticipate there being a restriction due to same. Having reviewed the medical records from Logan Primary from 1/9/03 through 10/24/22 the arbitrator finds the findings in those records consistent with Dr. Rosenberg's opinions, and therefore concludes that petitioner did not suffer from chronic bronchitis or a restriction related to the exposures in his employment with respondent.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner has failed to prove by a preponderance of the evidence that he suffered from coal workers' pneumoconiosis, chronic bronchitis or any other occupational disease.

L. WHAT IS THE NATURE AND EXTENT OF THE INJURIES?

O. DID PETITIONER PROVIDE TIMELY DISABLEMENT PURSUANT TO SECTIONS 1(e) AND 1(f) OF THE OCCUPATIONAL DISEASES ACT?

Having found the petitioner has failed to prove by a preponderance of the evidence that he suffered from coal workers' pneumoconiosis, chronic bronchitis or any other occupational disease the arbitrator finds these remaining issues moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC037271
Case Name	Debra McNeil v. Village of Robbins
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0095
Number of Pages of Decision	22
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Ardwin Boyer
Respondent Attorney	Nicole Breslau

DATE FILED: 3/7/2025

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DEBRA MCNEIL,

Petitioner,

vs. NO: 19 WC 37271

VILLAGE OF ROBBINS,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission affirms the Arbitrator's Decision finding causal connection between the work accident and the current condition of ill-being of Petitioner's right ankle/foot. However, the Commission additionally finds that the chronic regional pain syndrome ("CRPS") in Petitioner's right foot/ankle initially brought up by Dr. Lee, and later diagnosed by Drs. Primus, Murtaza, and Noren, is also causally connected to Petitioner's work accident of December 16, 2019. (Px1, Px3, Rx3, Rx4)

Further, the Commission reverses the Arbitrator's Decision denying causal connection between the work accident and Petitioner's lumbar spine condition. The Commission finds that 1) Petitioner had no prior back issues prior to the December 16, 2019 work accident; 2) Petitioner credibly testified that she fell onto her back at the time of the accident (T. 35); 3) Drs. Primus and Robinson's causation opinions regarding the low back were more persuasive than those of Dr. Mohan; and 4) Petitioner immediately began complaining of low back problems once her non-weightbearing status was lifted and Petitioner demonstrated an altered gait as observed by both her treating providers and noted during the July 22, 2020 Section 12 examination with Dr. Mohan (Rx2). Furthermore, having found causal connection between the work accident and lumbar spine condition, the Commission reverses the Arbitrator's denial of medical expenses related to treatment of the low back condition.

FINDINGS OF FACT

Petitioner testified that while she was going to physical therapy ("PT") she noticed an issue with her back when the therapist tried to get her out of the wheelchair to get her walking again. (T. 44) She said she noticed that the pain was constantly there. (T. 47) Petitioner testified her first complaint of back pain would be in the records. (T. 94) Although many of the PT notes reference numbness, swelling and tingling, as well as a lot of pain with weight bearing activities (Px1), it is not until the PT note of May 12, 2020 when she reports pain in the lumbar spine and that she had been wearing a back brace. (Px1) Dr. Primus' notes of May 13, 2020 indicate that the Petitioner has lower back pain with overcompensation on the left side. (Px1) In addition to noting the deconditioning, Dr. Primus noted at the June 9, 2020 visit that Petitioner's lower back pain was severely limiting her progress in therapy for the right ankle, but that she had been sedentary in a wheelchair for several months and her therapy was delayed for at least 2 months due to COVID and she developed deconditioning due to this which led to the low back pain. (Px1) At that same visit Dr. Primus offered a causation opinion that the low back pain was causally connected to the work injury of December 16, 2019. (Px1)

Petitioner has no history of back problems prior to the December 16, 2019 work accident. From May of 2020 through July of 2023, Petitioner had continuous and consistent complaints of low back pain. (Px1, Rx3, Rx4) Petitioner underwent a Section 12 examination with Dr. Mohan on July 22, 2020 who noted her significant antalgic gait with placing weight on the right lower extremity, but opined that she had a positive Waddell's sign with regard to the low back. He ultimately opined that based on her lumbar spine she could return to work full duty, without restrictions and that she needed no treatment to her low back at that time. (Rx2) In the August 6, 2020 Section 12 examination with Dr. Lee, Dr. Lee did not offer a causation opinion regarding the low back, but did opine that her back condition was causing her problems with progression as to her right lower extremity. (Rx3)

On October 15, 2020, Petitioner had an abnormal EMG study which showed evidence of an L5-S1 radiculopathy. (Px1) When Petitioner saw Dr. Coats on November 5, 2020, he read her lumbar MRI as showing L4-5 disc desiccation and bulge and a smaller bulge at L3-4. (Px1)

Petitioner returned to Dr. Lee on September 22, 2021. Dr. Lee opined that Petitioner was continuing to have low back pain with radiation into her right lower extremity although he did not

comment on causation or potential need for treatment in regard to her lower back. He did not feel Petitioner was at maximum medical improvement ("MMI") for her right ankle and recommended restrictions which he indicated might be permanent. He also recommended consideration for a pain management consultation. (Rx3)

On July 28, 2022, Dr. Primus addressed Petitioner's lower back at her office visit. He felt Petitioner's complaints were most consistent with lumbar radiculopathy after back sprain/contusion following a direct fall. He opined that a lot of her pain and nerve type symptoms from her right ankle injury and treatments may be related to or compounded by her spine condition. (Px1)

At the September 15, 2022 visit with Dr. Primus, Dr. Primus wanted Petitioner to get a second opinion with a spine specialist and stressed that he believed this was necessary due to the conflict with his medical management opinions and "the paid insurance doctor that rendered his/her opinion." Dr. Primus again causally related Petitioner's back condition to the December 16, 2019 work accident. (Px1)

On September 15, 2022 Petitioner saw Dr. Murtaza for her severe lower back pain. Dr. Murtaza interpreted Petitioner's MRI as positive for disc herniation at L5-S1 and the EMG as positive for lumbar radiculopathy. Dr. Murtaza diagnosed Petitioner with CRPS of the right lower limb, lumbar back pain with radiculopathy affecting the right lower extremity, lumbar pain and lumbar radicular syndrome. (Px3)

Petitioner underwent a repeat EMG with Dr. Murtaza on October 3, 2022 and another visit with Dr. Murtaza on October 12, 2022. Dr. Murtaza opined that there was a right lumbosacral radiculopathy at the L5-S1 nerve root level. (Px3) He also addressed Petitioner's CRPS of the right lower limb and wanted to treat both the radiculopathy as well as the CRPS. (Px3) On October 20, 2022 Dr. Primus also recommended a potential nerve block to treat the CRPS. (Px1) When Petitioner saw Dr. Leong on January 11, 2023, Dr. Leong opined Petitioner would benefit from treatment to the low back and for the CRPS. (Px3)

Petitioner underwent another Section 12 examination with Dr. Noren on July 5, 2023. Dr. Noren confirmed the diagnosis of CRPS in Petitioner's right ankle. Dr. Noren also agreed that there was pathology on the lumbar spine MRI and EMG evidencing radiculopathy. Dr. Noren did not believe the EMG findings were supported by the MRI. Dr. Noren causally connected the right ankle condition to the work accident, but opined "her subjective lumbar complaints are unrelated to the work injury." Dr. Noren ultimately opined Petitioner was at MMI at the time of the FCE in July of 2022. (Rx4) The Commission finds that Dr. Noren's opinions were internally inconsistent.

CONCLUSIONS OF LAW

Under a chain of events analysis, Petitioner's low back was causally related. The delay in complaints of low back pain do not change that the low back problems stemmed from the work accident. "'[A] chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury.'" *Shafer v. Illinois Workers' Compensation Comm'n,* 2011 IL App (4th) 100505, ¶39. (quoting *International Harvester v. Industrial Comm'n*, 93 Il.2d 59, 63-64).

When Petitioner was finally released from her strict non-weightbearing restrictions, her back injury became obvious. Petitioner had no prior treatment or complaints to her lower back. It was not until after the work accident that it was discovered that Petitioner had multilevel disc bulges. (Px1, 7/6/20 MRI) As of July 7, 2020 Dr. Primus causally connected Petitioner's lower back issues to the December 16, 2019 work accident. (Px1)

Petitioner was seen for several Section 12 examinations for her lower back and right lower extremity. At the time of Petitioner's Section 12 examination with Dr. Mohan on July 22, 2020, he noted Petitioner's significant antalgic gait when placing weight on the right lower extremity. However, Dr. Mohan found Petitioner's significant degenerative changes unrelated to her accident and noted Waddell's signs on lumbar spine exam and therefore opined that she could return to work full duty without restrictions as to the lumbar spine and that no further treatment of the lumbar spine was needed. Dr. Mohan reviewed the MRI of July 6, 2020 and noted she had significant L4-5 disc degeneration with mild to moderate central stenosis. He did not comment on the fact that Petitioner's low back was asymptomatic prior to the accident, nor did he comment on the impact of her severely altered gait to her low back. Dr. Lee did not offer a causation opinion regarding the low back condition, other than to state that Petitioner's low back might be impacting the progress to her right lower extremity. Dr. Noren admits there is radiographic evidence of issues to her lumbar spine, but categorically states the low back is unrelated to the work accident. The Commission does not find Respondent's Section 12 examiners' opinions persuasive in regard to the low back.

Prior to the work injury, Petitioner was not seeking medical treatment and was able to perform her job full duty without restrictions. Following the work accident, which was traumatic, Petitioner was limited not only due to the right ankle dislocation/fracture, but also the low back that was symptomatic following the accident. Dr. Primus's causation opinion was that Petitioner's back condition was a direct result of her prolonged non-weightbearing status and altered gait. The Respondent's Section 12 examiners opined that her back complaints were unrelated and simply degenerative. They did not comment on the fact that if it were actually degenerative, why it was asymptomatic prior to the injury and symptomatic once Petitioner attempted to weight bear.

The Commission finds that based on a chain of events theory and the opinions of Drs. Lee, Murtaza, Noren, Primus and Robinson, Petitioner's low back condition and CRPS are also causally related to the December 16, 2019 work accident.

The Commission finds that Petitioner has not reached maximum medical improvement as to her right foot/ankle conditions, CRPS, or low back condition.

Based on the finding of causal connection as to the right lower extremity and the low back condition, the Commission modifies the Arbitrator's award of medical expenses to also award the medical expenses related to treatment for the CRPS and the low back. The Commission awards the outstanding bills contained in Px11, Px12, Px13 and Px14 pursuant to Sections 8(a) and 8.2 of the Act.

The Commission additionally makes the following grammatical corrections and corrections to clerical errors of the Arbitrator's Decision:

The Commission strikes the second paragraph on page 12 and rewrites it as follows: "Thus, the Arbitrator finds that Respondent shall pay temporary total disability benefits to Petitioner from December 17, 2019 through August 9, 2023, amounting to 190-2/7 weeks, at the temporary total disability rate of $384.00 per week, as provided in Section 8(b) of the Act. Respondent shall receive a credit in the amount of $55,844.98, for temporary total disability benefits paid from December 17, 2019 through September 16, 2022, a period of 143-4/7 weeks."

In the last sentence of the first paragraph on page 12, the Commission corrects the credit to "$55,844.98" and strikes "8(j)" and replaces it with "8(b)".

In the third paragraph on page 5, the Commission strikes "2022" and replaces it with "2021".

In the fourth sentence of the fifth paragraph on page 5, the Commission strikes "able" and replaces with "unable".

In the third sentence in the fourth paragraph on page 4, the Commission strikes the phrase: "without any restrictions and that Petitioner was capable of returning back to her previous occupation."

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $384.00 per week for a period of 190-2/7 weeks, from December 17, 2019 through August 9, 2023, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any. Respondent shall receive a credit in the amount of $55,844.98 for temporary total disability benefits paid from December 17, 2019 through September 16, 2022, a period of 143-4/7 weeks.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $60,032.68 for medical expenses, as set forth in Px11, Px12, Px13, and Px14, under §8(a) of the Act subject to the fee schedule in §8.2 of the Act, for reasonable and necessary treatment to Petitioner's right ankle/foot condition, CRPS and lower back.

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

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

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

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

March 7, 2025

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

MEP/dmm
O: 012825
49

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC037271
Case Name	Debra McNeil v. Village of Robbins
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Antara Nath Rivera, Arbitrator

Petitioner Attorney	Ardwin Boyer
Respondent Attorney	Jeffrey Rusin

DATE FILED: 10/25/2023

THE INTEREST RATE FOR THE WEEK OF OCTOBER 24, 2023 5.32%

/s/Antara Nath Rivera, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Debra McNeil
Employee/Petitioner
v.
Village of Robbins
Employer/Respondent

Case # **19** WC **37271**

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 **Rivera**, Arbitrator of the Commission, in the city of **Chicago**, on **8/9/2023.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **12/16/2019,** 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 $**29,952.00,** the average weekly wage was $**576.00**.

On the date of accident, Petitioner was **62** years of age, ***single*** with **0** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $**55,844.98** for TTD, $**0** for TPD, $**0** for maintenance, and $**0.00** for other benefits, for a total credit of $**55,844.98**

ORDER

Respondent shall pay Petitioner for the following outstanding medical services, related to Petitioner's right ankle, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

Respondent shall pay TTD benefits to Petitioner from September 17, 2022, through the August 9, 2023, amounting to 46-4/7 weeks, at the TTD rate of $384.00 per week, as provided in Section 8(b) of the Act.

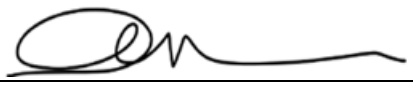
Respondent is entitled to a total credit of $55,844.94 for TTD benefits paid, pursuant to Section 8(j) of the Act.

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.

OCTOBER 25, 2023



Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATOR DECISION

Debra McNeil,	)	
Petitioner,	)	
	)	Case No. 19WC037271
v.	)	20WC007242
	)	
Village of Robbins,	)	
Respondent.	)	

This matter proceeded to hearing on August 9, 2023, in Chicago, Illinois before Arbitrator Antara Nath Rivera on Petitioner's Request for Hearing. Issues in dispute include causal connection, medical bills, temporary total disability ("TTD"); and credit to Respondent. (Arbitrator's Exhibit "AX" 1)

FINDINGS OF FACT

Debra McNeil ("Petitioner") testified that she is 66 years old and has been employed by the Village of Robbins ("Respondent") since September 2017. (Transcript "T." 13) Petitioner testified that she was injured on December 16, 2019, and had not returned to work in any capacity for the Village since that time (T. 13-14)

Job Duties

Petitioner testified that when she was initially hired, she began working in the water department as a billing clerk. (T. 14) Petitioner testified that her job duties were to collect bills, and various receipts, tally up, and close the bank books. *Id*. Petitioner testified that in September 2018, she was promoted to accounts payable. (T. 14-15) Petitioner testified that her job duties were to gather the bills and give them the treasurer. (T. 15) Petitioner testified that her job duties entailed paying bills, gathering the bills, creating a spreadsheet, entering it in the computer, writing up a form, and getting everything approved, so that payments can be made by the mayor. (T. 20) Petitioner testified that she had to go across the hall for these duties. (T. 20-21) Petitioner testified that her job was essentially a sit down job. (T. 21)

Petitioner testified that she was also a purchase manager for Respondent, police, and fire department. (T. 15-16) Petitioner testified that, for this job, she decorated the buildings for all special occasions. Petitioner testified that she also planted flowers outside, hanging planters, and made signs. *Id*. Petitioner testified that she went to stores such as Menards, Home Depot, Walmart to pick up supplies. (T. 21) Petitioner testified that she ordered heavier supplies online. *Id*. Petitioner testified that she worked

eight hours a day, Monday through Friday, and worked some overtime. (T. 16) Petitioner testified that her office was located in village hall. (T. 17-18) Petitioner testified that her office was located behind the mayor's office, which was located on the left side of the lobby. (T. 18) Petitioner testified that she reported directly to the mayor. (T. 19)

Petitioner testified that she decorated for all departments for all holidays. (T. 22-24) Petitioner testified that she set up Christmas trees and decorations in Respondent's lobby, decorated for the water department, decorated outside the building, and would decorate for special events, like Christmas parties for seniors at the community hall. (T. 22-24; Petitioner's Exhibit ("PX") 22) Petitioner testified that standing on the chair to decorate was part of her job duties. (T. 27)

Petitioner further testified that to beautify Respondent's building, she would also garden. (T. 24-26) Petitioner testified that she bought the plants, the dirt, and would physically plant flowers. *Id.* Petitioner testified that the bags of dirt were about 40 pounds. *Id*.

Petitioner testified that she would go to Sam's Club to buy various cleaning supplies, bottles of water, and bags of chips for Respondent. (T. 26-27) Petitioner stated that she drove her own car to the various stores and loaded and unloaded the items into her car and then had to walk and carry and lift these various items back into village hall. Petitioner testified that, on average, she sat at her desk 2-3 hours but always doing tasks. Petitioner testified that she stood, walked, ran errands, carried items, and drove for five to six hours a day. (T. 29-31)

Accident

Petitioner testified that, on December 16, 2019, she was decorating the lobby of village hall for Christmas. (T. 34) Petitioner testified that there were two large six-foot tables that she had to decorate in the vestibule of the lobby. *Id*. Petitioner testified that she put tablecloths on them, set up the baby Jesus figurines, other Christmas decorations, as well as reading pamphlets for visitors. *Id*. Petitioner testified that she was decorating, and standing next to the table, when the table collapsed in the center and "pushed out." (T. 35) Petitioner testified that she fell on her back and the corner edge of the table fell on her right ankle "taking it off the ball." *Id*. Petitioner testified that the table was not a modern table, but an old table with cast-iron legs. *Id*. Petitioner testified that the screw came out and the table tilted and went down. *Id*.

Petitioner testified that the mayor, the administrator, fire chief, and others who were in a meeting came out. (T. 36) Petitioner testified that she was screaming and they helped her get up but she could not move because the table was too heavy for her to push off of her. *Id*. Petitioner testified that three men lifted the table off of her. *Id*. Petitioner testified that that was when she saw her foot was dangling and hanging. *Id*.

Petitioner testified that she was performing her normal job duties when this happened. (T. 37) Petitioner also testified that, at that time, she made $576.00/week. (T. 38) Petitioner testified that she received TTD in the amount of $768.00 every two weeks until September 16, 2022. (T. 38-39)

Summary of Medical Records

Petitioner testified that she went to South Suburban Hospital by ambulance on December 16, 2019. (T. 39) Petitioner testified that the doctor immediately took x-rays and said she needed surgery. *Id*. Petitioner testified that the doctor said she would need more than one surgery. (T. 39-40) Petitioner was diagnosed with a trimalleolar fracture, described as "acute displaced fractures through the posterior medial tibial malleolus associated with posterior tibiotalar dislocation" with "severe local soft tissue swelling." (PX 5 at 28) Petitioner was kept off work. *Id.*

Petitioner underwent three operative procedures between December 18, 2019, and May 17, 2021. (PX 1.10) On December 18, 2019, Dr. Gregory Primus, M.D., performed a closed reduction and fluoroscopy. (PX 1 at 741-744) The pre and postoperative diagnosis was right trimalleolar ankle fracture with large posterior malleolar fragment and posterior dislocation of the ankle joint. The procedure involved a closed reduction with application of a splint. *Id*.

On January 9, 2020, Dr. Primus performed an "open reduction internal fixation of trimalleolar fracture involving the distal fibula, medial malleolus, as well as fixation of the posterior malleolus." (PX 1 at 745-747) The postoperative diagnosis was right ankle status post close reduction of displaced trimalleolar ankle fracture. *Id*. Surgical procedures included implants of plates and screws. *Id.* Postoperative instructions included non-weight bearing, wound care, activity modification, pain medication and to follow-up with Dr. Primus. *Id*.

Petitioner testified that, in March 2020, as she was getting out of a wheelchair during physical therapy, she noticed an excruciating pain in her lower back. (T. 44) On May 12, 2020, Petitioner reported at physical therapy that, with the recent weight bearing, she felt pain in her low back again. (PX 1 at 35) Petitioner consistently reported low back pain as a significant contributing cause of her ongoing physical limitations. (PX 1 at 35-514, 777-786) Dr. Primus opined that the Petitioner's low back pain was work related. (PX 1 at 38, 53, 70, 87-88, 100, 108)

From May 13, 2020, through May 17, 2021, Dr. Primus' continually diagnosed Petitioner with trimalleolar fracture as well as sprain of the tibiofibular ligament of the right ankle. (PX 1.3) Additionally, the physical therapy notes indicated right ankle pain, swelling/edema, right calf atrophy, numbness and tingling, decreased range of motion, difficulty with stairs and sleep and home chores and tub transfers and prolonged standing and walking, chronic pain and limitations due to pain and edema and limited range of motion. (PX 1 at 1-204)

On July 22, 2020, Dr. Vivek Mohan, M.D., section 12 examiner, performed an independent medical examination ("IME") involving Petitioner's lower back. (RX 2) Dr. Mohan documented his physical examination of the Petitioner which revealed a slow and antalgic gait with a walker. (RX 2 at 8-12) Dr. Mohan noted negative straight leg raise testing in the bilateral lower extremities. Dr. Mohan noted multiple positive Waddell's signs during evaluation of the low back, including nonorganic pain findings including twinging of the back with light pressure and pain with non-painful stimuli. *Id*. In addition to the medical records provided, Dr. Mohan reviewed Petitioner's MRI of the lumbar spine from July 6, 2020, which revealed L4-5 disc degeneration without any acute findings and only chronic degenerative changes noted. *Id*.

Dr. Mohan opined that Petitioner's diagnosis was right ankle fracture and dislocation. *Id*. Dr. Mohan opined that there was no evidence of a lumbar injury from the work accident. *Id*. Dr. Mohan stated that Petitioner had significant degenerative changes unrelated to her accident as well as positive Waddell's signs. *Id*. Dr. Mohan found no neurological findings emanating from the lumbar spine. *Id*. Dr. Mohan opined that she could return to full duty work without restrictions in her job, which is sedentary and light duty work. *Id*. Dr. Mohan found no further treatment for the lumbar spine reasonable or necessary. *Id*.

Dr. Simon Lee M.D. offered a series of IME reports dated August 6, 2020, September 22, 2021, August 24, 2022, and July 14, 2023. (RX 3) Dr. Lee diagnosed Petitioner with status post trimalleolar fracture, status post hardware removal and superficial peroneal nerve release with chronic pain. (RX 3 at 17-20) Dr. Lee opined that said diagnoses were causally related to the original accident. *Id*.

On September 22, 2021, Dr. Lee opined that Petitioner would only require 6-8 weeks of physical therapy until she reached maximum medical improvement ("MMI"). *Id*. Dr. Lee indicated that any additional care or treatment beyond the physical therapy would likely provide no additional benefit. *Id*. Further, Dr. Lee opined that Petitioner was capable of returning to her prior job without any restrictions and that Petitioner was capable of returning back to her previous occupation with restrictions of limited standing, walking, minimal bending, stooping, squatting, and no lifting, pushing, pulling or carrying greater than 10 pounds. *Id.*

On May 17, 2021, Dr. Primus performed hardware removal. (PX 1 at 749-753) Dr. Primus removed the hardware from Petitioner's right ankle, performed a right ankle abrasion chondroplasty, a nerve neurolysis; and a nerve wrap with amnion gap. (PX 1 at 765) The postoperative diagnosis was right ankle post trimalleolar open reduction and internal fixation; right ankle superficial branch of the peroneal nerve neuropathy; right ankle pain and swelling; metal allergy; ankle joint synovitis and scar; and ankle joint chondromalacia. *Id*. Dr. Primus also noted that the peroneal nerve was heavily encased in scar tissue. (PX 1 at 768)

Petitioner testified that after the May of 2021, surgery, she continued to follow up with Dr. Primus on a monthly basis as well as continuously undergo physical therapy. (T. 50) Petitioner testified that she

went to physical therapy until August 2022 when workers' compensation stopped paying for it. *Id.* Petitioner testified that workers' compensation stopped paying for Dr. Primus' visits but that she continued to see him. (T. 51) Petitioner testified that despite the suspension of benefits, she continued to treat with Dr. Primus monthly from September of 2022 through July of 2023 (T. 68)

On August 24, 2022, Dr. Lee's evaluation of Petitioner indicated that he found no significant swelling of the right ankle. (RX 3 at 22) Dr. Lee could not address the Petitioner's range of motion due to guarding. *Id*. Dr. Lee concluded that Petitioner does not require future care. *Id*.

On May 5, 2022, Dr. Primus noted that Petitioner reported sharp pains after physical therapy sessions. (PX 1 at 400) Dr. Primus noted that Petitioner consulted with a vein specialist and no vascular issues were noted. *Id*. Petitioner testified that she also sought treatment with Dr. Primus for her back pain. (T. 52) Petitioner testified that Dr. Primus conducted electric shock treatments and suction cup treatment to alleviate the pain. *Id*.

On June 3, 2022, Dr. Primus diagnosed Petitioner with right peroneal nerve injury. (PX 1 at 430)

On July 8, 2022, Dr. Primus noted that Petitioner's back pain became noticeable after physical therapy. (PX 1 at 458) He opined that Petitioner did not have any prior back complaints before the work accident and that she was able to wear heels on a regular basis. *Id*. Dr. Primus noted that Petitioner's pain was prevalent with prolonged standing and sitting and that the pain radiated from her lower back to her left leg. *Id.*

On July 20, 2022, Petitioner underwent a Functional Capacity Evaluation ("FCE"), at the recommendation of Dr. Primus, which was conducted at Chicago Center for Sports Medicine and performed by Joseph Santillo. (PX 1.9; T. 84) Pursuant to the FCE, the evaluator documented Petitioner's job in the Clerical industry and specifically highlighted the "target job" falls in the "sedentary physical demand level" (PX 1 at 721-723) Mr. Santillo's findings indicated that Petitioner met the sedentary physical demand level by lifting zero pounds from the floor, 10 pounds from her waist to shoulder, five pounds above her head, carrying five pounds, and pushing/pulling five pounds. *Id*. Mr. Santillo noted that Petitioner was able to meet the 10 pound lifting and carrying requirement for an accounts payable bookkeeper position. *Id*. Petitioner also demonstrated limited lower extremity active range with respect to her ankle, limited strength, and antalgic gait. *Id.* Petitioner was able to walk 50 feet and her rating for this test was "Moderate-Severe Slowing." (PX 1 at 729) Petitioner's pain level was continuously above 6 out of 10. (PX 1.9) Mr. Santillo indicated that Petitioner met the physical demands of a bookkeeper by her ability to demonstrate correct posture. (PX 1 at 723)

Respondent presented evidence of an FCE Analysis provided by Joe Castronovo (RX 5) Mr. Castronovo noted that the FCE is invalid as it shows only what the Petitioner chose to do and is not a representation of her maximum functional ability. *Id.* Mr. Castronovo opined that Petitioner is capable of

returning to unrestricted full duty work at her prior physical demand level in the sedentary capacity pursuant to her original job duties and job description. *Id*.

On September 12, 2022, Petitioner underwent and MRI. (PX 1 at 471) The MRI revealed L2-L3, L3-4, L4-5 disc bulge causing foraminal stenosis right worse than left. *Id*. Central herniation L5/S1 with underlying bulge causing foraminal stenosis left worse than right. *Id*. Petitioner testified that Dr. Primus referred her to Dr. Sajjad Murtaza, M.D. for her nerve pain. (T. 53)

On September 15, 2022, Petitioner presented to Dr. Murtaza. (PX 3; T. 53-55)The records indicated that Petitioner reported being in moderate to severe pain and distress in the right lower extremity. (PX 3 at 13) Petitioner also reported tenderness to palpation of the lumbar spine, with rotational pain to the right. *Id*. Dr. Murtaza diagnosed Petitioner with complex regional pain syndrome of the right lower limb and lumbar back pain with radiculopathy affecting the right lower extremity. (PX 4 at 14) Dr. Murtaza ordered a follow-up EMG. (PX 4 at 1-2)

Petitioner testified that after the EMG, Dr. Murtaza recommended an injection. (T. 54-55) Petitioner admitted that she had not undergone any injections. *Id*. Petitioner testified that workers' compensation would not pay for the injection. *Id*. Petitioner testified that the plan was surgery was the next option if the injection did not help. *Id*.

On September 22, 2022, Dr. Primus diagnosed Petitioner with lumbar radiculopathy after back sprain/contusion after a direct fall. (PX 1 at 477)

On July 5, 2023, Dr. Richard Noren, M.D., performed an IME. (RX 4) Dr. Noren noted that Petitioner suffered from complex regional pain syndrome. (PX 4 at 32) Dr. Noren noted that the EMG evidence showed an L5/S1 radiculopathy. *Id.* Dr. Noren opined that Petitioner's subjective lumbar complaints were unrelated to the work accident, despite some objective findings consistent with neuropathic pain. *Id.* Dr. Noren opined that Petitioner's recommended epidural injection was not reasonable and would not result in resolution of her back complaints or her neuropathic pain in the right foot. *Id*. Dr. Noren opined that Petitioner reached MMI at the time of her prior FCE in July of 2022 (RX 4 at 33)

At the hearing, Petitioner presented photographs of her right ankle from her phone on various dates from May 3, 2020, to May 4, 2023. (PX 15; T. 56-57) Petitioner testified that she took the photographs and that the dates of the photos automatically post. (T. 56-57) Petitioner testified that the photo taken on February 2, 2023, showed the tape measure around her right ankle and that it measured 13-1/2 inches (PX 15 at 9; T. 58) Petitioner testified that the picture of her left ankle, taken on the same day, measured 11 inches. (PX 15 at 10; T. 58-59) Petitioner testified that the right ankle was swollen 2-1/2 inches more than the left. (T. 59)[1]

[1] During this point of Petitioner's testimony, she requested to stand so that her leg did not cramp.

Petitioner testified that she communicated with Shuntai Sykes via email. (T. 61-63; PX 18, 19, 20, 21) Petitioner testified that she sent in Dr. Primus' Work Status Reports which indicated that Petitioner was off work from December 18, 2019, to July 25, 2023. (PX 1.6 at 516-623; PX 14; T. 61) The reports indicated that Dr. Primus never authorized Petitioner to return to work. (PX 1.6 at 516-623; T. 91-92) Petitioner also testified that she was offered a position to go back to work as an administrative assistant part time. (T. 61-62) Petitioner testified that she responded that she was she was still under doctor's care and that she felt as though she would not be able to do her job at the fullest because of her pain. (T. 62) Petitioner testified that she never got a response from Respondent to her concerns to returning to work. (T. 63)

Petitioner's Current Condition

Petitioner testified that her most recent visit with Dr. Primus was in late July of 2023. (T. 89) Petitioner testified that she had the same exact symptoms as she did three years ago and had no change in her overall physical examination and functional abilities. *Id.* Petitioner testified that Dr. Primus did not provide any new or significant treatment recommendations. She testified that there was a recommendation for her to follow up with a spinal expert, but she has not undergone any spinal evaluations *Id.*

Petitioner testified that she did not return to work in any capacity since 2019. (T. 84) She also testified that she had not sought employment from any other employer. *Id.* Petitioner testified that she is not able to return to work because of her excruciating pain, swelling, throbbing, on a daily basis. *Id.* Petitioner testified that had she got the injection, it could have helped. *Id.* Petitioner testified that she wants to get well but cannot pay for the service. *Id.* Petitioner also testified that her medical insurance was cancelled. *Id.*

Petitioner testified that she is not able to walk well enough to do the job duties she once performed. *Id.* Petitioner testified that she is not able to lift, carry, shop, get up on chairs or ladders, stand during work or events, or put any weight on her ankle as she used to. (T. 63-64)[2]

Petitioner testified that since December of 2019, she had had ongoing constant pain, swelling, and radiating pain down her leg and through her back with radiating pain going to her left leg as well (T. 45-46) Petitioner testified that she could only stand about 10 to 15 minutes before having terrible pain. (T. 47) Petitioner further testified that she did not believe she was able to return to work due to her pain levels (T. 48)

Testimony of Shuntai Sykes

[2] Respondent put in the record that Petitioner sat for an hour and stood "for the last 15 minutes." (T. 66)

Ms. Sykes testified that she worked as the Village administrator since May 2022. (T. 96-108) Ms. Sykes testified that she was not employed at the time Petitioner was employed or had her accident. *Id*. Ms. Sykes testified that none of the prior employees, including the mayor, were working for the Village of Robbins at this time. *Id.* Ms. Sykes testified that based on what she found on "Paylocity" Petitioner was employed by Respondent since May 2017. Ms. Sykes testified that Petitioner's prior position was "accounts payable manager," which was a part time position. *Id.* Ms. Sykes testified that the only "full-time" positions for Robbins including the village administrator, fire chief, police chief and public works director. *Id*.

Ms. Sykes testified that a majority of Petitioner's position included a lot of sitting, answering phones, filing, and carrying of items that could weigh between five to six pounds (occasionally sometimes over 10 pounds). (RX 8; T. 99-101) Ms. Sykes testified that she did not know what Petitioner's job duties were regarding holiday decorations because the people that were working there are no longer working there. *Id.*

Ms. Sykes then testified that a job offer that was given to Petitioner in November of 2022. (RX 7; T. 102-104) Ms. Sykes testified that the job was for an administrative assistant for the fire department. *Id*. Ms. Sykes testified that the job offered complied with all of the alleged restrictions and accommodations documented in the FCE. *Id.* Ms. Sykes testified that the salary offered was, $17, 500.00 and that the salary was subject to change and that Petitioner could earn more. *Id.* Ms. Sykes testified that Petitioner was offered the administrative assistant job, because the job she was previously working had already been filled (T. 104) Ms. Sykes testified that Petitioner never returned to work or attempted to return to work. (T. 103)

CONCLUSIONS OF LAW

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

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

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

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

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds the Petitioner credible and that she was calm, well-mannered, and composed. The Arbitrator observed Petitioner walk with a walker and observed Petitioner wince in pain throughout the trial. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find material contradictions that would deem the witness unreliable.

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

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

It is well established law that proof of prior good health and change immediately following and continuing after an injury may establish that an impaired condition was due to the injury. *Navistar International Transportation Corporation*, 315 Ill. App. 3d 1197, 1206 (2000) The Court specifically stated that causal connection between work duties and a condition may be established by a chain of events, including Petitioner's ability to perform duties before the date of the accident and inability to perform the same duties following that date. *Id.*

The Arbitrator notes that Petitioner was diagnosed with a trimalleolar fracture, described as "acute displaced fractures through the posterior medial tibial malleolus associated with posterior tibiotalar dislocation" with "severe local soft tissue swelling" in the emergency room. (PX 5 at 28)

The Arbitrator notes that Petitioner, thereafter, underwent three operative procedures between December 2019 and May 2021. (PX 1) The Arbitrator notes that the postoperative diagnosis, of the first surgery, was right trimalleolar ankle fracture with large posterior malleolar fragment, and posterior

dislocation of the right ankle. The procedure involved a closed reduction with application of a splint. (PX 1 at 741-744) The Arbitrator notes that the postoperative diagnosis, of the second surgier, was right ankle status post close reduction of displaced trimalleolar ankle fracture. (PX 1 at 745-747) The Arbitrator notes that after the third surgery, the postoperative diagnosis was right ankle status post trimalleolar open reduction and internal fixation; right ankle superficial branch of the peroneal nerve neuropathy; persistent right ankle pain and swelling; diffuse ankle joint synovitis and scar; and diffuse ankle joint chondromalacia. (PX 1 at 749-768)

The Arbitrator notes that Dr. Primus also noted that the peroneal nerve was heavily encased in scar tissue and diagnosed Petitioner with right peroneal nerve injury. (PX 1 at 430; 749-768) The Arbitrator notes that Dr. Primus never released Petitioner back to work due to her right ankle injury. The Arbitrator notes that Dr. Mohan opined that Petitioner's diagnosis was right ankle fracture and dislocation. (RX 2 at 8-12)

The Arbitrator notes that Dr. Lee diagnosed Petitioner with status post trimalleolar fracture, status post hardware removal and superficial peroneal nerve release with chronic pain. (RX 3 at 17-20) Dr. Lee opined that the diagnoses were causally related to the original accident.

With respect to Petitioner's lower back, the Arbitrator notes that Dr. Primus noted that Petitioner's back pain became noticeable after physical therapy. (PX 1 at 458) The Arbitrator notes that pain specialist, Dr. Murtaza, diagnosed Petitioner with complex regional pain syndrome of the right lower limb and lumbar back pain with radiculopathy affecting the right lower extremity. (PX 4 at 14) The Arbitrator notes that Dr. Murtaza did not provide a causal connection. The Arbitrator further notes that Dr. Mohan's review of Petitioner's MRI, of the lumbar spine, revealed L4-5 disc degeneration without any acute findings and only chronic degenerative changes noted. (RX 2 at 8-12) The Arbitrator notes that Dr. Mohan opined that there was no evidence of a lumbar injury from the work accident. (RX 2 at 8-12) The Arbitrator also notes that Dr. Noren opined that Petitioner's subjective lumbar complaints were unrelated to the work accident. (PX 4 at 32)

The Arbitrator notes that while Dr. Primus diagnosed Petitioner with lumbar radiculopathy after back sprain and contusion after a direct fall, there was no evidence of complaints of back pain until May 12, 2020, as noted in the physical therapy notes. (T. 44; PX 1 at 35; 477) Moreover, the Arbitrator notes that this was more than five months after the accident. The Arbitrator notes that Petitioner testified at trial that she developed low back symptoms stemming from physical therapy in March of 2020 after allegedly getting out of a wheelchair. (T. 44) The Arbitrator notes that there was no evidence presented from the March 2020 physical therapy records that Petitioner complained of such pain. (PX 1 at 25-34)

The Arbitrator notes that Petitioner testified that she had the same exact symptoms as she did three years ago and had no change in her overall physical examination and functional abilities. (T. 89) The Arbitrator notes that Petitioner testified that she is not able to return to work because of her excruciating

pain, swelling, throbbing, on a daily basis. (T. 84) The Arbitrator notes that while Petitioner testified that she was offered a position to go back to work, she responded that she was she was still under doctor's care and felt as though she would not be able to do her job at the fullest because of her pain. (T. 61-62) The Arbitrator notes that Petitioner testified that she is not able to put any weight on her ankle as she used to. (T. 63-64)

Based upon the totality of the evidence, the Arbitrator finds that Petitioner's current condition of ill-being, with respect to her right ankle, is causally related to the work related injury on December 16, 2019. However, based on the evidence presented, the Arbitrator finds that Petitioner's condition of ill-being with respect to her lumbar spine, is not causally related, to the December 16, 2019, accident.

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

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

As the Arbitrator found that Petitioner's current condition of ill-being, with respect to her right ankle, was causally related to a work related injury, the medical services rendered for her right ankle were reasonable. Based on the evidence presented, Respondent shall pay Petitioner for the following outstanding medical services, related to Petitioner's right ankle, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. (PX 10, PX 11, PX 12, PX 13, PX 14)

As the Arbitrator found that Petitioner's current condition of ill-being, with respect to her lower back was not causally related to a work related injury, Respondent is not liable for any outstanding medical services pertaining to such treatment.

WITH RESPECT TO ISSUE (K), WHAT TEMPORARY BENEFITS ARE IN DISPUTE, THE ARBITRATOR FINDS AS FOLLOWS:

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Westin Hotel v. Indus. Comm'n*, 372 Ill.App.3d 527, 542 (1st Dist. 2007).

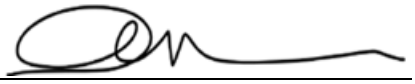
As the Arbitrator found that Petitioner's current condition of ill-being, with respect to her right ankle, was causally connected to the work-related accident, the Arbitrator finds that Petitioner met her burden and is entitled to receive TTD benefits. The Arbitrator notes that, based on Petitioner's testimony and records submitted, Petitioner was off work from December 17, 2019, through August 9, 2023. (PX 1; PX 14; T. 61) Respondent paid and is entitled to a credit in the sum of $55,844.94 for TTD benefits paid from December 17, 2019, through September 16, 2022.

Thus, the Arbitrator finds that Respondent shall pay TTD benefits to Petitioner from September 17, 2022, through the August 9, 2023, amounting to 46-4/7 weeks, at the TTD rate of $384.00 per week, as provided in Section 8(b) of the Act. (PX 1; PX 14; AX 1 line 9)

WITH RESPECT TO ISSUE (N), WHETHER RESPONDENT IS DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator found that Respondent paid TTD from December 17, 2019, through September 16, 2022. Thus, Respondent is entitled to a total credit of $55,844.94 for TTD benefits paid, pursuant to Section 8(j) of the Act.

It is so ordered:



Arbitrator Antara Nath Rivera

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC007242
Case Name	Debra McNeil v. Village of Robbins
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0096
Number of Pages of Decision	22
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Ardwin Boyer
Respondent Attorney	Nicole Breslau

DATE FILED: 3/7/2025

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DEBRA MCNEIL,

Petitioner,

vs. NO: 20 WC 7242

VILLAGE OF ROBBINS,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission affirms the Arbitrator's Decision finding causal connection between the work accident and the current condition of ill-being of Petitioner's right ankle/foot. However, the Commission additionally finds that the chronic regional pain syndrome ("CRPS") in Petitioner's right foot/ankle initially brought up by Dr. Lee, and later diagnosed by Drs. Primus, Murtaza, and Noren, is also causally connected to Petitioner's work accident of December 16, 2019. (Px1, Px3, Rx3, Rx4)

Further, the Commission reverses the Arbitrator's Decision denying causal connection between the work accident and Petitioner's lumbar spine condition. The Commission finds that 1) Petitioner had no prior back issues prior to the December 16, 2019 work accident; 2) Petitioner credibly testified that she fell onto her back at the time of the accident (T. 35); 3) Drs. Primus and Robinson's causation opinions regarding the low back were more persuasive than those of Dr. Mohan; and 4) Petitioner immediately began complaining of low back problems once her non-weightbearing status was lifted and Petitioner demonstrated an altered gait as observed by both her treating providers and noted during the July 22, 2020 Section 12 examination with Dr. Mohan (Rx2). Furthermore, having found causal connection between the work accident and lumbar spine condition, the Commission reverses the Arbitrator's denial of medical expenses related to treatment of the low back condition.

FINDINGS OF FACT

Petitioner testified that while she was going to physical therapy ("PT") she noticed an issue with her back when the therapist tried to get her out of the wheelchair to get her walking again. (T. 44) She said she noticed that the pain was constantly there. (T. 47) Petitioner testified her first complaint of back pain would be in the records. (T. 94) Although many of the PT notes reference numbness, swelling and tingling, as well as a lot of pain with weight bearing activities (Px1), it is not until the PT note of May 12, 2020 when she reports pain in the lumbar spine and that she had been wearing a back brace. (Px1) Dr. Primus' notes of May 13, 2020 indicate that the Petitioner has lower back pain with overcompensation on the left side. (Px1) In addition to noting the deconditioning, Dr. Primus noted at the June 9, 2020 visit that Petitioner's lower back pain was severely limiting her progress in therapy for the right ankle, but that she had been sedentary in a wheelchair for several months and her therapy was delayed for at least 2 months due to COVID and she developed deconditioning due to this which led to the low back pain. (Px1) At that same visit Dr. Primus offered a causation opinion that the low back pain was causally connected to the work injury of December 16, 2019. (Px1)

Petitioner has no history of back problems prior to the December 16, 2019 work accident. From May of 2020 through July of 2023, Petitioner had continuous and consistent complaints of low back pain. (Px1, Rx3, Rx4) Petitioner underwent a Section 12 examination with Dr. Mohan on July 22, 2020 who noted her significant antalgic gait with placing weight on the right lower extremity, but opined that she had a positive Waddell's sign with regard to the low back. He ultimately opined that based on her lumbar spine she could return to work full duty, without restrictions and that she needed no treatment to her low back at that time. (Rx2) In the August 6, 2020 Section 12 examination with Dr. Lee, Dr. Lee did not offer a causation opinion regarding the low back, but did opine that her back condition was causing her problems with progression as to her right lower extremity. (Rx3)

On October 15, 2020, Petitioner had an abnormal EMG study which showed evidence of an L5-S1 radiculopathy. (Px1) When Petitioner saw Dr. Coats on November 5, 2020, he read her lumbar MRI as showing L4-5 disc desiccation and bulge and a smaller bulge at L3-4. (Px1)

Petitioner returned to Dr. Lee on September 22, 2021. Dr. Lee opined that Petitioner was continuing to have low back pain with radiation into her right lower extremity although he did not

comment on causation or potential need for treatment in regard to her lower back. He did not feel Petitioner was at maximum medical improvement ("MMI") for her right ankle and recommended restrictions which he indicated might be permanent. He also recommended consideration for a pain management consultation. (Rx3)

On July 28, 2022, Dr. Primus addressed Petitioner's lower back at her office visit. He felt Petitioner's complaints were most consistent with lumbar radiculopathy after back sprain/contusion following a direct fall. He opined that a lot of her pain and nerve type symptoms from her right ankle injury and treatments may be related to or compounded by her spine condition. (Px1)

At the September 15, 2022 visit with Dr. Primus, Dr. Primus wanted Petitioner to get a second opinion with a spine specialist and stressed that he believed this was necessary due to the conflict with his medical management opinions and "the paid insurance doctor that rendered his/her opinion." Dr. Primus again causally related Petitioner's back condition to the December 16, 2019 work accident. (Px1)

On September 15, 2022 Petitioner saw Dr. Murtaza for her severe lower back pain. Dr. Murtaza interpreted Petitioner's MRI as positive for disc herniation at L5-S1 and the EMG as positive for lumbar radiculopathy. Dr. Murtaza diagnosed Petitioner with CRPS of the right lower limb, lumbar back pain with radiculopathy affecting the right lower extremity, lumbar pain and lumbar radicular syndrome. (Px3)

Petitioner underwent a repeat EMG with Dr. Murtaza on October 3, 2022 and another visit with Dr. Murtaza on October 12, 2022. Dr. Murtaza opined that there was a right lumbosacral radiculopathy at the L5-S1 nerve root level. (Px3) He also addressed Petitioner's CRPS of the right lower limb and wanted to treat both the radiculopathy as well as the CRPS. (Px3) On October 20, 2022 Dr. Primus also recommended a potential nerve block to treat the CRPS. (Px1) When Petitioner saw Dr. Leong on January 11, 2023, Dr. Leong opined Petitioner would benefit from treatment to the low back and for the CRPS. (Px3)

Petitioner underwent another Section 12 examination with Dr. Noren on July 5, 2023. Dr. Noren confirmed the diagnosis of CRPS in Petitioner's right ankle. Dr. Noren also agreed that there was pathology on the lumbar spine MRI and EMG evidencing radiculopathy. Dr. Noren did not believe the EMG findings were supported by the MRI. Dr. Noren causally connected the right ankle condition to the work accident, but opined "her subjective lumbar complaints are unrelated to the work injury." Dr. Noren ultimately opined Petitioner was at MMI at the time of the FCE in July of 2022. (Rx4) The Commission finds that Dr. Noren's opinions were internally inconsistent.

CONCLUSIONS OF LAW

Under a chain of events analysis, Petitioner's low back was causally related. The delay in complaints of low back pain do not change that the low back problems stemmed from the work accident. "'[A] chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury.'" *Shafer v. Illinois Workers' Compensation Comm'n,* 2011 IL App (4th) 100505, ¶39. (quoting *International Harvester v. Industrial Comm'n*, 93 Il.2d 59, 63-64).

When Petitioner was finally released from her strict non-weightbearing restrictions, her back injury became obvious. Petitioner had no prior treatment or complaints to her lower back. It was not until after the work accident that it was discovered that Petitioner had multilevel disc bulges. (Px1, 7/6/20 MRI) As of July 7, 2020 Dr. Primus causally connected Petitioner's lower back issues to the December 16, 2019 work accident. (Px1)

Petitioner was seen for several Section 12 examinations for her lower back and right lower extremity. At the time of Petitioner's Section 12 examination with Dr. Mohan on July 22, 2020, he noted Petitioner's significant antalgic gait when placing weight on the right lower extremity. However, Dr. Mohan found Petitioner's significant degenerative changes unrelated to her accident and noted Waddell's signs on lumbar spine exam and therefore opined that she could return to work full duty without restrictions as to the lumbar spine and that no further treatment of the lumbar spine was needed. Dr. Mohan reviewed the MRI of July 6, 2020 and noted she had significant L4-5 disc degeneration with mild to moderate central stenosis. He did not comment on the fact that Petitioner's low back was asymptomatic prior to the accident, nor did he comment on the impact of her severely altered gait to her low back. Dr. Lee did not offer a causation opinion regarding the low back condition, other than to state that Petitioner's low back might be impacting the progress to her right lower extremity. Dr. Noren admits there is radiographic evidence of issues to her lumbar spine, but categorically states the low back is unrelated to the work accident. The Commission does not find Respondent's Section 12 examiners' opinions persuasive in regard to the low back.

Prior to the work injury, Petitioner was not seeking medical treatment and was able to perform her job full duty without restrictions. Following the work accident, which was traumatic, Petitioner was limited not only due to the right ankle dislocation/fracture, but also the low back that was symptomatic following the accident. Dr. Primus's causation opinion was that Petitioner's back condition was a direct result of her prolonged non-weightbearing status and altered gait. The Respondent's Section 12 examiners opined that her back complaints were unrelated and simply degenerative. They did not comment on the fact that if it were actually degenerative, why it was asymptomatic prior to the injury and symptomatic once Petitioner attempted to weight bear.

The Commission finds that based on a chain of events theory and the opinions of Drs. Lee, Murtaza, Noren, Primus and Robinson, Petitioner's low back condition and CRPS are also causally related to the December 16, 2019 work accident.

The Commission finds that Petitioner has not reached maximum medical improvement as to her right foot/ankle conditions, CRPS, or low back condition.

Based on the finding of causal connection as to the right lower extremity and the low back condition, the Commission modifies the Arbitrator's award of medical expenses to also award the medical expenses related to treatment for the CRPS and the low back. The Commission awards the outstanding bills contained in Px11, Px12, Px13 and Px14 pursuant to Sections 8(a) and 8.2 of the Act.

The Commission additionally makes the following grammatical corrections and corrections to clerical errors of the Arbitrator's Decision:

The Commission strikes the second paragraph on page 12 and rewrites it as follows: "Thus, the Arbitrator finds that Respondent shall pay temporary total disability benefits to Petitioner from December 17, 2019 through August 9, 2023, amounting to 190-2/7 weeks, at the temporary total disability rate of $384.00 per week, as provided in Section 8(b) of the Act. Respondent shall receive a credit in the amount of $55,844.98, for temporary total disability benefits paid from December 17, 2019 through September 16, 2022, a period of 143-4/7 weeks."

In the last sentence of the first paragraph on page 12, the Commission corrects the credit to "$55,844.98" and strikes "8(j)" and replaces it with "8(b)".

In the third paragraph on page 5, the Commission strikes "2022" and replaces it with "2021".

In the fourth sentence of the fifth paragraph on page 5, the Commission strikes "able" and replaces with "unable".

In the third sentence in the fourth paragraph on page 4, the Commission strikes the phrase: "without any restrictions and that Petitioner was capable of returning back to her previous occupation."

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $384.00 per week for a period of 190-2/7 weeks, from December 17, 2019 through August 9, 2023, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any. Respondent shall receive a credit in the amount of $55,844.98 for temporary total disability benefits paid from December 17, 2019 through September 16, 2022, a period of 143-4/7 weeks.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $60,032.68 for medical expenses, as set forth in Px11, Px12, Px13, and Px14, under §8(a) of the Act subject to the fee schedule in §8.2 of the Act, for reasonable and necessary treatment to Petitioner's right ankle/foot condition, CRPS and lower back.

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

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

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

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

March 7, 2025

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

MEP/dmm
O: 012825
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/s/ *Amylee H. Simonovich*
Amylee H. Simonovich

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC007242
Case Name	Debra McNeil v. Village of Robbins
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Antara Nath Rivera, Arbitrator

Petitioner Attorney	Ardwin Boyer
Respondent Attorney	Jeffrey Rusin

DATE FILED: 10/25/2023

THE INTEREST RATE FOR THE WEEK OF OCTOBER 24, 2023 5.32%

/s/ Antara Nath Rivera, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Debra McNeil
Employee/Petitioner
v.
Village of Robbins
Employer/Respondent

Case # **20 WC 07242**

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 **Rivera**, Arbitrator of the Commission, in the city of **Chicago**, on **8/9/2023.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **12/16/2019,** Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**29,952.00,** the average weekly wage was $**576.00**.

On the date of accident, Petitioner was **62** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**55,844.98** for TTD, $**0** for TPD, $**0** for maintenance, and $**0.00** for other benefits, for a total credit of $**55,844.98**

ORDER

Petitioner's current condition of ill-being, with respect to her lower back, was not causally related to a work related injury. As such, Respondent is not liable for any outstanding medical services pertaining to such treatment.

Respondent shall pay TTD benefits to Petitioner from September 17, 2022, through the August 9, 2023, amounting to 46-4/7 weeks, at the TTD rate of $384.00 per week, as provided in Section 8(b) of the Act. (Pursuant to consolidated case 20WC007242.)

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

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

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

OCTOBER 25, 2023

Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATOR DECISION

Debra McNeil,	)	
Petitioner,	)	
	)	Case No. 19WC037271
v.	)	20WC007242
	)	
Village of Robbins,	)	
Respondent.	)	

This matter proceeded to hearing on August 9, 2023, in Chicago, Illinois before Arbitrator Antara Nath Rivera on Petitioner's Request for Hearing. Issues in dispute include causal connection, medical bills, temporary total disability ("TTD"); and credit to Respondent. (Arbitrator's Exhibit "AX" 1)

FINDINGS OF FACT

Debra McNeil ("Petitioner") testified that she is 66 years old and has been employed by the Village of Robbins ("Respondent") since September 2017. (Transcript "T." 13) Petitioner testified that she was injured on December 16, 2019, and had not returned to work in any capacity for the Village since that time (T. 13-14)

Job Duties

Petitioner testified that when she was initially hired, she began working in the water department as a billing clerk. (T. 14) Petitioner testified that her job duties were to collect bills, and various receipts, tally up, and close the bank books. *Id*. Petitioner testified that in September 2018, she was promoted to accounts payable. (T. 14-15) Petitioner testified that her job duties were to gather the bills and give them the treasurer. (T. 15) Petitioner testified that her job duties entailed paying bills, gathering the bills, creating a spreadsheet, entering it in the computer, writing up a form, and getting everything approved, so that payments can be made by the mayor. (T. 20) Petitioner testified that she had to go across the hall for these duties. (T. 20-21) Petitioner testified that her job was essentially a sit down job. (T. 21)

Petitioner testified that she was also a purchase manager for Respondent, police, and fire department. (T. 15-16) Petitioner testified that, for this job, she decorated the buildings for all special occasions. Petitioner testified that she also planted flowers outside, hanging planters, and made signs. *Id*. Petitioner testified that she went to stores such as Menards, Home Depot, Walmart to pick up supplies. (T. 21) Petitioner testified that she ordered heavier supplies online. *Id*. Petitioner testified that she worked

eight hours a day, Monday through Friday, and worked some overtime. (T. 16) Petitioner testified that her office was located in village hall. (T. 17-18) Petitioner testified that her office was located behind the mayor's office, which was located on the left side of the lobby. (T. 18) Petitioner testified that she reported directly to the mayor. (T. 19)

Petitioner testified that she decorated for all departments for all holidays. (T. 22-24) Petitioner testified that she set up Christmas trees and decorations in Respondent's lobby, decorated for the water department, decorated outside the building, and would decorate for special events, like Christmas parties for seniors at the community hall. (T. 22-24; Petitioner's Exhibit ("PX") 22) Petitioner testified that standing on the chair to decorate was part of her job duties. (T. 27)

Petitioner further testified that to beautify Respondent's building, she would also garden. (T. 24-26) Petitioner testified that she bought the plants, the dirt, and would physically plant flowers. *Id.* Petitioner testified that the bags of dirt were about 40 pounds. *Id*.

Petitioner testified that she would go to Sam's Club to buy various cleaning supplies, bottles of water, and bags of chips for Respondent. (T. 26-27) Petitioner stated that she drove her own car to the various stores and loaded and unloaded the items into her car and then had to walk and carry and lift these various items back into village hall. Petitioner testified that, on average, she sat at her desk 2-3 hours but always doing tasks. Petitioner testified that she stood, walked, ran errands, carried items, and drove for five to six hours a day. (T. 29-31)

Accident

Petitioner testified that, on December 16, 2019, she was decorating the lobby of village hall for Christmas. (T. 34) Petitioner testified that there were two large six-foot tables that she had to decorate in the vestibule of the lobby. *Id*. Petitioner testified that she put tablecloths on them, set up the baby Jesus figurines, other Christmas decorations, as well as reading pamphlets for visitors. *Id*. Petitioner testified that she was decorating, and standing next to the table, when the table collapsed in the center and "pushed out." (T. 35) Petitioner testified that she fell on her back and the corner edge of the table fell on her right ankle "taking it off the ball." *Id*. Petitioner testified that the table was not a modern table, but an old table with cast-iron legs. *Id*. Petitioner testified that the screw came out and the table tilted and went down. *Id*.

Petitioner testified that the mayor, the administrator, fire chief, and others who were in a meeting came out. (T. 36) Petitioner testified that she was screaming and they helped her get up but she could not move because the table was too heavy for her to push off of her. *Id*. Petitioner testified that three men lifted the table off of her. *Id*. Petitioner testified that that was when she saw her foot was dangling and hanging. *Id*.

Petitioner testified that she was performing her normal job duties when this happened. (T. 37) Petitioner also testified that, at that time, she made $576.00/week. (T. 38) Petitioner testified that she received TTD in the amount of $768.00 every two weeks until September 16, 2022. (T. 38-39)

Summary of Medical Records

Petitioner testified that she went to South Suburban Hospital by ambulance on December 16, 2019. (T. 39) Petitioner testified that the doctor immediately took x-rays and said she needed surgery. *Id*. Petitioner testified that the doctor said she would need more than one surgery. (T. 39-40) Petitioner was diagnosed with a trimalleolar fracture, described as "acute displaced fractures through the posterior medial tibial malleolus associated with posterior tibiotalar dislocation" with "severe local soft tissue swelling." (PX 5 at 28) Petitioner was kept off work. *Id.*

Petitioner underwent three operative procedures between December 18, 2019, and May 17, 2021. (PX 1.10) On December 18, 2019, Dr. Gregory Primus, M.D., performed a closed reduction and fluoroscopy. (PX 1 at 741-744) The pre and postoperative diagnosis was right trimalleolar ankle fracture with large posterior malleolar fragment and posterior dislocation of the ankle joint. The procedure involved a closed reduction with application of a splint. *Id*.

On January 9, 2020, Dr. Primus performed an "open reduction internal fixation of trimalleolar fracture involving the distal fibula, medial malleolus, as well as fixation of the posterior malleolus." (PX 1 at 745-747) The postoperative diagnosis was right ankle status post close reduction of displaced trimalleolar ankle fracture. *Id*. Surgical procedures included implants of plates and screws. *Id.* Postoperative instructions included non-weight bearing, wound care, activity modification, pain medication and to follow-up with Dr. Primus. *Id*.

Petitioner testified that, in March 2020, as she was getting out of a wheelchair during physical therapy, she noticed an excruciating pain in her lower back. (T. 44) On May 12, 2020, Petitioner reported at physical therapy that, with the recent weight bearing, she felt pain in her low back again. (PX 1 at 35) Petitioner consistently reported low back pain as a significant contributing cause of her ongoing physical limitations. (PX 1 at 35-514, 777-786) Dr. Primus opined that the Petitioner's low back pain was work related. (PX 1 at 38, 53, 70, 87-88, 100, 108)

From May 13, 2020, through May 17, 2021, Dr. Primus' continually diagnosed Petitioner with trimalleolar fracture as well as sprain of the tibiofibular ligament of the right ankle. (PX 1.3) Additionally, the physical therapy notes indicated right ankle pain, swelling/edema, right calf atrophy, numbness and tingling, decreased range of motion, difficulty with stairs and sleep and home chores and tub transfers and prolonged standing and walking, chronic pain and limitations due to pain and edema and limited range of motion. (PX 1 at 1-204)

On July 22, 2020, Dr. Vivek Mohan, M.D., section 12 examiner, performed an independent medical examination ("IME") involving Petitioner's lower back. (RX 2) Dr. Mohan documented his physical examination of the Petitioner which revealed a slow and antalgic gait with a walker. (RX 2 at 8-12) Dr. Mohan noted negative straight leg raise testing in the bilateral lower extremities. Dr. Mohan noted multiple positive Waddell's signs during evaluation of the low back, including nonorganic pain findings including twinging of the back with light pressure and pain with non-painful stimuli. *Id*. In addition to the medical records provided, Dr. Mohan reviewed Petitioner's MRI of the lumbar spine from July 6, 2020, which revealed L4-5 disc degeneration without any acute findings and only chronic degenerative changes noted. *Id*.

Dr. Mohan opined that Petitioner's diagnosis was right ankle fracture and dislocation. *Id*. Dr. Mohan opined that there was no evidence of a lumbar injury from the work accident. *Id*. Dr. Mohan stated that Petitioner had significant degenerative changes unrelated to her accident as well as positive Waddell's signs. *Id*. Dr. Mohan found no neurological findings emanating from the lumbar spine. *Id*. Dr. Mohan opined that she could return to full duty work without restrictions in her job, which is sedentary and light duty work. *Id*. Dr. Mohan found no further treatment for the lumbar spine reasonable or necessary. *Id*.

Dr. Simon Lee M.D. offered a series of IME reports dated August 6, 2020, September 22, 2021, August 24, 2022, and July 14, 2023. (RX 3) Dr. Lee diagnosed Petitioner with status post trimalleolar fracture, status post hardware removal and superficial peroneal nerve release with chronic pain. (RX 3 at 17-20) Dr. Lee opined that said diagnoses were causally related to the original accident. *Id*.

On September 22, 2021, Dr. Lee opined that Petitioner would only require 6-8 weeks of physical therapy until she reached maximum medical improvement ("MMI"). *Id*. Dr. Lee indicated that any additional care or treatment beyond the physical therapy would likely provide no additional benefit. *Id*. Further, Dr. Lee opined that Petitioner was capable of returning to her prior job without any restrictions and that Petitioner was capable of returning back to her previous occupation with restrictions of limited standing, walking, minimal bending, stooping, squatting, and no lifting, pushing, pulling or carrying greater than 10 pounds. *Id.*

On May 17, 2021, Dr. Primus performed hardware removal. (PX 1 at 749-753) Dr. Primus removed the hardware from Petitioner's right ankle, performed a right ankle abrasion chondroplasty, a nerve neurolysis; and a nerve wrap with amnion gap. (PX 1 at 765) The postoperative diagnosis was right ankle post trimalleolar open reduction and internal fixation; right ankle superficial branch of the peroneal nerve neuropathy; right ankle pain and swelling; metal allergy; ankle joint synovitis and scar; and ankle joint chondromalacia. *Id*. Dr. Primus also noted that the peroneal nerve was heavily encased in scar tissue. (PX 1 at 768)

Petitioner testified that after the May of 2021, surgery, she continued to follow up with Dr. Primus on a monthly basis as well as continuously undergo physical therapy. (T. 50) Petitioner testified that she

went to physical therapy until August 2022 when workers' compensation stopped paying for it. *Id.* Petitioner testified that workers' compensation stopped paying for Dr. Primus' visits but that she continued to see him. (T. 51) Petitioner testified that despite the suspension of benefits, she continued to treat with Dr. Primus monthly from September of 2022 through July of 2023 (T. 68)

On August 24, 2022, Dr. Lee's evaluation of Petitioner indicated that he found no significant swelling of the right ankle. (RX 3 at 22) Dr. Lee could not address the Petitioner's range of motion due to guarding. *Id*. Dr. Lee concluded that Petitioner does not require future care. *Id*.

On May 5, 2022, Dr. Primus noted that Petitioner reported sharp pains after physical therapy sessions. (PX 1 at 400) Dr. Primus noted that Petitioner consulted with a vein specialist and no vascular issues were noted. *Id*. Petitioner testified that she also sought treatment with Dr. Primus for her back pain. (T. 52) Petitioner testified that Dr. Primus conducted electric shock treatments and suction cup treatment to alleviate the pain. *Id*.

On June 3, 2022, Dr. Primus diagnosed Petitioner with right peroneal nerve injury. (PX 1 at 430)

On July 8, 2022, Dr. Primus noted that Petitioner's back pain became noticeable after physical therapy. (PX 1 at 458) He opined that Petitioner did not have any prior back complaints before the work accident and that she was able to wear heels on a regular basis. *Id*. Dr. Primus noted that Petitioner's pain was prevalent with prolonged standing and sitting and that the pain radiated from her lower back to her left leg. *Id.*

On July 20, 2022, Petitioner underwent a Functional Capacity Evaluation ("FCE"), at the recommendation of Dr. Primus, which was conducted at Chicago Center for Sports Medicine and performed by Joseph Santillo. (PX 1.9; T. 84) Pursuant to the FCE, the evaluator documented Petitioner's job in the Clerical industry and specifically highlighted the "target job" falls in the "sedentary physical demand level" (PX 1 at 721-723) Mr. Santillo's findings indicated that Petitioner met the sedentary physical demand level by lifting zero pounds from the floor, 10 pounds from her waist to shoulder, five pounds above her head, carrying five pounds, and pushing/pulling five pounds. *Id*. Mr. Santillo noted that Petitioner was able to meet the 10 pound lifting and carrying requirement for an accounts payable bookkeeper position. *Id*. Petitioner also demonstrated limited lower extremity active range with respect to her ankle, limited strength, and antalgic gait. *Id.* Petitioner was able to walk 50 feet and her rating for this test was "Moderate-Severe Slowing." (PX 1 at 729) Petitioner's pain level was continuously above 6 out of 10. (PX 1.9) Mr. Santillo indicated that Petitioner met the physical demands of a bookkeeper by her ability to demonstrate correct posture. (PX 1 at 723)

Respondent presented evidence of an FCE Analysis provided by Joe Castronovo (RX 5) Mr. Castronovo noted that the FCE is invalid as it shows only what the Petitioner chose to do and is not a representation of her maximum functional ability. *Id.* Mr. Castronovo opined that Petitioner is capable of

returning to unrestricted full duty work at her prior physical demand level in the sedentary capacity pursuant to her original job duties and job description. *Id*.

On September 12, 2022, Petitioner underwent and MRI. (PX 1 at 471) The MRI revealed L2-L3, L3-4, L4-5 disc bulge causing foraminal stenosis right worse than left. *Id*. Central herniation L5/S1 with underlying bulge causing foraminal stenosis left worse than right. *Id*. Petitioner testified that Dr. Primus referred her to Dr. Sajjad Murtaza, M.D. for her nerve pain. (T. 53)

On September 15, 2022, Petitioner presented to Dr. Murtaza. (PX 3; T. 53-55)The records indicated that Petitioner reported being in moderate to severe pain and distress in the right lower extremity. (PX 3 at 13) Petitioner also reported tenderness to palpation of the lumbar spine, with rotational pain to the right. *Id*. Dr. Murtaza diagnosed Petitioner with complex regional pain syndrome of the right lower limb and lumbar back pain with radiculopathy affecting the right lower extremity. (PX 4 at 14) Dr. Murtaza ordered a follow-up EMG. (PX 4 at 1-2)

Petitioner testified that after the EMG, Dr. Murtaza recommended an injection. (T. 54-55) Petitioner admitted that she had not undergone any injections. *Id*. Petitioner testified that workers' compensation would not pay for the injection. *Id*. Petitioner testified that the plan was surgery was the next option if the injection did not help. *Id*.

On September 22, 2022, Dr. Primus diagnosed Petitioner with lumbar radiculopathy after back sprain/contusion after a direct fall. (PX 1 at 477)

On July 5, 2023, Dr. Richard Noren, M.D., performed an IME. (RX 4) Dr. Noren noted that Petitioner suffered from complex regional pain syndrome. (PX 4 at 32) Dr. Noren noted that the EMG evidence showed an L5/S1 radiculopathy. *Id.* Dr. Noren opined that Petitioner's subjective lumbar complaints were unrelated to the work accident, despite some objective findings consistent with neuropathic pain. *Id.* Dr. Noren opined that Petitioner's recommended epidural injection was not reasonable and would not result in resolution of her back complaints or her neuropathic pain in the right foot. *Id*. Dr. Noren opined that Petitioner reached MMI at the time of her prior FCE in July of 2022 (RX 4 at 33)

At the hearing, Petitioner presented photographs of her right ankle from her phone on various dates from May 3, 2020, to May 4, 2023. (PX 15; T. 56-57) Petitioner testified that she took the photographs and that the dates of the photos automatically post. (T. 56-57) Petitioner testified that the photo taken on February 2, 2023, showed the tape measure around her right ankle and that it measured 13-1/2 inches (PX 15 at 9; T. 58) Petitioner testified that the picture of her left ankle, taken on the same day, measured 11 inches. (PX 15 at 10; T. 58-59) Petitioner testified that the right ankle was swollen 2-1/2 inches more than the left. (T. 59)[1]

[1] During this point of Petitioner's testimony, she requested to stand so that her leg did not cramp.

Petitioner testified that she communicated with Shuntai Sykes via email. (T. 61-63; PX 18, 19, 20, 21) Petitioner testified that she sent in Dr. Primus' Work Status Reports which indicated that Petitioner was off work from December 18, 2019, to July 25, 2023. (PX 1.6 at 516-623; PX 14; T. 61) The reports indicated that Dr. Primus never authorized Petitioner to return to work. (PX 1.6 at 516-623; T. 91-92) Petitioner also testified that she was offered a position to go back to work as an administrative assistant part time. (T. 61-62) Petitioner testified that she responded that she was she was still under doctor's care and that she felt as though she would not be able to do her job at the fullest because of her pain. (T. 62) Petitioner testified that she never got a response from Respondent to her concerns to returning to work. (T. 63)

Petitioner's Current Condition

Petitioner testified that her most recent visit with Dr. Primus was in late July of 2023. (T. 89) Petitioner testified that she had the same exact symptoms as she did three years ago and had no change in her overall physical examination and functional abilities. *Id.* Petitioner testified that Dr. Primus did not provide any new or significant treatment recommendations. She testified that there was a recommendation for her to follow up with a spinal expert, but she has not undergone any spinal evaluations *Id.*

Petitioner testified that she did not return to work in any capacity since 2019. (T. 84) She also testified that she had not sought employment from any other employer. *Id.* Petitioner testified that she is not able to return to work because of her excruciating pain, swelling, throbbing, on a daily basis. *Id.* Petitioner testified that had she got the injection, it could have helped. *Id.* Petitioner testified that she wants to get well but cannot pay for the service. *Id.* Petitioner also testified that her medical insurance was cancelled. *Id.*

Petitioner testified that she is not able to walk well enough to do the job duties she once performed. *Id.* Petitioner testified that she is not able to lift, carry, shop, get up on chairs or ladders, stand during work or events, or put any weight on her ankle as she used to. (T. 63-64)[2]

Petitioner testified that since December of 2019, she had had ongoing constant pain, swelling, and radiating pain down her leg and through her back with radiating pain going to her left leg as well (T. 45-46) Petitioner testified that she could only stand about 10 to 15 minutes before having terrible pain. (T. 47) Petitioner further testified that she did not believe she was able to return to work due to her pain levels (T. 48)

Testimony of Shuntai Sykes

[2] Respondent put in the record that Petitioner sat for an hour and stood "for the last 15 minutes." (T. 66)

Ms. Sykes testified that she worked as the Village administrator since May 2022. (T. 96-108) Ms. Sykes testified that she was not employed at the time Petitioner was employed or had her accident. *Id*. Ms. Sykes testified that none of the prior employees, including the mayor, were working for the Village of Robbins at this time. *Id.* Ms. Sykes testified that based on what she found on "Paylocity" Petitioner was employed by Respondent since May 2017. Ms. Sykes testified that Petitioner's prior position was "accounts payable manager," which was a part time position. *Id.* Ms. Sykes testified that the only "full-time" positions for Robbins including the village administrator, fire chief, police chief and public works director. *Id*.

Ms. Sykes testified that a majority of Petitioner's position included a lot of sitting, answering phones, filing, and carrying of items that could weigh between five to six pounds (occasionally sometimes over 10 pounds). (RX 8; T. 99-101) Ms. Sykes testified that she did not know what Petitioner's job duties were regarding holiday decorations because the people that were working there are no longer working there. *Id.*

Ms. Sykes then testified that a job offer that was given to Petitioner in November of 2022. (RX 7; T. 102-104) Ms. Sykes testified that the job was for an administrative assistant for the fire department. *Id*. Ms. Sykes testified that the job offered complied with all of the alleged restrictions and accommodations documented in the FCE. *Id.* Ms. Sykes testified that the salary offered was, $17, 500.00 and that the salary was subject to change and that Petitioner could earn more. *Id.* Ms. Sykes testified that Petitioner was offered the administrative assistant job, because the job she was previously working had already been filled (T. 104) Ms. Sykes testified that Petitioner never returned to work or attempted to return to work. (T. 103)

CONCLUSIONS OF LAW

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

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

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

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

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds the Petitioner credible and that she was calm, well-mannered, and composed. The Arbitrator observed Petitioner walk with a walker and observed Petitioner wince in pain throughout the trial. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find material contradictions that would deem the witness unreliable.

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

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

It is well established law that proof of prior good health and change immediately following and continuing after an injury may establish that an impaired condition was due to the injury. *Navistar International Transportation Corporation*, 315 Ill. App. 3d 1197, 1206 (2000) The Court specifically stated that causal connection between work duties and a condition may be established by a chain of events, including Petitioner's ability to perform duties before the date of the accident and inability to perform the same duties following that date. *Id.*

The Arbitrator notes that Petitioner was diagnosed with a trimalleolar fracture, described as "acute displaced fractures through the posterior medial tibial malleolus associated with posterior tibiotalar dislocation" with "severe local soft tissue swelling" in the emergency room. (PX 5 at 28)

The Arbitrator notes that Petitioner, thereafter, underwent three operative procedures between December 2019 and May 2021. (PX 1) The Arbitrator notes that the postoperative diagnosis, of the first surgery, was right trimalleolar ankle fracture with large posterior malleolar fragment, and posterior

dislocation of the right ankle. The procedure involved a closed reduction with application of a splint. (PX 1 at 741-744) The Arbitrator notes that the postoperative diagnosis, of the second surgier, was right ankle status post close reduction of displaced trimalleolar ankle fracture. (PX 1 at 745-747) The Arbitrator notes that after the third surgery, the postoperative diagnosis was right ankle status post trimalleolar open reduction and internal fixation; right ankle superficial branch of the peroneal nerve neuropathy; persistent right ankle pain and swelling; diffuse ankle joint synovitis and scar; and diffuse ankle joint chondromalacia. (PX 1 at 749-768)

The Arbitrator notes that Dr. Primus also noted that the peroneal nerve was heavily encased in scar tissue and diagnosed Petitioner with right peroneal nerve injury. (PX 1 at 430; 749-768) The Arbitrator notes that Dr. Primus never released Petitioner back to work due to her right ankle injury. The Arbitrator notes that Dr. Mohan opined that Petitioner's diagnosis was right ankle fracture and dislocation. (RX 2 at 8-12)

The Arbitrator notes that Dr. Lee diagnosed Petitioner with status post trimalleolar fracture, status post hardware removal and superficial peroneal nerve release with chronic pain. (RX 3 at 17-20) Dr. Lee opined that the diagnoses were causally related to the original accident.

With respect to Petitioner's lower back, the Arbitrator notes that Dr. Primus noted that Petitioner's back pain became noticeable after physical therapy. (PX 1 at 458) The Arbitrator notes that pain specialist, Dr. Murtaza, diagnosed Petitioner with complex regional pain syndrome of the right lower limb and lumbar back pain with radiculopathy affecting the right lower extremity. (PX 4 at 14) The Arbitrator notes that Dr. Murtaza did not provide a causal connection. The Arbitrator further notes that Dr. Mohan's review of Petitioner's MRI, of the lumbar spine, revealed L4-5 disc degeneration without any acute findings and only chronic degenerative changes noted. (RX 2 at 8-12) The Arbitrator notes that Dr. Mohan opined that there was no evidence of a lumbar injury from the work accident. (RX 2 at 8-12) The Arbitrator also notes that Dr. Noren opined that Petitioner's subjective lumbar complaints were unrelated to the work accident. (PX 4 at 32)

The Arbitrator notes that while Dr. Primus diagnosed Petitioner with lumbar radiculopathy after back sprain and contusion after a direct fall, there was no evidence of complaints of back pain until May 12, 2020, as noted in the physical therapy notes. (T. 44; PX 1 at 35; 477) Moreover, the Arbitrator notes that this was more than five months after the accident. The Arbitrator notes that Petitioner testified at trial that she developed low back symptoms stemming from physical therapy in March of 2020 after allegedly getting out of a wheelchair. (T. 44) The Arbitrator notes that there was no evidence presented from the March 2020 physical therapy records that Petitioner complained of such pain. (PX 1 at 25-34)

The Arbitrator notes that Petitioner testified that she had the same exact symptoms as she did three years ago and had no change in her overall physical examination and functional abilities. (T. 89) The Arbitrator notes that Petitioner testified that she is not able to return to work because of her excruciating

pain, swelling, throbbing, on a daily basis. (T. 84) The Arbitrator notes that while Petitioner testified that she was offered a position to go back to work, she responded that she was she was still under doctor's care and felt as though she would not be able to do her job at the fullest because of her pain. (T. 61-62) The Arbitrator notes that Petitioner testified that she is not able to put any weight on her ankle as she used to. (T. 63-64)

Based upon the totality of the evidence, the Arbitrator finds that Petitioner's current condition of ill-being, with respect to her right ankle, is causally related to the work related injury on December 16, 2019. However, based on the evidence presented, the Arbitrator finds that Petitioner's condition of ill-being with respect to her lumbar spine, is not causally related, to the December 16, 2019, accident.

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

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

As the Arbitrator found that Petitioner's current condition of ill-being, with respect to her right ankle, was causally related to a work related injury, the medical services rendered for her right ankle were reasonable. Based on the evidence presented, Respondent shall pay Petitioner for the following outstanding medical services, related to Petitioner's right ankle, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. (PX 10, PX 11, PX 12, PX 13, PX 14)

As the Arbitrator found that Petitioner's current condition of ill-being, with respect to her lower back was not causally related to a work related injury, Respondent is not liable for any outstanding medical services pertaining to such treatment.

WITH RESPECT TO ISSUE (K), WHAT TEMPORARY BENEFITS ARE IN DISPUTE, THE ARBITRATOR FINDS AS FOLLOWS:

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Westin Hotel v. Indus. Comm'n*, 372 Ill.App.3d 527, 542 (1st Dist. 2007).

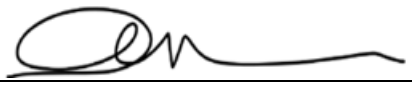
As the Arbitrator found that Petitioner's current condition of ill-being, with respect to her right ankle, was causally connected to the work-related accident, the Arbitrator finds that Petitioner met her burden and is entitled to receive TTD benefits. The Arbitrator notes that, based on Petitioner's testimony and records submitted, Petitioner was off work from December 17, 2019, through August 9, 2023. (PX 1; PX 14; T. 61) Respondent paid and is entitled to a credit in the sum of $55,844.94 for TTD benefits paid from December 17, 2019, through September 16, 2022.

Thus, the Arbitrator finds that Respondent shall pay TTD benefits to Petitioner from September 17, 2022, through the August 9, 2023, amounting to 46-4/7 weeks, at the TTD rate of $384.00 per week, as provided in Section 8(b) of the Act. (PX 1; PX 14; AX 1 line 9)

WITH RESPECT TO ISSUE (N), WHETHER RESPONDENT IS DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator found that Respondent paid TTD from December 17, 2019, through September 16, 2022. Thus, Respondent is entitled to a total credit of $55,844.94 for TTD benefits paid, pursuant to Section 8(j) of the Act.

It is so ordered:



Arbitrator Antara Nath Rivera

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC025795
Case Name	Laverne Kertis v. First American Bank
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0097
Number of Pages of Decision	23
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Muriel Collison
Respondent Attorney	Olimpia Pietraszewski

DATE FILED: 3/11/2025

/s/Marc Parker,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

Laverne Kertis,

Petitioner,

vs. NO: 21 WC 025795

First American Bank,

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, benefit rates, medical expenses, 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 July 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.

March 11, 2025

MP:yl
o 2/20/25
68

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC025795
Case Name	Laverne Kertis v. First American Bank
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	Muriel Collison
Respondent Attorney	David Gore

DATE FILED: 7/10/2024

/s/ Paul Cellini, Arbitrator
Signature

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

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)

LAVERNE KERTIS Case # **21** WC **25795**
Employee/Petitioner

v.

FIRST AMERICAN BANK
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 **Wheaton**, on **April 16, 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, **September 8, 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 $**Unknown**; the average weekly wage was $**2,264.93**.

On the date of accident, Petitioner was **53** 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 $**35,974.37** for TTD, $**16,151.24** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits, for a total credit of $**52,125.61**.

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

ORDER

The Arbitrator finds that the Petitioner's cervical condition of ill-being is causally related to the September 8, 2021 accident. The Arbitrator further finds that the Petitioner's headaches, left ear, and tinnitus symptoms are causally related to the September 8, 2021 accident. The Arbitrator finds that Petitioner has failed to prove that any claimed lumbar and left shoulder conditions are related to the September 8, 2021 accident.

The Arbitrator finds that the Petitioner's average weekly wage at the time of the accident is **$2,264.93**.

Respondent shall pay Petitioner maintenance benefits of **$1,509.95 per week** for **3-6/7 weeks**, commencing **March 21, 2024 through April 16, 2024**, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner temporary partial disability benefits of $**various amounts** per week for **72-2/7 weeks**, commencing **January 3, 2022 through July 6, 2022**, from **August 12, 2022 through February 7**, **2023**, and from **April 27, 2023 through September 14, 2023**, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of **$1,509.95 per week** for **58 weeks**, commencing **September 9, 2021 through January 2, 2022**, from **July 7, 2022 through August 11, 2022**, from **February 19, 2023 through April 26, 2023**, and from **September 15, 2023 through March 20, 2024**, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $**52,125.61** for temporary total disability and temporary partial disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical services of **$943,297.69**, as provided in Sections 8(a) and 8.2 of the Act.

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.

Penalties and Fees pursuant to Sections 19(k), 19(l), and 16 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.

July 10, 2024

Signature of Arbitrator

STATEMENT OF FACTS

Petitioner worked for Respondent as a Customer Relationship Officer Vice President. He started there in approximately 2010 as a branch manager, moving up to his current position in March 2020. He testified he currently earns approximately $103,000 per year with Respondent, which includes some increases since his work accident. He agreed his total weekly wage in the year prior to the accident, including his part-time job with Home Depot, was approximately $2,264.93. His job primarily involved business and higher net wealth customers, both deepening relationships with current customers and obtaining new customers to bankroll. He estimated that about 80% of his job was being out and about and meeting with customers to find new business to bankroll and deepen current relationships to keep them happy. He was therefore involved in networking groups, including being the executive chair for the Hoffman Estates Chamber of Commerce and various business lunches and meetings. The other 20% of his job involved researching and learning about target businesses and their financial needs, working with underwriters on new loans, and collecting necessary documentation to facilitate loan approvals. Based on his work duties, Petitioner testified on average he would work 55 to 60 hours per week ("it's not a 9 to 5 job"). When he started in 2010, he took their worst branch to number one by 2018 in terms of revenue, loans, and new relationships. PxQ contains pay stubs from his employment with Respondent.

Petitioner's job with Home Depot, which he had done for 8 or 9 years, involved sales in kitchen design/remodeling and appliances, and he was able to source a number of home equity loans for Respondent in

this position. Respondent's Executive President of Retail Banking, Adelbert Spann, was aware of his employment there and appreciated his thinking outside of the box to obtain new business. He worked at Home Depot approximately 20 hours per week and was earning $23.82 per hour "at the end." Petitioner identified PxU as his W2 forms from Home Depot in 2020 and 2021. He earned less in 2021 because of his inability to work after the work accident.

Petitioner denied any prior cervical, headache, vertigo, or left shoulder/arm pain or numbness before 9/8/21 He did have a prior minor low back injury with sciatica in approximately 2006 and that he had a right hip replacement in April 2021.

On 9/8/21, Petitioner was traveling to see a loan client on behalf of Respondent when he was involved in a motor vehicle accident. While stopped at a traffic light he was rear-ended by a driver who was driving at a high speed on a 45 mile per hour road, pushing him into a ditch. Both vehicles were badly damaged. He felt tingling in his hands immediately and recalled hitting his head on the drivers' side window. He was able to exit the vehicle and call 911. He was taken by ambulance (Countryside FD) to Delnor Hospital and admitted for two days, noting he had very high blood pressure and his arms were tingling.

The EMT report notes Petitioner was walking around when they arrived and complained of neck and left shoulder pain, denying other complaints. Petitioner advised the ENT he was going 10 to 15 miles per hour when he was struck from behind by a vehicle going about 40 to 45 miles per hour. En route to the hospital he reported tingling in his right hand. (PxA). The ER records from Delnor reference Petitioner being rear ended by a driver going about 30 miles per hour with complaints of neck and bilateral shoulder pain with numbness in the right arm. He also had hit his head and noted mid-back pain. Brain CT was normal. Orthopedic physician Dr. Mehta was consulted for right shoulder and trapezius pain complaints and numbness in the middle and ring fingers. X-ray showed evidence of a prior right shoulder surgery, which Petitioner indicated was about 30 years prior, including a wide AC joint and a chronic ossicle adjacent to the acromion. Dr. Mehta did not believe Petitioner sustained any significant shoulder injury and advised him to use the arm as tolerated, opining the shoulder symptoms were likely related to the cervical spine. Cervical CT scan showed spondylitic changes most pronounced at right C6/7 with broad-based disc/osteophyte complex resulting in moderate to severe right lateral recess and foraminal stenosis. At C5/6 there was degenerative disc disease with dorsal central left paracentral dis protrusion. Cervical MRI indicated multi-level spondylitic changes and facet arthrosis. At C6/7 was a broad-based right paracentral and right lateral disc osteophyte complex/broad-based disc herniation resulting in severe right lateral recess and moderate to severe right foraminal stenosis impinging on the exiting right-sided nerve root. At the C5/6 level, there was a degenerated disc with a left paracentral disc protrusion. Thoracic CT indicated no spinal abnormalities. Neurosurgeon Dr. Brayton agreed with discharge and follow up. Primary discharge diagnosis was right arm paresthesias with secondary diagnoses of C6/7 disc herniation, evidence of prior distal right clavicle resection and AC joint separation status post-remote shoulder surgery, right shoulder pain with possible rotator cuff injury, elevated right hemidiaphragm indicating possible diaphragm paralysis, bradycardia, hypertension, OSA and CAD status post CPI. Petitioner was discharged on 9/10/21, with the discharge noting a diagnosis of C5/6 and C6/7 disc/osteophyte complex with conservative treatment and a Miami J collar. He was to perform activities as tolerated and to follow up with Dr. Sood. (PxB). Petitioner testified his neck, left shoulder and arm hurt, noting the records referencing a right shoulder complaint was a clerical error, repeated in multiple subsequent reports. He also testified that a surgeon at the hospital had recommended neck surgery during his ER evaluation, but the doctor was "shaking a lot" and he wasn't comfortable with him, so he requested discharge and went to see his primary provider, Dr. Sood, on 9/13/21.

Dr. Sood recorded reported a consistent history of accident, diagnosed cervicalgia and referred Petitioner to orthopedic surgeon Dr. Mohan. (PxC). On 9/15/21, Dr. Mohan referenced neck pain with right arm numbness into the first three fingers following the motor vehicle accident where he was rear ended. Petitioner also

reported numbness in both arms when lying down flat, and neck pain radiated into both shoulders. He was noticing weakness in both arms, right greater than left. After reviewing the cervical MRI and CT scan and examining Petitioner, Dr. Mohan diagnosed a significant C6/7 disc herniation causing weakness in the right upper extremity that was likely to progress. The presented options were conservative treatment versus disc replacement with a possibility of fusion, and Petitioner opted for surgery. (PxD). While Petitioner testified he reported back pain, the Arbitrator did not see this in the report. 9/16/21 x-ray showed degenerative disc changes with osteophytes at C6/7 and to a lesser degree at C5/6 and multilevel uncovertebral joint degeneration. (PxF).

A C6/7 anterior discectomy and fusion surgery was performed by Dr. Mohan on 9/17/21. (PxD, PxE). At 9/27/21 follow up, Petitioner reported significant improvement in his pain with intermittent numbness in the left index and middle fingers, as well as right shoulder pain and "popping" with movement. Right shoulder x-ray was prescribed. (PxD). A 9/30/21 right shoulder x-ray showed a widened AC interval possibly related to prior trauma or osteolysis. (PxF). Petitioner was held off work and on 10/25/21 he reported significant neck and bilateral shoulder tightness with difficulty sleeping. There was no numbness or tingling. Physical therapy was prescribed along with sleeping pills to relieve the tightness. He was advised to remain off work and wean off of Norco. (PxD).

Post-operatively Petitioner testified he had vocal cord problems and couldn't talk due to surgical intubation, and that while his voice returned, this recurred with his subsequent surgeries. He agreed his numbness improved after surgery but remained intermittent and then worsened over time. While he was receiving TTD benefits, Petitioner testified the amount was based only on his job with Respondent and didn't take his job with Home Depot into account.

Petitioner underwent post-operative physical therapy ay Athletico. (PxG).

Petitioner had continued complaints on 11/10/21 to Dr. Mohan and denied numbness and tingling. Physical therapy was to be directed to his neck tightness. (PxD). Dr. Sood prescribed Xanax that same day for anxiety. On 12/1/21, Dr. Sood noted Petitioner complaints of post-surgical tinnitus that was worsening. He also noted a "fluttering" in his left ear when he laid on his side. A brain MRI was requested, and on 12/2/21 eardrops were prescribed. (PxC). On 12/10/21, Petitioner advised Mohan of ongoing tingling in the first three fingers of both hands, swelling of the left face, and constant ear ringing. The brain MRI revealed "inflammation superficially around the face, that may be causing compression of the facial nerve on the left side of his face." (PxD). A 12/15/21 cervical x-ray showed no change in alignment or hardware issues. (PxF). Dry needling / acupuncture was recommended, and Petitioner remained off work. On 12/17/21, Petitioner was feeling much better with improved pain, walking 4 miles per day with no problems. His facial swelling and ear ringing continued with flare ups after therapy and he was referred to Dr. Decaria for this, with Mohan noting possible dry needling/acupuncture and/or Botox injection. Dr. Mohan released him to return to part time work (4 hours per day) without restrictions and with ongoing therapy. (PxD).

Petitioner testified he was improving after surgery but had pain and tingling in his left first three fingers (thumb, index, middle). He had ongoing tinnitus, which began several months after the surgery, and swelling of his left neck and face, which he iced often. There was "no rhyme or reason" when this would occur, and he testified he would have bloody discharge from his left ear (Petitioner identified PxT as a photo depicting this on his pillow) which continues as of the hearing date. He denied prior similar symptoms. A 1/3/22 report from Athletico notes Petitioner reported this was the first day he returned to work, part-time. These records also reflected ongoing complaints of bilateral hand numbness, tinnitus, and left ear drainage. (PxG).

On 1/12/22, Dr. Decaria noted complaints of neck, left shoulder, and bilateral foot pain, bilateral finger numbness and "fluttering" feeling in the left ear since the accident ("feeling may have started with car accident

but he was taking lots of medications so it feels pronounced now after neck surgery – one month after surgery progressively increasing the feeling."). He also reported occasional swelling of his left face, fatigue, blurred vision, trouble hearing, cough, heartburn, nausea/vomiting, numbness/tingling, muscle pain, weakness, headaches, difficulty sleeping, ear discharge, anxiety, and depression. He had returned to work the week prior to this visit and felt it flared his pain. Dr. Decaria's assessment was left tinnitus, radicular pain, and myalgia. The radicular symptoms had improved with surgery, but Petitioner had significant ongoing myofascial pain and some signs of left TMJ syndrome. Petitioner was advised to see an ENT and to have possible vestibular therapy. Physical therapy was to continue at Athletico, he was advised to use a TENS unit and to avoid working more than 4 hours per day. Trigger point injections performed on 1/20/22 in the left cervical and trapezius area, which Petitioner reported provided the most relief he'd had since the accident. The relief was temporary, and they were repeated on 1/28/22. (PxH). Petitioner testified the second set of injections also provided good but temporary relief.

On 1/20/22, Petitioner saw Dr. Sood for high blood pressure and reported he was feeling depressed due to chronic neck pain. Ambien and Xanax were prescribed. (PxC). On 1/28/22, Dr. Mohan noted Petitioner was doing very well from a neck standpoint with no numbness or tingling. He was consulting with an ENT as to the facial and ear symptoms, noting he also complained of ear discharge. Dr. Mohan noted injections with Dr. Decaria had provided some relief, but that these face and ear symptoms were unrelated to the spine. Further therapy and part-time work was advised. (PxD).

Petitioner was evaluated by ENT Dr. Walker on 2/1/22 based on his complaints of headaches, ear drainage, tinnitus complaints and the fluttering feeling, as well as intermittent tenderness and swelling in the back of the left ear/upper neck. He also reported mainly left nasal drainage with a salty taste. Dr. Walker noted there was concern for a CSF leak. He recommended IAC MRI and CT scans and an audiogram. Petitioner saw Dr. Van Eaton for the audiologic evaluation on 2/3/22 and the findings reflected normal hearing bilaterally. (PxJ).

Petitioner underwent cervical and brain MRIs (Evanston Hospital) on 2/9/22. The history noted intermittent left drainage, intermittent tenderness and swelling of the neck and back of the left ear, a feeling of "fluttering" in the left ear with pressure, headaches, and intermittent nasal drainage primarily on the left with a salty taste. MRI reflected an opacified left mastoid air cell posterior to the medial external auditory canal just lateral to the descending mastoid segment of the facial nerve, and two punctate-very small foci of nonspecific high FLAIR/T2 signal in the right frontal subcortical white matter most likely representing gliosis of microvascular ischemic change in a patient of this age. Other than post-surgical changes, no other abnormalities were indicated. CT scan reportedly showed the mastoid air cell, very mild paranasal sinus inflammatory changes with no fluid level, and a probable bone island (assuming an absence of a history of malignancy) in the left sphenoid bone medial to the vidian canal that was to be checked for change/stability in 6 months. Also noted in the body of the report was cavernous carotid atherosclerotic calcification. (PxJ).

On 2/10/22, Petitioner reported 2 or 3 days of 90% relief with the repeat injections ("He said it was a 'miracle' of a few days.") that was again temporary. Further trigger point injections could not be performed given short temporary relief. Petitioner was allowed to continue working 4 hour days and follow up as needed. (PxH). Petitioner advised on 3/9/22 that his ENT had found no CSF leak but believed the tinnitus would continue. He was noted to be upset and tearful about this prognosis. The fluttering feeling had improved but Petitioner felt his left arm symptoms were worsening. Dr. Decaria advised possible Cymbalta and Botox. Petitioner was returned to 4 hour workdays and advised to follow up as needed. (PxH).

Petitioner testified he wanted to continue to work despite feeling it worsened his pain. He agreed all of the injections with Dr. Decaria provided relief but it was only temporary relief.

Petitioner underwent vestibular therapy at Physical Therapy Solutions on 2/28/22 and 3/2/22 on referral from Dr. Sood but testified that workers' compensation insurance wouldn't cover it so he could only afford to go to a couple of visits. A 3/4/22 note from this facility indicated Petitioner canceled due to having a cold, while a 4/8/22 note stated he canceled his "last appts due to being sick" and never responded to voice messages to reschedule and was discharged prior to goals being met. (PxK).

X-rays on 2/5/22 indicated a stable fusion. (PxF). On 2/19/22, Petitioner advised Dr. Sood he had a two to three day history of neck pain with discomfort and dizziness. (PxC). On 2/23/22, Dr. Mohan noted Petitioner recently developed worsening pain in the left biceps associated with hand swelling but no numbness or tingling. He continued to have ear ringing and the fluttering in his left ear. The doctor recommended the vestibular therapy prescribed by Petitioner's ENT, noting concern for a sympathetic problem or problem with the carotid artery. On 3/9/22, Petitioner reported a several week history of left shoulder weakness and pain. Dr. Mohan continued part-time duty and ordered a left shoulder MRI. (PxD). The 3/14/22 left shoulder MRI mild tendinosis and findings of external impingement and trace fluid indicating possible bursitis. (PxF). On 3/16/22, Petitioner called Dr. Sood's office with complaints of left shoulder pain with the inability to raise his arm. He was requesting an increased pain medication than Tylenol pending shoulder surgery and his Xanax was refilled with diagnosis of anxiety disorder. (PxC). Petitioner testified he'd had no prior diagnosis of vertigo.

Petitioner testified he was referred to Dr. Saper for an orthopedic left shoulder evaluation on 3/16/22. Dr. Saper recorded complaints of pain since the 9/8/21 accident. X-ray was normal. Diagnosis included rotator cuff pathology and adhesive capsulitis secondary to pain. Arthroscopic surgery was planned with lysis of adhesions and a possible open repair depending on what was revealed given the failure of conservative treatment and Petitioner's eagerness to proceed. On 3/28/22, Petitioner reported that Respondent had denied the surgery. Dr. Saper indicated the denial letter had "numerous errors . . . (and) in my opinion his care is being needlessly denied." He noted Petitioner had extreme left shoulder pain and dysfunction, difficulty sleeping, severe pain and limitations with range of motion, significant rotator cuff weakness, signs of external impingement and possible subscapularis tearing per MRI. Surgery was again recommended as more than reasonable. On 4/11/22, Dr. Decaria's report noted "It seems like his WC will do a peer to peer. Happy to do this for him. He may also benefit from an IME." (PxI).

Petitioner testified that after the left shoulder MRI he was prescribed surgery for lysis of adhesions and possible debridement/repair. Petitioner testified that the surgery was delayed by a utilization review report, but that he did ultimately undergo the surgery. The Arbitrator did not locate any surgical report in the records in evidence, including PxI.

Petitioner testified that he stopped therapy at Athletico in March 2022, indicating he wanted to stop for a while and "switch gears" before starting with a new therapy location that had better service. The Athletico records reflect treatment from 11/8/21 through 3/4/22. The therapist in the last report indicated that given the persistent symptoms and limited lasting improvement ("high subjective pain and fluctuating BP preventing full recovery"), it was recommended he follow up with his doctor to discuss alternate options of care and that any decision on discharge would be made by the doctor. (PxG).

Petitioner agreed diagnostic testing did not show a CSF leak and that Dr. Decaria diagnosed a concussion. He had ongoing neck and head pain at this time with left arm weakness. He testified that returning to part-time work made his symptoms flare up, but he wanted to continue working so he pushed through it. Petitioner agreed he also returned to his job with Home Depot until about 8 months prior to the hearing date, working only about 2 hours a day, mainly weekends, and that he was only standing and answering questions.

Petitioner was referred to the ER by his cardiologist Dr. Doshi on 4/19/22 with a two month history of intermittent chest pain. He had obtained relief with nitroglycerine but was admitted for cardiac monitoring and evaluation. He also noted pain with raising his left arm to shoulder level, more so with abduction. Upon discharge on 4/23/22, it appears it had been determined that the chest pain was not cardiac related. Cardiology consult was with Dr. Nazarian. Left shoulder MRI showed no rotator cuff tears and mild degenerative AC joint changes. Cervical MRI films reflected post op changes with right disc/osteophyte disease at C6/7 encroaching on the right neuroforamina, and mild canal stenosis at C5/6. Cervical CT showed post op changes with right sided C6/7 joint hypertrophy with significant right foraminal stenosis and slight distortion of the right lateral aspect of the cord. Facet and uncovertable joint degenerative changes were also noted at C3/4 and C4/5 with bilateral foraminal stenosis and right foraminal stenosis at C5/6. Lumbar MRI showed degenerative disc changes that had generally progressed at L5/S1 versus 4/11/12 films with no significant spinal stenosis and mild right foraminal stenosis. Thoracic films are within normal limits. The consult with neurosurgeon Dr. Bertoglio notes a history of Petitioner developing a new left shoulder pain after cervical surgery which had progressed to include weakness, numbness, and some left arm muscle atrophy. It did improve somewhat for a few months after surgery but remains persistent. He noted that cervical MRI showed no significant residual foraminal or canal stenosis or misalignment. He believed the symptoms were "suggestive by history" of brachial plexopathy, possibly Parsonage Turner Syndrome, and indicated that EMG and neurology evaluation could be considered. (PxL).

Petitioner testified he was hospitalized at St. Alexis from 4/19/22 through 4/23/22 after being referred there by his cardiologist, Dr. Doschi, when he had very high blood pressure at a visit due to concern for a heart attack. He had severe pain at that time, and when this was brought under control, his blood pressure improved. He testified he was diagnosed with atrial fibrillation, left arm muscle atrophy, a cervical disorder, anxiety, depressive disorder, and sleep apnea. He had no similar prior problems before the car accident.

A 4/21/22 cervical MRI showed postoperative changes at C6/7 with disc and osteophyte disease to the right of midline encroaching upon the right neuroforamina, as well as mild spinal stenosis due to disc bulging, minimal central protrusion, osteophyte disease at C5/6, and no foraminal stenosis. (PxD).

Dr. Mohan noted the hospitalization and that cervical MRI and CT scan were obtained and showed solid fusion with no evidence of left sided nerve compression but mild degenerative disc disease at the adjacent levels. Petitioner continued to have left shoulder pain into the arm, this time with mild numbness and tingling throughout the arm and into the first three fingers with forearm compression. EMG of the left upper extremity was ordered along with referral to a vascular surgeon to rule out thoracic outlet syndrome. (PxD).

On 5/2/22, Dr. Sood referenced Petitioner's hospitalization and that this was diagnosed as non-cardiac. He continued to complain of neck and left arm symptoms. On 5/16/22, Dr. Mohan reported the 5/13/22 EMG suggested C5/6 nerve root irritation. He recommended C5/6 disc replacement or discectomy and fusion. After being cleared by Dr. Sood Petitioner underwent surgery with Dr. Mohan on 7/7/22 involving a C5/6 discectomy and fusion along with removal of the hardware used with the C6/7 fusion. (PxD; PxC).

After initially denying this surgery, Petitioner testified Respondent did pay for this surgery. He did notice his left arm pain and tingling was gone the day after surgery and his ability to use the arm was improved. This was confirmed in Dr. Mohan's 7/8/22 report. (PxD). Petitioner noted how severe his preoperative symptoms had been. He testified to having some ongoing neck stiffness.

Petitioner was examined by orthopedic surgeon Dr. Singh on 7/14/22 at Respondent's request. His report notes complaints of 2 to 3 out of 10 neck pain (2-3/10) and left arm numbness into the forearm. He denied any prior pain and indicated he was improved since the accident. He had pain with all positions. The conservative

treatment was noted. Following examination and review of Petitioner's medical records, Dr. Singh diagnosed cervical muscular strain status post C5/6 and C6/7 fusion. He indicated he was unable to determine causation and that prognosis was guarded. He believed Petitioner could work with a 20 pound weight restriction with minimal bending, kneeling, stooping, squatting, or twisting. He wanted to review cervical MRI and post-operative cervical x-ray, as well as the 7/22 operative report, in order to opine as to causation and maximum medical improvement (MMI). (PxR; Rx1). The Arbitrator did not locate any addendum to this report in the evidentiary record until 2/2/23. Petitioner testified that Dr. Singh only asked him questions and did not perform any physical exam.

Petitioner reported continued improvement on 8/11/22, including hoarseness and difficulty talking he developed after surgery, but shoulder and neck tightness. A recent foot injury was referenced. Upper extremity therapy was ordered with neck therapy starting three months post-surgery. Dr. Mohan released him to work no more than 4 hours per day with a 10 pound weight restriction. This was increased to 6 hours per day on 9/21/22. (PxD). Petitioner testified his neck and arm pain were doing pretty well at this point and x-rays through 9/20/22 continued to show a stable fusion from C5 to C7. (PxF). On 10/3/22, Dr. Sood noted Petitioner was going to have surgery to remove hardware in his left ankle. (PxC).

Petitioner started post-surgical therapy at Athletico on 9/12/22, testifying that Respondent would not pay for this and that his personal health insurance, Blue Cross/Blue Shield, was covering this. As to Dr. Mohan's reference to a recent foot injury, Petitioner testified that on 10/3/22 he fell and hurt his ankle unrelated to this case.

On 10/5/22, Petitioner advised Dr. Mohan that 10/4/22 therapy included use of a massage gun for his neck soreness and tightness. He woke up that morning with severe dizziness, numbness in his first three right fingers, and had an episode of urinary incontinence. Dr. Mohan believed this was a nerve aggravation that induced a parasympathetic response. He ordered cervical x-ray and Medrol dosepak. Noting ongoing dizziness with facial swelling and more episodes of incontinence on 10/19/22, Dr. Mohan ordered spinal MRIs and cervical and thoracic x-rays. (PxD).

Petitioner testified that after the therapist used the Theragun he developed swelling and soreness and that this incident was a big setback for him. He continued to work for Respondent with his restrictions. Steroids had provided good but temporary relief of his swelling symptoms.

The records of Athletico indicate Petitioner attended therapy there from 9/12/22 to 11/16/22. The Petitioner on 10/7/22 that he an incident of loss of bladder/bowel function and was feeling off balance the prior Wednesday. Other bladder/bowel occurrences are noted subsequently. There is no specific mention of the Theragun incident in these reports. An 11/7/22 report notes dizziness and right arm numbness, and the therapist advised that further therapy would not be appropriate until his high blood pressure was addressed. The 11/16/22 report notes Dr. Mohan would be determining if further therapy was warranted, and that Petitioner's goals remained "in progress." (PxG).

Per the radiology reports, the 10/19/22 lumbar MRI reflected mild degenerative changes with mild foraminal stenosis at L3 to S1. Cervical MRI showed post-surgical and spondylitic changes and no acute bone marrow edema. There was some post-surgical hypertrophy at C6/7 with moderate right foraminal stenosis. Cervical x-ray from the same date shows stable fusion. Thoracic MRI showed mild degenerative changes in the lower thoracic spine without stenosis. (PxF).

Petitioner indicated on 10/26/22 that his dizziness and facial swelling improved with steroids. Dr. Mohan held him off work for a week and Petitioner was going to continue therapy at a different facility. (PxD). On 11/7/22,

Petitioner called Dr. Sood's office reporting dizziness and high blood pressure at therapy but declined their recommendation to go to the ER's he didn't want to be hospitalized again, which Petitioner acknowledged in his testimony. At follow up the next day, the doctor noted: "he does have swelling on side of face and neck" with increased blood pressure. Petitioner was frustrated not being able to get any answers and Dr. Sood diagnosed impairment of the lymphatic drainage versus allergic reaction versus something unknown. Petitioner followed up in the office the next day and Dr. Sood prescribed CT and ultrasound of the carotid artery, a head CT scan and a new medication, which all were reportedly normal. On 11/10/22, Petitioner reported dizziness and vertigo and on 11/16/22 Dr. Sood recommended vestibular therapy if there was no further improvement. (PxC).

On 11/30/22, Dr. Mohan noted ongoing therapy had been denied by Respondent and Petitioner was frustrated with ongoing dizziness, vertigo, high blood pressure and overall stress. His neck and shoulders were stiff. Dr. Mohan indicated Petitioner had a "significant amount of emotional distress which is clearly displayed in his physical symptoms. Due to his persistent emotional and physical symptoms of prolonged stress due to his case, I am providing patient with a referral to see a pain psychologist in order to gain more tools to cope with his current state." Home exercise and work restrictions were to continue. CT scan planned at 6 months post-surgery. On 12/7/23, Petitioner indicated he felt he had been recovering well until the incident with the Theragun and just hadn't been the same since. He was having difficulty working and with prolonged sitting. Dr. Mohan stated concern that the Theragun may have created a fusion non-union, noting Petitioner was not a pain medication seeker or malingerer and loved his job. (PxD).

Cervical CT was performed on 12/19/22 with a radiology impression of no significant changes versus the 10/19/22 films with stable fusion and redemonstration of mild to moderate right C6/7 foraminal stenosis. (PxF). Dr. Mohan's impression (12/20/22) was that the CT indicated the C5/6 level might not be fused, and opined there was a "high likelihood" the Theragun use impacted the fusion at a crucial point in the healing process. Petitioner was referred to interventional pain management for diagnostic facet blocks to confirm or rule out a non-union/pseudarthrosis as a pain generator. (PxD).

Petitioner testified he continued to work despite Dr. Mohan's instructions of 10/26/22, noting he loved his job, had a good reputation in the community and desire not to let people down, and he was only working part-time. After the brain/head scans, Petitioner testified that while he was having a lot of vertigo and difficulty walking, Dr. Sood reassured him that the imaging was clean. Petitioner agreed that his therapy ended on or about 11/16/22 because Respondent would not authorize it, and he had reached the limit on what his personal insurance would allow for the year. He was continuing to work part-time into 2023.

On 1/3/23, Petitioner saw pain professional Dr. Decaria with complaints of neck pain, ear ringing, occasional bilateral hand numbness, left sided neck swelling and bilateral arm numbness. He reported a period of time after surgery with no pain until the Theragun treatment. He worked 4 hours per day and would feel worse by the end of the day. He reported continued shoulder pain but that his neck was the larger issue. Cervical facet injections were performed at left C5 to C7, and on 1/31/23, Petitioner reported six hours of 100% improvement before returning to baseline. Given this temporary relief, Dr. Decaria indicated radiofrequency ablation (RFA) could possibly help, "but given his symptoms currently are actually from the muscle spasms and decreased range of motion. . . I do believe Botox for the torticollis would be helpful given he also had limited benefit to TPIs." Noting getting approval for this would be "challenging", Lyrica was prescribed and the importance of vestibular therapy and home exercise was indicated. His current part-time work status was continued. (PxH). Petitioner also advised Dr. Mohan on 2/1/23 that he had near 100% relief with the facet blocks for over 8 hours, then an intense return of headaches, neck, and left arm pain. Dr. Mohan believed suggested a non-union and recommended a fusion revision. (PxD).

Dr. Singh prepared an addendum report at Respondent's request on 2/2/23. He reviewed the September 2021 cervical MRI and x-rays from July, August, and September 2022, as well as the 7/7/22 operative report of Dr. Mohan. His new diagnosis included a right C6/7 disc herniation followed by the two fusion surgeries. He opined that Petitioner had a cervical strain and C6/7 disc herniation related to the 9/8/21 accident. He opined that this was appropriately addressed by the initial C6/7 fusion surgery, but that the subsequent C5/6 fusion was not causally related given the 9/8/21 cervical MRI showed minimal cervical stenosis at C5/6 and no repeat imaging was performed after the index fusion at C6/7. He opined that Petitioner did not need further treatment including the proposed C5/6 disc replacement surgery. He believed the treatment to date had been excessive and prolonged. While the initial surgery was required, he opined that Petitioner did not need any treatment at the C5/6 level, including surgery. He believed Petitioner had reached MMI as to the work related injury and was capable of returning to full duty without restriction based on the C6/7 fusion. (PxS; Rx2).

On 2/7/23, Petitioner went to the Ascension St. Alexius ER with complaints of dizziness and near syncope while he was driving with enhanced tinnitus and symptoms of nausea. He was very anxious about his symptoms. Dr. Jankowski admitted him and he underwent multiple diagnostic tests. A chest CT/angiogram, head CT/angiogram, and a brain/head CT were unremarkable. Chest x-ray was noted to show persistent elevation of the right hemidiaphragm and chest CT/angiogram no acute pulmonary emboli but possibly lung atelectatic or related to underlying airway disease. Petitioner was discharged with diagnosis of benign paroxysmal positional vertigo, Zofran, meclizine, and valium prescriptions, and advised to follow up with his primary provider if symptoms continued, noting he might need vestibular therapy. (PxL). Petitioner testified he was taken to the ER by ambulance after leaving work on 2/7/23 due to being unable to feel his legs while driving, calling 911 after winding up on someone's lawn.

On 2/8/23, Petitioner advised Dr. Mohan of this incident and he was taken off work pending surgery, which was performed on 2/20/23 to revise the prior C6/7 fusion and to add a C5/6 fusion. Post-op diagnosis was pseudarthrosis ("We noticed that the joint was not fused and motion was seen [at C6/7]"). Motion was also specifically noted by Dr. Mohan at C5/6. (PxD; PxM). Petitioner testified he was taken off work at this time.

Petitioner testified he could feel something was loose in his neck prior to the surgery, and after surgery his pain and swelling initially did improve and he felt better. He agreed he wasn't having any numbness, tingling, or feeling of ear fluttering when he followed up with Dr. Mohan on 2/28/23. He did not recall if he was still having vertigo or tinnitus. After the initial post-op visit, on 3/30/23 Petitioner told Dr. Mohan he had improved significantly but was having intermittent left triceps spasms and numbness in the first three fingers. He had positive right Phalen's and Tinel's testing on exam that led Dr. Mohan to note possible cubital tunnel syndrome. On 4/26/23, Petitioner reported continued neck and facial swelling with no real improvement with steroids. He also reported random cramping in the left 4th and 5th fingers. (PxD). Petitioner testified that Dr. Mohan released him again for part time work.

Petitioner attended physical therapy at Lake County PT from 4/25/23 through 8/21/23, which was covered by Blue Cross/Blue Shield, as Respondent would not approve it. (PxN). He testified the therapy did provide him with relief.

On 5/10/23, noting increased head, neck and left upper extremity pain, cervical x-ray showed a stable fusion but mild to moderate facet degeneration at left C2 to C4. Dr. Mohan believed the upper facet joints had been aggravated and prescribed facet blocks and RFA. (PxD).

Petitioner returned to Dr. Decaria on 5/17/23. The plan was for trigger point and occipital nerve block injections, with consideration of medial branch blocks at left C3/4/5 and possible ablation. Botox was to be looked into. On 5/24/23, trigger point and nerve block injections were performed. (PxH). On 5/31/23, Petitioner

reported facet blocks gave him 2 or 3 days of significant relief, but the symptoms came back when he returned to work. Dr. Mohan again RFA given this response and allowed Petitioner to work 6 hour days with the ability to sit/stand/walk as needed. (PxD). On 6/2/23, Petitioner saw Dr. Sood with pain, discomfort, and limb weakness. Left arm atrophy was noted and Petitioner was referred to Dr. Dabah for a spinal cord stimulator evaluation and/or RFA. (PxC).

On 6/6/23, Dr. Dabah recommended Botox, occipital nerve blocks, and medial branch block injections. A 6/30/23 report noted medial branch blocks were performed at left C3, C4, and C5 on 6/30/23 with report of initial improvement of greater than 80%. (PxO).

On 6/28/23, Petitioner told Dr. Mohan he had only a few hours of relief with the nerve blocks. His left arm would go numb when lying down and he had poor sleep. Dr. Mohan ordered a left upper extremity EMG to evaluate possible cubital tunnel and/or radiculopathy. (PxD). Facet blocks were repeated on 7/13/23, with Dr. Dabah noting report the last injections lasted for about 4 hours. Petitioner again reported 90% improvement with this second set of injections. (PxO).

On 7/26/23, Petitioner reported numbness in the bilateral arms when lying down and Dr. Mohan indicated if no improvement with RFA, a posterior fusion surgery would be considered. (PxD). The RFA procedure was ultimately performed on 8/11/23, which Petitioner testified was very painful. Petitioner reported no real improvement when he returned to Dr. Dabah's office on 8/22/23. Occipital nerve blocks and trigger point injections were performed to relieve pain and he was advised to follow up with Dr. Dabah for reevaluation and Botox. (PxO). No further records from this facility were in the evidentiary record.

On 8/16/23, Petitioner reported significant pain and soreness after the RFA procedure while Dr. Mohan advised it could take 1 to 2 weeks to obtain relief from RFA. Cervical CT scan and x-ray were ordered. (PxD). The 8/23/23 CT scan showed degeneration and post-surgical changes. Stenosis was noted at C2/3 (minimal right), C3/4 (severe bilateral), C4/5 (mild right, moderate left), C5/6 (mild right) and C6/7 (mild bilateral). (PxF). Cervical x-ray reflected stable fusion. (PxF).

At the last therapy visit (Lake County) of 8/21/23, the therapist noted Petitioner felt bruised and swollen following the RFA procedure and had to stop therapy early All of his goals had not yet been met and there was no indication that he was to be discharged. There is an 11/15/23 note indicating discharge because he was undergoing surgery. (PxN).

Petitioner still had no relief from the RFA as of 8/28/23 and noted side effects of dizziness and nausea, while the trigger point injections resolved these side effects. He still had left neck pain into the shoulder, with episodes of left arm numbness bending his neck to the left for any extended period of time. Dr. Mohan noted that while films showed a stable fusion, Petitioner had severe facet degeneration at C4/5 and C7/T1, particularly on the left, with spondylolisthesis, and recommended a posterior fusion surgery from C3 to T1. (PxD). Petitioner testified that at this point he was dropping things with weakness in the left hand and again started to develop left arm atrophy, which contributed to the surgical recommendation. At a 9/11/23 follow up, Petitioner noted lots of emotional trauma over the past few years and a few recent incidents that were overwhelming to him. While Petitioner advised he had a lot of friends for support and was apprehensive about following through, Dr. Mohan again recommended he see a pain psychologist. (PxD).

On 9/15/23, Petitioner underwent surgery to fuse his cervical spine from C3 to T1, including the use of rods. Postoperative diagnoses included spondylosis and radiculopathy, and spondylolisthesis. Dr. Mohan also specifically identified a significant instability at the C4/5 level during the surgery. (PxD). Petitioner testified he contracted Covid at the hospital, then developed pneumonia, and that this set him back and delayed therapy. He

testified therapy was not being approved but that he needed it and thus this was moot, but the Arbitrator could not locate any record of therapy until January 2024 at Lake County.

On 9/27/23, Petitioner reported improvement with pain and swelling, and Dr. Mohan noted he had weaned significantly on Norco and Valium. On 11/1/23, Petitioner reported a lot of coughing for a week due to pneumonia. He reported some left neck pain was radiating to the side of his head but that his numbness and tingling had resolved. He was using a bone stimulator and was held off work by Dr. Mohan. On 12/6/23, Petitioner reported left arm numbness had completely resolved but he had persistent left neck pain and spasm. He had recently had shingles. Fusion was stable. Dr. Mohan stated: "As opposed to IME doctor who opined that no further surgery was required, the patient has made significant progress with the recent surgical intervention." He noted Petitioner had the noted complications (Covid, pneumonia, shingles) and still continued to wean from narcotics ("a very challenging feat"). Dr. Mohan believed his neck pain would continue to improve and he prescribed physical therapy and chiropractic treatment, continuing Petitioner off work. (PxD). 9/28/23 and 12/8/23 cervical x-rays were noted by the radiologist to show a stable fusion. (PxF).

The last report of Dr. Sood in evidence is a 12/8/23 visit. Petitioner reported improvement in the left upper extremity but continued neck pain. (PxC). He was requesting pain medication (Norco) because he was going to Mexico, where he had a vacation home, to put it up for sale, a stressful event for him.

On 1/7/24, Petitioner had significant left neck tightness and burning into the left shoulder. Dr. Mohan noted significant muscle tightness due to stress and lack of physical activity. Physical therapy was not being approved but he was walking and stretching on his own. He was taking 1 or 2 Norco per week and one Valium before bed. Further therapy and off work were recommended. (PxD). Petitioner testified he remained off work at this point. The last note of Dr. Mohan in evidence is dated 3/20/24, with Petitioner reporting ongoing face and neck swelling, severe headaches with increased blood pressure, and ear drainage when he has a headache and lying down. He reported difficulty driving and sitting over 20 minutes at a time. He stopped taking Norco and was "in significant distress." PT provided only mild temporary benefit. Dr. Mohan permanently restricted Petitioner from working more than four hours per day. Dr. Mohan indicated Petitioner needed no further surgery and that he had reached maximum medical improvement "though will likely need intermittent physical therapy." He was advised to see Dr. Sood for his blood pressure and headaches and was to otherwise follow up in June or as needed. (PxD).

The Lake County therapy records note visits on 1/22 and 1/25/24. The initial report noted Petitioner's difficulty post-op with Covid and shingles and that he was struggling with insurance coverage, unable to get authorization until 2024 started, and there was no indication of discharge on 1/25/24. (PxN). Petitioner testified that Respondent was not authorizing this therapy.

Dr. Singh provided an additional addendum on 4/8/24 after reviewing the 10/19/22 spinal MRIs and cervical CT, as well as 8/23/23 MRI. He indicated his prior opinions has not changed. He indicated Petitioner's symptoms correlated with the initial cervical strain and C6/7 herniation and that he had been appropriately treated for this work related condition. Given the 12/19/22 cervical CT scan reflected solid fusion. He also did not agree with the C3 to T1 posterior fusion – "(Petitioner) has a solid bony fusion without residual stenosis." He believed Petitioner had reached MMI about 6 months after the initial fusion surgery at C6/7 and was able to return to work full duty, noting 10/19/23 cervical MRI confirmed no residual spinal stenosis. (Rx3).

Petitioner testified that the last surgery did help his arm pain, but he continues to have the swelling in the left neck and face. He also continues to have neck pain and tightness into the left shoulder, as well as headaches that are "hit or miss" – he can go 2 or 3 days without one, and at worst had them 4 days in a row. With the headaches he also gets ear drainage. Post surgical therapy was not authorized by Respondent but he has

continued to attend and it does help him, testifying he could not say how much Blue Cross/Blue Shield may have paid or what remained outstanding. He agreed that all post-operative imaging has shown good healing. He uses ice often for his continued neck soreness and spasms. Petitioner testified that Dr. Mohan advised he had reached MMI with permanent restrictions of 4 hours work per day and 10 pounds lifting with sitting and standing as needed but did indicate further treatment would be needed in the future, and that there would be days he couldn't work. The Arbitrator notes no records of Dr. Mohan were submitted which indicated MMI or that work restrictions were permanent. Petitioner was taking ibuprofen but testified that he saw Dr. Sood on 4/15/24 and was advised to reduce ibuprofen use for kidney health. Dr. Sood has prescribed Nurtec, which costs $940 per month but does help him. He also takes Meloxicam. He testified that Dr. Sood also recently provided him with a card for a neurologist he wanted him to see at Northwest Neurology for the ongoing headaches and ear drainage. He hasn't made an appointment because the plan is to first try the Nurtec for a while to see how it goes. Blue Cross/Blue Shield is currently covering his visits with Dr. Sood as they are not authorized by Respondent.

The Arbitrator notes that Dr. Sood's 4/15/24 note was not part of the evidentiary record. While there is reference to a 3/20/24 visit with Dr. Sood, it appears this visit was actually with Dr. Mohan. Thus, it is unclear if the neurology referral Petitioner testified to was from Dr. Sood or Dr. Mohan. As noted above, the last note of Dr. Sood in his evidentiary exhibit is from December.

Petitioner testified his yearly salary with Respondent prior to the accident was likely a little more than $95,090.07 prior to the accident, as his base salary is $103,00as had increases since the accident. He also agreed he made approximately $22,686.26 in the 52 weeks prior to accident with Home Depot, and adding these together leads to the claimed average weekly wage of $2,264.93.

Petitioner testified he was off work from the 9/8/21 accident until 1/4/22, and again from the 7/7/22 surgery through 9/1/22, returning to work on 9/2/22. He then worked through the third surgery of 2/8/23, returning to work post-surgery on 4/26/23. He again was off work following the 9/15/23 surgery and has not yet returned to work. He is not receiving any benefits and testified he is using his savings to live. He testified he was not paid any wage differential based on his restriction to part-time hours of 4 to 6 hours per day. He had to use all of his sick, vacation and PTO time he had banked with Respondent. He was initially paid TTD benefits after the accident but did not receive any after the initial surgery. Respondent did pay for the second surgery but hasn't paid for any subsequent treatment. Petitioner testified that all of the doctors he has treated with since the accident were on referral from either Dr. Sood or Dr. Mohan. He did everything he was advised to do by his medical providers because he wanted to get better.

Petitioner testified that following his 3/20/24 release from Dr. Mohan with restrictions he hasn't heard whether Respondent would accommodate the restrictions. He testified he received a call last week advising him to make sure that he sent in his long term disability application form, which he had requested, and he had this completed by Dr. Mohan before faxing it back to Respondent. He was advised that Metlife would call him that week, but he still hasn't received a call. He is not receiving Social Security Disability benefits and hasn't had any benefits at all over the last 7 months. Petitioner agreed that all outstanding medical listed in Arbitrator's Exhibit 3 are related to the 9/8/21 accident and remain unpaid by Respondent.

On cross examination, Petitioner acknowledged it is possible that Respondent has paid some of the bills. He agreed he has continued to work in his regular position while released to and working part time. He also had continued to work his normal job with Home Depot into late 2023 on a part-time basis, working 2 hours a day, 4 days per week, talking to customers about products. He denied ever working more than 6 hours per day including both jobs. Petitioner agreed that if Dr. Mohan's 4/26/23 report indicates he had symptoms post-surgically similar to those he had prior to surgery, this was accurate. While he does continue to have neck

tightness, his arm has been significantly improved since surgery, noting it had again begun to atrophy prior to the surgery, his strength in the extremity had been improving, and he no longer is dropping things. He does continue to have headache and swelling. Each surgery has provided him with relief, but he still has had continuing problems.

On redirect, Petitioner testified he left his employment at Home Depot because he just couldn't do it physically but would love to go back to both jobs. He reiterated he has never worked more than six hours per day while on restrictions. He testified that his job at Home Depot was not physically demanding, just the opposite he basically would discuss kitchen items with customers. He no longer has any numbness and tingling, just the neck swelling and headaches. All of the surgeries have helped his symptoms, other than the one that ended in nonunion. He reiterated that physical therapy was continuing to provide him with improvement before it was no longer being authorized. He did ask for the long term disability forms prior to the February 2024 work release from Dr. Mohan because he wasn't receiving any benefits. He asked Respondent's Human Resources why he wasn't being paid and long term disability is what they recommended.

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 cervical condition of ill-being is causally related to the 9/8/21 work accident.

Prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Comm'n*, 315 Ill.App.3d 1197, 1205, 734 N.E.2d 900, 248 Ill.Dec. 609 (2000). This is referred to more colloquially as a chain of events analysis. There was no evidence presented which would indicate that the Petitioner had any preexisting conditions involving his cervical spine. He testified he had no such prior cervical conditions. He testified he had no similar left ear and tinnitus complaints prior to the work accident. He sustained a significant high-speed impact to the rear of his vehicle on 9/8/21, struck his head on the driver's side window, and immediately developed neck and bilateral shoulder symptoms, as well as numbness down the arm. There is some discrepancy as to which arm, as the Petitioner testified the reference in the initial records to the right arm was a clerical error that was repeated in subsequent reported. Regardless, the Petitioner credibly testified that a neurosurgeon at the ER wanted to perform immediate cervical surgery, but he felt this doctor was "shaky" and wanted to discuss it with his primary provider first. He was referred by Dr. Sood to surgeon Dr. Mohan, who then performed cervical fusion at C6/7 just eight days post accident. These facts certainly lead to the conclusion that the cervical condition was addressed on a fairly emergent basis and was acute at the time of the accident.

Respondent's examining orthopedic surgeon, Dr. Singh, initially indicated on 7/14/22 that he was unable to determine an opinion on causation without review of additional records and films. He later issued an addendum on 2/2/23 where he opined that both a cervical strain and the C6/7 disc herniation were causally related to the 9/8/21 accident. He went on to opine that the initial C6/7 fusion properly addressed the condition, but that the subsequent C5/6 fusion was unrelated to the work accident. At a minimum, his opinion supports the causal relationship of the C6/7 disc and fusion surgery to the accident. In the Arbitrator's view, the Petitioner then had a cascade of problems in the cervical spine, mainly at the levels adjacent to C6/7. First, after some initial improvement, he redeveloped similar symptoms and underwent a C5/6 fusion. This then had to be revised following an incident with a Theragun massage gun during therapy and a failed fusion/pseudarthrosis. The Arbitrator does note that the therapy records do not reference such an incident. However, the contemporaneous

records of Dr. Mohan support his testimony regarding what occurred, and that Petitioner developed symptom that led the doctor to question whether the fusion was solid. Petitioner underwent a revision surgery that showed instability, per Dr. Mohan's report, at both levels. He issued a report indicating he believed the Theragun incident occurred at a critical moment of healing post-surgically, indicating the instability and fusion failure likely was related to this incident. When Petitioner subsequently developed quite severe symptoms in the left arm with tingling and numbness, Dr. Mohan fused the cervical spine with rods and other hardware from C2 to T1. He noted in the final operative report that he found instability at the C4/5 level during surgery. The preponderance of this evidence, in the Arbitrator's view, shows an initial injury to the C6/7 with fusion, and this began to impact adjacent levels going up the cervical spine.

The key pieces of evidence in this case regarding ongoing causation subsequent to the initial C6/7 fusion were the subsequent surgical reports referencing instability in locations at the fused levels. Petitioner's condition certainly appeared to change following the alleged incident with the Theragun. All of these incidents, per the preponderance of the evidence, indicates to the Arbitrator that the Petitioner's cervical condition remained causally related to the work accident. As noted, there was no evidence presented which indicated any cervical problems prior to the accident.

The Arbitrator notes that the Petitioner's anxiety also appears to be causally related to the work accident and the multiple failed surgeries the Petitioner went through in this case, still left with a level of ongoing symptoms and permanent work restrictions according to Dr. Mohan as of 3/20/24. The Petitioner's symptoms of vertigo and tinnitus/ear drainage also appear to be causally related to the accident. These symptoms all appear associated in time with either the 9/8/21 accident or the initial fusion surgery.

Petitioner has failed to prove that any lumbar injury he may be claiming is causally related to the 9/8/21 accident. The Arbitrator found no evidence of lumbar complaints after September 2021 or evidence of any lumbar treatment. With regard to Petitioner's alleged left shoulder condition, while the chain of events supports a causal connection, no records involving Petitioner's left shoulder surgery were contained in the record of evidence. The only evidence in the record were a couple of visits with Dr. Saper, who recommended surgery, but there is no evidence of the surgery itself in the medical records, or any post-surgical recovery. As such, there is no way for the Arbitrator to causally relate any left shoulder surgery that may have been performed to the 9/8/21 work accident by the preponderance of the evidence.

WITH RESPECT TO ISSUE (G), WHAT WERE THE PETITIONER'S EARNINGS, THE ARBITRATOR FINDS AS FOLLOWS:

The main complication in the calculation of the Petitioner's average weekly wage appears to be based on his concurrent employment with Home Depot. The Arbitrator does find that, based on Petitioner's undisputed testimony, the Respondent had knowledge of this job and not only approved of it, but also obtained a benefit from it based on Petitioner's ability to leverage this position to writing home equity loans on Respondent's behalf. As such, the wages from Home Depot are includable in the average weekly wage calculation.

Unfortunately, the proof provided by Petitioner of these wages is lacking in terms of the 364 days prior to the accident date. As the injury occurred in September 2021, normally one would use the September 2020 to September 2021 wages to make this determination. The only evidence of the wages included are the Petitioner's W2 forms from 2020 and 2021. As there is no way to apportion the wages from 2020, the Arbitrator finds that these wages are not includable in this determination.

In 2021, the Petitioner earned gross wages of $16,849.51. Based on the Petitioner not returning to work for Respondent until January 2022, the Arbitrator believes the evidence supports the finding that the Petitioner did

not earn any wages with Home Depot in 2021 after the 9/8/21 accident. Thus, the wages earned were from 1/1/21 through 9/7/21, a total of 35-5/7 weeks. Dividing Petitioner's earnings of $16,849.51 by 35-5/7 weeks leads to an average weekly wage at Home Depot of $471.79.

As to the Petitioner's wages with Respondent, the only documentary evidence in the record are pay stubs which post-date the work accident of 9/8/21. As such, these records are not relevant to the calculation of the pre-9/8/21 average weekly wage. Based on the parties' Statements of Exceptions, they agree that Petitioner earned $95,090.07 with Respondent in the 52 weeks leading up to the 9/8/21 work accident, which translates into an average weekly wage of $1,828.65. Adding these two average weekly wages together totals $2,300.44. However, based on Arbitrator's Exhibit 1, the Petitioner stipulated to an average weekly wage of $2,264.93, which means this $2,300.44 figure exceeds the stipulated average weekly wage. As such, the Arbitrator finds that the Petitioner's average weekly wage in the year prior to 9/8/21 was $2,264.93.

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 following medical expenses are the responsibility of the Respondent, pursuant to Sections 8(a) and 8.2 of the Act, based on the causation finding above, and a review of the associated medical records:

Fox River & Countryside Fire	$ 2,325.00
Northwestern Medicine/Delnor	$ 32,510.25
Advanced Midwest Medical	$ 10,043.54
VM Spine Institute	$645,587.91
Neuromonitoring Associates	$ 56,661.00
Envision Medical Imaging	$ 7,080.00
Athletico	$ 26,798.00
Revitalize Medical Center	$ 7,135.27
Northshore University Health	$ 12,636.00
Physical Therapy Solutions	$ 320.00
Ascension St. Alexius	$105,796.90
University of Chicago Medicine	$ 20,884.00
Lake County PT	$ 8,874.82
Pain Therapy Associates	$ 6,645.00
TOTAL	**$943,297.69**

With regard to the expenses of Edens Orthopedics, this relates to treatment of the left shoulder. First, there has been no causation opinion in support of a shoulder condition. The ER physician, Dr. Mehta, indicated he did not believe that Petitioner's symptoms were related to a shoulder condition. Additionally, the Petitioner testified he underwent surgery for this condition, but there are no records in evidence either leading up to the surgery or the surgery itself. It is noted that Dr. Saper questioned the Respondent's basis for denial, but neither this denial letter nor any response from Dr. Saper or peer-to-peer review was included in the evidentiary record. As such, these expenses are denied.

Several of these bills have lower outstanding balances than what was paid than the total bills. The bills themselves are subject to the Medical Fee Schedule contained in Section 8.2 of the Act, and this Section limits the actual amounts the Respondent is liable for, not the actual bill amounts. The Respondent is entitled to credit

for any amounts of the awarded bills that were paid by Respondent either through its workers' compensation carrier or any group health provider policy that where the Respondent paid for any portion of the premiums. Such credit would include any write offs, as the amount accepted by the providers from such group carrier as full payment, if less than the Fee Schedule, constitutes the reasonable charges based on the providers' acceptance of same. In exchange for this credit, the Respondent shall hold the Petitioner harmless with regard to any such claimed credit against the awarded medical.

Petitioner should also be reimbursed for any out-of-pocket expenses he paid towards the noted awarded medical expenses.

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

While the Petitioner is seeking prospective care, the records in evidence do not reference any current treatment recommendations beyond ongoing physical therapy. While Petitioner testified that he was referred to a neurologist by Dr. Sood, there is no records in evidence to support this recommendation. This does not mean that such a referral would not be reasonable and necessary if it is, in fact, contained in the records, but the Arbitrator cannot make such an award based on the hearsay statements of Petitioner. The Petitioner has been continuing to treat with Dr. Sood for medication management, and it appears to the Arbitrator that such medications are related to the accident. As noted, the cervical condition remains causally related to the accident.

Based on the records in evidence not indicating any currently pending specific prospective treatment prescriptions, the Arbitrator denies the request for prospective medical at this time.

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, Respondent agrees that Petitioner is entitled to temporary total disability (TTD) benefits from 9/8/21 through 1/2/22, and to temporary partial disability (TPD) benefits from 1/3/22 through 3/18/22.

Petitioner was off work from the day after the accident through 1/2/22. He was held off work by Dr. Mohan following the 9/17/21 surgery through 2021. On 12/7/21, Dr. Mohan initially released Petitioner to part time duty, and the Athletico records indicate he initially returned to work with Respondent on 1/3/22. Noting the Arbitrator's findings on causation, the Arbitrator finds that Petitioner is entitled to TTD from 9/9/21 through 1/2/22.

As noted, the Respondent agrees the Petitioner is entitled to TPD from 1/3/22 through 3/18/22. The Petitioner continued to work part-time duty from 3/19/22 through 7/6/22. He underwent a second surgery on 7/7/22. The Arbitrator finds Petitioner is entitled to TPD from 1/3/22 through 7/6/22. Again, the Arbitrator references the causation findings above.

On 7/7/22, Petitioner underwent surgery and was taken off work. On 8/11/22, Dr. Mohan released him to work no more than 4 hours per day with a 10 pound weight restriction, which was increased to 6 hours per day on 9/21/22. Petitioner is entitled to TTD from 7/7/22 through 8/11/22. Petitioner was then working part time and entitled to TPD benefits from 8/12/22 through 2/19/23.

On 2/8/23, Dr. Mohan took Petitioner off work pending surgery, but Petitioner testified he continued to work until the day prior to surgery, 2/19/23. Following the 2/20/23 surgery, he remained off work until 4/26/23, when Petitioner testified Dr. Mohan again released him to part-time duty. Petitioner is therefore entitled to TTD benefits from 2/20/23 through 4/26/23.

Petitioner then continued to work through 9/14/23, the day prior to his 9/15/23 fusion surgery. He is entitled to TPD benefits from 4/27/23 through 9/14/23. Petitioner testified that following the 9/15/23 surgery he has remained off work. Dr. Mohan continued to hold him off work through 3/20/24, at which time Petitioner was released to return to work with permanent part time duty and determined that Petitioner had reached maximum medical improvement. Petitioner testified that when he contacted Respondent about returning to work, he was advised by Human Resources to apply for long term disability benefits. This evidence was unrebutted by Respondent. The Arbitrator considers this to support a finding that Respondent was not continuing to provide Petitioner with part time work. Petitioner is entitled to TTD from 9/15/23 to 3/20/24.

As of 3/21/24, the Petitioner was provided with permanent restrictions by Dr. Mohan. As the Petitioner had then been determined capable of working, he was no longer entitled to TTD. Maintenance benefits began at that point and continue through the hearing date.

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES BE IMPOSED UPON THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator denies the Petitioner's request for penalties and fees pursuant to Sections 19(l), 19(k) and 16 of the Act.

This is a very complicated case. While the Arbitrator believes the evidence supports a causal relationship between the Petitioner's cervical condition and the work accident, this is based mainly on a chain of events analysis. Dr. Singh also supported a causal relationship of the C6/7 level condition and the work accident but denied that the C5/6 level was related and essentially indicated Petitioner had been treated for the C6/7 level and had reached MMI. Part of the Arbitrator's finding here is that it was not unreasonable and vexatious for Respondent to rely on Dr. Singh opinion given the Arbitrator found no clear indication of causation from Petitioner's treating physicians. While the Arbitrator does not agree with the Respondent's reliance on Dr. Singh, the Arbitrator does not believe this reliance rises to the level of penalties and fees in this case.

The Arbitrator also notes that the treatment in this case has been extensive and involves multiple conditions, such as tinnitus, ear drainage/fluttering, and anxiety, which complicates the causal connection issues in this case. These are not common symptoms that the Arbitrator has seen in reviewing a large number of cervical fusion cases.

With regard to Section 19(l) penalties, the Arbitrator finds that the evidence, as presented, makes it difficult to determine when various benefits were or were not paid by Respondent, making any calculation based on an unreasonable delay in payment very difficult, if not impossible, to discern, following the opinions of Dr. Singh. Even the average weekly wage issue in this case is complicated by a concurrent part-time job.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC034472
Case Name	Angela Orris v. Denny's
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0098
Number of Pages of Decision	23
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	William Trimble
Respondent Attorney	Joseph Cervantez

DATE FILED: 3/11/2025

/s/Amylee Simonovich,Commissioner

Signature

25IWCC0098

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Angela Orris,

Petitioner,

vs. NO: 12 WC 034472

Denny's,

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 causation, medical expenses, temporary total disability, and permanent partial disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission agrees with the Arbitrator's finding that Petitioner's current condition of ill-being was causally related to her injury at work, however, modifies the date of maximum medical improvement and the award of temporary total disability. On January 21, 2020, Petitioner underwent the implantation of the spinal cord stimulator and had a good result. T.37. "TTD is awarded for the period from the date on which the employee is incapacitated by injury to the date that his condition stabilizes or he has recovered as far as the character of the injury will permit." *Freeman United Coal Mining Co. v. Ill. Indus. Comm'n*, 318 Ill. App.3d 170, 177-178 (2000). We agree with the Arbitrator's finding that Petitioner was temporarily totally disabled beginning on September 3, 2013, however, find Petitioner's condition had stabilized as of the time of implantation of the spinal cord stimulator on January 21, 2020. The Commission finds Petitioner reached maximum medical improvement as of this date and therefore modifies the award of temporary total disability benefits to begin on September 3, 2013 and continue through January 21, 2020.

The Commission modifies the language under paragraph (ii), Issue (L) of the Decision, striking, "Petitioner is now receiving Social Security Disability." Arb. Decision, p. 15. Likewise, the Commission modifies the language under paragraph (iv), Issue (L) of the Decision, striking, "She has been determined disabled for the purposes of Social Security Disability and is not likely to work in the future." Arb. Decision, p.16.

The Commission modifies the award of permanent partial disability from 50% to 35% loss of use of the person as a whole. The Commission finds the award of the Arbitrator did not take into consideration the impact of Petitioner's numerous and significant comorbidities on her level of function and pain complaints. Petitioner sustained an injury to her lumbar spine as a result of the work accident; however, the medical evidence demonstrates the Petitioner suffered from a number of other ongoing medical conditions. Dr. Crowder credibly testified as to the impact of some of Petitioner's non spine related comorbidities, including her morbid obesity, fibromyalgia and kidney failure, noting these conditions were most likely impacting her level of function and complaints regarding her leg pain and swelling in particular. T.1519-1521. Petitioner may have suffered from imbalance and used a walker for ambulation in part due to her back injury, however, Petitioner's primary care physician, Dr. Fogle also noted that initially Petitioner was in physical therapy for her right knee osteoarthritis when the therapist "told her to ask about a walker". T.393, 396. The medical records also repeatedly reference bilateral knee pain due to osteoarthritis, including a reference to "grinding in both knees". T. 294, 297, 336, 373, 446. As such, her balance issues and walker usage do not appear to be confined solely to her back injury. There was no medical opinion offered delineating the disability directly related to her work accident from those disabilities which are a byproduct of her pre-existing comorbidities. The Arbitrator's award of 50% loss of use of the total person is excessive based upon the lack of disability evidence and the Commission finds an award of 35% loss of use of a person to be more appropriate.

The Commission modifies the Findings section of the Decision Form regarding payment of bills to read that Respondent ***has not*** paid all bills.

The Commission modifies the Order Section of the Decision Form regarding the award of medical benefits, striking the language, "pursuant to the medical fee schedule", replacing it with "as provided in Sections 8(a) and 8.2 of the Act."

The Commission modifies the eighth line of the second paragraph on page 14 of the Decision, striking the word "Plaintiff's", replacing it with "Respondent's".

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on May 4, 2023, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay for reasonable and necessary services as provided in Section 8(a) and 8.2 of the Act of the medical bills set forth in Petitioner's Exhibits 19, 21, and 23.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $164.54/week for 333 1/7 weeks, commencing on September 3, 2013 and continuing through January 21, 2020 as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the sum of $164.54/week for a further period of 175 weeks, as provided in Section 8(d)2 of the Act, as the injuries sustained caused 35% loss of use of the person as a whole.

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

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.

March 11, 2025

o: 1/14/2025

AHS/kjj
051

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC034472
Case Name	Angela Orris v. Denny's
Consolidated Cases	
Proceeding Type	
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	William Trimble
Respondent Attorney	R Mark Cosimini

DATE FILED: 5/4/2023

THE INTEREST RATE FOR THE WEEK OF MAY 2, 2023 4.90%

/s/Bradley Gillespie, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
(CORRECTED ARBITRATION DECISION)

Angela Orris
Employee/Petitioner

v.

Denny's
Employer/Respondent

Case # **12** WC **34472**

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 **Bloomington**, on **12/22/2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
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 6, 2012**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**7,239.00**; the average weekly wage was $**164.54**.

On the date of accident, Petitioner was **46** years of age, ***single*** with **0** dependent children.

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

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

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

Respondent is entitled to a credit of $**6,239.49** under Section 8(j) of the Act.

ORDER

Medical benefits

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of the medical bills set forth in Petitioner's Exhibits 19, 21, and 23.

Total Temporary Disability

Respondent shall pay Petitioner Total Temporary Disability benefits of $164.54/week for 485 3/7 weeks, for Petitioner's off work period commencing September 3, 2013 through December 22, 2022, as provided in Section 8(b) of the Act.

Permanent Partial Disability

Respondent shall pay Petitioner Permanent Partial Disability benefits of $164.54/week for 250 weeks, because the injuries sustained caused a 50% loss of use to her person as a whole, as provided in Section 8(d)2 of the Act.

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

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

Bradley D. Gillespie **MAY 4, 2023**

Signature of Arbitrator

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANGELA ORRIS,	)
Petitioner,	)
	)
v.	)**Case No.: 12WC034472**
	)
DENNY'S RESTAURANT,	)
Respondent.	)

DECISION OF THE ARBITRATOR

This matter was heard December 22, 2022, before Arbitrator Bradley Gillespie, in Bloomington, Illinois. The issues at hearing were Causal Connection, Medical Bills (as to liability), Total Temporary Disability, and Nature and Extent.

FINDINGS OF FACT

Petitioner Angela Orris testified that she was born 11/8/65, and on April 6, 2012, she was single with no children under 18 years old. (TX 13-14) On April 6, 2012, she was working as a hostess at Denny's Restaurant. She was earning $164.54 per week. (TX 14)

Although she had undergone previous back surgeries, Petitioner testified that in the several years before April 6, 2012, she was not limited in any way by back pain; she did not miss any work due to back pain, was able to work a full shift, and did not have to shorten her workdays. (TX 15-16) Petitioner testified that she played basketball and took walks with her sons and was learning to play tennis. (TX 15) Several years prior she had undergone a right sided L1 to L2 discectomy and fusion, as well as bilateral SI joint fusion, but after these surgeries she had no residual problems. (TX 15-16)

Petitioner testified that at the time of her injury she weighed approximately 230 lbs., that her weight had increased after the work injury in question, and that she has only recently had gastric bypass surgery. (TX 17)

On Friday, April 6, 2012, while Petitioner was standing at the hostess station, another employee who was rushing to get somewhere ran into her, spinning her around, although she did not fall all the way to the ground. She felt immediate sharp pain "and like something was twisting. . . I don't know how to explain it but felt like something cracked or something. (TX 18) Petitioner testified she felt sharp pain in her lower back. She was about an hour from the end of the workday, so she finished her shift, and went to OSF St. Joseph Medical Center Emergency Department. (TX 18-19) (PX 3)

On April 6, 2012, Petitioner reported to the Saint Joe Medical Center Emergency department with pain 8/10 and gave a history of being hit by a running co-worker, causing bilateral lower back pain. She was given injections and a prescription for muscle relaxants. (TX 19) She was directed to follow-up with Dr. Madagula Madhavi at OSF Ft. Jesse for testing and was provided a list of orthopedic physicians. (TX 20) Petitioner selected Dr. Jeffrey Wingate

from that list and was seen by Dr. Wingate at Orthopedic Sports & Enhancement on May 9, 2012. (TX 20) Petitioner provided Dr. Wingate a consistent history of work accident and indicated that she had suffered from severe progressive back and now right greater than left bilateral leg pain since the injury. Dr. Wingate prescribed Voltaren and Zanaflex and ordered an MRI. (PX 5, pp. 1 – 3)

Dr. Wingate wrote:

> It represents my opinion to a reasonable degree of medical certainty that the work described injury is causally related to her medical care today, into the [need] for imaging, and/or the need for further invasive spinal care. I appreciate having had the opportunity to see her through Workmen's Compensation of Illinois. I will be glad to see her back as soon as the new MRI scan has been completed for additional treatment/clinical decision making. I think she will do extremely well, hopefully avoiding any surgical management. I do not think she would do well with a stand-alone decompression even a straightforward discectomy, with an already collapsed and degenerative disk that is becoming unstable. It is very likely that she would have ongoing instability issues. We will reserve any further recommendations though until after seeing the new imaging study and putting everything into perspective along with a response to the anti-inflammatories and muscle relaxer.

(PX 5, p. 3)

An MRI was performed May 23, 2012, and Petitioner returned to Dr. Wingate on May 29, 2012. He reviewed MRI and noted a large L2-3 foraminal bump on the left side. He considered the previous fusion at T12-S1 to be solid and found no screws anywhere near the nerve. He diagnosed her with a Left L2-L3 foraminal herniated nucleosa pulposa and recommended a series of epidural steroid injections on the left. (PX 5)

On June 20, 2012, Dr. Wingate gave Petitioner an epidural steroid injection. In his operative record, he noted that "Clinically she complaints of left thigh and hip pain, concomitant with her diagnosis of L2-3 disc rupture." (PX 5) Dr. Wingate's record states that "I have recommended posterior approach with L2-L3 inner body and posterior lateral fusion using spinal instrumentation and a touchiness bone graft. This follows from the adjacent segment disease diagnosis inferior to the previous L1-L2 fusion.... It represents my professional opinion to a reasonable degree of medical certainty that the work-related injury described to me from April of this year has been the cause of the factor for setting her up for this type of surgical procedure." (PX 5)

On July 2, 2012, Petitioner saw Dr. Wingate in follow-up to her epidural steroid injection. Dr. Wingate noted that "she still has no significant relief whatsoever. The pain has been terrible, in addition she is now having bad muscle spasms down the left side, not only in the back, but also in the thigh and leg." (PX 5) He noted that Petitioner needed a formal decompression with radical discectomy, preparation of endplates, and distraction off of those endplates. Dr. Wingate noted: "it represents my professional opinion to a reasonable degree of

medical certainty that the work related injury described to me from April of this year has been the cause of the factor for setting her up for this type of surgical procedure." (PX 5)

Petitioner testified that through 2012, she continued to see Dr. Wingate, kept getting medicine, but it did not help much. (TX 22)

Petitioner saw Dr. Wingate in follow-up on January 8, 2013. She had severe intractable pain in her back and also into her left hip and thigh. He noted that she had herniated disc and foraminal compromise at L2-L3 immediately subjacent to her L1-L2 fusion which was very evident both by plain Xray and MRI. He also found a positive femoral nerve stretch on the left and found hip adductor, hip flexors, and quad knee extension weaker on the left than right. He noted proximal but no distal lower extremity radiculopathy. (PX 5) Dr. Wingate noted that Petitioner was taking Voltaren, Zanaflex, Norco, and Nycenta, and that the Norco seemed to help a bit but only took the edge off the severe nerve pain in Petitioner's hip and leg.

Dr. Wingate felt that Petitioner had failed all available conservative treatment, and that although steroid injections were temporarily beneficial, it was unlikely to completely alleviate Petitioner's severe symptoms. He indicated that he would recommend transforaminal lumbar interbody fusion at L2-L3, including reconstruction of some lordotic curvature up to L1. (PX 5)

On March 4, 2013, Petitioner saw Dr. Wingate again. She continued to complain of pain, and Dr. Wingate considered it to be just below the previously fused section of her spine, judging by her incision. He considered this to correlate with radiographic finding of foraminal disc herniation collapse and arthritic change at L2-L3. He noted that she also had significantly advanced disc degeneration at L5-S1. Dr. Wingate noted a positive femoral nerve stretch test again on the left side, and that the psoas and hip adductors were weak on the left side compared to the right. Dr. Wingate recommended discography to evaluate L5-S1 prior to surgery. (PX 5)

On May 28, 2013, Dr. Benjamin Taimoorazy at Guardian Pain performed a discogram (PX 15) This was followed by CT that same date. (PX 15)

Dr. Wingate relocated to Michigan and referred Petitioner to Dr. Richard Kube at Prairie Spine & Pain. On September 6, 2013, Petitioner sought treatment with Dr. Richard Kube. She provided Dr. Kube a history of her injury consistent with her testimony at hearing, and Dr. Kube noted in her records that getting hit by a co-worker "apparently herniated a disc in her back," after which she began having back and left leg pain. He noted a history of bilateral SI joint fusion in 2001 with no problems since, and an L1-2 fusion in 2004 also with no apparent problems since. Dr. Kube considered Petitioner to have a substantial amount of back pain along with pain radiating down her left leg. He recommended bilateral SI joint injections to bring the pain under control and verify that the SI joint was not the issue. He provided Petitioner an off work note. (PX 7)

On September 16, 2013, Dr. Cummings from Dr. Kube's office saw Petitioner. He noted Petitioner had substantial back pain radiating to her left leg as well as sacroiliac joint pain. Dr. Cummings wanted to separate the SI and back pain and planned bilateral SI joint injections for diagnostic and therapeutic purposes. (PX 7) On September 20, 2013, Dr. Cummings gave Petitioner

SI joint injections on both the left and the right, and performed an arthrogram including radiographic interpretation of the left and right sacroiliac joints. (PX 7) On October 17, 2013, Dr. Cummings saw Petitioner in follow-up for the SI joint injections, and noted that the injections had not really made any difference in her pain. (PX 7) Dr. Cummings noted that since the injections made no difference in her back pain, the SI joint was ruled out as the source of pain. He noted that Petitioner was still having pain from her lower thoracic area all the way down to her lumbar area, and continued to have radicular pain. (PX 7)

Dr. Kube referred Petitioner to Dr. Edward Trudeau for EMG/Nerve Conduction studies. On November 14, 2013, Dr. Trudeau found Left L3 radiculopathy, mild to moderately severe in electro neurophysiologic testing terms. He also noted severe pain, such that Petitioner had to lie down on the exam table for relief while he was dictating his notes. (PX 4)_

On December 16, 2013, Dr. Kube noted that nerve study showed L3 radiculopathy on the left side. Based on her pain complaints and the MRI, Dr. Kube determined that Petitioner was not a candidate for any sort of surgery for her discs. Dr. Kube did not believe there was a neurocompressive lesion that could be addressed to improve her condition. He recommended a functional capacity evaluation to determine permanent restrictions and noted that at that point Petitioner was getting to a point where she was looking at medication management or a spinal cord stimulator. (PX 9)

On April 4, 2014, Petitioner returned to Dr. Kube. He concluded that there was nothing for him to do surgically to eliminate her L3 radiculopathy and recommended dorsal column stimulator. (PX 9) On May 15, 2014, Petitioner saw Dr. Cummings. She indicated that she was not happy with Dr. Kube's management of her pain and wanted a second opinion. (PX 12)On May 29, 2014, Petitioner returned Dr. Cummings. She complained of flank pain for three years, and Dr. Cummings ordered a CT scan. (PX 29)

Petitioner saw AMG Family Health Clinic numerous times in 2014 complaining of chronic back pain. (PX 12) On January 8, 2015, Petitioner indicated to PA Dominno Fogle at AMG Family Health Clinic that she wanted AMG to take over the care of her back condition. (PX 12). On February 24, 2015, Petitioner told PA Fogle that she wanted a referral to Dr. Seibly. (PX 12) On March 26, 2015, Petitioner again saw PA Fogle, and complained of her chronic back pain. PA Fogle noted her history of discography and abnormal MRI and EMG. (PX 12) March 31, 2015, Petitioner saw Dr. Patrick Tracy at INI on referral from PA Fogle. Dr. Tracy considered that Petitioner was not suited for surgery, but that a spinal cord stimulator was reasonable. (PX 10)

Petitioner testified that on April 8, 2015, she got a TENS unit from the Center for Health at Ft. Jesse. (TX 26)

On April 13, 2015, Petitioner was seen at St. Joseph Medical Center Pain Clinic. She gave a consistent history of her work injury and severe pain ever since. Dr. Hunt noted that Petitioner was unable to work due to her condition, and that she spent the majority of the day lying down because that was the most comfortable position for her. Dr. Hunt considered that Petitioner had failed back surgical syndrome and discussed Petitioner's various treatment options with her. While Dr. Hunt considered that dorsal column stimulator was possibly a great option for Petitioner, he noted that it was not adequately covered by Petitioner's insurance. Other

options he discussed with Petitioner were physical therapy, injections, and advanced therapeutic options. (PX 11, pp. 41 - 44)

Petitioner returned to St. Joseph Medical Center for physical therapy on April 20, 2015. She was noted to ambulate with a four-wheeled walker with forward flexion at the trunk. Physical therapy noted that she presented with signs and symptoms consistent with chronic centrally maintained low back pain with failed back surgery syndrome, which contributed to limitation of all activities such that Petitioner was out of bed only two hours in an entire day. (PX 11, pp. 44 - 47) Petitioner returned to physical therapy 4/23/2015, 4/27/2015, 4/30/2015, and 5/7/2015. On the last date she reported that she was trying to stay out of bed most of the day. (PX 11)

On June 8, 2015, Petitioner returned to Dr. Hunt in follow-up. She indicated that she was unable to complete physical therapy due to pain. He noted that medication had not been helpful to Petitioner, and a spinal cord stimulator was not covered by Petitioner's insurance. Dr. Hunt prescribed a trial of topiramate, wean from Gabapentin, and a short course of hydrocodone while other medications were weaned. (PX 11, 54 - 57)

Petitioner saw Dr. Hunt in follow-up on July 22, 2015. She was ordered to discontinue Topamax due to side effects, although it was otherwise working. He recommended Effexor for both pain and depression and refilled her hydrocodone acetaminophen. (PX 11, pp. 58 - 61)

On August 3, 2015, Petitioner saw Dr. Kube's PA-C Derek Morrow. She still wanted a spinal cord stimulator. PA-C Morrow noted that Petitioner needed an updated MRI. (PX 13)

On October 31, 2015, Petitioner saw Dr. Taimoorazy at Guardian Headache and Pain Management to resume care for her lower back pain. Dr. Taimoorazy summarized her care and history of work accident and planned MRI and X-ray. (PX 14, p. 55; PX 15) Petitioner returned to PA-C Kristi Chioni on November 15, 2016, and she ordered physical therapy and adjusted her medication management. (PX 14, p. 54; PX 15)

On May 26, 2017, Petitioner was seen at Guardian Headache and Pain Management by PA-C Kristi Chioni for follow-up on lower back pain. She reported that physical therapy had not provided relief. PA-C Chioni ordered a lumbar spine MRI with and without contrast. (PX 14, pp. 52-53; PX 15) On June 14, 2017, Petitioner treated with Guardian Headache and Pain Management by Dr. Benjamin Taimoorazy. Dr. Taimoorazy performed bilateral lumbar medial branch block for lower back pain. (PX 14, p. 51; PX 15) On June 27, 2017, Petitioner was seen at Guardian Headache and Pain Management by PA-C Kristi Chioni in follow-up to bilateral lumbar medial branch block. Although Petitioner reported she was numb for two hours, she had no pain relief. PA-C Chioni scheduled Petitioner for LESI. (PX 14, pp. 49 - 50; PX 15) Dr. Benjamin Taimoorazy performed lumbar epidural steroid injection on August 1, 2017, to address Petitioner's lower back pain. (PX 14, p. 48; PX 15)

Petitioner returned to Guardian Headache and Pain Management on August 15, 2017, and was seen by PA-C Kristi Chioni in follow-up to a lumbar epidural steroid injection for her lower back pain. PA-C Chioni noted that Petitioner reported that she got no relief from the LESI. Since Petitioner had gotten no relief from physical therapy, SI injections, lumbar medial branch block,

and LESI, PA-C Chioni referred Petitioner to neurosurgery. PA-C Chioni also planned to taper opioids as she titrated up on gabapentin and amitriptyline. (PX 14, p. 47; PX 15)

On September 12, 2017, Petitioner was seen at Guardian Headache and Pain Management by PA-C Kristi Chioni for follow-up on her medications. PA-C Chioni noted that Petitioner had seen Dr. Kukkar but had not brought her MRI, so another appointment was necessary. PA-C Chioni increased Petitioner's gabapentin and amitriptyline and noted that Petitioner was to keep her appointment with her neurosurgeon. (PX 14, p. 46; PX 15)

On October 17, 2017, Petitioner was seen at Guardian Headache and Pain Management by PA-C Kristi Chioni for follow-up for medications for lower back pain. PA-C Chioni noted that there was no evidence of misuse or diversion of opioid medications, and that Petitioner was able to perform activities of her daily life with the opiates. (PX 14, p. 44; PX 15)

Petitioner returned to Guardian Headache and Pain Management on February 15, 2018, where she was seen by PA-C Kristi Chioni for medication follow-up. Petitioner had been titrated down from four Percocet per day to one without any major increase in pain; PA-C Chioni planned to give Petitioner one more prescription for Percocet then stop. (PX 14, p. 43; PX 15)

Petitioner testified that in March of 2018 she moved to Arizona. This was because her sons help take care of her, and they wanted to move to Arizona, since it would hopefully be better for her pain and her asthma. (TX 31-32)

On December 3, 2018, Petitioner was evaluated by AZ Pain Doctors, where she was seen by Esther Baxter FNP-C. FNP-C Baxter noted that Petitioner presented with back pain 4-8/10 from a work related accident. Petitioner gave a history of having undergone lumbar epidural 8/1/17 with minimal relief but having only been able to get one injection because of insurance, and bilateral lumbar medial branch block without relief on 6/27/18. FNP-C Baxter planned to order right SI joint injection. (PX 16) Petitioner received SI joint injection on December 18th, 2018. (PX 17)

On February 11, 2019, Petitioner returned to FNP-C Baxter. FNP-C Baxter reviewed Petitioner's MRI results and noted: "Plan: . . . . Given this patient's MRI findings, radicular complaints, as well as the physical exam and failure to respond to more conservative modalities, we have recommended for the patient to proceed with transforaminal epidural steroid injections x3 one week apart; an attempt to provide the patient palliation of their radicular complaints." (PX 16)

Petitioner returned to MVSC of Glendale on February 26, 2019, and received right L3-4 transforaminal ESI (L3 nerve root) and R L4-L5 transforaminal ESI (L4 nerve root) under fluoroscopic guidance. (PX 17) On March 19th, 2019, Petitioner was evaluated at MVSC by Dr. Saran, who noted that Petitioner would proceed with second LESI and return to clinic for further evaluation. (PX 16)

Petitioner received right L3-4 transforaminal ESI (L3 nerve root) and R L4-L5 transforaminal ESI (L4 nerve root) under fluoroscopic guidance on April 2nd, 2019. (PX 16) On

April 19th, 2019, Petitioner was assessed post procedure by Craig Saran, DO. Dr. Saran noted pain 4-8/10 constantly. Post-procedure pain relief was reported to be 50% and stated "Pain has failed to respond to extensive management including epidural steroid injection, medial branch radiofrequency ablation, medication management, physical therapy, as well as other conservative measures. The patient recently underwent right L3-4 and L4-5 transforaminal epidural steroid injections but unfortunately, she states that she experiences 50% improvement for only several days after each procedure. Patient is unsure as to whether she even wants to trial a third injection**.** I discussed with patient that this time my recommendation would be to consider spinal cord stimulation for lumbar radiculopathy and post laminectomy syndrome. . . . We will order spinal cord stimulation trial today." (reiterated in "plan" section, saying "we believe this is the most reasonable and necessary next step towards providing palliation of the patient's chronic and refractory pain symptoms." (PX 16)

On June 10, 2019, Petitioner underwent MRI of the lumbar spine. It found "L2-3: 2 mm annular bulge. Mild right and moderate left neural foraminal encroachment and bilateral exiting L3 nerve impingement in conjunction with facet arthrosis.; 3. L3-4: 2 mm annular bulge. Moderate left foraminal encroachment and left exiting L3 nerve impingement in conjunction with facet arthrosis." At her June 25, 2019, appointment, Petitioner was scheduled for a psychological evaluation July 3, 2019 to make sure she could get a spinal cord stimulator. (PX 17)

On July 31, 2019, Petitioner received a trial of spinal cord stimulator. (PX 17; PX 18, pp. 9-12) At hearing, she testified that "it worked really well, I didn't want them to remove it." (TX 36)

When Petitioner returned to AZ Pain Doctors for removal of the trial spinal cord stimulator on August 5th, 2019, Robin Jackson noted that she "received significant relief from the spinal cord stimulator trial and will be scheduled for the permanent spinal cord stimulator placement." (PX 18, pp. 2-6)

On December 11, 2019, Petitioner was seen in neurosurgical consultation for evaluation of spinal cord stimulator implantation by Doctor Christopher Ianotti. Dr. Iannotti indicated that he was willing to proceed. (PX 20, pp. 113-117)

Petitioner returned to AZ Pain Doctors on December 27, 2019. Dr Hogan examined her. and noted that a recent SI joint injection gave 100% pain relief for a day, then pain returned. Her pain was reported as 6/10, but ranged between 4-9/10. Her pain was reported as constant and worse in the evening. Petitioner's medications were discussed, and she was advised to continue Bertans and Lidocaine. Petitioner was to follow-up with her surgeon and was to follow-up in 4 weeks for evaluation of lumbar spinal cord stimulator. (PX 20, pp. 1-5)

The parties stipulated that spinal cord stimulator placement took place. Records of that placement were not available.

On January 28, 2020, Petitioner presented again to AZ Pain Doctors for follow-up. It was noted that Petitioner had undergone lumbar spinal cord stimulator placement approximately one week ago, and that Medtronic representatives would meet with her for programming. (PX 20, pp. 6-10) Petitioner returned for a three-week follow-up after implantation of spinal cord stimulator on February 10th, 2020. (PX 20, pp. 104 – 05)On August 17th, 2020, Petitioner was seen for follow-up. She was experiencing moderate to severe pain despite the use of her spinal cord stimulator. A right SI joint injection was ordered and Petitioner was referred for chiropractic care and a comprehensive pain management program. (PX 20. pp. 10-15)

On October 12, 2020, Petitioner returned to AZ Pain Doctors. Although her spinal cord stimulator was working effectively, she reported moderate to severe pain and had failed conservative care. An order was provided for bilateral hip injections. (PX 20, pp. 15-20)

Petitioner returned to AZ Pain Doctors on April 20th, 2021. Petitioner reported that although her lumbar spinal cord stimulator was working, she still experienced high pain levels. It was determined that she would be referred to a chiropractor, and recommended she proceed with bilateral L4-5 transforaminal epidural steroid injections three times, one week apart. (PX 20, pp. 21-27)

On July 14th, 2021, Petitioner was seen again at AZ Pain Doctors. She reported that her lumbar spinal cord stimulator implant was working, and reported good coverage of the painful areas, however she was still experiencing significantly high pain levels. It was noted that she continued use of back brace obtained in 2018. She was to continue the spinal cord stimulator. Petitioner reported that she was unable to go forward with injection therapy due to out-of-pocket costs. She also reported transportation issues for attending chiropractic treatment. Petitioner requested physical therapy. (PX 20, pp. 28-35)

Petitioner returned to AZ Pain Doctors on August 12th, 2021. She reported that her spinal cord stimulator was ineffective, but that she had not contacted the representative for reprogramming. It was recommended that she do so. (PX 20, pp. 35 – 42)

On October 8th, 2021, Petitioner was seen again at AZ Pain Doctors. She had not yet received reprogramming for her spinal cord stimulator. It was noted that she had failed lumbar epidurals, and her pain symptoms had failed to respond to extensive management, including epidural steroid injection, medial branch radiofrequency ablation, medication management, physical therapy, and other conservative measures. Her medications were adjusted. (PX 20, pp. 42 - 49)

Petitioner returned to AZ Pain Doctors on January 5, 2022. She reported continued pain, and her medications were adjusted. (PX 20, pp. 49-56) On February 22, 2022, Petitioner was seen again at AZ Pain Doctors for continued pain treatment. (PX 49 - 64) Petitioner was seen again at AZ Pain Doctors on April 1, 2022. She was instructed to continue involvement in a comprehensive pain management program which included physical therapy, exercises and/or chiropractic care, as well as psychosocial support and oral medications. (PX 64 – 72)

Petitioner followed up with AZ Pain Doctors on May 22, 2022. At this point, nortriptyline and Gralise were discontinued. Bilateral thoracic trigger point injections had been completed on April 1, 2022, with greater than 50% relief of symptoms, and a left sacroiliac joint

injection was recommended. (PX 20, pp. 72 – 79) Petitioner returned to AZ Pain Doctors on August 10, 2022. Repeat SI joint injections were ordered and her Cymbalta was increased with future consideration towards Pregablin, if the Cymbalta increase was not beneficial. (PX 20, pp. 72-85) On August 23rd, 2022, Petitioner received left SI Joint injection by Dr. Thakkar

Petitioner followed up with AZ Pain Doctors on October 13, 2022. She reported pain at 5-8/10. S1-S3 diagnostic lateral branch block was recommended. (PX 20, pp. 85 - 92)

Petitioner testified that the pain that she suffers today is the same pain that she has had ever since her work accident, and that it has never gone away. (TX 33-34) Petitioner testified that her life is limited even today due to pain: "I'm not able to do much without lying down." (TX 27) She described her day as "I'm usually just out of bed for a couple of hours and I usually have to do everything sitting on my walker because the longer I stand, the worse the pain gets, the longer I sit, the worse the pain gets." (TX 34) She requires a walker because the problems with her back cause her to have balance issues. (TX 34-35)

The Arbitrator notes that Petitioner's description of the pain she suffers today, chronic low back pain radiating down to the right butt and leg (TX 34), is consistent with the pain described throughout her medical records herein. She testified that she has now had her spinal cord stimulator reprogrammed, and that it works better. (TX 39) No further surgery is planned, and she is to continue pain management and spinal cord stimulator reprogramming from time to time. (TX 39-40) Although the spinal cord stimulator "helps . . . take the edge off," at the time of hearing she was still "in constant pain. Sharp burning pain in my lower back and it goes down my right leg." (TX 40)

She has applied for and has received Social Security Disability and has never been released to work by any doctor. (TX 41)

Deposition of Dr. Richard Kube

On March 3, 2016, the deposition of Petitioner's treating spine surgeon Dr. Richard Kube, II, was taken in this matter. The transcript of that deposition was entered into evidence as Petitioner's Exhibit 1.

Dr. Kube testified that Petitioner was first seen by his office on September 3, 2013, on referral from Dr. Jeff Wingate. Petitioner reported a history of pain since a co-worker who was running ran into her. She had undergone an epidural steroid injection which did not help. Dr. Kube testified that Petitioner told him that she had previously underwent bilateral SI joint fusions and experienced no problems since that surgery as well as a previous L1-2 fusion in 2004 with no problems since that procedure. However, she had experienced pain in her back and left leg since the time of her recent injury. (PX 1, pp. 7-8)

Dr. Kube testified that he examined Petitioner, and that he assessed her with back pain with pain radiating down her left leg. Dr. Kube determined that she had no neuro-compressive lesion on MRI, but he decided to examine her SI joint to make sure it wasn't pain generator (PX 1, p. 9) He recommended a diagnostic injection of her SI joints and placed her off work. On

September 2, 2013, bilateral SI joint injections were performed by Dr. Cummings, who worked with Dr. Kube. (PX 1, p. 10) Dr. Kube testified that Petitioner received mixed results from these injections. Dr. Cummings noted joint tenderness, decreased range of motion, and radicular pain, and recommended an EMG. Dr. Kube agreed with that recommendation, because she had two somewhat negative injections, but those were less reliable because she also had previous surgeries which could cause scarring or adhesions. He testified that if a nerve were a bit tethered by adhesions, for example, that would not show up on MRI. (PX 1, pp. 11-12)

Dr. Kube testified that the EMG was performed in November, and he next saw Petitioner December 5, 2013. (PX 1, p. 12) He testified that the nerve study indicated left L3 radiculopathy. Dr. Kube opined that the MRI did not show a large enough lesion for him to recommend surgical intervention, but he felt the back was a bigger issue with respect to her pain than was the SI joint region. He did not feel that Petitioner was a candidate for discectomy at that time. Usually for back pain, something like a fusion would be indicated, but because of the quality of Petitioner's discs, both his experience and the literature suggested that a fusion would not have a reliably good result. (PX 1, p. 13)

Since there was no surgical option, Dr. Kube discussed chronic pain management with Petitioner. This would include medication management or a spinal cord stimulator device. He testified that spinal cord stimulator was favorable because Petitioner's complaints were stable, there was no surgical fix, and it was physiologically harmful to medicate her for the rest of her life, even if the medication was just an anti-inflammatory. Dr. Kube testified that spinal cord stimulator was a very common procedure to use for someone who has intractable chronic pain with no surgical fix. (PX 1, pp. 14-15)

Dr. Kube testified that he next saw Petitioner April 1, 2014, and he continued to recommend dorsal column stimulator. Although Petitioner may have wanted a surgery, Dr. Kube believed that there was nothing he could "cure" with standard surgical intervention, because Petitioner did not have an instability, deformity, or a neuro-compressive lesion that he could remove, stabilize, or reconstruct which would change Petitioner's situation. (PX 1, p. 16). Moreover, if there was residual pain from the SI joint, any revision of that fusion would be a "monster operation, and so I probably would recommend against that if that was the problem." (PX 1, p. 17)

Dr. Kube testified that that he next saw Petitioner August 4, 2015. Her pain score was relatively unchanged, and she continued to have significant functional impairment. She had decided she wanted to get a spinal cord stimulator, since her other pain doctor was just giving her injections and therapy and wasn't going to change her long-term outlook. (PX 1, pp. 18-19)

Dr. Kube testified that to a reasonable degree of medical and surgical certainty Petitioner was suffering from chronic pain due to trauma. He testified that the injuries Petitioner described to him of April 2012, were the cause of her condition of ill-being. Dr. Kube based this opinion on the absence of significant symptoms in her history, and the contemporaneous onset of symptoms at the time of the described event. (PX 1, pp. 19-20) He reiterated that he was aware

that Petitioner had undergone joint fusion L1-2 and SI joint fusion. However, he testified that those were some 10 years prior. (PX 1, p. 20)

Dr. Kube testified that he disagreed with the opinion of IME Dr. Ghanayem that spinal cord stimulator was below the standard of care. Dr. Kube testified that he regularly placed them, and that Dr. Pat Tracy had been doing them for twenty to thirty years. He testified that, as to Dr. Ghanayem "I guess in his world he would rather create a drug addict than do a spinal stimulator." (PX 1, pp. 20-21) Dr. Kube testified that a difference between himself and Dr. Ghanayem was that Dr. Kube follows patients long-term, and he is aware of the long-term effects of the various pain medications. (PX 1, p. 21) He pointed out that the other advantage of a spinal cord stimulator is that is low risk, and it is possible do a trial of a spinal cord stimulator. (PX 1, p. 22)

Dr. Kube testified that he is not aware of anything in the literature that requires a specific segment to be affected make a patient a candidate for a spinal cord stimulator, and that while spinal cord stimulator can be used where there is a specific segment identified, they are also used for treating chronic low back pain and "as often as not, there's not a specific segment associated with the chronic low back pain, otherwise you'd simply do a fusion on the simple segment." (PX 1, pp. 23-24) Overall, Dr. Kube testified that he did not believe that Dr. Ghanayem had any basis in the literature. (*Id.*)

Dr. Kube also addressed Dr. Ghanayem's argument that Ms. Orris could not have been hit hard enough to cause a serious injury. Dr. Kube testified that a big trauma was not necessary and noted that "a year ago I was . . . carrying bags out to the car and stepped wrong off a step and had a thoracic disc. Okay. That's a [heck] of a lot less trauma than what she had when somebody hit her. . . . And so these things do happen." (PX 1, pp. 24-25) Dr. Kube explained why it would be impossible to calculate what kind of impact would be sufficient to cause a particular injury and stated that the chronology of Petitioner's injury and pain were such that he believed that the work accident was the source of Petitioner's problems. (PX 1, pp. 26-27)

On cross-examination, Dr. Kube testified that if Petitioner worked for four weeks before she sought treatment, it would not change his opinions regarding causation. (PX 1, p.30) (The Arbitrator also notes that records indicate that Petitioner was seen in the Saint Joe Medical Center Emergency department the day of the accident and gave a consistent history). He testified that:

> [W]e see people all the time with back problems and most people don't necessarily run straight in to see me the day after it happens. So we regularly see people who, you know -- again, this is somebody who is not, you know, say this isn't her first rodeo, this gal has had a lot of back stuff in the past so she's had this. So somebody like that who is a little more seasoned, may, you know, hope that, well, maybe this will just go away. I mean that's typically what we see. I mean, that's what I do usually with my medical issues, I hope they just go away. If they don't come up then you go see somebody.

(PX 1, pp. 30-31)

Dr. Kube testified that "every causation opinion is based off of history...[b]ecause Most images aren't changed remarkably unless there is a fracture or something, images aren't really changed by any of the traumas that you see 99% of the time when they come into my office." (PX 1, p. 34)

Dr. Kube was asked on cross examination whether he would "front the cost" of a spinal cord stimulator if it were not authorized by workers comp. He testified that he would not do this because his business would not stay open if he could not cover the cost of his procedures. (PX 1, pp. 62-63) Dr. Kube testified that Petitioner was taken off work 9/3/13, and there was no subsequent work status. (PX 1 p. 64). On re-direct examination, he testified that if her last work status was off work, then that is what her work status would have been throughout his treatment of her. (PX 1, p. 64) On redirect examination, Dr. Kube testified that the incident described as her work accident would have been sufficient the cause the injuries that he treated her for, and that both Petitioner's objective and subjective findings provided an appropriate basis for spinal cord stimulator. (PX 1, pp. 66-68).

Deposition of Dr. Alexander John Ghanayem

Independent medical examining physician Dr. Alexander John Ghanayem was deposed May 18th, 2016. The transcript of this deposition was entered into evidence as Respondent's Exhibit 2. Dr. Ghanayem testified that he is an orthopedic spine surgeon. (RX 2, p. 4) He testified that roughly 10% of the outpatient patients he saw were section 12 exams, and that 5% of these section 12 examinations were performed on behalf of petitioners. (RX 2, pp. 6-7)

Dr. Ghanayem testified that according to his review of Petitioner's medical records, she had suffered from a soft tissue injury to the lower back, and that this could be causally related to her work accident. (RX 2, pp. 12-13) he testified that when he saw Petitioner on January 9th, 2014, she was at maximum medical improvement. (RX 2, p. 14) He testified that a fusion would be totally inappropriate, and that a spinal cord stimulator was not reasonable or necessary. (RX 2, pp. 15-16) He testified that the recommendation for a spinal cord stimulator in the case of Petitioner was below the standard of care. (RX 2, p. 18) He testified that if a spinal cord stimulator were placed in Petitioner and it worked, it would just be a matter of chance. (RX 2, p. 24) He emphasized that "her condition is not amenable to it." (RX 2, p. 24) Dr. Ghanayem testified that spinal cord stimulators can lose their effectiveness over time. (RX 2, p. 25)

Dr. Ghanayem testified regarding an earlier IME of Dr. Delheimer. Petitioner's counsel objected to this on the basis of hearsay as well as *Ghere v. Industrial Comm'n,* 278 Ill. App. 3d 840 (4th Dist. 1996). Although the arbitrator denies Petitioner's objection so far as it is based on *Ghere*[1], testimony based on another IME is certainly based on hearsay and is an improper attempt to bring a hearsay document into evidence. This testimony is therefore stricken.

[1] *See, e.g., City of Chicago v. The Workers' Compensation Comm'n,* 387 Ill. App.3d. 276 (1st Dist. 2008) (Gordon J., concurring) "Therefore, given its plain and ordinary meaning, a hearing begins when the parties start to present their arguments and evidence to the arbitrator, not with the taking of an evidence deposition."

Deposition of Terrence T. Crowder, M.D.

The evidence deposition of Dr. Terrence Crowder Was taken September 25th, 2020. Dr. Crowder's deposition was entered into evidence as Respondent's Exhibit 4. Dr. Crowder testified that he examined Petitioner, and she provided him with a history of injury consistent with what she later testified to at Arbitration. (RX 4, pp. 10-11)

Dr. Crowder testified that if Petitioner had suffered a traumatic disc herniation, he would think it would be so painful that she would continue to seek treatment rather than go without treatment from April 6 to May 9th, 2012. However, he testified that "I mean, there are many reasons why she may not have seen someone," including lack of money, lack of workers' compensation approval, and lack of a primary care physician. (RX 4, p. 22)

Dr. Crowder testified that he had reviewed MRI images from 2019, as well as an MRI report from 2012. Based on his review, it was his opinion that these were essentially the same, without significant changes between the two. (RX 4, p. 24)

Dr. Crowder testified that Petitioner was very appropriate and honest on examination, and what he was getting was very honest and objective. (RX 4, p. 28) It was his opinion that Petitioner had suffered a sprain/strain from her work accident (RX 4, p. 30) He testified that he had no objective evidence to support her subjective complaints (RX 4, p. 30), and that her work injury had resolved. (RX 4, p. 34) However, he considered that "there are multiple reasons why Ms. Orris may have pain, but those reasons are not related to the incident of April 2012." (RX 4, pp. 35-36)

On cross examination, Dr. Crowder testified that he averages 35 to 45 independent medical examinations a year. (RX 4, p. 41) He testified that he places spinal cord stimulators. (RX 4, p. 42) Dr. Crowder testified that there was no big discrepancy between the history he was given by Petitioner and her medical records. (RX 4, p. 43) He noted pain with all range of motion of Petitioner's lower back, and no pain above the lower back. (RX 4, p. 45) The things he found upon examination were consistent with what Petitioner was being treated for at Arizona spine doctors. (RX 4, p. 45)

Dr. Crowder testified that "when you consider all of those things together - - whole leg pain, all back pain, and then her medical conditions - - I think a stimulator is very appropriate for someone like that." (RX 4, pp. 47-48) Regarding the test of spinal cord stimulator, Dr. Crowder testified that Petitioner had a "fantastic result." This spinal cord stimulator was equally appropriate in 2017 and 2019, and there was no new injury between those two dates. (RX 4, pp. 49-40) Dr. Crowder testified that Petitioner had already exhausted other methodologies, having tried physical therapy, oral medication, and lumbar injections multiple times. (RX 4, p. 50). Overall, he testified that a spinal cord stimulator would have been an appropriate treatment for Petitioner as far back as doctor Kube's recommendation in 2014. (RX 4, pp. 51-52)

CONCLUSIONS OF LAW

As an initial matter the Arbitrator notes Petitioner has the burden of proving all of her case by a preponderance of the evidence. *Chicago Rotoprint v. Industrial Comm'n*, 157

Ill.App.3d 996, 1000 (1st Dist. 1987). The Arbitrator incorporates by reference the Findings of Fact as set forth in the paragraphs above.

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

Yes.

The Arbitrator finds that Petitioner has met her burden of proving that her current condition of ill-being is causally related to her workplace accident. The Arbitrator notes particularly that all expert witnesses agree that Petitioner suffered a work injury. Although those experts retained by Respondent testified that the injury was limited to a strain/sprain, the Arbitrator does not find these opinions persuasive for the following two reasons.

First, the medical records and the uncontradicted testimony of Petitioner support that Petitioner's back had been stable since a fusion surgery several years prior to the incident occurring on April 6, 2012. She testified that prior to her April 6, 2012, work accident she was able to work a full shift without problems with her back, and that in the five years prior to the accident she had not missed work or been caused to shorten her workdays due to any back problem. She had been able to play basketball and take walks with her sons, and had been learning to play tennis. The medical records and Petitioner's testimony also agree that Petitioner had constant back pain from the date of the injury onward. Plaintiff's expert witness Terrence T. Crowder, M.D. testified that Petitioner had already exhausted other methodologies, having tried physical therapy, oral medication, and lumbar injections multiple times. (RX4 p. 50). Overall, he testified that a spinal cord stimulator would have been an appropriate treatment for Petitioner as far back as Dr. Kube's recommendation in 2014. Also, as Dr. Crowder agreed, Petitioner had not suffered any intervening injury.

Second, Petitioner's treating physician, Dr. Richard Kube, testified credibly that the work accident described by Petitioner was consistent with the injuries for which he treated her. The Arbitrator finds that Dr. Kube's explanation for this is credible and fits well with the evidence in this case, including the medical records of Dr. Wingate from close to the accident date, which directly attribute causation of Petitioner's condition to her work accident. The Arbitrator notes that Dr. Wingate recommended spinal surgery and did not believe that Petitioner's condition was a sprain/strain.

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

The Arbitrator incorporates by reference the Findings of Fact and Conclusions of Law as set forth in the paragraphs above. The Arbitrator finds and concludes that the medical services provided to Petitioner were reasonable and necessary. Respondent's expert witness Dr. Terrence Crowder testified that Petitioner had exhausted all other methodologies, and that a spinal cord stimulator would have been an appropriate treatment for Plaintiff as far back as 2014. The Arbitrator notes that this is consistent with the testimony of treating physician Dr. Kube. The record establishes that these services were reasonable and necessary to treat Petitioner's work

injury, and Respondent has not paid all appropriate charges. Respondent shall pay all medical expenses for treatment for Petitioner's work injury, as set forth in Petitioner's Exhibits #19, 21, and 22.

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

The Findings of Fact and Conclusions of Law set forth above are incorporated by reference herein. The Arbitrator finds and concludes that Petitioner was unable to work due to her work injury from the date she was first taken off work by Dr. Kube, September 3, 2013, through the date of hearing, December 22, 2022, a period of 485 3/7 weeks. Petitioner did not receive TTD for this time. At hearing, Petitioner testified that she has never been released to work, and that she had applied for and is receiving Social Security Disability. The Arbitrator finds that Respondent is responsible for TTD for 485 3/7 weeks at Petitioner's TTD rate of $164.54.

Issue (L): What is the Nature and Extent of the Injury?

The Arbitrator incorporates by reference the Findings of Fact and Conclusions of Law as set forth in the foregoing paragraphs. The Arbitrator finds and concludes as follows:

Since Section 8(d) has two options for permanent partial disability awards, an analysis for a PPD award is necessary. The two types of compensation contemplated by the act are a wage differential under Section 8(d)1 and a Person-as-a-Whole Award under Section 8(d)2. An award under 8(d)2 is the appropriate award in this circumstance as no evidence supporting a Wage Differential was presented. With respect to disputed issue (L), pertaining to the nature and extent of Petitioner's injury, and consistent with 820 ILCS 305/8.1b, permanent partial disability shall be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1b of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. No single enumerated factor shall be the sole determinant of disability. *Id*

(i) The reported level impairment based upon the most current addition of the American Medical Association's Guides thru the evaluation of permanent impairment.

No AMA Impairment Rating Report was submitted into evidence at the time of arbitration, so the Arbitrator gives no weight to this criterion.

(ii) The occupation of the injured employee.

At the time of her accident, Petitioner was a hostess for Respondent. After a period of attempting work despite her pain, she was taken off all work by Dr. Kube due to her injuries on September 3, 2013, and has never been released to work since. Petitioner is now receiving Social Security Disability. The Arbitrator gives greater weight to this factor.

(iii) The age of the employee at the time of the injury.

Petitioner was 46 years of age at the time of her injury. Petitioner had several years of employment before she would be eligible to retire. The Arbitrator gives greater weight to this factor.

(iv) Employee's future earning capacity.

Petitioner attempted to work since the accident, but medical records show that she was in considerable pain and was eventually taken off all work by Dr. Kube. She has been determined disabled for the purposes of Social Security Disability and is not likely to work in the future. The Arbitrator gives greater weight to this criterion.

(v) Evidence of disability corroborated by treating medical records.

Petitioner had considerable care for this condition, eventually exhausting all conservative care methods and receiving a spinal cord stimulator. The medical records show a course of treatment and total disability lasting for several years. The Arbitrator gives greater weight to this factor.

In making this evaluation of permanent partial disability, consideration is not given to any single enumerated factor as the sole determinant. Therefore, having considered the factors enumerated in Section 8.1(b) of the Act, 820 ILCS 305/8.1(b), and the record taken as a whole, the Arbitrator finds that as a result of her accidental injuries the Petitioner has sustained 50% loss of use of a person as a whole, pursuant to §8(d)(2) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC013328
Case Name	Gregory Roady v. State of Illinois - Dept of Transportation
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0099
Number of Pages of Decision	16
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Michael Rom
Respondent Attorney	Benjamin Pryde

DATE FILED: 3/11/2025

/s/Deborah Simpson,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with 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

Gregory Roady,
Petitioner,

vs. NO: 10 WC 13328

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 medical expenses, permanent disability, and temporary disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. 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 14, 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.

March 11, 2025

O: 2/19/25
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC013328
Case Name	Gregory Roady v. State of Illinois - Illinois Dept of Transportation
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Michael Rom
Respondent Attorney	Thomas Owen

DATE FILED: 6/14/2024

/s/ Jeffrey Huebsch, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 11, 2024 5.165%

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

June 14, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

G. Roady v. IDOT, 10 WC 013328

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)

Gregory Roady
Employee/Petitioner

Case # **10 WC 013328**

v.

Illinois Department Of Transportation
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeffrey Huebsch,** Arbitrator of the Commission, in the city of **Chicago**, on **4/17/2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **3/5/2010,** Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**43,077.84**; the average weekly wage was $**828.84**.

On the date of accident, Petitioner was **46** 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 $**343,951.09** for TTD, $**0** for TPD, $**0.** for maintenance, and $**0** for other benefits, for a total credit of $**343,951.09**.

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 $552.28 per week for 736-1/7 weeks, commencing 3/10/2010 through 9/25/2012 (awarded in prior 19(b) hearing) and 9/26/2012 through 4/17/2024, as provided in Section 8(b) of the Act, and as is set forth below.

Respondent shall authorize and pay for the lumbar MRI, recommended by Dr. Scott Glaser, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay the outstanding medical bills contained in Petitioner's Exhibits 6 – 9, totaling $44,527.51, pursuant to the Medical Fee Schedule, as provided in Sections 8(a) and 8.2 of the Act, and as is set forth below.

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

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

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

Signature of Arbitrator

June 14, 2024

FINDINGS OF FACT

This case was tried pursuant to Sections 19(b) and 8(a) of the Act on April 17, 2024. Proofs were closed on that date. The issues before the Arbitrator are reasonableness, necessity, and liability for unpaid medical expenses; period of temporary total disability; prospective medical; and causation. (ArbX 1). A Decision in this case was previously entered by Arbitrator Brian Cronin on February 19, 2013. Arbitrator Cronin found Petitioner's condition of ill-being was causally related to the accident of March 5, 2010, awarded medical expenses and penalties and attorney's fees and found that Petitioner was owed temporary total disability in the amount of $552.28 per week for 130 weeks from March 10, 2010 through September 25, 2012. That Decision is made part of the Record as ArbX 2, along with the Commission's Decision which unanimously affirmed Arbitrator Cronin's decision, but lowered the amount of penalties awarded. The Commission Decision was entered on September 17, 2013.

The Arbitrator notes that PX 1 contained Petitioner's SSN, which was redacted by the Arbitrator. The Parties are reminded of their obligation to comply with SCR 138.

Petitioner testified that after the decision of the Commission, he continued to receive temporary total disability benefits at the proper amount through April 11, 2022. Following the hearing in front of Arbitrator Cronin, Petitioner continued to treat with Dr. Eugene Lipov through June of 2016. (PX 2, p. 15-16). During that time, Petitioner's treatment was limited to pain management, including the use of DEA Schedule 2 narcotic medications, such as Nucynta and Dilaudid. (PX 2, p. 11). Petitioner also underwent lumbar injections on September 16, 2014, November 17, 2014 and December 3, 2014. (PX 4, p. 143; T. 12). Petitioner underwent a lumbar discogram on May 20, 2014, at Oak Brook Surgical Center, which revealed degenerative changes and discordant (non-associated) pain at L3-L4. (PX 4, p. 56-57).

In June of 2016, Petitioner's treatment was transferred to Pain Specialists of Greater Chicago under the care of Dr. Ira Goodman and eventually his current doctor, Dr. Scott Glaser, as Dr. Lipov retired. (PX 2, T. 13-14) Injections were again performed to the lumbar spine on November 17, 2016, January 18, 2018, and November 8, 2018. (PX 2, p. 354-356). Petitioner reported no relief from these injections. (*Id.* at 384, 158). Petitioner declined any further injections due to lack of long-lasting benefits. (*Id.* at 336).

Dr. Glaser's office notes from June13, 2018, document worsening of pain with sitting. (PX 2, p. 537). Petitioner's August 15, 2018, visit noted exacerbated pain with humidity and when he sits, more tolerance to the pain while walking or standing. (PX 2, p. 395).

Office notes from Petitioner's December 28, 2020, visit noted complaints of pain fluctuations with sedentary lifestyle and also that Petitioner benefited from doing his home exercise program. (PX 2, p. 228).

Office notes from Petitioner's May 26, 2021, visit noted Petitioner denying any new trauma for the added pain other than from sitting on hard surfaces. (PX 2, p. 187).

Several office notes from different visits document Petitioner's propensity to walk at flea markets or Menard's, because of the pain relief he gets from walking. (PX 2, p. 220, 232, 241).

Pain diagrams and disability assessments from Pain Specialists of Greater Chicago dated between November 2, 2016 and December 14, 2023, note consistent pain ratings from Petitioner between 7-8/10. (PX 2, p. 16-69, 317-332, 491-493, 517-536) Petitioner was asked for his pain level both during the visit as well as his pain level while doing certain activities. (*Id.*).

Dr. Glaser's note from January 18, 2024, shows complaints from Petitioner of increased pain from weather changes. (PX 2, p. 5).

Petitioner last presented to Dr. Glaser on February 15, 2024. (PX 2, p. 2). Dr. Glaser noted that the frequency and area of Petitioner's pain complaints had remained the same. (*Id.*). Dr. Glaser noted complaints of pain flare-ups with minimal activity. (*Id.*). Dr. Glaser noted that Petitioner had to cut back on his daily walks due to added pain and weather changes. (*Id.*). Dr. Glaser noted that Petitioner's pain interferes with his ability to sleep every night and that Petitioner is awakened by pain 3-5 times per night. (*Id.*). On exam, Dr. Glaser noted a normal gait, upright posture, and no signs of opioid withdrawal. (*Id.* at p. 3).

Petitioner testified that he currently sees Dr. Glaser every month, with a future appointment scheduled for the day after the hearing. (T. 14-16). Dr. Glaser has recommended an MRI and a trial spinal cord stimulator. (PX 3). On direct examination, Petitioner testified that he wants to undergo the prescribed MRI, but was unsure if he wanted to proceed with the offered SCS. (T. 16-17). Petitioner testified on re-direct examination that it is his desire to undergo the MRI and, provided there are no complications, the trial spinal cord stimulator procedure. (T. 85, 86).

Prior to the first hearing, Petitioner had been examined by Dr. Charles Slack at the request of Respondent on August 30, 2010, and his report was part of the evidence at the original hearing. (RX 3).

Following the original hearing, Petitioner was re-examined by Dr. Slack on April 14, 2014. (RX 4). Dr. Slack reiterated that he had diagnosed a persistent symptomatic aggravation of Petitioner's lumbar facet spondylosis on the left side and had recommended diagnostic lumbar facet blocks for the possibility of a radiofrequency lesioning of the facets. Dr. Slack noted that an MRI scan of March 5, 2014 revealed disc degeneration at L2-L3 and L3-L4, mild disc bulging moderate degree of degenerative joint changes at L4-L5, and moderate degenerative facet joint changes at L5-S1. Dr. Slack endorsed a causal connection between Petitioner's condition at the examination time and the work accident of March 5, 2010. He indicated that all medical treatment up to that point was reasonable and necessary to decrease Petitioner's pain and allow some degree of comfort. Dr. Slack noted that Petitioner was unable to return to work and recommended that he remain temporarily totally disabled until further treatment and testing was completed. Dr. Slack noted that Petitioner was on a strong pain medication and recommended periodic blood tests to check Petitioner's liver function. (RX 4).

Petitioner was reevaluated by Dr. Slack on December 3, 2014. (RX 5). At that visit, Dr. Slack reviewed the medical records from March 21, 2014 through October 10, 2014, including the

CT/discogram. Dr. Slack's opinion was that Petitioner had sustained symptomatic aggravation of his degenerative lumbar and facet disc disease at the time of the injury and his diagnosis was persistent low back derangement associated with symptomatic aggravation of degenerative lumbar and facet disc disease related to the incident of March 5, 2010. Dr. Slack recommended that Petitioner continue with pain management to control the ongoing pain response. Dr. Slack reiterated that Petitioner was not a surgical candidate, but would require ongoing medication on an indefinite basis. Dr. Slack indicated that Petitioner's restrictions or limitations for work activity due to the strong narcotic pain medications would be that he was permanently restricted from his return to his prior work. (RX 5 p. 4). Dr. Slack felt that Petitioner had exhausted all conservative measures and diagnostic testing and that no further treatment would bring relief, except for pain management regimen. Dr. Slack felt that Petitioner was at maximum medical improvement and would continue his medications on an indefinite basis.

Dr. Slack authored a record review addendum on July 7, 2016. (RX 6). At that time, Dr. Slack reviewed further records from Dr. Lipov and concluded that Petitioner could not return to his regular job as a highway maintainer due to his ongoing pain responses necessitating significant doses of strong narcotic medication, which impairs his ability to function. Furthermore, the severity of pain would interfere with Petitioner's ability to perform his work duties. Dr. Slack indicated that in his opinion Petitioner was not able to perform even a sedentary type of position, as the amount of medication he is using would affect his ability to travel to and from work and affect his ability to perform his duties. In addition, Petitioner would have difficulty being able to be in any one position for any length of time. (RX 6 p. 2).

On April 5, 2019, Dr. Slack performed a second record review in which he reviewed Petitioner's records through February 20, 2019, consisting of pain management records from Dr. Goodman and Dr Glaser. Dr. Slack was also provided with reports of video surveillance by Frasco Investigative Services Unit. (RX 7).

Dr. Slack's comments on the video reports state that he was provided with reports regarding 13 dates of video surveillance. Out of the 13 dates of surveillance, 11 revealed no specific activity. One date of specific activity noted by Dr. Slack were October 19, 2016, where Petitioner was allegedly observed driving his car to a flea market and walking at a fast pace through the market. (RX. 7, p. 3). The other date of activity noted was December 8, 2016, when Petitioner allegedly drove to Menard's, pushed a generator onto a flatbed cart, and lifted it into his vehicle. Dr. Slack indicated that the investigative report alleged that the generator was estimated to weigh between 100 and 150 pounds. Surveillance of April 22, 2017, allegedly showed Petitioner walking through a flea market for a few hours. Dr. Slack indicated that Petitioner had the ability to be on his feet standing and walking for periods of time and was able to drive his vehicle. Dr. Slack noted that Petitioner was functional on his medication. Dr. Slack agreed with the treating doctor's recommendation for an MRI of the lumbar spine. Dr. Slack indicated that the plan would be to get a lumbar MRI to rule out any significant evidence of nerve compression. Dr. Slack speculated that if indeed there was no significant abnormality noted, then the next step would be for Petitioner to undergo a functional capacity evaluation with validity testing to determine his status regarding the amount of sitting and lifting activities that he is able to perform and to then outline a work status notation. Dr. Slack's report did not indicate that Petitioner should be released to return to work. (PX 4).

Respondent sent Petitioner for a Section 12 exam by Dr. Thomas Gleason on August 25, 2020, through Illinois Bone & Joint, the same practice as Dr. Slack was associated with. (RX 8). (The Arbitrator notes that both Dr. Slack and Dr. Gleason are board certified orthopedic surgeons and the Arbitrator believes that Dr. Slack has retired.) Dr. Gleason indicated that Petitioner's complaints of low back pain causing difficulty sitting are the same as when he was first injured and have remained unchanged throughout the following years. Dr. Gleason performed x-rays, which demonstrated mild left lumbar convexity and moderate degenerative disc disease greatest at L3-L4, L4-L5, with disc space narrowing and spurring. Dr. Gleason reviewed MRI studies of 1/15/2020, 3/5/2014, and 5/29/2010. The January 15, 2020 film showed moderate degenerative disc disease greatest at L3-L4, with disc space narrowing, Schmorl's nodes at T 12, mild broad-based disc bulge L3-L4-L5 with associated narrowing and facet arthropathy at L$-L5. He reviewed the Post Discogram CT form 5/20/2014 was said to show what appears to be a radial tear at L2-L3 and L3-L4, with extension of contrast, posteriorly. He also reviewed a report of the 5/26/2014 MRI of the pelvis and hips, which were said to show mild reactive sclerosis sacro-iliac joints consistent with chronic sequelae from non-specific sacroiliitis. Based on his review of the objective tests as well as his review of the same surveillance video reports as provided to Dr. Slack, Dr. Gleason felt that there were no current positive objective findings related to the musculoskeletal system on physical exam. Petitioner was capable of full-time work from a musculoskeletal perspective, with no restrictions. Dr. Gleason felt no further formalized medical treatment was necessary for any musculoskeletal condition and that further treatment should consist of referral to "addiction medicine". (RX 8, p. 7)

Dr. Gleason's opinions were limited to Petitioner's orthopedic condition and indicated that claimant had reached maximum medical improvement from a musculoskeletal standpoint with respect to his low back, "most likely going back to 2010." (RX 8, p. 8). Because there were no positive objective findings, Dr. Gleason did not endorse any causal connection. Medications were not appropriate from an orthopedic standpoint and Dr. Gleason did not comment on Petitioner's pain management program other than to indicate a referral to "addiction medicine". Dr. Gleason opined that the treatment to date "has been excessive, largely unnecessary and unreasonable." (RX 8, p. 8). Dr. Gleason observed that Petitioner demonstrated no abnormal behavior. (RX 8, p. 7).

Petitioner's treating physician, Dr. Scott Glaser, prepared a narrative report on June 8, 2023. (PX 3). Petitioner was originally seen as a new patient of Dr. Ira Goodman, a partner of Dr. Glaser, on November 2, 2016. Petitioner had presented with bilateral low back pain and left hip and leg pain. The onset was the injury of March 5, 2010, that being a work-related incident and basis of this claim. Dr. Glaser notes that Petitioner indicates sitting is his worse position. When standing, he must shift weight from side to side and that Petitioner's walking is unlimited. (PX 3, page 1). Dr. Glaser notes that his current medication regiment is Nucynta, Amlodipine/Valsartan, and Hydromorphone HCL 8mg. Dr. Glaser outlines in his report the dangers of the use of the medications that Petitioner is currently prescribed. Dr. Glaser indicates that he is under the same medication care that started with Dr. Goodman. Petitioner has been compliant with his medication regiment as shown through his urine tests and lack of aberrant behavior. Dr. Glaser indicates that Petitioner switched from Nucynta to long-acting morphine and that the opioids significantly improve Petitioner's quality of life and allow him to perform his activities of daily living and get out of the house. Dr. Glaser opined, to a reasonable degree of medical and surgical certainty, that

Petitioner's current condition is secondary to the original work accident and that Petitioner will require medication management, including monthly visits and urine testing for the rest of his life.

Dr. Glaser further opined that the Petitioner has not had proper interventional treatment. Dr. Glaser reiterated the need for a repeat lumbar MRI. Dr. Glaser notes that Petitioner suffers from both lower back and coccygeal pain, which has been more difficult to treat. Petitioner is a candidate for a trial spinal cord stimulator to control the severe constant pain and that he would more likely than not respond well to the trial, which would then be followed by performing a permanent implantation of a spinal cord stimulator. (PX 3).

Respondent presented two video surveillance reports: one dated November 21, 2016, and one dated December 16, 2016. No video was entered into evidence and no video surveillance witness testimony was presented by Respondent. Only the two reports, which discussed only parts of the multiple days of surveillance, were provided. (RX 11, RX 10).

The November 21, 2016 report indicates that it relates to surveillance performed on November 16 and November 19, 2016. The November 16th surveillance report documents that Petitioner was observed driving for 13 minutes. The November 19th surveillance again shows the Petitioner driving for an undetermined period. (RX 11).

The December 15, 2016, report indicates that it pertains to two dates, December 8th and December 14, 2016. The December 8th surveillance relates to Petitioner allegedly purchasing a generator at Menard's and loading it into his vehicle. The report indicates Petitioner exited the store pushing a flat shopping cart containing a box to his vehicle. He then lifted the box from the cart and placed it into the back seat of the vehicle. The report indicates that the video shows that, despite the Ford Excursion driven by Petitioner having a hatch back storage area, the generator was placed by Petitioner into the backseat of the vehicle. The box was noted to contain a WEN brand generator. Petitioner than rolled the cart back and departed in his vehicle. A clear picture of the box was not provided in the surveillance. The investigator never confirmed which generator was purchased and simply indicated it was believed to be a specific generator. The investigator estimated the weight of the generator to be approximately 100-115 pounds. (RX 10).

There are still pictures of the box on the cart and being lifted from the cart and into the backseat by Petitioner. (RX 10, p. 4). As stated below, Petitioner estimated the weight of the generator to be 40 pounds. The Arbitrator believes that Petitioner's testimony is correct, based upon the still photos.

No other activity of note in other surveillance reports was described by either Dr. Slack or Dr. Gleason. (RX 7, RX 8).

As an aside, the Arbitrator notes that in almost 40 years of Illinois Workers' Compensation practice, he has never seen a Respondent send surveillance reports to a Section 12 examiner and cannot think of any reason to do so. In this case, the doctors documented Petitioner's lack of activity, which does appear to support his case.

Respondent submitted a "Blind Labor Market Survey" as RX 9. The document appears to have been prepared by Krista Diehl, MA, CRC, LPC. The diagnosis listed is persistent low back derangement associated with symptomatic aggravation of the degenerative lumbar disc and facet disease, other chronic pain, and coccygodynia. The survey indicates (without citing any evidence) that Petitioner has a functional capacity of heavy work capability per the permanent labor guidelines. Dr. Gleason's IME report referenced therein does not contain this work capacity. The labor market survey states that the "recommendations and opinions provided in this report may differ if the vocational case manager had an opportunity to interview this Petitioner and obtain additional information." (RX 9, p. 1).

Petitioner testified, and the survey notes, that Petitioner was never interviewed concerning a labor market survey. The survey was prepared without any input from the Petitioner.

The survey further indicates that it is unknown if the employers listed are in fact willing to hire Petitioner. The survey instead simply lists jobs that might exist. The survey also documents several impediments to placement that would require vocational assistance. (RX 9).

There was no evidence that Respondent offered Petitioner any vocational assistance and it is noted that Petitioner has not been released to return to work by his treating physician.

The Arbitrator checked the case docket for this matter (in CompFile and the Mainframe) and notes that Respondent did not file a Vocational Assessment, as required by Rule 9110.10, although Petitioner was off work for years and no one opined that he could return to "full duty work" until Dr. Glaeson did so, some 10 years after the work accident.

Petitioner testified that he is currently still under the care of Dr. Glaser and is under a medication regimen consisting of Hydromorphone 4mg tablets, Oxycodone, and Ibuprofen 800. The medications are contained and listed in Petitioner's Exhibit 9. (T. 21-22).

The Arbitrator notes that Petitioner tendered two PX 8 documents, the bill from Premier Healthcare in the amount of $5,693.76 and Petitioner's Out-Of-Pocket expenses for medications from 5/17/2022 through 4/2/2024 from Highland Park CVS. The OOP list has been re-marked by the Arb. as PX 9.

Petitioner testified that for at least the past 8 years his only medical care has consisted of pain management in relation to this work injury. Petitioner testified that he has not had any orthopedic treatment in that period. (T. 22, 23). Petitioner testified that he has no restrictions regarding walking and is, in fact, encouraged to walk as much as possible as it improves his function. (T. 24).

Petitioner testified that he does not have specific lifting restrictions imposed by Dr. Glaser or any other doctor. (T. 26). Petitioner testified that he felt he could lift approximately 40 pounds. (T. 26). Petitioner indicated that sitting intensifies his pain. (T. 27). Petitioner testified that it feels as if he is sitting on a "lava tennis ball" when seated. (*Id.*). Petitioner testified that he reviewed the doctor's reports showing the surveillance and did not dispute walking through the flea market.

Petitioner stated that he did not have any specific driving restrictions imposed by Dr. Glaser or any other doctor. (T. 31).

In relation to the surveillance concerning a generator, Petitioner admitted that he bought the smallest generator Menard's sold, costing approximately $159.00. (T. 32, 37). Petitioner testified that the generator was small and, thus, had placed it in the backseat. (T. 34). Petitioner estimated that the generator weighed approximately 40 pounds. (T. 35). Petitioner disagreed with the investigator's estimation that the generator weight 100-150 pounds. (T. 36).

Respondent has never sent Petitioner for a Section 12 examination concerning pain management. Petitioner has been taken off work per Dr. Glaser's orders and has not suffered any intervening injuries since the date of accident. (T. 41). Petitioner testified that his pain increases when he does not take his medication. (T. 43,44). Petitioner testified that he takes his medication as instructed by Dr. Glaser. (T. 43, 44).

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law that follow.

Section 1(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(d).

To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim (O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980)), including that there is some causal relationship between his employment and his injury. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill. 2d 52, 63 (1989).

Decisions of an arbitrator shall be based exclusively on evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e)

The Arbitrator finds the testimony of Petitioner to be credible. Petitioner was an honest and cooperative witness. He did have to get up from sitting in the witness chair at various times and he did appear to be uncomfortable.

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

Petitioner's current condition of ill-being, to wit: Lower back pain and bilateral buttock and leg pain, Lumbar facet joint pain, lumbar radiculopathy, Other chronic pain,

long term opioid therapy, and coccygodynia, as assessed by DR. Glaser in his 6/8/2023 report and his 2/15/2024 chart note, is causally related to the March 5, 2010 work accident.

The Arbitrator bases this finding on the credible testimony of Petitioner, the medical records, the Law of the Case in this matter, and the medical opinions of Dr. Glaser and Respondent's first Section 12 examiner, Dr. Slack.

There is a clear chain of events demonstrating that Petitioner's continued need for pain management treatment through the date of hearing is related to the original accident of March 5, 2010. Petitioner testified that he did not have any intervening accidents. Both Dr. Glaser and Dr. Slack rendered causal connection opinions that related Petitioner's ongoing complaints to his work injury. Even Dr. Gleason indicates that Petitioner should be sent for what he terms "addiction medicine". No doctor has indicated that Petitioner's current condition of ill-being and need for pain management is related to anything other than Petitioner's work injury.

The Arbitrator gives little weight to the surveillance reports submitted by Respondent. The Arbitrator notes that no video was presented for independent review by the Arbitrator at trial. In addition, the Petitioner testified that he is encouraged to walk as much as possible and has no driving restrictions whatsoever. Dr. Glaser's report further indicates that Petitioner has no restrictions on walking. Thus, any surveillance of him walking is immaterial. In addition, there is no objective evidence as to the actual weight of the box moved by the Petitioner. Both the Petitioner and the investigator speculated as to the weight of the box. The Arbitrator, as noted above, believes that Petitioner's estimate of 40 pounds is probably correct, based upon the photos in RX 10. This one instance of Petitioner lifting a generator of an unknown weight does not alleviate the need for treatment or undermine the validity of Petitioner's condition, which has been objectively documented by numerous doctors including Respondent's own Section 12 examiner, Dr. Charles Slack. It has long been noted that a claimant does not have to be reduced to a "state of total physical and mental incapacity or helplessness" before benefits can be awarded. E. R. Moore Co. v. Industrial Comm'n, 71 Ill. 2d 353, 360 (1978).

Given the entirety of the evidence adduced, Dr. Gleason's opinions are found to be not persuasive. If Dr. Slack had noted any inconsistencies or reasons to not endorse causation, he would have stated them. Dr. Slack did not do so.

Causation has been established.

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

Having found in favor of Petitioner on the issue of causation, the Arbitrator finds that the incurred medical expenses entered as Petitioner's Exhibits 6 through 9 (The RFH form says that

the claimed bills are PX 5-9 (ArbX 1), but PX 5 is a report from Dr. Slack) are causally related to the work accident of March 5, 2010. The same are found to be reasonable and necessary to cure or relieve the effects of the injury.

Dr. Gleason's opinion on reasonableness and necessity is found to be not persuasive. Respondent submitted no UR evidence regarding any of the claimed bills.

The awarded bills are as follows:

Dr. Glaser/Pain Specialists of Greater Chicago: (PX 6)	**$2,280.25**
Oak Brook Surgical Center: (PX 7)	**$34,203.00**
Premier Healthcare Services: (PX 8)	**$5,693.76**
Out of Pocket Expenses: (PX 9)	**$2,350.50**
TOTAL:	**$44,527.51**

This award is pursuant to Sections 8(a) and 8.2 of the Act and is subject to the <Medical Fee Schedule, with Respondent being entitled to a credit for all awarded bills that it has paid or compromised.

WITH RESPECT TO ISSUE K, IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE?, THE ARBITRATOR FINDS:

Based upon the Arbitrator's finding on the issue of causation, above, the medical records and Petitioner's testimony, the Arbitrator finds that Petitioner is entitled to the MRI that has been recommended by Dr. Glaser.

On direct examination, Petitioner testified that he would like to under the recommended MRI. He said that he was unsure about the SCS procedure. In such a circumstance, it is inappropriate for the Arbitrator to order a procedure prospectively that a petitioner is unsure of and the Arbitrator declines to do so.

Obviously, based upon the Arbitrator's finding on causation and Dr. Glaser's opinions, Petitioner is entitled to ongoing Pain management treatment and the same should be authorized and paid for by Respondent. Respondent has no evidence disputing ongoing pain management, other than the opinions of Dr. Gleason, which have been found to be not persuasive.

Accordingly, Respondent shall authorize and pay for the lumbar MRI, recommended by Dr. Scott Glaser, as provided in Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE K, WHAT TEMPORARY BENEFITS ARE IN DISPUTE (TTD)?, THE ARBITRATOR FINDS:

Under the Act, temporary total disability (TTD) is awarded for the period between when an injury incapacitates the Petitioner to the date the Petitioner's condition has stabilized or the Petitioner has recovered to the amount the character of the injury will permit. Whitney Productions, Inc. vs. Industrial Comm'n, 274 Ill. App. 3rd 28, 30 (1995).

Based upon the Arbitrator's findings above on the issues of causation and prospective medical, Petitioner has not reached MMI and Dr. Glaser has not released him to return to work. Accordingly, ongoing TTD is owed. Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Commission, 236 Ill.2d 132 (2010).

Accordingly, Respondent shall pay Petitioner temporary total disability benefits of $552.28 per week for 736-1/7 weeks, commencing 3/10/2010 through 9/25/2012 (awarded in prior 19(b) hearing) and 9/26/2012 through 4/17/2024, as provided in Section 8(b) of the Act.

Of course, Respondent is entitled to a credit for all awarded TTD benefits that have been previously paid.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC030929
Case Name	Maria Contreras v. University of Illinois @ Chicago
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0100
Number of Pages of Decision	21
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	John J. Castaneda
Respondent Attorney	Brad Antonacci

DATE FILED: 3/12/2025

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Maria Contreras,

Petitioner,

vs. No. 18 WC 030929

University of Illinois at Chicago,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Act provides for a Respondent to hold a Petitioner harmless only when a Section 8(j) credit is awarded. There being no Section 8(j) credit awarded in this case, the hold harmless and indemnification language on page 15 of the Arbitration Decision is stricken. All else in the Arbitrator's Decision is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 9, 2024 is hereby modified as stated above, and otherwise affirmed and adopted.

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

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

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

March 12, 2025

MP/mcp
o-02/20/2025
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/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC030929
Case Name	Maria Contreras v. University of Illinois @ Chicago
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Raychel Wesley, Arbitrator

Petitioner Attorney	John Castaneda
Respondent Attorney	Brad Antonacci

DATE FILED: 1/9/2024

THE INTEREST RATE FOR THE WEEK OF JANUARY 9, 2024 5.03%

/s/ Raychel Wesley, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Maria Contreras
Employee/Petitioner

v.

University of Illinois @ Chicago
Employer/Respondent

Case # 18 WC 30929

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 Raychel Wesley, Arbitrator of the Commission, in the city of Chicago, on November 9, 2023. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On April 1, 2016, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $40,264.12; the average weekly wage was $774.31.

On the date of accident, Petitioner was 52 years of age, Single with 1 dependent children.

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

Respondent ***has*** 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.

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of **$516.21**/week for 37 and 4/7ths weeks, commencing September 14, 2017, through June 3, 2018, as provided in Section 8(b) of the Act.

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 each hand or 57 weeks @ **$464.59** per week pursuant to §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.

/s/ *Raychel A. Wesley* **JANUARY 9, 2024**

Signature of Arbitrator

The disputed issues in the above proceeding are (C.) whether Petitioner sustained an accidental injury arising out of and in the course of her employment; (D.) the date of accident; (E.) whether the Petitioner provided timely notice of the alleged accidental injury; (F.) whether the Petitioner's present condition of ill-being is causally related to her alleged accidental injury; (K.) what amount, if any, of Temporary Total Disability is due to the petitioner; (L.) what, if any, is the nature and extent of Petitioner's injuries, and (O.) statute of limitations.

FINDINGS OF FACT

Petitioner testified through an interpreter. (T. 11). Petitioner is 59 years of age born on November 26, 1963. (T. 11). Respondent originally hired petitioner in April of 1997. (T. 12). Petitioner worked as a "building service worker" until she retired on January 1, 2023. (T. 12). Petitioner's regular work schedule was Monday through Friday, 40 hours per week. (T. 12-13). Petitioner's shift started at 5:00 a.m. and ended at 1:30 p.m. (T. 13). Petitioner confirmed her job as a "building service worker" was to perform cleaning services daily for the respondent. (T. 13). Petitioner confirmed her supervisor as Mr. Atwater in April and May of 2016 and who was present at the hearing. (T. 13-14).

Petitioner addressed the job requirements noted in the job description of a "building service worker." (PX5). One of the job requirements listed under work activities stated 25% of the day the employee would "sweep, strip, and refinish floors using automatic waxers, buffers, and single disc machines." (PX5: 2). Petitioner denied ever using automatic waxers. (T. 14). Petitioner denied ever using automatic buffers. (T. 14). Petitioner could not recall whether she ever used a single disc machine. (T. 14). Petitioner used a miso mop, like a stick with cloth on the bottom to sweep the floors. (T. 14-15). Petitioner used both of her hands to operate the mop with her right hand on top and the left hand underneath. (T. 15). Petitioner would clean the dust with the mop and then use the mop with water to clean. (T. 15). Petitioner cleaned three floors, sometimes more. (T. 15-16). Petitioner cleaned the

hallway`

ys, rooms, and offices. (T. 16). Petitioner could not recall exactly how many rooms or offices per floor but remembered over ten. (T. 16). Petitioner also cleaned lab rooms. (T. 16). Petitioner claimed the offices cleaned were the size of the hearing room and the lab rooms cleaned twice the size of the hearing room. (T. 16). Assuming the hearing room is 20 feet x 20 feet, Petitioner clarified the offices were smaller, but the lab rooms were still twice the size. (T. 17).

Petitioner described her use of the mop: ". . . when I'm dusting, it's like around; and when I clean with water it goes like this (back and forth). (T. 17-18). Petitioner used a light grip when dusting because she had a lot of pain in her hands, and she couldn't grab the mop any harder. (T. 18). Petitioner used a regular grip when mopping. (T. 18). Petitioner demonstrated her use of the mop as her right hand on top and her left hand underneath. (T. 18). Petitioner's hands were not together but about a foot apart. (T. 18-19). Petitioner denied having to strip any floors. (T. 19). Petitioner could not recall if she had to refinish floors. (T. 19).

The second work activity listed in the job description also required employees to spend 25% of their day to "clean and service lavatory and restrooms on a daily basis." (PX5: 2). Petitioner cleaned the bathrooms by holding a container and using a brush to clean the toilets, and toilet covers while using both hands. (T. 19-20). Petitioner would grab the container and the stick in her left hand and grab the brush with her right hand and use her right hand to dry things. (19-20). The container or bucket had liquid and chemicals used to clean. (T. 20). With her right hand petitioner used the brush to clean the inside of the toilet in a circular fashion. (T. 20). Petitioner also used her right hand with the brush to clean the sinks. (T. 21), Petitioner also cleaned the mirrors in the bathrooms using Windex spray with her right hand and then she used both hands to wipe off the mirrors due to their size. (T. 21-22). Petitioner also used the miso mop to dust and clean the bathroom floors. (T. 22-23). Petitioner recalled cleaning ten bathrooms per day. (T. 23),

A third activity listed on the work activities of a building service worker required the employee 25% of the day to "gather and dump waste, wash walls, and dust furniture and fixtures on a routine basis." (PX5: 2). Petitioner would take garbage out of each office. (T. 24), Petitioner described the big garbage containers as 2-3 feet. (T. 24). Petitioner would dump more than 10 but less than 20 of these containers. (T. 24-25), Petitioner would have to dump these containers into a big dumpster. (T. 25). Petitioner would pull the garbage bags out of the container with both hands. (T. 26). Petitioner denied washing walls. (T. 26). Petitioner dusted furniture with wipes and then polished the furniture. (T. 26). Petitioner used both hands with the wipes in a circular motion and back and forth. (T. 26-27). Petitioner also used a polish spray with her right hand and use both hands to wipe the polish in a circular and back and forth motion. (T. 27).

Petitioner denied ever having to sweep and/or shovel snow which was listed as 5% of her daily activities. (PX5: 2). Petitioner recalled having to lift recycling paper in containers and throw the paper in green buckets. (T. 28). Petitioner denied having to lift anything over 25 pounds. (T. 29). Petitioner recalled using a vacuum to clean the entrances and conference rooms and offices. (T. 30). Petitioner used both hands with the extension hose of the vacuum. (T. 30). Petitioner vacuumed at least 12 rooms. (T. 31).

On April 1, 2016, Petitioner noticed a lot of pain in both hands that went up to her ear and the back of her neck. (T. 31-32). Petitioner noticed these symptoms when she would clean the bathrooms, use the vacuum, and lift the garbage. (T. 32). In May of 2016 Petitioner had a conversation with her supervisor Mr. Atwater:

"I told him my hands were hurting and they were giving me a lot of work, and he told me, and he said, oh no, you have to bring me a medical note; and I told him that I was doing 45 bathrooms, and he said are you sure? And I said yes. And he said that he was going to talk to the other manager, I don't recall the name, and they did take off some bathrooms and I said okay, and that's when I started going to the doctor because I couldn't tolerate the pain no more."

(T. 33-34). Petitioner observed Mr. Atwater wrote nothing down during this conversation. (T. 34).

On June 27, 2016, Petitioner saw her primary doctor, Dr. Ramos, complaining of numbness in her hands. (T. 34). Petitioner delayed seeing a doctor because she thought her symptoms would improve. (T. 34). On June 27, 2016, Dr. Ramos noted Petitioner's diabetes and hypertension were both controlled, and Petitioner complied with treatment. (PX1: 13). Dr. Ramos noted Petitioner's history of carpal tunnel syndrome and referred Petitioner for an EMG and occupational therapy. (PX1: 14). In August 2016, Petitioner underwent an EMG that revealed severe bilateral carpal tunnel syndrome with axonal loss. (PX4, Deposition EX3). Axonal loss meaning "the nerves are starting to die a little, not just (being) irritated or inflamed." (PX4: 12).

Petitioner admitted that she had prior pain and numbness in her hand since November of 2015 while working as a building service worker. (T. 35). Petitioner also admitted that before working for the Respondent she had no symptoms in her hand. (T. 36).

Petitioner indicated Dr. Ramos referred her to see Dr. Christina Kuo. (T. 36). Petitioner consulted with Dr. Kuo on January 30, 2017. (PX3: 6). Dr. Kuo noted the following history at the initial evaluation:

"B/L wrist pain that radiates to the elbows, since Aug, did have some therapy last yr which helped a lot, EMG done 8/2016. . . . Dr. Ramos, thank you for referring your patient to me. As you know, Maria B. Contreras is a 53 y.o. RHD female works in housekeeping/cleaning. Working now. 8/2016 EMG – severe CTS with axonal loss. Pain in elbow is lateral bil. R>L, Right side is radiates up to shoulder. When (sic) had therapy for 3 months. Numbness and pain at tips of fingers resolved. Difficult to wear splints at night b/c she takes them off in sleep. No Rx for elbows."

(PX3: 6). Dr. Kuo diagnosed bilateral carpal tunnel syndrome and recommended surgery. (PX3: 9).

Dr. Kuo performed surgery on Petitioner's right hand on September 14, 2017. (T. 36). Petitioner stopped working as of that date and remained off work when she underwent surgery on her left hand on March 1, 2018. (T. 36). Petitioner did not return to work until June 4, 2018. (T. 37). Petitioner returned to work as a building service worker. (T. 37).

Petitioner's last visit with Dr. Kuo for her hands occurred on November 12, 2018. (T. 37). Petitioner notices a little pain in the left hand in the palmer aspect at the base of her thumb. (T. 38). Petitioner experiences

pain in the same area of her right hand. (T. 38-39). When Petitioner retired from work for the Respondent, she earned $22.00/hour. (T. 39). Since her hand surgeries, Petitioner suffered no other accidents or injuries to her hands. (T. 39).

On cross-examination, Petitioner confirmed she first noticed numbness and difficulty grabbing things in her hands and wrist in 2015. (T. 39-40). Petitioner admitted her hand pain began in 2015 with no specific injury. (T. 40). Petitioner recalled noticing these symptoms while performing her work duties. (T. 40). Petitioner thought these symptoms were related to her work duties. (T. 40).

On cross-examination Petitioner confirmed she is diagnosed with diabetes. (T. 40). Petitioner recalled in 2014 a doctor diagnosed her with hyperthyroidism. (T. 41).

On cross-examination Petitioner confirmed that during her work as a building services worker in April of 2016 she received two rest period breaks which each were 10 to 15 minutes. (T. 42). Petitioner had a 30-minute lunch break. (T. 42-43). Petitioner confirmed that the only equipment she used in her job as a building service worker that vibrated was a vacuum. (T. 47-48). Petitioner also confirmed she used the miso mop 45 minutes to an hour each day. (T. 48). Petitioner confirmed that she would sweep and mop every day. (T. 49). Petitioner also confirmed she would clean laboratories and restrooms every day. (T. 51). Petitioner indicated she would take between 2 and 3 hours to clean the laboratories and the restrooms. (T. 51). Petitioner indicated she cleaned approximately 10 restrooms a day. (T. 51).

On cross-examination petitioner described her day:

"First I would clean the bathrooms in the building before the people would get there and then I would go and clean the labs because there was a lot of drops, you know, chemical drops and you would have to clean them; and then after that I would go and pick up the garbage. And then I would check the offices. And if the vacuum was needed, then I would use it. That's everything I had to do before I would go to the other floor. And if the time that I had was not enough, then the following day I would finish the one I didn't the day before."

(T. 52). Petitioner would take about 2 or 2.5 hours to clean and service each department. (T. 53). Petitioner agreed this meant she cleaned about three departments per day. (T. 53). Petitioner spent around 30 to 40 minutes each day gathering garbage. (T. 54). Petitioner put all the trash bags in one barrel and rolled the barrel to a dumpster. (T. 54). Petitioner spent 15 to 20 minutes each day dusting furniture and fixtures. (T. 54). Petitioner vacuumed 1 and ½ hours each day for each department. (T. 56). Petitioner took care of recycling around 15 to 20 minutes per day. (T. 57). Petitioner agreed she did a variety of job duties. (T. 58). Petitioner performed activities of daily living but with some difficulty. (61).

On redirect examination petitioner explained she had difficulty doing her activities of daily living because "my hands hurt, my fingers hurt." (T. 62). Petitioner also explained when moving the garbage or recycling she had to push the barrel with both hands. (T. 64). Petitioner recalled she had to push the barrel about a ½ block to the dumpster. (T. 65).

Respondent called Mr. Winston Atwater to testify. (T. 66). Mr. Atwater was petitioner's supervisor during the period of April of 2016. (T. 68-69). Mr. Atwater confirmed the duties of a building service worker as "cleaning, sweeping, mopping, vacuuming and dusting." (T. 70). Mr. Atwater confirmed the job description of a building service worker described the physical demands of the position. (T. 71).

Mr. Atwater claimed use of a miso mop involved no heavy force or gripping. (T. 71). Mr. Atwater claimed cleaning and service of restrooms involved no heavy or forceful gripping. (T. 71). Mr. Atwater claimed dumping waste or dusting furniture involved no heavy or forceful gripping. (T. 72). Mr. Atwater claimed using a vacuum involved no heavy or forceful gripping. (T. 72).

Mr. Atwater confirmed petitioner worked a 40-hour work week working 5:30 a.m. to 1:30 p.m. (T. 73). Mr. Atwater confirmed petitioner received two rest breaks of 10-15 minutes and 30 minutes for a lunch break. (T. 73-73). Mr. Atwater claimed the bulk of petitioner's tasks did not involve heavy gripping. (T. 74).

Mr. Atwater did not recall petitioner reporting an injury, but admitted he could not remember back that far. (T. 74). Mr. Atwater claimed if petitioner had reported a work injury, he would have instructed her to fill out a report of injury and sent her to health services. (T. 75).

On cross-examination, Mr. Atwater admitted petitioner's work duties required her to push and pull carts and buckets. (T. 79-80). Mr. Atwater admitted petitioner had to use her hands to perform her job. (T. 80). Mr. Atwater admitted petitioner had to do her job efficiently and not be delayed due to any physical impairments. (T. 80).

On cross-examination Mr. Atwater admitted he does not have a medical degree or training in physical therapy. (T. 81-82). Mr. Atwater admitted he never worked beside the petitioner doing the tasks of a building service worker. (T. 82-82). Mr. Atwater admitted he never constantly or consistently did the work of a building service worker. (T. 82). Mr. Atwater also confirmed he didn't remember if he conversed with petitioner in April of 2016. (T. 83). On re-cross examination Mr. Atwater confirmed he documented no conversations he had with the building service workers. (T. 84).

CONCLUSIONS OF LAW

In support of the Arbitrator's Decision relating to (C), Whether an Accident Occurred Arising out of and in the Course of Employment and (D), Date of Accident, and (O), Statute of Limitations, the Arbitrator Finds and Concludes as Follows:

"An employee who suffers a repetitive-trauma injury still may apply for benefits under the Act but must meet the same standard of proof as an employee who suffers a sudden injury." *Durand v. Industrial Commission,* 862 N.E. 2d 918, 924 (2006). "(T)he date on which the employee notices a repetitive-trauma injury is not necessarily the manifestation date. Instead, the date on which the employee became unable to work, due to physical collapse or medical treatment, helps determine the manifestation date." *Durand v. Industrial Commission,* 862 N.E. 2d 918, 927 (2006). "Whether an injury arose out of and in the course of one's employment is a question of fact . . .

'(i)n the course of' employment refers to the time, place and circumstances under which the accident occurred. . . 'arise out of' the employment (means) its origin must be in some risk connected with, or incidental to, the employment. . . ." *City of Springfield v. Illinois Workers' Compensation Commission,* 901 N.E.2d 1066, 1079 (4th D. 2009) **citing** *Caterpillar Tractor Company v. Industrial Commission,* 541 N.E.2d 665 (1989).

Here, the unrebutted testimony of petitioner indicated during the years she worked as a building service worker she had to perform various daily work activities using only her hands: cleaning bathrooms with a brush, wiping toilets, sinks and mirrors, mopping and sweeping with two hands gripped apart, vacuuming for 1.5 hours per department, and grabbing, tossing and pushing a garbage barrel a ½ block to a dumpster. (T. 47-57) (PX5: 2). Petitioner is right-hand dominant and performed most of these job activities with both hands. (T. 15, 18, 19-21, 26). Petitioner testified while working as a building service worker she noticed numbness and pain in her hands. (T. 31, 39-40). Petitioner consulted with her family doctor, Dr. Ramos, when her symptoms did not go away. (T. 34). Dr. Ramos diagnosed petitioner with bilateral carpal tunnel syndrome and referred her for an EMG and consult with an orthopedic surgeon. (PX1: 7, PX4, Dep.Ex3). Petitioner claimed a manifestation date of April 1, 2016, as this was the date she recalled experiencing carpal tunnel syndrome symptoms. (T. 31-32). In May of 2016, petitioner recalled advising her supervisor Mr. Atwater of her condition and the cause of her symptoms. (T. 33-34). Mr. Atwater did not dispute or deny the May 2016 conversation only stating, "I can't remember back that far." (T. 74).

Based on the Arbitrator's assessment of the petitioner's credibility and testimony, review of the medical records, and review of the depositions of Dr. Kuo and Dr. Cohen, the Arbitrator finds and concludes that the manifestation date for petitioner's repetitive trauma injuries to her bilateral hands occurred on April 1, 2016. Petitioner credibly testified as to her work activities as a building service worker that resulted in repetitive trauma injuries to her hands causing her to see her primary doctor on June 27, 2016. (PX1: 7). The Arbitrator notes that petitioner had no prior symptoms to her hands or wrists before her employment with respondent. (T. 36). The

Arbitrator notes petitioner's diabetes and thyroid condition were controlled by treatment and medication. (PX1: 13) ("She is compliant with treatment all the time. . .(t)he treatment provided significant relief."). Thus, the Arbitrator finds and concludes petitioner's bilateral carpal tunnel syndrome arose out of and in the course of her employment as a building service worker and her injuries manifested on April 1, 2016.

Respondent contends and cites the deposition of Dr. Cohen in support that petitioner's job activities did not involve "super heavy gripping," would not place her at a high risk, and "she did a large variety of activities that would actually lower her risk for carpal tunnel." (RX3, pp. 11, 16). Dr. Cohen based his opinion that the work activities of a building service worker would not have a relation to carpal tunnel syndrome because of this intermittent activity. (RX3: 23). However, the Appellate Court in *City of Springfield* rejected that type of argument in affirming the Commission's decision that the injured worker in *City of Springfield* proved an accidental injury despite a variety of work activities since the work was "repetitive enough." *City of Springfield v. Illinois Workers' Compensation Commission,* 901 N.E. 2d 1066, 1080-1081 (4th D. 2009).

Here, Petitioner's job activities as described by her and as noted in the job description revealed work activities of a repetitive nature. (T. 15-31, PX1: 2). Respondent's witness Mr. Atwater admitted he never performed the work of a building service worker undermining his opinion the job did not involve heavy and forceful gripping. (T. 82-82). Mr. Atwater agreed Petitioner would need to have good manual dexterity and use her hands in a fair fashion to do her job. (T. 80). Dr. Cohen agreed Petitioner's job activities required her to push, pull and grasp while doing these activities. (RX3: 21). Dr. Cohen agreed that Petitioner's job activities required her to push, pull, and what some people may call "tightly grip." (RX3: 21). Dr. Cohen agreed Petitioner's job requirement to lift bags of garbage involved flexion/extension in the wrist which could be forceful depending on the weight of the garbage. (RX3: 22). Dr. Cohen agreed Petitioner's work activities involved flexion and extension of her wrists. (RX3: 25-26).

The Arbitrator finds the work activities of a building service worker were sufficiently repetitive; that the Petitioner used her bilateral hands and wrists to perform most if not all her work activities; and these work activities resulted in the manifestation of carpal tunnel symptoms on April 1, 2016. **See** (PX4: 15-16) (deposition of Dr. Kuo) (". . . her job duties could worsen or aggravate her (carpal tunnel syndrome) . . . (as) (m)most of the tasks would involve heavy gripping and use throughout the day.").

Respondent also argues even if Petitioner's work activities caused or aggravated her carpal tunnel syndrome, since she experienced symptoms in 2015, more than three years passed since the onset of these symptoms when she filed her application for adjustment of claim in 2018. The Arbitrator notes despite experiencing symptoms in 2015 Petitioner continued to work in the same position performing the same activities until her surgery on September 14, 2017. (T. 36). As the Supreme Court reaffirmed in *Durand v. Industrial Commission,* 862 N.E. 2d 918 (2006), "By their very nature, repetitive-trauma injuries may take years to develop to a point of severity precluding the employee from performing in the workplace. An employee who discovers the onset of symptoms and their relationship to the employment but continues to work faithfully for a number of years without significant medical complications or lost working time, may well be prejudiced if the actual breakdown of the physical structure occurs beyond the period of limitation set by statute". *Durand* at 27. Thus, the Arbitrator rejects this argument of Respondent and finds and concludes April 1, 2016, is the manifestation date and Petitioner's filing of her application for adjustment of claim in 2018 is timely.

On April 1, 2016, the Petitioner could not tolerate the pain and her unrebutted testimony is she conversed with her supervisor Mr. Atwater in May of 2016 and mentioned her complaints to Dr. Ramos on June 27, 2016. (T. 33-34, PX1: 13). When the Petitioner scheduled her first carpal tunnel surgery, the report of injury reaffirmed the manifestation date of April 1, 2016. (RX2). The Arbitrator finds April 1, 2016, as the proper manifestation date when Petitioner knew or should have known that her job activities caused injury to her bilateral hands and wrists.

In support of the Arbitrator's Decision Relating to (E), Whether the Petitioner Gave Timely Notice of Her Accidental Injury, the Arbitrator Finds and Concludes as Follows:

The notice requirement applies to employees who suffer repetitive trauma injuries. *White v. Workers' Compensation Comm'n,* 374 Ill. App. 3d 907, 910, 873 N.E.2d 388, 313 Ill. Dec. 764 (4th Dr. 2007). In a repetitive trauma case, the date from which notice must be given is the date when the injury manifests itself. *Id*. Here, the Arbitrator found the Petitioner's repetitive trauma injury manifested on April 1, 2016. The Petitioner's unrebutted testimony revealed she gave notice of her injuries to her supervisor in May of 2016:

> "I told him my hands were hurting and they were giving me a lot of work, and he told me, and he said oh no, you have to bring me a medical note; and I told him that I was doing 45 bathrooms and he said are you sure? And I said yes. And he said he was going to talk to the other manager, I don't recall the name, and they did take off some bathrooms, and I said okay, and that's when I started going to the doctor because I couldn't tolerate the pain no more."

(T. 33-34). The Arbitrator finds and concludes Petitioner gave timely notice of her repetitive trauma injury in May of 2016 during her meeting with Mr. Atwater. The Arbitrator finds the Petitioner credible regarding the conversation that occurred in May of 2016 and notes the Respondent's witness, Mr. Atwater did not rebut her testimony.

In support of the Arbitrator's Decision Relating to (F), Whether the Petitioner's Condition of Ill-being is Causally Related to Her Accidental Injury, the Arbitrator Finds and Concludes as Follows:

"In cases relying on the repetitive-trauma concept, the claimant generally relies on medical (evidence) establishing a causal connection between the work performed and the claimant's disability." *City of Springfield v. Illinois Workers' Compensation Commission,* 901 N.E. 2d 1066, 1081, **citing** *Williams v. Industrial Commission,* 614 N.E.2d 177 (1st D. 1993). The Arbitrator reviewed the testimony of the treating doctor, Dr. Christina Kuo, and the Respondent's doctor Dr. Michael Cohen. Dr. Kou opined "given her job duties which relied on heavy and sustained gripping I believe that the worsening and aggravation of her

bilateral carpal tunnel syndrome can be causally related to her work activities." (PX3, Deposition EX.3). Dr. Kuo acknowledged Petitioner's job duties varied but concluded that "(m)ost of the tasks would involve heavy gripping and use throughout the day." (PX3: 16). Dr. Kuo also acknowledged risk factors of Petitioner in developing carpal tunnel syndrome such as diabetes, and being a female in her 50s, but Dr. Kuo found these factors did not affect her causal connection opinion. (PX3: 34).

Dr. Cohen agreed with Dr. Kuo that Petitioner suffered from bilateral carpal tunnel syndrome. (RX3: 16). Dr. Cohen opined nothing in Petitioner's job description would be associated with carpal tunnel syndrome as "she did a large variety of activities" and an increased risk of carpal tunnel requires "tight grip with repetitive wrist flexion/extension." (RX3: 16-17). Dr. Cohen also noted Petitioner had risk factors for carpal tunnel syndrome including diabetes and hypothyroidism. (RX3: 17).

Petitioner is not required to eliminate all possible causes of her bilateral carpal tunnel syndrome as long as the Petitioner can demonstrate her work activities were a factor in the development of the condition. *Sisbro v. Industrial Commission,* 797 N.E.2d 665, 673 (2003). The Arbitrator notes that although Petitioner performed a variety of tasks for her building service worker position, these tasks involved the use of her hands and at times required forceful gripping and flexion of her wrists. (T. 15, 18-23). ***See also***, *University of Illinois v. Illinois Workers' Compensation Commission*, 2016 Il App (1st) 151838WC-U (Rule 23 order cited pursuant to Supreme Court Rule 23(e)(1) (evidence that a building service worker worked with her hands mopping, sweeping, vacuuming, cleaning public and private restrooms, dusting furniture performed every day sufficiently demonstrated the job is repetitive).

Based on all the above and a review of the medical testimony and medical records, the Arbitrator relies on the opinion of Dr. Christina Kuo in finding that Petitioner's condition of ill-being – namely

bilateral carpal tunnel syndrome - might or could be casually related to her work activities which manifested on April 1, 2016. The Arbitrator finds Dr. Kuo more credible and more persuasive than Dr. Cohen.

Thus, the Arbitrator finds and concludes that Petitioner's condition of ill-being of bilateral carpal tunnel syndrome is causally related to her accidental injury of repetitive trauma that manifested on April 1, 2016.

In Support of the Arbitrator's Decision Relating to (J), Whether the Medical Services Provided to the Petitioner Were Reasonable and Necessary, the Arbitrator Finds and Concludes as Follows:

The Arbitrator, having found that the Petitioner's condition of ill-being is causally related to her accidental injury of April 1, 2016, and noting all medical treatment paid by Petitioner's group health insurance carrier per agreement of the parties (ArbX1: 1) the Arbitrator finds and concludes Respondent shall indemnify and hold Petitioner harmless for any medical bill payments by any third-party carrier for which Petitioner is not liable.

In Support of the Arbitrator's Decision Relating to (K), What, if any Temporary Total Disability Benefits are Due the Petitioner, the Arbitrator Finds and Concludes as Follows:

The Arbitrator notes Respondent disputed Petitioner was temporarily and totally disabled as a result of her accidental injury. (ArbX1: 2). The Petitioner claimed temporary total disability from September 14, 2017, through June 3, 2018. (ArbX1: 2). Dr. Kuo stated ". . . I always write work notes that allow for time off of work after surgery." (PX3: 18). At the first post-operative visit after Petitioner's right carpal tunnel surgery on September 14, 2017, although Dr. Kuo considered releasing Petitioner to light duty work, Dr. Kuo opined Petitioner would not have performed her work as a building service worker. (PX3: 19). Dr. Kuo maintained Petitioner off work through the time of her left carpal tunnel surgery on March 1, 2018. (PX3: 20-21). Dr. Kuo continued Petitioner off work until a note dated March 30, returning the client back to work on June 6, 2018. (PX3: 21-25). Petitioner indicated

she returned to work on June 4, 2018. (T. 37). Dr. Cohen rendered no opinions regarding the ability of Petitioner's work status for this period claimed by Petitioner. (RX3: 18-19).

Petitioner is entitled to receive temporary total disability benefits until her condition has stabilized or reached maximum medical improvement. *Interstate Scaffolding v. Illinois Workers' Compensation Commission,* 923 N.E.2nd 266, 271 (2010). Temporary total disability benefits may only be suspended or terminated if the Petitioner "refuses to submit to medical, surgical or hospital treatment essential to (her) recovery," or "refuses work falling within the physical restrictions prescribed by (her) doctor," or "fails to cooperate in good faith with rehabilitation efforts." *Interstate* @ p. 274.

The Arbitrator finds and concludes that Petitioner is entitled to receive temporary total disability benefits from September 14, 2017, through June 3, 2018, as Dr. Kuo credibly testified she removed Petitioner from work during this time period. (PX3: 18-25).

In Support of the Arbitrator's Decision Relating to (L), the Nature and Extent of the Injury, the Arbitrator Finds and Concludes as Follows:

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator gives *no* weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes the record revealed Petitioner was employed as a building service worker at the time of the accident. The Arbitrator notes Petitioner returned to work as a building service worker on June 4, 2018, until she retired on January 1, 2023. Petitioner complained of pain bilaterally in the base of her thumbs. Because Petitioner returned to work full duty, but with these symptoms, the Arbitrator gives *some* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes Petitioner was 52 years old at the time of the accident. Because of this age, and Petitioner's symptoms, the Arbitrator gives *greater* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earning capacity, the Arbitrator notes the Petitioner earned similar if not higher earnings by the time of her retirement. The Arbitrator gives *lesser* 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 underwent bilateral carpal tunnel surgeries and at her discharge still complained of persistent right thumb pain and numbness which she described at hearing. Because of these continuing complaints supported by the treating medical records the Arbitrator gives *greater* weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds and concludes Petitioner sustained permanent partial disability to the extent of 15% loss use of the left hand and 15% loss of use of the right hand or 57 weeks x $464.59 per week pursuant to §8(e) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC002147
Case Name	Linda Johnson v. Manchester Tank
Consolidated Cases	21WC007637;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0101
Number of Pages of Decision	19
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Vitas Mockaitis
Respondent Attorney	Matthew Brewer

DATE FILED: 3/12/2025

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF ADAMS)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LINDA JOHNSON,

Petitioner,

vs. NO: 20 WC 002147

MANCHESTER TANK,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission corrects the clerical errors in the Arbitrator's Decision in the first line of the Findings to reflect the correct date of the accident, that being November 26, 2019. The Commission further corrects the Order at paragraph three, line two to reflect the case number of the companion case to 21 WC 007637. The Commission further corrects the Order at paragraph four, line two to reflect the case number of the companion case to 21 WC 007637. The Commission further corrects the Order at paragraph five, line three to reflect the case number of the companion case to 21 WC 007637. All else if affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 1, 2023, is hereby corrected as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's medical condition, an aggravation of her L4/5 minimal annular disc bulge with superimposed moderate,

central-left subarticular disc protrusion compromising the bilateral, left greater than right, lateral recesses and resulting in a right-sided L4/5 microdiscectomy, and, subsequently documented disc herniation at L4/5 on the left, with the same appearance as her earlier MRI, that they had not, apparently removed enough of the acute disc fragment in the earlier surgery, resulting in a second surgery, a left-sided L4/5 microdiscectomy is causally related to the accident of December 2019.

Petitioner was not temporarily totally disabled as a result of the accident of November 26, 2019.

While Respondent is entitled to credit in this case for temporary total disability paid, the credit of $9,171.75 towards said temporary total disability award will be applied in the decision in 21 WC 007637.

As all of the bills introduced in evidence were incurred subsequent to the December 9, 2019, accident, any award for medical expenses will be made in the decision in 21 WC 007637.

As the injuries suffered as a result of this accident had not reached a state of maximum medical improvement prior to the alleged accident of December 9, 2019, any award for permanent disability will be made in the decision in 21 WC 007637.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

March 12, 2025

SJM/msb

d-1/15/2025

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC002147
Case Name	Linda Johnson v. Manchester Tank
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Dennis OBrien, Arbitrator

Petitioner Attorney	Vitas Mockaitis
Respondent Attorney	Matthew Brewer

DATE FILED: 11/1/2023

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

/s/ Dennis OBrien, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

LINDA JOHNSON
Employee/Petitioner

v.

MANCHESTER TANK
Employer/Respondent

Case # **20** WC **002147**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Dennis O'Brien**, Arbitrator of the Commission, in the city of **Quincy**, on **September 6, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **November 26, 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.

In the year preceding the injury, Petitioner earned $**28,587.00**; the average weekly wage was $**549.75**.

On the date of accident, Petitioner was **63** years of age, ***single*** with **no** dependent children.

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

Respondent is entitled to a credit of for all amounts it has paid under Section 8(j) of the Act, as agreed by the parties.

ORDER

Petitioner's medical condition, an aggravation of her L4/5 minimal annular disc bulge with superimposed moderate central-left subarticular disc protrusion compromising the bilateral, left greater than right, lateral recesses and resulting in a right-sided L4/5 microdiscectomy, and, subsequently documented disc herniation at L4/5 on the left, with the same appearance as her earlier MRI, that they had not, apparently removed enough of the acute disc fragment in the earlier surgery, resulting in a second surgery, a left-sided L4/5 microdiscectomy is causally related to the accident of the accident of December 2019.

Petitioner was not temporarily totally disabled as a result of the accident of November 26, 2019.

While Respondent is entitled to credit in this case for temporary total disability paid, the credit of $9,171.75 towards said temporary total disability award will be applied in the decision in 20 WC 002137.

As all of the bills introduced into evidence were incurred subsequent to the December 9, 2019 accident, any award for medical expenses will be made in the decision in 20 WC 002137.

As the injuries suffered as a result of this accident had not reached a state of maximum medical improvement prior to the alleged accident of December 9, 2019, any award for permanent disability will be made in the decision in 20 WC 002137.

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.

NOVEMBER 1, 2023

Signature of Arbitrator

FINDINGS OF FACT:

TESTIMONY AT ARBITRATION

Petitioner

Petitioner

Petitioner testified that she began working for Manchester Tank in approximately 2017. Petitioner was a laborer for the Respondent. Petitioner's job duties primarily included airing up tanks and running checks on them. Petitioner testified that from 2017 through November 2019 she was not under any active medical care for any injuries suffered while working for Manchester Tank. Petitioner was not on any medical restrictions nor was she taking any medications during this time period. Petitioner testified she was able to do her job duties in a normal manner during this time frame. (AT 18-19)

Petitioner testified that on November 26, 2019, she aired up a tank and when she went to pull it out of the chamber it stopped and she felt what she described as a lightening shock through her back all the way to her feet. Petitioner testified that a tank had blown in the chamber in the first shift earlier that day and had messed up the wheels that the tank would slide on, which was Petitioner's belief as to why the tank got stuck at the time of the accident. Petitioner briefly described the tank testing process. Petitioner would put the tank inside of a chamber and run various tests on it and then would remove the tank from the chamber when the tests were complete. (AT 20-21)

After the accident of November 26, 2019, Petitioner noticed severe pain in her back, legs, hips and feet. Petitioner's pain in her back was in her lower back. Petitioner described it as being lightening sharp and achy. Petitioner was able to finish her shift which was almost over. Petitioner did not do anything to relieve her pain at that time. The Petitioner testified that she took Aleve and Tramadol. (AT 21-22)

Petitioner's November 26, 2019 accident occurred in the week of Thanksgiving. As such, the Petitioner was off of work for a brief period of time over the Thanksgiving holiday. Following the holiday, Petitioner did return to her regular job and continued to work full duty. (AT 22)

Petitioner then described to having a second accident which occurred on December 9, 2019. Petitioner testified that she was again airing up a tank and that when she tried to pull it through the chamber, it stopped, and it sent a shock through her back, again, down into her feet. Petitioner testified that this was a similar mechanism of injury as the one that had occurred on November 26, 2019. Petitioner did not seek medical care that day, but did so the next morning, as she could not get out of bed, and when attempting to do so she had severe pain in her back and hips. She said she was taken by ambulance to Blessing Hospital on December 10, 2019. (AT 22-24)

Petitioner testified that at Blessing Hospital she initially seen by a chiropractor, Dr. Creech, who did not provide any treatment and referred her to other providers. Petitioner then came under the care of Dr. Biggs who ordered an MRI, which was performed on December 24, 2019. Following the MRI, Dr. Biggs took Petitioner off work and referred her to Dr. Olson. She said she then began receiving TTD benefits. (AT 24-27)

Petitioner testified that Dr. Olson performed surgery on 1December 28, 2019. She said she continued to have pain with numbness into her toes after the surgery was performed, and that her knees and hips bothered her. Petitioner said she only noticed a little change in her condition after that first surgery. Dr. Olson subsequently ordered a second MRI scan which the Petitioner had on March 15, 2020. After viewing the MRI images, Dr. Olson recommended a second surgery, and it that second lumbar spine surgery occurred on May 12, 2020. Petitioner said her back was still bad following this second surgery, she did not believe she only had possibly a little improvement from that second surgery. Petitioner continued to follow up with Dr. Olson until the fall of 2020, with her last appointment with the doctor being in 2022. At that appointment he prescribed pain medication and told her to follow up and keep in contact with him. (AT 27-30)

Petitioner testified that Dr. Olson never released her to go back to her job. She said she had not gone back to work since leaving employment with Respondent, though she had tried. Petitioner testified that she last worked in July 2023, for a place called Father's Table, a bakery in Florida, where she now lives. She said that work required her to lift, bend, and turn. Petitioner testified that she only lasted in this job for three days as her back stiffened up, she could not feel her feet and her hips hurt. She said she went to the hospital, but she did not elaborate in regard to what was done while at the hospital. (AT 30-31)

Petitioner testified she was receiving Social Security disability benefits as of the date of arbitration. Petitioner testified the medical conditions for which was awarded Social Security benefits were in regard to a knee and shoulder surgery she had. Petitioner is not under active care for her low back. Petitioner takes Tramadol and over-the-counter medication presently for her knees and her shoulder as well as her back. She said the Tramadol she took three times daily gave her very little relief. She said she took Aleve every seven hours. (AT 31-33)

Petitioner testified that the bills included in Petitioner Exhibit 1 were all for treatment of her back. She said she paid for one medical bill in the amount of approximately $189.00 to Quincy Medical Group. Petitioner testified that some of her bills are unpaid, and others were paid for by Medicare as well as the Respondent. (AT 34)

Petitioner testified regarding her current condition as it relates to her back, saying she could not do anything, including getting into and out of a tub. Petitioner testified that her hips, back, and feet hurt. Sometimes she is unable to walk because her feet go numb. Petitioner feels sharp pain in her low back. Petitioner denied having any other kinds of accidents or injuries to her low back other than the alleged November 26, 2019 and December 9, 2019 accidents. Petitioner said she had seen doctors and talked to them about back pain before these accidents, but that pain had not been severe, and no MRI had ever been prescribed or surgery recommended. (AT 34-36)

On cross examination Petitioner did not remember seeing Dr. Raskas in Chicago at her attorney's request, but did recall being sent to see a doctor by her attorney, and that physician might have been Dr. Raskas. She said she did not know if she told Dr. Raskas that she did not have any issues with low back pain before these accidents. She again said she had some low back pain before these accidents, but it was not like the pain she was having now, it was just low back pain. She agreed she had seen her primary care physician, Dr. Kirkpatrick, for low back issues before the accident, but she did not remember being referred by Dr. Kirkpatrick to Dr. Arguelles for additional care for her low back pain before these

accidents. She said she could not remember being taken off work in July of 2018 for back pain. (AT 39-41)

Petitioner agreed that she was able to return to her job full duty after Thanksgiving break and was able to work in her regular position up to the time of her second accident on December 9, 2019. (AT 41-42)

The Petitioner was unaware that the emergency room records from Blessing Hospital on December 10, 2019 makes no reference to a work injury or work accident occurring the day before, on December 9., 2019. Petitioner did confirm that she told Blessing Hospital on 12/10/19 that she woke up the morning of December 10, 2019 with low back pain going into her right hip. The Petitioner denied being released to go back to work full duty by the emergency room a couple of days after she was seen, saying she had not gone back to work. (AT 44-45)

Petitioner said that Dr. Olson on September 21, 2020 did not recommend any additional MRIs and did not tell her to work on core strengthening at that time. Petitioner said she was not aware of Dr. Olson records of that date stating no additional care was recommended other than core strengthening. Petitioner agreed that Dr. Olson informed her to follow up with him when she had problems. She said Dr. Olson did not tell her to go back to work. Petitioner said she did not tell Dr. Olson at that visit that she was much better than she was before surgery. (AT 45-48)

Petitioner did not recall seeking any medical care from September 2020 through November 2022. The Petitioner testified that she did advise Dr. Olson in November of 2022 that she had picked up a dishcloth at home in October of 2022, and had felt a pop in her back, with increased pain in her low back and into her legs. She did not recall his ordering an MRI at that time. Petitioner confirmed that this accident picking up a dish cloth did occur at home. Petitioner said she had not seen Dr. Olson since November of 2022. (AT 48-51)

Petitioner testified that she moved to Florida in July of 2019. She said she did not look for work at all between 2019 through July 2023 when she worked briefly in July of 2023, and agreed that she did not have any note from a treating physician taking her completely off work during that time period. She said that she tried to work then as a doctor at a hospital in Florida told her she should get a hobby. She said that doctor told her she could not work, but that she should get a hobby. She said she looked for work n 2023, as much as she could, but she did not keep any record of her job search attempts. Petitioner said she was currently on Medicare and got $1,098.00 per month in social Security benefits. (AT 51-54)

Petitioner testified that she was paid temporary total disability benefits by the Respondent for a period of time following the accident as well as some medical benefits. Petitioner confirmed that she had Blue Cross Blue Shield insurance while she was employed by the Respondent. (AT 54-55)

Petitioner said the tank she was moving on the dates of accidents may have weighed about 375 pounds, they were the heaviest tanks they had, and she was able to move them as they were on wheels. (AT 55-56)

On redirect examination Petitioner agreed Dr. Kirkpatrick was her primary care physician, and if she had any back pain, she would have mentioned that to him, and it was possible he might have sent her to another doctor. She said she was a little confused by the questions, not really understanding. She said she did have some back complaints prior to these accidents, but she was never really treated for those complaints. She said that would have been in June of 2017. (AT 57-59)

Petitioner said the dishcloth incident occurred while she was doing laundry, it fell and she went to pick it up. She said she had to pick things up while working for Respondent, such as tools, and those things would have been heavier than the dishcloth. (AT 60-61)

MEDICAL EVIDENCE

Medical records pre-dating the date of accident were introduced into evidence. A CT scan of the abdominal pelvis of June 8, 2017 was interpreted as showing spondylosis of the lumbar spine without acute fracture. On June 14, 2017, Petitioner was seen by Dr. Arguelles, who was seeing her for her primary care physician, Dr. Kirkpatrick. At that time she was complaining of back pain of unknown origin. Recent x-rays were reviewed, and they showed some degenerative changes in the lumbar spine. The only abnormality on physical examination of the back was some soreness in the paraspinal muscles. The assessment that day was acute low back pain. Dr. Kirkpatrick gave Petitioner a one day off work slip for back pain on July 2, 2018. No office notes of Dr. Kirkpatrick were introduced for that date, but Petitioner was seen the next day by Dr. Aguelles a year later, on July 3, as well as on July 17, 2018, and on both of those dates she was seen for for right elbow pain. No mention of low back complaints or findings is included in the records for those dates. (RX 4, p.1-3; PX 5, p.8,9,12,13,15,18)

On December 10, 2019, Petitioner was transported to Blessing Hospital by ambulance. Her complaints to the ambulance crew were of extreme low back pain which had come on initially at work about a week earlier, while pushing and pulling on tanks. She told them she had possibly reinjured it the day prior to the ambulance call, December 9, 2019, again, at work. Petitioner told them that on the evening on December 9, 2019 she had back pain, and it had gotten worse. Her pain at the time of transport was reported to be 8/10. She was given IV Fentanyl prior to transport, and upon arrival reported her pain was better, down to 6/10. (PX 4)

Petitioner initially presented to Blessing Hospital on December 10, 2019 with complaints of back pain and a history of hurting her back at work a week prior, working the night before and waking up that morning with low back pain that radiates to her right hip. Petitioner was given a release to return to work on December 13, 2019. (PX 2, p.59; RX 5, p.1,2)

Petitioner was seen by Chiropractor Wesley Creech on December 11, 2019. She gave a history of her back pain beginning a few weeks earlier. Dr. Creech performed a spinal active release technique as well as other therapeutic modalities. His diagnosis was segmental and somatic dysfunction of the lumbar region and intervertebral disc dysfunction with radiculopathy. On December 13, 2019 Petitioner's complaints were worse, when seen by Dr. Creech, and he noted she was having more neurologic pain. He recommended Petitioner undergo an MRI. (PX 5, p.4-6)

Petitioner was seen by Dr. Biggs at Quincy Medical Group on December 16, 2019, and gave a history of an accident on November 26, 2019 while pushing a tank that got hung up in its rack, and of her feeling a sudden pain in her low back and right lower extremity. Dr. Biggs performed a physical examination, noted a reduction in range of motion of the lumbar spine, a positive right straight leg raising test, and diagnosed Petitioner as being three weeks status post-acute onset bilateral right greater than left radicular low back pain following an industrial injury with right sided lumbar radiculopathy. Her pain was such on this date that she presented in a wheelchair. Dr. Biggs ordered an MRI. She was given a work restriction of no work on that date. (PX 3, p.7,10-12,131,133; RX 6, p.2,5-7)

Petitioner followed up with Dr. Biggs on December 23, 2019. Petitioner was scheduled for an MRI the following day. Petitioner was kept off of work at this time. (PX 3, p.24,28,31,32,134)

Petitioner underwent an MRI of the lumbar spine without contrast on December 24, 2019. The MRI revealed spondylosis and degenerative disc disease of the lumbar spine, maximal at L4/5 and L5/S1, and an L4/5 minimal annular disc bulge with superimposed moderate central-left subarticular disc protrusion compromising the bilateral, left greater than right, lateral recesses and abutting the bilateral, left greater than right, descending L5 nerve roots. It was felt she had moderate to severe spinal canal stenosis, and an annular disc bulge at L5/S1. (PX 3, p.120,121)

Petitioner was seen in the emergency room of Blessing hospital again on December 26, 2019. She again identified the pain as starting at work on November 26, 2019, when she pulled a tank at work. Physical examination identified lumbar spine tenderness, worse with range of motion. After receiving pain medication Petitioner appeared to improve. (PX 2, p.66,67)

Petitioner was called by Dr. Biggs office in the morning hours of December 27, 2019, was advised of her MTI results, and advised Dr. Biggs staff that she had been to the emergency room due to great pain, had been given pain killers, but they did not touch the pain. Dr. Biggs was consulted, and Petitioner was advised to return to the emergency room if she was having a great deal of pain. (PX3, p.36)

Petitioner appears to have returned to the emergency room on December 27, 2019. Her December 24, 2019 MRI was reviewed, and Dr. Olson was consulted, and Petitioner advised him she was hardly able to ambulate at home due to her pain, and she had come to the emergency room on the telephonic direction of Dr. Biggs, who had reviewed her MRI results. She advised Dr. Olson that she had paresthesia in both legs, but the right was much worse than the left, with pain radiating into her right leg, into the lateral calf. Dr. Olson felt the MRI showed a prominent central disc herniation at L4/5 which was causing compression of the cauda equina at that level, and severe stenosis. His physical examination of Petitioner revealed diminished sensation in the lateral thigh on the right and lateral calf on the right consistent with L5 distribution symptoms. His assessment was L4/5 disc herniation causing severe lumbar radiculopathy. Petitioner was admitted to the hospital from the emergency room for surgery the next morning. (PX 2, p.71,72,74,75,78,79,81)

Petitioner underwent a lumbar spine right-sided L4/5 microdiscectomy on December 28, 2019, performed by Dr. Olson. Petitioner was discharged from the hospital on December 29, 2019. (PX 2, p.86,87,89)

Petitioner saw Dr. Biggs on December 31, 2019. Petitioner referenced having surgery with Dr. Olson on December 28, 2019 and was experiencing postoperative pain although her back and lower extremity symptoms had significantly improved. Dr. Biggs was being asked to address the Petitioner's work ability by Dr. Olson. Petitioner was kept off of work at this time and was to follow up in one month for reassessment. (PX 3, p.43,44,135)

Petitioner saw Dr. Olson on January 13, 2020, three weeks after her surgery. She reported that her pain was down to a "3," and she was ambulating using a walker. Her activity limitations were to continue for three more weeks, she was to stay off work and have no bending, lifting or twisting other than her activities of daily living. Her pain medication was changed as oxycodone made her ill. (PX 2, p.35,38)

When seen by Nurse Practitioner (NP) Nutter on January 15, 2020, Petitioner was found to have an abnormal gait and an abnormal back examination. She was ambulating with a walker and in a forward bet

posture. She was encouraged to stand straight if possible. Her L4-S1 region was tender to palpation, but the surgical site looked good. (PX 2, p.6)

The Petitioner saw Dr. Olson in follow up on February 5, 2020. The Petitioner was still having complaints in the left hip, causing pain when she would walk or lay down. She still had sensory changes in the second and third toes of her right foot. Recommendation was made to start physical therapy and a second MRI was ordered. (PX 2, p.30,33)

Petitioner was seen by Dr. Olson on March 9, 2020, with left leg radiculopathy and low back pain. She said her left side was worse than her right, and physical therapy had not helped her. She said her pain was a 10/10. She had a bilateral antalgic gait. She had sensory deficits on light touch in her left foot and lateral left shin, in an L5 distribution, as well as aching in the left leg while walking. Dr. Olson stopped physical therapy and ordered another MRI. He noted she should stay off work until they got her feeling better. (PX 2, p.24,27,28)

Petitioner underwent a second lumbar spine MRI on March 15, 2020, which revealed a recurrent disc herniation, with significant spinal stenosis and lateral recess narrowing. (PX 2, p.57,58,97,98)

Petitioner followed up with Dr. Olson on March 16, 2020. While noting improvement in her right leg, Petitioner was noting persistent left leg radiculopathy in the left leg which did not improve with physical therapy. She did note some pain in the right thigh as well as down the left leg to the ankle. Her pain description was 7/10. She was walking with a bilateral antalgic gait. She had a positive straight leg raising test at 30 degrees on the left. He advised Petitioner that, per the MRI, she continued to have a disc herniation at L4/5 on the left, with the same appearance as her earlier MRI, that they had not, apparently remove enough of the acute disc fragment in the earlier surgery. A left-sided L4/5 microdiscectomy was recommended. (PX 2, p.19,21,22)

Petitioner had a pre-operative physical with Dr. Olson on May 7, 2020. On that date it was noted that Petitioner had an abnormal sensory examination, with light touch in her left foot seeming to be diminished on the dorsum of her foot and on the lateral aspect of her left shin. She noted aching in the left leg when walking. Petitioner reported that her prior sensation loss in the right foot had resolved. (PX 2, p.17)

On May 12, 2020, Petitioner underwent another L4/5 microdiscectomy, this time on the left side. This surgery was also performed by Dr. Olson. Several sizeable pieces of disc were removed from the epidural space, as was bulging annulus and disc material. (PX 2, p.109,110)

Petitioner was seen by Dr. Olson on June 4, 2020, and advised him that her radicular pain down her legs had resolved. She was still reporting back pain and had recently experience right flank pain. While she said she had aching in her feet while sleeping, and walking bothered her back, she said she was otherwise doing much better than before her surgery. Physical examination revealed her to have a bilateral antalgic gait. While Petitioner was no longer taking pain medication, she was continuing to be prescribed Neurontin neuropathic symptoms in her feet. (PX 2, p.9-11)

Petitioner saw Dr. Olson on September 21, 2020. It was noted that Petitioner's left leg symptoms had resolved, but she had persistent lower back pain and on occasion had radiation into the right leg. She did not have symptoms in the left leg. Her main problem was low back pain, and intermittent right leg pain. Dr. Olson recommended the Petitioner engage in some core strengthening exercises. Continued to prescribe Neurontin 300mg three times daily to help with radicular symptoms. She advised Dr. Olson that she had pain which would shoot don her right leg, her toes were still numb, she had difficulty sleeping, and her pain score was a "6." On physical examination Petitioner was found to have bilateral paraspinal muscle tenderness. The assessment on

this date was lumbar radicular pain and chronic bilateral low back pain with right-sided sciatica. Petitioner was at that time released by Dr. Olson and was to follow up on an as needed basis. (RX 7, p.1,4)

Petitioner was seen by Dr. Olson on November 8, 2022, stating her back had popped on October 28, 2022 when she bent down to pick up a dish cloth, and that since that time she has had constant pressure across her low back. Petitioner reported that she was doing well until a couple of weeks before, when she bent over to pick up something off the floor and felt severe pain in her lower back. Petitioner reported that she went to a local emergency room and had been given medication. On physical examination Dr. Olson found Petitioner to have paraspinal muscle spam in the low back. Dr. Olson ordered an MRI which was performed on November 15, 2022, and revealed multilevel degenerative changes in the lumbar spine with no significant spinal canal stenosis, abutment of the right S1 nerve root secondary to disc bulge and multilevel neuroforaminal stenosis most prominent at the L4-5 level. Petitioner followed up with Dr. Olson on November 22, 2022. Dr. Olson did not note any acute abnormalities on the MRI scan and indicated had just aggravated her low back pain. He noted Petitioner was relieved when advised of this. Petitioner was to follow up as needed. (RX 7, p.5,8-11,14)

DEPOSITION TESTIMONY OF DR. DAVID SCOTT RASKAS

Dr. David Scott Raskas is a board-certified surgeon who focuses on spinal care; he was retained on behalf of the Petitioner to perform an Independent Medical Evaluation on June 18, 2021. Dr. Raskas testified via deposition on January 12, 2022. (PX 6, p.6,7, Pet. Dep. Exh. 2)

Dr. Raskas testified that he took a history from the Petitioner and that he reviewed medical records that were provided to him by the Petitioner's counsel. He also reviewed the films from the MRI studies he was provided, which included the MRIs of the Petitioner's lower back from December 14, 2019 and March 15, 2020. (PX 6, p.12-17)

Dr. Raskas testified in regard to his physical examination findings and his diagnosis for Petitioner, post-laminectomy syndrome, lumbar pain, lumbar herniated disk, and facet hypertrophy of the lumbar region. (PX 6, p.18-20)

When asked whether the November 26, 2019 accident caused or aggravated the Petitioner's back resulting in her lower back injury and need for her surgeries of December 27, 2019 and May 12, 2020, Dr. Raskas testified that he believed that the November 26, 2019 accident was the inciting event causing the herniated disc in her back. He also testified that the accident of December 9, 2019 further aggravated her back condition. He testified that the Petitioner initially developed back pain that was caused by the herniated disc and continued to have low back pain that subsequently progressed into radicular pain, which is a very characteristic history given by people that develop a herniated disc in their back. Dr. Raskas testified that when patients have instability and a large disc herniation like the Petitioner had, then they are at a little bit of increased risk for recurrent disc herniations. (PX 6, p.21-23)

When asked about his opinion about the Petitioner's prognosis, Dr. Raskas testified that he believes it is very unlikely that she is ever going to be able to do any physical labor type work like she was doing before the accident nor should she. He further testified that he thought the Petitioner should probably be confined to sedentary to light type duty work given her instability that she has in her back. (PX 6, p.24)

On cross examination Dr. Raskas testified that the Petitioner did not complain of any radicular symptoms into her bilateral feet at the time of his examination. Dr. Raskas believed that the Petitioner did have

instability but testified that this instability would likely be remedied if the Petitioner did undergo a fusion procedure. (PX 6, p.27)

Dr. Raskas testified that his opinion was based upon the accuracy of the documents and the information he was provided as well as the history provided to him by the Petitioner. Dr. Raskas testified that if the information including the documentation and history provided to him by the Petitioner were inaccurate or incomplete that could change his opinions relative to causation. Dr. Raskas confirmed he took a verbal history from the Petitioner and she denied having any low back issues before her November 2019 accident. Dr. Raskas testified that he was not aware if the Petitioner had back pain before this accident or if she had sought treatment for her low back before the November 2019 accident. The only pre-accident record that Dr. Raskas reviewed was a record from Quincy Medical Group dated 11/20/19 where the Petitioner presented for care for a condition unrelated to her low back. Dr. Raskas reviewed no other pre-accident medical records. (PX 6, p.31-35)

DEPOSITION TESTIMONY OF DR. TIMOTHY VANFLEET

Dr. VanFleet's deposition was taken on 10/5/22. Dr. VanFleet is board certified in orthopedic surgery with a subspecialty training in spinal surgery. Dr. VanFleet testified that 100% of his practice is dedicated to treating patients with spinal conditions. Dr. VanFleet performs between 400-500 spinal surgeries per year. Dr. VanFleet testified that while he had not performed any physical examinations of Petitioner, he had performed two record reviews in this case. The first record review report is dated April 16, 2020. Dr. VanFleet listed the records he reviewed and summarized the records in his report. Dr. VanFleet testified that although he was not able to perform a physical examination of the Petitioner, he was able to render opinions regarding diagnosis as well as causal connection, utilizing his education, training and experience as an orthopedic surgeon. (RX 1, p.8,9,11-14)

Dr. VanFleet did not have the MRI studies at the time of his initial records review, but was later provided with them, and issued an addendum records review report dated May 6, 2020. Dr. VanFleet interpreted the December 24, 2019 MRI study to show a large disc extrusion occupying approximately 60 percent of the spinal canal. Dr. VanFleet also noted some spinal canal stenosis as well as degenerative changes. The acquired spinal stenosis was at the L4-5 level and was contributing of an exacerbation factor of the disc herniation as well. (RX 1, p.16,17,20)

Dr. VanFleet also reviewed the operative report from the right sided L4-5 discectomy procedure performed on December 28, 2019. Dr. VanFleet also later reviewed the films from the lumbar spine MRI taken on March 15, 2020. This was an MRI with contrast that Dr. VanFleet noted revealed recurrent disc material in the spinal canal at the L4-5 level as well as significant spinal stenosis similar to the findings from the presurgical MRI. (RX 1, p.22,23,24)

Dr. VanFleet testified that his diagnosis was status post lumbar laminotomy diskectomy with an underlying degenerative disk condition. He said it was difficult for him to formulate an opinion regarding causation due to the fact that there was a gap from her reported injury of November 26, 2019 through the first time the Petitioner sought treatment. He knew of no December 9, 2019 event or accident. Dr. VanFleet did testify that when an individual has a large disc rupture, they are symptomatic at that point with leg pain basically. Dr. VanFleet opined that it would be difficult to state that there is a contemporaneous relationship between what the Petitioner described as occurring on November 26, 2019 with what she presented to with the

hospital two and a half weeks later on December 10, 2019. Dr. VanFleet testified that medically there is not a causal relationship based upon these factors. Dr. VanFleet did believe a repeat surgery was necessary, and that the need for the second surgery was likely related to the initial procedure given the fact that it was a recurrent disc herniation and he finds that about 12-15% of individuals who undergo a microdiscectomy will have a recurrence of that disc herniation. (RX 1, p.25-28)

On cross examination Dr. VanFleet said the recurrent disk material was essentially a sequelae of the first surgery. He said he based his opinions on the histories included in the reports he reviewed, and if the history were to change, his opinions could change. He said Petitioner was not at maximum medical improvement when he wrote his report, she still needed the second surgery. (RX 1, p.31,32)

ARBITRATOR CREDIBILITY ASSESSMENT

While Petitioner at times appeared to be confused by some of the questions posed to her, she was cooperative and appeared to be answering those questions to the best of her ability. Petitioner's testimony was consistent, believable and corroborated by the ambulance and other medical records. While the Respondent questioned the Petitioner regarding the issue of any back pain complaints to medical providers prior to her work accidents, Petitioner's explanations appeared reasonable and believable, the medical records for prior low back complaints were of a minor nature and did not result in any significant, ongoing medical treatment. The Arbitrator finds Petitioner to have been a credible witness.

The Arbitrator finds that Petitioner's examining physician, Drs. Raskas, and Respondent's record reviewing physician, Dr. VanFleet, were both qualified physicians whose opinioins simply differed. Both testified in a cooperative manner, answering all questions posed to them by both attorneys. The Arbitrator finds both Dr. Raskas and Dr. VanFleet to have been credible witnesses.

CONCLUSIONS OF LAW:

Respondent stipulated that Petitioner suffered an accident on November 26, 2019 which arose out of and in the course of her employment with Respondent. (Arb. Exh. 1)

In support of the Arbitrator's decision relating to whether Petitioner's current condition of ill-being, L4/5 minimal annular disc bulge with superimposed moderate central-left subarticular disc protrusion compromising the bilateral, left greater than right, lateral recesses and resulting in a right-sided L4/5 microdiscectomy, and, subsequently documented disc herniation at L4/5 on the left, with the same appearance as her earlier MRI, that they had not, apparently removed enough of the acute disc fragment in the earlier surgery, resulting in a second surgery, a left-sided L4/5 microdiscectomy, is causally related to the accident of November 26, 2019, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The Arbitrator's credibility assessment is incorporated herein.

Petitioner testified that she had a non-disputed accident prior to this accident, on November 26, 2019, where she noticed severe pain in her back, legs, hips and feet. That testimony was unrebutted. Petitioner described it as being lightening sharp and achy. Petitioner said she was able to finish her shift which was almost over, and she subsequently took Aleve and Tramadol for the pain. Petitioner's November 26, 2019 occurred the week of Thanksgiving. As such, the Petitioner was off of work for a brief period of time over the Thanksgiving holiday. Following the holiday, Petitioner did return to her regular job and continued to work full duty up to the time of this second event on December 9, 2019. The first alleged accident is the subject matter of another pending claim, 21WC007647, which was consolidated with this case for purposes of arbitration and will have a separate Decision of Arbitrator issued.

Petitioner testified to having this second accident on December 9, 2019. Petitioner testified that occurred in the same manner as the first, she was airing up a tank and that when she tried to pull it through the chamber, it stopped, and it sent a shock through her back, again, down into her feet. Petitioner testified that this was a similar mechanism of injury as the one that had occurred on November 26, 2019. Petitioner did not seek medical care on December 9, 2019, but did so the next morning, when she could not get out of bed, and when attempting to do so she had severe pain in her back and hips. She said she was taken by ambulance to Blessing Hospital on December 10, 2019. Petitioner testified that she woke on the morning of December 10, 2019 and could not function due to low back and leg pain, an ambulance had to be called to transport her to the emergency room. In the days and week following that emergency room visit Petitioner was seen and treated by Dr. Creech and Dr. Biggs. An MRI of the lumbar spine was performed on December 24, 2019, and revealed spondylosis and degenerative disc disease of the lumbar spine, maximal at L4/5 and L5/S1, and an L4/5 minimal annular disc bulge with superimposed moderate central-left subarticular disc protrusion compromising the bilateral, left greater than right, lateral recesses and abutting the bilateral, left greater than right, descending L5 nerve roots. It was felt she had moderate to severe spinal canal stenosis, and an annular disc bulge at L5/S1. She continued to be symptomatic, was again treated at the emergency room, came under the care of Dr. Olson, and underwent a lumbar spine right-sided L4/5 microdiscectomy on December 28, 2019. Her right-sided complaints were greatly improved, but her left-sided complaints worsened, resulting in a second MRI on March 15, 2020 which revealed a recurrent disc herniation, with significant spinal stenosis and lateral recess narrowing. On May 12, 2020 Petitioner underwent another L4/5 microdiscectomy, this time on the left side.

Petitioner was examined at her attorney's request by Dr. Raskas. He testified that he believed that the November 26, 2019 accident was the inciting event causing the herniated disc in her back, and that the accident of December 9, 2019 further aggravated her back condition. He said Petitioner's initial back pain was caused by the herniated disc and continued to have low back pain that subsequently progressed into radicular pain, which is a very characteristic history given by people that develop a herniated disc in their back. Dr. Raskas testified that when patients have instability and a large disc herniation like the Petitioner had, then they are at a little bit of increased risk for recurrent disc herniations.

Respondent had Dr. VanFleet perform record reviews, but did not have him examine Petitioner. It should be noted that Dr. VanFleet did not know a December 9, 2019 event had even occurred. He was a

a very large handicap as he did not see Petitioner and did not have the opportunity to take a history from her personally or question her in regard to the timeline of events or complaints. Nor was the ambulance record of December 10, 2019, which contained a history of the December 9, 2019 event, one of the records he reviewed.

Dr. VanFleet testified that his diagnosis was status post lumbar laminotomy diskectomy with an underlying degenerative disk condition. He said it was difficult for him to formulate an opinion regarding causation due to the fact that there was a gap from her reported injury of November 26, 2019 through the first time the Petitioner sought treatment. He knew of no December 9, 2019 event or accident, but again, he did not have all of the records, most especially the ambulance record, not did he have the opportunity to come to a greater knowledge of what had occurred by seeking information from Petitioner herself. Dr. VanFleet testified that his opinions were based on the histories included in the reports he reviewed, and if the history were to change, his opinions could change. As previously noted, medical records, the ambulance report, clearly described the second event just hours prior to her ambulance transport to the emergency room. Dr. VanFleet did believe a repeat surgery was necessary, and that the need for the second surgery was likely related to the initial procedure given the fact that it was a recurrent disc herniation and he finds that about 12-15% of individuals who undergo a microdiscectomy will have a recurrence of that disc herniation. Dr. VanFleet testified that the recurrent disk material was essentially a sequelae of the first surgery.

The Arbitrator finds that Petitioner's medical condition, an aggravation of her L4/5 minimal annular disc bulge with superimposed moderate central-left subarticular disc protrusion compromising the bilateral, left greater than right, lateral recesses and resulting in a right-sided L4/5 microdiscectomy, and, subsequently documented disc herniation at L4/5 on the left, with the same appearance as her earlier MRI, that they had not, apparently removed enough of the acute disc fragment in the earlier surgery, resulting in a second surgery, a left-sided L4/5 microdiscectomy is causally related to the accident of the accident of December 2019. This finding is based upon the testimony of Petitioner, the medical records, including the ambulance report, the opinions of Dr. Raskas in regard to causation, and the opinion of Dr. VanFleet in regard to the recurrent disk material essentially being a sequelae of the first surgery. The Arbitrator gives no weight to Dr. VanFleet's opinions on causation of the original L4/5 disk abnormalities, but accepts Dr. Raskas's opinions in that regard.

In support of the Arbitrator's decision relating to what temporary benefits Petitioner is entitled to as a result of the accident of December 9, 2019, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The Arbitrator's credibility assessment is incorporated herein.

The findings reference causal connection, above, are incorporated herein.

Petitioner lost no time from work between the dates of this first accident and her second alleged accident of December 9, 2019. All lost time was subsequent to the December 9, 2019 accident, and any award for temporary total disability will be made in the 20 WC 002137 case.

The Arbitrator finds Petitioner was not temporarily totally disabled as a result of the accident of November 26, 2019. This finding is based upon the testimony of Petitioner and the medical records summarized above.

The Arbitrator finds Respondent is entitled to credit in this case for temporary total disability paid, the credit of $9,171.75 towards said temporary total disability award will be applied in the decision in 20 WC 002137.

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 November 26, 2019, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The findings in regard to causal connection and temporary total disability, above, are incorporated herein.

Petitioner received no medical treatment between the dates of this first accident and her second alleged accident of December 9, 2019.

The Arbitrator finds that all of the bills introduced into evidence were incurred subsequent to the December 9, 2019 accident, and any award for medical expenses will be made in the 20 WC 002137 case. This finding is based upon the testimony of Petitioner' and the medical records introduced into evidence.

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

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The findings in regard to causal connection, temporary total disability, and medical, above, are incorporated herein.

As the injuries suffered as a result of this accident had not reached a state of maximum medical improvement prior to the alleged accident of December 9, 2019, any award for permanent disability will be made in 20 WC 002137.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC007637
Case Name	Linda Johnson v. Manchester Tank
Consolidated Cases	20WC002147;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0102
Number of Pages of Decision	21
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Vitas Mockaitis
Respondent Attorney	Matthew Brewer

DATE FILED: 3/12/2025

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF ADAMS)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Linda Johnson,

Petitioner,

vs. NO. 21WC 07637

Manchester Tank,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 1, 2023, is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

March 12, 2025

SJM/sj
d-1/15/2025
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC007637
Case Name	Linda Johnson v. Manchester Tank
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Dennis OBrien, Arbitrator

Petitioner Attorney	Vitas Mockaitis
Respondent Attorney	Matthew Brewer

DATE FILED: 11/1/2023

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

/s/ Dennis OBrien, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

LINDA JOHNSON
Employee/Petitioner

v.

MANCHESTER TANK
Employer/Respondent

Case # **21** WC **007637**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Dennis O'Brien**, Arbitrator of the Commission, in the city of **Quincy**, on **September 6, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **December 9, 2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

In the year preceding the injury, Petitioner earned $**28,587.00**; the average weekly wage was $**549.75**.

On the date of accident, Petitioner was **63** years of age, ***single*** with **no** dependent children.

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

Respondent shall be given a credit of $**9,171.75** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**9,171.75**.

Respondent is entitled to a credit of for all amounts it has paid under Section 8(j) of the Act, as agreed by the parties.

ORDER

Petitioner's medical condition, aggravation of L4/5 minimal annular disc bulge with superimposed moderate central-left subarticular disc protrusion compromising the bilateral, left greater than right, lateral recesses and resulting in a right-sided L4/5 microdiscectomy, and, subsequently documented disc herniation at L4/5 on the left, with the same appearance as her earlier MRI, that they had not, apparently removed enough of the acute disc fragment in the earlier surgery, resulting in a second surgery, a left-sided L4/5 microdiscectomy is causally related to the accident of the accident of November 26, 2019.

Petitioner was temporarily totally disabled as a result of the accident from December 10, 2019 to September 21, 2020, a period of 41weeks, at a weekly rate of $366.50.

Respondent is entitled to credit in the amount of $9,171.75 towards said temporary total disability award.

All of the bills introduced into evidence in Petitioner's Exhibit 1 are related to Petitioner's L4/5 minimal annular disc bulge with superimposed moderate central-left subarticular disc protrusion and subsequently documented disc herniation at L4/5 on the left, are reasonable and were necessitated to treat or cure Petitioner's injuries suffered in this accident, and are to be paid, including a reimbursement to Petitioner of $189.00 she has previously paid to Quincy Medical Group, at the payment level set out in the Medical Fee Schedule or the negotiated rate, whichever is less, with the exception of the following unrelated treatments for which no medical records were introduced:

- **Charges on page 13, of June 29, 2029 (also erroneously described as 36/29/2020) by Dr. Kirkpatrick, for a redacted diagnosis**
- **Charges on page 14, of July 2, 2020 by Dr. Pollocka, for a redacted diagnosis**

Petitioner sustained permanent partial disability to the extent of 25% loss of use of the person as a whole pursuant to §8(d)(2) of the Act and is to be paid 125 weeks of permanent partial disability at a weekly rate of $329.85.

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.

NOVEMBER 1, 2023

Signature of Arbitrator

FINDINGS OF FACT:

TESTIMONY AT ARBITRATION

Petitioner

Petitioner testified that she began working for Manchester Tank in approximately 2017. Petitioner was a laborer for the Respondent. Petitioner's job duties primarily included airing up tanks and running checks on them. Petitioner testified that from 2017 through November 2019 she was not under any active medical care for any injuries suffered while working for Manchester Tank. Petitioner was not on any medical restrictions nor was she taking any medications during this time period. Petitioner testified she was able to do her job duties in a normal manner during this time frame. (AT 18-19)

Petitioner testified that on November 26, 2019, she aired up a tank and when she went to pull it out of the chamber it stopped and she felt what she described as a lightening shock through her back all the way to her feet. Petitioner testified that a tank had blown in the chamber in the first shift earlier that day and had messed up the wheels that the tank would slide on, which was Petitioner's belief as to why the tank got stuck at the time of the accident. Petitioner briefly described the tank testing process. Petitioner would put the tank inside of a chamber and run various tests on it and then would remove the tank from the chamber when the tests were complete. (AT 20-21)

After the accident of November 26, 2019, Petitioner noticed severe pain in her back, legs, hips and feet. Petitioner's pain in her back was in her lower back. Petitioner described it as being lightening sharp and achy. Petitioner was able to finish her shift which was almost over. Petitioner did not do anything to relieve her pain at that time. The Petitioner testified that she took Aleve and Tramadol. (AT 21-22)

Petitioner's November 26, 2019 accident occurred in the week of Thanksgiving. As such, the Petitioner was off of work for a brief period of time over the Thanksgiving holiday. Following the holiday, Petitioner did return to her regular job and continued to work full duty. (AT 22)

Petitioner then described to having a second accident which occurred on December 9, 2019. Petitioner testified that she was again airing up a tank and that when she tried to pull it through the chamber, it stopped, and it sent a shock through her back, again, down into her feet. Petitioner testified that this was a similar mechanism of injury as the one that had occurred on November 26, 2019. Petitioner did not seek medical care that day, but did so the next morning, as she could not get out of bed, and when attempting to do so she had severe pain in her back and hips. She said she was taken by ambulance to Blessing Hospital on December 10, 2019. (AT 22-24)

Petitioner testified that at Blessing Hospital she initially seen by a chiropractor, Dr. Creech, who did not provide any treatment and referred her to other providers. Petitioner then came under the care of Dr. Biggs who ordered an MRI, which was performed on December 24, 2019. Following the MRI, Dr. Biggs took Petitioner off work and referred her to Dr. Olson. She said she then began receiving TTD benefits. (AT 24-27)

Petitioner testified that Dr. Olson performed surgery on 1December 28, 2019. She said she continued to have pain with numbness into her toes after the surgery was performed, and that her knees

and hips bothered her. Petitioner said she only noticed a little change in her condition after that first surgery. Dr. Olson subsequently ordered a second MRI scan which the Petitioner had on March 15, 2020. After viewing the MRI images, Dr. Olson recommended a second surgery, and it that second lumbar spine surgery occurred on May 12, 2020. Petitioner said her back was still bad following this second surgery, she did not believe she only had possibly a little improvement from that second surgery. Petitioner continued to follow up with Dr. Olson until the fall of 2020, with her last appointment with the doctor being in 2022. At that appointment he prescribed pain medication and told her to follow up and keep in contact with him. (AT 27-30)

Petitioner testified that Dr. Olson never released her to go back to her job. She said she had not gone back to work since leaving employment with Respondent, though she had tried. Petitioner testified that she last worked in July 2023, for a place called Father's Table, a bakery in Florida, where she now lives. She said that work required her to lift, bend, and turn. Petitioner testified that she only lasted in this job for three days as her back stiffened up, she could not feel her feet and her hips hurt. She said she went to the hospital, but she did not elaborate in regard to what was done while at the hospital. (AT 30-31)

Petitioner testified she was receiving Social Security disability benefits as of the date of arbitration. Petitioner testified the medical conditions for which was awarded Social Security benefits were in regard to a knee and shoulder surgery she had. Petitioner is not under active care for her low back. Petitioner takes Tramadol and over-the-counter medication presently for her knees and her shoulder as well as her back. She said the Tramadol she took three times daily gave her very little relief. She said she took Aleve every seven hours. (AT 31-33)

Petitioner testified that the bills included in Petitioner Exhibit 1 were all for treatment of her back. She said she paid for one medical bill in the amount of approximately $189.00 to Quincy Medical Group. Petitioner testified that some of her bills are unpaid, and others were paid for by Medicare as well as the Respondent. (AT 34)

Petitioner testified regarding her current condition as it relates to her back, saying she could not do anything, including getting into and out of a tub. Petitioner testified that her hips, back, and feet hurt. Sometimes she is unable to walk because her feet go numb. Petitioner feels sharp pain in her low back. Petitioner denied having any other kinds of accidents or injuries to her low back other than the alleged November 26, 2019 and December 9, 2019 accidents. Petitioner said she had seen doctors and talked to them about back pain before these accidents, but that pain had not been severe, and no MRI had ever been prescribed or surgery recommended. (AT 34-36)

On cross examination Petitioner did not remember seeing Dr. Raskas in Chicago at her attorney's request, but did recall being sent to see a doctor by her attorney, and that physician might have been Dr. Raskas. She said she did not know if she told Dr. Raskas that she did not have any issues with low back pain before these accidents. She again said she had some low back pain before these accidents, but it was not like the pain she was having now, it was just low back pain. She agreed she had seen her primary care physician, Dr. Kirkpatrick, for low back issues before the accident, but she did not remember being referred by Dr. Kirkpatrick to Dr. Arguelles for additional care for her low back pain before these accidents. She said she could not remember being taken off work in July of 2018 for back pain. (AT 39-41)

Petitioner agreed that she was able to return to her job full duty after Thanksgiving break and was able to work in her regular position up to the time of her second accident on December 9, 2019. (AT 41-42)

The Petitioner was unaware that the emergency room records from Blessing Hospital on December 10, 2019 makes no reference to a work injury or work accident occurring the day before, on December 9., 2019. Petitioner did confirm that she told Blessing Hospital on 12/10/19 that she woke up the morning of December 10, 2019 with low back pain going into her right hip. The Petitioner denied being released to go back to work full duty by the emergency room a couple of days after she was seen, saying she had not gone back to work. (AT 44-45)

Petitioner said that Dr. Olson on September 21, 2020 did not recommend any additional MRIs and did not tell her to work on core strengthening at that time. Petitioner said she was not aware of Dr. Olson records of that date stating no additional care was recommended other than core strengthening. Petitioner agreed that Dr. Olson informed her to follow up with him when she had problems. She said Dr. Olson did not tell her to go back to work. Petitioner said she did not tell Dr. Olson at that visit that she was much better than she was before surgery. (AT 45-48)

Petitioner did not recall seeking any medical care from September 2020 through November 2022. The Petitioner testified that she did advise Dr. Olson in November of 2022 that she had picked up a dishcloth at home in October of 2022, and had felt a pop in her back, with increased pain in her low back and into her legs. She did not recall his ordering an MRI at that time. Petitioner confirmed that this accident picking up a dish cloth did occur at home. Petitioner said she had not seen Dr. Olson since November of 2022. (AT 48-51)

Petitioner testified that she moved to Florida in July of 2019. She said she did not look for work at all between 2019 through July 2023 when she worked briefly in July of 2023, and agreed that she did not have any note from a treating physician taking her completely off work during that time period. She said that she tried to work then as a doctor at a hospital in Florida told her she should get a hobby. She said that doctor told her she could not work, but that she should get a hobby. She said she looked for work n 2023, as much as she could, but she did not keep any record of her job search attempts. Petitioner said she was currently on Medicare and got $1,098.00 per month in social Security benefits. (AT 51-54)

Petitioner testified that she was paid temporary total disability benefits by the Respondent for a period of time following the accident as well as some medical benefits. Petitioner confirmed that she had Blue Cross Blue Shield insurance while she was employed by the Respondent. (AT 54-55)

Petitioner said the tank she was moving on the dates of accidents may have weighed about 375 pounds, they were the heaviest tanks they had, and she was able to move them as they were on wheels. (AT 55-56)

On redirect examination Petitioner agreed Dr. Kirkpatrick was her primary care physician, and if she had any back pain, she would have mentioned that to him, and it was possible he might have sent her to another doctor. She said she was a little confused by the questions, not really understanding. She said she did have some back complaints prior to these accidents, but she was never really treated for those complaints. She said that would have been in June of 2017. (AT 57-59)

Petitioner said the dishcloth incident occurred while she was doing laundry, it fell and she went to pick it up. She said she had to pick things up while working for Respondent, such as tools, and those things would have been heavier than the dishcloth. (AT 60-61)

MEDICAL EVIDENCE

Medical records pre-dating the date of accident were introduced into evidence. A CT scan of the abdominal pelvis of June 8, 2017 was interpreted as showing spondylosis of the lumbar spine without acute fracture. On June 14, 2017, Petitioner was seen by Dr. Arguelles, who was seeing her for her primary care physician, Dr. Kirkpatrick. At that time she was complaining of back pain of unknown origin. Recent x-rays were reviewed, and they showed some degenerative changes in the lumbar spine. The only abnormality on physical examination of the back was some soreness in the paraspinal muscles. The assessment that day was acute low back pain. Dr. Kirkpatrick gave Petitioner a one day off work slip for back pain on July 2, 2018. No office notes of Dr. Kirkpatrick were introduced for that date, but Petitioner was seen the next day by Dr. Aguelles a year later, on July 3, as well as on July 17, 2018, and on both of those dates she was seen for for right elbow pain. No mention of low back complaints or findings is included in the records for those dates. (RX 4, p.1-3; PX 5, p.8,9,12,13,15,18)

On December 10, 2019, Petitioner was transported to Blessing Hospital by ambulance. Her complaints to the ambulance crew were of extreme low back pain which had come on initially at work about a week earlier, while pushing and pulling on tanks. She told them she had possibly reinjured it the day prior to the ambulance call, December 9, 2019, again, at work. Petitioner told them that on the evening on December 9, 2019 she had back pain, and it had gotten worse. Her pain at the time of transport was reported to be 8/10. She was given IV Fentanyl prior to transport, and upon arrival reported her pain was better, down to 6/10. (PX 4)

Petitioner initially presented to Blessing Hospital on December 10, 2019 with complaints of back pain and a history of hurting her back at work a week prior, working the night before and waking up that morning with low back pain that radiates to her right hip. Petitioner was given a release to return to work on December 13, 2019. (PX 2, p.59; RX 5, p.1,2)

Petitioner was seen by Chiropractor Wesley Creech on December 11, 2019. She gave a history of her back pain beginning a few weeks earlier. Dr. Creech performed a spinal active release technique as well as other therapeutic modalities. His diagnosis was segmental and somatic dysfunction of the lumbar region and intervertebral disc dysfunction with radiculopathy. On December 13, 2019 Petitioner's complaints were worse, when seen by Dr. Creech, and he noted she was having more neurologic pain. He recommended Petitioner undergo an MRI. (PX 5, p.4-6)

Petitioner was seen by Dr. Biggs at Quincy Medical Group on December 16, 2019, and gave a history of an accident on November 26, 2019 while pushing a tank that got hung up in its rack, and of her feeling a sudden pain in her low back and right lower extremity. Dr. Biggs performed a physical examination, noted a reduction in range of motion of the lumbar spine, a positive right straight leg raising test, and diagnosed Petitioner as being three weeks status post-acute onset bilateral right greater than left radicular low back pain following an industrial injury with right sided lumbar radiculopathy. Her pain was such on this date that she presented in a wheelchair. Dr. Biggs ordered an MRI. She was given a work restriction of no work on that date. (PX 3, p.7,10-12,131,133; RX 6, p.2,5-7)

Petitioner followed up with Dr. Biggs on December 23, 2019. Petitioner was scheduled for an MRI the following day. Petitioner was kept off of work at this time. (PX 3, p.24,28,31,32,134)

Petitioner underwent an MRI of the lumbar spine without contrast on December 24, 2019. The MRI revealed spondylosis and degenerative disc disease of the lumbar spine, maximal at L4/5 and L5/S1, and an L4/5 minimal annular disc bulge with superimposed moderate central-left subarticular disc protrusion compromising the bilateral, left greater than right, lateral recesses and abutting the bilateral, left greater than right, descending L5 nerve roots. It was felt she had moderate to severe spinal canal stenosis, and an annular disc bulge at L5/S1. (PX 3, p.120,121)

Petitioner was seen in the emergency room of Blessing hospital again on December 26, 2019. She again identified the pain as starting at work on November 26, 2019, when she pulled a tank at work. Physical examination identified lumbar spine tenderness, worse with range of motion. After receiving pain medication Petitioner appeared to improve. (PX 2, p.66,67)

Petitioner was called by Dr. Biggs office in the morning hours of December 27, 2019, was advised of her MTI results, and advised Dr. Biggs staff that she had been to the emergency room due to great pain, had been given pain killers, but they did not touch the pain. Dr. Biggs was consulted, and Petitioner was advised to return to the emergency room if she was having a great deal of pain. (PX3, p.36)

Petitioner appears to have returned to the emergency room on December 27, 2019. Her December 24, 2019 MRI was reviewed, and Dr. Olson was consulted, and Petitioner advised him she was hardly able to ambulate at home due to her pain, and she had come to the emergency room on the telephonic direction of Dr. Biggs, who had reviewed her MRI results. She advised Dr. Olson that she had paresthesia in both legs, but the right was much worse than the left, with pain radiating into her right leg, into the lateral calf. Dr. Olson felt the MRI showed a prominent central disc herniation at L4/5 which was causing compression of the cauda equina at that level, and severe stenosis. His physical examination of Petitioner revealed diminished sensation in the lateral thigh on the right and lateral calf on the right consistent with L5 distribution symptoms. His assessment was L4/5 disc herniation causing severe lumbar radiculopathy. Petitioner was admitted to the hospital from the emergency room for surgery the next morning. (PX 2, p.71,72,74,75,78,79,81)

Petitioner underwent a lumbar spine right-sided L4/5 microdiscectomy on December 28, 2019, performed by Dr. Olson. Petitioner was discharged from the hospital on December 29, 2019. (PX 2, p.86,87,89)

Petitioner saw Dr. Biggs on December 31, 2019. Petitioner referenced having surgery with Dr. Olson on December 28, 2019 and was experiencing postoperative pain although her back and lower extremity symptoms had significantly improved. Dr. Biggs was being asked to address the Petitioner's work ability by Dr. Olson. Petitioner was kept off of work at this time and was to follow up in one month for reassessment. (PX 3, p.43,44,135)

Petitioner saw Dr. Olson on January 13, 2020, three weeks after her surgery. She reported that her pain was down to a "3," and she was ambulating using a walker. Her activity limitations were to continue for three more weeks, she was to stay off work and have no bending, lifting or twisting other than her activities of daily living. Her pain medication was changed as oxycodone made her ill. (PX 2, p.35,38)

When seen by Nurse Practitioner (NP) Nutter on January 15, 2020, Petitioner was found to have an abnormal gait and an abnormal back examination. She was ambulating with a walker and in a forward bet

posture. She was encouraged to stand straight if possible. Her L4-S1 region was tender to palpation, but the surgical site looked good. (PX 2, p.6)

The Petitioner saw Dr. Olson in follow up on February 5, 2020. The Petitioner was still having complaints in the left hip, causing pain when she would walk or lay down. She still had sensory changes in the second and third toes of her right foot. Recommendation was made to start physical therapy and a second MRI was ordered. (PX 2, p.30,33)

Petitioner was seen by Dr. Olson on March 9, 2020, with left leg radiculopathy and low back pain. She said her left side was worse than her right, and physical therapy had not helped her. She said her pain was a 10/10. She had a bilateral antalgic gait. She had sensory deficits on light touch in her left foot and lateral left shin, in an L5 distribution, as well as aching in the left leg while walking. Dr. Olson stopped physical therapy and ordered another MRI. He noted she should stay off work until they got her feeling better. (PX 2, p.24,27,28)

Petitioner underwent a second lumbar spine MRI on March 15, 2020, which revealed a recurrent disc herniation, with significant spinal stenosis and lateral recess narrowing. (PX 2, p.57,58,97,98)

Petitioner followed up with Dr. Olson on March 16, 2020. While noting improvement in her right leg, Petitioner was noting persistent left leg radiculopathy in the left leg which did not improve with physical therapy. She did note some pain in the right thigh as well as down the left leg to the ankle. Her pain description was 7/10. She was walking with a bilateral antalgic gait. She had a positive straight leg raising test at 30 degrees on the left. He advised Petitioner that, per the MRI, she continued to have a disc herniation at L4/5 on the left, with the same appearance as her earlier MRI, that they had not, apparently remove enough of the acute disc fragment in the earlier surgery. A left-sided L4/5 microdiscectomy was recommended. (PX 2, p.19,21,22)

Petitioner had a pre-operative physical with Dr. Olson on May 7, 2020. On that date it was noted that Petitioner had an abnormal sensory examination, with light touch in her left foot seeming to be diminished on the dorsum of her foot and on the lateral aspect of her left shin. She noted aching in the left leg when walking. Petitioner reported that her prior sensation loss in the right foot had resolved. (PX 2, p.17)

On May 12, 2020, Petitioner underwent another L4/5 microdiscectomy, this time on the left side. This surgery was also performed by Dr. Olson. Several sizeable pieces of disc were removed from the epidural space, as was bulging annulus and disc material. (PX 2, p.109,110)

Petitioner was seen by Dr. Olson on June 4, 2020, and advised him that her radicular pain down her legs had resolved. She was still reporting back pain and had recently experience right flank pain. While she said she had aching in her feet while sleeping, and walking bothered her back, she said she was otherwise doing much better than before her surgery. Physical examination revealed her to have a bilateral antalgic gait. While Petitioner was no longer taking pain medication, she was continuing to be prescribed Neurontin neuropathic symptoms in her feet. (PX 2, p.9-11)

Petitioner saw Dr. Olson on September 21, 2020. It was noted that Petitioner's left leg symptoms had resolved, but she had persistent lower back pain and on occasion had radiation into the right leg. She did not have symptoms in the left leg. Her main problem was low back pain, and intermittent right leg pain. Dr. Olson recommended the Petitioner engage in some core strengthening exercises. Continued to prescribe Neurontin 300mg three times daily to help with radicular symptoms. She advised Dr. Olson that she had pain which would shoot don her right leg, her toes were still numb, she had difficulty sleeping, and her pain score was a "6." On physical examination Petitioner was found to have bilateral paraspinal muscle tenderness. The assessment on

this date was lumbar radicular pain and chronic bilateral low back pain with right-sided sciatica. Petitioner was at that time released by Dr. Olson and was to follow up on an as needed basis. (RX 7, p.1,4)

Petitioner was seen by Dr. Olson on November 8, 2022, stating her back had popped on October 28, 2022 when she bent down to pick up a dish cloth, and that since that time she has had constant pressure across her low back. Petitioner reported that she was doing well until a couple of weeks before, when she bent over to pick up something off the floor and felt severe pain in her lower back. Petitioner reported that she went to a local emergency room and had been given medication. On physical examination Dr. Olson found Petitioner to have paraspinal muscle spam in the low back. Dr. Olson ordered an MRI which was performed on November 15, 2022, and revealed multilevel degenerative changes in the lumbar spine with no significant spinal canal stenosis, abutment of the right S1 nerve root secondary to disc bulge and multilevel neuroforaminal stenosis most prominent at the L4-5 level. Petitioner followed up with Dr. Olson on November 22, 2022. Dr. Olson did not note any acute abnormalities on the MRI scan and indicated had just aggravated her low back pain. He noted Petitioner was relieved when advised of this. Petitioner was to follow up as needed. (RX 7, p.5,8-11,14)

DEPOSITION TESTIMONY OF DR. DAVID SCOTT RASKAS

Dr. David Scott Raskas is a board-certified surgeon who focuses on spinal care; he was retained on behalf of the Petitioner to perform an Independent Medical Evaluation on June 18, 2021. Dr. Raskas testified via deposition on January 12, 2022. (PX 6, p.6,7, Pet. Dep. Exh. 2)

Dr. Raskas testified that he took a history from the Petitioner and that he reviewed medical records that were provided to him by the Petitioner's counsel. He also reviewed the films from the MRI studies he was provided, which included the MRIs of the Petitioner's lower back from December 14, 2019 and March 15, 2020. (PX 6, p.12-17)

Dr. Raskas testified in regard to his physical examination findings and his diagnosis for Petitioner, post-laminectomy syndrome, lumbar pain, lumbar herniated disk, and facet hypertrophy of the lumbar region. (PX 6, p.18-20)

When asked whether the November 26, 2019 accident caused or aggravated the Petitioner's back resulting in her lower back injury and need for her surgeries of December 27, 2019 and May 12, 2020, Dr. Raskas testified that he believed that the November 26, 2019 accident was the inciting event causing the herniated disc in her back. He also testified that the accident of December 9, 2019 further aggravated her back condition. He testified that the Petitioner initially developed back pain that was caused by the herniated disc and continued to have low back pain that subsequently progressed into radicular pain, which is a very characteristic history given by people that develop a herniated disc in their back. Dr. Raskas testified that when patients have instability and a large disc herniation like the Petitioner had, then they are at a little bit of increased risk for recurrent disc herniations. (PX 6, p.21-23)

When asked about his opinion about the Petitioner's prognosis, Dr. Raskas testified that he believes it is very unlikely that she is ever going to be able to do any physical labor type work like she was doing before the accident nor should she. He further testified that he thought the Petitioner should probably be confined to sedentary to light type duty work given her instability that she has in her back. (PX 6, p.24)

On cross examination Dr. Raskas testified that the Petitioner did not complain of any radicular symptoms into her bilateral feet at the time of his examination. Dr. Raskas believed that the Petitioner did have

instability but testified that this instability would likely be remedied if the Petitioner did undergo a fusion procedure. (PX 6, p.27)

Dr. Raskas testified that his opinion was based upon the accuracy of the documents and the information he was provided as well as the history provided to him by the Petitioner. Dr. Raskas testified that if the information including the documentation and history provided to him by the Petitioner were inaccurate or incomplete that could change his opinions relative to causation. Dr. Raskas confirmed he took a verbal history from the Petitioner and she denied having any low back issues before her November 2019 accident. Dr. Raskas testified that he was not aware if the Petitioner had back pain before this accident or if she had sought treatment for her low back before the November 2019 accident. The only pre-accident record that Dr. Raskas reviewed was a record from Quincy Medical Group dated 11/20/19 where the Petitioner presented for care for a condition unrelated to her low back. Dr. Raskas reviewed no other pre-accident medical records. (PX 6, p.31-35)

DEPOSITION TESTIMONY OF DR. TIMOTHY VANFLEET

Dr. VanFleet's deposition was taken on 10/5/22. Dr. VanFleet is board certified in orthopedic surgery with a subspecialty training in spinal surgery. Dr. VanFleet testified that 100% of his practice is dedicated to treating patients with spinal conditions. Dr. VanFleet performs between 400-500 spinal surgeries per year. Dr. VanFleet testified that while he had not performed any physical examinations of Petitioner, he had performed two record reviews in this case. The first record review report is dated April 16, 2020. Dr. VanFleet listed the records he reviewed and summarized the records in his report. Dr. VanFleet testified that although he was not able to perform a physical examination of the Petitioner, he was able to render opinions regarding diagnosis as well as causal connection, utilizing his education, training and experience as an orthopedic surgeon. (RX 1, p.8,9,11-14)

Dr. VanFleet did not have the MRI studies at the time of his initial records review, but was later provided with them, and issued an addendum records review report dated May 6, 2020. Dr. VanFleet interpreted the December 24, 2019 MRI study to show a large disc extrusion occupying approximately 60 percent of the spinal canal. Dr. VanFleet also noted some spinal canal stenosis as well as degenerative changes. The acquired spinal stenosis was at the L4-5 level and was contributing of an exacerbation factor of the disc herniation as well. (RX 1, p.16,17,20)

Dr. VanFleet also reviewed the operative report from the right sided L4-5 discectomy procedure performed on December 28, 2019. Dr. VanFleet also later reviewed the films from the lumbar spine MRI taken on March 15, 2020. This was an MRI with contrast that Dr. VanFleet noted revealed recurrent disc material in the spinal canal at the L4-5 level as well as significant spinal stenosis similar to the findings from the presurgical MRI. (RX 1, p.22,23,24)

Dr. VanFleet testified that his diagnosis was status post lumbar laminotomy diskectomy with an underlying degenerative disk condition. He said it was difficult for him to formulate an opinion regarding causation due to the fact that there was a gap from her reported injury of November 26, 2019 through the first time the Petitioner sought treatment. He knew of no December 9, 2019 event or accident. Dr. VanFleet did testify that when an individual has a large disc rupture, they are symptomatic at that point with leg pain basically. Dr. VanFleet opined that it would be difficult to state that there is a contemporaneous relationship between what the Petitioner described as occurring on November 26, 2019 with what she presented to with the

hospital two and a half weeks later on December 10, 2019. Dr. VanFleet testified that medically there is not a causal relationship based upon these factors. Dr. VanFleet did believe a repeat surgery was necessary, and that the need for the second surgery was likely related to the initial procedure given the fact that it was a recurrent disc herniation and he finds that about 12-15% of individuals who undergo a microdiscectomy will have a recurrence of that disc herniation. (RX 1, p.25-28)

On cross examination Dr. VanFleet said the recurrent disk material was essentially a sequelae of the first surgery. He said he based his opinions on the histories included in the reports he reviewed, and if the history were to change, his opinions could change. He said Petitioner was not at maximum medical improvement when he wrote his report, she still needed the second surgery. (RX 1, p.31,32)

ARBITRATOR CREDIBILITY ASSESSMENT

While Petitioner at times appeared to be confused by some of the questions posed to her, she was cooperative and appeared to be answering those questions to the best of her ability. Petitioner's testimony was consistent, believable and corroborated by the ambulance and other medical records. While the Respondent questioned the Petitioner regarding the issue of any back pain complaints to medical providers prior to her work accidents, Petitioner's explanations appeared reasonable and believable, the medical records for prior low back complaints were of a minor nature and did not result in any significant, ongoing medical treatment. The Arbitrator finds Petitioner to have been a credible witness.

The Arbitrator finds that Petitioner's examining physician, Drs. Raskas, and Respondent's record reviewing physician, Dr. VanFleet, were both qualified physicians whose opinioins simply differed. Both testified in a cooperative manner, answering all questions posed to them by both attorneys. The Arbitrator finds both Dr. Raskas and Dr. VanFleet to have been credible witnesses.

CONCLUSIONS OF LAW:

Respondent stipulated that Petitioner suffered an accident on November 26, 2019 which arose out of and in the course of her employment with Respondent. (Arb. Exh. 1)

In support of the Arbitrator's decision relating to whether Petitioner's current condition of ill-being, L4/5 minimal annular disc bulge with superimposed moderate central-left subarticular disc protrusion compromising the bilateral, left greater than right, lateral recesses and resulting in a right-sided L4/5 microdiscectomy, and, subsequently documented disc herniation at L4/5 on the left, with the same appearance as her earlier MRI, that they had not, apparently removed enough of the acute disc fragment in the earlier surgery, resulting in a second surgery, a left-sided L4/5 microdiscectomy, is causally related to the accident of November 26, 2019, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The Arbitrator's credibility assessment is incorporated herein.

Petitioner testified that immediately after this non-disputed accident, she noticed severe pain in her back, legs, hips and feet. That testimony was unrebutted. Petitioner described it as being lightening sharp and achy. Petitioner said she was able to finish her shift which was almost over, and she subsequently took Aleve and Tramadol for the pain. Petitioner's November 26, 2019 occurred the week of Thanksgiving. As such, the Petitioner was off of work for a brief period of time over the Thanksgiving holiday. Following the holiday, Petitioner did return to her regular job and continued to work full duty up to the time of a second event on December 9, 2019, an alleged second accident that is the subject matter of another pending claim, 21WC007637, which was consolidated with this case for purposes of arbitration and will have a separate Decision of Arbitrator issued.

Petitioner testified that she woke on the morning of December 10, 2019 and could not function due to low back and leg pain, an ambulance had to be called to transport her to the emergency room. In the days and week following that emergency room visit Petitioner was seen and treated by Dr. Creech and Dr. Biggs. An MRI of the lumbar spine was performed on December 24, 2019, and revealed spondylosis and degenerative disc disease of the lumbar spine, maximal at L4/5 and L5/S1, and an L4/5 minimal annular disc bulge with superimposed moderate central-left subarticular disc protrusion compromising the bilateral, left greater than right, lateral recesses and abutting the bilateral, left greater than right, descending L5 nerve roots. It was felt she had moderate to severe spinal canal stenosis, and an annular disc bulge at L5/S1. She continued to be symptomatic, was again treated at the emergency room, came under the care of Dr. Olson, and underwent a lumbar spine right-sided L4/5 microdiscectomy on December 28, 2019. Her right-sided complaints were greatly improved, but her left-sided complaints worsened, resulting in a second MRI on March 15, 2020 which revealed a recurrent disc herniation, with significant spinal stenosis and lateral recess narrowing. On May 12, 2020 Petitioner underwent another L4/5 microdiscectomy, this time on the left side.

Petitioner was examined at her attorney's request by Dr. Raskas. He testified that he believed that the November 26, 2019 accident was the inciting event causing the herniated disc in her back, and that the accident of December 9, 2019 further aggravated her back condition. He said Petitioner's initial back pain was caused by the herniated disc and continued to have low back pain that subsequently progressed into radicular pain, which is a very characteristic history given by people that develop a herniated disc in their back. Dr. Raskas testified that when patients have instability and a large disc herniation like the Petitioner had, then they are at a little bit of increased risk for recurrent disc herniations.

Respondent had Dr. VanFleet perform record reviews, but did not have him examine Petitioner. It should be noted that Dr. VanFleet did not know a December 9, 2019 event had even occurred. He was a a very large handicap as he did not see Petitioner and did not have the opportunity to take a history from her personally or question her in regard to the timeline of events or complaints. Nor was the ambulance record of December 10, 2019, which contained a history of the December 9, 2019 event, one of the records he reviewed.

Dr. VanFleet testified that his diagnosis was status post lumbar laminotomy diskectomy with an underlying degenerative disk condition. He said it was difficult for him to formulate an opinion regarding causation due to the fact that there was a gap from her reported injury of November 26, 2019

through the first time the Petitioner sought treatment. He knew of no December 9, 2019 event or accident, but again, he did not have all of the records, most especially the ambulance record, not did he have the opportunity to come to a greater knowledge of what had occurred by seeking information from Petitioner herself. Dr. VanFleet testified that his opinions were based on the histories included in the reports he reviewed, and if the history were to change, his opinions could change. As previously noted, medical records, the ambulance report, clearly described the second event just hours prior to her ambulance transport to the emergency room. Dr. VanFleet did believe a repeat surgery was necessary, and that the need for the second surgery was likely related to the initial procedure given the fact that it was a recurrent disc herniation and he finds that about 12-15% of individuals who undergo a microdiscectomy will have a recurrence of that disc herniation. Dr. VanFleet testified that the recurrent disk material was essentially a sequelae of the first surgery.

The Arbitrator finds that Petitioner's medical condition, aggravation of L4/5 minimal annular disc bulge with superimposed moderate central-left subarticular disc protrusion compromising the bilateral, left greater than right, lateral recesses and resulting in a right-sided L4/5 microdiscectomy, and, subsequently documented disc herniation at L4/5 on the left, with the same appearance as her earlier MRI, that they had not, apparently removed enough of the acute disc fragment in the earlier surgery, resulting in a second surgery, a left-sided L4/5 microdiscectomy is causally related to the accident of the accident of November 26, 2019. This finding is based upon the testimony of Petitioner, the medical records, including the ambulance report, the opinions of Dr. Raskas in regard to causation, and the opinion of Dr. VanFleet in regard to the recurrent disk material essentially being a sequelae of the first surgery. The Arbitrator gives no weight to Dr. VanFleet's opinions on causation of the original L4/5 disk abnormalities, but accepts Dr. Raskas's opinions in that regard.

In support of the Arbitrator's decision relating to what temporary benefits Petitioner is entitled to as a result of the accident of November 26, 2019, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The Arbitrator's credibility assessment is incorporated herein.

The findings reference causal connection, above, are incorporated herein.

Petitioner testified she was receiving Social Security disability benefits as of the date of arbitration. Petitioner testified the medical conditions for which was awarded Social Security benefits were in regard to a knee and shoulder surgeries she had undergone. Petitioner takes Tramadol and over-the-counter medication presently for her knees and her shoulder as well as her back.

Petitioner was at maximum medical improvement in regard to her low back condition as of September 21, 2020, when Dr. Olson instructed her to follow up as needed. No work restrictions were noted by Dr. Olson at that time. Temporary total disability is to be awarded for the period of time when the injury incapacitates the

employee to the date when the employee's condition has stabilized. Whitney Production vs. Industrial Commission, 274 Ill.App.3d 28 (1995)

The Arbitrator finds that Petitioner was temporarily totally disabled as a result of the accident from December 10, 2019 to September 21, 2020, a period of 41weeks, which is to be paid at a weekly rate of $366.50. This finding is based upon the testimony of Petitioner and the medical records summarized above.

The Arbitrator finds Respondent is entitled to credit in the amount of $9,171.75 towards said temporary total disability award.

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 December 9, 2019, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The Arbitrator's credibility assessment is incorporated herein.

The findings reference causal connection and temporary total disability, above, are incorporated herein.

The Arbitrator finds that all of the bills introduced into evidence in Petitioner's Exhibit 1 are related to Petitioner's L4/5 minimal annular disc bulge with superimposed moderate central-left subarticular disc protrusion and subsequently documented disc herniation at L4/5 on the left, are reasonable and were necessitated to treat or cure Petitioner's injuries suffered in this accident, and are to be paid, including a reimbursement to Petitioner of $189.00 she has previously paid to Quincy Medical Group, at the payment level set out in the Medical Fee Schedule or the negotiated rate, whichever is less, with the exception of the following unrelated treatments for which no medical records were introduced:

- **Charges on page 13, of June 29, 2029 (also erroneously described as 36/29/2020) by Dr. Kirkpatrick, for a redacted diagnosis**
- **Charges on page 14, of July 2, 2020 by Dr. Pollocka, for a redacted diagnosis**

This finding is based upon the medical records introduced into evidence and the testimony of Petitioner and Dr. Raskas.

The Arbitrator further finds that based upon the records of Dr. Olson, Petitioner reached maximum medical improvement on September 21, 2020.

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

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The Arbitrator's credibility assessment is incorporated herein.

The findings reference causal connection, temporary total disability, and medical, above, are incorporated herein.

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

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a laborer at the time of the accident and that she *is* able to return to work in his prior capacity as a result of said injury. The Arbitrator notes Petitioner did not return to work following her release by Dr. Olson and instead has been receiving Social Security Disability payments due to shoulder and knee conditions. Because of the physical nature of her employment, the Arbitrator therefore gives *moderate* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 63 years old at the time of the accident. Because of the lesser number of additional years of work expectancy, the Arbitrator therefore gives *lesser* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes no evidence was introduced as to Petitioenr's future earning capacity, what she could have earned had she returned to work with Respondent upon her release by Dr. Olson and what she earned in her subsequent three day employment at Father's Table. Because of the lack of evidence in this regard, the Arbitrator therefore gives *no* weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner underwent two microdiscectomies at the L4/5 level, the first on the right side, the second on the left side. Petitioner's right-sided complaints lessened after the first surgery, but her left-sided complaints increased, necessitating the second surgery. Her left-sided complaints lessened after the second surgery, but she continued to have complaints following that surgery as well. When seen by Dr. Olson on September 21, 2020, the date she reached maximum medical improvement, Petitioner had persistent lower back pain and on occasion had radiation into the right leg. She did not have symptoms in the left leg. Her main

problem was low back pain, and intermittent right leg pain. Dr. Olson recommended the Petitioner engage in some core strengthening exercises, and continued to prescribe Neurontin to help with radicular symptoms. On physical examination on that date Petitioner was found to have bilateral paraspinal muscle tenderness. The assessment on this date was lumbar radicular pain and chronic bilateral low back pain with right-sided sciatica. Because of her multiple surgeries and comtinuing symptoms and findings, the Arbitrator therefore gives *greater* weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 25% loss of use of the person as a whole pursuant to §8(d)(2) of the Act and is to be paid 125 weeks of permanent partial disability at a weekly rate of $329.85.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC016010
Case Name	Lorrin Whinna v. Sugar Creek Alzheimer's Special Care Unit
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0103
Number of Pages of Decision	20
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	William Trimble
Respondent Attorney	Patrick Rollings

DATE FILED: 3/12/2025

/s/Amylee Simonovich,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEANS)

☒ 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

LORRIN WHINNA,

Petitioner,

vs. NO: 17 WC 16010

SUGAR CREEK ALZHEIMER'S SPECIAL CARE UNIT,

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, causal connection, medical expenses, and temporary total disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 16, 2023 is hereby affirmed and adopted.

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

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

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.

The bond requirement in Section 19(f)(2) is applicable only when "the Commission shall have entered an award for the payment of money." *820 ILCS 305/19(f)(2).* Based upon the denial of compensation herein, no bond is set by the Commission.

March 12, 2025

O030425
AHS/ldm
051

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC016010
Case Name	Lorrin Whinna v. Sugar Creek Alzheimer's Special Care Unit
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	William Trimble
Respondent Attorney	Austin Moore

DATE FILED: 11/16/2023

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 14, 2023 5.27%

/s/Bradley Gillespie, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF MCLEANS)

☐ 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

Lorrin Whinna
Employee/Petitioner

v.

Case # **17 WC 016010**

Consolidated cases:

Sugar Creek Alzheimer's Special Care Unit
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 **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Bloomington**, on **September 27, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **5/1/2015**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did 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 $**18,720.00**; the average weekly wage was $**360.00**.

On the date of accident, Petitioner was **25** years of age, ***married*** with **one** dependent child.

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

Because Petitioner's right shoulder conditions did not arise out of or in the course of employment with Respondent on May 1, 2015, benefits are denied.

Because Petitioner's right shoulder conditions are not causally related to her alleged work accident of May 1, 2015, benefits are denied.

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

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

Bradley D. Gillespie **NOVEMBER 16, 2023**

Signature of Arbitrator

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LORRIN WHINNA,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No: 17 WC 016010**
	)	
SUGAR CREEK ALZHEIMER SPECIAL CARE UNIT,	)	
	)	
	)	
Respondent.	)	

DECISION OF THE ARBITRATOR

On or about May 30, 2017, Lorrin Whinna [hereinafter "Petitioner"] filed an Application for Adjustment of Claim alleging injuries to her right shoulder due to repetitive trauma while employed by Sugar Creek Alzheimer's Special Care Unit [hereinafter "Respondent"]. (Arb. Ex. 2). This matter proceeded to hearing on September 27, 2023, in Bloomington, Illinois. (Arb. Ex. 1). The following issues were in dispute at arbitration:

- Accident;
- Causation; and
- Nature and Extent

FINDINGS OF FACT

Petitioner's Testimony

Petitioner was the sole witness to testify at trial. Petitioner testified on direct examination that she injured her right shoulder previously while working for Respondent in 2013. (Tr. p.11) She testified that she had surgery on her right shoulder performed by Dr. Romeo and underwent physical therapy following surgery. (Tr. p. 12) Petitioner testified that Dr. Romeo released her back to work with right shoulder lifting restrictions on March 11, 2015. *Id.* She testified that she returned to work with job duties including greeting people at the front desk, filing paperwork, painting, and doing yard work. (Tr. p. 13) Petitioner testified she became the interim Food Service Director doing mostly paperwork, scheduling staff members and doing the dietary requirements, meeting with the dietary manager overseeing a number of facilities to assuring that the meal plans were satisfactory. (Tr. pp. 13-14)

Petitioner testified that after the previous director left, her job duties changed. (Tr. p. 14) She stated that she became in charge of everything in the kitchen, including unloading trucks, ordering food, setting the dining room tables, and filling in for the cook when necessary. (Tr. pp. 14-15) Petitioner testified that she wore a sling on her right arm during this timeframe. (Tr. p. 15) She testified that she advised her supervisor of her work limitations and was told to use her other arm. *Id*. Petitioner confirmed that her March 20, 2015, physical therapy note indicating that she

had no increase in symptoms was accurate. (Tr. p. 15) She testified that the March 24, 2015 physical therapy note indicating that had to cover the kitchen duties and repetitive motions caused her arm to be stiff and sore was also accurate. (Tr. p. 16) Petitioner testified that she had to cover for dietary aides who did not come in including doing the dishes and setting the tables. *Id*. She testified that she informed Dr. Romeo of this history on May 1, 2015. (Tr. p. 17) Petitioner verified that Dr. Romeo's note indicating difficulty with unpacking boxes, taking dishes to the dish rack, carrying the dish rack and carrying heavy pans of food was correct. *Id.* She testified that she had increased right shoulder problems. *Id*. Petitioner testified that Dr. Romeo gave her restrictions on May 1, 2015, of lifting 20 pounds maximum, or carrying objects up to10 pounds. (Tr. p. 18) She testified that she was given limitations on repetitive motions such as loading dish rack, plating multiple plates of food, unpacking boxes, and others greater than five pounds. *Id*.

Petitioner testified that she continued to attend physical therapy. (Tr. pp. 18-19) She testified that she reported that she had increased pain in the anterior aspect of her right shoulder and upper trapezius and noted tightness and pain to physical therapy on May 27, 2015. (Tr. p. 19) Petitioner reported decreased range of motion and complaints of increase of pain (Tr. p. 20) She testified that she was taken off work on June 8, 2015, and diagnosed with reflex capsulitis from overwork. *Id*. Petitioner testified that Dr. Romeo ordered work conditioning (Tr. p. 21)

She testified that she underwent a right shoulder arthroscopy with extensive debridement on December 8, 2015 (Tr. p. 22) Petitioner testified that she had an emergency surgery on Christmas Eve due to an infection following her initial surgery. (Tr. pp. 22-23) Petitioner testified that she returned to physical therapy in January and February 2016 and that she remained off work (Tr. pp. 23-24) She testified that she had an FCE in July 2016. (Tr. p. 25) Petitioner testified that she was given permanent restrictions by Dr. Romeo following the FCE. *Id*. She testified that she treated periodically after Dr. Romeo released her with permanent restrictions, including a follow up visit on May 24, 2017. (Tr. p. 26) Petitioner presented to Dr. Anderson on February 27, 2020, for continued right shoulder pain. *Id*. She testified that she had a decreased range of motion. (Tr. p. 27) She testified that she had tingling in her pinky, ring finger, and middle finger. *Id*. Petitioner testified she underwent an EMG. (Tr. p. 28) She testified that she had right shoulder pain that radiated into her biceps muscle, limited range of motion, and numbness in her right hand on August 3, 2020. *Id*. Petitioner testified that Dr. Anderson told her that she was unlikely to have improvement with another surgery. *Id*. She testified that she now works for the McLean County Health Department in the WIC office. (Tr. p. 29) Petitioner testified that prior to her current job, she also worked for Toys R Us and McLean County Orthopedics. (Tr. p. 30) She testified that she found jobs while working with a vocational counselor. *Id*. She testified that she was a certified nursing assistant and a certified EKG assistant. Petitioner also had a dietary manager certificate, which she reported she was unable to use after treating for right shoulder. (Tr. p. 32) She testified she is unable to work for Ruvuab or Bridgestone because she is not physically capable and that she still has ongoing right shoulder pain. (Tr. p. 33) Petitioner testified that she cannot participate in a lot of her kids' activities due to range of motion issues and that she is unable to swim. (Tr. p. 34). She testified that she is unable to mow the yard or shovel snow. (Tr. p. 35)

On cross-examination, Petitioner testified that she first had right shoulder surgery on June 25, 2012, prior to her work injury of February 25, 2013. (Tr. pp. 36-37) She testified that her surgery was due to all her swimming but that surgery did not limit her range of motion. (Tr. pp. 37-38) Petitioner testified she was working full duty at the time of her 2013 right shoulder injury. (Tr. p. 38) She testified that she treated with Dr. Romeo in 2013 and 2014. *Id*. Petitioner testified that Dr. Romeo performed her right shoulder surgery on December 12, 2014. *Id*. She testified that she followed-up with Dr. Romeo on January 23, 2015, and March 11, 2015. (Tr. p. 39) Petitioner testified that Dr. Romeo did not release her at MMI for the right shoulder on either of those dates. *Id*. She testified that she still had right shoulder pain when she returned to Dr. Romeo on May 1, 2015. *Id*. She testified that she began physical therapy. (Tr. p. 40) She testified that she engaged in work conditioning for a couple of weeks. (Tr. p. 41) Petitioner testified that Dr. Romeo had not released her from her treatment related to the February 25, 2013, injury, when she presented on July 20, 2015. *Id*. She testified she then had two surgeries in December 2015 and then an FCE in July 2016. (Tr. p. 42) Petitioner testified that she had not filed an Application for Adjustment of Claim for an alleged May 1, 2015, accident at that time. *Id*. She testified that she was released from treatment by Dr. Romeo on August 24, 2016. *Id*.

Petitioner testified she signed the Application for the May 1, 2015 alleged accident on May 5, 2017. (Tr. pp. 42-43) She testified that she reviewed the Application prior to filing (Tr. 43). Petitioner testified she signed the Application that alleged a left shoulder injury although there was never a left shoulder injury. (Tr. p. 44) She testified that she never treated for a left shoulder injury. *Id*. Petitioner testified that when she filed the Application for a left shoulder injury, she had not settled her alleged February 25, 2013, right shoulder claim. (Tr. pp. 44-45) She testified that she if the record showed that she treated for her right shoulder in 2017, after being released from treatment in August 2016, then she did. (Tr. pp. 46-47) She then testified that if the records showed that she did not return for right shoulder treatment after 2016 until February 27, 2020, she would agree. (Tr. 47). She testified that she settled her February 25, 2013 right shoulder injury claim in April 2020 (Tr. p. 47) Petitioner testified that the settlement contract was accurate regarding TTD benefits paid from February 26, 2013 through February 28, 2013, December 12, 2013 through March 20, 2015, and June 8, 2015 through January 29, 2017 (Tr. p. 48) She testified that she understood the terms of the settlement contract regarding TTD benefits paid. *Id*. Petitioner testified that she was compensated for permanency as outlined in the settlement contract. (Tr. p. 50) She testified that she was familiar with and understood the terms of her settlement contract when she signed the contract. (Tr. p. 55) She testified she knows Jennifer Carr and that Ms. Carr was a nursing director when she worked there. (Tr. pp. 55-56) Petitoner testified that she worked with and for Ms. Carr. (Tr. p. 56) She testified that she knew her from work and a couple of group outings, and that she spoke to Ms. Carr in February 2023 when Ms. Carr called her to ask about a telephone call from Respondent's attorney. (Tr. pp. 56-57)

Deposition testimony of Jennifer Carr

Petitioner's counsel deposed Jennifer Carr on June 8, 2023, via Zoom. (PX #5) Ms. Carr testified that on May 1, 2015, she worked as a Health Service Director for Respondent. (PX #5 p. 6) She testified that her job duties included managing nurses and would sometimes assist with patients, including administering medication. (PX #5 p. 7) Ms. Carr testified that she was Petitioner's manager in May 2015. *Id*. She testified that she saw Petitioner on a regular basis in

May 2015. (PX #5 p. 8) She testified that she was aware in May 2015 that Petitioner had returned to work from a right shoulder surgery. *Id*. She testified that she was aware that Petitioner returned to work with restrictions and that Petitioner turned in her restriction notes to either herself or Tara, the administrator. (PX #5 p. 9) Ms. Carr testified that when Petitioner returned to work with restrictions, her job duties included office work such as filing, answering the phone, and other duties that she could do with one arm. (PX #5 p. 10) Ms. Carr testified that Petitioner became the Food Service Director after the prior director was either fired or quit, and that her job duties included managing kitchen employees, working on menus, ordering, and whatever else was entailed. (PX #5 p. 11) Ms. Carr testified that Tara would tell Petitioner to do job duties outside of her restrictions if others were unavailable. (PX #5 p. 12) Ms. Carr testified that she told Petitioner not to lift pots or unload trucks and that made Tara mad. *Id*. She testified that Petitioner would be seen crying and was unable to raise her arm due to pain. (PX #5 p. 13) She testified that Tara had Petitioner painting and unpacking boxes. (PX #5 pp. 13-14) She testified that Petitioner would remove her sling to lift pot. (PX #5 p. 14) She testified that she could not overrule Tara because Tara was her boss. (PX #5 p. 15) Ms. Carr testified that she was aware of Petitioner having a right shoulder injury. *Id.* She testified that she had to carry heavy pans and dish racks which varied in weight. (PX #5 p. 16) She testified that Petitioner could not work in the kitchen and not lift anything. *Id*. She testified that Petitioner knew she had to perform her job duties or lose her job. (PX #5 p. 17)

On cross-examination, Ms. Carr testified that she began working for Respondent in the early 2000s. (PX #5 p. 18) She testified that she was hired as a nurse and then became a supervisor. *Id*. She testified that she no longer works for Respondent and is currently employed by Willow Crossing in Columbus, Indiana. (PX #5 pp. 18-19) She testified that she left Respondent in 2013, but clarified that it was around October 2015. (PX #5 pp. 19-20) She testified that she was aware that Petitioner injured her right shoulder in 2013. (PX #5 p. 21) She testified that she was aware that Petitioner was still treating for her right shoulder injury from 2013 in May 2015. (PX #5 p. 21). She testified that Petitioner would report to either her or Tara if she needed direction while working. (PX #5 pp. 21-22) Ms. Carr testified that she saw Petitioner on days that Petitioner worked. (PX #5 p. 22). She testified that she was present a lot of the times when she performed her job duties. (PX #5 p. 22) Ms. Carr testified that Petitioner did not normally work alone. *Id*. She testified that she was aware of Petitioner's work restrictions *Id*. She testified that she observed Petitioner in pain while working. (PX #5 p. 24) She testified that she did not prepare an injury report and was unsure whether one was prepared by Petitioner (PX #5 pp. 24-25) Ms. Carr testified that it was her understanding that Petitioner had right shoulder pain when she began working her light duty position in the kitchen (PX #5 pp. 26-27). Ms. Carr testified that she still communicated with Petitioner and texted her before the deposition (PX #5 p. 28). She testified that she had spoken to Petitioner since she had spoken to Respondent's attorney in February 2023 *Id*. She testified that she had Petitioner as a friend on Facebook (PX #5 p. 31).

On re-direct, Ms. Carr testified that when she spoke to Respondent's attorney, he did not tell her what he wanted her to say but indicated that she might receive a subpoena to appear in Bloomington (PX #5 p. 32).

MEDICAL EVIDENCE

On June 25, 2012, Petitioner presented to Dr. Anthony Romeo for a right shoulder arthroscopy, debridement, and biceps tenodesis. (RX #1)

On February 25, 2013, Petitioner presented to Advocate Bromenn Medical Center emergency room. She reported hurting her right shoulder when attempting to transfer a patient. Right shoulder x-rays were negative for fractures, but a lesion was observed in the upper humerus, likely representing a cyst. Petitioner was diagnosed with right shoulder strain and released back to work without restrictions (PX #6; RX #2)

On February 27, 2013, Petitioner presented to Dr. Joesph Norris at McClean County Orthopedics regarding right shoulder pain. She reported recently injuring her right shoulder while working. Dr. Norris opined had Petitioner had a primary dislocation or a subluxation or a history consistent with multi-directional instability. Physical therapy was recommended for Petitioner's right shoulder and she was given light duty restrictions of no use of her right extremity. (RX #3)

On March 12, 2013, Petitioner began physical therapy at McClean County Orthopedics for her right shoulder pain. (RX #3) On March 21, 2013, Petitioner followed-up with Dr. Norris regarding her right shoulder dislocation. She denied improvement with physical therapy and was recommended to undergo an arthrogram to rule out any articular labral pathology. Petitioner's work restrictions remained. (RX #3) On April 23, 2013, Petitioner followed-up with Dr. Norris who recommended that she follow up with Dr. Romeo for a second opinion because he was unclear as to why she had persistent pain. Her work restrictions remained (RX #3)

On July 1, 2013, Petitioner presented to Dr. Anthony Romeo at Midwest Orthopedics at Rush regarding her right shoulder pain. Dr. Romeo noted that Petitioner's MRI did not reveal any significant findings. He diagnosed her with right shoulder instability. Dr. Romeo recommended that she undergo a right shoulder surgery with probable repair. Her work restrictions remained, but she was allowed to lift up to five pounds. (PX #6; RX #2)

On September 24, 2014, Petitioner returned to Dr. Romeo for her right shoulder pain. Dr. Romeo recommended a right shoulder arthroscopy, labral stabilization, and evaluation of possible repair if needed. Petitioner's work restrictions remained with no lifting over five pounds with the right upper extremity and no work above the shoulder level. (PX #6; RX #2)

Petitioner underwent a right shoulder arthroscopy, anterior inferior labral stabilization, and capsulorrhaphy on December 12, 2014, at the Gold Coast Surgery Center. (PX #7; RX #1)

On January 23, 2015, Petitioner followed-up with Dr. Romeo and reported that she continued to have right shoulder pain. Dr. Romeo recommended she continue physical therapy and to remain off work. (PX #6; RX #2)

On March 11, 2015, Petitioner followed-up with Dr. Romeo who noted that Petitioner's right shoulder surgery in December 2014 was her third right shoulder surgery. He recommended

that Petitoner should continue physical therapy. She was released back to work with light duty restrictions of no lifting over five pounds and no work at or above shoulder level. (PX #6; RX #2)

On May 1, 2015, Petitioner followed-up with Dr. Romeo. Petitioner reported that she had some improvements with her strength but had issues with range of motion. Dr. Romeo recommended that she continue physical therapy and released her back to work with light duty restrictions of no lifting over 20 pounds and minimal to no work at or above shoulder level. (PX #6; RX #2)

On June 8, 2015, Petitioner followed-up with Dr. Romeo who continued her in physical therapy. (PX #6; RX #2)

On July 20, 2015, Petitioner followed-up with Dr. Romeo. He held her off work until another MRI could be obtained due to her ongoing right shoulder pain. (PX #6; RX #2)

On August 10, 2015, Petitioner presented to Eastland Open MRI and underwent a right shoulder MRI which revealed mild supraspinatus bursal surface degeneration/tendinitis, post-surgical changes related to the anterior labrum and slight blunting of the superior labrum, mild glenohumeral chondromalacia accompanied by posterior decentering, and some thickening of the inferior glenohumeral capsule ligament complex accompanied by mild soft tissue effacement of the rotator interval which could reflect some degree of adhesive capsulitis. There was no evidence of a retracted rotator cuff tear. (PX #13; RX #5)

On December 8, 2015, Petitioner presented for a right shoulder subacromial decompression and debridement of her right shoulder. (PX #7; RX #1)

On December 22, 2015, Petitioner presented to Dr. Jerome Oakley at Advocate Bromenn Medical Center for right shoulder pain. She reported undergoing right shoulder surgery but that she continued to have severe right shoulder pain. Petitioner was diagnosed with right shoulder pain and Dr. Oakley recommended an arthroscopic irrigation. (PX #10; RX #1).

On December 24, 2015, Petitioner underwent right shoulder x-rays which did not reveal any fractures or dislocations. (PX #10; RX #1)

On December 25, 2015, Petitioner presented to Dr. David Anderson at Advocate Bromenn Medical Center for a right shoulder arthroscopy, irrigation, and debridement of the gleno-humeral joint and subacromial space, and debridement of arthroscopic portal and incision, exploration and debridement of axillary incision. She was discharged on December 31, 2015. (PX #10; RX #1)

On January 6, 2016, Petitioner returned to Dr. Romeo who kept her off work. Dr. Romeo indicated that Petitioner was doing well regarding her infection, but that it had delayed her rehabilitation period. He recommended additional physical therapy to improve her range of motion and strength. Petitioner remained off work. (PX #6; RX #2)

On February 10, 2016, Petitioner followed-up with Dr. Romeo for her right shoulder pain. Her physical therapy was continued. (PX #6; RX #2)

On March 30, 2016, Petitioner followed-up with Dr. Romeo and reported discomfort in the right shoulder but noted improved pain with range of motion. Dr. Romeo recommended ongoing physical therapy. (PX #6; RX #2)

On May 27, 2016, Petitioner followed-up with Dr. Romeo. An FCE was recommended. Dr. Romeo continued Petitioner off work. (PX #6; RX #2)

On July 7, 2016, and July 8, 2016, Petitioner presented to Work Well Systems, Inc. for an FCE. She was found to be able to lift a maximum of 45 pounds from floor to waste, 20 pounds waste to crown, and 30 pounds bilaterally. (PX #17; RX #2)

On August 24, 2016, Petitioner returned to Dr. Romeo who recommended permanent restrictions based upon the FCE. Dr. Romeo discharged Petitioner from his care at MMI. (PX #6; RX #2)

On February 27, 2020, Petitioner returned to Dr. David Anderson at Orthopedics of Illinois, reporting ongoing right shoulder pain with numbness and tingling in two digits. He recommended an EMG. (PX #10)

On May 27, 2020, Petitioner presented to Dr. Barry Riskin at Christie Clinic reporting pain in the right shoulder, right arm, and right hand. Her EMG results were within normal limits, indicating no neuropathy or radiculopathy. (PX #15)

On July 17, 2020, Petitioner presented to Fort Jesse Imaging Center for an MRI of the right shoulder which revealed partial articular bursal surface tears of the distal supraspinatus tendon as well as chronic changes of tendinosis of the supraspinatus tendon. There was no evidence of a full-thickness rotator cuff tear. (PX #14)

On August 20, 2020, Petitioner followed-up with Dr. Anderson and underwent a right shoulder subacromial injection. Dr. Anderson indicated that Petitioner may have to undergo a right shoulder arthroscopy with subacromial decompression. (PX #10)

On August 31, 2020, Petitioner returned to Dr. Anderson noting that the mild tingling had improved, but she continued complaining of stiffness in her right shoulder. She indicated that the injection did not improve her symptoms. Petitioner was directed to follow-up with Dr. Romeo and that if she had adhesive capsulitis, surgery would be reasonable. (PX #10)

On February 4, 2022, Dr. Anderson prepared a narrative report based upon a record review and opined that Petitioner suffered a new right shoulder injury in May 2015. He opined that Petitioner had been doing well until she began working overtime, which resulted in significant over-use requiring further treatment. (PX #20)

On May 9, 2022, Dr. Lyndon Gross prepared a record review report and opined that it was more likely that Petitioner's ongoing right shoulder problems were related to her surgery of December 12, 2014, and not to a new injury. He noted that Petitioner lacked range of motion in her right shoulder and had ongoing pain when she reported pain from being overworked. He noted that Dr. Romeo did not indicate a new injury to the right shoulder, but that she had continued pain. (RX #7)

Deposition testimony of Dr. Anthony Romeo

Dr. Anthony Romeo was deposed on June 9, 2014 in Chicago, Illinois. (PX #1) Dr. Romeo testified that he was board-certified in orthopedics and sports medicine. (PX #1 p. 6) Dr. Romeo testified that he saw Petitioner on July 1, 2013, and received a history regarding a right shoulder injury that happened at work while she was moving a patient. (PX #1 p. 7) He testified that Petitioner described worsening pain in the anterior/front of her right shoulder as well as posterior/back of her right shoulder. (PX #1 p. 8) Dr. Romeo testified that Petitioner reported instability and catching in her right shoulder. (PX #1 p. 8) He testified that he had previously performed a right shoulder surgery on Petitioner and that she had been released to full duty. (PX #1 pp. 8-9) Dr. Romeo testified that Petitioner had normal range of motion in her right shoulder in November 2012. (PX #1 p. 10) He testified that following her work injury, her range of motion decreased from 170 degrees, which he considered normal, to 100 degrees. (PX #1 p. 13) Dr. Romeo testified that Petitioner had a positive O'Brien's sign, which suggested that she could have a labrum tear. *Id*. He diagnosed Petitioner with right shoulder instability (PX #1 p. 14) Dr. Romeo did not believe she had a labral tear but noted that a labral tear could be present even with a negative MRI. *Id*. He recommended Petitioner undergo right shoulder surgery and gave her light duty restrictions of no lifting greater than five pounds and no working at or above shoulder level. (PX #1 pp. 15-16) Dr. Romeo opined that Petitioner's right shoulder condition was causally related to her work injury moving a patient (PX #1 p. 16) He testified that he identified a partial labral tear during her right shoulder surgery in 2012 but that it was not repaired, only debrided. (PX #1 p. 17) However, he testified that Petitioner's condition in July 2013 was a different problem than that which he operated on in 2012. (PX #1 p. 18) Dr. Romeo testified that the primary issue that he treated in 2012 was tendinitis of the biceps tendon, while the issue in 2013 was right shoulder instability. (PX #1 p. 19)

On cross-examination, Dr. Romeo testified that the surgery he performed in 2012 was a debridement of the superior labral tear and biceps tenodesis. (PX #1 p. 21) He testified that in July 2013, he recommended Petitioner undergo a right shoulder arthroscopic labral repair and capsulorrhaphy, which did not encompass any of the problems he addressed in 2012. *Id*. Dr. Romeo testified that he did not have enough evidence to state whether Petitioner had a labral tear, but that it was one of the possible mechanisms of instability. (PX #1 p. 22) He testified that a cyst identified in Petitioner's x-ray report was likely a normal variant. (PX #1 p. 24) Dr. Romeo testified that the numbness in Petitioner's fourth and fifth digits was not unusual for having an out-of-place shoulder. *Id*.

On re-direct, Dr. Romeo testified that a negative arthrogram would indicate that he had to focus on problems related to other parts of Petitioner's right shoulder. (PX #1 p. 26) He testified that if Petitioner returned for treatment, he would still recommend surgery (PX #1 p. 28)

On re-cross, Dr. Romeo testified that Petitioner's work restrictions should remain in place until after surgery. (PX #1 p. 29) However, he testified that as of the time of the deposition, he was unsure as to her work status. *Id*.

Deposition Testimony of Dr. David Anderson

Dr. David Anderson was deposed on February 9, 2022, by Zoom. (PX #3) Dr. Anderson testified that he was a board-certified orthopedic surgeon with a fellowship in sports medicine (PX #3 pp. 4-5) Dr. Anderson testified that he performed a medical record review of Petitioner's treatment, but that he also saw her as a patient. (PX #3 p. 6) Dr. Anderson testified regarding the medical records he reviewed. (PX #3 pp. 5-15) Dr. Anderson opined that Petitioner suffered a new injury to her right shoulder in May 2015 because her right shoulder was reportedly doing well until she worked overtime resulting in an overuse injury to the right shoulder, which led to further treatment. (PX #3 p. 15) He testified that Petitioner had a potential need for additional shoulder surgery as a result of the May 2015 injury. (PX #3 p. 16)

On cross-examination, Dr. Anderson testified that he was not aware of Petitioner sustaining a left shoulder injury. (PX #3 p. 17) Dr. Anderson testified that he first examined Petitioner on December 25, 2015. (PX #3 p. 18) He testified that he could not recall whether he obtained a history from Petitioner as to the cause of her right shoulder pain on that date. *Id*. He testified that he likely had access to Dr. Oakey's medical report of December 22, 2015. (PX #3 p. 19) He testified that it was possible he had seen Dr. Oakey's report in which he had written that Petitioner told him that her right shoulder condition was related to a job prior to her work in the food service industry. (PX #3 p. 20) Dr. Anderson testified that his February 27, 2020, medical report stated Petitioner injured her right shoulder while moving a patient. (PX #3 p. 19) He testified that he did not have anything in his report that Petitioner injured her right shoulder due to overuse while working in the kitchen in May 2015. (PX #3 p. 21) He testified that he was aware of Petitioner's injury prior to 2015. (PX #3 p. 24) Dr. Anderson testified that he never reviewed a medical report from Dr. Romeo or his assistant. (PX #3 p. 25) Furthermore, he testified that the only document he reviewed noting a sore right shoulder after working overtime came from an email from Nurse Rubio. *Id*. He testified that he relied on an email from a nurse not working for Dr. Romeo regarding what Petitioner believed was causing her right shoulder soreness. *Id*. Dr. Anderson testified that he prepared a record review report after being asked by Petitioner's attorney. (PX #3, p. 26) Dr. Anderson believed his office charged for the report he prepared for Petitioner's attorney. (PX #3 p. 28) Dr. Anderson testified that he could not recall whether he had reviewed Dr. Romeo's medical report from May 1, 2015. (PX #3 p. 29) He could not recall if he had ever reviewed a written job description of Petitioner's job duties performed at the time of her alleged injury, and that his understanding came from Petitioner. (PX #3 p. 31) Dr. Anderson testified that job duties he was aware of could have caused Petitioner to sustain a new injury but he was unaware of how frequently she had to do each job duty or how heavy the items were she had to carry. (PX #3 pp. 32-33). He testified that repetitive work is more likely to increase risk of injury (P's Ex. 3, P. 33). Dr. Anderson testified that he could not quantify the amount of overtime Petitioner worked and never reviewed a copy of her work schedule. He indicated that his opinion that she worked a lot of overtime came from an email by Nurse Rubio on July 20, 2015. (PX #3 pp. 34-35) Dr. Anderson testified that he was aware Petitioner was

already having pain when she presented to Dr. Romeo on May 1, 2015. (PX #3 p. 36) He testified, however, that he could not recall reviewing any of her medical records or diagnostic imaging studies from prior to May 1, 2015, and was unaware of objective changes to Petitioner's right shoulder in May 2015. (PX #3 pp. 36-37) Dr. Anderson testified that he never gave an opinion in his medical reports about Petitioner sustaining a repetitive trauma injury to the right shoulder in 2015. (PX #3 p. 39) He acknowledged not providing an opinion regarding a right shoulder injury from 2015 until his medical record review report of February 4, 2022. *Id*. He testified that he did not have any records that he reviewed showing that Petitioner had been released from treatment for the 2013 injury. *Id*. He testified that he had no reason to dispute that Petitioner was still treating for right shoulder injury from 2013 at the time of her alleged 2015 injury. (PX #3 pp. 39-40)

On re-direct, Dr. Anderson testified that if Petitioner's work in 2015 exceeded her restrictions, it could cause additional symptoms. (PX #3 p. 41) He testified restrictions were to prevent aggravation or reinjury. (PX #3 p. 42) He testified that his treatment of Petitioner and review of her records were consistent with an injury from 2013 and reinjury in 2015. (PX #3 p. 42)

On re-cross, Dr. Anderson testified that he believed the note from July 20, 2015, seemed to imply that Petitioner was working within her work restrictions when she allegedly reinjured right shoulder. (PX #3 pp. 43-44)

Deposition Testimony of Dr. Lyndon Gross

Dr. Lyndon Gross was deposed on February 9, 2022, by Zoom. (RX #8) On direct examination, Dr. Gross testified that he was an orthopedic surgeon specializing in shoulder, knee, and elbow surgery. (RX #8 p. 6) Dr. Gross testified that he performed between 200 and 250 shoulder surgeries per year. *Id*. Dr. Gross testified that he performed a medical records review and reviewed diagnostic images from Petitioner's treatment. (RX #8 p. 7) He testified that he reviewed a copy of Petitioner's written job description. (RX #8 pp. 7-8) He testified that he prepared a report in conjunction with his review of the medical records, films, and written job description. (RX #8 p. 8). Dr. Gross testified that he reviewed medical records and diagnostic studies from Petitioner's right shoulder treatment prior to the alleged accident date of May 1, 2015, and after that date. (RX #8 p. 9) He testified that he reviewed medical records regarding treatment Petitioner had on her right shoulder going back to February 25, 2013. *Id*. He opined that Petitioner's job duties as a Food Service Director did not cause an injury to her right shoulder. (RX # 8 p. 11) Dr. Gross opined that Petitioner had begun to develop adhesive capsulitis around May 1, 2015, which led to her right shoulder tightening up, restricting her range of motion. (RX #8 p. 12) He testified that Dr. Romeo recommended a second surgery to improve Petitioner's range of motion due to the tightening. (RX #8 p. 12) He testified that the purpose of Dr. Romeo's surgery in December 2015 was to remove scar tissue to loosen her shoulder and increase her range of motion. (RX #8 pp. 12-13) Dr. Gross noted that the MRI from August 10, 2015, showed tendonitis and that the inferior capsule was thickened, consistent with adhesive capsulitis or frozen shoulder, which he opined could have been caused by Dr. Romeo's previous surgical intervention. (RX #8 p. 13) Dr. Gross testified that he believed Petitioner's initial surgery in December 2014 caused her right shoulder to tighten up which restricted her

range of motion. (RX #8 p. 13) Dr. Gross testified that he did not believe Petitioner's job duties aggravated her right shoulder condition. (RX #8 p. 14) He testified that, under his definition of an aggravation, the pathology of the shoulder would have had to change, and that he did not believe that happened in Petitioner's situation. (RX #8 pp. 14-15) He opined that Petitioner's right shoulder complaints of decreased range of motion were more likely due to her first surgery than a new injury. (RX #8, p. 15)

On cross-examination, Dr. Gross admitted that he did not refer to Petitioner's written job description in his report. (RX #8 p. 16) However, he testified that the written job description played a part in his medical opinion. (RX #8 p. 17) He testified that it is possible that doing more work than she was supposed to do could cause a shoulder injury. (RX #8 p. 18) Dr. Gross testified that Petitioner's treatment for her right shoulder was reasonable and medically necessary *Id.* He testified that Petitioner's right shoulder condition was related to the earlier work injury *Id*. Dr. Gross testified that, based on Dr. Romeo's medical records, he believed it was more likely than not that Petitioner did not sustain a new right shoulder injury. (RX #8 p. 19) Dr. Gross testified about the number of medical record reviews he prepares in a year and the amount he charges for such records reviews. (RX #8 pp. 20-22)

On re-direct, Dr. Gross testified that his opinions were to a reasonable degree of medical certainty. (RX #8 p. 22)

ARBITRATOR CREDIBILITY ASSESSMENT

The Arbitrator finds that Petitioner's testimony did not appear argumentative or evasive and was credible as it related to her right shoulder complaints beginning in 2013 through the present date.

Dr. Romeo's deposition testimony did not appear to be argumentative or evasive and was consistent with his medical reports. The Arbitrator finds Dr. Romeo to have been credible.

Dr. Anderson's deposition testimony did not appear to be argumentative or evasive. However, the Arbitrator does not find him to be as persuasive as Dr. Gross.

Dr. Gross' deposition testimony did not appear to be argumentative or evasive and was consistent with his report. The Arbitrator finds that Dr. Gross was the most credible and forthright with his opinions regarding Petitioner's right shoulder.

CONCLUSIONS OF LAW

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

The Arbitrator adopts and incorporates by reference the Findings of Fact set forth in the foregoing paragraphs. The Arbitrator finds and concludes that Respondent's expert, Dr. Lyndon Gross, was more persuasive than Petitioner's expert, Dr. Anderson. Dr. Gross opined that Petitioner did not sustain a new injury to her right shoulder on May 1, 2015, and that her pain

and limited with range of motion were related to her February 25, 2013, injury, and her subsequent surgery. Furthermore, the Arbitrator believes that the Petitioner was previously compensated for the treatment she received for the right shoulder through August 24, 2016, and that any treatment following was not causally related to a work related injury of May 1, 2015, but to the injury of February 25, 2013.

The Arbitrator finds and concludes that Dr. Gross' opinion that Petitioner's right shoulder complaints were related to the February 25, 2013, injury and that she did not sustain a new injury to the shoulder due to repetitive job duties on May 1, 2015, to be well reasoned. Dr. Gross' opinion that Petitioner's job duties as a Food Service Director did not aggravate or exacerbate her underlying condition is likewise compelling. The medical records establish that from Petitioner treated consistently for right shoulder pain from February 25, 2013, through August 24, 2016. There was no break in treatment at the time of the alleged May 1, 2015, injury, or in the months preceding or succeeding that date, which would indicate that Petitioner's right shoulder condition had resolved or stabilized. Petitioner had not been released from care or pronounced at MMI prior to her alleged May 1, 2015, injury. In fact, not only do the medical records show that Petitioner continued to have pain and difficulties with range of motion in the months leading up to May 2015, but Petitioner testified that she was still having complaints at the time of her alleged new injury. Petitioner testified that she was still actively treating for her February 25, 2013, right shoulder injury in May of 2015. The records do not suggest, or even imply, that she scheduled to be released from treatment prior to her alleged May 1, 2015, date of injury. Petitioner testified credibly that she had pain while working light duty; however, she was only four and one half months post-surgery and was still actively treating.

Dr. Anderson's opinion that Petitioner sustained a new right shoulder injury in May 2015 was based on his belief that she was doing well at that time, but then began working overtime which resulted in a significant over-use injury. However, the Arbitrator notes that Dr. Anderson could not quantify the number of overtime hours Petitioner worked. Moreover, Dr. Anderson was not aware of the specific tasks that Petitioner did which caused pain nor the frequency with which she performed those tasks. Thus, the Arbitrator finds Dr. Anderson's opinion less persuasive than those of Dr. Gross.

The Arbitrator considered the testimony of Jennifer Carr, Petitioner's supervisor, that she witnessed Petitioner in pain and struggling to perform her job functions. However, her testimony does not establish that Petitioner sustained a new injury. Rather, the Arbitrator finds that Petitioner was struggling to perform the job duties assigned to her in her new position due to her ongoing right shoulder pain attributable to her February 25, 2013, injury and her December 12, 2014, surgery. Ms. Carr testified that she understood that Petitioner had right shoulder pain when she returned to work in her light duty capacity, and that she was unable to perform certain job duties due to her pain. Ms. Carr believed that an injury report would have been prepared if Petitioner sustained additional injuries on May 1, 2015, but was not aware whether one had been filed. Overall, the Arbitrator finds that Ms. Carr testified honestly regarding her observations that Petitioner had pain while working on light duty but notes that she is not a medical professional and could not credibly provide an opinion as to whether Petitioner sustained a new injury. Her observations that Petitioner had right shoulder pain while working were consistent with

Petitioner having right shoulder pain and limited range of motion stemming from her December 12, 2014, surgery for which she was still actively treating.

Finally, the Arbitrator notes that between August 24, 2016, and February 27, 2020, Petitioner did not undergo treatment focused on the right shoulder. When she returned for additional treatment regarding right shoulder pain in 2020, almost four years had passed, in which she testified she had worked for other employers and underwent various life changes. For reasons already stated above, as well as the significant gap in treatment, the Arbitrator finds that Petitioner's treatment in 2020 is not causally related to an alleged May 1, 2015, injury.

Aside from the medical, the Arbitrator finds Petitioner's settlement of the February 25, 2013, accident date to be relevant. (RX #9) In the approved settlement contract, Petitioner and Respondent agreed that Respondent would pay the medical bills related to treatment for the right shoulder from February 25, 2013, through August 24, 2016, and settle permanency for 45% loss of use of the person-as-a-whole. The Arbitrator finds that the terms of the contract between the parties considered the treatment Petitioner underwent in 2015 and 2016 for the right shoulder and that the settlement compensated her for her right shoulder disability and treatment, including her surgeries in 2014 and 2015, to her right shoulder. Moreover, the settlement contract showed that Petitioner was paid temporary total disability for the periods of February 26, 2013, to February 28, 2019, December 14, 2014, to March 20, 2015, and June 8, 2015, through January 29, 2017. These periods of temporary total disability show that the settlement contemplated the relevant timeframes for the surgeries purportedly related to the instant matter. Therefore, Petitioner is seeking to be awarded permanent partial disability benefits twice, for the same body part, under the same considerations as the parties negotiated when settling the 2013 claim. This is not acceptable.

Based on the foregoing, as well as the credible documentary evidence introduced at trial, the Arbitrator finds and concludes that Petitioner failed to establish that she sustained repetitive trauma injuries arising out of and in the course of her employment with Respondent manifesting on May 1, 2015. Furthermore, the Arbitrator further finds and concludes that Petitioner's current condition of ill-being is not causally related to any work related condition manifesting on May 1, 2015, but was related to her work injury of February 25, 2013.

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

The Arbitrator incorporates by reference the Findings of Fact and Conclusions of Law set forth in the preceding paragraphs. Based on the Arbitrator's findings that Petitioner did not sustain an accident arising out of an in the course of her employment on May 1, 2015, and that her current condition of ill being is not causally related to a work related repetitive trauma manifesting on May 1, 2015, but was instead a continuation of her February 25, 2013, injury for which she was already compensated, Respondent is not liable for any medical expenses..

ISSUE (L): Nature and Extent of the Injury

The Arbitrator incorporates by reference the Findings of Fact and Conclusions of Law presented in the foregoing paragraphs. Based on the Arbitrator's findings that Petitioner did not

sustain accidental injuries arising out of and in the course of her employment with Respondent manifesting on May 1, 2015, and her current condition of ill-being is not causally related to a work injury on May 1, 2015, but was instead related to her February 25, 2013, injury for which she was already compensated, Petitioner is not entitled to any permanent partial disability benefits related to an alleged right shoulder injury of May 1, 2015.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC008153
Case Name	Jerald Page v. Ferrara Candy Company
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0104
Number of Pages of Decision	12
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Dirk May
Respondent Attorney	John Hillock

DATE FILED: 3/12/2025

/s/ Raychel Wesley, Commissioner

Signature

25IWCC0104

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JERALD PAGE,

Petitioner,

vs. NO: 19 WC 08153

FERRARA CANDY COMPANY,

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 whether prospective medical care was at issue as well as the nature and extent of any permanent disability, and being advised of the facts and law, corrects the Decision of the Arbitrator as set forth below. The Commission further reverses the Arbitrator and finds Petitioner did not sustain any permanent disability.

Correction

The Findings of Fact include the following paragraph:

> Taking the evidence in it's [*sic*] entirety, the Arbitrator finds the probability of a total knee arthroplasty to be related to the original claim and/or Petitioner's degenerative and congenital condition and not the case at bar. There is no compelling evidence to establish any type of permanent aggravation, acceleration of exacerbation of the Petitioner's right knee condition, as it relates to the 07-16-18 occurrence. Arb.'s Dec., p. 5.

The Order similarly includes a "Prospective Medical" section reflecting "prospective medical treatment is denied." The Commission observes, however, prospective medical care was not raised as an issue before the Arbitrator.

Commission Rule 9030.40 provides as follows: "The completed Request for Hearing form, signed by the parties (or their counsel), shall be filed with the Arbitrator as the stipulation of the parties and a settlement of the questions in dispute in the case." *50 Ill. Adm. Code 9030.40*. The

Appellate Court considered this language in *Walker v. Industrial Commission*, 345 Ill. App. 3d 1084, 1088 (4th Dist. 2004), and confirmed "the request for hearing is binding on the parties as to the claims made therein." Here, the Request for Hearing form establishes prospective medical was not raised as an issue at trial and was not properly before the Arbitrator. ArbX1. Therefore, the Commission strikes the Prospective Medical section from the Order and further strikes the fourth full paragraph on Page 5 of the Decision.

CONCLUSIONS OF LAW

Permanent Disability

The Arbitrator found Petitioner sustained 5% loss of use of the right leg. The Commission views the evidence differently.

Initially, the Commission finds it important to clarify Petitioner's clinical picture as of the July 16, 2018 work accident. The record reflects Petitioner had a right knee injury in January 2018 and on April 11, 2018, Dr. Edward Kolb performed surgery: "1) Arthroscopy with debridement of medial and lateral meniscus tears; 2) Abrasion arthroplasty to the underlying surface of the patella. We did debride down through the area of torn cartilage with some area of grade 3 and perhaps grade 4 chondromalacia." PX2. At the initial post-operative appointment, Dr. Kolb ordered physical therapy and released Petitioner to full duty as of April 30, 2018. PX2. Petitioner attended therapy as directed over the next month. When Petitioner followed up with Dr. Kolb on May 18, 2018, Dr. Kolb noted Petitioner was doing quite well and ordered additional physical therapy; Dr. Kolb directed Petitioner to return in two months and indicated he was "hopeful" that Petitioner would be at maximum medical improvement ("MMI") at that time. PX2. The record reflects Petitioner continued to attend physical therapy through mid-June but did not see Dr. Kolb again prior to the injury herein; as such, Dr. Kolb never placed Petitioner at MMI for the January 2018 work injury. The last medical record prior to the July 16, 2018 accident is the June 14, 2018 physical therapy note, which reads as follows:

> He presents with mild right knee pain, improving right knee range of motion, and improving right knee strength. He is doing his normal duties, but cautiously and more slowly than usual. He is now completing standing tasks, transfers, stairs, squatting, and negotiating uneven surfaces with minimal to no limitation from right knee pain. Kneeling is still uncomfortable. He is confident with the home exercise program and wishes to try working on it independently at this time. PX2.

On July 16, 2018, Petitioner sustained the accident at issue. ArbX1. Petitioner testified he was walking in the facility and "I hit a wet floor and just my feet slid right out from underneath me. I landed flat on my back…I felt [my right knee] twist because I was in some good pain when I got up." T. 8-9.

Petitioner was evaluated by Dr. Kolb's physician's assistant, Shaun Rudicil, PA-C, on July 20, 2018 and July 30, 2018. PX2. The July 30, 2018 office note reflects Petitioner reported worsening pain since a recent fall at work. After examination revealed moderately antalgic gait and a positive McMurray's but no effusion or joint line tenderness, an MRI was ordered to evaluate for internal derangement. PX2.

Petitioner underwent the recommended MRI the next day. When Petitioner followed up with Dr. Kolb on August 3, 2018, he reported his symptoms were unchanged. On review of the MRI, Dr. Kolb diagnosed osteoarthritis, status post arthroscopy. Dr. Kolb performed a right knee aspiration and corticosteroid injection and recommended Petitioner continue to utilize a neoprene knee sleeve. PX2. Petitioner testified the aspiration/injection "helped tremendously." T. 11.

On August 24, 2018, Petitioner was re-evaluated by Dr. Kolb. Petitioner stated he was "at least 75% improved," with only occasional aches and stiffness. Dr. Kolb's examination findings were negative for effusion or tenderness. Dr. Kolb documented Petitioner had gotten good relief from the injection and indicated Petitioner may need repeat injections as symptoms warrant. PX2. The Commission observes the August 24, 2018 appointment was the last time Petitioner saw Dr. Kolb. There is no record of any further right knee treatment in the over five years that lapsed between August 24, 2018 and the November 29, 2023 arbitration hearing.

On October 24, 2023, Dr. Jacob Sams performed a §12 examination and record review at Respondent's request. Dr. Sams concluded Petitioner's July 16, 2018 accident resulted in a resolved right knee strain with exacerbation of degenerative knee arthritis. RX1. Dr. Sams further opined Petitioner had reached MMI and his current symptoms were "related to the degenerative condition of his knee which was present prior to his January 2018 and July 2018 knee injuries." RX1.

At arbitration, Petitioner described his current symptoms. Petitioner stated he has occasional pain as well as intermittent stiffness: "At times it's real stiff. Like, if I'm sitting for a long period of time like I was out here, I get up and I got to flex it a little bit to get it motivated." T. 12. Petitioner further testified he has lost strength: "Well, it's not a hundred percent, but I'm able to do my job." T. 12. Petitioner takes Ibuprofen every day for his knee symptoms and he wears a brace to support his knee at least once a week. T. 12.

The Commission finds the July 16, 2018 accident did not cause any permanent disability. As noted above, Petitioner underwent only a brief course of treatment and the medical records do not document any permanent changes in Petitioner's pathology. Moreover, while Petitioner testified to ongoing complaints, the Commission observes those complaints mirror the symptoms he reported during his pre-accident treatment. Significantly, those symptoms were related to the January 2018 accident from which Petitioner was never placed at MMI.

The Commission finds the preponderance of the credible evidence establishes Petitioner sustained only a temporary exacerbation which fully resolved, and the July 16, 2018 accident did not result in any permanent disability. The Commission vacates the award of 5% loss of use of the right leg.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 20, 2023 is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that the Prospective Medical section of the Order is hereby stricken.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of 5% loss of use of the right leg is hereby stricken.

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

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

The bond requirement in §19(f)(2) is applicable only when "the Commission shall have entered an award for the payment of money." *820 ILCS 305/19(f)(2)*. Based upon the denial of compensation herein, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

March 12, 2025

/s/ *Raychel A. Wesley*

RAW/mck

O: 1/15/25

/s/ *Stephen J. Mathis*

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/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC008153
Case Name	Jerald Page v. Ferrara Candy Company
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Dirk May
Respondent Attorney	John Hillock

DATE FILED: 12/20/2023

THE INTEREST RATE FOR THE WEEK OF DECEMBER 19, 2023 5.13%

/s/Kurt Carlson, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Jerald Page Case # **19** WC **008153**
Employee/Petitioner
v.
Ferrara Candy Company
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Bloomington**, on **11/29/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **07-16-18**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$55,684.20**; the average weekly wage was $**1,070.85**.

On the date of accident, Petitioner was **59** years of age, ***married*** with **0** dependent children.

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

Respondent shall be given a credit of $**0** 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 $**2,968.40** under Section 8(j) of the Act.

ORDER

Prospective Medical

Because the Petitioner failed to prove that the petitioner's condition of ill-being is related to the work activities that he performed for the respondent, prospective medical treatment is denied.

Permanent Partial Disability

The Arbitrator finds that the above accident resulted in a temporary aggravation of pre-existing condition and awards no permanency.

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

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

Kurt A. Carlson **DECEMBER 20, 2023**

Arbitrator

ICArbDec19(b)

Jerald Page v. Ferrara Candy Company Holdings 19 WC 015795
Attachment to Arbitration Decision

FINDINGS OF FACT

The issues in dispute are Petitioner's current condition of ill-being and the nature and extent of Petitioner's injuries. Arbitrators' Exhibit 1.

Petitioner's Testimony

Jerald Page testified that on 7/16/18 he was employed by Nestle USA, which was taken over by Ferrara, as a machinist. (Tr. 7-8) He had worked for Nestle/Ferrara for 42 years. (Tr. 8) Mr. Page testified that on 7/16/18 he was leaving his work area and walking into another area that was cleaning, but it wasn't marked, and he hit a wet floor and his feet slid out from underneath him, landing flat on his back. (Tr. 8) He testified that he felt his right knee twist and he was in some good pain when he got up. (Tr. 9) He described the pain as sharp and that he felt his knee swelling. (Tr. 9)

He testified that on 7/20/18 and 7/30/18 he treated with Shaun Rudicil, who was a physician's assistant for Dr. Kolb. (Tr. 9) He had an MRI of the right knee on 7/31/18. (Tr. 9) He testified that he also had an injection into his right knee and physical therapy. (Tr. 10) He testified that he was also examined at IWIN. (Tr. 10) He testified that the treatment he received helped tremendously. (Tr. 11)

Mr. Page testified that he had a prior knee injury for which he underwent surgery on 4/11/18 and he was able to return to work on 4/30/18 full duty. (Tr. 11) When asked what he noticed at this point regarding his right knee pain, Petitioner stated, "Well, before I fell, I was feeling like I could run around the block. I don't think I can run around the block, but I do a lot of walking, and that was what the doctor asked me to do." (Tr. 11) When asked what he noticed regarding strength of his right knee, Mr. Page replied, "Well, its not a hundred percent, but I am able to do my job." (Tr. 12) He continued to state that at times he will have stiffness and pain and take Ibuprofen. (Tr. 12) Mr. Page testified that he uses a knee brace at times to help with the pain. (Tr. 13) He is currently working full time as a mechanic at Ferrara. (Tr. 13)

On cross examination, Mr. Page testified that July 20, 2018, was the first time he sought treatment for his right knee after the date of accident. (Tr. 14) He testified that he visited Dr. Jacob Sams on October 24, 2023, answered Dr. Sams' questions truthfully and was examined by Dr. Sams. (Tr. 14) He has not sought medical treatment directed to his right knee since August 24, 2018. (Tr. 15) He has since returned to work at Ferrara working in the same position that he held prior to the alleged accident of July 16, 2018. (Tr. 15)

Medical Records

Orthopedics of Illinois

The Arbitrator notes this accident consists of only four treatment dates.

On 7/20/18 (four days after the occurrence) Petitioner treated with Shaun Rudicil, PA. He is now 3 months out from right knee arthroscopy with meniscal debridement. Overall he is doing very well. He still complains of pain, primarily with stair climbing. A majority of his pain is localized to the anterior aspect. He does still feel that things have been improving over the last 6 weeks. PLAN: At this point, I do feel he is progressing quite well. Given the fact that he is still having some discomfort and there continues to be an improvement in his overall recovery we will hold off on placing him at MMI. I did go over his operative report and he was found to have some significant degenerative changes in the patellofemoral compartment. I explained that this can lead to some diffuse anterior knee pain chronically, especially with bending, squatting and stair climbing. We will see him back in 6 weeks for reassessment. He may be a candidate for injections in the future such as steroid versus Visco supplementation. (PX2, Pg. 8)

The Arbitrator notes no accident history was given on the above initial treatment date.

On 7/30/18 petitioner followed up with Shaun Rudicil, PA. We saw him just 1.5 weeks ago at which time he was doing fairly well. He was having some pain due to a recent fall, but nothing significant. That pain as continued to worsen. The fall occurred while at work. He states he fell on a recently mopped floor and landed on his backside. Patient states he felt his patella shift at the time. He has continued to work through this time, which does exacerbate his symptoms. He also has complaints of instability. Patient states the pain is diffuse. He has been using a knee brace which he does not feel is helping. PLAN: at this point is it possible patient is dealing with a loose body secondary to possible patella subluxation episode that occurred 2 weeks ago while at work. I'd like to get him an MRI to rule out internal derangement. He was found to have significant degenerative changes present in the patellofemoral compartment and maybe a candidate for further conservative measures consisting of a steroid and/or viscose supplementation injections. (PX2, Pg. 10)

On 7/31/18 Petitioner underwent an MRI of the Right Knee at Orthopedic of Illinois, 2200 Fort Jesse Road, Suite 250, Normal, IL 61761, (309)-268-0000. History of Right Knee Arthroscopy and meniscal debridement 3 months ago. Comparison: Medial Pain. CONCLUSION: 1.) Focal grade 3 chondromalacia of the patella, with 8x8 mm partial thickness delamination fissure of the inferior patellar apex and adjacent lateral facet. Grade 3 chondromalacia of the lateral trochlea, with moderate to severe chondral thinning. 2.) Grade 3-4 chondromalacia of the medial compartment, with subchondral stress edema of the peripheral tibial plateau and near full-thickness erosion of the posterior weight-bearing femoral condyle. 3.) post meniscectomy changes of the medial meniscus posterior horn, with expansive size of the posterior body-horn junction; question partial extrusion and degeneration versus displaced flap tear. 4.) Inner edge blunting of the lateral meniscus posterior

horn, with mostly intrameniscal signal extending to the anterior body; question post meniscectomy truncation with conversion signal versus 4 mm inner edge radial tear. (PX2, Pg. 2-3)

The Arbitrator notes no acute injury was found by the radiologists interpreting the above.

On 8/3/18 petitioner followed up with Dr. Kolb. His symptoms remain unchanged. His chief complaint is anterior knee pain along with swelling. ASSESSMENT: Right Knee Osteoarthritis, status post right knee arthroscopy nearly 4 months out. PLAN: At this point we will see how Gerald responds to the injection. He is still working and will continue to do so. We will see him back in 3 weeks for repeat clinical evaluation. (PX2, Pg. 12)

On 8/24/18 Petitioner returned to Dr. Kolb. He does have a history of osteoarthritis and last visit we did administer a steroid injection. That has worked well for him, he states that he is at least 75% improved. He has occasional aches and pains as well as stiffness. ASSESSMENT: Right knee osteoarthritis. PLAN: At this point, we will see how the patient continues to do with this injection. He has gotten good relief so far. Patient understands that he have these injections every 6 months. He does understand that eventually he will most likely require total knee arthroplasty. His appointment has been left open. (PX2, Pg. 14)

The Petitioner has sought no additional treatment for his right knee in the last five years. Taking the evidence in it's entirety, the Arbitrator finds the probability of a total knee arthroplasty to be related to the original claim and/or Petitioner's degenerative and congenital condition and not the case at bar. There is no compelling evidence to establish any type of permanent aggravation, acceleration of exacerbation of the Petitioner's right knee condition, as it relates to the 07-16-18 occurance.

Decatur Orthopedic Center - Dr. Jacob Sams

On 10/24/23 petitioner presented for an IME before Dr. Jacob Sams of Decatur Orthopedic Center for his right knee. (RX1) Dr. Sams opined that petitioner sustained an injury to the right knee. He had previously treated with a right knee arthroscopy with meniscal debridement with Dr. Kolb in April of 2018. This was performed 3 months prior to this specific work injury. Since that time, he has been treated for the degenerative condition of his knee. He had an injection of corticosteroids which gave him significant relief. Diagnosis attributed to the 7/16/18 work injury: Right knee strain with exacerbation of degenerative knee arthritis. Medical treatment for the 7/16/18 injury has been reasonable and necessary. Petitioner has reached MMI regarding the work injury to the right knee. His current symptoms are related to the degenerative condition of his knee which was present prior to his January 2018 and July 2018 knee injuries. He does not require any further treatment for his work injuries of the right knee. Any further treatment of his right knee would be directed at the degenerative, pre-existing condition of his knee.

The Arbitrator finds Dr. Sam's medical opinion to be compelling and credible.

ISSUES and CONCLUSIONS

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

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

Petitioner was correctly released to full duty at maximum medical improvement for right knee strain with exacerbation of degenerative knee arthritis that he sustained when he was injured on 7/16/18. Petitioner lost no time from work as a result of his injuries and has been working full duty since the date of accident. There is no evidence of Petitioner's future earnings being affected by his knee injury. The Arbitrator concludes the injuries sustained by Petitioner caused a 5% loss of use of the right leg as a result of the July 16, 2018 work accident.

The Arbitrator notes that Petitioner had settled a previous work accident case involving this right leg for approximately 20% of the right leg.

Petitioner has failed to prove that he sustained any permanent injuries to his back. Petitioner did not testify to any injury to his back during trial or enter any medical records into evidence indicating that he received any treatment for a back injury as a result of this accident. None of petitioner's exhibits contain any record of treatment for a back injury. Therefore, the Arbitrator concludes that the injuries sustained by Petitioner result in a finding of no permanency.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC033358
Case Name	Travis Callis v. Nooter Construction
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0105
Number of Pages of Decision	37
Decision Issued By	Deborah Simpson, Commissioner, Raychel Wesley, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	J Bradley Young, Duane Coleman

DATE FILED: 3/12/2025

/s/ Raychel Wesley, Commissioner

Signature

DISSENT

/s/ Deborah Simpson, Commissioner

Signature

25IWCC0105

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

TRAVIS CALLIS,

Petitioner,

vs. NO: 21 WC 33358

NOOTER CONSTRUCTION,

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 Respondent's "Motion to Include the March 4, 2022 Hearing Transcript and Exhibits in the Record," whether or not the July 19, 2022 §19(b) Decision was interlocutory, whether Petitioner's current condition of ill-being is causally related to the February 3, 2021 accidental injury, entitlement to Temporary Total Disability benefits, entitlement to incurred medical expenses as well as prospective treament, and the propriety of the imposition of penalties and attorney's fees, and being advised of the facts and law, affirms and adopts the Corrected Decision of the Arbitrator, which is attached hereto and made a part hereof. Further, consistent with our determination that the July 19, 2022 Decision was not interlocutory and therefore became a final decision when neither party filed a Petition for Review within 30 days of its issuance, the Commission denies Respondent's "Motion to Include the March 4, 2022 Hearing Transcript and Exhibits in the Record." 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). This case was consolidated for hearing with case 22 WC 15009.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Corrected Decision of the Arbitrator filed September 28, 2023 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $855.31 per week for a period of 56 weeks, representing August 6, 2021 through April 16, 2022; March 16, 2023 through June 21, 2023; and July 21, 2023 through August 29, 2023, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b),

this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any. Respondent shall have a credit of $16,576.20 for TTD benefits already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall reimburse Siemens Energy the sum of $75,100.79, representing TTD benefits Siemens Energy paid Petitioner for the period May 18, 2022 through March 15, 2023.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the reasonable and necessary medical expenses incurred from February 3, 2021 through August 29, 2023 detailed in Petitioner's Exhibit 1, as provided in §8(a), subject to §8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in §8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for right knee surgery as recommended by Dr. Matthew Bradley, including but not limited to any necessary pre-operative clearance and post-operative rehabilitative treatment, as provided in §8(a) of the Act.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner §19(k) penalties in the amount of $23,948.59.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner §16 attorney's fees in the amount of $4,789.72.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent's "Motion to Include the March 4, 2022 Hearing Transcript and Exhibits in the Record" is hereby denied.

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

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

March 12, 2025

/s/ *Raychel A. Wesley*

RAW/mck

O: 1/15/25 /s/ *Stephen J. Mathis*

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PARTIAL DISSENT

I respectfully dissent in part from the Decision of the Majority. The Commission affirmed and adopted the Corrected Decision of the Arbitrator. In a previous arbitration before a different Arbitrator held pursuant to §19(b), the parties stipulated that the only issue that would be presented was whether the parties were subject to the Illinois Workers' Compensation Act and hence whether the Commission had jurisdiction to adjudicate the claim.

In the 19(b) arbitration, the Arbitrator found that Illinois had jurisdiction over the matter but she made no determination as to accident, causation, temporary total disability benefits, or medical expenses, and entered no award. No review was taken on that arbitration. I dissent from the majority because I believe the initial Arbitration decision pursuant to §19(b) was neither final nor appealable. Therefore, I believe that the issue of jurisdiction was still before the Commission.

In the Arbitration decision currently under review, the Arbitrator found the previous determination that Illinois had jurisdiction over the matter was the law of the case not subject to review. In so doing, she correctly noted that "a judgment is final if it determines the litigation on the merits, and it is not final if the order leaves disputed matters pending and undecided." The Arbitrator also correctly noted the WC Act specifies that §19(b) hearing "shall be conclusive as to all other questions except for nature and extent of such disability." 820 ILCS 305/19. Here, the §19(b) litigation resolved only the issue of jurisdiction. All other disputed issues were still pending. Therefore, I believe the §19(b) litigation was not final and appealable. Obviously, it would have been different if the Arbitrator found that Illinois did not have jurisdiction because that decision would have resolved all disputed issues on behalf of Respondent.

§19(b) is intended to advance litigation by disposing of issues regarding liability before the parties are able to determine the nature and extent of the claimant's disabilities, *i.e.* generally while the claimant is still treating. It is intended to establish liability to determine whether to provide medical treatment and temporary disability benefits. Here, the §19(b) arbitration decision did not establish liability or lack thereof. I do not believe that the parties should be able to "stipulate" to limit a §19(b) hearing to adjudicate a single issue. §19(b) is intended to "lubricate litigation" to speed the process for all parties concerned. However, that benefit is defeated if parties employ §19(b) to litigate specific issues rather than the underlying issue of liability. Similarly, conservation of judicial/administrative resources, militate against piecemeal litigation in which individual issues are dealt with in separate hearings. However, while I would have found that the issue of jurisdiction was before the Commission on review, I do not opine here on whether the Arbitrator was correct in her Decision pursuant to §19(b) that the matter was properly adjudicated in Illinois because the Commission did not consider the issue on review.

For the reasons stated above, I would have vacated the Decision of the Arbitrator, regarding the finality of the Decision of the Arbitrator issued pursuant to §19(b), found the issue was still pending before the Commission, and considered the issue on review. Accordingly, I respectfully dissent in part from the Decision of the Majority in which it found that the §19(b) litigation was final and appealable and that the issue of jurisdiction was no longer before the Commission.

/s/ *Deborah L. Simpson* **March 12, 2025**

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC033358
Case Name	Travis Callis v. Nooter Construction
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	33
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Duane Coleman, J Bradley Young

DATE FILED: 9/28/2023

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 26, 2023 5.31%

/s/Maureen Pulia, Arbitrator

Signature

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
CORRECTED MARBITRATION DECISION
19(b)

TRAVIS CALLIS,
Employee/Petitioner

v.

NOOTER CORPORATION,
Employer/Respondent

Case # **21** WC **33358**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Collinsville**, on **8/29/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **2/3/21**, 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 on 2/3/21, Petitioner earned $**15,395.55**; the average weekly wage was $**1,282.96**.

On the date of accident, Petitioner was **46** years of age, ***married*** with **2** dependent children.

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

Respondent Nooter Corporation shall be given a credit of $**16,576.20** for TTD, $**00.00** for TPD, $**00.00** for maintenance, and $**00.00** for other benefits, for a total credit of $**16,576.20**.

Respondent Nooter is entitled to a credit of $**00,00** under Section 8(j) of the Act.

ORDER

Respondent Nooter shall pay all reasonable and necessary medical services from 2/3/21 through 8/29/23, as provided in Sections 8(a) and 8.2 of the Act.

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

Respondent Nooter shall pay all reasonable and necessary medical services for the explant of his current knee prosthesis with an aggressive total synovectomy followed by a replant utilizing titanium, as provided in Sections 8(a) and 8.2 of the Act.

Respondent Nooter shall pay petitioner temporary total disability benefits of $855.31/week for 56 weeks, commencing 8/6/21 through 4/16/22, 3/16/23 through 6/21/23, and 7/21/23 through 8/29/23, as provided in Section 8(b) of the Act.

Respondent Nooter shall reimburse Respondent Siemens Energy for the period of temporary total disability benefits paid petitioner for the period 5/18/22 through 3/15/23, in the amount of $75,100.79.

Respondent Nooter shall pay to Petitioner penalties of $**4,789.72**, as provided in Section 16 of the Act; $**23,948.59**, as provided in Section 19(k) of the Act; and $**10,000.00**, as provided in Section 19(l) 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.

SEPTEMBER 28, 2023

Signature of Arbitrator

ICArbDec19(b)

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 46 year old millright, sustained accidental injuries to his right knee that arose out of and in the course of his employment by respondent Nooter Corporation (hereinafter referred to as 'Respondent Nooter') on 2/3/21, and by respondent Siemens Energy on 5/18/22. Petitioner was employed by Nooter on 2/3/21 and employed by Siemens Energy on 5/18/22. Petitioner began working for Nooter in 2020. Currently, petitioner is not employed.

In 1996 petitioner sustained a crush injury to his left foot that required 2 or 3 surgeries. For this injury he had intermittently utilized hydrocodone for his pain since 1996. At times, petitioner also demonstrates an altered gait as a result of this injury.

Prior to this hearing pursuant to Sections 19(b) and 8(a) of the Act, another hearing pursuant to Sections 19(b) and 8(a) of the Act was held on 3/4/22 before Arbitrator AuBuchon. The sole issue in dispute at that hearing was the issue of jurisdiction. Arbitrator AuBuchon issued her decision on 7/19/22. Arbitrator AuBuchon held that on 2/3/21 Respondent Nooter was operating under and subject to the provision of the Act, and that an employee-employer relationship did exist between petitioner and respondent. Neither party appealed this decision and Arbitrator AuBuchon's decision issued 7/19/22 became final.

On 2/3/21 petitioner was working as a millwright for respondent when he slipped and fell on the ice in the parking lot while going to his truck to get his tools. Following the accident, petitioner presented to Total Access Urgent Care. Petitioner reported that he fell on some ice in the parking lot at work. He indicated that he fell forward, while falling to his side. He noted that as he slipped he twisted his right knee and landed on his right knee as he went down. X-rays were taken and he was assessed with a sprain of the right knee. He was given a knee support with joints. He was instructed to return on 2/10/21. On 2/10/21 petitioner returned and reported that his right knee was less painful than his visit on 2/3/21, but he had tingling in his right foot and his toes were cold. Petitioner reported that since 2/3/21 his right knee had given out 3 times. He also reported that the pain keeps him up at night. He described his pain as dull, achy, and sharp. He was examined and again assessed with a sprain of the right knee. An MRI was recommended, and he was referred to orthopedics.

On 2/12/21 petitioner presented to Dr. Nathan Mall at the Orthopedic Center of St. Louis on the referral of Total Access Urgent Care. Petitioner's chief complaint was right knee pain stemming from his injury on 2/3/21. Petitioner reported pain with driving. He also reported that his toes go cold, and he has pain in the back and front of his right knee. He noted that he was wearing a brace, and that it had been

difficult bearing weight on his right leg since the injury on 2/3/21. Following an examination, and x-ray that showed severe narrowing on his medial compartment of his right knee, with almost bone-on-bone arthritis, Dr. Mall diagnosed right knee strain in the setting of fairly significant osteoarthritis. Dr. Mall ordered an MRI of the right knee since petitioner could not put full weight on his right leg. Dr. Mall was of the opinion that petitioner's right knee strain was caused by the injury on 2/3/21, and his need for physical therapy and anti-inflammatory medications was also the injury on 2/3/21. Dr. Mall released petitioner to light duty work. Dr. Mall prescribed 2 weeks of physical therapy, two times per week.

On 2/17/21 petitioner returned to Dr. Mall following his MRI of the right knee. Dr. Mall was of the opinion that the MRI demonstrated an anterolateral meniscus tear with associated paralabral cyst; medial meniscus tear; chondrosis in the medial compartment with the medial tibial plateau looking fairly good; and cartilage on the medial femoral condyle. Dr. Mall assessed a right medial meniscus tear in the setting of moderate arthritis in the knee. Dr. Mall was of the opinion that the MRI looked better than his radiographs predicted. He saw no evidence of a preexisting medial meniscus tear. He was of the opinion that the anterior and lateral meniscus tears were old, and associated with the paralabral cyst. He was of the opinion that petitioner had an acute, traumatic meniscal tear. Dr. Mall recommended a right knee arthroscopy and partial meniscectomy, and continued petitioner on light duty.

Somewhere between 2/17/21 and 2/25/21 petitioner provided a recorded statement.

On 2/25/21 petitioner underwent an arthroscopic partial medial meniscectomy; chondroplasty of the trochlea and patella; and, a two-compartment synovectomy. This procedure was performed by Dr. Mall. Petitioner followed up with Dr. Mall, and was taken off work. Post operatively petitioner presented to the emergency room at Red Bud Regional Hospital on 3/3/21 and 3/9/21 for right leg pain and swelling. He underwent Doppler studies for a possible DVT. The results were negative. Petitioner was diagnosed with a Baker's cyst of the right knee and started on a Medrol Dosepak.

Petitioner followed-up with Dr. Mall on 3/10/21. At that time, Dr. Mall again recommended physical therapy given that petitioner was unable to put weight on his right foot. Dr. Mall released petitioner to light duty work. Dr. Mall issued work status reports on 3/31/21 and 4/21/21 continuing petitioner on light duty. No office notes for that day were included in the records.

On 5/19/21 petitioner returned to Dr. Mall. Dr. Mall noted that petitioner was doing very well. He noted that petitioner had undergone extensive therapy and felt comfortable returning back to his normal job duties. Dr. Mall noted no swelling on examination. Petitioner had full range of motion and full

strength in his right knee. His assessment was status post right knee arthroscopy and partial meniscectomy.

On 6/2/21 during a telemedicine visit, petitioner reported some swelling if he is on his feet all day with work. Dr. Mall continued him on home exercises and full duty work. On 6/16/21 petitioner had a phone conversation with Dr. Mall. He reported some occasional symptoms in his right knee and felt that there had been some mild decrease in range of motion with flexion. He stated his was working fine. Dr. Mall recommended that petitioner be placed at maximum medical improvement and continued on full duty work. He was of the opinion that the symptoms that petitioner was discussing last time had dissipated, and he was no longer having any substantial symptoms in his knee.

After being released from care, petitioner worked for MC Industries and Walsh Construction until 7/29/21. He worked 5-6 weeks for MC Industries and set robots. This involved sitting and standing and lifting up to 50 pounds. For Walsh Construction he worked at Merchants Bridge doing some welding. Petitioner sat to perform this welding because it was at ground level.

On 7/29/21 petitioner presented to Dr. Matthew Bradley at Metro East Orthopedics. Petitioner reported a sudden onset of right knee pain with catching, clicking, and walking after falling on the ice on 2/3/21. He gave a history of slipping and falling, and during the process twisting his right knee. He provided a consistent history of his treatment with Dr. Mall. He reported pain of 10 on a scale of 10 with weight bearing, in addition to an inability to fully extend his right knee, and the feeling that his right knee was going to give out at any time. Following an examination, record review, and x-rays of the right knee taken that day, Dr. Bradley assessed a right knee arthrosis status post arthroscopic medial meniscectomy. He was of the opinion that petitioner has not reached maximum medical improvement, and was worse off than he was prior to the surgery on 2/25/21. Dr. Bradley ordered a repeat MRI of the right knee. He was of the opinion that performing arthroscopic knee surgery on patients with known degenerative disease can result in severe acceleration of the degenerative disease and loss of cartilage. Dr. Bradley had concerns given the significant worsening of petitioner's pain in combination with the findings on x-rays taken in his clinic that this is in fact the case with petitioner. Dr. Bradley gave petitioner a home exercise program to maintain any amount of strength and motion he is able to gain in his right knee. He also recommended that petitioner continue to take nonsteroidal anti-inflammatory medication and Tylenol as needed.

On 8/3/21 petitioner underwent another MRI of the right knee. The impression was partially resected medial meniscus without evidence of tear; large likely centrally cystic and expansile lesion in the posterolateral femoral condyle at the anterior inferior margin of the ACL lateral condylar footprint,

likely representing interosseous dissection of a large intra-ligamentous cyst or enthesopathic cyst; and, foci of grade III chondral thinning through the patella and trochlear surfaces, medial femoral condylar surfaces with posterolateral condylar grade IV chondral fissuring and probable small grade IV chondral fissures of the patella.

On 8/5/21 petitioner returned to Dr. Bradley to review his MRI results. He reported that his condition remained unchanged. He denied any new trauma. His examination remained unchanged. Dr. Bradley's assessment remained unchanged. Dr. Bradley was of the opinion that petitioner had significant worsening of some pre-existing degenerative disease to the medial aspect of his knee. He noted that petitioner had severe degradation of the cartilage along the medial aspect of his knee with areas of full fissuring noted. Based on this severity in cartilage loss, as well as his pain and dysfunction, Dr. Bradley recommended a total knee arthroplasty. Dr. Bradley authorized petitioner off work.

On 10/27/21 petitioner returned to Dr. Mall. He reported worsening pain in his right knee. He noted that he had seen Dr. Bradley at his attorney's request, a new MRI was performed, and Dr. Bradley told him that he needed a total knee arthroplasty. Petitioner complained of pain with stairs and steps; pain that was worse with declines more than inclines; pain when sitting for long periods of time; and, increased pain if his knee is bent when sitting. He also reported difficulty with uneven terrain. Petitioner reported that he was taking Vicodin and naproxen for his pain. He denied any new injury or event. He noted that his pain was anteromedial and anterolateral overlying and surrounding the patellar region. An examination revealed significant muscle weakness in the right knee, with 3/5 strength in the right quadriceps. Following a review of x-rays taken that day, and review of the MRI of the right knee from 8/3/21. Dr. Mall's assessment was right knee patellofemoral pain related to muscle weakness, status post partial meniscectomy, and mild arthritis in the knee. Dr. Mall strongly recommended against the total knee arthroplasty. He did not believe petitioner had severe osteoarthritis in his right knee. He recommended a cortisone injection into petitioner's right knee, followed by some physical therapy. He noted that petitioner had developed some significant weakness in his right knee. He believed petitioner's symptoms were not related to osteoarthritis, but rather to patellofemoral pain, which is related to muscle weakness.

On 12/15/21 petitioner returned to Dr. Mall. He reported that he was about the same as he was in October and had not gotten much relief. He noted that he had not started physical therapy yet. Dr. Mall examined petitioner and assessed patellofemoral pain in the right knee. He recommended that petitioner undergo the physical therapy and cortisone injection that was recommended. Dr. Mall told petitioner to contact him when the physical therapy and cortisone injection are authorized by respondent.

On 12/20/21 petitioner returned to Dr. Bradley. Petitioner reported that his condition was unchanged. He reported that his right knee hurt the worst when he is using stairs and steps. He also reported a lot of catching and clunking in his right knee. He noted that he feared his knee was going to give out on him. He reported that his pain was slightly increased. He denied any new injury. Following an examination and review of new x-rays Dr. Bradley assessed severe right knee pain status post arthroscopic meniscectomy, and failed arthroscopic partial medial meniscectomy. Dr. Bradley again recommended a right total knee arthroplasty. He released petitioner to light duty work with no lifting, pushing or pulling greater than 20 pounds, 15 minute breaks every hour, and no stairs or ladders.

On 1/26/22 petitioner followed-up with Dr. Mall. An examination revealed significant quadriceps weakness. Dr. Mall's assessment remained the same. Dr. Mall performed a cortisone injection. Petitioner reported that therapy was finally approved and he would be starting on Monday.

On 2/11/22 petitioner had a telephone conversation with Dr. Mall. He reported that he got no relief from his cortisone injection. He also reported that he was falling because his knee felt unstable. Dr. Mall was of the opinion that petitioner's knee instability was due to his muscle weakness. Dr. Mall believed petitioner got no relief from the injection because his muscle weakness would not respond to a cortisone injection. He instructed petitioner to complete his physical therapy. He believed petitioner's muscle weakness would be made worse by a total knee arthroplasty.

On 3/9/22 petitioner followed-up with Dr. Mall. Petitioner reported that he still had pain and swelling in his right knee. He reported no improvement following his injection or course of physical therapy. He reported the he was unable to do his normal activities. Following an examination, Dr. Mall assessed right knee patellofemoral pain and right knee osteoarthritis. Dr. Mall believed petitioner still had pain and symptoms associated with muscle weakness. He noted that petitioner had swelling that was an objective finding seen in the setting of osteoarthritis. Despite these findings, Dr. Mall was of the opinion that petitioner had reached maximum medical improvement from any workplace injury. Dr. Mall was of the opinion that petitioner had the option of another corticosteroid injection and physical therapy versus a total knee arthroplasty. He was of the opinion that petitioner had significant chondrosis in the patellofemoral compartment noted at the time of his surgery, and chondrosis in the medical compartment that had subsequently progressed related to his non-work risk factors of varus deformity and obesity with a BMI greater than 30. Dr. Mall was of the opinion that the progression of petitioner's arthritis is unrelated to his workplace accident, but is related to these other personal risk factors as the prevailing factor in the development of his worsening knee arthritis and continued symptoms. He did not believe petitioner needed any further treatment for his workplace injury.

Petitioner testified that he began working for Siemens Energy in April of 2022 because he was not being paid after Dr. Bradley took him off work on 8/5/21, and he needed money. He testified that he would have never returned to work if he was being paid temporary total disability benefits since Dr. Bradley had him authorized off work. He testified that when he returned to work his right knee was no better than it was on 8/5/21. He testified that he was sore, and was taking hydrocodone and anti-inflammatories at the time.

On 5/18/22 petitioner was working with the General Foreman and crew. There was a 2x4 on the floor with a tarp over it. The 2x4 caught his right foot and he fell and twisted and landed on his right knee. Petitioner testified that after the fall he felt a sharp pain in the outside of his right knee and all around. He testified that he had trouble with his knee locking up while working for Siemens Energy after the fall, but that when he would sit down it would unlock itself.

On 5/26/22 petitioner returned to Dr. Bradley complaining of right knee and left foot pain. He reported tripping over some stack boards while at work. He described falling forward, twisting his foot and striking his right knee and head. He reported some tingling and chills in his left foot. He reported that his right knee was now locking at times. He reported that when it locks up he needs to sit down or take the weight off it to help his right knee unlock. He reported that the pain in his left foot was in a different location and to a different degree than his chronic foot pain since 1996. Following an examination and new x-rays, Dr. Bradley assessed right knee arthropathy status post arthroscopic partial medial meniscectomy, and a left ankle sprain. He recommended treating the ankle sprain conservatively. With respect to the right knee, he ordered a repeat MRI. He took petitioner off work pending his MRI. He prescribed Hydrocodone to be used as needed for severe pain.

On 6/2/22 petitioner underwent a third MRI of the right knee that showed partial medial meniscectomy changes without recurrent meniscus tear; diffusely edematous/strained ACL with proximal ligamentous attachment within the subcortical cystic cavity within the inner aspect of the lateral femoral condyle, unchanged in appearance from previous study; tricompartmental osteoarthritis with grade III/IV chondrosis; grade IV chondral fissure in the mid patellofemoral articulation in the posterior aspect of the lateral tibiofemoral articulation, slightly increased in size in the lateral femoral condyle since 8/3/21.

On 6/13/22 petitioner returned to Dr. Bradley. He stated that although he had no change in his symptoms, he felt that he was worsening in some ways. He reported significant instability. He reported pain in his lateral knee. Following an examination and new x-rays, Dr. Bradley assessed severe right knee pain with instability status post arthroscopic meniscectomy, and failed arthroscopic partial medial meniscectomy surgery. Dr. Bradley noted that petitioner continued to suffer from significant pain and

instability in his right knee. Dr. Bradley was of the opinion that petitioner's new MRI clearly showed advanced chondrosis within his knee, and a very abnormal appearing ACL with a subcortical cyst located within the lateral femoral condyle in the area of the ACL attachment. Dr. Bradley again reiterated his recommendation for a right total knee arthroplasty. Dr. Bradley released petitioner to desk duty only work.

On 8/1/22 petitioner underwent a CT of the right knee. The impression was moderate knee and hip osteoarthritis.

On 8/9/22 petitioner underwent a right knee total arthroplasty performed by Dr. Bradley. His post-operative diagnosis was severe knee pain with bone on bone arthritis. Petitioner followed up post operatively with Dr. Bradley.

On 8/15/22 petitioner presented to the emergency room at Red Bud Regional Hospital in the morning with increased pain, redness and swelling. An x-ray showed soft tissue gas. He was then transferred to SSM Health St. Clare Hospital due to a concern of infectious process. A Doppler study was negative for a DVT. Dr. Bradley came and saw him and believed it was a reaction to adhesive. He removed the dressing and dressed with Ace bandage and discharged. Petitioner received care at home through 9/8/22 through At Home Health Care.

On 8/26/22 petitioner followed up with Dr. Bradley. Overall, he was doing better. Dr. Bradley evaluated petitioner and diagnosed an adhesive allergy. Petitioner was in home health physical therapy. He reported that his pain, motion and strength were improving on a daily basis. Following an examination and updated x-rays, Dr. Bradley assessed status post right total knee arthroplasty. Dr. Bradley recommended a course of outside physical therapy. He released petitioner to desk work only.

Petitioner began a course of physical therapy on 9/1/22 at Athletico.

On 10/13/22 petitioner returned to Dr. Bradley. Petitioner reported that his right knee was pretty good in the morning, but gets tighter and more painful as the day progresses. He stated that he had been working aggressively in physical therapy and at home but cannot get his knee past 90 degrees. Following an examination and new x-rays, Dr. Bradley assessed arthrofibrosis status post right total knee arthroplasty. Dr. Bradley was of the opinion that petitioner had signs or symptoms of an infection or metal allergy. He recommended manipulation under anesthesia.

On 10/19/22 petitioner underwent a right knee manipulation under anesthesia performed by Dr. Bradley. His postoperative diagnosis was right knee arthrofibrosis status post total knee arthroplasty. On 10/27/22 petitioner followed-up with Dr. Bradley. He reported severe pain. Following an examination

and new x-rays Dr. Bradley assessed increased pain and loss of function status post manipulation under anesthesia. Dr. Bradley switched petitioner's medication to Dilaudid. He instructed petitioner to attend outside physical therapy 2-3 times a week in addition to home exercise program. Dr. Bradley took petitioner off work.

On 11/28/22 petitioner returned to Dr. Bradley and told him that physical therapy was cancelled secondary to his insurance not paying and denying it. He denied any significant pain, but was struggling to get his flexion back. Following an examination and new x-rays, Dr. Bradley assessed status post right total knee arthroplasty and manipulation. Since his therapy was terminated Dr. Bradley was going to try and order petitioner a Flexionator type machine to help petitioner regain his motion in his right knee. Dr. Bradley released petitioner to light duty work.

On 12/13/22 the petitioner underwent a Section 12 examination performed by Dr. Timothy Farley, at the request of the Respondent Siemens Energy. Following his record review, detailed history and examination, Dr. Farley assessed right knee degenerative osteoarthritis status post total knee replacement with postoperative arthrofibrosis. He noted that petitioner continued to demonstrate signs of arthrofibrosis despite a manipulation. He noted that petitioner was still complaining of ongoing pain, swelling and loss of motion. Dr. Farley was of the opinion that his assessment flowed from the diagnosis of degenerative osteoarthritis in his right knee. His diagnosis was based on 1) petitioner's underlying degenerative osteoarthritis that predated the injury, and was likely years to decades in evolution, and 2) the fact he underwent an arthroscopic partial medial meniscectomy leading to what appears to be essentially a subtotal meniscectomy of the medial meniscectomy. Dr. Farley was of the opinion that subtotal meniscectomy in the setting of advanced osteoarthritis within the knee joint represents a significant contributing factor, aggravation, and acceleration of degenerative osteoarthritis within the knee. Dr. Farley noted that after the subtotal meniscectomy was performed one year prior to the injury of 5/18/22, petitioner has clearly had a difficulty dealing with it, because he had at least one injection after surgery, and even sought a 2nd opinion, with a follow-up MRI. Dr. Farley was of the opinion that that at that point the dye had been cast for the expected necessity of a knee replacement surgery in the future.

Dr. Farley was of the opinion that the preexisting degenerative conditions of osteoarthritis in the right knee with the previous partial subtotal partial medial meniscectomy represents the main causative factor and the subsequent knee replacement is mostly related to that particular condition. He was of the opinion that the 5/18/22 injury may have caused a temporary aggravation, but he did not see any objective radiographic findings to have caused a permanent aggravation or acceleration of his underlying osteoarthritis diagnosis. Dr. Farley was of the opinion that further treatment is required and is more

related to the knee arthroscopy of 2021 that led to the subtotal meniscectomy, as opposed to the work injury on 5/18/22. He recommended a knee aspiration and blood tests. He also recommended physical therapy. Dr. Farley believed petitioner needed restrictions that allowed altering between sitting and standing, up to 30 minutes and hour, as well as no squatting, stooping, climbing, use of ladders, or crawling. He recommended use of stairs episodically. Dr. Farley did not believe petitioner was ready to work full duty.

On 1/12/23 petitioner returned to Dr. Bradley. He stated that he was doing his rehabilitation program. Following his examination and new x-rays, Dr. Bradley's assessment was that petitioner was doing well status post right knee replacement. He aspirated 40 ml of synovial fluid from petitioner's knee. He continued petitioner in therapy.

On 1/20/23 petitioner was discharged from physical therapy. At this time, petitioner had pain around the right knee that traveled up the thigh. He described it like a bone pain. His functional limitations were identified as descending stairs, driving long periods, kneeling or crawling, and walking on uneven surfaces. His pain levels were 2/10 at rest, and 5/10 with activity. He reported that when his knee goes out on him he experiences a quick sharp pain that can go up to pain level of 6/10. Swelling, an antalgic gait, and decreased knee flexion on the right side were also noted. Petitioner was still unable to perform the functional work conditioning testing due to lack of range of motion at the right knee.

Petitioner testified that he was last paid temporary total disability benefits on 3/14/23. He also received an additional month later in 2023.

On 4/10/23 petitioner returned to Dr. Bradley. He presented him with the Section 12 report of Dr. Timothy Farley. Petitioner reported no significant change in his condition. He stated that he could stand for 45-60 minutes and then has to sit secondary to pain in his right knee. He also gave Dr. Bradley a copy of his recent cultures from Quest Diagnostics. Following his examination and new x-rays, Dr. Bradley's assessment was status post right total knee arthroplasty and subsequent manipulation. He noted that petitioner's condition was not changed, and his motion continued to be 0 to 90 degrees. He also noted mild effusion. Given that his recent cultures showed no infection, Dr. Bradley decided to check for a metal allergy. He continued petitioner's current rehab program and work restrictions.

On 4/22/23 the evidence deposition of Dr. Bradley was taken on behalf of petitioner. Dr. Bradley is an orthopedic surgeon board certified since 2012. He testified that he has spent half his career operating on the upper extremity and the other half operating on the lower extremity. Dr. Bradley testified that when he viewed the MRI taken after Dr. Mall's surgery it showed that the medial meniscus on the inside

of petitioner's right knee had been almost completely resected or cut out from his previous surgery by Dr. Mall. He also noted a large cyst in the lateral femoral condyle on the outside of petitioner's knee, and a "grade 4" arthritis in which the cartilage is completely gone in parts of petitioner's knee. He compared this to the preoperative MRI of the right knee which only showed minimal arthritis "grade 1 or maybe grade 2", which is why Dr. Mall did the arthroscopic procedure. He also noted that Dr. Mall saw no severe arthritis at the time of surgery. Dr. Bradley was of the opinion that the other big change from the preoperative MRI to the postoperative MRI of the right knee was that the cartilage lining those bones was significantly thinned and areas were completely missing. After reviewing the pre-op and post-op MRIs, and operative findings, and seeing petitioner was not getting better with non-surgical treatment, Dr. Bradley testified that on 8/5/21 he recommended a total knee arthroplasty, and petitioner wanted to move forward with it. His diagnosis at that time was an acceleration of a degenerative disease post arthroscopy.

Dr. Bradley opined that petitioner's current condition of ill-being was a direct result of the surgery Dr. Mall performed. Dr. Bradley further opined that since Dr. Mall's opinion was that the surgery was related to the fall, and he was of same opinion, then the meniscus tear petitioner sustained was casually related to his fall. Based on these opinions, Dr. Bradley opined that his recommendation for a right total knee arthroplasty would be directly related to his injuries. Dr. Bradley testified that he agreed with Dr. Farley's opinion that "a subtotal meniscectomy in the setting of advanced osteoarthritis within a knee joint represents a significant contributing factor aggravation and acceleration of degenerative osteoarthritis within the knee." Dr. Bradley was of the opinion that petitioner would not have improved without the surgery he performed. Dr. Bradley was of the opinion that at no time from the time of the meniscectomy until petitioner presented to him for a second opinion had petitioner's symptoms or conditions resolved for the most part, and in fact, had continued to slowly get worse.

Dr. Bradley opined that all his treatment was directly related to petitioner's right knee condition that started upon the accident in February of 2021, and was subsequently treated by Dr. Mall, and eventually him. He believed all petitioner's treatment from him and Dr. Mall has been related to the same initial accident where he fell on the ice. Dr. Bradley was of the opinion that there was nothing wrong with the care and treatment provided by Dr. Mall.

On cross examination by Respondent Nooter. Dr. Bradley testified that although Dr. Mall's note of 5/19/21 indicates petitioner was doing very well, petitioner told him that he never felt well afterwards. Dr. Bradley opined that the worsening of petitioner's arthritis began as soon as Dr. Mall put the scope in petitioner's knee on 2/25/21. He opined that that was the inciting event. He opined that it takes a lot of

time to actually see these changes on x-ray, and when the patient begins to feel these changes, because it takes a lot of time for the cartilage to wear down. Dr. Bradley was of the opinion that the surgery performed by Dr. Mall was the inciting event that took petitioner's right knee from arthritis to severe arthritis. He was of the opinion that sticking the scope in the knee aggravated the arthritis, and the surgery also took away the cushioning for the knee, which alone can really kind of accelerate the arthritis. He opined that the combination of the surgery and what was done in the surgery led to petitioner's arthritis progressing as quickly as it did. He believed petitioner had mild to moderate arthritis in his right knee before the accident on 2/3/21, based on the 2/17/21 MRI. Dr. Bradley was of the opinion that the petitioner's progression of arthritis from the 2/17/21 until the time he saw petitioner would be almost unheard of as a natural progression. Dr. Bradley was of the opinion that it is rare that an arthroscopic procedure like petitioner had would cause an acceleration of arthritis. He testified to 3-4 episodes in his own career. Dr. Bradley was of the opinion that weight of a patient could contribute to the acceleration of arthritis in cases where the shock absorber is taken away in surgery. He noted that petitioner was obese.

Dr. Bradley was of the opinion that petitioner's disease process began starting to present itself on 6/16/21 when he talked to Dr. Mall given his loss of motion, and pain in his knee. He was of the opinion that at this point petitioner's cartilage was probably starting to flake off and thin, thus causing his problems. Dr. Bradley was of the opinion that the changes in petitioner's quad strength in Dr. Mall's report might be due to a difference in the testing method. Dr. Bradley testified that he tests in extension to eliminate everything except the quad muscle, and Dr. Mall may test it with the knee bent which then you can't really tell if the quad is weak, or if the pain is from the patellofemoral joint inhibiting the quad.

Dr. Bradley opined that the fall on 5/18/22 did not overly change petitioner's right knee condition. He was of the opinion that petitioner's complaint at that time was ongoing knee pain that had not really worsened. He further opined that the fall may have aggravated the knee for a while, but the process was already going on.

On cross examination by respondent Siemens Energy Dr. Bradley testified that if Dr. Mall's note and report on 6/16/21 and 6/27/21, respectively, did not involve a physical examination by Dr. Mall, any opinions would be based solely on petitioner's subjective complaints. Dr. Bradley opined that petitioner's complaints on 7/29/21 were directly related to the fall on 2/3/21. He further opined that he did not agree petitioner had reached maximum medical improvement on 7/29/21 and 12/20/21 as it relates to the injury on 2/3/21. Dr. Bradley opined that petitioner's complaints on 12/20/21 were related to his arthritis. Dr. Bradley further opined that his post operative diagnosis on 8/9/22 was not changed in any way as a result of the incident that occurred on 5/18/22, given that he believed petitioner had bone on bone and severe

arthritis before that. He further opined that the need for surgery on 8/9/22 was not medically causally related in any way to the incident on 5/18/22, since petitioner had already been seen before that date and it had already been recommended long before that petitioner undergo the total knee replacement.

Dr. Bradley testified that he agreed with Dr. Farley that on 12/13/22 petitioner had degenerative arthritis of the right knee; that petitioner has an underlying degenerative osteoarthritis that predates the injury; that the subtotal meniscectomy performed by Dr. Mall in 2021 in this setting of advanced osteoarthritis within the knee joint represents a significant contributing factor, or aggravation and acceleration of degenerative osteoarthritis within the right knee; that there was no permanent aggravation or acceleration of petitioner's underlying osteoarthritis diagnosis as it relates to the 5/18/22 incident; and, that the additional treatment for the advanced osteoarthritis is more related to the knee arthroscopy leading to the subtotal meniscectomy as opposed to the work injury of 5/18/22. Dr. Bradley opined that the incident of 5/18/22 did not represent an acceleration of the need for a total knee replacement in light of his recommendation for a total knee replacement prior to 5/18/22.

Dr. Bradley opined that the injury of 5/18/22 caused petitioner a strain of the right knee, which by definition is a self-limiting temporary exacerbation of the symptoms without any physiologic changes noted. He further opined that none of the treatment he provided petitioner after the 5/18/22 for his right knee was related to the injury of 5/18/22. He also opined that no lost time after 5/18/22 with respect to his right knee would be related to the injury he sustained on 5/18/22. Dr. Bradley opined that any future treatment for petitioner's right knee, future time off, restrictions, inability to return to work related to his right knee, or future disability to petitioner's right knee would not be related to the injury on 5/18/22.

On 6/20/23 the evidence deposition of Dr. Timothy Farley, an orthopedic surgeon, was taken on behalf of respondent Siemens Energy. Dr. Farley was of the opinion that although petitioner returned to full duty work between the 2 injuries he was never without symptoms and had even followed up with another physician and had additional treatment. Dr. Farley was of the opinion that the MRI of 8/3/21 demonstrated significant arthrosis within the medial compartment with areas of Grade IV cartilage loss and full thickness fissuring. He testified that Grade IV cartilage loss is essentially bone-on-bone. Dr. Farley was of the opinion that the MRI of 8/3/21 showed that petitioner had bone-on-bone arthritis of his right knee. Dr. Farley was of the opinion that petitioner's pain, stiffness, and loss of range of motion when he examined him was not what you would expect following a knee replacement.

Dr. Farley opined that the conditions he diagnosed and identified during the course of his examination were not medically causally related to the work incident on 5/18/22. Dr. Farley was of the opinion that normal activities of daily living on or about 5/18/22 would create the type of temporary

aggravation petitioner experienced that day. Dr. Farley opined that the injury on 5/18/22 did not accelerate the need for a total knee replacement. Dr. Farley opined that the surgery that was performed by Dr. Mall in 2021 exacerbated and accelerated the arthritic changes within the petitioner's right knee. Dr. Farley opined that the injury on 5/18/22 did not alter or change any of the internal structure of petitioner's right knee. Dr. Farley also opined that absent the injury on 5/18/22 petitioner would have needed a total knee replacement. Dr. Farley opined that the medical care after the 5/18/22 injury was medically related to the degenerative arthritis within petitioner's knee, but not from any permanent aggravation or acceleration from the 5/18/22 injury. He also opined that any additional medical care, time off, disability, or inability to return to his regular type of employment, would not be medically causally related to the 5/18/22 injury.

On cross examination by Respondent Nooter, Dr. Farley testified that the first record he reviewed was dated 3/9/21 from the emergency room at Red Bud Regional Hospital. He did not review Dr. Mall's actual records. Dr. Farley agreed that on 5/26/22 Dr. Bradley noted that petitioner's greatest concern was that his right knee was locking up on him at times. Dr. Farley was of the opinion that the 12/20/21 report noted a lot of catching and clunking, which he believed was the same as catching and locking. He believed petitioner's knee was hurting at that time and people describe things in different ways. Dr. Farley did not believe petitioner had any ACL pathology on 6/13/22. He was of the opinion that petitioner just had fluid on his knee, decreased range of motion, and pain. Dr. Farley was of the opinion that it is the rule, and not rare, that when you remove the meniscus, you are going to accelerate arthritis.

On cross examination by petitioner, Dr. Farley was of the opinion that a slip and fall on ice could possibly be sufficient to cause a medial meniscal tear. He noted that most of the time on ice you don't tear a meniscus because your foot slides and you don't actually pivot on it. He then testified that based on the MRI of 2/17/21 Dr. Mall did not believe petitioner had a preexisting meniscal tear, and therefore a partial meniscectomy procedure was reasonable. He noted that Dr. Mall was of the opinion that the MRI showed an acute traumatic meniscal tear. Dr. Farley did not believe it would have been better for Dr. Mall to offer a knee replacement, or no surgery to petitioner in 2021. Dr. Farley opined that a subtotal meniscectomy in the setting of advance osteoarthritis can accelerate the osteoarthritis, and the need for a knee replacement. He testified that he was not aware of any surgeons recommending surgery to petitioner's knee prior to February of 2021. He further testified that when he examined petitioner on 12/13/22 he was recommending additional treatment and work restrictions. He opined that this additional treatment and work restrictions were more related to the knee arthroscopy of 2021 leading to the subtotal meniscectomy, as opposed to the work injury on 5/18/22.

On 8/7/23 petitioner followed-up with Dr. Bradley. Petitioner's right knee was unchanged. He reported that he underwent the allergy test the previous week. Following an examination and repeat x-rays, Dr. Bradley assessed recurrent effusion and fibrosis status post right knee replacement, and left knee pain. Dr. Bradley noted that the results of the metal allergy test had not yet been received. His work restrictions were continued. With respect to his left knee, Dr. Bradley reviewed the x-rays and MRI of the left knee, and examined petitioner. He discussed non-operative treatment with petitioner.

On 8/10/23 petitioner filed its Petition for Relief Under Sections 19(l), 19(k) and 16 of the Illinois Workers' Compensation Act

On 8/10/23 Dr. Peter Bonutti, performed a record review, at the request of Respondent Nooter. Dr. Bonutti reviewed a chronology of events; a transcript of petitioner's recorded statement; video of petitioner injury on 2/3/21; records of Total Access Urgent Care, Wood River Clinic, Dr. Mall, Dr. Bradley, MRI of right knee taken 2/17/21, 8/3/21 and 6/1/22; deposition of Dr. Bradley; Section 12 report of Dr. Farley; and deposition of Dr. Farley. Following his review of these records, Dr. Bonutti was of the opinion that he agreed with Dr. Farley's opinion that most of the time on ice, one does not tear a meniscus because the foot slides and the person does not actually pivot on it; that petitioner's slip and fall did not cause a tearing of his right medial meniscus because he did not twist his right knee or fall on his right knee as part of that injury, and did not react to his right knee when he got up off the ground; that none of the noted events and behavior related to the slip and fall indicate that petitioner sustained a right medial meniscus tear; that petitioner's medial meniscus tear pre-existed the fall and was not caused by the fall on 2/3/21; that at the time of the injury on 2/3/21 petitioner was close to having bone-on-bone osteoarthritis in his right knee; that on petitioner's MRI of his right knee of 2/17/21 his right medial meniscus tear had the appearance of a degenerative tear; that petitioner sustained a prior ACL injury in his right knee that resulted in his meniscus thinning and degrading over time, resulting in multiple menisci tears, including in the medial aspect of his right knee; that he could not opine that the progression of the osteoarthritis in petitioner's right knee accelerated after Dr. Mall's surgery, and even if it was caused in part by Dr. Mall's surgery; that petitioner's injury on 5/18/22 at Respondent Siemens Energy aggravated or accelerated his then-existing condition of ill-being such that his subsequent condition of ill-being can be said to have been causally connected to that injury and not simply the result of a normal degenerative process of the preexisting condition and not merely temporary; and, that petitioner reached maximum medical improvement for his injury on 2/3/21 in June of 2021.

On 8/22/23 the evidence deposition of Dr. Peter Bonutti, an orthopedic surgeon, was taken on behalf of Respondent Nooter. Dr. Bonutti has a subspecialty in arthroscopy and arthroplasty of the hip

and knee. Dr. Bonutti did not believe it was necessary for him to examine the petitioner. Dr. Bonutti reviewed no records prior to the injury on 2/3/21. Dr. Bonutti testified that prior to the fall on 2/3/21 he noticed in the injury video that prior to his fall petitioner had a reasonable limp pattern where as he walked, he did not appear to fully extend both his legs. He further testified that when he viewed the fall he did not notice or detect any direct or indirect trauma to petitioner's right leg. He was of the opinion that petitioner fell primarily on his left side, and when he got up, he was able to kneel and then torque and lift up on his leg to stand up. Dr. Bonutti noticed no substantive changes in petitioner's walk after he got up. He opined that petitioner did not sustain a meniscal tear as a result of the injury on 2/3/21. Dr. Bonutti opined that there was no acceleration in the progression of petitioner's osteoarthritis after Dr. Mall's surgery. He further opined that even if there was such an acceleration in the progression of petitioner's osteoarthritis after Dr. Mall's surgery, it was not caused by Dr. Mall's surgery.

Dr. Benutti was of the opinion that prior to the injury on 2/3/21 petitioner was destined for a total knee replacement. Dr. Bonutti opined that the effects of the petitioner landing directly on his right knee on 5/18/22 caused his right knee to become more symptomatic, and damaged and/or progressed the pain and/or symptoms from the patella femoral joint. He was also of the opinion that the MRI after the injury on 5/18/22 showed the ACL tear had progressed from a partial tear to an almost complete ACL tear. Dr. Bonutti was of the belief that after the injury on 5/18/22 petitioner had tri-compartmental complaints that he did not have before the injury on 5/18/22. Dr. Bonutti opined that the changes following the injury on 5/18/22 were permanent, not temporary in nature, and was the reason petitioner needed a knee replacement sooner than he otherwise would have.

On cross-examination by Respondent Siemen Energy, Dr. Bonutti was of the opinion that petitioner did not twist his right knee when he slipped and fell on 2/3/21. Dr. Bonutti disagreed that petitioner did not have a meniscal tear prior to the injury on 2/3/21. He was of the opinion that there was no acute meniscal tear seen on the 2/17/21 MRI. Dr. Bonutti was of the opinion that the decision for an arthroplasty is based on the patient, and is a viable option for a patient if they have significant symptoms and functional disability. He would not opine whether or not such a surgery was reasonable when Dr. Bradley recommended it on 10/27/21. Dr. Bonutti was of the opinion that he did not see substantive progression of petitioner's condition between the preoperative MRI on 2/17/21 and post-operative MRI on 8/3/21.

Although Bonutti agreed that petitioner had pain complaints of 10/10 with weight bearing, and an inability to fully extend his knee and a feeling that his knee was going to give out at any time on 7/29/21, he still believed petitioner had reached maximum medical improvement as it relates to his 2/3/21 injury,

when Dr. Mall placed him at maximum medical improvement in June of 2021. Dr. Bonutti was of the opinion that the findings and opinions in Dr. Mall and Dr. Bradley's records were inconsistent and he would not have recommended a total knee arthroplasty in July of 2021. He was also of the opinion that he would not recommend a total knee arthroplasty in July of 2021 because Dr. Bradley did not perform a complete workup.

On cross-examination by petitioner, Dr. Bonutti testified that he was not aware of any restrictions petitioner had on him on 2/3/21. Dr. Bonutti testified that he reviewed no medical records of petitioner's prior to 2/3/21, and was not aware of petitioner having any problems with his right knee from at least 2008 through 2/3/21. Dr. Bonutti testified that he saw no evidence of any trauma to petitioner between 6/16/21 and 7/29/21. Dr. Bonutti agreed that subtotal meniscectomy in the face of degenerative joint disease can accelerate arthritis. Dr. Bonutti agreed that the findings on an MRI are not the sole reason why one would recommend surgery. He was of the opinion that if someone does not have pain or dysfunction he would not recommended a knee replacement based solely on the MRI findings. Dr. Bonutti agreed that petitioner may have been taking the stairs one by one on 2/3/21 so as not to slip and fall on them when they have ice on them, and not because he was exhibiting pain in the right knee. Dr. Bonutti testified that someone can have change in their symptomatology without any change in their MRI, and that trauma can aggravate an underlying osteoarthritis.

On 8/24/23 petitioner last followed up with Dr. Bradley. He provided Dr. Bradley with a video of the fall on 2/3/21. He also provided Dr. Bradley with the results of the metal allergy test. He denied any change in his symptoms. Following an examination Dr. Bradley informed petitioner that he was highly allergic to nickel. He told petitioner he could continue non-operative treatment or undergo an explant of his current knee prosthesis with an aggressive total synovectomy followed by a replant utilizing a different metal. Since petitioner is not allergic to titanium, Dr. Bradley recommended a replant utilizing titanium. Dr. Bradley told petitioner that although it is not a guarantee, he believed that it was more likely than not that exchanging his knee for a titanium knee would certainly improve his function, pain and effusion. Dr. Bradley continued petitioner's restrictions. After viewing the video of the fall on 2/3/21. Dr. Bradley noted that he viewed petitioner slipping on ice and falling. He was of the opinion that petitioner's knees initially bend and twist just prior to him falling onto his buttocks and backside. After viewing the video, Dr. Bradley certainly felt that the slip and fall on the ice was a mechanism that could easily result in the meniscus tear that petitioner was subsequently noted to have, and be treated for.

Respondent Nooter offered into evidence video of the fall on 2/3/21. (Nooter RXA) The video shows the petitioner walking across the back lot and slipping on a patch of ice. It appears both of

petitioner's legs slipped on the ice, with both legs going out and him falling on his left side and then his right side before laying flat on his back. Petitioner is helped up by two other individuals. He begins rubbing the back of his head and bending over with his hands on his thighs. When petitioner begins walking he is demonstrating a visible altered gait where he is favoring his right leg. Petitioner demonstrate no altered gait while walking prior to the skip and fall.

Respondent offered into evidence surveillance of petitioner on 4/12/22 (Nooter RXC) Petitioner is seen in what appears to be a grocery store. He is seen walking slowly from the deli counter with a slightly altered gait to a cart in aisle 4 and placing the item in the cart.

Respondent Nooter entered into evidence some of petitioner's media posts (Nooter's RX F), between 2/25/21 and 3/16/22. Most of the posts selected included pictures of nature petitioner took at family's lake house in Horseshoe Lake. There were other pictures, but none that showed petitioner doing anything.

Petitioner testified that he wants the knee replacement being recommended by Dr. Bradley. He stated that he is only 49 years old and wants to return to work. He testified that he has only worked as a millwright. He finished one year of college.

Petitioner testified that his right knee is not as bad, but his toes are numb and cold. He testified that he can hardly get around some days. He stated that when he gets up and moves around his right knee tightens up and swells, and he cannot bend it. He testified that his left knee hurts now due to him overcompensating on it due to his right knee issues.

Petitioner testified that he had a prior left foot injury in 1996 where he almost lost his left foot. He testified that since then he has had an altered gait (limp). He testified that he has good and bad days with respect to walking after this injury. Petitioner did not recall injuring his right knee in April of 2008 while working for Alberisci Constructors at Riven Cement Company and settling the claim for 7.5% loss of use of the right knee in Missouri. The arbitrator notes that no medical records related to this injury or evidence of this settlement were offered into evidence.

Petitioner testified that he has a business names Callis Duck and Goose Calls where he used to manufacture duck and goose calls. He testified that he has not manufactured any since 2018. He also testified that he does not make duck boxes and decoys. Petitioner has a Facebook account for his business, but has not sold anything for years.

Petitioner testified that his father has a home at Horseshoe Lake, right off of Route 3. He testified that the home is ¼ mile out route 3. Petitioner testified that he takes pictures there and posts them on social

media. He testified that he does not do any strenuous activity there and drives around in the truck or 4-wheeler and takes his pictures that he posts on social media.

A. WAS RESPONDENT OPERATING UNDER AND SUBJECT TO THE ILLINOIS WORKERS' COMPENSATION OR OCCUPATIONAL DISEASES ACT?

Prior to this hearing pursuant to Sections 19(b) and 8(a) of the Act, another hearing pursuant to Sections 19(b) and 8(a) of the Act was held on 3/4/22 before Arbitrator AuBuchon. The sole issue in dispute at that hearing was the issue of jurisdiction. Arbitrator AuBuchon issued her decision on 7/19/22. Arbitrator AuBuchon held that on 2/3/21 Respondent Nooter was operating under and subject to the provision of the Act, and that an employee-employer relationship did exist between petitioner and respondent. No appeal was taken, and the decision of the Arbitrator became final.

Respondent maintains that the issue is not settled even though no appeal was taken from said prior decision, because said decision was not a final and appealable order.

A judgment is final if it determines the litigation on the merits, and it is not final if the order leaves disputed matters pending and undecided. Univ. of Illinois Hosp. v. Illinois Workers' Comp. Comm'n, 2012 IL App (1st) 113130WC, ¶ 9, 983 N.E.2d 505, 508. It is a well-known fact that under the Illinois Workers' Compensation Act, a party is permitted to limit the scope of a hearing in order to avoid the burden of preparing the entire case. Thomas v. Indus. Comm'n, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980). This provision stems from §19(b) of the Act, which provides that each hearing "shall be conclusive as to all other questions except the nature and extent of said disability." 820 Ill. Comp. Stat. Ann. 305/19. So long as a decision isn't a mandate for further administrative proceedings, such as when a case is reversed by the Circuit Court and remanded to the Commission, it is final rather than interlocutory. A.O. Smith Corp. v. Indus. Comm'n., 109 Ill. 2d 52, 54, 485 N.E.2d 335, 336 (1985).

At the prior 19(b) hearing before Arbitrator Aubuchon the parties stipulated that the only issue in dispute was the matter of jurisdiction. Thus, there were no matters pending and undecided as a result of said hearing. All issues pending before the arbitrator at that time were disposed of. It was therefore a final and appealable order.

Under the law-of-the-case doctrine, the unreversed decision of a question of law or fact made during the course of litigation settles that question for all subsequent stages of the suit. Weyer v. Illinois Workers' Comp. Comm'n, 387 Ill. App. 3d 297, 307, 900 N.E.2d 360, 368–69 (2008); Irizarry v. Indus. Comm'n, 337 Ill. App. 3d 598, 786 N.E.2d 218 (2003). Given that no appeal was taken from Arbitrator AuBuchon's decision issued on

7/19/22, holding that jurisdiction was proper in Illinois for petitioner's claim, said decision is final and binding on all further proceedings pursuant to the law-of-the-case doctrine. Consequently, Respondent Nooter was operating and subject to the Illinois Workers' Compensation Act.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

This issue is in dispute in both case 22WC15009 and 21WC33358. Respondent Nooter claims that petitioner's current condition of ill-being is not causally related to the injury on 2/3/21, and Respondent Siemens Energy claims that petitioner's current condition of ill-being is casually related to the injury on 2/3/21 and not the injury on 5/18/22.

Causal connection between accident and claimant's condition may be established by a chain of events including claimant's ability to perform manual duties before accident, decreased ability to still perform immediately after accident, and other circumstantial evidence. Pulliam Masonry v. Indus. Comm'n, 77 Ill. 2d 469, 397 N.E.2d 834 (1979). A claimant's testimony should not be expected to exactly mirror medical proofs due to the fact that the burden of proof is the preponderance of the evidence and inconsistency and error is inherent in the history taking process. Jamie Blommaeet v. Ford Motor Co., 06 I.W.C.C. 0682 (2006); Danny Farris v. Phoenix Corp. of Quad Cities, 11 I.W.C.C. 0610 (2011), aff'd by Farris v. Illinois Workers' Comp. Comm'n, 2014 IL App (4th) 130767WC, 22 N.E.3d 54.

Where a preexisting condition is present, Petitioner need only show that the prior condition was aggravated or the need for treatment accelerated. Sisbro, Inc. v. Indus. Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 672-673 (2003); Schroeder v. Illinois Workers' Comp. Comm'n, 2017 IL App (4th) 160192WC, 79 N.E.3d 833.

A compensable aggravation occurs when a claimant's need for surgery is accelerated. Judith Wheaton v. State of Illinois/Choate Mental Health Center, 13 I.W.C.C. 0467; Bowman v. Gateway Reg'l Med. Ctr., 14 I.W.C.C. 1022; Clutterbuck v. UPS, 15 I.W.C.C. 0046; Howard v. St. Clair Hwy. Dept., 16 I.W.C.C. 0187, modified 16 MR 106.

The law holds that accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it is a causative factor in the resulting condition of ill-being. Sisbro, Inc. v. Indus. Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 672-673 (2003). [Emphasis added]. "Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." Fierke v. Industrial Commission, 309 Ill. App. 3d 1037, 723 N.E.2d 846 (2000).

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 v. Workers' Comp. Comm'n, 371 Ill. App. 3d 882, 888, 864 N.E.2d 266, 272 (2007). Employers are to take their employees as they find them. A.C.& S. v. Industrial Comm'n, 304 Ill. App. 3d 875, 710 N.E.2d 837 (1999) citing General Electric Co. v. Industrial Comm'n, 89 Ill. 2d 432, 434, 433 N.E.2d 671, 672 (1982). The law is clear that if a preexisting condition is aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. Rock Road Constr. v. Indus. Comm'n, 227 N.E.2d 65, 67-68 (Ill. 1967), 37 Ill. 2d 123; see also Illinois Valley Irrigation, Inc. v. Indus. Comm'n, 66 Ill. 2d 234, 362 N.E.2d 339 (1977

In the case at bar, four doctors offered opinions on whether or not petitioner's current condition of ill-being is causally related to the injury on 2/3/21 or 5/18/22. Two were treating doctors, Dr. Mall and Dr. Bradley; one was an examining physician, Dr. Farley; and, the last was a record review, Dr. Bonutti.

The arbitrator has viewed the video of the fall on 2/3/21 and is of the opinion that petitioner lost his footing with both feet on the ice before he fell, and was visibly favoring his right leg after he got up and began to walk away.

Following his fall, petitioner underwent an MRI that Dr. Mall was of the opinion looked better than his radiographs predicted. He assessed a right medial meniscus tear in the setting of moderate arthritis in the knee. He saw no evidence of a preexisting medial tear. He opined that petitioner had an acute, traumatic meniscal tear. For this he performed an arthroscopic partial medial meniscetomy, chondroplasty of the trochea and patella, and a 2-compartment synovectomy. Petitioner underwent post op physical therapy.

By 5/19/21 petitioner seemed to be doing very well and was released to full duty work. However, as soon as petitioner returned to work he reported some swelling in his knee at the end of he day. By 6/16/21 he was reporting occasional symptoms in his right knee, and he felt like there had been some mild decrease in range of motion with flexion. Despite these complaints, Dr. Mall placed petitioner at maximum medical improvement.

When his complaints did not improve, he presented to Dr. Bradley on 7/29/21. His pain was now at a 10/10 with weight bearing. He again reported his inability to fully extend his right knee, and a feeling that his right knee was going to give way. Dr. Bradley assessed a right knee arthrosis status post arthroscopic medial meniscectomy. He was of the opinion that petitioner had not reached maximum medical improvement and was worse off than before the surgery. Dr. Bradley opined that performing arthroscopic knee surgery on patients with known degenerative disease can result in severe acceleration

of the degenerative disease and loss of cartilage. He further opined that this is in fact what was the case with petitioner.

A new MRI was performed and Dr. Bradley noted that it showed significant worsening of some of petitioner's preexisting degenerative disease to the medial aspect of his knee, and severe degradation of the cartilage along the medial aspect of the right knee with areas of full fissuring noted. Based on these findings he recommended a total knee replacement. Dr. Mall was against this surgery, and recommended an injection and physical therapy. Neither of which provided petitioner with any relief. Dr. Bradley assessed severe right knee pain status post arthroscopic meniscectomy, and failed arthroscopic partial medial meniscectomy. Petitioner's condition did not improve. He still had pain, swelling, weakness, caching and clunking, and giving way in his right knee.

Dr. Mall believed petitioner's symptoms were related to his muscle weakness, his swelling to his osteoarthritis. Dr. Mall was of the opinion that the progression in petitioner's arthritis was unrelated to his workplace accident, but rather related to his non-work risk factors of varus deformity, and obesity with a BMI over 30. He was of the opinion that these were the prevailing factors in the development of his worsening knee arthritis and continued symptoms.

After Dr. Bradley recommended a right total knee replacement 8/15/21, petitioner returned to work because he was not getting paid any benefits from Respondent Nooter. On 5/18/22 petitioner caught his right foot on a 2x4, fell and twisted, and landed on his right knee.

A new right knee MRI showed partial medial meniscectomy changes without recurrent meniscus tears, an ACL unchanged in appearance from the previous study, tricompartmental osteoarthritis with Grade III/IV chondrosis, and Grade IV chondral fissure, slightly increased in size in the lateral femoral condyle since 8/3/21. Given the significant changes in the petitioner's MRI Dr. Bradley again recommended a right total knee replacement, and performed it on 8/9/22.

Post-operatively, petitioner continued to get tighter and more painful as the day progressed. He was unable to get his knee past 90 degrees, despite extensive physical therapy and manipulation. After extensive testing petitioner was finally diagnosed with a metal allergy to nickel, which was part of his knee replacement. As a result, Dr. Bradley has recommended an explant of his current knee prosthesis with an aggressive total synovectomy followed by a replant utilizing titanium.

Respondent Siemens Energy had petitioner examined by Dr. Farley. Dr. Farley assessed a right knee degenerative osteoarthritis status post total knee replacement with postoperative arthrofibrosis. He was of the opinion that petitioner's underlying osteoarthritis predated the injury on 2/3/21, and was likely

decades in evolution. He was of the opinion that the arthroscopic partial medial meniscectomy led to a subtotal meniscectomy of the medial meniscectomy. Dr. Farley opined that the setting of advanced osteoarthritis within the knee joint represents a contributing factor, aggravation, and acceleration of degenerative arthritis in the knee. He opined that since petitioner had difficulty dealing with the aftermath of the surgery by Dr. Mall, as seen by his continued treatment, and 2nd opinion, as well as a new MRI of the right knee, that the dye had been cast for the expected necessity of a knee replacement in the future. Dr. Farley was of the opinion that it is a rule, and not rare, that when you remove the meniscus, you are going to accelerate arthritis.

Dr. Farley opined that the 5/18/22 injury may have caused a temporary aggravation, since there were no objective radiographic findings to support a finding that the injury on 5/18/22 caused a permanent aggravation or acceleration of petitioner's underlying osteoarthritis diagnosis. He opined that the injury on 5/18/22 did not accelerate the need for a total knee replacement, or alter or change any of the internal structure of petitioner's right knee.

When Dr. Bradley compared the MRI after the injury on 5/18/22 to the MRI in the summer of 2021, he noted that the 2021 right knee MRI only showed minimal arthritis "grade 1 or maybe grade 2". He was of the opinion that this is why Dr. Mall did the arthroscopic procedure. He further noted that Dr. Mall saw no severe arthritis at the time of surgery. He also noted another change in the MRIs was that the postoperative MRI showed the cartilage lining the bones was significantly thinned and areas were completely missing.

Dr. Bradley opined that petitioner's current condition of ill-being is a direct result of the surgery Dr. Mall performed. He further opined that since Dr. Mall's surgery was related to the fall, then the meniscus tear petitioner sustained was causally related to the fall. Dr. Bradley also agreed with Dr. Farley's opinion that a subtotal meniscectomy in the setting of advanced osteoarthritis within a knee joint represents a significant contributing factor aggravation and acceleration of degenerative osteoarthritis within the knee.

Dr. Bradley was of the opinion that the surgery performed by Dr. Mall was the inciting event that took petitioner's right knee from arthritis to severe arthritis. He opined that sticking the scope in the knee aggravated the preexisting arthritis, and the surgery took away the cushioning for the knee, which alone can really kind of accelerate the arthritis. He opined that the surgery led to petitioner's arthritis progressing as quickly as it did. Dr. Bradley was of the opinion that petitioner only had mild to moderate arthritis before the injury on 2/3/21 based on the MRI of 2/17/21, and his progression of arthritis after 2/17/21 until the time he saw him, would be almost unheard of as a natural progression. Dr. Bradley was

of the opinion that petitioner's disease process began starting to present itself on 6/16/21 when he began reporting to Dr. Mall his loss of motion and pain in his knee.

Dr. Bradley was also of the opinion that the fall on 5/18/22 may have aggravated petitioner's knee for a while, but the disease process was already going on. He did not believe this accident overly changed petitioner's right knee condition. Dr. Bradley was of the opinion that petitioner's postoperative diagnosis on 8/9/22 was not changed in any way as a result of the injury on 5/18/22, given that petitioner was bone on bone and had severe arthritis before that.

Dr. Bonutti performed a record review. He did not examine petitioner. He did not believe petitioner sustained a tearing of his right meniscus as a result of the injury on 2/3/21. The arbitrator finds Dr. Bonutti's belief that petitioner did not react to his right knee when he got up off the ground is not supported by the credible evidence. The arbitrator finds the petitioner was limping and favoring his right knee as he got up and started to walk away from where he fell. Dr. Bonutti was also of the opinion that petitioner's medial meniscus tear preexisted the fall. The arbitrator finds this opinion by Dr. Bonutti is also unsupported by the credible evidence given that the MRI showed a right medial meniscus tear in the setting of moderate arthritis in the knee, and Dr. Mall, who performed the initial surgery was of the opinion that he saw no evidence of a preexisting medial meniscus tear, only that petitioner sustained an acute, traumatic meniscal tear. Dr. Bonutti was also of the opinion that petitioner was close to having bone-on-bone osteoarthritis. The arbitrator notes that this opinion differs greatly from the opinion of Dr. Mall who found that the MRI at that time looked better than the radiographs predicted. Dr. Bonutti was of the opinion that the injury on 5/18/22 aggravated or accelerated petitioner's then existing condition of ill-being such that his condition after 5/18/22 is causally connected to that injury on 5/18/22. The arbitrator finds that this opinion is in contrast to both Dr. Bradley and Dr. Farley's opinions, and is also not supported by the credible medical evidence. Lastly, Dr. Bonutti was of the opinion that petitioner reached maximum medical improvement for his right knee in June of 2021. The arbitrator again finds this opinion unsupported by the credible medical evidence which shows that petitioner was still complaining of swelling and decreased range of motion in June 2021, that continued to get progressively worse.

Dr. Bonutti was of the opinion that petitioner was destined for a total knee replacement prior to 2/3/21. Given that Dr. Bonutti did not review any records within 10 years of 2/3/21, the arbitrator finds this opinion speculative at best. Dr. Bonutti opined that the effects of the petitioner landing directly on his right knee on 5/18/22 caused petitioner's right knee to become more symptomatic, and damaged and/or progressed the pain and/or symptoms from the patella femoral joint, and was the reason petitioner

needed a knee replacement sooner rather than later. The arbitrator finds this opinion unsupported by the credible medical evidence given that Dr. Bradley had already recommended a right total knee replacement on 8/5/21, about 9 months prior to the injury on 5/18/22. Lastly, based on these opinions, as well as Dr. Bonutti's opinion that petitioner had reached maximum medical improvement as it relates to his 2/3/21 in June of 2021, despite his pain complaints on 7/29/21 of 10/10 on scale of 10 with weight bearing, an inability to fully extend his knee, and a feeling that his knee was going to give out at any time, the arbitrator finds Dr. Bonutti's opinions do not appear to be based on the credible evidence, and therefore less than persuasive.

Based on the above, as well as the credible evidence, the arbitrator finds the opinions of Dr. Bradley and Dr. Farley more persuasive than those of Dr. Bonutti, and Dr. Mall's,after the surgery on 2/25/21, and finds the petitioner's current condition of ill-being as it relates to his right knee causally related to the injury petitioner sustained on 2/3/21. The arbitrator finds the petitioner's current condition of ill-being as it relates to his right knee is not causally related to the injury petitioner sustained on 5/18/22.

J. WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY? HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES?

Having found the petitioner's current condition of ill-being as it relates to his right knee causally related to the injury petitioner sustained on 2/3/21, the arbitrator finds the medical services that were provided to petitioner were reasonable and necessary to cure or relieve petitioner from the effects of the injury he sustained on 2/3/21.

The arbitrator finds that although petitioner was diagnosed with a right knee strain following the injury on 5/18/22, Dr. Bradley was of the opinion that his treatment following that date was reasonable and necessary and causally related to the injury on 2/3/21.

Based on the above, as well as the credible evidence, the arbitrator finds Respondent Nooter shall pay all reasonable and necessary medical services from 2/3/21 through 8/29/23, as provided in Sections 8(a) and 8.2 of the Act.

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

K. IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE?

After extensive testing petitioner was finally diagnosed with a metal allergy to nickel, which was part of his knee replacement. As a result, Dr. Bradley has recommended an explant of his current knee prosthesis with an aggressive total synovectomy followed by a replant utilizing titanium. Given that petitioner's current condition of-ill-being as it relates to his right knee is causally related to the injury on 2/3/21, the arbitrator finds petitioner is entitled to this prospective medical care recommended by Dr. Bradley.

The arbitrator finds the initial right knee arthroplasty was needed as a result of petitioner's acceleration of a degenerative disease post arthroscopy on 2/25/21, and this prospective medical care is needed due to the petitioner's allergic reaction to the nickel in the knee replacement that caused worsening symptoms for petitioner.

Respondent Nooter shall pay all reasonable and necessary medical services for the explant of petitioner's current knee prosthesis with an aggressive total synovectomy followed by a replant utilizing titanium, as provided in Sections 8(a) and 8.2 of the Act.

L. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

Petitioner and Respondent Nooter stipulated that Respondent Nooter paid $16,576.20 for temporary total disability benefits for the period 2/20/21-5/15/21, and 6/22/23-7/20/23.

Petitioner and Respondent Siemens stipulated that Respondent Siemens Energy paid $75,100.79 in temporary total disability benefits for the period 5/18/22-3/15/23.

Petitioner claims the periods of temporary total disability that have not been paid are 8/6/21-4/16/22, 3/16/23-6/21/23, 7/21/23-8/29/23, representing 56 weeks.

Having found petitioner's current condition of ill-being as it relates to his right knee causally related to the injury petitioner sustained on 2/3/21, the arbitrator finds Respondent Nooter shall pay petitioner temporary total disability benefits of $855.31/week for 56 weeks, commencing 8/6/21 through 4/16/22, 3/16/23 through 6/21/23, and 7/21/23 through 8/29/23, as provided in Section 8(b) of the Act.

M. SHOULD PENALTIES OR FEES BE IMPOSED UPON RESPONDENT?

Petitioner is claiming that he is entitled to penalties pursuant to Section 19(k) of the Act in the amount of $36,398.90; penalties pursuant to Section 19(l) of the Act in the amount of $10,000.00; and, attorneys fees pursuant to Section 16 of the Act in the amount of $9,763.78.

Pursuant to Section 19(l), penalties are warranted if benefits are withheld or refused without just and good cause. Specifically, penalties under section 19(l) are in the nature of a late fee. Mechanical Devices v. Industrial Comm'n, 344 Ill.App.3d 752, 763, 279 Ill.Dec. 531, 800 N.E.2d 819, 828 (2003). In addition, the assessment of a penalty under section 19(l) is ONLY 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 Comm'n, 183 Ill.2d 499, 515, 234 Ill.Dec. 205, 702 N.E.2d 545, 552 (1998).

The standard for determining whether an employer has good and just cause for a delay in payment is defined in terms of reasonableness. Mechanical Devices, 344 Ill.App.3d at 763, 279 Ill.Dec. 531, 800 N.E.2d at 829.

The Illinois Court of Appeals has dealt with this exact situation on many occasions. "Generally, an employer's reasonable and good-faith challenge to liability does not warrant the imposition of penalties", USF Holland, Inc. v. Industrial Comm'n, 357 Ill. App. 3d 798, 805 (2005); "an employer is entitled to rely in good faith on an opinion of its examining physician to dispute liability", Continental Distributing Co. v. Industrial Comm'n, 98 Ill. 2d 407, 415-16 (1983).

Pursuant to Section 19(k), penalties are warranted only if there is an unreasonable or vexatious delay of payment, or intentional underpayment of compensation, and also when proceedings have been instituted or carried on, which do not present a real controversy, but are merely frivolous or for a delay.

Specifically, the standard for awarding penalties under section 19(k) is higher than the standard under 19(l). Section 19(k) of the Act provides, in pertinent part, as follows: "In case where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation…then the Commission may award compensation additional to that otherwise payable under the Act equal to 50% of the amount payable at the time of such award.". 820 ILCS 305/19(k)(2006).

Pursuant to Section 16, which addresses an award of attorney's fees, an award of fees is proper when the Commission finds the employer or its agent has been guilty of unreasonable or vexatious delay, intentional underpayment of compensation and benefits, or has engaged in frivolous defenses, which does not present a real controversy.

Specifically, Section 16 of the Act provides for an award of attorneys' fees when an award of additional compensation under section 19(k) is appropriate. 820 ILCS 305/16 (West 2006). "The amount of [attorney] fees to be assessed is a matter committed to the discretion of the Commission." Williams v. Industrial Comm'n, 336

Ill.App.3d 513, 516, 271 Ill.Dec. 178, 784 N.E.2d 396, 399 (2003). The calculation of a penalty award under section 19(k) is simply a mathematical computation of 50% of the amount payable at the time of the award. Williams, 336 Ill.App.3d at 516, 271 Ill.Dec. 178, 784 N.E.2d at 399.

The penalties under Section 19(k), however, are not to be awarded against a Respondent with legitimate motives. See Jacobo v. Illinois Workers' Compensation Com'n, IL App (3d) 100807WC, 959 N.E.2d 772, 355 Ill.Dec. 358 (2011).

In the case at bar, Respondent Nooter relies on Dr. Mall's opinion on 6/16/21 that petitioner had reached maximum medical improvement and was released from care as its basis for non-payment of compensation after this date. However, the arbitrator finds when reading this office visit record that petitioner was still reporting some swelling after being on his feet all day at work, some occasional symptoms in his right knee, and a decrease in motion with flexion. The arbitrator does not find these complaints consistent with a person who has reached maximum medical improvement. Additionally, the arbitrator finds it significant that about one month later petitioner presented to Dr. Bradley with worsening symptoms, and underwent a subsequent MRI that showed severe degradation of the cartilage along the medial aspect of his right knee with areas of full fissuring noted.

Following the MRI petitioner returned to Dr. Mall. He denied any new injury but demonstrated worsening pain in his right knee, as well as significant weakness and strength. Dr. Mall recommended additional treatment in the way of a cortisone shot and physical therapy, neither of which provided petitioner with any relief. Petitioner's condition continued to deteriorate. Despite his ongoing complaints and diagnostic evidence of a worsening arthritic condition, Dr. Mall on 3/9/22 was of the opinion that petitioner did not need further treatment for his workplace injury. The arbitrator finds this opinion totally unsupported by the credible evidence, and Respondent Nooter's reliance on this opinion of Dr. Mall, as well as Dr. Mall's maximum medical improvement determination on 6/16/21, constitute a frivolous defense relied on only as a basis for the unreasonable and vexatious delay in payment of benefits to petitioner.

The arbitrator also notes that Respondent Nooter relied only on a partial opinion of Dr. Farley as part of its unreasonable and vexatious delay in payment of benefits to petitioner. In his deposition, Dr. Farley stated that "most of the time on ice you don't tear a meniscus because your foot slides and you don't actually pivot on it." However, what Respondent Nooter ignores is that Dr. Farley was also of the opinion that a slip and fall on ice could possibly be sufficient to cause a medial meniscus tear. The arbitrator further finds Respondent Nooter conveniently omits Dr. Mall's opinion after viewing the MRI of 2/17/21. After viewing the MRI Dr. Mall was

of the opinion that petitioner did not have a preexisting meniscal tear, but rather he sustained an acute traumatic meniscal tear as a result of the injury on 2/3/21.

The arbitrator finds although the petitioner sustained a subsequent accident on 5/18/22, it is unrebutted in the credible record that this injury caused at most a temporary aggravation of petitioner's preexisting right knee condition, as opined to by Dr. Bradley and Dr. Farley. The arbitrator finds it significant that Respondent Nooter did not present any contrary opinion to these causal connection opinions until it had Dr. Bonutti perform a record review on 8/10/23. The arbitrator finds that up to that point Respondent Nooter's actions constituted an unreasonable and vexatious delay in the payment of benefits to petitioner.

The arbitrator next addresses Respondent Nooter's continued reliance that jurisdiction is at issue. The arbitrator notes that after Arbitrator AuBuchon found jurisdiction in Illinois existed, that decision was not appealed by Respondent Nooter or any other party, and the decision of the Arbitrator became final. Therefore, the arbitrator finds Respondent Nooter's decision to continue raising jurisdiction as an issue constitutes a proceeding that does not present a real controversy given that the issue was already decided and is no longer appealable.

In summary, the arbitrator finds Respondent Nooter withheld or refused without just and good cause, to pay petitioner's benefits. The arbitrator further finds Respondent Nooter failed to show an adequate justification for the delay.

Based on the above, as well as the credible evidence, the arbitrator finds Respondent Nooter's failure to pay petitioner temporary total disability benefits from 8/6/21 through 4/16/22, 3/16/23 through 6/21/23, and 6/23/23 through 7/20/23, a total of 56 weeks, constituted an unreasonable and vexatious delay in the payment of benefits to petitioner. The arbitrator further finds Respondent Nooter has failed to prove by a preponderance of the evidence that it had a good faith basis for denying medical and temporary total disability benefits in light of the opinions of Dr. Bradley and Dr. Farley, who the arbitrator found most persuasive.

The arbitrator finds the unpaid temporary total disability benefits of 56 weeks times a TTD rate of $855.31 per week equals $47,897.17. This amount times 50% is equal to $23,948.59. Based on these calculations the arbitrator finds Respondent Nooter shall pay to petitioner penalties of $23,948.59, as provided in Section 19(k) of the Act.

The arbitrator further finds Respondent Nooter shall pay petitioner the maximum of $10,000 in penalties pursuant to Section 19(l) of the Act given that Respondent Nooter's delay in the payment of benefits pursuant to Section 8(a) and Section 8(b) of the Act have been withheld or refused in excess of 333 days at $30 per day.

The arbitrator also finds Respondent Nooter shall pay petitioner $4,789.72 in attorneys' fees pursuant to Section 16 of the Act for the unreasonable and vexatious delay of compensation benefits, as well as Respondent Nooter's frivolous defense on jurisdiction. This amount is equal to 20% of the penalties assessed pursuant to Section 19(k) of the Act.

N. IS RESPONDENT DUE ANY CREDIT?

Respondent Siemens Energy claims it is entitled to a credit from Respondent Nooter for the period of TTD it paid from 5/18/22 through 3/15/23, in the amount of $75,100.79.

Having found petitioner's current condition of ill-being as it relates to his right knee causally related to the injury petitioner sustained on 2/3/21, the arbitrator finds Respondent Nooter shall reimburse Respondent Siemens Energy for the period of temporary total disability benefits paid petitioner for the period 5/18/22 through 3/15/23, in the amount of $75,100.79.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC021311
Case Name	Samantha Payne v. State of Illinois - Dixon Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0106
Number of Pages of Decision	13
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Jim Vainikos
Respondent Attorney	Valarie Owino

DATE FILED: 3/12/2025

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LA SALLE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SAMANTHA PAYNE,

Petitioner,

vs. NO: 21 WC 21311

STATE OF ILLINOIS-
DIXON CORRECTIONAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of occupational disease, causal connection, medical expenses, temporary total disability, and permanent partial disability, and being advised of the facts and law, affirms in part and reverses in part the Decision of the Arbitrator as stated below, but incorporates the Decision of the Arbitrator for the Findings of Fact, which is attached hereto and made a part hereof.

FINDINGS OF FACT

While the Commission incorporates the Findings of Fact from the Decision of the Arbitrator herein, we also supplement the facts with additional facts and medical evidence:

During COVID-19 in the year 2020, Petitioner testified that Respondent employees were given small surgical masks rather than N95 masks. Further, not all employees and inmates wore masks properly.

On October 23, 2020, Respondent was under COVID-19 protocol. Petitioner was an essential worker, and was asked to report to housing units three times per week. The correctional center had quarantine and isolation units for inmates who tested positive for COVID-19. Petitioner would speak with inmates in her office, but would be escorted by security to the cells of the

quarantined inmates to speak with them. Protocol was for inmates to remain in their cell, but Petitioner testified that protocol was not followed, and inmates would be in the hallways.

When Petitioner spoke with quarantined inmates, it was through a steel door with a tiny window. She would have to speak through the window, then place her ear up to it to hear the inmates' response. If Petitioner could not hear the inmate, needed to give them hygienic items, or exchange paperwork, the security would open the door so Petitioner and the inmate could communicate within arm's reach of each other. Inmates were supposed to wear masks, but a lot of them were receiving tickets for not wearing one.

On September 14, 2021, Petitioner underwent a psychiatric evaluation at Katherine Shaw Bethea Hospital. During the evaluation **she reported a history of COVID-19 with lingering effects that manifest as increased forgetfulness**. *PX 1*.

On September 21, 2021, Petitioner followed up for treatment for her unrelated coronary artery disease. **The record references an "abnormal" COVID-19 test dated October 26, 2020. It also indicates a negative test on January 22, 2021**. *PX 1*.

In accordance with the September 21, 2021 record, the Commission also vacates the language in the second-to-last paragraph of page 3 of the Decision of the Arbitrator, which states that results of the October 26, 2020 and January 22, 2021 COVID-19 tests are not in evidence. *Decision of the Arbitrator*, *p. 3*.

CONCLUSIONS OF LAW

I. Accident

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)*; see also *United Electric Coal Co. v. Industrial Commission*, 74 Ill. 2d 198, 202 (1978). To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim. *O'Dette v. Industrial Commission*, 79 Ill. 2d 249, 253 (1980). There are presumptions in place for the accidental contraction of COVID-19.

The Occupational Disease Act states, in relevant part:

> In order for the presumption created in this subsection to apply at trial, for COVID-19 diagnoses occurring on or before June 15, 2020, an employee must provide a confirmed medical diagnosis by a licensed medial practitioner or a positive laboratory test for COVID-19 or for COVID-19 antibodies; **for COVID-19 diagnoses occurring after June 15, 2020, an employee must provide a positive laboratory test for COVID-19 or for COVID-19 antibodies.** (Emphasis added). *820 ILCS 310/1(g)(6)*.

The Commission finds Petitioner in the instant case has satisfied this presumption. On the final page of a September 21, 2021 medical record, there is a reference to an abnormal COVID-19 test, dated October 26, 2020. Therefore, with Petitioner being an essential worker, and obtaining a positive COVID-19 test result after June 15, 2020 and prior to the June 30, 2021 sunset date for this rebuttable presumption, she is within the timeframe for the presumption to apply to her.

Respondent does not offer any rebuttal to this presumption. In fact, in its brief, Respondent concedes that Petitioner has met her burden of proof for an accident under the Act. In accordance with the above, the Commission reverses the Decision of the Arbitrator, and finds Petitioner has proven accident by a preponderance of evidence.

II. Causal Connection

To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he or she has suffered a disabling injury which arose out of and in the course of his or her employment. 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 Commission*, 207 Ill. 2d 193, 203 (2003). Additionally, 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 Commission*, 93 Ill. 2d 59, 63-64 (1982).

Additionally, there is medical evidence in a record on September 14, 2021 corroborating Petitioner's current complaints of ongoing memory loss relating to her COVID-19 illness.

Having already found that Petitioner's contraction of the COVID-19 virus arose out of and in the course of her employment, and there being no medical evidence submitted to show that Petitioner's condition of ill-being was from any other source, the Commission finds that Petitioner's condition of ill-being is causally related to the work accident of October 23, 2020.

III. Medical Expenses

§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 Commission*, 201 Ill. App. 3d 880, 888 (2nd Dist. 1990).

The Arbitrator did not award medical expenses, finding the issue to be moot based on the finding of no accident. Having reversed the denials of accident and causal connection, the Commission also awards medical expenses herein. Consistent with the accident and causal

connection reversals above, the Commission finds that *certain* expenses in Petitioner's Exhibit 2 were related to Petitioner's COVID-19 condition, and were reasonable, necessary, and causally related to the instant claim. These expenses include treatment on: (1) October 26, 2020, (2) November 5, 2020, and (3) November 30, 2020, totaling $464.40. We find that all other expenses in the exhibit are for treatments unrelated to Petitioner's COVID-19 disease.

By November 30, 2020, Petitioner had no respiratory symptoms and her diarrhea had resolved. Petitioner indicates that her ongoing anxiety and depression was a sequela of her contraction of COVID-19, however the record supports an alternative finding. A December 8, 2020 record indicates a long-standing history of anxiety and depression which had worsened over the past couple of *years* due to life situations, namely marital issues with her spouse, and legal issues with her son. Other than Petitioner's own testimony, there is no supporting evidence that her COVID-19 diagnosis was a contributing factor in the deterioration of her mental well-being. Subsequently, her treatment focused on her anxiety/depression, a colonoscopy, and psychiatric care. The Commission finds that medical expenses related to these treatments are not reasonable and necessary to cure or relieve Petitioner from the effects of her COVID-19 illness, and thus are excluded from the award of medical expenses.

Additionally, Respondent acknowledges that Petitioner's medical bills were paid via her husband's private insurance. However, there is no evidence that Respondent contributed to this insurance. Respondent made no claim and offered no evidence proving entitlement to credit under §8(j) of the Act. Accordingly, Respondent remains liable for these awarded medical expenses.

IV. Temporary Total Disability

An employee is temporarily totally disabled from the time an injury incapacitates him until such time as he is as far recovered as the permanent character of the injury will permit. *Archer Daniels Midland Company v. Industrial Commission*, 138 Ill. 2d 107, 118 (1990). To be entitled to TTD benefits, the employee must establish not only that he did not work, but also that he is unable to work and the duration of that inability to work. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Commission*, 236 Ill. 2d 132, 146 (2010). Once an injured employee has reached maximum medical improvement, the disabling condition has become permanent, and he or she is no longer eligible for temporary total disability benefits. *Nascote Industries v. Industrial Commission*, 352 Ill. App. 3d 1067, 1072 (2004). The factors to be considered in determining whether an employee has reached maximum medical improvement include a release to work, medical testimony or evidence concerning the employee's injury, and the extent of the injury. *Land & Lakes Co. v. Industrial Commission*, 359 Ill. App. 3d 582, 594 (2005).

Although the Commission has found accident and causal connection in the instant case, we find it prudent to deny Petitioner's claim for TTD benefits from November 17, 2020 through February 26, 2021. Petitioner testified she received COVID pay from October 26, 2020 through November 16, 2020. However, she also seeks TTD benefits from November 17, 2020 through her termination date of February 26, 2021. While a June 23, 2021 record indicates Petitioner had been off work for the past eight months, it is also noted that this was *initially* due to COVID illness and emotional concerns before eventually being fired by Respondent. However, as noted in the medical

expenses analysis above, there is no indication that Petitioner's inability to work from November 17, 2020 through February 26, 2021 was due to her COVID-19 illness. Interim medical records highlight Petitioner's ongoing treatment for anxiety/depression—which pre-dated her COVID-19 contraction— as well as discussions for undergoing a colonoscopy. Petitioner noted that her mental health had been ongoing "forever," and had worsened over recent years due to familial issues. We find no evidence in the record that her COVID-19 illness contributed to the deterioration of her mental state, leading to an inability to work. Petitioner also indicated no respiratory issues during this time period. She did have a chronic cough, but indicated this pre-dated her COVID-19 illness as well.

Based on the above, we find no medical evidence in the record relating Petitioner's inability to work from November 17, 2020 through February 26, 2021 to her COVID-19 illness. Further, no off-work slips were provided in the record. Accordingly, the Commission affirms the Arbitrator's denial of Petitioner's claim for TTD benefits for these dates.

V. Permanent Partial Disability

In accordance with the above reversals, the Commission now analyzes Petitioner's entitlement to PPD benefits. Pursuant to §8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability for accidental injuries occurring on or after September 1, 2011:

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records.

No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

Regarding factor (i), no AMA impairment rating was offered by either party. Thus, no weight was given to this factor.

Regarding factor (ii), Petitioner was a Correctional Counselor II at the time of injury, but was eventually returned to work with no restrictions. Minimal weight was given to this factor.

Regarding factor (iii), Petitioner was 54 years old at the time of injury. Petitioner is not of a particularly advanced age, but has since retired. She testified to memory loss and difficulty focusing. Some weight was given to this factor.

Regarding factor (iv), there was no loss in Petitioner's future earning potential, as she was able to return to work for Respondent. Significant weight was given to this factor.

Regarding factor (v), Petitioner argues she still suffers from residual COVID-19 symptoms, including memory loss, chronic cough, difficulty focusing, and difficulty sleeping, and requests a 7.5% loss of use of her person as a whole. However, medical records only corroborate COVID-19 related memory loss. The evidence does not delineate to what extent, if any, Petitioner's COVID-19 illness may be contributing to her symptoms of hair loss, anxiety/depression, and insomnia. Accordingly, the evidence supports a finding that Petitioner sustained a 3% loss of use of her person as a whole as a result of her COVID-19 contraction, and is entitled to PPD benefits of $515.39 per week for a period of 15 weeks.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 3, 2023, is hereby affirmed in part and reversed in part for the reasons stated above.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner did sustain an occupational disease arising out of and in the course of her employment with Respondent.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner's current condition of ill-being is causally related to the instant workplace occupational disease.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of $464.40 for medical expenses, as provided in §8(a) and subject to §8.2 of the Act. Respondent shall not receive any §8(j) credit for expenses paid by Petitioner's husband's insurance.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner is not entitled to TTD benefits for the period November 17, 2020 through February 26, 2021.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $515.39 per week for a period of 15 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused a 3% loss of use of Petitioner's person as a whole.

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

IT IS FURTHER ORDERED BY THE COMMISSION that 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.

March 12, 2025

/s/ *Raychel A. Wesley*

RAW/wde

O: 1/15/25

/s/ *Stephen J. Mathis*

43

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC021311
Case Name	Samantha Payne v. State of Illinois Dixon Correctional Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	5
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	Jim Vainikos
Respondent Attorney	Joseph Blewitt

DATE FILED: 10/3/2023

/s/Jessica Hegarty,Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF OCTOBER 3, 2023 5.34%

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

October 3, 2023

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

25IWCC0106

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Samantha Payne Case # **21 WC 021311**
Employee/Petitioner

v.

State of Illinois Department of Corrections
Employer/Respondents

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jessica Hegarty**, Arbitrator of the Commission, in the city of **Ottawa**, on **5/19/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **10/23/2020**, 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-Employer.

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

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

In the year preceding the injury, Petitioner earned $**44,667.09**; the average weekly wage was $**858.98**.

On the alleged date of accident, Petitioner was **54** years of age, ***married*** with **0** dependent children.

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

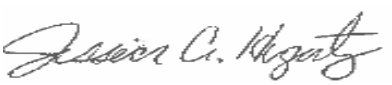
Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services.

ORDER

Because Petitioner has not proven that her alleged accident arose out of and in the course of her employment, her claim for compensation is denied.

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

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



OCTOBER 3, 2023

Arbitrator

FINDINGS OF FACT

On the alleged accident date, Petitioner worked as a correctional counselor at the Illinois Department of Corrections in Dixon, Illinois. She would make herself available in-person to inmates if they wanted to discuss their needs regarding certain prison programs and protocols. This normally occurred face-to-face in a dayroom, but in October 2020, covid protocols were initiated that kept some inmates in isolation and quarantine areas, which meant that Petitioner could only communicate with inmates through cracks in the doors separating the areas. The inmates were supposed to wear masks during such encounters, and if they did not, they received tickets from prison staff.

The Petitioner testified that her last day of work was October 23, 2020. She was off work before that date but could not recall how many days she was docked for unauthorized absence earlier in the month. She received covid pay from the prison from October 26, 2020, through November 16, 2020, which is paid at 100% of her usual pay. After that, she worked two, half days, then she might have gone on another unauthorized leave of absence, but she could not remember, although she said she was out of sick days at the time.

On November 5, 2020, Petitioner presented at Katherine Shaw Bethea Hospital ("KSB") in Dixon Illinois. (PX1). The records from that visit reflect that Petitioner was on "day 13 of Covid illness" and was starting to feel better. Petitioner reportedly had "a little bit of cough and shortness of breath with exertion". Petitioner further reported that she had "a chronic cough" and was seen in the emergency department 2 weeks prior. Petitioner noted that a few days after that visit, she tested positive for Covid-19. (*Id.)* Petitioner reported a history of anxiety, depression, palpitations, and shortness of breath as well as a "chronic cough for the past few years." (*Id.).*

On December 8, 2020, Petitioner followed up at KSB to talk about her depression and anxiety. (*Id.).* Petitioner reportedly had been on FMLA intermittently for several years due to her mood disorder. Petitioner stated that she had been absent from work for "about half of her scheduled hours due to this" and was told that she should get on disability at work due to "the significance of her symptoms." (*Id.).*

Petitioner testified that she was terminated from her position in February 2021 due to unauthorized absences.

After receiving treatment at KSB for unrelated matters such as a colonoscopy, Petitioner returned on May 20, 2021, reporting that "she was terminated from her job due to missing work." (*Id.).* Petitioner reported she was in the process of "fighting to get her job back [and that she] is hoping that if she gets her job back, she can go on long-term disability until she can collect her pension." (*Id.).* At her next visit, Petitioner stated that she felt able to return to work without any restrictions. Petitioner was planning to retire in the "somewhat near future." (*Id.).* At her next visit, Petitioner reported a history of COVID-19 with "lingering effects that manifest as increase [sic] forgetfulness." (*Id.).*

The medical bills from KSB show that Petitioner was tested for COVID-19 on October 26, 2020, January 22, 2021, and September 28, 2021. (PX2). The results of those tests are not among the medical records (PX1).

Petitioner testified that her job with Respondent was reinstated, through her union. nine months after her February 2021, discharge and that she retired in November 2021. She is not currently working.

Regarding her current condition, Petitioner testified that her long- and short-term memory has been affected by her COVID-19 illness and that she can't remember what happened the week prior. She said it is hard to focus, her mind wanders, and she lost half of her hair. She feels chronic fatigue, doesn't sleep well, and has insomnia. She has taken the COVID-19 vaccine and boosters.

The Application for Adjustment of Claim was amended at the time of the hearing to clarify this is an Occupational Diseases Act case and not a Workers' Compensation Act case.

CONCLUSIONS OF LAW

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

An occupational disease is a disease arising out of and in the course of employment. 820 ILCS 310/1(d). The claimant in an occupational disease case has the burden of proving that he suffers from an occupational disease and that a causal connection exists between the disease and his employment. *Freeman United Coal Mining Co. v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120564WC, ¶ 21, 999 N.E.2d 382, 376 Ill. Dec. 499.

In this case, Petitioner did not establish that she suffered from an occupational disease that arose out of and in the course of her employment with Respondent on October 23, 2020. Petitioner provided bills showing she took three COVID-19 tests between October 2020 and September 2021, however, no test results, indicating that Petitioner tested positive for COVID-19, are contained in the record. The records that mention a positive COVID-19 diagnosis are based on Petitioner's self-reported history. There is no record referring to or showing a positive laboratory test for COVID-19.

Because Petitioner has not proven that she suffered from an occupational disease that arose out of and in the course of her employment on October 23, 2020, her claim must end here.

Accordingly, all benefits are denied.

All remaining issues are moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC024777
Case Name	Lois Dober v. Lee County Health Department
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0107
Number of Pages of Decision	14
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	Daniel Arkin

DATE FILED: 3/13/2025

/s/Kathryn Doerries, Commissioner

Signature

25IWCC0107

STATE OF ILLINOIS)
) SS.
COUNTY OF LASALLE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LOIS DOBER,

Petitioner,

vs. NO: 21 WC 024777

LEE COUNTY HEALTH DEPARTMENT,

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, causal connection, medical expenses, prospective medical, temporary disability, and permanent disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission affirms and adopts the Arbitrator's Statement of Facts in its entirety, however, modifies the Arbitrator's Conclusions of Law with regard to Issue (C), whether an accident occurred that arose out of and in the course of Petitioner's employment, and affirms all else. The Commission, therefore, strikes the first full paragraph on page seven of the Arbitrator's Decision, beginning with the word "[i]n" and ending with the word "lunch" and substitutes the following.

> The Commission finds *Gooden v. Indus. Comm'n (Allstate Ins. Co.*), 366 Ill. App. 3d 1064 (2006), instructive, wherein the Petitioner made a choice to attend a company picnic rather than work the first four hours of his shift. In *Gooden*, both parties cited to *Woodrum v. Indus. Comm'n (Bunn-O-Matic*), 336 Ill. App. 3d 561 (2003). The *Gooden* Court noted that Petitioner's injuries were not compensable unless he was ordered or assigned by Respondent to attend the company picnic. The Court held that Gooden "clearly was not ordered to attend the picnic, and thus the pivotal question is whether he was assigned to attend." *Gooden,* at 1066.

The *Gooden* Court held that the key fact in *Woodrum* was that the employer substituted the company picnic for the claimant's regular job assignment. "Everything else remained the same as any other work day--which explains why the claimant would lose pay for not attending the picnic unless he used a personal/vacation day." *Gooden,* at 1067. In contrast, the *Gooden* Court found that Respondent eliminated the problem identified in *Woodrum.* "Rather than substituting the picnic for Gooden's regular job assignment, Allstate merely made the picnic an option or alternative." *Id*. The Court reasoned that "[u]nlike the claimant in *Woodrum,* Gooden did not face the prospect of losing pay or a personal/vacation day as a consequence of foregoing the picnic. Indeed he did not face any loss or repercussion at all. If he chose not to attend the picnic, he could simply work the entire day and be paid just like any other day." *Id.* The Court noted that Petitioner made a voluntary choice to attend rather than work, and Section 11 of the Act clearly bars benefits under such circumstances.

The Commission finds the subject Petitioner made a similar voluntary choice to attend the employee appreciation lunch rather than work her regular job assignment; either way she would get paid for the entire day, just like any other day. Petitioner did not face any repercussion if she did not attend the appreciation lunch; there was no consequence of losing pay or a personal or vacation day to give rise to effective compulsion.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on August 22, 2023, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner did not sustain accidental injuries that arose out of and in the course of her employment on July 28, 2021, pursuant to Section 11 of the Act. Based upon this finding, all benefits are hereby denied.

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

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

Based upon the named Respondent herein, no bond is set by the Commission. *820 ILCS 305/19(f)(2)*. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

MARCH 13 2025

/s/*Kathryn A. Doerries*

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KAD/bsd
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Kathryn A. Doerries

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC024777
Case Name	Lois Dober v. Lee County Health Department
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Roma Dalal, Arbitrator

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	Daniel Arkin

DATE FILED: 8/22/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 22, 2023 5.29%

/s/ Roma Dalal, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF LASALLE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Lois Dober
Employee/Petitioner

v.

Lee County Health Department
Employer/Respondent

Case # **21** WC **024777**

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 **Roma Dalal**, Arbitrator of the Commission, in the city of **Ottawa**, on **June 28, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **July 28, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

Timely notice of this claimed accident ***was*** given to Respondent. However, as noted above, the Arbitrator has found that the Petitioner did not sustain an accident that arose out of and in the course of her employment on July 28, 2021.

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

In the year preceding the injury, Petitioner earned $**35,665.76**; the average weekly wage was $**685.88**.

On the date of accident, Petitioner was **55** years of age, ***married*** with **0** dependent children.

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

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

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

ORDER

The Arbitrator finds Petitioner did not sustain accidental injuries that arose out of and in the course of her employment on July 28, 2021 pursuant to Section 11 of the Act. Based upon this finding, all benefits 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.

Signature of Arbitrator

AUGUST 22, 2023

STATE OF ILLINOIS)
) SS
COUNTY OF LASALLE)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Lois Dober,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 21WC24777
Lee County Health Department,	)	
	)	
	)	
Respondent.	)	

This matter proceeded to hearing on June 28, 2021 in Ottawa, Illinois before Arbitrator Dalal. Issues in dispute included accident, notice, causal connection, medical bills, temporary total disability (TTD), nature and extent of the injury (PPD) and credit due to Respondent for benefits paid as sick pay. (Arb. Ex.1).

Statutory Considerations

Section 11 of the Workers' Compensation Act for the State of Illinois states as follows relative to Voluntary Recreation:

> "Accidental injuries incurred while participating in voluntarily recreational programs including but not limited to athletic events, parties and picnics do not arise out of and in the course of the employment even though the employer pays some or all of the cost thereof. This exclusion shall not apply in the event that the injured employee was ordered or assigned by his employer to participate in the program."

Findings of Fact

Lois Dober, (hereinafter referred to as the "Petitioner"), testified at trial she was employed as a fiscal services coordinator for the Lee County Health Department in Dixon, Illinois for the last 24 years. (T.9). Petitioner noted this was a desk job consisting of payroll, grant reporting, accounts payable, and purchasing. (T.10). According to her, Respondent has twenty-one employees, but had a few more in July 2021, those individuals being contractors who had been brought in to do contract tracing for COVID-19, as well as a public health associate, also working on COVID-19 issues. (T.10-11).

Petitioner testified that July 28, 2021 was not a normal workday. Respondent held an employer appreciation happening over the lunch hour. (T.12). This is a time when everyone can gather together to

celebrate everyone which happens annually. (T.12). Petitioner testified that management provides lunch and games are played. Typically, employees are thanked for their employment with a gift certificate for a free day off. (T.13). Petitioner testified that the one-hour lunch is unpaid. (T.14). The employee appreciation lunch is scheduled from 11:30 to 1PM. Petitioner testified she was not paid from 11:30 to 12:30 but paid from 12:30 to 1 pm. (T.14). Petitioner became aware of the lunch via email. (T.15, RX1).

The email advised everyone to save the date for employee appreciation and sent out to all employees and a few contact tracers. (T.16). The Arbitrator notes the email stated, "I wanted to get a date out so you could mark your calendars. Finding a day with no one off can be tricky. I didn't see anything on the calendar for July 28, so we're going with that for our Employee Appreciation luncheon. More info. to come!" (RX1).

Petitioner testified she had attended all of the employee appreciation lunches during her twenty-five years of employment. Occasionally, staff members on vacation or off-site for work might not attend. It was her understanding that they were required to attend. If they did not attend, they had to use benefit time or stay in the building and continue to work. (T.18). The 2021 lunch was held at Sterling Federal Bank in Dixon, Illinois. (T.18). Petitioner stated she brought her own lunch due to her own dietary restrictions. (T.20). Petitioner noted Cindy did not attend due to medical testing. (T.20)

After everyone got there, people would do trivia questions while eating, then they started playing games. (T.22). Petitioner testified they played a game that was a combination of musical chairs and hot potato. (T.22). Petitioner testified her injury occurred while she was participating in the game. She testified she missed a ball that had been tossed to her by another employee, dropped it, bent down quickly to pick it up, tossed it to another employee and then fell backwards. (T.23). Petitioner stated she landed on her tailbone and hit her head on the floor. Petitioner felt dazed and sore and was bleeding. (T.25). Petitioner's daughter eventually came to pick her up and she took Petitioner to KSB Hospital. (T.27).

Petitioner testified she was to follow up with her primary care physician and was also seen by Dr. Sahli. (T.27-28). Petitioner testified she treated with Dr. Sahli from the beginning of August 2021 until the end of October 2021. (T.28). She noted Dr. Sahli was a chiropractor so would adjust her neck or spine. (T.29). Petitioner stated during the treatment with Dr. Sahli she was experiencing headaches, light sensitivity, sound sensitivity, dizziness, and a lack of balance. (T.29). The balance issues started a few days after she began seeing Dr. Sahli. Petitioner also noted she had light sensitivity.

Petitioner returned to work with Respondent in October of 2021. (T.30). Prior to then, she was unable to work. (T.31). She testified she has no ongoing symptoms or issues with her tailbone. She has an ongoing sensitivity to light and carries sunglasses to deal with fluorescent lights. (T.32). Petitioner also testified she has daily headaches but does not take medication. (T.34-35). During her time off, she was paid by her employer through sick days. Her medical bills for the injury were paid by her husband's group health insurance. (T.35).

On Cross Examination, Petitioner confirmed the lunch was scheduled from 11:30am to 1:00 pm, and that she was not to be paid from 11:30 to 12:30 pm as that was her lunch hour. She noted she never is paid for her lunch hour, unless it is a working lunch. She confirmed the employee appreciation lunch was not a working lunch rather it was a party. (T.38-39). Petitioner acknowledged Cindy Gabney and Angel Lillpop were both not present. (T.40). Petitioner testified no one told her that she was required to

attend the party, nor did she receive anything in writing that she was required to attend. (T.41). Petitioner testified that over the last 25 years she could not recall receiving either a verbal or written directive requiring Petitioner to attend the lunch. (T.42). She noted sometimes the environmental health staff would be called for inspections or people would be on vacations. (T.43). Petitioner stated she did not know if anyone was disciplined if they did not attend the lunch. (T.43). She was told of others that were frowned upon for not attending. (T.44). Petitioner explained that they were not disciplined but were strongly encouraged to start attending. (T.45). Petitioner further stated on this particular lunch, there were many contact tracers that were invited that did not attend as well as Roger Ditzler, the maintenance person. (T.47-48). Petitioner further stated she was not required or directed to participate in this game but everyone who attends the lunch usually participates in the games at their own discretion. (T.51).

Petitioner acknowledged that after tossing the ball, she took two steps back and fell. She did not trip on anything and does not know why she fell. (T.52)

Petitioner acknowledged a history of dizziness and vertigo predating this accident, but that the light and sound sensitivity were new following the accident. (T.54-55). She acknowledged she had been seeing a chiropractor named Dr. Pitkin for low back and occasionally neck pain for years preceding this accident and continues to see him today. (T.55-58). Petitioner noted she had some balance and dizziness prior to the accident. She also had headaches before the accident and was getting chiropractic adjustments for the same. (T.60). She acknowledged an episode of dizziness in 2019 after starting a new thyroid medication. (T.66). Petitioner acknowledged dizziness and headaches occurring daily but noted they did not continue thorugh July 28, 2021. (T.85)

On redirect, Petitioner confirmed that she had an episode of dizziness and vomiting in July 2019 after Dr. Mitz changed her thyroid medication, and that the medication was stopped due to these issues. (T.89). Her symptoms improved to an extent following stopping the medication. Petitioner testified she had no issues with dizziness or balance on July 28, 2021 before or at the party. (T.89)

Cathy Ferguson Allen

Respondent called Ms. Cathy Ferguson Allen, the administrator of the Lee County Health Department. (T.92-93). She testified on May 26, 2021 she sent an e-mail to all employees advising them of the July 28, 2021 Employee Appreciation lunch. (T.94). She testified that the employee appreciation luncheon is an annual gathering to show appreciation for employees, provide them lunch and activities, time out of the office, and a gift. The email is addressed to all the employees but does not tell them they need to attend the lunch, just to mark their calendar. She testified she has never told any employees or has knowledge of anybody in a managerial capacity telling any employees that they are required to attend. (T.94-95). Ms. Ferguson Allen testified they encourage people to attend because they enjoy being able to offer that to them as an employee. It has never been mandatory. (T.96). She noted that no record of attendance is kept. Most employees do attend the parties but occasionally someone is not available due to scheduled time off. She further testified there are no reprimands for not attending. (T.96). Respondent benefits from the lunches by fostering camaraderie between employees, but nothing financial. (T.98). Employees take their usual lunch hour and get paid for one half hour of the appreciation lunch. (T.98). She confirmed several employees did not attend the lunch that year. (T.100-101). No speeches or business was discussed. She confirmed that if employees do not attend the lunch, they are expected to work during the paid half hour. (T.103). Petitioner noted if employees do not attend the lunch, they still get the gift

(certificate for a day off) in their mailboxes. (T.104). Ms. Ferguson Allen testified the games at the lunch are likewise voluntary. (T.106).

She acknowledged the incident described by Petitioner and confirmed that it occurred largely as Petitioner described. She stated that Petitioner was paid sick pay during her time off work following the incident. She has no knowledge of Petitioner having ongoing problems or issues performing her work today. (T.108-109).

On Cross-Examination, Ms. Ferguson Allen acknowledged that there is an element of people building and camaraderie to the lunch - that employees who know each other and enjoy each other's company work better together. (T.118).

Angela Lillpop

Respondent also called Ms. Angela Lillpop who is Petitioner's direct supervisor, both at the time of trial and on the date of the incident. (T.123). Ms. Lillpop also testified the annual lunches are voluntary, and not mandatory with no record kept in attendance. (T.126-127). She confirmed that employees are only paid 30 minutes who attend this lunch. (T.128). No employees are punished for not attending. (T.129). She testified that she did not attend the event due to a flooding emergency at home. (T.129). She noted employees are free to come and go, stay, and leave. (T.131). There are no speeches and no business discussed during this event. (T.131). She further testified employees are not required to participate in games at the lunch. (T.131). She testified Petitioner is currently working in a full duty capacity, and she is not aware of Petitioner having any problems performing her duties. (T.133).

On Cross-Examination, Ms. Lillpop testified that she organized and set up the July 2021 employee appreciation lunch. (T.137).

Medical Summary

Preexisting medical records

Respondent placed medical records into evidence from KSB Hospital which document physical therapy services for a diagnosis of cervicalgia in March through June 2014. (RX3)

On July 3, 2019, Petitioner presented at KSB Hospital noting she felt dizzy at work. Petitioner had a CT of her head and was diagnosed with vertigo. (RX3). As of July 4, 2019, Petitioner was slightly improved and not as dizzy as yesterday. She still had an episode of spinning. Petitioner was diagnosed with dizziness, likely an episode of vertigo and was to try Zofran. (PX3). Petitioner was off work from July 3, 2019 through July 10, 2019 and was to return to work with no restrictions as of July 10, 2019. (RX3).

On July 11, 2019 Petitioner was seen for a vestibular evaluation. Petitioner was recommended physical therapy for vestibular rehabilitation. Petitioner began the same on July 19, 2019. Petitioner returned to Dr. Johnson on August 14, 2019 for a follow up of dizziness. Petitioner noted dizziness was triggered by bending over, accompanied by a headache. Petitioner was referred to neurology. It was noted her MRI of the brain revealed no acute intercranial abnormality. Petitioner was seen by Dr. Waseem

Ahmad on September 3, 2019 for a neurology consult. It was noted Petitioner's dizziness started in June after starting her new thyroid medication. The Doctor noted this was likely from an inner ear issue that cleared up. She should return in 6 months. (RX3).

Respondent also submitted medical records from Pitkin Family Chiropractic. (RX4). The records reveal Petitioner undergoing chiropractic care for her back beginning on January 27, 2016. Petitioner would occasionally complain of headaches. Petitioner periodically underwent adjustments through August 31, 2021. (RX4).

Medical after Accident

On July 28, 2021 Petitioner presented to KSB Hospital. Petitioner was a 55-year-old female with a history of dizziness, vertigo, hypothyroidism, atrial fibrillation, sleep apnea who presented to the emergency room for a head injury during an accidental fall. Petitioner noted she was in the basement at the bank playing with a barrel and got imbalanced and fell and hit the back of her head. Petitioner was diagnosed with an acute head injury, normal CT scan, scalp laceration and advised to follow up with her PCP. (PX1, p.48-49).

Petitioner returned to the emergency department at KSB Hospital on August 1, 2021. She complained of ongoing headaches and tailbone pain "from the fall." (PX1, p.70). An X-Ray of the sacrum and coccyx was negative for fractures. *Id*. at 79. She denied significant neck pain. *Id*. at 83. Petitioner was diagnosed with posttraumatic headache and contusion of the buttock. She was provided medication and declined narcotics. *Id*. at 84.

On August 4, 2021, Petitioner saw Dr. Johnson on August 4, 2021. (PX1, p.117). Petitioner followed up for her chronic medical conditions but also sustained an injury at work and had a concussion. Petitioner was diagnosed with a concussion and was to remain off work until her symptoms of headache resolved. *Id*. at 118.

Petitioner called Dr. Johnson's office on August 9, indicating her headaches were ongoing. Petitioner wanted to remain off work and Dr. Johnson agreed to the same. Dr. Johnson took Petitioner off for another week. (PX1, p.123-125). On August 16, 2021, Petitioner called Dr. Johnson's office complaining of ongoing issues with balance, headaches, and nausea. Dr. Johnson asked for an appointment to be scheduled for Thursday, August 19. *Id*. at 127. Dr. Johnson issued an off work note taking Petitioner off work through August 19. *Id*. at 129. Petitioner canceled this appointment and was seen instead the next day on August 20 by Dr. Brandon Gumbiner for issues related to her right foot, unrelated to the claimed work accident. *Id*. at 138 Petitioner called Dr. Johnson's office on August 23, 2021, indicating she was not feeling much better and was seeing a neurologist. *Id*. at 142.

On August 17, 2021 Petitioner filled out intake paperwork for Chiropractor Sahli. Petitioner "bent over quickly and came up quickly and lost my balance and fell backwards." (PX2, p.2). Petitioner underwent chiropractic services through October 21, 2021. (PX2). On August 27, 2021, Chiropractor Sahli completed FMLA paperwork for Petitioner. This paperwork indicates Petitioner's condition began on July 28, 2021, and had an estimated end date of September 24, 2021. Petitioner was unable to work with a computer during this time. *Id.* at 34-37.

On August 30, 2021, Petitioner followed up with Dr. Johnson. Petitioner was diagnosed with post concussive syndrome and was to remain off work until her symptoms resolved. She was to follow up with neurology. Dr. Johnson kept Petitioner off work. (PX1, p.153).

On August 30, 2021, Chiropractor Sahli wrote a letter taking Petitioner off work until September 23, 2021. (PX2, p.40). Petitioner continued with chiropractic care which showed improvement. On October 21, 2021, Dr. Sahli released Petitioner to return to work half days, with frequent breaks, blue light filter glasses, and ear plugs. *Id*. at 95.

Conclusions of Law

With regard to Issue "C", whether an accident occurred that arose out of and in the course of Petitioner's employment, the Arbitrator finds as follows:

For accidental injuries to be compensable under the Workers' Compensation Act, a claimant must show such injuries arose out of and in the course of his or her employment. *Navistar Intern. Transp. Corp. v. Industrial Com'n,* 315 Ill.App.3d 1197 (2000).

The Arbitrator has carefully reviewed the statutory language in Section 11 of the Act, cited above, and compared the same with the testimony of the Petitioner, Ms. Ferguson-Allen, and Ms. Lillpop. The Arbitrator finds Petitioner's attendance at the Employee Appreciation lunch was voluntary and not mandatory or required by the Respondent.

The Arbitrator notes Petitioner was not injured during the lunch portion of this party and injured during the participation of the game. Petitioner testified she was not mandated to participate in this game only encouraged.

In reviewing the case law, the Arbitrator reviews two cases, one that predates the modern Section 11 and one that came after the modern Section 11. In the case of *Lybrand, Ross Bros. & Montgomery v. Industrial Commission*, the employer held a golf outing for its employees and some former employees. Employees were not required to attend but had to work if they did not attend. The event was held on a regular workday. The employer provided food and drinks, paid for the golfing, and gave prizes for golfing (not work) accomplishments. One member of management made a short welcoming speech at the start of the post-golf dinner. The decedent in that case was killed in a motor vehicle accident on his way home from the event. The court ruled the case compensable, as attendance was during the workday, and employees who did not attend were required to perform their regular duties *in lieu* of attendance. The Supreme Court deemed this "effective compulsion." The *Lybrand* case, while dated, has not been overturned.

Likewise, in *Woodrum v. Industrial Commission*, the Illinois Appellate Court found in favor of the claimant. 783 N.E.2d 1072, 336 Ill. App.3d 561, 270 Ill.Dec. 772 (Ill. App. 2003). In *Woodrum*, the claimant injured his right knee while playing basketball at a company picnic. The picnic was held on company premises, on a regular workday. Employees were allowed to attend or could take a personal or vacation day *in lieu* of attendance. Employees who did not attend the picnic were not disciplined. The employer provided materials for various games including volleyball, basketball, etc. The claimant was

injured while playing basketball when his foot landed on a rock, causing a knee injury. The court reasoned, "Where an employee must either go without pay or give up personal/vacation time in order to opt out of attending a company picnic, there is only one single inference that can be drawn…the employee was ordered or assigned the task of attending the picnic that day." *Id*. The court's ultimate conclusion was, "We find that requiring the claimant to forego pay or to lose a benefit (vacation/personal day) by not attending the picnic, as with any normal workday, is sufficient indicia that the employer ordered or assigned claimant's attendance at the picnic." (parenthesis in original) *Id*. The employer argued below that *playing basketball* at the picnic was not mandatory - the Commission below held that if attendance was mandatory, whether or not specific participation in playing basketball was voluntary was irrelevant. The Appellate Court did not address this argument in its opinion, and it is unclear if this argument was made by the employer before the Appellate Court.

In this case, the Arbitrator finds the facts to be distinctly different. The Arbitrator finds the main distinction to be that the employee appreciation lunch was not all day, rather just a lunch. In addition, whether the employees attended the lunch or did not attend the lunch, the first hour was unpaid. The participants were paid for merely a half hour. If you did not attend the picnic, you could either work that normal half hour or take a half hour of vacation. The Arbitrator believes that 30 minutes is not the akin to a full a day off. As such, the Arbitrator does not deem this "effective compulsion." In addition, the Arbitrator notes that no business was conducted during this lunch. Respondent provided lunch but it was not required to eat. In fact, Petitioner testified due to her own dietary restrictions she obtained her own lunch which was not paid by Respondent. Petitioner was also not required to attend the lunch. Of importance, all employees, regardless of attendance, received a gift, i.e., a certificate for a day off. The witnesses explained that all employees received this recognition, and it was not dependent on attendance of the lunch.

Based upon the above, and considering the record taken as a whole, the Arbitrator finds that the Petitioner has failed to meet her proving she sustained accidental injuries which arose out of and in the course of her employment with Respondent.

With regards to Issues (E), (F), (L) and (N), the Arbitrator finds the following:

The Arbitrator adopts her findings in Section (C) above, that Petitioner did not sustain accidental injuries arising out of and in the course of her employment on July 28, 2021. As such, these issues are moot and all claims for compensation herein are denied.

Likewise, and noting that benefits are denied to Petitioner pursuant to the Illinois Workers' Compensation Act, the payments issued to the Petitioner, and the claims for credit by the Respondent for the sick pay that Petitioner received are likewise moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC009768
Case Name	John Sharp v. Standard Aero
Consolidated Cases	23WC001923
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0108
Number of Pages of Decision	19
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Warren Danz
Respondent Attorney	Martin P Spiegel

DATE FILED: 3/13/2025

/s/Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

John Sharp,

Petitioner,

vs. NO: 22 WC 009768

Standard Aero,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission modifies the last sentence of paragraph 2 and paragraph 3 of Issue (F) on page 11 of the Decision, striking "September 21, 2021" and replacing it with "September 22, 2021".

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on January 17, 2024, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay Petitioner temporary total disability benefits of $738.86/week for 9 and 5/7 weeks, commencing September 28, 2022 through December 5, 2022, as provided in Section 8(b) of the Act. Respondent shall be given a credit of $6,649.74 for temporary total disability benefits that have been paid. Any PPD advance will be applied to an award of permanency.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for reasonable and necessary medical treatment to the cervical spine, specifically an epidural

steroid injection as recommended by Dr. Stephen Pineda, as provided in Sections 8(a).

IT IS FURTHER ORDERED BY THE COMMISSION, that in no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for temporary or permanent disability, if any.

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $7,277.50. 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.

MARCH 13 2025
O: 1/14/25
AHS/kjj
051

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC009768
Case Name	John Sharp v. Standard Aero
Consolidated Cases	23WC001923
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Warren Danz
Respondent Attorney	Martin T. Spiegel

DATE FILED: 1/17/2024

THE INTEREST RATE FOR THE WEEK OF JANUARY 17, 2024 4.97%

/s/ Jeanne AuBuchon, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

John Sharp
Employee/Petitioner
v.
Standard Aero
Employer/Respondent

Case # **22** WC **009768**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Champaign**, on **12/12/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **09/22/2021**, 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 as to his bilateral carpal tunnel syndrome ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**57,631.08**; the average weekly wage was $**1,108.29**.

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

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

Respondent shall be given a credit of $**6,649.74** for TTD, $**0** for TPD, $**0** for maintenance, and $**6,649.74** for other benefits (PPD advance), for a total credit of $**13,299.48**.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $738.86/week for 9 & 5/7 weeks, commencing September 28, 2022, through December 5, 2022, as provided in Section 8(b) of the Act. Respondent shall be given a credit of $6,649.74 for temporary total disability benefits that have been paid. Any PPD advance will be applied to an award of permanency.

Respondent shall authorize and pay for medical treatment to the cervical spine, specifically an epidural injection as recommended by Dr. Stephen Pineda as provided in Section 8(a) of the Act.

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

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

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

Jeanne L. AuBuchon

Signature of Arbitrator

JANUARY 17, 2024

PROCEDURAL HISTORY

This matter proceeded to trial on December 12, 2023, pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) whether the Petitioner provided timely notice of injury to his hands; 2) the causal connection between the accident and the Petitioner's bilateral carpal tunnel conditions; 3) liability for medical expenses related to the Petitioner's hands; 3) entitlement to prospective medical care to the Petitioner's hands; and 4) entitlement to TTD benefits from September 26, 2021, (sic) through December 12, 2023, as it related to the Petitioner's hands. The Respondent stipulated to liability for injuries to the Petitioner's cervical spine. This case was consolidated with 23WC1923 involving repetitive use of the hands and arms that occurred on September 29, 2022.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 51 years old and employed by the Respondent for 25 years stripping, sanding, priming and painting airplanes. (AX1, T. 15) Using photos, the Petitioner explained how he performed these tasks on corporate airplanes using used sanders, drills and handheld grinders and demonstrated how he used his hands and arms. (T. 16-28, PX1) He said the tools vibrated, bounced and jarred him and that he had to have a good grip. (T. 19-22) He said that after a while, his hands and arms would start hurting, and he would switch hands. (T. 23) He said he worked 8-10 hours a day and 40-60 hours a week. (T. 28)

On September 22, 2021, the Petitioner was sanding the belly of a plane when "all of a sudden," he felt a jolt of electricity go through his arm and into his neck. (T. 30) He said his hands, arm and neck hurt severely. (T. 31) He said he had symptoms in his arms and hands before then when sanding for 8-10-hour days, but it would go away when he went home. (Id.) He said

this time it didn't go away. (Id.) He also said the symptoms were more severe after September 22, 2021. (Id.) He said he continued to work after September 22, 2021. (Id.)

The Respondent sent the Petitioner to Midwest Occupational Health Associates (MOHA) at Springfield Clinic. (PX2) On October 1, 2021, the Petitioner saw Nurse Practitioner Sandra Elliott and reported pain in the bilateral shoulders, elbows and wrists after doing extensive sanding on an airplane for 3½ days. (PX2) He also reported decreased grip and some numbness and tingling to the right hand that woke him up at night. (Id.) NP Elliott diagnosed bilateral shoulder, elbow and wrist pain, likely secondary to overuse injury, prescribed an anti-inflammatory and muscle relaxant and recommended light duty work with limited use of the hands, wearing splints at night, ice and heat. (Id.)

The Petitioner returned to MOHA on October 8, 2021, and indicated that his shoulders may have improved but his hands did not. (Id.) However, he also said wearing the splints seemed to help and that his wrists and hands were stiff in the morning but loosened up with use. (Id.) He continued to have trouble gripping with the right hand worse than the left with a lot of numbness and tingling in the right hand. (Id.) He reported that the elbows did seem to be improved and that his left arm seemed to be worse than the right, with continued spasming to the forearm on the left side. (Id.) PA Elliott referred the Petitioner to physical therapy and stated that if the Petitioner did not show significant improvement, she would consider referral to neurology for nerve condition studies and electromyography testing (EMG/NCS). (Id.) No physical therapy records were submitted at arbitration.

On October 22, 2021, the Petitioner reported that the two physical therapy sessions he attended helped briefly but his symptoms returned. (Id.) PA Elliott referred him to Dr. Koteswara Narla, a neurologist at Springfield Clinic for EMG/NCS. (Id.) On December 3, 2021, the

Petitioner reported pain going into his neck and headaches. (Id.) After each visit to MOHA, a discharge summary was provided to the Respondent showing the Petitioner's diagnoses. (Id.)

On December 30, 2021, the Petitioner underwent EMG/NCS. (PX2, RX8) Dr. Narla reported that the Petitioner had a 10-year history of cervical pain radiating into the left more than the right arm, a 7-year history of tingling and numbness in the hands and a 30-month history of pain in the shoulder, elbow and wrist joint areas. (Id.) Dr. Narla found borderline carpal tunnel compression of the median nerve on the right, no evidence of cubital tunnel compression of the ulnar nerves on either side, no evidence of large fiber distal neuropathy and no evidence of ongoing cervical radiculopathy, plexopathy or myopathy on the left. (Id.) He stated that the carpals were so minimal that he was not sure any intervention was needed. (Id.) He recommended observation for the time being. (Id.) As to neck symptoms, he recommended NSAIDs and physical therapy, adding that if the symptoms progressed, an MRI may be needed. (Id.) The Petitioner denied telling Dr. Narla that he had a 7-year history of tingling and numbness in his hands and said he told him his hands had been hurting for a couple of years. (T. 59)

On January 13, 2022, the Petitioner followed up with Nurse Practitioner Rachel Parks at MOHA and reported shooting pain in the left arm into his neck as well achiness in the right forearm and hand and numbness in the right hand. (PX2) NP Parks diagnosed pain in the shoulder, elbow and wrist and cervical discomfort with radiculopathy, ordered a cervical MRI and referred the Petitioner for physical therapy. (Id.)

The MRI was performed on January 26, 2022, and showed disc bulge at C5-6 and C6-7 with disc-osteophyte complexes causing foraminal stenosis left worse than right and a central herniation at C4-5 with left foraminal stenosis. (Id.) The Petitioner followed up with Nurse Practitioner Brieana Kesterson at MOHA on January 28, 2022, and she diagnosed cervicalgia,

unspecific shoulder pain, pain in the elbows and pain in the wrist. (Id.) She recommended continued home exercises and physical therapy, noting that the Petitioner was to return to Dr. Narla for a possible epidural steroid injection (ESI). (Id.)

The Petitioner saw Dr. Narla on February 24, 2022, and complained of neck pain, left arm numbness and numbness in both hands. (Id.) Dr. Narla diagnosed cervical pain with left-sided radiculopathy possibly secondary to central disc protrusion more prominent at C4-5 and osteophytes at C5-6 and C6-7 of minimal degree. (Id.) Dr. Narla noted that although the Petitioner complained quite bitterly of tingling and numbness in the hands, it was only borderline on the left and only very minor, if at all, on the right. (Id.) He said did not think carpal tunnel compression could explain all of the Petitioner's symptomology and would not recommend surgery. (Id.) He discussed a steroid injection with the Petitioner, who reported having side effects from oral steroids. (Id.) On February 28, 2022, the Petitioner saw PA Kesterson, who referred him to a spine surgeon. (Id.)

On March 14, 2022, the Petitioner saw Dr. Stephen Pineda, an orthopedic surgeon at Springfield Clinic. (PX2, RX6) The Petitioner testified that he told Dr. Pineda about everything he did at work. (T. 65) His intake forms indicated that he was still complaining of neck, shoulder, arm and hand pain. (PX2, RX4) Dr. Pineda recommended an injection. (PX2, RX6) The next day, the Petitioner saw NP Kesterson, who recommended an independent medical examination due to no further medical recommendations offered at MOHA. (PX2) Dr. Narla performed an epidural injection on May 5, 2022. (Id.) At a follow-up with Dr. Pineda on May 31, 2022, , the Petitioner reported "a little bit of benefit but not a lot." (PX2, RX6) Dr. Pineda recommended cervical disc replacement. (Id.) He performed a two-level discectomy and disc replacement at C5-7 on September 28, 2022, at which time Dr. Pineda ordered the Petitioner off work. (PX3,

RX6) The Petitioner said the surgery did not do anything for his hands. (T. 35) The Petitioner testified that he did not work after September 26, 2022. (T. 33) He said that while he continued working after September 22, 2021, he noticed that his hands and arms were getting worse, with numbness in his hands and the feeling of a thousand needles sticking him in his hand that continued for an hour to an hour and a half after he stopped working. (T. 32-34) He said he told his supervisor that his hands were still hurting and going numb and that he was dropping things. (T. 34-35)

On November 8, 2022, Dr. Pineda released the Petitioner to work without restrictions effective December 5, 2022. (PX3, RX6)

On December 5, 2022, the Petitioner saw Nurse Practitioner Megan Adams at HSHS Medical Group Family Medicine. (T. 36) The Petitioner testified that NP Adams gave him an off-work slip effective until he was evaluated by neurology. (T. 36) NP Adams' records were not submitted at arbitration.

The Petitioner saw Dr. Edward Trudeau, a physiatrist at HSHS, on December 22, 2022, and underwent an examination and EMG/NCS. (PX3) Dr. Trudeau noted that the Petitioner was found to have a minimal element of carpal tunnel on both sides about a year before but things got much worse. (Id.) Dr. Trudeau found bilateral carpal tunnel syndrome – severe on the right and moderately severe on the left. (Id.) He outlined treatment options that included conservative measures, medications and surgical referral. (Id.) Dr. Trudeau sent his report to Dr. Pineda. (Id.)

On February 2, 2023, the Petitioner saw Dr. Mark Greatting, an orthopedic hand surgeon at Springfield Clinic Greatting and reported that he thought his hand symptoms started around September 2021 and that his symptoms bothered him night and day and while driving. (PX3, RX7) He said his symptoms increased while doing his work activities. (Id.) He described his

work to include using air-driven painting tools, grinders, sanders and drills for a large amount of his workday. (Id.) Dr. Greatting diagnosed chronic bilateral carpal tunnel syndrome, adding that based on the history the Petitioner provided the Petitioner's work activities were a significant factor causing the development of his condition and contributed significantly to the development, aggravation or accelerated his symptoms. (Id.) He recommended carpal tunnel releases. (Id.)

An eHealth History dated January 25, 2023, stated that the Petitioner complained of hand pain, numbness and tingling for approximately three years. (PX3) The Petitioner testified that he did not recall telling this to Dr. Greatting. (T. 70) An intake form dated February 2, 2022, asked the Petitioner to describe the injury and how it occurred. (PX3, RX3) The response said: "September 22, 2021 started after neck surgery." (PX3, RX3) In his testimony the Petitioner acknowledged signing the questionnaire but denied telling Dr. Greatting that his symptoms started after his neck surgery. (T. 54-55) The Arbitrator notes that the entries on the intake form use a number of medical term abbreviations. (PX3) In his notes, Dr. Greatting stated under "Chief Complaint" that carpal tunnel syndrome persisted after neck surgery. (PX3, RX7)

On February 9, 2023, a records review was performed by Dr. David Holden, a family medicine practitioner, at the request of Petitioner's counsel. (PX5) Dr. Holden reviewed the December 30, 2021, EMG/NCV, Springfield Clinic records regarding cervical treatment, the December 19, 2022, EMG/NCV and a Section 12 examination report, which was not entered into evidence at arbitration. (Id.) Dr. Holden stated that the studies from December 30, 2021, did not reveal any evidence of severe nerve impairment of either upper extremity. (Id.) Dr. Holden noted that the Petitioner subsequently returned to work and had increasing symptoms after approximately eight months. (Id.) He found that the repeat studies confirmed a diagnosis of bilateral carpal tunnel, worse on the right than on the left and that this represented a worsening of the Petitioner's

condition caused by his repetitive use trauma. (Id.) He felt that the Petitioner was a candidate for surgery and was temporarily totally disabled. (Id.)

The Petitioner had a follow-up visit with Dr. Pineda on March 7, 2023. (PX3, RX6) There were no complaints by the Petitioner recorded in that office note. (Id.)

Dr. Greatting performed a right carpal tunnel release on March 24, 2023, and a left carpal tunnel release on April 28, 2023. (PX3, RX7)

The Petitioner testified that he returned to Dr. Greatting on May 11, 2023, and June 12, 2023, and told him that his ring finger on his left hand had no sensation and he was having pains all the way up through the back of his left arm, elbow and up into his neck. (T. 38) Dr. Greatting's records from May 11, 2023, showed the Petitioner overall felt his symptoms were significantly improved except for tingling along the ulnar side of his left ring finger. (PX3, RX7) His left side was doing well. (Id.) Dr. Greatting thought the tingling should resolve over time. (Id.) Dr. Greatting kept the Petitioner off work. (RX7) On June 12, 2023, the Petitioner complained of tingling along the radial side of his left ring finger. (PX3, RX7) Dr. Greatting continued off-work orders and said that if the Petitioner was doing well in a month, he likely would likely be released to work without restrictions. (Id.)

On July 13, 2023, the Petitioner again complained of persistent numbness on the radial side of his left ring finger and said he did not think he could yet return to work doing his normal work activities, which required a lot of forceful activity with his hands as well as some exposure to vibration. (T. 63, PX3, PX7) Dr. Greatting reported that the Petitioner would be reevaluated in six weeks and potentially be returned to work without restrictions after that visit. (PX3, RX7) He issued an off-work slip stating that the Petitioner was to remain off work until his next follow-up

appointment on August 24, 2023. (Id.) In his testimony, the Petitioner denied that Dr. Greatting said he planned on releasing him to work full duty when he followed up in six weeks. (T. 64)

On August 24, 2023, Dr. Greatting completed a Health Status Form stating that he saw the Petitioner, that there would be a follow-up appointment after an EMG is completed and that the Petitioner was to remain off work until further notice. (PX3) The Petitioner testified that Dr. Greatting referred him back to Dr. Trudeau for another EMG/NCS. (T. 38-39) He said he did not see Dr. Trudeau because the evaluation was not approved by workers' compensation. (T. 39) There was no office visit note for August 24, 2023, in the records of Dr. Greatting that were submitted at arbitration.

The Petitioner saw Dr. Pineda for follow-up on September 12, 2023, and complained of 10/10 pain, pain and burning down the left shoulder, arm and ring finger and sensation difference in the left hand. (RX6) Dr. Pineda prescribed oral steroids and stated that if the medication didn't work, he would consider a myelogram CT of the cervical spine. (Id.) On October 30, 2023, Dr. Pineda reported that the myelogram CT was performed on October 27, 2023, and showed minimal narrowing perhaps at C6-7, that overall there was good alignment in the disc replacements and the devices looked good. (Id.) Dr. Pineda recommended an epidural injection. (Id.) The Petitioner testified that Dr. Pineda sent him to Dr. Narla. (T. 40) He said Dr. Narla said he would give him an injection and try medication, but he did not receive the injection because he was waiting for authorization. (Id.) No such report from Dr. Narla was submitted at arbitration.

The Respondent terminated the Petitioner's employment as of September 27, 2023, for being on leave of absence for more than 12 months, in contravention to the company's guidelines. (PX4) He was invited to apply for future open positions if he is willing and able to meet the minimum requirements of the position. (Id.)

On November 28, 2023, Dr. Holden performed an examination of the Petitioner. (PX5) The Petitioner described his work, the September 21, 2021, accident and his treatment. (Id.) Dr. Holden examined the Petitioner and reviewed records from Dr. Greatting, Dr. Pineda, Dr. Narla and Dr. Trudeau. (Id.) His examination found weakness of the arms and forearms, weakness of the intrinsic muscles of the hands, numbness of both hands and difficulty grasping. (Id.) He opined that the Petitioner's carpal tunnel was aggravated by the fact that he continued to work with repetitive motions overhead up to September 22, 2022, when his condition worsened. (Id.) He gave work restrictions of no continuous use of the Petitioner's hands involving grinding or sanding and did not feel the Petitioner would be able to return to work operating heavy machinery, using vibrating tools or using blasters and sanders. (Id.)

Dr. Holden testified consistently with his reports at arbitration. He said he is semi-retired and had not treated patients since June 23, 2021, but was still on staff at two local hospitals. (T. 77, 90) He said that in his practice, he had seen hundreds of patients with injuries to the spine and hands and carpal tunnel syndrome. (T. 78) He said he has experience in analyzing and reading EMG tests. (Id.) On cross-examination, Dr. Holden said he has an office at his home but sees patients at Petitioner's counsel's office, which was where he saw the Petitioner. (T. 90)

Dr. Holden acknowledged that his physical examination findings were contrary to the findings of Dr. Greatting and Dr. Pineda, which he attributed to the passage of time. (T. 96) He believed the Petitioner's condition got worse rather than better after his surgeries. (T. 96-97)

The Petitioner testified that at the present time, his arms and hands still hurt, and his ring fingers are still numb. (T. 42) He said he still drops stuff and he has some sensation of hurting in the palms of his hands when he uses them. (Id.) He said his right hand was improving a little bit. (T. 42-43) He said he takes medication but it doesn't help. (T. 45)

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's testimony to be not credible when it comes to what he relayed to his doctors and what the doctors told him. His testimony conflicts with his reports to his treating physicians. As the reports to the doctors were mainly consistent between themselves and those reports were made at the time of the actual events, the Arbitrator relies on the Petitioner's statements as contained in the medical records versus his testimony. As to the Petitioner's testimony regarding his work duties, this is credible and supported by the medical reports and the photos submitted at arbitration.

Issue (E): Was timely notice of the accident – specifically regarding Petitioner's hands – given to Respondent?

Section 6(c) of the Act provides that notice of an accident shall be given to an employer as soon as practicable, but not later than 45 days after the accident. This section also provides that no defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy. The legislature has mandated a liberal construction on the issue of notice. *S&H Floor Covering, Inc. v. Workers' Comp. Comm'n*, 373 Ill. App. 3d 259, 265, 870 N.E.2d 821, 312 Ill. Dec. 377 (4th Dist. 2007) In *S&H Floor Covering, Inc.*, the court found that because some notice was given to employer, it was then incumbent upon employer to show that it was unduly prejudiced. *Id*. at 266.

Although no written notice of the accident was submitted at arbitration, it is apparent that the Respondent had notice of the accident on September 22, 2021, as the Respondent sent the Petitioner to MOHA for treatment. As to whether the Respondent specifically had notice of injury to the Petitioner's hands or wrists, the Respondent received discharge summaries from MOHA since the beginning of treatment on October 1, 2021, that specifically stated the Petitioner was diagnosed with pain in the wrists.

Therefore, the Arbitrator finds that timely notice was given to the Respondent.

Issue (F): Is Petitioner's current condition of ill-being, specifically his bilateral carpal tunnel syndrome, causally related to the accident?

An accident need not be the sole or primary cause so long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill. 2d 193, 205 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n,* 371 ILL. App. 3d 882, 888 (2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill. 2d 30, 36 (1982).

The Petitioner reported having pain in his wrists and hands prior to the accident on September 22, 2021. However, neither Dr. Greatting nor Dr. Holden opined that the Petitioner's carpal tunnel syndrome was the result of the acute trauma occurring on September 22, 2021. Rather, they believed that the Petitioner's carpal tunnel syndrome, which was mild around the time of the accident, had worsened while he was working after September 21, 2021, to the extent that surgery became necessary.

Therefore, the Arbitrator finds that the Petitioner's bilateral carpal tunnel syndrome was not causally related to the accident of September 21, 2021.

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

Based on the findings above regarding causation, the Arbitrator does not reach this issue.

Issue (K): Is Petitioner entitled to any prospective medical care, specifically an epidural injection to the Petitioner's cervical spine?

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

The Respondent has accepted liability for the Petitioner's cervical spine injury. The Petitioner had a recurrence of cervical symptoms in September. There was no evidence of any incidents involving the Petitioner's cervical spine since his disc replacements. After conservative treatment of oral steroids, Dr. Pineda recommended an epidural injection. There was no evidence that this course of treatment would not be reasonable or necessary.

Therefore, the Arbitrator finds the Petitioner is entitled to prospective medical care for his cervical spine, specifically the epidural injection recommended by Dr. Pineda. The Respondent shall authorize and pay for such.

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

According to the Request for Hearing (AX1), the parties dispute TTD benefits for the period of September 26, 2021, (sic) through December 12, 2023, as it related to the Petitioner's hands. The Arbitrator believes the beginning date is a typographical error, as the Petitioner had

not even begun treating on that date. From the records, it appears the beginning date should be September 27, 2022, as the Petitioner testified that he did not work after September 27, 2022.

"The fundamental purpose of the Act is to provide injured workers with financial protection until they can return to the work force." *Interstate Scaffolding, Inc., v. Illinois Workers' Compensation Comm'n,* 236 Ill.2d 132, 146, 923 N.E.2d 266, 337 Ill.Dec. 707 (2010). "Therefore, when determining whether an employee is entitled to TTD benefits, the test is whether the employee remains temporarily totally disabled as a result of a work-related injury and whether the employee is capable of returning to the work force." *Id.*

Due to the findings above regarding causation, the Arbitrator will not address whether the Petitioner is entitled to TTD benefits for time off during treatment for his hands. However, because the Petitioner's cervical injuries were accepted by the Respondent, he is entitled to TTD benefits from September 28, 2022 – when he was taken off work for surgery – until December 5, 2022 – the effective date of Dr. Pineda's release to work without restrictions. The Respondent is entitled to a credit for TTD paid.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC026086
Case Name	Carl Jamison v. City of Chicago
Consolidated Cases	16WC020944
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0109
Number of Pages of Decision	31
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Sheldon Minkow
Respondent Attorney	Terrence Donohue

DATE FILED: 3/13/2025

/s/Amylee Simonovich, Commissioner

Signature

25IWCC0109

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Carl Jamison,

Petitioner,

vs. NO: 14 WC 026086

City of Chicago,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causation and the nature and extent of the injury 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.

In the interest of efficiency, the Commission primarily relies on the detailed recitation of facts provided in the Decision of the Arbitrator, except as stated below. The Commission agrees with the Arbitrator's finding that the accident of July 18, 2014 caused injuries to Petitioner which were separate and distinct from the conditions of ill-being suffered in his companion case (16WC020944) involving an accident on May 27, 2016. The Commission agrees with the Arbitrator's finding that Petitioner's lumbar and cervical injuries were causally related to the July 18, 2014 accident. However, the Commission disagrees with the Arbitrator's finding that Petitioner's injuries entitled him to a permanent partial disability award of 7.5% loss of use of the person as a whole.

The Commission modifies the award of permanent partial disability from 7.5% to 3% loss of use of the person as a whole. The Commission notes that Petitioner's course of care was confined to conservative treatment, specifically three months of physical therapy and prescriptions for medication. PX3, p.8-18. On October 22, 2014, Dr. Goldvekht noted Petitioner was no longer experiencing pain in his neck and his low back pain was ranging from 0-3 out of 10 on the pain scale. PX3, p.12. Petitioner was placed at maximum medical improvement and was returned to work without restriction. *Id*. The medical evidence does not include any diagnostic testing demonstrating any structural damage over and above the multiple sprain/strains suffered as a result of the accident on July 18, 2014. As a result, the Arbitrator's award of 7.5% loss of use of the total

person is excessive based upon the lack of disability evidence and the Commission finds an award of 3% loss of use of the person as a whole to be more appropriate.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on May 21, 2024, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay for reasonable and necessary services for causally related treatment as provided in Section 8(a) and 8.2 of the Act and more specifically to West Suburban Medical Center in the amount of $1,383.00, EPMG in the amount of $736.00 and Advanced Physical Medicine in the amount of $6,677.90.

The parties have stipulated and agreed that Respondent has satisfied and paid the medical services of Advanced Physical Medicine. The parties have also stipulated and agreed that Respondent will pay and resolve the above medical services of West Suburban Medical Center and EPMG of Illinois and hold Petitioner harmless regarding the claims of these providers.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the sum of $735.37/week for a further period of 15 weeks, as provided in Section 8(d)2 of the Act, as the injuries sustained caused 3% loss of use of the person as a whole.

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

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

MARCH 13, 2025

o: 1/28/2025
AHS/kjj
051

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC026086
Case Name	Carl Jameson v. City of Chicago
Consolidated Cases	16WC020944;
Proceeding Type	
Decision Type	***Corrected Arbitrator Decision***
Commission Decision Number	
Number of Pages of Decision	28
Decision Issued By	Crystal Caison, Arbitrator

Petitioner Attorney	Sheldon Minkow
Respondent Attorney	Terrence Donohue

DATE FILED: 5/21/2024

/s/Crystal Caison, Arbitrator
Signature

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

Carl Jamison v. City of Chicago (14WC026086)
Consolidated Case: (16WC020944)

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

CARL JAMISON
Employee/Petitioner

v.

CITY OF CHICAGO
Employer/Respondent

Case # **14** WC **026086**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Crystal L. Caison**, Arbitrator of the Commission, in the city of **Chicago**, on **7/11/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **7/18/2014**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**70,408.00**; the average weekly wage was $**1,354.00**.

On the date of accident, Petitioner was **56** years of age, ***married*** with **1** dependent children.

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

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

Respondent shall be given a credit of $**13,539.90** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits, for a total credit of $**13,539.90**.

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

ORDER

The Arbitrator finds the conditions of ill-being suffered by Petitioner and arising from accident date 7/18/2014 (14 WC 026086) are separate and distinct from the conditions of ill-being suffered by Petitioner and arising from accident date 5/27/2016 (16 WC 020944).

The Arbitrator further finds that Petitioner has met his burden, proving by a preponderance of the evidence conditions of ill-being suffered to his neck and low back are causally related to the accident and injury of 7/18/2014.

The Arbitrator finds the Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment. As such, the Arbitrator orders the Respondent to pay reasonable and necessary medical services for causally related treatment Petitioner underwent, as provided in Sections 8(a) and 8.2 of the Act and more specifically to West Suburban Medical Center in the amount of $1,383.00, EPMG in the amount of $736.00, and Advanced Physical Medicine in the amount of $6,677.90.

The parties have stipulated and agreed that Respondent has satisfied and paid the medical services of Advanced Physical Medicine. The parties have also stipulated and agreed that Respondent will pay and resolve the above medical services of West Suburban Medical Center and EPMG of Illinois and hold Petitioner harmless regarding the claims of these providers.

Respondent shall pay Petitioner the sum of $ **735.37**/week for a further period of **50** weeks, because the injuries sustained caused the **7.5% 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.

Crystal L. Caison

Signature of Arbitrator

May 21, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION

Carl Jamison	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 14WC026086
City of Chicago	)	
	)	
	)	
Respondent.	)	

PROCEDURAL HISTORY

This matter proceeded to hearing on July 11, 2023, before Arbitrator Crystal L. Caison with consolidated case: 16WC020944. For case #14WC026086 (7/18/14), the issues in dispute include causal connection, medical bills, and nature and extent. (AX 1) For case #16WC020944 (5/27/16), the issues in dispute include causal connection and nature and extent. (AX 2)

With regards to case #14WC026086, the parties stipulated to the following:

That Respondent has paid for all amounts billed for Advanced Physical Medicine and believes that all reasonable related amounts claimed for provider, West Suburban Medical, have been paid by Respondent. The parties further stipulated that if West Suburban Medical Center, EPMG of Illinois or Blue Cross Blue Shield make any further claim for payment or reimbursement, that the Respondent shall hold Petitioner harmless from any claims by any providers for reasonable related medical treatment for July 18, 2014 at West Suburban Medical Center.

This consolidated decision will address all issues under each respective case number and a separate order will be issued for each case.

An Arbitrator Decision and Order were entered on April 29, 2024. Respondent filed a timely19(f) petition requesting for the Arbitrator to issue a corrected decision to correct the following: (1) a typo in the date of service for ER treatment at West Suburban Medical Center in

the second paragraph of the "Procedural History." The date now accurately reflects July 18, 2014 instead of the July 14, 2014; and (2) a typo in the Arbitrator Decision under "Issue L" in connection with **Case #14WC026086 (7/18/14)** that reflects the award as 10% loss of the person as a whole, which conflicts with what is accurately reflected in the Order as 7.5% person as a whole. The Arbitrator also noted an omission of the number of weeks in the fifth grammatical paragraph for the **8(d)(2) award** in the corresponding Order. The number **50** was inserted.

This corrected decision addresses those changes. All other portions of the Arbitrator Decision and Order issued on April 29, 2024, 2024 shall remain in full force and effect.

THE ARBITRATOR MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner's Testimony

Case #14WC026086 (7/18/14)

Carl Jamison was 56 years old at the time of the accident on July 18, 2014. He was married and had one dependent child. (T. 24) Petitioner testified that he retired from his employment with the City of Chicago Streets and Sanitation in November 2019. (T. 25)

On July 18, 2014, he was a garbage truck operator. (T. 25) This was a job he had held for about six years. He would drive the truck through the units with the help of 2 laborers that worked on the truck with him. (T. 26) He worked 5 days a week, 40 hours per week and had an average weekly wage of $1,354 at the time. (T. 26)

Petitioner was proceeding northbound on Cicero Avenue approaching the intersection with Chicago Avenue when a vehicle came out of a parking lot on the side of the street and struck the garbage truck. (T. 28) The other vehicle struck the passenger side of the garbage truck with a heavy impact. (T. 29) Petitioner testified his chest hit the steering wheel, and his knees were impacted. (T. 29). After the impact he remained in the garbage truck for about 15 minutes. (T. 30) He noticed he was hurt and had tingling in his lower back and legs. (T. 30). The police arrived, and he advised them his back was hurting. An ambulance was called. Petitioner called his supervisor on an overhead radio to notify him of the accident. (T. 31)

He was transported to West Suburban Hospital emergency room. (T. 32). He reported at that time his low back was getting worse and he had pain in his legs. (T. 33) He was released that

day and given a prescription for pain medication and muscle relaxants. (T. 33) He did not return to work the following Monday because he was still in pain, and his back pain he rated at 9/10. (T. 35). He also testified his neck was sore and he rated that at 10/10 pain level. He recalled he had radiation into his arms from his neck and shoulders. (T. 36)

Petitioner went to Mercyworks Clinic. (T.37) He underwent therapy 3 times a week at Advanced Physical Medicine for his lower back and legs and neck. (T. 40-41) Petitioner further testified that at his last visit with Dr. Goldvecht on October 22, 2014 he was asymptomatic regarding his legs but was still having some issues with his low back. (T. 44) He was still having some issues with his low back. He was uncomfortable with stiffness and soreness. The backache improved and he rated the pain at 3/10. (T. 45). At that time Dr. Goldvecht released him from care and returned him to work full duty effective October 27, 2014. (T. 46).

On cross, Petitioner did not recall having a neck and back auto accident, injury in 2002 (T. 47)

When asked whether he had undergone any other medical care between the time of his release on October 20, 2014 and the May 27, 2016 accident. He indicated that he had. He described it as hot compresses as well as cold compacts which he did on his own. (T. 49) He also stated there were visits with medical doctors at the VA. *Id*. He said this was physical therapy for his low back. However, there were problems with staffing at the VA and he said he was not able to complete the process. (T. 50) He described the therapy as three times total. (T. 52)

Petitioner testified that he had low back pain from the first accident in 2014, and that the low back pain he experienced from the May 2016 accident was similar in nature. (T. 53) He also testified the experienced neck pain in both the 2014 accident and 2016 accident and that the neck pain was similar in nature and character between the 2 accidents. (T. 54)

Petitioner testified that in eight to nine years prior to July 18, 2014 he was not suffering from any neck, low back, shoulder, or any other parts of the body which were injured from the accident of July 18, 2014. (T. 58)

Case #16WC020944 (5/27/16)

Petitioner testified to being in a motor vehicle accident while driving a garbage truck on May 27, 2016. He approximated that he had been back at work about a year from his 2014 accident, and said he was not treating with any doctors during that time. (T. 60) Petitioner testified

that on the day of the accident, he was driving northbound at Damen and Erie, when he was rear ended. He was approaching a stop sign at about 5 miles an hour. (T. 63) He testified that he was jarred and pushed around, and his body was jerked forward and back, and he hit his head and neck on the headrest in the truck. (T. 64) He said that he experienced pain in his neck, shoulder, low back, and upper back. (T. 64) When he got out of the vehicle, he felt he was tensing up and experienced pain. (T. 65) Petitioner identified photographs of the two vehicles taken after the accident. (T. 66) He testified that he informed his foreman that he needed an ambulance, which was then called, and took him away. (T. 66)

He was taken that day May 27, 2016 to the emergency department at St. Mary and St. Elizabeth Medical Center. (T. 67) He complained of neck pain and low back pain. The next day, May 28, 2016 he went to St. Anthony Health Clinic. (T. 68). He advised them of neck pain, rated at 10/10 and shoulder and low back pain, and described being rear-ended and feeling a whiplash type injury. (T. 68) He was not able to return to work and went to see his primary care doctor at Southwest Physician's Group on June 2, 2016. (T. 70) He was then referred to an orthopedic doctor. (T. 70)

On June 27, 2016 he saw orthopedist Dr. Michael Lee, who reviewed x-rays of the lumbar spine and received complaints of lumbar and neck pain, and Dr. Lee recommended continued physical therapy and possibly an MRI if complaints continue. (T. 71)

Petitioner started physical therapy on August 4, 2016 at United Rehab Providers. (T. 73) He underwent a cervical MRI on August 24, 2016, as well as lumbar and thoracic MRIs. (T. 73) He was maintained off work, and given a prescription for further pain medication, and the doctors recommended an injection into his neck. (T. 73) He was continuing to undergo therapy at United Rehab during this time.

He underwent a cervical epidural steroid injection on September 23, 2016 at Midwest Anesthesia. (T. 74) Petitioner agreed that there was discussion regarding a possible surgical consult, but he did not want to pursue that. (T. 75) He continued to have lumbar complaints, so on October 28, 2016 he underwent a lumbar injection. The injection provided about 10 hours of 80% relief, but then the pain returned, and so they recommended a radiofrequency ablation for his low back. (T. 76).

Petitioner agreed that Dr. Fisher was recommending a C-3 through C6 laminectomy since the injections had not completely resolved his pain. (T. 79) Petitioner was reluctant to undergo

the surgery. (T. 80). Subsequent to that, Petitioner did not immediately follow up with Dr. Fisher. (T. 81). Eventually Petitioner returned to Dr. Fisher again in December 2017 saying his neck had not gotten better, and he had decided to go ahead with the surgery. (T. 81)

Then he got a letter from the City, and was told to come back to work, and TTD was stopped and the medical was stopped. (T. 84) Petitioner said he then then went to the Veterans Administration for treatment. (T. 84) He presented at the Veterans Administration on April 13, 2018 complaining of neck and back pain and was referred to a neurosurgeon at the Veterans Administration. (T. 84) The neurosurgeon at the Veterans Administration said he had severe stenosis at C4-5, C5-6, C6-7 and needed cervical surgery. (T. 85) Petitioner returned to the neurosurgeon on May 19, 2018 and advised the neurosurgeon that he did not wish to undergo the surgery because of fears he had, and information of other people for whom surgery did not go well. (T. 85) Petitioner indicated that he did not want to become reliant on medication and therefore stopped taking the medication. (T. 86)

Petitioner was sent for an FCE, and then returned to work within the restrictions of the FCE. (T. 87) This was around February 2018, and he returned to driving a truck. Petitioner continued working his regular job after returning to work in February 2018 for about a year, and then retired November 27, 2019. (T. 88). He stated he retired because of the situation with his neck and fears that it could be worsened. (T. 80) Petitioner testified that presently he still has pain and cannot do movements without being cautious. (T. 89) He testified he does not drive a car anymore. He testified he stopped driving a car because he was in pain all the time and had to worry about moving around, including sitting for long periods of time. (T. 90) He said he can sit for about 5 minutes before he has pain in his neck and low back. Petitioner testified he doesn't lift anything without being cautious.

On cross, when asked whether he had sustained any other accidents after the May 2016 accident, he stated that he had. (T. 93) He described a personal vehicle accident where he was hit from the side in a hit-and-run in 2023. (T. 94) He testified he sought medical treatment for that incident, but that treatment has not occurred yet. He testified that he reaggravated his neck and low back in this recent motor vehicle accident and that it occurred in March 2023. (T. 94) He testified that following this March 2023 incident, he went to the VA where he was examined and prescribed pain medication and was advised to follow-up with his primary care doctor. (T. 95) He described the March 2023 incident as being hit from the side while driving his car. (T. 95) He was

not taken away by ambulance and the police did not come. He testified he has an appointment for the day of trial with his primary care physician Dr. Yohannan concerning this. He reported that as a result of this March 2023 accident, he experiences the same neck and low back pains that he has been having. (T. 96)

Petitioner agreed that he filed a report of an injury in 2019, recollecting an accident that happened where the fender of the truck he was driving was pulled off the truck or bent, due to a collision with another vehicle on May 9, 2019. (T. 96).

Petitioner confirmed that he did not and does not wish to pursue surgery. (T. 97) He testified that after the FCE in June 2018 and returning back to work, he took pain pills. (T. 90) He testified regarding some efforts to schedule therapy or other care, but there was a system issue which prevented this from happening. (T. 90).

Petitioner testified that he does have medical restrictions from a doctor at the VA, explaining that in April 2022 he had an event where he had a seizure. (T. 99). Following that incident, he was taken by ambulance and was told that if it persists, he should see his primary care doctor, which he did in April 2022, who put him on driving restrictions for 6 months. (T. 99)

Petitioner testified that the low back pain he experienced after the May 27, 2016 accident was similar in nature to the previous low back pain of the 2014 accident. (T. 100) Additionally he testified that the neck pain he experienced after the May 27, 2016 incident was similar in character but different than the neck pain from earlier in 2014. (T. 100) He said he could not keep his balance like he used to before the accident. (T. 101)

Medical

7/18/2014- Petitioner presented to and was admitted to The West Suburban Medical Center Emergency Care Department, where he complained of low back pain that climbs up his spine, and also complained of left-sided shoulder pain and neck pain. (PX 1, 1) The primary diagnosis of Petitioner's condition rendered during treatment was backache and muscle pain sustained in a motor vehicle accident. *Id*. at 3

7/22/2014-Petitioner's first visit for follow-up care at Advanced Physical Medicine (APM). The notes reflect complaints of sharp aching and tingling pain in the neck bilaterally radiating to both shoulders, arms, and hands; pain to the mid back bilaterally aggravated by bending in all directions; sharp pain in the lumbar spine bilaterally with symptoms radiating into

both legs. Petitioner was diagnosed with cervical sprain/strain; thoracic sprain/strain; lumbar sprain/strain; and radiculitis/neuritis. Petitioner presented with an overall pain score of 9/10 (PX 3, 1-2)

7/24/2014 -10/21/2014- Petitioner was provided with a course of chiropractic/physical therapy treatment under the supervision of chiropractic physician James Kopsian, D.C., which included 23 therapy sessions over the period. Therapy modalities included moist heat, electric muscle stimulation; spinal manipulation; intersegmental mobilization and trigger point therapy which were performed to the affected areas of complaint. (PX 3, 12-18) Additionally, during the course of therapy, the Petitioner received monthly exams and evaluations at APM by medical physician, Aleksandr Goldvekht, M.D., who also wrote orders for Petitioner's care, which included scripts for medication, therapy, and off-work orders (PX 3, 7-11). Dr. Goldvekht's progress notes of 7/23/2014, states that Petitioner reports bending, lifting, carrying, pushing, and pulling aggravates his symptoms; that Petitioner cannot sit for long periods of time; and assessed Petitioner to suffer from cervical discogenic pain and lumbar discogenic pain. *Id*.

10/16/14 & 10/22/2014, Dr Goldvekht noted that Petitioner was no longer experiencing pain in his neck; however, he was still experiencing lower back pain which comes and goes. Dr. Goldvekht further noted, that Petitioner felt that he was able to handle his lower back pain and discomfort and presented with a pain score ranging from 0-3/10 depending on his activities of daily living. Dr. Goldvekht deemed Petitioner to be at MMI with recommendations for full duty return to work. (PX 3, 11)

Petitioner was ordered off work by his treaters during the entire course of his medical care at APM (PX 3).

5/27/16- Petitioner was taken by ambulance from the scene and was admitted to Presence St. Mary of Nazareth Hospital Emergency Department. (PX 4, 20) A history of a motor vehicle collision, complaints of neck pain and back pain was noted. No loss of consciousness, no vision changes, no headache. No numbness or tingling. No airbags. He also reports back pain diffusely but predominantly over the lower back. It does not radiate to the legs. Petitioner is 6 feet tall and weighs 192 pounds. On examination of his lumbar spine, he exhibited tenderness and pain but no swelling, no edema, no spasm. X-rays were taken of his lumbosacral spine with an impression:

mild narrowing of the L2-3 disc space consistent with mild disc degeneration. There are no acute abnormalities within the lumbar spine. The ultimate diagnosis was low back pain, motor vehicle collision. He was given ibuprofen and methocarbamol. He was discharged with pain medications and muscle relaxer and was to follow-up with his primary care physician in 3 days.

5/28/16- Petitioner consulted with Dr. Rao at St. Anthony Hospital Clinic. (PX 5, 4,8)) On examination midline spinal tenderness is found. Midline cervical, thoracic lumbar, lumbar, sacral spinal tenderness is positive. X-rays were deferred and requested from the emergency department. Petitioner was to follow-up on May 31, 2016. His work status was modified duty, sit down work only, no lifting greater than 5 pounds floor to waist, no lifting greater than 5 pounds waist to shoulder, no lifting greater than 5 pounds overhead and no pushing or pulling more than 5 pounds. The diagnosis was cervical strain, thoracic strain, lumbar strain. He was prescribed Ibuprofen and Robaxin.

6/2/16- Petitioner was seen at Southwest Physicians Group by Dr. Rama Medavaram. (PX 8, 3) The assessment was: 1) repetitive strain injury of cervical spine; 2) strain of lumbar spine. He was to continue taking medicine and was referred to an orthopedic. His current medications included ibuprofen, methocarbamol, prednisone.

6/9/16- Petitioner followed up with Dr. Medavarum at Southwest Physicians Group. (PX8,7) It was noted that Petitioner still has neck and low back pain, and his medications are not helping. The pain goes down both lower extremities. Following examination, the assessment remained the same. He was again directed to see an orthopedic surgeon.

6/27/16- Petitioner presented to Dr. Michael J. Lee at UC Orthopedic Center at Orland Park. (PX 9, 2,15) Dr. Lee obtained a history of the accident. Following examination and review of x-rays he assessed the Petitioner with upper lumbar pain on the right side which appears to be along the paraspinal musculature. Dr. Lee reassured him that the x-rays do not reveal any red flag findings. He recommended physical therapy for 6 weeks in the form of core strengthening exercises. If there is no improvement, they would obtain a lumbar MRI. Dr. Lee stated however he did not believe the MRI would be high yield in revealing significant pathology, since his pain is primarily axial back pain. Petitioner was to return in 6 weeks as needed.

7/29/16- Petitioner was seen at MAPS by PA Hayduk. (PX10, 17) He then went to his primary care physician who told him to be off work and referred him to an orthopedic specialist. Following examination, the assessment was cervicalgia, radiculopathy cervical region, pain in

thoracic spine, low back pain. Lumbar, cervical, and thoracic MRIs were ordered. Physical therapy was prescribed, and he was ordered off work for 2 weeks and return to the clinic in 2 weeks for MRI review.

8/3/16-PA Hayduk wrote a prescription for a Terocin patch.

8/4/16-3/31/17-Petitioner underwent therapy at United Rehab Providers. (PX 11)

8/24/16-Petitioner underwent an MRI of the cervical spine, lumbar spine & thoracic spine, ordered by PA Hayduk. (PX10, 152, 158; PX12,2, 8; PX 14, 25, 49)

9/23/16- Petitioner underwent a cervical epidural steroid injection under fluoroscopy at C5-6 with epidurogram, performed by Dr. Saldanah. (PX10, 30, PX13, 4)

9/29/16-Petitioner returned to PA Hayduk. (PX10, 32) He recently had a cervical epidural steroid injection 6 days ago. He states the injection has not helped much. He reports burning into the right shoulder, but no longer traveling to the right hand. His low back is feeling better. There is no pain that travels down the bilateral lower extremities. He has been in therapy about 2 months. PA Hayduk recommended continuing therapy 3 times a week for 2 weeks. He provided a prescription for tramadol. He may need a repeat cervical epidural steroid injection for his radicular pain. He is to follow-up in 2 weeks.

10/13/16- Petitioner returned to MAPS and was seen by PA Hayduk. (PX10, 37). PA Hayduk opined that Petitioner's injuries are due to the accident of May 27, 2016 and not due to pre-existing condition. He was scheduled for a repeat cervical epidural steroid injection based upon his continued cervical radicular pain and MRI findings. His only other option for his cervical pain is a surgical consult, but he is opposed to that at present. For his low back pain, given the axial pain with worse on extension and failed therapy, and being present for greater than 3 months, he will be scheduled for a right L4-S1 medial branch block. He was to continue physical therapy for a month.

10/28/16- Petitioner underwent a lumbar medial branch block under fluoroscopy at the right L4-S1 levels by Dr. Pontinen. (PX10, 41; PX13, 6)

11/10/16- Petitioner returned to PA Hayduk at MAPS. (PX10, 43) He recently had a right L4-S1 medial branch block on October 28, 2016. On the day of the procedure, he got about 80% pain relief for 10 hours. Given the greater than 80% reduction in pain after the right L4-S1 medial branch blocks, they scheduled a right L4-S1 sided radiofrequency nerve ablation. He will likely need a C6-C7 cervical epidural steroid injection followed by the lumbar RFA. Also given the fact

his shoulder was still painful, PA Hayduk recommended a right shoulder MRI. Petitioner was to remain off work and follow-up in one month.

12/6/16- Petitioner underwent a cervical epidural steroid injection under fluoroscopy at C6-7 with epidurogram by Dr. Rakic. (PX10, 49; PX13, 8)

12/8/16- Petitioner followed up with physician assistant Hayduk. (PX10, 50)

12/23/16-Petitioner underwent a right sided radiofrequency ablation of facet joint medial nerve branches under fluoroscopy of the levels L4, L5 and S1 by Dr. Pontinen at Hyde Park Seem Day Surgery Center. (PX10, 54; PX13, 10)

1/5/17 & 2/9/17-Petitioner returned to PA Hayduk at MAPS. (PX10, 56, 61) He states he still has pain, and it is getting worse over the past month. PA Hayduk recommended a repeat cervical epidural steroid injection. He changed the tramadol to docusate sodium due to the constipation complaint. He was given a prescription for Flexeril. He was not to operate motor vehicles when taking medication.

2/17/17- On referral from PA Haykuk, Petitioner saw Dr. Fisher at Illinois Bone and Joint Institute on Michigan Avenue. (PX 14, 40). Petitioner presented with a chief complaint of cervicalgia and bilateral upper extremity radiculopathy. Dr. Fisher took lumbar x-rays, which he stated showed no evidence of spondylolisthesis or fracture. Dr. Fisher wrote a prescription for naproxen. Light duty was not available, so he was kept off work. Petitioner will forward the CDs of his MRI scan for review at his next visit.

3/3/17-Petitioner underwent a cervical epidural steroid injection under fluoroscopy with epidurogram at C5-6 by Dr. Pontinen. (PX10, 66; PX13, 12)

3/16/17-Petitioner returned to PA Hayduk at MAPS. (PX10, 68) Diagnosis remained the same. He stated the patient now has radiculopathy documented on examination corroborated by MRI. He has been unresponsive to conservative treatment therapy for 6 weeks; therefore he should be scheduled for a lumbar epidural steroid injection per ODG and CMS guidelines. He is to follow-up with Dr. Fisher regarding possible surgery for low back and neck. He could continue taking tramadol as needed and was to follow-up in a month.

3/29/17- Petitioner returned to Dr. Fisher at IBJ. (PX 14, 38) He reports continued neck pain and numbness and burning down the arms, forearms into the first dorsal web space, and first and 2nd fingers of both hands, right greater than left. Dr. Fisher stated that given Petitioner's continued symptoms and balance problems, he recommended cervical decompression. He

recommended a C-3 through C6 laminectomy. He further discussed possible need for converting to a fusion. Petitioner was restricted from work. A work status note from Dr. Fisher dated March 29, 2017 indicated the Petitioner is temporarily totally disabled. The diagnosis listed central cord syndrome C-4-5 myelomalacia, C3-6 HNP/stenosis; 2) lumbar degenerative disc disease. He was recommended to take naproxen and Flexeril as well as undergo a C3-6 laminectomy.

4/7/17- Petitioner underwent a lumbar epidural steroid injection under fluoroscopy at level L4-5 without epidural myelogram by Dr. Farag at Hyde Park surgical Center. (PX10, 72; PX13, 14)

4/13/17-Petitioner returned to PA Hayduk. (PX10, 73) Petitioner advised that since the last visit he had seen Dr. Fisher who told him that he recommended a surgery in his neck. His neck pain remains severe.

5/15/17- Petitioner returned to PA Osmanski at MAPS who recorded that he has finished several months of physical therapy with no improvement and has had neck and low back injections with minimal improvement of pain. (PX10, 77) A work status note dated May 15, 2017 from MAPS restricted Petitioner from work.

6/12/17- Petitioner was seen by Dr. Saldanha, also at MAPS. (PX10, 82) The notes indicate that there remains numbness in the bilateral legs but not as severe as before the injection. His low pain low back pain is 5-6/10. He is following up with Dr. Fisher who recommends cervical surgery. He wishes to undergo a repeat cervical epidural steroid injection. Dr. Saldana indicated he is a candidate for a repeat cervical epidural steroid injection. He has radicular symptoms on physical exam/imaging concordant with his neck pain. He was to be scheduled for a cervical epidural steroid injection at C6-7. He was given a prescription for tramadol and for docusate sodium and was to follow-up with Dr. Fisher.

6/27/17-Petitioner underwent a cervical epidural steroid injection under fluoroscopy with epidurogram. This was at C5-6. (PX10, 86; PX13, 16)

7/5/17-Dr. Fisher engaged in a peer-to peer phone call with Dr. Oh. The call was regarding a proposed multilevel cervical fusion surgery of Dr. Fisher. (PX 14, 36)

7/17/17-Petitioner returned to MAPS and was seen by PA Osmanski. (PX10, 88)

8/16/17-Petitioner returned to MAPS and was seen by Dr. Saldanha. (PX10, 92)

8/22/17- Petitioner underwent a lumbar epidural steroid injection, Interplanar approach L2-3 with fluoroscopic guidance, by Dr. Rakic. (PX10, 96; PX13, 18)

8/30/17-Petitioner returned to MAPS and was seen by PA Osmanski. (PX10, 97) Petitioner returned to MAPS and PA Osmanski on September 27, 2017. (PX10, 102) Following examination, he said he has not followed up with Dr. Fisher because he is nervous about possible surgery. Following his LESI on August 22, 2017, his pain gradually returned, and he is having the radicular symptoms down the bilateral lower extremities along with numbness in the toes. His last cervical epidural steroid injection was June 27, 2017 with a 40% decrease in pain for 2 days. He currently has sharp pain radiating up the right side of the neck and to the side of his head causing intermittent headaches. He also has numbness and tingling radiating to his bilateral upper extremities and into his thumbs. He previously had a LESI on August 22, 2017 with 75% decrease of pain for 3 weeks and his pain has returned. During that time his range of motion increased, and he did not have to take as much medication as previously. Recommend repeating LESI since he had significant improvement from previous injection. Will prescribe Norco as needed for pain. Discontinue tramadol.

10/25/17-Petitioner was seen at MAPS by PA Osmanski. (PX10, 108) The note indicates he will be following up with Dr. Fisher on November 2, 2017 to set up a date for surgery. His pain has not changed since his last visit. He has previously had a LESI with 75% decrease of pain for 3 weeks and then had about 50% for another 3 weeks. His pain returned and he is now having radicular symptoms down the bilateral lower extremities along with numbness in the toes. He had previously finished several months of PT with no improvement of pain. He has had two cervical epidural steroid injections with the last one on June 27, 2017 with 40% decrease of pain for 2 days. He continues to have sharp pain radiating up to the right side of the neck into the side of his head causing him to have intermittent headaches. The neck pain is associated with numbness and tingling that radiates to his bilateral upper extremities and into his thumbs. He was to continue his home exercise program and remain off work. Prescriptions for docusate sodium and for Norco were refilled. He is to continue to follow-up with Dr. Fisher for a surgery date.

11/29/17-Petitioner returned to MAPS and saw PA Hayduk. (PX10, 113) His neck pain is the worst pain. The pain radiates down both arms with numbness and tingling present. He rates the neck pain at 7/10. He was to continue his home exercise program and remain off work and continue Norco and tramadol and return in one month.

12/2/17-Petitioner underwent a cervical MRI ordered by Dr. Theodore Fisher. (PX14, 20 ; PX 15, 1) The impression was: 1) moderate C3-4, C5-6 stenosis, asymmetric along the right neural foramina; 2) mild C6-7 stenosis, also asymmetric along the right neural foramina; 3) moderate C4-5 central and left paramedian stenosis and disc protrusion.

12/14/17- Petitioner returned to Dr. Fisher at Illinois Bone and Joint Institute. (PX14, 34) He continues to have neck pain and pain extending down the shoulder blades, as well as into the bilateral upper extremities. He continues to complain of numbness and burning down the arms, forearms, and the first dorsal web space, first and 2nd fingers of both hands, right greater than left. Dr. Fisher, following examination, reviewed the MRI studies. He indicated that the cervical MRI revealed disc herniations at C3-C4, C4-C5, and C5-C6 with degenerative changes with disc space narrowing and disc desiccation at C6-C7 as well. His assessment was cervical spinal stenosis and myelomalacia. He discussed with Petitioner the theoretical risks of spinal stenosis and small traumas causing more spinal cord injuries which can be permanent. He discussed surgery including anterior surgery. He recommended a C-3 through C6 laminectomy.

1/10/18- Petitioner was seen at MAPS by Dr. Mark Farag. (PX10, 117) Petitioner has seen Dr. Fisher since the last visit on December 28, 2017, who was recommending surgery, which was supposed to be done yesterday, but it was denied. He is scheduled for an IME on January 31, 2018. His pain is overall the same since the last visit. He is taking Norco 5 daily and tramadol twice a day. He has had two cervical epidural steroid injections, with the last one on June 27, 2017 with 40% decrease in pain for about 2 days but then it returned. He also had a lumbar epidural steroid injection on August 22, 2017 with temporary relief. Dr. Farag discussed the cervical, thoracic, and lumbar MRI findings. The diagnosis remained cervicalgia, radiculopathy cervical region, low back pain, and lumbar radiculopathy. He discussed the treatment possibilities and refilled the prescriptions for Norco and tramadol and Petitioner was to follow-up with Dr. Fisher, and then return here in 6 weeks. A note signed by PA Hayduk restricted the Petitioner from work.

1/31/18-Petitioner underwent an IME with Dr. Jesse Butler. (RX3) Petitioner informed Dr. Butler that at the time of this accident he had just returned to work 5 months prior from an earlier front end collision at work in 2015 and was off work for one and 1/2 years while undergoing treatment. For that accident he stated the collision jarred his truck and he treated for neck and low back pain and was off work. Dr. Butler's assessment following examination was

spinal stenosis cervical region. He noted the current status is that of cervical pain and lumbar pain. The patient has pre-existing cervical spinal stenosis at the C4-C5 and C5-C6 levels. His diagnoses are degenerative in nature and unrelated to the auto collision of May 27, 2016. His subjective complaints correlate with his degenerative findings. His current symptoms are not caused by the work-related accident of May 27, 2016. His symptoms resulted from a long-standing degenerative condition. The mechanism of injury did not cause or contribute to his current subjective complaints or objective findings. He does not require additional treatment as a result of the May 27, 2016 accident. There is no contraindication to returning to work due to the May 27, 2016 accident. He may return to work full duty in that regard. He does have cervical stenosis which is an underlying degenerative condition neither caused nor aggravated by his work accident. He may choose to proceed with treatment for that degenerative condition in any fashion he may choose. Dr. Butler added he does not believe that the force transmitted to his cervical or lumbar spine would have caused any of the findings or exacerbated or even aggravated any of his underlying degenerative issues. His treatment to date has not been related to the incident of May 27, 2016. His multiple spinal injections were neither reasonable nor necessary.

2/21/18- Petitioner returned to PA Hayduk at MAPS. (PX10, 123) He presents for medication management. He is taking Norco 5 once a day which is helpful and allows him to be more functional. His neck pain is worse than his low back. The pain goes down both arms to the hands with tingling present. The pain also goes down both legs and there is tingling in his toes. He had an IME on January 30, 2018 with Dr. Butler and was told he had a degenerative disease and could go back to work full duty. His Norco prescription was refilled, and he was to continue on tramadol and follow-up in 6 weeks.

4/11/18- Petitioner returned to MAPS and was seen by Dr. Farag. (PX10, 128) He presents for medication management. He is taking Norco 5 1-2 times per day that is helpful and allows him to be more functional. He denies side effects. The neck pain is worse than his low back. It goes down both arms to the hands, with tingling present. It also goes down both legs with tingling in his toes. Dr. Farag recounted that in December 2017 Dr. Fisher recommended a C3-6 laminectomy, which was denied. Petitioner then had an IME on January 30, 2018 with Dr. Butler and was told he had degenerative disease and could go back to work full duty. He is no longer getting paid his workers compensation benefits now. He drives a city garbage truck for work and also has to maintain the vehicle. He has been off work since the injury. Dr. Farag stated that the

physical exam remains the same. His assessment was that the Petitioner was a 59-year-old male who was injured in a work-related motor vehicle accident on May 27, 2016. He has experienced no sustained relief from previous injections. The diagnosis list included cervicalgia, cervical radiculopathy, low back pain, displacement of cervical intravertebral disc, displacement of lumbar intravertebral disc, lumbar radiculopathy. Dr. Farag recommended heat wave treatment in an effort to provide pain relief and possibly help wean off of medications. He refilled the Petitioner's Norco and continued his tramadol.

4/13/18-Petitioner was seen by Dr. Yohannan at the Veterans Administration. (PX17, 1) He is 60 years old and had an injury to his neck in May 2016. He was evaluated by an orthopedic surgeon who told him he needs surgery, but then had an independent evaluation by a worker's compensation doctor and was told he does not need surgery. He has already seen a pain clinic and had injections and medications and has done physical therapy. Following examination, the assessment was 60-year-old with hypertension, GERD, cervical stenosis.

5/8/18-Petitioner presented for a neurosurgical consult at the Veterans Administration . (PX 17, 16) He presented with complaints regarding his neck pain going down both arms. His primary physician is Dr. Yohannan. Petitioner was referred by neurologist Dr. Rozental. Petitioner advised he started having neck pain after a neck injury caused by a motor vehicle accident. Radiates down both arms, more pain in the right arm in the C6 distribution. He reports numbness and tingling in both arms, but no weakness or other symptoms of myelopathy. He took hydrocodone and had physical therapy for a couple of months, which did not help. He had epidural injections which improved his pain temporarily. Petitioner had a normal neurologic physical examination. MRI imaging was read to show multilevel cervical spinal stenosis caused by disc herniation at C4-5, C5-6, and C6-7, more severe at C4-5. Disc herniation at C5-6 essential to the right, cervical spinal cord signal changes. The assessment was that the patient does have cervical spinal stenosis with neck pain and radiculopathy. He has spinal stenosis with spinal cord signal changes. He is very symptomatic, and Dr. Union offered him surgery of C4-5 and C5-6 ACDF. However, the patient does not want surgical intervention. Therefore, it was recommended he had physical therapy and see a pain specialist.

6/19/18- Petitioner underwent a functional capacity assessment at ATI physical therapy. (PX 10,179; PX17,1) He was found to be capable of above the shoulder 34.6 pounds occasionally, chest to chair 34.6 pounds occasionally, chair to floor 77.8 pounds occasionally, carry 47 pounds,

sitting 8 hours with regular breaks, standing 8 hours with regular breaks, walking 8 hours with regular breaks. The FCE determined Petitioner demonstrated ability to safely perform at least within the medium physical demand category, exerting 77 pounds of force occasionally and 41 pounds of force frequently. Despite only a conditionally valid effort with some self-limited effort during testing, he did demonstrate abilities to meet the full duty requirements of his pre-injury position. He is functionally employable within these findings on a full-time basis, at a minimum. His capabilities met the level as stated in the job description provided by the employer which was light to medium for a motor truck driver.

6/23/18- Petitioner returned to MAPS and was seen by PA Osmanski. (PX10, 136) He reported no changes over the past 6 weeks. His neck pain is worse than his low back. The pain goes down both arms to the hands with tingling present. The pain also goes down both legs and there is tingling to his toes. PA Osmanski recommended an FCE for his neck and low back pain to further assess work restrictions. He was continued on Norco and tramadol. He was to remain off work.

6/22/18-Petitioner returned to MAPS and PA Osmanski. (PX10, 141) He underwent an FCE earlier this week. PA Osmanski concluded the FCE says he can work within light to medium physical demand level. He continues to express neck and low back radicular pain. Due to the pain sustained in the accident he will most likely need surgery in the future. However, at this time his pain is stable, and he can return to work with restrictions for the FCE and he is at MMI and may be discharged.

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).

Although Petitioner appeared to be lethargic and confused about some of the questions asked of him, overall, Petitioner's testimony at arbitration was consistent with the medical records regarding history of accidents on July 18, 2014 and May 27, 2016, history of complaints and physical findings. The Arbitrator finds him to be a credible witness.

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

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

Petitioner suffered injuries to his neck, back and arms in the accident on 7/18/2014 (14WC026086) and the accident on 5/27/2016 (16WC020944). In order to determine whether a claimant sustained separate compensable injuries in two accidents, the Commission must consider the claimant's condition of ill-being prior to the second accident. The results should not

be different solely because multiple claims have been consolidated for hearing. *Baumgardner v Illinois Workers' Compensation Commission, 409 Ill. App. 3rd 274, 282, 947 N.E. 2d 856 (2011)*.

Case #14WC026086 (7/18/14)

Despite Petitioner's testimony of a pre-existing cervical sprain and lumbar sprain sustained in a 2002 motor vehicle accident, the evidence supports that Petitioner's conditions from that accident had resolved.

Petitioner provided uncontradicted and unrebutted testimony supported by the medical records of his providers that Petitioner was involved in a motor vehicle collision on 7/18/14, where there was an impact causing Petitioner to be thrown about the cabin of his garbage truck, causing his chest to hit the steering wheel, and both of his knees to strike the interior portion of the truck. Petitioner complained of lower back pain with radiation of symptoms into both legs at the scene of the accident. Petitioner was treated at the scene of the accident by Chicago Fire Department paramedics who transported Petitioner to West Suburban Medical Center's emergency care department for further care regarding the complaints of injury noted at the scene of the accident. Following the accident, Petitioner's condition worsened, necessitating further treatment being rendered at APM in the form of medical care, physical therapy, and medication management.

Petitioner testified that he was symptom-free regarding his neck and lower back prior to the 7/18/14 accident. Dr. Kopsian's note of 7/22/14 states that Petitioner's current symptoms resulting from the accident/onset of 7/18/14, appear to be a recurrence of previous, similar complaints which were asymptomatic (dormant or healed) at the time of this most recent accident onset. Dr. Kopsian further notes that Petitioner reported feeling well with none of his previous complaints present prior to the accident on 7/18/14. (PX 3, 2) The accident of 7/18/14 necessitated Petitioner's treatment at West Suburban Medical Center and at APM. (PX 1, PX 3).

On Petitioner's final visit to APM and Dr. Goldvekht on 10/22/14, he was asymptomatic regarding his neck, shoulder, and arms; his lower back pain had reduced; and he was able to return to work full duty. Petitioner testified that after his return to work, but prior to the 5/27/16 accident, he received physical therapy on three occasions with the Veterans Administration for his lower

back. There was no evidence presented indicating that Petitioner would require additional medical care after the conclusion of his three physical therapy sessions with the Veterans Administration.

Based on the record as a whole, the Arbitrator finds the Petitioner's current condition of ill-being as it relates to his cervical sprain/strain; thoracic sprain/strain; lumbar sprain/strain; radiculitis/neuritis; cervical discogenic pain and lumbar discogenic pain neck are causally related to the work accident of 7/18/14.

Case #16WC020944 (5/27/16)

Although, Petitioner testified that he did continue to suffer lingering lower back symptoms through the date of the second accident on 5/27/16, the medical reports indicate that his pain scores increased and was averaging at 7/10 contrasted to the score of 3/10 from the 7/18/14 accident. Moreover, Petitioner's neck, shoulders, and back conditions after the 5/27/16 accident required extensive medical care.

The Arbitrator finds, based upon the weight of credible evidence in this record, that Petitioner returned to work after his work accident of 7/18/14, as stated above. He returned to the same job he had prior to 7/18/14, driving a City of Chicago garbage truck through the alleys of the City of Chicago collecting garbage. Petitioner testified he did have some pain in his low back after he returned to work from the 7/18/14 accident. He used hot and cold compresses and received some infrequent physical therapy at the VA. He had neck and back pain that was similar in nature between these 2 accidents. There was no evidence presented that he was injured in any other accident between the time he returned to work after the 7/18/14 accident and the accident of 5/27/16.

Petitioner testified that he injured his neck and upper and lower back in the 5/27/16 accident. The medical records document a consistent history given by Petitioner to his medical providers after the accident of 5/27/16. He gave history to his medical providers that his neck jerked back and he hit the posterior part of his head with the seat. PX 4, 20-26. Next day, he followed up at St. Anthony clinic. The records reflect complaints of neck, shoulders and low back pain as a result of being rear ended by a car.

Based on the record as a whole, the Arbitrator finds that conditions of ill-being suffered by Petitioner to his neck, and low back in the second accident of 5/27/16, represent new injuries which are separate and distinct injuries from the conditions of ill-being suffered by Petitioner in the first accident of 7/18/14. Petitioner's neck and shoulder conditions sustained in the 7/18/14 accident, had resolved by his final visit to APM on 10/22/14, and his neck and shoulders remained symptom free until 5/27/16.

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

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

Case #14WC026086 (7/18/14)

Having found the Petitioner's current condition of ill-being relating to his cervical sprain/strain; thoracic sprain/strain; lumbar sprain/strain; radiculitis/neuritis; cervical discogenic pain and lumbar discogenic pain neck are causally related to the work accident of 7/18/14, the Arbitrator finds the Petitioner's treatment through 10/22/14 to be reasonable and necessary including charges of Advanced Physical Medicine ($6,677.90) (PX 4); West Suburban Medical Center ($1,383.00) (PX 2); and EPMG ($736.00) (PX 5).

The parties stipulated that Respondent has paid for all amounts billed for Advanced Physical Medicine and believes that all reasonable related amounts claimed for provider, West Suburban Medical, have been paid by Respondent. The parties further stipulated that if West Suburban Medical Center, EPMG of Illinois or Blue Cross Blue Shield make any further claim for payment or reimbursement, that the Respondent shall hold Petitioner harmless from any claims by any providers for reasonable related medical treatment for July 18, 2014 at West

Suburban Medical Center. This stipulation appears to address the billing issues and Respondent's obligation to pay and resolve the same.

The Arbitrator orders the parties to resolve payment of said bills pursuant to the above referenced oral stipulation and as provided in Sections 8(a) and 8.2 of the Act.

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

Consistent with the Illinois Workers' Compensation Act, the Arbitrator is to base the permanency determination on the following factors:

i. The reported level of impairment pursuant to subsection (a) (e.g., the AMA rating)
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;
v. Evidence of disability corroborated by the treating medical records.

No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

Case #14WC026086 (7/18/14)

With regard to subsection (i) of § 8.1b(b), The Arbitrator notes that no AMA Impairment Rating was rendered. Therefore, the Arbitrator gives this factor no weight.

With regard to subsection (ii) of § 8.1b(b), the Arbitrator notes at the time of the accident, the Petitioner worked as a garbage truck operator for the Respondent, and he was able to return to full-duty work for the Respondent as a garbage truck operator as of 7/18/14. Given the lack of change in occupation, the Arbitrator gives this factor some weight.

With regard to subsection (iii) of § 8.1b(b), the Arbitrator notes, at the time of the accident, Petitioner was 56 years old, married with one dependent child. The Arbitrator gives this factor some weight.

With regard to subsection (iv) of § 8.1b(b), the Arbitrator notes that no evidence regarding Petitioner's earning capacity was presented. Moreover, Petitioner was able to return to full-duty

work as a garbage truck operator for the Respondent. Given that there is no diminution in wages as a result of the Petitioner's injuries, the Arbitrator gives this factor some weight.

With regard to subsection (v) of § 8.1b(b), the Arbitrator notes the Petitioner's medical records establish that he sustained conditions of ill-being from the 7/18/2014 accident in the form of a cervical sprain/strain; thoracic sprain/strain; lumbar sprain/strain; radiculitis/neuritis; cervical discogenic pain and lumbar discogenic pain. The Arbitrator further finds that Petitioner reached MMI status on 10/22/2014. The injuries sustained by Petitioner required that he be off work for 15 weeks (7/21/2014 to 11/2/2014). The Arbitrator further finds that despite reaching MMI status on 10/22/2014, Petitioner has continued to suffer residual lower back pain and symptoms which Petitioner testified that they have not resolved. The Arbitrator gives this factor greater weight.

Based upon the findings as to nature and extent, the Respondent shall pay Petitioner the sum of $ **735.37**/week for a period of **37.50** weeks, because the injuries sustained caused **7.5%** loss of the person as a whole, as provided in Section 8(d)(2) of the Act.

Case #16WC020944 (5/27/16)

With regard to subsection (i) of § 8.1b(b), the Arbitrator notes that no AMA Impairment Rating was rendered. Therefore, the Arbitrator gives this factor no weight.

With regard to subsection (ii) of § 8.1b(b), the Arbitrator notes at the time of the accident, the Petitioner worked as a garbage truck operator for the Respondent, and he was able to return to full-duty work for the Respondent as a garbage truck operator as of 6/29/18. The Arbitrator gives this factor some weight.

With regard to subsection (iii) of § 8.1b(b), the Arbitrator notes, at the time of the accident, Petitioner was 58 years old, married with no dependent children. The Arbitrator gives this factor some weight.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner testified that driving the garbage trucks over bumps through the alleys caused pain in his neck and low back. He testified that he retired early. The Arbitrator gives this factor some weight.

With regard to subsection (v) of § 8.1b(b), the Arbitrator notes the medical records of Midwest & & pain specialists on 6/22/18 document Petitioner was released by his treating physician to return to work. Petitioner did return to work as of 6/29/18 performing the full demands of his job as a City of Chicago garbage truck driver but retired about a year later. He did not return to work any place else after his retirement from the City of Chicago. At hearing, he testified that he continues to have pain every day.

Sitting and standing are limited and he has to adjust accordingly. He stopped driving the car after he retired because of the pain he was having in his neck and lower back arms and legs. Sitting for long periods of time in the car was uncomfortable. After he sits for about 5 minutes, he begins to feel pain in his neck and low back. He does not do any chores that require lifting around the house other than taking out the garbage because of the pain. He takes ibuprofen for the pain in his neck and his low back. Medical records document on 6/22/18, his last day of treatment with his physicians at Midwest Anesthesia & Pain Specialists, that he continues to have neck and low back radicular pain.

Records of the VA on 5/8/2018 document Petitioner's complaints of neck pain and radiculopathy verified by imaging studies, that Petitioner is symptomatic, and that the treating physician recommends surgical intervention consisting of C4-5 and C5-C6 ACDF for management of his pain symptoms. These records further document that Petitioner does not want surgical intervention. He was recommended to follow-up with pain management. (PX 17, p 11-12, 16-17)

Dr. Fisher's records document the MRIs demonstrating large central disc herniations resulting in severe central stenosis C4-C5 level; disc herniations at C3-C4, C4-C5 and C5-C6 degenerative changes with disc space narrowing and disc desiccation at C6-C7 as well. PX 14, p 34-35. Medical records of Midwest Anesthesia & Pain Specialists document on 6/22/18 that Petitioner continues to have the same neck and low back pain consistent over the past several months. The Petitioner testified that the neck pain is worse than his back pain. He is taking Norco and Tramadol, but trying not to take medications as he does not want to become reliant on it. These records document he experienced no sustained relief from previous injections. (PX 10, p 141-144) The Arbitrator finds medical records support Petitioner's complaints of disability. Therefore, the Arbitrator gives this factor greater weight.

Based upon the findings as to nature and extent, the Respondent shall pay Petitioner the sum of $**755.22**/week for a period of **150** weeks, because the injuries sustained caused **10%** loss of the person as a whole for his low back and **20%** loss of the person as a whole for his neck, as provided in Section 8(d)(2) of the Act.

It is so ordered:

Crystal L. Caison

Arbitrator Crystal L. Caison

May 21, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC020944
Case Name	Carl Jamison v. City of Chicago
Consolidated Cases	14WC026086
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0110
Number of Pages of Decision	30
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Michael Casey
Respondent Attorney	Terrence Donohue

DATE FILED: 3/13/2025

/s/Amylee Simonovich, Commissioner

Signature

25IWCC0110

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

Carl Jamison,

Petitioner,

vs. NO: 16 WC 020944

City of Chicago,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causation and the nature and extent of the injury 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.

In the interest of efficiency, the Commission primarily relies on the detailed recitation of facts provided in the Decision of the Arbitrator, except as stated below. The Commission agrees with the Arbitrator's finding that the accident of May 27, 2016 caused a new cervical and lumbar injuries, which were separate and distinct from the conditions of ill-being suffered in his companion case (14WC026086) involving an accident on July 18, 2014. The Commission agrees with the Arbitrator's finding that Petitioner's lumbar and cervical injuries were causally related to the May 27, 2016 accident. The Commission further agrees with the Arbitrator's award of permanent partial disability in the amount of 10% loss of use of the person as a whole with regard to the lumbar injury. However, the Commission disagrees with the Arbitrator's finding that Petitioner's cervical injury entitled him to a permanent partial disability award of 20% loss of use of the person as a whole.

The Commission modifies the award of permanent partial disability for his cervical injury from 20% to 12.5% loss of use of the person as a whole. Petitioner underwent a Functional Capacity Evaluation (FCE) on June 19, 2018 which determined that his physical capabilities placed him in the light to medium physical demand level, which were equivalent to the physical demands required in his position with Respondent based upon the job description provided by the employer. PX18, p.1. On June 22, 2018, Petitioner was released by PA Osmanski to return to work with restrictions pursuant to the FCE. PX10, p.141. According to Petitioner's testimony at

trial, Petitioner returned to work within the restrictions of the FCE in February 2018 and continued to work in that capacity for a year and a half until he retired in November 2019. T.87-88. While Petitioner indicated he had retired as a result of his neck and a belief that his cervical condition could worsen, he did not provide any evidence of a medical modification of work restrictions or any additional medical treatment for approximately five years prior to the date of hearing. The Commission finds the Arbitrator's award of 20% loss of use of the total person is excessive based upon the lack of medically supported disability evidence related to his cervical injury and the Commission finds an award of 12.5% loss of use of a person to be more appropriate.

Based upon the above factors, the Commission finds an award of 12.5% loss of use of the person as whole to be appropriate for Petitioner's cervical injury.

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on May 21, 2024, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the sum of $755.22/week for a further period of 112.5 weeks, as provided in Section 8(d)2 of the Act, as the injuries sustained caused 10% loss of use of the person as a whole for the lumbar spine injury and 12.5% loss of use of the person as a whole for the cervical spine injury.

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

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

MARCH 13, 2025

o: 1/28/2025
AHS/kjj
051

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC020944
Case Name	Carl Jamison v. City of Chicago Dept of Streets & Sanitation
Consolidated Cases	14WC026086;
Proceeding Type	
Decision Type	***Corrected Arbitrator Decision***
Commission Decision Number	
Number of Pages of Decision	27
Decision Issued By	Crystal Caison, Arbitrator

Petitioner Attorney	Michael Casey
Respondent Attorney	Terrence Donohue

DATE FILED: 5/21/2024

/s/Crystal Caison, Arbitrator
Signature

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

Carl Jamison v. City of Chicago (16WC020944)
Consolidated Case: (14WC026086)

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

Carl Jamison
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # **16** WC **020944**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Crystal L. Caison**, Arbitrator of the Commission, in the city of **Chicago**, on **7/11/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

Carl Jamison v. City of Chicago (16WC020944)
Consolidated Case: (14WC026086)

FINDINGS

On **5/27/2016**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**72,729.28**; the average weekly wage was $**1398.64**.

On the date of accident, Petitioner was **58** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**83,519.09** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**83,519.09**.

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

The Arbitrator finds that conditions of ill-being suffered by Petitioner to his neck, and low back in the second accident of 5/27/16, represent new injuries which are separate and distinct injuries from the conditions of ill-being suffered by Petitioner in the first accident of 7/18/14. Thus, the Arbitrator finds the Petitioner's current condition of ill-being as it relates to his low back and neck are causally related to the work accident of 5/27/16.

Respondent shall pay Petitioner the sum of $**755.22**/week for a period of **150** weeks, because the injuries sustained caused **10%** loss of the person as a whole for his low back and **20%** loss of the person as a whole for his neck, 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.

Crystal L. Caison
Signature of Arbitrator

May 21, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION

Carl Jamison	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 16WC020944
City of Chicago	)	
	)	
	)	
Respondent.	)	

PROCEDURAL HISTORY

This matter proceeded to hearing on July 11, 2023, before Arbitrator Crystal L. Caison with consolidated case: 16WC020944. For case #14WC026086 (7/18/14), the issues in dispute include causal connection, medical bills, and nature and extent. (AX 1) For case #16WC020944 (5/27/16), the issues in dispute include causal connection and nature and extent. (AX 2)

With regards to case #14WC026086, the parties stipulated to the following:

That Respondent has paid for all amounts billed for Advanced Physical Medicine and believes that all reasonable related amounts claimed for provider, West Suburban Medical, have been paid by Respondent. The parties further stipulated that if West Suburban Medical Center, EPMG of Illinois or Blue Cross Blue Shield make any further claim for payment or reimbursement, that the Respondent shall hold Petitioner harmless from any claims by any providers for reasonable related medical treatment for July 18, 2014 at West Suburban Medical Center.

This consolidated decision will address all issues under each respective case number and a separate order will be issued for each case.

An Arbitrator Decision and Order were entered on April 29, 2024. Respondent filed a timely19(f) petition requesting for the Arbitrator to issue a corrected decision to correct the following: (1) a typo in the date of service for ER treatment at West Suburban Medical Center in

the second paragraph of the "Procedural History." The date now accurately reflects July 18, 2014 instead of the July 14, 2014; and (2) a typo in the Arbitrator Decision under "Issue L" in connection with **Case #14WC026086 (7/18/14)** that reflects the award as 10% loss of the person as a whole, which conflicts with what is accurately reflected in the Order as 7.5% person as a whole. The Arbitrator also noted an omission of the number of weeks in the fifth grammatical paragraph for the **8(d)(2) award** in the corresponding Order. The number **50** was inserted.

This corrected decision addresses those changes. All other portions of the Arbitrator Decision and Order issued on April 29, 2024, 2024 shall remain in full force and effect.

THE ARBITRATOR MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner's Testimony

Case #14WC026086 (7/18/14)

Carl Jamison was 56 years old at the time of the accident on July 18, 2014. He was married and had one dependent child. (T. 24) Petitioner testified that he retired from his employment with the City of Chicago Streets and Sanitation in November 2019. (T. 25)

On July 18, 2014, he was a garbage truck operator. (T. 25) This was a job he had held for about six years. He would drive the truck through the units with the help of 2 laborers that worked on the truck with him. (T. 26) He worked 5 days a week, 40 hours per week and had an average weekly wage of $1,354 at the time. (T. 26)

Petitioner was proceeding northbound on Cicero Avenue approaching the intersection with Chicago Avenue when a vehicle came out of a parking lot on the side of the street and struck the garbage truck. (T. 28) The other vehicle struck the passenger side of the garbage truck with a heavy impact. (T. 29) Petitioner testified his chest hit the steering wheel, and his knees were impacted. (T. 29). After the impact he remained in the garbage truck for about 15 minutes. (T. 30) He noticed he was hurt and had tingling in his lower back and legs. (T. 30). The police arrived, and he advised them his back was hurting. An ambulance was called. Petitioner called his supervisor on an overhead radio to notify him of the accident. (T. 31)

He was transported to West Suburban Hospital emergency room. (T. 32). He reported at that time his low back was getting worse and he had pain in his legs. (T. 33) He was released that

day and given a prescription for pain medication and muscle relaxants. (T. 33) He did not return to work the following Monday because he was still in pain, and his back pain he rated at 9/10. (T. 35). He also testified his neck was sore and he rated that at 10/10 pain level. He recalled he had radiation into his arms from his neck and shoulders. (T. 36)

Petitioner went to Mercyworks Clinic. (T.37) He underwent therapy 3 times a week at Advanced Physical Medicine for his lower back and legs and neck. (T. 40-41) Petitioner further testified that at his last visit with Dr. Goldvecht on October 22, 2014 he was asymptomatic regarding his legs but was still having some issues with his low back. (T. 44) He was still having some issues with his low back. He was uncomfortable with stiffness and soreness. The backache improved and he rated the pain at 3/10. (T. 45). At that time Dr. Goldvecht released him from care and returned him to work full duty effective October 27, 2014. (T. 46).

On cross, Petitioner did not recall having a neck and back auto accident, injury in 2002 (T. 47)

When asked whether he had undergone any other medical care between the time of his release on October 20, 2014 and the May 27, 2016 accident. He indicated that he had. He described it as hot compresses as well as cold compacts which he did on his own. (T. 49) He also stated there were visits with medical doctors at the VA. *Id*. He said this was physical therapy for his low back. However, there were problems with staffing at the VA and he said he was not able to complete the process. (T. 50) He described the therapy as three times total. (T. 52)

Petitioner testified that he had low back pain from the first accident in 2014, and that the low back pain he experienced from the May 2016 accident was similar in nature. (T. 53) He also testified the experienced neck pain in both the 2014 accident and 2016 accident and that the neck pain was similar in nature and character between the 2 accidents. (T. 54)

Petitioner testified that in eight to nine years prior to July 18, 2014 he was not suffering from any neck, low back, shoulder, or any other parts of the body which were injured from the accident of July 18, 2014. (T. 58)

Case #16WC020944 (5/27/16)

Petitioner testified to being in a motor vehicle accident while driving a garbage truck on May 27, 2016. He approximated that he had been back at work about a year from his 2014 accident, and said he was not treating with any doctors during that time. (T. 60) Petitioner testified

that on the day of the accident, he was driving northbound at Damen and Erie, when he was rear ended. He was approaching a stop sign at about 5 miles an hour. (T. 63) He testified that he was jarred and pushed around, and his body was jerked forward and back, and he hit his head and neck on the headrest in the truck. (T. 64) He said that he experienced pain in his neck, shoulder, low back, and upper back. (T. 64) When he got out of the vehicle, he felt he was tensing up and experienced pain. (T. 65) Petitioner identified photographs of the two vehicles taken after the accident. (T. 66) He testified that he informed his foreman that he needed an ambulance, which was then called, and took him away. (T. 66)

He was taken that day May 27, 2016 to the emergency department at St. Mary and St. Elizabeth Medical Center. (T. 67) He complained of neck pain and low back pain. The next day, May 28, 2016 he went to St. Anthony Health Clinic. (T. 68). He advised them of neck pain, rated at 10/10 and shoulder and low back pain, and described being rear-ended and feeling a whiplash type injury. (T. 68) He was not able to return to work and went to see his primary care doctor at Southwest Physician's Group on June 2, 2016. (T. 70) He was then referred to an orthopedic doctor. (T. 70)

On June 27, 2016 he saw orthopedist Dr. Michael Lee, who reviewed x-rays of the lumbar spine and received complaints of lumbar and neck pain, and Dr. Lee recommended continued physical therapy and possibly an MRI if complaints continue. (T. 71)

Petitioner started physical therapy on August 4, 2016 at United Rehab Providers. (T. 73) He underwent a cervical MRI on August 24, 2016, as well as lumbar and thoracic MRIs. (T. 73) He was maintained off work, and given a prescription for further pain medication, and the doctors recommended an injection into his neck. (T. 73) He was continuing to undergo therapy at United Rehab during this time.

He underwent a cervical epidural steroid injection on September 23, 2016 at Midwest Anesthesia. (T. 74) Petitioner agreed that there was discussion regarding a possible surgical consult, but he did not want to pursue that. (T. 75) He continued to have lumbar complaints, so on October 28, 2016 he underwent a lumbar injection. The injection provided about 10 hours of 80% relief, but then the pain returned, and so they recommended a radiofrequency ablation for his low back. (T. 76).

Petitioner agreed that Dr. Fisher was recommending a C-3 through C6 laminectomy since the injections had not completely resolved his pain. (T. 79) Petitioner was reluctant to undergo

the surgery. (T. 80). Subsequent to that, Petitioner did not immediately follow up with Dr. Fisher. (T. 81). Eventually Petitioner returned to Dr. Fisher again in December 2017 saying his neck had not gotten better, and he had decided to go ahead with the surgery. (T. 81)

Then he got a letter from the City, and was told to come back to work, and TTD was stopped and the medical was stopped. (T. 84) Petitioner said he then then went to the Veterans Administration for treatment. (T. 84) He presented at the Veterans Administration on April 13, 2018 complaining of neck and back pain and was referred to a neurosurgeon at the Veterans Administration. (T. 84) The neurosurgeon at the Veterans Administration said he had severe stenosis at C4-5, C5-6, C6-7 and needed cervical surgery. (T. 85) Petitioner returned to the neurosurgeon on May 19, 2018 and advised the neurosurgeon that he did not wish to undergo the surgery because of fears he had, and information of other people for whom surgery did not go well. (T. 85) Petitioner indicated that he did not want to become reliant on medication and therefore stopped taking the medication. (T. 86)

Petitioner was sent for an FCE, and then returned to work within the restrictions of the FCE. (T. 87) This was around February 2018, and he returned to driving a truck. Petitioner continued working his regular job after returning to work in February 2018 for about a year, and then retired November 27, 2019. (T. 88). He stated he retired because of the situation with his neck and fears that it could be worsened. (T. 80) Petitioner testified that presently he still has pain and cannot do movements without being cautious. (T. 89) He testified he does not drive a car anymore. He testified he stopped driving a car because he was in pain all the time and had to worry about moving around, including sitting for long periods of time. (T. 90) He said he can sit for about 5 minutes before he has pain in his neck and low back. Petitioner testified he doesn't lift anything without being cautious.

On cross, when asked whether he had sustained any other accidents after the May 2016 accident, he stated that he had. (T. 93) He described a personal vehicle accident where he was hit from the side in a hit-and-run in 2023. (T. 94) He testified he sought medical treatment for that incident, but that treatment has not occurred yet. He testified that he reaggravated his neck and low back in this recent motor vehicle accident and that it occurred in March 2023. (T. 94) He testified that following this March 2023 incident, he went to the VA where he was examined and prescribed pain medication and was advised to follow-up with his primary care doctor. (T. 95) He described the March 2023 incident as being hit from the side while driving his car. (T. 95) He was

not taken away by ambulance and the police did not come. He testified he has an appointment for the day of trial with his primary care physician Dr. Yohannan concerning this. He reported that as a result of this March 2023 accident, he experiences the same neck and low back pains that he has been having. (T. 96)

Petitioner agreed that he filed a report of an injury in 2019, recollecting an accident that happened where the fender of the truck he was driving was pulled off the truck or bent, due to a collision with another vehicle on May 9, 2019. (T. 96).

Petitioner confirmed that he did not and does not wish to pursue surgery. (T. 97) He testified that after the FCE in June 2018 and returning back to work, he took pain pills. (T. 90) He testified regarding some efforts to schedule therapy or other care, but there was a system issue which prevented this from happening. (T. 90).

Petitioner testified that he does have medical restrictions from a doctor at the VA, explaining that in April 2022 he had an event where he had a seizure. (T. 99). Following that incident, he was taken by ambulance and was told that if it persists, he should see his primary care doctor, which he did in April 2022, who put him on driving restrictions for 6 months. (T. 99)

Petitioner testified that the low back pain he experienced after the May 27, 2016 accident was similar in nature to the previous low back pain of the 2014 accident. (T. 100) Additionally he testified that the neck pain he experienced after the May 27, 2016 incident was similar in character but different than the neck pain from earlier in 2014. (T. 100) He said he could not keep his balance like he used to before the accident. (T. 101)

Medical

7/18/2014- Petitioner presented to and was admitted to The West Suburban Medical Center Emergency Care Department, where he complained of low back pain that climbs up his spine, and also complained of left-sided shoulder pain and neck pain. (PX 1, 1) The primary diagnosis of Petitioner's condition rendered during treatment was backache and muscle pain sustained in a motor vehicle accident. *Id*. at 3

7/22/2014-Petitioner's first visit for follow-up care at Advanced Physical Medicine (APM). The notes reflect complaints of sharp aching and tingling pain in the neck bilaterally radiating to both shoulders, arms, and hands; pain to the mid back bilaterally aggravated by bending in all directions; sharp pain in the lumbar spine bilaterally with symptoms radiating into

both legs. Petitioner was diagnosed with cervical sprain/strain; thoracic sprain/strain; lumbar sprain/strain; and radiculitis/neuritis. Petitioner presented with an overall pain score of 9/10 (PX 3, 1-2)

7/24/2014 -10/21/2014- Petitioner was provided with a course of chiropractic/physical therapy treatment under the supervision of chiropractic physician James Kopsian, D.C., which included 23 therapy sessions over the period. Therapy modalities included moist heat, electric muscle stimulation; spinal manipulation; intersegmental mobilization and trigger point therapy which were performed to the affected areas of complaint. (PX 3, 12-18) Additionally, during the course of therapy, the Petitioner received monthly exams and evaluations at APM by medical physician, Aleksandr Goldvekht, M.D., who also wrote orders for Petitioner's care, which included scripts for medication, therapy, and off-work orders (PX 3, 7-11). Dr. Goldvekht's progress notes of 7/23/2014, states that Petitioner reports bending, lifting, carrying, pushing, and pulling aggravates his symptoms; that Petitioner cannot sit for long periods of time; and assessed Petitioner to suffer from cervical discogenic pain and lumbar discogenic pain. *Id*.

10/16/14 & 10/22/2014, Dr Goldvekht noted that Petitioner was no longer experiencing pain in his neck; however, he was still experiencing lower back pain which comes and goes. Dr. Goldvekht further noted, that Petitioner felt that he was able to handle his lower back pain and discomfort and presented with a pain score ranging from 0-3/10 depending on his activities of daily living. Dr. Goldvekht deemed Petitioner to be at MMI with recommendations for full duty return to work. (PX 3, 11)

Petitioner was ordered off work by his treaters during the entire course of his medical care at APM (PX 3).

5/27/16- Petitioner was taken by ambulance from the scene and was admitted to Presence St. Mary of Nazareth Hospital Emergency Department. (PX 4, 20) A history of a motor vehicle collision, complaints of neck pain and back pain was noted. No loss of consciousness, no vision changes, no headache. No numbness or tingling. No airbags. He also reports back pain diffusely but predominantly over the lower back. It does not radiate to the legs. Petitioner is 6 feet tall and weighs 192 pounds. On examination of his lumbar spine, he exhibited tenderness and pain but no swelling, no edema, no spasm. X-rays were taken of his lumbosacral spine with an impression:

mild narrowing of the L2-3 disc space consistent with mild disc degeneration. There are no acute abnormalities within the lumbar spine. The ultimate diagnosis was low back pain, motor vehicle collision. He was given ibuprofen and methocarbamol. He was discharged with pain medications and muscle relaxer and was to follow-up with his primary care physician in 3 days.

5/28/16- Petitioner consulted with Dr. Rao at St. Anthony Hospital Clinic. (PX 5, 4,8)) On examination midline spinal tenderness is found. Midline cervical, thoracic lumbar, lumbar, sacral spinal tenderness is positive. X-rays were deferred and requested from the emergency department. Petitioner was to follow-up on May 31, 2016. His work status was modified duty, sit down work only, no lifting greater than 5 pounds floor to waist, no lifting greater than 5 pounds waist to shoulder, no lifting greater than 5 pounds overhead and no pushing or pulling more than 5 pounds. The diagnosis was cervical strain, thoracic strain, lumbar strain. He was prescribed Ibuprofen and Robaxin.

6/2/16- Petitioner was seen at Southwest Physicians Group by Dr. Rama Medavaram. (PX 8, 3) The assessment was: 1) repetitive strain injury of cervical spine; 2) strain of lumbar spine. He was to continue taking medicine and was referred to an orthopedic. His current medications included ibuprofen, methocarbamol, prednisone.

6/9/16- Petitioner followed up with Dr. Medavarum at Southwest Physicians Group. (PX8,7) It was noted that Petitioner still has neck and low back pain, and his medications are not helping. The pain goes down both lower extremities. Following examination, the assessment remained the same. He was again directed to see an orthopedic surgeon.

6/27/16- Petitioner presented to Dr. Michael J. Lee at UC Orthopedic Center at Orland Park. (PX 9, 2,15) Dr. Lee obtained a history of the accident. Following examination and review of x-rays he assessed the Petitioner with upper lumbar pain on the right side which appears to be along the paraspinal musculature. Dr. Lee reassured him that the x-rays do not reveal any red flag findings. He recommended physical therapy for 6 weeks in the form of core strengthening exercises. If there is no improvement, they would obtain a lumbar MRI. Dr. Lee stated however he did not believe the MRI would be high yield in revealing significant pathology, since his pain is primarily axial back pain. Petitioner was to return in 6 weeks as needed.

7/29/16- Petitioner was seen at MAPS by PA Hayduk. (PX10, 17) He then went to his primary care physician who told him to be off work and referred him to an orthopedic specialist. Following examination, the assessment was cervicalgia, radiculopathy cervical region, pain in

thoracic spine, low back pain. Lumbar, cervical, and thoracic MRIs were ordered. Physical therapy was prescribed, and he was ordered off work for 2 weeks and return to the clinic in 2 weeks for MRI review.

8/3/16-PA Hayduk wrote a prescription for a Terocin patch.

8/4/16-3/31/17-Petitioner underwent therapy at United Rehab Providers. (PX 11)

8/24/16-Petitioner underwent an MRI of the cervical spine, lumbar spine & thoracic spine, ordered by PA Hayduk. (PX10, 152, 158; PX12,2, 8; PX 14, 25, 49)

9/23/16- Petitioner underwent a cervical epidural steroid injection under fluoroscopy at C5-6 with epidurogram, performed by Dr. Saldanah. (PX10, 30, PX13, 4)

9/29/16-Petitioner returned to PA Hayduk. (PX10, 32) He recently had a cervical epidural steroid injection 6 days ago. He states the injection has not helped much. He reports burning into the right shoulder, but no longer traveling to the right hand. His low back is feeling better. There is no pain that travels down the bilateral lower extremities. He has been in therapy about 2 months. PA Hayduk recommended continuing therapy 3 times a week for 2 weeks. He provided a prescription for tramadol. He may need a repeat cervical epidural steroid injection for his radicular pain. He is to follow-up in 2 weeks.

10/13/16- Petitioner returned to MAPS and was seen by PA Hayduk. (PX10, 37). PA Hayduk opined that Petitioner's injuries are due to the accident of May 27, 2016 and not due to pre-existing condition. He was scheduled for a repeat cervical epidural steroid injection based upon his continued cervical radicular pain and MRI findings. His only other option for his cervical pain is a surgical consult, but he is opposed to that at present. For his low back pain, given the axial pain with worse on extension and failed therapy, and being present for greater than 3 months, he will be scheduled for a right L4-S1 medial branch block. He was to continue physical therapy for a month.

10/28/16- Petitioner underwent a lumbar medial branch block under fluoroscopy at the right L4-S1 levels by Dr. Pontinen. (PX10, 41; PX13, 6)

11/10/16- Petitioner returned to PA Hayduk at MAPS. (PX10, 43) He recently had a right L4-S1 medial branch block on October 28, 2016. On the day of the procedure, he got about 80% pain relief for 10 hours. Given the greater than 80% reduction in pain after the right L4-S1 medial branch blocks, they scheduled a right L4-S1 sided radiofrequency nerve ablation. He will likely need a C6-C7 cervical epidural steroid injection followed by the lumbar RFA. Also given the fact

his shoulder was still painful, PA Hayduk recommended a right shoulder MRI. Petitioner was to remain off work and follow-up in one month.

12/6/16- Petitioner underwent a cervical epidural steroid injection under fluoroscopy at C6-7 with epidurogram by Dr. Rakic. (PX10, 49; PX13, 8)

12/8/16- Petitioner followed up with physician assistant Hayduk. (PX10, 50)

12/23/16-Petitioner underwent a right sided radiofrequency ablation of facet joint medial nerve branches under fluoroscopy of the levels L4, L5 and S1 by Dr. Pontinen at Hyde Park Seem Day Surgery Center. (PX10, 54; PX13, 10)

1/5/17 & 2/9/17-Petitioner returned to PA Hayduk at MAPS. (PX10, 56, 61) He states he still has pain, and it is getting worse over the past month. PA Hayduk recommended a repeat cervical epidural steroid injection. He changed the tramadol to docusate sodium due to the constipation complaint. He was given a prescription for Flexeril. He was not to operate motor vehicles when taking medication.

2/17/17- On referral from PA Haykuk, Petitioner saw Dr. Fisher at Illinois Bone and Joint Institute on Michigan Avenue. (PX 14, 40). Petitioner presented with a chief complaint of cervicalgia and bilateral upper extremity radiculopathy. Dr. Fisher took lumbar x-rays, which he stated showed no evidence of spondylolisthesis or fracture. Dr. Fisher wrote a prescription for naproxen. Light duty was not available, so he was kept off work. Petitioner will forward the CDs of his MRI scan for review at his next visit.

3/3/17-Petitioner underwent a cervical epidural steroid injection under fluoroscopy with epidurogram at C5-6 by Dr. Pontinen. (PX10, 66; PX13, 12)

3/16/17-Petitioner returned to PA Hayduk at MAPS. (PX10, 68) Diagnosis remained the same. He stated the patient now has radiculopathy documented on examination corroborated by MRI. He has been unresponsive to conservative treatment therapy for 6 weeks; therefore he should be scheduled for a lumbar epidural steroid injection per ODG and CMS guidelines. He is to follow-up with Dr. Fisher regarding possible surgery for low back and neck. He could continue taking tramadol as needed and was to follow-up in a month.

3/29/17- Petitioner returned to Dr. Fisher at IBJ. (PX 14, 38) He reports continued neck pain and numbness and burning down the arms, forearms into the first dorsal web space, and first and 2nd fingers of both hands, right greater than left. Dr. Fisher stated that given Petitioner's continued symptoms and balance problems, he recommended cervical decompression. He

recommended a C-3 through C6 laminectomy. He further discussed possible need for converting to a fusion. Petitioner was restricted from work. A work status note from Dr. Fisher dated March 29, 2017 indicated the Petitioner is temporarily totally disabled. The diagnosis listed central cord syndrome C-4-5 myelomalacia, C3-6 HNP/stenosis; 2) lumbar degenerative disc disease. He was recommended to take naproxen and Flexeril as well as undergo a C3-6 laminectomy.

4/7/17- Petitioner underwent a lumbar epidural steroid injection under fluoroscopy at level L4-5 without epidural myelogram by Dr. Farag at Hyde Park surgical Center. (PX10, 72; PX13, 14)

4/13/17-Petitioner returned to PA Hayduk. (PX10, 73) Petitioner advised that since the last visit he had seen Dr. Fisher who told him that he recommended a surgery in his neck. His neck pain remains severe.

5/15/17- Petitioner returned to PA Osmanski at MAPS who recorded that he has finished several months of physical therapy with no improvement and has had neck and low back injections with minimal improvement of pain. (PX10, 77) A work status note dated May 15, 2017 from MAPS restricted Petitioner from work.

6/12/17- Petitioner was seen by Dr. Saldanha, also at MAPS. (PX10, 82) The notes indicate that there remains numbness in the bilateral legs but not as severe as before the injection. His low pain low back pain is 5-6/10. He is following up with Dr. Fisher who recommends cervical surgery. He wishes to undergo a repeat cervical epidural steroid injection. Dr. Saldana indicated he is a candidate for a repeat cervical epidural steroid injection. He has radicular symptoms on physical exam/imaging concordant with his neck pain. He was to be scheduled for a cervical epidural steroid injection at C6-7. He was given a prescription for tramadol and for docusate sodium and was to follow-up with Dr. Fisher.

6/27/17-Petitioner underwent a cervical epidural steroid injection under fluoroscopy with epidurogram. This was at C5-6. (PX10, 86; PX13, 16)

7/5/17-Dr. Fisher engaged in a peer-to peer phone call with Dr. Oh. The call was regarding a proposed multilevel cervical fusion surgery of Dr. Fisher. (PX 14, 36)

7/17/17-Petitioner returned to MAPS and was seen by PA Osmanski. (PX10, 88)

8/16/17-Petitioner returned to MAPS and was seen by Dr. Saldanha. (PX10, 92)

8/22/17- Petitioner underwent a lumbar epidural steroid injection, Interplanar approach L2-3 with fluoroscopic guidance, by Dr. Rakic. (PX10, 96; PX13, 18)

8/30/17-Petitioner returned to MAPS and was seen by PA Osmanski. (PX10, 97) Petitioner returned to MAPS and PA Osmanski on September 27, 2017. (PX10, 102) Following examination, he said he has not followed up with Dr. Fisher because he is nervous about possible surgery. Following his LESI on August 22, 2017, his pain gradually returned, and he is having the radicular symptoms down the bilateral lower extremities along with numbness in the toes. His last cervical epidural steroid injection was June 27, 2017 with a 40% decrease in pain for 2 days. He currently has sharp pain radiating up the right side of the neck and to the side of his head causing intermittent headaches. He also has numbness and tingling radiating to his bilateral upper extremities and into his thumbs. He previously had a LESI on August 22, 2017 with 75% decrease of pain for 3 weeks and his pain has returned. During that time his range of motion increased, and he did not have to take as much medication as previously. Recommend repeating LESI since he had significant improvement from previous injection. Will prescribe Norco as needed for pain. Discontinue tramadol.

10/25/17-Petitioner was seen at MAPS by PA Osmanski. (PX10, 108) The note indicates he will be following up with Dr. Fisher on November 2, 2017 to set up a date for surgery. His pain has not changed since his last visit. He has previously had a LESI with 75% decrease of pain for 3 weeks and then had about 50% for another 3 weeks. His pain returned and he is now having radicular symptoms down the bilateral lower extremities along with numbness in the toes. He had previously finished several months of PT with no improvement of pain. He has had two cervical epidural steroid injections with the last one on June 27, 2017 with 40% decrease of pain for 2 days. He continues to have sharp pain radiating up to the right side of the neck into the side of his head causing him to have intermittent headaches. The neck pain is associated with numbness and tingling that radiates to his bilateral upper extremities and into his thumbs. He was to continue his home exercise program and remain off work. Prescriptions for docusate sodium and for Norco were refilled. He is to continue to follow-up with Dr. Fisher for a surgery date.

11/29/17-Petitioner returned to MAPS and saw PA Hayduk. (PX10, 113) His neck pain is the worst pain. The pain radiates down both arms with numbness and tingling present. He rates the neck pain at 7/10. He was to continue his home exercise program and remain off work and continue Norco and tramadol and return in one month.

12/2/17-Petitioner underwent a cervical MRI ordered by Dr. Theodore Fisher. (PX14, 20 ; PX 15, 1) The impression was: 1) moderate C3-4, C5-6 stenosis, asymmetric along the right neural foramina; 2) mild C6-7 stenosis, also asymmetric along the right neural foramina; 3) moderate C4-5 central and left paramedian stenosis and disc protrusion.

12/14/17- Petitioner returned to Dr. Fisher at Illinois Bone and Joint Institute. (PX14, 34) He continues to have neck pain and pain extending down the shoulder blades, as well as into the bilateral upper extremities. He continues to complain of numbness and burning down the arms, forearms, and the first dorsal web space, first and 2nd fingers of both hands, right greater than left. Dr. Fisher, following examination, reviewed the MRI studies. He indicated that the cervical MRI revealed disc herniations at C3-C4, C4-C5, and C5-C6 with degenerative changes with disc space narrowing and disc desiccation at C6-C7 as well. His assessment was cervical spinal stenosis and myelomalacia. He discussed with Petitioner the theoretical risks of spinal stenosis and small traumas causing more spinal cord injuries which can be permanent. He discussed surgery including anterior surgery. He recommended a C-3 through C6 laminectomy.

1/10/18- Petitioner was seen at MAPS by Dr. Mark Farag. (PX10, 117) Petitioner has seen Dr. Fisher since the last visit on December 28, 2017, who was recommending surgery, which was supposed to be done yesterday, but it was denied. He is scheduled for an IME on January 31, 2018. His pain is overall the same since the last visit. He is taking Norco 5 daily and tramadol twice a day. He has had two cervical epidural steroid injections, with the last one on June 27, 2017 with 40% decrease in pain for about 2 days but then it returned. He also had a lumbar epidural steroid injection on August 22, 2017 with temporary relief. Dr. Farag discussed the cervical, thoracic, and lumbar MRI findings. The diagnosis remained cervicalgia, radiculopathy cervical region, low back pain, and lumbar radiculopathy. He discussed the treatment possibilities and refilled the prescriptions for Norco and tramadol and Petitioner was to follow-up with Dr. Fisher, and then return here in 6 weeks. A note signed by PA Hayduk restricted the Petitioner from work.

1/31/18-Petitioner underwent an IME with Dr. Jesse Butler. (RX3) Petitioner informed Dr. Butler that at the time of this accident he had just returned to work 5 months prior from an earlier front end collision at work in 2015 and was off work for one and 1/2 years while undergoing treatment. For that accident he stated the collision jarred his truck and he treated for neck and low back pain and was off work. Dr. Butler's assessment following examination was

spinal stenosis cervical region. He noted the current status is that of cervical pain and lumbar pain. The patient has pre-existing cervical spinal stenosis at the C4-C5 and C5-C6 levels. His diagnoses are degenerative in nature and unrelated to the auto collision of May 27, 2016. His subjective complaints correlate with his degenerative findings. His current symptoms are not caused by the work-related accident of May 27, 2016. His symptoms resulted from a long-standing degenerative condition. The mechanism of injury did not cause or contribute to his current subjective complaints or objective findings. He does not require additional treatment as a result of the May 27, 2016 accident. There is no contraindication to returning to work due to the May 27, 2016 accident. He may return to work full duty in that regard. He does have cervical stenosis which is an underlying degenerative condition neither caused nor aggravated by his work accident. He may choose to proceed with treatment for that degenerative condition in any fashion he may choose. Dr. Butler added he does not believe that the force transmitted to his cervical or lumbar spine would have caused any of the findings or exacerbated or even aggravated any of his underlying degenerative issues. His treatment to date has not been related to the incident of May 27, 2016. His multiple spinal injections were neither reasonable nor necessary.

2/21/18- Petitioner returned to PA Hayduk at MAPS. (PX10, 123) He presents for medication management. He is taking Norco 5 once a day which is helpful and allows him to be more functional. His neck pain is worse than his low back. The pain goes down both arms to the hands with tingling present. The pain also goes down both legs and there is tingling in his toes. He had an IME on January 30, 2018 with Dr. Butler and was told he had a degenerative disease and could go back to work full duty. His Norco prescription was refilled, and he was to continue on tramadol and follow-up in 6 weeks.

4/11/18- Petitioner returned to MAPS and was seen by Dr. Farag. (PX10, 128) He presents for medication management. He is taking Norco 5 1-2 times per day that is helpful and allows him to be more functional. He denies side effects. The neck pain is worse than his low back. It goes down both arms to the hands, with tingling present. It also goes down both legs with tingling in his toes. Dr. Farag recounted that in December 2017 Dr. Fisher recommended a C3-6 laminectomy, which was denied. Petitioner then had an IME on January 30, 2018 with Dr. Butler and was told he had degenerative disease and could go back to work full duty. He is no longer getting paid his workers compensation benefits now. He drives a city garbage truck for work and also has to maintain the vehicle. He has been off work since the injury. Dr. Farag stated that the

physical exam remains the same. His assessment was that the Petitioner was a 59-year-old male who was injured in a work-related motor vehicle accident on May 27, 2016. He has experienced no sustained relief from previous injections. The diagnosis list included cervicalgia, cervical radiculopathy, low back pain, displacement of cervical intravertebral disc, displacement of lumbar intravertebral disc, lumbar radiculopathy. Dr. Farag recommended heat wave treatment in an effort to provide pain relief and possibly help wean off of medications. He refilled the Petitioner's Norco and continued his tramadol.

4/13/18-Petitioner was seen by Dr. Yohannan at the Veterans Administration. (PX17, 1) He is 60 years old and had an injury to his neck in May 2016. He was evaluated by an orthopedic surgeon who told him he needs surgery, but then had an independent evaluation by a worker's compensation doctor and was told he does not need surgery. He has already seen a pain clinic and had injections and medications and has done physical therapy. Following examination, the assessment was 60-year-old with hypertension, GERD, cervical stenosis.

5/8/18-Petitioner presented for a neurosurgical consult at the Veterans Administration . (PX 17, 16) He presented with complaints regarding his neck pain going down both arms. His primary physician is Dr. Yohannan. Petitioner was referred by neurologist Dr. Rozental. Petitioner advised he started having neck pain after a neck injury caused by a motor vehicle accident. Radiates down both arms, more pain in the right arm in the C6 distribution. He reports numbness and tingling in both arms, but no weakness or other symptoms of myelopathy. He took hydrocodone and had physical therapy for a couple of months, which did not help. He had epidural injections which improved his pain temporarily. Petitioner had a normal neurologic physical examination. MRI imaging was read to show multilevel cervical spinal stenosis caused by disc herniation at C4-5, C5-6, and C6-7, more severe at C4-5. Disc herniation at C5-6 essential to the right, cervical spinal cord signal changes. The assessment was that the patient does have cervical spinal stenosis with neck pain and radiculopathy. He has spinal stenosis with spinal cord signal changes. He is very symptomatic, and Dr. Union offered him surgery of C4-5 and C5-6 ACDF. However, the patient does not want surgical intervention. Therefore, it was recommended he had physical therapy and see a pain specialist.

6/19/18- Petitioner underwent a functional capacity assessment at ATI physical therapy. (PX 10,179; PX17,1) He was found to be capable of above the shoulder 34.6 pounds occasionally, chest to chair 34.6 pounds occasionally, chair to floor 77.8 pounds occasionally, carry 47 pounds,

sitting 8 hours with regular breaks, standing 8 hours with regular breaks, walking 8 hours with regular breaks. The FCE determined Petitioner demonstrated ability to safely perform at least within the medium physical demand category, exerting 77 pounds of force occasionally and 41 pounds of force frequently. Despite only a conditionally valid effort with some self-limited effort during testing, he did demonstrate abilities to meet the full duty requirements of his pre-injury position. He is functionally employable within these findings on a full-time basis, at a minimum. His capabilities met the level as stated in the job description provided by the employer which was light to medium for a motor truck driver.

6/23/18- Petitioner returned to MAPS and was seen by PA Osmanski. (PX10, 136) He reported no changes over the past 6 weeks. His neck pain is worse than his low back. The pain goes down both arms to the hands with tingling present. The pain also goes down both legs and there is tingling to his toes. PA Osmanski recommended an FCE for his neck and low back pain to further assess work restrictions. He was continued on Norco and tramadol. He was to remain off work.

6/22/18-Petitioner returned to MAPS and PA Osmanski. (PX10, 141) He underwent an FCE earlier this week. PA Osmanski concluded the FCE says he can work within light to medium physical demand level. He continues to express neck and low back radicular pain. Due to the pain sustained in the accident he will most likely need surgery in the future. However, at this time his pain is stable, and he can return to work with restrictions for the FCE and he is at MMI and may be discharged.

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).

Although Petitioner appeared to be lethargic and confused about some of the questions asked of him, overall, Petitioner's testimony at arbitration was consistent with the medical records regarding history of accidents on July 18, 2014 and May 27, 2016, history of complaints and physical findings. The Arbitrator finds him to be a credible witness.

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

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

Petitioner suffered injuries to his neck, back and arms in the accident on 7/18/2014 (14WC026086) and the accident on 5/27/2016 (16WC020944). In order to determine whether a claimant sustained separate compensable injuries in two accidents, the Commission must consider the claimant's condition of ill-being prior to the second accident. The results should not

be different solely because multiple claims have been consolidated for hearing. *Baumgardner v Illinois Workers' Compensation Commission, 409 Ill. App. 3rd 274, 282, 947 N.E. 2d 856 (2011)*.

Case #14WC026086 (7/18/14)

Despite Petitioner's testimony of a pre-existing cervical sprain and lumbar sprain sustained in a 2002 motor vehicle accident, the evidence supports that Petitioner's conditions from that accident had resolved.

Petitioner provided uncontradicted and unrebutted testimony supported by the medical records of his providers that Petitioner was involved in a motor vehicle collision on 7/18/14, where there was an impact causing Petitioner to be thrown about the cabin of his garbage truck, causing his chest to hit the steering wheel, and both of his knees to strike the interior portion of the truck. Petitioner complained of lower back pain with radiation of symptoms into both legs at the scene of the accident. Petitioner was treated at the scene of the accident by Chicago Fire Department paramedics who transported Petitioner to West Suburban Medical Center's emergency care department for further care regarding the complaints of injury noted at the scene of the accident. Following the accident, Petitioner's condition worsened, necessitating further treatment being rendered at APM in the form of medical care, physical therapy, and medication management.

Petitioner testified that he was symptom-free regarding his neck and lower back prior to the 7/18/14 accident. Dr. Kopsian's note of 7/22/14 states that Petitioner's current symptoms resulting from the accident/onset of 7/18/14, appear to be a recurrence of previous, similar complaints which were asymptomatic (dormant or healed) at the time of this most recent accident onset. Dr. Kopsian further notes that Petitioner reported feeling well with none of his previous complaints present prior to the accident on 7/18/14. (PX 3, 2) The accident of 7/18/14 necessitated Petitioner's treatment at West Suburban Medical Center and at APM. (PX 1, PX 3).

On Petitioner's final visit to APM and Dr. Goldvekht on 10/22/14, he was asymptomatic regarding his neck, shoulder, and arms; his lower back pain had reduced; and he was able to return to work full duty. Petitioner testified that after his return to work, but prior to the 5/27/16 accident, he received physical therapy on three occasions with the Veterans Administration for his lower

back. There was no evidence presented indicating that Petitioner would require additional medical care after the conclusion of his three physical therapy sessions with the Veterans Administration.

Based on the record as a whole, the Arbitrator finds the Petitioner's current condition of ill-being as it relates to his cervical sprain/strain; thoracic sprain/strain; lumbar sprain/strain; radiculitis/neuritis; cervical discogenic pain and lumbar discogenic pain neck are causally related to the work accident of 7/18/14.

Case #16WC020944 (5/27/16)

Although, Petitioner testified that he did continue to suffer lingering lower back symptoms through the date of the second accident on 5/27/16, the medical reports indicate that his pain scores increased and was averaging at 7/10 contrasted to the score of 3/10 from the 7/18/14 accident. Moreover, Petitioner's neck, shoulders, and back conditions after the 5/27/16 accident required extensive medical care.

The Arbitrator finds, based upon the weight of credible evidence in this record, that Petitioner returned to work after his work accident of 7/18/14, as stated above. He returned to the same job he had prior to 7/18/14, driving a City of Chicago garbage truck through the alleys of the City of Chicago collecting garbage. Petitioner testified he did have some pain in his low back after he returned to work from the 7/18/14 accident. He used hot and cold compresses and received some infrequent physical therapy at the VA. He had neck and back pain that was similar in nature between these 2 accidents. There was no evidence presented that he was injured in any other accident between the time he returned to work after the 7/18/14 accident and the accident of 5/27/16.

Petitioner testified that he injured his neck and upper and lower back in the 5/27/16 accident. The medical records document a consistent history given by Petitioner to his medical providers after the accident of 5/27/16. He gave history to his medical providers that his neck jerked back and he hit the posterior part of his head with the seat. PX 4, 20-26. Next day, he followed up at St. Anthony clinic. The records reflect complaints of neck, shoulders and low back pain as a result of being rear ended by a car.

Based on the record as a whole, the Arbitrator finds that conditions of ill-being suffered by Petitioner to his neck, and low back in the second accident of 5/27/16, represent new injuries which are separate and distinct injuries from the conditions of ill-being suffered by Petitioner in the first accident of 7/18/14. Petitioner's neck and shoulder conditions sustained in the 7/18/14 accident, had resolved by his final visit to APM on 10/22/14, and his neck and shoulders remained symptom free until 5/27/16.

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

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

Case #14WC026086 (7/18/14)

Having found the Petitioner's current condition of ill-being relating to his cervical sprain/strain; thoracic sprain/strain; lumbar sprain/strain; radiculitis/neuritis; cervical discogenic pain and lumbar discogenic pain neck are causally related to the work accident of 7/18/14, the Arbitrator finds the Petitioner's treatment through 10/22/14 to be reasonable and necessary including charges of Advanced Physical Medicine ($6,677.90) (PX 4); West Suburban Medical Center ($1,383.00) (PX 2); and EPMG ($736.00) (PX 5).

The parties stipulated that Respondent has paid for all amounts billed for Advanced Physical Medicine and believes that all reasonable related amounts claimed for provider, West Suburban Medical, have been paid by Respondent. The parties further stipulated that if West Suburban Medical Center, EPMG of Illinois or Blue Cross Blue Shield make any further claim for payment or reimbursement, that the Respondent shall hold Petitioner harmless from any claims by any providers for reasonable related medical treatment for July 18, 2014 at West

Suburban Medical Center. This stipulation appears to address the billing issues and Respondent's obligation to pay and resolve the same.

The Arbitrator orders the parties to resolve payment of said bills pursuant to the above referenced oral stipulation and as provided in Sections 8(a) and 8.2 of the Act.

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

Consistent with the Illinois Workers' Compensation Act, the Arbitrator is to base the permanency determination on the following factors:

i. The reported level of impairment pursuant to subsection (a) (e.g., the AMA rating)
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;
v. Evidence of disability corroborated by the treating medical records.

No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

Case #14WC026086 (7/18/14)

With regard to subsection (i) of § 8.1b(b), The Arbitrator notes that no AMA Impairment Rating was rendered. Therefore, the Arbitrator gives this factor no weight.

With regard to subsection (ii) of § 8.1b(b), the Arbitrator notes at the time of the accident, the Petitioner worked as a garbage truck operator for the Respondent, and he was able to return to full-duty work for the Respondent as a garbage truck operator as of 7/18/14. Given the lack of change in occupation, the Arbitrator gives this factor some weight.

With regard to subsection (iii) of § 8.1b(b), the Arbitrator notes, at the time of the accident, Petitioner was 56 years old, married with one dependent child. The Arbitrator gives this factor some weight.

With regard to subsection (iv) of § 8.1b(b), the Arbitrator notes that no evidence regarding Petitioner's earning capacity was presented. Moreover, Petitioner was able to return to full-duty

work as a garbage truck operator for the Respondent. Given that there is no diminution in wages as a result of the Petitioner's injuries, the Arbitrator gives this factor some weight.

With regard to subsection (v) of § 8.1b(b), the Arbitrator notes the Petitioner's medical records establish that he sustained conditions of ill-being from the 7/18/2014 accident in the form of a cervical sprain/strain; thoracic sprain/strain; lumbar sprain/strain; radiculitis/neuritis; cervical discogenic pain and lumbar discogenic pain. The Arbitrator further finds that Petitioner reached MMI status on 10/22/2014. The injuries sustained by Petitioner required that he be off work for 15 weeks (7/21/2014 to 11/2/2014). The Arbitrator further finds that despite reaching MMI status on 10/22/2014, Petitioner has continued to suffer residual lower back pain and symptoms which Petitioner testified that they have not resolved. The Arbitrator gives this factor greater weight.

Based upon the findings as to nature and extent, the Respondent shall pay Petitioner the sum of $ **735.37**/week for a period of **37.50** weeks, because the injuries sustained caused **7.5%** loss of the person as a whole, as provided in Section 8(d)(2) of the Act.

Case #16WC020944 (5/27/16)

With regard to subsection (i) of § 8.1b(b), the Arbitrator notes that no AMA Impairment Rating was rendered. Therefore, the Arbitrator gives this factor no weight.

With regard to subsection (ii) of § 8.1b(b), the Arbitrator notes at the time of the accident, the Petitioner worked as a garbage truck operator for the Respondent, and he was able to return to full-duty work for the Respondent as a garbage truck operator as of 6/29/18. The Arbitrator gives this factor some weight.

With regard to subsection (iii) of § 8.1b(b), the Arbitrator notes, at the time of the accident, Petitioner was 58 years old, married with no dependent children. The Arbitrator gives this factor some weight.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner testified that driving the garbage trucks over bumps through the alleys caused pain in his neck and low back. He testified that he retired early. The Arbitrator gives this factor some weight.

With regard to subsection (v) of § 8.1b(b), the Arbitrator notes the medical records of Midwest & & pain specialists on 6/22/18 document Petitioner was released by his treating physician to return to work. Petitioner did return to work as of 6/29/18 performing the full demands of his job as a City of Chicago garbage truck driver but retired about a year later. He did not return to work any place else after his retirement from the City of Chicago. At hearing, he testified that he continues to have pain every day.

Sitting and standing are limited and he has to adjust accordingly. He stopped driving the car after he retired because of the pain he was having in his neck and lower back arms and legs. Sitting for long periods of time in the car was uncomfortable. After he sits for about 5 minutes, he begins to feel pain in his neck and low back. He does not do any chores that require lifting around the house other than taking out the garbage because of the pain. He takes ibuprofen for the pain in his neck and his low back. Medical records document on 6/22/18, his last day of treatment with his physicians at Midwest Anesthesia & Pain Specialists, that he continues to have neck and low back radicular pain.

Records of the VA on 5/8/2018 document Petitioner's complaints of neck pain and radiculopathy verified by imaging studies, that Petitioner is symptomatic, and that the treating physician recommends surgical intervention consisting of C4-5 and C5-C6 ACDF for management of his pain symptoms. These records further document that Petitioner does not want surgical intervention. He was recommended to follow-up with pain management. (PX 17, p 11-12, 16-17)

Dr. Fisher's records document the MRIs demonstrating large central disc herniations resulting in severe central stenosis C4-C5 level; disc herniations at C3-C4, C4-C5 and C5-C6 degenerative changes with disc space narrowing and disc desiccation at C6-C7 as well. PX 14, p 34-35. Medical records of Midwest Anesthesia & Pain Specialists document on 6/22/18 that Petitioner continues to have the same neck and low back pain consistent over the past several months. The Petitioner testified that the neck pain is worse than his back pain. He is taking Norco and Tramadol, but trying not to take medications as he does not want to become reliant on it. These records document he experienced no sustained relief from previous injections. (PX 10, p 141-144) The Arbitrator finds medical records support Petitioner's complaints of disability. Therefore, the Arbitrator gives this factor greater weight.

Based upon the findings as to nature and extent, the Respondent shall pay Petitioner the sum of $**755.22**/week for a period of **150** weeks, because the injuries sustained caused **10%** loss of the person as a whole for his low back and **20%** loss of the person as a whole for his neck, as provided in Section 8(d)(2) of the Act.

It is so ordered:

Crystal L. Caison

Arbitrator Crystal L. Caison

May 21, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC001923
Case Name	John Sharp v. Standard Aero
Consolidated Cases	22WC009768
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0111
Number of Pages of Decision	22
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Warren Danz
Respondent Attorney	Martin T. Spiegel

DATE FILED: 3/13/2025

/s/Amylee Simonovich, Commissioner

Signature

25IWCC0111

STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

John Sharp,

Petitioner,

vs. NO: 23 WC 001923

Standard Aero,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission modifies the Arbitrator's Decision regarding prospective medical to award the EMG, as recommended by Dr. Greatting in the Health Status Form of August 24, 2023. While the corresponding office note from the August 24, 2023 date of service was not introduced at the time of hearing, the overall medical records from before and after this date of service reflect ongoing complaints of numbness and changes in the sensation in Petitioner's left hand. On July 13, 2023, Dr. Greatting noted that Petitioner complained of persistent numbness to the radial side of his left right finger after his work-related surgery. PX3, p. 109. On September 12, 2023, Petitioner was seen by Dr. Pineda, noting pain, burning and a "sensation difference" in the left hand. PX6, p.27. The Commission finds contemporaneous neurological complaints surrounding the August 24, 2023 recommendation for an additional EMG are sufficient to show the reasonableness and necessity of the recommended treatment. The ongoing need for the EMG was further supported by Petitioner's testimony of continued numbness in his left hand at the time of hearing. T.43.

The Commission agrees with the findings of the Arbitrator with respect to the onset of temporary total disability, however, based upon the need for additional medical treatment, we find

that Petitioner had not yet reached maximum medical improvement at the time of hearing. Therefore, we modify the award of temporary total disability benefits commencing on March 24, 2023 to continue through the December 12, 2023 date of hearing.

The Commission modifies the first line of the Findings section on page 2 of the Arbitration Decision 19(b) Form, striking "09/22/2021" and replacing it with "12/22/2022".

The Commission modifies the heading for Issue (F) on page 13 of the Decision, striking "right shoulder", replacing it with "bilateral carpal tunnel syndrome".

The Commission modifies Issue (J) on page 13 of the Decision, striking the first sentence of the second paragraph.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on January 17, 2024, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay for reasonable and necessary services medical services provided by HSHS and Dr. Greatting listed in Petitioner's Exhibit 6, as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay Petitioner temporary total disability benefits of $738.86/week for 22 weeks, commencing March 24, 2023 through December 12, 2023, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall provide and pay for the EMG recommended by Dr. Greatting pursuant to Section 8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's claim for penalties and attorney fees is denied.

IT IS FURTHER ORDERED BY THE COMMISSION, that 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.

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $21,334.14. 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.

MARCH 13 2025 /s/ *Amylee H. Simonovich*

O: 1/14/25
AHS/kjj
051

Amylee H. Simonovich

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC001923
Case Name	John Sharp v. Standard Aero
Consolidated Cases	22WC009768
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Warren Danz
Respondent Attorney	Martin T. Spiegel

DATE FILED: 1/17/2024

THE INTEREST RATE FOR THE WEEK OF JANUARY 17, 2024 4.97%

/s/ Jeanne AuBuchon, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

John Sharp
Employee/Petitioner
v.
Standard Aero
Employer/Respondent

Case # **23** WC **001923**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Champaign**, on **12/12/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **09/22/2021**, 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 $**57,631.08**; the average weekly wage was $**1,108.29**.

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

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

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $738.86/week for 22 weeks, commencing March 24, 2023, through August 24, 2023, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services provided by HSHS and Dr. Greatting as listed in Petitioner's Exhibit 6, as provided in Section 8(a) and 8.2 of the Act.

Request for prospective medical treatment is denied.

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

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

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

Jeanne L. AuBuchon

Signature of Arbitrator

JANUARY 17, 2024

ICArbDec19(b)

PROCEDURAL HISTORY

This matter proceeded to trial on December 12, 2023, pursuant to Sections 19(b) and 8(a) if the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of his employment; 2) the date of the accident or manifestation of the injuries; 3) whether the Respondent was given notice of the accident within the limitations of the Act; 4) the causal connection between the accident and the Petitioner's bilateral carpal conditions; 5) liability for medical expenses; 6) entitlement to prospective medical care to the Petitioner's hands, specifically for nerve conduction testing; and 7) entitlement to temporary total disability (TTD) benefits from December 1, 2022, through December 12, 2023. This case was consolidated with 22WC9768 involving injuries to the Petitioner's cervical, neck, arms, back and hands that occurred on September 22, 2021.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 51 years old and employed by the Respondent for 25 years stripping, sanding, priming and painting airplanes. (AX2, T. 15) Using photos, the Petitioner explained how he performed these tasks on corporate airplanes using used sanders, drills and handheld grinders and demonstrated how he used his hands and arms. (T. 16-28, PX1) He said the tools vibrated, bounced and jarred him and that he had to have a good grip. (T. 19-22) He said that after a while, his hands and arms would start hurting, and he would switch hands. (T. 23) He said he worked 8-10 hours a day and 40-60 hours a week. (T. 28)

On September 22, 2021, the Petitioner was sanding the belly of a plane when "all of a sudden," he felt a jolt of electricity go through his arm and into his neck. (T. 30) He said his hands, arm and neck hurt severely. (T. 31) He said he had symptoms in his arms and hands before then when sanding for 8-10-hour days, but it would go away when he went home. (Id.) He said

this time it didn't go away. (Id.) He also said the symptoms were more severe after September 22, 2021. (Id.) He said he continued to work after September 22, 2021. (Id.)

The Respondent sent the Petitioner to Midwest Occupational Health Associates (MOHA) at Springfield Clinic. (PX2) On October 1, 2021, the Petitioner saw Nurse Practitioner Sandra Elliott and reported pain in the bilateral shoulders, elbows and wrists after doing extensive sanding on an airplane for 3½ days. (PX2) He also reported decreased grip and some numbness and tingling to the right hand that woke him up at night. (Id.) NP Elliott diagnosed bilateral shoulder, elbow and wrist pain, likely secondary to overuse injury, prescribed an anti-inflammatory and muscle relaxant and recommended light duty work with limited use of the hands, wearing splints at night, ice and heat. (Id.)

The Petitioner returned to MOHA on October 8, 2021, and indicated that his shoulders may have improved but his hands did not. (Id.) However, he also said wearing the splints seemed to help and that his wrists and hands were stiff in the morning but loosened up with use. (Id.) He continued to have trouble gripping with the right hand worse than the left with a lot of numbness and tingling in the right hand. (Id.) He reported that the elbows did seem to be improved and that his left arm seemed to be worse than the right, with continued spasming to the forearm on the left side. (Id.) PA Elliott referred the Petitioner to physical therapy and stated that if the Petitioner did not show significant improvement, she would consider referral to neurology for nerve condition studies and electromyography testing (EMG/NCS). (Id.) No physical therapy records were submitted at arbitration.

On October 22, 2021, the Petitioner reported that the two physical therapy sessions he attended helped briefly but his symptoms returned. (Id.) PA Elliott referred him to Dr. Koteswara Narla, a neurologist at Springfield Clinic for EMG/NCS. (Id.) On December 3, 2021, the

Petitioner reported pain going into his neck and headaches. (Id.) After each visit to MOHA, a discharge summary was provided to the Respondent showing the Petitioner's diagnoses. (Id.)

On December 30, 2021, the Petitioner underwent EMG/NCS. (PX2, RX8) Dr. Narla reported that the Petitioner had a 10-year history of cervical pain radiating into the left more than the right arm, a 7-year history of tingling and numbness in the hands and a 30-month history of pain in the shoulder, elbow and wrist joint areas. (Id.) Dr. Narla found borderline carpal tunnel compression of the median nerve on the right, no evidence of cubital tunnel compression of the ulnar nerves on either side, no evidence of large fiber distal neuropathy and no evidence of ongoing cervical radiculopathy, plexopathy or myopathy on the left. (Id.) He stated that the carpals were so minimal that he was not sure any intervention was needed. (Id.) He recommended observation for the time being. (Id.) As to neck symptoms, he recommended NSAIDs and physical therapy, adding that if the symptoms progressed, an MRI may be needed. (Id.) The Petitioner denied telling Dr. Narla that he had a 7-year history of tingling and numbness in his hands and said he told him his hands had been hurting for a couple of years. (T. 59)

On January 13, 2022, the Petitioner followed up with Nurse Practitioner Rachel Parks at MOHA and reported shooting pain in the left arm into his neck as well achiness in the right forearm and hand and numbness in the right hand. (PX2) NP Parks diagnosed pain in the shoulder, elbow and wrist and cervical discomfort with radiculopathy, ordered a cervical MRI and referred the Petitioner for physical therapy. (Id.)

The MRI was performed on January 26, 2022, and showed disc bulge at C5-6 and C6-7 with disc-osteophyte complexes causing foraminal stenosis left worse than right and a central herniation at C4-5 with left foraminal stenosis. (Id.) The Petitioner followed up with Nurse Practitioner Brieana Kesterson at MOHA on January 28, 2022, and she diagnosed cervicalgia,

unspecific shoulder pain, pain in the elbows and pain in the wrist. (Id.) She recommended continued home exercises and physical therapy, noting that the Petitioner was to return to Dr. Narla for a possible epidural steroid injection (ESI). (Id.)

The Petitioner saw Dr. Narla on February 24, 2022, and complained of neck pain, left arm numbness and numbness in both hands. (Id.) Dr. Narla diagnosed cervical pain with left-sided radiculopathy possibly secondary to central disc protrusion more prominent at C4-5 and osteophytes at C5-6 and C6-7 of minimal degree. (Id.) Dr. Narla noted that although the Petitioner complained quite bitterly of tingling and numbness in the hands, it was only borderline on the left and only very minor, if at all, on the right. (Id.) He said did not think carpal tunnel compression could explain all of the Petitioner's symptomology and would not recommend surgery. (Id.) He discussed a steroid injection with the Petitioner, who reported having side effects from oral steroids. (Id.) On February 28, 2022, the Petitioner saw PA Kesterson, who referred him to a spine surgeon. (Id.)

On March 14, 2022, the Petitioner saw Dr. Stephen Pineda, an orthopedic surgeon at Springfield Clinic. (PX2, RX6) The Petitioner testified that he told Dr. Pineda about everything he did at work. (T. 65) His intake forms indicated that he was still complaining of neck, shoulder, arm and hand pain. (PX2, RX4) Dr. Pineda recommended an injection. (PX2, RX6) The next day, the Petitioner saw NP Kesterson, who recommended an independent medical examination due to no further medical recommendations offered at MOHA. (PX2) Dr. Narla performed an epidural injection on May 5, 2022. (Id.) At a follow-up with Dr. Pineda on May 31, 2022, the Petitioner reported "a little bit of benefit but not a lot." (PX2, RX6) Dr. Pineda recommended cervical disc replacement. (Id.) He performed a two-level discectomy and disc replacement at C5-7 on September 28, 2022, at which time Dr. Pineda ordered the Petitioner off work. (PX3,

RX6) The Petitioner said the surgery did not do anything for his hands. (T. 35) The Petitioner testified that he did not work after September 26, 2022. (T. 33) He said that while he continued working after September 22, 2021, he noticed that his hands and arms were getting worse, with numbness in his hands and the feeling of a thousand needles sticking him in his hand that continued for an hour to an hour and a half after he stopped working. (T. 32-34) He said he told his supervisor that his hands were still hurting and going numb and that he was dropping things. (T. 34-35)

On November 8, 2022, Dr. Pineda released the Petitioner to work without restrictions effective December 5, 2022. (PX3, RX6)

On December 5, 2022, the Petitioner saw Nurse Practitioner Megan Adams at HSHS Medical Group Family Medicine. (T. 36) The Petitioner testified that NP Adams gave him an off-work slip effective until he was evaluated by neurology. (T. 36) NP Adams' records were not submitted at arbitration.

The Petitioner saw Dr. Edward Trudeau, a physiatrist at HSHS, on December 22, 2022, and underwent an examination and EMG/NCS. (PX3) Dr. Trudeau noted that the Petitioner was found to have a minimal element of carpal tunnel on both sides about a year before but things got much worse. (Id.) Dr. Trudeau found bilateral carpal tunnel syndrome – severe on the right and moderately severe on the left. (Id.) He outlined treatment options that included conservative measures, medications and surgical referral. (Id.) Dr. Trudeau sent his report to Dr. Pineda. (Id.)

On February 2, 2023, the Petitioner saw Dr. Mark Greatting, an orthopedic hand surgeon at Springfield Clinic Greatting and reported that he thought his hand symptoms started around September 2021 and that his symptoms bothered him night and day and while driving. (PX3, RX7) He said his symptoms increased while doing his work activities. (Id.) He described his

work to include using air-driven painting tools, grinders, sanders and drills for a large amount of his workday. (Id.) Dr. Greatting diagnosed chronic bilateral carpal tunnel syndrome, adding that based on the history the Petitioner provided the Petitioner's work activities were a significant factor causing the development of his condition and contributed significantly to the development, aggravation or accelerated his symptoms. (Id.) He recommended carpal tunnel releases. (Id.)

An eHealth History dated January 25, 2023, stated that the Petitioner complained of hand pain, numbness and tingling for approximately three years. (PX3) The Petitioner testified that he did not recall telling this to Dr. Greatting. (T. 70) An intake form dated February 2, 2022, asked the Petitioner to describe the injury and how it occurred. (PX3, RX3) The response said: "September 22, 2021 started after neck surgery." (PX3, RX3) In his testimony the Petitioner acknowledged signing the questionnaire but denied telling Dr. Greatting that his symptoms started after his neck surgery. (T. 54-55) The Arbitrator notes that the entries on the intake form use a number of medical term abbreviations and appears to have actually been written by someone other than the Petitioner. (PX3) In his notes, Dr. Greatting stated under "Chief Complaint" that carpal tunnel syndrome persisted after neck surgery. (PX3, RX7)

On February 9, 2023, a records review was performed by Dr. David Holden, a family medicine practitioner, at the request of Petitioner's counsel. (PX5) Dr. Holden reviewed the December 30, 2021, EMG/NCV, Springfield Clinic records regarding cervical treatment, the December 19, 2022, EMG/NCV and a Section 12 examination report, which was not entered into evidence at arbitration. (Id.) Dr. Holden stated that the studies from December 30, 2021, did not reveal any evidence of severe nerve impairment of either upper extremity. (Id.) Dr. Holden noted that the Petitioner subsequently returned to work and had increasing symptoms after approximately eight months. (Id.) He found that the repeat studies confirmed a diagnosis of bilateral carpal

tunnel, worse on the right than on the left and that this represented a worsening of the Petitioner's condition caused by his repetitive use trauma. (Id.) He felt that the Petitioner was a candidate for surgery and was temporarily totally disabled. (Id.)

The Petitioner had a follow-up visit with Dr. Pineda on March 7, 2023. (PX3, RX6) There were no complaints by the Petitioner recorded in that office note. (Id.)

Dr. Greatting performed a right carpal tunnel release on March 24, 2023, and a left carpal tunnel release on April 28, 2023. (PX3, RX7)

The Petitioner testified that he returned to Dr. Greatting on May 11, 2023, and June 12, 2023, and told him that his ring finger on his left hand had no sensation and he was having pains all the way up through the back of his left arm, elbow and up into his neck. (T. 38) Dr. Greatting's records from May 11, 2023, showed the Petitioner overall felt his symptoms were significantly improved except for tingling along the ulnar side of his left ring finger. (PX3, RX7) His left side was doing well. (Id.) Dr. Greatting thought the tingling should resolve over time. (Id.) Dr. Greatting kept the Petitioner off work. (RX7) On June 12, 2023, the Petitioner complained of tingling along the radial side of his left ring finger. (PX3, RX7) Dr. Greatting continued off-work orders and said that if the Petitioner was doing well in a month, he likely would likely be released to work without restrictions. (Id.)

On July 13, 2023, the Petitioner again complained of persistent numbness on the radial side of his left ring finger and said he did not think he could yet return to work doing his normal work activities, which required a lot of forceful activity with his hands as well as some exposure to vibration. (T. 63, PX3, PX7) Dr. Greatting reported that the Petitioner would be reevaluated in six weeks and potentially be returned to work without restrictions after that visit. (PX3, RX7) He issued an off-work slip stating that the Petitioner was to remain off work until his next follow-up

appointment on August 24, 2023. (Id.) In his testimony, the Petitioner denied that Dr. Greatting said he planned on releasing him to work full duty when he followed up in six weeks. (T. 64)

On August 24, 2023, Dr. Greatting completed a Health Status Form stating that he saw the Petitioner, that there would be a follow-up appointment after an EMG is completed and that the Petitioner was to remain off work until further notice. (PX3) The Petitioner testified that Dr. Greatting referred him back to Dr. Trudeau for another EMG/NCS. (T. 38-39) He said he did not see Dr. Trudeau because the evaluation was not approved by workers' compensation. (T. 39) There was no office visit note for August 24, 2023, in the records of Dr. Greatting that were submitted at arbitration.

The Petitioner saw Dr. Pineda for follow-up on September 12, 2023, and complained of 10/10 pain, pain and burning down the left shoulder, arm and ring finger and sensation difference in the left hand. (RX6) Dr. Pineda prescribed oral steroids and stated that if the medication didn't work, he would consider a myelogram CT of the cervical spine. (Id.) On October 30, 2023, Dr. Pineda reported that the myelogram CT was performed on October 27, 2023, and showed minimal narrowing perhaps at C6-7, that overall there was good alignment in the disc replacements and the devices looked good. (Id.) Dr. Pineda recommended an epidural injection. (Id.) The Petitioner testified that Dr. Pineda sent him to Dr. Narla. (T. 40) He said Dr. Narla said he would give him an injection and try medication, but he did not receive the injection because he was waiting for authorization. (Id.) No such report from Dr. Narla was submitted at arbitration.

The Respondent terminated the Petitioner's employment as of September 27, 2023, for being on leave of absence for more than 12 months, in contravention to the company's guidelines. (PX4) He was invited to apply for future open positions if he is willing and able to meet the minimum requirements of the position. (Id.)

On November 28, 2023, Dr. Holden performed an examination of the Petitioner. (PX5) The Petitioner described his work, the September 21, 2021, accident and his treatment. (Id.) Dr. Holden examined the Petitioner and reviewed records from Dr. Greatting, Dr. Pineda, Dr. Narla and Dr. Trudeau. (Id.) His examination found weakness of the arms and forearms, weakness of the intrinsic muscles of the hands, numbness of both hands and difficulty grasping. (Id.) He opined that the Petitioner's carpal tunnel was aggravated by the fact that he continued to work with repetitive motions overhead up to September 22, 2022, when his condition worsened. (Id.) He gave work restrictions of no continuous use of the Petitioner's hands involving grinding or sanding and did not feel the Petitioner would be able to return to work operating heavy machinery, using vibrating tools or using blasters and sanders. (Id.)

Dr. Holden testified consistently with his reports at arbitration. He said he is semi-retired and had not treated patients since June 23, 2021, but was still on staff at two local hospitals. (T. 77, 90) He said that in his practice, he had seen hundreds of patients with injuries to the spine and hands and carpal tunnel syndrome. (T. 78) He said he has experience in analyzing and reading EMG tests. (Id.) On cross-examination, Dr. Holden said he has an office at his home but sees patients at Petitioner's counsel's office, which was where he saw the Petitioner. (T. 90)

Dr. Holden acknowledged that his physical examination findings were contrary to the findings of Dr. Greatting and Dr. Pineda, which he attributed to the passage of time. (T. 96) He believed the Petitioner's condition got worse rather than better after his surgeries. (T. 96-97)

The Petitioner testified that at the present time, his arms and hands still hurt, and his ring fingers are still numb. (T. 42) He said he still drops stuff and he has some sensation of hurting in the palms of his hands when he uses them. (Id.) He said his right hand was improving a little bit. (T. 42-43) He said he takes medication but it doesn't help. (T. 45)

CONCLUSIONS OF LAW

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

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

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

Further, a Petitioner's job duties need not be repetitive in the sense that the same task is done over and over again as on an assembly line to result in a compensable injury. *City of Springfield v. Illinois Workers' Comp. Comm'n*, 388 Ill.App.3d 297, 901 N.E.2d 1066, 327 Ill.Dec. 333 (4th Dist., 2009). Intensive use of hands and arms can result in cumulative injuries that are compensable. *Id*.

The Petitioner's usual labor involved stripping, sanding, priming and painting airplanes. He used tools that vibrated, bounced and jarred him and that necessitated a good grip. Drs.

Greatting, Trudeau and Holden agreed that the Petitioner's work caused his condition. There was no opinion to the contrary.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that his injury arose out of and in the course of his employment.

Issue (D): What was the date of accident?

The date of the injury (accident) in a repetitive-trauma compensation case is the date when the injury manifests itself – the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person. *Durand v. Indus. Comm'n*, 224 Ill. 2d 53, 67, 862 N.E.2d 918, 308 Ill. Dec. 715. (2006) Courts have typically set the manifestation date of an injury on either the date on which the employee requires medical treatment or the date on which the employee can no longer perform work activities. *Id*. at 72. Because repetitive-trauma injuries are progressive, the employee's medical treatment, as well as the severity of the injury and particularly how it affects the employee's performance, are relevant in determining objectively when a reasonable person would have plainly recognized the injury and its relation to work. *Id*. See also *Oscar Mayer & Co. v. Industrial Commission*, 176 Ill.App.3d 607, 531 N.E.2d 174, 126 Ill.Dec. 41 (3rd Dist. 1988).

In *Durand*, the claimant reported carpal tunnel symptoms as work-related three years before what was determined to be the manifestation date, which was the date of formal diagnosis. *Durand*, 224 Ill.2d at 73-74. In *Oscar Mayer*, the Court set the manifestation date on the date of surgery, or the date the employee could no longer work, despite the claimant's knowledge that his condition was work-related two years prior. *Oscar Mayer,* 176 Ill.App.3d at 608.

Such alternative manifestation dates are employed by courts to prevent employees from being penalized for working diligently through progressive pain until it affected their ability to

work and required medical treatment. *Durand*, 224 Ill.2d at 74. See also *Three "D" Discount Store v. Industrial Com.*, 198 Ill.App.3d 43, 49, 556 N.E.2d 261, 144 Ill.Dec. 794 (4th Dist. 1989).

In this case, there are a number of possible manifestation dates. The Petitioner reportedly began experiencing hand pain prior to the accident on September 22, 2021. He was diagnosed with hand or wrist pain throughout his treatment following that accident. On December 30, 2021, nerve studies showed mild carpal tunnel syndrome. He continued to work until his neck surgery on September 28, 2022. He sought treatment for his hands and wrists on December 5, 2022. A second set of nerve studies on December 22, 2022, showed that his carpal tunnel syndrome had become severe. On February 2, 2023, Dr. Greatting gave a diagnosis and his opinion that the Petitioner's work caused his bilateral carpal tunnel syndrome. The carpal tunnel releases were performed on March 24, 2023, and April 28, 2023.

The Arbitrator finds the most appropriate manifestation date to be December 22, 2022 – the date of the second nerve tests. Although the Petitioner was aware of hand and wrist problems and believed they were related to his work before then, it was not until those tests that the severity of his condition and the necessity treatment was determined.

Issue (E): Was timely notice of the accident given to Respondent?

An employee is clearly prejudiced in the giving of notice to the employer if he is required to inform the employer within 45 days of a definite diagnosis of the repetitive-traumatic condition and its connection to his job since it cannot be presumed the initial condition will necessarily degenerate to a point at which it impairs the employee's ability to perform the duties to which he is assigned. Requiring notice of only a potential disability is a useless act since it is not until the employee actually becomes disabled that the employer is adversely affected in the absence of notice of the accident. *Oscar Mayer & Co.*, 176 Ill. App. 3d at 611.

The Respondent was aware that the Petitioner was having problems with his hands and wrists throughout his treatment at MOHA, which provided discharge summaries to the Respondent showing diagnoses of wrist pain. The Petitioner testified that while he was working during the year between his accident and his neck surgery, he told his supervisor about his increasing hand and wrist symptoms. There was no evidence to the contrary.

At the very latest, the Respondent received notice of the Petitioner's claimed injury when he filed his Application for Adjustment of Claim on January 18, 2023 – within 45 days of the manifestation date as found above. Therefore, the Arbitrator finds that timely notice was given to the Respondent.

Issue (F): Is Petitioner's current condition of ill-being, specifically his right shoulder injury, causally related to the accident?

Based on the causation findings above regarding whether the injury was in the course of and arose out of employment, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that his bilateral carpal tunnel syndrome is causally related to the 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).

No evidence was presented to show that the medical services the Petitioner has received to date were unreasonable or unnecessary. Based on the findings above regarding causation, the Arbitrator finds that these services were reasonable and necessary and orders the Respondent to

pay the medical expenses for HSHs and Dr. Greatting contained in Petitioner's Exhibit 6. 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).

The Petitioner is seeking prospective treatment for his wrists and hands – specifically additional nerve tests. Although Dr. Greatting completed a Health Status Form stating that there would be a follow-up appointment after an EMG was completed, there was no office visit note describing the Petitioner's complaints nor an examination that would explain the reasonableness and necessity of further testing. At the prior visits, the Petitioner described some numbness in one finger, and Dr. Greatting was contemplating releasing him to full duty. There is no explanation as to how this became a condition for which additional testing was necessary.

Therefore, the Arbitrator finds that the Petitioner is not entitled to prospective medical care to his hands and wrists.

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

According to the Request for Hearing (AX2), the parties dispute TTD benefits for the period of December 1, 2022, through December 12, 2023, as it related to the Petitioner's hands.

"The fundamental purpose of the Act is to provide injured workers with financial protection until they can return to the work force." *Interstate Scaffolding, Inc., v. Illinois Workers' Compensation Comm'n,* 236 Ill.2d 132, 146, 923 N.E.2d 266, 337 Ill.Dec. 707 (2010). "Therefore, when determining whether an employee is entitled to TTD benefits, the test is whether the employee remains temporarily totally disabled as a result of a work-related injury and whether the employee is capable of returning to the work force." *Id.*

Although the Petitioner testified that NP Adams took him off work on December 5, 2022, there was no office note to substantiate this or give a rationale for a determination that the Petitioner was temporarily totally disabled. Therefore, the Arbitrator finds that the Petitioner was entitled to TTD when he underwent his first carpal tunnel release on March 24, 2023. Dr. Greatting planned on releasing the Petitioner at his visit on August 24, 2023. Although Dr. Greatting issued an off-work slip on that date, there was no office note to explain why the Petitioner would be temporarily totally disabled.

After his examination on November 28, 2023, Dr. Holden issued work restrictions. There was no evidence that the Petitioner sought to return to his employment with the Respondent and seek accommodation of these restrictions.

Therefore, the Arbitrator finds that the Petitioner was entitled to TTD benefits from March 24, 2023, through August 24, 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.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC007008
Case Name	Monte Harris v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0112
Number of Pages of Decision	34
Decision Issued By	Maria Portela, Commissioner, Kathryn Doerries, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Thomas Bowman

DATE FILED: 3/14/2025

/s/Maria Portela, Commissioner

Signature

DISSENT

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MONTE HARRIS,

Petitioner,

vs. NO: 22 WC 007008

STATE OF ILLINOIS, GRAHAM CORRECTIONAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causation, medical, TTD, and nature and extent of disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 6, 2023, is hereby affirmed and adopted.

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

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

Pursuant to Section 19(f)(1) of the Act, this decision is not subject to judicial review. *820 ILCS 305/19(f)(1) (West 2013)*.

MARCH 14 2025

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

KAD/swj
O11425
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/s/*Amylee H. Simonovich*
Amylee H. Simonovich

DISSENT

I respectfully dissent from the opinion of the majority and would reverse the Decision of the Arbitrator. I view the evidence and law differently and would find that Petitioner failed to prove he sustained an accident arising out of and in the course of his employment, and failed to prove his bilateral carpal tunnel and cubital tunnel syndromes were causally related to his employment. In the case at bar, I find the evidence of causation lacking because there was a significant passage of time between the performance of provocative activities potentially capable of causing compression neuropathy and Petitioner's initial onset of symptoms. Additionally, in repetitive trauma claims, physicians must have sufficient knowledge of the employment activities to form a credible causation opinion, and in this case Dr. Bradley possessed limited information regarding Petitioner's employment history and the timing of his symptoms. I also disagree with the Arbitrator's evidentiary ruling striking in part the testimony of Respondent's Section 12 IME physician, Dr. Stewart, whose narrative report fully disclosed his opinions but did not mention he had personally toured the Graham Correctional Center. I believe it was error to strike the testimony discussing the onsite inspection as the causation opinion had been disclosed to Petitioner and thus this omission did not violate the 48-hour rule in *Ghere*. Additionally, the admission of this testimony is supported by the Appellate Court's recent decision in *Borst vs. Illinois Workers' Compensation Comm'n*, 2024 IL App (2d) 230124WC-U.

Petitioner's repetitive trauma claim is predicated on his entire 25-year career with Respondent; however, Petitioner never had any symptoms while working as a correctional officer and his symptoms occurred during the last five years of his career while working in supervisory positions which did not involve repetitive tasks. Petitioner did not seek any treatment until after he retired, and then received a referral to Dr. Bradley, whose causation opinion was based in large measure on a lengthy latency period, defined in this context as the passage of time between exposure to repetitive work and the subsequent onset of symptoms. Under this theory, repetitive work can cause compression neuropathy without symptoms manifesting until long after the exposure. This Commission has consistently rejected lengthy latency periods, finding causation is established only where symptoms "gradually occur during the performance of the alleged provocative activities" and I would apply the same analysis here. See *Gibbons vs. State of Illinois, Shawnee Correctional Center*, 17 IWCC 636; 2017 Ill. Wrk. Comp LEXIS 348; *Niepert v. State of Illinois, Menard Correctional Center*, 17 IWCC 61; 2017 Ill. Wrk. Comp. LEXIS 87; *Walker vs. State of Illinois, Menard Correctional Center*, 14 IWCC 519, 2014 Ill. Wrk. Comp. LEXIS 446; and *Hahs vs. State of Illinois, Big Muddy River Correctional Center,* 14 IWCC 100; 2014 Ill. Wrk. Comp. LEXIS 129.

Petitioner testified he was employed as a correctional officer at Pontiac Correctional Center from 1996 to 2006. Petitioner described the employment tasks he performed on a repetitive basis while employed at the Pontiac facility; however, he did not develop any symptoms while working at Pontiac. Petitioner transferred to Graham Correctional Center and continued working as a correctional officer from 2006 through 2015, a period of approximately ten years. During this ten-year period, Petitioner did not have any hand or upper extremity symptoms. Petitioner received a promotion to the rank of sergeant in 2016 and a second promotion to the rank of lieutenant in 2018. Petitioner testified he worked as a lieutenant for three years and retired in 2021. Respondent produced timesheets showing Petitioner retired effective October 31, 2021. (RX4)

Petitioner testified he first noticed symptoms in 2017; however, there were documented histories indicating his symptoms began in 2018, and Petitioner had no documented hand or upper extremity symptoms during a visit in December 2020 for an unrelated shoulder injury. Petitioner did not report any repetitive trauma injury while employed with Respondent, and he did not seek any treatment until March 10, 2022, almost four and half months after his retirement. Petitioner's Application used the March 10, 2022, visit as the accident/manifestation date. A shift supervisor testified Petitioner never complained of any symptoms or difficulties to him while employed with Respondent. Irrespective of when the symptoms first occurred, it is incontrovertible that Petitioner's symptoms developed at the earliest during the last five years of his career while employed as a sergeant and lieutenant in positions that were supervisory in nature. It is also incontrovertible that Petitioner had non-occupational risk factors associated with compression neuropathy. Although Petitioner testified that "conscientious" sergeants and lieutenants do the "same thing" as correctional officers, I find the assertion not credible. The Commission has previously determined that this assertion lacks credibility. See *Dilday vs. State of Illinois, Menard Correctional Center*, 2016 Ill. Wrk. Comp. LEXIS 452, 16 IWCC 605 ("The Commission finds Petitioner's testimony that lieutenants do the "same thing" as correctional officers and sergeants unpersuasive. We note that, as explained in the job descriptions, the higher the rank, the more supervisory the position becomes. While there is no doubt that Petitioner performed some of the duties of a correctional officer as a sergeant and lieutenant, the Commission finds it unbelievable that all three jobs are exactly the same . . .")

Petitioner prepared a "Work History Timeline" describing his job duties. (PX7) Regarding his job duties as a sergeant, Petitioner was assigned to a "cluster" of five housing units where he "walked the wings" and signed the wing books and equipment logs. Petitioner testified he also stood for the "feeds" and walked the "yard line out." (T. 45) Occasionally he worked the Gatehouse where he typed in visitor information. (PX7) When assigned to the Gatehouse, Petitioner primarily worked with a computer "all day long." (T. 45) At trial, Petitioner admitted that his role as a sergeant was "mostly a supervisory observer and report writing kind of role." (T. 46) As a lieutenant, Petitioner continued being assigned to a cluster of housing units where he walked the wings, signed the log books and equipment logs, stood for the inmate chow line, and dealt with "any situation that came up." (PX7) Petitioner's duties as a lieutenant also included added responsibilities which required Petitioner to prepare zone reports, evaluation reports, and tickets for infractions by inmates. Petitioner was also a member of the tactical team during his career which required four hours of baton training per month. (PX7) Petitioner further testified the Covid pandemic caused an increase in work duties for the staff. That was due to all the inmates being placed in lockdown, leaving the officers to perform additional work that would ordinarily be

performed by inmates. Petitioner was a lieutenant and he had to generate "more report writing" during the pandemic. (T. 51)

Mr. Trevor Wright was employed as a shift supervisor at the Graham Correctional Center and testified to the pandemic's impact on the facility's operations. Mr. Wright testified there were inmates who tested positive, causing the institution to go into lockdown, which in turn created a lot more work for the staff. (T. 53) Mr. Wright testified some staff members also came down with Covid. On cross-examination, Mr. Wright testified he supervised Petitioner at Graham. Prior to Petitioner's retirement, Petitioner never mentioned to him that he was having any symptoms or any issues with his job. (T. 54) Mr. Wright confirmed Petitioner was a lieutenant during the pandemic. Mr. Wright testified the facility was divided into five zones and Petitioner had supervision over whatever zone he was assigned to and made tours once or twice a day. (T. 57) Petitioner supervised the employees and also served as a training lieutenant where he conducted classroom exercises. (T. 57) Asked about the physical demands of being a lieutenant, Mr. Wright testified he might have to respond to incidents and restrain inmates, and during the pandemic, Petitioner probably helped feed the houses when they were short of staff. (T. 57) Timesheets were admitted into evidence, which Respondent represented showed Petitioner was off work for a cumulative total of 159 days in 2020 due to Covid time and benefit time. (RX3) Petitioner did not contest the amount of days not worked that year.

As mentioned, Petitioner first sought treatment with Dr. Bradley on March 10, 2022, about 4-½ months after he retired. Petitioner reported to Dr. Bradley his symptoms had been "present for many years." (PX3) No specific month or year was indicated. When Petitioner presented for Respondent's IME with Dr. Stewart on June 3, 2022, Petitioner was first seen by Jill Higgs, OTD, who recorded the onset symptoms started "about 4 years ago (2018)." (PX6 at 7) Dr. Stewart noted in his report that Petitioner reported his symptoms started in "October of 2018." (RX7 at 1) At trial, Petitioner testified he noticed his hands going numb in 2017 during "Tac training." (T. 33) Notably, Petitioner saw his primary care physician, Dr. Chen, on December 15, 2020, for an unrelated shoulder injury (altercation with inmate) and his records made no mention of any reported hand or upper extremity symptoms. The actual onset of symptoms is somewhat equivocal; however, it is clear that Petitioner's symptoms started no earlier than 2017 or 2018.

Petitioner was 52 years of age when he sought treatment. Dr. Bradley documented a height of 6'0" and weight of 228 pounds with a history of high blood pressure and heart stents. Petitioner testified he was previously diagnosed with hypertension in 2019. (T. 42-43) Dr. Bradley testified that Petitioner exhibited atrophy of the thenar eminence, which takes many years to develop. (PX8 at 20-21) Dr. Bradley did not elaborate or define what he meant by "many years." We are left to speculate whether the atrophy developed over the preceding three, four, or five years or more. Dr. Bradley opined that Petitioner's bilateral carpal tunnel and cubital tunnel syndromes were causally related to his employment. In forming that opinion, Dr. Bradley relied on Petitioner's entire "20-plus years working within the Department of Corrections" at both Pontiac as well as Graham, where he participated in a significant amount of repetitive work. (PX8 at 25) Dr. Bradley testified that past work history is relevant to the development of carpal tunnel and cubital tunnel syndromes. (PX8 at 27-28) That said, Dr. Bradley emphasized Petitioner's entire employment history, testifying that: "I'm going to look back as far as I can to see if I can really kind of come up with when this very well may have started or what very well may have contributed to it." (PX8 at 28)

Dr. Bradley went on to speculate whether Petitioner "actually ha[d] symptoms five years ago, six years ago and he just didn't recognize them because they were so early on?" (PX8 at 28) Dr. Bradley answered his own question, stating "Probably" because "many times these patients have very intermittent symptoms and they just don't recognize it." Accordingly, Dr. Bradley opined that since Petitioner recognized he had symptoms for a couple years, he probably had the condition going on before that. (PX8 at 28-29)

Dr. Stewart is board certified in orthopedic surgery with fellowship training in hand surgery and an added qualification in hand surgery. (RX8 at 7; Dep Ex1) Dr. Stewart testified that Petitioner had three risk factors for carpal tunnel syndrome and cubital tunnel syndrome, those being hypertension, age, and an elevated BMI. (RX8 at 16-17) Dr. Stewart testified he obtained a work history from Petitioner and noted that Petitioner's symptoms first developed when Petitioner was working as a sergeant and lieutenant. (RX8 at 17) Dr. Stewart further testified that Petitioner's work duties during that period were spent primarily doing reports and data entry rather than prisoner contacts. Dr. Stewart testified he was familiar with the Graham Correctional Center. (RX8 at 18) Dr. Stewart then testified he toured the facility, which prompted an objection by Petitioner's attorney because the IME report did not mention his having toured the facility. For the reasons stated herein, I would overrule this objection. Dr. Stewart testified he toured the facility during the last year preceding his deposition and was shown different aspects of the facility including the different housing units and the dining facility. (RX8 at 18-19) Dr. Stewart also testified he was furnished with keys and he personally opened doors and unlocked padlocks, chuckhole doors, cell doors, as well as some of the larger doors used for entering and exiting a given area. (RX8 at 19) Dr. Stewart testified that none of the locks became stuck or required excessive force to unlock. Dr. Stewart opined that Petitioner's employment did not cause or exacerbate Petitioner's condition. (RX8 at 21-22) Dr. Stewart explained that the type of activities putting people at risk for carpal tunnel syndrome are repetitive activities involving force. (RX8 at 22) "The more force then the more concern." For cubital tunnel syndrome, activity involving prolonged elbow hyperflexion or elbow extension poses a risk. (RX8 at 23)

On cross-examination, Dr. Stewart agreed that compression neuropathies can develop over time from repetitive activity involving force; however, he further explained that the timing of a compression neuropathy should be commensurate with the activity or job in question if the question pertains to causation with a particular activity. (RX8 at 29-30) Dr. Stewart further testified that if someone is employed in an occupation known to have a high risk for compression neuropathies and later develops the condition many years after retirement or changing occupations, then he would not causally relate the compression neuropathy to the prior employment. (RX8 at 30) On further questioning, Dr. Stewart testified that Petitioner had a BMI of 31 which put him at risk. (RX8 at 33)

In repetitive trauma cases, the issues of accident and causation are intertwined with both issues resolved together. *Boettcher vs. Spectrum Property Group*, 99 IIC 0961; 1999 Ill. Wrk. Comp. LEXIS 409; *Simpson vs. State of Illinois Department of Human Services*, 18 IWCC 255; 2018 Ill. Wrk. Comp. LEXIS 108. A claimant seeking compensation under a repetitive trauma theory "must prove that his physical structure gave way under the repetitive stresses of his usual work tasks." *Darling vs. Industrial Comm'n,* 176 Ill. App. 3d 186, 192, 530 N.E.2d 1135 (1988). Claimants alleging injury based on repetitive trauma must still meet the same standard of proof as

in claims involving a single traumatic accident. *Peoria County Bellwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 530, 505 N.E.2d 1026 (1987); *Williams vs. Industrial Commission*, 244 Ill. App. 3d 204, 209, 614 N.E. 177 (1993). There must be a showing that the disabling injury or condition was related to the employment and not the result of a normal degenerative process. *Peoria County Bellwood Nursing Home vs. Industrial Commission*, 115 Ill. 2d at 530 (1987); *Williams vs. Industrial Commission*, 244 Ill. App. 3d 204, 209 (1993).

Assuming Petitioner's employment as a correctional officer at Pontiac exposed him to occupational risk factors for compressive neuropathy, there was an 11 to 12-year gap between Petitioner's last year at that facility (2006) and the onset of symptoms in 2017 or 2018. As such, it is highly unlikely that the work performed at Pontiac could have caused or contributed to Petitioner's condition. Assuming the employment as a correctional officer at Graham posed occupational risk factors for compressive neuropathy, there was another significant gap between Petitioner's promotion to a supervisory role as a sergeant in 2016 and the onset of symptoms. Although Dr. Bradley did not refer to the medical theory by name, the medical-causation question in this case revolves around the concept of the latency period, defined as the period between exposure and subsequent onset of symptoms. In the setting of an infection leading to illness, this would be termed the incubation period. Dr. Bradley relied on Petitioner's entire career with Respondent. Dr. Bradley testified:

> "***I'm going to look back as far as I can to see*** if I can really kind of come up with when this very well may have started or what very well may have contributed to it. ***In Mr. Harris' s case, he had 20 years of working***." (Emphasis added.) (PX8 at 28-29)

As mentioned above, this Commission has consistently rejected the argument that a significant gap between exposure to risky repetitive activity and subsequent onset of symptoms can be explained by a lengthy latency period. In *Gibbons vs. State of Illinois, Shawnee Correctional Center*, 17 IWCC 636; 2017 Ill. Wrk. Comp LEXIS 348, the claimant worked as a correctional officer at the Shawnee facility from 1998 until 2011, after which he worked at the Hardin County facility from 2011 until that facility closed in 2015. The claimant began experiencing symptoms while employed at Hardin County, which was a less physically demanding facility. The claimant also suffered from diabetes, hypertension, and obesity. The treating surgeon, Dr. Young, provided opinion testimony which parallels Dr. Bradley's testimony in the case at bar. Dr. Young relied on the claimant's "repetitive and cumulative pinching, gripping, lifting over 14.5 years" and testified that a latency period could apply to the claimant's conditions, meaning that pathology could develop to cause a problem, even though the symptoms have not yet manifested. In adopting the arbitrator's reasoning rejecting this theory, the Commission's decision expressed the following:

> A key problem with the proofs in this case for the Petitioner is the gap between 2011 and 12/30/12, when he was working at Hardin County. The evidence indicates that a correctional officer's job at Hardin County, with regard to hand/wrist use, and in particular key usage, is significantly less stressful. The number of key turns at Hardin County appears to the Arbitrator to be a very small percentage of what it was at Shawnee.

> **The Arbitrator notes the opinion of Dr. Young with regard to the latency period**. However, after seeing numerous carpal tunnel cases, the Arbitrator is aware that causal connection opinions are very often based upon complaints that gradually occur during the performance of the alleged provocative activities. ***Dr. Sudekum's point is well taken with regard to how far the latency argument can potentially be taken in terms of a gap between the alleged causative activities and the onset of symptoms***. Here the gap period of **one or two years** between the performance of the most stressful of Petitioner's two position locations and the onset of symptoms is significant. (Emphasis added.) *Gibbons,* 17 IWCC 636; 2017 Ill. Wrk. Comp LEXIS 348.

Similarly, the Commission rejected a lengthy latency period in *Niepert v. State of Illinois, Menard Correctional Center*, 17 IWCC 61; 2017 Ill. Wrk. Comp. LEXIS 87. In that case, the claimant was employed as a correctional officer at Menard from 1996 through April 2011; however, the claimant's job duties became less demanding in March of 2009. That month, the claimant was assigned to work as a personal property officer. Then in September of 2010, the claimant was assigned to work in the infirmary. The claimant was subsequently promoted into the law library and later became a correctional counselor. The claimant developed symptoms during the years when he was no longer working as a regular correctional officer. The arbitrator noted that the claimant first sought treatment on May 31, 2013, which was 32 months after he became a property officer, and 26 months after he stopped working as a correctional officer. The treating physician, Dr. Young, testified that repetitive trauma injuries were "subject to a latency period, or a lapse in time during which pathology is developing but no symptoms are manifest." Dr. Young further testified that, "Well, I think that *everything he did prior to his new occupation or job duties* likely contributed. That's essentially the latency period . . ." The arbitrator denied the claim and the Commission affirmed. The arbitrator's reasoning, adopted on review, again rejected this purported latency period:

> While it is possible that the work activities performed by the Petitioner as a CO could potentially have been considered to have involved an accident within the meaning of the Act, the fact is that all of the evidence in this case, other than Petitioner's current testimony, indicates that he did not have symptoms during that time. As such, in the Arbitrator's view, those activities do not constitute an accident involving an October 7, 2013, manifestation date. * * * While the Arbitrator acknowledges the testimony of Dr. Young with regard to a latency period, the Arbitrator believes that the evidence does not support this opinion. *Niepert,*17 IWCC 61; 2017 Ill. Wrk. Comp. LEXIS 87

Likewise, in *Walker vs. State of Illinois, Menard Correctional Center*, 14 IWCC 519, 2014 Ill. Wrk. Comp. LEXIS 446, the Commission affirmed the arbitrator's denial of benefits and expressed the following regarding the purported latency period:

> **Dr. Choi's assertion of a latency period does not appear well supported**. Drs. Katz and Cohen appear to have a more thorough foundation on which to base their opinions. * * * The problem with attempting to relate Petitioner's medical

> condition to strenuous and repetitive physical duties at the Menard facility is that **petitioner's condition did not arise during the period where those duties were paramount.** Rather, he asserts the symptoms began during the period within which those duties were actually the least. (Emphasis added.) *Walker,* 14 IWCC 519, 2014 Ill. Wrk. Comp. LEXIS 446.

The Commission again rejected this argument in *Hahs vs. State of Illinois, Big Muddy River Correctional Center,* 14 IWCC 100; 2014 Ill. Wrk. Comp. LEXIS 129. There, the Commission, in affirming the arbitrator's denial of benefits, stated:

> **Essentially, Petitioner is claiming a repetitive trauma accident for work that he had stopped doing 2 years before his alleged accident date**. * * * Petitioner's testimony then goes into great detail on the job duties he performed in the Segregation Unit -- which he later admitted was no longer part of his job duties as of 2008. Even putting aside the Petitioner's lack of credibility, ***the 2 year passage of time - from the last time Petitioner performed his duties in the Segregation Unit to the alleged accident/manifestation date*** of October 15,1010 [*sic*] -- ***is too great of a factual stretch in this case to prove that Petitioner sustained an accident***. (Emphasis added.) *Hahs,* 14 IWCC 519, 2014 Ill. Wrk. Comp. LEXIS 446.

Given that Petitioner's symptoms did not occur during the years when his employment duties were more strenuous, and the timing of his symptoms occurring after Petitioner moved into positions with supervisory responsibilities, I see no reason to depart from the analyses underpinning the decisions discussed above. I further note that Dr. Bradley testified he was not a dedicated hand surgeon and does not have an added certification for hand surgery. (PX8 at 40)

In Petitioner's brief on review, he cites the Appellate Court's decision in *PPG Industries v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130698WC. That decision does not aid Petitioner. In the *PPG Industries* case, the matter went up on appeal to the Appellate Court pursuant to a certified question of law under Supreme Court Rule 308, concerning the statute of limitations. The certified question of law presented to the Court was framed as follows:

> Does section 6(d) of the Act, which sets forth a three-year statute of limitations for the filing of worker's [*sic*] compensation claims, act as a bar to the presentation of evidence of work activities that took place more than three years prior to the date of accident, or manifestation date, of a repetitive-trauma injury?

The Appellate Court answered the certified question in the negative. By way of background, "the employer objected to claimant's testimony describing her nearly 38-year work history. The employer argued that that a repetitive trauma claim must be based on work activities performed during the three year period preceding the date of her alleged repetitive trauma." The Court rejected that argument and ruled that the Commission could consider employment further back in time beyond the three-year statute of limitation. *PPG Industries v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130698WC. The Court in *PPG Industries* did not analyze or address medical causation; it only examined the evidentiary question relative to the

statute of limitations. The Court noted that, "The real issue presented by the employer's challenge to claimant's testimony is whether evidence of her entire work history for the employer *was relevant to her claim and admissible into evidence*. *This is an evidentiary issue* that was for the Commission to resolve and was not governed by the Act's statute of limitations." (Emphasis added.) *Id*. at P20. In the present matter, there is no argument made by Respondent that it was improper to admit and consider evidence of Petitioner's entire work history. Respondent only advanced a causation argument based on the onset of symptoms occurring after a reduction in work demands.

Additionally, in repetitive trauma claims, physicians must have sufficient knowledge of the employment activities to form a credible opinion. "The Commission has determined that a claimant fails to prove causation from repetitive trauma when the treating physician testified repetitive motions caused the injuries but failed to detail what repetitive motions the petitioner engaged in and the frequency of the motions." See *Rutherford vs. State of Illinois, Pinckneyville Correctional Center*, 15 IWCC 119; 2015 Ill. Wrk. Comp. LEXIS 118, and *Jones vs. State of Illinois, Menard Correctional Center*, supra, both citing *Gambrel vs. Mulay Plastics*, 97 IIC 238. Medical causation opinions may be rejected where the physician provides a causation opinion based on facts that are not in the record. *Session vs. Industrial Comm'n*, 124 Ill. App. 3d at 718 (1984), citing *Caterpillar Tractor Co. v. Industrial Comm'n*, 98 Ill. 2d 400, 405-06 (1983). See also *Tyson vs. State Journal Register*, 2010 Ill. Wrk Comp. LEXIS 65. If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. Expert opinions must be supported by facts and are only as valid as the facts underlying them. *In re Joseph S*., 339 Ill. App. 3d 599, 607, 791 N.E.2d 80, 87 (2003). A finder of fact is not bound by an expert opinion on an ultimate issue and may look "behind" the opinion to examine the underlying facts. *Id.* at 607.

On cross-examination, Dr. Bradley testified he had not seen or reviewed any job site analysis directly related to Petitioner. Dr. Bradley admitted that he did not know what job assignment Petitioner held prior to his retirement and he did not know how long Petitioner had been retired. (PX8 at 45) Dr. Bradley testified he has never visited a DOC prison facility. (PX8 at 45) Dr. Bradley did not know how long Petitioner had been retired before seeking treatment. (PX8 at 46) Dr. Bradley did not know when Petitioner received his promotion to lieutenant. (PX8 at 46) Asked what portion of his workday as a lieutenant was spent locking and unlocking doors, Dr. Bradley replied, "I can't give you a percentage." (PX8 at 47) Dr. Bradley was also unable to say how often on average Petitioner locked and unlocked doors as a sergeant. Dr. Bradley was also unable to say how often on average Petitioner locked and unlocked doors as a correctional officer at either Pontiac or Graham. (PX8 at 47-48) Dr. Bradley did not know how often Petitioner opened and closed chuckholes on average as correctional officer, sergeant or lieutenant. (PX8 at 48) Asked if Folgers Adams keys were specific to the Pontiac or Graham facilities, Dr. Bradley answered, "I don't know. I know for sure they were at Pontiac. I don't know if they were at the other facilities or not." (PX8 at 50) Regarding the initial onset of symptoms, Dr. Bradley testified Petitioner reported having symptoms for the "past few years." (PX8 at 50) Dr. Bradley did not know what job title Petitioner held when his symptoms started. He knew that Petitioner had been a lieutenant for three years and a sergeant for two years; however, he was unable to say when Petitioner's symptoms started relative to his job title. (PX8 at 52) Regarding report writing, Dr. Bradley testified that Petitioner did not describe the nature of those reports nor did he describe how frequently he typed up reports. Petitioner described typing reports as "one of the main tasks that

he had done over the years." (PX8 at 54) Dr. Bradley agreed that both carpal tunnel syndrome and cubital tunnel syndrome can develop idiopathically. (PX8 at 58)

Asked if it would be fair to say that he could not testify with any certainty as to the frequency Petitioner performed his job duties, Dr. Bradley answered with the following:

> A. This gentleman worked for 20 years in the Illinois Department of Corrections under multiple job titles. I can't tell you exactly every day how many locks he did, how many, you know, keys he turned, how many things he wrote. All I can tell you is he did multiple different repetitive activities ***over 20 years***, all of which in combination added up to create and cause carpal tunnel and cubital tunnel. (Emphasis added.) (PX8 at 55)

In short, Dr. Bradley relied on a vague understanding of Petitioner's entire career. Dr. Bradley also testified to having treated other patients employed as correctional officers. Although a degree of familiarity with a particular work environment derived from treating other patients working for the same employer can be relevant and potentially helpful, this type of evidence is not a credible supporting rationale in the absence of a detailed understanding of the claimant's employment, as each claimant's work history and activities may differ and each claimant's case must be decided on a case-by-case basis. See e.g., *Dobbs vs. State of Illinois, Menard Correctional Center*, 23 IWCC 0467; 2023 Ill. Wrk. Comp. LEXIS 582 (where the arbitrator's findings, affirmed on review, reflected, "Rather than having details of the duration, frequency and force of the Petitioner's work activities, Dr. Young based his opinion on the fact that he had treated several correctional employees for carpal tunnel syndrome and was familiar with their job duties.") I would find Dr. Bradley's causation opinion lacks foundation and is therefore unreliable.

Finally, I disagree with the Arbitrator's evidentiary ruling striking in part the testimony of Respondent's Section 12 IME physician, Dr. Stewart, whose narrative report fully disclosed his opinions but did not mention he had personally toured the Graham Correctional Center. The purpose behind the 48-hour disclosure requirement set forth in Section 12 of the Act is to prevent unfair surprise medical testimony. See *Ghere v. Industrial Comm'n*, 278 Ill. App. 3d 840, 663 N.E.2d 1046 (1996). As such, the Commission may bar the opinions of an examining or treating physician if not timely disclosed before a case has been set for hearing. *Borst vs. Illinois Workers' Compensation Comm'n*, 2024 IL App (2d) 230124WC-U, P54. The Appellate Court has observed, however, that "circumstances may occur where strict compliance with the requirements of section 12 would result in substantial prejudice, and a showing of good cause would justify relaxing those requirements." *Id.* at P54, citing *Mulligan vs. Illinois Workers' Comp. Comm'n*, 408 Ill. App. 3d 205, 219, 946 N.E.2d 421 (2011).

The Appellate Court in *Borst* drew a distinction between non-disclosure of a medical expert's opinion and non-disclosure of the factual reasons supporting the opinion. See *Borst,* 2024 IL App (2d) 230124WC-U, P55. In *Borst*, the claimant challenged the admissibility of Respondent's IME physician's opinion testimony on the grounds that Respondent failed to produce a copy of a job video provided to its examining physician. The Court rejected the argument:

> Claimant does not assert that Dr. Itkin's reports were not timely provided to him. Claimant's objection rests solely on the fact that certain videos were not provided prior to Dr. Itkin's deposition. However, we do not find, and claimant does not direct us to, any language in section 12, *Ghere*, or any other authority that an examining or treating physician *must produce every item he or she reviewed at least 48 hours prior to the physician's deposition testimony*. (Emphasis added.) *Borst,* 2024 IL App (2d) 230124WC-U, P55.

The Court further commented, "there was no surprise as to Dr. Itkin's testimony." *Borst,* 2024 IL App (2d) 230124WC-U, ¶ 55. There was also no surprise in the case at bar. In affirming the arbitrator's evidentiary ruling, the majority struck from consideration a key fact differentiating the conflicting causation opinions as Dr. Bradley had not personally toured the facility. When a medical expert possesses superior knowledge of the facts, the Commission often accords greater weight to that expert's opinion. See e.g., *Borst vs. Dow Chemical*, where the Commission found the employer's IME physician's opinion more credible on the grounds that "Dr. Itkin had a better *forensic understanding as to the nature of Petitioner's variety of job duties compared* to the treating surgeon Dr. Ahuja" based on his more comprehensive review of the job duties and physical demands. (Emphasis added.) *Borst vs. Dow Chemical*, 21 IWCC 0610; 2021 Ill. Wrk. Comp. LEXIS 490. As such, I believe the majority's refusal to admit into evidence and consider this portion of Dr. Stewart's testimony was improper and prejudicial to Respondent as Dr. Stewart possessed a better forensic understanding of the physical demands due to his personal tour of the Graham Correctional Center.

For the above reasons, I dissent from the majority's opinion and would reverse the Arbitrator's decision as I would find Petitioner failed to prove he sustained an accident arising out of and in the course of his employment, and failed to prove his bilateral carpal tunnel and cubital tunnel syndromes were causally related to his employment.

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

MARCH 14 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC007008
Case Name	Monte Harris v. State of IL/Graham Correctional Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	22
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Thomas Bowman

DATE FILED: 10/6/2023

THE INTEREST RATE FOR THE WEEK OF OCTOBER 3, 2023 5.34%

/s/ Jeanne AuBuchon, Arbitrator

Signature

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

October 6, 2023

/s/ Michele Kowalski

Michele Kowalski, Secretary

Illinois Workers' Compensation

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MONTE HARRIS
Employee/Petitioner

v.

STATE OF IL/GRAHAM CORRECTIONAL CENTER
Employer/Respondent

Case # **22** WC **007008**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Springfield**, on **August 24, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **March 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 $**61,193.68**; the average weekly wage was $**1,748.39**.

On the date of accident, Petitioner was **52** years of age, ***married*** with **0** dependent child(ren).

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

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

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

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

ORDER

Respondent shall pay the reasonable and necessary medical services listed in Petitioner's Exhibit 1, as provided in § 8(a) of the Act. Respondent shall be given credit for medical benefits that have been paid through its group carrier, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in § 8(j) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $**706.08**/week for **79.74** weeks, because the injuries sustained caused the **9% loss of the right and left hands (34.2 weeks), and the 9% loss of the right and left arms (45.54 weeks)**, as provided in § 8(e) of the Act.

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

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

Jeanne L. AuBuchon

Signature of Arbitrator

OCTOBER 6, 2023

PROCEDURAL HISTORY

This matter proceeded to trial on August 24, 2023, on all disputed issues. The issues in dispute are: 1) whether an employer-employee relationship existed on the date of "accident;" 2) whether the Petitioner sustained accidental injuries that arose out of and in the course of his employment; 3) the causal connection between the accident and the Petitioner's bilateral carpal and cubital tunnel syndromes; 4) liability for medical bills incurred; and 5) the nature and extent of the Petitioner's injuries. In addition, at trial the Arbitrator reserved ruling on the Respondent's objection to admission of Petitioner's Exhibit 6 – documents subpoenaed from the Respondent's Section 12 examiner – and Petitioner's Exhibit 9 – exhibits that were attached to the deposition of the Section 12 examiner.

FINDINGS OF FACT

The Petitioner was employed with the Illinois Department of Corrections for 25 years. (T. 23) He began in 1996 as a corrections officer at Pontiac Correctional Center, a maximum-security facility, and worked there for 10 years. (T. 24-25) He said he bar rapped every day, performed shakedowns and property box searches, cuffed and uncuffed inmates and keyed and unkeyed locks, including food hatches/chuckholes to give inmates their meals, ice and laundry. (24-27) He said he used regular keys on the chuckholes and Folger Adams keys on the cells and showers. (T. 25-26) The Petitioner was on the tactical team for more than 20 years until his retirement. (T. 27)

After working at Pontiac, he transferred to Graham Correctional Center as a corrections officer – a position he held for 10 years. (T. 29) He said 80 percent of his time was spent on the wing or gallery – unlocking cells, log books, other books and doors to mark equipment. – with 80 percent of that time using his arms and hands. (T. 29-30) The Petitioner was then promoted to sergeant and performed the same duties. (T. 30-31) He said that sometimes he worked in

segregation. (T. 31) After 2½ years as sergeant, the Petitioner was promoted to lieutenant and performed the same duties. (T. 32)

On a Work History Timeline form, the Petitioner wrote that as a correctional officer for 10 years at Pontiac, he: ran showers for 100 inmates each day, having two key rings with 10 Folger Adams keys on each ring, and would key out each inmate for shower; open 50 food hatches for food, trash, ice and laundry; and carry a food tub and ice bucket up three flights of stairs. (PX7) At Graham, he was assigned to a housing unit, signing all four wing books every half hour, dealing with inmates and running chow line, yard line and medical. (Id.) In his two years as sergeant, he was assigned to a cluster of five houses, where he: walked four wings; signed wing books, seg book and equipment log; take out and bring in medline; stand with the cluster chow line; write tickets; and do reports. (Id.) In the gatehouse, he typed and searched visitors. (Id.) As a lieutenant for three years, he: signed logbooks, equipment logs and wing books; dealt with any situation that came up, such as walking an inmate to segregation; stood for chow line; did zone reports and evaluations; wrote reports and tickets; and typed. (Id.) He noted that he was an active tactical member for more than 20 years training four hours a month on batons. (Id.)

On a Detailed Job Description form, the Petitioner wrote that he performed lifting, pushing and pulling, bending or stooping, reaching above shoulder level, using his hands for gross and fine manipulation and loading and unloading. (Id.) The tasks listed were the same as on the Work History Timeline plus lifting property boxes and performing shakedowns. (Id.)

The Respondent submitted a position description for correctional lieutenant that listed administrative and supervisory duties for a majority of work time. (RX4) No position descriptions for sergeant and correctional officer were submitted. The Respondent also submitted a list of job assignments that listed dates with various zones and other assignments. (PX6) The Petitioner

testified that assignment sheets meant nothing because he could be assigned to one spot and sent to another spot. (T. 32)

The Petitioner stated that during the COVID pandemic, his work duties increased because all the inmates were locked up and could not assist in work around the facility. (T. 50) He said the inmates' aggression level went up because they were locked up 24 hours a day, and, as a lieutenant or sergeant he was called to housing units because of issues with inmates. (T. 50)

The Petitioner testified that he did not have gout, hypothyroidism, diabetes or rheumatoid arthritis. (T. 28-29) He acknowledged using tobacco until 25 years ago and being diagnosed with hypertension in 2019, for which he takes medication. (T. 42-43) He also said he lifted weights, which was encouraged for being on the tactical team. (T. 47) He said he had no prior injuries to his hands or arms. (T. 48)

In late 2020 and early 2021, the Petitioner was treated for a right shoulder strain and rotator cuff tear suffered when wrestling with an inmate. (PX9) On his first treatment date, he reported that during the altercation, his right hand went numb. (Id.) There was no other reference to hand numbness in later treatment notes. (Id.) On January 14, 2011, the Petitioner underwent electromyography (EMG) for right arm pain and paresthesias and was reporting numbness in the first three digits of his right hand along with shoulder pain after performing a military press at work. (Id.) The test showed evidence of right upper extremity cervical radiculopathy and right upper extremity median neuropathy at the wrist. (Id.) There were no other records nor opinions produced to determine how these injuries were or were not related to the Petitioner's conditions at issue in this case.

The Petitioner retired on November 1, 2021. (T. 33) He said that in 2017 he noticed that his hands were going numb while using batons in training, and as time went on the numbness was

persistent and he had trouble sleeping at night because his arms and hands got numb. (Id.) He said that after he retired, his problems did not go away, so he reached out to a buddy on Facebook, who told him about Dr. Matthew Bradley, an orthopedic surgeon at Metro-East Orthopedics, and about Petitioner's counsel, who sent him to Dr. Bradley. (T. 33-34)

On March 10, 2022, the Petitioner saw Dr. Bradley and complained of bilateral elbow, wrist, and hand pain with numbness and tingling. (PX3) He said his symptoms had been present for the past few years. (Id.) He reported that the tingling was waking him up at night, and the symptoms were mostly present in his first three digits and less often in the pinkies. (Id.) Dr. Bradley performed a physical examination and took X-rays. (Id.) He diagnosed bilateral carpal and cubital tunnel, with carpal tunnel being more severe than cubital tunnel and referred the Petitioner for EMG and nerve conduction studies (NCS). (Id.) He allowed the Petitioner to work full duty, provided wrist splints to be worn at night and recommended over-the-counter anti-inflammatories and home exercises. (Id.)

The studies were performed on March 14, 2022, and showed severe left side carpal tunnel syndrome, moderate to severe right side carpal tunnel syndrome, moderate left side carpal tunnel syndrome, mild to moderate bilateral cubital tunnel syndrome and moderate bilateral Guyon's canal syndrome (neuropathy due to injury to the ulnar nerve where it passes through the wrist). (PX 4)

The Petitioner testified that the bracing did not help, and he was waking up every two hours because of the symptoms. (T. 35) He said that he also performed home exercises. (T. 43, 44) During a March 21, 2022, telemedicine visit, the Petitioner reported no change in his symptoms. (PX3) Dr. Bradley recommended surgery. (Id.)

On April 22, 2022, the Petitioner underwent right carpal tunnel release and right ulnar neurolysis (application of chemical or physical agents to a nerve to cause degeneration of the nerve fibers, interrupting the transmission of nerve signals). (PX3, PX5) On May 11, 2022, Dr. Bradley performed left ulnar nerve transposition and left carpal tunnel decompression. (Id.) Following each surgery, the Petitioner reported significant improvement. (PX3) Dr. Bradley released the Petitioner at maximum medical improvement on May 26, 2022. (Id.)

On June 3, 2022, the Petitioner underwent a Section 12 examination by Dr. Patrick Stewart, a hand surgeon at Sarah Bush Lincoln Medical Center. (RX7) Dr. Stewart reviewed medical records, notice of injury and job descriptions for correctional officer, sergeant and lieutenant. (Id.) The Petitioner reported that he first noticed symptoms in October 2018 when he was doing baton work for the tactical team. (Id.) At the time of the examination, the Petitioner stated that he still had constant numbness in his left thumb that was not present prior to surgery, numbness and tingling in the middle finger at night, pain in his bilateral wrists, difficulty with grasping and torquing activities and electrical shocks out his fingers with activities and movement. (Id.)

In his conclusions, Dr. Stewart found the Petitioner to be direct and forthright for the most part. (Id.) He found no causal connection between the Petitioner's condition and his employment as a lieutenant, sergeant or correctional officer. (Id.) In support of this conclusion, Dr Stewart noted that over the past five years, during which time he developed his symptoms, the Petitioner had advanced to the level of sergeant and subsequently lieutenant. (Id.) Dr. Stewart included in his report descriptions of the sergeant and lieutenant positions apparently provided by the Respondent. (Id.) Dr. Stewart said that those job positions did not have significant forceful repetitious activities. (Id.) He said the opening and closing of locks did not require significant force and required a very limited amount of time so that the number of repetitions resulted in a

nominal portion of a given workday – even when taken in its totality. (Id.) He said there was no prolonged, forceful grasp indicated within the job description that places people at an increased risk for cubital tunnel syndrome – nor was there repetitive flection and extension or a maintained hyperflexed position of the elbows. (Id.) He said data entry and writing reports had not been found to be related to an increased risk for developing compression neuropathy.

As to the medical treatment the Petitioner received, Dr. Stewart stated there was no conservative treatment of the Petitioner's cubital tunnel condition. (Id.) He also did not see an indication for the X-rays obtained because there was no specific joint complaints or injuries. (Id.) He said Dr. Bradley's technique in the cubital tunnel surgery of a 4-5 mm incision in the ligament and fascia to be the standard of care. (Id.) Dr. Stewart recommended no additional medical treatment and found the Petitioner had unrestricted work capabilities. (Id.)

Dr. Bradley testified consistently with his records at a deposition on March 1, 2023. (PX8) He identified a Registration Form the Petitioner completed on March 10. 2022, that included a description of job duties that included carrying 70-pound foot tubs up four flights of stairs, opening food hatches for 48 cells three times a day, opening cell doors for showers using Folger Adams keys at Pontiac and opening 50 rooms per day, report writing, tickets, "201," signing log books and "standing for feed" at Graham. (Id.) Dr. Bradley also reviewed the Petitioner's handwritten job description and work history timeline before his deposition. (Id.) He said he was familiar with the job requirements at the correctional facilities from treating other correctional officers, lieutenants and sergeants and used that information in treating the Petitioner and determining causation. (Id.)

Dr. Bradley said that in his examination of the Petitioner, he found atrophy of some of the muscles because the carpal tunnel syndrome was getting so bad. (Id.) He said this took many years to develop. (Id.)

Regarding conservative treatment, Dr. Bradley said he gave the Petitioner home exercises and wrist splints but did not give splints for cubital tunnel. (Id.) He said the cubital tunnel splints are expensive and cumbersome, so he has patients wrap a blanket, sheet or pillow around their elbows to keep them from bending at night. (Id.)

Dr. Bradley opined that the Petitioner's work for 20-plus years at Pontiac and Graham contributed to his carpal and cubital tunnel syndromes. (Id.) He said he had seen multiple correctional officers that have done similar activities and developed similar problems, so he thought that those activities over time contributed to carpal and cubital syndromes. (Id.) Regarding the Petitioner, Dr. Bradley pointed to activities earlier in his career – heavy lifting, carrying pods up and down stairs, more opening and closing of heavy doors, using Folger Adams keys – as starting the process. (Id.) He said that although the Petitioner's positions changed, he still performed a lot of the repetitive activities from time to time. (Id.) He said this added up after 20 years to the point he had symptoms. (Id.) He said many times patients have very intermittent symptoms and don't recognize it. (Id.) He said the conditions were probably going on before the Petitioner recognized it. (Id.) Dr. Bradley also explained his intraoperative findings – the ulnar nerve encased in scar tissue and the carpal tunnel ligament being flattened – as proof of chronic conditions. (Id.)

In response to Dr. Stewart's report, Dr. Bradley said the job descriptions listed therein did not match the descriptions the Petitioner and many other correctional officers, lieutenants and sergeants had given him. (Id.) Regarding his decision to proceed with surgery, Dr. Bradley

testified that when carpal tunnel syndrome advances to the severe category, it typically does not respond to nonoperative treatment and tends to get worse and result in nerve damage, and he did not think the Petitioner would have gotten any better without surgical intervention. (Id.) As to Dr. Stewart's criticism of the X-rays he took, Dr. Bradley said they are the standard of care when working up patients with joint complaints. (Id.) Dr. Bradley also disagreed with Dr. Stewart's opinion that Dr. Bradley's surgical technique for the cubital tunnel release was not the standard of care. (Id.) He said he had no idea what Dr. Stewart was talking about and that releasing anything that causes compression on the nerve was appropriate. (Id.)

On cross-examination, Dr. Bradley stated that he did not know how long the Petitioner had been retired before he saw him. (Id.) He did not know the frequency with which the Petitioner performed various tasks that he said contributed to his condition. (Id.) He said there is no threshold at which any certain activity causes carpal and cubital tunnel syndromes, adding that if, for example, somebody only turned keys 10 percent of the time, it would take significantly longer to develop the conditions. (Id.)

Dr. Stewart testified consistently with his report at a deposition on May 23, 2023. (RX8) He testified that he toured the prison and physically manipulated locks. (Id.) Petitioner's counsel objected to this testimony. (Id.) Dr. Stewart stated that he saw an indication in Dr. Bradley's notes that the Petitioner was on the tactical team, but the Petitioner did not report that to him. (Id.) He said that even if the Petitioner's job duties were a causative or aggravating factor in his condition, there should have been improvement or resolution of the symptoms after the Petitioner retired. (Id.) He explained his criticism of the incisions in the cubital tunnel surgery as being an inadequate release. (Id.)

On cross-examination, Dr. Stewart testified that he did not know how long the Petitioner worked for the Department of Corrections but surmised it was at least 20 years. (Id.) He was unaware that the Petitioner worked at Pontiac before working at Graham, nor did he know what type of facility Pontiac was. (Id.) He said that if he was provided a job description for the Petitioner's duties at Pontiac, he would have reviewed it. (Id.) He acknowledged that compression neuropathies are cumulative in nature. (Id.) He said he did consider the Petitioner's employment at Graham prior to his development of symptoms, adding that and his work as a lieutenant and sergeant did not put him at increased risk of developing compression neuropathy. (Id.)

Dr. Stewart said he did not ask the Petitioner about any changes in his duties during the COVID pandemic. (Id.) He said the Petitioner did not indicate that there was something he felt was a significant change in his job duties during the pandemic that was a risk factor or exacerbated his symptoms. (Id.) Dr. Stewart said he was aware of lockdowns at the prison during the pandemic but was told that certain inmate workers continued to work in dietary and as porters. (Id.)

Also during cross-examination, Petitioner's counsel questioned Dr. Stewart about several exhibits to which Respondent's counsel objected under Illinois Supreme Court Rule (ISCR) 206(h)(2) and on relevance. (RX8, PX9) Petitioner's Deposition Exhibit 1 and 2 are Section 12 examination reports from Dr. Ryan Calfee at Washington University School of Medicine and Dr. James Emanuel at Parkcrest Orthopedics, respectively, regarding other Department of Corrections employees whose carpal and cubital tunnel syndromes were found to be causally related to their work. Petitioner's Deposition Exhibit 3 is a Section 12 report from Dr. Stewart regarding an employee who fell. Exhibits 4 is another Section 12 report from Dr. Emanuel. Exhibit 6 is a Commission decision affirming and adopting an Arbitrator's decision in a case regarding a correctional officer at Graham Correctional Center. There was no Exhibit 5.

At the time of arbitration, the Petitioner was a school bus driver. (T. 22) He said that despite the improvements after surgery, he still experienced occasional numbness in the tips of his thumbs and pain when putting weight across the palms of his hands, such as when working out and chopping wood. (T. 37-38)

Trevor Wright, current shift supervisor for Graham Correctional Center, attended the arbitration hearing as the Respondent's representative and testified that he worked with the Petitioner. (T. 52) He heard the Petitioner's testimony and said that nothing the Petitioner said was incorrect. (Id.) He agreed that during the COVID pandemic, the facility went on lockdown, which caused a lot more work for the staff because they did not have the inmate work force to assist. (T. 53) He said lower staffing levels at that time also created more work. (Id.) On cross-examination, Mr. Wright said the Petitioner did not mention to him any symptoms or having issues doing his job. (T. 54)

Mr. Wright testified that he prepared the job assignment report based on daily rosters. (T. 56) He said that as a lieutenant, the Petitioner would conduct training in a classroom reviewing power points. (T. 57) He said that as a zone lieutenant, the Petitioner would make tours of the zone and supervise employes. (Id.) When asked if those roles were not physically strenuous, Mr. Wright said a lieutenant might have to respond to an incident, restrain an inmate and helped feed inmates during COVID when the facility was short-staffed. (Id.) He explained that in feeding inmates, every cell door would have to be opened and closed when giving the inmates their trays and when picking up the trays. (T. 60)

The Petitioner also submitted a 581-page exhibit consisting of documents subpoenaed from Sara Bush Lincoln Medical Center. (PX6) Included in these records were two copies of an evaluation performed on June 3, 2022, by Southern Illinois Hand Center Occupational Therapy as

a result of a referral from Dr. Stewart; two copies of a 216-page Physical Demand Analysis/Switch Analysis for various correctional officer positions sent to Dr. Stewart from the Respondent's insurer; four copies of Dr. Bradley's records; two copies of an Illinois Department of Central Management Services Position Description for security at Graham; two copies of a letter from the insurer to Dr. Stewart with the Notification of Injury; and what appears to be handwritten medical notes. (Id.) The Respondent objected to admission of the documents on the basis of the documents not being provided to the Respondent prior to the hearing, the documents being duplicative and a lack of foundation.

CONCLUSIONS OF LAW

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

As a preliminary matter, the Arbitrator reserved ruling on Respondent's objection to admission of Petitioner's Exhibits 6 and 9. Petitioner's Exhibit 6 was comprised of documents subpoenaed from Sarah Bush Lincoln. The objection on the basis of the documents not being provided to the Respondent prior to the hearing is overruled, as there is no such requirement in the Act or Rules. The objection regarding the documents being duplicative is sustained as to Dr. Bradley's records and the Notification of Injury. As to the rest of the documents, there was no foundation laid. Although they were subpoenaed from and certified by a medical facility, they do not fall under the provision for admission of certified records under Section 16 of the Act as they were not treatment records. In addition, no foundation was laid with Dr. Stewart, as he did not testify that he relied upon these documents in forming his opinion. Therefore, the objection is sustained, and Petitioner's Exhibit 6 is not admitted.

Petitioner's Exhibit 9 was another copy of Dr. Stewart's deposition with exhibits attached thereto. The Respondent objected to the admission of these exhibits based on ISCR 206(h)(2) and relevancy. ISCR 206 is within Part E, which addresses discovery, and specifically pertains to taking depositions. Paragraph (h) provides the procedures for taking depositions by remote electronic means. Most of Rule 206 relates to discovery depositions, but parts thereof refer to evidence depositions. Paragraph (h) does not make a distinction between discovery and evidence depositions.

Subparagraph (2) provides: "Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition." (ISCR 206(h)(2))

The fact that there is no discovery under the Workers' Compensation Act, makes this analysis different than in cases in civil court. The only disclosure rule under the Act is the 48-hour rule for expert opinions under *Ghere v. Industrial Comm'n*, 278 Ill. App. 3d 840, 663 N.E.2d (4th Dist. 1996). There is no penalty for failure to disclose any other evidence under the Act. If Dr. Stewart were testifying live at an arbitration hearing, there would be no basis for an objection under ISCR 206(h)(2).

In addition, review of ISCR 206(h) and the comments thereto make it apparent that the Rule is a logistical or procedural one rather than substantive, with the Supreme Court setting ground rules to allow for the technological advancements in the ways depositions are taken.

The comments from 1999 state:

> "The committee is of the opinion that telephonic and other remote electronic means depositions should be allowed by a specific paragraph of Rule 206. It is meant to reduce unnecessary discovery costs. The committee recommends that all other demonstrative evidence to be presented to the deponent be premarked before

> being provided to the officer administering the oath and the other parties. The parties may agree pursuant to Rule 201(i) to amend or waive any conditions of paragraph (h). (ISCR 206 Comments)

It is apparent that the purpose of this rule is to ensure that the court reporter, witness and counsel all have the same exhibits while a deposition is being taken remotely. The remedy for violation of this rule would be to adjourn the deposition to make sure that everyone remotely present had the exhibits at hand. The Respondent simply objected and did not ask for adjournment to be able to see the exhibits about which the witness was testifying. Therefore, the objection on the basis of ISCR 206 is overruled.

Regarding relevancy, this Arbitrator does not commonly sustain relevancy objections but gives the exhibits or testimony the weight she believes the evidence deserves. However, Petitioner's Deposition Exhibit 6 is a Commission decision. It may have precedential value but no evidentiary value and is more appropriate for inclusion as citations in a proposed decision rather than as evidence. Therefore, the relevance objection is sustained as to Petitioner's Deposition Exhibit 6.

Submission of Petitioner's Deposition Exhibits 1, 2 and 4 appears to be an attempt to compare this case with similar cases in which causation was found. However, this relevancy is limited in that each case is different, and this evidence has little bearing, if any, on the facts of the instant case. Similarly, Exhibit 3 has little relevance in that it pertains to a different corrections officer who suffered a fall.

Therefore, Petitioner Deposition Exhibits 1-4 are admitted over the objection of the Respondent, but the Arbitrator gives them little weight as explained above.

The Arbitrator also notes objections by the Petitioner to testimony elicited from Dr. Stewart in his deposition about conclusions he drew after visiting the prison. This was not contained in

his report, and there was no proof that this information or the conclusions Dr. Stewart drew therefrom was disclosed at least 48 hours before testimony began. The Arbitrator finds this is a violation of the rulings in *Ghere*, and the testimony is hereby stricken.

Last is the preliminary issue of the Petitioner's credibility. Although he apparently did not give great detail of his work activities to Dr. Stewart, his testimony and reports to Dr. Bradley were sufficiently consistent. In addition, the Petitioner's testimony about the tasks he performed during his career was confirmed by Mr. Wright. Therefore, the Arbitrator finds the Petitioner's testimony and his reports to Dr. Bradley to be credible.

Issue (A): Was there an employer-employee relationship?

An employee who suffers a gradual injury due to repetitive trauma is eligible for benefits under the Act, but he must meet the same standard of proof as a petitioner alleging a single, definable accident. *A.C. & S. v. Industrial Comm'n*, 710 N.E.2d 837, 840, 304 Ill. App. 3d 875, 238 Ill. Dec. 40 (1st Dist. 1999) Proof that the relationship of employer and employee existed at the time of the accident is one of the elements of an award under the Act. Id. The date of the accidental injury in a repetitive-trauma case is the date on which the injury "manifests itself." Id. The manifestation date is the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person. Id. The Court held that although the manifestation date of the claimant's injury occurred after the claimant's last day working for the employer, it would not impose an arbitrary limit on otherwise compensable repetitive-trauma claims by requiring the manifestation date to fall within the time of employment. Id. at 842.

The Commission has, in turn, found injuries with a manifestation date occurring after the employment ended to be compensable. See *Vasquez v. SOI/Menard Corr. Ctr.*, 10 I.W.C.C. 0826

(2010); *Barone v. SOI/Dept. of Transportation*, 13 I.W.C.C. 0055 (2013); *Broshears v. Menard Corr. Ctr.*, 13 I.W.C.C. 0063 (2013); and *Ramos v. SOI/Menard Corr. Ctr.*, 12 I.W.C.C. 0224 (2012).

Based on these holdings and the fact that the Petitioner began experiencing symptoms while working for the Petitioner, the Arbitrator finds that the Petitioner has established that an employer-employee relationship existed to satisfy this requirement.

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

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

Further, a Petitioner's job duties need not be repetitive in the sense that the same task is done over and over again as on an assembly line to result in a compensable injury. *City of Springfield v. Illinois Workers' Comp. Comm'n*, 388 Ill.App.3d 297, 901 N.E.2d 1066, 327 Ill.Dec. 333 (4th Dist., 2009). There is no legal requirement that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma. *Edward Hines Precision*

Components v. Indus. Comm'n, 365 Ill.App.3d 186, 192, 825 N.E.2d 773, 292 Ill.Dec. 185 (2nd Dist. 2005) See also *Darling v. Indus. Comm'n*, 176 Ill.App.3d 186, 530 N.E.2d 1135, 1142 (1st Dist. 1988). Proof of effort required or exertion needed may carry great weight only where the work duty complained of is a common movement made by the general public. *Darling*, 176 Ill.App3d. at 1142. As to whether the Petitioner's work duties complained of were common movements made by the general public, the Arbitrator finds that his duties were not common movements made by the general public. Therefore, proof of effort or exertion is not required.

In the instant case, Drs. Bradley and Stewart disagreed as to whether the Petitioner's repetitive trauma were due to his work. There are several reasons why the Arbitrator gives Dr. Bradley's opinions more weight.

First, Dr. Bradley apparently based his opinions on the Petitioner's descriptions of the tasks he performed, and Dr. Stewart based his opinions on the sergeant and lieutenant position descriptions. In looking at those position descriptions, the Arbitrator finds that these were descriptions of duties but not specific tasks he performed by using his hands and arms. Considering that the Arbitrator found the Petitioner to be credible, the Arbitrator also finds his testimony and reports more descriptive of what the Petitioner did with his hands and arms at work rather than a listing of duties. Also, his descriptions were confirmed by Mr. Wright.

Second, Dr. Stewart did not give consideration to the entirety of the 25 years during which the Petitioner performed duties that would contribute to carpal and cubital tunnel syndromes – locking and unlocking doors. Nor did Dr. Stewart consider the increase in the Petitioner's duties during COVID lockdown while the prison was short-staffed.

The Appellate Court has held that work history extending years before a claimant's alleged manifestation date is relevant because a repetitive-trauma injury is one which has been shown to

be caused by the performance of the claimant's job and has developed gradually over a period of time, without requiring complete dysfunction. *PPG Indus. v. Illinois Workers' Comp. Comm'n*, 2014 IL App (4th) 130698WC, ¶ 19, 22 N.E.3d 48.

On the other hand, Dr. Bradley did take the Petitioner's work history over the past 25 years into consideration in forming his causation opinion. In addition, Dr. Bradley's intraoperative findings described above support his opinion that the damage to the Petitioner's carpal and cubital tunnels were done over a long period of time.

Third, Dr. Stewart had limited information from the Petitioner about his activities – including his service on the tactical team. Dr. Stewart said the Petitioner did not expound on his activities. However, Dr. Stewart did not delve any deeper in his questioning of the Petitioner.

Dr. Bradley's opinions also deserve greater weight because he was the Petitioner's treating physician and had more opportunities to become familiar with the Petitioner and his conditions – especially prior to having surgery.

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

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

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

Although Dr. Stewart was critical of the number of X-rays taken and what he considered to be a lack of conservative care, Dr. Bradley thoroughly explained the rationale for his course of

treatment. Based on this and the findings above, the Arbitrator finds that the medical services provided to the Petitioner were reasonable and necessary and orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 1. The Respondent shall have credit for any amounts already paid or paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

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

Pursuant to Section 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." *Id.*

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

(ii) **Occupation.** The Petitioner is retired and no longer is subject to the same physical challenges as during his work for the Respondent. However, he now works as a school bus driver – an occupation that requires considerable use of the hands and arms. The Arbitrator places significant weight on this factor.

(iii) **Age.** The Petitioner was 52 years old at the time of the injury and has several work years left during which time he will need to deal with the residual effects of the injury. The Arbitrator places some weight on this factor.

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

(v) **Disability.** The Petitioner's achieved a good result from his surgeries and was returned to work full duty. However, he testified that he still experiences numbness and pain. The Arbitrator puts significant weight on this factor.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC002874
Case Name	James Edwards v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0113
Number of Pages of Decision	28
Decision Issued By	Kathryn Doerries, Commissioner, Maria Portela, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Thomas Bowman

DATE FILED: 3/14/2025

/s/Maria Portela, Commissioner

Signature

DISSENT

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JAMES EDWARDS,

Petitioner,

vs. NO: 22 WC 2874

STATE OF ILLINOIS –
GRAHAM CORRECTIONAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission corrects the first paragraph under the "Order" Section of the Decision to read "Petitioner's group exhibit #1" instead of "Petitioner's group exhibit".

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 6, 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.

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.

MARCH 14 2025

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

MEP/dmm
O: 011425
49

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

DISSENT

I respectfully dissent from the opinion of the majority and would reverse the Decision of the Arbitrator. I view the evidence differently and would find that Petitioner failed to prove he sustained an accident arising out of and in the course of his employment and failed to prove his bilateral carpal tunnel and cubital tunnel syndrome were causally related to his employment activities. As documented by Petitioner's primary care provider at Litchfield Family Practice Center, Petitioner suffered from hypertension and obesity and the initial onset of Petitioner's upper extremity and hand numbness coincided with a significant weight gain and spike in blood pressure in September 2019. (RX7) There was no discussion of Petitioner's employment activities in the primary care provider's records. Other records from Dr. Painter, an orthopedic surgeon who treated Petitioner for an unrelated trigger finger condition, noted Petitioner had a 25-year history for cigarette smoking, described as a pack per day. (RX7)

Petitioner alleges his symptoms subsequently worsened during the Covid pandemic; however, the Job Assignment History covering the period of March 1, 2020, through October 31, 2020, showed Petitioner primarily worked as a writ officer, hospital escort, healthcare escort, and tower officer, where provocative activities associated with compression neuropathy were minimal. During that period, Petitioner was assigned to a wing for only one day on June 5, 2020. (RX6) If Petitioner's occupation was a contributing causal factor, one would expect at least some diminishment or improvement in symptoms during this time period. The worsening of Petitioner's symptoms during this period when there was no significant exposure to provocative activities at work suggests the condition was systemic and progressing naturally. In December 2020, Petitioner saw Dr. Painter for trigger finger of the right thumb and intermittent numbness in the right palm. There was no discussion concerning Petitioner's employment activities with Dr. Painter. Fast forward to January 2022, Petitioner presented to Dr. Bradley for bilateral hand numbness and for the first time reported his condition as work related. (T. 12)

The significance of the weight gain and spike in blood pressure readings was made clear in the records of Litchfield Family Practice Center, during an office visit on Friday, September 27, 2019. At that visit, Petitioner presented for management of hypertension and it was noted that his blood pressure readings were "running 140-150's over 100'-110's on the bottom." (RX7) It was further noted that Petitioner was not exercising and weighed 249 pounds with a BMI of 37.31 (Morbid obesity is defined as 40 and over). The primary care provider further documented a recent onset of numbness in the right upper extremity and indicated the following:

> Note: Pt has recently stopped smoking and hasn't had a cigarette since Saturday. Since stopping he **has noticed that he has had elevated blood pressure**. He has also **continued to gain weight over the last year,** and was set up for an overnight pulse ox for potential sleep apnea. With all of this going on and his increased blood pressure we discussed changing or increasing medication.
> * * *
> His ***arm numbness and tingling in his upper right arm and right hand have only been present for one day***. He did break up a prison fight yesterday, and does not believe that could have caused this. We discussed monitoring it and following up if it gets worse. (Emphasis added.) (RX7)

The primary care provider advised Petitioner that he needed to bring his blood pressure readings down to "average less than 140/90." Petitioner's hypertension, age, and obesity were all risk factors associated with the development of carpal tunnel syndrome and cubital tunnel syndrome. (RX5, deposition of Dr. Stewart, at 18-19.) Cigarette smoking is also a known risk factor. (PX5, deposition of Dr. Bradley, at 8.)

When Petitioner first presented to Dr. Bradley in January of 2022, he reported a weight of 265 pounds, representing an additional gain of 16 pounds since September of 2019. Dr. Bradley was aware that Petitioner's numbness started sometime in 2019 (PX5 at 23-24); however, he had no knowledge of the medical circumstances surrounding the onset of symptoms. Dr. Bradley was

never made aware of Petitioner's history for cigarette smoking. Dr. Bradley's patient registration form only asked whether the patient was a "current" user of tobacco and Petitioner correctly answered "No." (PX5 at 56) The questionnaire never asked about past use of tobacco and Petitioner failed to divulge his smoking history. Dr. Bradley was also never made aware of the spike in blood pressure readings in September 2019, which coincided with Petitioner's first reported upper extremity and hand numbness. Dr. Bradley was also never made aware of the significant weight gain which preceded the onset of symptoms. Dr. Bradley testified he never reviewed any prior treatment records. When asked during his deposition if Petitioner had any non-occupational risk factors, Dr. Bradley testified that Petitioner did not have any risk factors besides being "slightly overweight." (PX5 at 11) Not only was this statement incorrect, but Dr. Bradley misremembered Petitioner as being taller in height before later correcting himself and conceding on cross-examination that Petitioner was "shorter than I thought" and was indeed "obviously overweight" with a "BMI in the upper 30s." (PX5 at 40) In affirming the Arbitrator's decision, the majority overlooks Dr. Bradley's lack of knowledge regarding Petitioner's past medical history, which I believe undermines his causation opinion.

In repetitive trauma cases, the issues of accident and causation are intertwined with both issues resolved together. *Boettcher vs. Spectrum Property Group*, 99 IIC 0961; 1999 Ill. Wrk. Comp. LEXIS 409; *Simpson vs. State of Illinois Department of Human Services*, 18 IWCC 255; 2018 Ill. Wrk. Comp. LEXIS 108. A claimant "must prove that his physical structure gave way under the repetitive stresses of his usual work tasks." *Darling vs. Industrial Comm'n,* 176 Ill. App. 3d 186, 192, 530 N.E.2d 1135 (1988). There must be a showing that the disabling injury or condition was related to the employment and not the result of a normal degenerative process. *Peoria County Bellwood Nursing Home vs. Industrial Commission*, 115 Ill. 2d at 530 (1987); *Williams vs. Industrial Commission*, 244 Ill. App. 3d 204, 209, 614 N.E. 177 (1993). Claimants alleging repetitive trauma must satisfy the same standard of proof as in claims involving a single traumatic accident. *Peoria County Bellwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 530, 505 N.E.2d 1026 (1987); *Williams* 244 Ill. App. 3d at 209.

The facts in this case are very similar to the factual and medical background in *Jones vs. State of Illinois, Menard Correctional Center*,19 IWCC 521; 2019 Ill. Wrk. Comp. LEXIS 845. In that case, where the Commission affirmed the denial of benefits, it was noted that the staff assignment history showed the claimant had held a variety of job assignments that did not involve bar rapping or keying doors, such as writ officer and tower assignments. The claimant was moderately obese with a BMI of 33.1. The Commission further noted that, "Petitioner had a 40 pound weight gain since 2011 which could lead to the development of cubital tunnel syndrome" and that "The right to recover benefits cannot rest upon speculation or conjecture." *Id*. Likewise, a strong inference can be made here that Petitioner's compression neuropathies were due to his non-occupational risk factors, as there was a clear correlation between Petitioner's weight gain and sudden increase in blood pressure. In order to prevail, Petitioner was not required to prove his employment was the sole cause; he was only required to prove that his employment was at least a concurring or contributing cause. In viewing the evidence in its

totality, however, I would find Petitioner failed to prove by a preponderance of the credible evidence that his employment was a concurring or contributing causal factor.

In this panel's recently issued decision of *Fenton vs. Graham Correctional Center*, 24 IWCC 0528 (filed November 12, 2024), this Commission determined the claimant failed to prove his bilateral carpal tunnel and cubital tunnel syndromes were causally related to his job duties as a correctional officer, and in so finding, we noted the claimant was "able to provide a list of the duties" he performed; however, there was no testimony as to the frequency he performed those duties other than vague references to multiple times throughout the day. *Id.* We further observed in *Fenton* that "a key element to proving a repetitive trauma theory is producing clear and detailed evidence of the manner and means in which the work activities alleged to have constituted the repetitive trauma were performed." *Id.* The Commission also found that the treating surgeon possessed only a vague and general description of the claimant's job duties. *Id.* Like the claimant in *Fenton*, I find Petitioner's evidence in the present case similarly deficient as there was a lack of detailed information regarding the frequency and duration with which Petitioner used his hands while performing his varied job duties and work assignments, and Dr. Bradley's causation opinion lacked credibility for the same reasons.

In assessing causality, the Commission may consider evidence, or the lack thereof, of the manner and method of a claimant's job to determine if the employment duties were sufficiently repetitive to establish a compensable injury. *Williams vs. Industrial Comm'n*, 244 Ill. App. 3d 204, 211, 614 N.E.2d 177 (1983). The Commission may also consider the degree to which the employment activity varied. *Id*. at 209. Expert testimony must be weighed like other evidence with its weight determined by the character, capacity, skill and opportunities for observation, as well as the state of mind of the expert and the nature of the case and its facts. *Madison Mining Company v. Industrial Comm'n*, 309 Ill. 91, 138 N.E. 211 (1923). In repetitive trauma claims, physicians must have sufficient knowledge of the employment activities to form a credible opinion. "The Commission has determined that a claimant fails to prove causation from repetitive trauma when the treating physician testified repetitive motions caused the injuries but failed to detail what the repetitive motions the petitioner engaged in and the frequency of the motions." See *Jones*, supra, and *Rutherford vs. State of Illinois, Pinckneyville Correctional Center*, 15 IWCC 119; 2015 Ill. Wrk. Comp. LEXIS 118, both citing *Gambrel vs. Mulay Plastics*, 97 IIC 238. Additionally, if the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. Expert opinions must be supported by facts and are only as valid as the facts underlying them. *In re Joseph S.*, 339 Ill. App. 3d 599, 607, 791 N.E.2d 80, 87 (2003). A finder of fact is not bound by an expert opinion on an ultimate issue and may look "behind" the opinion to examine the underlying facts. *Id*.

Petitioner prepared a Work History Timeline, which described in broad general terms his job duties as a correctional officer. Petitioner had been employed with Respondent since 2009. Petitioner noted he locked and unlocked inmates in cells, restrained and transported offenders on writs, conducted searches for contraband, wrote reports, lifted property boxes, fired a gun as needed, and assisted the health care staff regarding inmates' health problems. (PX6) There was

no discussion in Petitioner's written description pertaining to the frequency, duration, and force associated with the use of his hands and arms. Petitioner also completed a "Detailed Job Description" questionnaire with responses that were equally limited.

At trial, Petitioner testified he keyed the locks "multiple times a day." (T. 7) Petitioner testified that 50% of his time was spent working in a housing unit, wing or gallery, where he repeatedly used his hands. The other 50% of the time was spent working as a relief officer where he worked a multitude of varying work assignments. (T. 9) He did not describe the frequency with which he keyed cells and there was no evidence that the locks and cells at Graham Correctional Center were difficult to operate. On cross-examination, Petitioner's testimony revealed that some of his job assignments did not involve repetitive use of the hands. When working as a writ officer, Petitioner transported inmates for court appearances. (T.21) When assigned to hospital duty, Petitioner was required to watch over the inmates in the hospital room, where the inmate was basically shackled to a bed and it was his task to make sure the inmate was secure and safe at all times. (T. 22) When working as a hospital escort or healthcare escort, cuffing and uncuffing was required only when inmates were being transported and when they were moved to different treatment rooms or bring transferred to a wheelchair. When assigned to tower duty, Petitioner was required to observe the surroundings and watch people, cars, and objects located anywhere near the perimeter of the institution. (T. 24-25) There was no repetitive use of the hands while working as a tower officer, unless he was assigned to Tower 2, where he was responsible for manning a sally port and performing the intakes for vehicles entering and exiting the premises. Petitioner testified that opening the sally port door was controlled by a button on a control panel, and though he constantly slid the window back and forth when communicating with people, there was no evidence to suggest that any force was required. (T. 25) Petitioner failed to make clear how often and for how long he was assigned to work as a tower officer, writ officer, hospital escort, and healthcare escort, though at trial he testified he had been assigned to work as a tower officer "throughout my whole career at Graham." (T. 24-25)

In my view, Dr. Bradley did not possess an adequate knowledge of Petitioner's employment activities to render a credible causation opinion. Dr. Bradley was unable to say how often Petitioner turned keys per shift; he only knew it was "multiple times per day." (PX5 at 26) Dr. Bradley testified that "I don't know how many times per day he's done that" when questioned about the extent of the locking and unlocking Petitioner performed. (PX5 at 31) Dr. Bradley testified that pushing and pulling doors was required; however, he had no knowledge as to how often Petitioner opened and closed doors. (PX5 at 32) Dr. Bradley testified Petitioner had to restrain inmates but could not say how often that task was performed. (PX5 at 32) Dr. Bradley also admitted he had no knowledge regarding the extent to which Petitioner handled property boxes or how often he wrote reports, other than it was his understanding such tasks were a daily occurrence. (PX5 at 32) More important, he was not aware of the time Petitioner spent working as a writ officer, tower officer, hospital escort, and healthcare escort. As mentioned, Dr. Bradley was unaware of Petitioner's 25-year smoking history, and he was unaware of the weight gain and spike in blood pressure which coincided with the first reported hand and arm numbness.

For the above reasons, I dissent from the majority's opinion and would reverse the Arbitrator's decision as I would find Petitioner failed to prove he sustained an accident arising out of and in the course of his employment and failed to prove his bilateral carpal tunnel and cubital tunnel syndrome were causally related to his employment.

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

MARCH 14 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC002874
Case Name	James Edwards v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Thomas Bowman

DATE FILED: 5/6/2024

/s/Edward Lee, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF APRIL 30, 2024 5.165%

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

May 6, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

James Edwards
Employee/Petitioner

v.

State of IL / Graham Correctional Center
Employer/Respondent

Case # **22** WC **002874**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Springfield, Illinois**, on **March 26, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **January 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 $**71,968.52**; the average weekly wage was $**1,384.01**.

On the date of accident, Petitioner was **55** years of age, ***married*** with **0** dependent children.

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

Respondent shall be given a credit of $**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 $**if any** 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.

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

Respondent shall authorize and pay for the prospective treatment recommended by Dr. Bradley.

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

May 6, 2024

ICArbDec19(b)

FINDINGS OF FACT

This matter came before an Arbitrator appointed by the Commission pursuant to Petitioner's 19(b) Petition. (T. 4) The issues in dispute were accident, causal connection, past medical expenses and prospective medical treatment. (T. 4)

BACKGROUND

At the time of Arbitration, Petitioner had been employed by Respondent as a correctional officer for 14 years and seven months. (T. 6, 7) During his career at Graham Correctional Center, he noticed a numbness, tingling, heaviness and a "dead feeling" throughout his arms, elbows and hands. (T. 10) When his symptoms began, he worked through them. (T. 10, 11) When his symptoms became bad enough, he sought treatment with Dr. Bradley. (T. 12, 13)

MEDICAL EVIDENCE

On January 6, 2022, Petitioner presented to the office of Dr. Matthew Bradley with symptoms of right worse than left hand pain, numbness and tingling that had been present for approximately three years. (PX3, 1/16/22) His symptoms were worse at his fourth and fifth digits. *Id.* He also had significant pain and catching in his right thumb and a history of a trigger thumb release one year prior. *Id.* His symptoms had gone away for a short amount of time but had returned, and he experienced episodes where his finger got stuck and he had to utilize his contralateral hand to unlock it. *Id.*

Dr. Bradley indicated that Petitioner had been a correctional officer for over 12 years and that his symptoms worsened significantly since the COVID lockdown. *Id.* He reported that he had to key every cell multiple times per day, which was a significant increase from his usual pre-pandemic day. *Id.* He stated that Petitioner used a T-key. *Id.* He reported that he had gone to his primary care physician's office, where he was told that he potentially had carpal tunnel syndrome. *Id.* He did not have a history of hobbies or activities that required repetitive motion, nor did he have a history of diabetes or thyroid disease. *Id.*

On exam of the bilateral elbows, Petitioner reported tingling along the ulnar nerve distribution and had a positive Tinel's sign. Exam of the bilateral hands and wrists showed numbness and tingling over the median nerve distribution, decreased sensation to light touch over the ulnar nerve distribution, and positive Phalen's. *Id.* There was also severe triggering of the right thumb on active range of motion, but no locking was noted. *Id.* X-rays of the bilateral elbows hands and wrists showed no acute fractures or significant degenerative changes. *Id.*

Dr. Bradley noted that Petitioner's physical examination was consistent with carpal and cubital tunnel, and his right hand was symptomatically worse than his left. *Id.* He recommended an EMG and nerve conduction study to evaluate same. *Id.* Regarding Petitioner's trigger thumb, he indicated that Petitioner had a recurrence of his catching, clicking and occasional locking, and

non-operative versus operative treatment was discussed. *Id.* Dr. Bradley opined that the chronic repetitive use of Petitioner's hands at work over the last years during the COVID pandemic was contributing to the development of his bilateral carpal and cubital tunnel syndrome. *Id.*

That same day, Petitioner underwent an EMG and nerve conduction study with Dr. Ravi Yadava, which showed moderate right carpal tunnel syndrome, mild left carpal tunnel syndrome, mild to moderate left cubital tunnel syndrome, mild right cubital tunnel syndrome, and mild right wrist Guyton's canal syndrome. (PX4)

Petitioner returned to Dr. Bradley on February 10, 2022 and reported that he had had no change in his symptoms and was currently waiting approval for surgery. (PX3, 2/10/22) He reported that he would like to do the trigger finger and carpal tunnel release before the left upper extremity. *Id.* Dr. Bradley reviewed Petitioner's nerve conduction study and his findings on physical examination in comparison to his symptoms. *Id.* Carpal tunnel carpal and cubital tunnel surgeries in combination with a trigger thumb release were discussed as well as other treatment options, including nonsurgical. *Id.* Petitioner wished to proceed with a right trigger thumb release, right carpal tunnel decompression and right cubital tunnel decompression, and same was planned. *Id.* He was returned to work full duty without restrictions. *Id.*

SECTION 12 REPORT AND DEPOSITION OF DR. STEWART

At Respondent's request, Petitioner submitted to a Section 12 examination with Dr. Patrick Stewart on June 3, 2022, and Dr. Stewart generated a report dated June 8, 2022. (RX4) Dr. Stewart reviewed a job description that contained percentages of how officers spent their time; although he noted that the officers' time is not split up that way on a given day or week. *Id.* He indicated that Petitioner was assigned to tower two during the past year, and that prior to that, he was a writ officer. *Id.* at He indicated that Petitioner performed hospital duty, which included taking inmates to the hospital and staying at the hospital as their security detail during their hospitalization. *Id.* After he completed a writ, Petitioner would return back to the facility and fill in for any position where he was needed. *Id.*

Dr. Stewart reviewed Dr. Bradley's records and the nerve conduction study test and indicated that Petitioner gave a similar history to him. *Id.* Dr. Stewart noted that Petitioner indicated only his ring and small fingers were numb and tingling, that he had nocturnal awakenings secondary to numbness and tingling, that he felt loss of strength, and that he had experienced the dropping of objects. *Id.*

On examination of the right upper extremity, Petitioner had paresthesia in the ulnar base of the palm with compression testing, equivocal elbow flexion, and equivocal Tinel's with provocative maneuvers of the carpal tunnel, which caused discomfort in the volar aspect of the wrist. *Id.* Petitioner also had positive Phalen's, tenderness over the A1 pulley of the thumb, and a click with IP flexion and extension. *Id.* There was a question of weakness in abduction of his digits, as he had difficulty crossing his index and middle fingers. *Id.*

On exam of the left upper extremity, Petitioner had positive ulnar nerve compression testing with paresthesia of the base of the hand and equivocal Tinel's with provocative maneuvers at the carpal tunnel, which caused discomfort in the volar wrist, positive reverse Phalen's, weakness with abduction and abduction of his digits, and inability to cross the index and middle fingers. *Id.* Other testing showed diminished light touch on the base of the palm in the areas where Petitioner had symptoms with all ulnar nerve compression at the elbow. *Id.* He indicated that Petitioner had limited symptoms of carpal tunnel. *Id.* The assessment was bilateral cubital tunnel syndrome, minimal bilateral carpal tunnel syndrome, and asymptomatic ulnar tunnel syndrome. *Id.* Dr. Stewart observed that Petitioner was very considerate, forthright, appropriate and reasonable during the entire examination. *Id.*

He indicated that although Petitioner had cubital tunnel syndrome, none of his activities required prolonged, forceful grasping activity, and therefore, he opined that there was no causal relationship. *Id.* He stated that during the time he became symptomatic, he worked as a tower officer, and that same did not have significant forceful repetitive activities. *Id.* He indicated that the gates that are operated are push buttons, and that Petitioner naturally uses his thumb to push same. *Id.* He stated that Petitioner had to open and close windows, which go circumferentially around the tower, and that Petitioner indicated the windows did not slide easily. *Id.* He opined that as a writ officer, Petitioner's transfers between centers and court appearances were limited during COVID, and the transfers were primarily medical. *Id.*

He believed that Petitioner was at elevated risk for compression neuropathy due to his elevated BMI and hypertension. *Id.* He opined that conservative treatment would be appropriate, and that if Petitioner did not improve, surgical treatment could be considered. *Id.* He also indicated that it would be reasonable for Petitioner to undergo an injection to his right thumb. *Id.* He stated Petitioner had a limited click after undergoing a previously successful A1 pulley release, and that he may have had a temporary aggravation of same. *Id.* He felt that Petitioner was not at maximum medical improvement. *Id.*

Dr. Stewart testified via deposition on July 18, 2023. (RX5) On direct examination, he testified consistently with his report. He testified that 85% of his IMEs are at the request of respondents, that he charges $2,500 for IMEs and $1,500 for depositions. *Id.* at 8, 9. He testified Petitioner was very appropriate and reasonable during his examination. *Id.* at 23.

He testified that activities that would put someone at increased risk for carpal or cubital tunnel would be lifting 100 pounds 100 or 200 times per day, running vibratory tools, performing activities that require downward flexion of the wrist for long periods, and maintaining the elbow in a hyper-flexed position or repetitive extension and hyperflexion of the elbow. *Id.* at 19, 20.

He admitted that prior to being a tower officer, Petitioner would fill in for other positions at the prison if he did not have an inmate that needed to be escorted. *Id.* at 47. He was unaware of how much time Petitioner spent on a wing, gallery or in segregation. *Id.* at 47, 48. Dr. Stewart

based his opinion on his belief that Petitioner was exclusively working as a writ and tower officer at the time he examined him. *Id.* at 49, 50.

Dr. Stewart admitted that there was no reference to his tour of Graham Correctional Center in his report, that he was not paid for his tour, and that he was never asked to issue a supplemental report with regard to his tour. *Id.* at 35, 36, 39. He testified that he opened only eight to 10 doors during his tour. *Id.* at 36.

He testified that Petitioner's EMG was consistent with carpal and cubital tunnel and mild right ulnar tunnel syndrome. *Id.* at 12, 29. He admitted that Petitioner's provocative maneuvers at the carpal tunnel revealed equivocal Tinel's and caused discomfort in the volar aspect of the wrist but still felt that this was not indicative of carpal tunnel. *Id.* at 43. He believed that Petitioner's bilateral carpal tunnel was asymptomatic; however, he admitted that Petitioner had symptoms of numbness and tingling in his ring and small fingers. *Id.* at 41, 42. He opined that Petitioner was in need of further treatment, including potential surgical intervention on his elbows. *Id.* at 33.

He admitted that repetitive traumas are cumulative; however, he testified that when giving causation with regard to carpal and cubital tunnel, he considers what someone is doing at the time their symptoms start, and that he only considers, at most, their work history one year prior to the start of their symptoms. *Id.* at 44, 45.

He felt that the duties of a correctional officer at Graham Correctional Center did not represent an increased risk for compression neuropathy; however, admitted that he had not reviewed any of the Commission decisions that have found the opposite. *Id.* at 50, 51.

Dr. Stewart testified that Petitioner did not have outside hobbies that were relevant to his condition. *Id.* at 13. Regarding causation, he believed that Petitioner's elevated BMI and hypertension were risk factors; however, he completely excluded Petitioner's 12-year work history with Graham Correctional Center as causative. *Id.* at 52.

DEPOSITION OF DR. BRADLEY

Dr. Bradley testified via deposition on June 23, 2023. (PX5) Dr. Bradley is a board-certified orthopedic surgeon who treats compression neuropathies on a weekly basis. *Id.* at 4, 6. On direct examination, he testified consistently with his medical records. He reviewed Petitioner's patient questionnaire as well as a detailed job description and work history timeline. *Id.* at 9.

He testified that other than being overweight, Petitioner did not have any significant risk factors for compression neuropathies. *Id.* at 11. He testified that some reports show that hypertension is a negative risk factor to compression neuropathy, as there is a higher amount of

blood supply to the wrist. *Id.* at 43. He was not aware of any outside activities or hobbies that might have contributed to Petitioner's condition. *Id.* at 14.

Dr. Bradley testified that he has seen multiple officers from Graham Correctional Center and is familiar with the job duties of an officer. *Id.* at 13, 14. He testified that the correctional officers he has seen have not all had the same exact job duties and have been assigned various duties and shifts throughout the facility; however, the duties they described to him were similar. *Id.* at 22. He stated that the duties of correctional officers at Graham can change on a daily or hourly basis, depending on the needs of the facility, as they are extremely understaffed. *Id.* at 49, 50.

He testified that Petitioner described using a large key that gave him trouble. *Id.* at 43, 44. He stated that larger keys will directly put pressure on the carpal tunnel, but smaller keys require significant pinching, force and turning, and that both small and large could be contributory. *Id.* at 45. When asked if the key size mattered when determining causation, Dr. Bradley stated:

> I mean, it certainly, you know, is a factor. You know, a lot of studies have shown that the Folger Adams keys that are at Graham are a contributing factor, but, you know, all of the keys -- it's not just the size of the key. You know, I've been shown a video of correctional officers -- their job duties -- and it's not just the key that goes in. They put it in, they have to hit it, they have to push on it, they have to turn it, they use their other hand to turn it. They have to, you know, use their wrist to bang on the door to get it opened and closed. And then after every single one of these locks that they close, they all pull on them and they all hit them to verify that the lock is engaged. So does the key size matter? Of course it does, but there's a lot of other factors that go into it besides the key size. *Id.* at 44.

He has requested to tour Graham Correctional Center multiple times but to date, had not been allowed to do so. *Id.* at 16. He testified that if he was allowed to tour the facility, this would be another piece of the puzzle he would consider; however, he stated:

> …I can tour the facility and I can unlock one lock and do one handcuff, but I think the thing you got to remember is these guys are doing all the locks. These guys are putting handcuffs on patients that are under drugs. We know there's a huge drug population right there. So, you know, these guys are fighting, restraining, they're kicking, and you're trying to put handcuffs on them. I think that's very different from me locking and unlocking a set of empty handcuffs… *Id.* at 39.

He testified that there are multiple factors that come in to play with causation, and that it is not one specific number of times an activity is performed; rather, it's looking at the whole story and treating the individual person. *Id.* at 29, 30. He stated that Petitioner has worked as a correctional officer for 13 years and that he has performed the activities in question thousands and tens of thousands of times. *Id.* at 30. Regarding causation, he considers not only the amount of key turns someone performs, but also an individual's activities of firing guns, typing, pushing,

pulling, restraining inmates with cuffs, writing reports, checking cells and lifting property boxes. *Id.* at 26, 27. He stated:

> …I think the biggest contributory things are the utilizing of keys to lock and unlock locks, including handcuffs on individuals that are fighting and restraining, including locks that are sticking and don't unlock. I think the typing has contributed. I think the lifting of property boxes has contributed. The pushing or pulling on carts, property boxes, food carts, lifting up of the property boxes. I think all of those things have contributed. *Id.* at 33.

He believed that Petitioner's 12-plus years as a correctional officer contributed to the development of his bilateral carpal and cubital tunnel. *Id.* at 14, 15, 19, 20. He testified that during the lockdown, the number of keyings performed and number of cells Petitioner had to open up significantly increased, which caused worsening of his symptoms that never subsided afterwards. *Id.* at 15. He testified that he has heard the same history from numerous correctional officers at Graham as well as other facilities throughout Illinois and Missouri. *Id.* at 15.

Dr. Bradley reviewed the IME reports from Dr. Calfee, Dr. Emanuel and Dr. Williams, and testified that they all concluded that the activities of a correctional officer at Graham contributed to the development of carpal and cubital tunnel. *Id.* at 21.

He testified that at Petitioner's follow up visit, his symptoms were completely unchanged, and, as they had been present for over three years and were affecting his life, he recommended moving forward with surgery. *Id.* at 12, 13. He testified that although Petitioner would like to have the surgery, same has not yet been done because it has not been approved. *Id.* at 13. He testified that symptomatically, Petitioner's condition is significant and affects his ability to sleep and hold onto objects. *Id.* at 16. He stated that when Petitioner uses one extremity, becomes numb and painful and he has to switch back and forth between extremities due to his symptoms. *Id.* at 16.

DOCUMENTARY EVIDENCE

Respondent's Exhibit 6 is a job assignment history, prepared by Mr. Wright, which covers Petitioner's assignments from March 1, 2020 through November 1, 2020. (RX6; T. 36) The document indicated multiple different job assignments, including writ, hospital duty, tower, control, mail room, watches, dietary security, healthcare escort, commissary, dayroom, telepsych, segregation, X C wing, 10 day room, cycle training, crisis, X house escort, BL, 15 day room, crisis watch, healthcare movement, industries, sallyport, zone 3 SGT, X house assist and PB. (RX6) The document does not document any job assignment history for any dates prior or subsequent to the time period of March 1 through November 1, 2020.

Respondent's Exhibit 7 included medical records prior to Petitioner's accident date. (RX7) Records from Greg Jennings, FNP, from September 27, 2019 indicated Petitioner presented for hypertension management. *Id.* It was noted that he had upper right arm and hand

numbness and tingling that had been present for one day. *Id.* The records indicated that he had broken up a fight at the prison the day prior, but that Petitioner did not believe same caused his symptoms. *Id.* It was suggested to monitor the symptoms and follow up if they worsened. *Id.* On December 9, 2020, Petitioner was given a referral to an orthopedic surgeon for right thumb trigger finger. *Id.* On December 10, 2020, Petitioner saw Dr. Carl Painter for right thumb pain that had been present for several years and which was accompanied by locking. *Id.* Dr. Painter noted that he had occasional numbness in his right palm but had not undergone any EMGs or therapy for his right hand. *Id.* The diagnosis was trigger thumb of the right hand. *Id.* Dr. Painter was skeptical that an injection would provide long-term relief, and a right trigger thumb release was performed on December 18, 2020. *Id.* Postoperatively Dr. Painter noted that Petitioner did well with his right thumb and had good movement in same with no pain or numbness. *Id.* Dr. Painter noted that Petitioner had some numbness at the base of his right fifth finger; however, Dr. Painter indicated that same should continue to improve. Petitioner was released to return to work without restrictions. *Id.*

Records from Dr. Painter from July 19, 2022 indicate that Petitioner presented for right shoulder pain/discomfort that had been present for a month. *Id.* He reported that his right arm would go numb and that he had been diagnosed with carpal and cubital tunnel. *Id.* He was diagnosed with right shoulder and impingement syndrome, given a prescription for meloxicam and treated with an injection to the subacromial space on the right shoulder. *Id.* Dr. painter indicated that Petitioner had undergone a recent EMG demonstrating carpal and cubital tunnel syndrome, which he noted was consistent with his examination. *Id.*

A registration form from Dr. Bradley, which was completed by Petitioner, indicated that Petitioner's job duties included opening and closing chuck holes, locking and locking doors, passing out food trays, lifting commissary boxes, assisting with lifting and rolling inmates in healthcare, pushing wheelchairs, shooting guns and writing reports. (PX5, attachment)

A job description completed by Petitioner indicated that he performs lifting of property boxes, daily shakedowns, lifting of mail boxes, packages and lunch trays. (PX6) The document indicated that he performs pushing and pulling activities when shutting doors, opening chuck holes, pushing tray carts and dollying mail carts. *Id.* He performs bending or stooping when conducting shakedowns and offender searches. *Id.* He reaches above shoulder level when conducting cell shakedowns. *Id.* He uses his hands for gross manipulation when unlocking and locking cell doors, restraining offenders and writing reports. *Id.* He performs loading and unloading activities with property boxes and inmate mail. *Id.*

A work history timeline indicated that Petitioner has worked as a correctional officer since 2009, and that his duties include locking and unlocking cells, restraining and transporting offenders, conducting searches of offenders and common areas, writing reports, lifting property boxes, firing guns and assisting healthcare staff. *Id.*

Petitioner's exhibit 7 consists of reports from several Section 12 examiners that were requested by Respondent for different officers at Graham Correctional Center, as well as a deposition of an officer's treating physician, Dr. Greatting. (PX7) Respondent offered no objection to the inclusion of Petitioner's exhibit 7 at Arbitration.

The Section 12 report of Dr. Ryan Calfee dated July 15, 2021, indicates that the employee he examined worked as a correctional officer in Joliet in 2001, and in "Hillsboro" since 2010. (PX7. Dr. Calfee's report) Dr. Calfee's diagnosis was bilateral carpal and cubital tunnel syndrome. *Id.* He acknowledged that the employee had a personal risk factor of increased BMI; however, he stated:

> In this case, I do see this employee's work duties as contributing to his bilateral carpal tunnel and cubital tunnel syndromes. His work does involve repetitive forceful pinch in each hand as he has to work through many locks on doors and restraints throughout his work day. I believe this type of repetitive use of the hands would be sufficient to contribute to bilateral carpal and cubital tunnel syndrome. *Id.*

The Section 12 report of Dr. James Emanuel dated September 20, 2021, indicates that the employee he examined (James Wines) had an 18-year history as a correctional officer for the State of Illinois. (PX7, Dr. Emanuel's report) The employee had pre-existing histories of type II diabetes and a right wrist fracture. *Id.* Dr. Emanuel's assessment was bilateral carpal and cubital tunnel. *Id.* Regarding causation, he stated:

> Despite the examinee having several risk factors for the development of carpal tunnel syndrome, it is my medical opinion the job activities the examinee describes as a correctional officer, especially over the year and a half time of increased repetitive activities of the hands and elbows during the Covid-19 pandemic, has substantially aggravated and contributed to the diagnosis of carpal tunnel syndrome bilaterally in addition to cubital tunnel syndrome bilaterally. *Id.*

A deposition of Dr. Mark Greatting was taken on October 22, 2019 in the matter of Scott Honnies v. S.O.I/ Graham C.C. (PX7, Dr. Greatting's deposition) Dr. Greatting testified that the employee had a diagnosis of right carpal and cubital tunnel syndrome. *Id.* at p. 9 of depo. The employee had a history of hypertension, for which he was taking medication, a BMI of 31.27, and a hobby of riding a motorcycle for 2,000 miles per year. *Id.* at pp. 13, 14, 30 of depo. The employee had been a correctional officer for 23 years. *Id.* at pp. 16, 17 of depo.

When asked if the employee's job duties as a correctional officer caused or contributed to his condition, Dr. Greatting replied:

> I mean, this is based on his history, but I think -- Yeah, I don't know that I can say those work activities caused his conditions to develop, but it certainly sounds like it was a contributing factor or a factor that accelerated or aggravated his symptoms. *Id.* at p. 17 of depo.

Dr. James Williams examined an employee who had worked at Vandalia Correctional Center from February 2011 to December 2019 and who subsequently transferred to Graham Correctional Center, where she worked thereafter. (PX7, Dr. Williams' reports) Dr. Williams authored a Section 12 report dated May 19, 2022 and addendum reports dated September 19, 2022 and December 27, 2022 regarding the employee. *Id.* He indicated that the employee was a "floater" who changed job positions on a consistent, if not daily, basis. (PX7, Dr. Williams' 9/19/22 addendum report) He stated that the employee had increased risk for the development of carpal and cubital tunnel because she was a middle-aged female; however, he stated:

> [D]uring COVID, it sounds like there was increased use of bilateral hands due to the inmates being locked in the cells all the time, and thus, I do feel that this increased use, if indeed this is correct as she stated, could have at least been aggravating if not directly causative of her bilateral carpal and cubital tunnel syndrome. (PX7, Dr. Williams' 5/19/22 report)

TESTIMONY OF TREVOR WRIGHT

Mr. Wright is Petitioner's shift supervisor. (T. 32) He authored Respondent's exhibit 6, and that in 2020, Petitioner's job assignments changed to various different positions. (T. 36) He did not review any job assignment history for Petitioner for 2021. (T. 36)

He testified that the wing doors for each housing unit at Graham Correctional Center use Folger Adams keys. (T. 37) He testified that the housing unit doors can be operated by electronic buttons from the control room or by Folger Adams keys, and that whether the doors are opened by button or key "depends" on what building it is. (T. 37, 38) He stated that during lockdown for staff shortage, the manual key must be used. (T. 38) In segregation or restricted housing, the doors are all manual. (T. 38)

He stated that there is a locksmith at the facility, and that the amount of time it takes the locksmith to repair locks and correct issues "depends." (T. 37) He stated that if it is a really important door, they can sometimes get the locksmith there that day; however, other times it "might take a week." (T. 37)

Mr. Wright testified that the prison is short-staffed by approximately 80 correctional officers, or approximately 25 to 30%. (T. 33, 34) He reviewed Petitioner's exhibit 6, Petitioner's detailed job description, and stated that it looked like the practical duties of a correctional officer. (T. 36, 37) Mr. Wright has worked with Petitioner and testified that Petitioner is a good employee. (T. 32) He heard Petitioner's testimony and indicated that it was truthful. (T. 32, 33) Mr. Wright testified that like Petitioner, his own job duties increased exponentially during COVID. (T. 33, 34)

PETITIONER'S TESTIMONY

Petitioner testified that since the time he was hired, Graham Correctional Center has been short-staffed, and that in the past five years, the facility has gone on "lock time" quite a bit due to staffing issues. (T. 7)

Petitioner testified that he had a prior trigger thumb surgery, for which he did not make a claim. (T. 11) He takes medication for high blood pressure. (T. 18) He does not have a history of diabetes, gout, hypothyroidism or rheumatoid arthritis, nor does he engage in any hobbies that require the repetitive use of his upper extremities. (T. 15, 16)

He testified that the job description that was marked as Petitioner's exhibit 6 is a true and accurate description of his duties. (T. 8) He testified that he would get his assignment each day at roll call but could be reassigned at "any given moment." (T. 23, 24, 30) He testified that "easily" 50% of his time at Graham had been spent on a wing, gallery or in a housing unit. (T. 9) The remainder of his time is spent as a relief officer, which includes "a multitude of different jobs that can be assigned at any given moment." (T. 9) He testified that during most of his time as a relief officer, he was switched to a housing unit. (T. 9) He testified that a housing unit officer uses their hands "all the time." (T. 9, 10) He testified that he performs shakedowns, property box searches and cuffing and uncuffing of inmates. (T. 10)

He testified that when he was on hospital duty, he was responsible for an inmate who was shackled to a bed, and that he performed constant cuffing and uncuffing in order for the inmate to be taken out of bed for any sort of testing or treatment. (T. 22, 23) He would also move the inmates to a wheelchair. (T. 22, 23)

During COVID, the facility experienced "a lot of lockdown time," which increased his workload exponentially. (T. 11) He testified that during COVID, he did many different jobs, including working in housing units, performing hospital assignments and writs, and working in the segregation unit. (T. 20, 21) He testified that in housing units, he was "continuously opening the door" to pass supplies or things the inmates needed. (T. 21, 22)

Petitioner has not yet undergone the surgeries because he wants to make sure his time off and bills are taken care of. (T. 14) However, he is desirous to undergo the carpal and cubital tunnel surgeries recommended by his treating physician. (T. 14) He testified that previously, he had numbness and difficulty grabbing certain things; however, his condition is worsening to the point that his fingers "lock out" when he grabs objects. (T. 14, 15) He testified that he drops items, and his symptoms wake him up at night. (T. 15) He testified that his right elbow in particular feels like it is "dead weight." (T. 27)

CONCLUSIONS OF LAW

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

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

In a repetitive trauma case, issues of accident and causation are intertwined. *Elizabeth Boettcher v. Spectrum Property Group and First Merit Venture,* 99 I.I.C. 0961. In order to better define "repetitive trauma" the Commission has stated:

The term "repetitive trauma" should not be measured by the frequency and duration of a single work activity, but by the totality of work activity that requires a specific movement that is associated with the development of a condition. Thus, the variance in job duties is not as important as the specific force, flexion and vibratory movements requisite in Petitioner's job. *Craig Briley v. Pinckneyville Corr. Ctr.*, 13 I.W.C.C. 0519 (2013). "[I]n no way can quantitative proof be held as the *sine qua non* of a repetitive trauma case." *Christopher Parker v. IDOT*, 15 I.W.C.C. 0302 (2015).

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

The Appellate Court in *Darling v. Indus. Comm'n* even stipulated that quantitative evidence of the exact nature of repetitive work duties is not required to establish repetitive trauma injury in reversing a denial of benefits, stating that demanding such evidence was improper. *Darling v. Industrial Comm'n*, 176 Ill.App.3d 186, 195, 530 N.E.2d 1135, 1142 (1st Dist. 1988). The Appellate Court found that requiring specific quantitative evidence of amount, time, duration, exposure or "dosage" would expand the requirements for proving causal connection by demanding more specific proof requirements, and the Appellate Court refused to do so. *Darling,* N.E.2d at 1143. The Court further noted, "To demand proof of 'the effort required' or the 'exertion needed' . . . would be meaningless" in a case where such evidence is neither dispositive nor the basis of the claim of repetitive trauma." *Id.* at 1142. Additionally, the Court noted that such information "***may***" carry great weight "only where the work duty complained of is a common movement made by the general public." *Id.* at 1142. The evidence shows that Petitioner's job duties involve the performance of tasks distinctly related to his

employment at a State correctional facility, many of which are not activities that are even performed by the general public, let alone ones to which the public would be equally exposed.

In *City of Springfield v. Illinois Workers' Comp. Comm'n*, the Appellate Court issued a favorable decision in a repetitive case to a claimant in which the claimant's work was "varied" but also "repetitive" or "intensive" in that he used his hands, albeit for different task, for at least five (5) hours out of an eight (8) hour work day. *City of Springfield v. Illinois Workers' Comp. Comm'n*, 388 Ill.App.3d 297, 901 N.E.2d 1066, 327 Ill.Dec. 333 (Ill.App. 4th Dist., 2009). As was noted by the Commission and reiterated in the Appellate Court decision in *City of Springfield v. Illinois Workers' Compensation Comm'n*, "while [claimant's] duties may not have been 'repetitive' in a sense that the same thing was done over and over again as on an assembly line, the Commission finds that his duties required an intensive use of his hands and arms and his injuries were certainly cumulative." *Id.*

The Commission has also recognized that a claimant's employment may not be the only factor in his or her development of a repetitive compressive peripheral neuropathy. The Commission awarded benefits in a case where the claimant was involved in martial arts activity outside of his employment (*see Samuel Burns v. Pinckneyville Corr. Ctr.*, 14 I.W.C.C. 0482 (2014)), and in another case where the claimant was involved in weight lifting outside of his employment. *See Kent Brookman v. State of Illinois/Menard Corr. Ctr.*, 15 I.W.C.C. 0707 (2015). In the repetitive trauma case of *Fierke*, the Appellate Court specifically held that non-employment related factors that contribute to a compensable injury do not break the causal connection between the employment and a claimant's condition of ill-being. *Fierke v. Indus. Comm'n,* 309 Ill.App.3d 1037 (3rd Dist. 2000). The Court stated, "The fact that other incidents, whether work related or not, may have aggravated a claimant's condition is irrelevant." *Id*.

Under Illinois law an injury need not be the sole factor, or even the primary factor of an injury, as long as it is **a** causative factor. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193, 205 (Ill. 2003) [Emphasis added]. Even when other non-occupational factors contribute to the condition of ill-being, "[*A*] Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Indus. Comm'n*, 309 Ill.App.3d 1037 (3rd Dist. 2000). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Indus. Comm'n*, 834 N.E.2d 583 (2d Dist. 2005). Employers are to take their employees as they find them. *A.C.& S. v. Industrial Comm'n*, 710 N.E.2d 837 (Ill. App. 1st Dist. 1999) citing *General Electric Co. v. Industrial Comm'n*, 433 N.E.2d 671, 672 (1982). If a preexisting condition is aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. *Rock Road Constr. v. Indus. Comm'n*, 227 N.E.2d 65, 67-68 (Ill. 1967), 37 Ill. 2d 123; see also *Illinois Valley Irrigation, Inc. v. Indus. Comm'n*, 66 Ill. 2d 234, 362 N.E.2d 339 (1977). The Supreme Court in *Durand v. Indus. Comm'n* noted that the purpose of the Illinois Workers' Compensation Act is best served by allowing compensation where an injury is gradual but linked to the employee's work. *Durand v. Indus. Comm'n*, 862 N.E.2d 918, 925 (Ill. 2006).

Since repetitive trauma injuries are cumulative, the law requires that a claimant's entire work history be considered. The Appellate Court held in *PPG Indus. v. Illinois Workers' Comp. Comm'n*, that work history that extends well beyond the 3-year statute of limitations and a claimant's alleged manifestation date is clearly relevant because "a repetitive-trauma injury is one which "has been shown to be caused by the performance of the claimant's job and has developed gradually over a period of time, without requiring complete dysfunction. [Citations]. ('By their very nature, repetitive-trauma injuries may take years to develop to a point of severity precluding the employee from performing in the workplace.'). It stands to reason that a claimant's work history may be necessary and relevant to determining whether she sustained such a work-related, gradual injury." *PPG Indus. v. Illinois Workers' Comp. Comm'n*, 2014 IL App (4th) 130698WC, ¶ 19, 22 N.E.3d 48, 53. The Court also cited a number of instructive Appellate and Supreme Court cases relying on a lengthy work history, one involving over 30 years, to support a finding of repetitive trauma:

> It stands to reason that a claimant's work history may be necessary and relevant to determining whether she sustained such a work-related, gradual injury. As noted by the arbitrator and the Commission, case law establishes that a claimant's work history has been routinely considered in repetitive-trauma cases, including work history that extended beyond three years prior to an alleged manifestation date. See *Kishwaukee Community Hospital v. Industrial Comm'n,* 356 Ill.App.3d 915, 917–18, 293 Ill.Dec. 313, 828 N.E.2d 283, 287 (2005) (over 30 years); *Oscar Mayer,* 176 Ill.App.3d at 608, 126 Ill.Dec. 41, 531 N.E.2d at 174–75 (15 years); *City of Springfield, Illinois v. Illinois Workers' Compensation Comm'n,* 388 Ill.App.3d 297, 300–01, 327 Ill.Dec. 333, 901 N.E.2d 1066, 1069–70 (2009) (approximately 8 years); *Peoria County,* 115 Ill.2d at 527, 106 Ill.Dec. 235, 505 N.E.2d at 1027 (6 years).

In the instant case, Dr. Stewart observed that Petitioner was very considerate, forthright, appropriate and reasonable during the entire examination. (RX4; RX5, p. 23) Respondent's witness, Mr. Wright, heard Petitioner's testimony and indicated that it was truthful, and confirmed Petitioner's testimony that the facility is significantly short-staffed and that there was an exponential increase in the duties of the officers during the pandemic lock down. (T. 7, 11, 32-34) Therefore, the Arbitrator finds Petitioner to be a credible witness.

Dr. Stewart agreed that Petitioner had cubital tunnel and was in need of additional treatment regarding same. (RX4; RX5, p. 33) Despite his suggestion that Petitioner had "asymptomatic" carpal tunnel, Dr. Stewart's own examination showed positive reverse Phalen's, weakness in his digits and equivocal Tinel's with provocative maneuvers at the carpal tunnel, which caused discomfort in the volar wrist, and he admitted that Petitioner had symptoms in his fingers. (RX4; RX5, pp. 41, 42) Further, he admitted that Petitioner's EMG showed that carpal tunnel was, in fact, present. (RX5, pp. 12, 29) Additionally, Dr. Bradley's examination of

Petitioner's carpal tunnel showed numbness over the median nerve distribution and positive Phalen's at the median nerve, and Dr. Bradley concluded that his examination was consistent with *both* carpal and cubital tunnel. (PX3, 1/16/22) Lastly, Respondent produced records dated July 19, 2022 from Petitioner's visit with Dr. Painter, which took place approximately six weeks after his Section 12 examination with Dr. Stewart. (RX7) Contrary to Dr. Stewart, however, Dr. Painter stated that Petitioner's diagnosis of carpal and cubital tunnel *was consistent* with his examination. *Id.* Therefore, the Arbitrator finds that there is more than sufficient evidence to suggest that Petitioner is suffering from symptomatic carpal and cubital tunnel.

The Arbitrator notes that no corresponding report was produced with regard to Dr. Stewart's tour of Graham Correctional Center. It is curious that as a physician, Dr. Stewart toured the facility, but was not paid for his time, nor was he ever asked to author a supplemental report regarding same. (RX5, 35, 36, 39) Moreover, Dr. Stewart testified that he only opened eight to 10 doors during his visit to the facility. (RX5, p. 36) Regarding a tour of the facility, Dr. Bradley pointed out the obvious: That a physician's experience when performing an activity a minimal amount of times is remarkably different from what an officer experiences in reality, as officers manipulate a significant number of locks as well as deal with inmates who are resistant to being cuffed and restrained. (PX5, p. 39)

Further, the Arbitrator finds it egregiously prejudicial to Petitioner that Respondent not only allowed its expert to tour Graham Correctional Center while refusing requests to allow Petitioner's physician to do so, but then attempts to rely on its expert's knowledge via his testimony regarding same when no documentation or report exists to substantiate said testimony. (PX5, p. 16) Therefore, the Arbitrator gives no weight to the opinions of Dr. Stewart regarding his tour of Graham Correctional Center.

The Arbitrator has carefully considered the opinions of Dr. Stewart and Dr. Bradley and gives more weight to the opinions of Dr. Bradley.

Dr. Stewart admitted that after writs, Petitioner would fill in for any given position at the facility, and that during COVID, transfers were very limited. (RX4) Despite his admission that Petitioner would fill in for other positions, he was unaware of how much time Petitioner spent on the wing or gallery and based his opinions on his belief that Petitioner was exclusively working as a writ and tower officer. (RX5, pp. 49, 50)

The Arbitrator notes that Respondent's job assignment history document covers only eight months of Petitioner's work history for part of 2020. (RX6; T. 36) Given the limited amount of time it covers, the job assignment history document is given very little weight. However, while limited in scope, the document does demonstrate that Petitioner was assigned to various job assignments, including segregation and X-house, and therefore demonstrates that he was not solely performing tower or writ duty as Dr. Stewart suggested. (RX5, pp. 49, 50) This

also confirms Petitioner's testimony that he could be reassigned to a multitude of different jobs at "any given moment." (T. 9, 10)

The Arbitrator notes that despite acknowledging that Petitioner had a 12-year work history with Respondent and admitting that repetitive traumas are cumulative, Dr. Stewart testified that when determining causation, he considers what someone is doing at the time their symptoms start, and that he only considers, at most, their work history one year prior to the start of their symptoms. (RX5, pp. 44, 45) While Dr. Stewart is entitled to his opinion regarding what to consider when determining causation, same is contrary to existing Illinois law regarding repetitive traumas. *SEE PPG Indus., Kishwaukee Community Hospital, Oscar Mayer* and *City of Springfield, Illinois, supra.*

The fact that Dr. Stewart felt Petitioner's BMI and treated hypertension were risk factors but that his 12-year work history should be completely excluded as contributory coupled with his admission that he has not found the duties of a correctional officer at Graham to be causative despite Commission decisions to the contrary demonstrates a lack of credibility on his part. (RX5, pp. 50-52)

Conversely, Dr. Bradley's testimony was logical and credible. He was aware that although many correctional officers, including Petitioner, were assigned to various positions that frequently changed, their duties are similar, and from his experience in treating multiple correctional officers, he believed that their work was at least contributory. (PX5, p. 20) He felt that the contributory activities included firing guns, typing, writing reports, pushing and pulling, checking cells, lifting property boxes, restraining and cuffing inmates, including inmates who are fighting them, and utilizing keys to lock and unlock cells, including locks that stick and do not unlock. (PX5, p. 33) The Arbitrator agrees. Further, the Arbitrator notes that Respondent's witness, Mr. Wright, testified that it might take the facility's locksmith a week to repair locks, thereby confirming the fact that there are ongoing issues with the functionality of the locks at the facility. (T. 37)

Further, Dr. Bradley stated that, similar to numerous officers from other facilities throughout Illinois and Missouri, Petitioner's duties significantly increased during the pandemic. (PX5, p. 15) The testimony of Respondent's witness, Mr. Wright, corroborated the fact that the duties of the employees at Graham increased significantly during the pandemic. (T. 33, 34)

Further, the Arbitrator has reviewed Petitioner's exhibit seven, which includes the opinions of four separate physicians (one treating physician and three Section 12 examiners retained by Respondent) regarding causation of carpal and cubital tunnel in relation to correctional officers at Graham Correctional Center. (PX7) The Arbitrator notes that, similar to Petitioner in the instant case, the examinee referenced in Dr. Williams' report was a "floater" who changed jobs on a consistent, if not daily, basis. *Id.* The Arbitrator notes that each of the four examinees had comorbidities; one had an increased BMI, one had type II diabetes and prior

wrist fracture, one had hypertension, increased BMI and rode a motorcycle, and one was a middle-aged female. *Id.* Despite the comorbidities, the opinions of these four separate physicians were unanimous: That the job duties of an officer at Graham Correctional Center are, at the very least, contributory to the development of carpal and/or cubital tunnel syndrome. *Id.* The Arbitrator finds this significant.

The Arbitrator also notes that the Commission has previously determined that the duties of a Graham Correctional Officer contributed to the development of compression neuropathy in other cases. *Honnies v. SOI/Graham Corr. Ctr.*, 20 I.W.C.C. 0643; *Wines v. SOI/Graham Corr. Ctr*., 23 I.W.C.C. 0180.

The Arbitrator notes that Petitioner spent over 12 years as a Correctional Officer for Respondent. (PX6) Petitioner's job description, work history timeline and the registration form he completed for Dr. Bradley all indicated that, although Petitioner performed different job assignments, he repetitively used his hands and arms in a forceful, repetitive manner on a frequent basis. (PX5, PX6) This is consistent with Dr. Bradley's testimony regarding Petitioner and multiple other correctional officers he has treated. (PX5, p. 22, 29, 30) Additionally, Respondent's representative, Mr. Wright, testified that Petitioner's job description contained the practical duties of a correctional officer. (T. 36, 37) The Arbitrator finds this to be significant.

Therefore, the Arbitrator finds that Petitioner has met his burden of proof with regard to accident and causation and finds that Petitioner sustained accidental repetitive injuries that resulted in bilateral carpal and cubital tunnel syndromes.

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

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

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

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

Not only may the Commission decide which medical view is to be accepted, it may attach greater weight to the opinion of the treating physician. *International Vermiculite Co. v. Industrial*

Comm'n, 77 lll.2d l, 394 N.E.2d 1166 (1979); and, *ARA Services, Inc. v. Industrial Comm'n*, 226 Ill. App. 3d 225, 590 N.E. 2d 78 (1992).

Even Respondent's examiner, Dr. Stewart, agreed that Petitioner was in need of treatment regarding his cubital tunnel. (RX4; RX5, p. 33 As noted in the preceding findings, despite Dr. Stewart's opinion that Petitioner's carpal tunnel was asymptomatic, there is more than sufficient evidence to prove that Petitioner is suffering from carpal and cubital tunnel, both of which are symptomatic.

Further, Petitioner testified that his condition is worsening to the point where his fingers lock, he is dropping objects, he is waking at night, and his right arm feels like dead weight. (T. 14, 15, 27) Dr. Bradley also testified that he recommends moving forward with surgical intervention because Petitioner's symptoms are significant, painful, and that he has difficulty holding on to objects. (PX5, pp. 12, 13, 15)

Therefore, pursuant to the preceding findings on accident and causation, the Arbitrator finds that Respondent is liable for payment of Petitioner's medical bills as outlined in Petitioner's exhibit one. Further, the Arbitrator finds that Petitioner is in need of prospective medical treatment for his work-related condition, and that Respondent shall pay for prospective medical treatment to Petitioner's bilateral hands and arms in relation to his bilateral carpal and cubital tunnel, including, but not limited to, surgery.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC015095
Case Name	Anita Dunigan v. State of Illinois - Dept of Human Services
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0114
Number of Pages of Decision	21
Decision Issued By	Kathryn Doerries, Commissioner, Amylee Simonovich, Commissioner

Petitioner Attorney	Martin Haxel
Respondent Attorney	Thomas Bowman

DATE FILED: 3/14/2025

/s/Kathryn Doerries,Commissioner
Signature

DISSENT: /s/Amylee Simonovich,Commissioner
Signature

25IWCC0114

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANITA DUNIGAN,

Petitioner,

vs. NO: 16 WC 015095

STATE OF ILLINOIS, DEPARTMENT
OF HUMAN SERVICES,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission affirms and adopts the Arbitrator's Decision in its entirety with the exception of the following modifications. In the third sentence on page seven of the Arbitrator's Decision, the Commission inserts the word "arthritis" after the word "advanced" so the sentence now reads, "Dr. Allan noted that Petitioner had advanced arthritis in both of her knees and was 'headed toward total knee replacements.'"

On page 12 of the Arbitrator's Decision, under the section "In support of the Arbitrator's decision relating to whether the medical services that were provided to Petitioner were reasonable and necessary as a result of the Accident of September 8, 2015, the Arbitrator makes the following findings:", the Commission strikes "pursuant to the Medical Fee Schedule" from the last line of the fifth paragraph. The Commission replaces the referenced stricken phrase with the phrase "pursuant to Sections 8(a) and 8.2 of the Act" so the sentence now reads, "The Arbitrator finds

that the medical bill of Dr. Prasad and HSHS Medical Group for services rendered on September 11, 2015, as contained in Petitioner Exhibit 7, page 1, in the amount of $169.00, is related to Petitioner's right knee strain injury, is reasonable and was necessitated to treat or cure Petitioner's injuries suffered in this accident, and is to be paid by Respondent pursuant to Sections 8(a) and 8.2 of the Act."

Further, in the Order, on page two of the Arbitrator's Decision, in the last line of the fourth paragraph, the Commission strikes "pursuant to the Medical Fee Schedule" and replaces it with "pursuant to Sections 8(a) and 8.2 of the Act" so the sentence now reads, "The medical bill of Dr. Prasad and HSHS Medical Group for services rendered on September 11, 2015, as contained in Petitioner Exhibit 7, page 1, in the amount of $169.00, is related to Petitioner's right knee strain injury, is reasonable and was necessitated to treat or cure Petitioner's injuries suffered in this accident, and is to be paid by Respondent pursuant to Sections 8(a) and 8.2 of the Act."

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on October 16, 2023, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's medical condition, right knee sprain, and contusions to the face and mouth, are causally related to the accident of September 8, 2015.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's medical conditions, aggravation of pre-existing bilateral knee osteoarthritis and resulting bilateral total knee replacements, are not causally related to the accident of September 8, 2015.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner was not temporarily totally disabled as a result of the accident of September 8, 2015.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the medical bill of Dr. Prasad and HSHS Medical Group for services rendered on September 11, 2015, as contained in Petitioner Exhibit 7, page 1, in the amount of $169.00, as it is related to Petitioner's right knee strain injury, is reasonable and was necessitated to treat or cure Petitioner's injuries suffered in this accident, and is to be paid by Respondent pursuant to Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that all other medical bills contained in Petitioner's Exhibits 5, 7, and 8 are not related to Petitioner's right knee strain injury and were therefor not necessitated to treat or cure Petitioner's injuries suffered in this accident, and are not the responsibility of the Respondent.

IT IS FURTHER ORDERED BY THE COMMISSION that pursuant to the stipulation of the parties, Respondent is entitled to credit for all amounts paid by its group health insurer towards the awarded medical bills pursuant to §8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $687.73 per week for a period of 10.75 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused permanent partial disability to the extent of 5% loss of use of the right leg.

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 Section 19(f)(1) of the Act, this decision is not subject to judicial review. *820 ILCS 305/19(f)(1).*

March 14, 2025

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

O030425
KAD/bsd
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/s/*Maria E. Portela*
Maria E. Portela

DISSENT

After carefully considering the totality of the evidence, I respectfully dissent from the opinion of the majority. I would reverse the Decision of the Arbitrator and find that Petitioner proved by a preponderance of the evidence that the current condition of ill-being regarding her right knee remains related to the accident.

"A chain of events which demonstrated a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *Int'l Harvester v. Indus. Comm'n*, 93 Ill. 2d 59, 63-64 (1982).

Proof of prior good health and change immediately following and continuing after an injury may establish that an impaired condition was due to the injury. *Navistar Int'l Transp. Corp. v. Indus. Comm'n (Diaz)*, 315 Ill. App. 3d 1197, 1205 (2000).

The record contains a significant number of pre-accident medical records, none of which document any prior complaints related to her knees. The earliest record, dated October 14, 2013, indicates that Petitioner was seen by Dr. Nawoor with complaints of right hip pain, denying any other symptoms. Diagnoses included essential hypertension, and degenerative arthritis of the hip. PX4, p. 1-2.

More than a year later, on January 9, 2015, Petitioner was seen by Dr. Prasad with complaints of right hip pain. The only physical examination finding was pain with range of motion of the right hip. Her diagnoses were unchanged from prior. PX4, p. 3-5.

Petitioner was evaluated by Dr. Allan for her right hip on January 14, 2015. She complained of right hip pain, was diagnosed with severe osteoarthritis of her right hip, and surgery was recommended. PX2, p. 3-5.

On January 29, 2015, Petitioner was seen by Dr. Cramer for a pre-surgical evaluation. Dr. Cramer explicitly stated he had "reviewed her medical history in detail and updated the EHR." In the review of systems, everything was negative except musculoskeletal where it states: "Musculoskeletal: as noted in HPI and left hip and knees are OK." PX4, p. 6-9.

Petitioner was next seen by Dr. Prasad on March 2, 2015, two weeks following right hip surgery. As above, there is no mention of her knees. PX4, p. 10-11.

The final pre-accident record, dated March 21, 2015, documents that Petitioner was seen in post-surgical follow-up by Dr. Allan with no mention of her knees. PX2, p. 6-8.

Respondent had access to Petitioner's pre-accident medical records and introduced records from 2013 through 2015. Those records do not show treatment for the knees, lending credibility to Petitioner's testimony that no treatment occurred.

Petitioner worked for Respondent for 15 years prior to the work accident. Her unrebutted testimony was that she experienced no pain and could 'work forever' after her hip surgery (February 2015) and before her work injury (September 2015). No rebuttal evidence shows Petitioner was restricted below the full performance of her job duties. T. 48.

On September 8, 2015, Petitioner sustained a significant trauma when she tripped and fell. Her face went into the wall, her tooth put a dent in the wall, and she landed on both of her knees. T. 20, 37.

Following the accident of September 8, 2015, Petitioner is seen by Dr. Prasad on September 11, 2015, wherein he states "[s]he has chronic severe arthritis off [*sic*] knees and hips and takes tramadol daily." PX4, p. 15. The medical evidence simply does not support this statement. Dr. Prasad himself never documented prior complaints to the knees in the two visits he had with Petitioner in the year prior to her accident. Dr. Cramer specifically noted he had reviewed her history and updated her electronic health records and made no reference to knee complaints.

Respondent's Section 12 Examiner, Dr. Anderson, relies upon this misstatement in Dr. Prasad's note without having reviewed any of the pre-accident medical records. RX8. Dr. Anderson also relied on Dr. Prasad's note of October 5, 2015 for the conclusion that Petitioner's knee pain had resolved. *Id.* However, the record indicates that Petitioner not only continued to complain of right knee stiffness but was given a new prescription for Tramadol as needed for right knee pain. PX4, p. 18-20. Expert opinions must be supported by facts and are only as valid as the facts underlying them. *Gross v. Ill. Workers' Comp. Comm'n*, 2011 IL App (4th) 100615WC, ¶24, citing *In re Joseph S.*, 339 Ill. App. 3d 599, 607 (2003). For these reasons, I find Dr. Anderson's

opinion that Petitioner sustained a right knee contusion that resolved by October 5, 2015 to be unpersuasive.

In addition to the chain of events, Petitioner also submitted the causal connection opinion of Dr. Allan: "It is possible that the work injury on September 8, 2005 (sic) aggravated or exacerbated the patient's preexisting osteoarthritis in her knees." PX1. It is well established that a finding of causal relationship may be based upon a medical expert's opinion that an accident "could have" or "might have" caused an injury. *Price v. Indus. Comm'n*, 278 Ill. App. 3d 848, 853 (1996), citing *Organic Waste Systems v. Indus. Comm'n*, 241 Ill. App. 3d 257, 260 (1993).

However, I do not find causal connection for Petitioner's left knee, given the delay in reporting left knee symptoms following the accident.

Weighing the credibility of the evidence, I would find the opinions of Petitioner's treating physicians, consistent with the chain of events analysis, most persuasive and would reverse the Arbitrator's conclusion that Petitioner's ongoing complaints related to the right knee are not causally related to the September 8, 2015, work accident.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC015095
Case Name	Anita Dunigan v. State of Illinois, Department of Human Services
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Dennis OBrien, Arbitrator

Petitioner Attorney	Martin Haxel
Respondent Attorney	Thomas Bowman

DATE FILED: 10/16/2023

THE INTEREST RATE FOR THE WEEK OF OCTOBER 11, 2023 5.32%

/s/ Dennis OBrien, Arbitrator
Signature

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

October 16, 2023

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

ANITA DUNIGAN
Employee/Petitioner

v.

STATE OF ILLINOIS, DEPARTMENT OF HUMAN SERVICES
Employer/Respondent

Case # **16** WC **015095**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Dennis O'Brien**, Arbitrator of the Commission, in the city of **Springfield**, on **July 27, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **September 8, 2015**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

In the year preceding the injury, Petitioner earned $**59,602.72**; the average weekly wage was $**1,146.21**.

On the date of accident, Petitioner was **64** years of age, ***single*** with **no** dependent children.

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

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

ORDER

Petitioner's medical condition, right knee sprain, and contusions to the face and mouth, are causally related to the accident of September 8, 2015.

Petitioner's medical conditions, aggravation of pre-existing bilateral knee osteoarthritis and resulting bilateral total knee replacements, are not causally related to the accident of September 8, 2015.

Petitioner was not temporarily totally disabled as a result of the accident of September 8, 2015.

The medical bill of Dr. Prasad and HSHS Medical Group for services rendered on September 11, 2015, as contained in Petitioner Exhibit 7, page 1, in the amount of $169.00, is related to Petitioner's right knee strain injury, is reasonable and was necessitated to treat or cure Petitioner's injuries suffered in this accident, and is to be paid by Respondent pursuant to the Medical Fee Schedule.

All other medical bills contained in Petitioner's Exhibits 5, 7, and 8 are not related to Petitioner's right knee strain injury and were therefor not necessitated to treat or cure Petitioner's injuries suffered in this accident, and are not the responsibility of the Respondent.

Pursuant to the stipulation of the parties, Respondent is entitled to credit for all amounts paid by its group health insurer towards the awarded medical bills pursuant to §8(j) of the Act.

Petitioner sustained permanent partial disability to the extent of 5% loss of use of the right leg pursuant to §8(e) of the Act, 10.75 weeks of disability, payable at $687.73 per week.

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

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

OCTOBER 16, 2023

Signature of Arbitrator

FINDINGS OF FACT:

TESTIMONY AT ARBITRATION

Petitioner

Petitioner testified that as of the date of arbitration she was retired, having retired on April 1, 2022. She said that prior to retiring she had worked for the Illinois Department of Human Services (IDHS) for a number of years and was working for the IDHS on September 8, 2015. Petitioner testified that on the date of accident, she tripped over a rug in her office while crossing the office lobby to pick up some additional work. Petitioner said the rug was not lying flat on the floor, it had a hump in it that her right foot got caught in, causing her to fall into the wall. Petitioner testified that as she fell, her face went struck the wall, her tooth put a dent in in the wall, and she went forward, landing on both of her knees, bruising both knees.

Petitioner testified that she sought treatment three days after her fall, September 11, 2015, from Dr. Prasad. She noted that it had been a long time since her treatments back then, so she and would have to rely on medical records for dates. When asked if she had any injury to either of her knees before she tripped and fell on the rug in the lobby, Petitioner said she had not. Petitioner testified that when she saw Dr. Prasad she told him of her fall, of falling into the wall, that her shoulders were sore, and both of her knees were sore. She said she did not know how Dr. Prasad came up with just one knee being injured. Petitioner said she followed up with Dr. Prasad a couple of other occasions in the weeks following the first visit to him.

Petitioner said she saw Dr. Gordon Allan approximately four to five weeks after the date of accident and the visit was initially for a follow up concerning her hip surgery. Petitioner said Dr. Allan gave her an injection into the right knee at that time, and she returned to him a few weeks later to receive an injection into the left knee. Petitioner further stated she followed up with Dr. Allan on several occasions over the course of the next couple of years and she received cortisone injections into both knees on more than one occasion. Petitioner said the injections did not work well for her, she had a great deal of pain after one of them, and she decided she could not take cortisone injections.

Petitioner testified she asked Dr. Allan for knee surgery. Petitioner said she underwent a total right knee replacement on March 19, 2018, followed by some physical therapy. Petitioner said she underwent a second, left knee replacement surgery on July 2, 2018, followed by additional physical therapy, and she last saw Dr. Allan in regard to her knees in August of 2018. Petitioner testified she has not had any other medical treatment for her knees, other than the physical therapy, since the two knee replacement surgeries. Petitioner testified that she fell down the stairs while leaving work in September 2021, injuring her right knee, but could not recall seeing a doctor or receiving any medical care for that incident.

Petitioner said Dr. Nawar had been her primary care physician for a couple of decades prior to this accident, and she had never received any medical treatment to her knees in the years prior to this accident. She said she had not been prescribed pain medication for her knees previously, though she had been prescribed Tramadol for her hip.

Petitioner testified she does not have any treatment scheduled for either of her knees in the future. Petitioner further testified her knees hurt every day, especially when she is trying to get up and that she takes pain medication, but nothing prescribed, five or six times a week. She said she had difficulty getting out of chairs, could not kneel to pray or clean floors, and uses a cart to assist her when shopping, sometimes using a self-propelled cart.

On cross examination, Petitioner testified she worked "a very physical job" while working with the Illinois Department of Rehabilitation Services (DORS) for about ten years. Petitioner said she worked with children between the ages of 4 and 22, some of whom were non-walkers, in beds, and they had to be cleaned up, changed, lifted and transferred to chairs. She said she had to do a lot of squatting down and using her knees in her job with DORS, but that it did not really put a lot of stress on her knees, as they would raise the beds to transfer children, they did not have to bend down to do that. Petitioner testified that she did not have any diagnoses related to her knees prior to this accident. Petitioner said she did not know what diagnosis the doctor provided for the injuries related to the accident. Petitioner said she was improved by the surgeries she had, but she still could not get down on her knees, they were still painful. Petitioner said she does not take any prescription medications for knee pain now, just over-the-counter medication

Petitioner testified that she had been diagnosed as having arthritis, saying she had it over her whole body, though she denied having it in her knees. She said she was initially diagnosed with arthritis in the 1980s. She again said it was over her entire body, but not specifically to her knees, hips, or feet. After her first surgery by Dr. Allen, to her hip, she said she went back to work with no problems, no pain. She said as of the date of this accident her health was great.

Petitioner testified she had hip replacement surgery in March 2015 because she had fallen on her hip when working with handicapped children. Petitioner stated she was diagnosed with osteoarthritis in her hip after that 2010 fall. Petitioner further stated the fall probably occurred around 2010 and she filled out a report on the job, but she did not follow through with it.

Petitioner, when asked, noted that when she initially treated after this accident she requested both knees be treated, but they only treated one, that the medical records were incorrect.

Petitioner testified she returned to work after both knee replacement surgeries in 2018. Petitioner further testified she could not remember the last time she treated for her knees and that if she had needed to go to the doctor she would have gone.

On questioning by the arbitrator, Petitioner said she never had a reduction in pay after this accident, that scheduled raises were delayed by the Governor, but were eventually paid.

MEDICAL EVIDENCE

Pre-accident records of Dr. Prasad and HSHS Medical Group were introduced into evidence. They show right hip complaints and treatment, including right hip replacement, for visits of October, 14, 2013, January 9, 2015, right hip replacement surgery of February 17, 2015, March 2, 2015, as well as physical therapy records from March 26, 2015 through April 6, 2015, and the records during that period of time only deal with her

degenerative right hip, with no complaints about or diagnoses for her knee. (PX 4, p. 1-14; RX 5, p. 7,9,10,18,34,42-44,55,56,58,60; RX 6, p.1-6)

Pre-accident records of Dr. Allan were introduced into evidence. He treated her for right hip pain on January 14, 2015. His physical examination and x-rays were confined to the right hip, as were Petitioner's complaints. Dr. Allan noted Petitioner had failed conservative treatment, indicating visits and treatment had occurred prior to this office visit. Right total hip replacement surgery was discussed and agreed to at this visit. Petitioner was seen post-operatively on March 21, 2015, and the records only note right hip findings and complaints. (PX 2, p. 3,4,6; RX 5, p. 47,48,65,66)

Petitioner saw Dr. Prasad on September 11, 2015. The history recorded on that date was of her reporting that 3 days earlier she tripped on a rug and fell and hit a wall at work. When seen, Petitioner had a bruise on the right knee, and said her knee pain was improving. The record from that office visit notes that Petitioner had chronic severe arthritis of her knees and hips and was taking tramadol daily. The office note for this September 11, 2015, examination makes no mention of Petitioner's left knee issues. The assessment for that visit was, "Knee pain, right." (PX 4, p. 15; RX 5, p. 67,69)

Dr. Prasad signed a Workers' Compensation Medical Report dated September 14, 2015, which included the hand-written diagnosis of "right knee pain." The form contained a specific line to be filled out only in the event treatment was no longer to be rendered on the patient, and Dr. Prasad filled out that line, noting Petitioner had been discharged from treatment on September 11, 2015, and he further noted Petitioner was able to work without restrictions effective September 14, 2015. (RX 3)

Petitioner again saw Dr. Prasad on October 5, 2015, and that office visit record states "[o]n September 8, 2015, she had tripped and fell at work and strained her right knee. It is much better now. In the past she had arthritis in both knees." The doctor noted that while being seen for her right knee, it had resolved, there was no knee pain, no knee swelling, and no knee bruising. (PX 4, p. 18; RX 5, p. 70)

Petitioner sought treatment with Dr. Allan at Orthopedic Center of Illinois on October 16, 2015. The medical records concerning the October 16, 2015, examination concerns Petitioner's right knee only. This record indicates there was no bruising of the right knee and notes an x-ray was conducted showing complete bone on bone deformity on the medial joint. No mention of complaints involving the left knee are included in this note. Dr. Allan's assessment on that dates was "chronic knee pain, right." A Kenalog steroid injection was performed on the right knee only on that date. Dr. Allan's assessment at that time was primary right knee osteoarthritis. Dr. Allan also examined Petitioner's right hip on that date and recorded his findings in regard to that area of her body. (PX 2, p 9,10,12; RX 5, p. 73-75)

Petitioner called Dr. Allan's office on October 19, 2015, advising that the injection to the right knee had given her great relief, and asking if she could have an injection into her left knee. The record further states Petitioner requested a copy of the office note from October 16, 2015, and it was noted a copy was faxed to her. (PX 2, p. 14)

Petitioner next saw Dr. Allan on November 4, 2015. The medical records for this visit states Petitioner "comes in today for initial evaluation of a knee problem. Symptoms are located in the left knee and left anterior knee. There is no radiation. Onset was gradual. Her pain onset occurred 2 weeks ago." Petitioner did mention

she had been injured at work in a fall on September 8, 2015. X-rays of the left knee were performed during this visit, and they showed severe patella/femoral arthritis, as shown by loss of joint space, and severe joint space narrowing of the medial compartment. Dr. Allan noted that Petitioner had advanced in both of her knees and was "headed toward total knee replacements." A Kenalog steroid injection was performed on the left knee on this date. (PX 2, p 15,16; RX 5, p. 78,79)

When Petitioner saw Dr. Prasad on November 5, 2015, and for the first time mentioned to him that she had injured her left knee during her September 8, 2015 fall. While complaining of left knee pain on this occasion, it was noted she had that knee injected the day before. Physical examination of the knees on that date revealed no swelling, no warmth, and no bruising. The doctor recorded that Petitioner presented with complaints of gradual onset of mild bilateral knee arthralgias which were improving. (PX 4 p.21; RX 5, p. 81)

Petitioner was seen by Dr. Allan again on January 20, 2016, complaining of continued pain in both knees. Both knees were injected with Kenalog. She was then seen on March 23, 2016, and she told Physician Assistant (PA) Wilson that the effects of the injections were wearing off. She was told to make an appointment for a month later, as it was too soon to give her injections. She returned to see PA Wilson on May 5, 2016, continuing to complain of bilateral knee pain. The records reflect an injection being given, but it is unclear if this is to the left, the right, or both knees. Petitioner called the office the next day complaining of both knees being sore, and swelling of the left knee. (PX 2, p. 18,19,22,23,25; RX 5, p. 84,85,87,88,90)

Petitioner continued seeing her primary care physician regularly for follow up on general health issues. When seen by Dr. Prasad on August 19, 2016, Petitioner was complaining of right ankle pain, and using a cane. (PX 4, p.31)

Petitioner was next seen on September 21, 2016, by Dr. Allan, again complaining of bilateral knee pain. Dr. Allan explained to Petitioner that she had end stage osteoarthritis and her only option was total knee replacements, with the right being worse than the left, so the surgeries proceeding in that order. PX 2. p.28,30,31; RX 5, p. 97)

After complaining of continued knee pain to Dr. Prasad, Petitioner was again sent to Dr. Allan for an orthopedic consultation. (PX 4, p.54,56)

Dr. Allan saw Petitioner at Midwest Rehab on January 24, 2018. She was again complaining of bilateral knee pain and said the injections had helped for about two to three months. Her right knee was swollen on this date, and both medial collateral ligaments were found to be unstable. Right knee replacement surgery was again recommended. (PX 3, p.2; RX 5, p. 101,102)

The right total knee replacement surgery was performed on March 19, 2018. Petitioner was seen post-operatively by Dr. Allan on May 9, 2018, and he felt she was doing well post-operatively, and in physical therapy. Left knee replacement surgery was planned when Petitioner felt she had recovered sufficiently from the right knee replacement surgery. (PX 2, p.34-36; RX 5, p. 107,108)

Petitioner received physical therapy following her surgery from March 27, 2018 through April 25, 2018. (PX 3, p. 5-26; RX 6, p.9-34)

When seen by Dr. Allan on May 9, 2018, he found her implants secure and he felt she was doing well with physical therapy. He released her to go back to work on May 14. He noted the osteoarthritis in her left knee

was causing her a lot of pain, and that she was a candidate for total knee replacement on that side as well. (RX 5, p.111

When next seen by Dr. Allan on June 9, 2018, Petitioner said she was pleased with the right knee replacement and was ready to proceed with the left knee replacement. (PX 2, p.39)

The left total knee replacement surgery was performed on July 2, 2018. Petitioner was seen post-operatively by Dr. Allan on August 10, 2018. At that time she was not using an assistive device to walk. She was given a note to return to work on August 15, 2018. She was to follow up in six months. (PX 2, p. 42,43; RX 5, p. 118,119)

Petitioner again underwent physical therapy from July 23, 2018 through August 2, 2018. (PX 3, p.28-47; RX 6, p. 35-54)

Petitioner was seen by PA Wilson on August 9, 2018. She advised PA Wilson that she was weight-bearing as tolerated, was no using an assistive device to walk, she was doing better with pain 5 out of 10. She was felt to be progressing well with strength. X-rays showed the left leg had neutral mechanical alignment, and that the right total knee was also normal. She was told to return to work without restrictions effective August 15, 2018. (RX 5, p.126,129)

Petitioner was examined at Respondent's request by Dr. Anderson, on January 22, 2017. Dr. Anderson took a history from Petitioner and reviewed and summarized her post-accident medical records. Petitioner told him that on that date she had diffuse right knee pain, pain over the medial thigh, occasionally radiating down to her medial ankle, the pain being worse with activities. She advised him that she had not experienced right knee pain prior to this accident. Petitioner also noted she had left knee pain, but the doctor reported he only addressed her right knee in this examination as that what he had been asked to do. During his physical examination of the right knee he found slight swelling in the front, diffuse medial tenderness, lateral tenderness, and patella tenderness, as well as in the medial thigh musculature. Passive range of motion testing of that knee found "jerking sensation intermittently" which was not associated with pain, and flexion and extension of the knee was not painful. He also reviewed right knee x-rays of October 16, 2015, which he stated showed severe medial compartment arthritis and patellofemoral degenerative changes. He also reviewed left knee x-rays which had similar findings. He reported that Petitioner had documented evidence of chronic pre-existing, severe arthritis in the right and left knee. He diagnosed Petitioner to have advanced right knee degenerative arthritis. Dr. Anderson felt Petitioner's current objective findings were nonspecific, but of the type often associated with arthritis. He said he could not relate her current objective findings to the reported accident of September 8, 2015. (RX 8, p. 3,4)

Petitioner introduced into evidence a letter from Dr. Allan to Petitioner's attorney dated August 5, 2022. This letter addresses causal connection between this accident and Petitioner's bilateral knee problems in an extremely equivocal manner, noting it was "possible that the work injury on September 8, 2005 (sic) aggravated or exacerbated the patient's preexisting osteoarthritis of her knees." It goes on to note that x-rays taken on October 16, 2015 "showed severe bilateral osteoarthritis with deformity." Dr. Allan then went on to say, "[t}he treatment she received could possibly be related to her injury but again she had severe preexisting osteoarthritis of both knees." Addressing her 2018 right knee surgery, Dr. Allan said it "most likely was related to her severe osteoarthritis but I cannot say with any certainty that is was not exacerbated by her injury." He did not address

whether her left knee surgy in 2018 was in any way related to her injury. It is noted that Dr. Allan's opinions are not stated to be within a reasonable degree of medical certainty, but are instead described as "possibilities," which could be considered conjecture, speculation, or guesswork. (PX 1)

The Arbitrator notes that Petitioner's medical records entered into evidence by Petitioner and Respondent relate to knee issues only. Petitioner testified and some medical records in evidence recite that Petitioner hit her face and teeth when she fell on DOA. Petitioner testified to shoulder pain as well. Petitioner apparently did not seek any medical treatment for any other body part of her body other than her knees after the fall on September 8, 2015, and those injuries have resolved without permanent disability.

CREDIBILITY ASSESSMENT

Petitioner was the only witness. She was a very cooperative witness on direct examination and far less so on cross examination. Her testimony in regard to complaints made to her doctors was contradicted by multiple physicians, and when questioned about this she appeared somewhat angry. Her testimony that she began having arthritis problems all over her body starting in the 1980s, but not in her knees, seemed far less than credible, and self-serving. Her testimony was contradicted by objective evidence of advanced arthritis in both knees with bone-on-bone deformity of the medial compartments. While Petitioner testified that she had not had arthritis in her knees prior to September 8, 2015, Dr. Prasad on October 5, 2015, noted, "In the past she had arthritis in both knees." While some individuals only find out what histories are recorded by the doctor while preparing for a hearing with their attorney, Petitioner in this case was aware of the right knee only history record of Dr. Allan on October 16, 2015, as she called Dr. Allan's office on October 19, 2015, requesting a copy of the office note of October 16, 2015, and one was faxed to her. She did not testify that after reviewing that record she requested any histories be corrected by any of her doctors, nor do Dr. Allan's records reflect her making such a request. When Petitioner did eventually complain of left knee problems, she gave a history of the onset of pain gradually, not following a traumatic event, and six weeks or more following the date of this fall. The Arbitrator finds Petitioner to not be credible.

CONCLUSIONS OF LAW:

Respondent stipulated at arbitration that an accident occurred on September 8, 2015, it contested that Petitioner's current condition of ill-being, and the condition of her right and left knees requiring surgical treatment, were causally related to said accident. Respondent also stipulated at the arbitration hearing that it was not contesting the reasonableness of the bills for treatment of the knees, or the length of time Petitioner was claiming she was temporarily totally disabled, it was disputing liability for those benefits based upon its position that Petitioner's conditions being treated and causing the temporary total disability were not causally connected to this accident.

In support of the Arbitrator's decision relating to whether Petitioner's current condition of ill-being, aggravation of osteoarthritis in left and right knees resulting in bilateral total knee replacements, is causally related to the accident of September 8, 2015, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summary of medical evidence, above, is incorporated herein.

The Arbitrator's credibility assessment, above, is incorporated herein.

Petitioner sustained accidental injuries which caused her to fall forward and to the right, falling on both knees and striking her head, and a tooth, on the wall. Petitioner's testimony and the medical records are in agreement in that regard.

Petitioner claims she complained of both knees hurting when she was initially treated by Dr. Prasad. Dr. Prasad's records for his visit with Petitioner three days after the accident reflect that Petitioner had a bruise on the right knee, and that her knee pain was improving. The record also notes that Petitioner had chronic severe arthritis of her knees and hips and was taking tramadol daily. Petitioner denied having arthritis in her knees prior to the date of this accident. Dr. Prasad's findings were so minor that he filled out a report on September 14, 2015 with the handwritten diagnosis of "right knee pain,." noting Petitioner had been discharged from treatment on September 11, 2015, and that Petitioner was able to work without restrictions effective September 14, 2015.

Dr. Prasad's office note of October 5, 2015, again only notes that she injured her right knee on September 8, 2015, that the right knee was much better, and that in the past she had arthritis in both knees. He noted that her right knee problem had resolved, and that she had no knee pain, no knee swelling, and no knee bruising.

When Dr. Allan saw Petitioner on October 16, 2015, his examination was only in reference to her right knee. He observed no bruising of the right knee and stated that x-rays showed complete bone on bone deformity on the medial joint. There is no mention of left knee complaints in his note of that date. Dr. Allan's assessment on that dates was "chronic knee pain, right." He gave her a right knee injection at that time.

When next seen, on October 19, 2015, Petitioner told Dr. Allan that the injection to the right knee had given her great relief, and asking if she could have an injection into her left knee. There is no mention of this knee having been injured in any way by the September 8, 2015 accident, or of any sudden increase in pain at that time.

Petitioner was then seen by Dr. Allan on November 4, 2015, and his records reflect Petitioner was being seen for an initial evaluation of a left knee problem. Symptoms were located in the left knee and left anterior knee. Petitioner advised Dr. Allan that the onset had been gradual and had begun two weeks earlier. This office visit was nearly two months after the September 8, 2025 accident.

Petitioner saw Dr. Prasad the next day, November 5, 2015, and it was at this post-injection of the knee visit that Petitioner first mentioned to a medical provider him that she had injured her left knee during her September 8, 2015 fall. Dr. Prasad in his office note of that date recorded that Petitioner presented with complaints of gradual onset of mild bilateral knee arthralgias which were improving.

The medical records clearly show that Petitioner had severe pre-existing degenerative arthritis in both knees. Neither Dr. Prasad nor Dr. Allan in their records make any mention of the need for injections, or need for total knee replacements being the result of the accident of September 8, 2015.

Neither Dr. Prasad nor Dr. Allan were deposed and asked to give opinions within a reasonable degree of medical certainty in regard to Petitioner's right or left knee injuries or treatment being causally related to the accident of September 8, 2015.

As noted above, Dr. Allan in 2022 wrote a letter to Petitioner's attorney stating that it was "possible" that Petitioner's work injury aggravated or exacerbated the patient's preexisting osteoarthritis of her knees," which he said x-rays of October 16, 2015 showed severe bilateral osteoarthritis with deformity," and that her treatment, "could possibly be related to her injury but again she had severe preexisting osteoarthritis of both knees." Dr. Allan's opinions were not stated to be within a reasonable degree of medical certainty, but are instead described as "possibilities," which could be considered conjecture, speculation, or guesswork. Liability cannot be premised on speculation or conjecture, but must be based on facts contained in the record *Deichmiller v. Industrial Commission*, 147 Ill. App. 3d 66,497 N.E. 2d 451 (1986).

Respondent's examining physician, Dr. Anderson, reviewed left and right knee x-rays from October of 2015. He noted they showed severe medial compartment arthritis and patellofemoral degenerative changes. He reported that Petitioner had documented evidence of chronic pre-existing, severe arthritis in the right and left knee. His diagnosis was that of advanced right knee degenerative arthritis. Dr. Anderson felt Petitioner's current objective findings were nonspecific, but of the type often associated with arthritis. He said he could not relate her current objective findings to the reported accident of September 8, 2015.

A claimant has a burden of proving by preponderance of the credible evidence, all of the elements of this claim to recover benefits under the Illinois Workers' Compensation Act. *Illinois Bell Telephone Company v. Industrial Commission,* 265 Ill. App. 3d 381, 638 N.E. 2d 307 (1994). The burden of establishing the necessary causal relationship between an injury and the employment rests with the claimant. *Saunders v. Industrial Commission,* 189 Ill. 2d 623, 727, N.E. 2d 247 (2000). Liability under the Illinois Workers' Compensation Act cannot be premised on speculation or conjecture, but must be based on facts contained in the record *Deichmiller v. Industrial Commission*, 147 Ill. App. 3d 66,497 N.E. 2d 451 (1986).

The Arbitrator finds that Petitioner's medical condition, right knee sprain, and contusions to the face and mouth, are causally related to the accident of September 8, 2015. This finding is based upon the testimony of Petitioner and the medical records of Dr. Prasad.

The Arbitrator further finds that Petitioner's medical conditions, aggravation of pre-existing bilateral knee osteoarthritis and resulting bilateral total knee replacements, are not causally related to the accident of September 8, 2015. This finding is based upon the medical records of Dr. Prasad in the days and weeks immediately following this accident, the severe osteoarthritis seen on x-rays of October 16, 2015, the lack of any complaints in regard to the left knee for nearly two months following the accident, the history nearly two months after the accident that the left knee complaints had come on gradually approximately six weeks following the accident, and the statements of Dr. Allan in his letter, which were equivocal at best, and appear to be mere speculation, conjecture, or guesswork.

In support of the Arbitrator's decision relating to what temporary benefits Petitioner is entitled to as a result of the accident of September 8, 2015, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summary of medical evidence, above, is incorporated herein.

The findings in regard to causal connection, above, are incorporated herein.

The Arbitrator's credibility assessment, above, is incorporated herein.

Petitioner's claimed periods of temporary total disability are for periods immediately following her total knee replacement surgeries, which have been found to not be causally connected to this accident.

The Arbitrator finds that Petitioner was not temporarily totally disabled as a result of the accident for the period claimed by Petitioner. This finding is based upon the lack of causal connection noted above.

In support of the Arbitrator's decision relating to whether the medical services that were provided to Petitioner were reasonable and necessary as a result of the Accident of September 8, 2015, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summary of medical evidence, above, is incorporated herein.

The findings in regard to causal connection and temporary total disability, above, are incorporated herein.

The Arbitrator's credibility assessment, above, is incorporated herein.

The Arbitrator finds that the medical bill of Dr. Prasad and HSHS Medical Group for services rendered on September 11, 2015, as contained in Petitioner Exhibit 7, page 1, in the amount of $169.00, is related to Petitioner's right knee strain injury, is reasonable and was necessitated to treat or cure Petitioner's injuries suffered in this accident, and is to be paid by Respondent pursuant to the Medical Fee Schedule.

The Arbitrator further finds that all other medical bills contained in Petitioner's Exhibits 5, 7, and 8 are not related to Petitioner's right knee strain injury and were therefor not necessitated to treat or cure Petitioner's injuries suffered in this accident, and are not the responsibility of the Respondent. These findings are based upon the causal connection findings, above.

Pursuant to the stipulation of the parties, Respondent is entitled to credit for all amounts paid by its group health insurer towards the awarded medical bills pursuant to §8(j) of the Act.

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

The findings of fact, above, are incorporated herein.

The summary of medical evidence, above, is incorporated herein.

The findings in regard to causal connection, temporary total disability, and medical, above, are incorporated herein.

The Arbitrator's credibility assessment, above, is incorporated herein.

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

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was previously employed for ten years doing physical work caring for children with extreme needs, she was employed by the Illinois Department of Rehabilitation Services working in an office setting at the time of the accident and was able to return to work in his prior capacity as a result of said injury. The Arbitrator notes Petitioner returned to work immediately following this accident and did not lose time from work until over three years, when she had surgeries which have been found not to be causally related to this accident. Petitioner testified that after those surgeries she returned to work and continued working util she retired. Because of the sedentary nature of her work at the time of this accident, the Arbitrator therefore gives *lesser* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 64 years old at the time of the accident. Because of her short period of remaining work life expectancy, the Arbitrator therefore gives *lesser* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes Petitioner testified that despite delays in obtaining contracted raises, her earnings had increased following this accident. Because of the lack of evidence of loss of future earning capacity, the Arbitrator therefore gives *no* weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner suffered a right knee strain, and contusion of the face and mouth as a result of this accident and had continuing complaints as of the last date she saw Dr. Prasad for the knee strain, September 11, 2015. Because of her continuing complaints, 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 right leg pursuant to §8(e) of the Act, 10.75 weeks of disability, payable at $687.73 per week.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC031970
Case Name	INSURANCE COMPLIANCE v. BOOST ENTERPRISES, INC
Consolidated Cases	
Proceeding Type	Petition for Penalties
Decision Type	Commission Decision
Commission Decision Number	25IWCC0115-19INC00299
Number of Pages of Decision	7
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Megan Murphy
Respondent Attorney	

DATE FILED: 3/18/2025

/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

Illinois Department of Insurance,

Petitioner,

vs.

No. 22 WC 31970
19 INC 00299

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

Respondents.

DECISION AND OPINION REGARDING INSURANCE COMPLIANCE

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

The Commission, after considering the record in its entirety and being advised of the applicable law, finds that Respondent knowingly and willfully violated §4(a) of the Act and §9100 of the Rules from April 10, 2014 through September 8, 2023. The Commission also finds that Respondents were in default after proper and timely notice. Accordingly, Respondent shall be held liable for non-compliance with the Act and shall pay a penalty in accordance with §4(d) of the Act in the sum of $1,719,500.00. The Commission further orders Respondent to reimburse the Injured Workers' Benefit Fund in the amount of $18,235.21, for a total amount of $2,457,105.23.

I. Findings of Fact

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

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

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

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

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

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

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

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

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

I. Conclusions of Law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent Arthur Cup, individually and as president of Boost Enterprises, Inc., a dissolved corporation, pay to the Illinois Workers' Compensation Commission the sum of $2,457,105.23 pursuant to Section 4(d) of the Act and Section 9100.85(a)(1) of the Rules.

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

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

Bond for the removal of this 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.

March 18, 2025

SJM
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC043173
Case Name	Johnny E Baggett v. II-N-One
Consolidated Cases	
Proceeding Type	***Remand from the Circuit Court of Cook County***
Decision Type	Commission Decision
Commission Decision Number	25IWCC0116
Number of Pages of Decision	4
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	David Starshak
Respondent Attorney	Tammy Paquette

DATE FILED: 3/18/2025

/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

Johnny Baggett,

Petitioner,

vs. No. 12 WC 43173

II in One Contractors,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on third remand from the Circuit Court.[1] The sole issue on remand is the calculation of wage differential benefits. The Circuit Court instructed the Commission as follows: "Although it is reasonable to consider the best evidence of an impairment of earnings as the actual difference in earnings prior to the accident and after the injured worker returns to work, *Crittenden* and *Gallianetti* have held that a wage differential award may be based upon identifying some occupation that the claimant is able and qualified to perform, provided that it [is] supported by evidence in the record. *Crittenden,* 2017 IL App (1st) 160002WC at 124; *Gallianetti,* 315 Ill. App. 3d at 730. Here, the parties retained vocational experts both of whom testified regarding potential occupations [Petitioner] could perform and their corresponding wages. Accordingly, there is sufficient evidence in the record for the Commission to provide a factual determination of what occupation [Petitioner] is able and qualified to perform in order to calculate a wage differential award." The Commission hereby complies with the Circuit Court's Order and instructions.

Vocational evidence in this case shows that beginning in 2014, Steven Blumenthal performed a vocational assessment at Petitioner's request, and in 2016 Samantha Allen performed a labor market survey at Respondent's request. Mr. Blumenthal opined Petitioner could only get a near-minimum wage job (assuming he could get a job), while Ms. Allen's labor market survey listed jobs in the wage range of $9.00 to $17.31 per hour.

[1] The underlying facts are set forth in the Circuit Court's and the Commission's prior Decisions in this matter.

Mr. Blumenthal testified that he found it "very significant" that Petitioner smoked marijuana on a regular basis for pain relief. The Commission notes that at the time of the deposition, Illinois had already passed the Compassionate Use of Medical Cannabis Pilot Program Act (Public Act 098-0122), which has since become permanent (see 410 ILCS 130). Mr. Blumenthal also found significant Petitioner's remote felony convictions in the 1980s. Regarding Petitioner's subjective complaints, Mr. Blumenthal testified that Petitioner reported difficulty standing and walking, but not sitting. Petitioner "did have a computer with internet access and could use a computer for e-mails and go on social media." Petitioner did not have any work history outside of construction. However, Petitioner "stated that he would be willing to learn to work with a computer." Petitioner did well on standard vocational testing. Mr. Blumenthal acknowledged that Petitioner could perform a sedentary job. However, Mr. Blumenthal believed the prospective employers would only pay Petitioner entry-level wage, as opposed to median wage.

Ms. Allen testified that she surveyed the jobs within Petitioner's restrictions in a 50-mile radius of Petitioner's home. Most of the jobs were not physically demanding and were performed in a seated position. Petitioner was qualified for the jobs, which did not require much training. Ms. Allen believed the prospective employers could pay Petitioner more than the median wage because of Petitioner's work experience. At the high end of the labor market survey was a job as a sales/insurance representative at Auto Service Agency, which paid "up to 36,000 per year plus commission," which corresponded to an hourly wage of $17.31 plus commission.

At the time of the arbitration hearing, the union scale for a journeyman cement mason was $44.25 per hour. The Commission adopts Ms. Allen's opinion that Petitioner is employable as an auto insurance sales representative at an hourly wage of $17.31[2] and computes the weekly wage differential benefits as follows: 66 2/3% x 40 x ($44.25 - $17.31) = $718.40.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $718.40 per week commencing April 24, 2015 for the duration of his disability as provided in §8(d)(1) of the Act, for the reason that the injuries sustained caused Petitioner to become partially incapacitated from pursuing his usual and customary line of employment. As further provided in §8(d)(1) of the Act, this award of wage differential benefits shall be effective only until Petitioner reaches the age of 67 or five years from the date the award becomes final, whichever is later.

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.

[2] We exclude any commission from the calculations as speculative.

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.

March 18, 2025
o-1/29/2025
SM/sk
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC032455
Case Name	Edward Weber v. Sargent Electric
Consolidated Cases	18WC032468;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0117
Number of Pages of Decision	16
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Brad Reynolds
Respondent Attorney	Steven Etzler

DATE FILED: 3/18/2025

/s/Stephen Mathis, 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

Edward Weber,

Petitioner,

vs. NO. 18 WC032455

Sargent Electric,

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, employment, medical expenses, causal connection, notice, permanent disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 29, 2024, is hereby affirmed and adopted.

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

No bond is required for removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

March 18, 2025

SJM/sj
o-2.19.25
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC032455
Case Name	Edward Weber v. Sargent Electric
Consolidated Cases	18WC032468;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Brad Reynolds
Respondent Attorney	Steven Etzler

DATE FILED: 3/29/2024

/s/Frank Soto, Arbitrator
Signature

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

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

Edward Weber
Employee/Petitioner

v.

Sargent Electric
Employer/Respondent

Case # **18** WC **032455**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Frank Soto**, Arbitrator of the Commission, in the city of **Geneva, IL**, on **12/15/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **6/9/18**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did not*** exist between Petitioner and Respondent.

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

Timely notice of this accident ***was 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 $**99,580**; the average weekly wage was $**1,915**.

On the date of accident, Petitioner was **54** years of age, ***single*** with **0** dependent children.

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

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

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

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

ORDER

PETITIONIER FAILED TO PROVE HE SUSTAINED AN ACCIDENTAL INJURY THAT AROSE OUT OF AND IN THE COURSE AND SCOPE OF HIS EMPLOYMENT WITH RESPODNENT, FAILED TO PROVE HE PROVIDED NOTICE OF THE ACCIDENT AS REQUIRED UNDER THE ACT, AND FAILED TO PROVE THAT HIS CURRENT CONDITION OF ILL-BEING WAS CAUSALLY CONNECTED TO A WORK RELATED INJURY. FOR THESE REASON ALL BENEFITS ARE DENIED.

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

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

By: /o/ *Frank J. Soto*
Arbitrator
March 29, 2024

Procedural History

Petitioner filed two Application for Adjustment Claims alleging injuries to his left knee. The date of the first incident is June 9, 2018 and was assigned case number 18 WC 032455 and the date of the second incident is October 19, 2018 and assigned case number 18 WC 032468. (Arb. Ex. 2, 4). The issues in both cases are similar involving accident, causal condition, medical bills, TTD benefits, nature and extent of Petitioner's injury but in case number 18 WC 032468 it was disputed whether an employee and employer relationship existed and in case number 18WC032455 is was disputed whether notice of the injury was given. (Arb. Ex. 1, 3). The cases proceeded to trial on December 15, 2023 and separate decisions have been issued for each case.

Findings of Fact

Ed Weber (hereinafter referred to as "Petitioner") testified on June 9, 2018 he was employed by Sargent Electric (hereinafter referred to as "Respondent") as an electrician. (T. 10). Petitioner testified he worked for Respondent for a month and a half prior to being injured at work on June 9, 2018. (T.10). Petitioner testified on June 9, 2018 he was coming down a ladder when he noticed a sharp pain in his lower leg and calf area. (T.11). Petitioner testified he continued working after the incident. (T.11). Petitioner testified he went to the emergency room at Rochelle Community Hospital on August 6, 2018. (T.12).

On cross examination, Petitioner acknowledged he started working for Respondent on July 2, 2018. (T.55-56). Petitioner subsequently testified to working for Respondent in June of 2018 but he also agreed that Respondent hired him on July 2, 2018. (T.55-57). When asked whether the incident occurred on August 3, 2018 or on June 9, 2018, Petitioner responded that he didn't recall because it happened four years ago[1]. (T.57-58).

Petitioner was asked based upon the hospital records stating you were injured going down a ladder on August 6, 2018, were you injured going down the ladder on August 6, 2018 and Petitioner responded "yes". (T.60). Petitioner acknowledged to not originally reporting the ladder incident to Respondent stating he was not sure it was an injury.

[1] The Application of Adjustment of Claim for claim number 18WC032455 lists the date of accident as June 9, 2018. (Arb. Ex. #2). An Incident Investigation Form lists the date of incident as August 3, 2018. (Rx.1). The Rochelle Community Hospital records dated August 6, 2018 states Petitioner's pain began "a few days ago". (Px3.). Dr. Thakkar's medical records dated October 19, 2018 states Petitioner's knee pain for the past two months. (Px.1).

An Incident Report was generated on August 3, 2018. (Rx.1). The Incident Report states Petitioner reported to the general foreman, Frank Gervais, being injured on August 3, 2018. (Id). In the Report Petitioner stated he experienced a funny feeling in the back of his left leg while descending a ladder and after about 45 minutes he began to have a lot of pain and his leg locked. (Id). The Report also states Petitioner denied medical treatment and continued working. (Id).

On August 6, 2018, Petitioner presented to the emergency room at Rochelle Hospital complaining of left knee and calf pain. (Px.3). At that time, Petitioner reported having a 20-year-old left knee injury which causes occasional pain but that he started to experience knee pain after climbing ladders at work 4-5 days ago. (Id.). The medical records state Petitioner was worried about a blood clot because he had been wearing a tightly wrapped elastic knee brace and developed some redness and pain behind his knee and into the calf. (Id.). The examination of the knee showed full range of motion, no anterior tenderness or swelling, negative Homan's test, but some mild swelling was noted in the lower leg and upper calf. (Id.). An ultrasound was performed which showed a small hematoma in the proximal aspect gastrocnemius. (Id.). Petitioner was diagnosed with a ruptured Baker's cyst and edema, calf pain and swelling, and chronic knee pain. (Id). Petitioner was discharged and told to follow up with his doctor or an orthopedic physician. (Id.).

Petitioner testified the pain in his left knee went away after August 6, 2018 and that's why he went back to work. (T.63). Petitioner testified he continued working until October 19, 2018. (T.13).

Petitioner testified on October 19, 2018 he arrived at work before 7 a.m. and started pulling wire until lunch time. (T.20). Petitioner testified after returning from lunch, which was at 12:30 p.m., he went to get wire from a material trailer. (T.23). Petitioner testified as he was walking to the material trailer, on October 19, 2018, he injured his left leg. Petitioner testified he stepped over a curb with his left leg and as he lifted his right leg, his left leg slipped in mud causing him to twist and fall to the ground. (T.27). Petitioner testified after getting up, he walked to the trailer to report the accident to the foreman, Frank Gervais. Petitioner testified he arrived at the trailer between 12:40 p.m. and 12:43 p.m. (T. 29).

Petitioner testified to telling Mr. Gervais about falling and that his leg was killing him. (T. 30). Petitioner testified, at that time, Mr. Gervais called someone, a female, who worked for Respondent. (T.32). Petitioner testified Mr. Gervais handed him the phone and he spoke to a

lady who said that she was informed the incident occurred in the parking lot and the injury wasn't going to be covered. (T.34). Petitioner testified he never mentioned to Mr. Gervais anything about a parking lot. (T.80). Petitioner testified after getting off the phone he was asked to sit down for a couple of minutes. Petitioner testified the next thing he knew, he was handed a layoff check. (T.36). Petitioner testified he stayed at the job site for another couple of hours before leaving. (T. 38, 81). Petitioner testified two other employers were also laid off that day. (T.39). Petitioner testified he left the job site and went directly to the office of his primary care physician, Dr. Thakker. (T.82).

An Incident Report was generated on October 19, 2018. (Rx.2). The Incident Report states Petitioner notified the general foreman, Frank Gervais, at 1:50 p.m. (Id). The Report states Petitioner indicated he was injured exiting the jobsite walking to his vehicle when he tripped over a curb. (Id). The Report also states the investigation identified four witnesses who were interviewed. The Report states Petitioner was laid off and escorted out of the job site 40 minutes prior to the incident and during that 40 minutes Petitioner was observed driving his vehicle into the job site, parking his vehicle, loading blocks into the back of his pickup truck and doing something under his vehicle before driving toward the main road but he returned to the job trailer and reported an injury to the foreman, Frank Gervais. (Id).

Anna Tristan testified for Respondent. Petitioner testified she is currently employed by BP as an incident investigator. Ms. Tristan testified to working for Respondent as a safety manger for 11 years and that she has master's degrees in occupational health and is an accredited safety management specialist. (T.99-100). Ms. Tristan testified she conducted the accident investigations and authored the Incident Reports. (T.122).

Ms. Tristan testified Petitioner was hired on July 2, 2018 and that he did not work for Respondent on June 9, 2018. (T.103). Ms. Tristan testified on August 3, 2018 Petitioner reported an injury to Frank Gervais who called her. (T.104). At that time, Ms. Tristan spoke to Petitioner who reported injuring his left knee while descending a ladder. (T.104, 107).

Regarding the second incident, Ms. Tristan testified on October 19, 2018, Petitioner was laid off at approximately 9:00 a.m. and that he did not perform any work for Respondent. (T. 109). Ms. Tristan testified pursuant to the labor agreement, layoffs are to occur in the morning or before lunch. (T.110). Ms. Tristan testified when employees are laid off checks are given to employees at the time they are laid off and those checks are preprinted in the East Chicago office

before being delivered to the job site. (T.11). Ms. Tristan testified she confirmed Petitioner was laid off in the morning along with 2 other employees and that all the layoffs occurred at the same time. (T. 113).

Ms. Tristan testified she received a call from Frank Gervais at 1:50 p.m. (T.112). Ms. Tristan testified her investigation revealed that Petitioner was unhappy about being laid off and he stayed in the trailer for several hours before obtaining permission to take some blocks. (T.113). After obtaining permission to take the blocks, Petitioner was observed loading blocks into the back of his truck and doing something underneath his vehicle before reporting being injured.[2] (Id).

Ms. Tristan testified to speaking to witnesses on the date the Incident Report was authored. (T.123). Ms. Tristan testified unlike her August 3, 2018 investigation, she never spoke to Petitioner over the phone for the second incident. (T.112, 120, 122). Ms. Tristan testified she did not speak to Petitioner because he was no longer an employee. (T.121).

On October 19, 2018 Petitioner presented to Dr. Thakkar of Northwestern Medical Center. (Px.1). At that time, Petitioner complained of acute left knee pain and right elbow pain. Petitioner reported injuring his left knee at work around 1 p.m. Petitioner indicated he tripped over a curb at work causing his left knee pain to significantly worsen and lock up. (Id). The medical records state Petitioner reported having bilateral knee pain for two months which initially started from repeatedly going up and down ladders for work. (Id.). The medical records further state Petitioner reported going to the ER earlier today and being told that he has a torn muscle. Petitioner was diagnosed with an acute left knee pain and right elbow pain and was referred for an orthopedic evaluation. (Id.).

On October 25, 2018, Petitioner presented to Dr. Bodner of Midwest Orthopedic Institute. (Px.2). At that time, Petitioner stated he was referred for a right elbow and left knee evaluation and he injured both body parts at the same time. The examination showed tenderness at the lateral epicondyle. X-rays were taken and found to be normal. Petitioner was assessed with exacerbation of lateral epicondylitis with a component of a joint contusion. (Id.). At that time, Dr. Bodner ordered a left knee MRI. (Id.).

[2] Petitioner testified he took the blocks a week and a half before October 19, 2018 and that he was not crawling under his truck on October 19, 2018. (T.83-84, 92). Petitioner also denied he was laid off prior to being injured. (T.53).

Petitioner returned to Dr. Bodner on November 5, 2018. At that time, Petitioner reported sustaining two injuries to his left knee during the past two months. As to the first injury, Petitioner said he was getting off a ladder, in August, and twisted which caused him to go to the emergency room. As to the second injury, Petitioner said 4 days ago he was stepping over a curb on new concreate when he slipped in the mud twisting his knee and striking his right elbow. (Id).

The examination of the left knee showed minor swelling, some limits with external rotation, tenderness slightly more lateral than medical on the joint line, and a very small effusion. Dr. Bodner stated the October 25, 2018, MRI showed a very small flap near the posterior horn attachment with significant trochea chondromalacia and a small Baker's cyst and effusion. (Id). At that time, Dr. Bodner believed Petitioner had narrowing in the medial compartment and may also have a root type of failure with the small flap. (Id.). Dr. Bodner placed Petitioner on light duty work restrictions. (Id).

Dr. Bodner subsequently recommended left knee surgery which Petitioner underwent on December 20, 2018 at Midland Surgical Center. The medical records state Petitioner was being admitted for a partial left knee medial meniscectomy after coming off a ladder and having a second twist causing significant pain. (Px.2). The medical records state an MRI confirmed a free edge tear of the posterior horn of the medial meniscus, chondral thickness at the patella and effusion with a cyst. (Id.). The post-operate report noted a flap of synovium and PCL tissue flipped anteriorly which was removed. The report also noted widespread moderate grade 3 chondromalacia of the femoral condyle which was shaved. (Id.). The report further noted the posterior horn of the meniscus had complex tear which was trimmed and removed. (Id).

After the surgery, Petitioner continued to follow up with Dr. Bodner who noted, on January 30, 2019, that Petitioner had excellent range of motion with no effusion. (Id.). Petitioner returned to Dr. Bodner on February 20, 2019, reporting falling on ice twice since his last appointment. (Id.). On April 30, 2019 followed up with Dr. Bodner complaining of pain over the medical joint line. At that time, Dr. Bodner diagnosed effusion and pain following arthroscopy probable due to over activity. (Id.). Dr. Bodner recommended a cortisone injection. (Id). On June 27, 2019, Petitioner returned to Dr. Bodner reporting medial joint line pain and, at that time, Dr. Bodner assessed left knee osteoarthritis and he recommended viscosupplements. (Id.).

On September 9, 2020, Petitioner was examined by Dr. McCall pursuant to Section 12 of the Act. (Px. 8). At that time, Petitioner reported two injures to his left knee with the first occurring on June 9, 2018 resulting in calf pain after going up and down ladders in addition to stepping on a cutter located at the base of a ladder which caused his knee to twist. Petitioner reported going to Rochelle Community Hospital and having his knee checked out the same day of the incident. (Id). Regarding the second injury, Petitioner reported stepping over a curb, slipping in mud and falling forward and twisting to the ground and striking his right elbow. (Id). Petitioner told Dr. McCall after reporting the injury to his foreman he was subsequently laid off. (Id).

Dr. McCall reviewed the October 25, 2018 MRI which, he said, showed blunting of the posterior horn of the medial meniscus with a small flap of meniscus that appears to extend up toward the PCL with chondral loss. Dr. McCall also reviewed the January 21, 2020 MRI which, he said, showed chondral loss to the medial femoral. (Id.). Dr. McCall diagnosed osteoarthritis of the left knee. Dr. McCall opined Petitioner's current complaints were not related to the work accident of June 9, 2018 or October 19, 2018. Dr. McCall opined Petitioner's current symptoms consisting of pain, stiffness, loss of motion, clicking and catching were symptoms of degenerative cartilage loss. (Id).

Dr. McCall opined Petitioner's June 19, 2018 injury was either a calf strain or exacerbation of his underlying osteoarthritis with a Backer's cyst based upon the ultrasound. As to that incident, Dr. McCall opined Petitioner reached MMI in 6 weeks. (Id.).

Regarding Petitioner's October 19, 2018 incident, Dr. McCall opined that injury involved an aggravation of a degenerative tear in the posterior horn of the medial meniscus. Dr. McCall further opined Petitioner reached MMI in 12 weeks. (Id).

As to Petitioner's condition, Dr. McCall opined that Petitioner's current complaints were solely related to his pre-existing arthritis. Dr. McCall based his opinion on the fact that 8 weeks after surgery, on February 20, 2019, Petitioner reported 90% improvement and that after April 26, 2019, Petitioner's symptoms involved his ongoing osteoarthritis. (Id). Dr. McCall opined Petitioner had a 2% permanent partial impairment as defined by the 6th edition of the AMA Guides to the Evaluation of Permanent Impairment. (Id.).

Petitioner's treating orthopedic surgeon, Dr. Bodner, authored a narrative report dated August 15, 2018. (Px.7). In that report, Dr. Bodner opined Petitioner's current condition is left

knee osteoarthritis with failed prior meniscectomy and chondral shaving of the patella and medial condyle. (Id.). As to causal connection, Dr. Bodner stated "*I never saw Mr. Weber until October 23rd which is after the second injury and I'm unable to say if the first injury had any direct causal relationship with medical certainty*." (Id). Dr. Bodner was asked whether one or both injuries contributed to Petitioner's left knee diagnosis and Dr. Bodner responded "…*I cannot speak to the first injury and isolation as I never saw him [Petitioner] between the first and second injury*." (Id.). When asked whether Petitioner's surgery was causally related to the surgery, Dr. Bodner responded "*I have no way to know the relative amount of injury sustained between the 2 events, we saw him only after the second. With regard to the surgery, the meniscal tear can be related to one of the 2 injuries with the chondral wear as likely related to age and activities on his knee."* (Id.). Dr. Bodner further stated Petitioner's "*current knee condition is post-traumatic arthritis and is a combination of his developing arthritis and meniscal tear pain that he sustained during his work injuries*." (Id.).

As to his current condition of ill-being, Petitioner testified he could do about 90% of his job as an electrician. (T.47). Petitioner testified he continues to suffer slight pain. (T.51). Petitioner testified he can walk fine but he experiences pain with twisting, kneeling and being on ladders. (T.51-52).

The Arbitrator does not find Petitioner's testimony to be credible but does find Ms. Tristan's testimony to be credible.

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. The claimant bears the burden of proving every aspect of his claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223 Ill.App.3d 706, 714 (Ill. App. 5th Dist. 1992).

With Respect to Issues "C", "E" and "F" whether Respondent was Given Proper Notice under the Act, Whether Petitioner Sustained an Accident that Arose Out of and In the Course of Employment and Whether Petitioner's Current Condition of ill-being is Causally Related to the Injury, the Arbitrator Finds as Follows:

To obtain benefits under the Act, a claimant must establish by a preponderance of the evidence that he sustained an accidental injury "arising out of" and "in the course of" his employment. 820 ILCS 305/1(d) (West 2014); *McAllister*, 2020 IL 124848, Par. 32; *Sisbro, Inc.*

v. Industrial Comm'n, 207 Ill. 2d. 193, 203 (2003); The "arising out of" component is primarily connected with causal connection. *McAllister*, 2020 IL 124848, Par. 36. An injury is said to "arise out of" one's employment if its origin is in some risk connected with or incidental to the employment so that there is a causal connection between the employment and the accidental injury. *Id.* Par. 36; *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989). A risk is "incidental to the employment" when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties. *McAllister*, 2020 IL 124848, Par. 36; *Purcell v. Illinois Workers' Compensation Comm'n*, 2021 IL App. (4th) 200359WC, Par. 18. While it is true that an employee's uncorroborated testimony will not bar a recovery under the Act, it does not mean that the employee's testimony will always support an award of benefits when considering all the testimony and circumstances shown by the totality of the evidence. *Caterpillar Tractor Co., v. Industrial Comm'n*, 83 Ill.2d 213, 46 Ill. Dec. 687, 414 N.E.2d 740 (1980). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and the medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks*, 08 IL.W.C. 004187 (Ill. Indus. Comm'n 2010).

After reviewing all the credible evidence, the Arbitrator finds Petitioner failed to prove by the preponderance of the evidence he sustained an accidental injury that arose out of and in the course of his employment with Respondent.

Petitioner alleges injuring his left leg while working for Respondent on June 9, 2018. (Arb. Ex. #1, 2). Ms. Tristan testified Respondent hired Petitioner on July 2, 2018. (T.103). Ms. Tristan testified she reviewed Petitioner's employment file as part of her hearing preparation and she confirmed that Petitioner's date of hire was July 2, 2018. Petitioner initially testified Respondent hired him on June 9, 2018 but, on cross-exam, he acknowledged that Respondent hired him on July 2, 2018. (T.55-57). The Arbitrator notes other than Petitioner's testimony he failed to proffer any other evidence supporting that he worked for Respondent on June 9, 2018 such as his paystubs for that period of time[3].

After reviewing all the credible evidence, the Arbitrator finds Petitioner failed to prove by the preponderance of the evidence he sustained an accidental injury that arose out of and in the course of his employment with Respondent on June 9, 2018. Petitioner alleges he was injured

[3] Petitioner submitted paystubs from 10/8/18 through 10/14/18 but not for the date of his alleged 6.9.18 date of accident.

coming down a ladder when he noticed a sharp pain in his lower and calf area on June 9, 2018. (T. 11, Arb. Ex. 2). Petitioner testified he went to Rochelle Community Hospital for this incident on August 6, 2018. (T. 12). Petitioner testified he never missed any time from work for this incident and he did not initially report the incident to Respondent because he was not sure it was an injury. (T.12-13, 58-59). Petitioner also acknowledged he injured his left leg going down a ladder on August 6, 2018 as reflected in the Rochelle Community Hospital records. (T.60). Contrary to Petitioner's testimony of being injured at work on June 9, 2018, he reported to Respondent that he injured his left leg on August 3, 2018. (Rx.1). At the time Petitioner reported the accident, an Incident Investigation Form was created by Ms. Tristan. The Incident Report indicates Petitioner said he injured his left leg going down a ladder on August 3, 2018. (Id.).

Petitioner testified he sought medical treatment at Rochelle Community Hospital due to being injured while working for Respondent. (T. 12). The Arbitrator finds contrary to Petitioner's testimony, he did not seek treatment at Rochelle Community Hospital for a work injury. The Arbitrator finds based upon the credible evidence it is reasonable to infer that Petitioner presented to Rochelle Community Hospital because he was worried he had a blood clot in his left leg, not for a work accident. The medical records from Rochelle Community Hospital indicates Petitioner was concerned about a blood clot because he was wearing a tightly wrapped elastic knee brace for the past few days and, that day, he noticed swelling, pain, and redness left ankle. (Id.). At the hospital, Petitioner said he was using the knee brace for a 20-year-old knee injury which occasionally causes pain. (Id.). The medical treatment provided at Rochelle Community Hospital focused upon determining whether Petitioner had a blood clot. At the hospital, Petitioner underwent a color duplex Doppler ultrasound evaluation which showed a small hematoma in the proximal aspect gastrocnemius. (Id). Petitioner was assessed as having a Baker's cyst with rupture, calf pain and swelling with some chronic knee pain. (Id).

On the Request for Hearing, Petitioner claims he provided Respondent notice of the injury on June 9, 2018. (Arb. Ex. #1). The giving of notice within the 45-day statutory period is jurisdictional and a prerequisite of the right to maintain a proceeding under the Act. Assuming *arguendo* Petitioner sustained his burden of proof regarding accident, the Arbitrator further finds Petitioner also failed to prove that he provided Respondent notice of the Accident as required under the Act.

Section 6(c) of the Illinois Workers' Compensation Act states that notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident. Section 6(c)(2) states that "[n]o defect or inaccuracy of such notice shall be a bar to the maintenance of proceeding on arbitrator or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy." 820 ILCS 305/6(c). Contrary to his claims, Petitioner did not provide Respondent notice of the injury on June 9, 2018. Petitioner testified he did not notify Respondent of his injury on June 9, 2018. (T.58-59, 61,62). Petitioner acknowledged delaying the reporting of the injury because he didn't believe he was injured. (T.63). The Arbitrator finds Petitioner notified Respondent of an alleged injury on August 3, 2018 as reflected in the Incident Investigation Form. The Arbitrator finds Petitioner provided notice of an injury 56 days after the alleged June 9, 2018 injury.

Assuming *arguendo* Petitioner sustained his burden of proof regarding accident, the Arbitrator further finds Petitioner also failed to prove that his current condition of ill-being is causally connected to a work injury.

In pre-existing condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the pre-existing disease such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of a pre-existing condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill.2d 30, 36-37. When a worker's physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment. *General Electric Co. v. Industrial Comm'n,* 89 Ill.2d 432, 60 Ill. Dec. 629, 433 N.E.2d 671 (1982). When an employee with a preexisting condition is injured in the course and of his employment the Commission must decide whether there was an accidental injury which arose out of the employment, whether the accidental injury aggravated or accelerated the preexisting condition or whether the preexisting condition alone was the cause of the injury. *Sisbro, Inc. Industrial Comm'n*, 207 Ill.2d 193, 278 Ill. Dec. 70,797 N.E.2d 665, (2003).

The medical records from Rochelle Community Hospital shows that Petitioner sought medical treatment of a possible blood clot resulting from his use of a tightly wrapped elastic knee brace. Petitioner testified his knee pain went away after August 6, 2018 and that's why he

continued working. (T.63). Additionally, Petitioner's treating physician, Dr. Bodner, was unable to proffer any causation opinions regarding Petitioner's current condition of ill-being or need for surgery to Petitioner's alleged injury of June 9, 2018. As to causal connection, Dr. Bodner stated "*I never saw Mr. Weber until October 23rd which is after the second injury and I'm unable to say if the first injury had any direct causal relationship with medical certainty*." (Px.7).

With Respect to Issues "J" and "L", the Arbitrator finds as follows:

Having found Petitioner has failed to prove by a preponderance of the credible evidence he sustained an accidental injury that arose out of and in the course of his employment and notice of his injury as required under the Act, and that his current condition of illbeing is causally related to a work injury, the Arbitrator further finds all other issues are moot and need not be addressed.

By: /s/ *Frank J. Soto* March 28, 2024
Arbitrator Date
March 29, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC032468
Case Name	Edward Weber v. Sargent Electric
Consolidated Cases	18WC032455;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0118
Number of Pages of Decision	17
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Brad Reynolds
Respondent Attorney	Steven Etzler

DATE FILED: 3/18/2025

/s/Stephen Mathis, 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

Edward Weber,

Petitioner,

vs. NO. 18 WC 32468

Sargent Electric,

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, employment, medical expenses, causal connection, permanent disability, temporary disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 29, 2024, is hereby affirmed and adopted.

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

No bond is required for removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

March 18, 2025

SJM/sj
o-2.19.25
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

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Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Brad Reynolds
Respondent Attorney	Steven Etzler

DATE FILED: 3/29/2024

/s/Frank Soto, Arbitrator
Signature

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

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

Edward Weber
Employee/Petitioner

v.

Sargent Electric
Employer/Respondent

Case # **18** WC **032468**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Frank Soto**, Arbitrator of the Commission, in the city of **Geneva, IL**, on **12/15/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **10/19/18**, Respondent ***was*** operating under and subject to the provisions of the Act.

At the time of the injury, an employee-employer relationship ***did not*** exist between Petitioner and Respondent.

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

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

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

In the year preceding the injury, Petitioner earned $**99,580**; the average weekly wage was $**1,915**.

On the date of accident, Petitioner was **55** years of age, ***single*** with **0** dependent children.

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

Respondent ***has*** 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

BENEFITS ARE DENIED AS PETITIONER FAILED TO PROVE AN EMPLOYEE/EMPLOYER RELATIONSHIP EXISTED AND THAT HE SUSTAINED AN ACCIDENTAL INJURY THAT AROSE OUT OF AND IN THE COURSE AND SCOPE OF HIS EMPLOYMENT WITH RESPONDENT AND THAT HIS CURRENT CONDITION OF ILL-BEING WAS CAUSALLY CONNECTED TO THE ALLEGED ACCIDENT.

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

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

By: /o/ Frank J. Soto
Signature of *Arbitrator*

March 29, 2024

Procedural History

Petitioner filed two Application for Adjustment Claims alleging injuries to his left knee. The date of the first incident is June 9, 2018 and was assigned case number 18 WC 032455 and the date of the second incident is October 19, 2018 and was assigned case number 18 WC 032468. (Arb. Ex. 2, 4). The issues in both cases are similar involving accident, causal condition, medical bills, TTD benefits, nature and extent of Petitioner's injury but in case number 18 WC 032468 it was disputed whether an employee and employer relationship existed and in case number 18WC032455 it was disputed whether Petitioner provided notice as required under the Act. (Arb. Ex. 1, 3). The cases proceeded to trial on December 15, 2023 and separate decisions have been issued for each case.

Findings of Fact

Ed Weber (hereinafter referred to as "Petitioner") testified on June 9, 2018 he was employed by Sargent Electric (hereinafter referred to as "Respondent") as an electrician. (T. 10). Petitioner testified he worked for Respondent for a month and a half prior to being injured at work on June 9, 2018. (T.10). Petitioner testified on June 9, 2018 he was coming down a ladder when he noticed a sharp pain in his lower leg and calf area. (T.11). Petitioner testified he continued working after the incident. (T.11). Petitioner testified he went to the emergency room at Rochelle Community Hospital on August 6, 2018. (T.12).

On cross examination, Petitioner acknowledged he started working for Respondent on July 2, 2018. (T.55-56). Petitioner subsequently testified to working for Respondent in June of 2018 but he also agreed that Respondent hired him on July 2, 2018. (T.55-57). When asked whether the incident occurred on August 3, 2018 or on June 9, 2018, Petitioner responded that he didn't recall because it happened four years ago[1]. (T.57-58).

Petitioner was asked based upon the hospital records stating you were injured going down a ladder on August 6, 2018, were you injured going down the ladder on August 6, 2018 and Petitioner responded "yes". (T.60). Petitioner acknowledged to not originally reporting the ladder incident to Respondent stating he was not sure it was an injury.

[1] The Application of Adjustment of Claim for claim number 18WC032455 lists the date of accident as June 9, 2018. (Arb. Ex. #2). An Incident Investigation Form lists the date of incident as August 3, 2018. (Rx.1). The Rochelle Community Hospital records dated August 6, 2018 states Petitioner's pain began "a few days ago". (Px3.). Dr. Thakkar's medical records dated October 19, 2018 states Petitioner's knee pain for the past two months. (Px.1).

An Incident Report was generated on August 3, 2018. (Rx.1). The Incident Report states Petitioner reported to the general foreman, Frank Gervais, being injured on August 3, 2018. (Id). In the Report Petitioner stated he experienced a funny feeling in the back of his left leg while descending a ladder and after about 45 minutes he began to have a lot of pain and his leg locked. (Id). The Report also states Petitioner denied medical treatment and continued working. (Id).

On August 6, 2018, Petitioner presented to the emergency room at Rochelle Hospital complaining of left knee and calf pain. (Px.3). At that time, Petitioner reported having a 20-year-old left knee injury which causes occasional pain but that he started to experience knee pain after climbing ladders at work 4-5 days ago. (Id.). The medical records state Petitioner was worried about a blood clot because he had been wearing a tightly wrapped elastic knee brace and developed some redness and pain behind his knee and into the calf. (Id.). The examination of the knee showed full range of motion, no anterior tenderness or swelling, negative Homan's test, but some mild swelling was noted in the lower leg and upper calf. (Id.). An ultrasound was performed which showed a small hematoma in the proximal aspect gastrocnemius. (Id.). Petitioner was diagnosed with a ruptured Baker's cyst and edema, calf pain and swelling, and chronic knee pain. (Id). Petitioner was discharged and told to follow up with his doctor or an orthopedic physician. (Id.).

Petitioner testified the pain in his left knee went away after August 6, 2018 and that's why he went back to work. (T.63). Petitioner testified he continued working until October 19, 2018. (T.13).

Petitioner testified on October 19, 2018 he arrived at work before 7 a.m. and started pulling wire until lunch time. (T.20). Petitioner testified after returning from lunch, which was at 12:30 p.m., he went to get wire from a material trailer. (T.23). Petitioner testified as he was walking to the material trailer, on October 19, 2018, he injured his left leg. Petitioner testified he stepped over a curb with his left leg and as he lifted his right leg, his left leg slipped in mud causing him to twist and fall to the ground. (T.27). Petitioner testified after getting up, he walked to the trailer to report the accident to the foreman, Frank Gervais. Petitioner testified he arrived at the trailer between 12:40 p.m. and 12:43 p.m. (T. 29).

Petitioner testified to telling Mr. Gervais about falling and that his leg was killing him. (T. 30). Petitioner testified, at that time, Mr. Gervais called someone, a female, who worked for Respondent. (T.32). Petitioner testified Mr. Gervais handed him the phone and he spoke to a

lady who said that she was informed the incident occurred in the parking lot and the injury wasn't going to be covered. (T.34). Petitioner testified he never mentioned to Mr. Gervais anything about a parking lot. (T.80). Petitioner testified after getting off the phone he was asked to sit down for a couple of minutes. Petitioner testified the next thing he knew, he was handed a layoff check. (T.36). Petitioner testified he stayed at the job site for another couple of hours before leaving. (T. 38, 81). Petitioner testified two other employers were also laid off that day. (T.39). Petitioner testified he left the job site and went directly to the office of his primary care physician, Dr. Thakker. (T.82).

An Incident Report was generated on October 19, 2018. (Rx.2). The Incident Report states Petitioner notified the general foreman, Frank Gervais, at 1:50 p.m. (Id). The Report states Petitioner indicated he was injured exiting the jobsite walking to his vehicle when he tripped over a curb. (Id). The Report also states the investigation identified four witnesses who were interviewed. The Report states Petitioner was laid off and escorted out of the job site 40 minutes prior to the incident and during that 40 minutes Petitioner was observed driving his vehicle into the job site, parking his vehicle, loading blocks into the back of his pickup truck and doing something under his vehicle before driving toward the main road but he returned to the job trailer and reported an injury to the foreman, Frank Gervais. (Id).

Anna Tristan testified for Respondent. Petitioner testified she is currently employed by BP as an incident investigator. Ms. Tristan testified to working for Respondent as a safety manger for 11 years and that she has master's degrees in occupational health and is an accredited safety management specialist. (T.99-100). Ms. Tristan testified she conducted the accident investigations and authored the Incident Reports. (T.122).

Ms. Tristan testified Petitioner was hired on July 2, 2018 and that he did not work for Respondent on June 9, 2018. (T.103). Ms. Tristan testified on August 3, 2018 Petitioner reported an injury to Frank Gervais who called her. (T.104). At that time, Ms. Tristan spoke to Petitioner who reported injuring his left knee while descending a ladder. (T.104, 107).

Regarding the second incident, Ms. Tristan testified on October 19, 2018, Petitioner was laid off at approximately 9:00 a.m. and that he did not perform any work for Respondent. (T. 109). Ms. Tristan testified pursuant to the labor agreement, layoffs are to occur in the morning or before lunch. (T.110). Ms. Tristan testified when employees are laid off checks are given to employees at the time they are laid off and those checks are preprinted in the East Chicago office

before being delivered to the job site. (T.11). Ms. Tristan testified she confirmed Petitioner was laid off in the morning along with 2 other employees and that all the layoffs occurred at the same time. (T. 113).

Ms. Tristan testified she received a call from Frank Gervais at 1:50 p.m. (T.112). Ms. Tristan testified her investigation revealed that Petitioner was unhappy about being laid off and he stayed in the trailer for several hours before obtaining permission to take some blocks. (T.113). After obtaining permission to take the blocks, Petitioner was observed loading blocks into the back of his truck and doing something underneath his vehicle before reporting being injured.[2] (Id).

Ms. Tristan testified to speaking to witnesses on the date the Incident Report was authored. (T.123). Ms. Tristan testified unlike her August 3, 2018 investigation, she never spoke to Petitioner over the phone for the second incident. (T.112, 120, 122). Ms. Tristan testified she did not speak to Petitioner because he was no longer an employee. (T.121).

On October 19, 2018 Petitioner presented to Dr. Thakkar of Northwestern Medical Center. (Px.1). At that time, Petitioner complained of acute left knee pain and right elbow pain. Petitioner reported injuring his left knee at work around 1 p.m. Petitioner indicated he tripped over a curb at work causing his left knee pain to significantly worsen and lock up. (Id). The medical records state Petitioner reported having bilateral knee pain for two months which initially started from repeatedly going up and down ladders for work. (Id.). The medical records further state Petitioner reported going to the ER earlier today and being told that he has a torn muscle. Petitioner was diagnosed with an acute left knee pain and right elbow pain and was referred for an orthopedic evaluation. (Id.).

On October 25, 2018, Petitioner presented to Dr. Bodner of Midwest Orthopedic Institute. (Px.2). At that time, Petitioner stated he was referred for a right elbow and left knee evaluation and he injured both body parts at the same time. The examination showed tenderness at the lateral epicondyle. X-rays were taken and found to be normal. Petitioner was assessed with exacerbation of lateral epicondylitis with a component of a joint contusion. (Id.). At that time, Dr. Bodner ordered a left knee MRI. (Id.).

[2] Petitioner testified he took the blocks a week and a half before October 19, 2018 and that he was not crawling under his truck on October 19, 2018. (T.83-84, 92). Petitioner also denied he was laid off prior to being injured. (T.53).

Petitioner returned to Dr. Bodner on November 5, 2018. At that time, Petitioner reported sustaining two injuries to his left knee during the past two months. As to the first injury, Petitioner said he was getting off a ladder, in August, and twisted which caused him to go to the emergency room. As to the second injury, Petitioner said 4 days ago he was stepping over a curb on new concreate when he slipped in the mud twisting his knee and striking his right elbow. (Id).

The examination of the left knee showed minor swelling, some limits with external rotation, tenderness slightly more lateral than medical on the joint line, and a very small effusion. Dr. Bodner stated the October 25, 2018, MRI showed a very small flap near the posterior horn attachment with significant trochea chondromalacia and a small Baker's cyst and effusion. (Id). At that time, Dr. Bodner believed Petitioner had narrowing in the medial compartment and may also have a root type of failure with the small flap. (Id.). Dr. Bodner placed Petitioner on light duty work restrictions. (Id).

Dr. Bodner subsequently recommended left knee surgery which Petitioner underwent on December 20, 2018 at Midland Surgical Center. The medical records state Petitioner was being admitted for a partial left knee medial meniscectomy after coming off a ladder and having a second twist causing significant pain. (Px.2). The medical records state an MRI confirmed a free edge tear of the posterior horn of the medial meniscus, chondral thickness at the patella and effusion with a cyst. (Id.). The post-operate report noted a flap of synovium and PCL tissue flipped anteriorly which was removed. The report also noted widespread moderate grade 3 chondromalacia of the femoral condyle which was shaved. (Id.). The report further noted the posterior horn of the meniscus had complex tear which was trimmed and removed. (Id).

After the surgery, Petitioner continued to follow up with Dr. Bodner who noted, on January 30, 2019, that Petitioner had excellent range of motion with no effusion. (Id.). Petitioner returned to Dr. Bodner on February 20, 2019, reporting falling on ice twice since his last appointment. (Id.). On April 30, 2019 followed up with Dr. Bodner complaining of pain over the medical joint line. At that time, Dr. Bodner diagnosed effusion and pain following arthroscopy probable due to over activity. (Id.). Dr. Bodner recommended a cortisone injection. (Id). On June 27, 2019, Petitioner returned to Dr. Bodner reporting medial joint line pain and, at that time, Dr. Bodner assessed left knee osteoarthritis and he recommended viscosupplements. (Id.).

On September 9, 2020, Petitioner was examined by Dr. McCall pursuant to Section 12 of the Act. (Px. 8). At that time, Petitioner reported two injures to his left knee with the first occurring on June 9, 2018 resulting in calf pain after going up and down ladders in addition to stepping on a cutter located at the base of a ladder which caused his knee to twist. Petitioner reported going to Rochelle Community Hospital and having his knee checked out the same day of the incident. (Id). Regarding the second injury, Petitioner reported stepping over a curb, slipping in mud and falling forward and twisting to the ground and striking his right elbow. (Id). Petitioner told Dr. McCall after reporting the injury to his foreman he was subsequently laid off. (Id).

Dr. McCall reviewed the October 25, 2018 MRI which, he said, showed blunting of the posterior horn of the medial meniscus with a small flap of meniscus that appears to extend up toward the PCL with chondral loss. Dr. McCall also reviewed the January 21, 2020 MRI which, he said, showed chondral loss to the medial femoral. (Id.). Dr. McCall diagnosed osteoarthritis of the left knee. Dr. McCall opined Petitioner's current complaints were not related to the work accident of June 9, 2018 or October 19, 2018. Dr. McCall opined Petitioner's current symptoms consisting of pain, stiffness, loss of motion, clicking and catching were symptoms of degenerative cartilage loss. (Id).

Dr. McCall opined Petitioner's June 19, 2018 injury was either a calf strain or exacerbation of his underlying osteoarthritis with a Backer's cyst based upon the ultrasound. As to that incident, Dr. McCall opined Petitioner reached MMI in 6 weeks. (Id.).

Regarding Petitioner's October 19, 2018 incident, Dr. McCall opined that injury involved an aggravation of a degenerative tear in the posterior horn of the medial meniscus. Dr. McCall further opined Petitioner reached MMI in 12 weeks. (Id).

As to Petitioner's condition, Dr. McCall opined that Petitioner's current complaints were solely related to his pre-existing arthritis. Dr. McCall based his opinion on the fact that 8 weeks after surgery, on February 20, 2019, Petitioner reported 90% improvement and that after April 26, 2019, Petitioner's symptoms involved his ongoing osteoarthritis. (Id). Dr. McCall opined Petitioner had a 2% permanent partial impairment as defined by the 6th edition of the AMA Guides to the Evaluation of Permanent Impairment. (Id.).

Petitioner's treating orthopedic surgeon, Dr. Bodner, authored a narrative report dated August 15, 2018. (Px.7). In that report, Dr. Bodner opined Petitioner's current condition is left

knee osteoarthritis with failed prior meniscectomy and chondral shaving of the patella and medial condyle. (Id.). As to causal connection, Dr. Bodner stated "*I never saw Mr. Weber until October 23rd which is after the second injury and I'm unable to say if the first injury had any direct causal relationship with medical certainty*." (Id). Dr. Bodner was asked whether one or both injuries contributed to Petitioner's left knee diagnosis and Dr. Bodner responded "…*I cannot speak to the first injury and isolation as I never saw him [Petitioner] between the first and second injury*." (Id.). When asked whether Petitioner's surgery was causally related to the surgery, Dr. Bodner responded "*I have no way to know the relative amount of injury sustained between the 2 events, we saw him only after the second. With regard to the surgery, the meniscal tear can be related to one of the 2 injuries with the chondral wear as likely related to age and activities on his knee."* (Id.). Dr. Bodner further stated Petitioner's "*current knee condition is post-traumatic arthritis and is a combination of his developing arthritis and meniscal tear pain that he sustained during his work injuries*." (Id.).

As to his current condition of ill-being, Petitioner testified he could do about 90% of his job as an electrician. (T.47). Petitioner testified he continues to suffer slight pain. (T.51). Petitioner testified he can walk fine but he experiences pain with twisting, kneeling and being on ladders. (T.51-52).

The Arbitrator does not find Petitioner's testimony to be credible but does find Ms. Tristan's testimony to be credible.

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. The claimant bears the burden of proving every aspect of his claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223 Ill.App.3d 706, 714 (Ill. App. 5th Dist. 1992).

With Respect to Issues "B", "C" and "F" Whether an Employee-employer relationship existed, whether Petitioner Sustained an Accident that Arose Out of and In the Course of Employment and whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator Finds as Follows:

To obtain benefits under the Act, a claimant must establish by a preponderance of the evidence that he sustained an accidental injury "arising out of" and "in the course of" his employment. 820 ILCS 305/1(d) (West 2014); *McAllister*, 2020 IL 124848, Par. 32; *Sisbro, Inc.*

v. Industrial Comm'n, 207 Ill. 2d. 193, 203 (2003); The "arising out of" component is primarily connected with causal connection. *McAllister*, 2020 IL 124848, Par. 36. An injury is said to "arise out of" one's employment if its origin is in some risk connected with or incidental to the employment so that there is a causal connection between the employment and the accidental injury. *Id.* Par. 36; *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989). A risk is "incidental to the employment" when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties. *McAllister*, 2020 IL 124848, Par. 36; *Purcell v. Illinois Workers' Compensation Comm'n*, 2021 IL App. (4th) 200359WC, Par. 18. While it is true that an employee's uncorroborated testimony will not bar a recovery under the Act, it does not mean that the employee's testimony will always support an award of benefits when considering all the testimony and circumstances shown by the totality of the evidence. *Caterpillar Tractor Co., v. Industrial Comm'n*, 83 Ill.2d 213, 46 Ill. Dec. 687, 414 N.E.2d 740 (1980). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and the medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks*, 08 IL.W.C. 004187 (Ill. Indus. Comm'n 2010).

There were no witnesses to Petitioner's alleged fall and, therefore, the Arbitrator must take the credibility of the witnesses as well as other evidence into consideration to determine whether Petitioner sustained his burden of proof. After reviewing all the credible evidence, the Arbitrator finds Petitioner failed to prove by the preponderance of the evidence he sustained an accidental injury that arose out of and in the course of his employment with Respondent.

The Arbitrator finds the testimony of Ms. Tristan to be credible. Ms. Tristan reviewed Petitioner's employment file prior to testifying and was familiar with the circumstances regarding his hiring and separation of employment with Respondent. Ms. Tristan investigation included interviewing witnesses and a site inspection. Based upon Ms. Tristan's investigation Respondent denied the claim believing that Petitioner was not injured on October 19, 2018 while employed by Respondent. The Arbitrator notes Petitioner did not claim being injured while walking to his personal vehicle after leaving work and, therefore, the Arbitrator need not address whether this case falls under any of the exceptions to the general rule that employees who slip and fall off the employer's premises while going to or from work do not arise out of and in the course of employment and are not compensable under the Act.

Petitioner testified he was laid off after lunch when he reported his injury. Ms. Tristan testified Petitioner was laid off in the morning of October 19, 2018 along with two other employees. Ms. Tristan testified, as part of her investigation, she confirmed Petitioner was laid off in the morning and that he did not work for Respondent that day. (T.109, 113). Ms. Tristan testified layoffs are performed pursuant to the terms of the labor agreement. (T. 110). Ms. Tristan testified when employees are laid off, they receive a paycheck and the paychecks are generated at Respondent's East Chicago office and delivered to the jobsite to be presented at the time of the layoff. (T. 113). Ms. Tristan testified the amount of the preprinted paycheck would be incorrect had Petitioner worked in the afternoon under the terms of the labor agreement. (Id.). The Arbitrator finds based upon the credible evidence it is reasonable to infer that Petitioner was laid off in the morning of October 19, 2018 and he did not work for Respondent on that date.[3]

Petitioner testified to speaking to a lady on the phone, on October 19, 2018, after reporting his work injury and that he did not load blocks in the back of his truck after being laid off. Petitioner testified he loaded the blocks into his truck more than a week before his alleged October 19, 2018 work accident. Ms. Tristan testified she never spoke to Petitioner over the phone on October 19, 2018 because he wasn't employed by Respondent at the time of the alleged injury. (T.121). Ms. Tristan testified to speaking to Petitioner over the phone on August 3, 2018, which was the day he reported the prior incident. (T. 121-122). As part of her investigation Ms. Tristan spoke to several witnesses. Ms. Tristan testified her investigation revealed Petitioner was unhappy after being laid off and that he was observed loading blocks into his truck after being laid off on October 19, 2018 which occurred prior to Petitioner reporting being injured. (T.113, Rx.2). Based upon the credible evidence presented, the Arbitrator finds it reasonable to infer that Petitioner loaded the blocks into his truck on October 19, 2018 after being laid off.

The Arbitrator notes Petitioner also provided inaccurate histories regarding the onset of his symptoms to various doctors. On September 9, 2020, Petitioner told Dr. McCall he was seen at Rochelle Community Hospital on the same day he injured his left knee. (Px. 8). Petitioner also told Dr. Thakkar, on October 19, 2018, he received medical treatment at Rochelle

[3] Based upon the finding that Petitioner was laid off in the morning of 10/19/18 prior to his alleged injury the Arbitrator also finds that Petitioner failed to prove by the preponderance of the evidence that the relationship between Petitioner and Respondent was one of employee and employer.

Community Hospital earlier that day. (Px.1). However, Petitioner's alleges injuring his knee on June 9, 2018 but he was seen at Rochelle Community Hospital on August 6, 2018.

While at the Rochelle Community Hospital Petitioner reported a history of a 20-year-old left knee injury which caused occasional pain but that he started experiencing knee pain after climbing ladders at work 4-5 days ago. (Px. 3). Based upon the history Petitioner provided at Rochelle Community Hospital the onset of his symptoms was on the first or second of August which is almost two months after the alleged June 9, 2018 work accident. Petitioner reported to Dr. McCall that he stepped off a ladder onto a cutter which caused his knee to twist. The Arbitrator notes the history Petitioner provided to Dr. McCall was inconsistent with his trial testimony. Petitioner also reported Dr. Thakkar he injured his right elbow when he fell on October 19, 2018 which, the Arbitrator finds, was inconsistent with Petitioner's trial testimony.

Assuming *arguendo* Petitioner sustained his burden of proof regarding accident, the Arbitrator further finds Petitioner also failed to prove that his current condition of ill-being is causally connected to a work injury.

In pre-existing condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the pre-existing disease such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of a pre-existing condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill.2d 30, 36-37. When a worker's physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment. *General Electric Co. v. Industrial Comm'n,* 89 Ill.2d 432, 60 Ill. Dec. 629, 433 N.E.2d 671 (1982). When an employee with a preexisting condition is injured in the course and of his employment the Commission must decide whether there was an accidental injury which arose out of the employment, whether the accidental injury aggravated or accelerated the preexisting condition or whether the preexisting condition alone was the cause of the injury. *Sisbro, Inc. Industrial Comm'n*, 207 Ill.2d 193, 278 Ill. Dec. 70,797 N.E.2d 665, (2003).

The Arbitrator notes that Petitioner's treating physician, Dr. Bodner was unable to opine that Petitioner's current condition was causally related to the alleged October 19, 2018 injury.[4] As to causal connection, Dr. Bodner stated "*I never saw Mr. Weber until October 23rd which is after the second injury and I'm unable to say if the first injury had any direct causal relationship with medical certainty*." (Id). When asked whether Petitioner's surgery was causally related to the surgery, Dr. Bodner responded "*I have no way to know the relative amount of injury sustained between the 2 events, we saw him only after the second. With regard to the surgery, the meniscal tear can be related to one of the 2 injuries with the chondral wear as likely related to age and activities on his knee."* (Id.).

Assuming Dr. Bodner opined that Petitioner's current condition was causally related to the October 19, 2018 accident the Arbitrator would not afford much weight to that opinion because the medical history Petitioner provided to Dr. Bodner was inaccurate. As stated above, Arbitrator found Petitioner provided inaccurate histories regarding the onset of his symptoms to various doctors including Dr. Bodner. It is axiomatic that the weight accorded an expert opinion is measured by the facts supporting it and the reasons given for it; an expert opinion cannot be based on guess, surmise, or conjecture. *Wilfert v. Retirement Board*, 318 Ill. App.3d.507, 514-15 (First Dist. 2000). Petitioner's inconsistent histories regarding the onset of his symptoms undermines the causation opinions of his treating physicians. The Commission has ruled it is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical testimony. *Caterpillar Tractor Co. v. Industrial Comm'n*, 124 Ill. App. 3d 650 (1984).

Additionally, the medical evidence does not support that Petitioner's current condition of ill-being is causally related to his injury. Petitioner reported to Dr. Thakkar, his primary care physician, that he was experiencing bilateral knee pain for two months prior to October 19, 2018. Drs. Bodner and McCall diagnosed osteoarthritis of the left knee. Dr. McCall opined Petitioner's current complaints and diagnosis were not related to either Petitioner's June 9, 2018 accident or the October 19, 2018 accident. Dr. McCall opined regardless of Petitioner's claimed accidents, the degenerative cartilage loss in Petitioner's left knee would have caused pain, stiffness, loss of

[4] In case number 19 WC 032455 Petitioner alleged sustaining a work accident on June 9, 2018. The testimony at trial showed that Petitioner wasn't working for Respondent on June 9, 2018. In that case, the Arbitrator found Petitioner failed to prove he suffered an accident at work on June 9, 2018.

motion, clicking, catching and a feeling of giving away which is identical to the complaints noted by Petitioner.

With Respect to Issues "J", "K", and "L", the Arbitrator finds as follows:

Having found Petitioner has failed to prove by a preponderance of the credible evidence that an employee employer relationship existed, failed to prove he sustained an accidental injury that arose out of and in the course of his employment, and failed to prove that is current condition of ill-being was causally related to a work injury. As such, the Arbitrator further finds all other issues are moot and need not be addressed.

By: /s/ *Frank J. Soto* March 28, 2024
Arbitrator Date

March 29, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC000663
Case Name	Michael Gelsinger v. City of Centralia
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0119
Number of Pages of Decision	20
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Michael Bantz

DATE FILED: 3/19/2025

/s/Carolyn Doherty,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

Michael Gelsinger,

Petitioner,

vs. NO: 24 WC 000663

City of Centralia,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, and whether Petitioner suffered a compensable accident and whether Petitioner can be awarded temporary total disability (TTD) without any restrictions prescribed, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

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

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

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

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

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.

March 19, 2025

O: 03/17/25
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC000663
Case Name	Michael Gelsinger v. City of Centralia
Consolidated Cases	24WC000667;
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Michael Bantz

DATE FILED: 8/28/2024

/s/Jeanne AuBuchon, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF AUGUST 27, 2024 4.685%

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)

Michael Gelsinger
Employee/Petitioner

v.

City of Centralia
Employer/Respondent

Case # **24** WC **00663**

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, Illinois**, on **July 31, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **September 10, 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 $**79,999.92**; the average weekly wage was $**1,538.46**.

On the date of accident, Petitioner was **42** years of age, ***married*** with **5** 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 $**6,336.54** under Section 8(j) of the Act.

ORDER

Respondent shall pay the reasonable and necessary medical services outlined in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act.

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

Respondent shall authorize and pay for the postoperative therapies and follow-up visits as recommended by Dr. Bradley.

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

August 28, 2024

PROCEDURAL HISTORY

This matter proceeded to trial on July 31, 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 current left shoulder condition; 2) payment of medical bills as to liability; and 3) entitlement to prospective medical care.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 42 years old and employed by the Respondent as a firefighter. (AX1, T. 10) On September 10, 2023, the Petitioner was performing CPR on someone that was in an awkward position, and when he reached down to do the second set of compressions, he lost his balance because his leg got caught between the patient and the bed. (T. 10) He fell forward, heard a loud pop in his left shoulder and felt pain in his back and back of his shoulder area. (Id.) The Petitioner denied having any prior care, treatment, surgeries, workers' compensation claims or MRIs to that shoulder. (T. 10-11) He said he never missed work or was limited in his work in any way because of his shoulder. (T. 11) He said he had normal range of motion. (T. 20) He said that two days before the accident, he was fighting a structure fire and was able to reach above his head to pull a hose weighing 75-80 pounds. (T. 18-20)

On September 14, 2023, the Petitioner saw his primary care provider Dr. Rajendra Shroff at SSM Health for left shoulder pain/rotator cuff tear. (PX3) Dr. Shroff advised the Petitioner to rest from work and allowed him to return to work on September 21, 2023. (Id.)

The Petitioner testified that on September 28, 2023, he was reaching to help pick up a patient who had overdosed and was lying on a picnic table when he felt a stabbing in his left shoulder. (T. 12) He said he was still having shoulder pain from the first accident at the time of the second accident and that his pain was worse after the first accident than the second. (Id.)

The next day, the Petitioner returned to Dr. Shroff, who referred the Petitioner to Dr. Joon Ahn, an orthopedic surgeon at the Orthopaedic Center of Southern Illinois, and kept the Petitioner off work until October 16, 2023. (PX3) Dr. Shroff ordered shoulder X-rays that were performed on October 1, 2023, at SSM Health St. Mary's Centralia and showed mild degenerative changes in the acromioclavicular (AC) joint and moderate degenerative changes in the glenohumeral joint with narrowing, osteophytes and small osteocartilaginous loose bodies in the infracoracoid region. (PX5, PX6) On October 13, 2023, the Petitioner saw Dr. Shroff, who noted that the Petitioner was to see ortho in 10-14 days and took the Petitioner off work until November 1, 2023. (PX3)

On October 23, 2023, the Petitioner saw Dr. Ahn and complained of left shoulder pain since September 10, 2023, and described the work accident on that date. (PX6, RX4) He said he did have pain in his left shoulder before but it got a lot worse after the work incident. (Id.) Dr. Ahn performed a physical examination and diagnosed left shoulder severe glenohumeral joint arthritis. (Id.) He stated that for this to have happened at the Petitioner's age, there had to be some kind of previous trauma that caused damage to the glenohumeral joint cartilage. (Id.) He said this had been going on for years and had simply gotten worse recently. (Id.) He could not say this was a work-related condition unless the Petitioner could pinpoint a specific incident that happened at work where he fell a few years ago or traumatized that shoulder. (Id.) He recommended anti-inflammatory medication, subsequent cortisone shot and – as a last resort – joint replacement surgery. (Id.) He allowed the Petitioner to work full duty with no restrictions. (Id.) Dr. Ahn did not testify.

The Petitioner testified that Dr. Ahn did nothing for him, spoke to him for about two minutes and told him to take anti-inflammatories, which he can't take because he is on blood thinners. (T. 14) He said he told Dr. Ahn that he was on blood thinners. (T. 26) This medication

was indicated in Dr. Ahn's records. (PX6) The Petitioner testified that Dr. Ahn touched his shoulder in two places and asked if it hurt but did not move his arm around. (T. 26-27) He was dissatisfied with Dr. Ahn and went back to Dr. Shroff and got another referral – to Dr. Peter Mulhern, an orthopedic surgeon at Deaconess Clinics. (T. 14-15)

The Petitioner saw Dr. Mulhern on December 6, 2023, and reported hurting his shoulder after doing CPR. (PX4, RX5) He told Dr. Mulhern that he had known about some arthritis in his left shoulder for many years but had been able to work around it without too much difficulty. (Id.) Dr. Mulhern performed a physical examination, but his notes did not contain any examination details for the left shoulder. (Id.) He stated in his narrative that his examination definitely demonstrated some elements of adhesive capsulitis that may be somewhat reversible with a prolonged exercise program. (Id.) Dr. Mulhern diagnosed pain and osteoarthritis of the left shoulder joint, administered a corticosteroid injection for treatment of osteoarthritis and ordered an MRI. (Id.)

The Petitioner testified that the MRI was performed in a mobile unit at Crossroads Community Hospital. (T. 15-16) On the MRI taken on December 11, 2023, was moderately compromised due to motion artifact and fat saturation artifact. (PX4, PX7, RX5) Radiologist Dr. Randy Balmforth noted moderate to severe osteoarthritic changes of the left glenohumeral joint with a large reactive joint effusion, mild-to-moderate rotator cuff tendinosis without a full-thickness tear and mild osteoarthritic changes of the AC joint. (Id.)

At a follow-up visit to Dr. Mulhern on December 18, 2023, the Petitioner reported that the injection did not help. (PX4, RX5) Dr. Mulhern stated that the MRI confirmed the advanced degenerative changes in the glenohumeral joint with significant osteophyte formation along the medial inferior margin of the humeral neck and flattening of the humeral head with almost

complete loss of the joint space. (Id.) The Petitioner told Dr. Mulhern that his symptoms had been worse since September, and Dr. Mulhern wrote that he explained to the Petitioner that the changes in his shoulder had been present for a long time, so he was not sure why his pain had increased over the past three months. (Id.) Although his review of the MRI would indicate that the Petitioner's rotator cuff appeared intact, he thought there was some rotator cuff insufficiency. (Id.) In his physical examination, Dr. Mulhern noted limited shoulder mobility with pain complaints. (Id.) Dr. Mulhern referred the Petitioner for physical therapy. (Id.) Dr. Mulhern did not testify.

The Petitioner testified that he again was disappointed with his treatment again because the MRI showed an artifact, and Dr. Mulhern could not say definitively what the entire issue was. (T. 16) He stated that at that time, his symptoms were extreme – his range of motion was very limited, and he had pain constantly. (Id.) The Petitioner said he then saw his attorney, who referred him to Dr. Matthew Bradley, an orthopedic surgeon with Metro East Orthopedics. (Id.)

The Petitioner saw Dr. Bradley on January 11, 2024, with complaints of left shoulder pain that began on June 10, 2023, (sic) when performing CPR. (PX8) He reported a long history of some very mild shoulder achiness at the end of the day but had full, unrestricted range of motion and was able to pass all of his physicals for the fire department. (Id.) He said the pain he was experiencing at that time was a pain he never had before and that his loss of strength and motion were symptoms he had never experienced. (Id.) Dr. Bradley performed X-rays and reviewed the MRI, which he said revealed moderate to severe osteoarthritic changes of the left glenohumeral joint with a large reactive joint effusion, mild to moderate rotator cuff tendinosis without a full-thickness tear and mild osteoarthritic changes of the AC joint. (Id.)

Dr. Bradley diagnosed severe bone-on-bone arthritis with likely large underlying rotator cuff tear. (Id.) He noted shortcomings with the MRI and ordered a new one to appreciate the

integrity of the rotator cuff. (Id.) He stated that given the mechanism of injury and reported change in symptoms, he felt there was very likely an acute rotator cuff tear on top of the Petitioner's pre-existing degenerative disease. (Id.) He stated that certainly there was a component of exacerbation of the degenerative disease. (Id.) He recommended a cortisone injection and gave work restrictions of no lifting greater than 1 pound, no pushing or pulling greater than 2 pounds and no repetitive use of the left upper extremity. (Id.)

That same day, the Petitioner underwent an MRI arthrogram performed by Dr. Matthew Ruyle, a radiologist at Imaging Partners of Missouri. (PX9) Dr. Ruyle found: 1) severe glenohumeral arthrosis with marked erosive change of both humeral head and glenoid, circumferential degenerative labral tearing/fraying with extensive debris and loose body formation throughout the glenohumeral joint space and biceps tendon sheath; and 2) supraspinatus and infraspinatus glenohumeral sided enthesopathic changes without evidence for tear. (Id.) Dr. Ruyle also performed a steroid injection. (Id.)

On January 18, 2024, the Petitioner returned to Dr. Bradley and reported that his pain was slightly better after the injection, although he really did not have any increased function. (PX8) He said he was working light duty. (Id.) Dr. Bradley reviewed the January 11, 2024, MRI and found a large labral tear and loose body. (Id.) He diagnosed exacerbation of underlying degenerative disease of the left shoulder and said the rotator cuff was intact. (Id.) He discussed with the Petitioner continued nonoperative treatment versus operative intervention. (Id.) Dr. Bradley stated that given the severity of the Petitioner's pain and inability to function to perform his job activities, the Petitioner wanted to move forward with surgery. (Id.) Dr. Bradley felt shoulder replacement surgery would be the only predictable procedure that would give the Petitioner pain relief as well as improved function. (Id.) He continued work restrictions. (Id.)

On February 26, 2024, the Petitioner underwent a Section 12 examination by Dr. Lyndon Gross, an orthopedic surgeon at Ortho Missouri. (RX1, Deposition Exhibit 2) Dr. Gross reviewed the Petitioner's medical records, took a history and performed a physical examination. (Id.) The Petitioner told him about the two accidents and stated that prior to those injuries, he had 2/10 pain in his shoulder mostly over the anterior aspect of the left shoulder, but it did not interfere with the activities he was required to do at work. (Id.) He said that at the time of the second accident, the pain in his shoulder was 6/10 – both over the anterior and posterior aspects of the shoulder – and described it as a sharp pain that gave him difficulty sleeping on his left side. (Id.) He said he had problems when he tried to do any activities above shoulder. (Id.)

Dr. Gross took X-rays and reviewed the prior imaging. (Id.) On the January 22, 2024, MRI, Dr. Gross found: severe osteoarthritis of the glenohumeral joint with loss of cartilage and a large osteophyte on the humeral head; loose bodies in the subcoracoid space; tendinopathy of the rotator cuff but no full-thickness tear; degenerative tearing of the superior labrum; possible partial tearing of the biceps tendon; and degeneration of the AC joint. (Id.)

Dr. Gross diagnosed left shoulder glenohumeral osteoarthritis. (Id.) He believed the either of the activities the Petitioner was performing at the times of the reported accidents may have exacerbated the Petitioner's underlying left shoulder severe osteoarthritis, but he did not believe the accidents caused or aggravated this underlying process. (Id.) He said the first MRI did not show any fracture or significant subchondral edema that would have been more consistent with a more acute injury. (Id.) On the second MRI, Dr. Gross noted the labral tearing, adding that there did not appear to be any subchondral fracture, subchondral edema or a displaced labral tear that would be more consistent with an acute injury. (Id.)

Dr. Gross believed the treatment to date was reasonable and necessary as it related to the work injury. (Id.) He said the shoulder replacement recommended by Dr. Bradley would not be unreasonable for the Petitioner if he was having continued significant problems, adding that it was not related to the work-related injuries. (Id.) He said that due to the severe osteoarthritis of the Petitioner's left shoulder, he would require surgical intervention at some point in time, regardless of any injury sustained from the work accidents. (Id.) He said the Petitioner was at maximum medical improvement for his work-related injury and required no additional work-related treatment. (Id.) He also said the Petitioner did not require work restrictions as it related to the work accidents, and any restrictions would be related to the underlying left shoulder osteoarthritis. (Id.) He recommended restrictions of no lifting more than 25 pounds below shoulder and no lifting above shoulder level. (Id.)

Dr. Bradley performed a left total shoulder replacement and removal of three loose bodies on March 20, 2024, and took the Petitioner off work. (PX8, PX10) At a follow-up visit on April 4, 2024, Dr. Bradley found that overall, the Petitioner was doing extremely well. (PX8) He gave restrictions of desk work only. (Id.) The Petitioner underwent physical therapy and continued to follow up with Dr. Bradley. (Id.) On May 30, 2024, Dr. Bradley gave work restrictions of no lifting greater than 1 pound, no pushing or pulling greater than 5 pounds and no repetitive or overhead use of the left upper extremity. (Id.)

Dr. Bradley testified consistently with his records at a deposition on June 5, 2024. (PX12) He stated that after talking to the Petitioner about his function before the September 10, 2023, accident, examining him and reading the medical records, it was pretty clear that the injury he sustained in September exacerbated the underlying degenerative disease, giving him the symptoms, pain and dysfunction for which he was seeking treatment. (Id.) As to the second

accident, Dr. Bradley said it wasn't really a new injury and just made the Petitioner's pain a little bit worse for the time being. (Id.)

Regarding his recommendation of shoulder replacement surgery, Dr. Bradley explained that the Petitioner had been dealing with pain for four months, had what he thought was an appropriate and good amount of nonoperative treatment and a cortisone injection that helped a little bit but didn't change too much, so he felt that nonoperative treatment failed. (Id.) He said he would not have recommended surgery but for the September 10, 2023, accident. (Id.) He did not believe the Petitioner would have improved without surgery. (Id.)

For continuing post-surgical treatment, Dr. Bradley stated that typically when patients get their range of motion back, they start a strengthening program, then an endurance program. (Id.)

Dr. Bradley had reviewed Dr. Gross's report and voiced his agreement that the Petitioner suffered an exacerbation of his underlying degenerative disease and that the treatment was reasonable and necessary. (Id.) He was puzzled by Dr. Gross's definition of aggravation. (Id.) He said he uses the term exacerbate to mean the injury brought on pain in an acute phase but if that pain does not return to its baseline for a sustained period of time, he would give it an aggravation diagnosis. (Id.) He disagreed with Dr. Gross's statement that the Petitioner was at maximum medical improvement for the work injury because the Petitioner never got back to the level of function and pain he was at prior to the work injury. (Id.)

Dr. Gross testified consistently with his report at a deposition on July 18, 2024. (RX1) He explained that an exacerbation is something that causes an underlying degenerative problem to become symptomatic but does not anatomically change that condition, adding that it is a temporary increase in pain related to the underlying degenerative condition. (Id.) He stated that an aggravation actually causes an anatomic change in the underlying condition to worsen the

condition. (Id.) He said aggravations are permanent. (Id.) In this case, he said there was an acute finding on the MRI of swelling of the joint but no fracture or rotator cuff tear that could be accounted for as a more acute finding that changed the underlying anatomy of the degenerative, arthritic shoulder. (Id.)

Regarding the proposed shoulder replacement surgery, Dr. Gross expressed reluctance to perform that procedure on a patient in the Petitioner's age group unless all other nonoperative measures failed because there is a potential for complications of early wear or failure of the replacement. (Id.) He said that, based on the severity of the Petitioner's osteoarthritis studies and MRI, "at some point in time" he would be a candidate for a shoulder replacement regardless of work-related injuries. (Id.) He stated that the appropriate treatment for any exacerbation of an underlying degenerative condition would be a corticosteroid injection, nonsteroidal anti-inflammatory and home or formal physical therapy over the span of six to twelve weeks. (Id.) He said that after that point, any other treatment would be related to the Petitioner's osteoarthritis. (Id.) At that time, he recommended restrictions of no lifting greater than 50 pounds blow shoulder level and 25 pounds above shoulder level. (Id.)

On cross-examination, Dr. Gross testified that he did not detect any signs of symptom magnification or malingering in his examination. (Id.) He acknowledged that both after the accidents and at the Section 12 examination five months later, the Petitioner rated his pain at 6/10, while before the accident he had 2/10 pain that did not interfere with his work activities. (Id.) He agreed that the Petitioner's pain had not returned to the baseline before the accidents. (Id.)

At his last visit to Dr. Bradley on July 25, 2024, the Petitioner was continuing to do well. (Id.) His motion was significantly improved, but he reported continued weakness. (Id.) Dr. Bradley noted weakness about the supraspinatus and subscapularis, although there was not a lot of

pain with testing. (Id.) Dr. Bradley ordered more aggressive therapy with strengthening. (Id.) He decreased restrictions to no lifting greater than 5 pounds, no pushing or pulling greater than 10 pounds and no repetitive or overhead use of the left upper extremity. (Id.)

The Petitioner testified that right before his operation, he was having constant pain, could not lift his arm more than 80 or 85 degrees in front of him and had trouble sleeping. (T. 17) He said the surgery helped. (Id.) He said he was undergoing physical therapy, had lost 55-60 pounds and was doing home exercises. (T. 17-18) He said he was glad he had the surgery and was doing much better. (T. 21)

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. His testimony was consistent with his reports to the doctors. Dr. Gross found no indication of exaggeration or malingering.

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

An accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it is a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 672-673 (2003). Employers are to take their employees as they find them. *A.C. & S. v. Indus. Comm'n*, 304 Ill. App. 3d 875, 710 N.E.2d 837 (1999) citing *General Electric Co. v. Indus. Comm'n*, 89 Ill. 2d 432, 434, 433 N.E.2d 671, 672 (1982). 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 Hosp. v. Workers' Comp. Comm'n*, 371 Ill. App. 3d 882, 888, 864 N.E.2d 266, 309 Ill. Dec. 400 (5th Dist. 2007).

In addition to or aside from expert medical testimony, circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill. 2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 III.App.3d 92, 96-97, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 111.2d 59, 442 N.E.2d 908 (1982).

The appellate courts have relied on *Sisbro* in affirming Commission decisions where doctors have opined that work accidents have exacerbated pre-existing conditions – especially when circumstantial evidence showed that a claimant was able to perform work duties before an accident but was unable to afterwards. E.g. *Corn Belt Energy Corp. v. Ill. Workers' Comp. Comm'n*, 2016 IL App (3d) 150311WC, ¶36-37, 56 N.E.3d 1101, 404 Ill. Dec. 688; *Boyd Elec. v. Dee*, 356 Ill. App. 3d 851, 861-862, 826 N.E.2d 493, 292 Ill. Dec. 352 (1st Dist. 2005); and *St. Elizabeth's Hospital*, 371 Ill. App. 3d at 889.

Dr. Gross's causation opinion rests on his distinction between whether the Petitioner suffered an aggravation or an exacerbation of his underlying left shoulder osteoarthritis condition from the work accident. He distinguished the two by saying that an aggravation was a permanent

anatomic change in the underlying condition, while an exacerbation was temporary with no anatomic change. Dr. Bradley used the term exacerbate to mean the injury brought on pain in an acute phase, but if that pain does not return to its baseline for a sustained period of time, he would give it an aggravation diagnosis. In this case, the Petitioner did not return to baseline. The Arbitrator finds Dr. Gross's conclusions to be contrary to law in the cases cited above and gives his opinions little weight, if any. Dr. Bradley's opinions also deserve greater weight because, as the treating physician, he has had more opportunities to become familiar with the Petitioner and his condition.

Dr. Bradley's opinions are supported by the circumstantial. Despite the Petitioner having had prior shoulder aches, he was able to work full duty at a job that was physically demanding. After the accident, his pain increased, and he was no longer able to perform his job duties to the level he did before the work accident. That condition has continued.

The Arbitrator notes that neither Dr. Ahn nor Dr. Mulhern testified to explain their findings and therefore relies on the opinions of Dr. Bradley and Dr. Gross.

The Arbitrator also must determine the effect of the Petitioner's second injury on the relationship between the first accident and the Petitioner's current condition. As long as a "but-for" relationship exists between the original event and the subsequent condition, the employer remains liable. *International Harvester Co. v. Industrial Commission,* 46 Ill.2d 238, 263 N.E.2d 49 (1970). *See also Vogel v. Industrial Commission,* 354 Ill.App.3d 780, 821 N.E.2d 807, 290 Ill.Dec. 495 (2d Dist. 2005).

Dr. Bradley believed the second accident only caused a temporary aggravation of the injury from the first accident and that the Petitioner's current condition was caused by the first accident. This opinion was uncontroverted.

Based on this, the Arbitrator finds that the second accident exacerbated/aggravated the Petitioner's left shoulder condition and did not break the causal connection between the first accident and his current condition. Thus, the Arbitrator finds the Petitioner's current condition of ill-being is causally related to the injury from the September 10, 2023, 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).

Dr. Gross agreed that the treatment the Petitioner received at the time of his examination was reasonable and necessary to treat the work injury. He did not find the proposed shoulder replacement surgery to be related to the work accident, stating that the Petitioner would be a candidate for surgery "at some point in time" due to the degenerative condition. Dr. Bradley believed the surgery would not have been necessary but for the September 10, 2023, accident.

Based on the findings above regarding causation, the Arbitrator gives Dr. Bradley's opinions greater weight. Prior to the September 10, 2023, accident, shoulder replacement surgery was not imminent. The Arbitrator finds the accident accelerated the need for surgery. Therefore, the Arbitrator finds the medical services 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).

The Petitioner still has to finish the strengthening and endurance program as recommended by Dr. Bradley. The Arbitrator finds these are necessary to relieve or cure the effects of the work injury. Therefore, the Arbitrator finds that the Petitioner is entitled to prospective medical care, specifically further therapies and follow-up treatment by Dr. Bradley. 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	23WC006327
Case Name	Peter Hickey v. Stratas Foods
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0120
Number of Pages of Decision	13
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Timothy Shay
Respondent Attorney	Ashley Broadstone, Jessica Bell

DATE FILED: 3/19/2025

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PETER HICKEY,

Petitioner,

vs. NO: 23 WC 6327

STRATAS FOODS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, 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 June 14, 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 $24,400.00. 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.

March 19, 2025

CAH/tdm
O: 3/13/25
052

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC006327
Case Name	Peter Hickey v. Stratas Foods
Consolidated Cases	
Proceeding Type	
Decision Type	***Corrected Decision***
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Graham Ogilvy
Respondent Attorney	Jessica Bell

DATE FILED: 6/14/2024

/s/Edward Lee, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 11, 2024 5.165%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION

Peter Hickey
Employee/Petitioner

v.

Stratas Foods
Employer/Respondent

Case # **23** WC **006327**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Springfield**, on **3/26/2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **October 29, 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 $**1,218.76 over 11 days**; the average weekly wage was $**775.57**.

On the date of accident, Petitioner was **62** years of age, ***single*** with **0** dependent children.

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

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

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

ORDER

Medical benefits

Respondent shall pay reasonable and necessary medical services as set forth in Petitioner's Exhibit 5, directly to the providers, according to the fee schedule, as provided in Sections 8(a) and 8.2 of the Act.

Temporary Total Disability

Respondent is ordered to pay Petitioner $517.05 per week for a period of 7 weeks, representing temporary total disability benefits from October 31, 2022 through December 19, 2022.

Permanent Partial Disability

Respondent shall pay Petitioner permanent partial disability benefits of $465.34/week for 11.4 weeks, because the injuries sustained to Petitioner's right thumb caused a 15% loss of use thereof.

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 14, 2024

FINDINGS OF FACT

Petitioner's Testimony and Medical Exhibits

Petitioner is 63 years old and graduated from high school in 1978. TR, p. 6-7. After graduating from high school, he worked in various power plants, paper mills, and other industrial settings. TR, p. 7-8, 10. He attended trade school for five years in the 1990's to learn pipefitting. TR, p. 7-8. After trade school he went to work for ADM, and began working for Respondent not long before the accident at issue. TR, p. 9-10. Respondent is affiliated with ADM, and they produce and package food oil. TR, p. 9.

Petitioner worked on an assembly line for Respondent packaging oil in boxes. TR, p. 10. A bag would drop down into a box, which would then be filled with approximately 65 pounds of solid oil. TR, p. 11. When not working on the assembly line, he would work dumping oil so that it could be reused if it had been mislabeled, or if an order had been cancelled. TR, p. 11-12. This typically involved opening twist-off bottles as quickly as possible to dump out the oil. TR, p. 12-13. There would be pallets of oil to be dumped, and he would open hundreds of bottles in a row. TR, p. 13-14. There would be times when he would open bottles and dump oil for an entire shift. TR, p. 14.

In late October of 2022, Petitioner noticed a blister on his finger. TR, p. 14-15. At first, he just cleaned off his hand and switched gloves. TR, p. 14. He did not report the injury to a supervisor that day. TR, p. 44. He did not think anything would become of it, and testified that his direct supervisor was on vacation that day. TR, p. 43-44. He testified the blister then got worse over the course of a day or two. TR, p. 15, 30. His hand started to swell, and he went to an instant care facility on October 31, 2022. TR, p. 16.

On October 31, 2022, Petitioner presented to Memorial Health Express Care for an evaluation of a swollen thumb on his right hand. RX 1, p. MUC 9. He reported that a couple days earlier he had been taking lids off plastic bottles when he noticed discomfort to this right thumb. RX 1, p. MUC 9. On October 31 he noticed his thumb had become more swollen, and that swelling had developed on his right second finger as well. RX 1, p. MUC 9. As the day progressed, he also noticed red streaks going up his arm, which looked similar to blood poisoning he had in the past. RX 1, p. MUC 9.

Petitioner testified he had been treated for an infection in 2018 after noticing what appeared to be a spider bite under his armpit. TR, p. 26. This testimony is corroborated by records from St. Mary's Hospital for date of service November 5, 2018. RX 2, p. SM 405. Petitioner presented to the ER after having an abscess in his armpit drained, after which his blood pressure went up. RX 2, p. SM 405-07. It was noted that he had been prescribed a course of oral antibiotics for three days at urgent care. RX 2, p. SM 441. His treatment was largely focused on his blood pressure and chest pain, though he was advised to continue taking the antibiotics upon discharge. RX 2, p. SM 444-45.

At the Express Care facility on October 31, 2022, Advanced Practice Nurse Richard Rogers noted an apparent callus in the middle of the proximal phalanges of the right thumb, and what appeared to be a healing blister wound to the right index finger. RX 1, p. MUC 11. APN Rogers diagnosed Petitioner with cellulitis, administered an antibiotic injection, and transferred him to St. Mary's Hospital for lab work and possible IV antibiotics. RX 1, p. MUC 10-11.

Upon arriving at in the St. Mary's Hospital Emergency Department, Petitioner reported to triage nurse Lisa Sinkhorn that on Saturday, October 29, 2022, he had noticed blisters on this right thumb and index finger, and that on October 31, 2022 the pain had gotten worse and he noticed redness going up his arm. PX 1, p. 90.

Petitioner left the ER after triage due to the wait, but returned the morning of November 1, 2022. PX 1, p. 6. He complained of swelling, pain, and erythema to the right thumb, and that he did a lot of work with his hands. PX 1, p. 7. On November 2, 2022, the hospitalist would note that Petitioner reported hitting his thumb with a hammer at work. PX 1, p. 66. Petitioner disputed that he told anyone he hit his thumb with a hammer at work, and testified he never used a hammer at work. TR, p. 38-39.

On examination, Physician Assistant Emily Artime noted calluses, redness, warmth, swelling, erythema, and pain with palpation to the right thumb and index finger. PX 1, p. 9. He also noted streaking up the forearm. PX 1, p. 9. Photographs taken in the hospital depicting redness and swelling to the thumb, as well as streaking up the right forearm, have been submitted as Petitioner's Exhibit 4.

A CT scan was ordered of the right hand, and radiologist Dr. Theodore Gleason noted diffuse skin thickening and soft tissue edema involving the thumb consistent with cellulitis. PX 1, p. 11. Petitioner was admitted to the hospital with a clinical impression of cellulitis. PX 1, p. 12. While admitted, Petitioner was placed on IV antibiotics and a general surgeon and infectious disease specialist were consulted. PX 1, p. 34.

On November 1, 2022, infectious disease specialist Dr. Jignesh Modi, who assessed him with right hand cellulitis noted he would continue to monitor his clinical response to IV antibiotics. PX 1, p. 37-38. On November 2, 2022, general surgeon Dr. Leslie Anewenah noted that Petitioner had presented to the hospital with a worsening right thumb wound, and that he reported he believed he had injured himself using his hands at work. PX 1, p. 44. Dr. Anewenah assessed him with a right thumb abscess and cellulitis, continued his course of IV antibiotics, and noted the he would reassess Petitioner the next day for possible examination under anesthesia with incision and drainage. PX 1, p. 48.

On November 4, 2022, Dr. Anewenah performed an incision and drainage procedure to the right thumb. PX 1, p. 49-51. In his description of the procedure, he noted an abscess to the ventral aspect of the thumb with an associated large blister. PX 1, p. 51. Petitioner was discharged on November 4, 2022 with a prescription for antibiotics and instructions to follow up with his infectious disease specialist and with general surgery. PX 1, p. 34.

Petitioner followed up with Dr. Anewenah at HSHS Medical Group Multispecialty Care on November 16, 2022, and it was noted that his wound was healing as expected. PX 3, p. 31. He was advised to follow up in two months. PX 1, p. 31. He also followed up with infectious disease specialist Dr. Jignesh Modi November 16, 2022. PX 3, p. 12. On examination, Dr. Modi noted some swelling to the right hand, but no drainage, redness, or warmth. PX 3, p. 15. Petitioner was advised to follow up with Dr. Anewenah, but that he could follow up with Dr. Modi as needed. PX 3, p. 19.

On December 5, 2022, Petitioner called Dr. Anewenah's office for an earlier follow up appointment to see if he could return to work. PX 3, p. 8. On December 7, 2022, Dr. Anewenah cleared Petitioner to return to work without restrictions as of December 19, 2022. PX 3, p. 4. Petitioner testified he was not paid temporary total disability benefits from when he first sought treatment on October 31 through December 19, 2022.

Petitioner returned to work for Respondent after being released for approximately eight to twelve months. TR, p. 21-22. He testified that his hand would hurt when opening tight jars, including opening bottle lids. TR, p. 23. He testified he no longer works for Respondent because it was too hard on his hands. TR, p. 22.

Petitioner testified his right hand hurts in cold weather, and that he has trouble making a fist. TR, p. 23-24. He does not have similar issues with his left hand. TR, p. 24. He testified he takes aspirin almost daily as a result or his right hand pain. TR, p. 25.

Testimony of Chris Munson

Chris Munson works for Respondent as an Environmental Health and Safety Coordinator. TR, p. 48. In that role, he facilitates safety training, orientation, and monthly refreshers. TR, p. 48. All incidents are reported to him, and he investigates as necessary. TR, p. 48.

New employee training includes training employees to report work injuries, including the expectation that all injuries, near misses and close calls be reported immediately. TR, p. 48-49. Munson was involved in training Petitioner when he was hired, and his training included this information. TR, p. 50-51, RX 5.

Munson testified he first learned of the incident at issue between November 2 and November 5, 2022 when he received a call from a healthcare provider. TR, p. 55. He then initiated an investigation, which revealed Petitioner had been opening bottles at a dump station. TR, p. 56, 58. He confirmed that he has listed to Petitioner's testimony regarding the accident, and that Petitioner's testimony was consistent with his investigation. TR, p. 58. He believed Petitioner would have opened approximately 100 bottles on the date of the incident. TR, p. 59.

Munson confirmed that Petitioner's direct supervisor was not present on the date of the incident, though there would have been another supervisor on duty. TR, p. 60. He confirmed that not all employees report every single accident, and that he has no independent knowledge regarding the event in question. TR, p. 60-61. He was not present the date of the accident. TR, p. 60.

CONCLUSIONS OF LAW

Issues C and F: Did an Accident occur that arose out of and in the course of Petitioner's employment by Respondent and is Petitioner's current condition of ill-being causally related to the injury?

After a review of the totality of the evidence, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to an October 29, 2022 accident which arose out of and in the course of his employment with Respondent. In rendering his decision, the Arbitrator relies primarily on Petitioner's testimony and Petitioner's medical records.

Respondent's dispute as to accident and causation appears to be based on: 1) that Petitioner did not report his accident to a supervisor on October 29, 2022; and 2) that Petitioner reported a prior history of blood poisoning to Express Care on October 31, 2022.

As an initial matter, while Respondent called Environmental Health and Safety Coordinator Chris Munson in support if its contention that Petitioner did not report the accident on October 29, 2022, notice is not in dispute. Munson testified that he became aware of the accident sometime between November 2 and November 5, 2022,

at which time he initiated an investigation of the incident. TR, p. 55-56. This is well within the 45-day notice period of the Illinois Workers' Compensation Act. Respondent instead appears to argue that, because Petitioner did not report the accident on October 29, 2022, it is less likely that the accident occurred. The Arbitrator is unconvinced by this argument.

First, Munson testified that, despite the training provided by Respondent to new hires regarding accident reporting, accidents are not reported 100% of the time. TR, p. 60. The Arbitrator finds Petitioner's testimony regarding why he did not report the accident on October 29, 2022 to be credible. Petitioner testified that he initially only noticed a blister, and that he did not think anything would come of it. TR, p. 14-15, 43-44. It is entirely plausible that an employee would not necessarily think to report a blister to a supervisor. The condition of Petitioner's right thumb and index finger then worsened over the next day or two, at which point he sought medical attention. TR, p. 15-16, 30. Additionally, as Munson confirmed, Petitioner's supervisor was not present on the day of the accident. TR, p. 60.

Second, while Munson testified he was never notified of an October 29, 2022 work injury through the typical injury reporting process, he confirmed that he had no first-hand knowledge as to whether an accident occurred, and that he was not even present on that date. TR, p. 55, 60-61. Moreover, the information he was able to obtain supports that an accident in fact did occur. He testified that he had heard Petitioner's description of the accident, and that his testimony was consistent with what he learned in his investigation. TR, p. 58

The Arbitrator is similarly unconvinced that Petitioner's right hand cellulitis condition was the result of some underlying and unrelated infection or blood poisoning. In support if this argument, Respondent relies primarily on Petitioner's October 31, 2022 Express Care visit at which time he reported that the streaking going up his arm looked exactly like blood poisoning he had in the past.

First, Petitioner reported to Express Care on October 31, 2022 that he injured his thumb a couple days prior while opening plastic bottles. RX 1, p. MUC 9. As such, Petitioner clearly described a work accident consistent with his trial testimony at that time. The fact that his infection on October 31, 2022 may have looked similar to an infection Petitioner had in the past is not evidence that the infection was unrelated to a work accident.

Second, Petitioner testified regarding treatment he had for an infection in 2018 as a result of a bump he noticed under his armpit. TR, p. 26. His testimony is corroborated by St. Mary's Hospital records from November 5, 2018, which confirm he had been placed on a three-day course of antibiotics related to an abscess in his armpit. RX 2, p. SM 444-45. The fact that Petitioner was prescribed a brief course of antibiotics approximately four years prior to the treatment at issue is irrelevant to the issue of causation. Respondent has offered no evidence whatsoever to establish that Petitioner was suffering from cellulitis, blood poisoning, or any other infectious process leading up to the development of blisters on his right thumb and index finger, nor has Respondent offered any evidence which suggests that Petitioner's cellulitis was unrelated to those blisters.

Petitioner testified his job with Respondent involved opening containers of food oil, often plastic-twist off bottles, and dumping the oil for reuse. TR, p. 11-13. He testified there would be full pallets of oil to be dumped, and he would sometimes have to dump hundreds of bottles at a time. TR, p. 13-14. Respondent's witness Munson, testified he believed Petitioner likely opened around 100 bottles of oil on the date of accident. TR, p. 59. The Arbitrator finds it entirely plausible that an employee could develop blisters performing these duties as described. The Arbitrator further notes, as stated above, that Munson's investigation revealed findings consistent with Petitioner's testimony regarding the accident.

Moreover, Petitioner's medical records support a finding that Petitioner's condition of ill-being was causally related to a workplace accident. Petitioner initially presented for treatment at an Express Care facility on October 31, 2022, at which time APN Rogers noted a callus to the right thumb and a healing blister to the right index finger. RX 1, p. MUC 11. Dr. Anewenah additionally noted Petitioner's right thumb abscess was associated with a large blister in his operative report. PX 1, p. 51. The blisters documented in the medical records are consistent with Petitioner's testimony as to his injuries.

Additionally, at the Express Care facility, Petitioner reported that he had injured his thumb opening plastic bottles, and consistently described a mechanism of injury of working with his hands to his medical providers during his hospitalization at St. Mary's Hospital. No medical or testamentary evidence has been presented whatsoever which disputes that Petitioner developed blisters to his right thumb and index finger through his employment with Respondent. Further, the medical records are clear that Petitioner developed cellulitis to his right hand as a result of these blisters.

Based on the testimony and Petitioner's medical records, the Arbitrator finds that Petitioner sustained a right hand injury on October 29, 2022 that arose out of and in the course of his employment with Respondent, and that his current condition of ill-being is causally related to that accident.

Issue J: Were the medical services that were provided to Petitioner reasonable and necessary and has Respondent paid all appropriate chares for all reasonable and necessary services?

Respondent disputes that the treatment evidenced by Petitioner's Exhibit 2, and the corresponding bill for $527.00 from the Decatur Orthopedic Center included in Petitioner's Exhibit 5, is causally related to Petitioner's right hand cellulitis injury. Respondent otherwise agrees that Petitioner's medical treatment was reasonable and necessary to address this condition of ill-being. Respondent merely disputes liability for Petitioner's bills on the basis of its denials as to accident and causation.

Regarding the medical records and bill from the Decatur Orthopedic Center, orthopedic surgeon Dr. Donald Sullivan noted a billing encounter for hand swelling on November 1, 2022. PX 2, p. 5. As this corresponds to the time Petitioner presented to St. Mary's Hospital on that date regarding his right thumb and index finger complaints, this record appears to correspond to a consultation performed by Dr. Sullivan related to Petitioner's cellulitis injury. This is further supported by the St. Mary's Hospital records. A note authored by Advanced Practice Nurse Holly Chapman is noted to have been cosigned by Dr. Sullivan, and the HPI states "We were consulted to further evaluate and treat." PX 1, p. 31-32. The Arbitrator finds the medical bill from Decatur Orthopedic Center include in Petitioner's Exhibit 5 in the amount of $527.00 to be causally related to the workplace accident.

Regarding the remainder of Petitioner's medical treatment, for the reasons set forth in above as to Issues C and F, the Arbitrator finds Petitioner's condition of ill-being is causally related to an accident which arose out of and in the course of his employment. Respondent is therefore liable for Petitioner's medical bills.

Respondent shall pay reasonable and necessary medical services as set forth in Petitioner's Exhibit 5, directly to the providers, according to the fee schedule, as provided in Sections 8(a) and 8.2 of the Act.

Issue K: Is the Petitioner entitled to temporary total disability benefits?

Petitioner claims he is due temporary total disability benefits from October 31, 2022 through December 19, 2022, a period of 7 weeks, at which time he was released to full duty work by Dr. Anewenah. Respondent does not dispute that Petitioner was off work for this period, but disputes liability to temporary total disability benefits on the basis of its denials as to accident and causation. For the reasons set forth in above as to Issues C and F, the Arbitrator finds Petitioner's condition of ill-being is causally related to an accident which arose out of and in the course of his employment. Respondent is therefore liable for temporary total disability benefits.

Respondent is ordered to pay Petitioner $517.05 per week for a period of **7** weeks, representing temporary total disability benefits from October 31, 2022 through December 19, 2022.

Issue L: What is the nature and extent of the injury?

For accidents occurring after September 1, 2011, the Arbitrator must look to the five-factor test in determining permanent partial disability. As to the first factor, no AMA impairment rating has been presented into evidence. The Arbitrator therefore gives this factor no weight.

As to the second factor, nature of the employment, Petitioner's job duties included opening large quantities of twist-off, plastic bottles repetitively, sometimes for an entire shift. Petitioner testified these duties caused pain upon his return to work for Respondent, resulting in him seeking new employment. The Arbitrator therefore gives weight to this factor.

As to the third factor, age, Petitioner was 62 years old on the date of his accident. Petitioner will likely live for a number of years and continue to suffer ongoing limitations, as set forth in factor five, during that period. As such, the Arbitrator gives this factor weight.

As to the fourth factor, future earning capacity, Petitioner testified he had worked in a factory/industrial setting throughout his working life. He no longer works for Respondent, and currently works for Walmart. The Arbitrator therefore gives some weight to this factor.

Finally, as to the fifth factor, evidence of disability corroborated by treatment records, Petitioner presented to Express Care on October 31, 2022 and APN Rogers noted an apparent callus in the middle of the proximal phalanges of the right thumb, and what appeared to be a healing blister wound to the right index finger. RX 1, p. MUC 11. Dr. Anewenah would note a larger blister to right thumb in his operative report. PX 1, p. 51. At St. Mary's Hospital, Petitioner was noted to have calluses, redness, warmth, swelling, erythema, and pain with palpation to the right thumb and right index finger, as well as streaking up his forearm. PX 1, p. 9. Petitioner would ultimately be diagnosed with a right thumb abscess and with hand cellulitis.

Petitioner was ultimately admitted to the hospital for three days, from November 1 through November 4, 2022, during which time he underwent a course of IV antibiotics, and on November 4, 2022, Dr. Anewenah performed an incision and drainage procedure to the right thumb. Petitioner was discharged from the hospital on November 4, 2022 with a prescription for antibiotics and instructions to followed up with his infectious disease specialist and surgeon. He last followed up with Dr. Anewenah on December 7, 2022, at which time he released to full duty work as of December 19, 2022.

Taking the evidence and the five factors into consideration, the Arbitrator finds that Petitioner has sustained a 15% loss of use of the right thumb as a result his injury pursuant to Section 8(e)1 of the Act. Respondent is ordered to pay Petitioner $465.34/week for a period of 11.4 weeks.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC013806
Case Name	Samantha Smith v. General Dynamics Corp.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0121
Number of Pages of Decision	14
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	James Ruppert
Respondent Attorney	James Keefe Jr

DATE FILED: 3/19/2025

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SAMANTHA SMITH,

Petitioner,

vs. NO: 23 WC 13806

GENERAL DYNAMICS,

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

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

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $9,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

March 19, 2025

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

CAH/tdm
O: 3/13/25
052

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC013806
Case Name	Samantha Smith v. General Dynamics Corp.
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	William Gallagher, Arbitrator

Petitioner Attorney	James Ruppert
Respondent Attorney	James Keefe Jr

DATE FILED: 7/23/2024

/s/William Gallagher, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JULY 23, 2024 4.99%

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Samantha Smith
Employee/Petitioner

Case # 23 WC 13806

v.

Consolidated cases: n/a

General Dynamics Corp.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, 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, February 8, 2022, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $57,451.68; the average weekly wage was $1,104.84.

On the date of accident, Petitioner was 56 years of age, married with 0 dependent child(ren).

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

Respondent shall be given a credit of $736.56 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $736.56.

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

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 13, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

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

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

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

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

William R. Gallagher, Arbitrator
ICArbDec19(b)

July 23, 2024

Findings of Fact

Petitioner filed an Application for Adjustment of the Claim which alleged she sustained an accidental injury arising out of and in the course of her employment by Respondent on February 8, 2022. According to the Application, Petitioner was "Injured while working" and sustained an injury to the "Head, spine and other body parts" (Arbitrator's Exhibit 2). This case was tried in a 19(b) proceeding and Petitioner sought an order for payment of medical bills as well as prospective medical treatment. The prospective medical treatment sought by Petitioner was four level cervical disc replacement surgery, as recommended by Dr. Matthew Gornet, an orthopedic surgeon. Respondent stipulated Petitioner sustained a work-related accident, but disputed liability on the basis of causal relationship as well as the reasonableness and medical necessity of the cervical disc replacement surgery (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a quality specialist. Petitioner's job duties involved monitoring, guaging and tagging ammunition, as well as completing paperwork associated with those tasks. As of February, 2022, Petitioner had worked for Respondent for approximately 30 years.

On February 8, 2022, Petitioner was walking to her car when she fell on black ice. At trial, Petitioner testified she fell backward and landed on her head.

Following the accident, Petitioner was seen in the ER of Heartland Regional Medical Center on February 8, 2022. A CT scan of Petitioner's head was obtained which revealed a subdural hematoma and a subarachnoid hemorrhage. Because of Petitioner having sustained such a head injury, she was transferred via helicopter to St. Louis University Hospital (Petitioner's Exhibits 3 and 4).

Petitioner was a patient at St. Louis University Hospital from February 8, 2022, through February 10, 2022. During that time, multiple CT scans were performed on Petitioner which included a CT scan of Petitioner's cervical spine. According to the radiologist, the CT scan of Petitioner's cervical spine revealed anterolisthesis of C2 on C3 and a suspected retrolisthesis of C4 on C5 (Petitioner's Exhibit 5).

Petitioner was evaluated by Dr. Suzanne Burge, her family physician, on February 14, 2022. At that time, Petitioner complained of headaches and upper back pain. Dr. Burge prescribed medication and recommended physical therapy, but Petitioner declined to do so. Dr. Burge again saw Petitioner on February 21, 2022, and Petitioner's condition remained essentially the same (Petitioner's Exhibit 6).

Petitioner was again seen at St. Louis University Hospital on March 14, 2022. At that time, another CT scan of Petitioner's head was performed. According to the radiologist, the subdural hemorrhage had resolved (Petitioner's Exhibit 5).

Petitioner was subsequently seen by Dr. Burge on April 4, 2022. At that time, Petitioner complained of persistent neck pain. On examination, the range of motion of the neck was limited

and there was also weakness/pain in the left shoulder. Dr. Burge diagnosed neck/thoracic back pain, prescribed medication and ordered physical therapy (Petitioner's Exhibit 6).

Petitioner received physical therapy from April 12, 2022, through June 16, 2022. In the last therapy record of June 16, 2022, the therapist noted Petitioner continued to experience symptoms in her neck and mid back even though she had been compliant with treatment and was using a TENS unit. Physical therapy was placed on hold pending an evaluation of Petitioner by her physician (Petitioner's Exhibit 7).

Petitioner was evaluated by Dr. Burge on July 18, 2022. At that time, Dr. Burge noted physical therapy did not help because Petitioner continued to experience neck/upper back pain. She ordered MRI scans of Petitioner's thoracic and cervical spine (Petitioner's Exhibit 6).

The MRI of Petitioner's thoracic spine was performed on August 10, 2022. According to the radiologist, the MRI revealed disc bulges at T6-T7 and T9-T10, and multilevel degenerative changes. The MRI of Petitioner's cervical spine was performed on August 24, 2022. According to the radiologist, the MRI revealed a disc bulge, joint hypertrophy and facet arthropathy at C3-C4, joint hypertrophy and facet arthropathy resulting in an abutment of the exiting nerve root at C4-C5, joint hypertrophy and facet arthropathy at C5-C6, and a disc bulge and facet arthropathy at C6-C7 (Petitioner's Exhibit 3).

Dr. Burge evaluated Petitioner on September 9, 2022, and reviewed the MRI scans. At that time, Dr. Burge opined Petitioner had a herniated disc in the cervical spine (she did not specify at what level or levels) and was going to refer Petitioner to a spine surgeon (Petitioner's Exhibit 6).

On November 15, 2022, Petitioner was evaluated by Michael Bryant, a Physician Assistant, associated with Southern Illinois Healthcare. At that time, Petitioner informed PA Bryant of the accident of February 8, 2022, and she complained primarily of cervical/thoracic pain. PA Bryant examined Petitioner and reviewed the diagnostic tests. He noted Petitioner had muscular spasm in both the cervical and thoracic spine. PA Bryant recommended Petitioner undergo injection therapy and opined Petitioner did not have any "surgical etiology", but noted that this did not mean Petitioner did not have pain (Petitioner's Exhibit 8).

At the direction of Respondent, Petitioner was examined by Dr. Timothy VanFleet, an orthopedic surgeon, on April 12, 2023. In connection with his examination of Petitioner, Dr. VanFleet reviewed medical records and diagnostic studies provided to him by Respondent. At that time, Petitioner complained of neck/mid back pain which increased during the work day. Dr. VanFleet reviewed the MRIs of Petitioner's cervical and thoracic spine. In respect to the MRI of Petitioner's cervical spine, he noted it revealed moderate degenerative changes and mild/moderate bilateral foraminal stenosis at multiple levels. Dr. VanFleet's examination of Petitioner was normal. He opined Petitioner had pre-existing cervical and thoracic degenerative disc disease which was not causally related to the accident of February 8, 2022. He opined that treatment which had been rendered to date was appropriate and necessary, but Petitioner was at MMI. Dr. VanFleet did recommend Petitioner do home exercises, but no further formal treatment, including injections, was indicated (Respondent's Exhibit 1).

On May 17, 2023, Petitioner was again seen by Dr. Burge. At that time, Petitioner continued to complain of neck/upper back pain as well as left upper arm radicular pain. Dr. Burge noted she was going to refer Petitioner to an orthopedic spine surgeon (Petitioner's Exhibit 6).

On June 29, 2023, Petitioner was evaluated by Dr. Matthew Gornet, an orthopedic surgeon. At that time, Petitioner informed Dr. Gornet of the accident of February 8, 2022, and the medical treatment she received thereafter. Petitioner continued to complain of neck pain between the shoulder blades as well as left shoulder/upper arm pain. Dr. Gornet reviewed the prior diagnostic studies including the MRI of Petitioner's cervical spine of August 24, 2022. Dr. Gornet opined the MRI revealed a disc herniation at C5-C6 and possibly at C4-C5 as well, and a subtle protrusion at C3-C4. Dr. Gornet ordered another MRI scan of Petitioner's cervical spine (Petitioner's Exhibit 9).

The MRI of Petitioner's cervical spine was performed on June 29, 2023. According to the radiologist, the MRI revealed a midline herniated disc with extruded disc fragment at C6-C7 causing mild central canal stenosis and mild bilateral foraminal stenosis, disc bulges at C4-C5 and C5-C6 with bilateral foraminal protrusions, and a disc bulge with lateral recessed foraminal protrusions at C3-C4 (Petitioner's Exhibit 12).

Dr. Gornet reviewed the MRI of June 29, 2023, and his interpretation of it was consistent with that of the radiologist. He diagnosed Petitioner with multilevel disc injury at C3-C4, C4-C5, C5-C6 and C6-C7, with radicular symptoms coming from C4-C5 and C5-C6 on the left. He opined the accident of February 8, 2022, could have injured the cervical spine as well as causing the subdural hematoma. Dr. Gornet recommended Petitioner undergo an epidural steroid injection at C5-C6 and referred Petitioner to Dr. Helen Blake. He noted that if Petitioner's condition did not improve, multilevel cervical disc replacements could be considered (Petitioner's Exhibit 9).

Petitioner was seen by Dr. Helen Blake on July 25, 2023. At that time, Dr. Blake administered an epidural steroid injection at C5-C6 on the left (Petitioner's Exhibit 10).

Dr. Gornet saw Petitioner on August 10, 2023. At that time, Petitioner advised the injection had helped substantially; however, she was concerned that the pain symptoms were starting to return. Dr. Gornet recommended continued observation and that another injection might be indicated. Dr. Gornet again saw Petitioner on October 26, 2023. At that time, Petitioner advised she had experienced a slow return of neck and left shoulder pain. Dr. Gornet again referred Petitioner to Dr. Blake for another epidural steroid injection (Petitioner's Exhibit 9).

Dr. Blake again saw Petitioner on November 9, 2023. At that time, she administered an epidural steroid injection at C5-C6 on the left (Petitioner's Exhibit 10).

At the direction of Respondent, Petitioner was examined by Dr. Robert Bernardi, a neurosurgeon, on November 21, 2023. In connection with his examination of Petitioner, Dr. Bernardi reviewed medical records and diagnostic studies provided to him by Respondent. At that time, Petitioner complained of neck pain on both the left and right sides and aching in the left interscapular area. Petitioner advised the symptoms would wax and wane in intensity. Dr. Bernardi's examination of Petitioner's cervical spine was normal and he noted Petitioner had a full range of motion (Respondent's Exhibit 2; Deposition Exhibit 2).

Dr. Bernardi reviewed various diagnostic studies including the MRIs of Petitioner's cervical spine of August 24, 2022, and June 29, 2023. He opined the MRI of August 24, 2022, revealed multilevel degenerative disc disease, disc bulging, some loss of height, but no cord compression. Dr. Bernardi also observed bilateral C4 foraminal stenosis and mild/moderate degenerative foraminal narrowing at C5 and C6. In respect to the MRI of June 29, 2023, Dr. Bernardi opined it was unchanged when compared to the MRI of August 24, 2022 (Respondent's Exhibit 2; Deposition Exhibit 2).

Dr. Bernardi opined Petitioner had multilevel cervical and thoracic degenerative disc disease, multilevel cervical degenerative foraminal stenosis and neck, interscapular and non-radicular left arm pain of uncertain etiology. He opined the degenerative conditions were not related to the accident as those conditions were present prior to the accident of February 8, 2022. Further, he opined that the MRIs did not reveal any disk herniations and noted that this term was not used by the radiologist in his interpretation of the MRI of August 24, 2022. However, Dr. Bernardi also opined Petitioner's neck and upper back symptoms were related to the accident of February 8, 2022 (Respondent's Exhibit 2; Deposition Exhibit 2).

Dr. Bernardi stated he would not have recommended epidural steroid injections because Petitioner was not experiencing radicular pain. Dr. Bernardi also opined Petitioner was not a candidate for surgery, either a fusion or arthroplasty. He specifically noted that Dr. Gornet's recommendation Petitioner undergo a four level disc replacement procedure was contrary to FDA recommendations. He opined Petitioner was at MMI and Petitioner had a one percent (1%) whole person impairment based on the AMA guidelines (Respondent's Exhibit 2; Deposition Exhibit 2).

Petitioner was again seen by Dr. Gornet on January 25, 2024. Petitioner's complaints remained essentially the same and Dr. Gornet noted that she had tried and failed injections. Dr. Gornet again opined Petitioner's MRI scan revealed multilevel disc pathology at C3-C4, C4-C5, C5-C6 and C6-C7. He stated that all four areas need to be treated for Petitioner to have a successful outcome. He recommended Petitioner undergo a four level cervical disc replacement, but stated that Petitioner should undergo a CT scan of the cervical spine at her next examination (Petitioner's Exhibit 9).

The CT scan of Petitioner's cervical spine was performed on April 4, 2024. According to the radiologist, the CT scan revealed a disc bulge at C4-C5 with right lateral recessed protrusion causing right greater than left foraminal stenosis, a protrusion at C5-C6 causing mild central stenosis and moderate/severe foraminal stenosis, a probable central protrusion at C6-C7, and a central protrusion at C3-C4 (Petitioner's Exhibit 11).

Dr. Gornet evaluated Petitioner on April 4, 2024, and reviewed the CT scan performed that same day. Dr. Gornet also reviewed Dr. Bernardi's medical report of November 21, 2022. In respect to Dr. Bernardi's opinion that the MRI findings of June 29, 2023, were unchanged when compared to the MRI of August 24, 2022, he noted that this was contrary to both his opinion as well as the radiologist. He also observed that while Dr. Bernardi opined Petitioner was not a candidate for disc replacement surgery, Dr. Bernardi had never performed such a surgical procedure. He noted Dr. Bernardi offered no help to relieve Petitioner of her ongoing symptoms. Dr. Gornet renewed his recommendation Petitioner undergo four level cervical disc replacement surgery (Petitioner's Exhibit 9).

Dr. Gornet was deposed on May 13, 2024, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Gornet's testimony was consistent with his medical records and he reaffirmed the opinions contained therein. In respect to his review and comparison of the MRIs of August 24, 2022, and June 29, 2023, Dr. Gornet testified the MRI of August 24, 2022, revealed disc herniations at C5-C6 and C6-C7, and disc protrusions at C3-C4 and C5-C6. Dr. Gornet noted that the MRI of August 24, 2022, did not have any foraminal views, but the MRI of June 29, 2023, had foraminal views. Dr. Gornet stated that, without foraminal views, 30% of disk herniations might be messed. He testified the MRI of June 29, 2023, revealed foraminal herniations at C3-C4, C4-C5, C5-C6, and C6-C7 (Petitioner's Exhibit 1; pp 12-14).

Dr. Gornet testified he has performed disc replacement surgeries since 2006 and that disc replacement surgery is superior to fusion surgery. He stated that patients who have axial neck pain without radiculopathy achieved excellent results after undergoing disc replacement surgery. Dr. Gornet testified he diagnosed Petitioner with multilevel disc injury in the cervical spine with radicular symptoms on the left. Dr. Gornet stated he recommended Petitioner undergo four level cervical disc replacement surgery because she had tried and failed conservative measures. He explained that a four level procedure was indicated because if he did not treat all of the levels involved, Petitioner would not do as well following surgery (Petitioner's Exhibit 1; pp 8-9; 17-21).

In respect to causality, Dr. Gornet testified that Petitioner's cervical spine condition was related to the accident of February 8, 2022. He specifically noted the nature of the injury Petitioner had sustained which required hospitalization for several days and the fact Petitioner had no cervical spine symptoms prior to the accident. Dr. Gornet also testified that the need for the surgery he recommended was related to the accident of February 8, 2022 (Petitioner's Exhibit 1; pp 15-16, 22).

Dr. Gornet was cross-examined regarding his reading of the MRIs of August 24, 2022, and June 29, 2023. He agreed that, in respect to the MRI of August 24, 2022, the radiologist did not describe a "herniation" or "protrusion." Dr. Gornet testified the two MRIs were not comparable and compared them to taking a picture from the front and subsequently taking a picture from the front, side and back at different angles. He explained that the MRI of June 29, 2023, had more images to review and had more information (Petitioner's Exhibit 1; pp 32-33, 38-39).

Dr. Gornet testified if he was required to perform the surgery in a staged procedure, he would initially start at the bottom two levels, C6-C7 and C5-C6. If it was determined Petitioner's bone density was normal or just a little less than normal, then he would go ahead and perform surgery at all four levels (Petitioner's Exhibit 1; pp 39-40).

Dr. Bernardi was deposed on May 24, 2024, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Bernardi's testimony was consistent with his medical report and he reaffirmed the opinions contained therein. Dr. Bernardi testified Petitioner complained of neck pain, but did not describe any involvement of her arms which was indicative of no radiculopathy. However, Dr. Bernardi testified Petitioner was credible and described a mechanism of injury which could cause a neck ache or back ache, and that her current complaints were work-related (Respondent’s Exhibit 2; pp 9-10, 14-15).

Dr. Bernardi testified there was no advantage of disc replacement over fusion surgery and commented that individuals returned for revision surgeries for disc replacement procedures at essentially the same rate as those who undergo fusion. Dr. Bernardi testified a disc replacement surgery was not medically reasonable and necessary. This was based, in part, on the lack of any radiculopathy and Petitioner's pain is predominantly neck pain for which surgery is not indicated (Respondent's Exhibit 2; pp 15-19).

On cross-examination, Dr. Bernardi agreed Petitioner had injured her neck/cervical spine on February 8, 2022. Given the fact that he acknowledged Petitioner was credible and still having symptoms two years after the accident, characterizing the injury as a "strain" was not the best way to describe her injury. Dr. Bernardi also conceded that a traumatic event could cause a pre-existing condition they become symptomatic (Respondent's Exhibit 2; pp 23-25).

Dr. Bernardi testified he does not recommend surgery for axial neck pain. He also agreed he had no firsthand experience on how one might benefit from cervical disc arthroplasty surgery because he does not perform such procedures (Respondent's Exhibit 2; pp 26-27).

At trial, Petitioner testified she continues to experience neck pain which is worse with activity. She also described a throbbing sensation in her left arm. Petitioner takes pain medication and uses a TENS unit. She wants to proceed with the disc replacement surgery as recommended by Dr. Gornet. Petitioner denied any prior symptoms in her neck/upper back and left upper arm. Petitioner has been able to continue to work at her regular job.

Conclusions of Law

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

The Arbitrator concludes that Petitioner's current condition of ill-being is causally related to the accident of February 8, 2022.

In support of this conclusion the Arbitrator notes the following:

There was no dispute Petitioner sustained an injury to her neck/cervical spine on February 8, 2022.

Respondent had Petitioner examined by two Section 12 examining physicians, Dr. VanFleet, an orthopedic surgeon, and Dr. Bernardi, a neurosurgeon.

Dr. VanFleet opined Petitioner had pre-existing cervical and thoracic degenerative disc disease which was not causally related to the accident of February 8, 2022.

Dr. Bernardi opined Petitioner sustained an injury to her neck/cervical spine as a result of the accident of February 8, 2022, which, given the duration of Petitioner's symptoms (which he noted were credible), he did not describe the injury as being a "strain." Further, Dr. Bernardi conceded on cross-examination, that an individual could sustain a traumatic event which could cause a pre-existing condition to be symptomatic.

Dr. Gornet, Petitioner's primary treating physician, opined Petitioner sustained a multilevel disc injury in the cervical spine as a result of the accident of February 8, 2022.

While Dr. Bernardi and Dr. Gornet disagreed as to the appropriate diagnosis of Petitioner's cervical spine condition, they agreed that the condition was related to the accident of February 8, 2022.

Given the preceding, the Arbitrator is not persuaded by Dr. VanFleet's opinion that there was not a causal relationship between the accident of February 8, 2022, and Petitioner's current condition.

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

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and Respondent is liable for payment of the medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 13, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In support of this conclusion the Arbitrator notes the following:

Dr. Gornet opined that all of the medical treatment provided to Petitioner was reasonable and necessary. While Dr. Bernardi opined the epidural steroid injections were not medically necessary, Petitioner experienced significant relief from the first injection, even though it was temporary. The Arbitrator finds it was reasonable to have her undergo a second epidural steroid injection and was not persuaded by Dr. Bernardi's opinion regarding same.

The Arbitrator further finds that performing the MRI of June 29, 2023, was medically reasonable and necessary even though an MRI was previously performed on August 24, 2022. As noted in the Findings of Fact, the MRI of June 29, 2023, was a more thorough and comprehensive diagnostic study as it included foraminal views which were not included in that prior MRI of August 24, 2022.

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

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

In support of this conclusion the Arbitrator notes the following:

Petitioner has undergone numerous diagnostic tests in respect to her cervical spine. While there are differences of opinion between the physicians who read/interpreted those diagnostic studies, they all opined that the diagnostic studies revealed various abnormalities/pathologies in the cervical spine.

Petitioner has consistently complained of neck/cervical spine symptoms from the date of accident, up to and including the present, a period in excess of two years. In spite of this, Petitioner has continued to work full duty. The Arbitrator finds Petitioner to be credible, as did Respondent's Section 12 examiner, Dr. Bernardi.

The Arbitrator is persuaded by Dr. Gornet's opinion that Petitioner sustained a multilevel disc injury to her cervical spine, which is corroborated by the MRI scan of June 29, 2023.

Respondent's Section 12 examiner, Dr. Bernardi, opined Petitioner's complaints were credible and he did not characterize the injury as being a "strain" given the duration of Petitioner's complaints; however, Dr. Bernardi made no recommendation for active medical treatment and opined Petitioner was at MMI.

The Arbitrator is persuaded by Dr. Gornet's opinion that a four level cervical disc replacement procedure is indicated even in the absence of radicular symptoms and that it is for axial neck pain. The only alternative is no treatment whatsoever and leaving Petitioner to continue to live with her symptoms.

The Arbitrator is not persuaded by Dr. Bernardi's opinion that disc replacement surgery was not indicated, in part, because Dr. Bernardi does not perform disc replacement surgeries at all. Further, the basis of Dr. Bernardi's opinion that the surgical revision rate of disc replacements and fusion surgeries are essentially the same is difficult to comprehend because, as aforestated, Dr. Bernardi does not perform disc replacement surgeries.

William R. Gallagher, Arbitrator

July 23, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC018974
Case Name	Alex Moll v. State of Illinois - Menard Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0122
Number of Pages of Decision	19
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Jason Coffey
Respondent Attorney	Kenton Owens

DATE FILED: 3/19/2025

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ALEX MOLL,

Petitioner,

vs. NO: 22 WC 18974

MENARD CORRECTIONAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 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.

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.

March 19, 2025

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

CAH/pm
d: 3/13/25

052

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC018974
Case Name	Alex Moll v. State of Illinois - Menard Correctional Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Jason Coffey
Respondent Attorney	Kenton Owens

DATE FILED: 7/24/2024

/s/ Jeanne AuBuchon, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JULY 23, 2024 4.99%

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

July 24, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Alex Moll
Employee/Petitioner

v.

Menard Correctional Center
Employer/Respondent

Case # **22** WC **018974**

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 **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Herrin**, on **06/05/2024**. 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 **06/27/2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**70,497.50**; the average weekly wage was $**1,355.72**.

On the date of accident, Petitioner was **37** years of age, ***single*** with **3** dependent children.

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

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

Respondent shall be given a credit of $**0.00** 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 under Section 8(j) of the Act for any and all medical bills paid trough Petitioner's group health insurance.

ORDER

Respondent shall pay reasonable and necessary medical services as provided in Petitioner's Group Exhibit 4, as provided in Sections 8(a) and 8.2 of the Act.

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

Respondent shall pay Petitioner temporary total disability benefits of $903.81/week for 2 1/7 weeks, commencing 11/02/2022 - 11/06/2022, 12/30/2022 - 01/03/2023 and 05/19/2023 - 05/23/2023, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $813.43/week for 88.6 weeks, because the injuries sustained caused the 10% loss of the Petitioner's right hand, 10% loss of the Petitioner's left hand, 10% loss of the Petitioner's right arm, and 10% loss of the Petitioner's left arm as provided in Section 8(e) of the Act.

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

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

Jeanne L. AuBuchon **July 24, 2024**

Signature of Arbitrator

PROCEDURAL HISTORY

This matter proceeded to trial on June 5, 2024, on all disputed issues. The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of his employment; 2) the causal connection between the accident and the Petitioner's bilateral carpal and cubital tunnel syndromes; 3) liability for medical bills incurred; 4) liability for temporary total disability (TTD) benefits; and 5) the nature and extent of the Petitioner's injuries. The parties stipulated that if payment of medical bills is ordered, the Respondent would pay them directly to the providers.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 37 years old and employed as a corrections officer with the Illinois Department of Corrections for nearly 13 years. (AX1, T. 11-12) He worked at Menard Correctional Center, a maximum-security prison, where he had various duties. (T. 12) He worked for six years as a gallery officer and would perform such duties as bar rapping 25-50 cells per day, operating a crank box with a Folger Adam key and a crank to lock and unlock the cells, locking and unlocking the doors to the galleries and the cell doors using a Folger Adam key and pushing and pulling on cell doors to ensure they are closed and secure. (T. 13-22) The Petitioner also patrolled the catwalk, where he would carry and test his firearms and supervise and assist gallery officers. (T. 23-25) He worked as a writ officer, escorting inmates to court or doctor's appointments, which involved searching and putting restraints on inmates. (T. 25-26) He also worked in the tower, where he would prepare his weapon. (T. 28-29) The Petitioner described how he performed these tasks and stated that they involved elbow flexion, straining of the wrist and gripping. (T. 18, 29)

The Petitioner submitted a type-written summary of job duties in the east/west cell house with additional details of his work activities. (PX2) He said he provided this document to his treating physician and told his physician about his other assignments. (T. 30, 33)

The Respondent submitted a position description for correctional officer that lists general duties and the percentages of time spent performing those duties. (RX2) The Respondent also submitted a Staff Assignment History, showing that between August 2019 and July 2021, the Petitioner was assigned to catwalks. (RX3) From April through December 2018, he was assigned to towers. (Id.) From January 2018 through March 2019, he was assigned to the visiting room. (Id.) From January through December 2017, he was a writ officer, armory officer, yard officer and assigned to the dining room door. (Id.) From August 2015 through November 2016, he was assigned to dining room doors. (Id.) From July through October 2014, he was a gallery escort. (Id.) From December 2013 through July 2014, he was an armory officer and was assigned to a tower and visiting room. (Id.) From August through December 2013, he was assigned to a gallery. (Id.) From April through August 2013, he was assigned to an annex crank. (Id.) From March through April 2013, he was assigned to the yard and shower. (Id.) From April 2011 through November 2012, he was assigned to the armory and galleries. (Id.) The Respondent also submitted an Employee Time Sheet but did not call a witness to explain what it showed. (Id.)

The Petitioner agreed that in 2011, he worked in the armory, where he issued officers their equipment and did not have to use the crank box or bar rap the cells. (T. 41-42) He said he was a gallery door officer in the segregation unit, which included being assigned to a gallery. (T. 42) He said he worked as a yard shower officer, which entailed being assigned to a gallery and taking inmates to the shower. (T. 42-43) Those duties included searching, cuffing and uncuffing inmates. (T. 43) He also was assigned to the annex crank position, which included duties similar to a gallery

officer. (T. 43-44) He said his assignment to the Northeast Tower was the same as the catwalk, and the duties were less hand-intensive than as a gallery officer. (T. 44) He said an escort officer works in the segregation unit with the gallery officer and searches inmates, handcuffs them and removes them from their cells to escort them to health care. (T. 44-45) A dining room door officer supervises the dining room and keeps the grill door shut so the inmates can't leave. (T. 45) The Petitioner stated that as writ officer, he also would transport inmates to switch to other institutions once a week, which included loading and unloading inmates' property boxes. (T. 46-47) The Petitioner said he became a writ officer in January 2017, which is a less hand-intensive position than gallery officer. (T. 47-48)

The Petitioner added that even when he would have a specific assignment, he could be temporarily reassigned to other assignments when the facility is shorthanded, or another officer is needed. (T. 50-51) He said those reassignments are not listed on the Assignment History. (T. 51)

The Petitioner acknowledged that in July 2021, he had a shoulder injury and was placed on light duty working in the mail room until September 2022, during which time he was not doing the job duties of a cell house officer. (T. 37-38)

On May 23, 2022, the Petitioner sought medical treatment with Dr. Matthew Bradley, an orthopedic surgeon at Metro East Orthopedics. (PX3 Deposition Exhibit 2) He complained of numbness and tingling in his bilateral upper extremities, right worse than left. (Id.) He said the pain, tingling and numbness would wake him up several times a night. (Id.) He noticed the symptoms for approximately 3 years, but it had significantly worsened over the last year (PX. 3). He reported he does repetitive work as a correctional officer for 11½ years. (Id.) The Petitioner completed forms for Dr. Bradley in which he wrote job duties included: performing gallery tours walking up and down several times checking steel doors by pulling on them to make sure they

were secure; pushing and pulling on steel doors to get inmates out; turning keys to open cell doors, gallery doors and various locks; checking functionality of 223 mini 14 rifle; and loading and downloading the rifle. (Id.) He also provided the job description he prepared.

A physical examination revealed positive signs for bilateral carpal and cubital tunnel syndromes. (Id.) Dr. Bradley ordered electromyography and nerve conduction study (EMG/NCS). (Id.) He explained in his notes how chronic repetitive use and micro trauma to the Petitioner's bilateral wrists and elbows over the last 11 ½ years while working as a correctional officer contributed to the development of his carpal and cubital tunnel syndrome. (Id.)

The Petitioner returned to Dr. Bradley on June 27, 2022, after having undergone EMG/NCS that revealed bilateral moderate carpal tunnel syndrome and bilateral cubital tunnel syndrome. (Id.) Dr. Bradley noted the Petitioner had been using anti-inflammatories and a home exercise program and sleeping with a blanket or pillow in his elbow to prevent significant flexion of the elbow – none of which treated his symptoms to any significant degree. (Id.) Dr. Bradley recommended surgery carpal and cubital tunnel decompression surgeries. (Id.)

On June 29, 2022, the Petitioner filled out an Incident Report with a date of incident of June 27, 2022, and stating that he had been having ongoing pain and numbness in both his left and right elbows and wrists over the past two to three years. (PX1, T. 31)

Dr. Bradley performed a left cubital tunnel decompression and left carpal tunnel release on December 30, 2022. (PX3) At a follow-up visit on January 16, 2023, the Petitioner reported that his numbness, tingling, burning and pain had resolved. (Id.) Dr. Bradley noted the Petitioner had been compliant with his restrictions on activity, participating in a home exercise program and using anti-inflammatories. (Id.)

On February 3, 2023, the Petitioner underwent a Section 12 examination by Dr. Patrick Stewart, a hand surgeon at Sarah Bush Lincoln. (RX5) He told Dr. Stewart that he worked as a correctional officer either in the gallery of a cell house, where he used Folger Adam keys to move inmates around, or he would work on the catwalk, where he used they keys to get onto the catwalk. (Id.) He said that in July 2021, he was moved to the mailroom subsequent to having a shoulder injury. (Id.) He said that in September 2022, he was sent to the sally port (gate) – the entry and exit for deliveries. (Id.) Directly prior to being off for his upper extremity surgery, he returned to regular work activities in the housing unit. (Id.)

Dr. Stewart reviewed the Petitioner's medical records and performed a physical examination. (Id.) In his conclusions, Dr. Stewart gave further detail of the Petitioner's physical activities while working on the gallery, catwalk, mailroom and gate. (Id.) Dr. Stewart stated that the Petitioner's work in the mailroom, at the gate and on the catwalk did not require any significant use of keying. (Id.) He said there was no requisite force that would put the Petitioner at an increased risk for the development of carpal tunnel and no prolonged forceful grasp, repetitive elbow flexion and extension and no maintained hyperflexion positioning of the elbows. (Id.) Dr. Stewart concluded that the Petitioner's work activities did not aggravate or cause the underlying compression neuropathies for which the Petitioner was seen, diagnosed and treated. (Id.)

Regarding medical treatment the Petitioner received, Dr. Stewart stated that the Petitioner was not treated conservatively with a home exercise program or splints. (Id.) As to Dr. Bradley's reference in his records about the Petitioner using towels or pillows to prevent hyperflexion, Dr. Stewart said the Petitioner denied this. (Id.) Dr. Stewart also did not see a direct indication for the X-rays obtained because there was no indication of joint pain, discomfort or limited range of motion. (Id.) He stated that there was no physical examination performed to indicate any

provocative maneuvers for ulnar tunnel syndrome. (Id.) Dr. Stewart stated he would have recommended at least a trial of conservative treatment for the cubital tunnel prior to proceeding with surgery. (Id.)

On May 19, 2023, Dr. Bradley performed right carpal and cubital tunnel releases. (PX3) At a follow-up on June 5, 2023, the Petitioner reported symptom relief in his right upper extremity. (Id.) Dr. Bradley found the Petitioner to be at maximum medical improvement on August 14, 2023. (Id.)

Dr. Bradley testified consistently with his records at a deposition on August 23, 2023. (PX3) He stated that during the surgeries he performed on the Petitioner, he saw inflammation and scar tissue that had built up over the years in the areas of the carpal and cubital tunnels, which indicated run-of-the-mill chronic repetitive carpal and cubital tunnel. (Id.)

Dr. Bradley spoke of his familiarity with the activities of correctional officers, including bar rapping and use of Folger Adam keys and said he was treating about 30 employees of Menard Correctional Center for carpal or cubital tunnel. (Id.) He said use of the Folger Adam key requires a significant amount of force and grip that has been shown and documented in multiple reports to contribute to the causation of carpal tunnel. (Id.) He said vibratory bar rapping and heavy cell doors that don't often open very smoothly, which is the case at Menard, causes forceful resistance to elbow flexion that leads to cubital tunnel over time. (Id.) He said that even if an officer switched to different positions, that would not break the causal connection. (Id.) He said sometimes stopping an activity that leads to carpal or cubital tunnel syndrome may allow symptoms to improve or get completely better. (Id.) But he added that more often than not what has happened over time is that the ligaments become thickened, and it may just take something simple to make them become symptomatic. (Id.) He said that the years and years the Petitioner worked for

Menard added on layers and layers so that even if he had gone to a slightly less hand-intensive job, it may just be simply using the Folger Adam key one time that may his carpal tunnel go from asymptomatic to symptomatic. (Id.)

Regarding the X-rays he ordered, Dr. Bradley said he did this because the Petitioner had a history of wrist fractures, which can have a role in the development of carpal tunnel syndrome. (Id.) He said he wanted to look for malunions or bad healing of those wrist fractures for bone spurs or arthritis that can contribute to carpal tunnel. (Id.) He said he did not find any. (Id.)

Dr. Stewart testified consistently with his report at a deposition on June 27, 2023. (RX6) He explained that carpal tunnel syndrome is the increased pressure within the bony tunnel that connects the forearm to the hand, and the pressure is transmitted to the median nerve. (Id.) He identified risk factors for carpal tunnel syndrome as: being a woman; being perimenopausal or postmenopausal; advancing age; elevated body mass index over 30; having diabetes, thyroid problems, rheumatoid arthritis or hypertension; smoking; forceful repetitive grasping or activities; cold exposure; vibration exposure; and excessive positions of wrist position so that the wrist is being fully extended or fully flexed. (Id.) He said the only non-activity risk factor the Petitioner had was hypertension. (Id.) He stated that cubital tunnel syndrome is increased pressure or traction on the ulnar nerve at the elbow and that maintaining the arm in a hyperflexed position, repetitively flexing or extending, or a full-on forceful grip puts additional pressure and tension on that nerve. (Id.)

In explaining his opinion that the Petitioner's work duties did not play a role in his development of carpal and cubital tunnel syndrome, Dr. Stewart said that even if the Petitioner opened 25 cells four times a day, this would only take a couple seconds turn a lock, resulting in such activity taking two or three minutes of a day – allowing the body to recover from the stress.

(Id.) He compared the process to weightlifting, where a person stresses the muscles and giving them a period of rest so they can recover and repair – making then stronger than they were before. (Id.)

Dr. Stewart expressed concern about the discrepancy between the conservative treatment reported in the medical records and what the Petitioner told him. (Id.)

The Petitioner testified that since being released, he started to notice having a little bit of pain in his right elbow and minor issues with his wrists and left elbow. (T. 35) Otherwise, he was glad he had the surgery. (Id.) He said he had weakness, but the numbness and tingling resolved. (T. 36)

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. His testimony and reports to the doctors were consistent.

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

The claimant in a worker's compensation proceeding has the burden of proving by a preponderance of the credible evidence that the injury arose out of and in the course of employment, and that involves as an element a causal connection between the accident and the condition of claimant. *Cassens Transp. Co. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 330, 633 N.E.2d 1344, 199 Ill. Dec. 353 (2nd Dist. 1994) An injury is considered "accidental" even though it develops gradually over a period of time as a result of repetitive trauma, without requiring

complete dysfunction, if it is caused by the performance of claimant's job. *Id*. Compensation may be allowed where a workman's existing physical structure, whatever it may be, gives way under the stress of his usual labor. *Laclede Steel Co. v. Indus. Comm'n.*, 6 Ill.2d 296 at 300, 128 N.E.2d 718, 720 (Ill. 1955)

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

The issue herein is the disagreement between Dr. Bradley and Dr. Stewart as to whether the Petitioner's work activities contributed to him developing carpal and cubital tunnel syndromes. There are several reasons why the Arbitrator gives Dr. Bradley's opinions more weight.

First, Dr. Bradley had more specific information as to the precise actions performed by the Petitioner in his job. The Position Description submitted by the Respondent and relied upon by Dr. Stewart listed general duties for a correctional officer. It does not describe how correctional officers – more specifically, the Petitioner – use their hands and arms in performing their duties.

The exhibit has very little relevance in determining if the specific activities the Petitioner performed contributed to the development of his carpal and cubital tunnel syndromes. On the other hand, Dr. Bradley had the job description prepared by the Petitioner and his oral recitation of how he used his hands. Thus, his opinions deserve greater weight.

The Arbitrator finds that Dr. Stewart minimalized the Petitioner's forceful and repetitive activities, such as opening 25 cell doors four times a day – when at some times he opened and closed 50 cell doors – and estimating that such activity took only a couple seconds to turn the lock. It appears that Dr. Stewart relied upon the lowest amount of activity in forming his opinions, thus skewing the amount of hand-intensive work the Petitioner performed. Dr. Stewart also minimized the cumulative effect of repetitive trauma to the carpal and cubital tunnels by comparing it to weightlifting, where a person stresses the muscles and giving them a period of rest so they can recover and repair – making then stronger than they were before. The Arbitrator finds this analogy misleading in that it refers to the effects of stress on muscles, rather than ligaments and nerves involved in carpal and cubital tunnel. NG

Dr. Bradley thoroughly explained his causation opinion, describing how the Petitioner's respective actions of using Folger Adam keys and manipulating heavy cell doors caused cumulative trauma to the carpal and cubital tunnels. He cited his experience with correctional officers as part of the basis for drawing his conclusions. He explained the cumulative nature of stresses on the cubital and carpal tunnel syndromes and stated that even after performing less hand-intensive duties, the conditions could easily become symptomatic by performing the more strenuous duties again. Dr. Bradley also had the advantage of viewing the Petitioner's carpal and cubital tunnels during surgery. He said what he saw was indicative of repetitive-type trauma.

The opinions of Dr. Bradley also deserve greater weight because he was the Petitioner's treating physician and had more opportunities to become familiar with the Petitioner and his condition – especially prior to having the first surgery.

Lastly, the Staff Assignment History also bears little weight on the issue of causation. Based on the Petitioner's testimony, the assignments listed did not accurately reflect whether the Petitioner was actually working those positions throughout those assignments. He said he would be pulled off those assignments and given other duties. This is not reflected in the Staff Assignment History.

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

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

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

Although Dr. Stewart was critical of the number of X-rays taken and a lack of conservative care, Dr. Bradley thoroughly explained the rationale for his course of treatment. As to whether the Petitioner participated in any conservative care, the Arbitrator does not believe that Dr. Bradley fabricated the conservative care he described. The Arbitrator gives greater weight to Dr. Bradley's version, as this occurred at the time that the Petitioner would have been undergoing this conservative care, as opposed to Dr. Stewart's rendition later.

Based on this and the findings above regarding accident and causation, the Arbitrator finds that the medical services provided to the Petitioner were reasonable and necessary and orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 4. The Respondent shall have credit for any amounts already paid or paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

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

According to the Request for Hearing (AX1), the parties dispute TTD benefits for the periods of November 2-6, 2022; December 30, 2022, through January 3, 2023; and May 10-23, 2023.

An employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

The Respondent disputed liability for TTD on the basis of liability only. Based on the findings above regarding accident and causation, the Arbitrator finds that the Petitioner was entitled to TTD benefits for the periods of November 2-6, 2022; December 30, 2022, through January 3, 2023; and May 10-23, 2023.

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

Pursuant to Section 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity;

and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." *Id.*

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

(ii) **Occupation.** The Petitioner continues to work as a corrections officer for the Respondent and is subject to the same physical stresses on his hands and arms. The Arbitrator places significant weight on this factor.

(iii) **Age.** The Petitioner was 37 years old at the time of the injury. He has many work years left during which time he will need to deal with the residual effects of the injuries. The Arbitrator places significant weight on this factor.

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

(v) **Disability.** The Petitioner's achieved a good result from his surgeries and was returned to work full duty. He testified that he still has minor issues with his upper extremities. The Arbitrator puts some weight on this factor.

Therefore, the Arbitrator finds the Petitioner's permanent partial disability to be 10 percent of the left arm, 10 percent of the left hand, 10 percent of the right arm and 10 percent of the right hand.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC006551
Case Name	Nikita Greer v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0123
Number of Pages of Decision	11
Decision Issued By	Marc Parker, Commissioner, Christopher Harris, Commissioner

Petitioner Attorney	Gary Friedman
Respondent Attorney	Elizabeth Meyer

DATE FILED: 3/20/2025

/s/Marc Parker, Commissioner

Signature

DISSENT

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Nikita Greer,
Petitioner,

vs. No. 21 WC 006551

Chicago Transit Authority,
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 temporary total disability and permanent partial disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision, which is attached hereto and made a part hereof.

With regard to the nature and extent of Petitioner's eye injuries and post-traumatic stress disorder, the Arbitrator found the injuries sustained caused a 5% loss of use of each eye per Section 8(e)13 and 20% loss of use of the body as a whole per Section 8(d)2. However, the Arbitrator failed to assign a weight to factors (iv) future earning capacity, and (v) evidence of disability corroborated by the treating records, as required by Section 8.1b(b) of the Act, which states in part, "in determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order." 820 ILCS 305/8.1b(b).

Pursuant to Section 8.1b(b), the Commission assigns the above factors the following weight:

With regard to subsection (iv) of Section 8.1b(b), Petitioner's future earning capacity, the Commission concurs with the Arbitrator's evaluation and assigns it no weight.

With regard to subsection (v) of Section 8.1b(b), evidence of disability corroborated by the treating medical records, the Commission concurs with the Arbitrator's evaluation and assigns it great weight.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 26, 2024 is hereby modified as stated herein and otherwise affirmed and adopted.

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

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

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

March 20, 2025

/s/ *Marc Parker*
Marc Parker

MP/ns
o-2/20/25
068

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

DISSENT

I disagree with the Majority's decision to affirm the Arbitrator's permanent partial disability award of 20% loss of the person as a whole for Petitioner's mental injury as I find it excessive. The Arbitrator justified the award by finding that as a result of Petitioner's work-related mental condition, she was unable to return to her prior occupation as a bus operator and considerable weight was given to the second factor, the occupation of the employee.

Petitioner had testified that she was not mentally prepared to return to work due to anxiety, stress and fear of the possibility of another attack similar to the one she had experienced on March 5, 2021. The medical records accurately note Petitioner's concerns but also stated that she was slowly improving and believed she would be ready to return to work by December 2022. On November 29, 2022, Petitioner's treating psychologist, Dr. Bylsma, cleared her to return to work as a CTA bus operator without any physical or mental restrictions starting on December 2, 2022. Petitioner also discussed her return-to-work status with her physician at Concentra on December

5, 2022. That visit note similarly stated that Petitioner was feeling fine, and she was now improved with no other problems or symptoms.

Petitioner returned to her regular duties with Respondent as a bus operator in December 2022 and remained in this position for approximately three months. There is no testimony or evidence that Petitioner needed or sought any accommodation at any time after returning to work, or that her diagnosed mental condition prevented her from performing her job duties. On the contrary, Petitioner was promoted to a higher-paying position as a bus instructor.

Seven-and-a-half-percent (7.5%) loss of the person as a whole would have been an appropriate award for Petitioner's claimed mental condition.

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

MARCH 20 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC006551
Case Name	Nikita Greer v. Chicago Transit Authority
Consolidated Cases	20WC016301
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Gary Friedman
Respondent Attorney	Elizabeth Meyer

DATE FILED: 7/26/2024

/s/Elaine Llerena, Arbitrator
Signature

INTEREST RATE WEEK OF JULY 23, 2024 4.99%

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

Nikita Greer
Employee/Petitioner
v.
Chicago Transit Authority
Employer/Respondent

Case # **21** WC **006551**

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 **April 30, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **March 5, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**74,880.00**; the average weekly wage was $**1,442.00**.

On the date of accident, Petitioner was **44** years of age, ***married*** with **0** dependent children.

Respondent shall be given a credit of $**88,206.36** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**88,206.36**.

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 $961.33 per week for 91-4/7 weeks, commencing March 6, 2022, through December 7, 2022, as provided in Section 8(b) of the Act.

Respondent shall pay outstanding reasonable and necessary medical services to City of Chicago Fire Department, St. Joseph Hospital, Dolton Medical Center and Neuropsychological Services, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $865.20 per week for 16.2 weeks, because the injuries sustained caused the 10% loss of use of the eyes, as provided in Section 8(e)13 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $865.20 per week for 100 weeks, because the injuries sustained caused the 20% 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.

Signature of Arbitrator

FINDINGS OF FACT

This matter proceeded to hearing on April 30, 2024, in Chicago, Illinois, before Arbitrator Elaine Llerena. The issues in dispute were causal connection, medical expenses, temporary total disability benefits and permanency. (AX2)

Job Duties

On July 1, 2020, Petitioner worked as a bus operator for Respondent and had done so for about 18 or 19 years. (T. 9-10) As part of her job duties, Petitioner would transport members of the public via bus. *Id.*

Prior Medical Condition

Prior to March 5, 2021, Petitioner did not have any problems with her eyes. (T. 20) Petitioner wore glasses when she drove the bus at night due to the glare. *Id.* Petitioner wore contacts, but did not have any problem with her short-term or close vision. *Id.*

Accident

On March 5, 2021, a passenger was standing outside of the bus and Petitioner leaned her head over the shield on her side because she thought the passenger was going to ask her a question when the passenger started spraying Petitioner with pepper spray or mace. (T. 21) The passenger sprayed Petitioner's eyes. *Id.* Petitioner felt immediate pain and burning. (T. 22) Petitioner could not see and, fearing she was about to be attacked again by that passenger, Petitioner began to try to close the doors to the bus. *Id.* Some of the passengers on the bus started screaming and other passengers went to Petitioner to help. *Id.* According to Petitioner, some passengers went to a store to get water and milk to pour on her face. *Id.* Some time after, Chicago Fire Department personnel arrived, provided Petitioner with a rag moistened with irrigating solution, and took Petitioner to the emergency room at St. Joseph Hospital. (T. 22-23, PX1B)

Summary of Medical Records

On March 5, 2021, Petitioner saw Dr. Midori Par at St. Joseph Hospital's Emergency Room. (PX3B) Petitioner reported she had been maced while at work by a passenger and complained of irritation in her eyes, especially the right eye. Dr. Par diagnosed Petitioner with bilateral cornea abrasions and was prescribed an ointment for her eyes.

On March 6, 2021, Petitioner followed up with Dr. Rama Rao Medavaram complaining of burning in her eyes and anxiety with depression. (PX5B) Dr. Medavaram diagnosed Petitioner as having abrasion of the left and right eye, reactive depression and panic disorder with agoraphobia. Dr. Medavaram referred Petitioner to a psychiatrist and optometrist and took her off work.

On March 8, 2021, Petitioner saw Emily Opiola, Nurse Practitioner at Concentra. (PX7B) Petitioner reported that she was sprayed with what she thought was mace. Petitioner complained of recurring nightmares and anxiety, as well as slightly blurry vision and headaches. Petitioner underwent a visual acuity test that indicated Petitioner had 20/50 vision in both eyes without corrective device. Opiola diagnosed Petitioner as having anxiety, bilateral corneal abrasion and having suffered chemical exposure in the eyes and an assault. Opiola provided Petitioner with a psychology and physician referral and kept Petitioner off work.

On March 11, 2021, Petitioner saw Dr. Afiz Taiwo at Concentra. Dr. Taiwo diagnosed Petitioner as having anxiety, bilateral corneal abrasion and chemical exposure of the eyes. Dr. Taiwo referred Petitioner to an ophthalmologist and kept Petitioner off work. Petitioner followed up with Dr. Medavaram on March 12, 2021. (PX5B) Dr. Medavaram noted no change in the treatment plan. On March 29, 2021, Petitioner returned to Dr. Taiwo and reported persistent eye swelling, struggles with reading and persistent anxiety attacks. (PX7B) Dr. Taiwo found Petitioner to be in moderate distress and kept her off work.

On March 31, 2021, Petitioner saw Dr. Frederick Bylsma at Neurophysiological Services. (PX9B) Petitioner reported the March 5, 2021, attack and complained of ongoing anxiety and sleep problems. Dr. Bylsma diagnosed Petitioner as having anxiety reaction to severe stress and insufficient sleep syndrome and began psychotherapy. Petitioner treated with Dr. Bylsma through November 29, 2022. Petitioner complained of anxiety when in public and headaches throughout. On January 11, 2022, Dr. Bylsma opined that Petitioner would not be able to return to work as a bus operator. On March 25, 2022, Dr. Bylsma released Petitioner to return to work light duty in order to adjust to her work environment again.

On May 6, 2022, Petitioner underwent a Section 12 examination (IME) by Dr. Robert Heller at Respondent's request. (RX3) Dr. Heller examined Petitioner and reviewed her medical records. Dr. Heller opined that Petitioner had posttraumatic stress disorder (PTSD) of chronic duration due to Petitioner's lengthy history of traumatic events since childhood and multiple instances of violence experienced while operating a bus. Dr. Heller further opined that the March 5, 2021, attack exacerbated Petitioner's underlying issues and found that her current condition was partially the direct and proximate result of the March 5, 2021, attack. Dr. Heller also found that Petitioner's treatment for her PTSD was reasonable and necessary. Dr. Heller felt that Petitioner would benefit from 8-12 weeks of intensive trauma-focused therapy. Dr. Heller opined that Petitioner could work in another setting due to her ongoing condition.

On September 19, 2022, Dr. Bylsma indicated that Petitioner would be ready to return to work no later than December 2022. (PX9B) On November 29, 2022, Dr. Bylsma noted that Petitioner reported she was ready and prepared psychologically to return to work as a bus operator. Dr. Bylsma released Petitioner to return to work, without restrictions, starting December 12, 2022.

On December 5, 2022, Petitioner saw Dr. Khojasteh Bahmangeigi. Petitioner reported feeling fine with no problems. (PX7B) Dr. Bahmangeigi released Petitioner to return to work without any restrictions.

Petitioner's Current Condition

Petitioner returned to work in December 2022 as a bus operator instructor, which involves less interaction with the public. (T. 46, 49) Petitioner testified to continued problems with her vision. (T. 50) She explained that prior to the March 5, 2021, attack, she did not have to wear reading glasses or corrective lenses for her near-term vision, which she now has to wear. (T. 50-51)

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 following the March 5, 2021, work attack, Petitioner suffered from bilateral corneal abrasions, anxiety and PTSD. The Arbitrator further notes that Dr. Bylsma and Dr. Heller both opined

that Petitioner could not work as a bus operator following the attack due to her ongoing anxiety and PTSD and that she would benefit from psychological treatment. The Arbitrator further notes that Dr. Bylsma and Dr. Heller opined that Petitioner could work, but in a position other than bus operator. Dr. Heller further opined that the March 5, 2021, attack exacerbated Petitioner's PTSD and that her psychological condition was partially the direct and proximate result of the March 5, 2021, work attack. Prior to March 5, 2021, Petitioner was able to work as bus operator and was doing so without problems. The Arbitrator also notes that prior the March 5, 2021, Petitioner did not have to wear reading glasses or corrective lenses for her near-term vision and that she continues to have visual problems following the March 5, 2021, work attack.

Based on the above, the Arbitrator finds that Petitioner's current conditions of ill-being are causally related to the March 5, 2021, work attack.

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

The Arbitrator notes her findings about regarding causal connection. The Arbitrator further notes that Dr. Heller found Petitioner's psychological treatment was reasonable and necessary. The Arbitrator also notes that Petitioner suffered bilateral corneal abrasions on March 5, 2021, which required treatment.

Based on the above, the Arbitrator finds that Respondent shall pay for unpaid medical expenses to City of Chicago Fire Department, St. Joseph Hospital, Dolton Medical Center and Neuropsychological Services pursuant to Sections 8(a) and 8.2 of the Act.

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

The Arbitrator notes her findings above regarding causal connection. The Arbitrator further notes Petitioner was off work from March 6, 2021, through December 7, 2022. (AX1) Dr. Bylsma opined that Petitioner would be ready to return to work without restrictions no later than December 12, 2022. Prior to that, Dr. Bylsma had Petitioner off work and/or had released Petitioner to return to work, light duty. The Arbitrator notes that there is nothing in the record to indicate that Petitioner's restrictions were accommodated.

Based on the above, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from March 6, 2021, through December 7, 2022. Respondent shall receive a credit of $88,206.36 for temporary total disability benefits paid.

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

Pursuant to Section 8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability for accidental injuries occurring on or after September 1, 2011:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the

injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors;

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

With regard to subsection (i) of Section 8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator gives this factor no weight.

With regard to subsection (ii) of Section 8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a bus operator at the time of the accident and that she was not able to return to work in her prior capacity as a result of said injury. The Arbitrator gives this factor considerable weight.

With regard to subsection (iii) of Section 8.1b(b), the Arbitrator notes that Petitioner was 44 years old at the time of the accident. The Arbitrator gives this factor some weight.

With regard to subsection (iv) of Section 8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner's earnings were not compromised or affected, and no evidence was presented as to Petitioner's future earning capacity. The Arbitrator gives this factor its appropriate weight.

With regard to subsection (v) of Section 8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner suffered from bilateral corneal abrasions, PTSD and anxiety as a result of the March 5, 2021, work attack. The Arbitrator also notes that Petitioner continues to have vision problems and anxiety following the work attack.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 10% loss of use of the eyes pursuant to Section 8(e)(13) and 20% loss of use of the person as a whole pursuant to Section 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC016419
Case Name	Pamela Stivers v. Sherwin Williams
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0124
Number of Pages of Decision	26
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Matthew Coleman
Respondent Attorney	Craig Bucy

DATE FILED: 3/20/2025

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Pamela Stivers,

Petitioner,

vs. No. 20 WC 016419

Sherwin Williams,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary disability, permanent partial disability, and request for special findings per 9040.40(b) and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

FINDINGS OF FACT:

On July 2, 2020, Petitioner, a 61-year-old quality control technician, tripped over a mat while in the course of her job duties and fell onto her left outstretched arm. Petitioner reported immediate pain in her left wrist and presented for treatment, where she was diagnosed with an acute distal radius fracture of the left wrist. Petitioner continued treatment for her left wrist through January 6, 2021. At that time, Petitioner reported dropping objects with activity, tenderness to palpation over the first dorsal compartment, a positive Finklestein test, mildly painful grind test, and shoulder pain. She was diagnosed with DeQuervain's tenosynovitis and referred to Dr. Pizinger for the shoulder pain. Dr. Pizinger ordered an MRI arthrogram and diagnosed Petitioner with a left SLAP tear and partial rotator cuff tear. Petitioner underwent a Section 12 examination with Dr. Karlsson. Dr. Karlsson diagnosed Petitioner with an unrepaired left shoulder partial

thickness rotator cuff tear. Dr. Karlsson opined Petitioner's left shoulder diagnosis was not causally related to the accident as the pre-accident and post-accident MRIs were nearly identical.

It was undisputed that Petitioner was diagnosed with left shoulder impingement syndrome and a partial rotator cuff tear and was scheduled to undergo shoulder surgery prior to her July 2, 2020 accident. The surgery was scheduled to take place on July 6, 2020.

CONCLUSIONS OF LAW:

Causation-Left Shoulder

The Commission finds the evidence supports the conclusion that Petitioner's left shoulder condition of complex SLAP tear was causally related to the work accident of July 2, 2020. It was undisputed Petitioner was diagnosed with a partial rotator cuff tear prior to the work accident. Petitioner testified and the records reflect she was scheduled for an arthroscopic repair for her left shoulder on July 6, 2020, but suffered her current work accident on July 2, 2020. Following the work accident, Petitioner consistently reported a fall at work onto her left outstretched arm. Both Dr Pizinger and Dr. Karlsson acknowledged Petitioner fell on her left arm and both opined Petitioner's mechanism of injury could have aggravated pathology in her shoulder. Dr. Pizinger testified Petitioner's left shoulder condition was causally related to the work accident because there was no indication of a SLAP tear prior to the accident. Conversely, Dr. Karlsson opined the work accident did not aggravate Petitioner's left shoulder pathology because her pre and post injury MRI findings were nearly identical. After a review of the entire record, the Commission places greater weight on the opinion of Dr. Pizinger and finds Petitioner suffered an aggravation of her underlying left shoulder condition resulting in a SLAP tear which arose out of the accident of July 2, for which no additional treatment was recommended or obtained.

Medical Expenses

Based on the above, the Commission awards medical expenses for Petitioner's left shoulder contained in Petitioner's Exhibit 7 and as provided in section 8(a) and section 8.2 of the Act.

Permanent Partial Disability

When considering PPD, the Commission considers the following factors: (i) the level of impairment contained within a permanent partial disability impairment report; (ii) the claimant's occupation; (iii) the claimant's age at the time of injury; (iv) the claimant's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. *See* 820 ILCS 305/8.1b(b) (West 2022). "[N]o single enumerated factor shall be the sole determinant of disability." *Id*. § 305/8.1b(b)(v).

Regarding factor (i), no AMA impairment rating was admitted into evidence. The Commission gives no weight to this factor.

Regarding factor (ii), following the work accident, Petitioner returned to work as a quality control technician through the date of her right shoulder surgery on May 21, 2021, which was unrelated to the work accident. Petitioner was given no restrictions for her left shoulder. The Commission gives greater weight to this factor.

Regarding factor (iii), Petitioner was 61 years of age at the time of her injury and will have to live with any impairment for the remainder of her working life. The Commission gives moderate weight to this factor.

Regarding factor (iv), Petitioner submitted no evidence of permanent wage impairment. The Commission gives no weight to this factor.

Regarding factor (v), the medical records show Petitioner was actively treating for her left shoulder with a scheduled surgery before the work accident. Her previous MRI showed a partial rotator cuff tear with impingement syndrome. Following the work accident, Petitioner underwent an MRI arthrogram of the left shoulder which showed an increased superior labral tear. Petitioner underwent no treatment for her left shoulder. The Commission give greater weight to this factor.

Based on the above factors, and the record taken as a whole, the Commission concludes that Petitioner sustained permanent partial disability to the extent of 2% loss of use of the body as a whole for injuries sustained to Petitioner's left shoulder pursuant to Section 8(d)2 of the Act.

All else is affirmed and adopted.

Request for Special Findings per 9040.40(b)

The Respondent has further submitted a Request for Special Findings pursuant to Commission Rule 9040.40(b) seeking answers to the following five questions:

1. What is the Commission's assessment of the Petitioner's credibility regarding the mechanism of injury?

The Commission finds Petitioner proved she fell on her left arm while performing her job duties on July 2, 2020.

2. Is it more probably true than untrue that Petitioner fell with bilateral outstretched hands?

The Commission finds Petitioner proved she fell on her left arm while performing her job duties on July 2, 2020.

3. Did Petitioner suffer any injury to her left shoulder as a result of the fall?

Yes.

4. Did the accident of July 2, 2020 contribute to Petitioner's right rotator cuff tear to become symptomatic?

Petitioner failed to prove the July 2, 2020 accident contributed to her alleged right shoulder condition.

5. If the Commission finds the accident of July 2, 2020 did not in any way contribute to Petitioner's right rotator cuff to become symptomatic, what did?

The Commission finds Petitioner failed to prove her right shoulder was injured in the work accident and will not speculate as to any other cause.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 11, 2024, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner's medical expenses for treatment to Petitioner's left shoulder contained in Petitioner's Exhibit 7 and as provided in section 8(a) and section 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner permanent partial disability benefits of $600/week for 41 weeks, because the injuries sustained caused the 20% loss of use of Petitioner's left hand, as provided in Section 8(e) 9 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner permanent partial disability benefits of $600/week for 10 weeks because the injuries sustained caused the 2% loss of use of Petitioner's body as a whole as provided in Section 8(d)2 of the Act.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $ 41,500.00 The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

March 20, 2025

MP/ns
o-1/30/25
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/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC016419
Case Name	Pamela Stivers v. Sherwin Williams
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Matthew Coleman
Respondent Attorney	Craig Bucy

DATE FILED: 7/11/2024

/s/ Jeffrey Huebsch, Arbitrator
Signature

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

P. Stivers v. Sherwin Williams, 20 WC 016419

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

PAMELA STIVERS
Employee/Petitioner
v.
SHERWIN WILLIAMS
Employer/Respondent

Case # **20** WC **016419**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **4/24/24**. 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 _____

P. Stivers v. Sherwin Williams, 20 WC 016419

FINDINGS

On **7/2/20**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**52,000.00**; the average weekly wage was $**1,000.00**.

On the date of accident, Petitioner was **61** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**0** for TTD, $**972.58** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**972.58**.

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

ORDER

Petitioner's claim for medical services related to the right and left shoulders is denied.

Petitioner's claim for TTD benefits is denied.

Respondent shall pay Petitioner permanent partial disability benefits of $600.00/week for 41 weeks, because the injuries sustained caused the 20% loss of use of Petitioner's left hand, as provided in Section 8(e)9 of the Act.

Respondent shall pay Petitioner the compensation benefits that have accrued from 7/2/2020 through 4/24/2024 in a lump sum, and shall pay the remainder of the award, if any, in weekly payments.

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

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

Signature of Arbitrator

July 11, 2024

FINDINGS OF FACT

Petitioner's Testimony

Petitioner was the only witness who testified. She testified that she was employed by Respondent, on July 2, 2020, as a quality control technician. She had worked for Respondent for 40 and a half years at that time, having been hired when she was 20. She denied ever having any kind of work accident before that date. Petitioner testified she planned to work until age 67 to retire. (T. 10-12).

Petitioner's job duties required her to to test multiple aspects of paint (viscosity, ph., etc.). She described the process of how the paint was tested, which included heating the paint up and carrying it to different testing stations. She testified that a can of paint weighs between two and five pounds. The testing units would be a quart or a pint. Petitioner said that she was right hand dominant and would stir the paint using her right hand, holding the paint with her left hand. She testified there were eight different testing stations and she would test around 20 cans of paint per day. She would lift a can with her right arm, up to shoulder height. Sixteen lifts, 20 cans. (T. 13-16).

Petitioner testified that prior to July 2, 2020 she had no issues with her left wrist or right shoulder. (T. 17). She testified that she had been seen by a doctor for her left shoulder prior this date as her left shoulder was "sore". She testified that Dr. Hill had diagnosed her with a torn rotator cuff in the left shoulder before July 2, 2020, and she was scheduled to undergo left shoulder surgery on July 6, 2020. (T. 18-19).

The Parties stipulated that Petitioner sustained accidental injuries which arose out of and in the course of her employment by Respondent on July 2, 2020. Petitioner testified that she was walking in the lab, tripped over a mat and "went down". "I tried to break my fall and … I went down hard." (T. 19). Petitioner testified that she attempted to break her fall with both arms extended. (T. 20-21). She testified that following the fall, her left wrist was extremely painful and she couldn't move it. (Tr. 21). She reported the accident to a supervisor. (T. 21).

Petitioner went to Concentra on the date of accident and then saw Dr. James Hill from IBJ on July 6, 2020. (Tr. 22). Dr. Hill diagnosed her with a closed left radius fracture. She had follow ups with Dr. Hill before she obtained a second opinion from Dr. Elliot Nacke, regarding her left wrist. She had treatment with Dr. Nacke and a subsequent evaluation with Dr. Michael Chiu at Illinois Bone and Joint on November 11, 2020. (T. 22-23).

Petitioner testified that she was seen by Dr. Chiu for right shoulder pain. (T. 24). She told Dr. Chiu about experiencing right shoulder pain for the past two months. She testified that at a follow up visit with Dr. Chiu, on November 25, she reported shaking a jar and felt pain into the right shoulder. She testified this was not a new injury. (T. 24). Petitioner agreed with the November 11, 2020 chart note from IBJ that said that she presented for evaluation of right shoulder pain that is a new condition that started over the last 2 months, with worsening symptoms over the last 2 weeks. (T. 30). She testified that she waited two months after her right shoulder pain began to undergo treatment because of her left wrist fracture pain. (T. 30-31). She denied any other injury to the right shoulder after the trip and fall and wrist fracture (in September of 2020?) and before this evaluation. (T 31).

Petitioner testified that she underwent an MRI of the right shoulder and continued follow ups with Dr. Chiu and Dr. Nacke. Petitioner testified that Dr. Nacke eventually referred her to Dr. Ryan Pizinger for a second opinion on her right shoulder. (T. 26).

Petitioner testified that Dr. Pizinger ordered MRIs of both shoulders, which she underwent. (T. 27). She testified Dr. Pizinger diagnosed her with a SLAP tear in the right shoulder and confirmed the pre-accident diagnosis of a torn left rotator cuff. (T. 27). Petitioner testified that she underwent right shoulder surgery by Dr. Pizinger on May 21, 2021. (T. 27-28). Petitioner testified that she followed up post-operatively multiple times with Dr. Pizinger through February 7, 2022. (T. 28). Some of the follow ups were conducted via Zoom. She testified she underwent post-op physical therapy at Premier PT. (T. 29).

Petitioner testified that the original Application for Adjustment of Claim (RX 8, signed 4 days after the accident) did not list either shoulder as an injured body part. She testified that her left wrist pain was so bad that she didn't notice injuries to either shoulder at that time. (T. 33). Petitioner testified that she signed an Amended Application for Adjustment of Claim (PX 8), two days before trial, now additionally listing both shoulders as being injured. (T. 34). She testified the Amended Application was accurate. (T. 35).

Regarding her left wrist, Petitioner testified that she has difficulty with ADLs, vacuuming, getting dressed is hard, and she has difficulty carrying pots when cooking. Her wrist is tight all the time. She has difficulty tying shoes. (T. 35-41). Petitioner testified that she used to play card games but now requires help to shuffle. (T. 41). She testified that her wrist fracture altered how she uses a keyboard. She testified that she now gets groceries delivered. She testified that she now uses both hands to perform various jobs around the house instead of one. (T. 41-43).

With respect to her right shoulder, Petitioner testified that lifting items in the kitchen is hard. (T. 43-44). She testified that she gets pain while mopping. (T. 44). She testified that showering and getting dressed is also hard due to her shoulder. (T. 44-45). She testified that driving and caring for her family is more difficult as well. (T. 45-47). She testified that she takes Advil for her pain. (T. 47-48).

Petitioner testified that she retired from Respondent in November 2023, after 43 years with the company. (T. 48-49).

On cross examination, Petitioner testified that she had been seen by multiple medical providers as a result of the accident and was honest with each one. (T. 50). Petitioner testified that she was claiming acute injuries only to her left wrist, left shoulder and right shoulder as a result of the July 2, 2020 accident. (T. 51-52).

Petitioner testified that she began treating with Dr. James Hill at Illinois Bone and Joint for her left shoulder on March 19, 2020, 3-1/2 months before her work accident. She testified that she had experienced left shoulder issues for a month before that visit (loss of range of motion, aching and burning pain in the left shoulder). Petitioner testified that Dr. Hill thought she had a torn rotator cuff and gave her an injection. She confirmed her shoulder did not improve after the injection and she underwent an MRI on May 19, 2020. She testified that Dr. Hill reviewed the MRI, diagnosed her with impingement, rotator cuff pathology, biceps and labral pathology, and recommended surgery, all before the work accident. Petitioner testified that she wanted to proceed with the offered left shoulder surgery. (T. 52-55).

Petitioner testified that she was seen at Concentra on the day of the accident and gave an honest reporting of her accident. (T. 56). She also completed intake paperwork in connection with the visit. Petitioner testified that she reported tripping and falling over a mat at work, injuring her left wrist only. (T. 57). She testified that she did not report any left or right shoulder injury at this visit. (T. 57-58). Petitioner testified that she completed a pain diagram in connection with this visit and only circled the left wrist and hand. (T. 57-58). She made no mention of falling onto her right hand or shoulder. (T. 58). She testified that a physical exam was performed only of the left wrist and hand. (T. 59). Petitioner testified that no evaluation was performed of either shoulder. (T. 59).

She testified that she did not disagree with an x-ray indication of due to "tripping and falling onto left hand". (T. 59). Petitioner testified that she was diagnosed with just a left wrist fracture. (T. 60).

Petitioner testified that she was next seen by Dr. Hill on July 6, 2020 and told him about the new injury. Petitioner testified she told Dr. Hill that she "tripped over an elevated floor pad and fell, landing on the left outstretched upper extremity." (T. 60). Petitioner testified that her complaints were solely with respect to the left wrist at this visit. Petitioner confirmed that she reported no change in her pre-accident symptoms to Dr. Hill. Petitioner testified that Dr. Hill diagnosed her with a left wrist injury only at that visit. (T. 60-61).

Petitioner testified to continued follow ups with Dr. Hill on July 14 and August 11, 2020. She testified that her complaints were with respect to the left wrist. She testified that physical examinations were only performed with respect to the left wrist at these visits. Petitioner testified that Dr. Hill made no diagnosis or treatment recommendations for either shoulder. (T. 61-64).

Petitioner testified that she was able to work within restrictions (shortened days) regarding her left wrist. (T. 62-63, 65-66).

Petitioner testified that she subsequently obtained a second opinion regarding her wrist with Dr. Elliot Nacke, at Hinsdale Orthopedics on August 26, 2020. (T, 64). Petitioner testified that she told Dr. Nacke she suffered a fall onto an outstretched left hand. Petitioner agreed that her only complaint to Dr. Nacke was left wrist pain. (Tr. 65). Petitioner testified that Dr. Nacke performed an examination of her left wrist only. Petitioner testified that Dr. Nacke diagnosed her with a left wrist fracture and documented no injury to any other body part. (T. 64-66).

Petitioner testified that she told her therapist at Premier PT about her injury. Petitioner told her therapist that she tripped over an uneven floor mat and hurt her left wrist. Petitioner testified that she did not tell her therapist that she suffered any kind of injury to any other body part as a result of the work accident. She testified that she underwent therapy for the left wrist only and did not perform any kind of shoulder exercises. (T. 66-67).

Petitioner testified that she attended follow ups with Dr. Nacke on September 23, 2020 and October 28, 2020. She did not report any injury to either shoulder, undergo any treatment to either shoulder, have either shoulder examined, or obtain any kind of diagnosis for either shoulder at these visits. (T. 67-68).

Petitioner testified that she was first seen by Dr. Chiu at Illinois Bone and Joint on November 11, 2020 for right shoulder complaints. (T. 68-69). She testified this was the same group that she had previously treated with Dr. Hill for her left shoulder before the accident. (T. 69).

Petitioner agreed that this visit occurred four months after the work accident. (T. 69). She testified that she told Dr. Chiu that her pain began two months before this visit, around September 11, 2020. (T. 70). Petitioner agreed that this visit, four months after the accident, was the first time any right shoulder complaints were documented in her medical records. Petitioner testified that prior to this visit, she had been under active medical care with multiple providers and never mentioned any right or left shoulder issues after the accident. (T. 70-71).

Petitioner confirmed that she specifically told Dr. Chiu that she didn't remember any injury. (T. 71). She testified that she didn't tell Dr. Chiu that she had suffered any kind of work injury with respect to her right shoulder. (T. 71-72).

Petitioner testified that she thereafter continued therapy for the left wrist only. (T. 72-73).

Petitioner testified that she underwent a right shoulder MRI and followed up with Dr. Chiu on December 2, 2020. (T. 73). She testified that she again did not report any kind of right shoulder work injury to Dr. Chiu. She testified that Dr. Chiu recommended right shoulder surgery. (T. 73).

Petitioner testified that she was seen later the same day, on December 2, 2020, by Dr. Nacke.. She testified that she did not tell Dr. Nacke about any of her treatment with Dr. Chiu and did not mention any kind of right shoulder injury. (Tr. 73-74).

Petitioner testified that she returned to Dr. Chiu on December 23, 2020 and again made no mention of any kind of workplace injury with respect to her right shoulder condition. (T. 74). Petitioner testified that Dr. Chiu again recommended surgery. Petitioner testified that she never returned to Dr. Chiu for further treatment after this visit. (T. 75).

Petitioner testified that she was next seen by Dr. Nacke on January 6, 2021. She testified that this was the first time she mentioned any kind of shoulder complaints to him. (T. 75-76). Petitioner testified that she did not tell Dr. Nacke that she had been treating with Dr. Chiu for her right shoulder or had been prescribed surgery. (T. 75-76). Petitioner testified that Dr. Nacke gave her a referral to Dr. Pizinger. She testified that she never followed up with Dr. Nacke after this visit. (T. 78).

Petitioner testified that she was first seen by Dr. Pizinger on January 11, 2021. (T. 76). Petitioner testified that she told Dr. Pizinger that she slipped and fell at work onto her bilateral outstretched arms at the time of the accident. (T. 76). Petitioner testified that this was the first time she ever reported falling into the bilateral outstretched arms to any medical provider. This was approximately seven months after the accident. (T. 76-77).

Petitioner testified that she told Dr. Pizinger that she first developed bilateral shoulder pain a month after the accident. (T. 77). Petitioner testified that she would not dispute that this was the first time she ever made this allegation to a medical provider. Petitioner testified that she thereafter treated with Dr. Pizinger for her shoulders. (T. 77-78).

Petitioner testified that she attended an IME with Dr. Mark Cohen on February 24, 2021. (Tr.78). She testified that she told Dr. Cohen she tripped over a mat and fell onto her outstretched left hand at the time of the accident. (T. 78-79). Petitioner testified that she made no mention of falling onto her bilateral outstretched arms. Petitioner testified that she told Dr. Cohen she had last undergone medical treatment in November of 2020, despite being under active medical care at the time of the IME. (T. 79).

Petitioner testified that after the IME, her treatment was restricted to the shoulders only. (T. 80). Petitioner testified that she underwent right shoulder surgery on May 21, 2021 with post-op follow ups through February of 2022. (T. 80). Petitioner testified that her last visit with Dr. Pizinger was a telehealth visit on February 7, 2022. Petitioner testified that she never underwent left shoulder surgery or left wrist surgery. (T. 80-81). Petitioner testified that she was never given any kind of permanent restrictions. (T. 81).

Petitioner testified that she attended an IME with Dr. Karlsson on April 5, 2022. (T. 81). Petitioner testified that she told Dr. Karlsson she was able to work for Respondent through the date of her right shoulder surgery on May 22, 2021.

Petitioner testified that after the shoulder surgery, she received short term disability benefits from her employer from May 21 through November 19, 2021, in the amount of $33,875.32. (T. 82).

On redirect examination, Petitioner testified that she told the Concentra provider that she fell onto an outstretched left hand. (T. 85). She then testified that she actually fell onto both hands. (T. 85). Petitioner testified that she went to Concentra for treatment to her left wrist. (T. 86).

Petitioner testified that she had no reason to doubt her medical records from Dr. Hill. (Tr. 86-87). She testified that it was accurate that she fell onto the left hand. (Tr. 86). She testified this was because she actually fell on both hands. (T. 86-87). After the fall, she was treating with Dr. Hill and Dr. Nacke for her left wrist. (T. 87-88).

Petitioner confirmed that she never reported falling onto her bilateral outstretched arms to any medical provider until she was seen by Dr. Pizinger. (T. 90). Petitioner agreed that he was the eighth medical provider she had seen since the accident. She testified that the first visit with Dr. Pizinger was the first time she ever alleged her right shoulder was injured as a result of the work accident. (T. 90).

Medical Records

On March 19, 2020, approximately four months prior to the work injury, Petitioner presented to Dr. James Hill, of Illinois Bone & Joint Institute, with a one-month history of left shoulder and upper extremity pain with loss of range of motion and function. (RX 2). Petitioner described her pain as aching and burning, which started at the deltoid region of her shoulder radiating into the lateral aspect of her brachium and dorsal aspect of her forearm. Any attempt at shoulder range of motion in any direction exacerbated her pain. Petitioner was unable to raise her hand above shoulder level. Petitioner reported difficulty sleeping. She denied any similar problems in the past. Petitioner had not had any evaluations or treatment for her shoulder prior to this date. The left shoulder examination showed tenderness to palpation of the acromioclavicular joint. The remaining bony landmarks and soft tissue structures were non-painful. Petitioner's left shoulder demonstrated marked limitations in active range of motion in all directions relative to her passive range of motion, which was equal to the opposite extremity. Petitioner had pain with extremes of range of motion in all directions. Petitioner's rotator cuff strength was diminished. The x-ray of her left shoulder revealed advanced degenerative changes at the acromioclavicular joint. Petitioner was diagnosed with left shoulder pain, most consistent with significant rotator cuff tendon pathology, which could also represent cervical radiculopathy. Petitioner was given a left shoulder subacromial steroid injection. (RX 2, 20-21).

On May 19, 2020, Petitioner presented to Illinois Bone & Joint Institute for an MRI of the left shoulder. There was no acute injury noted on the MRI. The radiologist noted the MRI revealed low to moderate grade undersurface partial tearing involving the posterior distal aspects of the supraspinatus and infraspinatus tendons. No full thickness rotator cuff tear or atrophy was noted. The radiologist further noted moderate to severe acromioclavicular degenerative changes, as well as mild to moderate glenohumeral degenerative changes. No acute fractures were noted. The radiologist also noted there was diffuse non-displaced tearing of the inferior labrum. (RX 2, 82).

On May 28, 2020, Petitioner returned to Dr. Hill regarding her left shoulder. Petitioner reported that her prior steroid injection provided significant relief, but it was only temporary. Petitioner reported she did not undergo physical therapy. She also indicated that she underwent an MRI. She continued to have pain in the deltoid region of her shoulder which remained exacerbated with the use of her hand above shoulder level. Petitioner reported continued difficulty with activity. Petitioner reported that her symptomology interfered with the majority of her daily living activities, as well as her sleep at night. (RX 2, 17-18). On examination, Petitioner's left shoulder failed to demonstrate any appreciable soft tissue swelling or atrophy relative to the opposite extremity. She was tender to palpation at the acromioclavicular joint. Petitioner continued to demonstrate limited range of motion of her left shoulder. She had pain with Hawkin's and Neer's impingement testing. Speed and O'Brien's tests evidenced reproducible pain. Petitioner's rotator cuff tendon strength had improved,

but was still noted to be diminished. Dr. Hill reviewed the MRI, which evidenced an approximately 80% partial thickness external surface tear of the supraspinatus tendon with advanced degenerative changes of the acromioclavicular joint and fluid along the bicipital groove. It also revealed significant anterolateral subacromial osteophytes. The diagnosis was left shoulder pain, most consistent with left shoulder impingement syndrome with partial thickness external surface rotator cuff tendon tears and acromioclavicular joint arthritis with possible associated biceps tendon injury and labral pathology. Petitioner indicated she did not want to continue with conservative treatment and wanted to proceed with surgical intervention. (RX 2, 17-18).

On July 2, 2020, Petitioner presented to Occupational Health Centers of Illinois (Concentra), where she was seen by Dr. Daniel Shiba. (RX 3, 29). Petitioner reported that she tripped and landed onto her left wrist/hand. She indicated she tripped on a mat at work and only injured her left hand and wrist. Petitioner made no complaints regarding either of her shoulders. There was no history of a FOOSH (fall on outstretched hands). There is no mention of the right upper extremity, except that it was noted that Petitioner is right handed. (RX 3, 29).

Petitioner filled out a pain chart and information form. (RX 3, 17-19). She circled the left hand and wrist as the only areas that were hurt during the fall. She wrote "tripped on a mat" with respect to mechanism of injury. She listed "left hand and wrist" with respect to the parts of the body injured. (RX 3, 18). Petitioner reported she tripped and fell onto left hand and wrist just prior to appearing for treatment. She completed a pain diagram at this visit showing where her pain was. She circled the left wrist only. (RX 3, 18).

Petitioner underwent an x-ray during this visit which revealed an acute distal radius fracture of the left wrist. The reason for the x-ray was indicated as "patient tripped and fell onto her left arm". (RX 3, 30). No examination of either shoulder was documented. (RX 3, 30).

Dr. Shiba diagnosed Petitioner with a strain of the left wrist and a closed fracture of the distal end of the left radius, unspecified fracture morphology. There were no other diagnoses.. (RX 3, 31). Petitioner was discharged with a splint, pain medication and a referral to an orthopedic specialist. Petitioner received work restrictions consisting of no use of the left hand and keeping a splint on the left hand/wrist at all times. (RX 3).

The records of Dr. Hill and the history given to Dr. Cohen show that Petitioner was seen at Northwest Community Hospital, where she received another splint and was given a sling, after Concentra and before seeing Dr. Hill on July 6, 2020. Neither Party submitted these records.

On July 6, 2020, four days after Petitioner's work accident, she presented to Dr. Hill. (RX 2, 15). Petitioner indicated she presented for evaluation of a new condition. Dr. Hill noted that she had previously been seen for left shoulder pain and had elected to proceed with surgery, but then she sustained an injury to her left wrist related to a work accident on July 2, 2020. She reported that she tripped over an elevator (sic?) floor pad and landed on her outstretched left upper extremity. (RX 2, 15). Petitioner reported an immediate onset of pain and was seen at the company's urgent care clinic. Petitioner reported constant aching and pain localized diffusely at her left wrist. She reported her pain was exacerbated by any attempts at wrist range of motion. She denied any prior history of left wrist injuries. On examination, Petitioner's left upper extremity demonstrated her forearm, wrist and hand to be in a well-molded volar splint. Petitioner was tender to palpation over the distal radial metaphyseal region and ulnar styloid. Petitioner exhibited active range of motion in all digits without discomfort. Dr. Hill reviewed the prior x-ray, which evidenced a hairline non-displaced fracture of the distal radial metaphyseal and probable associated fracture of the ulnar styloid process. He further noted obvious narrowing of the distal radial ulnar joint. There was no evidence of carpal fracture or dislocation. Petitioner was diagnosed with a non-displaced left distal radius fracture and ulnar styloid process fracture, as well as

degenerative changes of the distal radial ulnar joint. (RX 2, 16). Petitioner was advised to continue immobilization and follow up in one week.

On July 14, 2020 Petitioner returned to see Dr. Hill. (RX2, 13). She reported ongoing discomfort in her left wrist. Petitioner remained tender to palpation on examination. She was diagnosed with a healing non-displaced left distal radius fracture. She was placed in a splint and instructed not to lift, push or pull more than two to three pounds. She was advised to follow up in one month. There were no complaints or diagnoses with respect to either shoulder. (RX 2,14).

On August 11, 2020, Petitioner returned to the Illinois Bone & Joint Institute for reevaluation by Dr. Hill. (RX2, 11). She was now six weeks status post left distal radius fracture. She had been using the splint, but still had some discomfort in her wrist. According to this medical note, Dr. Hill stated that Petitioner was "quite upset that I did not write her an off work note," and Dr. Hill noted she also never requested such a document. There was no new symptomatology. The physical examination found Petitioner again to be tender to palpation at the distal radial metaphysis with no obvious deformities. She was neurologically intact. Repeat x-rays again demonstrated essentially anatomical alignment of her distal radial metaphysis fracture. There was no interval loss of radial height. However, she did demonstrate a callus formation along the ulnar aspect of the fracture site at the inferior aspect of the radial ulnar joint. Dr. Hill concluded that Petitioner was status post left distal radius non-displaced fracture. She could continue to use the splint for activities outside the house. She was given a prescription for occupational therapy focusing on the wrist and digit range of motion. There is no mention of any shoulder issues. (RX 2, 11-12).

On August 26, 2020, Petitioner presented to Dr. Elliott Nacke at Hinsdale Orthopaedics for a second opinion regarding her left wrist. She reported the slip-and-fall at work onto her left outstretched left hand. (RX 4, 7). She stated that she was concerned that she continued to have left wrist pain. She stated that she had not begun physical therapy as previously instructed. She reported the pain was in the left wrist and rated it at 2/10. She reported her symptomology occurred during the entire day and her associated symptoms included weakness. She reported her pain was alleviated by resting. She reported her pain was aggravated with movement. On examination of Petitioner's left wrist, she exhibited mild soft tissue swelling about the wrist. She was tender to palpation over the distal radius, radial snuffbox, SL interval, LT interval and TFCC. Petitioner's range of motion of the wrist was diminished. Petitioner was able to make a complete fist. Sensation was intact. No complaints of left shoulder or right shoulder pain were documented and no examination was documented regarding either body part. (RX 4, 9). The diagnosis was left distal radius Colles' fracture. She was eight weeks post-injury. She was referred to Hand Therapy for wrist range of motion and strengthening. Restrictions were imposed of no lifting over five pounds. She was encouraged to discontinue using the splint. Petitioner was advised to follow up in four weeks.

Petitioner was seen at Premier PT on August 28, 2020, to undergo an initial evaluation for PT for her left wrist. (PX 8, 144). She gave a history of a left wrist fracture due to a fall at work on July 2, 2020. The cast had been removed and she was prescribed therapy. She voiced left wrist complaints. The assessment was left wrist pain and swelling, post Colles fracture of left radius. No complaints or examination of the right arm was noted. There were no complaints or examination of the left shoulder, although a left elbow exam was documented. (PX 8, 144-147).

On September 22, 2020, Petitioner attended physical therapy for a recertification regarding her left wrist pain. Petitioner continued to report pain in her left wrist and forearm. Swelling and mobility were noted to be improved, but pain was still impacting her activities of daily life. Long-term and short-term goals were reestablished, and Petitioner was instructed to attend physical therapy two to three times a week for six weeks. There was no mention of the left or right shoulder. (RX 4, 17).

On September 23, 2020, Petitioner returned to Dr. Nacke. (RX 4, 22). Petitioner complained of severe pain throughout her left wrist, hand, and forearm which was worsened with activity. Petitioner reported her pain radiated from her fingers along the dorsal aspect of her forearm. She reported pain with gripping activities. She reported that several nights prior to her visit, she was at dinner with her husband and developed severe throbbing pain in her forearm while at rest. She also stated that after half a day of work, she was in severe pain and was unable to tolerate and fully participate in therapy. Petitioner reported no relief from NSAIDs. Petitioner reported her pain was 5/10 and described the same as dull. The left wrist examination remained unchanged. Petitioner exhibited no tenderness in the thumb, index, long, ring or, small fingers. She was able to make a fist with difficulty. Petitioner was diagnosed with a left distal radius Colles' fracture. No examination was performed of either shoulder and no shoulder complaints were noted. Petitioner requested Norco in order to participate in physical therapy. She was provided a prescription for the same. Petitioner was instructed to continue attending physical therapy as previously prescribed. Petitioner was instructed to work light-duty with half days at work and no lifting over 10 pounds. She was to follow-up in one month. (RX 4, 23-24).

On October 27, 2020, Petitioner presented to Premier Therapy for physical therapy recertification. Petitioner was noted to show improvement in left hand and wrist mobility. Petitioner reported her pain was aggravated on occasion, but she was following through the treatment well. Long-term and short-term goals were reestablished, and Petitioner was instructed to attend physical therapy two to three times a week for six weeks. There is no mention of either the left or right shoulder. (RX 4, 26).

On October 28, 2020, Petitioner returned to Dr. Nacke. Petitioner reported pain in her left wrist only at this visit. (RX 4, 31). Overall, Petitioner felt as though she was improving. Petitioner reported she was attending Occupational Therapy. Petitioner described her pain was 5/10 and had been ongoing for approximately 2 months. Petitioner described her pain as dull and reported associated weakness. Upon examination Petitioner exhibited swelling of the left wrist. No wrist effusion was noted. Petitioner was "exquisitely tender" over the tip of the radial styloid and first dorsal compartment tendons. Petitioner had pain with resisted EPD function. Petitioner had a positive Finkelstein test. She was tender to palpation over the TFCC. Petitioner was able to make a fist. Petitioner was non-tender over the distal radius, DRUJ, distal ulnar, radial snuffbox, SL interval, or LT interval. Petitioner was administered a left DeQuervain's injection. No mention of the left or right shoulder was documented. (RX 4, 32) Ultimately, Petitioner was diagnosed with DeQuervain's tenosynovitis and a left distal radius fracture. Petitioner was instructed to continue to attend physical therapy. She was to follow-up in one month. There was no diagnosis made with respect to either shoulder. (RX 4, 33).

On November 11, 2020, Petitioner returned to Illinois Bone & Joint Institute and presented to Dr. Michael Chiu. (RX 2, 9). Petitioner reported she was presenting for treatment regarding her right shoulder pain. This is the first occasion Petitioner presented for an evaluation of her disputed right shoulder subsequent to her July 2, 2020 date of injury, approximately four months after the fall at work. Petitioner reported her prior treatment with Dr. Hill regarding her left shoulder, but was now seeking right shoulder treatment. Petitioner reported her right shoulder pain started over the past two months. Petitioner reported she did not remember an injury. This would mean Petitioner's pain complaints began around September 11, 2020. Petitioner described her pain as sharp, throbbing, aching and the symptoms were noted to be moderate to severe in nature. Petitioner said that she was utilizing heat and over-the-counter medications. She reported her pain worsened with overhead use and lifting. She reported that, to date, she did not receive significant relief from her treatment. Petitioner also complained of decreased range of motion and strength. She did not have any radiation of pain down her arm. (RX 2, 9).

Upon examination, Petitioner exhibited decreased muscle strength in her right shoulder. Petitioner had positive Jobe's, Neer and Hawkin's impingement tests. Acromioclavicular joint tenderness was noted. An x-ray was

evidently taken at this visit and revealed acromioclavicular degenerative joint disease with no evidence of an acute fracture. Petitioner was diagnosed with right shoulder rotator cuff syndrome. A possibility of an asymptomatic tear of the rotator cuff in the presence or absence of impingement or tendonitis existed. Petitioner reported she wished to undergo physical therapy. She was instructed to return to the clinic in six weeks and, if her condition had not significantly improved by then, an MRI of the right shoulder would be ordered. (RX 2, 9-10).

On November 25, 2020, Petitioner returned to Dr. Chiu. Petitioner reported that her right shoulder pain was exacerbated following an event while she was shaking a jar and suddenly felt sharp shooting pain in the right shoulder and subsequently dropped the jar. (RX 2, 8). Petitioner reported that her right arm felt as if it was "dead weight." Petitioner reported she had difficulty raising her arm. She also had swelling in the shoulder. Petitioner reported she still had not attended physical therapy. She reported that she was taking Norco tablets, from several years prior, for pain. Upon examination, no significant swelling at the shoulder was noted. Petitioner's right shoulder demonstrated active forward flexion of 30°. Repeat x-rays were taken, which were unchanged from the prior visit. She was diagnosed with an exacerbation of right shoulder pain. Petitioner was referred for an MRI to evaluate a potential rotator cuff tear. (RX 2, 8).

On November 27, 2020, Petitioner presented to Premiere Therapy for a physical therapy recertification. Curiously, Petitioner did not report her right shoulder problems or injury. She reported continued soreness in the left wrist. She attributed this potentially to the change in weather. Long-term and short-term goals were reestablished and petitioner was instructed to continue attending physical therapy 2 to 3 times a week for four weeks. No exercise, complaints or examination of either the left or right shoulder was documented in this date service record. (RX4, 37).

On December 2, 2020, Petitioner was seen by Dr. Nacke at Hinsdale Orthopedics. (RX4, 41)). Petitioner presented for follow up of her left DeQuervain's tenosynovitis. She was now five months post left distal radius fracture. She apparently underwent a previous injection and reported that she had pain with some activity. She was wearing her thumb Spica splint at night. She was attending hand therapy as prescribed. There was no mention of the left or right shoulder. (RX 4, 41-43). On exam, she had pain of the left wrist, 5/10 in severity. There were no obvious deformities of the wrist. Soft tissue was intact. There was no obvious swelling or effusion. Petitioner was tender primarily over the first dorsal compartment and the radial styloid. Motor function was intact. There were limitations in range of motion, but no ulnar neurological deficit. She was diagnosed as having left DeQuervain's tenosynovitis and a left distal radius fracture. Her symptoms had slowly improved. It was advised that she continue with her thumb Spica splint at night was well as continue her course of therapy. She was to remain on her current work restrictions. (RX 4, 42).

On December 2, 2020, Petitioner also presented to Dr. Chiu. (RX 2, 6). Petitioner reported she underwent the MRI and presented to discuss the findings. Petitioner reported her symptoms were unchanged from the prior visit. Upon examination, her right shoulder demonstrated increased active forward flexion. Otherwise, her examination remained unchanged. The MRI was reviewed and Petitioner was diagnosed with a right shoulder rotator cuff tear and right acromioclavicular degenerative joint disease. Petitioner was advised of potential treatment options, including operative and non-operative treatments. Petitioner advised she wished to consider her options. Petitioner was not given a specific return date. (RX 2, 6).

On December 23, 2020, Petitioner returned to Dr. Chiu. (RX 2, 4). She was noted not to have progressed well with non-surgical treatment. She reported continued significant dysfunction of her right shoulder. She indicated she did not want to manage pain non-surgically any longer. There was no mentione made of any work injury. The examination was unchanged, as were Petitioner's diagnoses. Petitioner was advised to become

medically optimized and cleared for surgery by her Primary Care Physician, as she was said to be a borderline diabetic. (RX 2, 4-5).

Petitioner did not return to Illinois Bone & Joint Institute after this visit. (RX 2).

On January 6, 2021, Petitioner returned to Dr. Nacke. (RX 4, 50). She presented for follow-up regarding her left DeQuervain's tenosynovitis. Petitioner reported she was six months out from the left distal radius fracture. She complained that she was dropping objects with activity. Petitioner reported her pain at 4/10. Upon examination, no dystrophic changes were noted. No soft tissue swelling or wrist effusion was noted. Petitioner was tender to palpation over the first dorsal compartment tendons and the radial styloid. Petitioner had no pain with resisted EPB function. Petitioner had a positive Finkelstein test. She did not have tenderness over the distal radius, DRUJ, distal ulna, radial snuffbox, SL interval, LP interval, or TFCC. Grind test revealed crepitus and mild pain. There was no tenderness over the thumb carpometacarpal joint. Petitioner was able to make a composite fist. Petitioner was diagnosed with left de Quervain's tenosynovitis. Surgery was offered and Petitioner advised that she wished to proceed. Dr. Nacke did not comment on whether the de Quervain's was related to the distal radius fracture. Dr. Nacke noted that Petitioner also had incidental complaints of bilateral shoulder pain. She was referred to Dr. Pizinger for "incidental complaints of bilateral shoulder pain". (RX 4, 52). This is first mention of any shoulder issues in the Hinsdale Othopaedics records**.**

This was Petitioner's final visit at Hinsdale Orthopedics. (RX 4).

On January 11, 2021, Petitioner presented to Dr. Pizinger at Illinos Orthopedic Institute regarding complaints of bilateral shoulder pain. Petitioner described her pain as constant, aching, and sharp. She indicated that due to her pain, she could not move her arms. Petitioner reported that she was scheduled for left shoulder surgery in July 2020, but on July 2, 2020 she slipped and fell at work, landing on both of her upper extremities. (PX 2, 3). This is the first time in the medical records that Petitioner reported that she landed on her upper extremities in the fall of July 2, 2020. Petitioner reported as a result of the slip and fall, she sustained a left wrist fracture and developed left de Quervain's tenosynovitis. Petitioner was recommended for surgical intervention. She reported her left shoulder pain and was still present. Petitioner reported that her right shoulder pain began weeks to a month after her slip and fall. The prior radiological examinations were reviewed and prior findings were reiterated. (PX 2).

Petitioner exhibited painful shoulder active range of motion bilaterally. Dr. Pizinger was able to passively move her right arm to approximately 150° of full motion. It was noted to be painful while doing so. Petitioner had no tenderness over either acromioclavicular joint, scapular, or cervical spine. Petitioner exhibited anterior joint line tenderness of the shoulders. Further, Petitioner had tenderness over the lateral tuberosity of the right shoulder. Testing of the right rotator cuff strength was noted to be difficult on the right side, as she was weak to external rotation. Petitioner had good internal rotation of both shoulders. The external rotation of the left shoulder was noted to be full. Empty can testing revealed 4+/5 on the left and 4-/5 on the right with pain. Petitioner had a positive O'Brien's bilaterally. Additional testing of the right shoulder was noted to be difficult due to pain. Petitioner was diagnosed as status post slip and fall at work this past summer. Petitioner was instructed to undergo an MRI of the bilateral shoulders and return subsequent thereto. Dr. Pizinger did not review any prior studies. (PX 2, 3-4).

On January 20, 2021, Petitioner presented to Oak Brook Imaging for MRI syudies of her bilateral shoulders. The right shoulder MR Arthrogram exhibited a supraspinatus tendon full thickness tear. The rest of the rotator cuff was intact. There was further evidence of a labral tear involving the anterior and inferior aspects involving the glenoid labrum. There was acromioclavicular joint inferior hypertrophic spurring. Finally, there were no

findings regarding the biceps tendon. (PX 2, 37). The left shoulder MR Arthrogram revealed no evidence of a full thickness rotator cuff tear. There was a labral tear involving the anterior and upper labrum. (PX 2, 6).

On January 29, 2021, Petitioner presented to Dr. Pizinger for a review of her MRIs. (PX 2). She stated she had shoulder pain. Otherwise no subjective complaints were noted. Petitioner's prior MRI findings were reiterated. She was diagnosed with a right shoulder rotator cuff tear with supraspinatus and infraspinatus tendons with traction to the humeral joint surface, as well as a complex SLAP tear. Petitioner was diagnosed with a left shoulder complex SLAP tear. Petitioner was noted to be a good surgical candidate and indicated she was willing to proceed with surgery. She was advised to follow up seven days subsequent to surgery. (PX 2, 5-7).

On February 24, 2021, Petitioner was seen at the Respondent's request for a §12 examination by Dr. Mark Cohen of the Hand and Shoulder Center at Rush Orthopedics. (RX 5). In advance of this evaluation, Dr. Cohen was provided with medical records dating back to early July of 2020. Petitioner reported that she tripped and fell at work with her left hand and wrist outstretched. (RX5, 3). Petitioner did not report falling onto her bilateral outstretched hands. She did report bilateral shoulder pain, right more than left. On examination, Dr. Cohen found evidence of degenerative changes of the interphalangeal joints of her hands bilaterally. There was no evidence of atrophy. She did have basal joint thumb enlargement bilaterally. She would move her left hand in a slow and deliberate fashion with guarding. She had a slight contracture of left small finger distal interphalangeal joint, which was unrelated and remote. The physical evaluation had some inconsistencies. Dr. Cohen noted discrepancies on static versus rapid exchange pinch and grip testing. There appeared to be a functional component to Petitioner's complaints. The distal radius fracture healed in a slightly extended position. There was no evidence of de Quervains. The treatment regarding the wrist was reasonable. Petitioner was at MMI for the wrist. There was an old ulnar styloid non-union present, which was thought to be unrelated to the July 2020 accident. Dr. Cohen's conclusions are that Petitioner suffered from a minimally displaced distal radius fracture from the event of July 2, 2020. Dr. Cohen found no contraindications to her returning to any job activities that she had done previously. (RX 5).

On May 21, 2021, Petitioner presented to Dr. Pizinger for right shoulder surgery. Petitioner's preoperative and postoperative diagnoses included a right shoulder rotator cuff tear, right shoulder superior labrum anterior posterior tear, and right shoulder subacromial impingement. (PX 2, 38-41).

On May 27, 2021, Petitioner returned to Dr. Pizinger. (PX 2, 10-12). Petitioner was noted to be six days post-surgery. Petitioner presented with shoulder pain. The incision sites were noted to be healing without any signs of infection. She was instructed her sutures would be removed the following week. She was instructed to return in three weeks for a clinical check-up. Petitioner was advised to remain off work subsequent to surgery.

Petitioner had continued follow-up care with Dr. Pinziger's office regarding her right shoulder through February 7, 2022. (PX 2). On January 3, 2022, Petitioner was seen by Nurse Practitioner Pizinger. (PX 2, 24). Petitioner reported her pain was 2/10. She reported physical therapy was helping. Upon examination, Petitioner had full range of motion and essentially full strength, although she had slight shaking when she had to hold against resistance for too long. Her pain medications were refilled and she was advised to continue physical therapy. Petitioner was advised to follow-up in one month. (PX 2, 24-25). The final visit was via telephone with Dr. Pizinger on February 7, 2022. Petitioner was doing good, post-op and was to continue with home exercises. A job description was requested to consider work restrictions. She was said to be at MMI and was to follow-up, PRN. (PX 2, 26-27).

Petitioner had no further medical care for any of her upper extremity conditions.

Respondent sent Petitioner for a §12 examination by Dr. Troy Karlsson on April 5, 2022. (RX 6). Petitioner said that she injured both her shoulders while working for Respondent on July 2, 2020. Petitioner told Dr. Karlsson that she tripped on the edge of a mat and fell forward. She thought she may have twisted and landed more on her left side. She complained of immediate left wrist pain that was severe. She reported her right shoulder started hurting within one or two months after the incident. (RX 6, 1). Petitioner told Dr. Karlsson she had already been scheduled for left shoulder surgery before the accident. She told him that she had not undergone any treatment whatsoever for the left shoulder since the accident. (RX 6, 2).

At the time of the exam, Petitioner reported no right shoulder pain at rest. She indicated that her pain could increase to 4/10 with certain repetitive movements. She rated her left shoulder pain from 0-5/10. She also noted decreased range motion of the left shoulder. Petitioner told Dr. Karlsson that she had been able to work for Respondent through the date of her right shoulder surgery. (RX 6, 3).

A physical examination was performed. Petitioner had full range of motion of the right shoulder and slightly reduced range of motion of the left shoulder. The right shoulder was mildly tender over the anterior and lateral humeral head. There were no significant positive orthopedic findings.

Dr. Karlsson reviewed Petitioner's medical records. He diagnosed Petitioner with a full thickness retracted rotator cuff tear in the right shoulder, resolved with surgical repair. For the left shoulder, he diagnosed Petitioner with a partial thickness rotator cuff tear and tendonitis. He opined neither condition was causally related to the July, 2020 work accident. (RX 6, 10).

Dr. Karlsson noted that Petitioner did not report any right shoulder problem until November 11, 2020. At that time, Petitioner alleged right shoulder issues for the past two months. He further noted that the MRI was consistent with degenerative tearing, as opposed to an acute tear. He opined this was consistent with the other right shoulder findings of significant AC arthritis and down sloping of the acromion. He opined this caused bony spurs and impingement, which led to her issues. (RX 6, 11).

Dr. Karlsson noted that the medical records showed Petitioner's left shoulder condition was clearly pre-existing in nature and the right shoulder condition had an insidious onset at least two months after the accident. He opined that Petitioner's pre-existing conditions were not aggravated in any way by the work accident. (RX 6, 11).

With respect to Petitioner's ongoing right shoulder complaints, Dr. Karlsson opined that the subjective complaints were greater than expected, given the successful repair and length of time since the procedure. Her left shoulder complaints were consistent with the unoperated condition. (RX 6, 11).

Dr. Karlsson opined that while Petitioner's treatment for the bilateral shoulders was reasonable, none of it was causally related to the work accident of July 2, 2020. He placed Petitioner at MMI for the right shoulder and noted she may want to proceed with a surgical repair of the left shoulder. He again indicated neither shoulder condition was causally related to a work accident. He did not perform an impairment rating as he found no work related condition. (RX 6, 12).

Petitioner submitted the evidence deposition of Dr. Ryan Pizinger, taken February 15, 2024, as PX 3. Dr. Pizinger is a board certified orthopedic surgeon. He was fellowship trained in trauma.

Dr. Pizinger testified that he first evaluated Petitioner on January 11, 2021. (PX 3,7). He indicated that Petitioner reported suffering a fall onto the bilateral outstretched arms on July 2, 2020. (PX 3, 8). He noted that Petitioner had a prior injury to the left shoulder and was scheduled for surgery to this body part in July 2020.

He reviewed Petitioner's complaints and physical examination findings. He indicated that he prescribed an MR arthrogram, as this had more sensitivity than the prior right shoulder MRI (from November, 2020) that Petitioner brought with her. (PX3, 9-10). Dr. Pizinger's diagnosis as to Petitioner's right shoulder was rotator cuff tear of the supraspinatus and infraspinatus tendons with some retraction and a complex SLAP tear. (PX 3, 12-13). A fall on outstretched hands could be a competent cause of Petitioner's injuries. (PX 3, 13). As to the left shoulder, the diagnosis was SLAP tear. The reported fall could be a competent cause to aggravate a preexisting SLAP tear in either of Petitioner's shoulders. (PX 3, 13-14).

Dr. Pinziger endorsed causation between the July 2020 event and Petitioner's right shoulder diagnosis and treatment. This was based on her examination, her complaints, her imaging and the intraoperative findings, which are consistent with an acute injury to the shoulder. (PX 3, 18). The retracted tear noted in Petitioner's right shoulder with no atrophy would be consistent with a recent acute tear. (PX 3, 19).

Dr. Pizinger endorsed causation as to the left shoulder on an aggravation basis, relying on the mechanism of injury and the different findings on the pre and post accident MR studies. (PX 3, 20).

Respondent submitted the evidence deposition of Dr. Troy Karlsson, taken on January 30, 2023, as RX 7. Dr. Karlsson is a board certified orthopedic surgeon. He is a general orthopedist, primarily treating knees, hips and shoulders. The Arbitrator notes that RX 7 is paginated both by the court reporter and Respondent (e.g.: transcript page 33 per the court reporter is RX 7, 34). The Arbitrator's citations are to the RX 7 number.

Dr. Karlsson testified that Petitioner's right shoulder symptoms, first documented on November 11, 2020, were not related in any way to the July 2, 2020 work accident. There simply were no right shoulder (or really complaints of anything other than the left wrist) with evaluation by multiple treaters, including the initial treatment, Dr. Hill, Dr. Nacke and the PT provider, and Dr. Chiu documented no specific injury at that first visit. Additionally, Dr. Chiu noted the onset of Petitioner's complaints to be 2 months prior to the November visit, some 2 months after the July work accident. (RX 7, 29).

Dr. Karlsson testified that there was too large of a gap between Petitioner's July 2, 2020 accident and the alleged onset of symptoms, which would have been September 2020, to have any kind of causal relationship to the accident. It would not take months to notice shoulder pain related to the injury when one obviously uses one's shoulder on a daily basis. (RX 7, 34). Dr. Karlsson further noted that Petitioner did not make any mention of falling onto the right outstretched hand or shoulder at the November 11, 2020 visit.

Dr. Karlsson testified to his review of a November 30, 2020 right shoulder MRI, and confirmed he reviewed the actual films. (RX 7, 30). He testified that the MRI showed near full-thickness tear of the supraspinatus tendon over a greater than 1 centimeter area. Dr. Karlsson testified this was a clearly chronic and pre-existing degenerative rotator cuff tear, as it takes a very large amount of time, over a year, to develop the degree of retraction that was seen in the MRI. (RX 7, 30-31). Accordingly, Dr. Karlsson opined that the rotator cuff tear was clearly pre-existing in nature. (RX 7, 31). Dr. Karlsson further testified that he identified degenerative changes including a frayed biceps tendon, AC joint moderate to severe arthritis, as well as moderate degenerative changes in the glenohumeral joint. Dr. Karlsson testified his opinion was based upon his review of the records and diagnostic films.

Dr. Karlsson testified that it appeared Dr. Pizinger had an inaccurate understanding of Petitioner's mechanism of injury (fall on the left hand as reported from July to January, or FOOSH as reported in January to Dr. Pizinger). (RX 7, 35).

Dr. Karlsson testified as to his review of the May 21, 2021 operative report for Petitioner's right shoulder surgery. (RX 7, 41-42). He agreed that the surgical procedure performed appeared to be appropriate, but again noted they were completely unrelated to the July 2, 2020 accident. (RX 7, 43-44).

Dr. Karlsson testified that Petitioner's left shoulder condition was completely unrelated in any way to the July 2, 2020 accident, nor were the diagnostic findings of her left shoulder degenerative condition aggravated in any way by the same. (RX 7, 49-52). He then testified that Petitioner's right shoulder condition was likewise completely unrelated to the work accident. (RX 7, 48-50).

Dr. Karlsson testified that while the medical treatment Petitioner had received to date was reasonable and necessary to address her conditions, none of this treatment was causally related to the work accident. (RX 7, 54). He opined that Petitioner was at MMI for the right shoulder, but required surgery for the left shoulder, again due to her pre-existing left shoulder conditions as documented by the pre-accident medical records and diagnostic testing, as well as the pre-accident surgical recommendation. (RX 7, 55-56).

On cross-examination, Dr. Karlsson testified that an asymptomatic rotator cuff tear could be rendered symptomatic with trauma. (RX 7, 59). He testified that a fall onto bilateral outstretched arms can cause or extend rotator cuff tears. (RX 7, 60). He was unfamiliar with the medical abbreviation "FOOSH" (Fall on outstretched hands). (RX 7, 58).

Dr. Karlsson testified that he was not offering any opinions with respect to Petitioner's left wrist fracture, but indicated that the fracture was likely caused by the fall onto a left outstretched arm. (RX 7, 61).

Dr. Karlsson testified that it was his opinion that the fall onto the left outstretched arm on July 2, 2020, did not aggravate Petitioner's left shoulder condition in any way, as there was no significant changes comparing the pre-accident records and diagnostic reports to the post-accident medical records and diagnostic films. He then testified that it was his opinion that Petitioner did not have any kind of right shoulder injury or involvement as a result of the July 2, 2020 fall as well. RX 7, 63).

Dr. Karlsson testified that he did not believe masking pain was relevant in this case, as the left wrist pain was only a 2/10 level, which was not severe enough pain to mask any ongoing issues in the left shoulder. (RX 7, 64-65). He testified that if there was any masking going on, if may have been the first day or two after the left wrist fracture, but noted it was a relatively benign fracture, which should have healed relatively quickly. Accordingly, he did not believe that there was any evidence of masking pain in this case. (RX 7, 64-65).

Petitioner's claimed medical bills were contained in PX 7. Respondent submitted its Payment Summary as RX 1.

It is noted that the Concentra records contained Petitioner's SSN, which was redacted by the Arbitrator. The Parties are reminded of their SCR 138 obligations.

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law that follow.

Section 1(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(d).

To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of her claim (O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980)), including that there is some causal relationship between her employment and her injury. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill. 2d 52, 63 (1989).

Decisions of an arbitrator shall be based exclusively on evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e)

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

The Arbitrator finds that Petitioner's current condition of ill-being with respect to her left wrist is causally related to the work accident of 7/2/20. As to Petitioner's left wrist injury, accident and causal connection were stipulated to. Her left wrist condition of ill-being is healed distal radius fracture, with residual complaints and some extension positioning of the wrist in its healed position, as noted by Dr. Cohen. This finding is based on Petitioner's testimony, the medical records and Dr. Cohen's report.

The Arbitrator finds that Petitioner's current condition of ill-being regarding her right and left shoulders is not causally related to the accident of 7/2/20.

First, there were no shoulder complaints, findings or any history of a fall on the bilateral outstretched hands/upper extremities noted in the medical records for many months after the accident. "It is presumed that a declaration to a treating physician as to one's physical condition and the cause thereof is true because the patient will not falsify such statements to the one whom he expects to get medical aid." Shell Oil v. Industrial Commission, 2 Ill. 2d 590, 602 (1954). The Illinois Supreme Court was right 70 years ago and its wisdom is correct in 2024. No history, no complaints, no findings = No injury/causation.

Yes, Petitioner suffered a painful fracture of the left wrist as a result of the July 2, 2020 fall. Yes (amazingly regarding a 60+ year old female patient (obvious risk for osteoporosis) who has suffered a hand fracture as a result of a fall), the physician at Concentra did not chart any evaluation of the RUE. Similarly, Dr. Hill did not document any examination of the contralateral side when he examined Petitioner on July 6, 2020. But the histories were of a fall on the outstretched LUE with resulting left wrist fracture, and the physicians noted no RUE problems. The initial records (and the records of treatment for some 4 months post-accident) do not support Petitioner's case.

Additionally, if there was masking of the right shoulder difficulties, it would be expected that the right shoulder complaints would have appeared in a few days to a week, as Dr. Karlsson explained. In this case, Petitioner is right-handed and would have been favoring her fractured left hand. If her right shoulder was injured in the fall, it is expected that Petitioner would have noticed it a short time after the fall, as this was her dominant arm and her use of it would have increased. Her best case is she noticed right shoulder problems weeks to a month after the fall (history to Dr. Pizinger given some 6 months post accident), although she first gave a history of noticing the right shoulder problems 2 months before her visit with Dr. Chiu (therefore some 2 months after the fall, with a statement that the patient does not remember an injury). Both of these time periods are too long after the accident for the Arbitrator to find causation.

Petitioner did not advise of any left shoulder complaints when she saw Dr. Chiu on November 11, 2020 (the first time that she was seen regarding her right shoulder). The first mention of bilateral shoulder complaints is the January 6, 2021 comment by Dr. Nacke and at the January 11, 2021 examination by Dr. Pizinger. This is too long after the accident for the Arbitrator to find causation.

Finally, in making this causation finding, the Arbitrator finds the opinions of Dr. Karlsson to be more persuasive than those of Dr. Pizinger. Dr. Karlsson's opinions comport with the medical records (no history, complaints or findings regarding the shoulders for many month after the accident and after many visits to care providers) that were submitted into evidence, while Dr. Pizinger did not review prior medical records and his causation opinion relies on the history given by Petitioner (again, unsupported by contemporaneous medical records), the imaging and the intraoperative findings. Of course, a fall on outstretched hands could cause or aggravate shoulder pathology such as Petitioner had, such that surgery would be appropriate, but symptoms would be expected to cause a patient to voice complaints and seek treatment regarding those symptoms reasonably close to sustaining the injury or aggravation, not 4 months later.

The Arbitrator finds that Petitioner has failed to prove a causal connection between the July 2, 2020 work injury and any condition of ill-being regarding her left shoulder and her right shoulder.

Accordingly, no benefits are awarded regarding Petitioner's left shoulder and right shoulder.

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

The Arbitrator finds that Petitioner reached MMI for the left wrist by February 24, 2021, when she was examined by Dr. Cohen. The Arbitrator further finds that Respondent has paid all reasonable and necessary medical services related to the left wrist.

No benefits are awarded regarding Petitioner's left and right shoulders, based upon the Arbitrator's finding above on the issue of causation.

WITH RESPECT TO ISSUE (K), WHAT TEMPORARY BENEFITS ARE IN DISPUTE (TTD)?, THE ARBITRATOR FINDS:

RX 1 shows $972.58 paid for TPD. Petitioner testified that she returned to work regarding her left wrist and worked less hours. The Arbitrator finds that the TPD paid was correct, even though the Parties stipulated to the payment of TTD benefits, not TPD.

No TTD benefits are awarded, based upon the Arbitrator's finding on the issue of causation, above.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURIES?, THE ARBITRATOR FINDS:

The Arbitrator finds that Petitioner suffered a healed distal radius fracture, with residual complaints and some extension positioning of the wrist in its healed position as a result of the July 2, 2020 work injury.

Under Section 8.1b of the Act, there are five factors for evaluating a claimant's permanent partial disability: (i) the level of impairment per an impairment rating under Section 8.1b(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) the evidence of the disability corroborated by the treatment records. 820 ILCS 305/8.1b(b). The weight and relevance of the factors shall be explained in a written order.

Of course, all five factors are relevant in determining PPD.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes no AMA impairment Rating was submitted into evidence. The Arbitrator therefore gives no weight to this factor in determining PPD.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that Petitioner was employed in the quality assurance department and was able to continue working on this position throughout her treatment for her left wrist, as well as after the MMI date of February 24, 2021. The Arbitrator takes note of Petitioner's ability to continue working in her job and gives this factor great weight in determining PPD.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 61 years old at the time of the accident. She will continue to suffer the residuals of a Colles fracture of her left wrist throughout the remainder of her life. The Arbitrator gives this factor significant weight in determining PPD.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner was given a full duty release to return to work regarding her left wrist injury. Petitioner was able to thereafter continue working for Respondent until she underwent a right shoulder surgery, which has been found to be not work-related. The Arbitrator notes that there was no evidence of a permanent wage impairment submitted. The Arbitrator therefore gives appropriate weight to this factor in determining PPD.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, Arbitrator finds that Petitioner suffered a minimally displaced distal radius fracture of the left wrist (Noted by Dr. Cohen to be healed with some extension position) as a result of the July 2, 2020 accident. Petitioner underwent a lengthy course of physical therapy before obtaining a full duty release as of February 24, 2021. The Arbitrator notes that Petitioner testified to ongoing soreness and weakness in her left wrist and that her last doctor's visit for the left wrist was on January 6, 2021. The Arbitrator greater weight to this factor in determining PPD.

Based on the above factors, and the Record taken as a whole, the Arbitrator finds that as a result of the injuries sustained, Petitioner suffered permanent partial disability to the extent of 20% loss of use of the left hand, in accordance with §8(e)9 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC028282
Case Name	Lori Wheeler v. Vitas Healthcare
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0125
Number of Pages of Decision	21
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Ryan Meikamp
Respondent Attorney	Kristin Lechowicz

DATE FILED: 3/20/2025

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Lori Wheeler,

Petitioner,

vs. NO: 19 WC 028282

Vitas Healthcare,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 26, 2024, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that 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 $5,700.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

March 20, 2025
MP:yl
o 3/18/25
68

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC028282
Case Name	Lori Wheeler v. Vitas Healthcare
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Ryan Meikamp
Respondent Attorney	Kristin Lechowicz

DATE FILED: 6/26/2024

/s/Kurt Carlson, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 25, 2024 5.14%

25IWCC0125

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Lori Wheeler
Employee/Petitioner/ Ryan@StrongLawOffices.com

Case # 19 WC 028282

v.
Vitas Healthcare
Employer/Respondent/ <klechowicz@kelleykronenberg.com

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Kurt Carlson, Arbitrator of the Commission, in the city of Peoria, on 3/20/2024. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

B. ☐ Was there an employee-employer relationship?

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

D. ☐ What was the date of the accident?

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

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

G. ☐ What were Petitioner's earnings?

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

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

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

K. ☒ What temporary benefits are in dispute?

☒ TPD ☐ Maintenance ☒ TTD

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

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

N. ☐ Is Respondent due any credit?

O. ☐ Other

FINDINGS

On September 14, 2019, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $48,228.64; the average weekly wage was $927.47.

On the date of accident, Petitioner was 36 years of age, married, with 4 children under 18.

The medical services provided to Petitioner *were not* reasonable and necessary after December 17, 2019.

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

Respondent shall be given a credit of $25,140.02 for TTD, $5,308.49 for TPD, $0 for maintenance, and $0 for other benefits, for a total credit of $30,448.51.

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

ORDER

The Arbitrator finds that the Petitioner did not meet her burden of proving her current condition is causally related to her September 14, 2019, work accident.

The Arbitrator finds Petitioner reached MMI for her cervical and lumbar sprains on or about December 17, 2019.

As the Arbitrator found Petitioner reached MMI for her cervical and lumbar sprains on December 17, 2019, Petitioner is entitled to TTD benefits from September 15, 2019, through December 16, 2019, a period of 13 2/7 weeks. At her TTD rate of $618.32, this amounts to a TTD award of $8,214.82. The parties stipulated that Respondent paid $30,448.51 in TTD and TPD benefits. Respondent shall be given a credit of TTD and TPD paid of $30,448.51, which results in a TTD/TPD overpayment of $22,233.69.

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

The Arbitrator finds that Petitioner suffered cervical and lumbar spine sprains as a result of the September 14, 2019, work accident. As such, the Arbitrator awards Petitioner 10% loss of use of the whole person for her work injuries.

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

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

Kurt A. Carlson

Signature of arbitrator

June 26, 2024

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LORI WHEELER,	)	
	)	
Petitioner,	)	
	)	
v.	)	**No. 19 WC 028282**
	)	
VITAS HEALTHCARE,	)	
	)	
Respondent.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ARBITRATOR'S FINDINGS OF FACT

Testimony of Petitioner

Ms. Lori Wheeler (Petitioner) testified that at the time of her work accident she was employed with Vitas Healthcare (Respondent). (T. 8) Her job title was that of LPN, hospice nurse, continuous care nurse (T. 8) Her job duties as a continuous care nurse included driving to different places, homes, nursing homes, to do hospice care on terminally ill patients. (T. 8) On September 14, 2019, Petitioner was involved in an automobile accident. (T. 9) She was on her way to a patient's house, stopped at a red light, when the "guy behind" her failed to stop and hit her vehicle from behind, pushing her into the car in front of her. (T. 9) Petitioner "went forward," hitting her head on the steering wheel, and then was pushed back. (T. 9-10) She had immediate low back pain, headache, confusion, and cloudiness. (T. 10) Petitioner was taken to the ER by ambulance where she believes she underwent an MRI for her low back. (T. 10-11) She began treating with Prairie Spine & Spine Institute in mid-September and was taken off work. (T. 12-13) Petitioner underwent physical therapy, which resolved her neck pain, but not her low back pain. (T. 12)

Petitioner then underwent trigger point injections, which did not help her low back. (T. 13) She also began treating with a Neurology Group for migraines, concussion, and whiplash. (T. 13-14) She underwent some treatment involving her eye, several months of speech therapy, and received work restrictions of no driving until she saw a therapist. (T. 14-15)

In all, Petitioner underwent two rounds of trigger point injections, which did not alleviate her low back pain. (T. 16) Dr. Kube then ordered a lumbar spine MRI. (T. 16) Dr. Kube recommended and administered facet blocks, medial branch blocks, and then radiofrequency ablation (RFA) all of which did not alleviate her low back pain. (T. 16-17) He kept her off work in the meantime, and then referred her to work conditioning and pain management once all injections were complete. (T. 18)

Petitioner underwent work conditioning followed by an FCE at Azer Clinic. (T. 19) She received work restrictions per the FCE involving limitations on repetitive lifting, twisting, and bending. (T. 19) She claims that her job let her go on August 12, 2020, after she received permanent work

restrictions. (T. 20-21) She also asked Prairie Pain & Spine to complete documents for her to obtain a disabled parking placard. (T. 21-22)

After being released with restrictions by Prairie Pain & Spine Institute, she continued pain management with them, obtaining medications every month for her low back pain and migraines. (T. 22-23)

Around the time she was released by Prairie Pain & Spine Institute, Petitioner then began treating with Nurse Felts of OSF Psychiatry for PTSD. (T. 23-24) Her symptoms included not wanting to be in a vehicle for fear of getting in "another really bad accident." (T. 24) Nurse Felts prescribed medications for her PTSD symptoms. (T. 25) Specifically, applying for jobs and having to recount her motor vehicle accident caused PTSD symptoms and flare up of other mental health issues. (T. 27) By the time of trial, her flashbacks and nightmares were occasional. (T. 29)

Petitioner also alleged memory and concentration issues from the accident, which had improved since the accident. (T. 27-28) She began driving again, but she doesn't let others drive her places and doesn't like to drive on the interstate. (T. 18-29)

At trial, Petitioner was taking Nurtec for migraines, Tramadol for her back, Prozac, and Tizanidine for both back pain and migraines. (T. 30) In January 2024, she obtained a job as a nurse for a dermatology clinic. (T. 30-31) She said no other employers could accommodate her work restrictions. (T. 31)

With regard to her current lumbar condition, Petitioner testified that bending "always hurts really bad," and the most she can lift is a jug of milk. (T. 32) She testified that she did not have any anxiety before the accident and now it must be managed. (T. 32) She described her migraines as more frequent and more intense than before her accident, although she did have migraines prior to the accident. (T. 32-33) Overall, she was more limited in which she could do with her kids, she can't multitask, struggles with word searching, thinks slower, and it takes longer for her to learn and retain things. (T. 33-34) She denied having these problems prior to the work accident. (T. 34) She could not ride roller coasters or walk for extended periods of time. (T. 34) She still uses the handicap placard. (T. 34-35) The EMDR treatment that she underwent with Lisa Johnson helped her. (T. 35)

On cross-examination, Petitioner testified that she lives in Vienna, Illinois, which is a 5-hour drive from the hearing site. (T. 36) She drove herself on the interstate to the hearing location. (T. 36-37) At the ER, she was diagnosed with neck and back strain. (T. 38) She admitted to PA Kitterman at Prairie Spine & Pain Institute that she had a prior back injury from a motor vehicle accident in 2006. (T. 39) The 2006 accident was similar to the September 14, 2019, accident in that she was rear-ended. (T. 39) The 2006 motor vehicle accident caused low back pain with numbness and tingling in her legs. (T. 40) She also underwent a lumbar spine ESI and physical therapy in 2018 after a lifting incident at work. (T. 40) Petitioner believed she "pulled something" in that incident. (T. 51) Petitioner switched from being a CNA to a nursing position that had more administrative type of duties, due to the lifting requirements of being a CNA. (T. 41) Her job as a hospice nurse required her to "simply reposition the patient from time to time." (T. 42)

On November 19, 2019, Petitioner reported to Dr. Kube that her neck issues had resolved, and Dr. Kube agreed. (T. 42-43) She went on vacation to the rodeo with her sister-in-law in early December 2019, where she did extensive walking. (T. 43-44) There were benches for her to sit, but she "had a very hard time." (T. 44) Petitioner underwent a lumbar spine MRI on December 12, 2019. (T. 45) Petitioner testified she was told she had facet joint problems from the car accident." (T. 45) Petitioner initially could not remember undergoing a lumbar spine MRI on April 28, 2018, but then she remembered undergoing the MRI in connection with her 2018 ESI. (T. 45-46)

Petitioner treated with Dr. Nersesyan on December 16, 2019, reporting chronic migraines since 2012. (T. 46-47) She did not recall telling Dr. Nersesyan that her current headaches 3-4 times a week were "not unusual with her frequent migraines before." (T. 49) Dr. Nersesyan told Petitioner that her December 12, 2019, lumbar spine MRI "looked okay." (T. 50) Petitioner believed her low back condition involved the facet joints. (T. 51-52) She returned to work light duty with Respondent from January 13, 2020, through March 30, 2020. (T. 52) As of March 30, 2020, Dr. Kube could not explain Petitioner's ongoing low back pain, so he referred her to Athletico for a work hardening consultation followed by pain management. (T. 52-53) Petitioner told the evaluator at Athletico that Dr. Kube advised her she had permanent damage and would be restricted after the FCE. (T. 54) The evaluator at Athletico found Petitioner was "very unlikely to be successful with the standard work conditioning program due to significant pain psychological barriers to rehabilitation." (T. 56) The evaluator recommended more standard physical therapy rather than work hardening. (T. 56) She did not return to Athletico because she thought they were inappropriate. (T. 56) She underwent work hardening at Azer Clinic instead. (T. 57)

Petitioner also underwent neuropsychological testing with Dr. Drake Ryan Steed at OSF Psychology and Neuropsychology. (T. 57-58) Petitioner admitted to having migraines since age 10 and treating for migraines since 2012. (T. 60) She reported applying online for many jobs but that most employers did not think they could accommodate her work restrictions. (T. 60-61)

Regarding her LPN job at Southern Illinois Dermatology, Petitioner reported that she doesn't do a lot of walking, and that her provider "basically spoon feeds me what I have to do" and "tells me exactly what to type." (T. 61-62) There are no lifting or bending requirements at the job. (T. 62) She denied any PTSD symptoms after her 2006 accident because "it was not an accident like this one at all," and "they didn't hit as hard. It was not as traumatic, I guess." (T. 65) Petitioner no longer sees an orthopedic surgeon or pain management physician. (T. 65-66) She treats only with her primary care physician for her low back and migraines. (T. 66)

On redirect examination, Petitioner claimed that the headaches she experienced after the accident were more frequent and intense than those she experienced prior to the accident. (T. 69-70) On re-cross examination, Petitioner admitted that although she wasn't actively treating for her migraines prior to the accident, she experienced migraines "here and there." (T. 70-71)

Medical Records

On September 14, 2019, CGH Emergency Services came upon the scene of Petitioner's motor vehicle accident. (PX 2 pg. 62) Petitioner stated she was stopped in traffic where she was rear-ended, causing her car to hit the car in front of her. (Id.) She hit her head on the steering wheel,

causing her head to come back and hit the seat. (Id.) She never lost consciousness but felt "cloudy" after hitting her head. (Id.) She had pain in the cervical neck region but denied having a headache or having pain in any other area of the back. (Id.) Petitioner was taken by ambulance to CGH Medical Center (PX 2 pg. 26) She was a restrained driver in a car that was rear-ended by another car and pushed into the car in front of her. (Id.) She complained of moderate headache, neck pain, and low back pain. (Id.) Results of the musculoskeletal physical examination showed normal range of motion, strength, no tenderness, no swelling, and no deformity. (Id. at 28) A CT scan of the head showed no acute intracranial process. (Id.) CT scan of the cervical spine showed no osseous abnormalities. (Id. at 29) CT scan of the lumbar spine showed no osseous abnormality and mild right neural foraminal narrowing at L4-L5. (Id. at 30). Petitioner was diagnosed with strains of the cervical and lumbar spine at the ER. (Id. at 46)

On September 16, 2019, Petitioner treated with her PCP provider at OSF Medical Group. She reported back pain, headaches, nausea, and neck pain from a motor vehicle accident on Saturday where she was rear-ended by someone going 30 mph. (PX 3 pg. 3) She described burning neck pain across the bilateral shoulders, rated 6/10 without radiation. (Id. pg. 4) Her low back hurt when walking or lying/sitting too long, 3/10 pain. (Id.) Petitioner reported a headache since the accident. (Id.) She requested a referral to a spine specialist per her attorney's recommendation. (Id.) Petitioner's diagnoses included head injury, neck pain, back pain, and cervicalgia. (Id. at 5) A referral for PT was placed at Petitioner's request. (Id.) She was again referred to Prairie Spine & Pain Institute and physical therapy at her September 24, 2019, visit. (Id. at 10).

On September 24, 2019, Petitioner began seeing PA Andrew Kitterman at Prairie Spine & Pain Institute (Prairie) for her neck pain. (PX 4 at 4) On the intake form, Petitioner checked the boxes for anxiety, depression, and frequent headaches. (Id. at 13) She reported low back pain that went down her leg with numbness and tingling in the left side pocket one year ago. (Id. at 16) She also admitted to sciatic type numbness after an injury in 2006 for which she underwent an epidural one year ago. (Id.) PA Kitterman ordered a cervical motion analysis and PT for the cervical spine, keeping her off work for a month. (Id. at 15)

At her September 26, 2019, physical therapy evaluation at Prairie, Petitioner reported her job as a hospice nurse requires her to "simply reposition the patient from time to time," "help with transfers and assist with gait as needed," and "requires her to drive quite a bit." (Id at 50) At that visit, she complained of central neck pain consistent with a neck sprain. (Id.) On October 2, 2019, Petitioner first sought treatment at Prairie for her low back pain. (Id. at 58) She disclosed a prior motor vehicle accident in 2006 that resulted in low back pain and sciatic type numbness that radiated down both legs for 12 years until the prior year. (Id.) She switched from being a CNA to an administrative type of role, not lifting patients as much. (Id.) Lumbar x-rays showed L3-L4 and L4-L5 retrolisthesis. (Id.) Dr. Kube recommended physical therapy and SI joint injections.

Petitioner underwent lumbar trigger point injections on October 8, 2019, and October 15, 2019. Examination on October 29, 2019, was consistent with a lumbar strain and inconsistent with SI joint dysfunction. (PX 4 at 90) By November 26, 2019, Dr. Kube believed Petitioner's cervical spine sprain had resolved. (Id. at 112, PX 6 Pg 23)

Petitioner underwent therapy sessions with social worker Lisa Johnson at New Directions Counseling Center from December 2, 2019, through June 22, 2022. (PX 10) Petitioner reported to Lisa that she had a difficult upbringing, migraines when she was young, and went through a divorce. (PX 11, pg. 19) Specifically, her parents divorced at a young age, she went back and forth between their homes, her father was absent, she was sexually abused by an uncle for 5 years, used drugs and alcohol as a teen, attempted suicide, and ran away from home. (Id. pgs. 29-30) Lisa diagnosed Petitioner with PTSD based on her self-reported symptoms. (PX 11, pgs. 37-38) Lisa did not review any medical records or prior mental health records as part of her treatment of Petitioner. (PX 11, pg. 15-17)

On December 13, 2019, PA Jacinda Cornick cleared Petitioner from a neurology standpoint to drive and work half days for a week, advancing as tolerated. (PX 8, pg. 36)

On December 16, 2019, Petitioner visited her neurologist, Dr. Hrachya Nersesyan at OSF Illinois Neurological Institute Headache Clinic for migraine and post-traumatic headache. (PX 8 pg 38) She had been seen before with initial visit in 2012, when she presented with a long-standing history of chronic headaches. (Id.) At that time, she was diagnosed with mixed headache and strong tendency to rely on acute analgesics as the primary go-to medications and fairly prominent generalized anxiety disorder. (Id.) Petitioner reported improvement in headaches in April 2014 with Hydroxyzine being the most effective treatment. (Id.) She had worsening of headaches in August 2013 due to stress, but overall "much better and under control" on a combination of venlafaxine, TCA, and tizanidine with Hydroxyzine. (Id.) Hydroxyzine was "working well" for the headaches, but she still reported headaches 3-4 times a week, which was "not unusual with my frequent migraines before." (Id. at 39) Petitioner reported chronic migraines since the age of 10. (Id.) Physical and neurological examinations were normal. (Id. at 41-42) Dr. Nersesyan reviewed post-accident CT scans of the cervical and lumbar spine, interpreting them to be unremarkable without acute changes. (Id. at 43) He prescribed Hydroxyzine, Tizanidine, and Naproxen. (Id.) Petitioner asked him to look at her MRI of the lumbar spine, which he noted was unremarkable, with no significant degeneration, spinal stenosis, foraminal stenosis, or other clinically significant abnormality. (Id. at 44)

By December 19, 2019, Petitioner was driving to her therapy sessions at New Directions Counseling. (PX 10, pg. 3)

On December 17, 2019, Dr. Kube interpreted the December 12, 2019, lumbar spine MRI to show "not really much in the way of change from the previous MRI that she had in 2018." (PX 4 at 124) Dr. Kube opined Petitioner's midline pain was a severe sprain: "more likely it was a soft tissue injury." (Id., PX 6 at 26, 28) He then recommended facet blocks, which she underwent on January 6, 2020, followed by medial branch blocks on January 20, 2020, and radiofrequency ablation on February 1, 2020. (Id. at 133, 143, 154) As of March 31, 2020, Dr. Kube could not explain Petitioner's ongoing low back pain as her discs "look fairly normal." (Id. at 156) He did not believe there was anything more to do besides referral for work hardening at Athletico followed by an FCE. (Id. at 156, 160) Petitioner reported working light duty at this visit. (Id.)

Petitioner underwent a work hardening consultation at Athletico on April 8, 2020. (PX 4 pg 324) She reported ongoing low back pain after her motor vehicle accident. (Id. at 325) Petitioner was

told she has permanent damage and will be restricted after the FCE. (Id. at 326) Dr. Kube admitted telling Petitioner, "It was likely she was going to have some limitations." (PX 6 pg. 34) The Athletico therapist believed Petitioner was very unlikely to be successful with a standard work conditioning program due to "obvious presence of significant pain psych barriers to client's rehabilitation." (Id.) It was recommended she undergo another episode of acute physical therapy with introduction of pain psych intervention, rather than initiating a rigorous work conditioning program that will "most definitely be non-beneficial and detrimental to client's long-term outcome." (Id.)

On April 20, 2020, Petitioner underwent another initial evaluation for work hardening at Azer Clinic. (PX 12) She reported constant 3-4/10 pain and up to 6/10 at the end of the day. (Id. at 2) Bending, sitting, walking, and squatting increased her pain, and she felt that lifting 15 pounds at the other work conditioning facility was too much. (Id.) Petitioner did not feel she could complete an 8-hour work conditioning. (Id. at 3) She made several comments that "she definitely cannot lift more than 10# and she questions whether she is going to be able to tolerate this." (Id.) The therapist questioned how Petitioner would do in work hardening as "she has set her own limits and even though she may look safe performing an activity the [patient] states over and over she does not want to push herself." (Id. at 4) Due to this, rehabilitation potential was poor. (Id.)

During her work hardening sessions over the next month, her heart rate at the end of sessions was often lower than when she began the sessions. (See PX 12, pgs. 14, 16, 18, 20, 21) Petitioner was hesitant when any changes were brought up and noted each minor change resulted in increased pain during that day's session. (Id. at 21) It was decided based on her decreased tolerance of sessions, she would not complete the last week of work hardening and instead proceed straight to the FCE on May 19, 2020. (Id.)

The May 19, 2020, FCE at Azer Clinic was deemed valid. (PX 13) Petitioner's bilateral hand grip strength was below normal for her age and gender group. (Id. at 11). Her performance on the rapid exchange grip suggested submaximal effort. (Id.) Petitioner perceived her disability level to be less than sedentary. (Id. at 16)

On June 5, 2020, Petitioner sought a neuropsychological consultation with Dr. Drake Ryan Steed at OSF St. Francis Medical Psychology Services "to ascertain her present neuropsychological status due to concern about concentration deficits." (RX 3 pg 1). She gave a consistent history of her accident, reporting significant back pain, headaches, forgetfulness ("losing pieces of my whole day"), word-finding difficulties, and significant anxiety being in a vehicle in the weeks after her accident. (Id.) Currently, she endorsed concentration issues, problems multitasking, difficulty with word finding, and problems recounting details. (Id.) Petitioner reported a history of depression and anxiety treated with psychotropic medications at least since her 20s. (Id. at 2) Adverse childhood events and problematic family dynamics included taking on a caretaker role at a young age, father having depression, mother having lupus, maternal uncle having bipolar, and brother and half-sister having ADD and alcoholism. (Id.) In high school, she described significant mental health difficulties, including a suicide attempt (took two bottles of Excedrin), drinking alcohol, and using marijuana in sophomore year. (Id.) Her educational history included a HS diploma (earned C's and D's), LPN license, and she was currently in a registered nursing program, where she was earning C's. (Id.)

Petitioner's test findings showed performance validity indicator in the indeterminate range but was markedly inconsistent with the rest of her neuropsychological profile, suggesting the influence of situational factors on test engagement. (Id.) Dr. Steed opined the test results likely underestimate her true level of neurocognitive strengths and weaknesses. (Id. at 3) She showed no amnesia, aphasia, or visuospatial deficit (Id.) Her self-report questionnaire of psychological functioning indicated a tendency to over-report psychosocial problems and physical and memory symptoms, for which Dr. Steed interpreted her profile cautiously. (Id.) Further results showed problems with coping, leading to symptoms including developing physical and cognitive problems in response to stress, depressive symptomatology, and anxiety/worry. (Id.) She scored just below the cutoff for provisional PTSD. (Id.) Dr. Steed noted that Petitioner's cognitive dysfunction, including concentration, memory, and word-finding problems, is unrelated to brain trauma from the motor vehicle accident since the brain heals in the weeks to months following head impact resulting in a concussion. (Id.) Any symptoms persisting beyond three months were related to premorbid or comorbid medical, psychosocial, or situational factors. (Id.) Based on Petitioner's history, this could include her anxiety, depression, and developing/intensifying headaches in response to stress. (Id.) Dr. Steed noted that the Baclofen, Hydroxyzine, and Tramadol she was taking could have cognitive side effects that momentarily affect memory. (Id.) Her prognosis was good if she could address those factors. (Id.) He recommended mental health treatment to address anxiety and depression in addition to cognitive behavioral therapy. (Id.)

On August 21, 2020, Petitioner underwent an IME with Dr. Jesse Butler. (RX 1, EX 2) After reviewing her medical records, December 12, 2019, MRI images, taking a history from Petitioner, and conducting a physical examination, Dr. Butler diagnosed a lumbar strain from the September 14, 2019, accident. (Id.) He specifically noted the December 12, 2019, MRI was completely normal, without degeneration of the facet joints, stenosis, or traumatic disc herniation. (Id.) He disagreed with Dr Kube's opinion that the facets were the pain generator because neither the CT nor the MRI scans confirmed a facet injury. (RX 1 pgs. 17-18) Ten sessions of physical therapy were reasonable for the lumbar sprain, but the facet blocks, medial branch blocks, and radiofrequency ablation procedures were neither reasonable nor necessary, as evidenced by her worsening of pain after the procedures. (Id. pg. 18) He also believed the FCE was not necessary for a back sprain. (Id. pg. 18) In response to Petitioner's self-report that pain medications give her very little relief from pain, Dr. Butler opined that continued medication prescription is not standard treatment protocol in that situation. (Id.pg 20-21) Dr. Butler further noted the FCE limitations were inconsistent with the objective MRI findings, noting that there is a strong objective component to FCEs. (Id. pg. 23) Once her MRI showed no structural abnormality, Petitioner should have been counseled about the results and returned to the workplace. (Id. pg. 18) Dr. Butler believed she reached MMI for her lumbar sprain by three months after the accident, and there was no objective basis for work restrictions or the severe level of disability she described. (Id. pg 22)

Petitioner reported to therapist, Lisa, at her September 28, 2020, visit at New Directions that she was "going for full disability." (PX 11, pg 22, PX 10, pg. 5) On August 30, 2021, Petitioner requested a letter from Lisa by Friday stating that she could not work. (PX 11 pg. 33, 36) Lisa provided the letter dated August 31, 2021, stating that Petitioner's significant PTSD, anxiety, and depression symptoms prevent her from maintaining gainful employment. (PX 10, pg. 25)

On September 28, 2022, Petitioner underwent an IME and neuropsychological testing with Dr. Nancy Landre. (RX 2) Petitioner reported a history of anxiety and depression since high school resulting in a suicide attempt and hospitalization senior year. (RX 2 EX 2 pg. 8) She further reported postpartum depression in 2007 and 2011. (Id.) Petitioner reported a chaotic childhood with her parents divorcing when she was two and being moved back and forth between them until HS graduation. (Id.) Her father was verbally abusive of her and her brother and physically abusive to her brother such that she took care of him. (Id.) Petitioner downplayed the sexual abuse from her uncle stating that it never bothered her much and only happened a couple of times. (Id.) However, treatment records with Ms. Johnson showed that he made her give him "blow jobs" during a five-year history of abuse. (Id.)

Petitioner reported her job duties as an LPN involved conducting assessments with patients in their homes, going over their medications, and contacting physicians if changes were needed. (RX 2, pg. 9) Petitioner drove to Dr. Landre's office in Park Ridge, Illinois for the IME from southern Illinois. (Id.) Dr. Landre reviewed all of Petitioner's medical and psychological testing, including the deposition testimony of Lisa Johnson (RX 2, pg. 9-13) She was surprised by Ms. Johnson's testimony that none of Petitioner's numerous traumatic childhood and adolescent experiences were related to Petitioner's current mental health issues. (RX 2, pg. 22) She also disagreed with Ms. Johnson that any pre-accident mental health records were irrelevant to her opinions. (Id.) Dr. Landre believed it was necessary to review all available records in developing a clinical picture since patients are not always 100 percent accurate in portraying their history (RX 2, pg. 13-14)

On the testing, Petitioner failed 7 of the 8 Performance Validity Tests, which suggested that her results underestimate her true abilities and were not valid for interpretation. (RX 2, pg. 9) Dr. Landre noted that such tests are easily passed by individuals with moderate to severe TBI, mild dementia, seizure disorders, depression, and PTSD. (Id.) Petitioner's results on problem-solving ability and visual memory were average or better than her peers. (Id. at 10) Symptom Validity Testing showed that Petitioner failed two of two screening measures for malingering and demonstrated evidence of extreme overreporting, indicating serious problems with the credibility of her self-report. (Id.) Petitioner's MMPI responses indicated non-credible and exaggerated reporting of physical and cognitive (particularly memory) symptoms. (Id.) Results of the BHI-2 test measuring physical and psychological functioning showed levels of perceived psychological and life problems were higher than that seen in 92% of complex medical patients and even higher than 78% of patients asked to "fake bad" on the test. (Id.) Petitioner perceived the mildest of pain she experienced in the past month as disabling and intolerable. (Id. at 11) These results indicated an identity disturbance, such as assuming a disabled role when not disabled for primary gain (intrinsic appeal of being a patient) and/or secondary gain (financial compensation or work avoidance). (Id.)

Petitioner's vivid memory of the events surrounding her accident was inconsistent with her being impaired immediately after the accident. (RX 2 pg 16) Dr. Landre diagnosed traumatic syndrome disorder with predominant pain, and malingering, both of which were unrelated to the September 14, 2019, accident. (RX 2, pg. 11-12) She believed Petitioner's mental health treatment and neuropsychological testing with Dr. Steed may have been reasonable, but it was not necessary or related to the work accident. (RX 2, pg. 12) Since Dr. Steed's testing showed suboptimal effort and exaggerated symptoms, any mental health or concussion treatment after that was not

warranted. (Id.) From a neuropsychological standpoint, Petitioner could work full, unrestricted duties, and MMI does not apply since there was no work-related diagnosis. (Id.)

In addition to her treatment with Lisa Johnson, Petitioner sought treatment with Nurse Joshua Felts for symptoms of PTSD, anxiety, and depression. (PX 14) Nurse Felts testified that Petitioner's pre-existing depression and anxiety worsened after the accident and that her PTSD symptoms were due to the accident. (PX 15, pg. 9) He believed she could not perform the duties of a traveling nurse due to the driving requirement. (Id. at 10) Nurse Felts arrived at his diagnoses based solely on Petitioner's self-report of her symptoms. (Id. at 29) He believed she could perform the full duties of her job as an LPN from a mental health standpoint. (Id. at 30)

After undergoing the FCE on May 19, 2020, Dr. Kube adopted the FCE restrictions on a permanent basis on July 7, 2020, when he effectively placed Petitioner at MMI for her low back. (PX 6, pg. 49). Dr. Kube admitted he did not physically examine Petitioner at this visit. (Id.) At this visit, Dr. Kube recommended monthly opioid medication refills despite Petitioner's report that medications provided "very little relief from pain" because "very little is greater than zero." (PX 6, pg. 53, 55)

Petitioner continued to see PA Kitterman at Prairie monthly for on-site medication refills until November 15, 2023, when PA Kitterman relocated. (PX 4 pg. 292, PX 6, pg. 56) During her medication management, Petitioner reported flare-ups of low back pain, which she sometimes attributed to the weather and personal stressful events. (Id. pgs. 177, 282, 285) She was told at the Neurological Institute that the medication she is taking may be affecting her memory as well. (PX 4 pg. 75) On February 2, 2021, PA Kitterman believed any of the new medications she was taking for her cognitive and mental health issues (Pregabalin, Namenda, Prozac) could "probably be causing an increase in some of these headaches." (PX 4, pg. 198) Reducing the Pregabalin dose from twice daily 150mg to 75mg improved her headaches. (PX 4, pg. 201) By March 30, 2021, Petitioner's headaches had resolved due to reducing her Pregabalin dose. (PX 4, pg. 205-206) Her headaches further improved with reduction in stress and warm weather. (PX 4, pg. 242)

Wages

Petitioner's earnings at Southern Illinois Dermatology show she worked from January 7, 2024, through March 2, 2024. (PX 18). Her hours worked per two-week period steadily increased from 32 hours to 82.25 hours in her last earnings statement from February 18, 2024, to March 2, 2024. (Id.) She earned $1,727.25 (including overtime at the straight time rate) during that two-week period (Id. at 4). Her current hourly pay at Southern Illinois Dermatology is $21.00 per hour. (Id.)

Pre-accident wages from VITAS show that Petitioner also earned $21.00 per hour prior to her work injury. (RX 5) She worked overtime more than half of the pay periods with an AWW of $927.47, including overtime at the straight time rate. (Id.)

CONCLUSIONS OF LAW

In support of the Arbitrator's Conclusions with respect to (F) Causal Connection, the Arbitrator makes the following findings of fact and conclusions of law:

The Arbitrator adopts and incorporates the findings of fact herein. The Arbitrator finds that Petitioner failed to prove that her current orthopedic, neurological, and mental health conditions are related to her September 14, 2019, work accident.

The September 14, 2019, accident is undisputed. The Arbitrator finds the orthopedic opinions of Dr. Butler more credible than Dr. Kube's as they are supported by the objective findings. Both Dr. Kube and Dr. Butler agree that Petitioner suffered a low back sprain, a soft tissue injury, as a result of the work accident. Dr. Kube also diagnosed a neck sprain, which resolved by November 26, 2019. The December 12, 2019, lumbar spine MRI was a normal study by every doctor's reading. Notably, it contained no new findings from the April 28, 2018, lumbar MRI. Facet joint involvement was ruled out by the lumbar CT scan and MRI findings. Petitioner failed to prove that she suffered anything more than a soft tissue injury from her work accident.

Petitioner's subjective reports of low back pain are unsupported by the medical evidence. Dr. Butler believed Petitioner should have reached MMI for her low back sprain three months after the work accident at which time she could return to work in a full duty capacity as an LPN from an orthopedic standpoint. He opined that 10 sessions of physical therapy were medically necessary to treat her low back injury. After the MRI on December 12, 2019, was shown to be completely normal, there was no basis for any further PT, injections, an FCE, or medications for Petitioner's lumbar sprain.

Dr. Kube had no orthopedic explanation for Petitioner's low back pain, yet he continued to recommend multiple types of injections, work restrictions, work conditioning, an FCE, and monthly pain medication refills.

Regarding Petitioner's mental health treatment, the Arbitrator finds the opinions of neuropsychologists Dr. Steed and Dr. Landre more persuasive than those of Lisa Johnson and Nurse Felts. Petitioner sought treatment with Dr. Steed on June 8, 2020. Her objective test results showed suboptimal effort and exaggerated symptoms. These results were duplicated and confirmed on Dr. Landre's September 28, 2022, tests. All objective testing points to Petitioner's responses being untruthful and exaggerated. Based on the test results, prior medical and mental health history, and Petitioner's clinical presentation, Dr. Landre diagnosed traumatic syndrome disorder and malingering, both unrelated to the work accident.

Lisa Johnson believed her treatment was reasonable to address PTSD from the work accident. Nurse Felts also believed Petitioner's PTSD treatment was related to the work accident. However, these providers relied solely on Petitioner's reports of her psychiatric symptoms and her perceived physical disability, both of which objective testing revealed to be compromised or exaggerated. Neither of them reviewed any other medical or mental health treatment records. Although Petitioner's treatment with Lisa Johnson and Nurse Felts may have been reasonable to treat

underlying mental health issues, it was unrelated to any condition stemming from the September 14, 2019, accident.

Petitioner's cognitive deficits have also not been proven to be related to the September 14, 2019, accident. Dr. Steed opined that Petitioner's cognitive deficits, including concentration, memory, and word-finding problems, are unrelated to brain trauma from the motor vehicle accident. Any symptoms that persisted after three months post-accident were related to Petitioner's premorbid or comorbid medical, psychosocial, or situational factors, such as her history of anxiety, depression, and developing/intensifying headaches in response to stress. As such, any treatment for cognitive complaints beyond approximately December 17, 2019, was unrelated to the work accident. Dr. Steed also believed Petitioner's medications could cause memory issues.

Dr. Nersesyan had treated Petitioner for headaches and migraines since 2012. Petitioner admitted to having migraines leading up to her work accident. PA Kitterman suggested that Petitioner's medications were causing her headaches, which is supported by their apparent improvement with the reduction of her Pregabalin dosage.

Based on the totality of the medical evidence available in the record, the Arbitrator finds that Petitioner has not proven her current medical, mental health, and cognitive complaints are related to her September 14, 2019, work accident. The Arbitrator further finds that Petitioner reached MMI on or about December 17, 2019, when Dr. Butler opined Petitioner reached MMI for her low back, Dr. Kube reviewed the normal lumbar MRI, and Dr. Steed opined Petitioner would have reached MMI for any cognitive issues stemming from a concussion.

In support of the Arbitrator's Conclusions with respect to (J) Medical Benefits, the Arbitrator makes the following findings of fact and conclusions of law:

The Arbitrator adopts and incorporates the findings of facts herein. The Arbitrator finds the orthopedic opinions of Dr. Butler more credible than Dr. Kube's as they are supported by the objective findings. Both Dr. Kube and Dr. Butler agree that Petitioner suffered a low back sprain, a soft tissue injury. Their opinions differ regarding the treatment necessary for this injury.

Dr. Butler believes Petitioner's low back sprain would have healed by three months after the work accident at which time she could return to work in a full duty capacity as an LPN from an orthopedic standpoint. Ten sessions of physical therapy were necessary to treat the lumbar sprain. After the MRI on December 12, 2019, was shown to be completely normal, Petitioner should not have received any further PT, any injections, an FCE, or medications for her lumbar sprain. There was no confirmation of a facet injury on the CT or MRI.

Dr. Kube could not explain Petitioner's low back pain, but he continued to recommend multiple types of injections, work restrictions, work conditioning, an FCE, and monthly pain medication refills for years. There is no objective basis for these treatment recommendations.

Regarding Petitioner's mental health treatment, all objective testing pointed to Petitioner's responses being untruthful and exaggerated. Dr. Steed's June 8, 2020, neuropsychological test results showed suboptimal effort and exaggerated symptoms. These results were duplicated and

confirmed by Dr. Landre's objective tests. Any mental health treatment should have been terminated once it became clear that Petitioner's responses could not be trusted as an accurate reflection of her condition.

Lisa Johnson believed Petitioner's PTSD was related only to the work accident despite Petitioner's extensive history of abuse, neglect, and prior mental health issues. Nurse Felts also believed Petitioner's PTSD symptoms were related to the work accident. Both providers relied solely on Petitioner's reports of her psychiatric symptoms and her perceived physical disability, both of which objective testing revealed to be compromised or exaggerated. Although Petitioner's treatment with Lisa Johnson and Nurse Felts may have been related to underlying mental health issues, it was unrelated to the September 14, 2019, accident.

Petitioner's treatment for cognitive deficits has also not been proven to be related to her September 14, 2019, accident. It was Dr. Steed's opinion that Petitioner's cognitive deficits including concentration, memory, and word-finding problems, are unrelated to brain trauma from the motor vehicle accident. Any symptoms that persisted after three months post-accident were related to Petitioner's premorbid or comorbid medical, psychosocial, or situational factors, such as her history of anxiety, depression, and developing/intensifying headaches in response to stress. Dr. Nersesyan had treated Petitioner for headaches and migraines since 2012. Petitioner admitted to having migraines leading up to her work accident. Dr. Steed believed Petitioner's medications could cause memory issues. PA Kitterman suggested that Petitioner's medications were causing her headaches, which appeared to improve with the reduction of Pregabalin.

Based on the totality of the medical evidence available in the record, aside from the ER visit, physical therapy, visits with Dr. Kube through December 17, 2019, and the December 12, 2019, MRI, the Arbitrator finds that Petitioner has not proven her medical or mental health treatment to be related to the work accident. As such, the Arbitrator declines to award the corresponding medical bills.

In support of the Arbitrator's Conclusions with respect to (K) TTD Benefits, the Arbitrator makes the following findings of fact and conclusions of law:

The Arbitrator adopts and incorporates the findings of fact herein.

An employee is temporarily totally disabled from the time that 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. *J.S. Masonry, Inc. v. Indus. Comm'n*, 369 Ill. App. 3d 591, 599 (2006).

For the reasons above, the Arbitrator finds Dr. Butler's orthopedic opinions regarding causal connection more credible than Dr. Kube's. Dr. Butler opined Petitioner should have reached MMI and full duty work status as an LPN from an orthopedic standpoint three months after the accident, or around mid-December 2019. After reviewing the normal December 12, 2019, MRI, Dr. Kube imposed light duty work restrictions on December 17, 2019, of lifting up to 10 pounds. Petitioner's low back physical examination was unchanged from prior visits. At the time, there was no objective basis for further orthopedic work restrictions.

Petitioner returned to work on January 12, 2020, and worked until her March 31, 2020, visit with Dr. Kube. The March 31, 2020, physical examination findings were unchanged from the prior examination. At that visit, he was unable to explain Petitioner's ongoing back pain as "her discs look fairly normal" and "there is nothing additional that I could really point to." However, he took Petitioner off work again without basis. The March 31, 2020, examination was Petitioner's last physical examination prior to Dr. Kube releasing her at MMI for the low back on July 7, 2020, as Dr. Kube admitted he did not physically examine her on July 7, 2020. As there was no subjective or objective change in her condition between December 17, 2019, and July 7, 2020, Petitioner's low back sprain had stabilized by December 17, 2019. After that date, there is no basis for temporary total or partial disability benefits.

Nurse Felts testified that Petitioner could perform the full duties of her job as an LPN from a mental health standpoint, an opinion with which Dr. Landre agreed. According to Nurse Felts, the only thing that precluded Petitioner being a traveling nurse was the driving requirement. However, Petitioner drove to her therapist's office on December 19, 2019. On December 13, 2019, PA Jacinda Cornick also cleared Petitioner to drive from a neurological standpoint. The subsequent medical records show Petitioner continued to drive herself to treatment visits. Petitioner drove from southern Illinois to attend Dr. Landre's IME in Park Ridge in 2022, and she drove 5 hours to attend this trial.

For the above reasons, the Arbitrator finds that Petitioner is owed TTD from September 15, 2019, through December 16, 2019.

In support of the Arbitrator's Conclusions with respect to (L) the Nature and Extent of the Injury, the Arbitrator makes the following findings of fact and conclusions of law:

The Arbitrator adopts and incorporates the findings of fact herein. The Arbitrator finds that Petitioner suffered a lumbar sprain as a result of her September 14, 2019, work accident for which she underwent physical therapy, injections, a work hardening program, and received medications.

With respect to the claim for permanent disability, as this matter involves an accident occurring after September 1, 2011, Section 8.1(b) of the Act requires any claim for permanent partial disability be established based on five factors. The Commission shall base its determination on the following factors: (i) the reported level of impairment pursuant to the most current edition of the AMA's "Guides to the Evaluation of Permanent Impairment;" (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; (v) evidence of disability corroborated by the treating medical records. (820 ILCS 305/8.1b). No single enumerated factor shall be the sole determinant of disability.

Reported Level of Impairment Pursuant to the AMA Guides
With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no impairment rating has been provided by any doctor.

Occupation of the Injured Employee
With regard to subsection (ii) of §8.1b(b), petitioner was employed as an LPN with the Respondent. She testified as to the physical demands required of her job, which she described as

administrative, involving driving to administer hospice care to terminally ill patients. This included repositioning patients from time to time. At trial, Petitioner testified that she worked as an LPN in a dermatology clinic that involves data entry, minimal walking, and no lifting or bending.

The Arbitrator finds this factor to be relevant to the disability determination and attaches great weight to these factors. The evidence produced demonstrates Petitioner has sustained a less severe physical disability on account of her occupying the same position as she did pre-injury.

Age of the Employee at the Time of the Injury
With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that petitioner was 36 years old at the time of the accident. She is currently 40 years old. Because Petitioner is a younger individual and any permanent partial disability will last a longer amount of time than an older individual, the Arbitrator finds this factor relevant to the determination of disability and applies great weight to it in determining the resulting disability.

Employee's future earning capacity.
With regard to subsection (iv) of §8.1b(b), Petitioner's future earning capacity, the Arbitrator notes that Petitioner was released to return to work in her regular duty capacity as an LPN by Joshua Felts from a mental health standpoint. The only restriction he imposed was no driving; however, Petitioner admitted to driving at the time of trial. Dr. Butler also found she was able to perform the full duties of her job as an LPN without restrictions from an orthopedic standpoint as of December 2019. Petitioner was employed as a part time LPN at the time of trial, most recently working over 80 hours in a two-week period. Her hours steadily increased over the short course of her employment with Southern Illinois Dermatology. She wages records show Petitioner is currently capable of earning at least $863.62 per week and working over 40 hours a week. She earned $21.00 an hour both before and after her work accident. Because the evidence produced at trial failed to show that Petitioner sustained any impairment of her earning capacity, the Arbitrator therefore gives no weight to this factor.

Evidence of Disability Corroborated by the Treating Medical Records
With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner's testimony that she still experiences low back pain, headaches, and PTSD symptoms from the accident.

Petitioner's complaints of moderate to severe low back pain are uncorroborated by her post-accident lumbar spine MRI findings from December 12, 2019. The study was normal with no significant findings, according to Dr. Nersesyan, Dr. Butler, and Dr. Kube. When compared to the April 28, 2018, lumbar spine MRI, it contained no new findings. On Dr. Butler's review of the lumbar MRI images and CT scan, he found no facet joint involvement. Both Dr. Kube and Dr. Butler agree that Petitioner suffered a low back sprain, and Dr. Kube additionally diagnosed a neck sprain that resolved by November 27, 2019, during his treatment. However, no doctor has diagnosed a lumbar disc herniation, impingement, or any other significant pathology that would explain Petitioner's ongoing high levels of low back pain. Dr. Kube could not explain this. By the time of trial, Petitioner was no longer seeing an orthopedic surgeon for her low back, treating only with her PCP.

The record supports that Petitioner had mental health issues and multiple traumatic stressors prior to her September 14, 2019, work accident dating back to her childhood. Petitioner described fear of driving on the interstate that was not corroborated by the records or facts. At trial, Petitioner admitted to driving 5 hours on the interstate to attend the trial. She drove from southern Illinois to Dr. Landre's office in Park Ridge for the IME.

Petitioner's results on the validity measures of both sets of neuropsychological testing (Dr. Steed's and Dr. Landre's) suggested malingering and that any test results likely underestimated her true abilities. Specifically, Petitioner's MMPI responses indicated non-credible and exaggerated reporting of physical and cognitive (particularly memory) symptoms. The tendency to overreport or exaggerate reports of physical and cognitive symptoms is corroborated by the normal brain CT scan from the accident date. Her work conditioning consultation results at Athletico and Azer Clinic further supported self-limiting behavior that was not supported by the therapist's objective findings and observations of her physical capabilities. The FCE, while deemed valid, showed submaximal effort on rapid grip testing and significant deficits in grip strength, an activity that should be unaffected by a low back injury. It was Dr. Steed's opinion that any ongoing cognitive dysfunction, including concentration, memory, and word-finding problems, is unrelated to brain trauma from the motor vehicle accident since the brain would have healed in the months following a concussion. Any symptoms persisting beyond three months were related to premorbid or comorbid medical, psychosocial, or situational factors, of which Petitioner had many.

Dr. Steed believed the medications Petitioner was taking could affect her cognitive state, particularly her memory. Petitioner's vivid recall of the events immediately after the accident suggest her post-accident memory was intact. She sought treatment for migraines since 2012 with Dr. Nersesyan and admitted to having migraines leading up to the accident. Her post-accident headaches were relieved by reducing her Pregabalin dosage, a medication prescribed for cognitive difficulties.

Despite her testimony regarding her mental health and cognitive issues, Petitioner is gainfully employed and performing the full duties of an LPN at a dermatology clinic. She has provided no objective support for her need for work restrictions or ongoing treatment for any orthopedic, neurological, or mental health condition. In fact, all objective findings contest her need for treatment or restrictions.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability for her work-related neck and low back sprains to the extent of 10% loss of use of the whole person pursuant to §8 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC021433
Case Name	Jaime Martinez v. Scarpelli Materials & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0126
Number of Pages of Decision	17
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	David Feuer
Respondent Attorney	Rufus Barner

DATE FILED: 3/24/2025

/s/Deborah Simpson,Commissioner
Signature

DISSENT: /s/Deborah Simpson,Commissioner
Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jaime Martinez,
Petitioner,

vs. NO: 10 WC 21433

Scarpelli Materials, Inc. and the IWBF,
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 issue of nature and extend 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 29, 2024, is hereby affirmed and adopted.

The Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund was named as a co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under §4(d) of the Act, in the event of the failure of Respondent-Employer to pay the benefits due and owing the Petitioner. Respondent-Employer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent-Employer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

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 $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.

March 24, 2025

d: 3/19/25
DLS/rm
046

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

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

Dissent in Part

I respectfully dissent in part from the Decision of the Majority. The Commission affirmed and adopted the Decision of the Arbitrator. The Arbitrator awarded Petitioner medical expenses submitted into evidence, 234.75 weeks of permanent partial disability ("PPD") representing loss of 100% of the left index finger, loss of 100% of the left middle finger, and loss of 75% of the left hand, and found the IWBF alternatively liable for the award. I concur with the Arbitrator and Decision of the Majority concerning the issues of accident, causation, the award of medical expenses, and the alternate liability of the IWBF because the employer did not have Workers' Compensation insurance coverage at the time of the accident. Therefore, I concur with these aspects of the Decision of the Majority.

However, I would have modified the Decision of the Arbitrator on the issue of PPD. Petitioner sustained amputation injuries to his index and middle fingers of his left hand as well as a laceration on his ring finger. Clearly the loss of 100% of the amputated fingers is the correct award. However, as mentioned above the Arbitrator also awarded Petitioner an award representing loss of the use of 75% of the left hand.

On direct testimony, Petitioner testified that currently he has trouble with all activities of daily living ("ADLs"), like taking showers, getting dressed, eating, and tying his shoes. His left hand hurts a lot particularly when it's cold. He felt depressed because he could not support his family and felt worthless; his wife had to take two shifts. He was not currently seeing any doctor for his hand. On questioning from the Arbitrator, Petitioner testified he was right-handed. Besides the issues he had with his index/middle fingers, his ring finger was also cut but he recovered about 80% mobility in that finger. Regarding his hand as a whole, it was not as strong as it had been before the accident and he cannot hold onto things he needs to work with such as tools, shovels, wheelbarrows, *etc*.

In my opinion, Petitioner has not sustained his burden of proving disability to his left hand, at least not to the extent to loss of 75% use of it. Petitioner's testimony about his ongoing difficulties with ADLs could be related only to the loss of his fingers, which is compensated through the amputation awards. Clearly, the statutory amputation awards inherently includes compensation for some impairment and disability associated with those amputations. While Petitioner testified he could not return to his previous job, he was working in a similar capacity for another employer, has not proved he can no longer perform his customary occupation, and has not proved any potential loss of future earning potential due to his condition. Concerning the disability to his hand Petitioner simply

testified to loss of strength and ability to grip tools. I agree with the Arbitrator and Majority that Petitioner sustained some additional impairment to his hand function because of his amputations, but not the extent of loss of 75% use of that hand. I would modify the Decision of the Arbitrator from awarding loss of 75% of the use of the left hand to loss of 25% of the use of the left hand.

For the reasons stated above I respectfully dissent in part from the Decision of Majority. I would have modified the Arbitrator's PPD award for loss of the use of the left hand.

DLS/dw

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC021433
Case Name	Jaime Martinez v. Scarpelli Materials & IWBF
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	David Feuer
Respondent Attorney	Rufus Barner

DATE FILED: 8/29/2024

s/Frank Soto, Arbitrator
Signature

INTEREST WEEK AUGUST 27 2024 4.685%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Jaime Martinez
Employee/Petitioner

v.

Scarpelli Materials, Inc. and the IWBF
Employer/Respondent

Case # **10WC** WC **021433**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Frank Soto**, Arbitrator of the Commission, in the city of **Joliet**, on **June 27, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **July 1, 2009**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**37,440.00**; the average weekly wage was $**720.00**.

On the date of accident, Petitioner was **40** years of age, ***married*** with **3** dependent children.

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

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

Respondent shall be given a credit of $**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 Dr. Fanto's outstanding medical charges of $14,848.80, outlined in the Patient's Ledger of Petitioner's Exhibit #2, pursuant to Sections 8(a) of the Act and subject to the fee schedule in Section 8.2 of the Act, as set forth in the Conclusions of Law attached hereto and incorporated herein;

TEMPORARY PARTIAL DISABILITY

Petitioner testified he was paid while off work so Petitioner failed to prove he was entitled to TTD benefits.

PERMANENT PARTIAL DISABILITY:

Respondent shall pay Petitioner permanent partial disability benefits of $432.00/week for 234.75 weeks because the injuries sustained caused permanent partial impairment of 100 % of a left index finger, 100 % of a left middle finger and 75 % of the left hand, pursuant to Section 8(e) of the Act, as set forth in the Conclusions of Law attached hereto and incorporated herein;

IWBF

The Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund was named as a co-respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered as to the IWBF to the extent permitted and allowed under §4(d) of the Act. In the event Respondent/Employer/Owner/Officer fails to pay the award, the IWBF has the right to recover the benefits paid by it to Petitioner pursuant to Section 5(b) and 4(d) of this Act. The IWBF's payment of medical costs awarded in this matter is limited to only those that are reasonable, related to this injury and that remain currently due and owing at the time of IWBF disbursement. Respondent/Employer/Owner/Officer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer that are paid to the Petitioner from the Injured Workers' Benefit Fund. The Employer-Respondent's obligation to reimburse the IWBF, as set forth above, in no way limits or modifies its independent and separate liability for fines and penalties set forth in the Act for its failure to be properly insured.

Respondent shall pay Petitioner compensation that has accrued from 7/1/2009 through 6/27/24 and shall pay the remainder of the award, if any, in weekly payments.

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

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

By: /o/ Frank J. Soto **August 29, 2024**

Jaime Martinez
v.
Scarpelli Materials, Inc.,
and the Illinois State Treasure as ex officio Custodian
of the Injured Workers' Benefit Fund

Case #21 WC 021433

PROCEDURAL HISTORY

This action was pursued under the Illinois Workers' Compensation Act (the "Act") by Petitioner-Employee, Jamie Martinez (hereinafter referred to as "Petitioner"), who sought relief from the Respondent-Employer, Scarpelli Materials, Inc. (hereinafter referred to as "Respondent"), and the Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund (hereinafter referred to as "IWBF").

On June 27, 2024 a hearing was held before Arbitrator Soto and Attorney David Feuer of Goldstein Bender and Romanoff represented Petitioner. The Illinois Attorney General's Office, through Assistant Attorney General Rufus Barner, represented the IWBF. Petitioner provided notice to the Employer-Respondent, Scarpelli Materials, Inc., through the Illinois Secretary of State and by Certified Mail through the United States Postal Service. pursuant to section 5 of the Business Corporation Act. *See* 805 ILCS 5/5.25(c)(2)(ii). At the hearing all issues were disputed. (Arb. Ex. #1).

FINDING OF FACTS

Petitioner testified that he was married with 3 children on July 1, 2009. (T.25). On that date, Petitioner was employed by Respondent a company that supplied salt. (T.26). Petitioner testified he was paid $18.00 per hour and worked 40 hours a week. (T.29). Petitioner testified he also worked overtime but it wasn't required. (T.28). Petitioner testified to earing earned $740.00 per week for Respondent. (T.27, 28).

Petitioner testified, on July 1, 2009, he was at work checking a hydraulic line of a machine that was attached to the engine. Petitioner testified to following the hydraulic line with his left hand and opening his hand to let go of the line. At that time, the fan of the machine struck three fingers of his left hand. (T.31). Petitioner testified two of his fingers were destroyed with the middle finger being completely torn while another finger was repaired but is very disfigured. (T.32).

After the accident, Petitioner reported the incident to his supervisor, Braulio, who notified the office via radio. (T.34). Thereafter Petitioner was taken to the office and a report of the event was made before Petitioner was taken to a clinic and then to a hospital. (T.36-37). After

being released from the hospital Petitioner treated with Dr. Pillet of Hand and Plastic Surgery Associates. (T.39).

Petitioner underwent surgery on July 1, 2009. The surgical report states, "*traumatic amputation of the left long finger with open wounds with obvious tendon and nerve injury.* Petitioner underwent surgery to his left long finger involving debridement of skin, subcutaneous tissue, tendon, and bone. The amputation site was closed with a dorsal flap. Petitioner underwent multiple surgical procedures to his left index finger to repair the nerves, tendons, and arteries. Petitioner also underwent surgery to his left ring finger which involved debridement and repair of a complex laceration.

Petitioner returned to work four weeks after the accident and was paid his full salary. (T.39). Petitioner work worked light duty for Respondent until being laid off. (T.41). After being laid off, Petitioner found various jobs but that he continued to get laid off because he couldn't maintain productions levels. (T.41). Thereafter, Petitioner obtained his CDL at Mid-City Truck Driving Academy and worked several years as a commercial driver. (T.41-42, 45). Due to the scheduling obligations of a commercial driver, Petitioner decided to find another job. (T.46). Petitioner eventually found a job working on machines similar to the ones he worked on for Respondent but smaller. (T.46). Petitioner testified he is unable to perform the same type of work as he did for Respondent because that job required the use of both hands. (T.47).

As to his current condition, Petitioner testified he is unable to tie his shoelaces and his wife helps him button his shirts. (T.48). Petitioner testified it is difficult to eat and that is wife must cut his food. Petitioner testified it is also difficult to take showers and dress. (T.48-49). Petitioner continues to take Tylenol for pain. (T.51). Petitioner further testified that he is unable to hold tools like he could before the accident. (T.55).

The Arbitrator finds Petitioner's testimony to be credible.

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. The claimant bears the burden of proving every aspect of his claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223 Ill.App.3d 706, 714 (Ill. App. 5th Dist. 1992).

With respect to issue (A), was respondent operating under and subject to the Illinois Workers' Compensation Act, the Arbitrator finds as follows:

The Arbitrator finds Petitioner proved by the preponderance of the evidence that Respondent was operating under the Illinois Workers' Compensation Act, and their relationship was one of employee and employer. Petitioner testified he was employed by Respondent as a machine operator and he would operate machines with large buckets. (T.26). The Arbitrator takes judicial notice machine operators is an area of employment that falls under the jurisdiction of the Workers Compensation Act.

With respect to issue (B), was there an employee-employer relationship, the Arbitrator finds as follows:

The Arbitrator finds Petitioner proved by the preponderance of the evidence an employee-employer relationship existed between Petitioner and Respondent. Petitioner testified he was employed as a machine operator by Respondent. Petitioner testified Brauio was his supervisor and that he wore a uniform with Respondent's name on it. (T.76).

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 claimant has the burden of establishing by a preponderance of the evidence that her injury arose out of and in the course of her employment. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221, 38 Ill. Dec. 133 (1980); *Edward Don Co. v. Industrial Comm'n*, 344 Ill. App. 3d 643, 654, 801 N.E.2d 18, 279 Ill. Dec. 726 (2003). The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. *Scheffler Greenhouses, Inc., v. Industrial Comm'n,* 66 Ill. 2d 361, 366-67 (1977). "A compensable injury occurs 'in the course of' employment when it is sustained while a claimant is at work or while he performs reasonable activities in conjunction with his employment." *Wise, v. Industrial Comm'n*, 54 Ill. 2d 138, 142 (1973). "The 'arising out of' component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to the employment so as to create a causal connection between the employment and the accidental injury." *Sisbro Inc. v. Industrial Comm'n*, 207 Ill. 2d 193 (2003), citing *Caterpillar Tractor*, 129 Ill. 2d at 58. An injury is accidental within the meaning of

the Workers' Compensations Act when it is traceable to a definite time, place and cause and occurs in the course of the employment unexpectedly and without affirmative act or design of the employee. *Matthiessen & Hegeler Zinc Co. v. Industrial Board*, 284 Ill. 378, 120 N.E.2nd 249, 251 (1918). An injury "arises out of" employment if it originates from a risk connected with, or incidental to, the employment, involving a causal connection between the employment and the accidental injury. *Parro v. Industrial Comm'n*, 167 Ill.2d. 385, 393, 212 Ill. Dec. 537, 657 N.E.2d. 882 (1995).

The Arbitrator finds Petitioner proved by the preponderance of the evidence he sustained an accidental injury that arose out of and in the course of his employment with Respondent on July 1, 2009. Petitioner testified to injuring his left and fingers while repairing a machine for Respondent. Petitioner testified, "*And at that point when I got to the end of the line, I let go of the hose, I opened my finger, I opened my hand to let go of the hose and I felt a hit on my hand. And when I felt the hit to my hand, I felt that the fan of the machine pulled my hand and the next thing I knew my hand, my 3 fingers were destroyed. Two of them were completely destroyed and the other one, this one was just open here at the edge and the other two destroyed".* (T. 31). The Arbitrator notes the history of the accident contained in the medical records was consistent with Petitioner's trial testimony.

With respect to issue (D) what was the date of the accident, the Arbitrator finds as follows:

The Arbitrator finds Petitioner proved by the preponderance of the evidence that the date of accident was July 1, 2009. Petitioner testified to being injured at work on that day which corresponds with the histories contained in the medical records. No other evidence was produced at trial contradicting Petitioner's trial testimony.

With respect it issue (E) was timely notice of the accident given to Respondent, the Arbitrator finds as follows:

The giving of notice under the Act is jurisdictional and a prerequisite of the right to maintain a proceeding under the Act, however, the legislature has mandated a liberal construction on the issue of notice. *S&H Floor covering v. The Workers' Compensation Comm'n*, 870 N.E.2d. 821 (2007). Section 6(c)(2) of the Act states that "[N]o defect or inaccuracy of such notice shall be a bar to the maintenance of proceeding on arbitration or

otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceeding by such defect or inaccuracy". 820 ILCS 305/6(c) (West 2004).

The Arbitrator finds Petitioner proved by the preponderance the evidence that timely notice of the accident was given to Respondent. Petitioner testified to reporting the incident to his supervisor, Braulio, who took him to the office. Petitioner testified Braulio oversaw all the workers. (T.34). Petitioner after being taken to the office, he reported the accident before being taken to secure medical treatment. No other evidence was produced at trial contradicting Petitioner's trial testimony.

With respect to issue (F) whether Petitioners' current conditions of ill-being is causally related to the accident, the Arbitrator finds as follows:

To obtain compensation under the Act, a claimant bears the burden of proving by a preponderance of the evidence that a causal relationship between his work accident and his condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). The Arbitrator finds Petitioner proved by the preponderance of the evidence that his current left hand and left fingers conditions are causally related to his work accident.

Petitioner suffered a trauma to his left hand resulting in the amputation of one finger and the severe loss of use to other fingers as he tried to repair a machine for Respondent on July 1, 2009. Prior to this accident, Petitioner did not have any issues with his left hand and fingers. The Arbitrator finds the histories contained in the medical records consistent with Petitioner's trial testimony.

Petitioner underwent several surgical procedures including attempts to repair the nerves, tendons, and arteries of his left index finger, Petitioner also suffered an amputation to the left long finger requiring surgery including the debridement of the skin, subcutaneous tissue, tendon, and bone in addition to closing the amputation site with a dorsal flap. Petitioner underwent surgery to his left ring finger which consisted of a debridement and repair of a complex laceration. Petitioner testified that he is unable to tie his shoelaces, button his shirts or cut his food. (T.48,49). Petitioner continues to take Tylenol for pain. (T.51). Petitioner testified he is unable to hold onto tools like he could before his accident. (T.55).

With respect to issue "G" Petitioner's earnings, the Arbitrator finds as follows:

Section 10 of the Illinois Workers' Compensation Act provides as follows:

> *The 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 proceeding the date of injury, illness, or disablement excluding overtime, and bonus divided by 52; but, if the injured employee lost 5 or more calendar days during such period, whether or not in the same week, then the earnings for the remainder of the 52 weeks shall be divided by the number of weeks and parts thereof remaining after the time so lost has been deducted… 820 ILCS 305/10.*

The Arbitrator finds Petitioner proved by the preponderance of the evidence that his average weekly wage was $720.00 pursuant to Section 10 of the Act. Prior to his injury, Petitioner worked eight years for Respondent. At the time of his work accident, Petitioner was working 40 hours per week earning $18.00 per hour. (T.29). Although Petitioner worked overtime, he testified that overtime was not mandatory.

With respect to issues (H) and (I), what was Petitioner's age, marital status and number of dependents at the time of the accident, the Arbitrator finds as follows:

Petitioner testified to being born on March 3,1969, being married, and having three children under the age of 18 on the date of the accident. Petitioner wife's name is Patricia and he has twin daughters named Ashley and Leslie, born on October 13, 1999 and a son, named Daniel, born on March 21, 2007. As such, the Arbitrator finds Petitioner was born on March 3, 1969 and, at the time of his work accident, was married with three children under the age of eighteen.

With respect to issue (J), whether the medical services rendered to Petitioner were reasonable and necessary, the Arbitrator finds as follows:

Under Section 8(a) of the Act (820 ILCS 305/8(a)(West 2010), an employer "*shall…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*." Vocational rehabilitation may include, but is not limited to, counseling for job searches,

supervising job search program, and vocational retraining, which includes education at an accredited learning institution. See 820 ILCS 305/8(a) (West 2010).

The Arbitrator finds Petitioner proved by the preponderance of the evidence the medical treatment received was reasonable and necessary and that Respondent did not pay all appropriate changes. The medical treatment provided involved the fingers of Petitioner's left hand. Petitioner treated with Dr. Fanto who performed surgery and follow up care. Petitioner submitted into evidence a patient ledger, from Dr. Fanto, showing an outstanding balance of $14,848.80. (Px.2). The Arbitrator finds Petitioner proved by the preponderance of the evidence the medical treatment provided by Dr. Fanto was appropriate, reasonable, and necessary. As such, Respondent shall pay Dr. Fanto's outstanding medical charges of $14,848.80, outlined in the Patient's Ledger of Petitioner's Exhibit #2, pursuant to Sections 8(a) of the Act and subject to the fee schedule in Section 8.2 of the Act.

With respect to issue (K) whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

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

With respect to issue (L) what is the nature and extent of Petitioner's condition, the Arbitrator finds as follows:

Petitioner sustained a traumatic amputation of the left long finger at the level of the proximal interphalangeal joint and significant injuries to his left index and ring fingers. (Px.1).

Petitioner underwent various surgeries to his left index finger consisting of repair of the flexor digitorum profundus tendon, flexor digitorum superficialis tendon, ulnar digital artery, ulnar digital nerve, radial digital nerve, extensor tendon over the proximal interphalangeal region as well as the repair of the nail bed. The index finger sustained a laceration on the volar aspect of the proximal interphalangeal joint with an avulsed nail plate with significant injury to the nail bed with complete instability of the proximal interphalangeal joint. K-wires were used to secure the proximal interphalangeal joint. At the time of the surgery, Dr. Fanto noted extensive injury to the A4 pulley. (Px2). Petitioner also underwent surgeries to repair his left long finger consisting of debridement of skin, subcutaneous tissue, tendon and bone and closure of the amputation site with a dorsal flap. The surgical report indicates the amputation of the long finger was at the proximal interphalangeal joint. The surgery to the left ring finger consisted of the debridement of skin, subcutaneous tissue, and repair of a complex laceration. (Px.1). Petitioner testified to experiencing difficulties dressing, tying shoelaces, washing himself. Petitioner testified he continues to suffer pain and weakness in his left hand. Petitioner's wife needs to cut his food and help dress him. Petitioner also testified to difficult using and/or holding tools.

Based upon the record as a whole, the Arbitrator finds Petitioner sustained permanent partial impairment of 100 % of a left index finger, 100 % of a left middle finger and 75 % of the left hand, pursuant to Section 8(e) of the Act.

As to issue "O" Insurance Coverage and Liability of the Injured Workers' Benefit Fund, the Arbitrator finds as follows:

Insurance Coverage

On November 27, 2022, National Council on Compensation Insurance, Inc., issued a certification indicating it did not show a workers' compensation insurance policy for Respondent-Employer, Scarpelli Materials, Inc, covering July 1, 2009. (Px 5).

Notice and Service

The Commission's rules require that in all cases that have been on file at the Commission for more than three years, the parties or their attorneys must appear at each status call. 50 ILAC 9020.60(D). If the employer fails to appear, the arbitrator may schedule the claim for a trial and proceed *ex parte*. 50 ILAC 9030.20(c)(2). On August 9, 2023, this matter appeared on the

Arbitrator's status call. A pretrial was scheduled for August 11, 2023 at 9:00 AM. Counsel for Petitioner and the Illinois Injured Worker Benefit Fund appeared at the pretrial and this matter was scheduled for trial on June 27, 2024 at 9:00 AM.

On March 13, 2024, Petitioner's counsel attempted to notify Respondent the claim was set for trial on June 27, 2024 by serving the Secretary of State and by mailing letters by regular and certified mail to Respondent's last known locations at 1401 Timber Drive, Elgin, Illinois, 60123; 1600 Downs Drive, Unit 9, West Chicago, Illinois 60185; and 40W842 LaFox Road, St. Chales, Illinois 60175. Each mailing was returned to Petitioner's Counsel's office as undeliverable. The Arbitrator finds Petitioner's efforts to provide notice comply with 805 ILCS 5/5.25(c)(2)(ii). Based upon the above, the Arbitrator concludes that Petitioner complied with proper service and notice.

Injured Workers' Benefit Fund

The Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund was named as a co-respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered as to the IWBF to the extent permitted and allowed under §4(d) of the Act. In the event Respondent/Employer/Owner/Officer fails to pay the award, the IWBF has the right to recover the benefits paid by it to Petitioner pursuant to Section 5(b) and 4(d) of this Act. The IWBF's payment of medical costs awarded in this matter is limited to only those that are reasonable, related to this injury and that remain currently due and owing at the time of IWBF disbursement.

Respondent/Employer/Owner/Officer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer that are paid to the Petitioner from the Injured Workers' Benefit Fund. The Employer-Respondent's obligation to reimburse the IWBF, as set forth above, in no way limits or modifies its independent and separate liability for fines and penalties set forth in the Act for its failure to be properly insured.

Additional Relief Sought by Petitioner

In his proposed decision, Petitioner requested reimbursement for unpaid vocational rehabilitation costs consisting of attending cases at Mid-City Driving Academy and obtaining a CDL. Petitioner did not retain the services for a vocational expert who recommended obtaining

a CDL or attending commercial truck driving classes. The Arbitrator notes that Petitioner did not list the reimbursement of these items on the Request for Hearing. (Arb. Ex. #1). Because these issues were not identified as an issue of dispute on the Request for Hearing, the issue is waived and will not be addressed. See *Walker v. The Industrial Comm'n*, 345 Ill. Spp. 3d. 1084, 1088, 4-03-0087WC, (Fourth Dist. 2004), Section 9030.40 of the *Rules Governing Practice Before the Illinois Workers' Compensation Comm'n*, and 50 Ill. *Adm. Code Section* 7030.40.

By: /o/ *Frank J. Soto* **August 29, 2024**

Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC033002
Case Name	George Heard v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0127
Number of Pages of Decision	24
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Leonard Becker
Respondent Attorney	Andrew Zasuwa

DATE FILED: 3/24/2025

/s/Deborah Simpson,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with 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

George Heard,
Petitioner,

vs. NO: 12 WC 33002

Chicago Transit Authority,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 14, 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.

March 24, 2025

o: 3/5/25
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC033002
Case Name	George Heard v. Chicago Transit Authority
Consolidated Cases	14WC011107;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	22
Decision Issued By	James Byrnes, Arbitrator

Petitioner Attorney	Leonard Becker
Respondent Attorney	Andrew Zasuwa

DATE FILED: 6/14/2024

/s/James Byrnes, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 11, 2024 5.165%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

George Heard
Employee/Petitioner

v.

Chicago Transit Authority
Employer/Respondent

Case # **12** WC **033002**

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 **Raychel Wesley**, Arbitrator of the Commission, in the city of **Chicago**, on **February, 8, 2024**. As former Arbitrator Wesley is no longer an Arbitrator of the Commission, the parties agreed to have Arbitrator James Byrnes review the evidence and issue a decision in this matter. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **September 19, 2012**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**61,672.00**; the average weekly wage was $**1,186.00**.

On the date of accident, Petitioner was **49** 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 $**102,208.11** for TTD (to be applied against lost time prior to 3/1/2018 only), $**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.

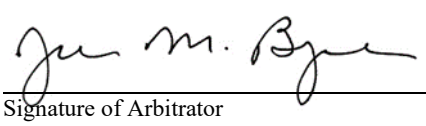
ORDER

Respondent shall pay Petitioner temporary total disability benefits of $790.67/week for 134-1/7 weeks, commencing March 1, 2018, through September 24, 2020, as provided in Section 8(b) of the Act.

Based on the §8.1b(b) factors, as set forth in the attached Memorandum of Decision of Arbitrator, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 50% disability to the person as a whole pursuant to §8(d)2 of the Act, and therefore Respondent shall pay Petitioner permanent partial disability benefits of $711.60/week for 250 weeks.

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

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



Signature of Arbitrator

June 14, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

GEORGE HEARD,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 12WC033002
CHICAGO TRANSIT AUTHORITY,	)	
	)	Consolidated Case:
	)	14WC011107
Respondent.	)	

MEMORANDUM OF DECISION OF ARBITRATOR

This matter proceeded to hearing on February 8, 2024, in Chicago, Illinois before Arbitrator Raychel Wesley on Petitioner's Request for Hearing. As former Arbitrator Wesley is no longer an Arbitrator of the Commission, the parties agreed to have Arbitrator James Byrnes review the evidence and issue a decision in this matter. Issues in dispute include accident, causation, medical bills, TTD benefits, nature and extent of the injury, and credit due to Respondent. (Arb. Ex. 1)

This matter was consolidated with 14WC011107 prior to hearing and the Findings of Fact set forth below apply to both dates of accident.

FINDINGS OF FACT

Job Duties

Petitioner testified that he is 61 years old and has an associate's degree in electronics from DeVry Institute of Technology. He testified that for most of his adult life he has worked for the CTA driving a bus. He testified that he started working for the CTA in 1991. (T. 17-18)

Petitioner testified he has a CDL commercial driver's license and his duties as a CTA bus driver included picking up passengers, taking them to a destination and collecting fares (pre-Ventra). (T. 19-20) He testified that a shift could range from 8 to 10 hours, five days a week, during which he sat as he operated the bus. Petitioner stated that he would assist with the wheelchair lift, pushing the passengers in the chair and then locking it in once the passenger was seated. (T. 20-21)

Petitioner testified he worked as a bus operator for 25 years (until 2018) and alleged that he earned the top pay of $30.00 per hour. (T. 22) He no longer works for CTA because he was in

an accident and has restrictions and was told he could not return to work with restrictions. (T. 23) He was told this by a CTA administrator. (T. 25) His goal was to become a line instructor and eventually a supervisor for Respondent. (T. 23)

Accident

Petitioner testified that on September 19, 2012, he was driving as a CTA bus driver eastbound on Roosevelt Road at Sacramento. (T. 27) He was stopped and loading passengers onto his bus when he heard a loud noise in the back of the bus. (T. 28) He testified that in the process of that loud noise, he noticed he was hit, and went forward and came back, and felt a heavy impact. (T. 28) He testified that a car had hit the back of the bus. (T. 28) He testified that he was jerked back and forth. (*Id.*)

As Petitioner felt the pressure of the impact along his seat-belted waist, he felt something pop in his low back, and he then began experiencing low back pain. (T. 29, 31-32) The low back pain was immediate and unlike anything he had experienced. (T. 33) At the scene Petitioner called Respondent's control center and advised that he had been in a traffic accident and that he was injured. (T. 33)

Upon inspection of the vehicles, Petitioner observed that a car had struck the rear of the bus, such that the front end of the car was "in his windshield." (T. 34) Petitioner testified it was "a very old car," and that a photograph of the scene, taken on the date of the accident, shows the denting of the front hood of the car. (T. 34-36; PX 16 pg. 6) Because Petitioner felt significant pain in his low back, he was taken by ambulance to Mt. Sinai Hospital. (T. 37)

The Petitioner completed an "Employee's Report of Injury on Duty," on September 20, 2012, which sets forth the details of the accident on September 19, 2012. Specifically, Petitioner provides the following history:

> "I was sitting at the red light with my seat belt on. I had one foot on the brake and one foot planted on the floor, when I suddenly felt a crash." (PX 16, p. 2)

The report also makes reference to the time and location of the accident, as well as his resulting back pain, neck pain and shoulder pain. (PX 16, p. 2) A "Supervisor's Report of Employee Injury on Duty" was also completed on that date, setting forth similar details of the accident and that "This [is] a work related injury," and signed by a manager for Respondent. (*Id.*, p. 3) Further documentation of the accident includes photographs of the car which struck the rear end of the bus (showing damage to the front end/hood of the car), an internal CTA report and a police report prepared by the Chicago Police Department. (*Id.*, pp. 4-17)

The Petitioner testified to a second traffic accident which occurred on September 25, 2013 (T. 12, 58). Again, Petitioner was operating Respondent's bus while on duty and in the employ of Respondent. (T. 59) On that day Petitioner was driving northbound when a vehicle in the left turn lane indicated an intent to turn left and travel westbound. (T. 58) Rather than making the left turn and proceeding west, the vehicle unexpectedly turned right and proceeded east across the bus's northbound path of travel. (T. 59) The bus collided with the vehicle and upon impact,

Petitioner again jerked forward and back and again felt pain in his low back. (*Id.*) The pain was the same as the pain he had felt as a result of the September 19, 2012, accident. (T. 60)

Prior Medical Condition

Petitioner testified that prior to the accident, he was in great health and had no problems. He testified he was very active and had no medical issues. (T. 29) He also testified that he was never told prior to the 2012 accident that he required surgery. (T. 61) Surgery was eventually recommended by Dr. Michael, after the 2012 accident and before the 2013 accident. (T. 62) Petitioner testified that he had a bilateral hip replacement in 2010 as well as a neck fusion. He testified that he wasn't having any hip or neck issues before the accident and was not having any lower back issues prior to the accident. (T. 30-31)

The Petitioner was seen by Dr. David Fardon of Midwest Orthopaedic Network for an independent medical examination on September 15, 2010. (PX 5, pp. 230-234) The records reviewed by Dr. Fardon in conjunction with that exam reveal that Petitioner underwent a C6-7 discectomy and fusion on February 26, 2010. (*Id.*, p. 232) The Petitioner also advised Dr. Fardon that he had undergone bilateral total hip surgeries, the first in May of 2010 and the second in August of 2010. (*Id.,* p. 231) Dr. Fardon proceeded to examine the Petitioner's cervical spine and render an opinion regarding additional treatment, the Petitioner's ability to return to work as a bus driver and opinions concerning causation to that injury. (*Id.*, 232-234) There is no indication Petitioner had any complaints concerning his lumbar spine or that Dr. Fardon examined that part of Petitioner's body or reviewed any records concerning the lumbar spine or bilateral hips.

Summary of Medical Records

City of Chicago Fire Department

City of Chicago EMS arrived at the scene of the September 19, 2012, accident and it was reported that Petitioner was stopped at a light when a car rear ended the bus. Petitioner reported that he felt a jolt in his back and has been hurting ever since, with pain in the low back that shoots down both legs below his knees. Petitioner was transported to Mt. Sinai ER (PX 1, pp. 2-3).

Mt. Sinai Hospital ER

The Petitioner was seen by Dr. Jorge Ferrer at the emergency department of Mt. Sinai Hospital on September 19, 2012, complaining of lower back pain radiating down his legs. He advised that he was sitting in his bus and the bus was rear-ended. (PX 2, p. 17) X-rays taken at the hospital showed normal alignment of the lumbosacral spine with multilevel facet arthrosis and anterior osteophytes and left greater than right SI joint degenerative joint disease, but no compression fracture. (*Id.*, p. 16) He was diagnosed with acute lower back pain due to a motor vehicle accident, prescribed medications and sent home. (*Id.*, pp. 19-20)

Advanced Physical Medicine

After being seen at the emergency room, the Petitioner followed up his treatment at Advanced Physical Medicine on September 19, 2012, where he was seen by a chiropractor, Dr. Igor Russo. Petitioner provided a consistent history of the work accident that took place that day and reported complaints of stiffness and pain in the neck, as well as pain in the low back. (RX 4, p. 1) The Petitioner indicated that his current symptoms existed prior to the accident on September 19, 2012, but such symptoms were notably exacerbated and aggravated by the accident. (*Id.*) Based on the Petitioner's symptoms and the physical examination findings, Dr. Russo diagnosed acute cervical sprain/strain with subluxation, and lumbosacral sprain/strain with subluxation. (*Id.*, p. 3) The doctor recommended a course of conservative treatment and referred the patient to Dr. Goldvekht.

The Petitioner followed up with Dr. Aleksandr Goldvekht at Advanced Physical Medicine on September 24, 2012. He provided a history of working for the CTA driving a bus on September 19, 2012, when he was stopped at a red light and rear-ended by another vehicle. He initially felt pain in the lower back and the next day his neck and lower back were causing him severe pain. He reported that bending, lifting, carrying and pushing and pulling aggravates the pain and he cannot sit for long periods of time due to discomfort. He reported the previous medical history bilateral hip replacements and a cervical C6-7 ACDF. Dr. Goldvekht diagnosed cervical and lumbar sprain/strains, prescribed medications and physical therapy, and advised the Petitioner to remain off work. (PX 3, p. 2)

The Petitioner participated in physical therapy at Advanced Physical Medicine and remained off work. (PX 3, pp. 9-25) On November 26, 2012, he underwent an MRI scan of the lumbar spine at Hawthorne Imaging. The results of the scan showed diffuse narrowing of the spinal canal at L5-S1, partially due to congenitally short pedicles, as well as diffuse narrowing of the thecal sac at L2-3 and L3-4. Diffuse facet arthrosis and hypertrophy was also noted, along with multilevel neural foramen compromise. There was also a small right foraminal disc protrusion with annular fissure at L5-S1, resulting in moderate compromise of the neuroforamen encroaching on the exiting nerve root. (*Id.*, p. 27)

The Petitioner followed up with Dr. Goldvekht on December 3, 2012, at which time the results of the lumbar MRI scan were discussed. Due to the results of that test, as well as Petitioner's symptoms and clinical presentation, Dr. Goldvekht advised Petitioner to continue with physical therapy and remain off work, and he also referred him to a spine specialist. (PX 3, p. 29)

The Petitioner was seen by Dr. Ronald Michael for a neurosurgical consultation on December 18, 2012. He complained of low back pain and bilateral leg pain, worse on the left than on the right, and severe with sitting, standing and walking. It was also noted that Petitioner had onset of low back pain 6 months prior and had been treated with physical therapy and a series of 3 lumbar epidural steroid injections. Dr. Michael noted that this accident had aggravated his condition beyond his baseline pain. Dr. Michael reviewed the MRI and felt that Petitioner had herniated discs at L4-L5 and L5-S1 with a possible protrusion or frank herniation at L3-4. A series of 3 epidural steroid injections was recommended. (PX 3, p. 32)

A lumbar epidural steroid injection was performed on January 8, 2013. A second injection was performed on February 5, 2013. (PX 3, pp. 40, 48) Dr. Goldvekht saw Petitioner again on February 11, 2013, and noted he would be undergoing work conditioning followed by an FCE. A lower extremity EMG was recommended. (*Id.,* p. 59)

The EMG was performed on February 22, 2013, and was abnormal with findings consistent with mild right and left L4/L5 radiculopathy. (PX 3, pp. 64-68) A functional capacity evaluation was performed at Advanced Physical Medicine on February 27, 2013. (*Id.*, pp. 69-73) According to the report summary, the Petitioner was capable of assuming a position in the light strength category, with maximum lifting capacity of 20 pounds and maximum carrying capacity of 10 pounds. (*Id*., p. 72)

Dr. Goldvekht saw Petitioner on March 14, 2013. Petitioner stated he still had low back pain but wanted to try to go back to work even though his FCE stated he was unable to sit for a long time. The doctor released Petitioner full duty as of March 20, 2013. (PX 3, p. 78)

Petitioner followed up with Dr. Goldvekht on April 15, 2013, at which time he reported he was experiencing low back pain while performing his full duty work. (PX 3, p. 80) It was also noted he was to have a discussion with Dr. Michael about undergoing surgery. He was permitted to keep working full duty. (*Id.*) The Petitioner was seen by Dr. Michael on April 16, 2013, who recommended a lumbar discogram to define the pain generator. (*Id.*, p. 81)

He saw Dr. Christopher Morgan on May 15, 2013, who recommended a lumbar discogram. He also set forth opinions in which he causally related the Petitioner's symptoms to the injury, noting the patient did have an underlying degenerative condition that was silent and asymptomatic, but the injury rendered the condition symptomatic and in need of treatment, with the injury resulting in an aggravation of the asymptomatic condition. (PX 3, pp. 83-84)

The discogram was performed on June 26, 2013. A CT scan of the lumbar spine was performed on that date as well. The results of the discogram noted discogenic pain at L4-5 and L5-S1 and disc concordant pain at L3-4. The CT scan revealed multilevel annular tearing from L3-S1 and multilevel prominent posterior hypertrophy contributing to significant osseous encroachment on the neural foramina at L2-3 on the right side. (PX 3, pp. 87-91)

Petitioner followed up with Dr. Morgan again on July 10, 2013, who referred him back to Dr. Michael due to the positive discogram at L4-L5 and L5-S1. Dr. Michael saw Petitioner on July 24, 2013, and noted that the post-discogram CT scan showed annular tears at L4-L5 and L5-S1. Surgery was again discussed, including disc decompression versus a lumbar fusion. Dr. Michael also noted a causal relationship between Petitioner's current condition of ill-being and the injury. (PX 3, pp. 102-103)

Petitioner returned to Dr. Morgan on August 28, 2013. It was noted he had been sent to UIC to see Dr. Siemionow, who had ordered an MRI to rule out infection due to Petitioner's complaints following the discogram. The Petitioner continued to complain of low back pain with bilateral lower extremity paresthesias, weakness and fatigue; he had positive bilateral straight leg

raising. Petitioner stated he wanted to get a second opinion for a surgical evaluation and thus was given a referral to Dr. Singh at Rush Hospital. (PX 3, pp. 105-106)

Midwest Orthopaedics at Rush

Petitioner initially presented to Dr. Kern Singh on October 2, 2013, and provided a history of an immediate onset of low back pain with radiation into bilateral lower extremities as a result of the rear-end collision of September 19, 2012. (PX 5, p. 227) He related that the pain is worse in the morning and his symptoms are worsening. (*Id.*) It was noted he had x-rays, physical therapy and an MRI as well as 2 steroid injections with no relief of his symptoms. (*Id.*)

Dr. Singh reviewed the lumbar MRI and noted it showed central stenosis at L2-3 and L3-4, a right facet cyst at L2-3 and a left facet cyst at L3-4. (PX 5, p. 228) Dr. Singh diagnosed spinal stenosis at L2-3 and L3-4 and a facet cyst at the same levels. He felt Petitioner had exhausted conservative treatment and recommended surgery in the form of a minimally invasive laminectomy from L2 to L4. (*Id.*, p. 229)

Petitioner underwent a minimally invasive L2, L3, L4 laminectomy with bilateral facetectomy and foraminotomy on December 17, 2023. The postoperative diagnosis was L2-3, L3-4 spinal stenosis. (PX 5, p. 217)

Petitioner began post-operative physical therapy at NovaCare Rehabilitation on February 25, 2014. (PX 5, p. 208) A work capacity evaluation took place on March 19, 2014, and concluded that Petitioner demonstrated an ability to function in the medium physical demand level but did not demonstrate the ability to work as a Bus Operator for the CTA. His test performance was consistent. Work conditioning was recommended in order to get him to return back to work full duty. (PX 5, pp. 199-205)

Petitioner attended 12 work conditioning sessions at NovaCare and on April 8, 2014, it was determined that he had met all his job demands and could be discharged. (PX 5, p. 193)

Petitioner followed up with Dr. Singh on April 10, 2014. The Petitioner reported axial low back pain at a level of 4/10 without any lower extremity symptoms and overall felt "greatly improved" since prior to surgical intervention. (PX 5, p. 191) It was noted that according to the work conditioning report of April 8, 2014, Petitioner had met all of his job demands and discharge was recommended. (*Id.*) Dr. Singh recommended that Petitioner return to work without restrictions for a 3-month work trial before determining MMI status. (*Id.*, p. 192)

Petitioner returned to Dr. Singh on August 18, 2014. He was 6 months status post L2-3, L3-4 laminectomy. He told the doctor he had improved. It was noted he had returned to work without restrictions. He had some axial low back pain at times with standing and with certain equipment and his pain was aggravated by driving the bus, especially the busses that are more "rickety" than others. He rated his pain at a level of 6/10, which was worse in the morning. He was not taking any pain medication at that time. Dr. Singh reaffirmed Petitioner's ability to work without restrictions and considered him to be at maximum medical improvement ("MMI"). (PX 5, pp. 189-190)

Petitioner returned to Dr. Singh on March 23, 2015. He was complaining of low back pain rated at 6/10, aggravated by long periods of driving, sitting, lifting and standing. He was referred for an MRI and was advised he could continue to work without restrictions. (PX 5, pp. 187-188)

On March 21, 2016, Petitioner returned to Dr. Singh with complaints of axial back pain with bilateral lower extremity radiculopathy. An MRI of the lumbar spine dated March 8, 2016, revealed post-operative changes and severe stenosis at L2-3 and L3-4. Dr. Singh prescribed physical therapy and Petitioner was removed from commercial driving with work restrictions of 10 pounds lifting and restrictions on pushing and pulling. (PX 5, pp. 184-185)

Petitioner returned to Dr. Singh on May 2, 2016, after completing a course of physical therapy. He was complaining of intractable low back pain, as well as leg discomfort that radiates to the anterior thigh. Dr. Singh diagnosed residual L2-3, L3-4 spinal stenosis and recommended a revision L2-3 and L3-4 laminectomy with bilateral partial facectomy and foraminotomy. The doctor also mentioned a possible fusion in the future. (PX 5, pp. 173-175)

In a letter dated May 18, 2016, Dr. Singh set forth the basis for the proposed surgery. Specifically, he noted the surgery performed in 2014 only partially addressed the Petitioner's symptomatology, in that the decompression was not taken lateral enough to decompress the thecal sac and lateral recess. He notes the revision laminectomy was predicated based upon the original injury for which he had treated two years prior, and further states that "[t]he essence of causation is based upon the fact that the patient had a spinal stenosis aggravated in 2010 requiring a subsequent laminectomy that was only partially complete." (PX 5, p. 171)

On May 24, 2016, Dr. Singh performed a minimally invasive revision L2, L3 and L4 laminectomy with bilateral partial facetectomy. Operative findings noted residual L2-3 and L3-4 spinal stenosis with epidural fibrosis and right-sided L2-3 and L3-4 laminotomy defect. (PX 5, pp. 167-168)

The Petitioner thereafter participated in physical therapy and work conditioning at NovaCare Rehabilitation. (PX 5, pp. 129-164) According to the work conditioning discharge summary, dated December 28, 2016, the Petitioner made good progress in work conditioning "but did not meet sitting goals for a bus operator." It was noted he did not demonstrate the ability to perform sitting/standing for one sustained period but was able to perform cumulatively throughout an 8-hour period. It was therefore recommended that he has a position where he is able to change positions frequently. (*Id.,* pp. 122-123)

Petitioner was seen by Dr. Singh on January 4, 2017, complaining of low back pain but denying any bilateral lower extremity paresthesias. Referring to the work conditioning discharge summary of December 28, 2016, Dr. Singh released Petitioner with permanent restrictions including 4-hour drive shifts for the next 4 weeks, then 8 hour shifts thereafter. (PX 5, pp. 119-120)

The Petitioner was last seen by Dr. Singh on February 15, 2017, reporting no changes in his back, with pain at a level of 6/10. He also reported that he had not yet returned to work, citing the need for "additional paperwork to be completed." Dr. Singh reiterated the permanent

restrictions of 4-hour drive shifts over the next four weeks and thereafter a return to full 8-hour shifts and MMI. He also noted if the symptoms were to persist, Petitioner would be a candidate for a revision L2-4 laminectomy with fusion. (PX 5, pp. 117-118)

NorthShore University Health System

On March 27, 2018, Petitioner presented to Dr. Srjdan Mirkovic at NorthShore University Health System. He provided a history of the 2012 accident in which he was the belted driver of a CTA bus when he was struck from behind when sitting still, by a vehicle traveling at "a fairly high speed." (PX 7, p. 187) He also provided a history of his treatment from the date of that accident to the present. He noted constant low back pain since 2016, with worsening pain over the last 2 months, and that he was no longer experiencing the lower extremity pain. (*Id.*) Based on the history, physical examination and review of the 2016 MRI scan, Dr. Mirkovic diagnosed lumbar spondylosis, spinal stenosis, neurogenic claudication, facet arthropathy, status post bilateral total hip arthroplasty and sciatica. He recommended an MRI scan of the lumbar spine and a follow-up visit upon completion of that test. (*Id.*, pp. 191-192)

An MRI of the lumbar spine was performed on April 1, 2018, and revealed postoperative findings at L2-L3 and L3-L4 with mild progression of marked central stenosis. There was mild progress of foraminal stenosis at L5-S1 and moderate central stenosis at L4-L5. (PX 7, 179)

Petitioner saw Dr. Mirkovic again on April 17, 2018. The doctor believed the MRI demonstrated severe stenosis and postoperative changes at L2-L3 and L3-L4 as well as L4-L5. (PX 7, p. 155) A revision L2 through L5 lumbar decompression and fusion with instrumentation was discussed. (*Id.*, p. 156)

A CT scan of the lumbar spine was performed on April 28, 2018, and revealed severe spinal canal stenosis at L2-3 and L3-4, mild spinal canal stenosis at L1-2 and L4-5 and severe foraminal stenosis on the right at L2-3 and bilaterally at L3-4. (PX 7, p. 142)

Petitioner underwent the L2-L5 lumbar fusion on May 9, 2018, and returned to Dr. Mirkovic on May 29, 2018. The Petitioner reported that his low back symptoms had markedly improved, with some expected residual numbness and soreness. X-rays demonstrated good position of instrumentation. He was directed to avoid bending, twisting, stooping, or lifting greater than 10-15 pounds. (PX 7, pp. 121-124)

Petitioner was seen by Dr. Mirkovic on July 23, 2018, and had mild low back discomfort, with occasional lower extremity numbness when laying on his back and occasional twinges in his right lower extremity. (PX 7, p. 107) He was advised to wean himself out of the back brace in August and begin physical therapy in September. (*Id.*, p. 111)

The Petitioner followed up with Dr. Mirkovic on November 13, 2018. He advised that he had begun physical therapy and a home exercise program and was noticing a burning sensation down his left lower extremity, as well as low back pain when standing, different than pre-operatively. (PX 7, p. 92) Dr. Mirkovic recommended another lumbar MRI scan, as well as a neurological evaluation. (*Id.*, p. 93)

At that same appointment, the Petitioner mentioned his symptoms were work-related, and based on the history provided by the Petitioner, Dr. Mirkovic expressed his agreement with "_____ between the patient's symptoms and the work related accident in 2012." The doctor noted he had not reviewed any records related to this and that Petitioner understood he could not make a determination based on a review of records. (PX 7, p. 93)

A new MRI of the lumbar spine was done on December 5, 2018, and revealed mild to moderate spinal canal stenosis at L1-2, as well as postoperative changes at L2 through L5, with moderate to severe right and mild left neural foraminal stenosis at L2-3 and moderate bilateral neural foraminal stenosis and L3-4 and L4-5. The test also showed moderate to severe right and moderate left neural foraminal stenosis at L5-S1, similar to prior. (PX 7, p. 80)

An MRI of the thoracic spine performed on January 21, 2019, revealed no high-grade thoracic spinal stenosis, no abnormal signal intensity in the thoracic spinal cord, and thoracic spondylosis with mild lower thoracic spinal stenosis. (PX 7, p. 69) An MRI of the cervical spine done on January 23, 2019, revealed ACDF at C6-7 and right paracentral disc herniation at C5-6, there was mild to moderate central stenosis and moderate right foraminal stenosis at C5-6. (*Id.,* p. 58)

Petitioner returned to Dr. Mirkovic on February 12, 2019, after the imaging studies were completed. On that date, Petitioner stated that he had difficulty with standing and sitting, and complained of severe pain and progressive weakness in his lower extremities the further he walks. (PX 7, p. 48) Dr. Mirkovic felt that based on the imaging studies, he had trouble seeing objective evidence for the severity of symptoms that Petitioner complained of. He did not think that the cervical or thoracic spine were contributing to his lumbar symptoms. He recommended a follow up with Dr. Dickerson in pain management for possible placement of a spinal cord stimulator. Regarding the progressive weakness with walking, Dr. Mirkovic noted that the imaging studies could not clearly explain his subjective complaints. Petitioner was referred to Dr. Campanella for evaluation of other neurological disorders including MS. (*Id.*, pp. 48-49)

The Petitioner contacted Dr. Mirkovic's office on March 26, 2020, regarding disability paperwork. The doctor called the Petitioner and advised he could not complete the requested documentation as he had not seen him in a year a physical examination would be needed. (PX 7, p. 39) The Petitioner expressed his understanding, and it was noted a referral for a physical functional evaluation would be written and Petitioner would follow up upon completion. (*Id.*)

A second such discussion between Petitioner and Dr. Mirkovic took place on March 31, 2020, specifically regarding Petitioner's desire that the doctor "write off on him not be able to return to work." (PX 7, p. 30) Dr. Mirkovic again stressed that a physical examination would be necessary for such a purpose and Petitioner agreed to return to the clinic in one week. (*Id.*)

On September 15, 2020, the Petitioner participated in a functional capacity evaluation at NovaCare Rehabilitation. During the test, the Petitioner demonstrated the ability to occasionally lift up to 10 pounds floor to waist, 25 pounds waist to shoulder, null pounds floor to shoulder, and the ability to carry up to 10 pounds, push 128 pounds of force and pull 80 pounds of force. It was noted he did not demonstrate the ability to sit constantly and will not be able to perform a job

demand that does not allow for positional changes, and that he could perform sedentary work that allowed for him to change from sitting to standing position frequently. (PX 15, p. 2) It was noted his performance consistency during the testing was substantially consistent. (*Id.*, p. 10)

The Petitioner was last seen by Dr. Mirkovic on September 24, 2020, following his participation in the FCE. Dr. Mirkovic diagnosed chronic low back pain, noted the results of the FCE in his report and stated that Petitioner could return to work as delineated in the FCE. (PX 7, p. 15) The doctor also authored a letter of the same date, in which he states that Petitioner cannot return to work as a bus driver, may return to work as per the FCE of September 15, 2020, and that Petitioner had reached maximum medical improvement. (*Id.*, p. 16)

Advocate Medical Group

A lumbar myelogram and CT scan was performed on May 15, 2019. The testing showed multilevel degenerative changes and disc herniations throughout the lumbar spine, as well as moderate to severe foraminal narrowing at all lumbar levels. (PX 8, p. 36)

Petitioner saw Dr. Raed Abusuwwa on May 29, 2019. He complained of numbness and pain down both legs to the bottom of his feet, with the symptoms much worse with prolonged sitting and standing. (PX 8, p. 4) The doctor recommended diagnostic injections in the form of L5-S1 caudal epidural injection, L5-S1 bilateral intra-articular facet injections, L1-2 bilateral intra-articular facet injections. The doctor also discussed the possibility of additional surgery including a decompression and fusion at L1-2 and fusion at L5-S1. (PX 8, pp. 4-5)

On June 3, 2019, it was noted that Petitioner contacted Dr. Abusuwwa's office to request information to treat at a different pain clinic; he was referred to Premier Pain. (PX 8, p. 3) Another telephone call took place on August 15, 2019, at which time it was noted the Petitioner had undergone the recommended injections and was considering seeking a second opinion. (*Id.*, p. 2)

Northwestern Medicine

Petitioner presented to Northwestern Pain Medicine on June 13, 2019. The Petitioner was seen by Dr. Zheng for evaluation and treatment of paresthesias and gluteal pain. Based on evaluation and diagnostic test results (EMG), Dr. Zheng diagnosed lumbosacral radiculopathy and recommended bilateral S1 transforaminal lumbar epidural steroid injections. (PX 9, 45) The Petitioner returned on September 20, 2019, at which time a caudal epidural injection was discussed and performed. (PX 9, p. 14)

NovaCare Rehabilitation

Following his discharge from Dr. Mirkovic, the Petitioner participated in physical therapy at NovaCare Rehabilitation. He testified that he would go to physical therapy on his own to help with the pain. (T. 52)

The first course of therapy took place from January 13, 2021, through March 17, 2021, due to low back pain. He reported low back pain with radiation to his feet, right worse than left. (PX

6, p. 306) He was discharged upon completion of the program, although still noting pain with driving, sitting, and sleeping for greater than 10 minutes. (*Id.*, p. 371)

The second course of therapy, again for low back pain, took place from April 13, 2022, through June 9, 2022. At the initial visit, he reported that he had not been performing his home exercise program and his low back pain and numbness/tingling had increased as a result. (PX 6, p. 372) He was discharged on June 9, 2022, upon completion of the program, at which time it was noted his range of motion had increased and his symptoms had improved. (*Id.*, p. 401)

The last physical therapy session took place between September 9, 2022, and November 4, 2022, and was focused on treatment to his right knee and not his low back. (PX 6, pp. 403-449) Petitioner was discharged due to non-compliance and failure to complete the plan of care. (*Id.*, p. 449)

Expert Reports

Dr. Martin Herman

The Petitioner was seen by Dr. Martin Herman for an independent medical examination on July 19, 2016, at the request of Respondent. The Petitioner related the history of the two work accidents in 2012 and 2013, and the doctor referred to an incident on March 21, 2016. Based on the history, physical examination, and review of the MRI scan of January 2016, Dr. Herman diagnosed severe lumbar stenosis prior to March 21, 2016. He opined the surgery performed by Dr. Singh on May 24, 2016, was reasonable and necessary due to the degenerative stenosis and facet ligamentous hypertrophy and felt that the Petitioner would be at maximum medical improvement upon completion of physical therapy and work hardening. (PX 11, p. 1-2)

Relative to the injury of March 21, 2016, the Petitioner did not relate to Dr. Herman that any injury occurred on that date, so he could only assume that his clinical condition was a function of the previous degenerative condition and/or injuries related to the previous accidents from 2012 or 2013. (PX 11, p. 2)

The Petitioner was examined by Dr. Herman for a second IME on May 25, 2017. Dr. Herman reviewed updated treatment records, including those of Dr. Singh, and performed another physical examination. It was the doctor's impression that Petitioner suffered from an underlying condition of lumbar stenosis, and his causality opinion was no different than set forth in his previous IME report of July 19, 2016. (PX 12, p. 2) He agreed with Dr. Singh's recommendation that Petitioner return to a 4-hour workday and that it may be helpful to obtain a formal functional capacity evaluation. He also agreed with Dr. Singh's assessment that Petitioner had reached maximum medical improvement. (*Id.*)

Dr. Jerry Bauer

The Petitioner was seen by Dr. Jerry Bauer for an independent medical examination on October 13, 2021, at the request of Respondent. The Petitioner provided a history of the work accidents which took place in 2012 and 2013, as well as a summary of his medical treatment to

date. (RX 1, pp. 1-2) Dr. Bauer also reviewed and listed the diagnostic images and medical reports and he reviewed in conjunction with the IME. (*Id.*, pp. 5-19)

The Petitioner's chief complaints included low back pain which worsens with prolonged sitting, the need to change position to alleviate his pain, intermittent pain down the legs and weakness in his legs related to pain. (RX 1, p. 2) The physical examination findings were essentially normal, with an ability to walk without a limp, ability to support his weight on his heels and toes, no lumbar tenderness, normal lower extremity strength and negative straight leg raising. He did exhibit limited lumbar range of motion and reduced sensation on the lateral aspect of both feet. (*Id.*, p. 5)

Dr. Bauer diagnosed Petitioner with a congenitally narrow spinal canal with severe facet arthropathy at multiple levels, especially at L2-3 and L3-4, resulting in severe lumbar stenosis. In his opinion, the motor vehicle accident of September 19, 2012, did not contribute to the Petitioner's lumbar stenosis or need for lumbar surgical procedures, and the lumbar condition was not a result of injury. (RX 1, p. 19) Dr. Bauer also expressed the opinion that the accident of September 19, 2012, did not exacerbate, aggravate or accelerate Petitioner's severe spinal stenosis or contribute to the need for surgery. (*Id.*) In his report, Dr. Bauer also refers to several occasions in the medical records in which he felt Petitioner gave inconsistent histories concerning whether he had pre-existing low back pain. (*Id.*)

Dr. Bauer expressed the opinion that, regardless of cause, the Petitioner's treatment to date (other than the lumbar discogram) was reasonable and necessary to cure and relieve the Petitioner's symptoms. (RX 1, p. 19) He recommended additional diagnostic testing (thoracic and lumbar MRI scans) and felt Petitioner may require additional surgery. (*Id.*, p. 20) He was also of the opinion that Petitioner was not capable of performing the physical functions of a CTA bus driver, due to his low back and lower extremity pain and dyesthesias in his toes. (*Id.*)

Chicago Neurospine Surgery

The Petitioner was seen for an independent medical evaluation at Chicago Neurospine Surgery on March 21, 2022 (the report is unsigned but referred to by Petitioner's attorney as the "IME of Dr. Salehi," and was admitted into evidence without objection by Respondent's attorney (T. 112)).

According to this report, the Petitioner reported constant numbness in the bilateral buttock region with intermittent tingling in the low back, as well as burning with hot and cold sensations in his feet. (PX 14, p. 1) His low back pain and leg pain is intermittent and dependent on position and can reach 9/10 before changing position, worse with standing and improved with lying down. Sitting too long causes cramping in the thighs. (*Id.*)

Based on the Petitioner's symptoms, physical exam findings and review of the medical records, Dr. Salehi diagnosed post-laminectomy syndrome and myelomalacia of the distal spinal cord. (PX 14, p. 5) It was the opinion of Dr. Salehi that the Petitioner's lumbar stenosis and spondylosis were pre-existing conditions and the accident in 2012 was a contributing and aggravating factor. (*Id.*, p. 6) The doctor recommended a T11-L1 laminectomy to treat the

myelomalacia of the spinal cord and a dorsal spinal cord stimulator to treat the post-laminectomy syndrome. (*Id.*) As for work, the doctor opined Petitioner could work at no more than a light duty capacity with no driving of commercial vehicles, no lifting of more than 20 pounds, no pushing or pulling more than 35 pounds and no repeated bending or twisting more than 3 times per hour. (*Id.*)

Petitioner's Current Condition

The Petitioner testified that his pain comes and goes. (T. 52) He has pain-free days, but if he doesn't do his exercises or sits, stands, or walks for a long time, the pain will return, sometimes to a level of 9/10. (T. 52-53) He seeks physical therapy on his own and exercises to manage and reduce the pain. (T. 53) He takes ibuprofen to deal with his "sciatica" pain, which he describes as starting in his low back and goes down both legs to his feet. (T. 54) He notices such sciatica pain about three times per week. (T. 54-55)

The Petitioner testified that he continued to receive off work benefits from Respondent until about March 1, 2018. (T. 95) He expressed a willingness to continue working for Respondent in a position within his restrictions but was told there was no job available for him within his restrictions. (T. 25, 94)

The Petitioner testified he has a commercial driver's license ("CDL") and a B stamped on it for passengers. (T. 19) He starting as a bus operator for Respondent in 1991. (T. 18) Prior to that, he earned an associate's degree in electronics from DeVry Institute of Technology, but never worked in the electronics field because he began his employment with Respondent shortly after earning that degree. (*Id.*)

In March of 2022, Petitioner took a job driving for SCR, working as a school bus driver, picking up children at their homes and driving them to school (and vice versa), which would involve a twenty-one-mile round trip. There were no children who required wheelchair assistance or lifts. (T. 67-69) He did not feel capable of pushing someone in a wheelchair, due to his restrictions. (T. 94-95) He no longer works for that company and left of his own volition after less than a year. (T. 70, 94)

The Petitioner began working for Windy City Limo about a year before the hearing (2023). (T. 79) He works during the summer and is on call for when they need him, operating within the state of Illinois. (T. 80-81) As an example, he would drive a van of 12 people to a destination, go home, and return in several hours to pick them up. He would not be driving for 8 hours. (T. 81) The company is aware of his condition and that his decision to accept or deny a driving job depends on the distance to be traveled. (T. 82-83) His decision about whether to accept a job depends on how he physically feels that day. (T. 89) He would not agree to drive a 39-passenger vehicle, because the motion of such a vehicle would affect his back. (T. 90)

He estimates he can sit behind the wheel and drive for up to 45 minutes in a single session. (T. 91) As such, he does not accept jobs from Windy City Limo that require him to drive for more than 45 minutes in a single stretch, because it would be painful. (T. 92)

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

A decision by the Commission cannot be based upon speculation or conjecture. *Deere and Company v. Industrial Commission,* 47 Ill.2d 144, (1970). A Petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. *Illinois Institute of Technology v. Industrial Commission,* 68 Ill.2d 236, (1977).

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:

A claimant bears the burden of proving by a preponderance of the evidence that his or her injury arose out of and in the course of the employment. *Baldwin v. Illinois Workers' Compensation Comm'n,*409 Ill. App. 3d 472, 477 (2011); *First Cash Financial Services,* 367 Ill. App.3d at 105. Both elements must be present to justify compensation. *First Cash Financial Services,* 367 Ill.App. 3d at 105.

For an injury to arise out of the employment, its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989). "In the course of the employment" refers to the time, place, and circumstances under which the claimant is injured. A compensable injury occurs "in the course of" employment when it is sustained while a claimant is at work or while he performs reasonable activities in conjunction with his employment. *McAllister v. Illinois Workers' Compensation Comm'n,* 2020 IL 124848, ¶ 34.

In this case, Petitioner credibly testified that he sustained an accident while performing his assigned duties as a bus operator for Respondent on September 19, 2012. This is supported by the accident reports, photographs and police report set forth in PX 16 and the ambulance report of PX 1. The Petitioner also gave a consistent history of the work accident to every medical provider and independent medical examiner he encountered from the date of the accident forward.

Based on the above, the Arbitrator finds the Petitioner proved 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 September 19, 2012.

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

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. It is not necessary to prove that the employment was the sole causative factor or even that it was the principal causative factor, but only that it was a causative factor. *Tolbert v. Ill. Workers' Comp. Comm'n*, 2014 IL App (4th) 130523WC, ¶ 1. 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 (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 (1982).

Petitioner testified that prior to the accident, he was in great health and had no problems. He testified he was very active and had no medical issues. (T. 29) Petitioner testified that he had a bilateral hip replacement in 2010 as well as a neck fusion. He testified that he wasn't having any hip or neck issues before the accident and was not having any lower back issues prior to the accident. (T. 30-31)

The Petitioner also testified to his previous cervical fusion and bilateral hip replacements in 2010, and also reported such to his treating physicians and the examining physicians. The Arbitrator does note some inconsistencies, such as in the initial report to Dr. Russo on the date of accident that "his current symptoms already existed prior" to the accident, but it is not clear if that statement refers to the prior neck complaints (which led to the cervical fusion) or to the low back pain, or to both. In addition, the December 18, 2012, report of Dr. Michael refers to the onset of low back pain 6 months prior which was treated through physical therapy and lumbar epidural steroid injections (there are no pre-accident medical records regarding such treatment, as opposed to the pre-accident documentation of the cervical fusion and bilateral hip replacements).

Despite these inconsistencies, however, the Arbitrator finds the Petitioner was generally consistent in the medical histories that he provided regarding the accident of September 19, 2012, and the immediate onset of low back pain he experienced as a result.

The Arbitrator also notes that all the physicians agree that prior to the accident of September 19, 2012, the Petitioner had a pre-existing degenerative condition in his lumbar spine. According to most of the Petitioner's treating physicians (Dr. Michael, Dr. Morgan, Dr. Singh, Dr. Mirkovic) and two of the examining physicians (Dr. Herman and Dr. Salehi), this pre-existing condition was aggravated and rendered symptomatic by the work accident and caused the need for his subsequent treatment. It is only Dr. Bauer who is of the opinion that the accident did not

aggravate the pre-existing condition. Taking all the medical evidence into account, the Arbitrator finds the opinions of the treating physicians (as well as Drs. Herman and Salehi) to be more persuasive than the opinion of Dr. Bauer on the issue of causal connection. (See *Int'l Vermiculite v. Industrial Comm'n*, 77 Ill.2d 1 (1999), in which the Illinois Supreme Court held that the Commission may give greater weight to the opinions of a treating physician over those of a retained examiner).

The Arbitrator also notes that Petitioner was apparently capable of performing his full duty activities as a bus operator for the Respondent, after his return to work following the hip and cervical spine surgeries in 2010, until the accident on September 19, 2012. There is no documentation he sought treatment or lost time from work due to low back pain in the interim (or at any time prior to the work accident). Such is the "chain of events" referenced by the court in the *International Harvester* case noted above.

Following the accident of September 19, 2012, Petitioner consistently presented to his physicians for treatment related to low back pain with radiculopathy. He intermittently lost time from and returned to work as a bus operator following that accident but continued to seek medical treatment for his lumbar spine condition subsequent to the date of accident, even after his attempts to return to work as a bus operator for Respondent. No evidence was presented that he sustained an intervening accident subsequent to the accidents of September 2012 and September 2013, such to break the chain of causal connection.

Based on the above, the Arbitrator finds the Petitioner proved by a preponderance of the evidence that his current condition of ill-being is causally related to the work accident of September 19, 2012.

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

At the time of hearing, counsel for Petitioner indicated his client was not claiming that any medical bills were unpaid (T. 6), yet counsel for Respondent marked the medical bill issue on the Request for Hearing form as "disputed per IME." (Arb. Ex. 1) But counsel for Respondent also stated on the record that "if there's no bills being claimed, there is no dispute, but I think we would dispute any medical bills because of the nature of the IME, the opinion." (T. 6-7)

Given that Petitioner is not claiming that any medical bills regarding this accident remained unpaid at the time of trial, the Arbitrator finds this issue to be moot. The Arbitrator also notes that having found the Petitioner's current condition of ill-being to be causally related to the work accident (despite the opinion of Respondent's IME physician), the Respondent would be liable for any reasonable, necessary, and causally related medical treatment incurred by Petitioner as a result of the accident of September 12, 2019.

Regarding Issue (K), what temporary issues are in dispute, the Arbitrator finds as follows:

To be entitled to TTD benefits, it is the claimant's burden to prove not only that he did not work but also that he was unable to work. *Holocker v. Illinois Workers' Compensation Comm'n,* 2017 IL App (3d) 16036WC, ¶35. A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Westin Hotel v. Indus. Comm'n*, 372 Ill.App.3d 527, 542 (1st Dist. 2007).

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n*, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

The Petitioner testified that Respondent paid him benefits for lost time from work until March 1, 2018, and he is seeking payment of TTD benefits from that date to the hearing on February 8, 2024. The parties agree that Respondent paid a total of $120,142.50 in TTD benefits subsequent to both accidents, for lost time prior to March 1, 2018. (Arb. Ex 1 - $102,208.11; Arb. Ex. 2 - $17,934.39) Respondent disputes liability for TTD benefits, based on the IME of Dr. Bauer.

At Petitioner's final office visit with Dr. Singh on February 15, 2017, Petitioner was complaining of pain at a level of 6/10. Dr. Singh reiterated the permanent restrictions of 4-hour drive shifts over the next four weeks and thereafter a return to full 8-hour shifts and MMI. He also noted if the symptoms were to persist, Petitioner would be a candidate for a revision L2-4 laminectomy with fusion. No evidence was presented to show that Respondent accommodated this restriction or that Petitioner ever returned to work for Respondent.

The Petitioner resumed his medical treatment with Dr. Mirkovic on March 27, 2018. He noted constant low back pain since 2016, with worsening pain over the last 2 months, and that he was no longer experiencing the lower extremity pain. Based on the history, physical examination and review of the 2016 MRI scan, Dr. Mirkovic diagnosed lumbar spondylosis, spinal stenosis, neurogenic claudication, facet arthropathy, status post bilateral total hip arthroplasty and sciatica. He recommended an MRI scan of the lumbar spine and a follow-up visit upon completion of that test.

Following an MRI scan and CT scan of the lumbar spine, Dr. Mirkovic performed a lumbar fusion at L2-L5 on May 9, 2018. The Petitioner thereafter participated in physical therapy at NovaCare Rehabilitation and continued to treat with Dr. Mirkovic. In 2019, he sought treatment at Advocate Medical Group and Northwestern Medicine, where he underwent a lumbar caudal epidural injection in September 2019.

On September 15, 2020, the Petitioner participated in a functional capacity evaluation at NovaCare Rehabilitation. In addition to lifting, pushing, and pulling restrictions, it was noted he did not demonstrate the ability to sit constantly and would not be able to perform a job demand

that does not allow for positional changes, and that he could perform sedentary work that allowed for him to change from sitting to standing position frequently.

The Petitioner was last seen by Dr. Mirkovic on September 24, 2020, following his participation in the FCE. Dr. Mirkovic diagnosed chronic low back pain, noted the results of the FCE in his report and stated that Petitioner could return to work as delineated in the FCE. The doctor also authored a letter of the same date, in which he states that Petitioner cannot return to work as a bus driver, may return to work as per the FCE of September 15, 2020, and that Petitioner had reached maximum medical improvement.

The Petitioner thereafter attended physical therapy sessions for his low back at NovaCare Rehabilitation in 2021 and 2022, on his own volition, but the Arbitrator notes there is no indication his underlying condition or work restrictions changed as a result; as Petitioner testified, the therapy was intended to alleviate his pain as necessary.

In addition, both Dr. Bauer and Dr. Salehi indicated that future surgery may be necessary, but there is no indication Petitioner ever pursued such treatment. Both doctors also agreed that Petitioner has permanent physical restrictions and is unable to return to his former occupation as a bus operator, similar to the restrictions put in place by Dr. Mirkovic on September 24, 2020. As such, the Arbitrator finds that Petitioner's condition stabilized by September 24, 2020.

Based on the above, the Arbitrator finds Petitioner is entitled to payment of TTD benefits from March 1, 2018, through September 24, 2020, a period of 134-1/7 weeks, at a rate of $790.67 per week.

Regarding Issue (L), what is the nature and extent of the injury, the Arbitrator finds as follows:

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); *Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n,* 2016 IL App (1st) 152576WC, ¶ 22. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b). "None of the factors set forth in section 8.1b(b) is to be the sole determinant of the claimant's disability." *Corn Belt Energy Corp. v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3d) 150311WC, ¶ 49.

Under Section 8.1b(b)(i), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The statute does not require the claimant to submit an impairment rating. It only requires that the Commission consider such a report if in evidence and regardless of which party submitted it. See *Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n*, 2015 IL App (5th) 140445WC, ¶ 17. 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 a bus operator from 1991 and is unable to return to that job following his work accident. The Arbitrator therefore gives substantial 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 49 years old at the time of the accident. The Arbitrator gives some weight to this factor.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes Petitioner was earning up to $30.00 per hour as a bus operator for the Respondent, and is medically unable to return to his former occupation to earn that wage. As such, he has suffered a loss of earning capacity as a result of the work accident. The Arbitrator gives substantial weight to this factor.

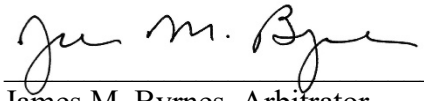
Under Section 8.1b(b)(iv), evidence of disability corroborated by the treating medical records, the Arbitrator gives substantial weight to this factor. The Petitioner underwent three surgical procedures, including a lumbar laminectomy, a revision laminectomy and a lumbar fusion from L2-L5. After these surgical procedures, he underwent a lumbar caudal epidural injection and sought physical therapy on his own volition to alleviate the chronic lumbar back pain. He has been diagnosed with chronic low back pain, for which Dr. Mirkovic recommended pain management treatment. He has permanent physical restrictions which do not allow him to return to his former occupation as a bus operator on a full-time basis.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 50% disability to the person as a whole, pursuant to §8(d)2 of the Act which corresponds to 250 weeks of permanent partial disability benefits at a weekly rate of $711.60.

Regarding Issue (N), is Respondent due any credit, the Arbitrator finds as follows:

The parties have stipulated that prior to March 1, 2018, Respondent paid Petitioner TTD benefits totaling $102,208.11, after the accident of September 19, 2012. (Arb. Ex. 1) The parties agree that Respondent is entitled to credit for that amount, to be applied against the lost time incurred by Petitioner prior to March 1, 2018, but not against any lost time after that date.

IT IS SO ORDERED:



James M. Byrnes, Arbitrator

June 14, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC023214
Case Name	Chabriel Wade v. Pharmacann, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0128
Number of Pages of Decision	30
Decision Issued By	Maria Portela, Commissioner, Kathryn Doerries, Commissioner

Petitioner Attorney	Dominick Ranallo
Respondent Attorney	Scott Webber

DATE FILED: 3/24/2025

/s/Maria Portela,Commissioner
Signature

DISSENT: /s/Kathryn Doerries,Commissioner
Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHABRIEL WADE,

Petitioner,

vs. NO: 23WC023214

PHARMACANN, 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 causation, medical expenses, temporary total disability (TTD), penalties and fees, and "Choice of physician," and being advised of the facts and law, modifies the Corrected Decision of the Arbitrator as stated below and otherwise affirms and adopts the Corrected 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).

As Petitioner concedes in his brief, we modify the medical award to reflect that he is not entitled to the Athletico expenses between August 2, 2023 and August 14, 2023 since Dr. Ahn's referral was made on August 15, 2023. *P-brief at 10; Px1, T.299*.

We affirm the Arbitrator's award of §19(l) penalties because that is not affected by the reduction in the medical award. However, we modify the calculations for §19(k) penalties and §16 attorney's fees as follows:

Section 19(k) penalties

Unpaid TTD:

Average Weekly Wage = $845.95

29-1/7 weeks @ $563.97 (TTD rate) =	$16,435.70	
Minus TTD paid =	- 8,540.48	
	$7,895.22	Net TTD due
	x 50%	§19(k) penalty
	$3,947.61	§19(k) penalty on unpaid TTD

Unpaid Medical Expenses:

Suburban Orthopedics	$3,287.00	
Athletico (8/15/23 – 9/13/23)	+ 4,942.00	
Advanced Physicians	+ 8,365.00	
	$16,594.00	Total unpaid medical
	x 50%	§19(k) penalty
	$8,297.00	§19(k) penalty on unpaid medical

Calculation of total §19(k) penalties:

$3,947.61	§19(k) on unpaid TTD
+$8,297.00	§19(k) on unpaid Medical
$12,244.61	Total §19(k) penalties

Section 16 Attorney's Fees

Unpaid medical	$16,594.00	
Net TTD due	+ 7,895.22	
	$24,489.22	
	x 20%	
	$4,897.84	§16 Attorney's fees

Therefore, we modify the Arbitrator's Corrected Decision to reflect the awards of penalties and attorney's fees as outlined above.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $563.97 per week for a period of 29-1/7 weeks, 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 $16,594.00 for medical expenses under §8(a) of the Act subject to the fee schedule in §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay $12,244.61 in penalties pursuant to Section 19(k) of the Act, $6,120.00 in penalties pursuant to Section 19(l) of the Act, and $4,897.84 in attorney's fees pursuant to Section 16 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 $50,000.00. 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.

March 24, 2025 /s/ *Maria E. Portela*

SE/

O: 1/28/25 /s/ *Amylee H. Simonovich*

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PARTIAL CONCURRENCE AND DISSENT

I concur with the Majority's Decision in part except I disagree with the award of §19(k) penalties and attendant §16 Attorney's Fees, the inadmissibility of the video evidence offered by Respondent, the award of temporary total disability (TTD) and §19(l) penalties after February 23, 2024, and prospective medical. As to these issues, I respectfully dissent.

§19(k) Penalties and §16 Attorney's Fees

§19(k) of the Workers' Compensation Act states:

> In case where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or

> carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award. Failure to pay compensation in accordance with the provisions of Section 8, paragraph (b) of this Act, shall be considered unreasonable delay. *820 ILCS 305/19*.

The Majority finds it appropriate to award §19(k) penalties and §16 attorney's 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." As noted, "[t]he 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)." Further, the Majority finds "that Respondent had no objectively reasonable basis to delay or deny payment of benefits." I disagree. I would find that Respondent proved it acted in an objectively reasonable manner, without bad faith or improper purpose under this set of circumstances based upon the following.

On June 1, 2023, Dr. Mostafa Hassib El Dafrawy from the Department of Orthopaedics, at University of Chicago, authored an Order referring Petitioner to outpatient physical therapy 2-3 times per week for 4-6 weeks for a strain of her neck muscle, whiplash injuries and cervicalgia, injuries she sustained in the May 13, 2023, non-work related motor vehicle accident (MVA). (RX8, T. 524-526) Petitioner testified that she never went to see Dr. Dafrawy after June 1, 2023. (T. 64) Instead she chose to see Dr. Ahn, as her primary care physician and she sought work restrictions documentation from him. (T. 60-61)

Petitioner saw her primary care physician, Dr. Ahn, two days after the work incident sustained on June 24, 2023. That office visit on June 26, 2023, was summarized as a "Routine general medical examination." (PX1, 2, 34-37, 54;) Petitioner saw Dr. Ahn about non-work related medical conditions and also advised Dr. Ahn about the work incident and that she had had left foot pain. (PX1, 20, 22) Dr. Ahn did not take Petitioner off of work but specifically authorized her to return to work. (PX1, 51) On June 30, 2023, Dr. Ahn's office relayed to Petitioner that initial left foot x-rays were normal and recommended ibuprofen as needed for pain. (PX1, 80) Further, Dr. Ahn did not take or authorize Petitioner off work for more than seven weeks after the accident and Petitioner worked in "her regular position up through August 15, 2023" full time, performing full duties. (T.73)

Petitioner sent Dr. Ahn a message on August 14, 2023, and asked for a virtual appointment and refill of her pain medications. (PX1, 102) Petitioner sent Dr. Ahn a lengthy message on August 14, 2023. (PX1, 103) In that message, Petitioner stated that after having x-rays on her foot and being told she could return to work, she "had serious pain in my left calf, foot and leg from certain nerves that sends numbing sensations." She relayed that she was in physical therapy for the (motor vehicle) accident that occurred on May 13, 2023, and "from your referral have received more information on why my foot and leg had been continuously hurting me." Petitioner went on to say in her message to Dr. Ahn, that after speaking with her physical therapist, "my concerns (sic) is with my disc and my nerves being triggered." Petitioner continued that she thought it would be

okay to continuously work but she reported that she was "still in much pain and limping to avoid serious pressure on her left foot/ankle/leg." She reported being in pain from her back and neck from the car accident and she was putting more pressure on her right side to compensate for her left. She reported the therapist would send Dr. Ahn notes but that the therapist suggested that Petitioner get "a document recommending time off to heal properly and give her body time to rest." This lengthy message then went on to say that Petitioner had a "second nerve injury" from her foot being run over at work by their property, on their property" and she reported currently having a "Worker's Comp claim regarding the injury I reported during my visit for the spinal injury you referred me to physical therapy about." *Id*.

Dr. Ahn had never volunteered that Petitioner should be off work for her work injury, however, clearly he had referred her to an orthopedic specialist after her MVA. It is patently obvious that Dr. Ahn did not take Petitioner off work on his own initiative. Nonetheless, seven weeks after the work injury without any further physical examination or diagnostics, and clearly at Petitioner's request and via telehealth visit, Dr. Ahn authorized Petitioner off work. (PX1, 153) The reason that Dr. El Dafrawy did not or would not author an off -work note for Petitioner is not clear but Petitioner was already in physical therapy when she decided to ask Dr. Ahn to author the off work note. (PX2)

The summary of the August 15, 2023, "telephone evaluation" with Dr. Ahn provided for a "[d]ocumentation letter (letter for work and referral to podiatrist)" and medication refill. (PX1, 105) The notes under Subjective/History of Present Illness from the August 15, 2023, telephone encounter state: "telehealth visit: pt states her L ft/leg and back pain has not improved in spite of PT…" (PX1, 123) Dr. Ahn's office note also reflects that Petitioner is a "bartender" which is not the same as a bud tender. Thus Dr. Ahn's perception of Petitioner's job duties was not accurate when he provided the requested off-work note.

Under Musculoskeletal, Dr. Ahn wrote that "PT will determine when the patient has sufficiently recovered to return to work." (PX1, 125) The relevant orders indicate outpatient referrals to Podiatry and Athletico Physical Therapy. *Id*. The actual work status note states, "will be able to return on TBD" and "no wrk until cleared by physical therapy." (PX1, 153) An open ended return to work note is not, and has not routinely been, sufficient evidence of an injured worker's work status for purposes of obtaining TTD nor do therapists author work status notes for purposes of obtaining TTD benefits. Petitioner was not authorized off work thereafter until she saw a podiatrist Dr. Peterson, three months later. (PX2, PX3)

Further, on August 1, 2023, the Athletico Patient Data -All Questions form lists Petitioner's Group Policy number and Petitioner confirmed coverage with her own insurance. (RX10) Under Workers' Compensation, Petitioner checked the box "no" in response to whether she was seeing Athletico for an approved workers' compensation claim. Under Clinical History Current Condition Petitioner responded "Back; Neck; Ankle; Hip; Shoulder" to the question, "What's bothering you." When asked to provide more information on her issue and concerns, Petitioner wrote, "I was in a car accident on 5/13/23 and my neck back and hips have been in pain. I was given a next (sic) brace and all and as of 6/24/23 I had a foot injury at work on my left side and have been limping ever since." For "Symptom Start Date" Petitioner responded with the MVA date, "5/13/2023" not the June 24, 2023, work incident date.

To summarize, Petitioner was in a one car accident in May and obviously still feeling the effects of that injury to her neck and back at the time of the work incident evidenced in the Athletico records and complaints to Dr. Ahn. Petitioner worked for 7-4/7 weeks after the work incident but was still treating and suffering from the effect of the MVA. The medical bills Explanation of Benefits (EOBs) indicate that for therapy Date of Service (DOS) on August 2, 2023 and on August 4, 2023, the referring Provider was "Direct Access." (PX2, 1-2) Thereafter, for dates of service between August 10, 2023, through November 2, 2023, the referring provider is listed as Dr. Mostafa El Dafrawy, who was treating Petitioner for the MVA. (PX2, 3-29) Petitioner was initially seeing Dr. El Dafrawy for her neck and back as a result of a motor vehicle accident (MVA) that occurred in May 2023, not for her left foot. (T. 62-63)

Further complicating matters, Petitioner was in a second MVA on August 15, 2023. (T. 35) She testified it was "a four-car collision, rear-end." (T. 53) On August 24, 2023, the Athletico physical therapy note documented that Petitioner reported "everything is much worse because she was in another really bad car accident." (PX2, 70) Her subjective complaint on August 25, 2023, was "increased frequency of LLE radicular symptoms, left sided neck pain, abdominal pain and bilateral knee pain s/p MVA." (PX2, 68) These records belie Petitioner's testimony that she was not injured in the second MVA. (T. 53, 90-91) Further, she testified she went to the emergency room at University of Chicago sometime after the second MVA. (T. 92)

All of the Athletico Explanation of Benefits Petitioner provided through November 2, 2023, (PX2, 1-29) included four CPT codes, which, when compared to the Daily Notes comport as follows: 1) M54.2 Cervical Pain; 2) M54.6 Pain in thoracic spine; 3) M54.16 Lumbar Pain with Radiculopathy; and 4) M79.672, Pain in left foot. The Daily notes begin with the Initial Evaluation on August 2, 2023, and no referral is listed. (PX2, 85) The last Daily Note in evidence is dated September 13, 2023 (PX2, 88-90). All of those notes list all four CPT codes as referenced.

The Daily notes between August 10, 2023, and September 12, 2023, also list Dr. El Dafrawy as the referring physician. (PX2, 55-78) On August 30, 2023, she reported "some left knee and low back pain." (PX2, 61) Between August 30, 2023, and September 13, 2023, there were little or no left foot and ankle complaints noted. (PX2)

On September 6, 2023, Petitioner's subjective chief complaint was "consistent lumbar and lower extremity radicular symptoms." The Assessment states: "Pt tolerated treatment well w/ reduced cervical and lumbar pain s/p therapeutic exercise regime. LLE radicular pain remained fairly constant throughout w/ numbness below the knee s/p lumbar traction. Pt encouraged to follow up w/ referring physician regarding additional imaging of the lumbar spine to rule out disc pathology/stenosis." (PX2, 58)

On September 12, 2023, Petitioner reported her right arm was hurting. The Assessment states: "Patient found benefit from upper arm and neck pain from gentle cervical traction, however she had subjective reports of pain near R elbow. Patient tolerated therapy fairly well with pain and fatigue being primary complaints." (PX2, 56) Regarding TTD, there were no ongoing work status notes.

These facts all sow doubt regarding the veracity of Petitioner's condition of ill-being as it relates to the work incident on June 24, 2023, and were a reasonable basis for withholding benefits, at a minimum pending an independent evaluation pursuant to §12.

On September 29, 2023, Petitioner returned to Dr. Ahn and requested a referral for an MRI for her back and ankle. (RX9, 533) Dr. Ahn ordered a lumbar spine MRI for Petitioner with indications of use: "Neurologic deficit consistent with l-spine pathology, low back pain." (RX9, 537)

On October 3, 2023, Petitioner spoke with Tammy Fisher at Dr. Ahn's office. The telephone note documents the following: "Pt states on 8/15 Dr Ahn did a MD note for pt's job for pain, however, pt states in her notes from her visit it does not state anything about the pain. Pt states this needs to be added to the notes from her visit on 8/15 for her job. Pt states she needs this urgently, pt needs to send this info to her lawyer before 3. If any questions, please call pt back." (RX9, 510)

Dr. Ahn's nurse, Abigail Morrow, documented:

> Received message from patient regarding return to work note and visit note from 8/15/23 with Dr. Ahn; needs pain to be documented. Chart reviewed and documentation of left leg and back pain. Follow up call made to patient to clarify what is needed from our office. Left VM to contact office. *Id.*

A short time later, Nurse Morrow authored an Addendum that said the following:

> Patient had telemedicine appointment with Dr. Ahn on 8/15/23 and received work statement indicating that she is not to return to work until cleared by physical therapy. Patient states that she needs visit note to be updated states no documentation of pain due to work injury and needs to be added; and documenting that work statement was given to be off of work until cleared by physical therapy and reason why she is off of work, such as pain due to injury. Patient requesting this to be updated ASAP. Will forward information to Dr. Ahn. *Id.*

Nurse Morrow then arranged a telemedicine appointment with Dr. Ahn for 4:15 p.m. on October 3, 2023, with Dr. Ahn and Petitioner. (RX9, 511)

Petitioner underwent the lumbar spine MRI on October 14, 2023, and the results were compared with x-rays taken on August 23, 2023. The results were noted on October 15, 2023. On October 23, 2023, Dr. Ahn's notes document that the lumbar spine MRI showed degenerative joint disease with mild-moderate L4-S1 neural foraminal narrowing and Petitioner should follow-up with neurology. (RX9, 289) Dr. Ahn prescribed Gabapentin and Xanax prn for "adjustment disorder with anxiety." *Id.*

Petitioner first filed a Penalties and Fees Petition pending receipt of the §12 report which was scheduled for November 14, 2023. The Majority acknowledges that Respondent made four payments to Petitioner for TTD benefits totaling $8,540.48. (Rx4) The Majority notes that the first payment, however, was delayed and not paid until October 19, 2023, over two months after Petitioner provided Respondent with Dr. Ahn's August 15, 2023, off work note. This delay was not

objectively unreasonable given that Dr. Ahn's August 15, 2023, off work slip was open-ended, and solicited by Petitioner, was not pursuant to a physical exam, Petitioner was in a second MVA after soliciting the work status note, and the therapy notes were reflective of a non-work related referral and treatment. While I agree the first payment was late, and subject to penalties under §19(l), I do not agree that Respondent's withholding benefits under the circumstances was objectively unreasonable. Instead, I would find that Respondent acted without bad faith or improper purpose under this set of circumstances.

Petitioner then received TTD payments on October 25, 2023 (for the time period of October 19, 2023 through October 25, 2023), November 1, 2023 (for the time period of October 26, 2023, through November 1, 2023), and then not again until February 2, 2024. (Rx4) Again, while there was a delay between the November 1, 2023, payment until the February 2, 2024, payment, warranting a §19(l) late penalty, Petitioner did not treat with any podiatrist between November 16, 2023, and January 5, 2024 as outlined below. There remained confusion regarding the extent of Petitioner's work injury versus injuries she might have sustained in the May MVA and the August MVA.

Despite Dr. Ahn's referral to a podiatrist on August 15, 2024, Petitioner did not seek treatment with the podiatrist, Dr. Peterson at Suburban Orthopedics, until November 10, 2023. At the first office visit, Dr. Peterson obtained 3 x-ray views of Petitioner's left foot. The results were normal and reported as follows:

> INTERPRETATION(S)
>
> Routine Findings: The images were reviewed, they show normal alignment, closed physes, no fractures, no dislocations, no degenerative Joint changes, no loose or foreign bodies, and no congenital abnormalities. (PX3, 3; T. 425)

This was the second set of x-rays of Petitioner's left foot confirming there were no fractures or abnormalities. Dr. Peterson diagnosed a Left Tarsometatarsal Joint Sprain. *Id*. His notes indicate that the natural history and treatment of a Tarsometatarsal Joint sprain depends on the cause. Weight bearing is limited initially in most cases and may be prohibited for up to six weeks. The time for full return to sporting activities is variable. For minor sprains return to sports may be from a week to a few months. For more severe sprains return to sports may be delayed more from 3-6 months. *Id*. Petitioner was already more than five months post work incident. Dr. Peterson discussed the findings with Petitioner and wrote that they decided on conservative management and MRI and EMG/NCV. *Id.*

Petitioner had the MRI of her left foot on November 16, 2023. (PX3) The MRI report was also benign confirming the following:

> Findings:
>
> The intertarsal and tarsal-metatarsal joints appear reasonably well-maintained. There is no Lisfranc injury.
>
> There is no pathologic marrow signal to suggest fracture, marrow edema or osteonecrosis. Both sesamoids appear normal.

The visualized segments of flexor and extensor tendons appear intact.

The intrinsic muscular tissues of the forefoot demonstrate normal morphology and signal response. There is no intramuscular edema, fiber tearing or hematoma formation.

Visualized segments of plantar fascia appear intact. There is no soft tissue mass or cystic fluid collection. No acute inflammatory soft tissue signal response is identified.

Impression:

1. No acute appearing MRI pathology of the foot. No acute marrow edema. **(**PX3, T. 431)

Petitioner did not return to Dr. Peterson/Suburban Orthopedics until more than two months later, on January 30, 2024. (PX3) This accounts, in part, for Respondent's delay in authorizing medical benefits and the last TTD payment. In the interim, Petitioner underwent the §12 Independent Medical Evaluation with Dr. Lin on November 14, 2023. (RX5) Dr. Lin took three views of weightbearing x-rays of the left foot and the x-ray results comported with Dr. Ahn's and Dr. Peterson's initial x-ray results. Dr. Lin notes that on x-ray there was no evidence of any fracture and normal anatomical alignment throughout the midfoot. *Id.* Further, there were no degenerative changes seen. Dr. Lin diagnosed a "left foot contusion." *Id.* Based on Petitioner's "significant complaints of pain despite objective minimal findings" Dr. Lin recommended a nerve conduction test and an MRI of the foot to determine any objective structural abnormalities within the foot. *Id*.

Petitioner had the MRI two days later on November 16, 2023, at Dr. Peterson's office, Suburban Orthopaedics, and the first MRI results were normal as referenced above. Dr. Lin had suggested if the MRI and the EMG were normal he would recommend full duty without restrictions. (RX5, 3-4) At this juncture, none of the diagnostics to date were abnormal, and Petitioner had three sets of x-rays and an MRI which showed no objective evidence of an injury suffered from the work incident on June, 24, 2023, yet Petitioner had a MVA prior to, and after, the work incident and was actively treating for her cervical, lumbar back and radiculopathy up to this point. Petitioner had also applied for unemployment between October 5, 2023, her termination date, and November 5, 2023, thus Respondent would have been notified that Petitioner was conducting a job search to find work. All of these circumstances support the Respondent's defense that the injuries Petitioner sustained were a result of one or both MVAs and pending the result of the last test, the EMG, a reason to delay payment of TTD.

After the November 16, 2023, MRI Petitioner did not seek any further treatment for her left foot for two months, until she sought an opinion with a second podiatrist, Dr. Esposito on January 5, 2024. (T. 41) Dr. Esposito also prescribed an MRI and EMG. A second MRI was performed on January 10, 2024. at Advance Physicians MRI & Imaging and was read as follows:

1. Negative and unchanged from 11/16/2023.

2. 3.5 mm high-signal structure abutting the lateral cortex proximal shaft 3rd metatarsal potentially a tiny intermetatarsal ganglion.(PX4, T. 450)

These diagnostic results only further justified Respondent's defense under these circumstances. Petitioner did not return to Dr. Esposito. The two MRI results are different to the extent that the latter MRI showed a "potentially" tiny intermetatarsal ganglion. However, Dr. Peterson did not review the MRI result that he ordered that confirmed there was no Lisfranc injury, contrary to what he said in his causal opinion. Instead he reviewed the MRI Dr. Esposito ordered, identified by his description of the ganglion cyst. Dr. Peterson did not discuss the two MRIs. (PX3, 11) I find this taints his credibility. Expert opinions must be supported by facts and are only as valid as the facts underlying them. *In re Joseph S.,* 339 Ill. App. 3d 599, 607 (2003). A finder of fact is not bound by an expert opinion on an ultimate issue, but may look 'behind' the opinion to examine the underlying facts. *Id.*

On February 6, 2024, Dr. Lin authored an Addendum §12 opinion report and was provided video footage of the injury, a history of the two motor vehicle accidents and additional physical therapy records for review. Dr. Lin opined that based on his review of the video, he believed that the mechanism of injury was consistent with a left foot contusion. Dr. Lin noted that based on the unknown effects of the motor vehicle accidents, it was difficult for him to determine any additional causality based on lack of information with regards to the motor vehicle accidents. Dr. Lin continued to recommend a nerve conduction test and an MRI.

For his February 23, 2024 addendum, Dr. Lin was provided additional records including results of the nerve conduction test and MRIs. Following his review of the additional records, Dr. Lin opined that the only finding that would possibly be consistent with the mechanism of the left foot contusion was sural nerve neuropathy. (RX7) Dr. Lin opined that the peroneal nerve findings were proximal findings by the knee. Dr. Lin noted that he could not determine the contribution to causality of the left sural nerve sensory neuropathy from the May 13, 2023, MVA, but that it would be a conceivable mechanism for sural nerve neuropathy. (RX7, 1-2) Dr. Lin noted that based on the MRI reports of November 16, 2023 and January 10, 2024, it did not appear that there was any significant structural injury that occurred. Dr. Lin did not believe that the intermetatarsal ganglion cyst was the result of trauma. (RX7, 2) Dr. Lin opined that Petitioner was at maximum medical improvement for the left foot contusion. (RX7, 2) He did not recommend any further physical therapy. Dr. Lin opined that the only treatment that would be related to the work injury was treatment for the sural nerve neuropathy, in the form of anti-inflammatories and Neurontin, and he noted that any intervention regarding the ganglion cyst was unrelated to the work injury. *Id*. The Majority relies upon the fact that on November 14, 2023, Respondent's expert, Dr. Lin, in his §12 opinion report, recommended work restrictions for Petitioner, which were not accommodated, and that he did not offer any opinions as to Petitioner's work status on February 6, 2024 or February 23, 2024, however, there was no objective evidence that Petitioner's work injury was objectively substantiated by the diagnostics until Petitioner underwent the EMG on January 11, 2024, which showed "electrodiagnostic evidence for a mild left sural sensory mononeuropathy." (PX4, T. 453) Even upon receipt of the EMG report, according to Dr. Lin, the left leg pain could have been from the May 2023 MVA. Dr. Lin had diagnosed a left foot contusion and opined that Petitioner was at MMI for that work related condition. (RX7, 2) Further, Dr. Lin's opinion differed from Dr. Peterson's in that he found the ganglion cyst unrelated to the work incident. Dr. Peterson reviewed that EMG result and rendered his causal connection opinion on January 30, 2024, and the TTD check was issued on February 2, 2024. This was not a vexatious withholding of payments, or done with improper purpose.

Accordingly, the evidence unequivocally supports that Respondent had a reasonable basis to delay TTD benefits and authorization of Petitioner's medical treatment based upon their defense and the above referenced facts. These circumstances obviously undermined the veracity of the Petitioner's case, and for purposes of deciding whether §19(k) penalties are warranted, justify Respondent's defense. This delay in payment of benefits was not done in bad faith, not for improper purpose nor vexatious, under these circumstances. Further, without §19(k) penalties, there can be no award of §16 attorney's fees. *Gallentine v. Industrial Comm'n*., 201 Ill. App. 3d 880 (1990).

Evidentiary Ruling/Admissibility of the June 24, 2023, Accident Video

At hearing, the Arbitrator rejected a video of Petitioner's accident (RX1) due to lack of foundation. (T.149-150) The Majority opinion did not address the video, nor does the Majority opinion include, in the Statement of Facts, the testimony by Respondent's witness, Rebecca Morgan, regarding the video. The only reference to the video was in the discussion of Dr. Lin's report. *Arb. Dec. @* 5. I would find that the Arbitrator improperly denied Respondent's request for the video of Petitioner's accident be admitted into evidence. Petitioner admitted that she was the individual depicted in the video. (T. 76) Petitioner further admitted that the time of the accident corresponded with the time of the video. (T. 77)

I believe the Arbitrator erred by rejecting the video due to lack of foundation. In *People v. Taylor*, 353 Ill. Dec. 569 (2011), the Supreme Court addressed the "silent witness" theory for laying foundation for video evidence and wrote:

[T]he appellate court in the case at bar looked to several factors in determining whether a proper foundation had been laid for the admission of the VHS tape: (1) the device's capability for recording and general reliability; (2) competency of the operator; (3) proper operation of the device; (4) showing the manner in which the recording was preserved (chain of custody); (5) identification of the persons, locale, or objects depicted; and (6) explanation of any copying or duplication process. We agree that these factors may be considered when determining whether the process by which a surveillance videotape was produced was reliable. However, like other jurisdictions, we emphasize that this list of factors is nonexclusive. Each case must be evaluated on its own and depending on the facts of the case, some of the factors may not be relevant or additional factors may need to be considered. The dispositive issue in every case is the accuracy and reliability of the process that produced the recording.

> Although we agree with the appellate court's choice of factors to consider, we disagree with the appellate court's conclusion that the evidence failed to demonstrate the VHS tape was admissible. The appellate court concluded that the State failed to establish the camera was working properly; failed to give an explanation of the process of copying the recording from the DVR to the VHS tape; failed to establish a sufficient chain of custody; failed to preserve the original; and failed to establish there were no alternations, deletions, or changes made to the original. As such, the appellate court found that the State failed to establish even the probability that the VHS tape had not been tampered with. We disagree with the appellate court's

> analysis and find that the State laid a sufficient foundation for admission of the VHS tape. *Id.* at 577-578

The Court proceeded to explain why the appellate court erred in its analysis relating to each of the factors. *Id.* at 578-580. The Court concluded that "the totality of the evidence presented demonstrates that the State laid a proper foundation for admission of the VHS tape." *Id.* at 581.

In *In re D.Q.*, 408 Ill. Dec. 536 (1st Dist., 2016), the appellate court concluded:

> Here, as noted, after viewing the video, Christopher Q. positively identified both respondent and D.Q. as the woman and child in the video, as did Lane. Thus, the camera used to record the video was clearly operational at the time and was able to record sufficiently clearly so that the individuals in the video were identifiable, as were their actions. Our supreme court has found that such evidence is sufficient to adequately demonstrate that the camera was able to record and was generally operating properly. See *Taylor*, 2011 IL 110067, ¶ 39 ("As one court has stated, '[t]he fact that the tape[] exist[s] at all is evidence that the tape recorder was functional and that [the operator] knew how to operate it.' [Citation.] Moreover, 'the evidence showed that the camera was working at least well enough for the events and persons portrayed thereon to be recognizable.' [Citations.] The State adequately demonstrated the camera and system were able to record and were generally operating properly."). Christopher also testified that he received the video from respondent's mother and that, after viewing the video, he took it to the River Grove police department. He further testified that the video he received on his cell phone and the video played in court were "the exact same video." Thus, Christopher's testimony verified that the same video he received was played in court, demonstrating the authenticity of the recording. Finally, the juvenile court found that there was no evidence that the video had been altered or tampered with such that it would be rendered unreliable or untrustworthy. Consequently, we cannot find that the juvenile court abused its discretion in admitting the video into evidence. Since there was no error in the admission of the evidence, we do not find respondent's argument that the admission of the video rendered the juvenile court's findings against the manifest weight of the evidence and, accordingly, affirm the juvenile court's adjudication findings. *Id.* at 543-44.

In the case at bar, I believe the following non-exclusive factors tend toward a finding that the video of the accident (RX1) was accurately and reliably produced. Rebecca Morgan, Respondent's regional manager, testified that she provided Respondent-attorney with a copy of the video. (T.121) She further testified that Respondent is "required by the State of Illinois to maintain a video surveillance of our entire location." (T.123) "Every inch of the store is covered by CD TV video with the exception of the restroom." *Id*. "I contacted our loss prevention safety team. They pulled all of the video evidence, which was then presented to you." (T.124) Further, Ms. Morgan testified that she watched the video and believes it is all of the relevant video concerning the accident. *Id*. Finally, she testified that the video is from about 10:30 p.m. and was pulled from whatever Respondent's security camera footage was for that date and time. *Id.*

Further, Petitioner testified there is a video of her accident and she viewed it. (T.76) When asked if the video accurately depicted the accident, she testified, "I am going to say no, because I didn't view it in the same way that it was shown to me. It was shown to me at an angle where I can identify looking parallel versus looking in a dome view, top of the room." *Id*. It appears that Petitioner answered "no" because the video was taken from the ceiling looking down at the floor as opposed to horizontally from her perspective. However, by that measure, no "silent witness" video could fairly and accurately depict an event. Nevertheless, Petitioner did admit that "the person in the video is me" and that she believes it shows the point in time (approximately 10:30 p.m.) when the accident occurred. (T.76-77)

Petitioner further admitted that the video "shows me on one side and then the closing manager, Sunny, on the other side." (T.78-79) Finally, the video depicts (at :07 mark; 22:34:06 timestamp) the cart running into Petitioner's foot and bouncing away again causing the products on the cart to shift positions.

These factors lead to the conclusion that the video was accurately and reliably produced under the "silent witness" theory. Respondent was required to maintain video surveillance by the State of Illinois, they were pulled by the "loss prevention safety team," they depict the date, time and location of Petitioner's accident, Petitioner admitted that it was she in the video and the video depicts an accident involving her left foot. Finally, there is no evidence that the video had been tampered with.

Therefore, I would modify the Majority decision to address the work incident video and find that it was error for the Arbitrator to exclude it. I would find that the video supports the fact that the cart rolled onto Petitioner's second and third toes on her left foot as she described. (T. 21) However, the video also supports the proposition that immediately following the incident Petitioner did not stop and exhibit any observable behaviors, expressions, and actions that would indicate she was experiencing pain as a result of the incident. Instead, she straightened one or two product containers, then she assisted her co-worker with pushing the shelving unit into place and she walked toward the other room without engaging in conversation with her co-worker and without any altered gait. Thus, while the accident occurred, the video does not support that an injury as alleged occurred to her foot at that time. Based on this evidence alone, Respondent had a reasonable basis to withhold benefits.

Temporary Total Disability and Prospective Medical

I incorporate herein all of the facts outlined above under the §19(k) Penalties and §16 Attorney's Fees and the Evidentiary Ruling/Admissibility of the June 24, 2023, Accident Video sections as the basis for reversing the Majority opinion regarding the award of TTD after February 23, 2024, and prospective medical. The video belies the history in Dr. Peterson's January 19, 2024, office note nor did Petitioner testify that there was approximately 100 pounds of product on the cart or that the cart "came to rest on the mid portion of her foot or that she "had to lift the cart off of her foot" as she reported to Dr. Peterson and Dr. Esposito. (PX3, 17; PX4, 2) Petitioner never reported that a cart "came to rest on the mid portion of her foot" or that she had to lift the cart off of her foot" to Dr. Ahn or Dr. Lin-she did report a cart rolled over her left foot but the embellishments were absent rendering Dr. Peterson's causal connection opinion unreliable. Given the fact that Petitioner

failed to include the Athletico physical therapy records after September 13, 2023, there is little or no evidence that Petitioner had more than a left foot contusion as a result of the June 24 2023, incident based upon three sets of negative x-rays and the November 16, 2023, left foot MRI. I would rely upon Dr. Lin's November 14, 2023, §12 opinion and February 6, 2024, and February 23, 2024, §12 Addendum opinions to find that Petitioner reached MMI from her left foot contusion on February 23, 2024. Dr. Lin opined that the May 2023 MVA could be a conceivable mechanism for sural nerve neuropathy. (RX7, 2)

Based on these circumstances, Respondent's actions were not vexatious or done for improper purpose given all the afore-referenced reasons. Thus, I dissent from the Majority and I would reverse the Majority decision awarding penalties under §19(k) and attorney's fees under §16, I would reverse the Arbitrator's evidentiary ruling finding that the video of Petitioner's June 26, 2024, accident was inadmissible, and I would reverse the award of TTD after February 23, 2024 and for prospective medical, and find that Petitioner reached MMI on February 23, 2024. Accordingly, I would award §19(l) penalties only through February 23, 2024.

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC023214
Case Name	Chabriel Wade v. Pharmacann, Inc.
Consolidated Cases	
Proceeding Type	19(b)/8(a) Petition
Decision Type	Corrected Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Dominick Ranallo
Respondent Attorney	Jonathan Cook

DATE FILED: 5/15/2024

/s/Ana Vazquez, Arbitrator

Signature

INTEREST RATE WEEK OF MAY 14, 2024 5.165%

STATE OF ILLINOIS)
)SS
COUNTY OF COOK)

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

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

Chabriel Wade
Employee/Petitioner

v.

Pharmacann, Inc.
Employer/Respondent

Case # **23** WC **023214**

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 **March 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: **whether Petitioner exceeded her choice of two medical providers**

FINDINGS

On the date of accident, **June 24, 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 $**25,378.59**; the average weekly wage was $**845.95**.

On the date of accident, Petitioner was **28** years of age, ***single*** 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 $**8,540.48** for TTD, $**0** for TPD, $**0** for maintenance, and $**0,** for other benefits, for a total credit of $**8,540.48**.

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

ORDER

The Arbitrator finds that Petitioner did not exceed her two choices of medical providers.

Respondent shall pay for the reasonable and necessary medical services, as provided in Px2 for the 15 sessions of physical therapy from August 2, 2023 through September 13, 2023 at Athletico Physical Therapy, and those provided in Px3 and Px4, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Petitioner's claim for unpaid bills from Athletico Physical Therapy for treatment after September 13, 2023 are not awarded, as there are no treatment records to support Petitioner's claim.

Respondent shall authorize and is liable for the prospective medical treatment plan recommended by Dr. Kyle Peterson, including physical therapy and pain medications, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of **$563.97/week** for **29 1/7** weeks, commencing **August 16, 2023** through **March 6, 2024**, the date of arbitration, as provided in Section 8(b) of the Act. Per the Parties' stipulation, Respondent is entitled to a credit in the amount of **$8,540.48** for temporary total disability benefits paid by Respondent to Petitioner. Ax1.

Respondent shall pay **$13,446.11** in penalties pursuant to Section 19(k) of the Act, **$6,120.00** in penalties pursuant to Section 19(l) of the Act, and **$5,378.44** in attorney's fees pursuant to Section 16 of the Act.

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

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

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

Ana Vazquez

Signature of Arbitrator

ICArbDec19(b)

MAY 15 2024

PROCEDURAL HISTORY

This matter proceeded to arbitration on March 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, (4) penalties/attorney's fees under Sections 19(k), 19(l) and 16 of the Act, and (5) whether Petitioner exceeded her two choices of medical providers. Arbitrator's Exhibit ("Ax") 1. All other issues have been stipulated. Ax1.

FINDINGS OF FACT

Petitioner was employed full time as a bud tender at Respondent on June 24, 2023. Transcript of Proceedings on Arbitration ("Tr.") at 16, 17, 51. Petitioner testified that Respondent is a recreational and medical marijuana dispensary. Tr. at 16. Petitioner testified that her hire date was November 22, 2022. Tr. at 50. Petitioner's job duties included being a customer service representative and a cashier, as well as tending to opening and closing procedures. Tr. at 17, 50-51. Petitioner testified that closing procedures entailed cleaning, taking out the trash, making sure merchandise was set in place for the next day, and placing all the inventory onto carts or shelves and placing and locking the carts and shelves in a vault. Tr. at 17, 51. Petitioner testified that the carts and shelving units were on wheels and two people were needed to move them. Tr. at 18, 19. Petitioner testified that three or four shelving units were placed in the vault each night. Tr. at 19. Petitioner testified that the shelving units were loaded with as much inventory as possible and that they became heavier as more products were loaded onto it. Tr. at 19-20.

Petitioner testified that she did not have any pain or anything unusual going on with her left leg prior to June 24, 2023. Tr. at 20. Petitioner testified that she had not seen any medical providers for left leg issues prior to June 24, 2023. Tr. at 20. Petitioner testified that prior to her shift on June 24, 2023, she was feeling fine, and she did not notice anything unusual regarding her left leg. Tr. at 20.

May 13, 2023 Motor Vehicle Accident

Petitioner testified that on May 13, 2023, she was involved in a single-motor vehicle accident. Tr. at 34, 52. Petitioner testified that her wrists, her abdomen, her neck, and her back were injured by being hit by the airbags. Tr. at 34, 54. Petitioner testified that she did not hit or crush her left foot or left leg. Tr. at 34-35. Petitioner testified that she did not have any pain in her left leg or left foot after the May 13, 2023 motor vehicle accident. Tr. at 35. Petitioner testified that she went to the Emergency Department of University of Chicago Medicine on May 13, 2023, and that she checked out from the hospital on May 14, 2023. Tr. at 55-56. Petitioner testified that she received work restrictions from the emergency room doctor, and that she then had to see Dr. Phillip S. Ahn for a work status note because Respondent requested an accommodation form be filled out by a doctor to accommodate her restrictions. Tr. at 58-59.

Pre-accident Medical Records Summary

On May 24, 2023, Petitioner saw Dr. Phillip S. Ahn at University of Chicago Medicine for follow up after a motor vehicle collision on May 13, 2023. Respondent's Exhibit ("Rx") 9 at 1082-1086. Petitioner then followed up with Dr. Mostafa Hassib at University of Chicago Medicine on June 1, 2023. Rx9 at 1015, 1021-1042. The records for both visits note that Petitioner was a new patient. Petitioner complained of neck pain and upper back pain, as well as low back pain from a previous car accident years prior. Petitioner's diagnoses included cervicalgia, whiplash, neck strain, and dorsalgia. These records do not document any left leg or left foot symptoms or issues.

Accident

Petitioner testified that on June 24, 2023, towards the end of her shift, she was taking a loaded cart/shelving unit into the vault. Tr. at 21. Petitioner explained that she was walking backwards with the cart/shelving unit and that her manager, Sunny, held the gate to the vault open for her and helped her get the other end of the cart/shelving unit into the vault. Tr. at 21. Petitioner testified that when she saw Sunny grab the cart/shelving unit with his hand, she turned over her left shoulder to place the end of the cart/shelving unit that she was grabbing onto into the corner of the vault, and the cart/shelving unit then rolled over the second and third toes of her left foot. Tr. at 21. Petitioner was wearing gym shoes at the time. Tr. at 21. Petitioner testified that after the cart/shelving unit rolled over her foot, she felt instant pain. Tr. at 22. Petitioner testified that her toes were burning and that her foot was becoming hot, cold, and numb. Tr. at 22. Petitioner testified that Sunny was aware that the cart/shelving unit rolled over her left foot, and that she also informed her assistant general manager, Asia Carter, and her general manager, Colleen. Tr. at 22-23. Petitioner worked the following day and filled out an incident report. Tr. at 23. Petitioner testified that the following day, her left foot and left leg were in a lot of pain, and that she had a terrible pain in her calf muscle similar to a charley horse. Tr. at 24. Petitioner testified that it became harder to walk and stand on her left foot, so she was limping, and it was difficult to move around. Tr. at 23-24.

Post-accident Medical Records Summary

On June 26, 2023, Petitioner saw Dr. Ahn at University of Chicago Medicine for a general medical examination and for unrelated conditions. Petitioner's Exhibit ("Px") 1 at 1133-1137; Rx9 at 901-904. At that time, Petitioner reported left foot pain after a cart rolled over it at work two days prior. Petitioner's diagnoses included left foot pain. Dr. Ahn ordered x-rays and recommended that Petitioner slowly advance activity as tolerated. Petitioner testified that she went to work after her appointment with Dr. Ahn. Tr. at 27. Petitioner testified that Dr. Ahn released her to work without restrictions regarding the left foot injury. Tr. at 72. Petitioner testified that she continued to work in her regular position through August 15, 2023. Tr. at 73.

Petitioner returned to Dr. Ahn on June 29, 2023 for unrelated conditions. Rx9 at 838-840. At that time, Petitioner reported that her left foot pain was unchanged. Petitioner's diagnoses included left foot pain. X-rays of Petitioner's let foot were ordered. The left foot x-rays demonstrated mild pes planus and hallux vulgus without acute fracture. Rx9 at 814. On June 30, 2023, Petitioner left messages for Dr. Ahn asking what she should do for the stiff pain in her calf muscle and informing Dr. Ahn that she was still in pain. Px1 at 1026. Petitioner was instructed to use ibuprofen as needed for pain. On July 2, 2023, Petitioner left messages for Dr. Ahn asking if it was possible for a CT scan of her left foot to be performed because her foot, ankle, and calf were feeling numb with a burning/hot sensation, and she requested a brace or sock to help with pressure. Px1 at 1025. In her message, Petitioner also reported that she had been experiencing pain in her calf since the injury. Petitioner was instructed to schedule a follow up appointment to discuss additional testing and was informed that she could purchase a brace over the counter. Petitioner saw Dr. Ahn on July 26, 2023 for unrelated conditions. Rx9 at 781-784. Petitioner testified that she would see Dr. Ahn for unrelated conditions while seeking treatment for her left foot, because he was her primary care physician. Tr. at 73. Petitioner left another message for Dr. Ahn on August 14, 2023 reporting continued pain in her left leg, calf, and foot and that her physical therapist suggested that she "get a document recommending time off to heal properly and give my body the proper time to rest." Px1 at 928.

Petitioner had a telehealth visit with Dr. Ahn on August 15, 2023. Px1 at 834-836, 153; Rx9 at 711-713. Petitioner reported that her left foot, left leg, and back pain had not improved despite physical therapy. Petitioner's diagnoses included left foot pain. Dr. Ahn ordered an outpatient referral to podiatry and an outpatient external referral to Athletico Physical Therapy ("Athletico"). Petitioner was instructed to continue

physical therapy. Petitioner's Flexeril prescription was refilled, and Petitioner was also recommended use of Tylenol and ibuprofen. Dr. Ahn noted that physical therapy would determine when Petitioner had sufficiently recovered to return to work. Petitioner testified that Dr. Ahn referred her to a podiatrist at the same time that he referred her to physical therapy, but that he did not recommend a specific podiatrist. Tr. at 37-38. Petitioner testified that at the time of her August 15, 2023 visit with Dr. Ahn, she was in a lot of pain, she was compensating with her right side, and she was in pain in both legs. Tr. at 29, 82. Petitioner testified that her pain increased during the period between June 24, 2023 and August 15, 2023. Tr. at 83.

Petitioner testified that on August 15, 2023, she was the front passenger of a vehicle involved in a motor vehicle accident. Tr. at 35, 52, 53, 90. Petitioner testified that the August 15, 2023 motor vehicle accident was a four-car collision. Tr. at 53. Petitioner testified that she did not sustain any injuries at that time. Tr. at 35, 93. Petitioner testified that she did not hit or crush her left leg or left foot at the time of the August 15, 2023 motor vehicle accident. Tr. at 35, 93. On cross examination, Petitioner testified that she went to the Emergency Department at University of Chicago Medicine "some days" after the August 15, 2023 motor vehicle accident to report it and because "you are supposed to go check on yourself for like internal things of that nature." Tr. at 90-92. Petitioner testified that only her back was x-rayed at the emergency room. Tr. at 92. Petitioner testified that she did not have follow up treatment after the emergency room visit for the August 15, 2023 motor vehicle accident. Tr. at 93.

Petitioner saw Dr. Ahn on September 5, 2023 for unrelated conditions. Rx9.

Petitioner attended 15 sessions of physical therapy at Athletico between August 2, 2023 and September 13, 2023. Px2. There are no physical therapy records for dates of service after September 13, 2023 contained within Px2. Petitioner testified that physical therapy did not help the pain. Tr. at 36. Petitioner saw Dr. Ahn on September 14, 2023 for unrelated conditions. Rx9.

Petitioner saw Dr. Ahn on September 29, 2023 for follow up of low back pain and left foot pain, and other unrelated issues. Rx9 at 533-537. Petitioner's diagnoses included left foot pain. Petitioner was referred to neurology.

Petitioner had a telephonic visit with Dr. Ahn on October 3, 2023 for follow up of left foot pain. Rx9 at 485-487. Dr. Ahn noted that Petitioner still had significant left foot pain despite physical therapy. Petitioner's diagnosis was left foot pain. Dr. Ahn recommended Petitioner continue with physical therapy until appointments with neurology and podiatry. Petitioner was kept off work until cleared by physical therapy. A separate telephone message recorded on October 3, 2023 notes that Petitioner called and asked for her work note to be updated to include documentation of left foot pain due to injury. Rx9 at 510.

Petitioner again saw Dr. Ahn on October 11, 2023. Rx9 at 344-347. Dr. Ahn referred Petitioner to neurology for her left foot pain. Petitioner was instructed to continue physical therapy.

Petitioner saw Dr. Ahn on October 23, 2023 for complaints of left leg, left foot, and back pain. Rx9 at 285-288. Dr. Ahn noted that Petitioner's left foot pain was unchanged. Petitioner's diagnoses included left foot pain. Dr. Ahn recommended Petitioner follow up with neurology and continue with physical therapy.

Petitioner testified that after the podiatrist referral was made, she went to an appointment with a podiatrist whose name she could not recall, but did not see the podiatrist because the appointment was "pushed back." Tr. at 97-99, 100. This prompted Petitioner to see Dr. Peterson, to whom Petitioner was referred by the physical therapist who she was seeing under Dr. Ahn's direction. Tr. at 37. Petitioner was not referred to Dr. Peterson by

Dr. Ahn. Tr. at 101.Petitioner testified that she did not see a neurologist following Dr. Ahn's referral. Tr. at 98-99.

On November 10, 2023, Petitioner was seen by Dr. Kyle S. Peterson at Suburban Orthopedics. Px3 at 2-4. Dr. Peterson noted that Petitioner was referred to Suburban Orthopedics by her physical therapist. Petitioner reported a consistent accident history. Petitioner reported continued pain in her left foot radiating to her calf muscle. Petitioner described the pain as burning and throbbing. Petitioner reported numbness and tingling. Positive neuritis with neuralgia was noted in the superficial nerve of the midfoot on exam. X-rays of Petitioner's left foot were obtained and demonstrated normal alignment, closed physes, no fractures, no dislocations, no degenerative joint changes, no loose or foreign bodies, and no congenital abnormalities. Dr. Peterson's diagnosis was left tarsometatarsal joint sprain. Dr. Peterson ordered an MRI of the left foot and an EMG/NCV exam. Petitioner was allowed to return to work light duty, with sitting and resting as needed.

On November 13, 2023, Petitioner returned to Dr. Ahn for a one-month follow up for unrelated conditions. Rx9 at 155-161. Petitioner's left foot pain was addressed at this visit. Regarding Petitioner's left foot pain, Dr. Ahn noted that Petitioner had paused physical therapy due to insurance issues and that she would resume as soon as possible. Dr. Ahn also noted that Petitioner would follow up with neurology. Petitioner's diagnoses included left foot pain. Petitioner was instructed to follow up as needed for her left foot pain.

Petitioner underwent a left foot MRI on November 16, 2023 which demonstrated no acute appearing MRI pathology of the foot and no acute marrow edema. Px3 at 9-10. Petitioner saw Dr. Ahn on November 7, 2023 and November 23, 2023 for unrelated conditions. Rx9 at 117-122, 194-199.

Petitioner was seen by Dr. Ralph Esposito at Advanced Physicians on January 5, 2024 for complaints of left foot pain. Px4 at 2-6. Petitioner reported a consistent accident history. Petitioner reported that she had pain in the first through third digits of the left foot since the injury, with sharp pain and a burning sensation on the top of the foot that had extended up the left calf to the shin. Dr. Esposito's diagnosis was left foot pain. Dr. Esposito ordered x-rays and an MRI of the left foot and an EMG study due to Petitioner's continued pain and nerve related symptoms. Dr. Esposito recommended physical therapy and prescribed a CAM walker. Petitioner testified that she got Dr. Esposito's information from an associate. Tr. at 41-42. Petitioner testified that neither Dr. Peterson nor Dr. Ahn referred her to Advanced Physicians. Tr. at 103.

Petitioner underwent a left foot MRI on January 10, 2024, which demonstrated no changes in comparison to the November 16, 2023 MRI and a 3.5 mm high-signal structure abutting the lateral cortex proximal shaft third metatarsal potentially a tiny intermetatarsal cyst. Px4 at 10-12. Petitioner attended a physical therapy evaluation at Advanced Physicians on January 10, 2024. Px4.

Petitioner underwent an EMG/NCV study on January 11, 2024 at Advanced Physicians. Px4 at 13-16. The overall findings demonstrated (1) electrodiagnostic evidence for a mild left sural sensory mononeuropathy and (2) no electrodiagnostic evidence for a left tibial, peroneal, or plantar nerve mononeuropathy.

Petitioner again saw Dr. Esposito on January 19, 2024. Px4 at 17-19. Dr. Esposito noted that the January 10, 2024 MRI demonstrated a 3.5 mm high-signal structure abutting the lateral cortex of the proximal shaft of the third metatarsal, potentially an intermetatarsal ganglion, and that the presence of an intermetatarsal ganglion was the most likely contributor to Petitioner's left foot symptoms and discomfort. Dr. Esposito noted that a ganglion cyst in the forefoot can cause symptoms when the cyst places pressure on adjacent soft tissue structures such as nerve, tendon, or bone. Dr. Esposito's diagnoses were ganglion of the foot and crush injury of the foot. Dr. Esposito recommended physical therapy. Petitioner attended a physical therapy session at Advanced Physicians on January 19, 2024. Px4. Petitioner testified that she performed a structural restraint test

on January 19, 2024. Tr. at 43. Petitioner testified that she did not return to see Dr. Esposito after January 19, 2024 because the location was far, and travel was difficult. Tr. at 44.

Petitioner returned to Dr. Peterson on January 30, 2024. Px3 at 11-15. Petitioner reported increased pain. Petitioner reported constant leg pain, numbness in the foot, and burning sensation. Petitioner presented wearing a CAM boot. Dr. Peterson noted that he advised Petitioner that it could take up to one year for full and complete recovery. Dr. Peterson noted that at that time, there did not appear to be any pathology present for surgical intervention to the left foot. Dr. Peterson noted that the January 10, 2024 left foot MRI demonstrated an intermetatarsal ganglion cyst formation with fluid accumulation, and that it was his opinion that it was directly related to the blunt force trauma with injury and damage of the structures now causing clinical neuritis and neuropathy of the sural nerve of the foot. Dr. Peterson noted that the EMG of the lower left extremity showed decreased velocities of the peroneal nerve and the sural nerve, and that it was his opinion that this was directly related to the blunt force trauma with injury and damage of the nerve structures, now causing clinical neuritis and neuropathy of the sural nerve of the left foot. Petitioner's diagnosis was left tarsometatarsal joint sprain. Dr. Peterson recommended additional physical therapy and prescribed Tramadol 50mg as needed. Petitioner's light duty work restrictions were maintained. Petitioner testified that she returned to physical therapy at Athletico after Dr. Peterson's recommendation. Tr. at 46. Petitioner testified that physical therapy is not helping with the pain. Tr. at 46. Petitioner testified that her plan is to continue treating at Suburban Orthopedics. Tr. at 105-106.

Respondent's Section 12 Examination Report and Addendums by Dr. Johnny Lin

Petitioner was seen by Dr. Johnny Lin for a Section 12 examination on November 14, 2023. Rx5. Petitioner reported a consistent accident history. Dr. Lin reviewed Petitioner's medical records and performed a physical examination of Petitioner. Following his review of Petitioner's medical records and physical examination of Petitioner, Dr. Lin opined that Petitioner's diagnosis was left foot contusion. Dr. Lin opined that there was reasonable objective and subjective evidence to relate the June 24, 2023 work injury to Petitioner's left foot diagnosis. Dr. Lin, however, did not believe that the mechanism of injury would cause pain to radiate up Petitioner's left leg. Dr. Lin opined that the medical treatment rendered through the date of examination was medically necessary and appropriate for the June 24, 2023 work injury. Dr. Lin recommended a nerve conduction test to determine if there was any nerve diagnoses and an MRI of the foot to determine if there were any objective structural abnormalities within the foot. Dr. Lin noted that if there were no significant findings on both studies, Petitioner would be at maximum medical improvement ("MMI"), would require pain management, and that he would recommend that Petitioner return to work full duty without restrictions. Dr. Lin noted, however, that depending on the results of the studies, further treatment may be recommended. Dr. Lin noted that the use of Neurontin was reasonable for residual neuritis and he recommended topical anti-inflammatories as a source of pain relief. Dr. Lin did not recommend any further physical therapy given that Petitioner had attended physical therapy for five months. Dr. Lin noted that at that time, Petitioner was able to stand for two hours with 15 minutes seated rest and lift up to 20 pounds.

Dr. Lin prepared an addendum on February 6, 2024 and another on February 23, 2024. Rx6, Rx7. Dr. Lin did not re-examine Petitioner prior to issuing his two addendums. For his February 6, 2024 addendum, Dr. Lin was provided with video footage of the injury, a history of a motor vehicle accident that occurred on May 13, 2023, a history of another motor vehicle accident that occurred "slightly" before Petitioner's August 24, 2023 physical therapy visit, and additional physical therapy records for review. Dr. Lin was not provided with any medical records related to evaluations following the motor vehicle accidents. Dr. Lin opined that based on his review of the video, he believed that the mechanism of injury was consistent with a left foot contusion. Dr. Lin noted that based on the unknown effects of the motor vehicle accidents, it was difficult for him to determine any additional causality based on lack of information with regards to the motor vehicle accidents. Dr. Lin continued to recommend a nerve conduction test and an MRI. Dr. Lin noted that until records were produced from the May

13, 2023 accident demonstrating left foot complaints immediately after the motor vehicle accident, he could not determine from the therapy report alone that there was any preexisting condition within the left foot before the June 24, 2023 work injury. For his February 23, 2024 addendum, Dr. Lin was provided additional records including results of the nerve conduction test and MRIs. Dr. Lin references only the MRI reports and not the actual MRI images in his addendum. Following his review of the additional records, Dr. Lin opined that the only finding that would possibly be consistent with the mechanism of the left foot contusion was sural nerve neuropathy. Dr. Lin opined that the peroneal nerve findings were proximal findings by the knee. Dr. Lin noted that he could not determine the contribution to causality of the left sural nerve sensory neuropathy from the May 13, 2023 motor vehicle accident, but that it would be a conceivable mechanism for sural nerve neuropathy. Dr. Lin noted that based on the MRI reports of November 16, 2023 and January 10, 2024, it did not appear that there was any significant structural injury that occurred. Dr. Lin did not believe that the intermetatarsal ganglion cyst was the result of trauma. Dr. Lin opined that Petitioner was at MMI for the left foot contusion. He did not recommend any further physical therapy. Dr. Lin opined that the only treatment related to the work injury was treatment for the sural nerve neuropathy, and he noted that any intervention regarding the ganglion cyst was unrelated to the work injury. Dr. Lin lastly noted that he could not determine the contribution of the motor vehicle accidents to Petitioner's residual left foot complaints.

TTD/Medical Bills

Petitioner testified that she provided the August 15, 2023 off work note via email to Adriana, in human resources, and Chris, her union representative. Tr. at 30; Px7. Respondent did not provide Petitioner with any benefits after providing the August 15, 2023 off work note. Tr. at 31. Petitioner testified that she was instead placed on a medical leave and that she was not provided any wages or benefits during the medical leave. Tr. at 32. Petitioner testified that she did, however, receive an advance of four weeks from Respondent. Tr. at 47. Petitioner received a termination letter from Respondent on October 5, 2023. Tr. at 33; Px9.

Petitioner testified that a health care provider has not released her to full duty work since August 15, 2023. Tr. at 46-47. Petitioner testified that she has not returned to work at any employer since August 15, 2023. Tr. at 109. Petitioner testified that she has been applying and looking for work since October 5, 2023, the date of her employment termination with Respondent. Tr. at 109-110, 111, 112. Petitioner testified that she has been looking for jobs that are "work from home or online things that I have certain mobility to sit down and do the light-duty work restrictions that were given to me by my doctor." Tr. at 111. Petitioner testified that she began receiving unemployment compensation some time after October 5, 2023 but before November 5, 2023. Tr. at 47, 110-111. At the time of arbitration, she was still receiving unemployment compensation. Tr. at 110. Petitioner testified that she has not earned income from any other source besides from unemployment. Tr. at 111-112.

Petitioner testified that Respondent provided her with health care insurance through Blue Cross Blue Shield, but discontinued this coverage following her termination. Tr. at 114. Petitioner testified that she attempted to put the Athletico bills through Blue Cross Blue Shield. Tr. at 107. Petitioner is not aware if any of her medical bills have been paid through workers' compensation or whether Blue Cross Blue Shield had paid the bills from Athletico. Tr. at 47, 89.

Current Condition

Petitioner testified that she is still experiencing constant pain in her left leg and left foot. Tr. at 46. Petitioner testified that she was in pain while at arbitration. Tr. 46. Petitioner testified that she has been in a lot of pain and that she has been extremely stressed. Tr. at 48. Petitioner testified that she has not been able to do a lot of things for her four-year-old child. Tr. at 48. Petitioner testified that the injury affects her ability to take care of her

home, play with her child, and take her child out to places. Tr. at 48. Petitioner testified that the injury has been stressful, both physically and mentally. Tr. at 49.

Testimony of Rebecca Morgan

Respondent called Ms. Rebecca Morgan to testify on its behalf. Tr. at 115. Ms. Morgan is the regional manager for Respondent and has worked at Respondent for three years. Tr. at 116. Ms. Morgan is the regional manager of the River North store, where Petitioner worked. Tr. at 116. She was the regional manager of the River North store while Petitioner worked there. Tr. at 117. As the regional manager, Ms. Morgan was not in the River North store every day, but would visit the store weekly. Tr. at 117.

Ms. Morgan testified that she is familiar with Petitioner and with Petitioner's employment. Tr. at 116. Petitioner was a bud tender. Tr. at 117. Ms. Morgan testified that after Petitioner's May 13, 2023 motor vehicle accident, Petitioner requested that she be allowed to return to work with restrictions. Tr. at 120. Ms. Morgan testified that Petitioner was not allowed to return to work until paperwork was provided. Tr. at 120. Ms. Morgan believed that Petitioner provided paperwork, and that she was allowed to then return to work in a restricted manner. Tr. at 121.

Ms. Morgan testified that Petitioner had an incident at work on June 24, 2023. Tr. at 121. Ms. Morgan testified that Petitioner returned to work the following day and continued to work until August 15, 2023. Tr. at 126. Ms. Morgan agreed that Petitioner has not returned to work at Respondent since August 15, 2023. Tr. at 126-127. Ms. Morgan testified that Petitioner did not provide any other medical notes after August 15, 2023 that allowed her to return to work with restrictions. Tr. at 127. Ms. Morgan testified that work restriction accommodations are decided by Respondent's Group Access Management team, and that Respondent has a lot of accommodations. Tr. at 127.

On cross examination, Ms. Morgan testified that Adriana Rosa worked for Respondent on August 15, 2023, but was no longer employed by Respondent at the time of arbitration. Tr. at 128. Ms. Morgan testified that Ms. Rosa was the human resources generalist, and that she would have been the appropriate person for Petitioner to provide an off work note to. Tr. at 128. Ms. Morgan testified that Group Access Management is a company outside of Respondent. Tr. at 129. When asked whether Respondent's human resources department would have any bearing on a return to work with restrictions decision, Ms. Morgan testified, "I can't speak to that." Tr. at 129. Ms. Morgan testified that as of September 15, 2023, Salvador Tejeda was an employee of Respondent and that his position was general manager of the River North store. Tr. at 129-130. Ms. Morgan was shown Px5, and she agreed that Petitioner would not be able to return to work until after possibly being released full duty by her doctor. Tr. at 131.

CONCLUSIONS OF LAW

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

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

Credibility is the quality of a witness which renders her evidence worthy of belief. It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill. 2d 249, 253 (1980); *Hosteny v. Workers'*

Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Where a claimant's testimony is inconsistent with her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

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

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

The Arbitrator initially notes that there is no dispute as to accident. Ax1.

Having considered all the evidence, the Arbitrator finds that Petitioner's current left leg and left foot conditions of ill-being are causally related to the June 24, 2023 injury. The Arbitrator relies on the following in support of her findings: (1) the records of University of Chicago Medicine, (2) the records of Suburban Orthopedics, (3) the records of Advanced Physicians, (4) the fact that none of the records in evidence reflect that Petitioner was actively treating for a left leg or left foot condition immediately prior to June 24, 2023, and (5) Petitioner's credible testimony regarding the mechanism of injury and the abrupt onset of symptoms following the injury.

The Arbitrator acknowledges that Petitioner was involved in a motor vehicle accident on May 13, 2023. The Arbitrator notes that Petitioner credibly testified that she did not hit or crush her left leg or left foot at the time of the May 13, 2023 motor vehicle accident, and that she did not have any pain in her left leg or left foot following the May 13, 2023 motor vehicle accident. Petitioner's testimony is corroborated by the medical evidence, where the May 24, 2023 and June 1, 2023 records reflect only neck, upper back, and low back complaints and symptoms. No left leg or left foot symptoms or complaints were documented until after June 24, 2023. While Petitioner testified that she was given work restrictions following the May 13, 2023 motor vehicle accident, said restrictions were not related to any left leg or left foot condition. The record demonstrates that Petitioner's left leg and left foot were in good health and that she was not on any restrictions related to her left leg or left foot at the time of the June 24, 2023 injury. The Arbitrator further acknowledges that Petitioner was involved in another motor vehicle accident on August 15, 2023. Petitioner credibly testified that she did not sustain injuries to her left leg or left foot at that time. Petitioner's testimony was unrebutted and there is no medical evidence contradicting Petitioner's testimony. The Arbitrator further notes that Respondent's Section 12 examiner, Dr. Lin, acknowledged that he could not determine whether the motor vehicle accidents contributed to Petitioner's left foot condition because of the lack of information he had regarding the motor vehicle accidents. Accordingly, the Arbitrator finds that the motor vehicle accident of August 15, 2023 did not break the causal chain between the June 24, 2023 work-related left leg and left foot injuries and Petitioner's current left leg and left foot conditions of ill-being.

The Arbitrator has considered the opinions of Dr. Lin, and while the Arbitrator finds his opinions regarding causation and reasonableness of care persuasive, the Arbitrator does not find certain other opinions, namely those relating to the peroneal nerve and cyst, persuasive. The Arbitrator notes that Petitioner has had consistent and persistent complaints and symptomology of the left leg and left foot since June 24, 2023, which are well documented in the medical evidence. The Arbitrator finds that overall, the record supports the opinions of Dr. Peterson, including that the ganglion cyst shown on MRI and the decreased velocities of the peroneal nerve and the sural nerve shown on EMG of the left lower extremity are directly related to the blunt force trauma with injury and damage of the nerve structures causing clinical neuritis and neuropathy of the sural nerve of the left foot. The Arbitrator notes that Dr. Esposito's opinions are consistent with those of Dr. Peterson, and that Dr.

Esposito also opined that the ganglion cyst is the most likely contributor of Petitioner's left foot symptoms and discomfort, and that a ganglion cyst in the forefoot can cause symptoms when the cyst places pressure on adjacent soft tissue structures. The Arbitrator further notes that Dr. Lin conceded that the finding of sural nerve neuropathy was consistent with the mechanism of the June 24, 2023 work injury. Moreover, while Dr. Lin opined that Petitioner was at MMI for the left foot contusion on February 23, 2024, he offered no opinions as to whether Petitioner was at MMI for the condition of sural nerve neuropathy and he recommended continued treatment for this condition.

In resolving the issue of causality, the Arbitrator further finds that Petitioner is not yet at MMI for her current left leg and left foot 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 and Issue O: whether Petitioner exceeded her two choices of medical providers, the Arbitrator finds as follows:

Respondent claims that Petitioner's treatment with Dr. Esposito, at Advanced Physicians, exceeded her two choices of medical providers.

The Arbitrator finds that Petitioner did not exceed her two choices of medical providers. The evidence demonstrates that Dr. Ahn ordered an outpatient referral to a podiatrist for Petitioner on August 15, 2023. Petitioner credibly testified that after the referral was made, she presented for an appointment with a podiatrist, but the appointment was pushed back. Petitioner was then referred to Suburban Orthopedics by her physical therapist, who Petitioner was seeing under Dr. Ahn's direction. Dr. Esposito, therefore, was Petitioner's second choice for podiatric treatment.

At arbitration, Petitioner presented the following unpaid medical bills: (1) Suburban Orthopedics ($3,287.00), Px3, (2) Athletico Physical Therapy ($18,279.00), Px2, and (3) Advanced Physicians ($8,365.00), Px4. Respondent disputes Petitioner's claim for unpaid medical bills.

The bills from Suburban Orthopedics relate to Petitioner's treatment with Dr. Peterson on November 10, 2023 and January 30, 2024, as well as the November 16, 2024 MRI. The bills from Athletico Physical Therapy relate to physical therapy sessions from August 2, 2023 through February 28, 2024. The bills from Advanced Physicians relate to Petitioner's treatment with Dr. Esposito on January 5, 2024 and January 19, 2024, physical therapy sessions on January 10, 2024 and January 19, 2024, and the January 11, 2024 nerve conduction study. The Arbitrator notes that Respondent's Section 12 examiner, Dr. Lin, recommended Petitioner undergo an MRI of the left foot and nerve conduction study of the left lower extremity on November 14, 2023 and February 6, 2024.

Consistent with the Arbitrator's prior finding as to causal connection, the Arbitrator finds that the medical services that were provided to Petitioner were reasonable, necessary, and casually related to the work accident, and that Respondent has not paid all appropriate charges. Regarding the Athletico Physical Therapy bills, the Arbitrator notes that no records of Petitioner's treatment after September 13, 2023 were offered within Px2, and that records for only 15 sessions of physical therapy from August 2, 2023 through September 13, 2023 were offered to support the amount claimed by Petitioner as unpaid by Respondent. Accordingly, the Arbitrator further finds that all bills, as provided in Px3, Px4, and Px2 for the 15 sessions of physical therapy from August 2, 2023 through September 13, 2023 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. Bills claimed by Petitioner from Athletico Physical Therapy for treatment after September 13, 2023 are not awarded, as there are no treatment records to support Petitioner's claim.

Regarding Respondent's claim for a Section 8(j) credit, the Arbitrator notes that on the Request for Hearing form jointly submitted by the parties, Respondent claimed that it paid $0.00 in medical bills through its group medical plan for which credit may be allowed under Section 8(j) of the Act. Ax1 at No. 7, which is binding under *Walker v. Industrial Comm'n*, 345 Ill. App. 3d 1084, 1087-1088 (2004). At arbitration, however, Respondent claimed an 8(j) credit for any bills paid by group medical insurance through Blue Cross Blue Shield. See Tr. at 12-13, 138-139. Respondent offered Rx12, an Athletico Physical Therapy payment ledger, in support of its claim for an 8(j) credit. See Tr. at 139. For that reason, the Arbitrator addresses the issue.

The Arbitrator notes that while Rx12 reflects payment deductions under "Insurance Receipt," there is nothing to indicate that Blue Cross Blue Shield or any workers' compensation related carrier is the source of these payments. Accordingly, the Arbitrator finds that Respondent failed to meet its burden of proof as to an 8(j) credit and Respondent's claim for an 8(j) credit is denied.

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. Peterson.

The Arbitrator notes that as of January 30, 2024, Dr. Peterson recommended continued conservative treatment of Petitioner's left leg and left foot, recommending additional physical therapy and the use of tramadol as needed. The Arbitrator also notes that on February 23, 2024, Respondent's Section 12 examiner, Dr. Lin, recommended continued use of anti-inflammatories and Neurontin for the condition of sural nerve neuropathy. Accordingly, the Arbitrator finds that Petitioner is entitled to the treatment as recommended by Dr. Peterson, including additional physical therapy and pain medications, 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, the Arbitrator finds as follows:

Petitioner claims that she is entitled to TTD benefits for the period of August 16, 2023 through March 6, 2024, the date of arbitration. Respondent disputes Petitioner's claim, and Respondent claims no TTD benefits are owed to Petitioner.

Consistent with the Arbitrator's prior findings, the Arbitrator finds that Petitioner is entitled to TTD benefits. The record demonstrates that Petitioner was taken off work by Dr. Ahn on August 15, 2023 until cleared to return to work by physical therapy. Petitioner credibly testified that Respondent did not provide her with any benefits after providing Respondent with Dr. Ahn's August 15, 2023 off work note. Petitioner further credibly testified that instead, Respondent placed her on a medical leave without wages or benefits. Petitioner was then terminated by Respondent on October 5, 2023, after exhausting the medical leave. Petitioner's testimony was unrebutted.

On November 10, 2023, Petitioner was released to return to light duty work. The Arbitrator notes that on November 14, 2023, Respondent's Section 12 examiner, Dr. Lin, opined that Petitioner could return to work with the restrictions of standing for two hours with 15-minute seated rest and a 20-pound limit for lifting. As of January 30, 2024, Dr. Peterson has maintained Petitioner on light duty restrictions. The Arbitrator further notes that in his February 6, 2024 and February 23, 2024 addendums, Dr. Lin did not offer any opinions regarding Petitioner's work status. The Arbitrator further notes that there is no evidence that Respondent accommodated Petitioner's restrictions.

Further, Petitioner credibly testified that she has not returned to work at any employer since August 15, 2023. The Arbitrator notes that Respondent's witness, Rebecca Morgan, agreed that Petitioner has not returned to work at Respondent since August 15, 2023.

Accordingly, the Arbitrator finds that Petitioner is entitled to TTD benefits from August 16, 2023 through March 6, 2024, the date of arbitration.

Based on the Parties' stipulation, Respondent is entitled to a credit in the amount of $8,540.48 for TTD paid by Respondent to Petitioner. Ax1 at No. 9.

Issue M, whether penalties/attorney's fees should be imposed upon Respondent, the Arbitrator finds as follows:

Petitioner filed multiple penalties petitions, with the first petition filed on or about November 10, 2023, and the most recent filed on or about March 4, 2024. Respondent has not filed a response to any of Petitioner's penalties petitions.

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.

The Arbitrator notes that Respondent's Section 12 examiner, Dr. Lin, opined in his November 14, 2023 IME report that Petitioner's left foot condition at that time was causally related to the June 24, 2023 work injury, that the treatment that she had up until that date was reasonable and necessary, and that she required additional treatment. The Arbitrator further notes that on February 6, 2024, Dr. Lin continued to opine that Petitioner's left foot condition was causally related to the June 24, 2023 work injury and that Petitioner required additional treatment. Further, on February 23, 2024, Dr. Lin opined that the finding of sural nerve neuropathy was consistent with the mechanism of the June 24, 2023 injury and recommended additional treatment in the form of anti-inflammatories and the use of Neurontin. Additionally, the Arbitrator acknowledges that Respondent made four payments to Petitioner for TTD benefits totaling $8,540.48. See Rx4. The first payment, however, was delayed and not paid until October 19, 2023, over two months after Petitioner provided Respondent with Dr. Ahn's August 15, 2023 off work note. Petitioner then received TTD payments on October 25, 2023 (for the time period of October 19, 2023 through October 25, 2023), November 1, 2023 (for the time period of October 26, 2023 through November 1, 2023), and then not again until February 2, 2024. See Rx4. The Arbitrator notes that on November 14, 2023, Dr. Lin recommended work restrictions for Petitioner, which were not accommodated, and that he did not offer any opinions as to Petitioner's work status on February 6, 2023 or February 23, 2024. In this case, the evidence demonstrates that Respondent has delayed or withheld payment of Section 8(a) and Section 8(b) benefits to Petitioner from August 16, 2023 through March 6, 2024, the date of arbitration. The Arbitrator finds that Respondent did not offer an adequate justification for denial of payment. As such, the Arbitrator further finds Respondent liable for Section 19(l) penalties in the amount of $6,120.00 since benefits were denied for 204 days, from August 16, 2023 through March 6, 2024, the date of arbitration.

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. The Arbitrator exercises her discretion and finds Respondent liable for Section 19(k) penalties in the amount of $3,947.61, representing 50% of the awarded TTD benefits and considering the stipulated credit of $8,540.48 for TTD benefits paid by Respondent, and $9,498.50, representing 50% of the awarded Section 8(a) benefits, and Section 16 attorney fees in the amount of $5,378.44, representing 20% of the awarded benefits.

Ana Vazquez

ANA VAZQUEZ, ARBITRATOR

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC017086
Case Name	Ernesto Alarcon v. Those Painting Guys, Inc & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0129
Number of Pages of Decision	17
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	George Tamvakis
Respondent Attorney	Drew Dierkes

DATE FILED: 3/24/2025

/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 Permanent Disability	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ERNESTO ALARCON,

Petitioner,

vs. NO: 15 WC 17086

THOSE PAINTING GUYS, INC. and
ILLINOIS STATE TREASURER as *ex-officio*
custodian of the INJURED WORKERS' BENEFIT FUND,

Respondents.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent Injured Workers' Benefit Fund and notice given to all parties, the Commission, after considering the issues of whether an employer-employee relationship existed between Respondent Those Painting Guys, Inc. and Petitioner as well as the liability of Respondent Injured Workers' Benefit Fund, and being advised of the facts and law, corrects the Decision as set forth below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Correction

The Commission observes the permanent partial disability benefit is miscalculated. The award of 37.5% loss of use of the left foot under §8(e)11 equates to 62.625 weeks of PPD benefits (167 weeks x 37.5% = 62.625). The Decision, however, awards 58.45 weeks. The Commission corrects the Decision reflect an award of 62.625 weeks.

All else is affirmed.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondents pay to Petitioner the sum of $400.00 per week for a period of 3 6/7 weeks, representing May 5, 2015 through May 31, 2015, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondents pay the sum of $24,018.43 for medical expenses, as provided in §8(a), subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondents shall reimburse Petitioner for out-of-pocket prescription expenses totaling $771.62.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondents pay to Petitioner the sum of $360.00 per week for a period of 62.625 weeks, as provided in §8(e)11 of the Act, for the reason that the injuries sustained caused the 37.5% loss of use of the left foot.

The Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund was named as a co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award hereby is entered against the Fund to the extent permitted and allowed under §4(d) of the Act, in the event of the failure of Respondent-Employer to pay the benefits due and owing the Petitioner. Respondent-Employer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent-Employer that are paid to the Petitioner from the Injured Workers' Benefit Fund. The Respondent-Employer's obligation to reimburse the Injured Workers' Benefit Fund, as set forth above, in no way limits or modifies its independent and separate liability for fines and penalties set forth in the Act for its failure to be properly insured.

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 $49,000.00. 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.

March 24, 2025

/s/ *Raychel A. Wesley*

RAW/mck

O: 2/19/25

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC017086
Case Name	Ernesto Alarcon v. Those Painting Guys, Inc & IWBF
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	George Tamvakis
Respondent Attorney	Drew Dierkes

DATE FILED: 5/28/2024

/s/ Paul Cellini, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF MAY 28, 2024 5.17%

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

ERNESTO ALARCON Case # **15** WC **17086**
Employee/Petitioner

v.

THOSE PAINTING GUYS, INC., and STATE TREASURER And EX OFFICIO CUSTODIAN OF THE ILLINOIS WORKERS' COMPENSATION COMMISSION
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 **March 26, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **May 4, 2015**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

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

On the date of accident, Petitioner was **54** years of age, ***married*** with **3** dependent children.

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

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

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

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

ORDER

The Arbitrator finds that the Respondent, pursuant to Section 3 of the Act, was subject to and operating under the Workers' Compensation Act on May 4, 2015.

The Arbitrator finds that the Petitioner and Respondent had an employer/employee relationship on May 4, 2015. providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

The Arbitrator finds that the Petitioner sustained accidental injury which arose out of and in the course of his employment with Respondent on May 4, 2015.

The Arbitrator finds that the Petitioner provided proper and timely notice to the Respondent pursuant to Section 6(c) of the Act.

The Arbitrator finds that Petitioner's left foot/ankle condition is causally related to the May 4, 2015 accident. The Arbitrator finds that the Petitioner has failed to prove that any lumbar injury is causally related to the May 4, 2015 accident.

The Arbitrator finds that the Petitioner's average weekly wage was $600.00.

The Arbitrator finds that the Petitioner was 54 years old, married, and had two dependent children as of the accident date, May 4, 2015.

Respondent shall pay Petitioner temporary total disability benefits of $400.00/week for 3-6/7 weeks, commencing May 5, 2015 through May 31, 2015, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $24,018.43, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall also reimburse Petitioner for out of pocket prescription expenses totaling $771.62.

Respondent is entitled to the credits indicated in the medical expenses in evidence which indicate various write offs, as noted in Px3 and Px4, which have already been accounted for in the noted award.

Respondent shall pay Petitioner permanent partial disability benefits of $360.00 per week for 58.45 weeks, because the injuries sustained caused the loss of use of 37.5% of the left foot, as provided in Section 8(e) of the Act.

Respondent has shown, by the preponderance of the evidence, that the Respondent did not have workers' compensation coverage on May 4, 2015.

The Illinois State Treasurer, ex-officio custodian of the Injured Workers' Benefit Fund, was named as a co-respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under Section 4(d) of this Act. In the event the Respondent/Employer/Owner/Officer fails to pay the benefits, the Injured Workers' Benefit Fund has the right to recover the benefits paid due and owing Petitioner pursuant to Sections 5(b) and 4(d) of this Act. Respondent/Employer/Owner/Officer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer that are paid to the Petitioner from the Injured Worker's benefit Fund.

Respondent shall pay Petitioner compensation that has accrued from **May 4, 2015** through **March 26, 2024**, and shall pay the remainder of the award, if any, in weekly payments.

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

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

Signature of Arbitrator

May 28, 2024

STATEMENT OF FACTS

Petitioner testified that he is 64 years old, married, and has three children, two of whom were under 18 in 2015. He previously worked as a police officer in Mexico. His highest level of education was six years in primary school, which the Arbitrator would understand to be equivalent to elementary school in the U.S. He acknowledged he had a prior 2019 workers compensation claim for his right great toe. He testified he is not working based on health issues which include hypertension, diabetes, ear, and prostate cancer.

Petitioner testified he got a job performing painting and maintenance with Respondent through a friend in approximately May 2014. His boss with Respondent was Jorge Perez. He testified he made $120 cash per day working eight hour days, five days per week (Monday to Friday). He has no receipts or pay stubs. He did not work overtime. He worked at a variety of locations for this job. Petitioner testified that Respondent provided him with all of the tools for work, including rollers, brushes, ladders, spatulas, and other materials. Perez also provided Petitioner with a t-shirt with Respondent's company logo as a uniform, and he was wearing the t-shirt on 5/4/15 when he alleges he was injured (See Px8). Jorge Perez would pick him up and drop him off at his home.

On 5/4/15, Petitioner was working for Respondent in a garage attached to a home in Aurora. Sometime between 11 a.m. and noon, he was on a ladder performing a repair. The A-frame ladder legs split while he was about 10' in the air and he fell, landing with his left foot and injuring his left ankle and his waist area. No one was present when he fell, but Perez was in the attached homeowner's kitchen. He testified he dragged himself to the homeowner's kitchen and the homeowner wanted to call 911. Perez stopped her and took Petitioner to the hospital (Presence Mercy in Aurora), dropping him off.

The 5/4/15 intake report from the ER at Presence Mercy Medical Center states that Petitioner's primary language is Spanish. It also indicates Petitioner was self-employed. Separate reports state that Petitioner fell 6 to 8 feet off a ladder at work ("the first day on his job") while painting when the ladder slid under him, landing on his left heel. Another note indicates he landed on his right hand, bending his fingers back but not too painful, and hitting his left heel on the ground with an inversion ankle injury. Another indicates he fell forward and "landed on feet." He complained of severe left foot pain. X-rays demonstrated a "tongue-type nondisplaced calcaneal fracture with minimal involvement of the facet subtalar joint." The fracture was described as a posterior to mid calcaneus fracture by Dr. Jacobs-El, who believed casting was indicated and no surgery. He was referred to Dr. Rabin as well as his primary provided Dr. Woodward, and he was to be non-weight bearing and off work. (Px1).

Petitioner testified that after the ER visit, he mainly treated with Dr. Rabin at Presence Mercy and an affiliated facility, Dreyer Medical, resulting in a number of medical expenses. (Px3 & 4).

On 5/12/15, Petitioner returned to the Presence Mercy ER with complaints of sudden onset of shortness of breath and feeling like he was going to pass out. It was noted he was checked out multiple times, and had a normal chest CT/angiogram, and was feeling better. He indicated he normally took a Norco but took 2 of them prior to symptom onset. (Px1). On 5/13/15, Petitioner reported left lower extremity pain and edema status post left foot surgery a week prior. Venous doppler testing ruled out deep vein thrombosis. (Px1).

Petitioner was admitted to Presence Mercy via the ER on 5/17/15 for pain control. A 5/18/15 CT scan of the left lower extremity confirmed the fracture: "comminuted somewhat impacted os calcis fracture entering the calcaneal cuboid articulation with some offset at the articulation, and also enters the posterior talocalcaneal articulation with several millimeters of offset. (Px1).

Petitioner underwent surgery with Dr. Rabin on 5/22/15 involving open reduction and internal fixation of the fracture with plates, screws, and K-wire. Post-operative diagnosis was left comminuted intraarticular displaced calcaneal fracture. (Px1).

Petitioner testified he initially used crutches after the surgery and was unable to work, ending up with an infection that required multiple ER visits and created significant anxiety issues for him. He believed that between May and August 2015 he was seen at the Mercy ER approximately nine times and had visits from a home nurse program to help with the infection. Petitioner testified he also had back problems.

The records in evidence reflect that on 5/24/15, Petitioner returned to the ER with increased pain complaints and no relief with medication, and he was advised that Dr. Rabin's office wanted him Petitioner to obtain an appointment following Tuesday. At the ER again on 5/30/15, records reference shortness of breath and high blood pressure. Petitioner was to elevate his leg and wear his boot per Dr. Rabin, and he was taking Augmentin, an antibiotic, Vicodin, and ibuprofen as previously prescribed. He also was to follow up with pain management per Dr. Rabin. (Px1).

On 6/8/15, the Mercy Emergency Room record indicates Petitioner had been seen on 6/3/15 at Rush Copley, and again on 6/7/15, for "dropping something heavy on his foot at work" and he was prescribed amoxicillin and Vicodin. Petitioner was to see Dr. Rabin on 6/11/15. Advice to Petitioner was the same as on 5/30/24. The Arbitrator notes that no records of Rush Copley were part of the evidentiary record. Petitioner reported redness, non-prurient drainage and swelling to the wound site. The fracture appeared stable. Cellulitis was diagnosed and he was to continue medications and to follow up with pain management. The discharge notes indicate no growth of bacteria or yeast in 5 days. (Px1).

On 6/16/15, Petitioner returned to the ER with complaints of left ankle/foot pain and swelling, and Xanax was prescribed for complaints of anxiety/shortness of breath. He returned the next day and maceration of the wound was noted. Petitioner was supposed to follow up with Dr. Rabin that day. On 6/17/15, Petitioner reported his wound was starting to open and looked infected. On 6/18/15, Petitioner returned for wound care. He was advised to continue his medications. On 6/30/15, Petitioner returned to the ER for anxiety "that will not go away", shortness of breath, and dizziness. He was to continue to use Xanax as needed. (Px1). It is unclear but it appears that he may have visited the ER twice on 6/30/12, as the second visit noted he had not filled his Xanax prescription and that he had been there that morning.

On 7/13/15, Petitioner went to Mercy for left ankle pain following a slip and fall at a gas station. A left great toe abrasion was noted and treated. X-ray showed no acute abnormalities but soft tissue swelling around the left ankle. Densities were also noted along the lateral ankle that could represent avulsion fracture or old post-traumatic change. (Px1).

On 7/19/15, Petitioner complained of left foot swelling and that he had dizziness and the feeling of passing out that morning. It was noted at discharge by the ER that he had been seen for chronic wound, fatigue, dizziness, and left foot pain. The wound had a small amount of serosanguinous fluid and there was swelling, verified on x-ray, with pitting edema to the foot. He was to continue his medications and to follow up with his wound care appointment. There is a report from this date that also notes would care was performed. (Px1).

On 8/12/15, Petitioner underwent ultrasound testing of the left lower extremity (venous), based on complaint of left calf pain, and it showed no sign of deep vein thrombosis. (Px1).

Petitioner agreed he saw a podiatrist in 2018 at Advocate for the left foot/ankle, and a letter was issued which describes some of his resulting physical limitations. The 4/19/18 report of podiatrist Dr. Taha states that

Petitioner had been under his care and that long-term Petitioner needed a seated job – "Anytime he utilizes any kind of standing for greater than 2 hours it can lead to increased pain and irritation in the lower extremity. He also had limited use of steel toed showed. He may need to avoid excessive utilization of any type of restrictive shoe gear such as a steel toed boot or shank boot. Patient will also have limitations on functional standing especially at work walking on uneven surfaces or standing on uneven surfaces. He should limit these types of things as much as possible. There is no current limit on patient's ability to lift. Though this may change over time depending on the patient's functional capacity." (Px7). Petitioner acknowledged his understanding of the contents of this letter.

Petitioner testified he underwent a total of three surgeries/procedures. Post-operative x-rays were performed (Px2) and show screws and plates, approximately 10 screws and a plate from mid foot to heel based on the Arbitrator's review. The last surgery involved removal of the hardware per the Petitioner, but the Arbitrator could not locate a record of this surgery in the record. The Arbitrator notes that photocopies of the x-ray films were entered into evidence but don't reflect any detail regarding the hardware, but Petitioner's counsel has retained the photos themselves if needed on review. Petitioner testified he had a difficult time finding work between August 2015 and April 2018 due to the condition of his left foot and because he was shaking really bad with the foot due to infection. He did return to work in 2018 for "Minutemen."

Petitioner identified Px3 and Px4 as documentation of medical expenses from Presence Mercy and Dreyer related to the left foot injury. Respondent has not paid any of the bills, either via workers compensation or group health coverage, and he hasn't received any temporary total disability benefits related to the alleged work accident. Some of the bills have been written off. Petitioner has paid for prescription medication out of pocket by his wife and family. This is documented in Px5 (Wal-Mart) and Px6 (Walgreens). Petitioner testified he was unable to work at all through 8/12/15, and he was on crutches most of this time.

Petitioner reports ongoing left foot/ankle pain and problems, difficulty bearing weight on the left lower extremity, and difficulty using ladders. He reports a limp and swelling to the left foot/ankle. He feels a "creaking" of bones in the left foot/ankle. He cannot walk long distances and has difficulty traversing uneven surfaces. He has problems wearing steel-toe boots. He identified a hole / depression in the area of his scar, which does itch at times and gives him anxiety. He is not currently taking any prescribed medications but does use over the counter pain medication/NSAIDs approximately three times per week.

On cross-examination, Petitioner testified the friend who helped him get the job with Respondent was a casual friend and he didn't remember his name. He reiterated that he was paid weekly in cash by Jorge Perez, and Jorge Perez brought all of the tools and ladders to the job sites. Petitioner agreed he never provided his related medical bills to Respondent. His foot swells when he is on his feet too long, and this happens all week long. The foot creaks every time he walks. He testified the farthest he can walk now is from the courtroom to the parking lot, which he estimated to be about 100 feet. He occasionally uses a cane but did not have one with him at the hearing. Jorge Perez is the only person he dealt with from Respondent, and he denied knowing a Charles Anton. He had no employment contract with Respondent. No other Respondent workers were working on-site other than Perez. Perez made the schedule. He would pick the Petitioner up at 7 a.m. and then would drop him off after work. Petitioner didn't have to clock in or out. All equipment was provided by Perez. Petitioner did not receive a W2 form and he did not have any taxes taken out of his take home pay.

Petitioner testified he last worked for Respondent on 5/4/15 and never talked to Perez again after being dropped off at the hospital. He testified he tried to call Perez, but his calls went unanswered. He did not work any other job while he was working for Respondent. He hadn't undergone any training with Respondent and already knew how to paint. He didn't know why the initial 5/4/15 ER patient registration form (Px1) from this visit indicated he was self-employed, testifying that regardless of this document he was in fact an employee of

Respondent. He agreed he had been asked about his employment at the ER but didn't know why it would say he was self-employed.

Petitioner testified initially on cross that he didn't work again after 5/4/15 until 2019, but then was provided with a report from a 6/8/15 emergency room visit (Px1) indicating he dropped something heavy on his foot while he was working at Minutemen. He acknowledged having a job with Minutemen, working in the warehouse of a fabrication company. He couldn't say when he started this job other than it was when he felt better. He denied any prior left foot injuries, noting his toe injury with Minutemen was on the right. Petitioner never presented Respondent with the 2018 letter in Px7 referencing work restrictions due to the alleged work injury, nor did he ever provide any off work notes.

Testifying on redirect, Petitioner testified he had no knowledge of what Mercy Presence may have stated in his medical records. He acknowledged he attempted to return to work in a warehouse in June 2015, several weeks after the surgery, but that he had to stop working at some point, but he could not recall the date. He then indicated he didn't begin any gainful employment until 2018 or 2019, as he just worked a few weeks for Minutemen. However, he also appeared to testify that at some point after the injury to the right toe he was unable to return to work for that reason, and that at some point he was able to return to work based on the left foot/ankle but could not return to work due to the right foot. Petitioner reiterated that he reported an injury to the right foot on 6/3/15, and that he had five therapy sessions for the right foot at the same place as the left foot.

Petitioner's wife, Maria Santillanez, testified that she and her daughter paid case for Petitioner's prescription medication related to the alleged work accident at Walgreens and WalMart.

On 11/16/15, NCCI (National Council on Compensation Insurance) certified that 11/11/15 research indicated no workers compensation insurance policy active for Respondent (at 324 E. Roosevelt Road, Suite L1, Wheaton, Illinois, 60187) for the alleged 5/4/15 accident date. (Px9).

Notice of the 3/26/24 hearing in Geneva was provided to Respondent via email (at customercare@those paintingguys.com), regular mail (at two additional addresses in addition to the 324 E. Roosevelt Road address in Wheaton), and to registered agent Charles Anton (20 Danada Square West, Suite 177, Wheaton, Illinois) via regular mail and hand delivery. (Px10).

Petitioner's counsel averred on the record that the notice was sent by regular mail to all of the noted addresses and that neither that mail, not the email sent, bounced back to counsel.

Respondent submitted the State of Illinois corporate report for Respondent. This identified the principal address of the corporation as 601 Sidwell Court. Suite A, St. Charles, Illinois. The Registered Agent was Charles D. Anton at registered office 2400 E. Main Street, Suite 103-328, St. Charles, Illinois. Anton's personal address was at 2098 Creekside Drive, Wheaton Illinois. (Rx1).

CONCLUSIONS OF LAW

WITH RESPECT TO ISSUE (A), WAS THE RESPONDENT OPERATING UNDER AND SUBJECT TO THE ILLINOIS WORKERS' COMPENSATION OR OCCUPATIONAL DISEASES ACT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that, pursuant to Section 3(1) of the Act, the Respondent was operating under and subject to the Workers' Compensation Act ("the Act"). The company performed painting activities, which involves the remodeling of a structure. Additionally, the Arbitrator believes that the use of ladders to perform painting

activities would constitute an extra hazardous activity, as demonstrated by the facts of the work injury in this case.

WITH RESPECT TO ISSUE (B), WAS THERE AN EMPLOYEE-EMPLOYER RELATIONSHIP, THE ARBITRATOR FINDS AS FOLLOWS:

The Petitioner testified he was hired by the Respondent through Jorge Perez. He testified that Perez provided to Petitioner and wore a t-shirt with Respondent's company logo. Petitioner testified that Perez would pick him up, take him to jobs, and then take him home after work. He testified that Perez was present on the accident date when he fell, where he was painting in a garage at Perez's direction, and he took Petitioner to the hospital. Despite being notified of the hearing, the Respondent presented no evidence which would rebut Petitioner's testimony.

The nature of the Respondent's business was painting. Petitioner worked for Respondent as a painter, directly involved in the nature of the business. Petitioner testified he was controlled by Jorge Perez. Perez set the schedule, brought Petitioner to and from work, provided him with a logoed t-shirt he wore on the job, and provided all of the equipment and tools.

The Arbitrator finds that the Petitioner was an employee of the Respondent on 5/4/15.

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

The Arbitrator finds that the Petitioner sustained accidental injury arising out of and in the course of his employment with Respondent on 5/4/15.

The Petitioner again testified that he was brought to jobs by his boss, Jorge Perez, and would then be taken home by Perez. Petitioner testified he fell at a residence with Perez when the ladder split, and he fell. The Arbitrator finds that the Petitioner sustained accidental injury in the course of his employment with Respondent.

The Petitioner was performing a task directly related to his employment while he was on a ladder. The ladder was provided by the Respondent via Jorge Perez. The Petitioner was at a greater risk of injury based on working at height and on a ladder that resulted in his fall.

The Arbitrator also notes that the Petitioner's testimony supports a finding that he worked for Respondent as a traveling employee, and the fall from a ladder was a reasonably foreseeable occurrence.

The Petitioner sustained accidental injury which arose out of his employment with Respondent on 5/4/15.

WITH RESPECT TO ISSUE (D), WHAT WAS THE DATE OF THE ACCIDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds, based on the Petitioner's testimony and the medical records in evidence, that Petitioner sustained accidental injury on 5/4/15.

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

The Arbitrator finds that the Petitioner provided timely notice of the work accident on 5/4/15. He testified in unrebutted fashion that his boss, Jorge Perez, was present at the location where Petitioner fell and drove Petitioner to the ER after the fall.

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 Petitioner testified that he landed on his left lower extremity when he fell from the ladder on 5/4/15. The 5/4/15 intake report from the ER at Presence Mercy is consistent with the Petitioner falling off a ladder at work and landing on his left heel. X-rays showed a nondisplaced calcaneal fracture with some involvement of the subtalar joint. He subsequently underwent multiple surgeries related to this fracture. The chain of events supports the causal relationship of the Petitioner's left foot/ankle injury to the 5/4/15 accident.

While he testified to back pain, the Arbitrator found insufficient evidence to determine whether the Petitioner sustained a lumbar injury that required treatment.

WITH RESPECT TO ISSUE (G), WHAT WERE THE PETITIONER'S EARNINGS, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Petitioner's testimony, the Arbitrator finds that the Petitioner earned $600.00 per week. Again, there was no evidence which would rebut this testimony. He testified that he was paid weekly in cash by Jorge Perez.

WITH RESPECT TO ISSUE (H), WHAT WAS THE PETITIONER'S AGE AT THE TIME OF THE ACCIDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Petitioner testified he was 54 years old at the time of the 5/4/15 accident, and this is the finding of the Arbitrator.

WITH RESPECT TO ISSUE (I), WHAT WAS THE PETITIONER'S MARITAL STATUS AT THE TIME OF THE ACCIDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner testified and averred (see Arbx1) that he was married at the time of the accident, and this was verified by the testimony of his wife.

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 further finds that the following medical bills which total $24,018.43 are due and owing pursuant to Sections 8(a) and 8.2 (Fee Schedule) of the Act:

1. Dreyer (PX4)

Date of Service	Billed	Adjustment	Balance
5/4/2015	$964.00	$0.00	$964.00

5/12/2015	$102.00	$0.00	$102.00
5/12/2015	$344.00	$0.00	$344.00
5/15/2015	$164.00	$0.00	$164.00
5/18/2015	$29.00	$0.00	$29.00
5/19/2015	$124.00	$0.00	$124.00
5/22/2015	$3,508.00	$0.00	$3,508.00
TOTAL			**$5,235.00**

2. Presence Mercy (PX3)

Date of Service	Billed	Adjustment	Balance
5/4 and 5/5/2015	$8,309.29	$0	$8,309.29
5/12/2015	$9,367.10	$9,367.10	$0.00
5/13/2015	$1,607.00	$1,607.00	$0.00
5/18/2015	$1,361.00	$1,361.00	$0.00
5/18/2015	$2,104.00	$2,104.00	$0.00
5/22/2015	$68,364.39	$68,364.39	$0.00
5/24/2015	$1,297.40	$1,297.40	$0.00
5/30 and 5/31/2015	$9,797.80	$3,919.12	$5,878.68
6/8/2015	$4,995.10	$1,998.04	$2,997.06
6/16/2015	$1,346.00	$538.40	$807.60
6/17/2015	$1,318.00	$527.20	$790.80
TOTAL			**$18,783.43**

With regard to the prescriptions contained in the Wal-Mart records, submitted as Px5, the Arbitrator finds that the medications listed all appear to be related to the Petitioner's visits to Mercy/Dreyer, and involve pain, muscle relaxers, antibiotics and/or anxiety-related medications. As they all appear to be causally related to the work injury of 5/4/15, the Arbitrator awards the Petitioner $771.62 in out-of-pocket expenses, supported by the testimony of Petitioner's wife, Maria Santillanez.

With regard to the prescriptions listed in the Walgreens records, submitted as Px6, the Arbitrator finds these documents to not describe the medications that were purchased. Therefore, the out-of-pocket expenses claimed in Px6 are denied.

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

The Arbitrator finds that the Petitioner is entitled to temporary total compensation from 5/5/15 through 5/31/15. Petitioner was off work subsequent to his initial surgery. While the Petitioner was held off work, he testified that he started working for Minutemen in June 2015. He ended up sustaining a right foot injury with Minutemen in early June 2015, which he testified resulted in being held off work, noting there was even a period of tine he was released to work with Respondent while still being held off work for the right toe/foot injury. There simply is a paucity of subsequent medical records in support of any further TTD related to the 5/4/15 work injury.

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

Pursuant to §8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability for accidental injuries occurring on or after September 1, 2011:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's (AMA) "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors;

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that neither party has presented an AMA permanent partial impairment rating or report into evidence. Therefore, this factor carries no weight in the permanency determination.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a painter at the time of the accident. The evidence presented does not indicate whether Petitioner's injury prevented or prevents him from working as a painter. The Arbitrator notes the Petitioner returned to work at a warehouse job for Minutemen shortly after the initial surgery, and his employment history subsequent to that is not very well described in the record. There is a 2018 note which reflects specific restrictions, but the Petitioner did not describe his job duties with Respondent very well beyond that he worked as a painter, and the note provides rather general observations of the Petitioner's ability to perform prolonged standing. However, there is no reference to whether break periods would be sufficient to overcome this issue. This factor carries moderate weight in the permanency determination given that it stands to reason that a painter would need to be on his/her feet for extended periods of time, and the Petitioner's injury was to the left lower extremity.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 54 years old at the time of the accident. Neither party has presented evidence which tends to show the impact of the Petitioner's age on any

permanent disability related to the accident at issue here. As such, this factor carries minimal weight in the permanency determination.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that no evidence was presented which would tend to show whether the Petitioner's future earning capacity has been impacted by any permanent disability related to this case. That being said, the Petitioner has submitted a 2018 opinion of a podiatrist that he has limitations related to the left foot/ankle injury. This factor carries some reasonable weight in the permanency determination.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes the Petitioner sustained a significant injury to the left foot/ankle with a fracture that extended into an articulation. It appears that this was somewhat misdiagnosed initially, as the ER initially indicated surgery was not warranted, but Petitioner then underwent surgery with the involvement of extensive hardware. He testified that he had a subsequent infection, and the records and prescriptions support an extended period of antibiotic medications. The Petitioner testified he had three surgeries, the last being removal of the hardware. Unfortunately, the records in evidence do not appear to contain the reports from the latter two surgeries, so the Arbitrator has no way to confirm the specifics of what these surgeries entailed. The Petitioner also had multiple ER visits, which often included anxiety-related complaints. Given that the evidence supports that the Petitioner likely needed surgery right after the injury and suffered for a period of time because it wasn't prescribed, and then had to deal with an infection of some sort, while the visits seem somewhat excessive, his feelings of anxiety appear to be warranted. The Petitioner testified to ongoing pain and swelling in the left foot/ankle, and podiatrist Dr. Taha on 4/19/18 opined that the Petitioner would have ongoing difficulty with prolonged standing, uneven surfaces, and the use of steel-toed boots. The lack of supporting medical records after 2015 is a factor in the permanency award as well. This factor carries the greatest weight in the permanency determination.

Based on the above factors, the record taken as a whole and a review of prior Commission awards with similar injuries and similar outcomes, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of the loss of use of 37.5% of the left foot pursuant to §8(e) of the Act.

WITH RESPECT TO ISSUE (N), IS THE RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

The Respondent provided no evidence in support of entitlement to a credit for pre-hearing payments of workers compensation benefits. The Arbitrator does note that many of the medical bills submitted into evidence reflect significant adjustments, often resulting in $0 balances, and the award of medical benefits is of the outstanding balances, providing Respondent with the benefit of the write offs/adjustments.

WITH RESPECT TO ISSUE (O), LIABILITY OF THE INJURED WOERKERS' BENEFIT FUND (IWBF), THE ARBITRATOR FINDS AS FOLLOWS:

Based on the evidence presented as Px9, the Arbitrator finds that the Respondent was uninsured on 5/4/15. The Arbitrator found the Petitioner's testimony credible. The Arbitrator sees no reason why Jorge Perez would be providing t-shirts with Respondent's name on it if he wasn't employed by Respondent. Respondent was provided notice of the hearing and did not appear at the hearing to present evidence to rebut Petitioner's testimony. The Arbitrator finds sufficient evidence was presented that it is more likely than not that he was employed by Respondent on 5/4/15, and that the Respondent was uninsured with regard to workers' compensation on 5/4/15.

The Arbitrator notes that all of the awards made to Petitioner in this matter involve the liability of both the Respondent and, based on its uninsured status, the IWBF.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC017725
Case Name	Bianca Taylor v. Berwyn School District 98
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0130
Number of Pages of Decision	14
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Aaron Bryant
Respondent Attorney	Peter Stavropoulos

DATE FILED: 3/24/2025

/s/Raychel Wesley,Commissioner
Signature

25IWCC0130

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

BIANCA TAYLOR,

Petitioner,

vs. NO: 22 WC 17725

BERWYN SCHOOL DISTRICT 98,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner's current condition of ill-being is causally related to the December 4, 2019 accidental injury as well as entitlement to prospective medical care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for ulnar shortening osteotomy as well as post-operative care as recommended by Dr. Labriola, as provided in §8(a) 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.

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

March 24, 2025

/s/ *Raychel A. Wesley*

RAW/mck

O: 2/19/25

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC017725
Case Name	Bianca Taylor v. Berwyn School District 98
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	Rachael Sinnen, Arbitrator

Petitioner Attorney	Aaron Bryant
Respondent Attorney	Peter Stavropoulos

DATE FILED: 7/23/2024

/s/ Rachael Sinnen, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JULY 23, 2024 4.99%

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)

Bianca Taylor
Employee/Petitioner

v.

Berwyn School District 98
Employer/Respondent

Case # **22** WC **017725**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Rachael Sinnen**, Arbitrator of the Commission, in the city of **Chicago**, on **5.6.24**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **12.4.19**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**n/a**; the average weekly wage was $**n/a**.

On the date of accident, Petitioner was **29** 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 $**n/a** for TTD, $**n/a** for TPD, $**n/a** for maintenance, and $**n/a** for other benefits, for a total credit of $**n/a**.

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

ORDER

Respondent shall approve and pay for Petitioner's ulnar shortening osteotomy and necessary post-operative care as prescribed by Joanne Labriola, M.D. as provided in Section 8(a) and 8.2 of the Act.

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

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

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

Signature of Arbitrator

July 23, 2024

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Bianca Taylor,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 22WC017725
Berwyn School District 98,	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on May 6, 2024, in Chicago, Illinois before Arbitrator Rachael Sinnen on Petitioner's Request for Hearing pursuant to Section 19b under the Illinois Workers' Compensation Act "Act." Issues in dispute include causation and prospective medical. Arbitrator's Exhibit "AX" 1.

Accident of December 4, 2019

Petitioner, a special needs teacher at Berwyn School District 98, was sitting on the floor with her students on December 4, 2019. Petitioner quickly pushed herself up from the ground with her hands in response to a student in crisis. Petitioner injured her right hand while pushing herself up off the floor. Petitioner felt immediate pain in her right-hand wrist and heard an audible pop when she pushed herself off of the ground.

Summary of Medical Records

Petitioner first sought treatment at the Edward-Elmhurst clinic on December 4, 2019, where she reported an injury to her outstretched right hand, which caused pain in the wrist and hand. She reported no previous injuries to that area. The doctor took x-rays, provided a hand splint, and referred her to orthopedist, Jeffery Meisles, M.D. PX1.

Petitioner presented to Dr. Meisles on December 23, 2019, whose exam revealed a positive load and shift test over when pressing on the scaphoid tuberosity and moving the wrist from radial to ulnar deviation. Dr. Meisles recommended a right wrist MRI and continued use of splint. PX1.

Petitioner underwent a right wrist MRI on January 8, 2020, which revealed minimal dorsal sublation of the distal radial ulnar joint; distal radius ulnar joint instability and extensor carpi ulnaris tendinosis. PX1.

Petitioner followed up with Dr. Meisles on January 27, 2020, who prescribed Naproxen and occupational therapy. Petitioner attended occupational therapy for her right wrist and hand at Edward-Elmhurst from March 9, 2020 to April 15, 2020. PX1.

Petitioner followed up with Dr. Meisles on May 20, 2020, where she reported continued pain in the ulnar side of her wrist and occasional tingling in fingers. Dr. Meisles also performed a cortisone injection in her right wrist. PX1.

Petitioner followed up with Dr. Meisles on August 10, 2020, where she reported continued pain in the ulnar side of her wrist. Dr. Meisles prescribed Meloxicam and referred her to orthopedic surgeon, Joanne Labriola. PX1.

Petitioner first saw Dr. Labriola on November 5, 2020, where she reported continued pain in the ulnar side of her wrist. Dr. Labriola diagnosed Petitioner with radioscaphoid impaction syndrome of the right wrist and recommended a right wrist arthroscopy with debridement and synovectomy. PX2.

On December 16, 2020, Petitioner underwent a Section 12 exanimation with Dr. Michael Vender at Respondent's request. Dr. Vender diagnosed Petitioner with a tear of the triangular fibrocartilage complex of the right wrist which was consistent with the mechanism of injury described by Petitioner. She also appeared to have a small dorsal wrist ganglion, which Dr. Vender related to her injury. Dr. Vender noted that Petitioner had the developmental condition of ulnar positive variance where her ulna is longer than the adjacent radius at the level of the wrist. Dr. Vender noted that Petitioner's ulna could complicate her treatment and prognosis. Dr. Vender opined that, as of the date of his examination, Petitioner's treatment had been reasonable and necessary. Dr. Vender recommended a wrist arthroscopy to debride the suspected triangular fibrocartilage complex tear. Dr. Vender did note that an ulnar shortening may be needed at the same time as the wrist arthroscopy for the triangular fibrocartilage complex tear. He also recommend an excision of the dorsal wrist ganglion. Dr. Vender estimated MMI within 3-4 months postoperatively. Restrictions were not needed as she was currently working her normal activities. RX1.

On February 19, 2021, Petitioner underwent a right wrist arthroscopy with debridement and synovectomy performed by Dr. Labriola. Pre and postoperative diagnosis was right wrist radioscaphoid impaction syndrome and ulnar impaction syndrome. There was no evidence of a TFCC tear. PX2.

Petitioner followed up with Dr. Labriola on March 4, 2021, following surgery. The doctor recommended physical therapy. PX2. Petitioner attended physical therapy for her right wrist at Rush University from March 8, 2021 through May 5, 2021. PX3.

Petitioner followed up with Dr. Labriola on June 3, 2021, where she reported continued right wrist pain. The doctor took an x-ray, which revealed a 2mm ulnar positive variance. The doctor recommended and performed a lidocaine injection into Petitioner's right wrist on this date. PX2.

Petitioner followed up with Dr. Labriola on August 5, 2021, where she reported better range of motion but continued pain in her left wrist. The doctor offered a second surgery, which would involve a ganglion cyst removal or home exercises and over the counter pain medications. Petitioner opted for home exercises. PX2.

Respondent's Section 12 examiner, Dr. Vender, authored an addendum report dated November 3, 2021, in which he reviewed the operative report from February 19, 2021, records from Dr. Labriola, physical therapy records, records from DuPage Medical Group, and records from Dr. Wysocki. He noted that the TFCC was found to be intact, and the only thing done was to debride synovitis. Dr. Vender opined that Petitioner was at maximum medical improvement (MMI) and there was no indication for further care. RX2.

Petitioner returned to Dr. Labriola on February 10, 2022, where she reported right wrist pain and tenderness over the ganglion cyst. The doctor recommended a topical gel before surgery. Petitioner returned to Dr. Labriola on March 3, 2022, where she reported right wrist pain and tenderness over the ganglion cyst. The doctor recommended a ganglion cyst removal. PX2.

On March 30, 2022, Petitioner saw Dr. Vender for an updated Section 12 examination. Dr. Vender noted that at the time of his initial evaluation it was thought that Petitioner had a tear of the TFCC along with a dorsal wrist ganglion. Since his last evaluation, Petitioner had undergone surgery and although the TFCC was felt to be intact, synovitis was debrided. Petitioner's current complaints were consistent with the ganglion, which Dr. Vender opined was causally related to her work injury. Dr. Vender continued to recommend exploration of the dorsal wrist to either find a definite ganglion or possibly thickened tissue which could be debrided, then followed by a course of physical therapy. Petitioner could continue to perform her normal work activities without restriction. Dr. Vender opined that Petitioner had reached MMI with respect to the wrist arthroscopy, however, if surgery for the dorsal wrist ganglion was performed, MMI would be reached approximately three months after. RX3.

Dr. Labriola performed the right wrist ganglion cyst removal on June 21, 2022. PX2.

Petitioner returned to Dr. Labriola on July 7, 2022, where she reported improvement following surgery. The doctor recommended she attend physical therapy. PX2. Petitioner underwent physical therapy at Premier Physical Therapy starting on July 9, 2022. PX4. Petitioner returned to Dr. Labriola on August 4, 2022, where she reported ulnar sided pain in her right wrist. The doctor recommended she continue with the physical therapy. PX2. Petitioner completed physical therapy at Premier on September 23, 2022. PX4.

Petitioner returned to Dr. Labriola on September 15, 2022, where she reported ulnar sided pain in her right wrist. The doctor offered ulnar shortening surgery or to continue with another round of physical therapy. Petitioner opted with additional physical therapy. PX2. Petitioner attended physical therapy for her right wrist at Rush University from October 13, 2022 through October 25, 2022 and again from April 7, 2023 through May 9, 2023. PX3.

Petitioner returned to Dr. Labriola on May 4, 2023, where she reported ulnar sided pain in her right wrist and had ulnar sided tenderness. Examination revealed Petitioner had tenderness to palpation over the TFCC and positive ulnar grind. X-rays revealed a 2.5 mm ulnar positive variance and she diagnosed Petitioner with ulnar impaction syndrome. The doctor recommended an ulnar shortening osteotomy in Petitioner's right wrist. PX2.

Dr. Vender saw Petitioner again on August 9, 2023, following which he authored a report dated August 20, 2023. Dr. Vender noted that Petitioner was reporting new symptoms of pain in her first web space with a tingling sensation in her hand and forearm. Dr. Vender opined that Petitioner was status post wrist arthroscopy and excision of a dorsal wrist ganglion. RX4.

To date, the ulnar shortening osteotomy has not been approved by Respondent and Petitioner wishes to proceed with the recommended surgery.

Testimony of Respondent's Section 12 Examiner, Dr. Vender

Dr. Vender testified via evidence deposition on March 15, 2024. He opined that initially he diagnosed Petitioner with a TFCC tear that was causally related to the work accident. RX5 at 11. He also noted that Petitioner exhibited an ulnar positive variance, a pre-existing condition, that could have been addressed at the same time the TFCC tear was repaired. RX5 at 11-12.

Regarding the November 3, 2021, addendum report, Dr. Vender testified that his examination of the operative report revealed that there was no tear of the TFCC, merely nonspecific changes described as synovitis. RX5 at 14. Dr. Vender considered the surgery to be, "a normal arthroscopy." In his opinion, Petitioner had reached MMI and required no further treatment. RX5 at 15 – 16.

Dr. Vender also testified regarding his second in person evaluation, which took place on March 30, 2022. RX5 at 16. Dr. Vender opined that Petitioner's ganglion cyst was causally related to the work accident, and thought it was reasonably necessary to perform surgery. RX5 at 18-19.

Dr. Vender went on to testify about his third in person evaluation, which occurred on August 9, 2023, following which he authored a report dated August 20, 2023. As part of the history, Petitioner reported new symptoms of pain in her first web space. Dr. Vender noted new non-physiologic findings of a tingling sensation in her hand and forearm. Dr. Vender diagnosed Petitioner with status post wrist arthroscopy and excision of a dorsal wrist ganglion. The reason there were no additional diagnosis was the lack of any other pathology in her wrist. RX5 at 20-24.

With regard to Petitioner's prognosis, Dr. Vender offered the following testimony: "Well, we've already gone through two very basic procedures. The first one was the wrist arthroscopy. And with the wrist arthroscopy, nothing was really found. Then you do another basic procedure in the way of excision of the dorsal wrist ganglion, and she's still not better. Then she develops a new symptom in the way of her thumb or her first web space. She now has findings on physical examination of a non-physiologic nature, including the tingling sensation when palpating. And also, now, she has different areas of tenderness. So it's not even localized anymore. So for

whatever reason, she's going in the wrong direction as far as her physical examination without any true objective findings to support that." RX5 at 24.

Overall, Dr. Vender opined that Petitioner required no further medical treatment, and that proceeding with an ulnar shortening was not reasonable and necessary. Petitioner was at maximum medical improvement. RX5 at 24-27.

Testimony of Petitioner's Treater, Dr. Joanne Labriola

Joanne Labriola, M.D. is a board-certified orthopedist that specializes in hand surgery. PX5 at 4-5. Dr. Labriola testified that Petitioner had an ulnar positive variation, which means that the distal ulna compared to the distal radius (in the wrist) is taller, and that leads to oftentimes a thinner TFCC, which can more easily tear, and also the height differential can cause what's called ulnar impaction. That's when the ulna hits against the carpus or the wrist bones with certain motions, especially with pressure on the wrist and moving her wrist over to that ulnar side. PX5 at 9.

Dr. Labriola defined the TFCC as the triangular fibrocartilage complex. The TFCC is the area of the wrist in between the ulnar side of the carpus and the distal ulna. Tenderness to the TFCC or just tenderness in that joint space in the ulnar carpal joint, can be related to ulnar impaction. PX5 at 9.

Dr. Labriola diagnosed Petitioner with a current condition of ulnar impact syndrome. PX5 at 16. Dr. Labriola testified that this condition causes pain in the patients' wrist: "the distal ulna is taller than the distal radius. And when that happens, very commonly it causes pain as people do gripping and lifting and certain motions with their wrist, because in certain positions of the wrist, the bones can kind of touch and hit together. You do have kind of a shock-absorbing meniscus pad on that side. It's called your TFCC or triangular fibrocartilage complex. The people with a longer ulna have a thinner meniscus, which even if it's intact, they can still have the bones somewhat hit together or cause pain when that happens." PX5 at 16.

Dr. Labriola testified that the ulnar shortening osteotomy to repair the diagnosed ulnar impaction syndrome is reasonable medical treatment, medically necessary and related to her December 4, 2019 work accident. "Yes. I think it's medically reasonable and necessary at this point in time. I do think it's been a persistent problem since her original injury that we attempted to treat in different ways, but it's prevented her from returning to work without pain, and I think the next step would be an ulnar shortening osteotomy." PX5 at 24-25.

Dr. Labriola testified that she disagreed with Dr. Vender, specifically his findings regarding the results of the x-rays and examination. Dr Labriola testified that the x-ray findings of a 2.5 mm ulnar variance, plus positive tenderness and ulnar grinding, and her lack of improvement from conservative treatment made her a candidate for an ulnar shortening osteotomy. PX5 at 20-21.

Dr. Labriola further disagreed with Dr. Vender's opinion that Petitioner was not a surgical candidate because the initial arthroscopic surgery did not reveal a TFCC tear. While Dr. Labriola admitted that Petitioner never had a TFCC tear, Dr. Labriola testified that the lack of tear does not

remove the fact that Petitioner still had an ulnar variance and ulnar impaction syndrome. PX5 at 21.

Dr. Labriola noted that Petitioner was able to continue to work without any restrictions following her surgeries. As of her last visit, Petitioner had a restriction of no lifting greater than 10 pounds and ground-level work pending surgery. These restrictions did not prevent Petitioner from performing her preinjury occupation. PX5 at 29-30.

CONCLUSIONS OF LAW

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

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

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).

Both Drs Labriola and Vender initially suspected that Petitioner had a TFCC tear, which they both causally related to the work accident. Although the TFCC was felt to be intact during surgery, synovitis was debrided. Following Petitioner's initial surgery, both doctors opined that Petitioner's ongoing complaints were consistent with a ganglion cyst, which both doctors opined was causally related to her work injury. Both doctors recommended removal, which Petitioner ultimately underwent.

Both doctors acknowledge that Petitioner has an ulnar positive variance, a pre-existing condition where the ulna is longer than the radius. The Arbitrator places significant weight on the fact that Dr. Vender conceded in his initial report that Petitioner's ulnar positive variance could complicate her treatment and prognosis. At the time of his initial report (before Petitioner's first surgery to address the suspected TFCC tear), Dr. Vender opined that an ulnar shortening may be needed at the same time as the wrist arthroscopy as well as an excision of the dorsal wrist ganglion. The Arbitrator acknowledges that Petitioner's dorsal wrist ganglion and ulna were not addressed in the initial surgery but this fact does not defeat Petitioner's claim.

The Arbitrator notes that Dr. Vender changed his opinion with regards to the need for an ulnar shortening when he saw Petitioner for a third examination on August 9, 2023. At that point, Petitioner had already undergone a second surgery (the excision of the dorsal wrist ganglion) and was now being recommended for a third surgery (the ulnar shortening). Dr. Vender opined that

Petitioner's current complaints consisted of new symptoms of pain in her first web space. Dr. Vender also noted new non-physiologic findings of tingling in her hand and forearm as well as new areas of non-localized tenderness. Dr. Vender opined that there were no objective findings to support Petitioner's complaints. As a result, Dr. Vender no longer opined that Petitioner needed an ulnar shortening osteotomy. The Arbitrator does not find Dr. Vender's opinions on this matter as persuasive as those of Dr. Labriola.

Dr. Labriola explained in her testimony that the ulnar shortening osteotomy was needed to correct Petitioner's ulnar impaction syndrome. Dr. Labriola explained that Petitioner has remained symptomatic following the work accident, x-rays confirmed a 2.5 mm ulnar variance, and Petitioner has presented with ulnar tenderness and grinding during exams, which is all consistent with ulnar impaction syndrome. The Arbitrator notes that Dr. Labriola never noted any inconsistent findings or nonspecific complaints and even Dr. Vendor's three previous reports did not reveal any inconsistencies in Petitioner's report of symptoms.

The fact that Petitioner did not have a TFCC tear does not affect whether her current condition of ill-being is causally related and whether she needs the ulnar shortening osteotomy. Dr. Labriola testified to this effect at length and even Dr. Vender admitted that it is possible that a symptomatic patient with an ulnar positive variance, but no TFCC tear, could still require surgery. See RX5 at 34-35.

The Arbitrator acknowledges that Petitioner was born with the ulnar variance. However, the evidence shows she was asymptomatic until her December 4, 2019 work accident. Petitioner testified that prior to her December 4, 2019 work accident, she did not have any symptoms or medical treatment to her right wrist. Petitioner's credible testimony is corroborated with the medical history she provided to her treating physicians including the initial medical record from the Edward-Elmhurst clinic.

Based on the above and the record as a whole, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to the injury.

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

Having found for Petitioner on the issue of causation and having found the medical opinions of Dr. Labriola to be more persuasive than those of Dr. Vender, the Arbitrator finds that Petitioner is entitled to prospective medical care.

Dr. Labriola credibly testified that the ulnar shortening osteotomy is medically reasonable, necessary to treat Petitioner's current condition of ulnar impact syndrome and is related to Petitioner's December 4, 2019 work accident. Petitioner testified that she would proceed with the surgery if approved.

As a result, Respondent shall approve and pay for Petitioner's ulnar shortening osteotomy and necessary post-operative care as prescribed by Joanne Labriola, M.D. as provided in Section 8(a) and 8.2 of the Act.

It is so ordered:

Arbitrator Rachael Sinnen

July 23, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC012278
Case Name	Randy Bynum v. Custom Staffing Industrial
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0131
Number of Pages of Decision	21
Decision Issued By	Christopher Harris, Commissioner, Marc Parker, Commissioner

Petitioner Attorney	Kirk Caponi
Respondent Attorney	Kenneth Werts, Julie Webb

DATE FILED: 3/25/2025

/s/Marc Parker,Commissioner
Signature

Special Concurrence: /s/Christopher Harris,Commissioner
Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Randy Bynum,

Petitioner,

vs. NO: 17 WC 012278

Custom Staffing Industrial,

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 occupational disease, permanent partial disability, and disablement per Section 1(d) – (f) of the Occupational Diseases Act, 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 notes that Petitioner refiled a Petition for Review on April 8, 2024. Respondent filed a motion to dismiss the refiled Petition for Review on April 18, 2024, which was considered simultaneously with the Petition for Review of the Arbitrator's Decision at oral argument. While the majority considered the motion to dismiss the Petition for Review and Respondent's arguments related thereto, the majority has affirmed the Arbitrator's decision to deny benefits to the Petitioner which disposes of the case on its merits. Accordingly, to the extent a procedural ruling remains necessary for the record, the Respondent's motion is denied by the majority.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 15, 2020, is hereby affirmed and adopted.

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

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

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

March 25, 2025

/s/ *Marc Parker*
Marc Parker

MP:yl
o 3/13/25
68

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

SPECIAL CONCURRENCE

Just as a Petitioner may lose his right to proceed before the Commission by failing to file a timely petition for review, he may also lose his right to be heard by failing to exercise due diligence in pursuing his cause before the Commission. *Contreras v. Indus. Comm'n*, 306 Ill. App. 3d 1071, 1075-76 (1999); *See also Bromberg v. Indus. Comm'n*, 97 Ill. 2d 395 (1983).

This claim proceeded to arbitration hearing on August 13, 2020 with a decision filed on October 15, 2020 denying Petitioner's claim for workers' compensation benefits. Petitioner timely filed his Petition for Review on November 9, 2020; however, no further action was taken, and no return date on review was set by the Commission since the authenticated transcript was never filed. Petitioner re-filed the November 9, 2020 Petition for Review on CompFile on April 8, 2024, and subsequently uploaded the arbitration hearing transcript on April 15, 2024. The Petitioner took no action on this claim between November 9, 2020 and April 15, 2024, and failed to use the available remedies under Sections 19(b) and 19(e) of the Act to timely perfect his review before the Commission.

The Petitioner's failure to act for nearly four years demonstrates a lack of due diligence in pursuing their claim. While I agree with the Majority's final decision, I believe that Respondent's Motion to Dismiss should have been granted.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION 25IWCC0131
NOTICE OF ARBITRATOR DECISION

BYNUM, RANDY Case# **17WC012278**
Employee/Petitioner

CUSTOM STAFFING INDUSTRIAL
Employer/Respondent

On 10/15/2020, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.11% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0755 CULLEY & WISSORE
KIRK A CAPONI
300 SMALL ST SUITE 3
HARRISBURG, IL 62946

1662 CRAIG & CRAIG LLC
KENNETH F WERTS
115 N 7TH ST PO BOX 1545
MT VERNON, IL 62864

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

RANDY BYNUM
Employee/Petitioner

v.

CUSTOM STAFFING INDUSTRIAL
Employer/Respondent

Case # **17** WC **12278**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin**, on **August 13, 2020**. 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 **Sections 1(d)-(f) of the Occupational Diseases Act**

FINDINGS

On **September 30, 2015**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did 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's earnings were **$4,903.95** and his average weekly wage was **$767.12**.

On the date of accident, Petitioner was **57** years of age, ***married*** with **1** dependent child.

Petitioner claims no medical.

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

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

ORDER

The Arbitrator finds that Petitioner failed to prove by a preponderance of the evidence that he has an occupational disease arising out of and in the course of his employment. Therefore, no benefits are awarded.

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

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

Signature of Arbitrator

10/7/20
Date

OCT 15 2020

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

RANDY BYNUM,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 17-WC-12278
	)	
CUSTOM STAFFING INDUSTRIAL,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Herrin on August 13, 2020. An Amended Application for Adjustment of Claim was filed on April 26, 2017 wherein Petitioner alleges he sustained an occupational disease of his lungs, heart, pulmonary system and respiratory tracts as a result of inhalation of coal mine dust, including, but not limited to, coal dust, rock dust, fumes and vapors for a period in excess of 39 years. The Amended Application alleged a date of last exposure of September 30, 2015.

TESTIMONY

Petitioner lives in Carrier Mills. He was 62 years old and married at the time of arbitration. Petitioner graduated from Carrier Mills Stonefort High School. He attended SIC Junior College and received his Associate of Applied Science in computer programing. Petitioner testified that he had a welding certificate and other such certificates that go along with the coal mining field. Petitioner worked approximately 38 years in coal mining with close to 36 years being underground. In addition to coal dust, Petitioner was regularly exposed to and breathed silica dust, roof bolting glue fumes, and diesel fumes.

Petitioner last worked in the coal mine on September 30, 2015, for Respondent at College Grove Mine. On his last day of employment he was 58 years old. His job classification was truck driver. Petitioner testified that he was exposed to and breathed coal dust on that day. Petitioner testified that this was his last day working in the coal mine because he was laid off. He decided to end his mining career at that point because his health was starting to go down. He testified that his breathing was getting worse and he had other

health problems like bad knees. He later found out that he was diabetic. Petitioner has not had any employment since leaving the mining industry. Petitioner testified that he owned a restaurant for approximately one year post mining.

Petitioner began his mining career in 1977 with Harrisburg Coal Company as a general laborer. One of his job duties was to shovel coal when it spilled off the tracks. He would fill in for anyone who was off such as a shooter. He testified that before they had continuous miners, someone would undercut the coal and then a worker would come in and drill it. The shooter would then put 12 shells in the hole and compressed air would shoot the coal down. He testified that this was a dusty job. Petitioner testified that he also filled in at times carrying roof bolts and rock dust bags to the face of the mine. Petitioner worked at Harrisburg Coal for approximately two years until the mine shut down. Next he worked at Sahara Coal Company for two years. At Sahara he was a shuttle car operator. The shuttle car takes the coal from the continuous miner and dumps it on the belt which takes it out of the mine. After the Sahara mine shut down, Petitioner went to work at Brushy Creek Coal Company. He worked there from 1981 to 2000. At Brushy Creek he started off as a laborer, more or less doing all the fill in jobs. He also worked as a shuttle car operator and roof bolter. As a roof bolter he drilled holes in the roof through the rock to support the top. He testified that they used conventional roof bolts that he inserted in the roof and tied up. They also used glue bolts that he would stick in the roof and spin. He testified that glue bolts were an epoxy type which had an odor that would take his breath away if he did not have enough air in the place where he was working. He also worked as a scoop operator which cleaned up all the places and hauled supplies in on the unit. He worked as a rock duster for a while. He would use a big, long tank to rock dust the top, sides and floors. He was also a miner operator that cut the coal at the face of the mine. Petitioner also worked as a repairman at Brushy Creek. He would repair the machines at the face or wherever they broke down. He worked as a mine examiner going all through the mine making sure there was plenty of rock dust and air and that there was no excessive methane gas. He also worked on a rock crew which would go into the intakes and returns where rock would fall and narrow down the area so not as much air would move. The crew would go in and knock the supports out, let it fall, clean it out and re-roof bolt. He also worked on top in the prep plant as a repairman and as a gob truck driver.

In 2000, Petitioner went back to school for the computer programming degree. After he completed his degree, he worked for SIC at the Golconda Job Corps teaching basic computer skills. He worked there for approximately one year until his wife became sick with cancer and he had to go back to the mines for insurance. He returned to the coal mines in 2003 with American Coal Company. He worked there as a laborer. He worked at American Coal for approximately 11 years until that mine shut down in 2015. Petitioner saw an ad in the paper for Custom Staffing. He was hired by Respondent and sent to the Cottage Grove Mine in Harrisburg. He worked there as a truck driver hauling rock and coal on the surface. He testified that he was exposed to coal dust while driving a truck on the surface.

Petitioner testified that he first noticed breathing problems while working at American Coal. He testified that it was getting a lot harder to breathe. If he tried to overextend himself, he could hardly breathe. He testified that from the time he first noticed breathing problems until he left the mine in 2015, his breathing symptoms got a little bit worse. He testified that since leaving the mine, his breathing has remained about the same. He testified that he has a "real hard time breathing." Petitioner testified that he could not walk a couple hundred feet before becoming short of breath. He testified that he was out of breath walking from the parking lot to the front door for the arbitration. Petitioner testified that he could not climb a whole lot of stairs before he would have to stop and rest. Petitioner testified that his breathing affects his daily life. There are a lot of things that he used to do that he cannot do anymore. He used to like to hunt and fish but now if he kills a deer it is just not worth trying to drag it out. He testified that he likes to volunteer at the local soup kitchen, but he has to take a lot of breaks. Petitioner testified that he has ten acres, four acres of which he mows. He testified that the mowing is not too bad because he has a zero turn, but it takes awhile to get it weed-eated. It takes two to three days to get it all done .

Petitioner testified that Dr. Alexander is his treating physician. He testified that he has talked to Dr. Alexander about his breathing difficulties and that Dr. Alexander was aware that he worked in the mines. Petitioner saw Dr. Istanbouly relating to this claim in February 2017. Dr. Istanbouly told him that he had black lung. He shared that diagnosis with Dr. Alexander. Petitioner testified that he has never been a smoker. Petitioner testified that he has high blood pressure and is a diabetic. He testified that he had knee surgeries as well as rotator cuff and gallbladder surgeries.

Petitioner testified that he left Brushy Creek because the mine shut down. He testified that after the mine shut down, he filed a claim for state black lung benefits against Brushy Creek. Petitioner testified that his attorneys were Culley & Wissore. Petitioner testified that a chest x-ray was performed as part of that claim. The chest x-ray was interpreted as positive for black lung. Petitioner could not recall whether he had pulmonary function testing performed as part of his claim against Brushy Creek. Petitioner settled his claim against Brushy Creek for $25,000.00.

Petitioner testified that Respondent is an employment agency. He was actually employed by Respondent, but they assigned him out to Cottage Grove which is a Peabody Mine. Petitioner began working at Cottage Grove on August 17, 2015. His last day was September 30, 2015. He testified that he was laid off on that day. Petitioner testified that someone from Peabody told him that he was not to work so he called Respondent was told that he was laid off. Petitioner testified that if he had not been told that day that he was not return, he would have come back for his next shift.

Petitioner owned Bynum's Route 45 Barbeque which was a little mom and pop barbeque place that he operated. He testified that he applied for Social Security Disability in November 2016 and alleged his date of disablement to be September 15, 2016 which would have been about when he finished with his restaurant. Petitioner was awarded Social Security Disability benefits in December 2016. He has not worked anywhere since closing his restaurant. Petitioner testified that now he spends his time mostly babysitting his four year old granddaughter and helping out at the soup kitchen.

Petitioner testified that from time to time over the years he underwent chest x-ray screenings by NIOSH for black lung. After the chest x-ray was taken and interpreted, they would write to him and tell him what the chest x-ray revealed. Petitioner testified that he did not bring any of those letters with him to arbitration.

Dr. Suhail Istanbouly examined Petitioner on February 28, 2017, at the request of Petitioner's counsel. Dr. Istanbouly is board certified in internal medicine, pulmonary medicine and critical care medicine. Dr. Istanbouly testified that during the course of his practice he has had numerous occasions to work with and treat coal miners or former coal miners. He sees patients with emphysema, COPD, chronic bronchitis, asthma, coal workers' pneumoconiosis and lung cancer. For the past several years Dr. Istanbouly has performed five to seven examinations a month at the request of a claimant attorney.

Dr. Istanbouly noted that Petitioner worked as a coal miner for 38 to 39 years. In the last year he worked on top as a supply man. The majority of his coal mining career was underground. Petitioner was a lifelong never smoker. Petitioner described coughing on and off intermittently for at least the past two years. Dr. Istanbouly testified that chronic cough could be a manifestation of coal workers' pneumoconiosis. He testified that Petitioner could also have chronic bronchitis and coal workers' pneumoconiosis at the same time. At the time of his evaluation Petitioner complained of exertional dyspnea where he would get short of breath by walking half a block to one block. This had been his baseline capacity for the prior six months. Dr. Istanbouly testified that Petitioner's exercise ability was definitely diminished compared to a normal person at his age. Petitioner had gained 50 pounds since his retirement.

Dr. Istanbouly reviewed the chest x-ray from Harrisburg Medical Center. He also reviewed Dr. Smith's B-reading. He testified that he agreed with Dr. Smith's reading. Dr. Smith noted that there were pleural densities which could have been related to subpleural fat deposits and less likely to chest wall plaques in profile A/2 in both the mid and lower lung zones. Dr. Istanbouly testified that he interpreted it as having some areas of pleural thickening. He testified that according to the medical literature, this could be a manifestation of coal workers' pneumoconiosis. Dr. Istanbouly found Petitioner's spirometry which was performed at Harrisburg Medical Center to be within the range of normal.

Dr. Istanbouly concluded that based on his occupational history, symptoms and chest x-ray findings, Petitioner had simple coal workers' pneumoconiosis related to long term coal dust inhalation. He also testified that Petitioner's long-term inhalation was a significant contributing factor to his respiratory symptoms. Dr. Istanbouly testified that Petitioner could have chronic bronchitis caused by his long-term coal dust inhalation. Dr. Istanbouly testified that in light of his coal workers' pneumoconiosis and chronic bronchitis, Petitioner could not have any further exposure to the environment of a coal mine without endangering his health.

Dr. Istanbouly testified that in order to have pneumoconiosis one must have, in addition to coal mine dust deposited in his lungs, a tissue reaction to it. That tissue reaction can be called scarring or fibrosis. The scarring of coal workers' pneumoconiosis cannot perform the function of normal healthy lung tissue. By definition, if one has coal workers' pneumoconiosis, he has some impairment in the function of the lung at the site of the scarring whether it can be measured by spirometry or not. Dr. Istanbouly testified that if one wanted to know whether or not a specific exposure had caused impairment of a miner's lungs, he would need to have serial pulmonary function tests, pretest and post-test. Dr. Istanbouly testified that if reads a person's x-ray as positive for coal workers' pneumoconiosis, and he has enough exposure as a coal miner to cause coal workers' pneumoconiosis that is a sufficient basis for Dr. Istanbouly to make a diagnosis of coal workers' pneumoconiosis. He testified that a person can have coal workers' pneumoconiosis and have a normal chest x-ray. It is something that can be found on both pathology and autopsy and not show up on the chest x-ray. He testified that a negative chest x-ray can never rule out the existence of coal workers' pneumoconiosis.

Petitioner did not relate to Dr. Istanbouly a past medical history of respiratory disease, including black lung. Dr. Istanbouly did not review any treatment records regarding Petitioner. Dr. Istanbouly testified that Petitioner related intermittent cough that was dry, mild in intensity, mostly in the morning. He related no triggers for that cough including smoke, dust or fumes. He related dyspnea on exertion. Dr. Istanbouly testified that same can be due to things other than respiratory disease. Deconditioning is a known cause of dyspnea on exertion. Dr. Istanbouly testified that Petitioner was probably not as physically active as he was while being in the coal mine.

Petitioner did not relate to Dr. Istanbouly taking any breathing medications or that he had ever done so in the past. Petitioner did not tell Dr. Istanbouly that he left work at the mine due to respiratory disease or symptoms. He did not report to Dr. Istanbouly that he was incapable of performing the physical demands of his last job at the mine from a respiratory standpoint. Dr. Istanbouly testified that the spirometry performed on Petitioner was normal. His forced vital capacity of 85% revealed no indication of a restriction. His FEV1/FVC ratio of 80% revealed no evidence of obstruction.

Dr. Istanbouly testified that Dr. Smith did not see a calcified granuloma or the presence of emphysema on the film that he interpreted. Dr. Istanbouly is neither an A or B-reader. Dr. Istanbouly testified that he does not provide profusion ratings on the films he interprets. When he interprets a film for black lung, he determines whether the film is positive or negative for black lung and if it is positive then he classifies the film as mild, moderate or severe. He classified Petitioner's film as mild. He could not say whether the film revealed a 1/0 or a 0/1 profusion. Dr. Istanbouly testified that in his written report his sole diagnosis for Petitioner was simple pneumoconiosis. He was not sure how long that abnormality had been present on chest x-ray. He testified that he would expect it to have been there for a long time and could go back decades. With regard to his chronic bronchitis, according to Petitioner, it had been present for two years.

Dr. Henry K. Smith, board certified radiologist and B-reader, interpreted Petitioner's chest x-ray dated March 23, 2015. Dr. Smith found the chest x-ray to be positive for pneumoconiosis, profusion 1/0 with P/P opacities in the bilateral middle and lower lung zones. Dr. Smith also interpreted chest x-ray of October 10, 2016, as positive for pneumoconiosis with P/S opacities in the bilateral middle and lower lung zones, profusion 1/0. Dr. Smith also noted bilateral subpleural fatty deposits. Dr. Smith found both films to be quality 1.

Dr. Cristopher Meyer reviewed PA chest radiographs from Harrisburg Medical Center dated March 23, 2015, and October 10, 2016. Dr. Meyer testified that the 2015 examination was of borderline quality. He rated it quality 3 due to mottle. He testified that the 2016 examination was quality 1. Dr. Meyer testified that mottle on the examination can make it look grainy and can simulate small opacities. Dr. Meyer testified that there were no radiographic findings of coal workers' pneumoconiosis. e testified that there was a normal variant extra-pleural fat, which can at times simulate plaque, but it has a distinct appearance. Dr. Meyer's final impression was clear lungs with no radiographic findings of coal workers' pneumoconiosis. He testified that people put down fat in different places and some folks put down fat around their organs either in their abdomen or around the pleural surfaces. He suspected that this was just due to Petitioner's individual deposition of fat. Dr. Meyer also described a calcified granuloma at the medial left lung base on the 2016 chest x-ray.

Dr. Meyer has been board certified in radiology since 1992. Dr. Meyer has been a B-reader since 1999. Dr. Meyer was asked to take the B-reading exam by Dr. Jerome Wiot who was part of the original committee that designed the teaching course which is called the B-reader program. Dr. Meyer has recently been asked to have a more academic role in the B-reader program. Dr. Meyer is a member of the American College of Radiology Pneumoconiosis Task Force which has completed a new syllabus for the B-reading course as well as the test that was delivered to NIOSH in 2017. Dr. Meyer testified that radiologists have a 10% higher pass rate on the B-reading exam than other specialties. In Dr. Meyer's opinion, radiologists have a better sense of what the variation of normal is. Dr. Meyer

testified that one of the most important parts of the B-reader training and examination is making the distinction between a 0/1 and 1/0 film.

Dr. Meyer testified that to become a B-reader one takes the weekend course which includes a series of lectures describing the B-reading classification system. The teachers of the course go through standard examples of the various components of the B-reading system. The course participants mainly review a series of practice examples with mentors overseeing the practice examples. Dr. Meyer testified that the faculty are typically experienced senior level B-readers. Typically after one takes the course, he then takes the B-reading exam. Dr. Meyer testified that the certifying exam is six hours long with 120 chest x-rays to be characterized. The pass rate of the examination runs roughly 60%. Dr. Meyer testified that if the physician reading the chest x-ray is not a B-reader or an A-reader or a radiologist, and he says it shows pneumoconiosis, one does not know if it technically meets the criteria that the ILO has established for that diagnosis.

Dr. Meyer testified that the B-reader looks at the lungs to decide whether there are any small nodular opacities or linear opacities and based on the size and appearance of those small opacities they are given a letter score. Dr. Meyer testified that specific occupational lung diseases are described by specific opacity types. Coal workers' pneumoconiosis is characteristically described by small round opacities. Diseases that cause pulmonary fibrosis like asbestosis, will be described by small linear opacities. The distribution of the opacities is also described because different pneumoconioses are seen in different regions of the lung. Coal workers' pneumoconiosis is typically an upper zone predominant process. Idiopathic pulmonary fibrosis or asbestosis is a basilar or linear process. The last component in the interpretation is the extent of the lung involvement or the so-called profusion. Dr. Meyer testified that the profusion is basically trying to define the density of the small opacities in the lung.

Dr. Meyer testified that the gold standard for determining the existence of lung disease is pathologic review of the tissue itself. Dr. Meyer testified that when he is asked to do a B-reading, he assumes that the worker has an appropriate exposure history for developing pneumoconiosis. Dr. Meyer testified that a negative film for coal workers' pneumoconiosis does not necessarily rule out that the miner may have pneumoconiosis pathologically. Dr. Meyer testified that there are studies that show that at autopsy as much as 50% of coal miners are found to have abnormalities of coal workers' pneumoconiosis when they might not have been apparent radiographically during their life.

Dr. David Rosenberg conducted a review of medical records and films regarding Petitioner at the request of Respondent's counsel. Dr. Rosenberg has been board certified in internal medicine since 1977. After graduating from medical school, he did a pulmonary fellowship at the National Institutes of Health in Bethesda, Maryland. He received his board certification in pulmonary disease in 1980. In 1995, he received his board certification in occupational medicine. Dr. Rosenberg has been a B-reader since July 2000.

Dr. Rosenberg is a member of the American Thoracic Society, and the American College of Chest Physicians. Dr. Rosenberg has lectured by invitation on a number of subjects through the years. These topics included interstitial lung disease, chronic obstructive lung disease, pulmonary stress testing, pulmonary function testing, exercise testing, and occupational lung disease.

Dr. Rosenberg reviewed chest x-rays of Petitioner dated March 23, 2015. He found the film to be quality 2 due to decreased contrast. He observed no micronodularity on the film. He also reviewed the chest x-ray from October 10, 2016. Dr. Rosenberg found this film to be quality 1 and noted the profusion was 0/0. Dr. Rosenberg testified that for a proper reading of the chest x-ray for pneumoconiosis, the reader first determines the film quality. Then he determines the opacity type and lung zone involvement. Next the reader determines the profusion which is what Dr. Rosenberg described as intensity. The reader then looks for other conditions that may be present which would be recorded in Section 4(b) of the B-reader form. Dr. Rosenberg testified that the distinction between a film that has a 0/1 profusion as compared to a 1/0 is that a 0/1 profusion would be negative and a 1/0 profusion would be a first category positive x-ray.

Dr. Rosenberg testified that there is no such thing as radiographically apparent pulmonary impairment. He testified that pulmonary impairment is determined by pulmonary function testing, namely spirometry, lung volumes, diffusing capacity measurements and blood gases. Dr. Rosenberg testified that it is unusual for simple pneumoconiosis to progress once exposure ceases. Dr. Rosenberg agrees with the position taken by the American Thoracic Society that an older worker with a mild pneumoconiosis may be at low risk for working in currently permissible dust levels until he reaches retirement age.

Dr. Rosenberg testified that seven weeks of coal dust exposure would not cause a category 1 pneumoconiosis. He testified that there was not any evidence in the record that Petitioner's exposure during that time aggravated, on a permanent basis, his pulmonary system or any preexisting disease he might have. Dr. Rosenberg testified that if in fact Petitioner had a positive chest x-ray reading on the film of October 10, 2016, as Dr. Istanbouly interpreted, said abnormality could have been present for decades. Dr. Rosenberg testified that coal workers' pneumoconiosis develops in a latent fashion so it would have been exposures at least ten years prior to that x-ray that would have caused those changes. He testified that it could go back even farther. Petitioner began coal mining in 1981 so by the 1990s he could have had black lung. There is nothing in the records reviewed by Dr. Rosenberg that indicated that Petitioner's condition had somehow changed over that time.

Dr. Rosenberg testified that to make a diagnosis of chronic bronchitis one must have cough and sputum production on a regular basis for three months out of the year for two consecutive years. Dr. Rosenberg testified that the history Dr. Istanbouly obtained

from Petitioner of cough that was intermittent, mostly dry, for two years did not meet the definition of chronic bronchitis. Dr. Rosenberg testified that chronic bronchitis did not appear anywhere in the treatment records that he reviewed. Dr. Rosenberg testified that cough is not considered an objective determinant of pulmonary impairment.

Dr. Rosenberg testified that the pulmonary function testing performed on Petitioner was normal. Dr. Rosenberg is familiar with the *AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition*. He testified that if he applied the results from pulmonary function testing performed on Petitioner to Table 5-4 of the *AMA Guides*, he would fall in Class 0 impairment.

Dr. Rosenberg agreed with Dr. Istanbouly's testimony that a negative chest x-ray cannot rule out the presence of coal workers' pneumoconiosis that is present only at the pathologic level. Dr. Rosenberg testified that subradiographic pneumoconiosis would not have any clinical significance for the miner. Dr. Rosenberg testified that Petitioner's diffusion capacity of 85% supported the fact that the alveolar capillary bed in his lungs was normal and that there was no damage from dust. Dr. Rosenberg testified that the alveolar capillary bed is the area of the lung that exchanges gas. He testified that if there was scarring of the lung that would result in any sort of impairment in gas exchange that would show up on diffusion capacity.

Dr. Rosenberg testified that Vallyathan is the lung study that has looked at those miners with chest x-ray findings negative for pneumoconiosis who nevertheless had pathologic evidence of pneumoconiosis. He testified in that study 30% of those miners with negative chest x-rays had pathologic evidence of pneumoconiosis. Dr. Rosenberg testified that most of the coal miners in that study had their exposure before 1971 which meant it would have been higher dust exposure before regulations took place. Also, all the miners came within 100 mile radius of Beckley, West Virginia. It was a fairly unique set of coal miners in Eastern Appalachia. Most of those miners on chest x-ray had opacities consistent with pneumoconiosis so it was only a minority that had pathologic evidence and did not have radiographic evidence of the disease. Dr. Rosenberg agreed with the authors that the miners' high exposure and associated level of disease should not be taken as typical of coal miners working today.

Dr. Rosenberg reached some final conclusions regarding Petitioner. He noted that various respiratory symptoms had been outlined and that Petitioner had morbid obesity and was being treated for hypertension. Radiographically, he did not have micronodularity and his pulmonary function test was normal. Dr. Rosenberg testified that based on review of the medical records and films, it could be appreciated that despite Petitioner's symptoms of shortness of breath, he did not have micronodularity related to past coal mine dust exposure. He had no restriction or obstruction with his pulmonary function tests being normal, including his diffusing capacity measurement. Dr. Rosenberg concluded that Petitioner did not have a pneumoconiosis related to past coal mine dust exposure.

Furthermore, any cough or sputum production that he has does not relate to past coal mine dust exposure. Intermittently, he has had bronchitis symptoms, but remote coal dust exposure is not causing those pulmonary manifestations. Dr. Rosenberg testified that Petitioner had no respiratory disability.

Dr. Rosenberg testified that chronic bronchitis is something that the physician would determine during patient history. He was not able to take a patient history of Petitioner, but the treatment records from Harrisburg Medical Center and associated records did not outline office visits with chronic cough and sputum production. There was intermittent coughing, but nothing that he described as chronic bronchitis. Dr. Rosenberg testified that coal workers' pneumoconiosis is a tissue reaction either in the airways or the lung parenchyma. That tissue reaction can be called scarring or fibrosis. Dr. Rosenberg testified that most patients with simple coal workers' pneumoconiosis have preserved lung function. On a microscopic basis, if scar tissue was laid down on normal structures, on a theoretical sense, that area might not be working correctly.

Medical records of HMC Clinic were admitted into evidence. Petitioner was seen on February 22, 2006, for preemployment physical for employment at Willow Lake Mine. Chest x-ray taken on that date was noted to be negative for active infiltrate. A prominent, noncalcified rounded density was seen in the left hilum. Dr. Alexander's impression was left hilar prominence of undetermined etiology, no active pulmonary disease. Petitioner underwent pulmonary function testing on the same date. The interpretation was normal spirometry. CT scan of the chest was performed on March 7, 2006 at Harrisburg Medical Center and was interpreted by Dr. Youssef as showing benign changes of old healed granulomatous disease. No mention of pneumoconiosis was made.

Petitioner was seen on February 10, 2007, with complaint of cough and congestion. The diagnosis was bronchitis. Petitioner was seen on June 11, 2007, for anemia. He was taken off work for five days. He returned to the office on June 25, 2007, for recheck. He was feeling better and was back to work. On examination his lungs were clear.

Petitioner returned on August 1, 2008, for recheck of his anemia. His lungs were clear on examination. The impression was stable anemia. His lungs were found to be clear on November 5, 2008, when he was seen for follow up regarding his anemia. Petitioner was seen for cough, congestion and fever on September 15, 2009. On examination his lungs were clear. Petitioner was diagnosed with bronchitis and prescribed antibiotic and cough syrup. On October 20, 2009, Petitioner underwent chest x-ray. Indication for same was shortness of breath. The impression was mildly asymmetric right middle lobe markings which might represent atelectasis but an early infectious process could not be excluded. Petitioner was seen on October 22, 2009, for recheck of pneumonia. Physical examination of the chest revealed the lungs to be clear. The impression was pneumonia improved. Petitioner was seen on November 5, 2009, for cough, congestion, wheezing and shortness

of breath. His nasal passages were congested. His lungs were clear. He was diagnosed with sinusitis/bronchitis with wheezing.

Petitioner was seen on November 9, 2011, for high blood pressure. His review of systems pulmonary revealed no dyspnea. Examination of the chest showed no wheezing, rhonchi or rales. Petitioner was seen on January 24, 2012, to discuss blood pressure medication after gallbladder surgery. No past history of dyspnea was indicated. His review of systems pulmonary revealed no dyspnea. Examination of chest revealed no wheeze, rhonchi or rales. Petitioner was seen to review lab work on March 14, 2012. His review of systems pulmonary revealed no dyspnea. On this date his weight was 278 pounds.

Petitioner was seen on January 3, 2013. He complained that he was feeling tired. He relayed that if he walked for more than five minutes, he would be short of breath and wiped out. His review of systems respiratory revealed no dyspnea. Physical examination of the chest revealed no wheeze, rhonchi or rales. Assessment included hypertension, obesity and fatigue (medication induced). Petitioner was seen on February 27, 2014. His medical history included morbid obesity. His review of systems respiratory revealed no dyspnea or cough. Petitioner's weight was 318 pounds. Physical examination of his chest revealed no wheeze, rhonchi or rales.

Petitioner was seen on March 6, 2015, for a screening for obesity. On that date he weighed 329 pounds. On examination the lungs were clear to auscultation. Petitioner was seen on March 19, 2015, with chief complaint of cough. Physical examination of the chest revealed no wheeze, rhonchi or rales. The impression was acute sinusitis and bronchitis. Petitioner returned on March 23, 2015, relating that his cough was worse. Physical examination of the chest revealed no wheeze, rales or rhonchi. The assessment was anterior wall chest pain with respiration, acute bronchitis with bronchospasm and reactive airways disease. Chest x-ray was performed on March 23, 2015, and interpreted by Dr. Hisham T. Youssef as revealing no active cardiopulmonary disease.

Petitioner was seen on March 29, 2016, regarding a knot on his right foot. The only medication listed at that time was Hydrochlorothiazide. His review of systems pulmonary revealed no dyspnea and no cough. On this date he weighed 329 pounds. Physical examination of the chest revealed no wheeze, rhonchi or rales. Petitioner was seen on September 12, 2016, with complaints of pain and swelling with tingling in his feet and legs and some shortness of breath. His review of systems pulmonary revealed dyspnea but no cough or wheeze. On that date he weighed 319 pounds. Physical examination of the chest revealed a decrease in breath sounds with rales. The doctor indicated that Petitioner was out of shape and too arthritic to get back into shape. It was also recommended that he get a sleep study and pulmonary function testing for black lung.

Petitioner was seen on January 13, 2017, complaining of a knot on his right knee. His review of systems pulmonary revealed no dyspnea, cough or wheeze. On that date he

weighed 320 pounds. Physical examination of the chest revealed no wheeze, rhonchi or rales. Petitioner was seen on April 10, 2017, because of an abscess tooth. Review of systems pulmonary revealed no dyspnea, cough or wheeze. Petitioner weighed 334 pounds. Physical examination of the chest revealed no wheeze, rhonchi or rales. Petitioner was seen on September 15, 2017, with chief complaint of tooth pain. Petitioner was noted to be a never smoker. It was charted that from a functional standpoint he was unable to perform the usual physical activities for his age. His weight at that time was 355 pounds. Physical examination of the chest revealed no adventitious sounds. Petitioner was seen on December 20, 2017, with chief complaint of shortness of breath. Petitioner related that he was feeling terrible and had a weight gain of 35 pounds in the last year. He had dyspnea with minimal exercise. It was charted that he was unable to perform physical activities for his age. Review of systems respiratory revealed dyspnea but no cough or wheeze. Examination of the chest revealed decreased breath sounds with rales/crackles. The assessment was benign essential hypertension which was severely exacerbated and obesity. The doctor indicated that he discussed with Petitioner his need to get some exercise. He then stated, "Understanding he has black lung and that limits his endurance." The doctor also indicated that the Petitioner had arthritis in his knees which limited his activities. Petitioner underwent chest x-ray which was performed on December 20, 2017 and interpreted by Dr. Hisham T. Youssef. The chest x-ray revealed the lungs were clear of active infiltrate. There were tiny benign, calcified left lower lobe granuloma posteriorly. Mild cardiomegaly had developed since the prior study.

Petitioner was seen on January 31, 2018. The reason for the visit was follow up regarding hypertension and lab work. Petitioner related no change in shortness of breath. It was charted that he was not physically active and babysat a lot. His review of systems pulmonary revealed dyspnea but no cough or wheeze. On this date he weighed 344 pounds. Physical examination of the chest revealed a decrease in breath sounds with rales/crackles. Diagnoses included hypertension and morbid obesity as well as type 2 diabetes, mellitus and iron deficiency anemia. Petitioner was seen on April 30, 2018, with complaint of dyspnea on exertion. His review of systems respiratory revealed dyspnea. On this day his weight was 332 pounds. Physical examination of the chest revealed decreased breath sounds with rales/crackles. Petitioner returned for follow up on June 20, 2018. Petitioner related he had lost 40 pounds and felt better. Review of systems respiratory revealed no dyspnea, cough or wheeze. On this date he weighed 312 pounds. Physical examination of the chest revealed no adventitious sounds. Petitioner was seen on August 27, 2018. He complained of chronic dyspnea during exertion. He was noted to have poor exercise habits with a lack of exercise. It was charted that he was unable to perform the usual physical activities for his age. He had difficulty with mobility. Review of systems respiratory revealed no cough. He weighed 318 pounds. Physical examination of the chest revealed no adventitious sounds. The doctor indicated that Petitioner had to lose weight and needed to consider gastric bypass surgery.

Medical records of Prairie Cardiovascular Consultants were admitted into evidence. Petitioner was seen on February 13, 2013, for abnormal stress test. Petitioner had been complaining of generalized fatigue and lack of energy and motivation. Petitioner's review of systems respiratory was positive for snoring. Physical examination of the chest revealed the lungs were clear to auscultation. The doctor recommended cardiac catheterization. Petitioner underwent cardiac catheterization on February 19, 2013. The results of the left heart catheterization were normal coronary arteries, normal left ventricle and false positive stress cardiolite. Petitioner was seen on March 20, 2013, for follow up. On this date he had no complaints. On review of systems respiratory Petitioner complained of shortness of breath. On examination his chest was clear to auscultation.

Petitioner was awarded Social Security Disability Benefits effective September 15, 2016. The primary diagnosis was osteoarthrosis and allied disorders. The secondary diagnosis was obesity.

Records of NIOSH were admitted into evidence. A chest x-ray of March 12, 1979 was interpreted by an A-reader and a B-reader as being completely negative. A chest x-ray dated March 23, 2000, was interpreted by H. T. Youssef as having no parenchymal abnormalities consistent with pneumoconiosis. Dr. Youssef is noted to be an A-reader. A B-reader interpreted this chest x-ray as being completely negative. Dr. Youssef also interpreted a chest x-ray of October 18, 2003, as being completely negative. A B-reader interpreted the September 2013 chest x-ray as having no parenchymal abnormalities consistent with pneumoconiosis.

CONCLUSIONS OF LAW

Issue (C): Did an occupational disease occur that arose out of and in the course of Petitioner's employment with Respondent?

Issue (F): Is Petitioner's current condition of ill-being casually related to his occupational exposure?

The Arbitrator finds that Petitioner failed to prove by a preponderance of the evidence that he has an occupational disease arising out of and in the course of his employment.

Dr. Istanbouly testified that based on his review of Petitioner's chest x-ray, he had coal workers' pneumoconiosis. Dr. Istanbouly could not say whether the x-ray he interpreted had a profusion of 1/0 or 0/1. Dr. Istanbouly testified that he does not provide profusion ratings on the films he interprets. Dr. Smith interpreted chest x-rays of March 23, 2015, and October 10, 2016, as positive for pneumoconiosis, profusion 1/0. Dr. Smith noted opacities in the bilateral middle and lower lung zones. This finding is not consistent with the general progression of coal workers' pneumoconiosis which Dr. Meyer described as generally having an upper lobe predominance. Dr. Smith found both films to be quality

1. Drs. Meyer and Rosenberg reviewed the chest x-rays of March 2015 and October 2016 and interpreted same as negative for pneumoconiosis. Dr. Meyer found the 2015 examination to be quality 3 due to mottle. He testified that mottle can mimic small opacities. Dr. Rosenberg found the 2015 film to be quality 2 because of decreased contrast. Dr. Smith failed to consider the deficiencies in the quality of the 2015 film when interpreting the x-ray.

Dr. Meyer testified as to the training and examination required to become a B-reader. Dr. Istanbouly has not had that training or passed the examination. He is not an A-reader or B-reader of films. Dr. Istanbouly's history of treating coal miners for coal mine dust lung disease and interpreting chest x-rays of coal miners cannot be said to be the same as taking the B-reading course and passing the B-reading exam. Dr. Youssef, who is an A-reader interpreted the March 23, 2015, chest x-ray as revealing no active cardiopulmonary disease. Some months after his examination with Dr. Istanbouly, Petitioner's primary care physician stated, "Understanding he has black lung and that limits his endurance." There was no indication that his primary care physician made a diagnosis of coal workers' pneumoconiosis. Petitioner testified that he related this diagnosis to his primary care physician. A diagnosis of coal workers' pneumoconiosis does not appear in the treatment records.

The diagnosis of coal workers' pneumoconiosis is based on x-ray interpretation. The Arbitrator finds the x-ray interpretations by Drs. Rosenberg, Meyer and Youssef to be more credible and persuasive than the interpretations by Drs. Istanbouly and Smith.

At his deposition, Dr. Istanbouly diagnosed Petitioner with chronic bronchitis which he opined was causally related to Petitioner's long term coal dust inhalation. Dr. Istanbouly testified that Petitioner related intermittent cough that was dry, mild in intensity, mostly in the morning. Dr. Istanbouly did not review any treatment records which would confirm or deny the history given by Petitioner at his examination. Dr. Rosenberg reviewed records from Petitioner's primary care physician dating back to 2006. Dr. Rosenberg testified that to make a diagnosis of chronic bronchitis one must have cough and sputum production on a regular basis for three months out of the year for two consecutive years. Dr. Rosenberg testified that the history Dr. Istanbouly obtained from Petitioner of cough that was intermittent and mostly dry for two years did not meet the definition of chronic bronchitis. Dr. Rosenberg testified that chronic bronchitis did not appear anywhere in the treatment records that he reviewed. The Arbitrator finds that Petitioner failed to prove by a preponderance of the evidence that he suffers from chronic bronchitis casually related to his coal mine dust exposure.

Petitioner testified that after he left Brushy Creek Mine in 2000 he filed a claim for state black lung benefits against Brushy Creek. He testified that a chest x-ray was performed as part of that claim and same was interpreted as positive for black lung. Dr. Istanbouly testified that he did not know how long the abnormality that he observed on

Petitioner's chest x-ray had been present. He testified that he would expect it to have been there for a long time and could go back decades. Dr. Rosenberg testified that if in fact Petitioner had a positive chest x-ray reading of the October 10, 2016, film, said abnormality would have been present for decades. Dr. Rosenberg also testified that seven weeks of coal dust exposure during Petitioner's employment with Respondent would not have caused a category 1 pneumoconiosis. He testified that there is not any evidence in the record that Petitioner's exposure during that time aggravated, on a permanent basis, his pulmonary system or any preexisting disease he might have.

Issue (L): What temporary benefits are in dispute?

Based on the Arbitrator's decision with regard to causation, the Arbitrator finds Petitioner is not entitled to temporary total disability benefits and said benefits are denied.

Issue (O): Whether Petitioner proved timely disablement pursuant to Sections 1(e) and (f) of the Occupational Diseases Act?

The Arbitrator concludes that Petitioner failed to prove by a preponderance of the evidence that he suffered a timely disablement as defined in Section 1(e) of the Occupational Diseases Act.

To prove disablement under the Act, Petitioner must show that he suffered an impairment in the function of the body or the event of becoming disabled from earning full wages as a coal miner as a result of an occupational disease. Petitioner must prove that but for his occupational lung disease, he would have continued his coal mine employment. *Dawson v. Workers' Compensation Comm'n*, 382 Ill. App. 3d 581 (5th Dist. 2008). Petitioner testified that he left his employment with Respondent when he was laid off. He further testified that if he had not been told that day that he was not to return, he would have come back for his next shift. The evidence in the record reveals that Petitioner left his coal mine employment due to layoff rather than impairment related to his breathing. There was no evidence in the record that any physician took Petitioner off work as a result of an occupational disease. There is no evidence that Petitioner was not performing his job duties in a coal mine up until the time that he was laid off. The pulmonary function study performed as part of Dr. Istanbouly's examination was normal. Petitioner had no evidence of any obstruction, restriction or other pulmonary impairment.

Linda J. Cantrell

Arbitrator Linda J. Cantrell

10/7/20

DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC026862
Case Name	Laurie Judd v. Hy-Vee, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0132
Number of Pages of Decision	21
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Mark Wilson
Respondent Attorney	Christopher Crawford

DATE FILED: 3/25/2025

/s/Marc Parker,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANKAKEE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Laurie Judd,

Petitioner,

vs. No. 22 WC 26862

Hy-Vee, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) and §8(a) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of benefit rates/wage calculations, causal connection, medical expenses, temporary total disability, prospective medical care, and credit-bills/benefits, and being advised of the facts and law, modifies the Decision of the Arbitrator, as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission,* 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

At the beginning of the arbitration hearing the parties stipulated, inter alia, that Petitioner's average weekly wage was $449.10, and that Respondent was entitled to a credit under §8(j) of the Act for the medical bills paid through its group medical plan, Blue Cross/Blue Shield.

Following the hearing, the Arbitrator issued a decision in which she found Petitioner proved causal connection of her right shoulder condition of ill-being to her April 5, 2022 accident. The Arbitrator awarded Petitioner: $299.40 per week for 59 weeks of temporary total disability (from September 27, 2022 to June 5, 2023, and from July 10, 2023 to December 19, 2023); the prospective right shoulder treatment recommended by Dr. Keith Corpus, including physical

therapy and a total shoulder arthroplasty; and the reasonable and necessary medical services in the amount of $159,213.40 (as included in Petitioner's Exhibit 1), as provided in §8(a) and §8.2 of the Act. Of the medical expenses awarded, the Arbitrator found that Respondent's group health insurance paid $36,640.74.

The Commission affirms the TTD periods awarded by the Arbitrator: September 27, 2022 to June 5, 2023, and July 10, 2023 to December 19, 2023. However, we find those periods total 59-2/7 weeks, not 59 weeks. In addition, we find that the correct TTD rate which should be used in this claim is $320.00, which was the statutory minimum TTD rate in effect on Petitioner's April 5, 2022 date of accident. Accordingly, we modify Petitioner's TTD award to be 59-2/7 weeks, at a weekly rate of $320.00, for the periods September 27, 2022 to June 5, 2023, and July 10, 2023 to December 19, 2023.

Although the parties stipulated on the Request for Hearing form that Respondent was entitled to a §8(j) credit for, "Bills paid by Blue Cross/Blue Shield," the Arbitrator did not award that credit to Respondent. It should have been awarded. We therefore award Respondent a §8(j) credit in the amount of $36,640.74, for the bills paid by its group medical plan, Blue Cross/Blue Shield. We also find that Respondent shall hold Petitioner harmless for any medical bill payments by Blue Cross/Blue Shield.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on May 31, 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 $320.00 per week for 59-2/7 weeks, for the periods September 27, 2022 through June 5, 2023, and July 10, 2023 through December 19, 2023, as provided by §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the reasonable and necessary medical expenses incurred in treating Petitioner's right shoulder in the amount of $159,213.40 (as included in Petitioner's Exhibit 1), as provided by §8(a) and §8.2 of the Act. Respondent shall additionally hold Petitioner harmless with regard to payments made by her group medical plan, Blue Cross/Blue Shield. Respondent is entitled to a credit under §8(j) of the Act for $36,640.74, the amount the Arbitrator found was paid by Blue Cross/Blue Shield.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for the prospective right shoulder treatment as recommended by Dr. Keith Corpus, including physical therapy and a total shoulder arthroplasty.

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

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

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

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

March 25, 2025

MP/mcp
o-03/13/25
068

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC026862
Case Name	Laurie Judd v. Hy-Vee, Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	Mark Wilson
Respondent Attorney	Christopher Crawford

DATE FILED: 5/31/2024

/s/ Jessica Hegarty, Arbitrator

Signature

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

25IWCC0132

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Laurie Judd
Employee/Petitioner

v.

Hy-Vee
Employer/Respondent

Case # **22** WC **026862**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jessica Hegarty**, Arbitrator of the Commission, in the city of **Kankakee**, on **12/19/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **4/5/22**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**23,353.20**; the average weekly wage was $**449.10**.

On the date of accident, Petitioner was **62** years of age, ***single*** with **0** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $**0** for TTD, **$0** for TPD, $**0** for maintenance, and **$4,216.16** for other benefits, for a total credit of **$4,216.16**.

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

ORDER

- **Respondent shall pay Petitioner temporary disability benefits of $299.40/week for 59 weeks, commencing from September 27, 2022 to June 5, 2023 and from July 10, 2023 to December 19, 2023 as provided in Section 8(b) of the Act.**
- **Respondent shall pay the reasonable and necessary medical services in the amount of $159,213.40 (as included in Petitioner's Exhibit 1) as provided in Sections 8(a) and 8.2 of the Act.**
- **Respondent shall authorize and pay for the prospective right shoulder treatment, as recommended by Dr. Keith Corpus, including physical therapy and a total shoulder arthroplasty.**

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.

Jessica Hegarty

Signature of Arbitrator

May 31, 2024

ICArbDec19(b)

ADDENDUM TO THE DECISION OF THE ARBITRATOR

FINDINGS OF FACT

Petitioner's Testimony

Petitioner began working for Respondent in October of 2018 and was so employed on April 5, 2022, when she sustained accidental injuries that arose out of and in the course of her job duties. (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as an "Aisles Online" shopper, which required her to shop the store for online orders. After completing the grocery shopping, Petitioner bagged up the groceries and then placed the grocery bags for each order into a "tote," which is a rubber storage box with a lid. Petitioner would then stack each tote onto a rolling cart, which held approximately 20 stacked totes. Petitioner estimated the average tote weighed between 10 and 50 pounds. When stacking the cart three totes high, the Petitioner lifted each tote to her chest level. While stacking the cart four or five totes high, the Petitioner was required to lift each tote overhead.

Typically, in an average 8-hour shift, Petitioner would fill 40-50 totes with groceries, which she stacked onto 2 or 3 rolling carts.

At the time of her accident, Petitioner was 62 years old and had been performing these job duties for approximately 3.5 years.

When not working the Aisles Online job, Petitioner worked for Respondent as a barista at the Hy-Vee Starbucks, where she waited on customer and filled their orders. Petitioner testified she split her time between these two jobs.

Regarding her work accident, Respondent does not dispute that Petitioner sustained work-related injuries to her right shoulder/arm on April 5, 2022. (Arb. Ex. 1) According to Petitioner, she was working her Aisles Online job, loading totes onto a rolling cart, when a tote, stacked on the cart overhead, began to fall. Petitioner lifted her dominant right arm overhead, grabbed the tote, and pushed it back up on the stack. In doing so, she felt acute right shoulder pain and heard an audible "snap" in her right shoulder, similar to the sound of a snapping rubber band. According to Petitioner, her surrounding coworkers heard her scream out in pain when the accident occurred.

Following the accident, Petitioner and a coworker opened the tote involved in the accident, noting it contained four gallons of milk. According to Petitioner, store policy limited each tote to 2 gallons of milk. Petitioner testified that someone else loaded the tote in question.

Petitioner did not seek medical treatment immediately following her accident, although she knew she hurt her left shoulder/arm. She continued working her regular job duties as her right shoulder symptoms worsened.

On May 16, 2022, Petitioner sought treatment with her primary health provider, who referred her to an orthopedic doctor.

Petitioner consulted with an orthopedic surgeon, Dr. Corpus, and underwent a right shoulder MRI on August 8, 2022. Dr. Corpus reviewed the MRI and recommended surgery.

Petitioner notified Katie in HR of her accident and injury a few days following her MRI.

According to Petitioner, Respondent's carrier denied her claim because she failed to complete an incident report soon after her accident. Petitioner testified she was unaware of this requirement as she had no experience with workers' compensation claims.

Petitioner eventually underwent right shoulder surgery performed by Dr. Corpus. Post-operatively, she was off work. (Id.)

On February 22, 2023, Dr. Corpus modified her work restrictions to include left-arm work only. Petitioner provided these work restrictions, via text to Katie Saephan, the HR manager, but Respondent did not accommodate those restrictions.

On March 1, 2023, Dr. Corpus modified Petitioner's work restrictions to include no lifting over 15 pounds with her left arm while her right arm remained in a sling. On May 31, 2023, Dr. Corpus continued Petitioner's 15 lb. left arm restrictions and modified her right arm restrictions to allow for lifting under 5 pounds with no overhead lifting and no work away from her body. According to Petitioner, Respondent did not accommodate her restrictions.

On June 5, 2023, Petitioner received a text from Katie in HR, who noted that Respondent could accommodate her restrictions. Katie's text also mentioned that "Marcus" had previously contacted Petitioner with an offer of accommodated work. Petitioner testified she received no such communication from Marcus. According to Petitioner, Katie agreed, in the June 5th text, that Petitioner would not report to work at that time as Petitioner had a planned trip to Florida to see her newborn grandson, followed by a second shoulder surgery on July 10, 2023.

Petitioner testified that she experienced increased pain and restricted movement in her right shoulder prior to her second surgery on July 10, 2023. Following that surgery, her shoulder pain decreased, but her range of motion did not improve. (Id.) Petitioner was off work again following her July 10, 2023 surgery. Post-operatively, Petitioner's right shoulder pain increased when she took her arm out of her sling.

On August 22, 2023, Dr. Corpus instituted work restrictions prohibiting using her right arm while she could use her left arm for light desk and office-type work. These restrictions remained in place and were continued by Dr. Corpus on December 1, 2023. Petitioner testified that Respondent did not accommodate her restrictions.

Regarding her current condition, the Petitioner testified that her right shoulder pain and decreased range of motion persist. She is unable to put her right arm behind her back or hold it above her waist or shoulders. She experiences increased right shoulder pain when on her feet. Her next scheduled appointment with Dr. Corpus is on March 1, 2024.

On cross-examination, Petitioner acknowledged she gave a recorded statement to Respondent's adjuster in late August of 2022. Petitioner agreed that she was offered a position signing customers up for the Perks Plus program. She testified that she told Katie from HR that she could perform that work if a chair was provided. Petitioner testified that during her IME with Dr. Cohen, she told him she could lift a cell phone but could not hold it up to her ear for any length of time.

On re-direct, Petitioner testified that during her recorded statement, she told the adjuster that she provided notice of her accident to Respondent orally but did not complete a written incident report.

Testimony of Aiden Sondgeroth

Aiden Sondgeroth testified in Petitioner's case-in-chief. Mr. Sondgeroth began working for Respondent in 2019. On the date of Petitioner's accident, he was employed as the Aisles Online manager. (T, pp. 73-74) According to Sondgeroth, Petitioner notified him that she hurt her right shoulder, pushing a tote up, within a week of her accident. Sondgeroth asked Petitioner if she was okay. He then told Meigan Gensler, the head of Aisles Online, about Petitioner's accident. Gensler told Sondgeroth that she would handle it, which Sondgeroth interpreted to mean that Gensler would have Petitioner complete an incident report. Sondgeroth testified that Petitioner continued working her Aisles Online job following the accident but appeared to be in pain. Sondgeroth further testified that Petitioner's co-workers asked Sondgeroth if Petitioner was okay following her accident. According to Sondgeroth, he considered Petitioner to be a good worker.

Testimony of Katie Saephan

Respondent called Katie Saephan, who works for Respondent as an account manager, to testify in their case in chief. Ms. Saephan testified that Respondent's scheduler, Marcus, offered Petitioner the self-checkout position as an accommodation in March 2023, although Petitioner did not resume work in that position. In early June 2023, Saephan offered Petitioner the self-checkout position. Saephan agreed that Petitioner would not return to work until after Petitioner's trip to Florida trip and her second right shoulder surgery.

In August 2023, Saephan offered Petitioner a position working the Perks Plus table, where Petitioner would use a tablet to assist customers in updating their fuel-saving card. Petitioner told Saephan that she would require a chair to work in this capacity. Saephan testified that she told Petitioner she could have a chair but could not sit down the whole shift. Saephan testified that in her experience working the Perks Plus table, "A chair is not an option. You just stand."

On cross-examination, Saephan conceded that she had no personal knowledge that Marcus contacted Petitioner to offer the accommodated, self-checkout position.

Petitioner's Recorded Statement

Petitioner's recorded statement to Respondent's adjuster was submitted as Respondent's Exhibit 4. The recording is approximately 22 minutes long.

Petitioner told the adjuster that she is a U.S. military veteran, a widower, and divorcee.

Regarding her pre-accident condition, Petitioner told the adjuster she had not sought medical treatment for her right shoulder before her work accident.

Petitioner confirmed her insurance information and gave the adjuster information regarding her medical providers.

Regarding her work accident, Petitioner told the adjuster that she was loading totes onto a gray cart when a tote, stacked at the top of the cart, above eye level, began to fall. (RX 4) Petitioner grabbed the tote and pushed it up higher onto the cart when she experienced right shoulder pain and heard an audible sound from her right shoulder similar to the sound that a snapping rubber band makes. Petitioner reportedly yelled, "Ouch" when the incident occurred. At that time, Petitioner did not know she had torn anything in her right shoulder.

After her accident, Petitioner had a male coworker retrieve the tote involved in the accident noting that it contained 4 gallons of milk which exceeded store policy that limited each tote to 2 gallons of milk.

The adjuster asked Petitioner if anybody was with her when her accident occurred. Petitioner answered that there were people "back there," but she did not remember who was back there. The adjuster interrupted Petitioner to say, "So basically nobody actually saw the incident occur, but you had yelled 'Ouch', and somebody had come over to assist you, but you have no idea who that was?" Petitioner said she knew it was a guy "from the pod" who helped her, but could not identify him. She again mentioned that the tote was loaded with 4 gallons of milk.

Petitioner told the adjuster that her Aisles Online job required constant pushing, pulling, and use of "all your muscles." At the time of her accident, Petitioner did not know the extent of her injury. Had she known, she would have said something to her superiors at work.

The Arbitrator notes that Petitioner was on duty working her Starbucks barista job while she spoke with Respondent's adjuster. (RX 4)

Medical Records

The medical records in evidence show that Petitioner sought initial treatment following her accident, on May 16, 2022, when she presented to her primary medical provider, Susan Pavlick, APRN, CNP, at OSF Medical Group in Streator, Illinois. (Petitioner's Exhibit "PX" 2) Petitioner presented regarding an "acute/new concern" of right shoulder pain. Petitioner reported the sudden onset of right shoulder pain while lifting a container overhead several months prior. She continued working after this event, and her right shoulder pain progressively worsened. On exam, APRN Pavlick noted Petitioner could not reach behind her back and had pain with extension and forward movement of her shoulder. APRN Pavlick suspected that Petitioner had suffered a labral tear. Petitioner was referred to an orthopedic surgeon and was instructed to avoid using her right arm. (Id.)

On July 19, 2022, Petitioner presented to orthopedic physician Dr. Keith Corpus at OSF Orthopedics in Peoria, Illinois. (PX 3) Petitioner reported the onset of right shoulder pain a few months earlier while lifting a tote at work when she heard a rip in her right shoulder. (PX3) Her right shoulder symptoms had progressively worsened since that event. On exam, Dr. Corpus noted tenderness along the biceps, active forward elevation

at 160 degrees with pain, positive impingement, and a positive O'Brien sign. Dr. Corpus ordered a right shoulder MRI, noting concern that Petitioner had sustained a torn rotator cuff. (Id.)

On August 8, 2022, Petitioner underwent an MRI of her right shoulder that demonstrated a full-thickness, partial-width, supraspinatus tear with 3 mm retraction and stump fibers attached to the footplate superimposed upon a broader delaminating articular surface tear extending into the conjoined tendon along with a partial-thickness width, intra-substance tear of the subscapularis, longitudinal split tear long head biceps tendon, moderate acromioclavicular degenerative joint disease, and mild glenohumeral chondrolabral degeneration. (PX 3)

On August 10, 2022, Dr. Corpus noted Petitioner's complaints of right shoulder pain, weakness, and limited range of motion. (Id.) The doctor reviewed the recent MRI images, noting a full-thickness tear of the supraspinatus progressing back toward the infraspinatus along with partial thickness tearing of the subscapularis, significant degeneration, and tearing of the long head of the bicep's tendon, mild degenerative changes about the glenohumeral joint, and moderate osteoarthritis of the AC joint. On exam, positive impingement and a positive O'Brien's sign were noted. Dr. Corpus recommended that Petitioner undergo surgery. (PX 4)

On September 27, 2022, Petitioner underwent surgery, performed by Dr. Corpus, at the Center for Health Ambulatory Surgery Center. (PX 4) The operative report indicates the following preoperative diagnosis:

1. Right shoulder full-thickness tear supraspinatus rotator cuff;
2. Right shoulder full-thickness tear leading edge subscapularis rotator cuff;
3. Right shoulder long head of biceps tendon tear;
4. Right shoulder end-stage acromioclavicular joint osteoarthritis and
5. Right shoulder subacromial impingement. (Id.)

Intraoperatively, Dr. Corpus noted the exam under anesthesia demonstrated full range of motion with no instability, an intact labrum anterior, inferior, and posterior, a very mild degenerative type 2 SLAP tear; tearing of the intra-articular portion of the long head of biceps tendon; a full thickness tear of the supraspinatus; a full thickness tear of the leading edge of the subscapularis; early grade 2 osteoarthritis of the glenohumeral joint; no loose bodies; obvious subacromial and subdeltoid impingement with an anterior and lateral subacromial spur and end-stage acromioclavicular joint osteoarthritis. (Id.)

The operative procedures performed by Dr. Corpus were as follows:

1. Right shoulder examination under anesthesia;
2. Right shoulder diagnostic arthroscopy;
3. Right shoulder arthroscopic rotator cuff repair of the supraspinatus and subscapularis;
4. Right shoulder arthroscopic supra pectoral biceps tenodesis;
5. Right shoulder arthroscopic distal clavicle excision and
6. Right shoulder arthroscopic subacromial decompression. (Id.).

Post-operatively, Petitioner underwent physical therapy at Athletico and regular examinations with Dr. Corpus. (PX6; PX3)

On November 9, 2022, Dr. Corpus noted Petitioner's complaints of persistent pain, especially anteriorly and down her right arm. (Id.) Dr. Corpus recommended that Petitioner start weaning from her sling and remain off work for 6 weeks. (Id.)

On December 20, 2022, Dr. Corpus noted Petitioner's complaints of continued pain and soreness in her right shoulder, worse with activity and motion. (Id.) The Petitioner reported slow progress in physical therapy. Dr. Corpus administered an injection to Petitioner's right shoulder and continued her off-work restrictions. (Id.)

When Petitioner followed up with Dr. Corpus at the end of January 2023, she reported no relief from the prior injection. She reported worsening right shoulder pain. Dr. Corpus noted concern that she may have re-ruptured her rotator cuff and ordered an MRI. (PX3)

On February 17, 2023, Petitioner underwent an MRI of her right shoulder that showed joint effusion, subacromial/subdeltoid bursitis, and rotator cuff repair with areas suspicious for partial thickness re-tearing in the supraspinatus and infraspinatus tendons. (Id.)

On February 22, 2023, Petitioner followed up with Dr. Corpus, who reviewed the recent MRI, noting the study showed significant effusion, subacromial and subdeltoid bursitis, and evidence of "partial thickness re-tearing" along the articular surface and some bursal sided partial-thickness re-tearing. The doctor recommended the administration of another injection in a month, gentle therapy, and continued use of anti-inflammatory medication. (Id.) Petitioner was restricted to one-armed work with her left arm. (PX10)

On March 1, 2023, Dr. Corpus restricted Petitioner to no lifting over 15 lbs. with her left arm and continued use of the sling for her right arm. (Id.)

On March 23, 2023, Dr. Corpus noted Petitioner's continued complaints of right shoulder pain. (PX 3) Petitioner also complained of left shoulder/arm pain. The doctor administered a right shoulder injection. (Id.)

On May 31, 2023, Petitioner's continued complaints of right shoulder pain were noted by Dr. Corpus. She reported no relief from the last injection. Given the lack of improvement, Dr. Corpus recommended that Petitioner undergo revision surgery. (Id.) Dr. Corpus restricted left arm lifting to 15 lbs. and right arm lifting to 5 lbs. Additionally, Petitioner was instructed not to lift her right arm above her shoulder. (PX10)

On July 10, 2023, Petitioner underwent surgery, performed by Dr. Corpus, consisting of right shoulder diagnostic arthroscopy, revision rotator cuff repair of the supraspinatus and subscapularis, and subacromial bursectomy revision and decompression. (PX5) The post-operative diagnosis noted a right shoulder recurrent full-thickness tear with severe degeneration of the supraspinatus and new high-grade partial-thickness leading edge subscapularis tear, subacromial bursitis, and failed biceps tenodesis. (Id.)

On August 8, 2023, Dr. Corpus noted Petitioner's complaints of right shoulder pain more pronounced than her pain following her initial surgery. She reported difficulty sleeping comfortably. Dr. Corpus noted she was progressing as expected. He ordered her to continue with physical therapy. (PX 3)

On August 22, 2023, Petitioner reported that her complaints of right upper extremity pain persisted. (Id.) Dr. Corpus recommended that she begin weaning out of her sling and continue with therapy. Work restrictions of one-armed, sit-down work and no lifting over 1 lb. with the right arm were noted. (Id.)

On September 29, 2023, Dr. Corpus administered a subacromial bursa injection to Petitioner's right shoulder and noted work restrictions of light desk and office-type work with the left arm only. (Id.)
On December 1, 2023, Petitioner followed up with Dr. Corpus, who noted she was out of her sling. (PX3) Petitioner reportedly continued to have pain and weakness in her right shoulder. She continued in physical therapy and would be transitioned to a home exercise program. Dr. Corpus noted that a third surgery, a reverse total shoulder arthroplasty, may have to be considered in one years' time. Petitioner's prior work restrictions were continued. (Id.)

Dr. Keith Corpus Evidence Deposition

On February 10, 2023, Dr. Keith Corpus testified via evidence deposition. (PX11) Dr. Corpus is a board-certified orthopedic surgeon specializing in the knee, hip, and shoulder. (Id., p. 5) The doctor testified that in a typical year, he performs over a hundred shoulder surgeries. (Id., pp. 6-7)

Regarding Petitioner's medical treatment, Dr. Corpus noted she presented for initial consult on July 19, 2022, with a history of injury, a few months prior, while working in a grocery department when she felt a rip in her right shoulder while picking up a large tote. (Id., p. 7) Dr. Corpus was concerned that she had suffered a torn rotator cuff, given the Petitioner's age, physical exam, and history of injury. Accordingly, he ordered an MRI of the right shoulder. Dr. Corpus later reviewed the MRI films, noting a full-thickness rotator cuff tear, a delaminating injury to the tendon, a tear of the subscapularis and biceps tendon, and mild to moderate arthritic changes. (Id., pp. 9-11)

Dr. Corpus explained that the supraspinatus tendon is the primary rotator cuff muscle on the top of the shoulder. A full-thickness tear means the entire width of the tendon has been pulled off of the humerus bone and then starts to retract. (Id., pp. 9-10) This is superimposed on a broader delaminating injury to the tendon, causing a "straw that broke the camel's back" scenario. (Id., p. 10) Dr. Corpus testified that chronic degeneration to this tendon ultimately led it to pull off, meaning it was a diseased tendon that underwent a full-thickness tear. (Id.) Dr. Corpus further testified that the subscapularis is the rotator cuff muscle toward the front of the shoulder, which can commonly be injured in this kind of mechanism of injury. (Id.)

Dr. Corpus recommended that Petitioner undergo surgery to repair her rotator cuff, noting that a full-thickness rotator cuff tear will not heal without surgery. (Id., p.11) His recommendation for surgery was based on the Petitioner's pain, functional limitations, and her activity level at work. (Id., pp.11-12)

Petitioner underwent surgery on September 27, 2022. Dr. Corpus repaired the muscle on the top of the rotator cuff and the muscle on the front of the rotator cuff. He also performed a biceps tenodesis, which entailed cutting the biceps off of its insertion onto the top part of the socket, moving it to a new location on the humerus, and then sewing it into place. The doctor also performed a general decompression of the top part of Petitioner's shoulder where there was impingement. (Id., pp.12-13)

Dr. Corpus testified he found Petitioner to be forthright with him and dedicated to her recovery. (Id., pp.20-21)

Dr. Corpus was asked to assume a hypothetical set of facts assuming, as of January 2022, Petitioner worked her Aisles Online job one or two days a week which entailed lifting 40 to 50 totes weighing 10 to 50 pounds. She would put the totes on carts, filling two to three carts, per shift. The carts held 20 totes each. While performing this work in April 2022, she noticed right shoulder pain. Still, she continued performing this work and experienced worsening shoulder pain up until she was taken off work just before shoulder surgery. Assuming those facts were true, would Dr. Corpus find a causal connection between the work performed by Petitioner and the right shoulder injury for which he provided treatment from July 19, 2022 to the present, including the revision surgery. (Id., pp. 21-23) Dr. Corpus testified he would find a causal connection between Petitioner's work and the current condition of her right shoulder. The doctor based this opinion on her accident history and the imaging studies that show chronic wear and tear and a full-thickness tear. (Id., pp.23-24)

On cross-examination, Dr. Corpus testified that Petitioner had degenerative changes in her rotator cuff. (Id., p.31) He testified it is hard to say that Petitioner's rotator cuff tore over time, especially given the history that Petitioner was picking up a tote, felt a rip, and was then markedly worse following the accident. (Id.) The doctor further testified that a person can have tendinosis changes evident on MRI and not experience pain in the shoulder, and then as soon as it tears, there is pain, which is what Petitioner endorsed to him. (Id., p. 36) He added that Petitioner's accident certainly exacerbated her symptoms. (PX11, p.37)

Dr. Michael Cohen IME Report & Evidence Deposition

Petitioner attended an Independent Medical Evaluation ("IME") on April 19, 2023, at the request of Respondent. (RX1, Ex.2) In his report, Dr. Cohen indicated that Petitioner reported a history of injury on April 5, 2022, while stacking totes on a cart when one of the totes on the top of the cart, above shoulder height, began to fall at which time Petitioner pushed the tote back up using her right arm when she felt pain and tearing in her shoulder. The tote contained 3 gallons of milk, which he estimated to weigh 25 pounds.

On physical examination, Dr. Cohen noted positive impingement signs and tenderness over the bicipital groove and the AC joint. Petitioner complained of global tenderness and claimed she could not hold her cell phone with an outstretched right arm. Petitioner denied any history of right shoulder issues before her accident.

Dr. Cohen opined that Petitioner sustained a sprain/strain to her right shoulder during the event on April 5, 2022. He conceded it was possible, though unlikely, that the incident significantly aggravated her pre-existing rotator cuff tear.

Dr. Cohen testified that Petitioner is not at maximum medical improvement. He indicated she could currently work with restrictions of no right arm use. He recommended six weeks of therapy, possible longer, depending on her progress. Otherwise, a Functional Capacity Evaluation ("FCE") should be considered. (Id.)

Dr. Cohen's evidence deposition was taken on August 9, 2023. (RX1) The doctor testified he is board-certified in orthopedics and has a certification in hand surgery. (Id., p.5) About 25% of his practice involves treating shoulders, including performing shoulder surgeries. (Id., pp.6-7)

Dr. Cohen's testimony was consistent with his Section 12 report. According to Dr. Cohen, Petitioner was "pretty dramatic" in terms of pain complaints during his physical examination. (Id., pp.10-11)

Regarding the initial MRI on August 8, 2022, Dr. Cohen noted the study was significant for an "old" rotator cuff tear, biceps tendonitis, degenerative changes in the labrum, and arthritis at the AC joint. (Id.).

At the IME exam, Petitioner underwent x-rays which showed post-op changes and an incomplete resection of the distal clavicle that could correlate with the pain and tenderness she has at the AC joint. (Id., p.12) According to Dr. Cohen, the distal clavicle resection performed by Dr. Corpus was incomplete. (Id., pp.12-13)

Dr. Cohen testified that the right shoulder MRI from February 17, 2023, did not show a re-tear. (Id., p.15)

Based upon Petitioner's initial MRI Dr. Cohen opined that Petitioner's rotator cuff tear pre-dated the accident. (Id., p.16) Petitioner's current complaints stemmed from arthritis in the shoulder and the fact that the distal clavicle is not completely resected, neither of which would be related to her work accident. (Id., pp.22-23) He testified it is difficult for him to causally relate the surgery to the accident because she did not undergo conservative treatment before undergoing surgery. (Id., p.23)

On cross-examination, Dr. Cohen testified he had no basis to question Petitioner's denial of injury or symptoms right shoulder symptoms prior to April 5, 2022. (Id., pp.28-29) His opinions were focused primarily on the mechanism of injury not the fact that she continued working her regular job after her accident. (Id., pp.30,32) He further testified he was not aware of any intervening trauma. (Id., p.33)

CONCLUSIONS OF LAW

Credibility of Petitioner

At the hearing, the Arbitrator found that Petitioner presented as an honest, sincere individual. She answered all questions posed to her without hesitation and seemed eager to tell her story. Petitioner remained confident, answered all questions, and withstood a rigorous cross-examination unscathed.

The Arbitrator found the testimony of Aiden Sondgeroth corroborated Petitioner's testimony regarding notice and right shoulder disability following her accident. He further testified he considered her a good worker.

The Arbitrator found the testimony of Dr. Corpus substantiated Petitioner's credibility noting he found Petitioner to be forthright and dedicated to her recovery.

Furthermore, the Arbitrator found Petitioner's recorded statement to Respondent's insurance adjuster further substantiated her credibility. Petitioner spoke with Respondent's adjuster on August 19, 2022, for about 22 minutes. Petitioner told the adjuster she is a war veteran and a divorced widower. Petitioner provided information regarding her medical treatment and medical providers. She seemingly wanted to help the adjuster and offered to provide further information regarding specific dates of treatment.

The Arbitrator noted that Petitioner gave this statement, presumably on her cell phone, while also working her barista job for Respondent at the Hy-Vee Starbuck's. Noise and conversations can be heard in the background

of the recording. Petitioner paused the interview at one point to ascertain whether a customer needed assistance at the drive-thru window. Nonetheless, Petitioner proceeded with the statement. She did not seem to be in a defensive mode. Regardless of the noisy and hectic work environment, Petitioner answered the insurance adjuster's questions without hesitation. Petitioner's concern for the rules governing the maximum number of milk gallons loaded in a tote (which is not more than two gallons) is evident.

The Arbitrator found no material inconsistencies between Petitioner's testimony, her recorded statement to Respondent's adjuster, and the treating medical records.

The only potential inference of negativity regarding Petitioner's credibility was from Dr. Cohen, Respondent's Section 12 examiner. According to Dr. Cohen, Petitioner was "pretty dramatic" during his physical examination. (RX1, pp. 10-11) Dr. Cohen concluded that Petitioner's subjective complaints outweighed his objective exam findings. As discussed below, the Arbitrator did not find Dr. Cohen's allegations of symptom magnification supported by the evidence in the record which indicates that Petitioner was indeed suffering from a full-thickness "re-tear" of her supraspinatus, a new high-grade partial-thickness leading edge subscapularis tear, subacromial bursitis, and failed biceps tenodesis on the date of her IME exam. At the time of her IME exam, Petitioner was awaiting approval for a revision surgery and was restricted from lifting her right arm above her shoulder and from lifting over 5 lbs. As indicated in the findings below, there is substantial medical evidence to support the fact that Petitioner's pain complaints at the IME with Dr. Cohen were legitimate.

After considering the above evidence, the Arbitrator finds Petitioner a credible witness and places significant weight on her testimony.

Causal Connection

To obtain compensation under the Act, a claimant must prove that some act or phase of her employment was a causative factor in her 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. "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). Evidence of prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. Navistar International Transportation Co. v. Industrial Commission, 315 Ill. App. 3d 1197, 1205, 248 Ill. Dec. 609, 734 N.E.2d 900 (2000).

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 v. Workers' Compensation Commission, 864 N.E.2d 266, 272-273 (5th Dist. 2007). In such cases, recovery may be had if a claimant's employment is a causative factor in his or her current condition of ill-being. Sisbro, Inc. v. Industrial Commission, 797 N.E.2d 665 (2003). In Sisbro, the Court reduced this issue to its simplest terms. The Commission must decide: 1) whether there was an accidental injury which arose out of the employment; 2) whether the accident accelerated or aggravated the pre-existing condition or 3) whether the preexisting condition alone caused the resultant disability. If there is competent evidence that an occupational activity

aggravated or accelerated a preexisting condition, the Commission's award of compensation must be confirmed. See also, Twice Over Clean v. Industrial Commission, 214 Ill. 2d 203, 827 N.E. 2d 409, 292 Ill. Dec. 800 (2005).

Employers take their employees as they find them. Baggett v. insdutrial Commission, 201 Ill,2d 187, 775 N.E.2d 908(2002). Thus, even where a preexisting condition exists, recovery may be had if a claimant's employment is a causative factor in his or her current condition of ill-being. Sisbro, Inc., 207 Ill. 2d at 205. Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. Land & Lakes Co., 359 Ill. App. 3d at 592. Thus, only where an employee's health is so deteriorated that typical daily activity constitutes overexertion will recovery be denied. Cook County v. Industrial Comm'n, 69 Ill. 2d 10, 18 (1977). The question of whether a claimant's condition of ill-being is the sole result of a preexisting condition is one of fact. Sisbro, Inc., 207 Ill. 2d at 205. Although a claimant's preexisting condition 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 employees' 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. Id., 207 Ill. 2d at 204-05.

It is axiomatic that the weight accorded an expert opinion is measured by the facts supporting it. An expert opinion cannot be based on guess, surmise, or conjecture. Wilfert v. Retirement Board, 318 Ill.App.3d 507, 514-15 (1st Dist. 2000). Expert testimony shall be weighed like other evidence with its weight determined by the character, capacity, skill and opportunities for observation, as well as the state of mind of the expert and the nature of the case and its facts. Madison Mining Company v. Industrial Commission, 309 Ill. 91, 138 N.E. 211 (1923). The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. Gross v. Illinois Workers' Compensation Comm'n, 2011 IL App (4th) 100615WC, 960 N.E.2d 587, 355 Ill. Dec. 705. If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. Expert opinions must be supported by facts and are only as valid as the facts underlying them. *In re Joseph S.*, 339 Ill. App. 3d 599, 607, 791 N.E.2d 80, 87, 274 Ill. Dec. 284 (2003). A finder of fact is not bound by an expert opinion on an ultimate issue, but may look 'behind' the opinion to examine the underlying facts.

The Arbitrator finds the preponderance of credible evidence in the record supports a finding that Petitioner's April 5, 2022, accident aggravated and/or accelerated her preexisting condition, and thereby is a cause, of her current condition of ill-being.

In support, the Arbitrator notes the necessary elements in a chain of events analysis, as outlined by the court in Sisbro, are essentially uncontested facts in this this case.

Petitioner's credible testimony regarding her condition of general good health prior to the accident is undisputed. There is no history of missed work, unsatisfactory work performance, medical treatment, MRI's, physical therapy, work restrictions, surgical recommendations, or Functional Capacity Exams due to her right shoulder condition.

The accident itself is uncontested. Petitioner's testimony regarding the acute onset of right shoulder pain coupled with an audible sound of snapping in her right shoulder while lifting 4 gallons of milk overhead is unrebutted and corroborated by the treating medical records in evidence.

Although Petitioner did not seek immediate treatment following her accident, Petitioner's manager, Aiden Sondgeroth, corroborated Petitioner's testimony regarding pain and disability following the accident.

Approximately 6 weeks following her accident, Petitioner sought treatment with APRN Pavlick who documented a history of accident consistent with Petitioner's testimony. On exam, Petitioner's right shoulder disability was evident. Evidence of the serious nature of Petitioner's injury and disability is supported by the recommendation that Petitioner consult with an orthopedic surgeon, rather than a course of conservative treatment. There is no evidence of any intervening accidents or events between April 5, 2022, and Petitioner's initial visit with APRN Pavlic.

The Arbitrator relies on the reasonable, persuasive, and well-supported opinions of Dr. Corpus who considered the chain of events in this case noting that Petitioner's right shoulder became symptomatic after her work accident. The opinions of Dr. Corpus are supported by the diagnostic MRI on August 8, 2022, in which the reviewing radiologist noted, amongst other findings, noted a full-thickness rotator cuff tear. Dr. Corpus reviewed the MRI images on August 10, 2022, noting agreement with the radiologists' findings regarding the presence of a full-thickness tear of the supraspinatus progressing back toward the infraspinatus along with partial thickness tearing of the subscapularis, significant degeneration, and tearing of the long head of the biceps tendon, mild degenerative changes about the glenohumeral joint, and moderate osteoarthritis of the AC joint. On exam, positive impingement and a positive O'Brien's sign were noted. At his evidence deposition, Dr. Corpus explained that a full-thickness tear means the entire width of the tendon has been pulled off of the humerus bone and then starts to retract. (Id., pp. 9-10) This is superimposed on a broader delaminating injury to the tendon causing a "straw that broke the camel's back" scenario. (Id., p. 10) Dr. Corpus testified that Petitioner's chronic degeneration in this tendon then underwent a full-thickness tear. (Id.) Dr. Corpus noted that a person can have degenerative changes and no pain in the shoulder, and then as soon the rotator cuff tears, there is pain. (PX11, p.36) This is consistent with Petitioner's testimony regarding the acute onset of right shoulder pain, coupled with an audible noise, similar to the snap of a rubber band, while lifting the tote overhead.

Dr. Corpus further testified that the subscapularis is the rotator cuff muscle toward the front of the shoulder, which can commonly be injured in this kind of mechanism of injury. (Id.) Dr. Corpus recommended that Petitioner undergo surgery to repair her rotator cuff noting that a full-thickness rotator cuff tear will not heal without surgery. (PX11, p.11) His recommendation for surgery was based on the Petitioner's pain, functional limitations, and her activity level at work. (PX11, pp.11-12)

The Arbitrator finds the medical opinions of Dr. Corpus reasonable and well-substantiated by Petitioner's history, chain of events, treating medical records, diagnostic evidence, and the credible, unrebutted testimony of Petitioner.

The Arbitrator was not persuaded by Dr. Cohen's opinions that Petitioner suffered a mere sprain/strain during the accident. Petitioner's disability, as noted by APRN Pavlic's exam findings and treatment recommendations, was evident six weeks following the accident. The fact that an orthopedic consult was

recommended, as opposed to conservative treatment, indicate a more serious injury than contemplated by Dr. Cohen.

It is uncontested that the August 6, 2022, diagnostic right shoulder MRI showed a full-thickness rotator cuff tear amongst other findings. There is no doubt that Petitioner had preexisting degenerative changes in her right shoulder, but the fact remains that Petitioner was physically capable of performing her job duties before her accident whereas after her accident, she was in obvious pain and experienced progressive disability. The Arbitrator finds Dr. Cohen's claims that Petitioner engaged in symptom magnification and/or malingering during his IME exam, unsupported by the evidence. As noted above, on the day that Petitioner presented to Dr. Cohen, she was suffering from a full-thickness "re-tear" of her supraspinatus, a new high-grade partial-thickness leading edge subscapularis tear, subacromial bursitis, and failed biceps tenodesis. This is supported by the MRI of February 17, 2023, as interpreted by the radiologist and Dr. Corpus, and the July 10, 2023, operative report. Dr. Cohen's conclusion that the February 2023, MRI did not show a "re-tear" in the rotator cuff was incorrect. At the time Petitioner presented for her IME, she was awaiting revision surgery and was under work restrictions to refrain from raising her right arm above shoulder or from lifting over 5 lbs. with her right arm when she presented to Dr. Cohen. Given the above evidence, it is not surprising that Petitioner was exhibiting pain behaviors at her IME exam. If Petitioner was "pretty dramatic" it is because she was legitimately in pain. The Arbitrator finds Dr. Cohen's claims of symptom magnification and/or malingering without merit.

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

Incorporating the above findings, the Petitioner introduced evidence of medical expenses totaling $159,213.40, which Petitioner incurred during the course of her treatment as follows:

OSFMG Streator -	$737.00;
OSF Center for Health Streator	$1,794.00
OSF Cardiovascular	$50.00
St. Elizabeth Medical Center	$100.00
Central Illinois Radiology	$996.00
Center for Health Surgery Center-Peoria	$25,560.00
Associated Anesthesiologists	$6,298.00
OSF Orthopedics	$23,781.25
OSF St. Francis	$83,467.15
Athletico Physical Therapy	$8,916.00
OSF PT Chillicothe	$340.00
OSF Rehab-Peru	$4,904.00
Professional Therapy Services	$2,270.00.

Of this amount, group health insurance paid $36,640.74; Medicaid paid $9,086.09; insurance discounts of $92,110.82 were applied and Petitioner paid $66.00. $21,309.75 remains unpaid.

Having found that Petitioner has established a causal connection between her work accident and her current condition of ill-being, the Arbitrator further finds that the disputed medical services and corresponding bills

represent medical treatment that was reasonable necessary. As such, Respondent is liable for Petitioner's medical treatment and corresponding bills I the amount of $159,213.40, subject to the Medical Fee Schedule provided in the Act.

Is Petitioner entitled to any prospective care?

Petitioner has established that the current condition of ill-being in her right shoulder is causally related to her work-related accident on April 5, 2022. The treating records and testimony of Dr. Corpus reflect that he is recommending further conservative treatment, including physical therapy, and possibly, a reverse total shoulder arthroplasty. Petitioner indicated a willingness to proceed with Dr. Corpus' recommended course of treatment for her right shoulder condition.

The Arbitrator finds that Petitioner has sustained her burden on this issue.

Accordingly, the Arbitrator finds Respondent is liable for the recommended course of medical treatment, as recommended by Dr. Corpus.

What temporary benefits are due?

The Petitioner has established that she has been off work or subject to work restrictions, unaccommodated by Respondent, from September 27, 2022, to June 5, 2023, and from July 10, 2023, to December 19, 2023.

Although Respondent's HR Manager Katie Saephan testified that she believed the grocery scheduler (Marcus) offered an accommodated position to Petitioner in March 2023, she admitted she had no personal knowledge that Petitioner was offered that accommodation. Petitioner credibly testified, and her text messages, contained in Petitioner's Exhibit 13, indicate that Marcus never contacted her. (T, p.42)

Petitioner acknowledged an accommodated position was offered to her on June 5, 2023.

Additionally, the Arbitrator finds Petitioner's interpretation of Dr. Corpus' "light desk and office type work" restriction to mean sit-down work consistent with Dr. Corpus' August 22, 2023, record in which he references "sit-down work." The Arbitrator further finds the Perks Plus table was not a sit-down position consistent with the testimony of Ms. Saephan in regards to that position, "A chair is not an option. You just stand." (T, pp.96-97)
The Arbitrator finds that the Petitioner is entitled to temporary total disability benefits from September 27, 2022, to June 5, 2023, and from July 10, 2023, to December 19, 2023, a period of 59 weeks totaling $17,664.60.

Notice

The Arbitrator finds the preponderance of credible evidence, including the testimony of Mr. Sondgeroth, and Petitioner's statement to Respondent's adjuster, support a finding in favor of Petitioner on this issue

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC023950
Case Name	Michael Garland v. DuPage County Sheriff's Office
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0133
Number of Pages of Decision	31
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Brent Eames
Respondent Attorney	David Miller

DATE FILED: 3/26/2025

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michael Garland,

Petitioner,

vs. No. 21 WC 23950

DuPage County Sheriff's Office,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses and prospective medical care, and being advised of the facts and law, reverses the Decision of the Arbitrator and awards workers' compensation benefits for the right ankle condition for the reasons stated below. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation, medical benefits or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327 (1980).

Following a section 8(a) hearing regarding the right ankle condition only, the Arbitrator filed a decision on March 25, 2024, finding, in pertinent part: "Based on the record as a whole, regarding the disputed issues related to the right ankle, the Arbitrator finds Petitioner experienced an ankle sprain which resolved by October 17, 2022 when Dr. Vora examined him. Any other condition of the right ankle is not causally connected." The Arbitrator denied medical expenses and prospective medical care related to the right ankle. We disagree.

Petitioner, a deputy sheriff, testified on direct examination that his main job duty was inmate surveillance. Before the accident, Petitioner did "[e]xtensive" walking to perform

physical surveillance rounds. He walked "[m]ultiple miles" a day throughout the jail facility. Petitioner stated he was "[h]ealthy as a horse" until the accident. He denied prior problems with his right ankle.

On August 9, 2021, Petitioner felt his left knee pop while walking down a flight of stairs. Over the next several days, Petitioner experienced severe swelling and pain in his knee. On August 31, 2021, Petitioner consulted Dr. Giannoulias, an orthopedic surgeon. Dr. Giannoulias prescribed physical therapy, which Petitioner began on September 9, 2021.

After the injury, Petitioner put most of his weight on his right leg when he walked. By October 21, 2021, Petitioner developed "an irritation to the right leg" and told the physical therapist. On October 26, 2021, Dr. Giannoulias recommended surgery on the left knee. Respondent denied the surgery, and Petitioner continued to attend physical therapy. On November 22, 2021, Petitioner complained to his physical therapist of "abnormal walking." Petitioner explained he walked "with the unsteady gait, putting more pressure on my right leg to alleviate my left knee." On November 23, 2021, Petitioner reported to his physical therapist: "I tried to walk normal, and I just couldn't. The pain was just not manageable." On December 1, 2021, Petitioner reported to the physical therapist having right ankle pain for a few days. Petitioner denied a specific traumatic incident. Petitioner attributed the right ankle pain to "just from overcompensating, I believe. There was no traumatic injury. It *** started sore at first and then the pain became progressively worse and that's when I just finally said something." After that, the physical therapist eliminated the active/exercise physical therapy component. On December 7, 2021, Petitioner complained of right ankle pain to Dr. Giannoulias. Petitioner again attributed the right ankle pain to his altered gait. On January 21, 2022, Petitioner reported to the physical therapist the right ankle pain was an 8/10. Petitioner elaborated: "It was just excruciating. I just couldn't tolerate it as much anymore. Medication, ibuprofen, Tylenol, really wasn't doing the trick."

Respondent eventually approved the left knee surgery, which Petitioner underwent on February 7, 2022. During a follow-up visit on March 8, 2022, Petitioner complained to Dr. Giannoulias of significant pain in his right ankle. Dr. Giannoulias recommended an MRI. Subsequently, Dr. Giannoulias reviewed the MRI and referred Petitioner to a podiatrist, Dr. Kane.

On May 4, 2022, Petitioner began treating with Dr. Kane. On May 13, 2022, Dr. Kane discussed surgery. Petitioner would like to proceed with the surgery recommended by Dr. Kane. Petitioner has continued to follow up with Dr. Kane, who continued to recommend surgery. Petitioner continues to suffer from a great deal of pain in the right ankle.

Respondent has been accommodating Petitioner's light duty restrictions for the left knee. "[L]ight duty consists of just desk work, monitoring cameras, utilizing the touchscreens to open doors for people coming and going. *** [O]ther than that, not a whole lot." Petitioner

concluded: "I'm still walking with an unsteady gait, and I'm still in a lot of pain all the time. I do the best I can, and I get around as I can."

On cross-examination, Petitioner testified that Respondent began accommodating his light duty restrictions on August 31, 2021. Petitioner confirmed that light duty consisted of "desk work." Petitioner's non-work physical activity consisted of "[w]alking the dogs when I have to, going to physical therapy, just normal—going to the grocery store, normal everyday functions."

The medical records in evidence show that on August 31, 2021, Petitioner consulted Dr. Giannoulias about a work injury to his left knee. He did not complain about his ankle. An MRI showed a meniscus tear. Dr. Giannoulias prescribed physical therapy and restricted Petitioner to "office work only." On September 14 and September 28, 2021, Petitioner complained of persistent pain in his knee. He did not complain about his ankle. On October 26, 2021, Dr. Giannoulias recommended surgery on the knee and did not mention the ankle.

The first recorded complaint relative to the ankle appears in the note dated December 7, 2021. Dr. Giannoulias noted: "We are waiting for surgical authorization for his left knee. He continues to have pain and difficulty. He has developed some pain in his right ankle after walking a bit differently than normal." Physical examination findings relative to the ankle were as follows: "The ankle on the right side reveals some peroneal tendon tenderness. No significant effusion or instability." Dr. Giannoulias continued to recommend surgery on the knee. On February 7, 2022, Dr. Giannoulias operated on the knee.

The next complaint relative to the ankle appears in a note dated March 8, 2022. Dr. Giannoulias noted: "[The patient] has been having some pain and swelling in his right ankle. He states that this has been going for quite a bit of time but, recently in therapy, his ankle started swelling and he had to put therapy on hold for his left knee." Physical examination findings relative to the ankle were as follows: "The right ankle reveals swelling and tenderness over the anterolateral ligaments. He has pain with eversion and inversion." Dr. Giannoulias ordered an MRI of the ankle. On March 22, 2022, Dr. Giannoulias noted the following MRI findings: "He does have an effusion and OCD [in the ankle] in the talar dome. That explains the swelling and his pain. It is catching his ankle." Dr. Giannoulias injected the ankle. On April 12, 2022, Petitioner reported only temporary relief from the injection. Dr. Giannoulias referred Petitioner to a podiatrist.

Physical therapy records, overlapping the treatment with Dr. Giannoulias, show that during the initial visit on September 9, 2021, no complaints were noted relative to the ankle. On November 22, 2021, Petitioner blamed "his abnormal walking" for "tight muscles." On November 23, 2021, Petitioner reported "he has been trying to walk with proper heel strike and step through."

The first complaint relative to the ankle appears in a note dated December 1, 2021. Petitioner reported "R ankle has been sore for the last few days." The physical therapist noted: "Treatment session modified today secondary to increased R ankle pain with antalgic gait pattern." Thereafter, the physical therapist continued to note complaints of ankle pain until the surgery. Petitioner's postoperative physical therapy began on March 7, 2022. Petitioner complained of significant soreness in the ankle.

The medical records from Dr. Kane show that Petitioner began treating on May 4, 2022. Dr. Kane noted the following history: "[The patient] describes his injury as having falling [*sic*] down the stairs twisting his left knee. Since the surgical procedure was performed on his left knee he started developing pain in the area of his right ankle. *** **Dr. Giannoulias had told [the patient] that the right ankle is symptomatic due to overuse syndrome favoring his left knee**." (Emphasis in original.) Dr. Kane interpreted the MRI as follows: "On multiple sequences the patient presents with a large osteochondral defect, 15 mm x 8 mm x 12 mm along the medial talar dome. There is effusion around the margins of the lesion. It appears to be full-thickness. The peroneal brevis and longus tendons appear to have mild to moderate fraying with linear type interruption in the tendon." Dr. Kane "explained to the patient that the lesion that he has in his ankle joint is a crack in the bone." He also diagnosed "peroneal tendon injuries right ankle." Dr. Kane recommended physical therapy and "immobilization of his right foot and ankle." In the event conservative treatment failed, Dr. Kane recommended "an outpatient surgical procedure for repair of the lateral condyle defect."

Thereafter, Petitioner regularly followed up with Dr. Kane. On May 13, 2022, Dr. Kane stated: "The injury occurred in August of 2021, therefore a fracture boot is no longer indicated. The symptoms have become chronic and immobilization would no longer be effective. ¶ In the original progress note, I suggested immobilization. This was an error. Immobilization would not help at this point." This time, Dr. Kane recommended "an outpatient surgical procedure for repair of the peroneal tendon tears. The peroneal tendon tears appear to be the main focus of [the patient's] symptoms." Dr. Kane's subsequent notes are near-identical.

Dr. Kane, a board-certified podiatrist foot and ankle surgeon, testified by evidence deposition on January 17, 2023. Dr. Kane testified on direct examination to his understanding of Petitioner's history as follows: "He had an injury at work in performing his normal work duties. And the focus of his injury was his left knee, and he apparently had undergone surgery for his left knee." "The symptoms in the right foot and ankle began subsequent to his treatment for his left knee." Dr. Kane diagnosed "overuse syndrome," which "involves excessive use of the right foot and ankle as a result of not being able to put full weight-bearing on his left limb because of his left knee surgery during recovery." "[The patient] mentioned that after the surgery, he was putting the necessary weight on his right limb to be able to stand and the lack of weight on his left limb. And eventually, during the period of recovery, particularly during physical therapy, he just started developing pain in his right foot and ankle." Initial physical examination findings were as follows: "[H]is right foot and ankle was slightly swollen, painful along the lateralmost aspect of the ankle as well as along the anterior and medial aspect of his right ankle." Dr. Kane

interpreted the MRI as showing "significant findings, such as the peroneal tendon injury as well as a subchondral defect—an osteochondral defect of the talar dome along the medial aspect of the talus." Dr. Kane diagnosed "an injury to the peroneal tendon of his right ankle as the tendon passes under the notch just under the distal part of the fibula as it passes into the ankle, and he has an osteochondral defect. And I noted the size of it being 15 millimeters by 8 millimeters by 12 millimeters along the medial aspect of the talar dome. There's a little tear as well of the cartilage in that area. It's small, but it's significant." Initially, Dr. Kane recommended "repairing the osteochondral defect in his ankle as well as the peroneal tendon. *** [T]he peroneal tendon was flattened, not necessarily torn through and through, but you could see the excessive pathological changes as the tendon passes into the foot *** underneath the peroneal groove of the fibula."

Dr. Kane opined the overuse of the right lower extremity aggravated the osteochondral defect and the peroneal tendon injury, explaining: "After his surgery for his left knee, he wasn't able to apply his weight on the left knee during his recovery. And during that time, he puts excessive wear and tear on his right foot and ankle, particularly during physical therapy, which causes this injury to happen." Upon further questioning, Dr. Kane added: "I do recall asking the patient whether he had ever had treatment for his right ankle in the past, and he denied any injuries or treatment of his right ankle. And, therefore, *** his symptoms began once he had his left knee surgery and had excessive use of his right ankle is when his symptoms began."

As of the last date of treatment, Dr. Kane "continued to recommend the outpatient surgical procedure for arthroscopic examination and treatment of the osteochondral defect as well as repair of the peroneal tendon injury of his right ankle."

On cross-examination, Dr. Kane testified he was a podiatrist, not an orthopedic surgeon. Dr. Kane assumed Petitioner was told not to bear weight on his left leg after the surgery. "I don't have documentation in my progress notes, but I'm fairly confident that he had told me that he was favoring his left limb and putting his weight on the right limb." Upon further questioning, Dr. Kane qualified: "If his symptoms began after his injury, *** I think it's directly related. But if he had symptoms prior to any injury, then I would say it wouldn't be, or *** it was not related." "I'm saying that he had no symptoms prior to his injury on August 9, 2021, and developed symptoms after August 9th of 2021 as a result of overuse syndrome of his right ankle." "I don't have any evidence other than assumption, assumption that he's been walking on his right limb since the injury and, therefore, put excessive wear and tear on his right limb."

On redirect examination, Dr. Kane further clarified: "Assuming that he had injured his left knee enough on August 9th, 2021, I'm sure he wasn't weight-bearing very much on his left knee after that type of injury anyhow. And then once he had the surgery done, he likely continued to overweight on his right limb. And that's an extensive period of time, and I think that that has led and has a direct causal relationship to the original injury." Dr. Kane added: "Apparently, I didn't document it as well as I should have. But *** [the patient] explained to me that since the time of his injury, he had been unable to put weight on his left limb and, therefore, has been

weight-bearing on his right limb to compensate. And as a result, he started to develop symptoms in the right foot and ankle."

Respondent's section 12 examiner, Dr. Vora, testified by evidence deposition on September 1, 2023. Dr. Vora, a board-certified orthopedic surgeon, testified that he had published scholarly works on peroneal tendons and osteochondral defects. Dr. Vora examined Petitioner at Respondent's request on October 17, 2022. Dr. Vora understood that after suffering a knee injury and while awaiting surgery, Petitioner developed pain in his ankle "from limping." Petitioner "pointed to the back of his fibula bone posterolateral ankle behind the lateral side ankle bone as well as in the front of the ankle crease." Physical examination of the ankle was normal. "And there was an MRI [report] of March 10th, 2020 [*sic*], which showed evidence of what looks to be a sclerotic, which means old, osteochondral defect without fluid, again suggesting chronic, not acute, and flattening and fraying of the peroneal tendons." When Dr. Vora reviewed the MRI images, he saw no peroneal tear. Petitioner "definitely had an osteochondral lesion of his ankle, which is chronic." There were no findings suggesting an aggravation of the osteochondral defect.

Dr. Vora opined: "[T]he pathology, if there was any, would have no work-related basis. It would not have been aggravated by a work-related condition." "I don't know that any surgery is necessary. But should surgery be necessary, it's not related to any work-related condition, direct or indirect." Regarding any post-accident overuse, Dr. Vora continued: "Altered gait does not cause a peroneal tendon tear. Osteochondral lesion is not caused by altered gait." "If there was anything, it was a sprain." The sprain, which had resolved, would not be work-related.

The Commission finds the chain of events and the deposition testimony of Dr. Kane persuasive on the issue of causal connection. Accordingly, the Commission reverses the Arbitrator's Decision and awards related medical bills in evidence and prospective surgery on the right ankle.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 25, 2024, is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay related medical bills in evidence pursuant to §§8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide prospective medical care in the form of surgery on the right ankle, pursuant to §§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.

No bond is required for removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

March 26, 2025

SJM/sk
o-2/19/2025
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC023950
Case Name	Michael Garland v. DuPage County Sheriff's Office
Consolidated Cases	
Proceeding Type	8(a) Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	23
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Brent Eames
Respondent Attorney	David Miller

DATE FILED: 3/25/2024

/s/Michael Glaub, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF MARCH 19, 2024 5.13%

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
8(a)

MICHAEL GARLAND
Employee/Petitioner

v.

DUPAGE COUNTY SHERIFF'S DEPT.
Employer/Respondent

Case # **21** WC **23950**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Michael Glaub**, Arbitrator of the Commission, in the city of **Wheaton**, on **12/07/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **08/09/2021**, 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 partially*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**87,696.44**; the average weekly wage was $**1,686.47**.

On the date of accident, Petitioner was **38** 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 $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**0.00**.

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

ORDER

To the extent these bills relate to treatment for Petitioner's left knee, Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $1,485.00 to G&T Orthopaedics; $70,720.00 to ReLive Physical Therapy; $168.00 to Oak Brook X-Ray and Imaging; and $2,103.25 to Summerlin Medical as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits.

Petitioner's claim for prospective medical treatment related to the right ankle is denied.

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

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

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

Michael Glaub
Signature of Arbitrator

March 25, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL GARLAND,	)	
	)	
PETITIONER,	)	
	)	
V.	)	NO: 21 WC 23950
	)	
DUPAGE COUNTY,	)	
	)	
RESPONDENT.		

PROCEDURAL

This matter was tried under Section 8(a) of the Act before Arbitrator Glaub in Wheaton on December 7, 2023. The issues in dispute were causal relation, medical bills and prospective medical. The parties stipulated that temporary total disability benefits were not in dispute.

STATEMENT OF FACTS

Petitioner is employed by the County of DuPage as a deputy sheriff. Prior to August 9, 2021, Petitioner primarily performed surveillance work at the DuPage County Jail, which required him to patrol the facility and frequently walk several

miles per day. However, on August 9, 2021, Petitioner walked down a stairwell to ensure that all doors in the stairwell were secure. As he descended the stairs, Petitioner felt and heard a pop in his knee. Petitioner then reported the incident to a supervisor. (Px 1). Petitioner admitted at hearing that he did not injure his right ankle during this incident on August 9, 2021. (T12).

On August 31, 2021, Petitioner saw Dr. Christos Giannoulias regarding continued pain in his left knee. Dr. Giannoulias prescribed physical therapy for Petitioner, which he began on September 9, 2021. (Px2, p2).

Dr. Giannoulias also immediately placed Petitioner on sedentary duty only. (Px1, p180). Petitioner remained on sedentary duty until the date of trial on December 7, 2023 (Px1 p180; T27, 30).

At hearing, Petitioner testified that his sedentary duty composed of only desk work, monitoring cameras, utilizing the touchscreens to open doors for people coming and going…"other than that, not a whole lot".(Tr28). Petitioner testified that he's essentially been monitoring touchscreens since August 31st of 2021 (Tr30). Petitioner also testified that since August 31, he performs those sedentary duties 80 hours every two weeks. (Tr29-31).

Petitioner testified that almost immediately after his knee injury, he supported his injured knee with a brace. (Tr32). Petitioner also testified that when he walks steps, he uses a handrail for support. (Tr15, 32).

An MRI performed on September 8, 2021, revealed medial and lateral meniscus tears, trace joint effusion, and mild peripatellar soft tissue swelling.

Petitioner continued with physical therapy. On September 14, the therapist noted "low tolerance for activity." (Px2, p10). On September 23, Petitioner reported to the therapist that he was able to walk longer distances compared to the initial evaluation. (Px2, p15). The therapist noted that Petitioner was meeting or progressing toward most short and long term goals, including improving gait mechanics. (Px2, p16, 17). On September 30, Petitioner reported to the therapist that he had improved "cushion" in the left knee. Petitioner also was able to tolerate calf raises. (Px2, p23-24).

On October 1, Petitioner again reported to the therapist having more cushion in the knee. The therapist noted Petitioner had improved tolerance for the therapy exercises. (Px2, p26,27) On October 6, Petitioner reported improved stability when in weight bearing. (Px2, p30)

On October 7, 12, 15, and 20, Petitioner performed further left knee weight bearing activities which he tolerated well with little pain increase, including calf raises. (Px2, p33, 36, 39, 42). On October 21, the therapist noted that Petitioner continued to improve his gait mechanics, lacking only 2 degrees. The therapist also noted the plan was to continue to progress weight bearing activity. The therapist also noted for the first time that Petitioner had walking tolerance to 10 minutes. (PX. 2, P 46).

By November 22, Petitioner had attended 22 physical therapy sessions, each with the plan of increasing weight bearing activity. On that date, Petitioner began to complain of "tight" muscles in his legs, which he attributed to his "abnormal" walking. (Px2, p79). On November 23, Petitioner reported he attempted to walk with

proper heel strike and step through. (Px2, p82) Walking with the proper gait had been a therapy goal from the start. (Px2, p84).

On December 1, Petitioner claimed to the therapist that his right ankle had been sore for a few days. (Px2, p85). The therapist claimed the treatment that day was modified secondary to right ankle pain with antalgic gait pattern. (Px2, p86)

On December 2, however, the therapist noted Petitioner reported improvement in walking tolerance. (Px2, p88). The therapist further noted that Petitioner had progressed in walking tolerance over the 25 therapy visits. In fact, the therapist noted that the goal of improving gait mechanics had been met and that walking tolerance had improved to 25 to 30 minutes. (Px2, p90-91).

On December 7, Dr. Giannoulias noted that Petitioner complained of right ankle pain from walking differently than normal. Examination of the Petitioner's right ankle revealed peroneal tendon tenderness. There was no significant effusion or instability. Dr. Giannoulias provided no diagnosis or treatment related to the ankle. He noted the parties were waiting for approval of surgery to the left knee. (Px1, p25).

On December 28, Respondent approved the request for left knee surgery. (Px1, p145-46). On February 7, 2022, Dr. Giannoulias performed surgery on Petitioner. The surgery consisted of a left knee partial lateral meniscectomy, left knee extensive synovectomy, and left knee patellar chronoplasty. (Px1).

As of February 3, 2022, Petitioner had not been working at all. (Px2, p203). Petitioner remained off work through April 24, 2022, when Dr. Giannoulias released

Petitioner to return to restricted duty. (Px1, p87-102). That restricted duty was sedentary work monitoring touch screens. (Tr30)

On March 8, Petitioner returned to Dr. Giannoulias for a follow up visit related to the knee. During that visit, Petitioner informed Dr. Giannoulias that he was having pain and swelling in the right ankle which caused him to put "on hold" his therapy for the left knee surgery. (Px1, p22). The therapy records show, however, the therapy was never placed "on hold." (Px2, p198-242).

On March 8, examination of the right ankle by Dr. Giannoulias revealed swelling and tenderness in the anterolateral tendons. There was pain with eversion and inversion. Dr. Giannoulias assessed right ankle pain with effussion. Dr. Giannoulias ordered an MRI examination and prescribed ice and anti inflamatories. (Px1, p22).

The MRI occurred on March 10, 2022. Dr. Giannoulias reviewed the study and opined that it revealed an effusion and OCD in the talar done. According to Dr. Giannoulias, that explained the swelling and pain. It was catching his ankle. Dr. Giannoulias administered a cortisone injection into the ankle. (Px1, p21).

Petitioner returned to Dr. Giannoulias on April 12 for follow up on the left knee and right ankle. (Px1, p20). Regarding the ankle, Petitioner reported that he received complete relief from the injection, but only for three or four days. Dr. Giannoulias thus concluded he would refer Petitioner to a podiatrist for further evaluation and treatment.

On May 4, 2022, Petitioner saw Dr. David Kane regarding his ankle. (Px3, p2). Petitioner reported to Dr. Kane that the ankle pain started "since the surgical procedure was performed on his left knee." (Px3, p2). Dr. Kane noted Petitioner underwent the surgery on February 7, 2022.

Dr. Kane also wrote in his notes that "Dr. Giannoulias had told Michael that the right ankle is symptomatic due to overuse syndrome favoring his left knee." (Px3, p2). However, Dr. Giannoulias' records make no mention of the cause of the ankle condition, overuse or otherwise, or any discussion regarding cause with Petitioner. (P1, p20-22).

On May 4, Dr. Kane reviewed the MRI of the right ankle and concluded it showed an osteochondral defect along the medial talar dome with effusion around the margins of the lesion. The MRI also showed the peroneal brevis had longus tendons having mild to moderate fraying with linear type interruption in the tendon. (Px3, p4).

On May 4, Dr. Kane explained to Petitioner that he has an osteochondral defect which caused the symptoms in the area of his right ankle joint. (Px3, p4). Dr. Kane recommended physical therapy and immobilization of the right foot and ankle. If conservative treatment failed to control the symptoms, Dr. Kane recommended surgery to repair the lateral condyle defect. Dr. Kane's diagnoses on May 4 were osteochondral defect right ankle and peroneal tendon injuries right ankle. (Px3, 4).

Petitioner returned to Dr. Kane on May 13, 2022. (Px3, p7). At that time, Petitioner reported the new symptom of "a focal area of pain along the lateral aspect

of the right malleoulus where the peroneal tendons track into the foot across the ankle." (Compare Px3. p7 with p3). Dr. Kane changed his recommended treatment from surgery to repair the lateral condyle defect to surgery to repair the alleged peroneal tendon tears. (Compare Px3. p4 with p9).

On October 17, 2022, Dr. Anand M. Vora, a board certified orthopedic surgeon with a fellowship in orthopedic foot and ankle surgery, conducted an Independent Medical Examination of Petitioner. As of then, Petitioner reported pain in the right ankle. (Rx1, Exhibit 2 attached thereto). After physical examination of Petitioner's ankle, Dr. Vora concluded Petitioner had a normal ankle examination. Dr. Vora opined that Petitioner had no objective abnormalities which would correspond with the degree of subjective complaints. (Rx1, Exhibit 2, p4, attached thereto). Dr. Vora further opined that any peroneal tendon findings are either incidental or preexisting but certainly would not have any relationship to offloading or altered gait as peroneal tendon pathology does not develop in that manner. (Rx1, Exhibit 2, p4) Dr. Vora also stated that there is no mechanism or literature that would support aggravation of the preexisting osteochondral defect. (Rx1, Exhibit 2, p4) . Dr. Vora qualified his remarks by stating it would be important to review the MRI personally as Petitioner had not supplied the films on advice of his counsel.

Accordingly, Dr. Vora reviewed the MRI films and issued a supplemental report on July 12, 2023. (Rx1, Exhibit 3 attached thereto). In that report, Dr. Vora stated that he personally reviewed the MRI dated March 10, 2022. Dr. Vora interpreted that film as showing the osteochondral defect well positioned medially

and chronic. There was no evidence of fracture, loose body and no evidence of edema. Dr. Vora also found the peroneus tendons and peroneus longus were intact and in continuity. There was no evidence of tear. Essentially normal tendon contour. Mild Tenosynovitis.

After reviewing the MRI film, Dr Vora reaffirmed his opinion that Petitioner's right ankle condition is normal. Dr. Vora further opined that there is no peroneal tear that requires intervention. (Rx1, p22 and Exhibit 3, p2,). In his opinion, no further treatment is necessary. (Rx.1, Exhibit 3, p2). Moreover, Dr. Vora restated his opinion that there is no work-related injury applicable to the right lower extremity. (Rx1, Exhibit 3, p2).

On January 17, 2023, Dr. Kane provided his evidence deposition testimony. (Px6). Dr. Kane is board certified in foot and ankle surgery. Dr. Kane defined overuse syndrome as excessive use of the right foot and ankle as a result of not being able to put full weight bearing on the left limb. (Px6, p10-11). Dr. Kane believed that overuse of the right extremity could aggravate an osteochondral defect and a peroneal tendon injury.

Dr. Kane provided his opinion regarding how overuse aggravated caused the alleged conditions in Petitioner's right ankle. Dr. Kane testified that "after his surgery for his left knee, he wasn't able to apply weight to the left knee during his recovery. And during that time, he puts excessive wear and tear on his right foot and ankle, particularly during physical therapy, which caused this injury to happen." (Px6, p15).

In his deposition, Dr. Kane claimed that as of May 13, 2022, his recommended treatment plan was an arthroscopic examination of his right ankle and at the same time clean the excessive amount of synovitis in his ankle, clean that out, expand the joint a little bit with pressure of the arthroscopic examination and then also take a few minutes to address the peroneal tendon, which would be a repair of the tendon sheath. (Px1, p16). Dr. Kane's May 13, 2022 record, however, states he recommended only "repair of the peroneal tendon tears." (Px3, p9).

On cross examination, Dr. Kane testified he has not published literature involving either peroneal tendons or osteochondral defects. (Px6, p30). Dr. Kane further testified he had not spoken with Dr. Giannoulias to discuss Petitioner's case before Dr. Kane first examined Petitioner or at any time during his treatment of Petitioner. (Px6, p31). Dr. Kane further admitted that there is no mention in his initial notes of pain in the peroneal tendon. (PX. 6, P. 33).

At his deposition, Dr. Kane provided a further explanation of what "excessive wear and tear" means. Instead of distributing 50 percent of weight when walking, [Petitioner] is putting all of the weight on his right limb while he was walking during recovery. (Px6, p36-37) When asked how he knew that fact, he claimed that Petitioner was told to be off weight-bearing on his left limb after the surgical procedure. (Px6, p37). When asked how he knew that Petitioner was told to be off his left leg after surgery, he replied he was assuming that. (Px6, p37). When asked what evidence he had that Petitioner developed overuse syndrome prior to February 7, 2022, when he had surgery on the right knee, Dr. Kane replied "I don't have any

evidence other than assumption, assumption that he's been walking on his right limb since the injury and therefore put excessive wear and tear on his right limb." (Px6, p42) Dr. Kane admitted that he never asked Petitioner how he was walking or what his activities were before February 7, 2022. (Px6, p42). Dr. Kane further admitted Petitioner never provided any information to him about what his activities were before February 7, 2022. (Px6, p42-43).

Dr. Kane further admits that Petitioner told him that Dr. Giannoulias told him that the right ankle was symptomatic due to overuse and favoring his left knee. Dr. Kane admits this statement from Petitioner partially influenced his opinion that overuse let to the right ankle condition. (Px6, p44). There was nothing in Dr. Kane's notes stating that Petitioner was not bearing weight on his left knee after the surgery on February 7, or otherwise stating what activities Petitioner underwent after the surgery. (Px6, p45). Dr. Kane has no idea whether Petitioner was sedentary or how much he walked (Px6, p46). Dr. Kane admits knowing the amount of activity bears on whether was actual excessive wear and tear on the ankle. (Px6, p46).

On direct examination. Dr. Kane testified that Petitioner informed him that *after the surgery* he was putting the necessary weight on his right limb to be able to stand. (Px6, p11-12). On redirect examination, however, Kane attempted to modify that testimony by claiming that Petitioner told him that *since the time of his injury,* he had been unable to put weight on his left limb and therefore, has been weight-bearing on his right limb to compensate. As a result, he started to develop symptoms in his right foot and ankle. (Px6, p55). Dr. Kane admits even though that fact is

important, he did not put it in his notes. (Px6, p56). Further, Petitioner testified at hearing and did not corroborate Dr. Kane's changed testimony.

Dr. Vora provided his evidence deposition on September 1, 2023. (Rx1). At the deposition, Dr. Vora discussed the significance of the findings of his physical examination of Petitioner which occurred on October 17, 2022. Dr. Vora testified that swelling and weakness in the ankle region would be expected if there was a tear. (Rx1, p9-10).

Dr. Vora also provided further support for his opinions related to whether Petitioner's right ankle conditions were caused or aggravated by work-related events. Regarding the osteochondral lesion, Dr. Vora testified that that can occur only with significant trauma. (Rx1, p11). Dr. Vora confirmed aggravation of this preexisting condition would require a severe twisting injury or a severe ankle sprain, and then there would be edema in that defect, but there were no such findings in this case to suggest an aggravation. (Rx1, p23-24). Dr. Vora testified that activities of daily living, such as repeated walking could aggravate that condition. Perhaps running or high impact could potentially, but not likely. (Rx1, p24). Regarding the peroneal tendon, Dr. Vora testified a tear will result either from degeneration or an acute trauma such as a severe sprain. (Rx1, p11).

Dr. Vora reaffirmed his opinion that altered gait caused neither peroneal tendon tears nor osteochondral lesions. (Rx1, p13-14). To support his opinions, Dr. Vora referenced several publications he has authored on the issue of peroneal tendons and osteochondral defects. (Rx1, p5-6. 14 and Exhibit 1).

Dr. Vora also testified regarding altered gait and the effect of offloading upon the other lower extremity. Dr. Vora testified that the other extremity can take weight, but there is no evidence that such condition caused problems on the other extremity that are not transient. (Rx1, p25). The transient conditions would be expected to resolve as the gait resolves, but there would be no permanent conditions. (Rx1, p26). In this case, Dr. Vora explains Petitioner's ankle pain as at most a sprain which had resolved. (Rx1, p27-28). Based on the above, Dr. Vora testified his opinion was that surgery to the right ankle would be neither reasonable nor necessary. (Rx1, p16,18, 19).

CONCLUSIONS OF LAW

(F), Whether Petitioner's present condition(s) of ill-being are causally related to the injury:

To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of her claim. (*O'Dette v. Industrial Commission,* 79 Ill. 2d 249, 253 (1980), including that there is some causal relationship between her employment and her injury. *Caterpillar Tractor Co. v. Industrial Commission,* 129 Ill. 2d 52, 63 (1989). Petitioner sustained an undisputed accident on August 9, 2021. The parties agree the condition of Petitioner's left knee as of the date of hearing was related to that accident. The parties stipulated, however, that the future treatment for that condition is not part of this hearing (Tr. 38)

Disputed issues are the condition of Petitioner's right ankle, whether any present condition is causally related to the August 9, 2021 accident, and whether any recommended treatment for those conditions are reasonable and necessary. Regarding the issue of the present condition of Petitioner's right ankle, the parties agree that Petitioner has a preexisting osteochondral defect. There is a dispute regarding whether Petitioner has a peroneal tendon tear.

When resolving the disputed issues in this case, it is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Berry v Industrial Comm'n*, 99111. 2d 401, 406-07, 459 N.E.2d 963, 76111. Dec. 828 (1984); *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675, 928 N.E.2d 474, 340 Ill. Dec. 475 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041, 721 N.E.2d 1165, 242 Ill. Dec. 634 (1999). Expert testimony shall be weighed like other evidence with its weight determined by the character, capacity, skill and opportunities for observation, as well as the state of mind of the expert and the nature of the case and its facts. *Madison Mining Company v Industrial Commission*, 309 Ill 91, 138 N.E. 211 (1923). The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th)100615WC, 960 N.E.2d 587, 355 Ill. Dec. 705.

In the case before him, the Arbitrator believes that Respondent has established Dr. Vora's opinions regarding the current conditions are more reliable. Dr. Vora is board certified in orthopedics with a fellowship in ankle and foot surgery. Dr. Vora has written extensively regarding the conditions at issue in this case.

Further, Dr. Kane's initial diagnosis was osteochondral defect, with no mention of a tendon tear or recommendation for surgery. (Px3, p4). When Petitioner first complained of right ankle pain, Dr. Giannoulias found no significant effusion or instability. (Px1, p25). Dr. Vora testified the lack of swelling and weakness indicates there was no tear. (Rx1, p9-10). Accordingly, I find Petitioner has a preexisting osteochondral defect and no peroneal tendon tear.

Even if Petitioner has established that he has an existing peroneal tendon tear, I further find that Petitioner has failed to carry his burden of establishing by the preponderance of the evidence is causally related to the August 9. 2021 accident. Resolution of this issue is based on which expert opinion is most credible. As previously stated, the proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th)100615WC, 960 N.E.2d 587, 355 Ill. Dec. 705. Moreover, if the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. Expert opinions must be supported by facts and are only as valid as the facts underlying them. *In re Joseph S.*, 339 Ill. App. 3d 599, 607, 791 N.E.2d 80, 87, 274 Ill. Dec. 284 (2003). A finder of fact is not bound by an expert opinion on an ultimate issue but may look 'behind' the opinion to

examine the underlying facts. A treating doctor's findings and opinions can be undermined, or even disregarded, through reliance on inaccurate or incomplete information." See *Ravji v. United Airlines*, 2012 WL 440353 at 13 (Ill. Indus. Comm'n) interpreting *Horath v. Industrial Commission*, 96 Ill.2d 349 (Ill. 1983).

Petitioner here relies on Dr. Kane's opinions. The crux of Dr. Kane's opinions is that Petitioner engaged in "excessive" use of the right foot and ankle as a result of not being able to put full weight bearing on the left limb. (Px6, p10-11). At his deposition, Dr. Kane provided a further explanation of what "excessive wear and tear" means. Instead of distributing 50 percent of weight when walking, [Petitioner] is putting all of the weight on his right limb while he was walking during recovery. (Px6, p36-37)

Dr. Kane, however, admits he has no idea how much weight Petitioner placed on his right leg, and that his opinions are based on speculation. When asked how he knew Petitioner placed all his weight on his right limb during recovery, Dr. Kane claimed that Petitioner was told to be off weight-bearing on his left limb after the surgical procedure. (Px6, p37). When asked how he knew that Petitioner was told to be off his left leg after surgery, he replied he was assuming that. (Px6, p37). When asked what evidence he had that Petitioner developed overuse syndrome, Dr. Kane replied "I don't have any evidence other than assumption, assumption that he's been walking on his right limb since the injury and therefore put excessive wear and tear on his right limb." (Px6, p42) Dr. Kane admitted that he never asked Petitioner how

he was walking or what his activities were before he saw Dr. Kane. (Px6, p42). Dr. Kane also admitted Petitioner never provided such information to him. (Px6, p42-43).

In addition to basing his opinion on speculation, Dr. Kane relied on incomplete and inaccurate facts. First, Dr. Kane supported his opinion with the claim that Petitioner's activities from the date of surgery (February 7, 2022) until he complained of ankle pain to Dr. Giannoulias aggravated his ankle conditions. Dr. Kane's note of the initial consultation with Petitioner stated that the ankle pain started "since the surgical procedure was performed on his left knee." (Px3, p2). Dr. Kane testified that "*after his surgery for his left knee*, he wasn't able to apply weight to the left knee during his recovery. And during that time, he puts excessive wear and tear on his right foot and ankle, particularly during physical therapy, which caused this injury to happen." (Px3, p15).

Dr. Kane then later attempted to base his opinion on Petitioner's activities from the date of injury (August 9, 2021) rather than the date of knee surgery. On direct examination. Dr. Kane testified that Petitioner informed him that *after the surgery* he was putting the necessary weight on his right limb to be able to stand . (Px6, p11-12). On redirect examination, however, Kane attempted to modify that testimony by claiming that Petitioner told him that *since the time of his injury,* he had been unable to put weight on his left limb and therefore, has been weight-bearing on his right limb to compensate. As a result, he started to develop symptoms in his right foot and ankle. (Px6, p55). Dr. Kane admits even though that fact is important, he did not put it in his notes. (Px6, p56).

That attempt to change the basis for his opinion further weakens it. That, along with changing claims about the diagnosis and recommended treatment render Dr. Kane's opinions as less than credible to the Arbitrator. (Compare Px3. p7 with p 3, Px3. p4 with p9., and Px1, p16 with Px3, p9).

Regardless of whether Dr. Kane attempts to justify his opinions with Petitioner's activities from the date of injury or from the date of surgery, Petitioner has failed to carry his burden to demonstrate that Dr. Kane's opinions are based on fact.

Dr. Kane admits knowing the amount of activity bears on whether was actual excessive wear and tear on the ankle. (Px6, p46). Yet, there was nothing in Dr. Kane's notes stating that Petitioner was not bearing weight on his left knee after the surgery on February 7, or otherwise stating what activities Petitioner underwent after the surgery. (Px6, p45). Dr. Kane does not appear to have much knowledge regarding the extent of petitioner activities. (Px6, p46).

As noted, Dr. Kane relies only on speculation. The known facts are to the contrary. For example, as of February 3, 2022, Petitioner had not been working at all. (Px2, p203). Petitioner remained off work through April 24, 2022 when Dr. Giannoulias released Petitioner to return to restricted duty. (Px1, p87-102). That restricted duty was sedentary work monitoring touch screens. (T30).

Further, if measuring the activity from the date of injury, August 9, 2021, Petitioner fails to support his burden. Yet again, the know evidence is contrary to "excessive" activity which could cause the ankle conditions.

Dr. Giannoulias also immediately after the injury placed Petitioner on sedentary duty only, on which Petitioner remained when he was working through the date of trial. (Px1, p180; 141-180; T27, 30). Petitioner testified that he's essentially been monitoring touchscreens since August 31st of 2021 80 hours every two weeks. (T29-31). Those facts counter any claim of excessive activity. Petitioner provided no facts about what he was doing when not working.

The therapy notes, however, undermine any claim of excessive activity. Those showed Petitioner was not performing much activity. (Px2) Moreover, there are multiple entries of improving gait, improved cushion on the left knee, and improved stability with weight bearing (P2).

Specifically, on October 7, 12, 15, and 20, Petitioner performed further left knee weight bearing activities which he tolerated well with little pain increase, including calf raises. (Px2, p33, 36, 39, 42). On October 21, the therapist noted that Petitioner continued to improve his gait mechanics, lacking only 2 degrees. The therapist also noted the plan was to continue to progress weight bearing activity. The therapist further noted for the first time that Petitioner had walking tolerance to 10 minutes. (Px2, p46). Petitioner apparently was not walking more than 10 minutes previously. The preponderance of the evidence does not support Petitioner's claim that he engaged in excessive activities involving the right ankle which aggravated his conditions.

Moreover, simply parroting Petitioner's belief about the cause of a condition renders the expert opinion unreliable. *Rochelle v. Ultra Foods*.2021 Ill. Wrk. Comp.

LEXIS 82, *30. Here, Petitioner was the advocate for attributing any ailment to alleged "abnormal" walking. This advocacy began with the therapist in November 2022, where Petitioner attributed tight muscles in his legs to abnormal walking. (Px 2, p79). Petitioner continued this advocacy on December 7 when he first complained of right ankle pain to Dr. Giannoulias, stating the pain was from walking differently than normal. (Px1, p25).

In notes of his first visit with Petitioner, Dr. Kane wrote that "Dr. Giannoulias had told Michael that the right ankle is symptomatic due to overuse syndrome favoring his left knee." (Px3, p2). Yet, Dr. Giannoulias' records make no mention of the cause of the ankle condition, overuse or otherwise, or any discussion regarding cause with Petitioner. (Px1, p20-22). Further, Dr. Kane testified he had not spoken with Dr. Giannoulias to discuss Petitioner's case before Dr. Kane first examined Petitioner or at any time during his treatment of Petitioner. (Px6, p31). Thus, Petitioner was the sole source of the opinion that "overuse" caused the right ankle condition. Dr. Kane admits Petitioner's statement regarding causation partially influenced his opinion that overuse let to the right ankle condition. (Px6, p44).

Based on the record as a whole, regarding the disputed issues related to the right ankle, the Arbitrator finds Petitioner experienced an ankle sprain which resolved by October 17, 2022 when Dr. Vora examined him. Any other condition of the right ankle is not causally connected.

(J), Whether the medical services that were provided to Petitioner were reasonable and necessary? Whether Respondent paid all appropriate charges for all reasonable and necessary medical services?

Petitioner seeks payment of the medical bills listed in Arbitrator's Exhibit1. As the causal connection of the left knee condition through the date of hearing is undisputed, Respondent shall pay for services related to the left knee care pursuant to the Illinois Medical fee Schedule. The Arbitrator denies any claim for treatment related to the right ankle, including but not limited to the treatment rendered by Dr. Kane. Respondent shall receive credit for any amounts it has paid of the bills listed in Arbitration Exhibit 1.

(K) Whether Petitioner entitled to any prospective medical care:

Petitioner has sought authorization for surgery to be performed by Dr. Kane on the right ankle. As Petitioner has failed to prove by a preponderance of the evidence that the condition of right ankle is related to this accident, Petitioner's claim for that prospective medical care is denied. The parties have stipulated that Petitioner is not seeking prospective care for the left knee in this proceeding.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC015910
Case Name	Robert Aubry v. Performance Floors
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0134
Number of Pages of Decision	12
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Steven Scarlati
Respondent Attorney	Jaclyn Jednachowski

DATE FILED: 3/27/2025

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBERT AUBRY,

Petitioner,

vs. NO: 22 WC 015910

PERFORMANCE FLOORS,

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 Benefit Rates including whether the benefit rates are correct and whether the average weekly wage calculations are correct, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327, 399 (1980).

The Commission modifies the Arbitrator's Decision to correct a scrivener's error. At the §19(b) hearing, both parties executed the Request for Hearing form prior to its admission into evidence at the time of trial on July 22, 2024. (Arb.X1) The Request for Hearing form represented the disputed issues before the Arbitrator and the parties' trial stipulations including Petitioner's annual earnings during the year preceding the injury of $88,279.36, and the average weekly wage rate calculated pursuant to §10 of the Act of $1,697.68. *Id.* Therefore, the Commission strikes"$93,690.48" and "$1,801.74" from the sixth sentence in the Arbitrator's Findings and substitutes the numbers that the parties stipulated on the Request for Hearing form representing the Petitioner's annual earnings during the year preceding the injury and corresponding average

weekly wage rate, so the sentence now reads, "In the year preceding the injury, Petitioner earned $88,279.36; the average weekly wage was $1,697.68."

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on November 15, 2024, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the condition in Petitioner's bilateral knees is causally related to the work injury of March 9, 2022. 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.

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 $14,433.00. 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.

MARCH 27,2025

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KAD/bsd
42

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC015910
Case Name	Robert Aubry v. Performance Floors
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Charles Watts, Arbitrator

Petitioner Attorney	Steven Scarlati
Respondent Attorney	Jaclyn Jednachowski

DATE FILED: 11/15/2024

/s/Charles Watts, 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)

Robert Aubry
Employee/Petitioner

v.

Performance Floors
Employer/Respondent

Case # 22 WC 015910

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Charles Watts, Arbitrator of the Commission, in the city of Chicago , on 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, March 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 condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $93,690.48; the average weekly wage was $1,801.74.

On the date of accident, Petitioner was 56 years of age, 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 $129725.28 for TTD, $0 for TPD, $0 for maintenance, and $6000 for other benefits, for a total credit of $135,725.28.

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

ORDER

THE ARBITRATOR FINDS IN FAVOR OF PETITIONER, HOLDING THE CONDITION IN PETITIONER'S BILATERAL KNEES TO BE CAUSALLY RELATED TO THE WORK INJURY OF MARCH 9, 2022.

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.

NOVEMBER 15 2024

Signature of Arbitrator

STATEMENT OF FACTS

Petitioner had preexisting problems with his right knee. On October 4, 2011, Petitioner had surgery to remove a prepatellar bursa from his right knee. (RX3:51-53). Post-operatively, petitioner was diagnosed with chronic prepatellar bursitis of the right knee. *Id.* Postoperatively, Dr. Meisles – the surgeon – noted that there were degenerative changes and that Petitioner continued to have complaints. (RX3:14). An MRI on December 7, 2011 the MRI revealed a tear of the medial meniscus and a questionable tear of the lateral meniscus was noted. (RX3:46-47). Mild infrapatellar and distal quadriceps tendinopathy was also in the findings. *Id.* The radiologist also noted tricompartmental degenerative changes with chondromalacia most prominently involving the lateral tibial plateau. *Id.* On December 13, 2011, Dr. Meisles performed a right knee arthroscopy consisting of a partial medial meniscectomy and chondroplasty of the patella. (RX3:43-44). As of this surgery, Petitioner already had grade 3 chondromalacia in the undersurface of the patella with some rather large fragments or partially delaminated articular cartilage hanging down. *Id.* At the conclusion of post-operative care, Dr. Meisles released Petitioner from care and advised that he find another line of work that did not involve frequent kneeling. (RX3:5).

Petitioner suffered a work-related injury on March 9, 2022. The medical records provide a consistent history of a work injury involving the right knee. (PX1). Petitioner came under the care of Dr. Brian Cole at Midwest Orthopaedics at Rush. An MRI was recommended and ultimately secured on April 7, 2022. (PX2:123-124) The MRI showed a complex tear of the medical meniscus extending into the posterior horn, a lateral meniscus posterior root tear and tri compartmental chondromalacia. *Id.*

The right knee was treated conservatively with injection and therapy. When conservative treatment failed to resolve the issue, Petitioner was scheduled for and ultimately underwent surgery to repair the meniscus tear on June 7, 2022. (PX 9) Given the chondromalacia, the surgical procedure also included a bone marrow concentrate. (PX9:44-45).

Following surgery, the Petitioner was placed in a post op knee brace, issued crutches and was returned to physical therapy.

On July 21, 2022, Petitioner related to Dr. Cole that had suffered an injury to his left knee due to an incident with his crutches. (PX5:135) The Petitioner testified at trial that while using his crutches he had missed a step, falling down stairs and injuring his left knee. (Trial page 18)

Following that incident, treatment including therapy involved both the left and right knee. (PX5:107) When the left knee pain continued unresolved, an MRI of the left knee was recommended and ultimately performed on September 1, 2022. (PX3: 121-122) It showed a complex medical meniscus tear and mild tricompartmental osteoarthritis. *Id.*

At the request of the Respondent, Petitioner was examined by Dr. Mark Levin on December 6, 2022. While Respondent objected to the admission of this report, relevant portions of the doctor's opinion are contained within Respondent's Exhibit 1, an IME report drafted by Dr. Vijay Thangamani. Specifically, Dr. Levin is reported to have felt that there was a preexisting degenerative condition in Petitioner's knee, but, based upon a subjective report of injury in March 2022, the right leg was reportedly aggravated by the work injury that is the subject of this case. Dr. Levin also was reported to have noted the injury to the left knee due to a twisting injury while in recovery from the right knee surgery. Dr. Levin reportedly opined that Petitioner may require knee replacement**s** at some point in time due to his continued symptoms. Dr. Levin reportedly felt that the treatment rendered to date had been reasonable and appropriate. (RX1:2)

Following a course of conservative treatment including bilateral knee injections Petitioner underwent left knee surgery including medical meniscectomy and debridement of synovectomy on February 1, 2023. (PX10:68)

Following the left knee surgery, Petitioner was again enrolled in a course of physical therapy. While there was improvement in the left knee, the right remained significantly symptomatic and on March 20, 2023, Dr. Cole referred Petitioner for potential total knee replacement. (PX3:221)

On November 6, 2023, Respondent obtained a utilization review of petitioner's total knee replacement. (PX8:8-14). The same was denied per ODG guidelines because Petitioner's x-rays only revealed moderate osteoarthritis in the right knee, which do not meet ODG criteria of advanced OA. *Id.*

Respondent then secured a second independent medical examination, with Dr. Thangamani, which took place on March 18, 2024. (RX1) The doctor opined that the condition of Petitioner's knee was preexisting and as such unrelated to the work injury. The doctor opined that with regards to a return to work and while unrelated to the work injury, Petitioner required permanent restrictions of no kneeling, bending, squatting, or stooping. No lifting greater than 20 pounds. (Respondent's Ex 1 page 7. Dr. Thangamani further specifies that these restrictions would be in effect "until he has the knee replacements performed…" The Petitioner testified that his job required him to be on his knees 75% to 80% of the eight-to-ten-hour work day. (Trial page 11)

Dr. Cole in a report dated June 12, 2024 opined that as Petitioner's osteoarthritis, which had been asymptomatic with regards to either knee prior to the March 9, 2022 incident and the fall on stairs while on crutches, constituted an ongoing aggravation of his pre-existing condition and with a reasonable degree of medical and surgical certainty, he opined the work event caused the symptomatology that may otherwise not have become symptomatic, absent of that injury. (PX13).

CONCLUSIONS OF LAW

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

Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d). To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim (*O'Dette v. Industrial Commission,* 79 Ill. 2d 249, 253 (1980)), including that there is some causal relationship between his employment and his injury. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill. 2d 52, 63 (1989). An injury is accidental within the meaning of the Act when it is traceable to a definite time, place, and cause and occurs in the course of employment, unexpectedly and without affirmative act or design of the employee. *Mathiessen & Hegeler Zinc. Co. v. Industrial Board*, 284 Ill. 378 (1918).

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

Credibility is the quality of a witness which renders his or her evidence worthy of belief. The arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his testimony. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission*, 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972). While it is true that an employee's uncorroborated testimony will not bar a recovery under the Act, it does not mean that the employee's testimony will always support an award of benefits when considering all the testimony and circumstances shown by the totality of the evidence. *Caterpillar Tractor Co. v. Industrial Commission*, 83 Ill. 2d 213 (1980).

Petitioner testified in open hearing before the Arbitrator who viewed his demeanor under direct examination and under cross-examination. Petitioner's manner of speech, body language, and flow of answers to questions was indicative of sincerity. The Arbitrator finds the testimony of the Petitioner as to his work duties, the accident and his course of medical treatment to be credible and consistent with the records of treatment.
The credibility of other witnesses is discussed below.

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

The primary issue to be addressed is whether the current recommendations for treatment, including total knee replacement, are causally related to the March 9, 2022 date of accident. Respondent relies upon the report of their second IME, Dr. Thangamani, who opines that there is no causal relationship between the bilateral knee conditions and the work injury. This opinion centers around the assertion that the degenerative condition in the knees

preexists the claimed date of accident. He opines there is no evidence of structural change following the work injury.

A causal connection between work duties and a condition may be established by a chain of events including Petitioner's ability to perform the duties before the date of the accident, and inability to perform the same duties following that date. *Pulliam Masonry v. Industrial Comm'n*., 77 Ill.2d 469, 471 (1979). A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. Causation between the work-related accident and condition of ill-being can be established by showing prior history of good health, followed by a work-related accident in which petitioner is unable to perform his physical duties. *Kawa v. Illinois Workers' Comp. Comm'n*, 991 N.E.2d 430, 448 (2013).

It is very difficult for the Arbitrator to rationalize the lack of causation with Dr. Thingamani's concurrent opinion that Petitioner is under restrictions that are to remain in effect until he has the recommended knee replacements. All evidence supports the finding that prior to the work injury, Petitioner was capable of full duty work without restriction and had been doing so for the last ten years. The Arbitrator also finds it difficult to rationalize this position given the lack of any indication that the Petitioner was exhibiting symptoms and/or difficulty prior to the undisputed work injury. As such, the Arbitrator finds little if any support for Dr. Thangamani's conclusions on causation and accordingly, assigns no weight to this opinion. The Arbitrator also finds compelling the fact that the Respondent validly objected to the admission of Dr. Levin's December 6, 2022 IME report. The Arbitrator notes that following the report of Dr. Levin, Petitioner continued to receive both lost time and medical benefits from the Respondent. Dr. Thingamani referenced Dr. Levin's opinions in his IME report and wrote, "[Dr. Levin] felt that it was preexisting and degenerative in nature, but that based strictly on a subjective report of injury in March 2022 that the right knee was aggravated by this alleged injury and that he had left knee pain caused by a twist recovering from right knee surgery." (RX1:2).

There is no support for any argument that attempts to assert a spontaneous or coincidental emergence of arthritic symptomatology. Respondent offered into evidence the records of Orthopedic Specialists that document a prior right knee surgery in 2011 consisting of a meniscus repair and the excision of a prepatellar bursa. Pain with kneeling was also referred to in a report dated April 25, 2012. Most significantly, however, the Arbitrator notes that Petitioner returned to the same doctor in September and October 2016 and there is no indication of ongoing difficulties or complaints pertaining to the right knee. (RX3) Petitioner testified that following his discharge from care in 2012, his symptoms resolved. (Trial page 25) There is no evidence of further treatment or complaints regarding the knee between April 2012 and the March 9, 2022 date of accident.

The Arbitrator finds no credible evidence establishing symptomatology in either the right or left knee in the ten years preceding the date of accident. In a light most favorable to Respondent, the report of Dr. Gerlinger dated March 27, 2023, contains a history indicating a 2-year history of knee pain that arguably predates the claimed date of accident. (RX1:4,

PX4:204-212). Petitioner denied ever providing this history and the records of treatment demonstrably support the contention that this was an error on the part of the doctor. (Trial page 26) When seen in physical therapy on March 20, 2023, he is frustrated by knee pain that has lasted over a year which is consistent with a March 9, 2022, date of accident (PX2:17-20). The petitioner also testified that he had personally completed a questionnaire for the doctor. (Trial page 27). That document completed by the Petitioner on March 25, 2023, asks when his pain began. Petitioner responds: 1 year. (PX2:9).

Given the lack of any credible evidence suggesting Petitioner was symptomatic prior to the undisputed injury, the Arbitrator finds more credible the opinion of Dr. Cole who finds Petitioner's arthritic condition to have been aggravated by said incident. Dr. Cole has opined that his left knee injury was caused by his use of crutches. As the crutches stem from the compensable injury, that condition is also causally related to the March 9, 2022, date of 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?

The Arbitrator finds all of Petitioner's medical treatment was reasonable and necessary as a result of the injuries sustained on March 9, 2022. As previously noted, Respondent's Exhibit 1 contains excerpts of Respondents initial expert who reportedly found the treatment provided by Dr. Cole to be both reasonable and necessary. Petitioner's Exhibit 12 contains both paid and unpaid medical bills. Accordingly, the Arbitrator orders Respondent to pay these related medical expenses set forth in Petitioner's Exhibit 12, pursuant to the Fee Schedule:

Provider	Dates of Service	Total Charges
Elmhurst Hospital Accounts: 3005291830, 3005496903, 3006334959	03/09/22, 05/12/22, 01/17/23	4,137.00
Midwest Orthopaedics at Rush Patient #: 1696871	03/21/22 – 09/14/23	130,252.00
Gold Coast Surgicenter Account: MRN18905	06/07/22	17,183.92
University Anesthesiologists Account: UNI-220607700	06/07/22	1,440.00

Rush Oak Brook Surgery Center Account: 32244-1	02/01/23	12,504.00
University Anesthesiologists Account: UNI-230201428	02/01/23	960.00
Elmhurst Med Associates Patient #: EH2382250	05/12/22, 01/17/23	606.06
TOTALS:		$167,082.98

Respondent is given credit for those payments already made. Respondent shall remain responsible for the reimbursement of any medical bills submitted to and paid by the Petitioner's group carrier.

(k) Is Petitioner entitled to any prospective medical care?

The Arbitrator further finds Petitioner is entitled to undergo the knee surgery that has been recommended by his treating physician.

(l) What temporary benefits are in dispute

In light of his opinion regarding causation, the Arbitrator finds the Petitioner entitled to TTD from March 9, 2022 though July 25, 2024. Respondent is entitled to credit of $135,725.28 in benefits paid.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC011632
Case Name	Kevin Ross v. Prairie Farms Dairy
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0135
Number of Pages of Decision	18
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Matthew Terry

DATE FILED: 3/27/2025

/s/Maria Portela, 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

KEVIN ROSS,
Petitioner,

vs. NO: 23 WC 11632

EAST SIDE JERSEY DAIRY, 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 issues of accident, causal connection, medical expenses, temporary total disability benefits, and permanent partial disability benefits, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission affirms and adopts the Arbitrator's Decision as to accident, causal connection, medical expenses, temporary total disability benefits, permanent partial disability benefits and nature and extent. However, the Commission modifies the Section 8.1b(b)(v) analysis to read as follows:

> The surgery performed was on Petitioner's non-dominant hand, however, Petitioner has on-going complaints of intermittent pain at night and loss of strength in the right hand. Further, the left-hand/dominant hand symptoms are currently being conservatively treated and are not requiring additional intervention at this time. Finally, the right long finger trigger finger continues to

be symptomatic and has residual tingling. The Commission gives this factor greater weight.

Additionally, the Commission modifies the Arbitrator's Decision to reflect that for repetitive trauma carpal tunnel cases, a hand is valued at 190 weeks. Therefore, the award for permanent partial disability is modified to reflect that 10% of the right hand equals 19 weeks, 1% of the left hand equals 1.9 weeks, and the 20% loss of the right long finger equals 7.6 weeks, for a total award of permanent partial disability benefits of 28.5 weeks.

The Commission corrects the scrivener's error in the first sentence of the Findings of Fact to reflect that Petitioner has worked for Respondent for 8.5-9 years, rather than "nearly nine 32 years."

The Commission corrects the scrivener's error in the last paragraph of page 11 of 11 to reflect the award in the Order section of the Decision from 12.5% of the right hand and 2% of the left hand to 10% of the right hand and 1% of the left hand.

Finally, the Commission corrects the Decision Signature Page to reflect that the name of the Respondent is "East Side Jersey Dairy, Inc." rather than "Prairie Farms Dairy".

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $603.67 per week for a period of 9-6/7 weeks, from May 17, 2023 through July 24, 2023, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $543.31 per week for a period of 28.5 weeks, as provided in §8(e)9 and §8(e)3 of the Act, for the reason that the injuries sustained caused the 10% loss of Petitioner's right hand, 1% loss of the left hand and the 20% loss of the Petitioner's right long finger.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $43,243.00 for medical expenses under §8(a) of the Act, subject to the fee schedule in §8.2 of the Act.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $59,053.00. 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.

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

MARCH 27, 2025

MEP/dmm
O: 030425
49

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC011632
Case Name	Kevin Ross v. Prairie Farms Dairy
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Matthew Terry

DATE FILED: 2/20/2024

/s/ Jeanne AuBuchon, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 14, 2024 5.065%

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

KEVIN ROSS
Employee/Petitioner

v.

EAST SIDE JERSEY DAIRY, INC.
Employer/Respondent

Case # **23** WC **011632**

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, Illinois**, on **January 19, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **March 11, 2023**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**47,086.52**; the average weekly wage was $**905.51**.

On the date of accident, Petitioner was **47** years of age, ***married*** with **0** dependent child(ren).

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

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

Respondent shall be given a credit of **$0** for TTD, $**0** for TPD, $**0** for maintenance, and **$5,725.70** in nonoccupational indemnity disability benefits, for a total credit of **$5,725.70**.

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

ORDER

Respondent shall pay the reasonable and necessary medical services of outlined in Petitioner's Exhibit 1, as provided in § 8(a) of the Act.

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

Respondent shall pay temporary total disability benefits of $**603.67** for **9 6/7** weeks, commencing May 17, 2023, through July 24, 2023.

Respondent shall pay Petitioner permanent partial disability benefits of $**543.31**/week for **30.15** weeks, because the injuries sustained caused the 10% loss of Petitioner's right hand, 1% of the left hand and the 20% loss of Petitioner's right long finger, as provided in §8(e)10 and §8(e)3 of the Act.

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

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

Jeanne L. AuBuchon **February 20, 2024**

Signature of Arbitrator

PROCEDURAL HISTORY

This matter proceeded to trial on January 19, 2024, on all issues. The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of his employment; 2) the causal connection between the accident and the Petitioner's bilateral carpal tunnel and long finger trigger finger conditions; 3) payment of medical expenses; 4) eligibility for temporary total disability (TTD) benefits; and 5) the nature and extent of the Petitioner's injury.

Amendment of the Application for Adjustment of claim to rename the Respondent as "East Side Jersey Dairy, Inc." and to change the accident date to March 11, 2023, was granted without objection from the Respondent.

FINDINGS OF FACT

The Petitioner is employed with Respondent as a case dock cooler receiver and has worked for the Respondent for nearly nine 32 years. (T. 11) As of March 11, 2023 – the alleged date of injury – the Petitioner was 47 years old. (AX1) He described his job tasks as holding onto empty milk cases, pushing them down the line on a moving track with a hook and grabbing carts and separating them from trays coming off the truck. (T. 13-14) In a prior position as a blow mold operator that makes gallon jugs, he used his hands and arms to make adjustments and loosening bolts to be replaced, turning and twisting a rachet with both hands. (T. 15-16) As a filler operator, he used his hands and arms to break down the machine, taking out parts and putting it back together – using little forks that he had to push down with his hand. (T. 17) While working in receiving, he hooked up pipes and hoses – using his hands to tighten clamps with a wrench. (T. 19-20) In the cooler, he would catch gallons off the conveyor belt, build pallets and shrink wrap the product on the pallets. (T. 20) The Petitioner testified that he filled out a Detailed Job Description and Work History Timeline at the request of his attorney. (T. 13, PX9) The descriptions on these

forms were consistent with his testimony and gave details regarding the lifting, pushing, and use of his hands for gross manipulation such as grasping, twisting and handling that he performed. (PX9)

The Petitioner also identified a job description of the case dock position. (T. 32, 34, RX1, Deposition Exhibit 3) He explained that in performing that job he gets empty carts out of the cooler mismatched with trays, and he has to break them down and stack them about seven or eight high, spray them out, scrub them and stick them through a machine. (T. 32-33) The Petitioner acknowledged that in the blow mold position, he used a rachet on an as-needed basis. (T. 35)

The Petitioner testified that he started a lawn care business in 2023, but he only cut two or three yards. (T. 38) He said he used a zero-turn riding mower that rides very smoothly, and someone else performed weed-eating and trimming. (T. 39)

The Petitioner stated that on March 11, 2023, he was working overtime in the cooler with two other employees when there should have been five – two catching milk and one watching the machine. (T. 11-12, 40) He said he felt sharp pains in his right arm while lying in bed that night and thought it might have been from high blood pressure. (T. 12) He said he did not notice symptoms in right arm before that. (Id.) He denied being diagnosed with diabetes, high blood pressure, gout or sleep apnea and was not a smoker. (T. 28-29)

The Petitioner saw his primary care physician, Dr. Lowell Sensintaffer, on March 23, 2023. (T. 22, PX3) He reported right arm pain and tingling in his hand. (PX3) He also had symptoms in his left hand that were not as severe. (Id.) Dr. Sensintaffar noted that the Petitioner had recently began a new job that was very physical, required pulling cases and involved a lot of repetitive movements with the arms and hands. (Id.) Dr. Sensintaffar stated that the Petitioner's examination was normal but his history supported a possible carpal tunnel syndrome diagnosis. (Id.) He was

referred for a electromyography and a nerve conduction study (EMG/NCS) and was given a prescription for nighttime wrist splints. (Id.) The tests were conducted on April 10, 2023, and were positive for moderate carpal tunnel on the right and mild on the left. (PX4) Dr. Sensintaffer then referred the Petitioner for occupational therapy and hand surgery. (PX3)

On May 1, 2023, the Petitioner saw Dr. Matthew Bradley, an orthopedic surgeon at St. Louis Spine and Orthopedic, and complained of bilateral wrist and hand pain, numbness and tingling and pain in his right long finger. (PX5) He could not fully flex his long finger on his right hand and got it stuck on extension. (Id.) He reported that in March 2023, he had a day where he was lifting gallons of milk and catching and pulling the cases, having worked overtime and noticed his hands were painful and burning. (Id.) Dr. Bradley noted that the Petitioner completed a work activity sheet outlining the activities he performed over the past eight years working in the dairy industry in multiple capacities. (Id.) The work activity sheets described the Petitioner's work and his activities on the day he noticed symptoms in his hands. (Id.)

After a physical examination and X-rays, Dr. Bradley diagnosed right greater than left carpal tunnel with right long finger trigger finger, found that non-operative treatment failed and recommended surgery. (Id.) He opined that the chronic repetitive use of Petitioner's bilateral hands during the past eight years of working in the dairy industry contributed to and was causally related to the development of his bilateral carpal tunnel and right long finger trigger finger. (Id.)

On May 17, 2023, Dr. Bradley performed an open right carpal tunnel decompression and long finger trigger finger release. (Id.) Intraoperatively, Dr. Bradley noted that the median nerve was flattened as it went into the carpal tunnel and the transverse carpal ligament was thickened. (Id.) There was also triggering with bulbous changes to the flexor tendon of the long finger. (Id.)

The Petitioner underwent physical therapy at Athletico from June 7, 2023, through July 12, 2023. (PX7)

At follow-up appointments with Dr. Bradley, the Petitioner reported that the pain, numbness and tingling improved and the triggering in his finger resolved. (PX5) He still had some grip weakness. (Id.) On July 24, 2023, the Petitioner reported to Dr. Bradley that he was doing well. (Id.) He complained of some residual tingling at the tip of his finger and inability to flex his long finger to the pad of his palm but said this was improving. (Id.) Dr. Bradley noted that since Petitioner had not been working, his left hand had significantly improved. (Id.) Dr. Bradley returned the Petitioner to work full duty and placed him at maximum medical improvement. (Id.)

On August 16, 2023, the Petitioner underwent a Section 12 examination by Dr. W. Chris Kostman, an orthopedic surgeon at Performance Orthopedics. (RX1, Deposition Exhibit 2) The Petitioner described his work activities prior to the onset of symptoms consistently with his testimony and reports to Dr. Bradley. (Id.) Dr. Kostman reviewed job descriptions and job bids from the Respondent listing responsibilities and duties for various positions. (RX1, Deposition Exhibit 3) He also reviewed registration materials from Dr. Bradley that described lifting, pushing and pulling activities the Petitioner performed at work. (RX1, Deposition Exhibit 4)

Dr. Kostman stated in his report that he did not believe the Petitioner's work activities were a cause of or permanently aggravated any bilateral hand or wrist condition, based on the Petitioner's history and Dr. Kostman's review of medical records and exam findings. (RX1, Deposition Exhibit 2) He also stated that he believed the Petitioner's symptoms of carpal tunnel syndrome represented a temporary aggravation. (Id.) He said that with symptoms occurring mostly at night and in the morning, he believed the Petitioner had baseline idiopathic slowing of

his median nerve by EMG/NCS bilaterally. (Id.) He did not believe the right-sided carpal tunnel release and trigger finger release were specifically related and necessary secondary to the Petitioner's work activities. (Id.)

Dr. Bradley testified consistently with his reports at a deposition on December 6, 2023. (PX1) He said carpal tunnel syndrome in work-related scenarios is cumulative in nature that occur and happen over years and years. (Id.) He explained that the causes of trigger finger are similar to carpal tunnel, such as picking up a crate or instrument and putting pressure across the tendons on the palms of the hands. (Id.) Dr. Bradley said he reviewed with the Petitioner the intake form and the work history timeline and description of his work activities. (Id.) He concluded that the activities over at least eight years were sufficient to at least contribute to the Petitioner's carpal tunnels and trigger finger. (Id.) He believed that repetitive lifting of items weighing 30 pounds every day for multiple hours a day was a contributed to the Petitioner's development of carpal tunnel syndrome. (Id.)

On December 20, 2023, Dr. Kostman testified consistently with his report at a deposition. (RX1) He disagreed with Dr. Bradley's diagnosis of right long finger trigger finger, stating that the finger getting stuck in extension is not a consistent finding with trigger finger. (Id.) Rather it is typically stuck in flexion. (Id.) He said that although the Petitioner's EMG/NCS showed mild carpal tunnel syndrome on the left, his examination did not reveal any deficit or findings consistent with that diagnosis. (Id.)

Dr. Kostman explained the basis for his opinion that the Petitioner's carpal tunnel syndrome was not caused by or permanently aggravated by his work activities, stating that the symptoms occurred primarily at night, bothered him in the morning and his work activities were not vibratory involving power tools but were lifting, which he said was not consistent with a work

causation for carpal tunnel. (Id.) He said these were more consistent with idiopathic or non-defined cause. (Id.)

Dr. Kostman thought carpal tunnel release on the right side was a treatment option but did not believe the Petitioner required treatment on the left side. As to time off from work following surgery, he stated that he typically releases a patient to regular activities after four weeks. (Id.)

On cross-examination, Dr. Kostman testified that the Petitioner did not relate to him any nonoccupational risk factors for carpal tunnel syndrome and that the Petitioner seemed to be honest and forthcoming. (Id.) He said he did not review the job descriptions provided by the Respondent with the Petitioner. (Id.) He did not believe that repetitive lifting of items over 30 pounds every day for multiple hours a day was a consistent risk factor for the development of carpal tunnel syndrome. (Id.) He did acknowledge that any kind of grasping activities for someone with carpal tunnel syndrome can cause some aggravation of symptoms but stated he did not believe that the Petitioner's work activities were an aggravation of his carpal tunnel syndrome. (Id.) He did not believe lifting activities were cumulative over time for development of carpal tunnel syndrome. (Id.)

The Petitioner testified that before the surgery, he was experiencing tingling and pain in his right forearm. (T. 24) He said the surgery helped a little bit, but he still had sharp pains at night every now and then. (T. 25-26) He said the symptoms come on after increased activities, such as after work, and he takes ibuprofen as needed. (T. 26, 30) At the time of arbitration, the Petitioner was still working on the case dock and making the same amount of money. (T. 27, 29-30) He said he hurts when trying to exercise and has lost strength and endurance when trying to do curls. (T. 31-31)

The Petitioner acknowledged that he started a lawn care business in 2023 that "never really got started for real," and he only did two or three yards and used a zero-turn mower. (T. 38-39)

CONCLUSIONS OF LAW

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

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

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

Further, a Petitioner's job duties need not be repetitive in the sense that the same task is done over and over again as on an assembly line to result in a compensable injury. *City of Springfield v. Illinois Workers' Comp. Comm'n*, 388 Ill.App.3d 297, 901 N.E.2d 1066, 327 Ill.Dec. 333 (4th Dist., 2009). Intensive use of hands and arms can result in cumulative injuries that are compensable. *Id*. There is no legal requirement that a certain percentage of the workday be spent

on a task in order to support a finding of repetitive trauma. *Edward Hines Precision Components v. Indus. Comm'n,* 365 Ill.App.3d 186, 825 N.E.2d 773, 292 Ill.Dec. 185 (2nd Dist. 2005).

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's usual labor involved lifting, pushing, pulling, gripping and twisting objects on a frequent basis. He began to experience symptoms after a day of working overtime while short-staffed. The Petitioner was a credible witness, as his testimony, written job descriptions and reports to Dr. Bradley were consistent. As to whether the Petitioner's brief stint running a lawn care business was the actual culprit in developing the injuries at issue, the evidence does not show that these activities were of the intensity or frequency that his work activities were.

Dr. Bradley believed that the Petitioner's bilateral carpal tunnel syndrome and trigger finger were causally related to the Petitioner's work activities. Dr. Kostman did not believe the Petitioner had trigger finger and that none of his injuries were causally related to work activities.

The bases for Dr. Kostman's opinions are flawed in a couple of ways. First, he did not examine the Petitioner prior to his surgery, which would have been important to support his conclusion that the Petitioner did not have trigger finger. His theory was solely based on Dr. Bradley's notes. Without performing an examination, his conclusion regarding the Petitioner's finger is speculation. Second, the job descriptions provided by the Respondent did not include

details about how the Petitioner used his hands at work but merely listed duties and responsibilities. The intake sheet from Dr. Bradley did give more details, but the greatest detail was contained in the job descriptions and work history timeline (PX9) that Dr. Bradley reviewed but Dr. Kostman did not. In addition, as the Petitioner's treating physician, Dr. Bradley had more opportunities to become familiar with the Petitioner and his conditions. Lastly, Dr. Kostman acknowledged that grasping activities can cause some aggravation of carpal tunnel symptoms. Based on these facts, the Arbitrator finds that Dr. Bradley's opinions deserve greater weight than Dr. Kostman's.

Furthermore, the circumstantial evidence supports a conclusion that an accident occurred that was causally related to the Petitioner's injuries. He began to experience symptoms the night after having working overtime while short-staffed, causing greater stress to his wrists and finger. He had no symptoms before that.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that his injuries arose out of and in the course of his employment.

Issue F: Is Petitioner's current condition of ill-being causally related to the accident?

Based on the causation findings above regarding whether the injury was in the course of and arose out of employment, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that his bilateral carpal tunnel and right long finger trigger finger were causally related to the 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).

Based on the above findings regarding accident and causation, the Arbitrator finds that the medical services were reasonable and necessary and orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 1. The Respondent shall have credit for any amounts already paid or paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

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

An employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

Based on the findings above regarding accident and causation, the Arbitrator finds that the Petitioner was entitled to TTD benefits from May 17, 2023, through July 24, 2023 – from when Dr. Bradley took the Petitioner off work for surgery until he was released. The Respondent is entitled to a credit of $5,725.70 in short-term disability benefits paid.

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

Pursuant to Section 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b.

The Act provides that, "No single enumerated factor shall be the sole determinant of disability." *Id.*

(i) **Level of Impairment.** No impairment rating was submitted. The Arbitrator gives this factor no weight.

(ii) **Occupation.** The Petitioner is still working in his same job with the same physical demands. The Arbitrator places significant weight on this factor.

(iii) **Age.** The Petitioner was 47 years old at the time of the injury. He has many work years left during which time he will need to deal with the residual effects of the injuries. The Arbitrator places significant weight on this factor.

(iv) **Earning Capacity.** The Petitioner is making the same amount or more at his new job. Therefore, the Arbitrator places no weight on this factor.

(v) **Disability.** The Petitioner testified that he still had sharp pains at night every now and then, that the symptoms come on after increased activities, such as after work, and he takes ibuprofen as needed. He said he hurts when trying to exercise and has lost strength and endurance when trying to do curls. It does not appear that his left hand is causing any problems at this time. The Arbitrator puts some weight on this factor.

Therefore, the Arbitrator finds the Petitioner's temporary total disability to be 12½ percent of the right hand, 2 percent of the left hand and 20 percent of the right long finger.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC034102
Case Name	Danny Wilson v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0136
Number of Pages of Decision	32
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Timothy Henderson
Respondent Attorney	Elizabeth Meyer

DATE FILED: 3/27/2025

/s/ Raychel Wesley, Commissioner

Signature

25IWCC0136

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 Temporary Disability, Medical, Permanent Disability, Credit, Penalties and Attorney's Fees	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DANNY WILSON,

Petitioner,

vs. NO: 16 WC 34102

CHICAGO TRANSIT AUTHORITY,

Respondent.

DECISION AND OPINION ON REVIEW

This matter comes before the Commission pursuant to Respondent's timely filed Petition for Review of the Decision of the Arbitrator. Therein the Arbitrator found Petitioner's current low back condition is causally related to the undisputed October 30, 2016 accident. The Arbitrator awarded 87 weeks of Temporary Total Disability benefits, 275 3/7 weeks of Temporary Partial Disability benefits, the medical bills contained in Petitioner's Exhibits 1, 2, 7, 8, 10 and 11, and found Petitioner entitled to wage differential benefits of $308.53 per week commencing October 12, 2023. The Arbitrator imposed $10,000 in §19(l) penalties as well as §19(k) penalties and §16 attorney's fees, though the amounts were uncalculated. Finally, the Arbitrator found Respondent entitled to a credit of $6,072.90 for previously paid Temporary Total Disability benefits.

Notice having been given to all parties, the Commission, after considering all issues and being advised of the facts and law, incorporates the Findings of Fact in the Decision of the Arbitrator but strikes the Arbitrator's Conclusions of Law and substitutes the analysis set forth below. The Commission further remands this case to the Arbitrator for additional proceedings consistent with this Decision.

CONCLUSIONS OF LAW

I. Causal Connection

In challenging causal connection, Respondent argues Petitioner reached maximum medical improvement ("MMI") as of September 4, 2017, the date Dr. William Payne allowed Petitioner to

return to work. Respondent claims Petitioner is not credible and asserts Petitioner's cancelling of two follow-up appointments with Dr. Payne establishes he had fully recovered. The Commission disagrees.

Initially, the Commission is not persuaded by Respondent's negative credibility allegations. To be clear, the Commission finds nothing evasive about Petitioner's testimony; rather, we find Petitioner was plain spoken and his responses were straightforward. The Commission finds Petitioner is credible. The Commission further finds Petitioner's credible testimony is corroborated by the medical records, which demonstrate Petitioner's condition of ill-being remains causally related to his undisputed accident on October 30, 2016.

On November 3, 2016, Petitioner was evaluated by his primary care physician, Dr. Sushma Raghavendra, who diagnosed Petitioner with radiculopathy and ordered a lumbar spine MRI. PX13. On review of the November 10, 2016 MRI, Dr. Raghavendra referred Petitioner to pain management and directed he begin physical therapy. Pursuant to the pain management referral, Petitioner was evaluated by Dr. Dragan Gastevski, who similarly diagnosed radiculopathy and recommended a series of epidural steroid injections ("ESI"). PX2. The ESIs were performed from December 2, 2016 through January 16, 2017, after which Petitioner underwent physical therapy. As of Dr. Gastevski's March 15, 2017 re-evaluation, Petitioner's low back pain was down to 1-2/10, but he continued to report pain from his right buttock down to his knee posteriorly; Dr. Gastevski recommended a piriformis injection, which was done on March 27, 2017. PX2. On April 18, 2017, Petitioner sought a second opinion from Dr. William Payne (Specialty Physicians of Illinois Orthopedic Department) and complained of back and right leg pain at 3/10; Petitioner gave a history of the work injury and "some improvement" with ESIs by Dr. Gastevski and therapy. T. 33, PX5. After examination, Dr. Payne diagnosed radiculopathy and recommended an L5-S1 selective nerve root block. PX5. Petitioner thereafter underwent injections with Dr. Rajive Adlaka at Pain Care Associates on May 10, 2017; June 20, 2017; and July 18, 2017. PX8. At the August 14, 2017 re-evaluation, Dr. Adlaka noted Petitioner reported 1/10 pain and intermittent numbness and tingling throughout his leg; Dr. Adlaka directed Petitioner to "try and be off all meds until he sees Dr. Payne 8/22." PX8.

On August 22, 2017, Petitioner followed up with Dr. Payne and again reported 1/10 pain; examination was negative for tenderness, weakness, and sensation deficit. Noting Petitioner was "interested in returning to work soon," Dr. Payne released Petitioner to return to full duty as of September 4, 2017, with instructions to follow with Dr. Adlaka as well as return to the clinic in four weeks. PX5. At arbitration, Petitioner testified his request to be released to work was financially-motivated, as Respondent had terminated his benefits. T. 35. The Commission observes Respondent's payment logs reflect that prior to August 2017, there had been a four-month period where no Temporary Total Disability ("TTD") benefits were paid. RX5, RX6.

On August 28, 2017, Petitioner was evaluated by Dr. Adlaka's associate, Vincent Tupper, and reported a pain flare over the weekend; on examination, Petitioner had decreased sensation in the right thigh but was otherwise within normal limits. Mr. Tupper reiterated the release to return to work on September 4, 2017 and directed Petitioner to return if his pain increased. PX8.

The record reflects Petitioner returned to work on September 4, 2017. Petitioner testified it "didn't go very well"; Petitioner explained his pain increased significantly and he was unable to meet his quota of servicing 26 buses per shift. T. 37. Petitioner only worked for four days before his supervisor sent him home: "My first night I did six. My next night I was able to do nine. The

next following night I was able to do nine. And then the last and foremost day was eight buses." T. 39.

On October 9, 2017, Petitioner presented to Dr. Sean Salehi; Petitioner gave a history of the October 30, 2016 work accident and complained of low back pain with pain and numbness radiating down the right leg. PX10. On examination, Dr. Salehi noted lumbosacral tenderness, a positive straight leg raise on the right, and decreased sensation; Dr. Salehi also reviewed the November 10, 2016 MRI. Dr. Salehi concluded Petitioner had "mechanical back pain and radicular pain as a result of the described work injury secondary to disc disease/annular tear at L4-5"; the doctor ordered a repeat MRI and imposed work restrictions of no lifting greater than 20 pounds, no pushing/pulling greater than 35 pounds, no bending/twisting more than three times per hour, and alternate sitting/standing every 30-45 minutes as needed. PX10.

The recommended MRI was completed on October 12, 2017 and when Dr. Salehi reviewed the images on October 31, 2017, he concluded Petitioner had a herniated lumbar disc at L4-5. PX10. Dr. Salehi recommended fusion surgery; as Petitioner wished to think about surgery, Dr. Salehi directed Petitioner to remain under the prior restrictions pending a Functional Capacity Evaluation ("FCE"). PX10.

On November 16, 2017, Petitioner underwent an FCE. The report reflects Petitioner performed at the Medium Physical Demand Level, however his effort was classified as inconsistent/unacceptable:

> …client's perceived limitations and return to work confidence are markedly affecting symptom expression, consistency of effort, reliability of pain, and quality of effort. The client could have performed at markedly higher levels than willing during musculoskeletal and functional testing. Behavioral factors are affecting evaluation results to such a degree the evaluator cannot identify the client's true musculoskeletal status, project full-time work tasks and/or true impairment…The client is capable of greater functional abilities than demonstrated during the FCE. PX12 (Emphasis added).

On November 27, 2017, Petitioner followed up with Dr. Salehi and advised he did not wish to have surgery. Dr. Salehi concluded Petitioner required permanent restrictions; noting Petitioner's FCE was inconsistent, Dr. Salehi eased his previously-imposed restrictions to no lifting greater than 35 pounds, no pushing/pulling greater than 50 pounds, no bending/twisting more than three times per hour, and alternate sitting/standing every 30-45 minutes as needed. PX10. Petitioner has thereafter continued with medication management and palliative care with Dr. Raghavendra.

In the Commission's view, there is no break in the causal connection chain. Moreover, we find no credible evidentiary support for Respondent's claimed MMI dates of February 6, 2017 or September 4, 2017. To be clear, the only evidence suggesting that Petitioner's condition had fully resolved as of February 6, 2017 is Dr. Kern Singh's §12 report. We emphasize, however, Dr. Singh's opinion is not fully-informed: Respondent provided Dr. Singh with only a single treatment note (December 2, 2016 ESI) and the 2016 MRI. Therefore, Dr. Singh's denial of an aggravation of a pre-existing condition based on the absence of documented radiculopathy is neither reliable nor credible. *See Sunny Hill of Will County v. Illinois Workers' Compensation Commission*, 2014 IL App (3d) 130028WC, ¶ 36 (Expert opinions must be supported by facts and are only as valid

as the facts underlying them.) As to the suggested MMI date of September 4, 2017, the Commission finds this incompatible with the fact that Petitioner was only able to work four days before his supervisor sent him home because he was unable to perform his job duties. The Commission finds Petitioner's failed return to work does not constitute credible evidence proving his condition had stabilized.

The Commission finds Petitioner's low back condition remains causally connected to the accident. The Commission further finds Petitioner reached MMI as of November 27, 2017, the date Dr. Salehi imposed permanent restrictions.

II. Wage Differential

The Commission next addresses Petitioner's request for permanent disability benefits. We do so because our analysis herein impacts the remaining issues. Petitioner seeks wage differential benefits under §8(d)1. The Commission concludes, however, that because the parties failed to comply with Commission Rule 9110.10(a), Petitioner's permanent disability is not ripe for adjudication.

Commission Rule 9110.10(a) provides:

> An employer's vocational rehabilitation counselor, in consultation with the injured employee and, if represented, with his or her representative, shall prepare a written assessment of the course of medical care and, if appropriate, vocational rehabilitation required to return the injured worker to employment. The vocational rehabilitation assessment is required when it can be reasonably determined that the injured worker will, as a result of the injury, be unable to resume the regular duties in which he or she was engaged at the time of injury. When the period of total incapacity for work exceeds 365 days, the written assessment required by this subsection shall likewise be prepared. 50 Ill. Admin. Code. §9110.10(a) (Emphasis added).

Here, following his undisputed October 30, 2016 injury, with the exception of his failed four-day return to work in September 2017, Petitioner was either authorized off work or under significant restrictions until November 27, 2017, when Dr. Salehi imposed permanent restrictions. As such, the Commission finds the parties' obligation under Rule 9110.10(a) was triggered no later than November 27, 2017. Inexplicably, though, the parties never obtained the mandatory vocational assessment. Rather, Petitioner was left to conduct a self-directed job search and on July 1, 2018, Petitioner started a part-time job as a personal assistant for elderly clients with the Illinois Department of Rehabilitative Services ("DORS"). T. 10. It is this part-time job that Petitioner asserts as the basis for wage differential benefits.

Under §8(d)1, an impaired worker is entitled to wage differential benefits when (1) he is "partially incapacitated from pursuing his usual and customary line of employment" and (2) there is a "difference between the average amount which he would be able to earn in the full performance of his duties in the occupation in which he was engaged at the time of the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident." *820 ILCS 305/8(d)1* (Emphasis added). "Suitable employment is employment which the claimant is both able and qualified to perform." *Crittenden v. Illinois Workers' Compensation Commission*, 2017 IL App (1st) 160002WC, ¶ 24. Significantly, "'post-injury earnings and earning

capacity are not synonymous' because other evidence can show that 'the actual earnings do not fairly reflect claimant's capacity.'" *Jackson Park Hospital v. Illinois Workers' Compensation Commission*, 2016 IL App (1st) 142143WC, ¶ 44, quoting 4 A. Larson & L. Larson, *Larson's Workers' Compensation Law § 81.03[1]* (2005) (Emphasis added). The Commission emphasizes we are unable to make these statutorily-required determinations without a vocational assessment. To be clear, the purpose of the mandatory vocational assessment under Rule 9110.10(a) is to supply the necessary evidence on suitable employment and earning capacity. Here, the record is devoid of vocational evidence – no information on Petitioner's educational background or work history and no expert opinion on Petitioner's employability, expected wage range, or whether or not this 40-year-old gentleman would benefit from vocational rehabilitation under the factors set forth in *National Tea Co. v. Industrial Commission*, 97 Ill. 2d 424 (1983).

In the Commission's view, Petitioner's permanent disability cannot be adjudicated until the parties comply with Rule 9110.10(a). The Commission vacates the wage differential award and orders the parties to obtain the requisite vocational assessment.

III. Temporary Disability

A. Temporary Total Disability

On the Request for Hearing, the parties stipulated Petitioner was temporarily and totally disabled as of October 31, 2016. ArbX1. Pursuant to the parties' stipulation, the Commission finds Petitioner was entitled to TTD benefits as of October 31, 2016 and he thereafter remained temporarily and totally disabled until he returned to work on September 4, 2017. The Commission finds Petitioner's initial TTD period is October 31, 2016 through September 3, 2017.

Petitioner testified he worked a total of four days, September 4 through September 7, 2017, before he again was off work. Consistent with our resolution of the causal connection issue, Petitioner's entitlement to TTD benefits resumed on September 8, 2017. Given our further determination that Petitioner reached MMI as of November 27, 2017, an award of TTD benefits after that date is impermissible. The Commission finds Petitioner was entitled to TTD benefits from September 8, 2017 through November 27, 2017, and the remainder of the claimed benefit period is properly considered a request for maintenance benefits under §8(a). *See Matuszczak v. Illinois Workers' Compensation Commission*, 2014 IL App (2d) 130532WC, ¶ 14 (once an injured employee's condition stabilizes, *i.e.*, once the employee reaches MMI, he is no longer eligible for TTD benefits).

An employer is obligated to pay maintenance benefits "while a claimant is engaged in" a vocational rehabilitation program. *W.B. Olson v. Illinois Workers' Compensation Commission*, 2012 IL App (1st) 113129WC, ¶ 39. A claimant's self-initiated and self-directed job search or vocational training may constitute a "vocational-rehabilitative program" under §8(a). *Roper Contracting v. Industrial Commission*, 349 Ill. App. 3d 500, 506 (5th Dist. 2004). Petitioner testified he performed a self-directed job search after Respondent refused to provide accommodated work and he ultimately found the job at DORS starting on July 1, 2018. T. 47-48, 57. Petitioner's job search logs were admitted into evidence as Petitioner's Exhibit 15. While Respondent is critical of Petitioner's documentation, the Commission reiterates that Petitioner was left to his own devices at a time when the mandatory vocational assessment was long overdue. The Commission finds Petitioner conducted a valid self-directed job search and is therefore entitled to maintenance benefits.

The Commission finds Petitioner is entitled to benefits as follows:

TTD: October 31, 2016 through September 3, 2017 (44 weeks)
TTD: September 8, 2017 through November 27, 2017 (11 4/7 weeks)
Maintenance: November 28, 2017 through June 30, 2018 (30 5/7 weeks)

Petitioner's stipulated average weekly wage of $1,143.22 yields a TTD/maintenance benefit rate of $762.15 ($1,143.22 / 3 x 2 = $762.15).

B. Temporary Partial Disability

On the Request for Hearing, Petitioner alleged entitlement to Temporary Partial Disability ("TPD") benefits from July 1, 2018 through October 11, 2023, the date of hearing. ArbX1. The Act addresses Temporary Partial Disability benefits in §8(a):

> When the employee is working light duty on a part-time basis or full-time basis and earns less than he or she would be earning if employed in the full capacity of the job or jobs, then the employee shall be entitled to temporary partial disability benefits. Temporary partial disability benefits shall be equal to two-thirds of the difference between the average amount that the employee would be able to earn in the full performance of his or her duties in the occupation in which he or she was engaged at the time of accident and the gross amount which he or she is earning in the modified job provided to the employee by the employer or in any other job that the employee is working. *820 ILCS 305/8(a)*.

On July 1, 2018, Petitioner began working as a part-time personal assistant for DORS. As detailed above, absent competent evidence from a vocational expert, the Commission cannot evaluate whether the DORS position constitutes Petitioner's permanent earning capacity. Instead, we find the DORS job is properly considered a "modified job" under §8(a), thus entitling Petitioner to TPD benefits. The next step in our analysis is calculating the benefit rate.

The Commission observes there is no evidence of what Petitioner would currently be earning as a bus serviceman. As such, the Commission relies on Petitioner's pre-accident average weekly wage of $1,143.22 to represent the average amount Petitioner would be able to earn in the full performance of his duties. As to Petitioner's DORS earnings, Petitioner's tax documents reflect Adjusted Gross Income of $32,708, which yields average gross weekly earnings of $629.00 ($32,708 / 52 = $629.00). The Commission calculates Petitioner's TPD rate at $342.81 ($1,143.22 – $629.00 = $514.22 / 3 x 2 = $342.81)

The Commission finds Petitioner is entitled to TPD benefits of $342.81 per week from July 1, 2018 through October 11, 2023.

IV. Medical Bills

Petitioner offered into evidence treating records from Advocate Trinity Hospital, Advocate South Suburban Hospital, Advocate Medical Group, Neurology Consultants, Specialty Physicians of Illinois, Physical Therapy and Sports Rehabilitation, Franciscan Health Alliance, Pain Control Associates, METT Physical Therapy, Neurological Surgery & Spine Surgery, Elmwood Park

Same Day Surgery Center, and Athletico. The Commission finds the care detailed in these treating records was reasonable, necessary and causally related to the undisputed work accident.

The record includes billing statements for the treatment at Advocate Trinity Hospital (PX1), Advocate South Suburban Hospital (PX2), Neurology Consultants (PX4), Specialty Physicians of Illinois (PX5), Physical Therapy and Sports Rehabilitation (PX6), Franciscan Health Alliance (PX7), Pain Control Associates (PX8), Neurological Surgery & Spine Surgery (PX10), Elmwood Park Same Day Surgery Center (PX11), and Athletico (PX12). The Commission has analyzed the billing statements as well as Respondent's medical payment ledger (RX4), and we find charges outstanding with the following providers:

Advocate South Suburban Hospital (PX2)	$871.18
Franciscan Health Alliance (PX7)	$113.18
Pain Control Associates (PX8)	$1,252.96
Neurological Surgery & Spine Surgery (PX10)	$1,645.00
Elmwood Park Same Day Surgery (PX11)	$1,794.88

Respondent is liable for these charges as provided by §8(a), subject to §8.2.

V. Credit

Respondent offered into evidence payment ledgers for short-term disability payments (RX3), TTD payments sent through Petitioner's prior attorney (RX5), and payments sent directly to Petitioner (RX6). The record reflects Petitioner verified the payments were received and Petitioner's Counsel raised no foundational objections when the exhibits were offered into evidence. The Commission finds Respondent is entitled to credit for the payments set forth in RX3 ($6,500.00), RX5 ($17,529.66), and RX6 ($6,097.90).

VI. Penalties and Attorney's Fees

The Act's penalties provisions include §19(l), which provides as follows:

> If the employee has made written demand for payment of benefits under Section 8(a) or Section 8(b), the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay…In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 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 *** 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)*.

Additional penalties are provided in §19(k), which states, "In case[s] where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation *** then the Commission may award compensation additional to that otherwise payable under the Act equal to 50% of the amount payable at the time of such award." *820 ILCS 305/19(k)*. In §16, the Act provides for an award of attorney's fees when an award of additional compensation under §19(k) is appropriate. *820 ILCS 305/16*. The purpose of §§16, 19(k), and 19(l) is to further the Act's goal of expediting the compensation of workers and penalizing employers who

unreasonably, or in bad faith, delay or withhold compensation due an employee. *Avon Products, Inc. v. Industrial Commission*, 82 Ill. 2d 297, 301 (1980). "When an employer chooses to delay payment of compensation, it has the burden of showing that it had a reasonable belief that the delay was justified." *Roodhouse Envelope Co. v. Industrial Commission*, 276 Ill. App. 3d 576, 579 (4th Dist. 1995). *See also Zitzka v. Industrial Commission*, 328 Ill. App. 3d 844, 848 (1st Dist. 2002). Under §19(l), the penalties are in the nature of a late fee: "If the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay, an award of the statutorily specified additional compensation is mandatory." *McMahan v. Industrial Commission*, 183 Ill. 2d 499, 515 (1998). The standard for determining whether an employer has good and just cause for a delay in payment is defined in terms of reasonableness, and "the employer's justification for the delay is sufficient only if a reasonable person in the employer's position would have believed that the delay was justified." *Jacobo v. Illinois Workers' Compensation Commission*, 2011 IL App (3d) 100807WC, ¶ 19.

Here, the parties stipulated Petitioner was entitled to TTD benefits as of October 31, 2016. ArbX1. However, Respondent's payment ledger reflects no TTD payment was made until January 9, 2017; at that point, Petitioner was brought current with TTD benefits covering October 31, 2016 through January 3, 2017. RX5. As such, there is a "delay" of 70 days in the initial payment of TTD benefits (October 31, 2016 through January 8, 2017 = 70 days).

The record further reflects Respondent continued paying Petitioner through February 14, 2017 (RX6), when benefits were terminated based on Dr. Singh's §12 report. The Commission emphasizes, however, the mere fact Respondent was in possession of a competing medical opinion is insufficient to insulate it from penalties: "The test is not whether there is some conflict in medical opinion. Rather, it is whether the employer's conduct in relying on the medical opinion to contest liability is reasonable under all the circumstances presented." *Continental Distributing Co. v. Industrial Commission*, 98 Ill. 2d 407, 415-16 (1983) (Emphasis added). As detailed above, Respondent obtained Dr. Singh's opinion but withheld all but one procedure note and the MRI from Dr. Singh, who subsequently opined Petitioner suffered only a resolved muscular strain, had no evidence of radiculopathy, and denied causation. For Respondent to withhold the pertinent records from its expert then rely on an opinion predicated on incomplete information to terminate benefits is not "reasonable under all the circumstances presented." *Id*. *See also Sunny Hill of Will County v. Illinois Workers' Compensation Commission*, 2014 IL App (3d) 130028WC, ¶ 36. Respondent ultimately reinstituted TTD benefits on June 14, 2017, issuing a check for May 31, 2017 through June 27, 2017. RX5. Therefore, the Commission finds there is a second "delay" of 119 days (February 15, 2017 through June 13, 2017 = 119 days). Additionally, there remains a 15-week period of unpaid TTD from February 15, 2017 through May 30, 2017.

Respondent continued paying TTD benefits through September 3, 2017. Respondent asserts it reasonably refused to pay benefits thereafter because Petitioner was released to full duty by both Dr. Payne and Mr. Tupper. The Commission disagrees and observes Respondent's argument is contradicted by the fact that this was a failed to return to work: Petitioner was unable to complete his usual work duties, had increased pain, and was sent home by his supervisor on his fourth day. Petitioner was thereafter evaluated by Dr. Salehi, who ordered updated imaging and imposed significant work restrictions. After a repeat MRI and a declined surgical recommendation, Dr. Salehi imposed slightly eased but still significant permanent work restrictions. Rather than obtain an updated and ideally fully-informed §12 opinion to refute Dr. Salehi's opinions, or get the required vocational assessment, Respondent took no further action to justify its years-long refusal to pay benefits. The Commission finds Respondent failed to prove its continued failure to

pay benefits after September 7, 2017 was reasonable under the circumstances. The record reflects TTD, maintenance, and TPD benefits have been refused since September 8, 2017; this equates to a delay of 2,225 days through the hearing date. The Commission further finds Respondent's conduct was unreasonable and vexatious and implicates §19(k) and §16.

Under §19(l), a penalty of $30 is imposed for each day payment is delayed or withheld. The Commission has concluded Respondent withheld benefits from October 31, 2016 through January 8, 2017; February 15, 2017 through June 13, 2017; and September 8, 2017 through October 11, 2023, totaling 2,414 days of delay. The Commission orders Respondent to pay §19(l) penalties in the amount of $10,000, that being the statutory maximum under §19(l) ($30 x 2,414 = $72,420).

The Commission further finds Respondent vexatiously delayed payment of $143,806.14 in benefits under §8(a) and §8(b):

Unpaid medical bills	$5,677.20
Unpaid TTD Feb. 15, 2017 through May 30, 2017 (15 weeks)	$11,432.25
Unpaid TTD Sept. 8, 2017 through Nov. 27, 2017 (11 4/7 weeks)	$8,819.16
Unpaid maintenance Nov. 28, 2017 through June 30, 2018 (30 5/7 weeks)	$23,408.89
Unpaid TPD July 1, 2018 through Oct. 11, 2023 (275 4/7 weeks)	$94,468.64
	$143,806.14

Therefore, the Commission finds Petitioner entitled to §19(k) penalties of $71,903.07 ($143,806.14 x 50% = $71,903.07) and §16 attorney's fees of $28,761.23 ($143,806.14 x 20% = $28,761.23)

IT IS THEREFORE ORDERED BY THE COMMISSION that the award of wage differential benefits is vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that the matter is remanded to the Arbitrator with instructions that the parties obtain a vocational rehabilitation assessment and any periodic assessments as required by Commission Rule 9110.10. Respondent shall pay the cost of the vocational rehabilitation assessment, as provided in §8(a).

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $762.15 per week for a period of 55 4/7 weeks, representing October 31, 2016 through September 3, 2017 and September 8, 2017 through November 27, 2017, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner maintenance benefits in the amount of $762.15 per week for a period of 30 5/7 weeks, representing November 28, 2017 through June 30, 2018, as provided in §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner temporary partial disability benefits in the amount of $342.81 per week for a period of 275 4/7 weeks, representing July 1, 2018 through October 11, 2023, as provided in §8(a) of the Act..

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of $5,677.20, as detailed herein, for medical expenses as provided in §8(a), subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have a credit of $30,127.56, representing payments detailed in Respondent's Exhibits 3, 5, and 6.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner §19(k) penalties in the amount of $71,903.07.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner §16 attorney's fees in the amount of $28,761.23.

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

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

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision.

MARCH 27, 2025

/s/ *Raychel A. Wesley*

RAW/mck

O: 1/29/25

/s/ *Stephen J. Mathis*

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/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC034102
Case Name	Danny Wilson v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Timothy Henderson
Respondent Attorney	Elizabeth Meyer

DATE FILED: 12/14/2023

/s/William McLaughlin, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF DECEMBER 12, 2023 5.19%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Danny Wilson
Employee/Petitioner

v.

Chicago Transit Authority
Employer/Respondent

Case # **16** WC **034102**

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 **10/11/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **10/30/2016**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**59,447.44**; the average weekly wage was $**1143.22**.

On the date of accident, Petitioner was **36** years of age, ***married*** with **4** dependent children.

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

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

Respondent shall be given a credit of $**6,072.90** for TTD, $**0** for TPD, $**0** for maintenance, and $**0.00** for other benefits, for a total credit of $**6,072.90**.

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

ORDER

Medical Awarded:

Respondent shall pay the reasonable and necessary medical expense as follows subject to the fee schedule, 8(a) and 8.2 of the Act: Trinity Hospital $ 1,077.00 (Px 1), Advocate Suburban Hospital $ 871.18 (Px 2), Franciscan Alliance $ 113.18 (Px 7), Pain Control Associates $ 1,252.96 (Px 8), Neurological Surgery & Spine Surgery $ 1,645.00 (Px 10), Elmwood Park Same Day Surgery $ 1,794.88 (Px 11)

Temporary Total Disability, Temporary Partial Disability and Maintenance Awarded:

Respondent shall pay Petitioner temporary total disability benefits of $761.38 a week for 87 weeks, commencing on 10/31/2016 through 7/1/2018, for a total amount of $66,240.06.

Respondent shall pay Petitioner temporary partial disability benefits of $308.53 a week for 275 and 3/7 weeks, commencing on 7/1/2018 – 10/11/23, for a total amount of $84,978.42.

Wage Differential Award under Section 8(d)1 of the Act. And Permanent Partial Disability

Respondent shall pay Petitioner benefits commencing on October 12, 2023, of $308.53 per week because Petitioner has suffered a permanent wage loss of $308.53 per week as provided by Section 8(d)(1) of the Act. This award shall be paid until Petitioner reaches the age of 67 on March 13, 2047, or 5 years after the award becomes final, whichever is later. March 13, 2047 would have a due and owing balance of $462,002.08.

The total accrued weekly benefits due and owing to the Petitioner under TTD, TPD and Wage Loss as of October 12, 2023 is a total of $151,218.48.

Penalties and Fees Awarded Pursuant to Section 16 and 19 of the Act.

Pursuant to Section 19(l) Respondent shall pay $10,000.00 to Petitioner for non-payment of medical expenses and TTD.

Pursuant to Section 19(k) Respondent shall pay to Petitioner 50% of the unpaid medical expenses, after they are reduced by any appropriate fee schedule reduction, if any, pursuant to Section 8.2.

Pursuant to Section 16 Respondent shall pay $75,609.24 for non-payment of the outstanding TTD owed to Petitioner.

Pursuant to Section 16 Respondent shall pay attorneys' fees of 20% of the unpaid medical bills pursuant to the fee schedule, and 20% of the 19(k) award on the unpaid medical bills.

Attorneys' fees in the amount of $48,040.97 are awarded based on the non-payment of benefits due and owing to Petitioner.

Credits

Respondent shall be given a credit of $**6,072.90** for TTD, $**0** for TPD, $**0** for maintenance benefits, and $0.00 in other benefits, for which credit may be allowed under Section 8(j) of the Act for a total credit of $**6,072.90.**

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

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

Arbitrator William McLaughlin

December 14, 2023

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Danny Wilson,	)	
Petitioner,	)	
	)	
v.	)	**16 WC 34102**
	)	
CTA,	)	
Respondent.	)	

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

STATEMENT OF FACTS

The Petitioner was a 36-year-old married individual with 4 dependents, under the age of 18, at the time of the injury in dispute on this claim. (Arbitration Transcript, hereafter "Tr." At 10 and Request for hearing Stipulation Sheet).

Petitioner was employed by Respondent as a maintenance worker starting February 2, 2002 (Tr. 11,21). On the date of accident, October 30, 2016, the petitioner experienced immediate pain in his back running down his right leg, which remains to this day (Id. 21).

The Petitioner's job entailed maintenance on buses, requiring heavy lifting and moving of various tools and objects ranging from 5 to 40 pounds and some that could weigh up to 150 pounds (Id. 11-13). Petitioner had no history of injury to his back or right leg prior to the October 30, 2016, accident (Id. 11-17, 28).

On the date of the accident, Petitioner was working within the course and scope of his job duties as a maintenance worker servicing a bus at the 103rd St. Garage (Id. at 21). While completing his duties and exiting the bus, Petitioner's foot became wedged in the bus, causing him to skip and twist his body while falling (Id.).

Upon skipping and falling, Petitioner developed sudden pain in his back and radiating pain into his right leg, causing his leg to flop (Id. 21,22). The petitioner immediately reported the incident to management, where it was decided that he would go home to see if the pain resolved (Id. 22).

Petitioner sought medical care at Advocate Trinity Hospital ER on October 31, 2016 (Id. 22, Px 1). Petitioner was diagnosed with a lumbar sprain, musculoskeletal pain, and muscle spasm (Px 1 at 34). Petitioner was given valium, ibuprofen, and a ketorolac injection to manage the pain. (Id. 43, 22). Petitioner was directed to follow up within 1 to 2 days should the pain not subside (Id. 34).

The pain continued and Petitioner sought follow up care with his primary care physician Dr. Sushma Raghavendra on November 3, 2016 (Tr. 28). Petitioner reported a pain level of 9/10 (Px 3 at 4). Petitioner was diagnosed with back pain and lumbar radiculopathy and directed to undergo an MRI (Px 3 at 6). The petitioner was also prescribed gabapentin and tramadol by his primary care physician who also directed Petitioner to stay off work (Id. 8).

Petitioner underwent a lumbar MRI on November 10, 2016, where it was revealed that he had a broad disc protrusion with annular fissure effacing right lateral recess more so than left at L4-5 and a circumferential disc bulge with annular fissure narrowing the lateral recesses at the L3-4 level. (Px 3 at 10). Dr. Rahavendra reviewed the results at a follow up appointment on November 11, 2016. The petitioner was referred to begin physical therapy for his injuries and referred to pain management specialist. (Id. at 11). Petitioner began, and continued, physical therapy via Advocate from 11/18/16 – 11/20/16 (Px 2 at 354-376). The physical therapy continued from 1/11/17 – 2/21/17, with minimal improvements in his back pain (Px 2 at 354-376).

Petitioner was treated by Dr. Dragan Gastevski, a pain management physician, from November 21, 2016, through January 12, 2018 (Px 3). Petitioner was diagnosed with lumbosacral spondylosis with myelopathy and radiculopathy as well as asymptomatic spina bifida occulta at L1 (Px 3 at 12,13). Dr. Gastevski concluded Petitioners pain was emanating from the accident at work and suggested that Petitioner continue taking tramadol and gabapentin for his pain, as well as discontinue physical therapy as it was making the pain worse (Id). Petitioner was directed to remain off work. The options for treatment presented to Petitioner included surgery and/or transforaminal injections at the right L3, L4, L5 and S1 levels (Id at 13).

Petitioner followed up with his primary care physician on November 28, 2016, for another referral for a pain management specialist to complete the epidural injections that had been recommended (Id at 16 and Tr 28).

Petitioner underwent his first injection with Dr. Gastveski, which included right transforaminal injections at L3/4, L4/5, L5/S1 and S1/S2 on December 2nd, 2016, as recommended by the referring physician (Px 2 280-284). The second round of the right lumbar transforaminal epidural steroid injections at L3/4, L4/5, L5/S1 and S1/S2 took place on December 23, 2016. The third round of Petitioner's right transforaminal injections at L3/4, L4/5, L5/S1 and S1/S2 injections was completed on January 16, 2017, with Dr. Gastevski (Px 2 at 254 – 256).

Petitioner had a follow up visit with Dr. Gastveski on February 14, 2017, and reported a 50% improvement in pain with the injections. Petitioner's medication was increased. (Px 3 at 19). During a visit on March 15, 2017, Petitioner was prescribed a TENS unit, topical cream and continued physical therapy (Id.22). Dr. Gastveski describes the progress that Petitioner has made while undergoing the therapy, injections, medication and DME through his care and recommended that Petitioner undergo a Functional Capacity Evaluation (Id).

Petitioner underwent a final injection with Dr. Gastveski on March 27, 2017, where a right piriformis injection around the sciatic nerve under X-ray was completed (Id at 32-37).

Petitioner had a visit with with Dr. Gastveski on May 1, 2017 (Px 2 at 17-22). On that visit Petitioner reported that the previous injections did help alleviate some of his pain, but it would return and radiate down his buttocks and right leg (Px 2 at 21).

Petitioner was referred by Dr. Gastveski to Dr. Scott Lipson and on April 5, 2017, Petitioner was diagnosed with parasthesis and potential lumbosacral radiculopathy (Id at 7). Petitioner was referred to get an EMG for the right leg pain (Px 4,6). Petitioner underwent that EMG on April 26, 2017, that revealed lumbago with sciatica. Petitioner was directed to continue his current course of pain management with Dr. Gastveski, at which time he was given a PCE form removing him from work (Id at 10).

Petitioner saw Dr. Payne for the first time on April 18, 2017, wherein it was noted that Petitioner was suffering from lumbar radiculopathy (Px 5 at 29). Dr. Payne recommended that Petitioner undergo a selective nerve root block at L5 and S1 and keep his appointment with the neurologist to rule out other possible etiologies of his pain and directed to follow up. It was noted that a Physical Capacity Evaluation form was filled out for the Petitioner, keeping him off work in agreement with his primary care physician and Dr. Gastveski (Id.). Dr. Payne continued Petitioner's medication prescription of gabapentin and tramadol (Id. At 32, 33).

Petitioner followed up with Dr. Payne on May 25, 2017, who recommended another epidural steroid injection. In addition, physical therapy continued, with minimal improvement at Physical Therapy and Sports Injury Rehabilitation from May 8, 2017, through June 23, 2017 (Px at 9).

Petitioner continued the requested physical therapy at METT Physical Therapy/Franciscan Alliance from July 19, 2017, to August 3, 2017. Petitioner stopped attending physical therapy at this location. The goals of stabilizing and strengthening his lumbar area for an eventual return to work were not completed (Px 9).

The final visit with Dr. Payne occurred on August 22, 2017, where the Petitioner instructed the Dr., he had not completed the requested work hardening program and the medication he was taking, gabapentin, had to be reduced as it was making him feel groggy (Px 5 at 80). Petitioner's pain had not dissipated completely but had been reduced since the last injection on July 18, 2017, and he is interested in returning to work soon for financial reasons. (Id.).

Dr. Payne and released him at his request. (Id. 34). Dr. Payne directed the Petitioner to return for a follow up visit in 4 weeks, follow up with the pain clinic and Dr. Adlaka. Petitioner was released to return to work on a trial basis on September 4, 2017 (Id.). The physical therapy/work hardening order for Petitioner remained open and pending in his chart for the ongoing issues he was experiencing (Id. At 86).

Petitioner returned to work on September 4, 2017. Petitioner testified was not able to perform his job. (Tr. At 36,37). Petitioner's normal work schedule consisted of 40 hours a week in 8-hour shifts, more when overtime was available (Tr. At 14). Petitioner testified he could not perform the work required of him at his job and discontinued as an employee of Respondent. (Tr. at 37).

Petitioner continued seeing his primary care physician. (Px. 3). Petitioner was referred for a Neurosurgery for his ongoing pain on September 25, 2017. (Px 10. 65-66).

Petitioner followed up on the referral from his primary care physician to see Dr. Sean Salehi at Neurological Surgery & Spine Surgery, S.C. on October 9, 2017, for his ongoing back and radiating pain (Id. at 4-7). Dr. Salehi diagnosed the Petitioner with a herniated lumbar disc because of the of the work injury, secondary to an annular tear at L4-5 and requested a new MRI (Id. At 7). Petitioner was given new work restrictions of light duty, no lifting greater than 20 pounds, no pushing pulling greater than 35 pounds, no bending twisting over 3x/hour and alternate sitting/standing every 30-45 minutes because of his pain complaints and limited range of motion (Id. at 5). A Physical Capacity Evaluation form was filled out for Petitioner on this visit reflecting the restrictions (Id. at 9). On October 31, 2017, Dr. Salehi again saw the Petitioner for the continued back and radiating right leg pain. On that visit it was determined that the course of treatment Petitioner had received over the previous year had failed and an L4-5 transforaminal lumbar interbody fusion was determined to be the best treatment plan (Id. at 13). The restrictions delineated on the previous visit were reiterated and remained in place until the completion of the surgery. A work hardening program and final x-ray, in lieu of the same, and a valid functional capacity evaluation (FCE) was requested (Id at 14). Again, a new Physical Capacity Evaluation form was filled out for Respondent on this visit showing the restrictions for Petitioner (Id. at 16).

A FCE was completed at ATI on November 16, 2017, placing the Petitioner at medium level (Id at 21). A follow up post FCE took place on November 27, 2017, for the ongoing low back pain radiating down the right leg being at a 5-7/10 (Id. at 39). A new Physical Capacity Evaluation form was completed for Petitioner on that visit placing permanent restrictions of no lifting over 35

pounds, no pushing/pulling greater than 25 pounds, no bending twisting 3x/hr and alternating of sitting and standing every 30-45 minutes, along with no operating of bus/utility vehicles or operating machinery (Id at 42). Petitioner returned to see Dr. Salehi several more times, through March 13, 2019, with no improvements in his pain (Id. at 43-62).

Petitioner testified that he tried on numerous occasions to return to work for the Respondent (Id at 75-76).

Petitioner testified that he is currently still receiving medical treatment from various providers, including Dr. Gane, as recently as the month before the hearing on October 11, 2023 (Tr. at 73).

Petitioner attended an IME appointment with Dr. Singh on February 6, 2017. Dr. Singh described a portion of Petitioner's records, as outlined in his 8-line medical chronology, as given to him by the Petitioner. Dr. Singh opined that Petitioner suffered from a lumbar muscular strain and degenerative disc disease at L4-5. The Petitioner was released to return to work full duty (Respondent's Exhibit 1).

CONCLUSIONS OF LAW

An Arbitrators decision is to 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' by 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 this case, Arbitrator finds the testimony of the Petitioner to be credible. Despite some minor discrepancies the Petitioner s testimony was consistent with the volumes of medical reports.

(F) Whether Petitioners current condition of ill-being is Causally Connected to the injury, the Arbitrator finds:

In Miglio v. County of Cook, 99 I.I.C. 02801, the Arbitrator relied on both the medical records admitted to evidence by the petitioner as well as the petitioner's own un-refuted testimony to reach a conclusion. In that case the Arbitrator took note of the petitioner's un-refuted testimony that there were no prior injuries with the body part at issue. Similarly, in the present case, the medical records and Petitioner's own un-refuted testimony that he had no prior injuries or issues with his lower back support a finding of causal connection.

The Arbitrator finds that on October 30, 2016, Petitioner was exiting a bus at Respondent's garage and tripped, causing him to experience severe, immediate, and debilitating pain in his lower back and right leg. This accident caused issues in Petitioner's back that included: L4-L5 level 3-4 mm subligamentous broad-based posterior disk herniation with a mildly extruded nucleus pulposus which indents the thecal sac with generalized spinal stenosis and mild bilateral neuroforaminal narrowing seen at this level, diskogenic endplate changes, L3-L4 level 2 mm broad-based posterior annular disk bulge which indents the thecal sac, annular tear L4-5, circumferential disc bulge with annular fissure at L3-L4, right piriformis syndrome, as well as aggravating asymptomatic degenerative disc disease and the resulting radiating pain into his right leg (Px 1-14).

Prior to the accident, Petitioner had never seen a doctor nor treated for any issues with his back, or right leg. He had never missed work for any complaints of pain in his lower back, or radiating

pain into the lower extremities. Since the accident, Arbitrator concludes that the Petitioner has not recovered fully and still has severe pain in his lower back that radiates into his right leg. Petitioner has received numerous injections to control the pain in his back, with little positive results. Petitioner continues to receive treatment that includes taking controlled substances, via Lyrica, as well as other medications, but is still in a debilitated condition of ill-being. Further, he continues to treat under the care of Dr. Gain for his ongoing pain. (Id and Tr.)

Prior to the accident, Petitioner's unrefuted, credible testimony and medical records reveal no prior issues in his back. Prior to the accident the Petitioner was able to perform his job and did not have complaints of back or leg pain. After the accident, the Petitioner had serious back pain that radiated into his lower right extremity. (Id)

Petitioner's testimony was consistent with the medical records. Except for the opinion reached by from Dr Singh, the IME DR., Petitioners injury was confirmed by various providers. Those injuries included: L4-L5 level 3-4 mm subligamentous broad-based posterior disk herniation with a mildly extruded nucleus pulposus which indents the thecal sac with generalized spinal stenosis and mild bilateral neuroforaminal narrowing seen at this level, diskogenic endplate changes, L3-L4 level 2 mm broad-based posterior annular disk bulge which indents the thecal sac, annular tear L4-5, circumferential disc bulge with annular fissure at L3-L4, right piriformis syndrome and is creating the pain that Petitioner is suffering from then, and now. (Px 1-14). Even Dr. Singh admitted that he did not disagree, or agree, with the single MRI he reviewed. (Rx 2)

In reference to his right leg, Petitioner credibly testified he did not have any prior injury to that leg. He was performing his job at full duty, without incident, until the accident on October 30, 2016. After the accident, he was no longer able to do the required work. and that his everyday life has been affected by his injury. (Tr. at 58-59).

Petitioner continues to experience numerous limitations due to his injury. (Id).

Arbitrator gives less weight to Dr. Singh testimony given the Dr. performed a 5-minute exam on the Petitioner on February 6, 2017. (Tr at 76). After the brief exam a written report was issued

despite no medical records that were reviewed by Dr. Singh prior to that examination. In addition there were limited medical records reviewed for a determination on the current state of ill-being of the Petitioner. (Px 1 -14).

Based on the medical records in evidence, Petitioner's own unrefuted testimony and the supporting case law, the Arbitrator finds that Petitioner's current condition of ill-being and pain are causally connected to the Petitioner's accident on October 30, 2016.

(J) Whether the Medical Services provided were reasonable and necessary, and has Respondent paid all appreciate charges, The Arbitrator finds:

The Arbitrator finds that Petitioner sustained his burden of proving that medical care and treatment that Petitioner received relates to the injury he sustained on October 30, 2016. The Petitioner admitted Petitioners medical records and the corresponding bills into evidence which were related to the medical treatment Petitioner received for the care and treatment of Petitioners back and right leg. Arbitrator finds that because Petitioner was never released at maximum medical improvement or discharged completely at full duty all the bills and treatment were reasonable and necessary. and related to the work accident of October 30th, 2016.
As discussed in prior paragraphs above, the Arbitrator gives little weight to the opinion of Dr. Singh and more weight to the opinions and treatments of the Petitioners treating physicians.

Therefore, Arbitrator finds that the bills related to treatment at Dr. Gastevski, Advocate South Suburban Hospital, Franciscan Health Chicago Heights, Dr. Parameswar, Pain Control Associates, Advicate Trinity Hospital, Dr. Raghavendra, Advocate Medical Group, Dr. Scott Lipson, Neurological Consultants, EMG Centers of Chicagoland, Dr. Payne, Specialty Physicians of Illinois, Physical Therapy and Sports Injury Rehabilitation, Dr. Parameswar, Dr. Adlaka, Pain Control Associates, METT Physical Therapy, Franciscan Alliance, Dr. Salehi, Neurological Surgery and Spine Surgery, Elmwood Park Same Day Surgery Center, Athletico Physical Therapy are awarded and Respondent is liable for payment of these bills pursuant to the Illinois Workers' Compensation Fee Schedule.

• Trinity Hospital	$ 1,077.00 (Px 1)
• Advocate Suburban Hospital	$ 871.18 (Px 2)
• Franciscan Alliance	$ 113.18 (Px 7)
• Pain Control Associates	$ 1,252.96 (Px 8)
• Neurological Surgery & Spine Surgery	$ 1,645.00 (Px 10)
• Elmwood Park Same Day Surgery	$ 1,794.88 (Px 11)
Total	$ 6,754.20

Respondent shall pay reasonable and necessary medical services of $6,754.20 as provided in Section 8(a) and 8.2 of the Act.

(K) What Total Temporary disability is owed? The Arbitrator Finds:

Because the Arbitrator finds that the Petitioner met his burden of proving the injuries from October 30, 2016, are directly related to his employment with the Respondent. The Arbitrator concludes that Petitioner sustained his burden of proving that he was temporarily totally disabled during the period listed below.

- 87 weeks from October 31, 2016 through July 1st 2018 when Petitioner was off of work, via medical documentation and his inability to work from his treating physician's Dr. Gastevski, Dr. Parameswar, Dr. Raghavendra, Dr. Payne, Dr. Parameswar, Dr. Adlaka and finally Dr. Salehi issuing medical notes with work restrictions that Respondent was unable/unwilling to accommodate.

- ADDITIONAL WEEKLY WAGE DIFFERENTIAL OWED of 275 and 3/7 weeks from July 1st, 2018, through October 11, 2023, based on the work restrictions preventing Petitioner from returning to work per restrictions by his physicians' orders including Dr. Salehi's permanent restrictions addressed in section M below.

Totaling 87 weeks of TTD and 1,497 and 3/7 weeks of wage differential with an average weekly wage of 1,143.22. In addition the Arbitrator finds that Respondent is entitled to a credit of $6,072.90 pursuant to Respondent's Exhibit 6, $25.00 for the IME travel expense.

(L) What is the nature and extent? The Arbitrator finds:

The Arbitrator concluded that the Petitioner is entitled to a Wage Differential award pursuant to Section 8(d)1 commencing July 1, 2018.

The Supreme Court has expressed a preference for compensation based on earnings loss, rather than scheduled awards, General Electric Co. V. Industrial Comm'n, 89 Ill.2d 432, 437-438 (1982). Specifically, the Court held, "If the injured worker can provide an actual loss of earnings greater than the schedule presumes, there is no reason why he should not recover that loss. In theory, the basis of the workers' compensation system should be earnings loss, not the schedule (Id at 438)

Petitioner must provide two elements to qualify for a wage differential award under Section 8(d)(1) of the Act: 1) Partial incapacity which prevents him from pursuing his "usual and customary line of employment" and 2) an impairment of earnings. The Arbitrator finds and concludes Petitioner has proven beyond a preponderance of the credible, unrefuted, evidence he has satisfied both burdens of proof necessary to support an award pursuant to 8(d)1.

Section 8(d)a of the Act provides:

> "If, after the accidental injury has been sustained, the employee as a result thereof becomes partially incapacitated from pursuing his usual and customary line of employment, he shall, except in cases compensated under the specific schedule set forth in paragraph (e) of this Section, receive compensation for the duration of his disability, subject to the limitations as to maximum amounts fixed in paragraph (b) of this Section, equal to 66-2/3% of the difference between the average amount which he would be able to earn in the full performance of his duties in the occupation in which he was engaged at the time of the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident. For accidental injuries that occur on or after September 1, 2011, an award for wage differential under this subsection shall be effective only until the employee reaches the age of 67 or 5 years from the date the award becomes final, whichever is later."

In the current case, it has been concluded that the Petitioner was injured when he tripped at work. Because of the nature of the injury the Petitioner s unable to continue his career as a maintenance worker for the Respondent. As discussed above the accident resulted in a back injury that required extensive physical therapy, pain management, medication, restrictions, various DME devices and to date 5 injections. The permanent physical restrictions imposed by Dr. Sean Salehi removed

Petitioner from ever returning to his previous position as a maintenance worker for Respondent (Tr. at 46-48).

Petitioner did find different employment after numerous job searches. Petitioner is currently working for DORS which is a state agency. (Px.15 and Tr. at 10, 52-55 and 74). There was insufficient evidence to refute the contention that the Petitioner would be capable of working, either for the Respondent or any other employer at the same wage.

The Arbitrator finds that the Petitioner sustained his burden of proving that he was unable to perform his regular duties as he had prior to the injury. To qualify for wage differential benefits under Section 8(d)(1) of the Act, a Petitioner must prove: (1) a partial incapacity which prevents him from pursuing his usual and customary line of employment; and (2) an impairment of earnings. In Smith v. Industrial Comm'n, 308 Ill.App.3d 260, 265-66 (1999), the appellate court ruled that "[t]he object of Section 8(d)(1) is to compensate an injured claimant for his reduced earnings capacity, and if an injury does not reduce his earning capacity, he is not entitled to compensation" under that Section.

Petitioner, if he was capable of working for the Respondent, would be earn at least $1,143.22 per week in the full performance of his full job duties for the Respondent as a maintenance worker. Respondent offered no evidence that any position at all was available, nor did they offer any vocational rehabilitation or assistance to the Petitioner when he dropped off his work restrictions from Dr. Salehi in October of 2017.

Prior to the work accident, the Petitioner had a yearly wage of $59,447.44 which corresponds to an average weekly wage of $ 1,143.22. Applying section 8(d)(1) "the average amount of which he is earning or is able to earn in some suitable employment" when Petitioner found a new position within his permanent work restrictions at DORS, he is earning $32,708.00 which corresponds to an average weekly wage of $629.00 (Px. 16 and Tr. 18,19).

Factoring in Petitioners previous employment wag with the Respondent and his current wage with DORS Petitioner is realizing a difference of $514.22 per week. Taking 66 and 2/3 of $514.22 results in a weekly wage loss rate of $308.53.

Based on that calculation, the Arbitrator finds that the Petitioner is entitled to a wage differential award pursuant to Section 8(d)1 of the Act, commencing on July 1, 2018. Thus, Petitioner has suffered a weekly wage loss benefits of $308.53 per week until the age of 67. March 13, 2047 (a period of 1,497 and 3/7 weeks), or five years from the date this award is to become final, whichever is further.

(M) Should fees and penalties be imposed? The Arbitrator finds:

The Arbitrator finds and concludes, based on the review of the totality of the evidence that the Respondent is liable for penalties and attorney fees pursuant to Section 19(k) and Section 16.

Section 19(k) and 19(l) of the Illinois Workers Compensation Act respectively state:

> (k) In case where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award. Failure to pay compensation in accordance with the provisions of Section 8, paragraph (b) of this Act, shall be considered unreasonable delay.
>
> (l) If the employee has made a written demand for payment of benefits under Section 8(a) or Section 8(b), the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay. In the case of demand for payment of medical benefits under Section 8(a), the time for the employer to respond shall not commence until the expiration of the allotted 30 days specified under Section 8.2(d). In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of $30 per day for each day that the benefits under Section 8(a) or Section 8(b) have

been so withheld or refused, not to exceed $10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay.

Section 16:

Whenever the Commission shall find that the employer, his or her agent, service company or insurance carrier has been guilty of delay or unfairness towards an employee in the adjustment, settlement or payment of benefits due such employee within the purview of the provisions of paragraph (c) of Section 4 of this Act; or has been guilty of unreasonable or vexatious delay, intentional under-payment of compensation benefits, or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of paragraph (k) of Section 19 of this Act, the Commission may assess all or any part of the attorney's fees and costs against such employer and his or her insurance carrier.

At the hearing on October 11, 2023, Petitioner submitted bills; totaling $6,754.20 in outstanding medical charges for reasonable and related treatment received for his work injury of October 30, 2016. There was reasonable explanation or evidence presented why these charges were not paid, in a timely manner. Nonpayment of medical bills without a reasonable basis is subject to penalties and attorney's fees. Under Section 19(k) the penalty is to be 50% of the entire type of benefit awarded that has accrued. Assessment of $10.00 per day penalty under Section 19(l) is mandatory "if the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay. McMahon v. Industrial Comm'n, 183 111 2d 499, 702 N.E.2d 545 (1998).

In deciding for the Petitioner, the Arbitrator reviewed the evidence presented which included Dr. Singh's deposition. along with his report. As previously mentioned, Arbitrator gives less weight to that Dr. Singh conclusion so much as the reviewed little to no medical records in his determination of the Petitioner's condition at the time of the exam. Dr. Singh testified that no medical records were provided to him for his Section 12 exam of the Petitioner, aside from an MRI film, that he can no longer find in his file. No medical bills or charges were reviewed during the exam, in the report, or deposition as none were sent for his review (Rx 1 at 20-23).

Considering the testimony of Dr. Singh, along with the Petitioner's testimony regarding the "exam" performed by Dr. Singh, Arbitrator finds that reliance on Dr. Singh conclusions is an inadequate reason to deny the benefits in question.

For the reasons mentioned above, the Arbitrator finds the conduct of the Respondent to be willful and vexatious in its denial of benefits. Accordingly, the Arbitrator awards penalties and attorney's fees under Sections 19(k), 19(l) and Section 16. The total outstanding bills introduced in Petitioner's exhibits total $6,754.20. The Arbitrator awards 50% of the unpaid medical bills, at the fee schedule rate under 19(k) when calculated. Under Section 19(l), the Arbitrator awards Petitioner $10,000.00, which is the maximum allowable amount accrued at $30.00 a day.
Regarding the nonpayment of wage differential benefits Arbitrator cites Peterson v. Mickinsey & Co., 99 IWCC 1176. Which finds where a respondent has neglected to pay the wage loss benefits, in addition to the outstanding TTD, without any valid legal, or factual basis.
Respondent must demonstrate a reasonable belief that its denial of liability was justified under the circumstances, as required by Continental Disrtrib. Co. v. Indus. Comm'n, 98 Ill.2d 847 (1993), Bd. Of Educ. V. Indus. Comm'n, 93 Ill.2d 1, 442 N.E.2d 883 (1982) "hereinafter Tully. Then relying on an independent medical examination report which reviewed no medical records is neither reasonable, nor justified.
The Tully Court held that where a delay has occurred in payment of worker's compensation benefits, the employer bears the burden of justifying the delay and the standard we hold him to is one of objective reasonableness in his belief. The Respondent in this matter wrongfully withheld benefits to Petitioner so he was forced back to work when he should not have been medically cleared to do so. Petitioner requested Dr. Payne send him back to work despite his pain continuing, and Dr. Payne ordering additional treatment at the time of the writing of the return to work note. The denial of the benefits was willful and wrongfully withheld.
The Petitioner has not received TTD or PTD benefits aside 8, random, weeks (Rx 6). The Arbitrator gives little weight to the Respondents reliance on the full duty release on a Physical Capacity Evaluation form filled out on 8/22/17. In those forms Dr. Payne is mislabeled as Petitioner's primary care physician, or primary pain management physiciain with that title. When in fact, Dr. Payne is not practicing at Advocate Hospital, but in private practice at Specialty Physicians of Illinois. Dr. Payne's Physical Capacity Evaluation form dated 8/22/17 diagnosed Petitioner with a litany of issues, including lumbago, and right leg radiculopathy, and directed the Petitioner to schedule another appointment less than a month away on September 19, 2017 (Id.). Dr. Payne's trial return to work is mischaracterized as a primary care physician releasing their

patient to return to work full duty, when in fact, in that same office visit note he refers Petitioner back to the treating pain management physician, Dr. Adlaka for care (Id. at 2).

Because it has been concluded that Petitioner suffered a work-related injury on October 30, 2016, and was off of work, per the primary care physician's orders, until being released with restrictions by the neurosurgeon that the PCP referred Petitioner to for treatment in October of 2017. Arbitrator finds Respondent should have paid Petitioner the outstanding TTD at a rate of $761.38 based on the uncontested AWW of Petitioner for this claim for those 87 weeks. The total outstanding TTD owed to the Petitioner is $66,240.06.

In addition, the Petitioner is entitled to a weekly wage differential from July 1, 2018, and the trial date of October 11, 2023. Using the calculations above the weekly wage differential of $308.53 owed for a period of 275.43 results in a total amount owed to Petitioner for weekly wage loss at $84,978.42.

The Arbitrator finds Respondent's failure to pay outstanding TTD and weekly wage differential benefits to Petitioner following his new employment was unreasaonble and vexatious and awards penalties in the amount of:

Under Section 19(k), the Arbitrator awards Petitioner penalties of 50% of the total unpaid wage differential benefits and TTD benefits (50% of $151,218.48 equates to $75,609.24). Penalties are assessed in the amount of $75,609.24 pursuant to the Act. Under Section 16 of the Act, the Arbitrator awards attorney's fees of $17,797.27 (20% of $88,986.34) and $30,243.70 (20% of $151.218.48).

The Arbitrator awards 19(l) penalties of $30.00 a day of withholding the TTD and includes it in the $10,000.00 penalty assessed for non-payment of medical bills, and outstanding TTD.

(N) Credit

Respondent shall be credited what they have actually paid and presented at trial in their totality of their exhibits, less any cost for defense or unrelated expenses. Arbitrator requires strict proof of any payments claimed to have been made.

(O) Other. Wage Differential Claim vs. PPD Claim

The Petitioner is entitled to a wage loss differential claim as discussed above in preceding conclusions.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC027215
Case Name	Frank G. Bosco v. Orange Crush, LLC.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0137
Number of Pages of Decision	20
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Michael Casey
Respondent Attorney	Nicholas Bigoness

DATE FILED: 3/31/2025

/s/Maria Portela,Commissioner

Signature

25IWCC0137

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

FRANK G. BOSCO,

Petitioner,

vs. NO: 16 WC 27215

ORANGE CRUSH, LLC,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission affirms the Arbitrator's Decision regarding causal connection, duration of temporary total disability benefits, and the three medical bills awarded by the Arbitrator from Hinsdale Orthopaedics, ATI Physical Therapy and Bright Light Radiology, however modifies the benefit rate and the credit given to the Respondent as set forth below.

The Commission affirms the award of temporary total disability benefits for the period of August 18, 2016 through April 26, 2017, but modifies the benefit rate awarded by the Arbitrator from $1,398.23 to $1,180.09. The Commission further modifies the benefit rate contained in the Arbitrator's Decision, both in the Order section as well as in the narrative section contained in the second paragraph of Section K on page 15.

The Commission reverses the Arbitrator's finding that lack of evidence by the Respondent as to whether they contributed to the Fund relieves Respondent of any liability for the medical expenses paid by the Fund in the amount of $6,616.43. Respondent's contribution to the Fund, or lack thereof, is relevant only as to the issue of 8(j) credit, not liability for medical

expenses. Accordingly, the Commission finds Respondent is liable for payment of the reasonable, necessary, and causally-related medical bills as outlined in the lien letter. (Px13) Respondent shall pay per the fee schedule, or negotiated rate, whichever is less, only through the MMI date of April 26, 2017.

The Commission affirms the Arbitrator's finding that Respondent is not liable for the reimbursement to the Fund for disability benefits paid in the amount of $8,457.46, but modifies the reasoning for same. The Commission finds Respondent is not liable for payment of the disability benefits as the Commission lacks the authority to award such reimbursement pursuant to Section 8(b).

Finally, the Commission makes the following changes to the Arbitrator's Decision:

In the second sentence of the third paragraph under Section F on page 14 of the Arbitrator's Decision, the Commission strikes the following: "Aside from the deference often given to opinions of treating physicians,".

The Commission also strikes the last paragraph on page 14 of the Arbitrator's Decision, as well as the first sentence on page 15 of the Arbitrator's Decision.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,180.09 per week for a period of 35-6/7 weeks, from August 18, 2016 through April 26, 2017, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $775.18 per week for a period of 68.70 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 15% loss of use of the right hand and 15% loss of use of the right arm.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $17,583.24 for medical expenses to Bright Light Radiology ($2,700.00), Hinsdale Orthopaedics ($5,971.67), and ATI ($8,911.57) under §8(a) of the Act, subject to the fee schedule in §8.2 of the Act. Additionally, Respondent is liable for payment of the reasonable, necessary, and causally-related medical bills as outlined in the lien letter under §8(a) of the Act and subject to the fee schedule in §8.2 of the Act.

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

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

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

the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

March 31, 2025

MEP/dmm
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/s/ *Maria E. Portela*
Maria E. Portela

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC027215
Case Name	Frank G. Bosco v. Orange Crush, LLC.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Steven Fruth, Arbitrator

Petitioner Attorney	Michael Casey
Respondent Attorney	Nicholas Bigoness

DATE FILED: 7/7/2023

THE INTEREST RATE FOR THE WEEK OF JULY 5, 2023 5.26%

/s/Steven Fruth, Arbitrator

Signature

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

FRANK G. BOSCO, Case # **16 WC 027215**
Employee/Petitioner

v.

ORANGE CRUSH, LLC,
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Steven Fruth**, Arbitrator of the Commission, in the city of **Chicago,** on **9/28/2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **8/16/2016**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

Timely notice of the 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 $**92,046.76**; the average weekly wage was $**1,770.13**.

On the date of accident, Petitioner was **56** years of age, ***married*** with **0** dependent children.

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

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

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

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

ORDER

Respondent shall pay Petitioner's outstanding unpaid medical expenses as follows: 2,225.02 owed to Bright Light Radiology, $5,971.67 owed to Hinsdale Orthopaedics, and $8,911.57 owed to ATI Physical Therapy, all to be adjusted in accord with the medical fee schedule provided by §8.2 of the Act.

Respondent shall pay Petitioner 35 & 6/7 weeks of TTD benefits at a rate of $1,398.23/week.

Respondent shall pay Petitioner 68.70 weeks of permanent partial disability benefits because Petitioner sustained a 15% loss of the right hand and a 15% loss of the right arm, at a rate of $775.18/week.

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

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

_____ **JULY 7, 2023**

Signature of Arbitrator

Frank Bosco v Orange Crush
16 WC 027215

INTRODUCTION

This matter proceeded to hearing before Arbitrator Steven Fruth. The disputed issues were: ***C:*** Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the 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? TTD; ***L:*** What is the nature and extent of the injury?

Petitioner claims TTD benefits from August 16, 2016 through April 26, 2017, 36 & 2/7 weeks, which Respondent disputes.

STATEMENT OF FACTS

On the accident date, August 16, 2016, Petitioner Frank Bosco was employed by Respondent Orange Crush as an operating engineer. He operated a front-end loader at Respondent's asphalt plant. His job was to feed sand, chips, stone, and recycled asphalt to keep the asphalt plant running. He would feed between 280 tons and 450 tons of material an hour into the asphalt plant. He operated a front-end loader which had a bucket with a volume of 8 cubic yards.

Petitioner operated the front-end loader using his left foot for the brake and his right foot for the gas. He used a joystick on the left for steering. There are 2 joysticks on the right control the bucket for picking up and dumping out. The bucket had to be "banged out" to make sure it is clean so that materials are not contaminated. Petitioner testified there is less movement with his left hand and more movement with his right hand. The joystick on the left is strictly back and forth steering. Petitioner testified his right hand is continually moving to control every single movement that the bucket makes. He had to scoop up material, then dump it, and then bang out the bucket to clean it.

Petitioner testified that both joysticks vibrated. The 2 joysticks on the right vibrated "very much" because he had to bring the bucket up and then dump it and then bang it to make sure it's clean. Petitioner prepared a video of the operation of the front-end loader showing the kinds of activities he performed on August 16, 2016, PX #11. Petitioner testified the video shows the movements of his hand and the vibrations. Petitioner also prepared a job description of his duties at the request of his attorney, PX #10. Petitioner testified the job description he prepared detailed all kinds of activities he was doing on August 16, 2016.

Petitioner worked in his job operating a front-end loader feeding the asphalt plant for 17 to 19 years before August 16, 2016. Before that, he operated the crusher for 2 years. He worked 17 years at Respondent's asphalt plant before he had a problem with his hand. He worked an average of 6 days a week and averaged anywhere from 60 to 80 hours a week.

Petitioner testified that he had not injured his right hand, right elbow, or right arm in any other accident prior to August 16, 2016. He testified that he did not injure his right hand, right elbow, or arm in any accident after August 16, 2016.

In the few weeks prior to August 16, 2016 the asphalt plant was really busy because of flooding in Des Plaines. Petitioner testified that he got very busy and on the 16th he could not move his hand. He reported he was having problems and was told to take ibuprophen. He went to Loyola University Medical Center Immediate Care that day, but they "didn't know what was wrong."

Petitioner's Loyola Center for Immediate Care records on August 16 documented Petitioner's complaints of pain in his neck, that feels like a cold, or it may be from work. He reported he used a machine with a joystick. He complained of a knot in his neck and pain goes through the arm since last couple of weeks but has gotten worse over the last couple of days. His history of present illness was: 56-year-old male presents with upper back spasms that radiate into the right side of the neck. No trauma, he woke up with this pain. No trauma or heavy lifting. He is using a new tractor with a joystick at work. Right shoulder spasm to deep palpation with normal range of motion with movement was noted on examination. Petitioner was diagnosed with right shoulder strain and discharged. PX #1

Petitioner returned to work the next day and told them he did not want to work and wanted to go to an Immediate Care center or a doctor or hospital. He had told to try to work and see how he feels. He did work for 5 hours and after that he could not move his hand. Petitioner called his boss and asked him to please take him to the hospital.

Petitioner testified the next day, August 17, he was seen at the emergency room of the Alexian Brothers Medical Center. PX #2

Petitioner's Alexian Brothers Medical Center records noted Petitioner's complaints of right arm pain for 5 days. Pain radiated down the right arm from right shoulder to hand with numbness sensation to first 3 fingers. Denies injury or trauma. Petitioner reported he worked as an equipment operator and uses his hands often. Pain increased with activity and moving right arm. His pain improved when raising his arm above and placing his hand on his head. Petitioner complained that his pain had been increasing in intensity for 2 days discomfort to his right side and upper back. His chief complaint was noted as numbness of arm.

On exam motor and sensory were grossly intact. Strength was 5/5. A cervical CT scan noted anterior cervical fusion from C4 through C6 with plate and screws with degenerative disc disease at C3-4 and C4-5, and fusion at C5-6 and C6-7. There was multilevel spinal and neural foraminal stenosis. No fracture or subluxation. The medical assessment was CT showed no significant stenosis, foraminal narrowing, and history suggestive for peripheral radiculopathy. There was a low suspicion for central neuro-process. Petitioner was discharged to follow-up with his PCP and with prednisone and tramadol.

Petitioner testified he was referred by the Alexian Brothers Hospital to Northwest Suburban Medical Center.

Petitioner presented to Northwest Suburban Medical Group ("Northwest Medical") on August 18, 2016. He reported he worked a machine for 19 years that required repetitive use of a joystick. Petitioner p[resented in follow-up from St. Alexius. He complained of numbness, tingling and pain in the right extremity from the fingers to the armpit/thorax. He also complained of decreased muscle strength in the right arm compared to the left. He noticed the symptoms for the past 3 weeks. Symptoms peaked last Monday following a busy day of work. On Monday night he sought treatment at nearby urgent care clinic where he was given Flexeril. The following day, after taking Flexeril, his pain was worse. He returned to work, but symptoms were aggravated again at work. He presented to St. Alexius where full workup was done, see report. A cervical CT was significant for degeneration. He had 2 cervical fusions in past. He was discharged with prednisone taper and tramadol for pain. He also tried applying heat. The combination of above medications provided some relief.

Examination by Dr Afshan Hameeduddin noted right hand grasp weaker compared to left. Radial pulses were 2+ bilaterally. There was no deformity in shoulder or cervical spine tenderness to palpation. Dr. Hameeduddin assessed paresthesias (numbness/tingling) of the arm and elevated blood pressure. MRIs cervical and thoracic spine were ordered. The doctor also ordered gabapentin, lisinopril, continue prednisone til taper is complete, and tramadol as previously directed; follow-up in one week after obtaining MRI. Petitioner was given a note to excuse from work. PX #3

Petitioner saw Natalie Hindley NP-C at Northwest Medical on August 22, 2016. He had completed prednisone taper dose and had run out of tramadol and was almost out of Flexeril. He is concerned because the pain has not gotten any better. Petitioner complained of right hand numbness, pain/tingling radiating up the right arm to the right-sided chest. There was right hand weakness on exam. NP-C Hindley assessed numbness of hand, cervical pain, and hypertension. She ordered a C-spine MRI and Flexeril. She also issued a work note for return to work tentatively 8/31 pending MRI results. NP-C Hindley also referred Petitioner for a neurosurgical evaluation and physical therapy. PX #3

Petitioner's cervical MRI was performed on August 22, 2016 at Bright Light Radiology. The radiologist noted 1) Grade 1 anteriolisthesis at C7-T1 associated disc degeneration and facet hypertrophy resulting in significant bilateral foraminal stenosis with abutment of the existing C8 nerve roots bilaterally, left greater than right, 2) Postsurgical changes as above. Moderate grade spondylotic degenerative disc disease in the remainder of the cervical spine resulting in multiple areas of moderate grade stenosis. 3) Mild cord compression at the C3-4 and C6-7 levels resulting in mild underlying myelomalacia. PX #4

Petitioner returned to Dr. Hameeduddin at Northwest Medical on August 29, 2016 in follow-up after cervical MRI. He reported similar symptoms, with little improvement,

from last visit, including right arm pain, tingling and numbness especially 4th and 5th fingers. He rated his pain at 6/10; worse in morning rated at 8 or 9/10. Current medications are providing some relief, which include tramadol, cyclobenzaprine, and gabapentin. He is also taking daily Celebrex. Right-hand grasp was weaker than left.

After examination and review of the MRI the assessment was cervical pain and elevated blood pressure. Petitioner had appointments with neurosurgeon Dr. Knobloch on September 12 and Dr. McNally September 22. The doctor increased gabapentin and continued lisinopril. Physical therapy was ordered. Petitioner was referred to a pain specialist for possible, epidural injection. A work note was given: return to work tentatively September 23, 2016 with no bending, twisting, lifting, repetitive motion. A form was completed for physical disability and returned to Petitioner.

Petitioner presented to Dr. Sanjay Yadla MD of Amita Health Medical Group ("Amita") on August 14, 2016 with a one month history of right upper extremity pain, tingling, numbness, and weakness. Petitioner gave a history of operating a large machine at work, and on August 17, 2016 was very busy at work trying to keep up with work pace and after 5 hours of work, his right arm went numb. His symptoms travel from the neck to the shoulder, posterior upper arm, ulnar side of the forearm, and the last 2 digits of the right hand. He has difficulty gripping things with the right hand. He denied left arm symptoms, which he had years ago in the past (status post two ACDF for left upper extremity symptoms). He also denies balance disturbance. He is taking pain medications and muscle relaxants with little relief. PX #5

On exam, Petitioner had weakness of the right triceps, right hand intrinsics, and right wrist extensors. Sensation to light touch was decreased. Cervical range of motion was also decreased. The doctor noted the cervical MRI from August 2016 demonstrated degenerative disc disease at the C7-T1 level with central stenosis. Dr Yadla noted Petitioner's signs and symptoms were most consistent with a right C8 radiculopathy due to degenerative disc disease and cervical stenosis at the C7-T1 level. He recommended a course of physical therapy and epidural steroid injections. The doctor did not believe he should return to work until he is reevaluated in 6 weeks. PX #5

Petitioner received physical therapy from ATI Physical Therapy from September 19 through October 17, 2016. On evaluation September 19 Petitioner reported constant numbness down the right upper extremity down to the 4th and 5th digits. He also had radiating pain and achiness that increased with movements. He has not been working. Patient is able to lift and reach arm overhead but with discomfort. Patient has\d some difficulty with turning/rotating head left and right. Patient had increase in symptoms with prolonged looking down to read/write. Petitioner also reported decreased right upper extremity strength and grip strength. Petitioner had 12 therapy sessions. PX #6

Petitioner was discharged from ATI on October 31, 2016 "due to therapy being put on hold by patient's attorney due to insurance limitations." PX #6

Petitioner was examined by neurosurgeon Dr. Andrew Zelby pursuant to §12 of the Act at Respondent's request on September 28, 2016. His report was admitted in evidence

as Petitioner's Exhibit #14. Petitioner gave a history of his injury from work on August 15, 2016. He reported using joysticks when operating a front-end loader. He felt a lot of numbness and tingling as well as pain along the right side of the neck, the right shoulder, and the shoulder blade, and going down the back of the arm into the right 4th and 5th fingers. He had no symptoms on the left. His current complaints included constant pain on the right side of his neck into the shoulder, the shoulder blade, down the outside of the arm and forearm into the 4th and 5th fingers. He had not worked since August 17, 2016.

On examination Dr. Zelby noted decreased range of cervical motion, particularly right lateral flexion and rotation. There was trace weakness in the abductors and adductors for the fingers on the right. Sensation to pin-prick and vibratory was diminished in the 4th and 5th fingers of the right hand. Tinel's, Phalen's, and Adson's Maneuver were all negative bilaterally. Dr. Zelby reviewed Petitioner's August 17, 2016 cervical CT scan and the August 22, 2106 cervical MRI. He also reviewed records from Alexian Brothers Medical Center, Northwest Suburban Medical Group, Dr. Yadla, and Employer's First Report of Injury.

Dr. Zelby's impressions were cervical spondylosis with radiculopathy and history of anterior cervical discectomy and fusion. Dr. Zelby opined that the complaints of pain and some findings on exam were suggestive of a right C8 radiculopathy which may be related to degenerative changes, stenosis, and mild spondylolisthesis at C7-T1. Dr. Zelby noted that repetitive use of the joystick at work may be problematic for Petitioner to work with a joystick because of the underlying and fairly significant degenerative condition in the cervical spine. Dr. Zelby opined that Petitioner's condition of repetitive trauma and using the joystick even on a repetitive basis did not cause cervical condition or caused that condition to become symptomatic.

Dr. Zelby stated Petitioner's difficulties at work arose due to the manifestation of his degenerative condition and that his degenerative condition did not occur or become symptomatic as a result of his work activities. He further opined that Petitioner's condition is exclusively due to the manifestations of his degenerative condition and should be treated as such. All of his symptoms, all of his treatment, any absence from work, and any restrictions he may have in the future were not caused or more likely to be necessary as a result of any work activities or any work injury.

Dr. Zelby added that additional treatment is warranted but is completely unrelated to any industrial accident or activity. Petitioner requires no treatment, absence from work, or restrictions from his regular activities because of any work activities or any work injury. He noted that whether Petitioner was at MMI was not applicable to work activities or a work injury. Petitioner had not yet reached MMI for the condition arising from his degenerative cervical spondylosis and spondylolisthesis.

Petitioner returned to Dr. Hameeduddin at Northwest Medical on November 7, 2016, complaining of pain from right shoulder to right hand, with constant numbness in digits 4 and 5 of the right hand. Pain is constant, rated 6/10. Petitioner was going to physical therapy 3 times per week from September 20 to October 17, 2016, but stopped

therapy due to aggravation of symptoms. Petitioner reported he saw Dr. Yadla, who suggested physical therapy and spine shots. He had not been able to work for 3 months.

Examination revealed right hand grasp weakness and decreased sensation of digits 4 and 5 on right hand. Dr. Hameeduddin's assessment was cervical pain. The plan was to refill cyclobenzaprine, tramadol, and gabapentin. Petitioner was to follow-up with Dr. Yadla. PX #3

Petitioner testified doctors ordered him off work from the time he started treating.

Petitioner presented to Hinsdale Orthopaedics as a new patient on November 14, 2016, when he was seen by Dr. Ashraf Darwish. Petitioner's chief complaint was cervical pain. Petitioner gave a history of operating a front-end loader which involved many repetitive movements of a joystick with the right hand. On August 16, 2016 he began to feel some numbness and tingling in his right arm that radiated down the posterior aspect to the 4th and 5th digits. An Occupational Medicine physician referred him to Dr. Yadla, who recommended a cervical MRI and ordered physical therapy and epidural injections. He only completed a couple sessions of physical therapy, was denied epidural injections. RX #7

Petitioner reported he had an IME by Dr. Zelby, who stated this was due to adjacent level degeneration due to his previous two cervical fusions. He had his first cervical fusion which was a one level in 1994. He had a two-level cervical fusion in 2003 at Loyola. Petitioner reported he has not been working for the past 3 months. He also has not had any treatment due to the denial from his workmen's comp. He is currently taking tramadol, Flexeril and gabapentin for the pain.

Petitioner stated that he has pain radiating into the right parascapular region and down the posterior aspect of the right arm the 4th and 5th digits. The pain can get so bad it feels like his fingers are going to explode. The pain is localized to the right cervical spine and left cervical spine. Patient states that the pain radiates to the right upper extremity. The quality is described as stabbing and an ache. The pain level 7/10, but is 6/10 at best and 8/10 at worst. Patient states that physical therapy treatment has improved the pain.

On examination Dr. Darwish noted tenderness over there right and left paraspinal and periscapular regions. Upper extremity muscle strength was normal. Spurling's was positive on the right but negative on the left. There was decreased sensation in the 4th and 5th digits, the posterior forearm, and triceps. Cervical spine X-rays revealed evidence of cervical fusion of C4, C5, C6, and C7, along with degenerative changes. The doctor diagnosed cervicalgia, cervical radiculopathy, and cervical disc degeneration. Dr. Darwish ordered a new cervical MRI to aid in an accurate diagnosis.

The cervical MRI was performed on November 23, 2016. The radiologist's impression was fusion of the bodies of C4-C7 with anterior fusion plate in place, moderately severe left foraminal narrowing with moderate central canal and right foraminal narrowing at C3-4 due to broad-based bulging of the disc with facet arthropathy, moderate spondylotic spurring at C5-6 primarily centrally with moderate

central canal and mild bilateral foraminal narrowing at C4-5, and moderately severe right foraminal narrowing and moderate central canal narrowing at C7-T1 due to a grade 1 spondylolisthesis, facet arthropathy, and broad-based bulging of the disc eccentric to the left. PX #7

Dr. Darwish reviewed the MRI with Petitioner on December 8, 2016. Petitioner still reported numbness and pain that radiates from the right cervical spine into the right posterior aspect of the arms, forearm, and 4th and 5th digits. On exam Cervical range of motion was diminished and painful. There was no tenderness over the cervical spine and upper back. Right Spurling's was now negative. Sensation in the right posterior forearm and right digits 4 and 5. Tinel's at the cubital tunnel was positive.

The diagnoses were spinal stenosis and cervical region, pain in right elbow, cervicalgia, cervical radiculopathy, cervical disc degeneration. Dr. Darwish noted Petitioner had stenosis at C7-T1 due to adjacent level degeneration from his two previous cervical fusions. The doctor was able to reproduce symptoms at the elbow which is indicative of a right ulnar nerve entrapment. Dr. Darwish opined that due to the repetitive nature of his work at the elbow and wrist, this is very likely consequence of Petitioner's occupation. He recommended an EMG of the right upper extremity, after which he will follow up with Dr. Mark Fajardo for evaluation of the right ulnar nerve entrapment. The doctor kept Petitioner off work until he sees Dr. Fajardo. PX #7

Petitioner testified he had an EMG on December 22, 2016, by Dr. Boyd. Amita Health Medical Group records document Dr. Michael Boyd's diagnoses of carpal tunnel syndrome and cervical radiculopathy. PX #8

Petitioner followed up with Dr. Fajardo of Hinsdale Orthopaedics on December 28, 2016 with right arm pain. He reported neck pain radiating into the right hand. Pain was 7/10. Petitioner also complained of weakness, numbness, tingling, and joint pain, which was aggravated by movement, lifting, and holding objects. The doctor noted the EMG showed right median sensory nerve latency and decreased right ulnar motor nerve velocity. Dr. Fajardo assessed right double crush syndrome, right carpal tunnel syndrome, and possible right cubital tunnel syndrome. Surgery versus non surgery was discussed and Petitioner decided to proceed with surgery. The doctor advised continuation of bilateral wrist guards.

Petitioner followed up with Dr. Hameeduddin on January 3, 2017 at Northwest Medical for his work related injury. He was still complaining of numbness, tingling, and pain in the right extremity from fingertips to shoulder. He also reports decreased muscle strength in the right arm compared to the left. He has a history of two cervical fusions in the past. He had pain from right side of neck to shoulder down to right hand, with constant numbness in digits 4 and 5. Pain is constant at 7/10. Dr. Hameeduddin noted the EMG on right hand and elbow and showed carpal tunnel. He is referred to surgeon Dr. Fajardo and he will perform surgery on January 10. The doctor's assessment was neurologic pain in upper extremity and carpal tunnel.

Dr. Fajardo performed a right carpal tunnel release and a right cubital tunnel release and a right medial epicondylectomy on January 10, 2017. Pre and post-operative diagnoses were right carpal tunnel syndrome and right cubital tunnel syndrome. PX #7 & PX #9

Petitioner saw Dr. Fajardo on January 24, 2017 for a postop visit. Petitioner reported 3/10 achy right wrist/elbow pain. He reported numbness, tingling, and joint pain, but pain and numbness were improving. Petitioner was referred for occupational therapy. Return to work was anticipated in one month.

Petitioner received occupational therapy at Hinsdale Orthopaedics from January 24 through April 4, 2017. PX #7

Petitioner returned to Dr. Fajardo for postop status on February 24, March 29, and April 26, 2017. Petitioner made regular progress. By April 26 Petitioner's pain was 2/10. Examination of the wrist noted 5/5 strength and no tenderness to palpation over the A1 pulley of the fingers. Petitioner was able to make a full fist without difficulty. There was intermittent stiffness at the wrist and numbness. Petitioner was advised to continue occupational therapy for strengthening and released to work without restrictions. He was discharged and advised to return PRN.

Petitioner had occupational therapy at ATI Physical Therapy from April 14 through April 24, 2017. The April 28 discharge summary noted that Petitioner's physician had discharged Petitioner and returned him to work on April 26. PX #6

Petitioner followed up with Dr. Hameeduddin on February 6, 2017. Petitioner reported improvement in numbness, tingling, and pain in the right extremity from fingertips to shoulder. He gets physical therapy twice a week at Hinsdale Orthopedic. He denied right arm pain, during last visit reports starting Metoprolol for his blood pressure. Petitioner followed up on March 3, March 6, and April 3, 2017. He reported improvement with his right arm and hand symptoms but was depressed because his symptoms continued. He was also followed for general health issues unrelated to his work injuries.

Petitioner testified he returned to work with Respondent in the same job on May 1, 2017. He performed the same duties as before. He continued to perform those duties for about 4 years, after which he advised that he could not do the job anymore. He now works in the yard where he does not have to feed asphalt into the plant anymore. During the 4 years that he worked the front-end loader feeding asphalt into the plant, he noticed that his right hand and wrist were swelling from the vibrations and movement and the symptoms started again. He runs a front-end loader, but not as repetitively as before. He pushes piles of concrete and asphalt and loads stone onto trucks.

Petitioner testified that he has swelling in his right hand, and it is stiff, sore, and not as strong. His grip is not the same.

Petitioner identified Petitioner Exhibit # 10 as an accurate description of his job duties on or about the time of August 16, 2016, which he prepared.

Petitioner identified Petitioner Exhibit # 11, a video that he prepared that depicts the activities he performed with his right hand and wrist in operating the front-end loader. Petitioner testified that there were 3 occasions in the video when the joystick vibrated very significantly. Petitioner testified that his hand is on that joystick when it vibrates "constantly, all the time." Petitioner testified that PX #11 shows the type of activities that he performed all day.

PX #10 and PX #11 were admitted in evidence over objection.

On cross-examination Petitioner testified that since May 2017 he has been working with the same equipment. Two years prior to the date of hearing, he told the supervisor that he did not want to perform that particular job, feeding the asphalt plant, anymore because of the repetitiveness of the job and his age. He was not able to do the job as well as he did before. The particular part of his body that seems to be really affected by the feeding of the plant is his right hand.

Petitioner further testified he still has some lingering problems as he did before he saw Dr. Fajardo, but they are not as bad. Petitioner had two cervical fusions many years ago. Many years ago, he had complaints in the neck and shoulder area emanating from his neck to his shoulder and down his arm. When he first reported this incident, he had complaints about the neck shoulder and pain going down his arm, but they didn't know exactly where it was and that's why they brought up prior histories and were asking him what he thought it could be. He was told he had problems in his neck and shoulder and pain that goes down his arm because it was affecting his whole side of his arm in the whole side of his body.

Petitioner had carpal tunnel release and cubital tunnel release by Dr. Fajardo, which relieved the pain in his right hand by 80% to 90%, and that is where it remains today. He was first diagnosed with cervical radiculopathy at Alexian Brothers and Loyola and North Suburban. He was ordered to get physical therapy at ATI for radiculopathy where he received treatment for his neck. He testified he was having complaints of neck pain and shoulder pain down his arm at that point, but that they didn't know where the pain was from. He confirmed Dr. Fajardo released him to return to full duty work. He has never returned to see Dr. Fajardo after his release or seen any other doctor since his release by Dr. Fajardo. The bills for examination and stress test of his heart were ordered because they wanted to run that before he had his surgery. He has no problems with his heart. Dr. Fajardo never explained what he meant by double crush injury.

Dr. Marc Fajardo testified by evidence deposition on September 9, 2022 (PX #12). Dr. Fajardo is a board-certified orthopedic surgeon with a with added qualifications of the hand. He refreshed his memory with his records.

Dr. Fajardo testified that he first saw Petitioner was on December 28, 2016 on referral from Dr. Darwish. He took history of a 56-year-old man complaining of right upper extremity pain and numbness after work in August 2016. Petitioner works as a front-end loader at a construction site. He was initially seen at urgent care where he was

prescribed muscle relaxers. He then saw Dr. Darwish who treated the cervical spine, and he was referred by Dr. Darwish for second opinion.

Dr. Fajardo testified that on examination he found positive Durkan and Tinel signs at the wrist and a positive Tinel sign at the elbow. These were suggestive of some type of peripheral compression neuropathy at the wrist or the elbow. Dr. Fajardo noted the EMG demonstrated pretty severe carpal tunnel syndrome as well as severe ulnar nerve neuropathy. He commented that there is a short window of opportunity for surgery when there is nerve damage.

Dr. Fajardo opined that Petitioner's work had a role in causing his condition. He did not see any other risk factors in Petitioner's history. Over objection of Respondent's counsel, Dr. Fajardo relied on the video of work activities and job description prepared by Petitioner (PX #11 & PX #10). He noted that the video demonstrated a lot of vibration. Dr. Fajardo performed a right carpal tunnel release, a cubital tunnel release, and a right medial epicondylectomy on January 10, 2017. He reiterated his pre-operative and post-operative diagnoses of right carpal tunnel syndrome and right cubital tunnel syndrome, confirming that Petitioner's work was a cause of those conditions.

Dr. Fajardo testified that Petitioner followed up postoperatively. Petitioner improved with therapy. He released Petitioner on April 26, 2017 to finish his course of therapy and to return to work without restrictions. He has not seen Petitioner since then.

On cross-examination Dr. Fajardo testified that the symptoms of carpal tunnel and cubital tunnel syndrome can develop both gradually or all at once. Dr. Fajardo opined it would not be unusual for Petitioner to have worked on this piece of equipment for 17 years to be symptom free and not complaining of numbness in his fingers and then all of a sudden appear in a doctor's office with 7/10 pain. Dr. Fajardo testified it was not unusual for this patient to go from zero to seven in his complaints if this was a result of work activity.

Dr. Fajardo did not review Dr. Darwish's records. Respondent's counsel said Dr. Darwish performed a shoulder abduction sign by having the patient put his hand on his head. Dr. Fajardo said abducting the shoulder puts less pressure on the cervical nerves or cervical nerve roots. He added that if there is relief from shoulder abduction, then you would suspect that the issues are more peripheral and not at the neck.

Dr. Fajardo further testified that carpal tunnel is more a vibration issue. He testified he was given a work description by Petitioner's counsel. He did not remember specifically how many hours a day Petitioner typically spent in the front-end loader, but he understood it to be 8 hours workday with a half-hour lunch break constituting 7 ½ hours on the front loader. He did not know if Petitioner worked all year round. There is no one specific cause of carpal tunnel or cubital tunnel syndrome. Risk factors include autoimmune conditions like rheumatoid arthritis or lupus. Sometimes gout can cause it. Medical conditions like diabetes and thyroid issues are more at risk. A broken wrist or elbow can cause carpal tunnel if the broken bones heal in a malunited position. Some

people could be born with this type of condition. People with renal, sometimes renal issues can cause it. But many different factors can come into play.

On redirect examination Dr. Fajardo testified that based upon the job description of Petitioner's starting work anytime between 3 AM and 6 AM and work until he stopped making asphalt; depending on orders working until 4 PM to 8 or 9 PM; one break at 11:30 and a couple of bathroom breaks the rest of the time he is continuously running the machine, feeding the asphalt plant to keep up with demand is consistent with his understanding of the frequency of the time and the amount of time every day that petitioner performs his job duties.

CONCLUSIONS OF LAW

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

The Arbitrator finds that Petitioner proved that he sustained an accidental injury that arose out of and in the course of his employment.

Petitioner is claiming to have sustained right carpal tunnel syndrome and right cubital tunnel syndrome from repetitive vibratory work activities. To sustain this claim petitioner must show that the claimed injury is work related and not the result of a normal degenerative process. However, Petitioner need not prove a specific traumatic injury or an identifiable episode. Petitioner can satisfy his burden of proof by demonstrating the injury was accidental even though it develops as a result of repetitive trauma or activity.

Petitioner testified that he worked for Respondent for 17 years operating a front-end loader. He testified that the front end loader was controlled by a series of joysticks. He testified he operated 2 joysticks with his right hand repetitively and that the joysticks vibrated continually. Petitioners Exhibit #11 corroborated Petitioner's testimony.

The only rebuttal to Petitioner's claim of repetitive injuries was Dr. Andrew Zelby's opinion that Petitioner's symptoms were attributable to his degenerative cervical spine pathology. Dr. Zelby had been retained by Respondent to perform an IME. In that examination Dr. Zelby found no objective signs of either carpal tunnel syndrome or cubital tunnel syndrome. However, Dr. Zelby performed his IME before a right upper extremity EMG confirmed Petitioner's peripheral neuropathy and before Dr. Fajardo's surgical diagnoses.

Petitioner's treating surgeon, Dr. Fajardo, opined in his deposition that petitioners repetitive work activities played a role in his right arm and hand conditions. Dr. Fajardo add clinical information that Dr. Zelby lacked, namely the EMG and the ability to observe the surgical field on January 10, 2017 when he performed the carpal tunnel release, the epicondyle tunnel release and the epicondylectomy.

The Arbitrator finds Petitioner testified credibly that his complaints of pain and numbness in his right arm and hand manifested in the course of and a rising out of his employment by Respondent on August 16, 2016.

F: *Is Petitioner's current condition of ill-being causally related to the accident?*

The Arbitrator finds that Petitioner proved that his condition of ill being, namely right carpal tunnel syndrome and right cubital tunnel syndrome were causally related to the repetitive nature of Petitioner's work activities which manifested on August 16, 2016.

Dr. Fajardo opined that Petitioner's work activities "played a role" and causing Petitioner's right wrist and right elbow entrapment syndromes. The doctor found that Petitioner's work activities were a cause of the carpal tunnel syndrome in the cubital tunnel syndrome that required surgery. Petitioner need not prove that his work activities were "the" cause or that work activities were the primary cause of the condition of ill-being. Petitioner must prove merely that his work activities were "a" cause.

The Arbitrator weighed the conflicting opinions of Dr. Zelby and Dr. Fajardo and found the causation opinions of Dr. Fajardo more reasonable and persuasive. Aside from the deference often given to opinions of treating physicians, the Arbitrator found Dr. Zelby 's opinion was based on insufficient and incomplete information and therefore was not reliable or persuasive.

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?*

It follows from the findings above, that Petitioner proved that the medical services provided were reasonable and necessary, as well as the medical fees and charges for those services.

Petitioner's Exhibit #13 included unpaid bills from Bright Light Radiology for $2,700.00, Hinsdale Orthopaedics for $5,971.67, and ATI Physical Therapy for $8,911.57. PX #13 also included a lien from Midwest Operating Engineers Welfare Fund for $15,641.89. The Operating Engineers Welfare Fund lien was broken down to $6,616.43 in medical payments and $8,457.46 in disability payments, with "OHC" charges of $568.00. The lien also shows a payment of $474.98 to Bright Light Radiology.

The Arbitrator finds that Respondent is liable for $2,225.02 owed to Bright Light Radiology, $5,971.67 owed to Hinsdale Orthopaedics, and $8,911.57 owed to ATI Physical Therapy, all to be adjusted in accord with the medical fee schedule provided by §8.2 of the Act.

No evidence was offered to establish whether Respondent contributed to the medical benefits of $6,616.43 set forth in the lien asserted by the Midwest Operating Engineers Welfare Fund. Therefore, the Arbitrator finds that Respondent is not liable for these $6,616.43 of medical benefits paid by the Operating Engineers Welfare Fund.

Likewise, the Arbitrator finds Respondent is not liable for the $8,457.46 in disability benefits paid by the Operating Engineers Welfare Fund.

K: *What temporary benefits are in dispute? TTD*

The evidence showed that Petitioner continued to work throughout his shift on August 16, 2016 and then 5 hours on August 17. Petitioner was not taken off work until August 18, by Dr. Dr. Hameeduddin of Northwest Suburban Medical Group. Petitioner was released to full duty work by Dr. Fajardo on April 26, 2017.

Petitioner is entitled to TTD benefits from August 18, 2016 through April 26, 2017, 35 & 6/7 weeks at $1,398.23/week.

L: *What is the nature and extent of the injury?*

The Arbitrator evaluated Petitioner's Permanent Partial Disability in accord with §8.1b of the Act:

i) No AMA Impairment Rating was admitted in evidence. The Arbitrator cannot give any weight to this factor.

ii) Petitioner was employed as an operating engineer. He operated heavy equipment, in particular front-end loaders. Although Petitioner returned to that job initially he requested a different assignment after 4 years due to continuing symptoms from his injuries. The Arbitrator gives great weight to this factor.

iii) Petitioner was 56 years old at the time of his accident. He has a statistical life expectancy of approximately 24 years. Petitioner has continuing complaints that will likely affect him for the remainder of his life. However, Petitioner also has permanent disabilities unrelated to the injuries at issue here. The Arbitrator gives moderate weight to this factor.

iv) Petitioner returned to work as an operating engineer. There was no evidence that his earning capacity was adversely affected by his injuries, which diminishes the extent of disability. The Arbitrator gives great weight to this factor for that diminishment.

v) Petitioner sustained a right carpal tunnel syndrome and a right cubital tunnel syndrome, both of which required surgery. Petitioner recovered sufficiently to return to full duty work but with continuing symptoms. Due to his continuing symptoms, he now works in a different and more limited capacity than before. The Arbitrator gives great weight to this factor.

After considering all the evidence, including the above five factors, the Arbitrator finds that Petitioner proved that he sustained a permanent partial disability of 15% loss of the right hand for his carpal tunnel syndrome and a permanent partial disability of 15% loss of the right arm for his cubital tunnel syndrome, 68.70 weeks at $775.18/week.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC002290
Case Name	Shawn M. Roach v. Continental Tire The Americas, LLC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	25IWCC0138
Number of Pages of Decision	16
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Joshua Humbrecht
Respondent Attorney	James Keefe Jr

DATE FILED: 3/31/2025

/s/Maria Portela,Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SHAWN M. ROACH,

Petitioner,

vs. NO: 24 WC 02290

CONTINENTAL TIRE THE AMERICAS, 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 issue of prospective medical treatment and the medical necessity of the proposed surgery and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, but makes a clarification as outlined below. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission affirms the Decision of the Arbitrator and affirms the award for the prospective medical treatment including the surgery recommended by Dr. Gornet. However, the Commission modifies the award for the prospective medical treatment and finds that the use of the BMP in the prospective surgery is unnecessary. Both Drs. Wright and Gornet testified that the use of BMP in a cervical spine surgery is off label and that there are publications and warnings from the FDA against its use in the cervical spine. Further, the Commission finds the testimony of Dr. Wright persuasive in that the use of BMP for the type of proposed surgery does not represent the standard of care. (Rx1, p. 47)

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed Jun 27, 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 $50,000.00. 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.

March 31, 2025

MEP/dmm
O: 030425
49

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC002290
Case Name	Shawn M. Roach v. Continental Tire The Americas, LLC
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Joshua Humbrecht
Respondent Attorney	James Keefe Jr

DATE FILED: 6/27/2024

/s/ Jeanne AuBuchon, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 25, 2024 5.14%

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Shawn M. Roach
Employee/Petitioner

v.

Continental Tire The Americas, LLC
Employer/Respondent

Case # 24 WC 02290

Consolidated cases: N/A

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Jeanne L. AuBuchon, Arbitrator of the Commission, in the city of Mt. Vernon, on May 21, 2024. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

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

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

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

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

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

In the year preceding the injury, Petitioner earned $69,077.00; the average weekly wage was $1,328.40.

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

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

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

ORDER

Respondent shall authorize and pay for the surgery as proposed and recommended by Dr. Matthew Gornet, specifically fusion at C3-4 and disc replacements at C5-6 and C6-7, including the use of BMP.

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 27, 2024

PROCEDURAL HISTORY

This matter proceeded to trial on May 21, 2024, pursuant to Sections 19(b) and 8(a) if the Illinois Workers' Compensation Act (hereinafter "the Act"). The sole issue in dispute is whether the Petitioner is entitled to prospective medical care, specifically cervical surgery. The parties stipulated that any issues regarding the Petitioner's right shoulder are reserved. The Respondent has accepted an injury to the Petitioner's carpal tunnel.

FINDINGS OF FACT

The Petitioner has worked for the Respondent for 25 years and is an industrial mechanic, performing preventative maintenance and repairing machinery. (T. 10-11) In September 2022, the Petitioner reported pain, numbness and tingling into his arms as well as pain higher up in the right shoulder area. (T. 12) He said the symptoms were getting progressively worse over the course of time. (Id.)

The Petitioner testified that the Respondent sent him to Dr. David Brown, a hand surgeon at the Orthopedic Center of St. Louis, who performed bilateral carpal tunnel releases on December 8, 2022, and December 21, 2022. (T. 13, PX7) The Petitioner stated that the surgeries helped some of the numbness and tingling into his hands. (T. 13)

The Respondent then sent the Petitioner to Dr. George Paletta, an orthopedic shoulder surgeon at the Orthopedic Center of St. Louis. (T. 14) He saw Dr. George Paletta on March 14, 2023, and complained of right basicervical pain and upper shoulder pain. (PX8) He provided a description of his work activities and tools involved. (Id.) Dr. Paletta conducted an exam and noted his symptoms were concerning for cervical pathology. (Id.) He recommended MRIs of the neck and right shoulder and gave restrictions no lifting over 10 lbs. and no repetitive overhead

activity. (Id.) Dr. Paletta stated that if there was evidence of a cervical issue, he would recommend consultation with a cervical spine specialist. (Id).

The Petitioner testified that the Respondent has been accommodating the restrictions. (T. 16) He said that working with the restrictions has helped his symptoms let up "a little bit." (Id.) He described having continuous soreness, headaches going over his ear, pain in the thoracic area and across the bottom of his neck that he described as stabbing and radiating. (T. 17)

On March 28, 2023, Petitioner underwent the recommended MRIs which were interpreted by Dr. Matthew Ruyle, a radiologist at MRI Partners of Chesterfield. (PX 5) Regarding the cervical spine, Dr. Ruyle's noted annular tears/fissures and protrusions at the C5-6 and C6-7 discs. (Id.) The C5-6 protrusion extended into the medial left foramen and the C6-7 to the medial right foramen. (Id.) Dr. Ruyle reported that the C5-6 created left foraminal stenosis and the C6-7 created right foraminal stenosis. (Id.) He identified a right foraminal protrusion with an extruded fragment and right-sided facet arthropathy causing severe right foraminal stenosis. (Id.) On the right shoulder MRI, Dr. Ruyle found insertional cuff tendinitis and a partial-thickness tear of the anterior supraspinatus tendon and long-head biceps peritendinitis/tenosynovitis. (Id.)

Dr. Paletta reviewed the MRIs on April 3, 2023. On the right shoulder MRI, Dr. Paletta identified a high-grade partial thickness tear of the supraspinatus, but no full thickness tear. (PX8) He prescribed oral steroids and recommended an intraarticular injection of the glenohumeral joint and concomitant injection of the bicipital groove. (Id.) After completion of the oral steroid, he recommended nonsteroidal anti-inflammatories. (Id.) Regarding the cervical MRI, Dr. Paletta saw multiple abnormalities, including severe right-sided foraminal stenosis at C3-4 and evidence of central disc protrusions at C5-6 and C6-7. (Id.) He felt the C5-6 was slightly more to the left

and the C6-7 extended into the right medial foramen. (Id.) He felt spinal evaluation was necessary prior to any shoulder intervention. (Id.)

On April 11, 2023, the Petitioner saw Dr. Matthew Gornet, an orthopedic spine surgeon at the Orthopedic Center of St. Louis, who took a history, reviewed the Petitioner's symptoms, conducted an examination and interpreted Petitioner's imaging. (PX2) On the MRI, he noted that the C3-4 disc demonstrated encroachment of the facet joint as well as a disc herniation resulting in foraminal narrowing. (Id.) He said C5-6 and C6-7 demonstrated central and right herniations at both levels. (Id.) Dr. Gornet recommended epidural steroid injections (ESI), medial branch blocks and radiofrequency ablation (RFA). (Id.) He opined that Petitioner's current state of ill-being and need for treatment were causally related to his work activities. (Id.)

The Petitioner underwent an ESI at C3-4 on the right on April 25, 2023, performed by Dr. Helen Blake, a pain management physician at Pain and Rehabilitation Specialists. (PX 3) On April 25, 2023, Petitioner underwent an ESI to his C3-4 on the right. (PX 4) The Petitioner testified that the injection provided very little relief. (T. 18) On May 17, 2023, he underwent an ESI at C5-6 to the right side. (PX 4) The Petitioner testified that injection provided relief in his neck and shoulder. (T. 18-19) He said the relief was short-lived. (T. 19)

On June 1, 2023, the Petitioner saw Dr. Gornet, who noted that the injections provided some short-term relief for several days, but the pain returned. (PX 2) Dr. Gornet the Petitioner was suffering from discogenic pain at C3-4, C5-6 and C6-7 with facet pain at C3-4. (Id.)

Dr. Blake performed a right-sided medial branch block on June 6, 2023. (PX4) The Petitioner testified that the blocks provided good relief. (T. 20) On June 13, 2023, Dr. Blake performed an RFA of the right C3-4 facet joint. (PX 4) The Petitioner testified that the RFA

provided good relief and helped with his headaches and higher-up central neck pain. (T. 21) He agreed that the relief lasted six to eight months but was gradually coming back. (T. 28-29)

At a follow-up visit with Dr. Gornet on August 3, 2023, Dr. Gornet recommended a fusion at C3-4 – with physician-directed use of bone morphogenetic protein (BMP) – and disc replacements at C5-6 and C6-7. (Id.) Dr. Gornet noted that he explained to the Petitioner that use of BMP would be "off label" and that there are FDA warnings regarding the use in the neck. (Id.)

On September 13, 2023, the Petitioner underwent a Section 12 examination by Dr. Neill Wright, a neurosurgeon at Neurosurgery of St. Louis. (RX1, Deposition Exhibit 2) Dr. Wright reviewed medical records and performed an examination. (Id.) The Petitioner reported pain in the anterior and posterior shoulder and bilateral neck pain radiating from the top of his neck down to the base and towards his shoulder blades. (Id.)

On the imaging studies, Dr. Wright saw right foraminal stenosis at C3-4 due primarily to facet arthropathy with contribution from a small right foraminal disc protrusion. (Id.) He also noted small bulges at C5-6 and C6-7 without significant canal stenosis or cord compression. (Id.) He said there was minimal left foraminal narrowing at C5-6 but no significant right foraminal stenosis. (Id.) He said that although the radiology report described mild right foraminal stenosis at C6-7, he did not appreciate such pathology. (Id.)

Regarding treatment, Dr. Wright recommended surgery, given disabling levels of neck pain precluding return to full duty work and failure of injections and medications. (Id.) He opined that a cervical discectomy and fusion at C3-4 was reasonable and necessary but did not agree on the use of BMP. (Id.) He said use of BMP during anterior cervical discectomy and fusion is considered an "off-label" use, and the FDA has cautioned against its use in the anterior cervical spine. (Id.) He said this use remains investigational and does not represent standard of care. (Id.)

As to the disc replacements recommended by Dr. Gornet, Dr. Wright stated that the small disc protrusions at C5-6 and C6-7 were not clearly related to the claimant's complaint of neck pain, based on the lack of response to epidural injection at this level. (Id.) He did not believe disc replacement surgery at these levels were reasonable or necessary for the Petitioner at that time. (Id.) Dr. Wright acknowledged in his report that cervical fusion is associated with the development of adjacent segment disease and the potential need for additional surgeries down the road. (Id.)

In his report from a follow-up visit on October 26, 2023, Dr. Gornet voiced his disagreement with Dr. Wright. (PX2) He said the Petitioner had objective pathology on the MRI at C5-6 and C6-7 that correlated with the Petitioner's right trapezius and right-sided pain and headaches. (Id.) He said a fusion at C3-4 would cause increasing stress on the adjacent segments at C5-6 and C6-7 and, therefore, he did not believe a fusion at C3-4 would be enough to cure and relieve the effects of the injury and would probably make the Petitioner worse. (Id.)

On January 9, 2024, Dr. Blake performed a right C6-7 epidural injection. (PX3) The Petitioner testified that relief of his symptoms from this injection lasted longer than the others. (T. 23-24) He said it helped with the pain radiating into the right trapezius and shoulder. (T. 24) He followed up with Dr. Gornet on February 1, 2024, who stated that the Petitioner's report of improvement after the C6-7 injection supported his belief that C5-6 and C6-7 were "in play." (RX2)

Dr. Gornet testified consistently with his records at a deposition on March 4, 2024. (PX1) He explained that discogenic pain – which he believed was coming from the Petitioner's C3-4, C5-6 and C6-7 – is pain that comes from the disc itself. (Id.) He said the Petitioner had facet pain from C3-4 that was coming from symptomatic facet arthritis in the facet joint. (Id.) He reiterated his opinions that the Petitioner had "clear pathology" at C5-6 and C6-7 and that a fusion at C3-4

would cause symptoms in other areas because fusions cause increasing stress and will accelerate the problems at the other levels. (Id.) He said the pathology at C3-4 would not explain the Petitioner's symptoms going down his arm, but the pathology at C5-6 and C6-7 would. (Id.) He added that the Petitioner's response to the injection at C6-7 also showed that C5-6 and C6-7 were "in play." (Id.) He said the Petitioner's trapezius and shoulder pain would be more from C5-6 and C6-7. (Id.)

Dr. Gornet also explained that the use of BMP in fusions tends to accelerate healing if used in appropriate amounts. (Id.) He said he and other doctors in the area have used it over time and have not had any problems. (Id.) He agreed that there are publications and warnings about using BMP in the neck but believed it is reasonable and necessary to use it in this case. (Id.) He said that with surgery at multiple cervical levels, the Petitioner is at increased risk not to heal, and using BMP is the best option. (Id.) He said BMP has been used "off label" for years, citing Washington University using it in scoliosis patients. (Id.)

Dr. Wright testified consistently with his report at a deposition on April 3, 2024. (RX1) He thought the majority of the Petitioner's pain was coming from the C3-4 level where the Petitioner had the inflammatory facet arthropathy. (Id.) Regarding his finding that he could not correlate the Petitioner's symptoms with the C5-6 and C6-7 levels, Dr. Wright stated that the Petitioner did not have any radicular component, meaning pain or numbness coming down the arm in the pattern of those nerves. (Id.) He added that the MRI didn't show any significant right-sided foraminal stenosis, and the ESI at C5-6 had done nothing for the Petitioner. (Id.) Dr. Wright stated that he was unaware of the injection at C6-7 and had no records reflecting such. (Id.) He said that could impact his opinion as to whether that level was contributing to the Petitioner's symptoms, depending on which symptoms improved and for how long. (Id.) He said that given that the

Petitioner didn't have a significant complaint of arm pain, he was not sure what benefit that injection would give him. (Id.)

As to the annular tears in the discs that Dr. Gornet pointed out, Dr. Wright stated that the bulges he referred to at C5-6 and C6-7 was part of an annular tear and the fact that there's a bulge implies that there is some defect in the annulus. (Id.) When asked if annular tears can create discogenic or localized pain in the cervical spine, Dr. Wright answered that the issue of discogenic neck pain is controversial. (Id.) He said that operating on discs for neck pain without any abnormality is a "crapshoot" as to whether it works or not. (Id.)

Regarding his opposition to the use of BMP, Dr. Wright explained that it is contraindicated by the company that sells it, and there is a "black box warning" from the FDA not to use it in the anterior cervical spine. (Id.) He said that he and other surgeons had used BMP in the cervical spine when it was first released, but there were significant swelling complications, with patients requiring tracheostomies and readmissions to hospitals. (Id.) He said there had been some fatalities associated with it when used in the anterior cervical spine. (Id.) He said that even with using a smaller dose of BMP, a study showed that there were still patients who had complications. (Id.)

As to disc replacement, Dr. Wright stated that the procedure is contraindicated for facet arthropathy. (Id.) He explained that with a disc replacement, the facet joints continue to move and cause pain, while with a fusion, the facet joints no longer move. (Id.) He said both he and Dr. Gornet believed the Petitioner had erosive inflammatory arthropathy at the C3-4 level on the right. (Id.) He said that if the Petitioner was having discogenic pain from C5-6 and C6-7, he would expect that epidural injections would relieve that pain. (Id.)

Dr. Wright acknowledged that fusions could result in adjacent segment disease where a patient loses range of motion and the cervical levels above and below the fusion have to work a little bit harder to maintain motion in the neck, causing the next level to become degenerative and painful enough to require surgical intervention. (Id.) However, he pointed out that the disc replacements Dr. Gornet was proposing were not adjacent levels and said a fusion at C3-4 should not affect the C5-6 or C6-7 levels because there is a disc space between them. (Id.)

The Petitioner testified that at the time of arbitration he was experiencing headaches that wrap around the side of his head, pain in the lower aspect of his neck, pain in the mid/upper area of his neck and pain radiating down to his right shoulder that occurs daily and increases with activity, such as driving long distances. (T. 24-25) He said he is pretty miserable every day and does not feel like he could just live with the symptoms. (T. 26)

CONCLUSIONS OF LAW

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

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. The Petitioner bears the burden of proving every aspect of her claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223 Ill.App.3d 706 (1992). Upon establishing causal connection and the reasonableness and the necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Manufacturing Co. v. Industrial Commission*, 294 Ill.App.3d 705 (1997). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Manufacturing Co. v. Industrial Commission*, 325 Ill. App. 3d 527 (2001).

Both Dr. Gornet and Dr. Wright recommended fusion surgery at C3-4 but disagreed on disc replacements at C5-6 and C6-7. Dr. Wright's opinion was based on not seeing significant

pathology there or symptoms that he could a link to those levels. Dr. Gornet identified pathology that he believed needed surgical intervention. He explained that the Petitioner's trapezius, shoulder and arm symptoms were likely coming from C5-6 and C6-7.

The Arbitrator notes that Dr. Wright was lacking information that he acknowledged would be important in determining whether disc replacements were necessary. He was unaware that the Petitioner had an injection at C6-7 and the results of the injection. On the other hand, Dr. Gornet did have this information, which formed part of his basis for recommending disc replacements.

Dr. Wright also did not think disc replacements were necessary to prevent adjacent segment disease because the discs proposed for replacement were not adjacent to the fusion. However, the Arbitrator notes that the immediately adjacent segment – C4-5 – did not demonstrate pathology, while the C5-6 and C6-7 did demonstrate bulges, that Dr. Wright acknowledged would include annular tears or fissures. Dr. Gornet explained that solely performing a fusion at C3-4 would worsen the pathology at the C5-6 and C6-7 discs.

As to Dr. Wright's statements that disc replacements are contraindicated for facet arthropathy, both he and Dr. Gornet only found facet arthropathy at C3-4, which is the level being proposed for fusion, not disc replacement. Thus, this is a non-issue as to disc replacements at C5-6 and C6-7.

Lastly, Dr. Wright recommended against use of BMP with a cervical fusion because of warnings from the FDA and manufacturer. However, Dr. Gornet cited his own experience and that of other doctors to vouch for the safety of using BMP in this procedure.

For these reasons – and the fact that, as the Petitioner's treating physician, Dr. Gornet had more opportunities to become familiar with the Petitioner and his condition – the Arbitrator gives Dr. Gornet's opinions greater weight than those of Dr. Wright's. The Arbitrator finds that

performing the disc replacements is reasonable to cure the effects of the injuries Dr. Gornet identified at those levels and to prevent the need for future surgery due to adjacent disc disease that would be caused by the fusion.

Therefore, the Arbitrator finds Dr. Gornet's treatment plan to be reasonable and necessary. The Respondent shall authorize and pay for the prospective treatment recommended Dr. Gornet, specifically fusion at C3-4 and disc replacements at C5-6 and C6-7, including the use of BMP.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC008194
Case Name	Brenetta Hall v. Presence St Joseph Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0139
Number of Pages of Decision	22
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Jason Esmond
Respondent Attorney	Micaela Cassidy

DATE FILED: 3/31/2025

/s/Raychel Wesley,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 (TTD)	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BRENETTA HALL,

Petitioner,

vs. NO: 17 WC 08194

PRESENCE HEALTH,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, and nature and extent, and being advised of the facts and law, affirms in part and modifies in part the Decision of the Arbitrator as stated below, but otherwise incorporates the Decision of the Arbitrator, which is attached hereto and made a part hereof.

FINDINGS OF FACT

While the Commission incorporates the Findings of Fact from the Decision of the Arbitrator herein, we also supplement the facts with additional facts and medical evidence:

On April 9, 2017, Petitioner was terminated by Respondent while on right knee restricted duty orders from treating physician Dr. Geoffrey Van Thiel at OrthoIllinois.

On September 18, 2017, Petitioner followed up with Dr. Van Thiel for her ongoing right knee pain. Dr. Van Thiel administered a cortisone injection in Petitioner's right knee. Conservative treatment was continued based on Petitioner's progress, and Petitioner was released to work beginning October 16, 2017.

On October 9, 2017, Petitioner complained to Dr. Michelle S. Faull at Monroe Clinic of back pain radiating to her right thigh and calf, with numbness down to the toes. The back pain was constant but waxed and waned in intensity. Petitioner also had right knee pain and swelling. She

indicated that a right knee steroid injection administered three weeks earlier was helpful. Dr. Faull opined the right knee surgery, subsequent blood clot, lumbar facet arthropathy, and radicular leg pain were contributing to Petitioner's back and knee pain. Petitioner was prescribed new medication, was continued on physical therapy for her right leg, and was kept off work.

On December 6, 2017, Petitioner underwent a psychological evaluation for Social Security Disability Insurance ("SSDI") benefits with Dr. Julie Young. The evaluation indicated Petitioner had no communication problems, and that she had two children and 14 grandchildren. When asked if she had an IEP in school, she responded "I have no disease." She lives with her 21 year old grandson and 11 year old nephew. Her morning schedule included making breakfast for her nephew and grandson. She participates in church groups and activities. She walks two blocks with a cane to church. *Respondent's Exhibit 3*.

VOCATIONAL ANALYSES

Laura Belmonte

At the request of her counsel, Petitioner underwent a Vocational Evaluation with Laura Belmonte on April 7, 2022. Ms. Belmonte noted Petitioner's accident, injury conditions, and work restrictions of no lifting over 20 pounds, no repetitive bending, and standing as tolerated. She also noted Petitioner used a cane every time she left her home, and occasionally used a knee brace.

Regarding her educational history, Petitioner graduated high school with a "C" average, and had trouble reading, writing, and spelling. She went to the resource room for extra help. At Highland Community College she took 33 credits in early childhood education, but the reading assignments were too difficult, so she dropped out. She then earned her CNA certificate. She testified she had successfully renewed her certification every time she has attempted to. As an adult she intentionally chose jobs which did not require, reading, writing, or spelling. She has worked as a personal assistant to people with developmental disorders or elderly, a teacher's aide for a preschool, and a CNA (earning $15.85/hour with Respondent). While working for Respondent she also worked as a personal caregiver a few times per week, 3-4 hours each time. Ms. Belmonte noted that Petitioner's work history included several semi-skilled positions according to the Dictionary of Occupational Titles.

Ms. Belmonte noted there was evidence Petitioner may have some kind of learning disability, based on extra help she received in high school. She noted Petitioner had no transferable skills. Petitioner could no longer work as a CNA, Personal Attendant or Home Health Aide, as she could no longer perform medium demand level jobs. Sedentary jobs have 10 pound lifting restrictions, and light duty jobs have 20 pound restrictions. Most sedentary jobs require computer skills and language skills at a high school level. Petitioner has no computer skills and needed help in high school with reading and writing. Ms. Belmonte opined Petitioner was not alternatively employable due to her advanced age, learning disability, lack of computer skills, lack of job seeking skills, and lack of transferable skills. She also walked with a cane, which limited most jobs that required standing and walking, and eliminated jobs that required someone to carry more than what a person can grasp in one hand. Petitioner also did not own a car.

Julie Bose

On March 28, 2023, Ms. Bose completed a vocational report on Respondent's behalf. She noted Petitioner's age, educational history, and work history. She also noted that as part of her 2017 SSDI application, Petitioner underwent a psychological consultation with Dr. Peggau (Dr. Julie Young). Petitioner indicated she had a valid drivers' license and no communicative problems. She denied having an IEP in high school and had "no disease." Ms. Bose found that Petitioner's work history indicated semi-skilled work activity.

Ms. Bose noted Petitioner worked part time as a childcare worker for the State of Illinois, which is a medium demand level, semi-skilled job. She opined that, at minimum, Petitioner was capable of sedentary work, and noted that Monroe Clinic physicians released Petitioner to light duty work. Meanwhile, Dr. Coe and the Social Security Administration opined Petitioner was capable of sedentary work.

A Labor Market Survey in Petitioner's geographical area indicated Petitioner was capable of performing sedentary jobs. The survey did not target jobs that required computer use. 33 employers were contacted, and 18 responded. Three of the 18 said Petitioner would need computer skills. The remaining 15 indicated Petitioner had the background and functional capabilities to perform the job. Seven of the 15 indicated a current need to hire. The overall wage range for the 15 jobs was $11.00/hr. to $17.00/hr. Ms. Bose opined Petitioner was capable of performing jobs such as lobby attendant, call center clerk, front desk receptionist, and customer service clerk. *Respondent's Exhibit 5*.

CONCLUSIONS OF LAW

I. Temporary Total Disability

In the instant case, the issue surrounding temporary total disability ("TTD") is the determination of the appropriate duration.

An employee is temporarily totally disabled from the time an injury incapacitates him until such time as he is as far recovered as the permanent character of the injury will permit. *Archer Daniels Midland Company v. Industrial Commission*, 138 Ill. 2d 107, 118 (1990). In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized, *i.e.*, whether the claimant has reached maximum medical improvement, and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Commission*, 236 Ill. 2d 132, 142, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. *Archer Daniels Midland Co.* at 118.

Here, although Respondent's §12 examiner Dr. Lawrence Lieber opined Petitioner was capable of full duty work as of March 30, 2017, Petitioner worked under restrictions for Respondent until her termination date of April 9, 2017. Subsequently, she underwent right knee surgery on May 18, 2017. Post-operatively, Petitioner received recovery treatment including

physical therapy and injections. On September 18, 2017, treating physician Dr. Van Thiel released Petitioner back to work beginning October 16, 2017. However, on October 9, 2017, treating physician Dr. Michelle Faull took Petitioner back off work, citing complications from the right knee surgery and resulting blood clot as contributory. Dr. Faull prescribed new medication and continued physical therapy.

The Arbitrator adopted the opinion of Dr. Lieber in finding Petitioner was capable of full duty work beginning March 30, 2017. Accordingly, no TTD benefits from that date through the May 18, 2017 surgery date were awarded. The Arbitrator then relied on the opinion of Dr. Van Thiel in finding that Petitioner was subsequently capable of a full duty return to work as of October 16, 2017. Thus, TTD benefits were ultimately awarded form May 18, 2017 through October 16, 2017.

The Commission views the evidence differently than the Arbitrator, and based on the totality of evidence, modifies the TTD award. The record reflects that Petitioner was terminated on April 9, 2017, while she was on restricted duty. Although Dr. Lieber's §12 report on March 30, 2017 indicated Petitioner was capable of full duty work, medical evidence contradicts this opinion. Prior to the stipulated accident, Petitioner was working full duty for Respondent. After the accident Petitioner immediately sought medical care, and was placed on restricted duty with lumbar and right knee diagnoses. Petitioner's complaints of medial right knee and back pain continued, as did her work restrictions, for the next few months leading up to Dr. Lieber's §12 examination. There is no indication in the record that Petitioner's right knee or back symptoms resolved in the interim. In fact, On February 20, 2017, Petitioner's right knee pain and stiffness remained, and Dr. Van Thiel reviewed a right knee MRI conducted two days earlier, finding a right knee medial meniscus tear. Right knee surgery was recommended at that time by Dr. Van Thiel. The surgery had not taken place by the date of Petitioner's termination; thus, we find her condition remained unstable. The timeline of events supports a finding by a preponderance of evidence that Petitioner was incapable of full duty work at the time of her April 9, 2017 termination. We find that at the time of Petitioner's termination, her accident-related condition had yet to stabilize, thus entitling her to ongoing TTD benefits past her termination date.

Moving forward, Petitioner's restrictions continued until her May 18, 2017 knee surgery, after which she remained off of work until Dr. Van Thiel's September 18, 2017 visit. At that time, Petitioner was released to work beginning October 16, 2017. However, seven days prior to the release date, Petitioner followed up with treating physician Dr. Faull, complaining of right knee pain and swelling, a blood clot that had only somewhat improved, and fairly constant back pain. Dr. Faull kept Petitioner off of work, specifically opining that it was in part related to her right knee surgery. Of note, Petitioner's right knee complaints never subsided after surgery. In fact, even on the date Dr. Van Thiel released Petitioner to work, he administered a cortisone injection into the knee, and recommended continued conservative care based on Petitioner's progress. We find this to be an indication that Petitioner still had ongoing knee issues at that time, enough to support Dr. Faull's opinion that Petitioner was still unable to work.

The record indicates that subsequently, Petitioner remained off of work until October 15, 2018, when she began babysitting, which was paid through the YWCA program. *Respondent's Exhibit 3*. Accordingly, based on the totality of evidence, the Commission modifies and extends

the Arbitrator's TTD award, so that benefits are awarded to Petitioner from April 10, 2017 through October 14, 2018, the date Petitioner was capable of returning to the workforce.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 12, 2024, is hereby affirmed in part and modified in part for the reasons stated above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of $5,523.62 for medical expenses, pursuant to §8(a) and subject to §8.2 of the Act. Respondent shall hold Petitioner harmless from any claims by any providers of the services related to Petitioner's right knee and low back for which Respondent is receiving this credit, as provided in §8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $312.80 per week for a period of 79 weeks, representing April 10, 2017 through October 14, 2018, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $281.52 per week for a period of 53.75 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused a 25% loss of use of the right leg.

IT S FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $281.52 per week for a period of 25 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused a 5% loss of use of Petitioner's person as a whole.

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

IT IS FURTHER ORDERED BY THE COMMISSION that 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 $52,500.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

March 31, 2025

/s/ *Raychel A. Wesley*

RAW/wde

O: 2/19/25

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC008194
Case Name	Brenetta Hall v. Presence St Joseph Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Jason Esmond
Respondent Attorney	Micaela Cassidy

DATE FILED: 7/12/2024

/s/Michael Glaub, Arbitrator
Signature

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

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

Brenetta Hall
Employee/Petitioner

v.

Presence Health
Employer/Respondent

Case # **17 WC 8194**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Michael Glaub**, Arbitrator of the Commission, in the city of **Woodstock**, on **April 4, 2024.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **November 15, 2016,** Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Petitioner's current right knee and low back condition of ill-being are causally related to her accident.

In the year preceding the Petitioner's injury, Petitioner's average weekly wage was **$469.20.**

On the date of accident, Petitioner was **55** 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

The Respondent shall pay the petitioner temporary total disability benefits of $ **312.80** /week for **21 5/7** weeks, from **May 18, 2017 through October 16, 2017** , as provided in Section 8(b) of the Act.

The Respondent shall pay $**5,523.62** for necessary medical services, as provided in Section 8(a) and 8.2 of the Act and consistent with the Illinois Medical Fee Schedule. Respondent shall hold petitioner harmless for any medical bills regarding her right knee and low back treatment from any third party that paid for these services

The petitioner failed to prove she is permanently and totally disabled. However the respondent shall pay the petitioner **$22,169.70** representing **78.75** weeks of disability as the petitioner's accidental injuries caused a **25%** loss of use of the right leg under section 8(e) of the Act and a **5%** loss of use of the person as whole under Section 8(d)2 of the Act at a permanency rate of **$281.52.**

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.

Michael Glaub
Signature of Arbitrator

July 12, 2024

ICArbDec

STATEMENT OF FACTS

STIPULATIONS

The parties stipulated that on November 15, 2016, the Petitioner was employed by Presence St. Joseph Medical Center, and that her average weekly wage rate was $469.20/week in the year prior to that date. On November 15, 2016, the Petitioner was 55 years old, single, and had no dependent children.

PRIOR MEDICAL CONDITIONS

On cross examination, the petitioner admitted to having been given light-duty work restrictions with no lifting over 20 pounds by Dr. James Turek at Monroe Clinic in May of 2008. The petitioner did not remember presenting herself to the Monroe Clinic on March 9, 2009, at which she underwent an MRI of the left lower extremity. Additionally, the petitioner stated that she did not remember presenting to Monroe Clinic where she underwent a left knee x-ray which was within normal limits or undergoing an MRI of the left knee that was completed on December 18, 2010, and demonstrated small moderate effusion with no evidence of internal derangement. However, the petitioner agreed that she had no reason to doubt the Monroe Clinic records that related to her.

On December 14, 2010, the petitioner presented to Monroe Clinic where she underwent a left knee x-ray which was within normal limits. She was ordered to undergo an MRI of the left knee that was completed on December 18, 2010, and demonstrated small moderate effusion with no evidence of internal derangement.

The petitioner then stated that she did not remember undergoing bilateral knee x-rays on July 27, 2012, due to intermittent knee pain or any other reason. The right knee x-ray was within normal limits, and the left knee x-ray demonstrated mild joint space narrowing in the medial compartment of the femoral tibial joint and mild narrowing of the patellofemoral joint with no evidence of joint effusion. (RX2).

The petitioner admitted that she had a previous worker's compensation claim in Wisconsin for an injury to her left ankle after slipping and falling on ice while working for Hometown Assisted Living. The petitioner admitted that an x-ray demonstrated a distal fibular fracture in her ankle. She admitted that on May 21, 2014, at an appointment at the Monroe Clinic, the petitioner did not feel she could return to regular work at that time by any means as she was still hurt. The petitioner was returned to work by her ankle doctor on November 14, 2014. (RX2).

The petitioner then admitted that she applied for Social Security Disability Insurance Benefits on June 24, 2014, shortly after her ankle injury. In her application, the petitioner alleged that she had pain in her foot, knee, and low back. However, she was found not to be entitled to these benefits in November 2014. (RX3).

WORK INJURY NOVEMBER 15, 2016

On November 15, 2016, the alleged injury occurred while the petitioner was pushing a resident up a ramp into a doctor's office. The petitioner testified something was wrong with the wheels on the chair, and that as she pushed the resident up the ramp, she felt pain in her right lower back that radiated to her right thigh. Later, after returning

from the doctor's office, she had to push the resident across the carpet. As she was pushing the resident across the carpet, she felt pain in her right knee.

On cross examination, when asked about the wheelchair wheels, the petitioner stated she did not know why this information was not included in any medical history until October of 2018.

MEDICAL TREATMENT AFTER NOVEMBER 15, 2016

On November 16, 2016, the petitioner presented to Dr. Diane McNulty at Freeport Health Network (FHN), reporting right hip, knee, foot, and thigh pain after pushing a very heavy patient up a ramp. Afterward, she felt intermittent tingling in the right with increased back pain. She was diagnosed with a strain of the right knee. She noted her pain improved over the past day. There was no instability in the knee during the exam. She was released to work with 5 pounds lifting, carrying, pushing, and pulling restrictions, and the respondent accommodated them. (RX1).

On November 18, 2016, Petitioner presented to Jeffrey Hass, DC, and Dr. McNulty at FHN with no change in her pain status. She complained of diffuse right knee pain as well as numbness and tingling in the right foot**.** Her examination revealed minimal swelling medially in the right knee. There was full range of motion with increased pain at the end range of extension and flexion. She was released to work within the same restrictions. (RX1).

On November 21, 2016, she returned to Dr. McNulty for a follow-up of low back pain with pain in her right hip. She also reported right foot numbness. She reported worse pain, which now extends across her back on left and right sides. She was diagnosed with low back pain with right-sided sciatica. An MRI was ordered. (RX1).

On November 28, 2016, the petitioner underwent an MRI which revealed degenerative disc disease, most prominent at L5-S1. There was mild disc bulging with minimal indentation at L4-L5 and moderate disc space narrowing with diffuse disc bulging at L5-S1. (RX1).

On November 29, 2016, the petitioner reported to Dr. McNulty that her pain was unchanged across her low back extending down to the right leg and foot, and sometimes the left leg and foot were also involved. Dr. McNulty noted the MRI showed chronic degenerative changes but nothing acute. She was referred for physical therapy.

On December 5, 2016, the petitioner presented for her initial therapy evaluation at FHN for pain in her right low back, hip, thigh, knee and foot. The petitioner also mentioned that she noticed right arm pain that started on December 12, 2016, (her doctor was not aware of right arm pain). The petitioner attended physical therapy from December 5, 2016, to December 27, 2016. On December 27, 2016, the therapist discharged the petitioner noting the petitioner exhibited a fair prognosis. She was discharged secondary to no improvement in physical therapy. (RX1).

On December 20, 2016, the petitioner reported to Dr. McNulty some sharp pain in her right medial knee and clicking while walking. She claimed the symptoms started with the original injury. She was referred to Dr. Braaksma for her spine. The x-rays of the right knee revealed no acute fracture or dislocation. There was moderate joint space narrowing in the medial compartment. (RX1).

On December 28, 2016, the petitioner saw Dr. Richard Broderick at Rockford Orthopedics Riverside for pain in her lower back and right knee. She also complained of radicular pain from her right buttock to the knee and down to her leg with numbness in right foot. The petitioner's lumbar MRI revealed severe degenerative disc disease with disc space collapse, mild foraminal stenosis and no central canal stenosis. She was diagnosed with intervertebral disc degeneration in the lumbar region and was released to work with no lifting greater than 10 pounds, no pushing, pulling, bending, or twisting, and no sitting or standing for prolonged periods of time. (RX1).

On January 17, 2017, the petitioner saw Dr. Broderick and was returned to work with restrictions of no lifting greater than 10 pounds, no pushing, pulling, or twisting, no sitting or standing for prolonged periods of time. (RX1). On January 24, 2017, the petitioner began physical therapy at Rockford Orthopedics Riverside for disc degeneration in the lumbar region. (RX1). She did not report snapping in her right knee until this date. (RX1).

On January 25, 2017, the petitioner presented to Dr. Diane McNulty and reported physical therapy was helping. She planned to treat with Dr. Geoffrey VanThiel for her knee pain. She was cleared to continue working light duty. (RX1).

On January 31, 2017, the petitioner saw Dr. Broderick and reported slight improvement from therapy for her knee. She reported continued pain in her low back with numbness in her right foot. The petitioner was diagnosed with other intervertebral disc degeneration in the lumbar region. She was to continue physical therapy and use of ibuprofen. (RX1).

On February 6, 2017, saw Dr. VanThiel at Rockford Orthopedics Riverside. She reported working full duty. Dr. Van Thiel ordered an MRI of the right knee to rule out a meniscus tear. She was released to return to work with no lifting of greater than 20 pounds from floor to waist, no lifting of greater than 20 pounds overhead, and no lifting more than 20 lbs. from waist to shoulder. The petitioner was to refrain from kneeling, squatting, jumping, running, and use of ladders. (RX1).

On February 18, 2017, petitioner underwent an MRI of the right knee. The MRI revealed the following:

1. Tricompartmental chondromalacia and associated subcortical degenerative bone marrow signal changes.
2. Posterior medial meniscus signal changes suggesting fraying and degenerative tear.
3. Myxoid degeneration medial and lateral menisci. (RX1).

On February 20, 2017, the petitioner presented to Dr. VanThiel. She reported doing about the same, with continued low back pain. Dr. Van Thiel reviewed the MRI and recommended a right knee arthroscopy with partial medial meniscectomy and chondroplasty. She could continue to work with restrictions of no lifting over 20 pounds. (RX1). The petitioner was discharged from physical therapy at OrthoIllinois on February 23, 2017, after which time she was discharged due to minimal/no progress and pending surgery to the right knee. She was provided with a home exercise program. (RX1). On March 7, 2017, Dr. Richard Broderick placed petitioner's treatment for her lower back on hold until after the right knee surgery. (RX1).

On March 30, 2017, the petitioner underwent an IME with Dr. Lawrence Lieber. Dr. Lieber opined that the petitioner's lumbar MRI demonstrated degenerative lumbar disc disease at L5-S1, and MRI of the right knee demonstrated evidence of degenerative chondromalacia and degenerative medial meniscus. Dr. Lieber opined

that there was no evidence of medical meniscal tear of the right knee during special testing for this pathology. (RX4,pp. 11, 14). Dr. Lieber stated that she reached maximum medical improvement for her right knee and low back on or about January 1, 2017. He noted that current complaints were degenerative in nature, not traumatic, and were associated with pre-existing abnormalities of the lumbar spine and right knee. The petitioner was able to return to full duty employment with no restrictions as a CNA and reached maximum medical improvement as of January 2017. (RX4,pp 16-17). Dr. Lieber stated that the petitioner had no evidence of any permanent disability as a result of the alleged work injury. (RX1).

On May 18, 2017, the petitioner underwent a right knee partial medial and lateral meniscectomy. (PX2).

During direct examination, the petitioner reported that she began physical therapy for her right knee following surgery. The petitioner also stated that about 2 weeks post-op, she had DVT in her leg. The petitioner stated that she presented to the hospital where she was given medication. She stated that the blood clot resolved after a couple of days, and once she was cleared from the clot, she began physical therapy again. The petitioner then stated that in addition to physical therapy, she underwent a right knee injection in September 2017.

On October 9, 2017, the petitioner presented the Monroe Clinic before Dr. Michelle Faull. The petitioner reported she received a steroid injection in the right knee 3 weeks ago, which was helpful. The petitioner reported she underwent right knee surgery 3 months ago. The petitioner was excused from work due to continued pain and ongoing treatment of her right leg. She was ordered to continue with physical therapy and to return for re-evaluation in 8 weeks. (RX2).

In October of 2017, the petitioner reapplied for Social Security Disability Benefits for both mental disabilities including depression and physical disabilities including chronic back pain and right leg pain. It was noted that the petitioner had an associate degree. It was found that the petitioner was disabled beginning April 9, 2017. However, the assessing physician, Dr. John Peggau, noted that the petitioner's allegation of the severity of disorder was not consistent with her ability to function generally well from day-to-day. (RX3).

On November 27, 2017, the petitioner presented to the Monroe Clinic before Dr. Faull. The petitioner reported that her pain was better with the new medication. The petitioner reported numbness and tingling in the right foot that radiates up the leg into the back. She was assessed with right low back pain, and right leg and knee pain. The petitioner was excused from work due to pain and ongoing treatment of the right leg. She was ordered to return in 8 weeks for re-evaluation. (RX2).

On January 24, 2018, the petitioner presented to the Monroe Clinic before Dr. Faull for treatment of her right leg pain. She reported the pain had not significantly changed, and she had a numb feeling in her toes that radiated up the leg. The petitioner was assessed with chronic right low back, knee, and calf pain. The petitioner underwent an x-ray of the right knee, which was noted to be unremarkable. Dr. Faull authored a note recommending home care to assist with bathing and chores. The petitioner was ordered to wear a soft knee brace and consider returning to physical therapy and undergoing a right lumbar facet injection. (RX2).

On October 12, 2018, the petitioner presented to Monroe Clinic before Dr. Mark Patterson. The petitioner complained of right leg radiculopathy with numbness. Dr. Faull recommended injections, but the petitioner did not want to proceed with injections. The petitioner received Osteopathic Manipulation in the low back, pelvic region, lower extremity, upper extremity, and rib cage. The petitioner was ordered to return in 2 weeks. (RX2).

On October 17, 2018, the petitioner presented to Monroe Clinic before Dr. Faull. The petitioner returned reporting her right knee and low back pain increased over the past 2 weeks. She reported her manipulation treatment helped, but she still had pain if she sat for too long. The petitioner was provided disability paperwork to obtain a disability sticker. She was advised to consider right knee and right lumbar injections. She was also prescribed a cane for use in the left hand. She was ordered to follow up in 3 months. (RX2).

On October 26, 2018, the petitioner presented to Monroe Clinic before Dr. Faull for a repeat Osteopathic Manipulation. The petitioner advised that she did not want surgery or physical therapy but wanted to continue with manipulation. The petitioner was advised to follow up in 2 weeks. (RX2).

On February 4, 2019, the petitioner presented to Monroe Clinic before Dr. Faull. It was noted the petitioner was medically unable to work and was on social security disability for the right knee and low back. (RX2).

On June 6, 2019, the petitioner followed up with Dr. Faull. Dr. Faull noted the petitioner was medically unable to work due to her right knee, low back, and leg pain. The petitioner was scheduled for an epidural injection and ordered the petitioner to follow up once completed. Her diagnosis remained the same. (RX2). On June 27, 2019, the petitioner underwent a right L5 transforaminal injection. (RX2).

On August 1, 2019, the petitioner presented to Dr. Faull at Monroe Clinic. The petitioner presented for back and right knee pain. The petitioner reported the epidural injection reduced the petitioner's low back and leg pain. The petitioner reported the pain was returning. She reported the pain radiated into the lateral thigh, lateral calf, and whole foot. She reported her leg pain has been constant over the last few days. Dr. Faull ordered a right L4 transforaminal epidural injection. (RX2). On August 15, 2019, the petitioner underwent a right L4 transforaminal epidural injection. (RX2).

On September 16, 2019, the petitioner reported to Dr. Faull that she recently fell in Walmart after her knee felt week and that she had been tripping while walking lately due to the pain. She also reported some swelling in the right knee, but she had no radiating pain since receiving the steroid injection. The petitioner underwent a right hip x-ray; she was advised that she could get a repeat injection in the future if the radiating pain in the leg returned. The petitioner underwent x-rays to the right knee and right hip, which was noted to be stable with degenerative changes. (RX2).

On September 18, 2019, the petitioner presented to Dr. Lance Sathoff at the Monroe Clinic regarding her right knee. The petitioner reported that her pain was aggravated with walking, weight-bearing, stairs and bending. The petitioner was assessed with right knee degenerative joint disease. Dr. Sathoff discussed an injection. (RX2). On

direct examination, the petitioner stated that she underwent a series of Synvisc injections in October and November of 2019.

On January 21, 2020, petitioner underwent an independent medical evaluation performed by board certified occupational medicine specialist, Dr. Jeffrey Coe, MD, at the direction of her attorney. Dr. Coe admitted that his practice does not involve surgery of the knees or low back, as he is not an orthopedic surgeon. Coe opined that there was a causal relationship between petitioner's alleged injuries on November 5, 2016, and her current lower back and right knee symptoms. Dr. Coe noted that the petitioner was not at MMI for her lower back but was at MMI for her right knee. Dr. Coe testified that none of the procedures or surgeries discussed for the right knee would improve her function and were not recommended. Dr. Coe testified that there was no herniated disc, and that the medical records reflected she had declined lumbar injections. He admitted he reviewed no diagnostic imaging as part of his evaluation, of the right knee or lumbar spine. He acknowledged that the radiologists of imaging to the spine characterize the findings as degenerative. Dr. Coe further opined that the petitioner has permanent disability to the person-as-a-whole with additional disability to the right lower extremity. Dr. Coe noted that the petitioner required work restrictions limiting her to lifting to the "sedentary" physical demand level and limitation in any work requiring bending, twisting, stair climbing or descending, kneeling, squatting, or assistance of potentially disabled patients. (PX5, pp. 41-47).

On September 16, 2020, the petitioner reported to Dr. Faull that the Coolief had a significant positive impact on her right knee, and she was able to walk her dog without stopping and play with grandchildren. The petitioner required the use of a cane with a significant amount of steps. She was instructed to continue taking Tizanidine at night, performing her exercises, and monitor her right knee. The petitioner was scheduled to follow up in three months. There was a note indicating that she had been recommended a care attendant to assist her. On direct examination, the petitioner stated that she started getting an assistant to help her with tasks, such as laundry and grocery shopping, Monday through Saturday for 3 hours per day. However, on direct examination, the petitioner stated that she did not begin receiving this assistance until 2023. (RX2).

On November 12, 2020, the petitioner presented for a Coolief procedure for the right knee. (RX2).

On November 19, 2020, the petitioner underwent a repeat IME with Dr. Lieber, a board-certified orthopedic surgeon. (RX4, p. 4-7). Dr. Lieber also testified via evidence deposition on August 4, 2021 regarding both of his evaluations and his opinions. She reported having had right knee injections and right knee arthroscopy since last evaluated by Dr. Lieber. She reported having an injection in the lumbar spine. (Rx4, pp. 18). He testified that her examination findings were different/progressed since the 2017 evaluation, as evidence of degenerative arthritis. He testified this was not related to her work injury in 2016. (RX4, pp. 19-20). He testified further that Dr. Dr. Sathoff's recommendation for right total knee replacement was likewise not related to the work injury. As to the lumbar spine, Dr. Lieber testified that she exhibited inconsistent results on straight leg raise testing. There was some possibility of nerve irritation on the right, and none on the left.

Dr. Lieber testified that the inconsistencies called into question the validity of her complaints, (RX4, pp. 22). Dr. Lieber commented that Dr. Coe's failure to examine the imaging compromised his ability to fully understand the petitioner's diagnoses. (Rx4, pp. 23). Dr. Lieber maintained his opinion that the petitioner was capable of working

without restriction as a CNA and required no further medical treatment related to the work injury in November 2016. (RX4, pp. 23-24).

On November 20, 2020, the petitioner presented to Monroe Clinic where she underwent a right knee Coolief-cooled radiofrequency ablation to the right knee. (RX2).

On December 16, 2020, the petitioner stated that she had been doing well since her repeat Coolief injection and was able to cook Thanksgiving dinner without difficulty. She stated that her pain had been increasing over the last few days, so she was given a right knee steroid injection. (RX2).

The petitioner did not return to Dr. Faull until June 16, 2021 and reported her right knee pain had returned, but she was not ready to pursue knee replacement surgery. The petitioner was diagnosed with chronic low back pain and leg pain with degenerative changes and mild foraminal/lateral recess narrowing. The petitioner was ordered to undergo a repeat Coolief cooled radiofrequency ablation, and it was recommended that she follow-up with an orthopedic doctor. (RX2).

On July 12, 2021, the Petitioner underwent an MRI to the right knee which indicated worsening arthritis, but no meniscal pathology. On July 13, 2021, the Petitioner received a Coolief injection. On July 14, 2021, Dr. Lance Sathoff advised her to continue conservative care. (RX2).

The petitioner testified that she was scared to undergo the right total knee replacement due to prior development of DVT after arthroscopy. Although she claimed on direct examination she was in the hospital for a few days, the records reflect she was discharged with medication only for DVT within 24 hours of arrival.

The Petitioner testified that sees Dr. Faull every 6-7 months to evaluate her nerve pain medicine. She also reported following up with her primary care provider. The petitioner stated that she is on a weight restriction of 5 lbs. with no repetitive bending or lifting from Dr. Faull. On cross examination, she claimed not to recall Dr. Faull's actual release to return to work with a 20-pound weight restriction.

VOCATIONAL ANALYSES

On April 7, 2022, the petitioner underwent a Vocational Evaluation with Laura Belmonte. At this evaluation, she claimed to have had a learning disability in high school. The records from Social Security indicate she denied any learning disability or disease when being evaluated for transferrable skills. On cross examination, the petitioner claimed to not remember ever telling the evaluator at Social Security that she took no special classes and had no learning deficits. Ms. Belmonte opined that the petitioner had no access to her pre-injury job in line of occupation and she was not alternatively employable. She relied in part upon the Petitioner's claim to have a learning disability. She testified she was unaware that the Petitioner completed high school in four years and over 100 hours of community college in Early Childhood. (PX6).

The petitioner testified that she worked for the respondent with light-duty restrictions as well as for Home Health Care until April 9, 2017, and did not work after this. However, she testified that three to four years prior to the Arbitration Hearing, she was paid to watch her grandchildren through a YWCA program for low-income families. She stated that she only watched one little boy at the time of Arbitrator, for about 8-10 hours per week. Of note,

on cross examination, the petitioner was unable to provide the first name of the children she babysat, even though she claimed they were her grandchildren. The Arbitrator notes that the names of the children she watched between 2019 and 2022 are listed on her paystubs from the State of Illinois (RX3).

On March 28, 2023, Ms. Julie Bose completed a Vocational Report. It was noted that the petitioner was 61 years of age and resided in Freeport, Illinois. She completed 12th grade and received a high school diploma. She reported having taken college class work in early childhood development. She has a certified nurse's assistant certificate. As a part of her Social Security Disability Application in 2017, she underwent a psychological consultation with Dr. Peggau, during which she indicated a valid driver's license, no communicative problems and that she was a high school graduate. She denied having had an IEP program and reported "I have no disease". This is in contrast to the Vocamotive Report in which the evaluator noted "evidence of learning disability". Ms. Bose reviewed records of her work history from Social Security and noted prior employment consistent semi-skilled work activity that required judgment. Ms. Bose reviewed evidence of multiple orthopedic problems and treatment between 2010 and July 2021. Ms. Bose reviewed records of her work as a part-time childcare worker for the State of Illinois between 2019 and 2022, which is defined in the Dictionary of Occupational Titles as medium physical demand level, semi-skilled work. Ms. Bose opined and testified that at the minimum, the petitioner was employable performing medium level work, and at minimum, sedentary work. Ms. Bose noted she had worked as a child monitor subsequent to the work injury for several years. Ms. Bose noted her physicians at Monroe Clinic released her to light work. (RX5).

On September 20, 2023, Ms. Bose testified via evidence deposition that Ms. Belmonte's presumption that the Petitioner had a learning disability was not supported by the evidence. Furthermore, her ability to earn a Certified Nurse's Assistant Certification, her ability to be certified by the State of Illinois to work as a Childcare Monitor for the State, and her ability to perform over her lifetime semi-skilled, medium level work indicated her competency. Ms. Bose testified that she disagreed with the opinions of Ms. Belmonte, that the Petitioner had a learning disability, and disagreed that no stable labor market existed for the petitioner. Ms. Bose testified to her search for work in the sedentary physical demand level arena, to give the Petitioner the benefit of the doubt, but stated that none of the Petitioner's treating physicians placed her at a sedentary physical demand level. Rather, Dr. Faull felt her capable of working with a 20-pound lifting restriction and avoidance of repetitive bending/twisting as to her low back condition. Dr. VanThiel released her to return to work with no restrictions regarding her right knee. The Petitioner's IME, Dr. Jeffrey Coe was the only doctor to assess sedentary restrictions, but the Respondent IME, Dr. Lieber, felt her to have no work restrictions, and stated that her complaints at the time of his examination were not causally related to her employment by Presence St. Joseph Medical Center. (RX5).

ARBITRATOR'S FINDINGS

F. Is the Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds the following facts.

Petitioner's treatment records support a causal relationship between her current condition of ill-being of her right knee and lower back and her acute injury of November 15, 2016. Respondent's examining physician, Dr. Lieber opined that Petitioner's conditions were solely degenerative and were not caused or aggravated by her injury. Dr. Coe opined that Petitioner's injury was a causative factor in her current condition of ill-being, causing the meniscal tearing as well as aggravating the degenerative condition of her right knee and lumbar spine. Dr. Coe's opinions are consistent with the treating medical records. While Petitioner had sustained injuries to her left ankle in 2014 and had a left knee MRI performed in 2010, there was no evidence of issues with her right knee or lumbar spine prior to her November 15, 2016, injury. Petitioner testified to having no issues with her back or right knee prior to her injury. Petitioner was working full time, performing full duty work without restriction or limitation prior to her injury. Dr. Lieber agreed that there was no evidence that Petitioner experienced problems with her back, right knee, or right hip before her injury. Nothing presented at trial contradicted Petitioner's testimony that she was symptom free relative to her right leg or lower back prior to her November 15, 2016, injury.

Petitioner complained of pain in the right hip, thigh, knee, foot, and lower back at the time of her hospital visit on November 16, 2016, the day after her injury. Petitioner related the symptoms to the injury she had sustained the day before, describing the injury she described at trial. The history of her injury and the onset of her symptoms is consistently provided throughout her treatment records. While her symptoms have fluctuated with various treatment, including injections, physical therapy, and the right knee meniscectomy, she has consistently reported pain in the right leg, specifically the knee, with pain radiating into and from the lower back down the right leg. She has consistently reported swelling in the right knee and giving way of the right knee. There is no indication in the records that she had these symptoms prior to her injury of November 15, 2016.

Petitioner testified to similar symptoms that have been reported in her medical records for the last seven years, since her injury. The Arbitrator finds that Dr. Coe's opinions are better supported by the history of the onset of Petitioner's symptoms as well as the continuation of her symptoms and limitations since her November 15, 2016 injury. As such, the Arbitrator also finds that Petitioner's current condition of ill-being regarding her right knee and low back are causally related to her November 15, 2016 injury.

J. Were the medical services that were provided to Petitioner reasonable and necessary, and has Respondent paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds the following facts:

The Arbitrator finds that the medical services provided to Petitioner were reasonable and necessary for the injuries she sustained as a result of her November 15, 2016 injury. The Arbitrator notes that the medical

records, diagnoses, treatment carried out, and treatment recommendations are noted in the Statement of Facts. The Arbitrator finds that Petitioner's treatment described in the statement of facts, including physical therapy, injections, and the May 18, 2017 surgery were reasonable and necessary. For the reasons stated above and having found that Petitioner's current condition of ill-being to be related to her injuries, Petitioner's treatment has been reasonable and necessary.

As such, the Arbitrator finds that the Respondent is liable for the treatment provided, as set forth in Petitioner's Exhibit 7, pursuant to the medial fee schedule, as follows:

Respondent is responsible for the outstanding charges at Ortho IL, totaling $623.41 for physical therapy from June 5, 2017 through July 7, 2017 and for the May 18, 2017 surgery.

Respondent is responsible for the outstanding charges at OSF Medical Center, totaling $3,316.42 for charges related to Petitioner's June 5, 2017 – June 6, 2017 hospitalization with DVT, a complication of her May 18, 2017 surgery, and for the September 7, 2017 lumbar MRI.

Respondent is responsible for the outstanding charges at Monroe Clinic & Hospital, totaling $1,213.00 for charges related to Petitioner's October 9, 2017 office visit, November 27, 2017 office visit, and January 24, 2018 office visit regarding her right leg and knee pain.

Respondent is Responsible for the outstanding charges at Rockford Orthopedic Surgery Center, totaling $370.79 for charges related to the May 18, 2017 right knee surgery.

Based on the above, the Arbitrator finds Respondent is liable for charges as noted above, totaling $5,523.62, pursuant to the Illinois Medical fee Schedule. The Arbitrator also finds that the respondent shall hold petitioner harmless for any medical bills regarding the petitioner's right knee and low conditions that were paid by any third party.

K. What temporary benefits are in dispute, the Arbitrator finds the following facts:

The Arbitrator finds that the Petitioner is entitled to temporary total disability benefits. The Petitioner testified, and the parties stipulated that she worked with restrictions accommodated by the Respondent through April 7, 2017. The Arbitrator adopts the opinion of Dr. Lieber that the petitioner was capable of returning to full duty work at the time of his first evaluation on March 30, 2017. The Arbitrator also notes petitioner was working at this time. However, the petitioner did undergo surgery by Dr. Van Thiel of Ortho Illinois on May 17, 2017. The surgery involved a partial and lateral meniscectomy of the right knee. The petitioner received post-operative conservative treatment to right knee which included physical therapy and injections. The petitioner was released to return to work by her treating surgeon, Dr. Van Thiel at her visit with him on September 18, 2017. (Px2: p.117) The petitioner was seen after this visit Ortho Illinois after this visit with Dr. Van Thiel but only for physical therapy. The petitioner did receive off work authorizations after her treatment ended with Dr. Van Thiel on

September 18, 2017 from other physicians, most notably Dr. Faull at the Monroe Clinic. However, the Arbitrator chooses to adopt the medical opinion of the treating physician, Dr. Van Thiel on this issue. Petitioner was examined again by the respondent's examining physician, Dr. Lieber on November 19, 2020. Dr. Lieber agreed with the petitioner's treating physician that petitioner was capable of working full duty,

The Arbitrator also notes that the Petitioner was working for the State of Illinois program watching children in her home between 2017 and 2021. Petitioner claimed all of the children she watched were her grandchildren, but was unable to provide their first names, as listed in the Social Security Administration records.

Based on all of the above, the Arbitrator awards temporary total disability benefits to the petitioner for the period from the date of her right knee surgery of May 18, 2017, through the date she was released for work by Dr. Van Thiel on October 16, 2017.

L. What is the nature and extent of the injury, the Arbitrator finds the following facts:

The Petitioner is claiming she is totally and permanently disabled from all work. However, she is working, and testified she still watches one child under employment by the State, although during periods she is claiming disability, watched multiple children. She also receives Social Security Disability Insurance benefits and must limit the amount of work performed to receive full SSDI benefits, and as the records show, submits documentation to SSA to verify her ongoing employment. The Petitioner offers the testimony of Laura Belmonte / Vocamotive to support a conclusion that she is disabled from all work, but Ms. Belmonte appears to have relied on false and incomplete information regarding the petitioner's education, presence of a learning disability, information about petitioner's work for the State of Illinois in reaching her conclusions. The Arbitrator therefore finds the opinions of Ms. Belmote lack credibility. The Arbitrator adopts the opinions and testimony of Julie Bose / MedVoc (RX 5), over those of Ms. Belmonte for these reasons. The Arbitrator finds the Petitioner failed to prove total and permanent disability from work on an odd-lot basis. The Arbitrator relies on the medical opinion of the petitioner's treating knee surgeon, Dr. Von Thiel, that the petitioner could return to work as of October 17, 2017. The Arbitrator also relies on the medical opinion of Dr. Lieber that petitioner could work full duty. The Arbitrator notes that there was no sworn testimony, subject to cross examination, of any of the treating physicians offered into evidence. The Arbitrator notes that Dr. Lieber's testimony was sworn and subject to cross-examination.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a part-time Certified Nurse's Assistant at the time of the accident. The Arbitrator believes that the job duties of this profession involve heavy lifting, twisting and bending. Thee Arbitrator finds that this factor weighs in favor of greater permanence.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 55 years old at the time of the accident. The Arbitrator finds that the petitioner was near the end of her natural work life at the time of her injury and even more so at the time of trial. The Arbitrator finds that this factor weighs in favor of decreased permanence.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes the petitioner receives SSDI benefits and works part time watching children for the State of Illinois The Arbitrator has adopted the findings of the treating surgeon that the petitioner can return to work. Thus the Arbitrator finds no evidence of diminished earning capacity. The Arbitrator finds that this factor weighs in favor of decreased permanence.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the medical records reflect petitioner underwent an arthroscopic repair of the medial and lateral meniscus. Petitioner had ongoing complaints of pain and received extensive post-operative physical therapy and injections. The Petitioner's treating physician Dr. Van Thiel released her to full duty work regarding the right knee, effective October 16, 2017. An MRI of the petitioner's low back revealed degenerative disc disease disc most pronounced at L5-S1 and a mild bulge at that level as well. The Arbitrator finds that this factor weighs in favor of greater permanence.

Based on all of the above, the Arbitrator finds that the petitioner sustained a permanent partial disability of a 25% loss of use to the right leg under Section (8)e of the act and a 5% loss of use to the person as a whole under Section 8(d)2 of the Act.