

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC005546
Case Name	Cheryl Harris v. Citgo Petroleum
Consolidated Cases	
Proceeding Type	
Decision Type	Corrected Decision
Commission Decision Number	25IWCC0217
Number of Pages of Decision	15
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Curtis Burke
Respondent Attorney	Miles Cahill

DATE FILED: 5/16/2025

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse:	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify: Down	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHERYL HARRIS,
Petitioner,

vs.

Nos: 24 WC 5546
25 IWCC0217

CITGO PETROLEUM,
Respondent.

CORRECTED ORDER ON PETITIONER'S MOTION TO DISMISS REVIEW

This matter comes before the Commission on Petitioner's Motion to Dismiss Respondent's Review. The Decision of the Arbitrator was issued on May 22, 2024. In the Decision the arbitrator found Petitioner proved a repetitive trauma accident on June 7, 2021 and awarded her 22.15 weeks of PPD representing loss of 5% the left hand and 5% of the left arm. Respondent did not file its Petition for review until July 11, 2024.

By way of background, this claim was consolidated with three other claims. In 21 WC 17061, the Arbitrator found Petitioner proved a compensable repetitive trauma accident on May 5, 2021 causing right CTS/CUTS and awarded her medical expenses submitted, 31&5/7 weeks of TTD, and 61.7 weeks of PPD representing loss of 12.5% of the right hand and 15% of the right arm. In 23 WC 3516 the Arbitrator found Petitioner proved a repetitive trauma accident on January 26, 2023 and awarded her 100&6/7 weeks of TTD, medical expenses submitted, and 65.20 weeks of PPD representing loss of 20% of the right thumb and 10% for the "loss of shoulder" (person-as-a-whole). In 24 WC 5451, the Arbitrator found that Petitioner did not prove accident/causation on June 9, 2021 and denied compensation. In this claim the arbitrator found Petitioner proved a repetitive trauma accident on June 7, 2021 and awarded her 22.15 weeks of PPD representing loss of 5% the left hand and 5% of the left arm.

Respondent filed timely Petitions for Review on 21 WC 17061 and 23 WC 3516, which will be addressed by separate decisions. Respondent acknowledges that its Petitions for Review in this matter and in 24 WC 5451 were not filed timely. Nevertheless, Respondent argues its tardiness was excusable because it was not served with the Decision of the Arbitrator until the date it filed its Petition for Review.

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The Commission acknowledges that it did not serve Respondent with the Decision of the Arbitrator within the time specified for notice. However, the Commission can only serve parties which have filed their appearances in particular matters. Here, the records of the Commission show that Respondent did not file an appearance in the instant claim. Therefore, there was no way for the Commission to timely serve Respondent with the Decision of the Arbitrator. In addition, the Commission operates under the premise that the parties, and perhaps in particular the lawyers, are obligated to follow the progression of their cases. Here, as noted above, this claim was consolidated with three other claims. Respondent filed appearances in two out of the four claims, was timely served with the decision of the Arbitrator in those claims, and filed timely Petitions for Review on those claims. It would seem that once Respondent was served with one of the Decisions in the consolidated claims it would be put on notice to determine whether Decisions in the other claims were issued as well. According, Petitioner's Motion to Dismiss Review is Granted.

IT IS THEREFORE ORDERED BY THE COMMISSION Petitioner's Motion to Dismiss Respondent's Review is hereby granted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent's Petition for Review in instant matter is dismissed and the Decision of the Arbitrator becomes the Decision of the Commission.

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 \$25,000.00. The party commencing the proceeding for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

MAY 16, 2025

dw

o- 4/9/25

46

/s/ Stephen J. Mathis

Stephen J. Mathis

/s/ Raychel A. Wesley

Raychel A. Wesley

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SPECIAL CONCURRING OPINION

This case was scheduled for Oral Arguments on April 29, 2025, before a three-member panel of the Commission including members Deborah L. Simpson, Stephen J. Mathis and Raychel A. Wesley, at which time Oral Arguments were either heard, waived or denied. Subsequent to Oral Arguments and prior to the departure of Deborah L. Simpson on April 30, 2025, a majority of the panel members had reached agreement as to the results set forth in this decision and opinion, as evidenced by the internal Decision worksheet initialed by the entire three-member panel.

Although I was not a member of the panel in question at the time Oral Arguments were heard, waived or denied, and I did not participate in the agreement reached by the majority in this case, I have reviewed the Decision worksheet showing how Commissioner Simpson voted in this case, as well as the provisions of the Supreme Court in Zeigler v. Industrial Commission, 51 Ill.2d 137, 281 N.E.2d 342 (1972), which authorizes signature of a Decision by a member of the Commission who did not participate in the Decision. Accordingly, I am signing this Decision in order that it may issue.

/s/ Kathryn A. Doerries
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	24WC005546
Case Name	Cheryl Harris v. Citgo Petroleum
Consolidated Cases	21WC017061; 23WC003516; 24WC005451;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Scott Shapiro
Respondent Attorney	

DATE FILED: 5/22/2024

/s/ Elaine Llerena, Arbitrator

Signature

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

STATE OF ILLINOIS)
)SS.
 COUNTY OF COOK)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

Cheryl Harris

Employee/Petitioner

v.

Citgo Petroleum

Employer/Respondent

Case # **24 WC 005546**

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 **February 28, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **June 7, 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 **\$89,232.00**; the average weekly wage was **\$1,716.00**.

On the date of accident, Petitioner was **58** years of age, *married* with **0** dependent children.

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

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

ORDER

See case 21WC017061 for award regarding temporary total disability benefits, medical expenses, and permanent partial disability benefits regarding the right hand and right arm.

Respondent shall pay Petitioner permanent partial disability benefits of \$871.73 per week for 9.5 weeks, because the injuries sustained caused the 5% loss of the left hand, as provided in Section 8(e)(9) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$871.73 per week for 12.65 weeks, because the injuries sustained caused the 5% loss of the left arm, as provided in Section 8(e)(10) of the Act.

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

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



Signature of Arbitrator

ICArbDec p. 2

May 22, 2024

FINDINGS OF FACT

This matter was heard on February 28, 2024, in Chicago, Illinois before Arbitrator Elaine Llerena on Petitioner's Request for Hearing. The issues in dispute were accident, causation, medical expenses, temporary total disability benefits, and permanency. Arbitrator's Exhibit 4 (AX4).

This case, 24WC005546, is consolidated with 21WC017061, 23WC003516 and 24WC005451. This case deals with Petitioner's claimed injuries of bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome.

Job Duties

Petitioner started working for Respondent in 2002. (T. 11) For the last 17 years of her employment with Respondent, Petitioner has worked as a picker, forklift driver and loader. (T. 11-13)

As a picker, Petitioner would go to the office and get an order from a customer then pick the items listed on that order. (T. 12, 19) On average, she would pick about 500 items per day, for an average of 10-12 hours per day including Saturdays and load them onto pallets. (T. 12-14) Those items weighed anywhere from 1 pound up to 120 pounds. (T. 12-13) The 120-pound item was an oil keg which Petitioner had to physically maneuver off one pallet onto another. (T. 13) Everything else she picked during the day required her to physically lift with her hands. *Id.* Petitioner would also have to load cartons, up to 10 at a time, which could weigh up to 30 pounds each and stack them on a pallet. (T. 15) The pallet was on the floor so she would lift the cartons, sometimes over her head, to stack them on the pallet. *Id.* Petitioner would drive a forklift all day. (T. 11-12, 18) As a loader, Petitioner would load trucks with pallets. (T. 13) It was a fast-paced job, requiring her to drive in tight spaces, constantly turning the steering wheel with the controls in order to back up, go forward, left, and right. *Id.* Driving the forklift involved constant maneuvering down narrow corridors of the warehouse, requiring a lot of hand work, back and forth, shoulders up and down. (T. 13, 17) Petitioner would steer with one hand and shift with the other. (T. 17)

International loads required more strenuous work. (T. 13) After loading the truck, Petitioner had to take 2 large pieces of plywood up the ramp and onto the truck to secure the load, so it did not shift. *Id.* After the last 2 pallets were loaded, Petitioner would get a two-by-four and nail it to the ground to also secure the load. (T. 14)

Prior Medical Condition

Prior to the Spring of 2021, Petitioner did not experience any physical difficulties performing any of her job duties. (T. 19) She did not have any pain, numbness or tingling in her right arm or right hand. (T. 21) Petitioner did not sustain any injury to or seek any medical treatment for her right hand, right arm or right elbow before the Spring of 2021. *Id.*

Accident

Beginning in the Spring of 2021, Petitioner noticed that she was experiencing difficulties in picking things up or gripping them with her right hand and right arm. (T. 19) She started to feel numbness, tingling and pain in her right hand and right elbow. *Id.* Petitioner felt pain in her right elbow while lifting items. *Id.* June 5, 2021, was the last day Petitioner worked for Respondent before beginning treatment for the pain in her right hand and right elbow. (T. 22-23)

After noticing the pain in her right hand, right arm and right elbow in the spring of 2021, Petitioner went to see her primary care physician, Dr. Meher Bala Medavaram, at Naperbrook Medical Center. (T. 20) During that visit, Dr. Medavaram took Petitioner off work and ordered a nerve test. *Id.*

Summary of Medical Records

On April 20, 2021, Petitioner had an EMG/ Nerve Conduction study that revealed evidence of moderate carpal tunnel syndrome bilaterally, right was worse than the left, and evidence of ulnar neuropathy across the elbow bilaterally, the right was moderate in nature and the left is mild in nature. (PX7)

Petitioner went to see her primary care physician, Dr. Medavaram at Naperbrook Medical Center on June 7, 2021. (PX1) Petitioner complained of tingling, numbness and pain in her hand and wrists that went up her arms and was not improving. Dr. Medavaram diagnosed Petitioner as having bilateral carpal tunnel syndrome.

On June 9, 2021, Petitioner saw Dr. Michael Cohen at DuPage Medical Group. (PX2) Petitioner complained of tingling and numbness in her fingers and pain in her right elbow. Petitioner indicated that she had pain doing just about anything with her hands, including opening jars. Petitioner also reported that she had some paresthesia in the right hand with some night awakenings which occurred about once a week. Petitioner reported that she did a lot of lifting at work. Dr. Cohen reviewed the EMG and diagnosed Petitioner as having right carpal tunnel syndrome and medial epicondylitis of the right elbow. Dr. Cohen provided Petitioner with a wrist brace, ordered physical therapy, prescribed anti-inflammatory medication, and took Petitioner off work. Petitioner underwent physical therapy at DuPage Medical Group from June 9, 2021, through July 13, 2021. On June 24, 2021, Petitioner returned to Dr. Cohen still complaining of numbness and tingling in her right arm. Dr. Cohen had her continue physical therapy for another 4 weeks and returned her to work with a 5-pound lifting restriction. Respondent did not accommodate her restrictions, so she remained off work. (T. 25)

On July 20, 2021, Dr. Cohen ordered an MRI and continued Petitioner's prior work restrictions. (PX2) Petitioner underwent the MRI of her right elbow on July 28, 2021, the results of which were normal. On August 5, 2021, Dr. Cohen advised Petitioner that the MRI of her right elbow was normal, and she did not have any evidence of carpal tunnel based on her exam or subjective symptomatology. Dr. Cohen released Petitioner to return to work without restrictions on August 13, 2021.

Petitioner returned to work on August 13, 2021, and felt terrible pain throughout the day, worse than what she had experienced before. (T. 27) Petitioner returned Dr. Medavaram again on August 26, 2021, seeking a referral for a second opinion regarding the pain in her right hand and arm. (PX1) Petitioner also complained of left and right elbow pain. Dr. Medavaram diagnosed Petitioner with right and left arm pain and bilateral carpal tunnel syndrome, and referred her to Dr. Kush Patel for a second opinion.

On August 31, 2021, Petitioner saw Dr. Patel and complained of ongoing pain in her wrists and arms. (PX3) Dr. Patel diagnosed Petitioner with bilateral carpal tunnel and cubital tunnel syndrome. He found that her symptoms were clinically consistent with carpal tunnel and cubital tunnel syndrome and that there is EMG/NCV evidence to support both diagnoses. Dr. Patel determined Petitioner's work had likely contributed to the development of carpal tunnel syndrome bilaterally. Dr. Patel recommended that Petitioner have both a right carpal tunnel and right cubital tunnel release and released her to return to work with 5-pound lifting, pushing, pulling, and carrying restrictions with bilateral hands. She was allowed to drive a forklift. Respondent did not accommodate her restrictions. (T. 30)

On October 13, 2021, Dr. Patel performed a right endoscopic carpal tunnel release and right cubital tunnel release. (PX3, PX8) Petitioner continued to follow up with Dr. Patel during her recovery. (PX3) Petitioner underwent post-operative physical therapy from October 26, 2021, through December 16, 2021, at Edwards Occupational Health. (PX5)

On November 30, 2021, Petitioner reported that she had a complete resolution of her numbness and tingling and had full recovery of sensation. (PX3) On January 11, 2022, Petitioner reported that she did not have any more numbness or tingling and wanted to return to work. Dr. Patel released Petitioner to return to work on January 27, 2022, and indicated that he would proceed with left sided carpal tunnel and left sided cubital tunnel releases whenever Petitioner was ready.

Petitioner did not undergo surgery of the left upper extremity. Due to a planned vacation, Petitioner did not return to work until February 1, 2022. (T. 32-33)

After returning to work Petitioner had a few flare ups of pain in her right wrist and right arm but was able to perform her regular duties at work. (T. 34) She did return to see Dr. Patel on several occasions after returning to work on March 11, 2022, May 9, 2022, and the last on June 7, 2022. (T. 34, PX3) On June 7, 2022, Dr. Patel noted Petitioner was doing well overall and had recovered from her flareup with no significant numbness and tingling episodes and that she was able to continue working without restrictions. He also wanted to continue monitoring her left sided symptoms which were very mild at the time. (PX3)

On August 23, 2022, Dr. Patel opined that Petitioner developed right carpal tunnel syndrome and cubital tunnel syndrome, as well as left carpal tunnel syndrome and cubital tunnel syndrome, secondary to her job which required heavy repetitive lifting.

Petitioner returned to Dr. Patel on January 26, 2023, complaining of right hand and arm pain that began more than a month earlier, as well as pain in the base of her thumb. Dr. Patel took Petitioner off work. Petitioner continued to follow up with Dr. Patel with continued right thumb and right shoulder pain complaints. On February 27, 2023, Dr. Patel referred Petitioner to Dr. Zahab Ahsan regarding her right shoulder and administered a corticosteroid injection to Petitioner's right thumb.

On February 20, 2023, Petitioner underwent a Section 12 examination (IME) with Dr. Michael Birman at Respondent's request. (RX1) Dr. Birman issued his report on February 27, 2023. Petitioner reported ongoing pain in the right wrist and thumb with radiation into the forearm. Petitioner indicated that her symptoms are worse at night and that she has difficulty opening doors and squeezing. Petitioner also complained of pain in the right elbow and right shoulder. Dr. Birman examined Petitioner and reviewed her medical records. Dr. Birman also noted Petitioner's job duties. Dr. Birman diagnosed Petitioner as having right cubital tunnel syndrome, status post cubital tunnel release, and right elbow medial epicondylitis which had resolved. Dr. Birman opined that Petitioner's right cubital tunnel syndrome was not caused, aggravated or accelerated by her job duties. Dr. Birman further opined that Petitioner's work activities could have been a factor in causing or aggravating her medial epicondylitis. Dr. Birman found that Petitioner's treatment had been reasonable and necessary. Dr. Birman determined that Petitioner did not require any more treatment, nor did she require work restrictions.

Petitioner saw Dr. Ahsan on March 6, 2023. (PX4) Petitioner complained of right shoulder pain that radiated down her arm from time to time and described her work activities. Dr. Ahsan diagnosed Petitioner as having adhesive capsulitis, acute right shoulder pain, and bicep tendonitis. Dr. Ahsan administered a corticosteroid and Ketorolac injection and Petitioner reported immediate relief. Dr. Ahsan ordered physical therapy and took Petitioner off work. Petitioner underwent physical therapy from April 4, 2023, through May 18, 2023, at Athletico Physical Therapy. (PX6) On April 27, 2023, Petitioner returned to Dr. Patel determined

that the injection to Petitioner's thumb did not work. (PX3) Dr. Patel felt Petitioner might be a surgical candidate and kept Petitioner off work. On June 7, 2023, Petitioner saw Dr. Ahsan and reported temporary improvement in her right shoulder pain following the injection. (PX4) Dr. Ahsan ordered a right shoulder MRI and restricted Petitioner from using her right arm. Dr. Ahsan determined that Petitioner's right shoulder problems were related to her work. On June 22, 2023, Dr. Patel found that Petitioner's right carpal tunnel and cubital tunnel were stable, but kept Petitioner off work due to continued right arm problems.

Petitioner underwent the right shoulder MRI on June 24, 2023, the result of which showed marked tendinopathy of infraspinatus tendon extending anteriorly to involve conjoined rotator cuff tendon and posterior fibers of the supraspinatus with associated reactive edema in the adjacent posterior aspect of the greater tuberosity and also intramuscular edema, and mild amount of fluid in the subdeltoid and subacromial bursa. There were no tears or retraction, and biceps tendon was intact. On July 7, 2023, Dr. Ahsan reviewed the MRI and diagnosed Petitioner as having tendinopathy and subacromial impingement of the right rotator cuff and recommended arthroscopic surgery with subacromial decompression and debridement. Dr. Ahsan restricted Petitioner to sedentary duty. Petitioner decided to not undergo surgery and did not return to Dr. Ahsan. (T. 43)

On September 11, 2023, Petitioner underwent a second IME with Dr. Birman at Respondent's request. (RX2) Dr. Birman issued his report on September 18, 2023. Dr. Birman again examined Petitioner and reviewed her medical records (but her right shoulder treatment records were not provided to Dr. Birman). Dr. Birman diagnosed Petitioner as having right shoulder pain, bilateral thumb base pain with mild right thumb carpometacarpal joint arthritis, and left-hand numbness and tingling. Dr. Birman deferred any opinions or recommendations regarding the right shoulder and found that Petitioner had reached maximum medical improvement (MMI) regarding the right elbow medial epicondylitis and right cubital tunnel syndrome, per his prior report. As to Petitioner's right carpal tunnel syndrome, Dr. Birman found that work activities could be a factor, but that, regardless of causation, Petitioner's carpal tunnel syndrome had been treated and she was at MMI for her right carpal tunnel syndrome. Regarding Petitioner's bilateral thumb pain, Dr. Birman noted arthritis, which is common for someone Petitioner's age. Dr. Birman explained that unless Petitioner was utilizing forces through her thumbs excessively and consistently in a forceful manner throughout the workday to the point that it would accelerate her arthritis, Petitioner's pain is a natural progression of her thumb base arthritis. Dr. Birman recommended an injection to treat the pain. Dr. Birman could not provide any opinion regarding work restrictions without additional medical and work information.

On September 14, 2023, Petitioner returned to Dr. Patel complaining of ongoing pain in her thumbs and bilateral carpal tunnel and cubital tunnel syndrome symptoms. Dr. Patel told Petitioner to continue to use her thumb braces and ordered an EMG.

Petitioner's Current Condition

Petitioner was able to perform her regular work activities through the end of 2022. (T. 34-35) Petitioner did not return to work after January 26, 2023, and retired on January 1, 2024. (T. 44-45)

Petitioner still experiences pain in her right wrist and elbow. Her fingers still have numbness. (T. 46) She has difficulty sleeping at night because of her pain and experiences pain and discomfort when turning jars and unscrewing things. *Id.* She experiences pain daily in her right wrist, elbow and hand. *Id.* On average, her pain level for her right wrist is 7 out of 10. (T. 46-47)

Petitioner also continues to experience pain and discomfort in her left hand, wrist and elbow. (T. 48-50) Dr. Patel gave her a brace which she was wearing. *Id.* It is not every day but when she does have pain, the pain level is 4 out of 10. *Id.*

Petitioner experiences pain every day in her right thumb. (T. 47) The ball of her thumb is tender, and she feels pain when trying to grip something. *Id.* Her pain level is 5 out of 10. *Id.*

Petitioner's right shoulder is very painful, and her pain level is about 9 out of 10. (T. 48) She feels this pain every day. *Id.* She has pain when sleeping or when lifting up a bag or milk. *Id.* She experiences pain with and without activities. *Id.*

CONCLUSIONS OF LAW

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

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

Petitioner, worked for the Respondent for 22 years. For the last 17 years of her employment with Respondent, she worked as a picker, forklift Driver and loader. The job was hand intensive and required lifting items from 1 to 120 pounds, as well as cartons, and constant maneuvering of the forklift. Petitioner did not have any problems with her right arm, hand and elbow until the spring of 2021.

In regard to repetitive traumas, the court in *A.C. & S. v. Industrial Commission*, 304 Ill. App. 3d 875, 879 (1999), stated that "[a]n employee who suffers a gradual injury due to a 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. 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. The date of the accidental injury in a repetitive trauma case is the date on which the injury 'manifests itself.'" Furthermore, "[t]here must be a showing that the injury is work related and not the result of a normal degenerative aging process. *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill. 2d 524, 530 (1987).

The Arbitrator notes that Dr. Patel opined that Petitioner's work likely contributed to the Petitioner's development of bilateral carpal tunnel syndrome and that Petitioner developed bilateral carpal tunnel syndrome and cubital tunnel syndrome secondary to her job which required heavy repetitive lifting. The Arbitrator notes that while Dr. Birman found that Petitioner's cubital tunnel syndrome was not causally related to Petitioner's job, and Dr. Cohen did not find that Petitioner had carpal tunnel syndrome and that the MRI of her elbow was normal, the EMG/NCV study revealed evidence of moderate carpal tunnel syndrome bilaterally, right was worse than the left, and evidence of ulnar neuropathy across the elbow bilaterally, the right was moderate in nature and the left is mild in nature, contradicting Dr. Cohen's and Dr. Birman's findings. As such, the Arbitrator finds the findings and opinions of Dr. Patel more persuasive than those of Dr. Cohen and Dr. Birman.

Based on the above, the Arbitrator finds that Petitioner sustained accidental injuries arising out of and in the course of her employment with Respondent on June 7, 2021.

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 prior to the Spring of 2021, Petitioner did not experience any physical difficulties performing any of her job duties. She did not have any pain, numbness or tingling in either her right arm or right hand. Petitioner did not seek any medical treatment for her right hand, right arm or right elbow

before the Spring of 2021. On April 20, 2021, Petitioner had an EMG/ NCV study which showed evidence of moderate carpal tunnel syndrome bilaterally, right was worse than the left, and evidence of ulnar neuropathy across the elbow bilaterally. Further, Dr. Patel opined that Petitioner's work likely contributed to the Petitioner's development of carpal tunnel syndrome and that Petitioner developed carpal tunnel syndrome and cubital tunnel syndrome secondary to her job which required heavy repetitive lifting. Dr. Patel performed a right endoscopic carpal tunnel release and right cubital tunnel release on October 13, 2021, after which Petitioner made a full recovery and her symptoms resolved. Petitioner returned to full duty work following the surgery. On January 11, 2022, Dr. Patel noted that Petitioner's carpal tunnel and cubital tunnel syndrome symptoms had resolved and released Petitioner to return to work, without restrictions, starting June 27, 2022. On June 7, 2022, Dr. Patel noted Petitioner was doing well overall and had recovered from her symptom flareup with no significant numbness and tingling episodes and that she was able to continue working without restrictions. Surgery in the left upper extremity was never performed. Additionally on June 7, 2022, Dr. Patel noted that Petitioner's left sided symptoms were very mild at the time. Subsequent records do not document any issues with the left upper extremity, but do note that Petitioner had been diagnosed with bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome.

Based on the above, the Arbitrator finds that Petitioner's bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome were causally related to the June 7, 2021, work accident through January 27, 2022.

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 regarding accident and causal connection above. The Arbitrator further notes that Petitioner's symptoms resolved following her treatment and was released to return to full duty work on January 27, 2022. On June 7, 2022, Dr. Patel noted Petitioner was doing well overall and had recovered from her symptom flareup with no significant numbness and tingling episodes and that she was able to continue working without restrictions.

Based on the above, the Arbitrator finds that Petitioner's treatment through June 7, 2022, was reasonable and necessary. The medical expenses in this case are the same as those in case 21WC017061. Therefore, the Arbitrator refers to her award of medical expenses in case 21WC017061 for this case.

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 regarding accident and causal connection above. The Arbitrator further notes that Petitioner was off work from June 7, 2021, through August 12, 2021 (per AX4) and August 26, 2021 (per AX1), through January 27, 2022, when Dr. Patel released Petitioner to return to work.

Based on the above, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from June 7, 2021, through August 12, 2021 (9-4/7 weeks), and from August 26, 2021, through January 27, 2022 (22-1/7 weeks). The periods of temporary total disability in this case are the same as those in case 21WC017061. Therefore, the Arbitrator refers to her award of temporary total disability benefits in case 21WC017061 for this case.

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 picker, forklift driver and loader at the time of the accident and that she was able to return to work in her prior capacity as a result of said injury. The Arbitrator gives this factor substantial weight.

With regard to subsection (iii) of Section 8.1b(b), the Arbitrator notes that Petitioner was 58 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 no evidence was presented regarding any impact on Petitioner's future earnings as a result of this accident and Petitioner retired. The Arbitrator gives this factor no weight.

With regard to subsection (v) of Section 8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner underwent right carpal tunnel and cubital tunnel releases which resolved her symptoms. Petitioner returned to work, full duty. On June 7, 2022, Dr. Patel noted Petitioner was doing well overall and had recovered from her flareup with no significant numbness and tingling episodes and that she was able to continue working without restrictions. He also noted that Petitioner's left sided symptoms were very mild at the time. The Arbitrator gives this factor considerable weight.

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 left hand, pursuant to Section 8(e)(9) of the Act and 5% loss of use of the left arm pursuant to Section 8(e)(10) of the Act. Regarding Petitioner's right hand and right arm, the Arbitrator notes that the injuries to Petitioner's right hand and right arm in this case are the same as those in case 21WC017061. Therefore, the Arbitrator refers to her award of permanent partial disability to the Petitioner's right hand and right arm in case 21WC017061 for this case.