ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC020028
Case Name	Andrew Palasik v. Chi-Town Transfer Inc, Technology Insurance Co. & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0195
Number of Pages of Decision	18
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	James Marszalek
Respondent Attorney	Thomas Owen, Mark Vizza, Dan Kallio

DATE FILED: 5/1/2025

/s/Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LASALLE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANDREW PALASIK,

Petitioner,

vs. NO: 16 WC 020028

CHI-TOWN TRANSFER INC,
TECHNOLOGY INSURANCE and IWBF,

Respondents.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent Illinois State Treasurer as ex-officio custodian of the Injured Workers' Benefit Fund (IWBF) and notice given to all parties, the Commission, after considering the issues of jurisdiction and notice of hearing, and being advised of the facts and law, vacates the Decision of the Arbitrator as stated below and remands the claim to the Arbitrator.

Procedural Background

Petitioner filed an Application for Adjustment of Claim which was dated June 29, 2016, and assigned Case # 16WC020028. This Application alleged employment by Chitown Express, with address 1200 S. Cedar Rd, #213B, New Lenox, IL 60451. IWBFX1.

Petitioner filed an Amended Application on June 14, 2018, correcting the name and address of the employer to CHI-Town Transfer, Inc., with address at 760 Tanager LN., New Lenox, IL 60451. IWBFX1.

Petitioner filed a Second Amended Application on May 20, 2019, adding Technology-Insurance Co, as an insurer pursuant to Section 4(g) of the Workers' Compensation Act. IWBFX1.

Petitioner filed a Third Amended Application on February 25, 2020, adding the State Treasurer of the State of Illinois as ex-officio custodian of the Injured Workers' Benefit Fund.

On August 31, 2023, Petitioner mailed an Illinois Workers' Compensation Commission

Notice of Motion and Order (the Notice) along with a Request for Hearing Form, notifying the recipients of a trial hearing. Pursuant to the Notice, the Petitioner intended to appear before Arbitrator Dalal on December 29, 2023 at 9:00 a.m. at 707 E. Etna Road, Ottawa, Illinois. A copy of the Notice was sent to Chi-Town Transfer and the Illinois Attorney General's office. PX1.

On December 29, 2023, this matter proceeded to hearing before Arbitrator Dalal at 119 W. Madison Street, Ottawa, Illinois. Appearing were the Petitioner, personally and by counsel, Transfer Technology-Insurance, by counsel, and the Injured Workers Benefit Fund, by counsel. The Arbitrator entered a Request for Hearing Form listing the disputed issues before the Commission as Arbitrator's Exhibit 1 (AX1). All issues were marked disputed, and the additional issues of 'Insurance Coverage', 'Liability of the IWBF', and 'Hearing Notice to Respondent-Employer' were identified. AX1.

On February 1, 2024, Arbitrator Dalal issued an Arbitration Decision, finding the Petitioner had met his burden for a compensable claim, and awarding benefits. The Arbitrator found jurisdiction, and proper notice of the hearing to the parties.

On March 1, 2024, Respondent the Injured Workers Benefit Fund filed a Petition for Review of the Arbitration Decision taking exception to jurisdiction and hearing notice to Respondent-Employer.

Findings

On December 29, 2023, the Commission held hearings at the LaSalle County Courthouse building located at 119 W. Madison Street Ottawa, IL, 61350.

Respondent Chi-Town Transfer, Inc., was not provided adequate notice of the location of the hearing as the Notice introduced as Petitioner's Exhibit 1 notified them of a hearing at a different LaSalle County Courthouse building also located in Ottawa at 707 E. Etna Road.

As the Supreme Court noted in *Interstate Contractors v. Indus. Comm'n*, 81 Ill. 2d 434, 438, 410 N.E.2d 837 (1980), "the Industrial Commission and the circuit court are vested with the power to examine the validity of the decisions entered in the proceedings below and empowered to determine whether they are void for lack of jurisdictions over the parties." The purpose of providing notice and requiring a notice procedure to be followed is to allow all parties an equal opportunity to be made aware of an impending trial date so they may be able to present their respective side of the case on said date prior to a determination by the arbitrator. Further, the Commission finds requiring notice ensures due process under the law. The Commission finds due to lack of proper notice, there was no jurisdiction to conduct an *ex parte* hearing.

The Commission finds Petitioner's failure to provide proper notice to the Respondents rendered the arbitrator's decision void.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 1, 2024, is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that this case is remanded to

arbitration for a hearing on the merits with proper notice of same.

Pursuant to the holding of *Supreme Catering v. Ill. Workers' Comp. Comm'n*, 2012 IL App (1st) 111220WC, 364 Ill. Dec. 484, 976 N.E.2d 1047, this remand decision requires further administrative proceedings, and is not a final, appealable order.

MAY 1, 2025
O: 3/4/2025
AHS/ps
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	16WC020028
Case Name	Andrew Palasik v. Chi-Town Transfer Inc, Technology Insurance and IWBF
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	James Marszalek
Respondent Attorney	Mark Vizza, Thomas Owens

DATE FILED: 2/1/2024

THE INTEREST RATE FOR THE WEEK OF JANUARY 30, 2024 4.98%

/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

Andrew Palasik
Employee/Petitioner

v.

Chi-Town Transfer Inc, Technology Insurance and IWBF
Employer/Respondent

Case # **16** WC **020028**

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 **December 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 **Insurance Coverage/IWBF Liability; hearing notice**

FINDINGS

On **February 19, 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 $**19,801.60**; the average weekly wage was $**380.80**.

On the date of accident, Petitioner was **40** years of age, ***single*** with **no** 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 $ for TTD, $ for TPD, $ for maintenance, and $ for other benefits, for a total credit of $.

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

ORDER

The Arbitrator finds that Technology Insurance did not provide Workers' Compensation coverage on February 19, 2016. No liability is found for Technology Insurance

Respondent shall pay Petitioner temporary total disability benefits of $253.87week for 29 3/7 weeks, commencing May 9, 2016 through November 30, 2016, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $228.48/week for 37.5 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. (See attached decision for the arbitrator's analysis pursuant to 820 ILCS 305-8.1(B)).

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.

Signature of Arbitrator

FEBRUARY 1, 2024

STATE OF ILLINOIS)
)
COUNTY OF LASALLE)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Andrew Palasik
Petitioner/Employee

v. Case#: 16 WC 020028

Chi-Town Transfer Co.,
Technology Insurance Co., as Insurer, &
Il. State Treasurer *as Ex-Officio* Custodian of the Injured Workers' Benefit Fund
Respondent/Employer

PROCEDURAL HISTORY

This matter proceeded to hearing on December 29, 2023 in Ottawa, Illinois before Arbitrator Roma Dalal on Petitioner's Request for Hearing. Petitioner-Employee, Andrew Palasik ("Petitioner"), was represented by Steven Globis. Mark Vizza appeared on behalf of Respondent Technology Insurance and Assistant Attorney General Thomas Graydon Owen appeared on behalf of the IWBF. No one appeared on behalf of Respondent Chi-Town. All issues were in dispute. (Arb. Ex.1).

FINDINGS OF FACT

Petitioner was employed by Chi-Town Transfer, Inc. on February 19, 2016. The affidavit from NCCI (PX2 and Respondent Technology Insurance Exhibit 1) show that the policy of insurance issued by Technology Insurance to Chi-Town Transfer Inc. was cancelled effective January 16, 2016.

Petitioner testified he was born on August 20, 1975. He was not married on February 19, 2016, and has no children. He is left-handed.

In 2015, Petitioner met with Rob Stagner of Chi-Town Transfer, Inc. (hereinafter Chi-Town) a trucking company. When Petitioner was hired, he had a conversation with Dave Stagner. Petitioner took a driving test with Robert Stagner to see how he handled the tractor trailer. Dave Stagner was his supervisor and set Petitioner's schedule. Petitioner worked five days per week from 4:00 a.m. to finish. Petitioner drove various trucks, but all of the tractor trailers were owned by Chi-Town. He drove a Chi-Town Transfer truck with their logo. Chi-Town provided the fuel and insurance for the trucks. Petitioner could not carry passengers per Dave Stagner's instructions. Petitioner was supposed to use diesel, but he was not told where to get the fuel. Dave Stagner instructed Petitioner to leave the trucks at the office at the end of the day. Petitioner worked as a driver and would pick up and deliver tires from a tractor trailer. Dave Stagner would tell Petitioner what times to pick up the tires. Petitioner would drive to North Liberty and typically handled 2 loads per day. If there was not a load to pick up, Petitioner would not be paid. He

was paid $100 per load and received a check once per week. Chi-Town did not give Petitioner travel orders nor routes to take. Petitioner attended employee meetings, which were also conducted by Dave Stagner.

On February 19, 2016, Petitioner was driving a Chi-Town truck with an empty load. Heavy wind caught the truck and trailer and the truck rolled over. After the wreck he noticed pain and loss of motion in his left shoulder.

On February 19, 2016, Petitioner presented to Illinois Valley Community Hospital Emergency Room. (PX7). Petitioner reported to the providers that he was involved in a motor vehicle accident. X-rays of the left shoulder revealed a mid to distal left clavicular fracture without displacement. He was diagnosed with a fractured clavicle and given a sling. *Id.* Petitioner testified Dave Stagner picked him up at the hospital. Petitioner advised him about the injuries, the state of the truck, and how the accident occurred. Petitioner also told Stagner he needed time off. Petitioner was terminated from the company as Respondent thought it would be easier for him to obtain unemployment.

On February 21, 2016, Petitioner presented to Community Hospital Emergency Department with complaints of tongue and jaw swelling that started that morning and a left clavicle fracture. (PX8). Petitioner was taking Norco for the pain relating to the left clavicle fracture but was unsatisfied with the results. Petitioner was discharged once the tongue swelling went down and referred to Dr. Khaled Reheem. *Id.*

On February 23, 2016, Petitioner presented to Dr. Khaled Reheem-Farag for the clavicle fracture. Dr. Reheem-Farag prescribed Petitioner hydrocodone-acetaminophen. (PX9). Petitioner followed up with Dr. Reheem-Farag on March 24, 2016. Petitioner stated he had not taken his medications for about three weeks due to his financial situation. Petitioner was not able to use his left arm and still needed some pain medication. Dr. Raheem-Farag recommended physical therapy. *Id.*

Petitioner returned to Dr. Reheem-Farag on May 5, 2016. Petitioner again stated that he had run out of medication. Dr. Raheem-Farag advised Petitioner to comply with treatment and gave him some sample of Januvia and Plavix. On May 9, 2016, Dr. Raheem-Farag provided an off-work slip advising Petitioner would be restricted from working for three to six months. (PX9).

On July 12, 2016, Petitioner returned and complained about left leg weakness with walking. He also was worrying about driving after the accident. Petitioner was provided medication. (PX9). Petitioner followed up on November 30, 2016. Petitioner complained of limited movement with his shoulder. Petitioner was referred for physical therapy. *Id.* Petitioner confirmed this was his last date of treatment.

Petitioner testified he was never released to work without restrictions and his condition has not changed. Petitioner testified he still has limited movement in his left shoulder. Petitioner did not sustain any prior or subsequent injuries to his clavicle or left shoulder. He continues to notice a loss of motion of his left shoulder. Petitioner testified Chi-Town terminated him in order for him to collect unemployment benefits. Petitioner was unable to pass the DOT test due to his injuries. Petitioner started working as a cab driver around September 2017. Petitioner earns less per week as a cab driver. He works from 6:00 p.m. to 6:00 a.m. 6 days per week and drives steadily during that time other than the early mornings.

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.

The Arbitrator briefly addresses the Fund's post-hearing argument that the trial should not have proceeded. The Fund frames this as a jurisdictional argument but the Arbitrator does not view it as such. At no point before or during the hearing did the Fund object to proceeding ahead to trial. In addition, no discussions were raises prior to the start of trial. The Arbitrator notes the NCCI shows Respondent-Employer's coverage ended on December 31, 2015 with a cancellation date effective of January 16, 2016 for non-payment of the premium. (PX2). There is no evidence that it was reinstated after that date, or that another policy was obtained. In addition, notice of the proceedings was provided to Respondent-employer. (PX1).

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 Chi-Town, Inc., was operating under and subject to the Illinois Workers' Compensation Act. The Arbitrator further finds that records in evidence indicate Petitioner was driving a Chi-Town Transfer diesel fuel truck with their logo that was owned and operated by Chi-Town Transfer at the time of his accident. Petitioner was also carrying goods and materials for Chi-Town. In addition, the company had seven employees.

Consequently, the Workers' Compensation Act automatically applies to Chi-Town under the following provisions of Section III of the Workers' Compensation Act:

Paragraph 3: Carriage by land, water or arial service and loading or unloading in connection there with, including the distribution of any commodity by horse drawn or motor vehicle where the employer employs more than two employees in the enterprise or business.

Paragraph 15: any business or enterprise in which electric, gasoline or other power-driven equipment is used in the operation thereof.

Petitioner's job was extra-hazardous pursuant to Section 3(15) due to the type of vehicle he was driving, as an 18-wheel truck qualifies as power driven equipment using gasoline for operation. The Arbitrator further finds Petitioners submitted sufficient credible evidence that Chi-Town Transfer was not insured at the time of the injury, as required under the Act. Such evidence consists of the National Council on Compensation Insurance Certificate. (PX2). As such, the Arbitrator finds Respondent was operating under and subject to the Illinois Workers' Compensation Act on February 19, 2016.

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 he met with Robert Stagner in 2015, the owner of Chi-Town Transfer, about working for them as a truck driver. He was hired after he was given a driving test. He was later told by Dave Stagner, his supervisor that he would be paid $100 per run. Dave Stagner provided him with travel orders regarding where to pick up loads and when to arrive. The truck he drove belonged to Chi-Town and it was licensed by them and displayed their logo. He was given a charge card to pay for fuel and he received weekly paychecks from Chi-Town Transfer. After the accident his supervisor, David Stagner, terminated him. Petitioner also testified that he signed an employment contract with Chi-Town.

Petitioners Exhibit #4 is a W2 form Petitioner received from Chi-Town for the year 2016. Chi-Town Transfer, Inc. is listed as the "employer," Andrew Palasik is listed as the "employee." Federal, state, and local taxes were withheld from Petitioner's wages.

Lastly, Petitioner testified he was an employee which was uncontradicted. He further testified he worked for Respondent-Employer since 2015. The totality of the evidence demonstrates Chi-Town exercised significant control over Petitioner's work activities, that his work activities were directly related to their business purposes, that they paid him in the manner of an employer and that they terminated him. Accordingly, the Arbitrator concludes the Petitioner was Chi-Town's employee on February 19, 2016.

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 on February 19, 2016, he was operating a truck for Chi-Town with an empty trailer after making a delivery. High winds caused the truck to roll over while he was headed southbound on Route 39 in LaSalle County. After the wreck, he noticed the onset of left shoulder pain. He was then taken by ambulance to Illinois Valley Community Hospital.

The Arbitrator finds Petitioner was in the course of his employment while driving the truck, which was part of his job-related tasks. Petitioner's testimony, supported by the medical records, provides sufficient evidence that his left clavicle fracture was injured as a result of the motor vehicle accident while performing 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 February 19, 2016. The Arbitrator finds Petitioner's testimony to be credible. Petitioner's testimony is further supported by medical records that document a February 19, 2016 accident date. Thus, the Arbitrator finds Petitioner sustained a work-related injury on February 19, 2016.

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 Dave Stagner, his supervisor, that he sustained an injury. In fact, Petitioner testified that Dave Stagner picked him up at Illinois Valley Community Hospital and drove him back to Chi-Town's office in New Lenox. On the trip back to the office Petitioner advised Dave Stagner he had a painful left shoulder after the wreck.

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 February 19, 2016 accident, he had no medical issues with his left shoulder. Petitioner stated on the date of accident, he sustained injuries after the truck he was driving rolled over when driving. Following the injury, Petitioner was diagnosed with a left sided clavicle fracture. Petitioner underwent conservative treatment and continues to have symptoms of pain and loss of range of motion of the left shoulder. There is no indication in the record Petitioner suffered any other injury to his left shoulder, either prior to or subsequent from the accident. The chain of events involved

in this case convincingly leads to the conclusion that the accident of February 19, 2016 was the cause of the condition of ill-being of Petitioner's left shoulder.

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 was paid $100.00 per load by the Respondent and that he drove one to two loads per day, five days per week.

The Arbitrator finds the most reliable indicator of Petitioner's earnings is the W2 form he received from Chi-Town (PX4). He testified the W2 form was true and accurate. It documents Petitioner earned $2,720.00 in 2016. There were 7 1/7ths weeks from January 1, 2016 through February 19, 2016, equaling an average of $380.80 per week. Consequently, the Arbitrator finds that Petitioner's average weekly wage was $380.80. There was there was no documentation of Petitioner's earnings in the year 2015.

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 August 20, 1975. Petitioner also testified he was 40 years old at the time of injury. As such, the Arbitrator finds Petitioner presented sufficient, credible evidence that on the date of accident he was 40 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 no unpaid medical bills were placed into evidence. As such, the Arbitrator does not award any unpaid medical bills.

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 February 20, 2016 through November 9, 2016. On the Request for Hearing form, the calculation is shown to be 35 5/7 weeks. The Arbitrator notes the actual calculation is 37 5/7 weeks.

On May 9, 2016, Dr. Raheem-Farag provided an off-work slip advising Petitioner would be restricted from working for three to six months. (PX9). The Arbitrator finds Petitioner was off work beginning May 9, 2016 through his last date of medical treatment, November 30, 2016, i.e., 29 3/7 weeks. Petitioner confirmed this was his last date of treatment. 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 29 3/7 weeks, commencing May 9, 2016 through November 30, 2016 as provided in §8(b) of the Act.

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

The Arbitrator incorporates by reference the above Findings of Fact and refers to them by reference herein.

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

With regard to subsection (i) of § 8.1b(b), the Arbitrator notes no party submitted an AMA impairment report. Therefore, the Arbitrator gives no weight to this factor.

With regard to subsection (ii) of § 8.1b(b), the occupation of the employee, the Arbitrator notes Petitioner was employed as a semi-truck driver for Respondent. There was no testimony regarding the demand level of this position. In addition, the Arbitrator notes no physician restricted Petitioner from returning to work in the same position. Thus, the Arbitrator gives this factor some weight.

With regard to subsection (iii) of § 8.1b(b), the age of the employee at the time of the injury, the Arbitrator notes Petitioner was 40 years old at the time of the accident. The Arbitrator notes Petitioner has several more years of work life before him. Given the length of his estimated work life, the Arbitrator gives great weight to this factor.

With regard to subsection (iv) of § 8.1b(b), the Arbitrator notes Petitioner testified he is earning less as a cab driver than he could have made as a truck driver. The Arbitrator also notes, however, that no evidence was submitted to prove the same. As such, the Arbitrator assigns low weight to the impact on Petitioner's wages as it was not proved.

With regard to subsection (v) of § 8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner sustained a left clavicular fracture without displacement. Petitioner followed up with his physician and was provided pain medication. Petitioner was recommended physical therapy but did not undergo the same due to financial reasons. On Petitioner's last medical visit, November 30, 2016, Petitioner complained of limited movement with his shoulder. No physician placed Petitioner with permanent restrictions.

The Arbitrator notes Petitioner testified he was never released to work without restrictions and his condition has not changed. Petitioner testified he still has limited movement in his left shoulder. Petitioner did not sustain any prior or subsequent injuries to his clavicle or left shoulder. He continues to notice a loss of motion of his left shoulder. Petitioner was unable to pass the DOT test due to his injuries. Petitioner started working as a cab driver around September 2017. Petitioner earns less per week as a cab driver. Thus, the Arbitrator gives this factor great weight.

The determination of PPD is not simply a calculation but an evaluation of the five factors in Section 8.1b. In making this evaluation of PPD, no single enumerated factor is the sole determinant of PPD. Therefore, after applying Section 8.1b, and considering the relevance and weight of each of the five factors, the Arbitrator concludes that as result of the accidental injuries, Petitioner has sustained 7.5% loss of use of the whole person under Section 8(d)2.

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 December 31, 2015 with a cancellation date effective of January 16, 2016 for non-payment of the premium. (PX2). There is no evidence that it was reinstated after that date, or that another policy was obtained. As such Respondent-Employer lacked workers' compensation insurance on the date of injury, February 19, 2016. Such evidence consists of the National Council on Compensation Insurance Certificate. (PX2).

Further, Petitioner provided sufficient, credible evidence that notice of the proceedings were provided to the Respondent-Employer. (PX1).

The Arbitrator finds that the policy of insurance issued by Technology Insurance to Chi-Town Transfer, Inc. was cancelled on January 16, 2016 and Technology Insurance did not insure Chi-Town Transfer Inc on February 19, 2016. Based upon the above benefits are denied against Technology Insurance.

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	24WC000071
Case Name	Bridget Throop v. Gilster-Mary Lee Corporation
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0196
Number of Pages of Decision	16
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Pieter Schmidt

DATE FILED: 5/5/2025

/s/Carolyn Doherty, Commissioner

Signature

DISSENT

/s/, Commissioner

Signature

STATE OF ILLINOIS)	☐ Affirm and adopt (no changes)
) SS.	☐ Affirm with changes
COUNTY OF)	☐ Reverse
WILLIAMSON)	
	☒ Modify Prospective Care

☐ 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

BRIDGET THROOP,

Petitioner,

vs. NO: 24 WC 71

GILSTER- MARY LEE CORPORATION,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under Section 19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care, 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 thereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

The Commission modifies the Decision of the Arbitrator to vacate the award of prospective care, as there is no prescription for, or recommendation made by Dr. Bradley for specific care or treatment.

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated September 16, 2024, is modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of prospective care is vacated.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

MAY 5, 2025
o: 3/13/25
CMD/kcb
045

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

/s/ *Marc Parker*
Marc Parker

DISSENT

I disagree with the Majority's decision to affirm the Arbitrator's finding that Petitioner proved a compensable work accident based on the employment-related risk theory held by *McAllister v. Ill. Workers' Comp. Comm'n*, 2020 IL 124848. According to our Supreme Court, an employment-related risk involves performing some work-related task or act which contributes to the risk of injury. *Id.* at ¶¶ 40, 46. The Court categorized such acts as: 1) acts that a claimant was instructed to perform by the employer, (2) acts that a claimant 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. The Majority affirmed and adopted the Arbitrator's finding that Petitioner had satisfied her burden of proving that her injuries arose out of an employment-related risk through the third prong. I find this position unsupported by the evidence.

Petitioner claimed that she sustained work-related injuries to both knees while trying to move out of a co-worker's path on June 29, 2023. She specifically testified that she and two co-workers were standing near a door, discussing a code for a sample or product, when another co-worker approached on Petitioner's left side stating, "[p]ardon me, [p]ardon me." (T.16). Petitioner testified on three separate occasions that she tried to move out of the co-worker's way but her feet did not move. Respondent's Quality Assurance Manager, Dawn Neville, and the

Safety and Sanitation Supervisor, Christine Ledendecker, did not witness the alleged accident but testified similarly that Petitioner had reported trying to move out of the way, and that her top half moved but not her bottom half. Ms. Neville testified that Petitioner also reported twisting her left knee. The Incident Report, dated July 5, 2023, stated that Petitioner twisted her knee while moving out of an employee's way. Petitioner did not fall or stumble but described feeling sharp pain in both knees as if something had torn. In later testimony, Petitioner added: "I definitely was not in the way of the lady approaching from my left side." (T.37). Respondent's Exhibits 6-8 were photographs that depicted the narrow area where Petitioner had been standing with her co-workers.

I do not find that Petitioner's purported movement was an act that Respondent might have reasonably expected from Petitioner incident to the fulfillment of her assigned duties as the head/lead lab tech of Respondent's cake plant. Petitioner's primary job duties involved paperwork and working with samples. *McAllister* additionally stated that an injury could be compensable if it occurred while the employee was rendering reasonably needed assistance or extending an ordinary courtesy to another employee. However, an employee would have to demonstrate that such acts were in furtherance of the employer's business and performed within reasonable contemplation of what the employee may do in the service of the employer. *McAllister v. Ill. Workers' Comp. Comm'n*, 2020 IL 124848, ¶ 48. Stated otherwise, the intention behind the activity undertaken should be to assist a co-employee's performance in his or her work. *Id.* at ¶ 49. In the case at bar, there is no testimony or evidence that Petitioner was rendering any work-related assistance to the passing co-worker.

The case of *Noonan v. Ill. Workers' Comp. Comm'n*, 2016 IL App (1st) 152300WC, is also instructive as it provided examples of when a common bodily movement may or may not rise to the level of an employment-related risk. For example, the claimant in *Noonan* was a clerk and part of his job duties required him to fill out forms. He alleged a work injury after the rolling chair he was sitting in went out from underneath him as he reached for a dropped pen. The Appellate Court first dismissed that Petitioner's act of reaching for a dropped pen was a risk distinctly associated with his employment. Although the claimant was at work, the act that caused his injury was not one that he was instructed to perform or had a duty to perform. More importantly, the Court held that: "[T]he act of reaching to the floor while sitting in a chair was not required by claimant's job duties. The fact that he was reaching to retrieve a dropped pen and used a pen to fill out forms does not warrant an opposite conclusion." *Id.* at ¶ 21. The same principle may be asserted in this instant claim – although Petitioner was at work, the act that caused her injury was not one that she was instructed to perform or had a duty to perform. Moreover, there is no testimony or evidence that moving out of the way for a passing co-worker was required by Petitioner's job duties and the fact that this act occurred while Petitioner was standing and discussing a work-related matter with her co-workers does not render her injury compensable. Our Supreme Court in *Caterpillar Tractor Co. v. Indus. Comm'n*, 129 Ill. 2d 52 (1989), emphasized that "the mere fact that the duties take the employee to the place of the injury and that, but for the employment, he would not have been there, is not, of itself, sufficient to give rise to the right to compensation." *Id.* at 63.

The Appellate Court in *Noonan* also considered a neutral risk analysis. "[I]f the injury results from a hazard to which the employee would have been equally exposed apart from the

employment, or a risk personal to the employee, it is not compensable." *Noonan v. Ill. Workers' Comp. Comm'n*, 2016 IL App (1st) 152300WC, ¶ 18; citing to *Caterpillar Tractor Co. v. Indus. Comm'n*, 129 Ill. 2d 52, 59 (1989). Injuries resulting from a neutral risk are compensable under the Act only where the employee was exposed to the risk to a greater degree than the general public. "Such an increased risk may be either qualitative, such as some aspect of the employment which contributes to the risk, or quantitative, such as when the employee is exposed to a common risk more frequently than the general public." *Noonan v. Ill. Workers' Comp. Comm'n*, 2016 IL App (1st) 152300WC, ¶ 19. The Court ultimately found that "the risk posed from reaching for a pen while sitting in a rolling chair is no greater than if claimant had been reaching to retrieve any other object, including one wholly personal to him." ¶ 30.

The Appellate Court again provided examples of other cases with similar circumstances as *Noonan*. One was *Hopkins v. Indus. Comm'n*, 196 Ill. App. 3d 347 (1990), wherein the claimant was responsible for training another officer and he injured his back when the trainee officer asked him a question and the claimant turned in his chair to answer. The Court stated that the claimant simply turned in his chair and suffered an injury. There was no evidence that there was anything wrong with the chair or that the claimant's gun and holster got caught on the chair as he turned. "The act of turning in a chair, without more, was insufficient to warrant a finding of compensability. Similarly, claimant's [Noonan's] action of bending over or reaching while seated in his work chair, without more, is insufficient to establish a work-related cause to his accidental injury." *Noonan v. Ill. Workers' Comp. Comm'n*, 2016 IL App (1st) 152300WC, ¶ 36.

Here, as in *Hopkins* and *Noonan*, Petitioner's alleged act of moving after a co-worker passed by, without more, does not meet the necessary threshold of proof even under a neutral risk theory. There is no evidence that Petitioner was exposed to this risk to a greater degree than the general public on either a qualitatively or quantitively basis. The risk of injury from someone simply passing by Petitioner is identical whether at or away from the workplace. Similar to what the Court noted in *Hopkins*, Petitioner's injury was the result of normal activity and any injury could reasonably be considered personal to her, especially in this instance where there is ample evidence of and no genuine dispute regarding her long-standing, pre-existing degenerative bilateral knee condition.

I dissent from the Majority's decision in light of the above discussion as I find that Petitioner failed to prove an accident that occurred out of and in the course of her employment by Respondent.

I further find that Petitioner failed to prove causation in this matter. Petitioner claimed that her bilateral knee condition worsened after the work accident on June 29, 2023, and that she had very sharp pain and could hardly walk. However, prior records from 2015 and 2016 indicated that Petitioner had a long history of pain in her right knee with some similar, but less severe, problems with her left knee. She had consulted with an orthopedic physician at the end of 2015, and received a cortisone injection into the right knee that relieved her pain for three days before the pain returned "to its previous significant level." (Resp. Ex. 9). A 2015 MRI of the right knee further revealed an ACL tear, a medial meniscal tear and other findings. Petitioner was diagnosed with advanced primary osteoarthritis in the bilateral knees but more symptomatic on the right side. Surgical and non-surgical treatment options were discussed including more

injections, physical therapy, weight loss and a possible total knee arthroplasty in the future.

The prior records also documented that Petitioner's knee pain would be aggravated by prolonged sitting and standing and other daily activities, she would go up and down steps one at a time, she tried a flexible knee brace with minimal benefit and she had difficulty walking overall. Ms. Neville testified regarding Petitioner's knee problems before the alleged accident and stated that Petitioner was given a badge that allowed her to use a certain stairwell at Respondent's plant where the stairs were not as steep or as many. She also observed Petitioner using both feet on each step as she descended stairs at work. Ms. Ledendecker was also aware that Petitioner could not go up and down stairs often.

Neither Petitioner's treating surgeon, Dr. Matthew Bradley, nor Respondent's Section 12 examiner, Dr. Michael Nogalski, had reviewed Petitioner's prior medical records related to her knees, but both agreed that Petitioner had pre-existing degenerative disease in her knees. Dr. Bradley opined that Petitioner had sustained an aggravation of the underlying degenerative disease in both knees. He believed that Petitioner's knee pain prior to the accident had not limited her and that the extent of any prior treatment only involved anti-inflammatories, ice, heat and rest. This history is not consistent with Petitioner's medical records.

Dr. Nogalski's understanding of the mechanism of injury was that Petitioner had stepped to the right side as another worker passed her on the left side and she felt pulls on her knees. He found that Petitioner had bilateral knee osteoarthritis and was status-post right total knee replacement. Dr. Nogalski opined that Petitioner's condition was unrelated to the alleged work accident because the mechanism and subsequent symptoms she described was consistent with osteoarthritis, she had not been involved in any violent event, and her condition was compounded by her close-to-morbid obesity as well as the venous statis changes in her legs which contributed to some dysfunction. Dr. Nogalski testified that Petitioner had heavier legs "because she's just carrying a lot of fluid in them, so she has multiple factors that would cause symptoms in her knees and she doesn't have a reasonable mechanism of injury or event that would reasonably create osteoarthritis nor would it reasonably cause permanent symptoms of osteoarthritis." (RX3, pgs. 13-14).

Dr. Nogalski's testimony regarding Petitioner's injury was not consistent with her testimony at arbitration, but his opinion that Petitioner's current condition of ill-being in her knees is related to her pre-existing condition is persuasive and consistent with the arbitration record. Dr. Bradley acknowledged that his intraoperative findings were "[j]ust pretty run-of-the-mill degenerative disease." (PX10, pg. 15). The prior medical records further showed that Petitioner's complaints, diagnoses and treatment recommendations were not that much different following the claimed accident. Petitioner also required work accommodations for her knees prior to the alleged injury. Therefore, I would also find that Petitioner's bilateral knee condition was pre-existing and that she failed to prove that the current condition of ill-being in her knees was casually related to the June 29, 2023 alleged work accident.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC000071
Case Name	Bridget Throop v. Gilster-Mary Lee Corporation
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Pieter Schmidt

DATE FILED: 9/16/2024

/s/William Gallagher, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 10, 2024 4.53%

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

25IWCC0196

☐ 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)

Bridget Throop
Employee/Petitioner

Case # 24 WC 00071

v.

Consolidated cases: n/a

Gilster-Mary Lee Corporation
Employer/Respondent

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

DISPUTED ISSUES

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

FINDINGS

On the date of accident, June 29, 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 $49,231.39; the average weekly wage was $984.63.

On the date of accident, Petitioner was 60 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 $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. At trial, the parties stipulated TTD benefits were paid in full.

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

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule.

Respondent shall authorize and pay for prospective medical treatment as determined by Dr. Matthew 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.

William R. Gallagher, Arbitrator
ICArbDec19(b)

September 16, 2024

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged she sustained an accidental injury arising out of and in the course of her employment by Respondent on June 29, 2023. According to the Application, Petitioner "Tried to move out of the way of coworker" and sustained an injury to her "Right knee/leg, left knee/leg" (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. Petitioner and Respondent stipulated temporary total disability benefits had been paid in full. Respondent disputed liability on the basis of accident and causal relationship (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a lead laboratory technician. Petitioner was a long term employee of the Respondent, having worked for Respondent for over 44 years. Respondent was the only employer Petitioner ever worked for.

Petitioner testified that on June 29, 2023, she was inside the lab standing adjacent to a door while having a discussion with another employee. At that same time, Petitioner was in the process of observing a "code" at the door. At that time, another employee attempted to walk past Petitioner on her left side. Petitioner attempted to move out of the way, but when she did so, her feet stuck to the floor which caused Petitioner to experience a twisting sensation to both of her legs/knees. Petitioner stated she experienced a sharp pain on the left side of her left knee and three sharp pains across her right knee.

The accident was reported to Respondent in a timely manner and the "Accident/Incident Report" was prepared on July 5, 2023, by Dawn Neville, her supervisor. According to the report, "Employee asked Bridget to move out of her way. Bridget twisted her knee when moving." (Respondent's Exhibit 4). Petitioner testified that there was a delay in having the report prepared because of the accident having occurred shortly before the Fourth of July holiday and Neville being on vacation.

On cross-examination, Petitioner was asked to identify three photographs of the lab (Respondent's Exhibits 6, 7 and 8). Respondent's Exhibit 6 was of a portion of the lab. On the right hand side, there was a door which had a window which could be opened/closed. The window was opened when the lab received samples. Respondent's Exhibit 7 was also of the door/window, but from a different perspective. At trial, Petitioner pointed to the area in front of the door/window as being where the accident occurred and stated there were three employees standing in that area at that time.

Dawn Neville testified for Respondent at trial. Neville was Respondent's quality assurance/lab tech supervisor. She testified that the photographs (Respondent's Exhibits 6 and 7) were of the window where samples are delivered to the lab. Neville also testified that Petitioner was permitted to use the back door to the lab (which was observed in Respondent's Exhibits 6 and 8) because the route to it had fewer and less steep steps.

Neville testified that when Petitioner reported the accident to her, Petitioner described a twisting injury to her left knee when she was standing at the window and another employee attempted to walk

past her. Neville testified Petitioner informed her that "…her top half moved, but her bottom half did not, and she twisted her left knee."

Neville subsequently testified that sometime in October, 2023, Petitioner informed her that she sustained the accident when she tripped on the threshold of the door at the end of the hall depicted in Respondent's Exhibits 6 and 8. On cross-examination, Neville stated that Petitioner did not fill out an accident report nor did she provide one to Petitioner. Neville believed Petitioner was referring to the accident of June 29, 2023; however, she agreed there was no threshold at the area where Petitioner alleged the accident occurred.

Christine Ledendecker testified on behalf of Respondent at trial. Ledendecker was Respondent's safety and sanitation supervisor. She testified Petitioner's prior supervisor had informed her that Petitioner's knee condition restricted her from going up/down stairs frequently. In respect to the accident, Ledendecker stated Petitioner sustained the accident when another employee attempted to pass by her and when Petitioner attempted to move out of the way, her top half moved, but her bottom half did not.

When Petitioner was cross-examined, she was asked about whether she ever informed her supervisor of having tripped on a threshold adjacent to the back door. Petitioner responded that she had no recollection of having made such a statement. She also testified that she informed Neville she had sustained an injury to both knees, not just the left knee.

Petitioner testified that, prior to the accident of June 29, 2023, she had long standing pre-existing bilateral knee problems for which she had sought medical treatment. However, Petitioner also stated that, prior to the accident, she had continued to work at her regular job full time.

In respect to the medical treatment prior to the accident of June 29, 2023, Petitioner was evaluated by Karen Chamness, a Physician Assistant, on September 14, 2015, for right knee pain. PA Chamness ordered an x-ray of Petitioner's right knee which revealed moderately advanced degenerative arthritis (Respondent's Exhibit 9).

An MRI of Petitioner's right knee was obtained on November 6, 2015. According to the radiologist, there was evidence of tears of both the ACL and medial meniscus, degenerative arthrosis, and a loose body. PA Chamness saw Petitioner on December 7, 2015, reviewed the MRI, and referred Petitioner to Dr. Robert Lander, an orthopedic surgeon (Respondent's Exhibit 9).

Dr. Lander examined Petitioner on December 23, 2015. At that time, Petitioner informed him she had sustained a fall in the 1990s in which she had sustained an injury to her right knee. Dr. Lander reviewed the MRI and his interpretation of it was consistent with that of the radiologist. He noted Petitioner was obese and opined she would eventually need a total knee replacement. He administered an injection into the right knee, recommended weight loss and hoped Petitioner could avoid a total knee replacement surgery (Respondent's Exhibit 9).

On July 13, 2016, Petitioner was seen by PA Chamness for various health issues which included right knee pain. She referred Petitioner to Dr. Robert Barr, an orthopedic surgeon (Respondent's Exhibit 9).

Dr. Barr evaluated Petitioner on July 21, 2016. He diagnosed Petitioner with advanced osteoarthritis of both knees, but more symptomatic on the right. He recommended Petitioner receive conservative treatment including injections, physical therapy, home exercises and weight loss. Dr. Barr opined Petitioner "…may ultimately become total knee arthroplasty candidate and given her age I think is likely to need that surgery at some point in the future." (Respondent's Exhibit 9). This was the last time Petitioner was treated for her right knee condition prior to the accident of June 29, 2023.

Petitioner did not immediately seek medical treatment because she hoped the symptoms would improve on their own. She also testified that she was waiting for Respondent to refer her to an orthopedic surgeon. When she asked to see the company nurse, Petitioner was informed that she could see her own physician.

Petitioner was evaluated by PA Chamness on November 7, 2023. While the visit was described as an "annual wellness exam", Petitioner advised that she had sustained an injury to both knees while at work in June, 2023 (Petitioner's Exhibit 3).

Petitioner was subsequently evaluated by Dr. Matthew Bradley, an orthopedic surgeon, on January 10, 2024. At that time, Petitioner informed him that she sustained an accident at work on June 29, 2023, when a coworker walked up to her and, when Petitioner attempted to move out of the way, Petitioner twisted and felt a popping sensation in both of her knees with some pain. She also advised that there was a delay in reporting the accident because it had occurred shortly before a holiday weekend and the report was not sent in until sometime in October (Petitioner's Exhibit 4).

Petitioner informed Dr. Bradley she had sustained an injury approximately 30 years ago, but did not recall if it was to either the right or left knee. However, Petitioner had been able to work and perform activities of daily living. Dr. Bradley ordered x-rays of both knees and opined they revealed severe end stage tricompartmental arthrosis with bone on bone deformity in respect to both knees. Because of the severity of the arthritis, Dr. Bradley opined conservative treatment would not likely provide significant relief and recommended Petitioner undergo total knee replacement surgery (Petitioner's Exhibit 4).

Dr. Bradley performed surgery on Petitioner's right knee on February 6, 2024. The procedure consisted of right total knee arthroplasty, right knee injection and local nerve block (Petitioner's Exhibit 4).

At the direction of Respondent, Petitioner was examined by Dr. Michael Nogalski, an orthopedic surgeon, on March 27, 2024. In connection with his examination of Petitioner, Dr. Nogalski reviewed medical records and diagnostic studies provides to him by Respondent. When seen by Dr. Nogalski, Petitioner advised him of the accident of June 29, 2023, stating that while she was talking to a coworker, another worker walked around her on her left side which caused Petitioner to step to the right. When she did so, Petitioner felt three pulls in her right knee and one pull in her left knee, and experienced more right than left knee pain. Petitioner informed Dr. Nogalski of having sustained a knee injury 30 years prior, but did not experience any significant problems with either knee prior to the accident of June 29, 2023 (Respondent's Exhibit 3; Deposition Exhibit 2).

Dr. Nogalski noted Petitioner had recently undergone total knee replacement surgery by Dr. Bradley. Dr. Nogalski opined Petitioner's knee problems were because of chronic osteoarthritis consistent with advancing age, obesity and general deconditioning. He did not identify a mechanical or structural issue within the knee which would be related to an injury and opined neither knee condition was related to the accident of June 29, 2023 (Respondent's Exhibit 3; Deposition Exhibit 2).

Following surgery, Petitioner continued to be treated by Dr. Bradley who ordered physical therapy and directed Petitioner to perform home exercises. When he saw Petitioner on April 15, 2024, he noted she was doing well, but still experiencing some right knee swelling. Dr. Bradley last saw Petitioner on June 3, 2024, and Petitioner continued physical therapy. He noted she had just returned to work to a sit down job and imposed a work restriction of no standing longer than 30 minutes at a time (Petitioner's Exhibit 4).

Dr. Nogalski was deposed on May 20, 2024, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Nogalski's testimony was consistent with his medical report and he reaffirmed the opinions contained therein. In respect to the accident of June 29, 2023, Dr. Nogalski testified it was not a "mechanical event" which he stated would be one in which the accident would cause the knee to lock up, slide or feel unstable. He stated Petitioner did not describe to him having sustained any twisting of the knee at the time of the accident (Respondent's Exhibit 3; pp 7-8).

Dr. Nogalski testified Petitioner's knee condition was not related to the accident of June 29, 2023, and noted she simply stepped aside and experienced symptoms consistent with osteoarthritis. He noted the accident was not a "violent event" and that individuals with bone on bone osteoarthritis are going to experience pain symptoms and Petitioner's condition was compounded by her obesity and other multiple factors that would cause knee symptoms (Respondent's Exhibit 3; pp 13-14).

On cross-examination, Dr. Nogalski agreed he did not know what care/treatment Petitioner had received either one week or one year prior to the accident or what symptoms Petitioner had experienced one year prior to the accident. He did not review any of the medical records for treatment Petitioner had received prior to the accident and did not know if Petitioner was taking any medication for knee symptoms prior to the accident (Respondent's Exhibit 3; pp 20-21).

Dr. Bradley was deposed on June 12, 2024, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Bradley's testimony was consistent with his medical records and he reaffirmed the opinions contained therein. Specifically, Dr. Bradley testified Petitioner informed him of the accident of June 29, 2023, when she sustained an injury to both of her knees. He stated Petitioner had informed him that she had sustained an injury to one of her knees 30 years prior, had experienced pain off and on in her knees, but did not miss work and had not received medical treatment prior to the accident (Petitioner's Exhibit 10; pp 10-11).

In respect to causality, Dr. Bradley testified the twisting injury Petitioner sustained contributed to the aggravation of the underlying degenerative condition. He stated it was a "common mechanism" which caused asymptomatic arthritis to become symptomatic. Dr. Bradley further testified the need for the total knee replacement surgery he performed was related to the accident of June 29, 2023 (Petitioner's Exhibit 10; pp 13-14).

On cross-examination, Dr. Bradley agreed that not all of Petitioner's pain symptoms started on January 29, 2023, and that she had previously experienced some aches and pains. However, he stated the pain Petitioner experienced subsequent to the accident of June 29, 2023, was different than the pain she had experienced prior (Petitioner's Exhibit 10; pp 24-25).

At trial, Petitioner testified she is still being treated by Dr. Bradley and has not been released from care. Petitioner stated she has returned to work, but performs most of her work duties while sitting.

Conclusions of Law

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

The Arbitrator concludes Petitioner sustained an accidental injury arising out of and in the course of her employment by Respondent on June 29, 2023.

In support of this conclusion the Arbitrator notes the following:

Petitioner testified that she sustained the accident when she was standing adjacent to a door/window at the lab, another employee attempted to walk around her, Petitioner attempted to move out of the way and, when she did so, her feet stuck to the floor which caused her to sustain a twisting injury to her knees.

Petitioner gave a consistent history of the aforementioned accident to Dr. Bradley, Petitioner's primary treating physician, and Dr. Nogalski, Respondent's Section 12 examiner. While Dr. Nogalski testified Petitioner did not inform him of having sustained a twisting injury to her knees, the remainder of the history she provided to him regarding the accident was consistent with her testimony.

When PA Chamness evaluated Petitioner on November 7, 2023, the only history Petitioner provided was that she had sustained a work-related accident in June and did not advise as to the details regarding same. However, this was not in any way inconsistent with Petitioner's testimony regarding the circumstances of the accident.

The history Petitioner provided to Dawn Neville and the history contained in the Accident/Incident Report was consistent with Petitioner's testimony regarding the accident in spite of the fact that the accident report did not specifically referenced which knee was injured.

The testimony of Christine Ledendecker regarding the accident of June 29, 2023, was consistent with that of the Petitioner.

The only testimony in which there was a possible alternative history of how the accident occurred was that of Dawn Neville who stated that sometime in October, 2023, Petitioner informed her that she sustained the injury to her knee when she tripped over a threshold adjacent to another door in the lab. Neville did not repair another accident report upon receipt of this information. Considering all of the preceding evidence regarding the circumstances of the accident of June 29, 2023, the Arbitrator is not persuaded by Neville's testimony regarding a possible alternative history of how the accident occurred.

At the time Petitioner sustained the accident, she was performing a task incidental to her employment with Respondent. The Arbitrator finds the holding in the case of *McCallister v. Illinois Workers' Compensation Commission*, 181 N.E.3d 656, 672 (Ill. 2020) to be applicable.

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

The Arbitrator concludes Petitioner's current condition of ill-being is causally related to the accident of June 29, 2023.

In support of this conclusion the Arbitrator notes following:

There was no question Petitioner had significant osteoarthritis in both of her knees prior to the accident of June 29, 2023.

Petitioner sustained an injury to one of her knees approximately 30 years prior, but did not recall which knee it was. None of the medical records regarding this prior accident were received into evidence at trial.

Petitioner received some medical treatment for knee issues in 2015/2016, which she did not disclose to either Dr. Bradley or Dr. Nogalski. However, the Arbitrator acknowledges that the treatment was limited to conservative care and occurred approximately seven or eight years prior to the accident of June 29, 2023.

While both Dr. Barr and Dr. Lander opined Petitioner would probably require total knee replacement surgery at some point in time, neither of them opined it was necessary or imminent at the time they treated Petitioner.

Dr. Bradley noted Petitioner had sustained a twisting injury to her right knee which made the underlying degenerative condition symptomatic and then requiring total knee replacement surgery.

Dr. Nogalski opined Petitioner's knee condition was related to long standing, degenerative osteoarthritis, aging, obesity, and general deconditioning. Because Petitioner had not sustained a "violent event", he opined Petitioner's condition was not work-related. However, Dr. Nogalski was unaware of the fact that Petitioner had, in fact, sustained a "twisting injury" and he had no knowledge of the treatment Petitioner had received prior to the accident and what her symptoms were prior to the accident.

Because of the preceding, the Arbitrator finds the opinion of Dr. Bradley in respect to causality to be more persuasive than that of Dr. Nogalski.

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 medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule.

In support of this conclusion the Arbitrator notes following:

There was no dispute in respect to the reasonableness and necessity of the medical treatment provided to Petitioner.

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

The Arbitrator concludes Petitioner is entitled to prospective medical treatment to be determined by Dr. Matthew Bradley.

In support of this conclusion Arbitrator notes following:

Petitioner continues to be treated by Dr. Bradley has not been released from care.

William R. Gallagher, Arbitrator

September 16, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC020415
Case Name	Chad Carson v. State of Illinois - Illinois Department of Transportation
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0197
Number of Pages of Decision	18
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Nicole Werner

DATE FILED: 5/6/2025

/s/Marc Parker, 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

Chad Carson,

Petitioner,

vs. NO: 23 WC 020415

State of Illinois-Department of Transportation,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 22, 2024, is hereby affirmed and adopted.

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

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

MAY 6, 2025

MP:yl
o 5/1/25
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	23WC020415
Case Name	Chad Carson v. State of Illinois - Illinois Dept of Transportation
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Nicole Werner

DATE FILED: 7/22/2024

/s/ Jeanne AuBuchon, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JULY 16, 2024 4.985%

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

July 22, 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

CHAD CARSON
Employee/Petitioner

v.

SOI / IDOT
Employer/Respondent

Case # **23**WC**020415**

Consolidated cases: _____

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

DISPUTED ISSUES

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

FINDINGS

On **July 31, 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 $**83,192.40**; the average weekly wage was $**1,599.85**.

On the date of accident, Petitioner was **45** 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 of outlined in Petitioner's group exhibit related to the treatment of the injury, as provided in § 8(a) of the Act.

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

Respondent shall pay Petitioner permanent partial disability benefits of $**959.91**/week for **110.75** weeks, because the injuries sustained caused the **12.5% loss of the right hand, 12.5% loss of the left hand, 12.5% loss of the right arm and 12.5% loss of use of the left arm**, 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

July 22, 2024

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 right shoulder condition; 3) payment of medical bills; and 6) the nature and extent of the Petitioner's injuries.

FINDINGS OF FACT

The Petitioner is employed with the Respondent as a highway maintainer and has been for the past 11 years. (T. 10, RX5) As of July 31, 2023 – the alleged date of injury – the Petitioner was 45 years old. (AX1)

The Petitioner testified that prior to working for the Respondent, he worked for RC Cola delivering soda, and before that, he worked at Tamms Correctional Center, a maximum-security prison. (T. 10-11) He said he uses wrenches and air hammers. (T. 15) He said he worked in the sign department for the Respondent, painting and performing sign maintenance. (T. 15-16) He said he used his hands and arms, and his work involved heavy gripping, forceful grasping and working overhead. (T. 16) The Petitioner prepared a job description that listed job duties of: lifting signs and posts weighing 10-20 pounds into a truck and setting them frequently; lifting 10-pound bags of pot hole patch frequently; joy stick operation of a plow frequently in winter; pushing and pulling truck and Bobcat levers frequently; backhoe operation frequently; wrench use to tighten signs and lighting frequently; reaching above shoulder level to change lights in highway lighting and changing road signs frequently. (T. 11, PX8)

Jason Taylor, operations supervisor for the Respondent testified that the Petitioner was a fair employee and that the job duties he described were not incorrect. (T. 28) The Respondent submitted a Position Description for a highway maintainer that listed essential functions of: 1)

operating, repairing and maintaining various trucks, tractors and equipment 25 percent of the time; 2) performing labor relating to maintenance of roadways such as repairing and replacing road surfaces, loading and unloading trucks, spreading materials on roads, filling in shoulder ruts, cleaning and repairing bridges, operating asphalt kettles, filling pavement cracks and joints, directing and controlling traffic; and responding to emergency weather situations to inspect roadways and removing hazardous material and obstacles weighing up to 50 pounds – all 25 percent of the time; 3) operating snowplows and spreading salt and sand 20 percent of the time; 4) performing labor relating to the maintenance of roadside and right-of-way 10 percent of the time; 5) performing routine housekeeping duties at headquarters 5 percent of the time; 6) removing and disposing of trash, dead animals and other debris along highways 5 percent of the time; 7) maintaining job records 5 percent of the time; and 8) performing other duties within the scope of the duties listed above. (RX5)

The Petitioner testified that over the course of his employment, he noticed having tingling, pain and numbness in his arms and hands. (T. 13) He said he first noticed symptoms severe enough to seek help from his attorney in June or July 2023. (T. 20) He denied having gout, hypothyroidism, or rheumatoid arthritis. (T. 13) He admitted being diagnosed with diabetes in October 2023 and said it is being controlled with insulin. (T. 13-14)

The Petitioner presented to Dr. Matthew Bradley on July 20, 2023, with complaints of left greater than right numbness and tingling in his hands and medial elbow pain bilaterally. (PX3) He said his thumb, index finger and long finger were worse but he had intermittent symptoms in his small digit. (Id.) He reported a two-to-three-year history of increasing numbness and tingling. (Id.) At first it was mostly intermittent where he could shake it out, but recently it became more chronic but also painful and affecting his grip and ability to do his job. (Id.) Dr. Bradley noted

that Petitioner began his career working on many signs, doing electrical work, and striping roads; but more recently, the Petitioner had been operating vibratory equipment like Bobcats. (Id.) The Petitioner provided Dr. Bradley with a written job description that included lifting, pushing and pulling and gross manipulation of turning wrenches, operating equipment, operating levers and loading/unloading deliveries. (Id.)

Dr. Bradley examined the Petitioner and performed X-rays. (Id.) He diagnosed left greater than right numbness and tingling with carpal greater than cubital tunnel symptoms. (Id.) He believed the Petitioner's job duties working for the Respondent were "consistent with the development of carpal tunnel" and his work for the past 10-and-a-half years "at least contributed to the development of his bilateral carpal tunnel and cubital tunnel syndrome and need for further work up, evaluation, and treatment." (Id.) He ordered electromyography and nerve conduction studies (EMG/NCS). (Id.)

The EMG/NCS performed on July 20, 2023, showed evidence of bilateral carpal tunnel syndrome, left Guyon's canal syndrome, and bilateral cubital tunnel syndrome. (PX4) Petitioner returned to Dr. Bradley on July 31, 2023, and reported that wearing night splints actually made his symptoms slightly worse. (PX3) He reported using anti-inflammatory medication and performing home exercises as instructed, but these did not help to any significant degree. (Id.) Because non-operative treatment failed, Dr. Bradley recommended cubital and carpal tunnel surgery. (Id.)

On September 27, 2023, Dr. Bradley performed subcutaneous left cubital and carpal tunnel releases. (PX5) He performed the surgeries on right on October 12, 2023. (Id.) At follow-up visits with Dr. Bradley, the Petitioner reported doing well. (Id.)

The Petitioner underwent a Section 12 examination on November 8, 2023, performed by Dr. Mitchell Rotman, an orthopedic hand surgeon at The Orthopedic Center of St. Louis. (RX6)

When asked about the type of work activities that might involve elbow flexion, the Petitioner talked about pulling parts off a trucking, painting or picking up pain (sic) lids. (Id.) He said his other activities at work included spreading asphalt or patch type of work filling potholes which can be repetitive. (Id.) He said he initially spent several years building traffic signs that were put together with a lot of wrenching-type activities and putting up signs on the highway and striping activities. (Id.) At the time of the examination, he was filling potholes, doing ditch or culvert activities and mowing. (Id.) He said his job activities varied from day to day. (Id.) Other activities that might involve heavier gripping included tearing off the top of 20-25-pound bags filled with materials that are dumped into potholes. (Id.) There also were activities of pulling a buggy of asphalt and shoveling asphalt out, driving a Bobcat or backhoe, servicing mower decks and vehicles, putting up or taking down signs and plowing snow. (Id.)

Dr. Rotman reviewed the Position Description provided by the Respondent, Dr. Bradley's records and the EMG/NCS. (Id.) He examined the Petitioner. (Id.) In his assessment, Dr. Rotman noted that the significant risk factor was the development of full-blown diabetes that year that happened to coincide with the need for treatment of his bilateral carpal tunnel condition. (Id.) He pointed out an additional risk factor of the Petitioner's height and weight characteristics. (Id.) He noted that the Petitioner's activities involved 40-50 percent and (sic) driving heavy machinery that does not involve any significant heavy gripping and that the Petitioner's work activities were varied throughout the week and day. (Id.) He said the Petitioner was certainly not doing assembly line work nor was he doing too many activities that involve repetitive elbow flexion. (Id.) He said the Petitioner's activities might involve repetitive gripping depending on his day-to-day activities so that he may be doing some activities through the course of his work week that could trigger

symptoms from either carpal or cubital tunnel. (Id.) He noted that the Petitioner appeared to be symptomatic by the end of the day. (Id.)

On January 29, 2024, Dr. Rotman issued an addendum report in which he opined that the Petitioner's work activities were not an aggravating factor for, nor did they cause or contribute to cubital or carpal tunnel syndrome. (Id.) He said the work activities did not involve repetitive elbow flexion past 90 degrees, a direct blow to the inner elbow or continually resting on the inner elbows. (Id.) He said the work activities did not involve repetitive heavy gripping with or without vibration and with or without awkward positioning. (Id.) He stated that the Petitioner may have performed some of those activities occasionally during the course of the work week, but it was not done in a repetitive fashion or for a long enough period of time during the course of his daily work activities to be an aggravating factor. (Id.)

Dr. Bradley testified consistently with his records at a deposition on March 13, 2024. (PX7) He explained how compression neuropathy develops when the tunnel in which a nerve runs shrinks down and pushes on the nerve. (Id.) He said that medical literature identifies risk factors for carpal and cubital tunnel syndromes, such as being female over 40 or 50, obesity, hyperthyroidism, diabetes, sleep apnea, smoking history and history of radiation or chemotherapy for cancer. (Id.) Dr. Bradley explained that anything that causes microtrauma to the carpal tunnel or the front of the wrist would be occupational risk factors for carpal tunnel, such as direct impact, using tools that cause direct impact and using vibratory instruments or tools that causes repetitive use of the wrist or elbow over time. (Id.) Regarding cubital tunnel occupational risk factors, Dr. Bradley explained that having to hyperflex the elbow or bend the elbow up all the way repetitively can cause cubital tunnel. (Id.) He said anytime a person has to repetitively lift up objects or carry them where the object is to try to straighten out the elbow and bend the elbow, that would be

isolated to the cubital tunnel. (Id.) Dr. Bradley explained that carpal and cubital tunnel syndromes are almost always multiple-modalities – not caused by one particular activity or thing but having multiple things that all contribute to these conditions. (Id.)

Dr. Bradley thought just about all of the Petitioner's job activities over the past 10+ years influenced his symptoms. (Id.) He described his intraoperative findings and said he did not find any explanation for the carpal and cubital tunnel conditions other than the run-of-the-mill repetitive, building-up, long-developing carpal and cubital tunnel. (Id.) Dr. Bradley did not think that if the Petitioner continued to work as a highway maintainer, he would have gotten any resolution of his symptoms without surgery.

As to the Petitioner being diagnosed with diabetes near the time he was diagnosed with carpal and cubital tunnel syndromes, Dr. Bradley stated that diabetes could be a component and participating factor of the Petitioner's conditions, but he did not think his work could be discounted because of this. (Id.) He also stated that if diabetes was the only factor in the Petitioner developing carpal and cubital tunnel syndromes, he would expect the Petitioner to have neuropathy – a condition in which the nerve is physically dead and does not function. (Id.) He said that if a person has neuropathy and a carpal tunnel release, they still have neuropathy, and those symptoms don't get better. (Id.) He noted that after surgery, all the Petitioner's symptoms resolved, which pointed to the fact that diabetes was not a large factor. (Id.)

On cross-examination, Dr. Bradley admitted that he did not review injury reports, a formal job description or jobsite analyses from the Respondent. (Id.) Although he noted although the Petitioner said he performed the work activities he described "frequently," Dr. Bradley did not know how often or how long the Petitioner performed these activities through the course of a day. (Id.)

Dr. Rotman testified consistently with his reports at a deposition on April 16, 2024. (RX8) He explained that varied activities are actually good for individuals with carpal tunnel – not doing the same thing over and over again so that job activities don't involve repetitive high forces. (Id.) He said the work activities did not meet the criteria for work-related or work-aggravated carpal tunnel. (Id.) Dr. Rotman pointed to the Petitioner's risk factors for carpal tunnel of being age 45, being stocky at 5'10" and 210 pounds, as well as his diabetes. (Id.) He further explained how weight and diabetes affect the carpal tunnel. (Id.) He pointed out that the Petitioner was having trouble with diabetes at the same time that he was developing symptoms of carpal tunnel. (Id.) As to cubital tunnel, he said the Petitioner had a risk factor in that he has a subluxing ulnar nerve, from which some people get irritated. (Id.)

On cross-examination, Dr. Rotman believed the Petitioner had been a highway maintainer for 30 years with 10 years in the sign department. (Id.) He was not familiar with the Petitioner's work or job duties with RC Cola and the Illinois Department of Corrections. (Id.) He did not know how long the Petitioner was having symptoms of numbness, tingling and pain. (Id.) He disagreed with Dr. Bradley's opinion that while diabetes and weight may have played some role in the development of the Petitioner's bilateral compression neuropathy, so did his decade-plus work as a highway maintainer. (Id.)

The Petitioner testified that before the surgery, he was having pain in his elbows, his hands were tightening up, and he had numbness and tingling. (T. 17) He said the surgery helped, but he still had symptoms, depending on his level of activity, involving such activities as wrenching and operating vibrating vehicles like a Bobcat or backhoe. (T. 17-18) He said he has been able to return to his hobbies of hunting and fishing. (T. 18-19) He said he golfs. (T. 22) He stated that

at the time of arbitration, he was not having "really any problem at all" and was doing "fantastic." (T. 19)

The Respondent submitted a Facebook posting by the Petitioner's wife from May 10, 2024, upon which the Petitioner was tagged showing apparent construction work on a bar owned by the Petitioner. (RX9, T. 22-24) The posting said: "Putting in that sweat equity today." (RX9) The Petitioner testified that his wife was painting and he didn't help. (T. 24-25)

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, 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 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.

The Petitioner's usual labor involved lifting, gripping, shoveling and using vibratory machinery on a frequent basis. Mr. Taylor, a supervisor of the Petitioner, testified that the Petitioner's job description was not incorrect. The job description provided by the Respondent listed several tasks that can be seen to be hand and arm intensive. Although the doctors apparently did not consider the Petitioner's work before being a highway maintainer, the Arbitrator notes that delivering soda and being a corrections officer also include hand and arm intensive activities.

Dr. Rotman and Dr. Bradley had contrary views of the Petitioner's work activities and their impact on his conditions. Dr. Rotman emphasized that the Petitioner's work was varied and not like assembly line work. Dr. Bradley looked at all of the Petitioner's job duties in determining that they were a factor in his development of his injuries. His intraoperative findings supported a run-of-the-mill repetitive, building-up, long-developing carpal and cubital tunnel. Dr. Bradley also made the point that the Petitioner had no diabetic neuropathy and had a resolution of his symptoms, which would weigh against diabetes being the sole factor.

Dr. Bradley's rationale for his opinions is more consistent with the requirements of the law for establishing causation as cited above. Dr. Rotman's opinions are not. Therefore, the Arbitrator gives more weight to Dr. Bradley's opinions that to Dr. Rotman's.

The claimant's injury need not be the sole factor that aggravates a preexisting condition, so long as it is a factor that contributes to the disability. *Cassens Transp. Co.*, 262 Ill. App. 3d at 331. The appropriate question is whether the evidence can support an inference that the accident aggravated the condition or accelerated the processes which led to the claimant's current condition of ill-being. *Id*. The Commission may find a causal relationship based on a medical expert's opinion that the injury "could have" or "might have" been caused by the accident. *Id*. at 332.

The Petitioner had risk factors for developing carpal or cubital tunnel syndrome, specifically his body habitus and diabetes. Dr. Rotman's opinion that these risk factors – to the exclusion of his work activities – caused his conditions is too simplistic. Dr. Bradley explained the multi-factorial nature of carpal and cubital syndromes and how the Petitioner's work activities played into the development of these conditions. The Arbitrator notes that the Petitioner's symptoms appeared to worsen while working – circumstantial evidence that his work activities contributed to his symptomatic carpal and cubital tunnel syndromes.

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 injuries were 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 carpal and cubital tunnel syndromes are 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. Dr. Bradley did not think that if the Petitioner continued to work as a highway maintainer, he would have gotten any resolution of his symptoms without surgery.

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 (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 working the same job with the same activities that led to his injuries. The Arbitrator places significant weight on this factor.

(iii) **Age.** The Petitioner was 45 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. Although he noted some symptoms related to the level of his activities, he characterized his condition now as "fantastic." The Arbitrator puts some weight on this factor.

Therefore, the Arbitrator finds the Petitioner's permanent partial disability to be 12.5 percent of the left arm, 12.5 percent of the left hand, 12.5 percent of the right arm and 12.5 percent of the right hand.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC029427
Case Name	Stacy Heselton v. State of Illinois - Illinois State Police
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0198
Number of Pages of Decision	12
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Caitlin Fiello

DATE FILED: 5/6/2025

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STACEY HESELTON,

Petitioner,

vs. NO: 21 WC 29427

ILLINOIS STATE POLICE,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issue of 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 August 22, 2024 is hereby affirmed and adopted.

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

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

MAY 6, 2025

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

CAH/pm
d: 5/1/25

052

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC029427
Case Name	Stacy Heselton v. State of Illinois - Illinois State Police
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 8/22/2024

/s/ William Gallagher, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF AUGUST 20, 2024 4.77%

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

August 22, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Stacey Heselton
Employee/Petitioner

v.

SOI/Illinois State Police
Employer/Respondent

Case # 21 WC 29427

Consolidated cases: n/a

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Mt. Vernon, on July 24, 2024. By stipulation, the parties agree:

On the date of accident, September 26, 2021, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $114,643.50; the average weekly wage was $2,204.68.

At the time of injury, Petitioner was 53 years of age, married, with 0 dependent child(ren).

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $0.00. The parties stipulated TTD benefits were paid in full.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $937.11 per week for 250 weeks, because the injury sustained caused the 50% loss of use of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from March 25, 2024, through July 24, 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.

William R. Gallagher, Arbitrator

August 22, 2024

ICArbDecN&E p. 2

Evidentiary Rulings

At trial, counsel for Respondent made objections to four of the Exhibits tendered into evidence by Petitioner's counsel. The Arbitrator deferred ruling on the objections and stated he would rule on them at the time he issued his Decision.

Respondent's counsel objected to the admission into evidence of a portion of Petitioner's Exhibit 8, specifically, pages 38 and 39. Petitioner's Exhibit 8 were the medical records of Dr. Matthew Gornet, Petitioner's primary treating physician. However, pages 38 and 39 consisted of a narrative report prepared by Dr. Gornet dated May 6, 2024, addressed to Petitioner's counsel. In this report, Dr. Gornet opined as to the probability and potential expense of future medical treatment. Respondent's counsel objected on the basis of hearsay and that it was a report prepared by Dr. Gornet in anticipation of litigation. The Arbitrator sustains Respondent's objection to that portion of Petitioner's Exhibit 8 and pages 38 and 39 are not admitted into evidence.

Respondent's counsel objected to the admission into evidence of Petitioner's Exhibit 17 which was a narrative medical report with attached documents pertaining to tests performed on Petitioner prepared by Dr. Adam Sky, regarding a psychiatric evaluation performed by Dr. Sky on Petitioner on May 6, 2022. The report is titled "Independent Psychiatric Evaluation" and was prepared at the request of Kristina Cooksey, an attorney associated with Petitioner's counsel's law firm. Respondent's counsel objected to the admission of this report on the basis that it was hearsay and a Section 12 examination performed at the request of Petitioner's counsel. The Arbitrator sustains Respondent's objection and Petitioner's counsel Exhibit 17 is not admitted into evidence.

Respondent's counsel objected to the admission into evidence of Petitioner's Exhibit 19, which was the video of the occurrence as recorded by Petitioner's body cam. The basis of Respondent's counsel’s objection was that she had never seen the Exhibit and had no opportunity to watch the video. The Arbitrator makes no ruling because, subsequent to the trial of the case, Petitioner's counsel withdrew Petitioner's Exhibit 19.

Respondent's counsel objected to the admission into evidence of Petitioner's Exhibit 22, which were photographs of the damage/repair of the railroad crossing at the site of the accident. The basis of Respondent's objection was relevance. The Arbitrator overrules the objection and Petitioner's Exhibit 22 is received into evidence. However, the Arbitrator also notes that the photographs have minimal probative value in respect to a determination of the nature and extent of Petitioner's disability.

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment by Respondent on September 26, 2021. According to the Application, Petitioner's "Squad car hit by semi truck" and Petitioner sustained an injury to his "Left shoulder/left pinky finger/neck/body as a whole/back/left leg/PTSD" (Arbitrator's Exhibit 2). Respondent stipulated to accident, causality and that medical expenses had been (or would be) paid pursuant to the fee schedule and Petitioner had been paid temporary total disability benefits in full. Accordingly, the only disputed issue at trial was the nature and extent of disability (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a vehicle enforcement officer with the State Police. At the time of the accident, Petitioner had worked for Respondent for approximately 24 years. On September 26, 2021, Petitioner was seated in his police cruiser on the side of the road when he was in the process of assisting a stranded driver. At that time, his vehicle was rear-ended by a semi truck which totaled both vehicles. The impact caused significant damage to both vehicles and photos of the vehicles were tendered into evidence at trial (Petitioner's Exhibit 21).

Petitioner was transported by ambulance to the ER of St. Anthony's Hospital. Petitioner provided a history of the accident and complained of pain between his shoulder blades and left elbow. Multiple x-rays of various areas of the anatomy were obtained, but all of them were negative for fracture (Petitioner's Exhibit 4).

Petitioner was evaluated at the Pain Relief Center of Vandalia on September 27, 2021, where he was seen by Dr. Jeremy Clark, a chiropractor. When seen by Dr. Clark, Petitioner complained of headaches, left hand pain, numbness/tingling in both arms and spine pain. Dr. Clark's examination revealed a limitation of the range of motion of the cervical spine and he diagnosed Petitioner as having sustained a sprain of the ligaments of the cervical spine. He treated Petitioner with chiropractic manipulation, therapy, and muscle stimulation for several weeks. Petitioner continued to experience symptoms so Dr. Clark referred Petitioner to Dr. Matthew Gornet, an orthopedic surgeon (Petitioner's Exhibit 7).

Petitioner was also seen by Dr. Jeffrey Cowell, his family physician, on October 1, 2021. When seen by Dr. Cowell, Petitioner complained of headaches, dizziness, difficulties concentrating, and fatigue. Petitioner stated he experienced anxiety when driving past the scene of the collision and also experienced sleep disruption. Dr. Cowell opined Petitioner had symptoms of post traumatic stress disorder/anxiety and recommended referral to a behavioral specialist (Petitioner's Exhibit 6).

Dr. Gornet evaluated Petitioner on October 24, 2021. At that time, Petitioner provided a history of the accident and complained of neck pain, bilateral shoulder/trapezius pain, more on the left than right, headaches, dizziness and left little finger pain. On examination, there was a reduced range of motion of the cervical spine. Dr. Gornet reviewed an MRI scan which was previously performed on October 14, 2021. He opined it revealed central disc protrusions at C3-C4 and C4-C5, central recess protrusions at C3-C4, C4-C5 and C6-C7, and disc pathology on the left at C3-C4, C4-C5 and C6-C7. He opined Petitioner had disc injuries at four levels of the cervical spine and referred Petitioner back to Dr. Clark for conservative treatment (Petitioner's Exhibit 8).

In regard to his left upper extremity injury, Petitioner was evaluated by Dr. Shawn Kutnick, an orthopedic surgeon, on October 29, 2021. Dr. Kutnick treated Petitioner primarily for an injury to Petitioner's left little finger. He diagnosed Petitioner with a flexion contracture of the left little finger and treated Petitioner conservatively. He released Petitioner from treatment on January 3, 2022 (Petitioner's Exhibit 11).

Petitioner continued to receive care at the Pain Relief Center of Vandalia as well as physical therapy at Holy Family Hospital (Petitioner's Exhibit 7 and 12). However, Petitioner continued to experience cervical spine symptoms and Dr. Gornet referred Petitioner to Dr. Helen Blake for a steroid injection at C6-C7 (Petitioner's Exhibit 8).

Dr. Blake saw Petitioner on December 7, 2021. At that time, Dr. Blake administered an epidural steroid injection on the left at C6-C7 (Petitioner's Exhibit 13).

Dr. Gornet evaluated Petitioner on December 15, 2021. At that time, Petitioner advised that the injection had provided significant relief, but only for a brief period of time, then the symptoms returned. Dr. Gornet recommended Petitioner continue physical therapy and undergo another epidural steroid injection at C3-C4. He also opined that if Petitioner's condition did not improve, that disc replacement surgery at C3-C4, C4-C5, C5-C6, and C6-C7 might be indicated. Dr. Gornet also noted Petitioner had left leg numbness/tingling in the L5 distribution which began approximately three/four weeks prior. He opined that if Petitioner continued to experience these symptoms, an MRI of the lumbar spine might be required (Petitioner's Exhibit 8).

Petitioner was again seen by Dr. Blake on February 1, 2022. At that time, Dr. Blake administered an epidural steroid injection on the left at C3-C4 (Petitioner's Exhibit 13).

Dr. Gornet saw Petitioner on February 21, 2022, and Petitioner informed him that the epidural steroid injection just performed by Dr. Blake did not provide him with any significant relief. Dr. Gornet again discussed with Petitioner his undergoing a four level cervical disc replacement surgery. He ordered a CT scan of the cervical spine and an MRI scan of the lumbar spine (Petitioner's Exhibit 8).

The CT scan of Petitioner's cervical spine was performed on February 21, 2022. According to the radiologist, the CT scan revealed central protrusions at C3-C4 and C4-C5, bilateral lateral recess protrusions at C5-C6, and central canal stenosis at C3-C4 (Petitioner's Exhibit 15).

The MRI of Petitioner's lumbar spine was performed on February 21, 2022. According to the radiologist, the MRI revealed central protrusions at L3-L4 and L4-L5, and a circumferential disc bulge at L5-S1 (Petitioner's Exhibit 9).

Dr. Gornet reviewed the CT scan and MRI scan of February 21, 2022. His interpretation of the studies was consistent with that of the radiologist. Dr. Gornet again discussed cervical disc replacement surgery with Petitioner and the decision was made to proceed forward with same (Petitioner's Exhibit 8).

Dr. Gornet performed surgery on Petitioner's cervical spine on March 8, 2022. The procedure consisted of disc replacements at C3-C4, C4-C5, C5-C6, and C6-C7 (Petitioner's Exhibit 16).

Following surgery, Petitioner continued to treat with Dr. Gornet and Petitioner experienced improvement in respect to his neck symptoms. However, Petitioner continued to have low back symptoms. When Dr. Gornet evaluated Petitioner on April 21, 2022, he noted that he would see Petitioner in June and would transition him to treatment for his low back condition (Petitioner's Exhibit 8).

Dr. Gornet again saw Petitioner on June 16, 2022. At that time, Petitioner continued to do well in respect to his neck, but complained of low back pain which went into his left hip/buttock with numbness/tingling in his left foot. Dr. Gornet opined Petitioner had sustained a disc injury at L4-L5 and L5-S1 and recommended Petitioner undergo an epidural steroid injection at L5-S1 (Petitioner's Exhibit 8).

Petitioner was seen by Dr. Helen Blake on July 5, 2022. At that time, Dr. Blake administered an injection at L5-S1. Dr. Blake subsequently saw Petitioner on August 30, 2022. At that time, she administered an injection on the left at S1 (Petitioner's Exhibit 13).

Dr. Gornet saw Petitioner on September 21, 2022. At that time, Petitioner advised the injections had only provided temporary relief. Dr. Gornet opined Petitioner had significant disc pathology at L5-S1, but ordered a discogram and CT scan at L3-L4 and L4-L5 (Petitioner's Exhibit 8).

The discogram was performed on October 5, 2022. Dr. Gornet opined the discogram revealed a non-provocative disc at L3-L4 and a provocative disc at L4-L5. The post discogram CT scan was performed on October 5, 2022. According to the radiologist, the CT scan revealed an annular fissure at L4-L5 and loss of disc height at L5-S1 (Petitioner's Exhibit 15).

Dr. Gornet saw Petitioner on October 27, 2022. At that time, he recommended Petitioner undergo lumbar disc surgery consisting of a disc replacement at L4-L5 and a fusion at L5-S1 (Petitioner's Exhibit 8).

Dr. Gornet performed surgery on Petitioner's lumbar spine on March 8, 2023. The procedure consisted of a disc replacement at L4-L5 and a fusion with cage and bone graft at L5-S1 (Petitioner's Exhibit 16).

Dr. Gornet saw Petitioner on March 23, 2023, and April 20, 2023, and Petitioner's low back symptoms had improved. When Dr. Gornet saw Petitioner on June 19, 2023, he noted Petitioner had done "exceedingly well" and experienced a "dramatic improvement" in his back and leg symptoms. At that time, Dr. Gornet authorized Petitioner to return to work without restrictions; however, Petitioner informed him that this was not an issue because he had retired (Petitioner's Exhibit 8).

Dr. Gornet last saw Petitioner on March 25, 2024. At that time, he again opined Petitioner was doing well. Dr. Gornet noted he discussed the potential of revision surgery at L4-L5 and adjacent

level failure as well as potential failure of one of the disc levels in the neck. Dr. Gornet indicated he would follow up with Petitioner in one year (Petitioner's Exhibit 8).

During the time Petitioner was being treated for his cervical and lumbar spine conditions, he was also being treated for his anxiety/PTSD condition. As previously noted herein, Dr. Cowell recommended referral to a behavioral specialist when he saw Petitioner on October 1, 2021. Petitioner was subsequently evaluated and treated by Melissa Samples, a psychologist associated with Dr. Cowell, who first saw Petitioner on January 28, 2022. At that time, Petitioner informed Samples of the accident of September 26, 2021, and that he had become hypervigilant and anxious when driving. He also advised that his father had died after being struck by an automobile. She diagnosed Petitioner with anxiety (Petitioner's Exhibit 6).

When Samples saw Petitioner on February 11, 2022, she diagnosed him with PTSD. She continued to treat Petitioner through January 9, 2023, for anxiety/PTSD. When Samples saw Petitioner on July 25, 2022, she discussed the possibility of Petitioner returning to work, but opined it would affect his PTSD negatively and cause unnecessary trauma reactions (Petitioner's Exhibit 6).

At trial, Petitioner testified that prior to being treated by Dr. Gornet that he was in constant pain in respect to both his neck and low back. Following the surgeries, Petitioner's physical condition significantly improved; however, he still experiences symptoms in respect to both his neck and low back.

Petitioner stated he has experienced a loss of the range of motion of his neck and if he looks to the right or left for an extended period of time, he experiences stiffness/pain. Petitioner also testified he has problems looking up/down. In respect his low back, Petitioner stated he still experiences stiffness/pain especially with the weather changes or prolonged sitting/standing. Petitioner's symptoms in respect to both his neck and low back are all greater when he is active and his hobbies of farming, working on equipment/vehicles and playing with his children have been adversely impacted.

In respect to his anxiety/PTSD, Petitioner has continued to deal with those issues. He has never regained his confidence in respect to driving and has experienced shakes and hyperventilation when driving because of his fear of being involved in another accident. Petitioner testified his anxiety/PTSD, was the primary reason he made the decision to retire.

Conclusions of Law

The Arbitrator concludes Petitioner has sustained permanent partial disability to the extent of 50% loss of use of the person as a whole.

In support of this conclusion the Arbitrator notes the following:

Neither Petitioner nor Respondent tendered an AMA impairment rating. The Arbitrator gives this factor no weight.

At the time of the accident, Petitioner worked for Respondent as a vehicle enforcement officer. Because of his anxiety/PTSD, Petitioner retired from his position with Respondent. The Arbitrator gives this factor significant weight.

Petitioner was 53 years old at the time he sustained the accident. He will have to live with the effects of the injury for the remainder of his natural life. The Arbitrator gives this factor moderate weight.

As noted herein, Petitioner retired from his job with Respondent as a result of the accident. Obviously, this had a negative effect on his future earning capacity. Petitioner would have had the potential of working approximately 14 more years until he reached normal retirement age. The Arbitrator gives this factor significant weight.

As a result of the accident, Petitioner sustained significant injuries to both the cervical and lumbar spine, both of which required surgery.

The cervical spine injury required cervical disc replacement surgery at four levels, C3-C4, C4-C5, C5-C6, and C6-C7. Petitioner's lumbar spine injury required disc replacement surgery at L4-L5 and a fusion at L5-S1. While Petitioner's conditions in respect to both his neck and low back improved following the surgeries, he continues to experience symptoms consistent with the injuries he sustained which are corroborated by the treatment records.

Petitioner was diagnosed with anxiety/PTSD subsequent to the accident and he has never been able to regain his confidence in respect of driving an automobile. This was the primary reason Petitioner made the decision to retire. The Arbitrator gives this factor significant weight.

William R. Gallagher, Arbitrator

August 22, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC007760
Case Name	Clarice Fortney v. Hoyleton Young and Family Services
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0199
Number of Pages of Decision	21
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	David Galanti
Respondent Attorney	Gregory Keltner

DATE FILED: 5/5/2025

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CLARICE FORTNEY,

Petitioner,

vs. NO: 22WC007760

HOYLETON YOUTH AND FAMILY SERVICES,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review under §19(b) having been filed by Petitioner and Respondent 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, 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 (1980). Petitioner, a 61-year-old employee of a home for special needs foster children, testified that she was preventing a teen/client with a stop order from eloping out a window. She pulled the back of his shirt and he yanked forward hard, causing injury. Petitioner reported the incident immediately and identified her injury as left shoulder pain. The same day Petitioner was seen at the SSM Express Clinic with complaints of an injury at work. An examination by the staff of Express Clinic showed tenderness and spasm along the trapezius. Petitioner was referred to Dr. Bassman, with whom she had treated in the past.

Because there was delay in getting the referral to Dr. Bassman approved, Petitioner was again seen at SSM Express Clinic on May 10, 2022. Petitioner complained of left shoulder pain as well as numbness going down the left arm to her fingers. On examination, the range of motion of the left shoulder was limited. Petitioner was diagnosed with a left shoulder strain and authorized to continue to work on light duty.

Petitioner was evaluated by Dr. Bassman on July 1, 2021. At that time, Petitioner informed Dr. Bassman of the accident of May 6, 2021, and complained of left shoulder, neck, and left upper back pain. Dr. Bassam recorded her symptoms as pain running up to the back of her neck and into her shoulders, with numbness radiating into her left hand. She had reduced range of motion and strength on the left. Dr. Bassman diagnosed Petitioner with tendinitis of the left shoulder and ordered an MRI scan. An x-ray of the cervical spine was obtained which revealed multilevel spondylosis and discogenic disease C3-4 through C5-6, encroaching on the neural foramen left greater than right.

Petitioner was seen by her primary care physician on July 21, 2021, primarily for hypertension. However, she informed Dr. Krishnamoorthy that she had been injured at work and had complaints of shoulder and neck pain.

The MRI of Petitioner's left shoulder was performed on July 25, 2021. According to the radiologist, the MRI revealed anterior and superior labral tears, small tears of the distal supraspinatus and distal infraspinatus, as well as widening of the AC joint. The latter finding was most likely related to the prior surgery.

Dr. Bassman saw Petitioner on August 9, 2021, and reviewed the MRI. His interpretation of the MRI was consistent with that of the radiologist. Dr. Bassman diagnosed Petitioner with an unspecified rotator cuff tear or rupture of the left shoulder. He ordered physical therapy and kept Petitioner on light duty restrictions.

At the direction of Respondent, Petitioner was examined by Dr. James Emanuel, an orthopedic surgeon, on October 18, 2021. In connection with his examination of Petitioner, Dr. Emanuel reviewed medical records and diagnostic studies, including the MRI of Petitioner's left shoulder, which were provided to him by Respondent. At that time, Petitioner complained of daily left shoulder pain, loss of motion and decreased strength. Petitioner also complained of neck pain and headaches as well as numbness/tingling down her left arm going into her fingers, primarily the index and long fingers.

In respect to his examination of Petitioner, Dr. Emanuel noted Petitioner did not cooperate during the examination. Specifically, he observed that when he attempted passive range of motion of the left shoulder, Petitioner exhibited muscle rigidity and prevented him from performing any passive range of motion testing. In respect to the neck, Dr. Emanuel described "immediate rigidity" when attempting to ask Petitioner to actively flex, extend and rotate her neck.

Dr. Emanuel reviewed the MRI of Petitioner's left shoulder and opined it revealed pre-existing changes from the prior rotator cuff repair, but no acute tears. He opined Petitioner presented exaggerated and inconsistent physical examination responses involving both the left shoulder and cervical spine. He noted the cervical spine had degenerative disc disease at multiple levels, but it pre-existed and was not related to the accident of May 6, 2021. He diagnosed Petitioner as having sustained a shoulder strain as a result of the accident of May 6, 2021.

Petitioner saw Dr. Krishnamoorthy on January 24, 2022. She complained of discomfort in the left infraclavicular region without radiation.

Dr. Bassman again saw Petitioner on March 21, 2022. At that time, Petitioner continued to complain of left shoulder pain and dysesthetic feelings in her left arm. Dr. Bassman diagnosed Petitioner with a traumatic incomplete tear of the left rotator cuff, and paresthesia of the left arm. He renewed his recommendation that Petitioner be evaluated by a neurologist.

Subsequent to his evaluation of Petitioner of March 21, 2022, Dr. Bassman retired and referred Petitioner back to Dr. Krishnamoorthy.

Dr. Krishnamoorthy saw Petitioner on June 6, 2022, because Petitioner complained of a severe headache in the occipital area. He directed Petitioner to go to an ER. Petitioner was seen in the ER of St. Mary's Hospital on June 6, 2022. At that time, Petitioner complained of a headache and cervical radiculopathy. CT scans of the head and brain were performed which were interpreted as being negative. A CT scan of the cervical spine was performed which revealed spondylotic changes at C3 to C7, facet degeneration and multilevel foraminal stenosis.

When Dr. Krishnamoorthy saw Petitioner on June 30, 2022, Petitioner's headache issue had resolved, but she continued to experience neck pain. Dr. Krishnamoorthy then retired and referred Petitioner to Dr. Adaku Uzo-Okereke. Dr. Uzo-Okereke evaluated Petitioner on March 17, 2023. At that time, Petitioner informed her of the accident and the medical treatment she received thereafter. Petitioner complained of left shoulder and left sided neck pain as well as numbness/tingling radiating into her left arm. Dr. Uzo-Okereke diagnosed Petitioner with cervical radiculopathy and recommended a new cervical MRI scan.

At the direction of Respondent, Petitioner was examined by Dr. Donald deGrange, an orthopedic surgeon, on two occasions: January 19, 2022, and November 14, 2023. The January 19, 2022, examination was conducted in regard to a work-related accident of August 26, 2015, in which she injured her low back. At that time, Petitioner made no complaints in respect to either her cervical spine or left shoulder. In connection with that examination, Petitioner completed a form in which she indicated bilateral low back and hip symptoms on a pain diagram. At trial, Petitioner testified she did not make any complaints in respect to her cervical spine and left shoulder at the time of that examination because it was her understanding it was limited to her low back injury.

Dr. deGrange identified the medical records made available to him for his report. These records extend from October of 2013 through November of 2020. Records included diagnostic studies, accident reports, primary care records, and emergency room records.

When Petitioner saw Dr. Uzo-Okereke on June 16, 2023, she was informed that she was leaving her medical practice and was referred to Dr. Brett Taylor, an orthopedic surgeon.

Dr. Taylor initially evaluated Petitioner on September 6, 2023. At that time, Petitioner informed Dr. Taylor of the accident of May 6, 2021, and the medical treatment she received thereafter. She also advised Dr. Taylor of her prior neck injury of 2019 and the arthroscopic surgery performed on her left shoulder in 2001. Petitioner complained of neck and left arm/shoulder pain,

weakness in the left shoulder and numbness in the upper arm and index, long and ring fingers. Petitioner denied having cervical or left shoulder complaints prior to the accident of May 6, 2021.

Dr. Taylor reviewed the MRI of Petitioner's cervical spine of June 9, 2022, and opined it revealed disc protrusions causing severe canal and foraminal stenosis at C3-C4, C4-C5, and C5-C6. He also reviewed the MRI of Petitioner's left shoulder performed in July 2021, and noted it revealed anterior and superior labral tears and tears of the distal supraspinatus and distal infraspinatus.

Dr. Taylor opined Petitioner had pre-existing degenerative disc disease in the cervical spine, cervicogenic neck pain and cervical myeloradiculopathy with cervical central stenosis at C3 to C6. He opined Petitioner's cervical spine symptoms were related to the work exposure as a result of a "permanent dynamic aggravation" of pre-existing stenosis. He recommended Petitioner undergo another cervical MRI scan and, upon its review, referral to pain management.

In respect to Petitioner's left shoulder condition, Dr. Taylor diagnosed Petitioner with intrinsic left shoulder pathology which he described as a ligamentous injury in the left shoulder. Dr. Taylor recommended Petitioner be referred to Dr. Corey Solman, an orthopedic surgeon, who is a shoulder specialist.

Dr. Taylor subsequently conducted a telehealth visit with Petitioner on October 25, 2023. At that time, he reaffirmed his opinions regarding the diagnosis and causality in respect to Petitioner's cervical spine and left shoulder conditions.

Dr. deGrange performed his second examination on November 14, 2023. Dr. deGrange reviewed medical records and diagnostic studies provided to him by Respondent. At that time, Petitioner informed Dr. deGrange of the accident of May 6, 2021, and complained of neck pain and numbness/tingling radiating down the left arm. Dr. deGrange reviewed the MRI of Petitioner's cervical spine and noted there were diffuse bulges/protrusions at multiple levels.

Dr. deGrange opined Petitioner had cervical spine degenerative disc disease. In respect to causality, Dr. deGrange noted in his review of the medical records, the initial injury was to the left shoulder and there were no complaints regarding the cervical spine until Petitioner was seen by Dr. Bassman, approximately six weeks following the accident. He also observed Petitioner had diffuse symptoms and questionable findings on examination indicative of non-anatomic and non-physiologic findings. He opined that while the MRI revealed cervical disc abnormalities, Petitioner did not sustain a cervical spine injury as a result of the accident of May 6, 2021.

Dr. Taylor was deposed on January 9, 2024, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Taylor's testimony was consistent with his medical records and he reaffirmed the opinions contained therein. In respect to Petitioner's left shoulder, Dr. Taylor testified Petitioner had a markedly decreased range of motion and there were positive findings indicative of rotator cuff involvement. He recommended Petitioner be treated by Dr. Corey Solman, a shoulder specialist.

In respect to Petitioner's cervical spine condition, Dr. Taylor testified he diagnosed Petitioner with age related degenerative disc disease, cervicogenic neck pain and myeloradiculopathy with central canal stenosis, C3 through C6, which was aggravated by the accident of May 6, 2021. He recommended Petitioner be seen by Dr. Patricia Hurford for diagnostic testing and non-operative treatment.

On cross examination, Dr. Taylor opined specifically that Petitioner is experiencing both radicular neck pain, and pain related to her shoulder diagnosis. He agreed that she had severe anterior osteophyte formation from C2-C6. The structural pathology seen on the Petitioner's MRIs and CTs was agreed to have been pre-existing to the work accident.

Dr. deGrange was deposed on January 12, 2024, and his deposition testimony was received into evidence at trial. Dr. deGrange testified that when he previously examined Petitioner on January 19, 2022, Petitioner did not inform him of any cervical or left shoulder symptoms. He did state that he had informed Petitioner that his examination of that date was limited to the low back.

Dr. deGrange testified that, based on his review of Dr. Bassman's medical records as well as the accident reports prepared following the accident, Petitioner had no cervical spine complaints until she was seen by Dr. Bassman, approximately six weeks after the accident. He specifically noted that the accident reports only referenced an injury to the left shoulder.

On cross-examination, Dr. deGrange identified the basis of his conclusion as the delay from May to July for the Petitioner to report numbness and tingling down her left arm. He opined that delayed pain after an accident was not uncommon, and stated his criteria for the evolution and reporting of symptoms was up to 72 hours, at the outside, to find causation.

Dr. deGrange then admitted that the first medical record he was provided in this claim was the July 1, 2021, record of Dr. Bassman, and that he had not been provided the records of SSM Express Clinic of May 6 or May 10, 2021.

Dr. Emanuel was deposed on January 23, 2024, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Emanuel's testimony was consistent with his medical report and he reaffirmed the opinions contained therein. Specifically, Dr. Emanuel testified Petitioner did not cooperate during the examination and resisted attempts at passive range of motion testing and there were inconsistent findings. He also stated there was no atrophy in the left shoulder which indicated there wasn't a rotator cuff tear. Dr. Emanuel testified Petitioner sustained a shoulder strain as a result of the accident and Petitioner's subjective complaints were out of proportion, based upon the mechanics of the injury and his reading of the x-rays and MRI scan. He stated that when he read the MRI, he could not identify any pathology related to the accident of May 6, 2021.

Dr. Emanuel agreed that a patient with pain in the side of the neck or the trapezius muscle or scapular region would be indicative of the neck being a potential source of the subjective shoulder pain.

Dr. Emanuel testified that when he attempted to examine Petitioner's neck, she immediately became rigid which he said was an inconsistent finding. He described this as being an "exaggerated

response" to a minimal test. He attributed none of the pathology he observed in the MRI scan of Petitioner's cervical spine to the accident.

At trial, Petitioner testified she continues to experience left shoulder pain, a reduced range of motion, stiffness, and a loss of strength. She wants to proceed with referral to Dr. Solman as recommended by Dr. Taylor. In respect to her neck, Petitioner testified she continues to experience neck pain, stiffness, and headaches. She described the pain as radiating down the left side of her neck to the trapezius and that she also has numbness/tingling down her left arm into her left hand. She wants to proceed with the treatment and referral as recommended by Dr. Taylor. Petitioner has continued to work for Respondent, but on a light duty basis.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

As a preliminary matter, the Commission observes Petitioner's personal identity information was unredacted in multiple exhibits introduced by both parties. The Commission cautions Counsel to adhere to Supreme Court Rule 138. Ill. S. Ct. R. 138 (eff. Jan. 1, 2018) before introducing any exhibit or claims data into evidence.

A. Causal Connection

The Arbitrator found Petitioner proved by a preponderance of the evidence that her current condition of ill-being in regard to her left shoulder is causally related to the accident of May 6, 2021, and that the Petitioner failed to prove a causal connection in regard to her cervical spine condition.

Regarding the Petitioner's left shoulder, the Commission affirms and adopts the Arbitrator's analysis.

Regarding the Petitioner's cervical spine, the Commission views the evidence differently than the Arbitrator and concludes that the evidence supports a finding of a causal connection between the accident and the current condition of her cervical spine.

A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury. *Int'l Harvester v. Indus. Comm'n.*, 93 Ill. 2d 59, 64, 66 Ill. Dec. 347, 350, 442 N.E.2d 908, 911 (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. Ill. Workers' Comp. Comm'n*, 2017 IL App (4th) 160192WC, ¶ 26, 414 Ill. Dec. 198, 204, 79 N.E.3d 833, 839 (2017).

Petitioner's undisputed testimony was that she did not have any history of pain or numbness in her left arm going into her left hand prior to May 6, 2021. The report of Dr. DeGrange from January 19, 2022, shows the Respondent had access to and was in possession of the Petitioner's pre-accident health records, yet none were noted to be relevant to her cervical spine, lending credibility to Petitioner's testimony.

Petitioner's examination at SSM Express Clinic on May 6, 2022, showed a finding of tenderness and spasm in the trapezius region by Deanne M. Perez-Meskil, APRN-CNP. Dr. deGrange, unaware of this examination, testified that palpated spasm was an involuntary symptom, and not a subjective complaint. Separately, Dr. Emanuel testified that trapezius symptoms could be indicative of cervical spine pathology.

Petitioner's history on May 10, 2021, included intermittent numbness down the left arm to her fingers.

The Commission therefore finds, contrary to the Arbitrator, that there was reporting of cervical spine complaints prior to July 1, 2021.

The Commission must then give weight to the expert opinions in light of this altered factual finding. 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, 355 Ill. Dec. 705, 712, 960 N.E.2d 587, 594 (2011). A finder of fact is not bound by an expert opinion on an ultimate issue but may look 'behind' the opinion to examine the underlying facts. Not only may the Commission decide which medical view is to be accepted, it may attach greater weight to the opinion of the treating physician. *Int'l Vermiculite Co. v. Indus. Comm'n.*, 77 Ill. 2d 1, 4, 31 Ill. Dec. 789, 791, 394 N.E.2d 1166, 1168 (1979); *ARA Servs. v. Indus. Comm'n*, 226 Ill. App. 3d 225, 232, 168 Ill. Dec. 756, 760, 590 N.E.2d 78, 82 (1992).

The Commission finds that the chain of events analysis is in the Petitioner's favor. The Petitioner was not in treatment for her cervical spine, she underwent a specific traumatic injury, and Dr. deGrange, Dr. Emanuel, and Dr. Taylor are all in agreement that some form of additional cervical spine treatment is needed.

Weighing the opinions of Dr. deGrange, Dr. Emanuel, and Dr. Taylor, the Commission finds Dr. deGrange's opinions least credible as he was not provided the May 6, or May 10, 2021, medical records. Weighing Dr. Emanuel's and Dr. Taylor's opinions, the Commission finds Dr. Taylor's opinion most credible, as it is consistent with the chain of events analysis. Dr. Emanuel, finding Petitioner in need of additional care for her neurological symptoms, does not credibly address the cause for the present need of care.

B. Medical Expenses

The Commission also considers Petitioner's claimed medical expenses. Consistent with the above findings, the Commission orders Respondent to pay to the Petitioner, pursuant to §8(a) and §8.2 of the Act, the medical expenses as identified in Petitioner's Exhibit 11, for treatment provided to Petitioner in respect to her left shoulder condition and her cervical spine condition.

C. Prospective Medical Care

The Commission also considers Petitioner's prospective care. Consistent with the above findings, the Commission affirms the Arbitrator's award of prospective medical treatment including, but not limited to, examinations, diagnostic studies and treatment for Petitioner's left

shoulder condition as recommended by Dr. Corey Solman, and further awards additional testing and pain management consultation, as recommended by Dr. Brett Taylor for her cervical spine condition. All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed on May 8, 2024, is reversed as to the cervical spine, and affirmed and adopted as to the left shoulder for the reasons stated above.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's current condition of ill-being in her left shoulder and her cervical spine is causally related to the accident.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for the reasonable and necessary and causally related medical treatments for the left shoulder and the cervical spine recommended by Dr. Corey Solman and Dr. Brett Taylor, respectively, pursuant to §8(a) and §8.2 of the Act**.**

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner reasonable and necessary medical services as set forth in Petitioner's Exhibit 11 for causally related treatment, as provided in §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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $49,900.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

MAY 5, 2025

o:3/4/2025
AHS/ps
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	22WC007760
Case Name	Clarice Fortney v. Hoyleton Young and Family Services
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	David Galanti
Respondent Attorney	Gregory Keltner

DATE FILED: 5/8/2024

/s/William Gallagher, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF MAY 7, 2024 5.155%

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Clarice Fortney
Employee/Petitioner

Case # 22 WC 07760

v.

Consolidated cases: n/a

Hoyleton Youth and Family Services
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 March 28, 2024. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, May 6, 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, in part, causally related to the accident.

In the year preceding the injury, Petitioner earned $50,448.32; the average weekly wage was $970.16.

On the date of accident, Petitioner was 61 years of age, single 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 $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 amounts paid under Section 8(j) of the Act.

ORDER

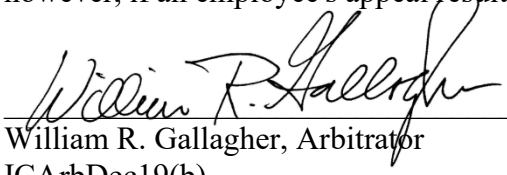
Respondent shall pay reasonable and necessary medical services provided to Petitioner as identified in Petitioner's Exhibit 11, for treatment provided to Petitioner in respect to her left shoulder condition, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall 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, examinations, diagnostic studies and treatment for Petitioner's left shoulder condition, , as recommended by Dr. Corey Solman.

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 sof 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)
May 8, 2024

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged she sustained an accidental injury arising out of and in the course of her employment by Respondent on May 6, 2021. According to the Application, Petitioner was "Holding onto escaping client and hurt left shoulder" and sustained an injury to the "MAW" (Arbitrator's Exhibit 2). This case was tried in a 19(b) proceeding and Petitioner sought an order for payment of medical bills as well as prospective medical treatment. Respondent stipulated Petitioner sustained a work-related accident on May 6, 2021, but disputed liability on the basis of causal relationship (Arbitrator's Exhibit 1).

The prospective medical treatment sought by Petitioner was diagnostic testing and pain management in respect to Petitioner's cervical spine as recommended by Dr. Brett Taylor, an orthopedic surgeon. The prospective medical treatment sought by Petitioner for her left shoulder condition was a referral to Dr. Corey Solman, an orthopedic surgeon, for diagnostic testing and treatment, as recommended by Dr. Brett Taylor.

The Petitioner became employed by Respondent in 2013 as a cook/youth care worker, a position she continues to hold. Petitioner testified Respondent is a home for foster children, children with disabilities and children who have behavioral issues. In addition to her duties as a cook, Petitioner also works with children as a youth care worker. Because of the type of children at Respondent's facility, Petitioner is required, on occasion, to keep/maintain order.

In 2001, Petitioner sustained an injury to her left shoulder for which she was treated by Dr. Donald Bassman, an orthopedic surgeon. Dr. Bassman performed surgery on Petitioner's left shoulder; however, none of the medical records regarding that prior surgery were tendered into evidence. Apparently, the left shoulder surgery performed by Dr. Bassman consisted of a rotator cuff repair. Petitioner testified that following her being released by Dr. Bassman, she had no ongoing symptoms and did not receive any further medical treatment for her left shoulder until she sustained the accident on May 6, 2021.

Petitioner sustained an injury to her low back while working for Respondent in 2015. As noted herein, Petitioner was later examined by Dr. Donald deGrange, an orthopedic surgeon, at the direction of Respondent on January 12, 2022.

Petitioner also sustained an injury to her neck in 2019 while working for Respondent. At that time, Petitioner attempted to restrain a young female resident and injured her neck while doing so. Petitioner testified she was seen in the ER and subsequently by her family physician. Petitioner received no other treatment and her neck symptoms resolved.

On May 6, 2021, a teenage male resident who Petitioner estimated weighed 120 to 140 pounds, became agitated and attempted to climb out a window. Petitioner attempted to restrain the resident by pulling on the back of his shirt with her left hand. The individual "yanked" in response which caused Petitioner to experience a pop/pain in her left shoulder.

Petitioner reported the accident to Respondent that same day and she prepared an Employee's Report of Injury. The description of the accident contained therein was consistent with Petitioner's testimony regarding same; however, it only references the injured part of Petitioner's body as being the left shoulder. There was no reference to Petitioner's neck (Petitioner's Exhibit 1).

A Supervisor's Investigation Report was prepared on May 12, 2021. The information contained therein regarding the circumstances of the accident was consistent with Petitioner's testimony regarding same; however, it likewise only referenced the left shoulder as being the site of the injury. There was no reference to Petitioner's neck (Petitioner's Exhibit 2).

Petitioner sought medical treatment at SSM Express Clinic on May 6, 2021. At that time, Petitioner provided a history of the accident and complained of left shoulder pain. It was noted Petitioner previously had undergone rotator cuff surgery in 2001 which was performed by Dr. Bassman. There was no record of Petitioner having any neck/cervical spine complaints. An x-ray of Petitioner's left shoulder was taken and it revealed degenerative changes and a mild separation of the AC joint. Petitioner was prescribed medication and directed to go to Dr. Bassman (Petitioner's Exhibit 3).

Because there was delay in getting the referral to Dr. Bassman approved, Petitioner was again seen at SSM Express Clinic on May 10, 2022. At that time, Petitioner continued to complain of left shoulder pain as well as numbness going down the left arm to her fingers. On examination, the range of motion of the left shoulder was limited. Petitioner was diagnosed with a left shoulder strain and authorized to continue to work on light duty. There was no reference to Petitioner having any neck/cervical spine complaints (Petitioner's Exhibit 3).

Petitioner was evaluated by Dr. Bassman on July 1, 2021. At that time, Petitioner informed Dr. Bassman of the accident of May 6, 2021, and complained of left shoulder, neck and left upper back pain. Dr. Bassman diagnosed Petitioner with tendinitis of the left shoulder and ordered an MRI scan (Petitioner's Exhibit 4).

When seen by Dr. Bassman on July 1, 2021, an x-ray of the cervical spine was obtained which revealed mild multilevel spondylosis and discogenic disease which resulted in mild/moderate encroachment on the neural foramen bilaterally. However, Dr. Bassman did not make a diagnosis in respect to the cervical spine (Petitioner's Exhibits 4 and 5).

The MRI of Petitioner's left shoulder was performed on July 25, 2021. According to the radiologist, the MRI revealed anterior and superior labral tears, small tears of the distal supraspinatus and distal infraspinatus as well as widening of the AC joint. The latter finding was most likely related to the prior surgery (Petitioner's Exhibit 5).

Dr. Bassman saw Petitioner on August 9, 2021, and reviewed the MRI. His interpretation of the MRI was consistent with that of the radiologist. Dr. Bassman diagnosed Petitioner with an unspecified rotator cuff tear or rupture of the left shoulder. He ordered physical therapy and kept Petitioner on light duty restrictions (Petitioner's Exhibit 4).

Petitioner was again seen by Dr. Bassman on September 13, 2021. His medical record of that date was blank; however, there was a worksheet of that date apparently completed by Dr. Bassman which noted Petitioner's left shoulder still hurts and "PT" did not help. The worksheet also contained a hand written note that indicated Petitioner needed to be referred to a neurologist (Petitioner's Exhibit 4).

At the direction of Respondent, Petitioner was examined by Dr. James Emanuel, an orthopedic surgeon, on October 18, 2021. In connection with his examination of Petitioner, Dr. Emanuel reviewed medical records and diagnostic studies, including the MRI of Petitioner's left shoulder, which were provided to him by Respondent. At that time, Petitioner complained of daily left shoulder pain, loss of motion and decreased strength. Petitioner also complained of neck pain and headaches as well as numbness/tingling down her left arm going into her fingers, primarily the index and long fingers (Respondent's Exhibit 2; Deposition Exhibit 2).

In respect to his examination of Petitioner, Dr. Emanuel noted Petitioner did not cooperate during the examination. Specifically, he observed that when he attempted passive range of motion of the left shoulder, Petitioner exhibited muscle rigidity and prevented him from performing any passive range of motion testing. In respect to the neck, Dr. Emanuel described "immediate rigidity" when attempting to ask Petitioner to actively flex, extend and rotate her neck (Respondent's Exhibit 2; Deposition Exhibit 2).

Dr. Emanuel reviewed the MRI of Petitioner's left shoulder and opined it revealed pre-existing changes from the prior rotator cuff repair, but no acute tears. He opined Petitioner presented exaggerated and inconsistent physical examination responses involving both the left shoulder and cervical spine. He noted the cervical spine had degenerative disc disease at multiple levels, but they pre-existed and were not related to the accident of May 6, 2021. He diagnosed Petitioner as having sustained a shoulder strain as a result of the accident of May 6, 2021 (Respondent's Exhibit 2; Deposition Exhibit 2).

Dr. Bassman again saw Petitioner on March 21, 2022. At that time, Petitioner continued to complain of left shoulder pain and parasthesias in her left arm. Dr. Bassman diagnosed Petitioner with a traumatic incomplete tear of the left rotator cuff. He renewed his recommendation Petitioner be evaluated by a neurologist (Petitioner's Exhibit 4).

Subsequent to his evaluation of Petitioner of March 21, 2022, Dr. Bassman retired and referred Petitioner to Dr. Suresh Krisnamoorthy, who had previously seen Petitioner on July 21, 2021, primarily for hypertension. However, at that time, Petitioner informed Dr. Krisnamoorthy that she had been injured at work and had complaints of shoulder and neck pain (Petitioner's Exhibit 8).

Dr. Krisnamoorthy saw Petitioner on June 2, 2022, because Petitioner complained of a severe headache in the occipital area. He directed Petitioner to go to an ER (Petitioner's Exhibit 8).

Petitioner was seen in the ER of St. Mary's Hospital on June 6, 2022. At that time, Petitioner complained of a headache and cervical radiculopathy. CT scans of the head and brain were performed which were interpreted as being negative. A CT scan of the cervical spine was

performed which revealed spondylotic changes at C3 to C7, facet degeneration and multilevel foraminal stenosis (Petitioner's Exhibit 7).

When Dr. Krisnamoorthy saw Petitioner on June 30, 2022, Petitioner's headache issue had resolved, but she continued to experience neck pain (Petitioner's Exhibit 7). Dr. Krisnamoorthy then retired and referred Petitioner to Dr. Adaku Uzo-Okereke.

Dr. Uzo-Okereke evaluated Petitioner on March 17, 2023. At that time, Petitioner informed her of the accident and the medical treatment she received thereafter. Petitioner complained of left shoulder and left sided neck pain as well as numbness/tingling in the left arm. Dr. Uzo-Okereke diagnosed Petitioner with cervical radiculopathy and recommended a new cervical MRI scan. When Petitioner saw Dr. Uzo-Okereke on June 16, 2023, she was informed that she was leaving her medical practice and was referred to Dr. Brett Taylor, an orthopedic surgeon (Petitioner's Exhibit 9).

Dr. Taylor initially evaluated Petitioner on September 6, 2023. At that time, Petitioner informed Dr. Taylor of the accident of May 6, 2021, and the medical treatment she received thereafter. She also advised Dr. Taylor of her prior neck injury of 2019 and the arthroscopic surgery performed on her left shoulder in 2001. Petitioner complained of neck and left arm/shoulder pain, weakness in the left shoulder and numbness in the upper arm and index, long and ring fingers. Petitioner denied having cervical or left shoulder complaints prior to the accident of May 6, 2021 (Petitioner's Exhibit 10).

Dr. Taylor reviewed the MRI of Petitioner's cervical spine of June 9, 2022, and opined it revealed disc protrusions causing severe canal and foraminal stenosis at C3-C4, C4-C5, and C5-C6. He also reviewed the MRI of Petitioner's left shoulder performed in July, 2021, and noted it revealed anterior and superior labral tears and tears of the distal supraspinatus and distal infraspinatus (Petitioner's Exhibit 10).

Dr. Taylor opined Petitioner had pre-existing degenerative disc disease in the cervical spine, cerviogenic neck pain and cervical myeloradiculopathy with cervical central stenosis at C3 to C6. He opined Petitioner's cervical spine symptoms were related to the work exposure as a result of a "permanent dynamic aggravation" of pre-existing stenosis. He recommended Petitioner undergo another cervical MRI scan and, upon its review, referral to pain management (Petitioner's Exhibit 10).

In respect to Petitioner's left shoulder condition, Dr. Taylor diagnosed Petitioner with intrinsic left shoulder pathology which he described as a ligamentous injury in the left shoulder. Dr. Taylor recommended Petitioner be referred to Dr. Corey Solman, an orthopedic surgeon, who is a shoulder specialist (Petitioner's Exhibit 10).

Dr. Taylor subsequently conducted a telehealth virtual visit with Petitioner on October 25, 2023. At that time, he reaffirmed his opinions regarding the diagnosis and causality in respect to Petitioner's cervical spine and left shoulder conditions (Petitioner's Exhibit 10).

At the direction of Respondent, Petitioner was examined by Dr. Donald deGrange, an orthopedic surgeon, on two occasions, January 19, 2022, and November 14, 2023. In regard to his examination of January 19, 2022, this was conducted in regard to Petitioner's work-related accident of August 26, 2015, in which she injured her low back. At that time, Petitioner made no complaints in respect to either her cervical spine or left shoulder. In connection with that examination, Petitioner completed a form in which she indicated bilateral low back and hip symptoms on a pain diagram (Respondent's Exhibit 1; Deposition Exhibits 2 and 4).

At trial, Petitioner testified she did not make any complaints in respect to her cervical spine and left shoulder at the time of that examination because it was her understanding it was limited to her low back injury. In connection with his examination of Petitioner performed on November 14, 2023, Dr. deGrange reviewed medical records and diagnostic studies provided to him by Respondent. At that time, Petitioner informed Dr. deGrange of the accident of May 6, 2021, and complained of neck pain and numbness/tingling radiating down the left arm. Dr. deGrange reviewed the MRI of Petitioner's cervical spine and noted there were diffuse bulges/protrusions at multiple levels (Respondent's Exhibit 1; Deposition Exhibit 3).

Dr. deGrange opined Petitioner had cervical spine degenerative disc disease. In respect to causality, Dr. deGrange noted in his review of the medical records, the initial injury was to the left shoulder and there were no complaints regarding the cervical spine until Petitioner was seen by Dr. Bassman, approximately six weeks following the accident. He also observed Petitioner had diffuse symptoms and questionable findings on examination indicative of non-anatomic and non-physiologic findings. He opined that while the MRI revealed cervical disc abnormalities, Petitioner did not sustain a cervical spine injury as a result of the accident of May 6, 2021 (Respondent's Exhibit 1; Deposition Exhibit 3).

Dr. Taylor was deposed on January 9, 2024, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Taylor's testimony was consistent with his medical records and he reaffirmed the opinions contained therein. In respect to Petitioner's left shoulder, Dr. Taylor testified Petitioner had a markedly decreased range of motion and there were positive findings indicative of rotator cuff involvement. He recommended Petitioner be treated by Dr. Corey Solman, a shoulder specialist (Petitioner's Exhibit 12; pp 12-13, 23).

In respect to Petitioner's cervical spine condition, Dr. Taylor testified he diagnosed Petitioner with age related degenerative disc disease, cerviogenic neck pain and myeloradiculopathy with central canal stenosis, C3 through C6, which was aggravated by the accident of May 6, 2021. He recommended Petitioner be seen by Dr. Patricia Hurford for diagnostic testing and non-operative treatment (Petitioner's Exhibit 12; pp 20-21).

On cross-examination, Dr. Taylor agreed that it was his understanding Petitioner had both cervical and left shoulder complaints since the time of the accident of May 6, 2021. This was based on what Petitioner told him and his review of the medical records. In respect to the MRI of June 9, 2022, he agreed that this was obtained approximately one year following the accident and he could not say if the pathology observed in the study was related to the accident (Petitioner's Exhibit 12; pp 41-43).

Dr. deGrange was deposed on January 12, 2024, and his deposition testimony was received into evidence at trial. On direct examination, Dr. deGrange's testimony was, to a large extent, limited to the information contained in his report of November 14, 2023. However, Dr. deGrange testified that when he previously examined Petitioner on January 19, 2022, Petitioner did not inform him of any cervical or left shoulder symptoms. He did state that he had informed Petitioner that his examination of that date was limited to the low back (Respondent's Exhibit 1; pp 16-17).

Dr. deGrange testified that, based on his review of the medical records as well as the accident reports prepared following the accident, Petitioner had no cervical spine complaints until she was seen by Dr. Bassman, approximately six weeks after the accident. He specifically noted that the accident reports only referenced an injury to the left shoulder. Dr. deGrange testified that the delay in Petitioner having any cervical spine or radicular symptoms was the basis for his opining that there was no aggravation of the degenerative condition in Petitioner's cervical spine (Respondent's Exhibit 1; pp 19-20, 48-49).

On cross-examination, Dr. deGrange agreed he did not opine as to anything in respect to Petitioner's left shoulder condition. He also conceded that someone can have cervical spine and shoulder symptoms which overlap and a patient can report shoulder pain which is, in fact, cervical spine pain and vice versa (Respondent's Exhibit 1; pp 42-45).

Dr. Emanuel was deposed on January 23, 2024, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Emanuel's testimony was consistent with his medical report and he reaffirmed the opinions contained therein. Specifically, Dr. Emanuel testified Petitioner did not cooperate during the examination and resisted attempts at passive range of motion testing and there were inconsistent findings. He also stated there was no atrophy in the left shoulder which indicated there was not a rotator cuff tear. Dr. Emanuel testified Petitioner sustained a shoulder strain as a result of the accident and Petitioner's subjective complaints were out of proportion, based upon the mechanics of the injury and his reading of the x-rays and MRI scan. He stated that when he read the MRI, he could not identify any pathology related to the accident of May 6, 2021 (Respondent's Exhibit 2; pp 9-10, 16-18).

Dr. Emanuel testified that when he attempted to examine Petitioner's neck, she immediately became rigid which he said was an inconsistent finding. He described this as being an "exaggerated response" to a minimal test. He attributed none of the pathology he observed in the MRI scan of Petitioner's cervical spine to the accident (Respondent's Exhibit 2; pp 14-15).

On cross-examination, Dr. Emanuel agreed degenerative changes such as those he observed in the MRI scans, could be made symptomatic by trauma. However, he declined to attribute Petitioner's symptoms to the accident noting the "out-of-proportion findings" both subjectively and, on examination, as not correlating with objective findings (Respondent's Exhibit 2; pp 30-31).

At trial, Petitioner testified she continues to experience left shoulder pain, a reduced range of motion, stiffness and a loss of strength. She wants to proceed with referral to Dr. Solman as recommended by Dr. Taylor. In respect to her neck, Petitioner testified she continues to experience neck pain, stiffness and headaches. She described the pain as radiating down the left side of her neck to the trapezius and that she also has numbness/tingling down her left arm into her left hand.

She wants to proceed with the treatment and referral as recommended by Dr. Taylor. Petitioner has continued to work for Respondent, but on a light duty basis.

Conclusions of Law

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

The Arbitrator concludes Petitioner's current condition of ill-being in regard to her left shoulder condition is causally related to the accident of May 6, 2021.

The Arbitrator concludes Petitioner's current condition of ill-being in regard to her cervical spine condition is not causally related to the accident of May 6, 2021.

In support of these conclusions the Arbitrator notes the following:

There was no dispute Petitioner sustained a work-related accident on May 6, 2021.

Petitioner's testimony that she injured her left shoulder when she pulled on an individual's shirt who was attempting to climb out of a window was consistent with and corroborated by the accident reports and medical records.

Petitioner previously underwent arthroscopic surgery on her left shoulder in 2001, by Dr. Donald Bassman. While the surgical report of this prior procedure was not tendered into evidence, the surgery was apparently a left rotator cuff repair.

Petitioner recovered from the 2001 left shoulder surgery and had no further left shoulder symptoms or treatment until she sustained the accident on May 6, 2021.

Dr. Bassman (the same physician who performed the 2001 left shoulder surgery), saw Petitioner and ordered an MRI scan which was performed on July 25, 2021. According to both the radiologist and Dr. Bassman, the MRI revealed tears of the labrum, supraspinatus and infraspinatus.

When Respondent's Section 12 examiner, Dr. Emanuel, examined Petitioner, she did not cooperate during the examination and was resistant to passive range of motion of the left shoulder and exhibited muscle rigidity. Dr. Emanuel also reviewed the MRI and opined it revealed pre-existing degenerative changes, but no acute tears.

Petitioner was later evaluated by Dr. Brett Taylor, who also reviewed the MRI of Petitioner's left shoulder. Dr. Taylor's interpretation of the MRI was consistent with that of Dr. Bassman and the radiologist.

Respondent's other Section 12 examiner, Dr. deGrange, did not examine or provide any opinions in respect to Petitioner's left shoulder condition.

Petitioner has continued to experience left shoulder symptoms. While her lack of cooperation when examined by Dr. Emanuel casts some doubt on her credibility, the Arbitrator is persuaded by the positive findings noted in the MRI of Petitioner's left shoulder as described by Dr. Bassman, the radiologist, and Dr. Taylor.

When Petitioner sustained the accident on May 6, 2021, as noted in the accident reports, she only reported an injury to her left shoulder. There is no reference to Petitioner having sustained a neck injury in the accident reports.

Petitioner did not report any neck symptoms when seen at SSM Express Clinic on May 6, 2021, or May 10, 2021. Petitioner did not advise a medical provider of her having any cervical spine complaints until she was seen by Dr. Bassman on July 1, 2021, approximately six weeks subsequent to the accident.

When Petitioner was examined by Dr. Emanuel in respect to her cervical spine, she was uncooperative during that examination. Dr. Emanuel noted Petitioner exhibited "immediate rigidity" when asked to move her neck.

When Dr. Taylor saw Petitioner he reviewed the MRI of Petitioner's cervical spine and opined it revealed disc pathology at multiple levels and that Petitioner's pre-existing conditions were aggravated by the accident of May 6, 2021.

When Dr. deGrange examined Petitioner, he specifically noted the delay in Petitioner reporting any cervical spine complaints until she was seen by Dr. Bassman approximately six weeks subsequent to the accident. He also noted the lack of any reference to neck complaints in the accident reports. While Dr. Bassman noted the MRI scan of Petitioner's cervical spine revealed abnormalities, he did not attribute them to the accident of May 6, 2021. The primary basis of Dr. deGrange's opining as to no causal relationship between Petitioner's cervical spine condition and the accident of May 6, 2021, was the fact Petitioner only initially reported having sustained a left shoulder injury and did not advise a medical provider of having cervical spine symptoms until approximately six weeks subsequent to the accident.

The Arbitrator finds Petitioner's credibility is suspect as to the onset of her cervical spine symptoms, and is persuaded by the opinion of Dr. deGrange.

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

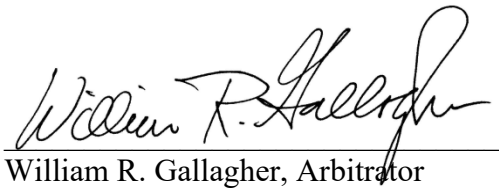
The Arbitrator concludes that all of the medical treatment provided to Petitioner in respect to her left shoulder condition was reasonable and necessary and Respondent is liable for payment of the medical bills incurred therewith. Based upon the Arbitrator's conclusion of law in disputed issue (F), Respondent is not liable for payment of the medical bills incurred in connection with Petitioner's cervical spine condition.

Respondent shall pay reasonable and necessary medical services provided to Petitioner as identified in Petitioner's Exhibit 11, for treatment provided to Petitioner in respect to her left shoulder condition, 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 regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

Based upon the Arbitrator's conclusion of law in disputed issue (F), the Arbitrator concludes Petitioner is entitled to prospective medical treatment including, but not limited to, a referral to Dr. Corey Solman for an examination, diagnostic tests and treatment for her left shoulder condition.



William R. Gallagher, Arbitrator

May 8, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC030906
Case Name	Gary Cochran Jr. v. Viking Mining
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0200
Number of Pages of Decision	31
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Gregory Keltner

DATE FILED: 5/6/2025

/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

GARY COCHRAN,

Petitioner,

vs. NO: 23 WC 30906

FORESIGHT ENERGY, LLC,

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 date, notice and permanent partial disability (PPD) benefits, and being advised of the facts and applicable law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator which is attached hereto and made a part hereof.

The Commission affirms the Arbitrator's award of PPD benefits in this claim, but clarifies that no weight shall be given to the first factor under Section 8.1b(b) of the Act. Neither party submitted an AMA impairment rating for consideration.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 2, 2024 is hereby modified as stated and otherwise affirmed and adopted.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

MAY 6, 2025

CAH/pm
d: 5/1/25
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	23WC030906
Case Name	Gary Cochran Jr. v. Viking Mining
Consolidated Cases	23WC030900; 23WC030903;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	28
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Gregory Keltner

DATE FILED: 8/2/2024

/s/Bradley Gillespie, Arbitrator

Signature

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

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

Gary Cochran
Employee/Petitioner

v.

Foresight Energy, LLC
Employer/Respondent

Case # **23** WC **30906**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Herrin, Illinois**, on **July 9, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **10/6/2023**, 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 $**38,175.10**; the average weekly wage was $**1,590.63**.

On the date of accident, Petitioner was **34** 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**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $1,060.42/week for 1 4/7 weeks, commencing November 22, 2023, through November 27, 2023, and from December 20, 2023, through December 26, 2023, as provided in Section 8(b) of the Act.

Respondent shall pay the reasonable and necessary medical services outlined in Petitioner's group exhibit, as provided in Sections 8(a) and 8.2 of the Act.

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

Respondent shall pay Petitioner compensation that has accrued from February 26, 2024, through July 9, 2024, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay Petitioner permanent partial disability benefits of $954.38/week for 123.4 weeks, because the injuries sustained caused the 12.5% loss of Petitioner's right hand, the 12.5% loss of Petitioner's left hand, the 15% loss of Petitioner's right arm, and the 15% loss of Petitioner's left arm, as provided in Sections 8(e)9 and 8(e)10 of the Act.

See decision forms for companion cases 23WC030900 and 23WC30906.

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

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

Bradley D. Gillespie
Signature of Arbitrator

August 2, 2024

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

GARY COCHRAN,	)		
	)		
Petitioner,	)		
	)		
v.	)	**Case Nos:**	**23WC030900**
	)		**23WC030903**
	)		**23WC030906**
FORESIGHT ENERGY, LLC,	)		
	)		
Respondent.	)		

DECISION OF ARBITRATOR

FINDINGS OF FACT

These consolidated cases came before an Arbitrator appointed by the Commission pursuant to Petitioner's Motion for a hearing on all issues. Petitioner filed three Applications for Adjustment of Claim; the first bearing number 23WC30900 concerning the accident date of September 5, 2023 (AX1); the second claim numbered 23WC30903 relates to the accident date of September 12, 2023 (AX3); and the last claim numbered 23WC30906 regarding an accident date of October 6, 2023 (AX5). The issues in dispute for case number 23WC030900 were accident, causal connection, and nature and extent of Petitioner's injuries. (AX1; Tr. pp. 5-6) The issues in dispute for case number 23WC030903 causal connection, medical expenses and the nature and extent of Petitioner's injuries. (AX3; Tr. pp. 7-8) The issues in dispute for case number 23WC030906 were accident, notice, manifestation/accident date, causal connection, medical expenses, temporary total disability benefits, and the nature and extent of Petitioner's injuries. (AX5; Tr. pp. 8-10)

MEDICAL EVIDENCE AND PETITIONER'S TESTIMONY

Petitioner began working for Respondent as a roof bolter and continuous miner operator on March 27, 2023, with the majority of his time being spent as a roof bolter. (Tr. pp. 19-20) Prior to working for Respondent, he worked for Hamilton County Coal in the same capacity for six to seven years. Prior to that, he worked as a roof bolter for another company, Mark Ford. (Tr. pp. 20-21) Petitioner has worked as a roof bolter for 14 or 15 of the last 20 years. (Tr. p. 21)

On September 5, 2023, Petitioner was working for Respondent when he twisted a bolt, put it into a chuck, put the roof support up, and his left wrist popped. (Tr. pp. 21-22) Petitioner testified that he reported the incident to Sam Gulley but did not seek medical treatment. (Tr. pp. 22-23, 47)

On September 12, 2023, Petitioner was again twisting a bolt and placing it in the chuck for roof support and while pulling a miner cable out of the way his left wrist popped. (Tr. pp. 22-23,

48) On that date, Petitioner presented to the emergency department at Franklin Hospital via Abbott EMS. (PX3 p. 3) He provided the history of a left wrist injury that occurred while working at a coal mine. *Id.* It was noted that he was twisting something when he fell a pop in his left wrist. *Id.* Petitioner reported his pain as moderately severe and worsened with attempts to move the hand laterally. *Id.* His physical exam revealed tenderness along the volar surface and the palmar joint line. (PX3 p. 3) An x-ray showed an old fracture of the ulnar styloid but no acute fractures. (PX3 p. 4) Petitioner was diagnosed with a sprain of the radiocarpal joint of the left wrist. *Id.* Petitioner was given a cockup wrist splint, instructed to take ibuprofen, and follow up with his primary care provider in one week. *Id.*

On September 18, 2023, Petitioner presented to SIH Harrisburg Primary Care, where he saw physician's assistant Ashton Lee. (PX4 p. 2) He reported that on Wednesday, September 13, he was at work performing a twisting motion with his left wrist when he felt a pop in his wrist with subsequent worsening pain. *Id.* He reported a history of his visit and x-rays at Franklin Hospital. *Id.* PA Lee noted that Franklin Hospital wanted to keep him off work but "his work did not agree with this and required he be at work the next day." *Id.*

PA Lee indicated that Petitioner performed repetitive twisting motions with his wrist at work every day and that this worsened his pain. (PX4 p. 2) He rated his pain as 3/10 at rest and was exacerbated with any motion. *Id.* He had been applying ice, resting, and elevating his wrist, and was utilizing Tylenol and ibuprofen. *Id.* He reported that he had been seeing his primary care provider for issues with his hands but stated that the current symptoms in his hands were worse than normal. *Id.* He reported that certain motions of his wrist caused shooting pain up the forearm and stabbing pain in his left elbow. (PX4 p. 2) He reported swelling in his wrist while using it at work. *Id.*

On exam, there was some limitation of left wrist flexion and extension due to pain, and mild diffuse tenderness to palpation of the left wrist. (PX4 p. 4) An x-ray was taken, which showed mild soft tissue swelling without visible acute fracture. *Id.* PA Lee felt it necessary that Petitioner be placed off work until he was cleared by a physical or occupational therapist. *Id.* He was given a referral to physical/occupational therapy and instructed to continue ice, rest, elevation, bracing, Tylenol, and ibuprofen. *Id.*

On September 20, 2023, Petitioner presented to SIH Occupational Therapy, where it was noted that approximately three weeks prior, he was twisting a bolt at work and experienced sharp pain. (PX5 p. 3) Since that time, he had constant, increasing throbbing in the wrist, which now included his elbow. *Id.* It was noted that Petitioner had pain, impaired range of motion and strength, and impaired ability to perform lifting, carrying and daily functional tasks. *Id.* He was given a plan for occupational therapy to address and improve his deficits and symptoms and to improve his functional ability. *Id.*

Petitioner returned to occupational therapy on September 22, 2023, where it was noted that he had a pain rating of 3/10 with his brace on, and that his symptoms increased when he was out of his brace and actively moving his extremity. (PX5 p. 9) He was most sensitive at the volar distal forearm midline over the median nerve. (PX5 p. 10) During gentle passive range of motion and wrist flexion, there was an audible pop that came from the carpals. *Id.* Petitioner reported pain with this and indicated that this is what happened with the accident. *Id.* It was noted that he had tremors due to weakness with active range of motion, as well as intermittent popping in the same spot. *Id.* During tendon glides, he had a pulling sensation at his thumb and was only able to tolerate four repetitions. (PX5 p. 10)

At Petitioner's September 25, 2023, occupational therapy visit, he reported increased pain since his last session. *Id.* He believed the tendon glides increased his pain. *Id.* He reported that he picked up a gallon of milk the night prior and had significant pain in the wrist. *Id.* It was noted that there were trigger points in the hypothenar and distal extensors near the medial side. *Id.* His pain increased halfway through supination and he still had altered sensation through hi-volt. *Id.*

On October 2, 2023, Petitioner reported a stinging sensation on the back side of the wrist and mild increase in pain and fatigue at the end of the session. (PX5 p. 11) He was discharged from physical therapy on that date. *Id.* Petitioner testified that physical therapy did not help his condition. (Tr. p. 23) At Arbitration, Petitioner testified that on October 6, 2023, just days after completing his ineffective physical therapy, he reported his symptoms to his supervisor, mine manager Sam Gulley. (Tr. pp. 23-24, 46) Following his report of increased symptoms on October 6, 2023, Petitioner saw Dr. Rotman at the direction of Respondent. (Tr. p. 24)

Petitioner saw Dr. Rotman on October 10, 2023. (PX6) Petitioner noted on his intake paperwork that his affected parts were his wrist/forearm/elbow. (RX1, Pet. Ex. 1) On his pain diagram, he noted stabbing in the left elbow and forearm, numbness/pins and needles in the left thumb and index finger and burning and stabbing in the left wrist. *Id.* On the lines requesting that Petitioner provide a "date of injury" on the first and fifth pages of the intake forms, Petitioner wrote "N/A." *Id.* Under the section "history of your problem" when Petitioner was asked how he injured himself, he wrote, "Work." *Id.*

On the last page of Petitioner's intake paperwork under "work history," he was asked which company he was currently working for, and he wrote, "Foursight / Viking." [sic] (RX1, Pet. Ex. 1) When asked, "What was your occupation when you developed the problem that you are being seen for?" Petitioner wrote "Viking." *Id.* When asked, "What company were you working for when you developed this problem?" Petitioner wrote "Foursight." [sic] When asked to "Please list the type of work you did before you worked for the company you were working for when you developed this problem," Petitioner wrote, "Alliance coal" and "Knight Hawk coal." [sic] *Id.*

Petitioner indicated on his paperwork that he was referred to Dr. Rotman by "Rockwood." *Id.* Dr. Rotman noted that the worker's compensation adjuster was with "Rockwood Casualty."

(RX6) Dr. Rotman noted that Petitioner was there for an evaluation of his left wrist pain, which was apparently caused from moving a miner cable while working at Viking mining. *Id.* Dr. Rotman noted that Petitioner also had right-sided complaints, but this was more of a numbness and tingling that had been present for six years and Petitioner felt he had carpal tunnel. *Id.* Dr. Rotman indicated that Petitioner had similar numbness and tingling on the left. *Id.* He noted that Petitioner's complaints of pain on the left were not isolated to the wrist but went into the palm of the hand and thenar eminence and were associated with numbness and tingling. (RX6) He noted Petitioner had complaints going all the way up to the medial elbow and up the forearm. *Id.* Dr. Rotman indicated that Petitioner worked as a roof bolter and coal miner and had been doing heavy hand intensive activity for about 14 years. *Id.* He had been at his current mine since March of that year and before that, he had worked for Alliance Coal and Nighthawk Coal, and his job activities included roof bolting. *Id.*

Dr. Rotman reviewed Petitioner's medical records from SIH Harrisburg Primary Care and occupational therapy. (RX6 p. 2) He noted that the September 18, 2023, record from PA Lee documented that Petitioner had stabbing pain into his left elbow and shooting pain up his forearm. *Id.* Dr. Rotman indicated that Petitioner was referred to therapy and that when he was three weeks out, he was still complaining of constant throbbing in the wrist that included the elbow. *Id.* On exam, Petitioner had a lot of discomfort at the left medial elbow over the medial epicondyle and pain with median nerve compression testing on both sides. *Id.* He had equivocal Tinel's on both sides. (RX6 p. 2)

Dr. Rotman referred Petitioner for an EMG and nerve conduction study with Dr. Daniel Phillips, which was performed the same day. (PX7) Similar to his responses on Dr. Rotman's intake sheets, Petitioner indicated symptoms from his left elbow down to his fingers on Dr. Phillips' intake sheets. *Id.* On question two of Dr. Phillips' intake sheets, Petitioner was asked, "When did your symptoms begin?" and Petitioner wrote "N/A" in response. *Id.* On question five, "Have you had similar symptoms in the past?" Petitioner circled "no." *Id.* Dr. Phillips indicated that there was severe chronic bilateral sensorimotor median neuropathy across the carpal tunnels. *Id.*

Dr. Rotman's impression was that Petitioner did not have a wrist sprain or injury from September 5, 2023. (PX6 p. 3) He felt Petitioner's complaints were related to carpal tunnel and noted that this was chronic and rather significant on both sides. *Id.* He felt Petitioner needed surgery on both of his carpal tunnels or he would develop thenar atrophy. *Id.* He stated that Petitioner's symptoms had been going on for five to six years and that this would be correct considering the severity of Petitioner's findings on his nerve studies. *Id.* He felt Petitioner was quite young to have this type of advanced carpal tunnel and noted that he had no family history of carpal tunnel. (RX6 p. 3) Dr. Rotman did not see any specific risk factors other than Petitioner's several years of heavy hand use. *Id.* He recommended bilateral simultaneous endoscopic carpal tunnel releases. *Id.*

On November 9, 2023, Petitioner presented to the office of Dr. Matthew Bradley with symptoms of bilateral hand numbness and tingling. (PX8 p. 2) He also had clicking on the medial aspect of his elbow, more so on the left than on the right, which created forearm numbness and tingling as well as small finger numbness and tingling with burning. *Id.* He reported that his symptoms had been present for several months but had become significantly worse over the last month while working. *Id.* He denied a history of similar symptoms prior to the previous five or six months. *Id.* Petitioner indicated that he worked in the coal mines as a roof bolter and demonstrated his repetitive activities in the clinic for Dr. Bradley. (PX8 p. 2) He reported that he had worked in the coal mines for approximately 14 years performing these activities. *Id.* He stated that his company had referred him to Dr. Rotman and that Dr. Rotman recommended immediate surgery. *Id.*

On exam of the right and left elbows, Petitioner had pain to palpation over the medial epicondyle, tingling along the ulnar nerve distribution and over the small finger, and positive Tinel's. (PX 8 pp. 2-3) Exam of the bilateral hands and wrists showed numbness and tingling over the median nerve distributions, decreased sensation to light touch over the ulnar nerve distributions, and bilateral positive Phalen's and Tinel's testing. (PX8 p. 3) X-rays of the bilateral elbows and right hand/wrist showed no acute fractures or dislocations. *Id.* X-ray of the left hand/wrist showed an ulnar positive variance and old minimally displaced ulnar styloid fracture. (PX8 p. 4)

Dr. Bradley's assessment was left slightly greater than right carpal and cubital tunnel syndrome. (PX8 p. 4) He indicated that Petitioner's EMG showed severe carpal tunnel; however, he also had complaints of cubital tunnel going down his forearm and into his small finger. *Id.* Petitioner reported that the cubital tunnel happened when he was repetitively using his elbows. *Id.* Dr. Bradley noted that on the left, the nerve was relatively unstable and hyper mobile. *Id.* Dr. Bradley felt it was likely that Petitioner had carpal tunnel with a very unstable and hyper mobile nerve greater on the left than the right. (PX8 p. 4) He agreed with Dr. Rotman that given the severity of Petitioner's carpal tunnel, non-operative treatment was not likely to give him significant relief. *Id.* Dr. Bradley indicated that surgery would be planned to correct both Petitioner's carpal tunnel and unstable ulnar nerve on the left, followed by the right if it continued to be problematic. *Id.* Dr. Bradley indicated that a work restriction form was completed, although it was his understanding that Petitioner "had to quit his job for various reasons." *Id.* Dr. Bradley opined that the more than 14 years of working in the coal mines at least contributed to and was causally related to Petitioner's bilateral hand numbness and tingling and diagnosis of bilateral carpal and cubital tunnel syndromes, as well as his need for treatment. (PX8 p. 4)

On November 22, 2023, Petitioner underwent surgery with Dr. Bradley in the form of a left open carpal tunnel release and cubital tunnel release with ulnar nerve transposition. (PX10) The cubital tunnel was released all the way proximally and distally and was reduced in diameter approximately 25% across the cubital tunnel. (PX10 p. 3) It was dissected proximally to the intermuscular septum and distally to the fascia. *Id.* There was no further stricturing appreciated;

however, when the elbow was flexed to 90 degrees, the nerve was unstable and transposing over the medial epicondyle. *Id.* At that point, Dr. Bradley felt that ulnar nerve transposition was necessary and same was performed. *Id.* At the carpal tunnel, it was noted that the nerve was flat but was normal in color and texture. (PX10 p. 3) The transverse carpal ligament was released all the way proximally and distally and adhesions were removed. *Id.*

At Petitioner's initial postoperative appointment with Dr. Bradley on December 7, 2023, his left extremity was doing well. (PX8 p. 10) He had some stiffness and weakness to grip, but Dr. Bradley felt that this would likely resolve with a home exercise program. *Id.* His numbness and tingling had resolved. *Id.* He was kept on light duty for an additional two weeks, after which he could return to full duty. (PX8 p. 12)

Dr. Bradley noted that Petitioner's right upper extremity symptoms were unchanged. *Id.* He indicated that Petitioner's small finger had symptoms that were reproduced with repetitive bending and extending of the elbow. *Id.* He felt Petitioner suffered from a hyper mobile nerve which led to his symptoms. *Id.* He noted that Petitioner EMG and nerve conduction study did not illicit a frank cubital tunnel; however, Dr. Bradley felt his symptoms were more from an unstable nerve rather than true cubital tunnel on the right. (PX8 p. 12) He recommended a right carpal tunnel decompression and ulnar nerve transposition. *Id.*

On December 20, 2023, Petitioner underwent an open right carpal and cubital tunnel release with Dr. Bradley. (PX11) Intraoperatively, the cubital tunnel was thickened with inflammatory tissue and adhesions to the underlying ulnar nerve. (PX11 p. 3) The cubital tunnel was released all the way proximally and distally and the nerve was decreased in size by approximately 50% as it went to the cubital tunnel. *Id.* When no further stricturing was appreciated, the elbow was placed through full range of motion, and the nerve maintained its normal and atomic position behind the medial epicondyle. *Id.* At the carpal tunnel, the transverse carpal ligament was noted to be thickened, and it opened up in excess of one centimeter upon complete release. *Id.* The nerve had a flattened appearance but was normal in color and texture. (PX11 p. 3) It was gently retracted, medially and laterally and adhesions were taken down. *Id.*

Petitioner returned to Dr. Bradley on January 5, 2024, and reported that he felt significantly better than he did preoperatively. (PX8 p.18) He still had a little bit of stiffness, but no significant pain. *Id.* His preoperative symptoms of numbness and tingling had significantly resolved. *Id.* Dr. Bradley allowed Petitioner to return to work in a light duty capacity for two weeks, after which he could return to full unrestricted duty. (PX8 p. 19) He instructed Petitioner to return in four to five weeks, at which point consideration would be given to maximum medical improvement. *Id.*

On February 26, 2024, Petitioner returned to Dr. Bradley and reported that he was doing extremely well following his surgeries. (PX8 p. 20) He still had some tenderness at the incision on the right but this did not bother him to a significant degree. *Id.* His preoperative symptoms of

numbness, tingling and burning had resolved. *Id.* He was instructed to return to work full duty without restrictions and was placed at maximum medical improvement. (PX8 p. 22)

PRE-ACCIDENT RECORDS

Respondent submitted pre-accident medical records at Arbitration. On May 19, 2023, Petitioner presented to SIH Harrisburg Primary Care where he was seen by Dr. Brent Jones to establish care as a new patient. (RX5 p. 3) He was evaluated for shiftwork sleep disorder and was placed on Nuvigil. *Id.* He reported a history of bilateral hand numbness. *Id.* He stated he did not have arm pain; however, he had some neck pain into the shoulders bilaterally. *Id.* He had no previous injury and no weakness. (RX5 p. 3) The assessment was bilateral hand numbness, and Dr. Jones questioned whether this was cervical radicular pain versus carpal tunnel. *Id.* He ordered x-rays of the cervical spine as well as a nerve conduction test and indicated he would treat Petitioner based upon the findings. *Id.* X-rays of cervical spine performed that same day showed no acute abnormality of the cervical spine. (RX5 p. 20)

On June 17, 2023, Petitioner returned to Dr. Jones for his shiftwork sleep disorder, GERD and bilateral hand numbness. (RX5 p. 10) Regarding the hand numbness, Dr. Jones indicated that Petitioner had not been contacted about doing the nerve conduction study. (RX5 p. 11) He noted that Petitioner presented with hand pain and worsening numbness in both hands. *Id.* He felt his right side was worse than his left, and he had significant pain and numbness on the right with decreased grip strength. *Id.* He had right shoulder pain as well. *Id.* On exam, Petitioner was tender to palpation in the right upper paraspinals and rhomboids with some reproduction of his symptoms with radiation down the ulnar; however, most symptom reproduction was noted with Tinel's and Phalen's at the wrist on the right. (RX5 p. 13) No spinal tenderness was present. *Id.* Dr. Jones indicated that he would check on the nerve conduction study and noted that Petitioner likely had carpal tunnel syndrome plus some right shoulder pain. (RX5 p. 10) He was given Flexeril and prednisone. *Id.*

APRIL 1, 2024, ADDENDUM REPORT AND DEPOSITION OF DR. ROTMAN

On April 1, 2024, Dr. Rotman issued an addendum report addressed to counsel for Respondent. (RX7) He reiterated that Petitioner's carpal tunnel syndrome was not related to any incident that occurred on September 5, 2023. *Id.* He stated that Petitioner had chronic and significant bilateral carpal tunnel syndrome but did not feel that Petitioner had findings suggestive of cubital tunnel. *Id.*

Dr. Rotman reviewed records from Dr. Jones and Dr. Bradley. *Id.* He summarized the May 19 and June 17, 2023, records of Dr. Jones, including Petitioner's physical exam but omitted Dr. Jones' notation in his June 17, 2023, exam which stated that Petitioner had reproduction of his symptoms with radiation down the ulnar nerve. (RX7) Dr. Rotman stated that Petitioner's visit with Dr. Bradley was "the first mention of cubital tunnel in any of the records." *Id.*

He opined that there were no findings suggesting cubital tunnel in his October 10, 2023, exam and that it was unlikely Petitioner would have developed unstable painful ulnar nerves in the one month following his exam. *Id.* He opined that Petitioner had several years of numbness and tingling complaints, and that it was not possible to have developed chronic advanced cubital tunnel from two months of working as a roof bolter. *Id.* He stated that Petitioner's bilateral carpal tunnel was not a result of his work activities, as he believed that Petitioner had not worked in the mine long enough for same to be an aggravating factor for chronic advanced bilateral carpal tunnel. (RX7) He believed that if Petitioner truly had cubital tunnel, conservative care should have been instituted; however, he believed that Petitioner's bilateral carpal tunnel releases were reasonable. *Id.*

Dr. Rotman testified via deposition on June 13, 2024. (RX1) On direct examination, Dr. Rotman testified that Petitioner was referred to him through Rockwood casualty and the mine in which Petitioner was working. (RX1 p. 6) Dr. Rotman testified that he was familiar with the job duties of a roof bolter. (RX1 p. 7) Although he felt Petitioner's complaints were "a little bit magnified," he admitted that Petitioner had medial elbow discomfort over the medial epicondyle. (RX1 p. 9) He testified that Petitioner's carpal tunnel tests were equivocal, that Petitioner's clinical exam was essentially negative, and that he had to get the information from the nerve study that was ordered that day. *Id.* Dr. Rotman testified that Petitioner did not have an injury on September 5, 2023 and that he simply had chronic carpal tunnel. (RX1 p. 10)

On cross-examination, he testified that he charges $1,900 per deposition, and performs one to two depositions per week, all of which in Illinois are at the request of the defense. (RX1 pp. 18-19) Dr. Rotman testified that he did not believe Petitioner called his office to make an appointment, but believed it was one of Respondent's representatives that did so. (RX1 pp. 19-20) Dr. Rotman testified that Petitioner had never underwent an EMG and nerve conduction study prior to the one that he ordered on October 10, 2023. (RX1 pp. 22-23) He testified that Respondent had approved the nerve study. (RX1 p. 23)

He testified that carpal and cubital tunnel conditions can be cumulative. (RX1 p. 29) He testified that if someone has severe carpal tunnel, it may not take a whole lot of activity to have symptoms from carpal tunnel. (RX1 pp. 29-30) He stated that individuals that do heavy repetitive activities can have an aggravation of symptoms that lead to the need for carpal tunnel surgery. (RX1 pp. 29-30) He stated that some people do not have symptoms until their carpal tunnel is at a severe stage. (RX1 p. 30) He testified that Petitioner performed heavy hand work over the course of his 14 year work history and various coal mines. *Id.* He believed that the totality of Petitioner's work was an aggravating factor in his condition. *Id.* He testified that Petitioner did not have any other comorbid risk factors other than several years of heavy hand use. (RX1 p. 31) He testified that Petitioner did "good" after surgery and was given a full duty work release. *Id.*

DOCUMENTARY EVIDENCE

A work history timeline provided by Petitioner indicated that he had worked for seven years for Alliance / Hamilton Co. Coal as a roof bolter. (PX12 p. 5) He indicated that he had worked for one year for Viking mining as a roof bolter. *Id.*

Petitioner submitted a detailed job description for a coal miner/roof bolter and indicated that a roof bolter drills holes in the top at specified distances, then installs glue tubes and roof bolts with plates into drilled holes for roof support. (PX12 p. 1) He stated that this was a repetitive process that normally lasted for an entire eight hour shift and that hundreds of holes could be drilled during each shift. *Id.* Pushing and pulling duties included pulling the glue tubes from a bundle and roof bolts from a stack then pushing each into the drilled hole. *Id.* He indicated that he performed constant bending in order to pick up concrete blocks, power cables, tools and other related objects. (PX12 p. 2) He wrote that as a roof bolter, his hands and arms are above the shoulder during installation of bolt cables, ventilation tubes, wire mesh, and other related objects. *Id.* He performed gross manipulation with his hands while loading or installing bolting materials, handling power cables, and building concrete block walls. *Id.* He stated that while drilling holes, an operator must handle drills, tools, and drilling wrenches. *Id.* He indicated that during the drilling of each hole, a joystick and series of levers must be manipulated with tremendous accuracy. (PX12 p. 3) He stated that hundreds of bolts and plates, as well as several bundles of glue must be loaded by hand onto the miner's tray. *Id.*

An attendance calendar submitted as Respondent's exhibit 4 showed that Petitioner was employed by Respondent from March 27, 2023, through October 15, 2023. (RX4)

DEPOSITION OF DR. MATTHEW BRADLEY

Dr. Bradley testified via deposition on May 29, 2024. (PX13) Dr. Bradley is a board-certified orthopedic surgeon who performs carpal and cubital tunnel surgeries every week. (PX13 pp. 4-5) He testified consistently with his medical records.

He testified that following Petitioner's examination, he was given a diagnosis of bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome secondary to unstable ulnar nerve. (PX13 p. 7)

Dr. Bradley testified that the nerve conduction study was positive for severe carpal tunnel bilaterally but was negative for cubital tunnel. (PX13 pp. 6-7) When asked to explain why the electrodiagnostic studies were negative for carpal tunnel but his examination was positive, he replied:

> So cubital tunnel technically is where the cubital tunnel nerve or the ulnar nerve is actually being squeezed and compressed, similar to what carpal tunnel is on the carpal tunnel nerve. In his case, he didn't truly have cubital tunnel in that the nerve was being compressed or squeezed on; he had an unstable ulnar nerve. So when he

> would move his arm at a certain spot, his ulnar nerve or his cubital tunnel nerve would flip over the bone on the inside of his elbow. And it gives the exact same symptoms and the exact same findings on physical examination that a cubital tunnel would, with the exception being that on examination, the nerve can be felt to be unstable in an unstable nerve, where in a regular cubital tunnel it would not be unstable. But the findings are very similar on physical examination. On EMG and nerve conduction studies, they'll pick up a compressed nerve at cubital tunnel, but a lot of times an unstable ulnar nerve will be normal on an EMG. (PX13 pp. 7-8)

He testified that this is what happened in Petitioner's case, as he operated on Petitioner, demonstrated that his nerve was unstable, fixed him, and all Petitioner's symptoms improved. (PX 13 pp. 8-9)

He testified that he reviewed Dr. Rotman's initial note as well as his addendum and that he agreed with Dr. Rotman that Petitioner's September 5, 2023, incident did not cause his carpal or cubital tunnel. (PX13 p. 9) He testified that he reviewed Petitioner's detailed job description and work history timeline and stated that he has treated many roof bolters over the past five years. (PX 13 pp. 9-10)

Dr. Bradley agreed with Dr. Rotman that given the severity of Petitioner's carpal tunnel syndrome, non-operative treatment was not likely to help and could put Petitioner at risk for permanent damage. (PX13 p. 11) He testified that intraoperatively on the left, Petitioner's carpal tunnel was thickened, and his nerve was flattened, and at the elbow the nerve popped over the medial epicondyle, proving that it was unstable. (PX13 p. 12) He stated that these findings were what Petitioner's physical examination indicated preoperatively. *Id.* He testified that intraoperatively on the right, Petitioner's carpal tunnel was thickened which caused pressure on the nerve, and that the ulnar nerve was narrowed and decreased in diameter approximately 50%. *Id.* However, there was no significant instability on the right and he was able to leave the nerve where it was once the scar tissue was cleaned. (PX13 pp. 12-13)

With regard to causation, Dr. Bradley testified:

> When I reviewed, you know, his work history timeline, and particularly more importantly the detailed job description that he did, it becomes very apparent that this gentleman utilizes his bilateral wrists and hands very repetitively, very forcefully, all day, every day, at his work. When you add up the 14 years that he has been working in various mines or various capacities in these mines, I think it's very clear that, you know, the 14 years is at least contributed to the development of his carpal or cubital tunnel. When you look at his medical history, he doesn't have any other comorbidities. He's not a female of advancing age; he doesn't have diabetes; he doesn't have thyroid disorders. This guy has nothing else to explain his development of carpal and cubital tunnel syndrome other than the repetitive work he had done for 14 years within the mines. (PX13 pp. 13-14)

He testified that the treatment rendered to Petitioner for his bilateral carpal and cubital tunnel syndrome was a direct result of and related to his work activities. (PX13 pp. 14-15)

On cross-examination, Dr. Bradley was asked if the last six months of Petitioner's career while working at Viking caused his carpal and cubital tunnel syndrome, to which he replied:

> I would say six months of working as a roof bolter at Viking certainly contributed to it. I think that, you know, the jobs he was with with Alliance as a roof bolter before that, you know, also contributed, but I certainly think the six months he was at Viking contributed to it as well. (PX13 p. 17)

Regarding Petitioner's cubital tunnel, Dr. Bradley testified that this was not a simple cubital tunnel where the nerve was being compressed but was a case of the nerve being hyper mobile. (PX13 pp. 19-20) He explained that when the nerve flips over the bone time and time again, the body reacts by forming scar tissue and adhesions. *Id.* However, he stated that there was definitely compression at the cubital tunnel, as the nerve was 25% reduced in diameter on the left and 50% reduced in diameter on the right. (PX13 p. 20)

Regarding Dr. Rotman's report where he indicated in the history of present illness that Petitioner had numbness and tingling in his hands going all the way up to his medial elbow and into his forearm, Dr. Bradley testified Dr. Rotman's description seemed to be that of classic cubital tunnel syndrome. (PX13 pp. 21-22)

TESTIMONY OF RANDY FUQUA

Petitioner called Mr. Fuqua, who was sitting next to counsel for Respondent at Arbitration, to testify. (Tr. p. 52) Mr. Fuqua is the production manager at Respondent's Viking facility. (Tr. p. 53) He testified that he has worked with Petitioner and that Petitioner is a good employee. (Tr. pp. 53-54) He did not disagree with any of Petitioner's testimony concerning his job description as a roof bolter. (Tr. p. 54) Respondent did not cross-examine Mr. Fuqua. *Id.*

PETITIONER'S TESTIMONY - CONTINUED

At the time of Arbitration, Petitioner was employed with NCW, a contract company for installing solar panels, and had been employed in this capacity for two to three months. (Tr. pp. 18-19) His last date of employment with Respondent was October 14, 2023. (Tr. p. 34)

Petitioner testified that his symptoms had not reached the point to get medical treatment until he saw Dr. Jones on May 19, 2023. (Tr. pp. 36-37) Petitioner testified that at that time, he believed his hand symptoms were related to his job activities; however, when Petitioner was asked when he made the association between his job activities and his symptoms, he stated that he did not know. (Tr. pp. 39-40) On cross-examination, Petitioner was asked to estimate how long he had hand numbness prior to seeing Dr. Jones on May 19, 2023, and Petitioner responded that he could not recall. (Tr. p. 38) When pressed by Respondent to estimate, Petitioner guessed that it was

"probably about four months." *Id.* Petitioner testified that his symptoms at that time would "come and go" and that he "just wasn't thinking nothing [sic] of it." (Tr. p. 36) He testified that he felt symptoms prior to working for Respondent but when his symptoms came on, he shook his hands and went on with his job, lived with the symptoms and kept working. (Tr. p. 50) He stated that his symptoms were not "that bad" until he twisted the bolt. (Tr. p. 36)

Petitioner testified that Dr. Phillips' report which indicated Petitioner had a five-year history of right hand symptoms was incorrect, and that he told Dr. Phillips that he had noticed symptoms three to five months prior. (Tr. pp. 42-43)

Petitioner testified that he prepared the work history timeline and job description that is marked as Petitioner's exhibit 12. (Tr. pp. 30-31) He testified that roof bolting is a difficult job, as it involves lifting, gripping, pushing, pulling, and tugging. (Tr. p. 31) He testified that you use your whole body for the job, including arms, back, legs and neck. *Id.*

Petitioner testified that right before his surgeries, he had symptoms of pain, numbness, aching and loss of strength. (Tr. pp. 28-29)

Petitioner testified that the surgeries improved his condition, and he is happy with the outcome of his surgeries. (Tr. pp. 29-30, 33) Despite his improvements, he still has residual symptoms of soreness when using his hands as well as diminished strength. (Tr. pp. 29-30) For his symptoms, he takes Tylenol or Advil as needed. (Tr. p. 30) His hobbies of fishing, lifting and playing with his son have been adversely affected due to his symptoms. *Id.*

CONCLUSIONS OF LAW

Issue (D): What was the date of the accident?
Issue (O): What is the manifestation/accident date?
Issue (E): Was timely notice of the accident given to Respondent?

Respondent disputes accident/manifestation date and notice with regard to case number 23WC30906, relating to an alleged manifestation/accident date of October 6, 2023. (AX5; Tr. pp. 8-10)

In repetitive trauma cases, courts have employed a flexible-but-fair standard that allows claimants to choose the manifestation date. The manifestation date can be set as: (a) the date the employee actually became aware of the physical condition and its relation to work through medical consultation; (b) the date the employee requires medical treatment; (c) the date on which the employee can no longer perform work activities; or (d) when a reasonable person would have plainly recognized the injury and its relation to work. *Durand v. Industrial Commission*, 224 Ill.2d 53, 862 N.E.2d 918 (Ill. 2007), see also Peoria County Belwood Nursing Home v. Industrial Commission, 115 Ill.2d 524, 505 N.E.2d 1026 (Ill. 1987); *Oscar Mayer & Co. v. Industrial*

Commission, 176 Ill.App.3d 607, 531 N.E.2d 174 (3rd Dist. 1988); *Three "D" Discount Store v. Industrial Commission*, 198 Ill.App.3d 43, 556 N.E.2d 261 (4th Dist. 1989).

Although a claimant is aware of symptoms and carries a suspicion that these are work-related, the Supreme Court has stated, "The 'fact of injury' is not synonymous with the 'fact of discovery'" *Durand*, N.E.2d at 927. In short, claimants are not charged with filing a claim as soon as they believe they may have a work-related condition, nor are they penalized for failing to realize a condition is work-related when the employer feels that he or she should have. In fact, the Supreme Court stated that to rely solely on a claimant's testimony concerning symptoms, without accurate knowledge of the cause of those symptoms, would essentially be asking them to "rely on 'expert' medical testimony from a layperson." *Id*. at 929. The Court likewise noted that the claimants would have had difficulty proving injury with a sketchy and equivocal understanding of same. *Id*. at 930. The standard that "the 'fact of injury' is not synonymous with the 'fact of discovery'" has since become a safety measure employed by all Courts to ensure that the employers do "penalize an employee who diligently worked through" his or her symptoms. *Durand v. Indus. Comm'n*, 862 N.E.2d at 927, 930.

Furthermore, the law holds that differences between a claimant's testimony and other parts of the records are not fatal to a claim. See *Danny Farris v. Phoenix Corp. of Quad Cities*, 11 I.W.C.C. 0610 (2011), aff'd by *Farris v. Illinois Workers' Comp. Comm'n*, 2014 IL App (4th) 130767WC, 22 N.E.3d 54; *Jennifer Stronz v. Alexian Brothers Medical Center*, 07 I.W.C.C. 0289 (2007); *Jamie Blommaeet v. Ford Motor Co*., 06 I.W.C.C. 0682 (2006). A claimant's testimony should not be expected to exactly mirror medical proofs due to the fact that the burden of proof is the preponderance of the evidence and inconsistency and error is inherent in the history taking process. *Blommaeet*, 06 I.W.C.C. 0682 (2006); *Danny Farris v. Phoenix Corp. of Quad Cities,* 11 I.W.C.C. 0610 (2011), aff'd by *Farris v. Illinois Workers' Comp. Comm'n*, 2014 IL App (4th) 130767WC, 22 N.E.3d 54.

In *Three D. Disc. Store*, the respondent argued that the petitioner failed to give timely notice of his injury. *Three D Disc. Store v. Indus. Comm'n*, 198 Ill. App. 3d 43, 50, 556 N.E.2d 261, 266 (1989) The Court referenced Section 6(c) of the Workers' Compensation Act, which provides in pertinent part:

> "Notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident. * * *
> 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." Ill.Rev.Stat.1983, ch. 48, par. 138.6(c).

The claimant in that case initially sought medical treatment in January 1984. *Three D Disc. Store v. Indus. Comm'n*, 198 Ill. App. 3d 43, 50, 556 N.E.2d 261, 266 (1989) It was in May and

June 1984 that petitioner's condition had deteriorated to the point that his family doctor referred him to a medical specialist. *Id.* He underwent an EMG study, which suggested carpal tunnel, on June 27, 1984. *Id.* On July 10, 1984, he first saw an orthopedic surgeon regarding his condition and "it became clear that petitioner's condition necessitated surgery." *Id.* The Court found that Petitioner's injury manifested itself on July 10, 1984, and that he had until August 24, 1984 to give timely notice to his employer. *Id.* Since he had given notice in the time period, it was found that his notice fell within the statutory period. *Id.*

As the Appellate Court in *A.C. & S.* noted, the Supreme Court deliberately modified the standards for determining the date of injury for repetitive trauma cases in order provide protection for injured workers. *A.C. & S. v. Industrial Commission*, 304 Ill. App. 3d 875, 880, 710 N.E.2d 837, 840–41 (1999). It has even been permissible to change the date of accident during litigation as long as doing so would not prejudice the employer. See *Steven Beal v. Town of Normal*, 06 IL.W.C. 25261, 10 I.W.C.C. 0380 (2010). "The purpose behind the Workers' Compensation Act is best served by allowing compensation where an injury is gradual but linked to the employee's work." *Durand*, 862 N.E.2d at 925, 224 Ill. 2d at 66.

Under workers' compensation law, the date on which the employee notices a repetitive-trauma injury is not necessarily the manifestation date, and instead, the date on which the employee became unable to work, due to physical collapse or medical treatment, helps determine the manifestation date for limitations purposes. *Durand v. Indus. Comm'n*, 224 Ill. 2d 53, 862 N.E.2d 918 (2006)

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 syndrome 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 the instant case, Petitioner credibly testified that he reported the increase in symptoms to manager Sam Gulley on October 6, 2023, and that he filled out reports or documents relating to same. (Tr. pp. 23-24, 46, 47) Respondent did not produce Petitioner's supervisor, manager or any other witnesses to refute that Petitioner reported the incident. The only other witness at trial, Mr. Fuqua, who was sitting next to counsel for Respondent at Arbitration, was called to testify by Petitioner. (Tr. p. 53) Mr. Fuqua testified that he is in a management position for Respondent, that he has worked with Petitioner, that Petitioner is a good employee and that he did not disagree with Petitioner's testimony concerning his job duties. (Tr. pp. 53-54) Respondent had an opportunity to examine or cross-examine Mr. Fuqua concerning the issue of notice but chose not to do so. (Tr. p. 54)

The Arbitrator notes that Petitioner also specifically named Mr. Gulley as the person he gave notice to at the time of his September 5, 2023, accident, and Respondent did not dispute notice for that date of incident. (Tr. pp. 22-23, 47) Therefore, aside from Petitioner's credible testimony, the fact that he again specifically named Mr. Gulley as the person he gave notice to on October 6, 2023, also demonstrates evidence that this is in fact what took place.

Petitioner testified that following his report of injury on October 6, 2023, he was referred by his employer to Dr. Rotman. (Tr. p. 24) Dr. Rotman stated that Petitioner's job as a roof bolter required heavy hand-intensive activities and that Petitioner's only risk factors for bilateral carpal tunnel were his years of heavy hand use. (RX6) Therefore, although there is ample evidence that Petitioner gave proper notice to his manager on October 6, 2023, even if he would not have done so, Respondent would have been notified of Petitioner's condition in relation to work through the physician it chose to treat Petitioner.

Regarding the dispute over the accident/manifestation date, the Arbitrator notes that although Dr. Rotman and Dr. Phillips noted that Petitioner had symptoms in the five or six years prior, Petitioner made no such indications on his intake paperwork to either physician. (RX1, Pet. Ex. 1; PX7) In fact, on Dr. Rotman's paperwork, he indicated that he was working for Respondent when he developed the problem. (RX1, Pet. Ex. 1) Petitioner testified at trial that he told Dr. Phillips that he had noticed symptoms three to five months prior (in approximately May/July of 2023) and that Dr. Phillips' notation of symptoms five years in the past was incorrect. (Tr. pp. 42-43) At Arbitration, Petitioner could not recall how long he had hand symptoms prior to May 2023. (Tr. p. 38) When asked to make an estimation by Respondent, he thought it was probably about four months. *Id.* Additionally, Dr. Bradley's November 9, 2023, note indicated that Petitioner did not have similar symptoms previous to the past five or six months, which would correspond to approximately May/June 2023. (PX8 p. 2)

Although there are some minor inconsistencies in Petitioner's symptom timeline relating to an *exact* month or date that his symptoms began, these only serve to prove that Petitioner had a gradual onset of symptoms that developed over time. See *Danny Farris, supra* and *PPG Indus. v. Illinois Workers' Comp. Comm'n*, 2014 IL App (4th) 130698WC, ¶ 19, 22 N.E.3d 48, 53.

In correlation with this, Petitioner explained during his testimony that his symptoms prior to May 2023, although present, would "come and go" and that he "just wasn't thinking nothing [sic] of it" during that time. (Tr. pp. 36-38) He testified that although he had some symptoms prior to working for Respondent, when he felt symptoms, he would shake out his hands and keep working. (Tr. p. 50) In fact, he testified that his symptoms were not "that bad" until he twisted the bolt in September 2023. (Tr. pp. 36-38)

There is no evidence that Petitioner ever sought treatment for his bilateral carpal and cubital tunnel symptoms prior to his employment with Respondent, which began in March 2023. (Tr. pp. 19-20) In fact, the records of Dr. Jones in May 2023 indicated that Petitioner had numbness in his hands but not weakness; however, in June 2023, his symptoms worsened, and he had decreased grip strength on the right, showing a progression of his symptoms after beginning employment with Respondent. (RX5 p. 11)

Although Petitioner testified that he believed his hand symptoms were related to his job at the time of his May 2023 visit with Dr. Jones, there is no mention that Dr. Jones or Petitioner discussed a diagnosis of carpal and/or cubital tunnel syndrome in relation to job duties at that time. (RX5 p. 3; T. 39, 40) Rather, Dr. Jones indicated that Petitioner's condition was radicular cervical pain verses carpal tunnel. (RX5 p. 3) At the June 2023 visit, Dr. Jones noted that Petitioner likely had carpal tunnel; however, he still made no reference to work and made no referrals to orthopedics for further treatment, as he indicated that Petitioner still needed a nerve conduction study. *Id.* Therefore, to force Petitioner to choose a manifestation date as early as May or June of 2023 would essentially require the Arbitrator to "rely on 'expert' medical testimony from a layperson." See *Durand, supra*.

The Arbitrator notes that the first time Petitioner's job duties are mentioned in relation to his hand/arm condition are when he sought emergency care on September 12, 2023. (PX3) However, even at that time, Petitioner believed his symptoms were related to a traumatic injury involving twisting a bolt/moving cable and he still did not have an actual diagnosis of carpal or cubital tunnel syndrome. (PX3) It was not until Petitioner's visit with PA Lee on September 18, 2023, that Petitioner's repetitive job duties are mentioned in connection with his symptoms. (PX4 p. 2) At that visit, he reported that he had been seeing his primary physician for issues regarding his hands but the symptoms he was experiencing on September 18, 2023, were worse than normal. *Id.* Moreover, it was at this visit that Petitioner was taken off work for the first time due to the fact that his repetitive work duties had worsened his pain. (PX4 p.8) Therefore, to choose a manifestation date prior to, at the very earliest, September 18, 2023, would be premature and tantamount to penalizing Petitioner's efforts to diligently work through his symptoms. See *Durand*, *supra*.

The Arbitrator notes that at the September 18, 2023, appointment with PA Lee, Petitioner was referred to physical therapy, which he completed on October 2, 2023. (PX5) He testified that

same did not help his condition, and just days later on October 6, 2023, Petitioner reported the increased symptoms relating to his repetitive duties to his supervisor. (Tr. pp. 23-24, 46) The Arbitrator finds that October 6, 2023, is a reasonable manifestation date, as Petitioner's efforts to improve his symptoms through physical therapy and to continue working had failed, and he then clearly recognized his injury in relation to his work.

Therefore, pursuant to the above facts and law, the Arbitrator finds October 6, 2023, to be a proper manifestation/accident date in relation to Petitioner's carpal and cubital tunnel syndrome, and that Petitioner gave proper notice of same to Respondent on October 6, 2023.

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?

Respondent disputes accident with regard to the dates of injury of September 5, 2023 (23WC30900) and October 6, 2023 (23WC30906). (T. 5, 6, 8-10) Respondent stipulated to accident with regard to date of accident September 12, 2023 (23WC30903). (T. 7, 8; AX3) Respondent disputes causation with regard to the accident dates of September 5, 2023 (23WC30900), September 12, 2023 (23WC30903) and October 6, 2023 (23WC30906). (T. 5-10)

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. To obtain benefits, a claimant must show that work activities are a cause of his or her condition; however, 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. *Dorhesca Randell v. St. Alexius Medical Center*, 13 I.W.C.C. 0135 (2013) citing *All Steel, Inc. v. Indus. Comm'n*, 582 N.E.2d 240 (1991); *Edward Hines Precision Components v. Indus. Comm'n*, 365 Ill.App.3d 186, 825 N.E.2d 773 (2005). A claimant's work may be varied but still considered repetitive, and exact quantitative evidence of the exact nature of repetitive work is not required to prove repetitive injury. *City of Springfield v. Illinois Workers' Comp. Comm'n*, 388 Ill.App.3d 297, 901 N.E.2d 1066, 327 Ill.Dec. 333 (2009); *Darling v. Industrial Comm'n*, 176 Ill.App.3d 186, 195, 530 N.E.2d 1135, 1142 (1988). Stated another way, "[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).

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 workday. *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 weightlifting outside of his employment. *See Kent Brookman v. State of Illinois/Menard Corr. Ctr.*, 15 I.W.C.C. 0707 (2015). In the repetitive trauma case of *Fierke*, the Appellate Court specifically held that non-employment related factors that contribute to a compensable injury do not break the causal connection between the employment and a claimant's condition of ill-being. *Fierke v. Indus. Comm'n*, 309 Ill.App.3d 1037, 723 N.E.2d 846 (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*.

The fact that the Commission and the Appellate Court recognized that a claimant's employment may not be the only factor in his or her development of a repetitive compressive peripheral neuropathy is consistent with the principle espoused by the Supreme Court that 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, 797 N.E.2d 665 (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, 723 N.E.2d 846 (3rd Dist. 2000). Employers are to take their employees as they find them. *A.C.& S. v. Industrial Comm'n*, 710 N.E.2d 837 (Ill. App. 1st Dist. 1999) citing *General Electric Co. v. Industrial Comm'n*, 433 N.E.2d 671, 672 (1982). The Supreme Court in *Durand v. Indus. Comm'n* noted that the purpose of the Illinois Workers' Compensation Act is best served by allowing compensation where an injury is gradual but linked to the employee's work. *Durand v. Indus. Comm'n*, 862 N.E.2d 918, 925 (2006).

An injury is also accidental within the meaning of the Act if "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, 300, 128 N.E.2d 718, 720 (1955).

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).

It is a well-known general fact that repetitive trauma injuries are cumulative and occur gradually over time, making the entire work history relevant. As the Commission noted in *Rachel Vasquez v. Menard Correctional Center*, the repetitive duties performed inflict "multiple micro-traumas" that are sustained on a daily over the course of a claimant's career. *Rachel Vasquez v. Menard Correctional Center*, 10 I.W.C.C. 0826 (2010).

The Commission has consistently recognized the aforementioned principle by (1) allowing recovery against the current employer with which the claimant was employed on the manifestation date, even when more than one employer may have been responsible for the repetitive injuries; and (2) by recognizing that compensable repetitive injuries manifest, persist, and even worsen in cases where the claimant has retired or switched employers. See *Lemes v. Peko Tile, Inc*, 07 I.W.C.C. 1545 (2007) (holding the current employer with which the injury manifested itself liable for the entire claim when both employers contributed to the development of the resulting injury); See *Rachel Vasquez v. Menard Correctional Center*, 10 I.W.C.C. 0826 (2010) (where claimant's condition did not improve after she switched to a non-repetitive job and the Commission held the previous employer liable after the termination of the employer/employee relationship); *Mastrangeli v. Illinois State Toll Highway Authority*, 12 I.W.C.C. 1371 (2012) (wherein claimant's condition worsened after retiring); See also *A.C.& S. v. Industrial Comm'n*, 710 N.E.2d 837 (Ill. App. 1st Dist., 1999); and *White v. Illinois Workers' Compensation Comm'n* 873 N.E.2d 388 (Ill. App. 4th Dist. 2007) (holding that repetitive injuries can manifest after the termination of the employer/employee relationship).

With respect to the instant cases, the Arbitrator notes the following:

September 5, 2023, Claim

Regarding Petitioner's September 5, 2023, accident, both Dr. Rotman and Dr. Bradley felt that the September 5, 2023, incident did not cause his carpal and/or cubital tunnel. (PX6; RX1, p. 10; PX13 p. 9) The Arbitrator agrees; however, notes that Petitioner credibly testified that he had symptoms on September 5, 22023,when he twisted the bolt, that his left wrist popped, and that his hand symptoms were not "that bad" until he twisted the bolt. (Tr. pp. 21-22, 36, 38) He also reported the incident to his employer; however, did not seek medical treatment. (Tr. pp. 22-23, 47) Therefore, the Arbitrator finds that on September 5, 2023, Petitioner suffered an aggravation, albeit minor, of his not-yet-diagnosed carpal and cubital tunnel syndromes. However, in agreement with Dr. Rotman and Dr. Bradley, the Arbitrator finds that the September 5, 2023, accident did not cause Petitioner's carpal and cubital tunnel syndromes and therefore, the September 5, 2023, accident is not causally related to Petitioner's current condition of ill-being.

September 12, 2023, Claim

With respect to Petitioner's September 12, 2023, claim, Respondent does not dispute accident but disputes causal connection. (AX1; Tr. pp. 7-8) Akin to his September 5, 2023, claim, the Arbitrator notes that on September 12, 2023, Petitioner experienced symptoms while twisting a bolt and moving a cable, which resulted a pop in his left wrist. (AX3; Tr. pp. 22-23, 48) Although Petitioner's carpal and cubital tunnel were not caused by the September 12, 2023, accident, the increase in Petitioner's symptoms due to the accident he sustained on that date did cause him to seek medical treatment at that time in the form of an ER visit, a visit with PA Lee, and physical therapy. (PX3; PX4; PX5) It was only when Petitioner's symptoms did not improve following therapy that he filed a claim for repetitive injuries. (Tr. p. 23) Therefore, Petitioner's condition of ill-being from September 12, 2023, through October 6, 2023, is causally related to his September 12, 2023 injury.

October 6, 2023, Claim

With respect to the October 6, 2023 claim, the Arbitrator notes that in his April 1, 2024 report, Dr. Rotman stated that he did not believe that Petitioner had worked in the mine long enough for same to be an aggravating factor; however, during his deposition, he admitted that some people do not have symptoms until their carpal tunnel is at a severe stage and that if someone has severe carpal tunnel, it may not take much activity to produce symptoms. (RX7; RX1, pp. 29-30)

Additionally, the Arbitrator notes that Dr. Rotman opined Petitioner had been performing hand-intensive activities as a roof bolter for 14 years, that he was quite young to have such advanced carpal tunnel, and that he had no family history or any other specific risk factors for the development of same other than his many years of heavy hand usage. (RX6 p. 3) During his deposition, he testified that individuals that do heavy repetitive activities can have an aggravation of symptoms that lead to the need for surgery, and that the totality of Petitioner's work was an

aggravating factor in his condition. (RX1, pp. 29-31) Despite stating that the "totality" of Petitioner's work was an aggravating factor, Dr. Rotman still completely excluded Petitioner's work for Respondent has a factor, despite the fact that no medical evidence suggests that Petitioner ever sought treatment for his symptoms until the time of his employment with Respondent. *Id.*

The Arbitrator finds the opinions of Dr. Bradley to be more logical and persuasive than those of Dr. Rotman, as he agreed that Petitioner's 14 years of performing roof bolting contributed to his condition; however, unlike Dr. Rotman, Dr. Bradley opined that Petitioner's heavy repetitive duties while working for Respondent were also a part of the total causality of his condition. (PX13, pp. 13-14, 17) Dr. Bradley's opinion is in line with not only the medical evidence, but existing Illinois law that requires employers to take their employees as they find them and that the current employer is responsible for the entire claim even where past employers contributed to an injury. See *A.C.& S.* and *Lemes, supra.*

With regard to Petitioner's diagnosis of cubital tunnel syndrome, the Arbitrator finds that Petitioner's diagnosis of same in relation to work is certainly reasonable. The Arbitrator notes Dr. Bradley's opinion that Petitioner's cubital tunnel stemmed from a hyper mobile nerve, that a hyper mobile nerve causes scar tissue and adhesions, that an EMG can show compression but many times an unstable ulnar nerve will appear normal, and that Petitioner's nerve was unstable intraoperatively and that his symptoms improved once this was addressed. (PX13, pp. 7-9, 19, 20) The Arbitrator finds Dr. Bradley's opinions in this regard more logical and persuasive than those of Dr. Rotman.

Specifically, the Arbitrator notes that in his April 1, 2024, report, Dr. Rotman stated that Petitioner's visit with Dr. Bradley was "the first mention of cubital tunnel in any of the records," and that there were no findings of cubital tunnel in his own exam of October 10, 2023. (RX7) Although Dr. Rotman is correct in that the specific words "cubital tunnel" do not appear in the records until Petitioner was seen by Dr. Bradley, there are numerous instances of elbow findings and symptoms consistent with cubital tunnel in the records that predate Petitioner's visit with Dr. Bradley. Namely, the records of PA Lee documented shooting pain up the forearm and stabbing in the left elbow, and occupational therapy records noted that Petitioner had constant, increasing throbbing in his wrist and elbow. (PX4 p. 2; PX5 p. 3) Additionally, in his April 1, 2024, addendum, Dr. Rotman summarized the June 2023 exam with Dr. Jones but omitted Dr. Jones' notation that Petitioner had reproduction of his symptoms down the ulnar nerve. (RX5; RX7) Interestingly, despite stating that his examination produced no findings suggestive of cubital tunnel, Dr. Rotman's exam did in fact show significant discomfort at the left medial elbow at the medial epicondyle, which is similar to Dr. Bradley's exam findings of symptoms in the medial epicondyles of Petitioner's bilateral elbows, and Dr. Bradley testified that Dr. Rotman's exam seemed to be that of cubital tunnel syndrome. (PX6; PX8 p. 3; PX13, pp. 21, 22)

Moreover, Dr. Bradley's intraoperative findings confirmed stricturing, compression and instability at the ulnar nerve on the left, and a thickened cubital tunnel with inflammatory tissue

and adhesions with 50% reduction of the ulnar nerve on the right, which maintained its normal position after being cleaned up. (PX10; PX11; PX13, pp. 12, 13)

Therefore, with respect to case number 23WC30906, pursuant to the above findings and law, the Arbitrator finds that Petitioner suffered accidental injuries relating to bilateral carpal and cubital tunnel syndromes with a manifestation date of October 6, 2023, and that his current condition of ill-being is causally related to his repetitive work activities with Respondent.

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

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

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

In the instant cases, Petitioner sought no medical treatment following the September 5, 2023 (23WC30900) incident. (T. 22, 23) Respondent disputes medical treatment for the dates of accident of September 12, 2023 (23WC30903) and October 6, 2023 (23WC30906).

With respect to Petitioner's emergency room visit of September 12, 2023, PA Lee's visit of September 18, 2023, and Petitioner's therapy from September 20, 2023 through October 2, 2023, the Arbitrator finds that this treatment was reasonable, necessary, and causally related to the increased symptoms he experienced as a result of twisting a bolt and moving a cable on that date.

Regarding Petitioner's treatment with Dr. Bradley and subsequent carpal and cubital tunnel surgeries in relation to his October 6, 2023, claim, the Arbitrator notes that Dr. Bradley and Dr. Rotman felt that nonoperative treatment would not benefit Petitioner and that he required immediate surgical intervention for his carpal tunnel syndrome. (PX6; PX8 p. 4) In the cubital tunnel, intraoperative findings that included an unstable ulnar nerve on the left that required transposition, as well as thickening, inflammatory tissue and adhesions in the right cubital tunnel, all demonstrate that Petitioner's surgical treatment concerning same was reasonable and necessary. (PX10; PX11; PX13, pp. 12, 13) Petitioner testified that the surgeries improved his condition and that he is happy with the outcome of same. (Tr. pp. 29-30, 33)

Therefore, pursuant to the above findings regarding causation, the Arbitrator finds that the medical treatment Petitioner received in relation to his September 12, 2023, case on September 12, 2023, September 18, 2023, and September 20, 2023 through October 2, 2023, was reasonable, necessary, and causally related to his September 12, 2023 accident.

Likewise, the medical treatment Petitioner received after October 6, 2023, including his carpal and cubital tunnel surgeries, was reasonable, necessary, and causally related to his October 6, 2023, accident. Therefore, the Arbitrator finds that Respondent is liable for the medical expenses as outlined in Petitioner's group exhibit 1.

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, 561 N.E.2d 623 (1990). The ability to do light or restricted work does not preclude a finding of temporary total disability. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 561 N.E.2d 623 (1990) citing *Ford Motor Co. v. Industrial Comm'n*, 126 Ill.App.3d 739, 743, 467 N.E.2d 1018 (1984).

In the instant cases, no temporary total disability benefits were claimed as a result of the September 5, 2023, accident. (AX1) Regarding the September 12, 2023, accident, the parties stipulated to the TTD period of 3 2/7 weeks, commencing September 18, 2023, through October 10, 2023. (AX3; Tr. pp. 7-8)

Respondent disputes TTD with regard to date of accident October 6, 2023. (AX5; Tr. pp. 8-10) Pursuant to the above findings on causal connection, the Arbitrator finds that Respondent is liable for the payment of TTD benefits for the period of 1 4/7 weeks, commencing November 22, 2023, to November 27, 2023, and from December 20, 2023 through December 26, 2023.

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

The nature and dispute of the injury is in dispute with regard to the accident dates of September 5, 2023 (23WC30900), September 12, 2023 (23WC30903) and October 6, 2023 (23WC30906).

Pursuant to § 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 are to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The

Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

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

(ii) **Occupation**: Petitioner no longer works for Respondent and is currently employed for NCW, where he installs solar panels. (Tr. pp. 18-19) The Arbitrator places little weight on this factor.

(iii) **Age**: Petitioner was 34 years of age at the time of his injury. He is a younger individual and must live and work with his disability for an extended period of time. Pursuant to *Jones v. Southwest Airlines*, 16 I.W.C.C. 0137 (2016) (wherein the Commission concluded that greater weight should have been given to the fact that Petitioner was younger [46 years of age] and would have to work with his disability for an extended period of time). Wherefore, the Arbitrator gives this factor some weight.

(iv) **Earning Capacity**: While there is no direct evidence of reduced earning capacity contained in the record; based on the severity of Petitioner's injuries, the requisite treatment, and the resulting disability, it is reasonable to conclude that such repercussions may manifest in the near future. However, the Arbitrator places little weight on this factor.

(v) **Disability**: As a result of his September 12, 2023, accident, Petitioner suffered injury to his left hand and arm. As a result of his repetitive injuries with a manifestation date of October 6, 2023, Petitioner suffered repetitive injuries to his bilateral hands and arms and eventually underwent surgical intervention in the form of a left open carpal tunnel release and left cubital tunnel release with ulnar nerve transposition, and an open right carpal and cubital tunnel release. (PX10; PX11) Despite the improvement gained from his surgeries, Petitioner still has soreness in his hands and diminished strength. (Tr. pp. 29-30) His activities of fishing, lifting, and playing with his son have been adversely affected by his symptoms, and he takes Tylenol or Advil to manage same. (Tr. p. 30) The Arbitrator places significant weight on this factor.

Based upon the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained serious and permanent injuries that resulted in the 12.5% loss of Petitioner's right hand, the 12.5% loss of Petitioner's left hand, the 15% loss of Petitioner's right arm, and the 15% loss of Petitioner's left arm.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC011879
Case Name	Ronald W. Patt v. David Wuebbek's dba Trade-Masters Painting & Wallpaper & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0201
Number of Pages of Decision	33
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Kevin Boyne
Respondent Attorney	Hrant Norsigian, Casey Fitzgerald

DATE FILED: 5/6/2025

/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

RONALD W. PATT,

Petitioner,

vs. NO: 19 WC 11879

DAVID WUEBBELS, d/b/a TRADEMASTERS PAINTING and WALLPAPER, and ILLINOIS STATE TREASURER as EX-OFFICIO CUSTODIAN of the INJURED WORKERS' BENEFIT FUND,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by Petitioner and Respondents David Wuebbels, d/b/a Trademasters Painting and Wallpaper, and the Injured Workers' Benefit Fund (IWBF), and notice given to all parties, the Commission, after considering the issues of benefit rates, causal connection, medical expenses, temporary total disability (TTD) benefits and permanent partial disability (PPD) 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 25, 2024 is hereby affirmed and adopted.

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

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

IT IS FURTHER ORDERED BY THE COMMISSION that 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 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 the 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 Workers' Benefit Fund.

Bond for the removal of this cause to the Circuit Court by Respondent David Wuebbels, d/b/a Trademasters Painting and Wallpaper, is hereby fixed at the sum of $75,000.00. Pursuant to Section 19(f)(2)(1), Respondent Injured Workers' Benefit Fund is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

MAY 6, 2025

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

CAH/pm
O: 5/1/25
052

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC011879
Case Name	Ronald W. Patt v. David Wuebbek's dba Trade-Masters Painting & Wallpaper & IWBF
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	30
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Kevin Boyne
Respondent Attorney	Hrant Norsigian, Casey Fitzgerald

DATE FILED: 9/25/2024

/s/ Jeanne AuBuchon, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 24, 2024 4.27%

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

Ronald W. Patt
Employee/Petitioner

v.

David Wuebbels d/b/a Trademasters Painting and Wallpaper and State Treasurer, as ex officio Custodian of the Injured Workers Benefit Fund.
Employer/Respondent

Case # **19** WC **11879**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon** Arbitrator of the Commission, in the city of **Collinsville**, on **July 26, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **6/3/2015**, 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 35 weeks preceding the injury, Petitioner earned $**23,787.00**; the average weekly wage was $**679.63**.

On the date of accident, Petitioner was **55** years of age, ***single*** with **0** dependent children.

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

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

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

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

Respondent was uninsured on the date of accident.

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 10, as provided in Sections 8(a) and 8.2 of the Act

Respondent shall pay temporary total disability benefits of $**452.82**/week for the period from 1/8/2020 through 5/11/2020 representing 17 & 6/7ths weeks, pursuant to Section 8(b) of the Act.

Respondent shall pay Petitioner the sum of $**407.78**/week for a period of **75** weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused **15%** loss of use of the person as a whole.

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 the Petitioner pursuant to Section 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 Workers' Benefit Fund.

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. DuBuchon
Signature of Arbitrator

September 25, 2024

PROCEDURAL HISTORY

This matter proceeded to trial on July 26, 2024. The issues in dispute are: 1) whether the Petitioner and Respondent Wuebbles were operating under the Illinois Workers' Compensation Act on December 19, 2018; 2) whether their relationship was one of employee and employer; 3) whether the Petitioner sustained accidental injuries that arose out of and in the course of employment; 4) timely notice of the accident; 5) the causal connection between the accident and the Petitioner's right shoulder condition; 6) the Petitioner's average weekly wage; 7) the Petitioner's age, marital status and number of dependents; 8) liability for medical bills; 9) entitlement to TTD benefits; 10) the nature and extent of the Petitioner's injury; and 11) whether Respondent Wuebbels had workers' compensation insurance. The Petitioner filed a Second Amended Application on August 19, 2020, to include the State Treasurer as Ex Officio Custodian of the Injured Workers' Benefit Fund.

FINDINGS OF FACT

The Petitioner testified that his date of birth was October 11, 1963. (T. 12) He said that in April 2018, he started working for Respondent Wuebbels, painting and repairing walls and ceilings and replacing, painting and patching drywall. (T. 13) Respondent Wuebbels provided the jobs to perform, directed him in what to do and provided a truck, equipment and paint. (T. 13-14) The Petitioner said he first started earning $20/hour, and his standard workweek from his date of hire until the last day he worked was eight hours/day, 40 hours/week. (T. 14) He said he received a pay raise to $21/hour. (T. 15) Respondent Wuebbels admitted that the Petitioner was his employee at the time of the accident. (T. 192)

According to payroll records, the Respondent began working for Respondent Wuebbels on April 9, 2018. (RXA) As of the last pay date before the accident, the Petitioner had earned $23,787.00 in the 35 weeks he was employed by Respondent Wuebbels. (Id.)

On December 19, 2018, the Petitioner was working at a residence in Belleville removing and replacing glaze on exterior windows. (T. 16) He said he was using a ladder provided by Respondent Wuebbels. (T. 17) He said that as he was going up the ladder, he started to scrape a little bit on the caulking, and the ladder collapsed, throwing him off the ladder and down into a ravine. (T. 18) He said his feet were on at least the third rung of the ladder, which was 2½-3 feet off the ground. (T. 18) The Petitioner stated that when he fell, his right hand probably hit the ground first, and his right shoulder bore the brunt of the fall. (T. 20-21) He said that when he hit the ground, he felt a tearing and burning sensation in his right shoulder, and as the moments progressed, he felt very sore and hurt in the shoulder, his side and both of his knees. (T. 21) The Petitioner stated that Respondent Wuebbels came to the job site that day, and he told Respondent Wuebbels about the fall. (T. 21-22) He said coworker Chris Wilson witnessed the fall. (T. 48-49) Mr. Wilson did not testify.

Respondent Wuebbels testified that he went to the job site about noon that day, and the Respondent said he fell about an hour before. (T. 162-163) He said he smelled a little alcohol, but the Petitioner denied drinking. (T. 163) He said that after the Petitioner quit working for him, there were small vodka bottles under the seat of the van for which the Petitioner was responsible. (T. 171) On cross-examination, Respondent Wuebbels said he did not see the Petitioner consume alcohol on the day of the accident and did not think he was drunk. (T. 195)

Respondent Wuebbels said he usually took workers to the job site in the morning and came back at lunch and sometimes at the end of the day. (T. 164) He said that on the day of the accident,

the Petitioner did not say he was hurt and did not show him any injuries on his body. (T. 164-165) Respondent Wuebbels said he asked the Petitioner if he needed to go to the hospital or see a doctor, and the Petitioner said he was fine. (T. 165) He said the next day the Petitioner called off work and wanted to go to a doctor. (T. 167)

The Petitioner said that the night after the accident he was sore all over, and his right shoulder started swelling. (T.24) The next day, he sought treatment from Dr. Gregory Climaco, a family medicine physician at HSHS Medical Group Family Medicine and told him what occurred. (T. 24, PX1) The Petitioner reported that he was working on a 6-foot-tall ladder when the ladder collapsed and he fell back and landed on his back and struck his elbow on a window that was on the ground. (Id.) He had abrasions on the right knee and both shins and pain in the right shoulder and collarbone. (Id.) He reported having pain with pushing down with his right arm and that he could not lift his arm up to paint. (Id.) The Petitioner denied telling Dr. Climaco that he fell back and landed on his back. (T. 47-48)

A musculoskeletal examination revealed tenderness at the right knee and bilateral shins and right shoulder pain but no edema or deformity. (PX1) Dr. Climaco prescribed pain medication, ordered X-rays and recommended follow up as needed or if there was no resolution. (Id.) The X-rays were normal except for mild arthritic changes at the shoulder. (PX2)

The Petitioner identified photos of his body taken on December 20, 2018. (T. 27-28, PX14) He pointed to bruising on his back, arm, elbow, knees and right hip area. (T. 28-29) He also identified photos of the windows and the ladder, pointing out metal fatigue between the two rivets where the metal snapped. (T. 18-20, PX13, PX8) He said a Trademasters logo usually was on the outsides of the ladder but were not visible from the view from which the photos were taken. (Id.)

Respondent Wuebbels testified that the ladder in the photos was not the same ladder the Petitioner was using. (T. 164) He said his ladders would have had "Trademasters" on the side. (T. 188)

The Petitioner acknowledged that he previously sought treatment for his right shoulder from Dr. Climaco and received an injection six days before the accident. (T. 26) Dr. Climaco's records show the Petitioner saw him on December 7, 2018, in part as a follow-up for a right shoulder issue. (PX1) A musculoskeletal examination showed normal range of motion and no edema. (Id.) There was no diagnosis listed that day regarding the Petitioner's right shoulder. (Id.) The Petitioner saw Dr. Climaco again on December 13, 2018, for right shoulder pain. (Id.) A musculoskeletal examination showed right lateral shoulder tenderness but good range of motion. (Id.) Dr. Climaco performed a steroid injection to the Petitioner's right shoulder. (Id.)

The Petitioner testified that before the accident, he was having shoulder discomfort, but afterwards it was totally different, with feeling a pop and a burning, searing-metal feeling that he never had before the incident. (T. 26-27) He said he had been taking pain medication for his knees but not his shoulder. (T. 50) He also acknowledged having shoulder replacement surgery on his left shoulder a couple years after the accident. (T. 53)

Respondent Wuebbels testified that before the accident – during the wintertime – the Petitioner moved a deep freezer that was given to him by customer and told him that his shoulder was hurting. (T. 182-185) He said this occurred after work hours and, when the Petitioner asked him to turn a workers' comp claim, he refused. (T. 185) Respondent Wuebbels did not remember which shoulder the Petitioner said was hurting. (Id.) The Petitioner agreed that before the work accident, he had removed a deep freezer from a customer's house that was a gift but denied that he hurt his shoulder. (T. 78)

The Petitioner testified that following the work accident, he continued working, but his injuries affected his ability to work – making it difficult to carry anything heavy, being able to climb up ladders properly and lift his arm over his head. (T. 25, 30) He said he could paint overhead with his left arm, but it made doing his job more difficult. (T. 31) He said he used extensions on paint rollers to paint high areas. (T. 32) He said he asked Respondent Wuebbels if he had workers' compensation insurance, and Respondent Wuebbels said "No." (T. 45)

On January 4, 2019, Dr. Climaco ordered a refill of pain medication. (PX1) On February 15, 2019, he prescribed an anti-inflammatory. (Id.) The Petitioner saw Dr. Climaco on March 14, 2019, for a three-month follow-up. (Id.) Dr. Climaco noted that the Petitioner had continued right shoulder pain and was due for another steroid injection. (Id.) Dr. Climaco diagnosed chronic left shoulder pain and acute right shoulder pain, prescribed pain medication and performed a steroid injection to the left shoulder and aspiration/steroid injection to the right shoulder. (Id.)

The Petitioner testified that he continued to work full time for Respondent Wuebbels until April 9, 2019. (T. 61-62) Respondent Wuebbels testified that he observed the Petitioner during that time and did not see him favoring his right shoulder or arm. (T. 174) However, he stated that he could not say which hand the Petitioner used to paint. (T. 176) Respondent Wuebbels stated that aside from wanting to see a doctor the day after the accident, the Petitioner did not complain about his right arm. (Id.) He said he saw the Petitioner use his right arm above shoulder. (Id.) When asked if he ever saw the Petitioner using his right arm to carry anything heavy like paint buckets, Respondent Wuebbels responded: "Oh, yeah, a lot." (T. 177) He then added that he did not recall seeing the Petitioner carrying a bucket, "but somehow the paint got to the house, you know what I mean?" (Id.) He said: "It didn't fly so who else carried it?" (Id.) Respondent Wuebbels also said that he did not notice any change in how the Petitioner worked, any change in

how he used his right arm, that he was painting only with his left arm nor that the Petitioner would hold his right arm into his body and only paint elbow level or down. (T. 178-179)

The Petitioner testified that he also did side jobs, including what he described as a "small cleanout" in mid-March 2019 – pulling out carpet and laminate flooring, removing cabinets, pulling up baseboard and removing a sink. (T. 64, 67-69)

Bill Bell, owner of Bell Construction Services testified that he had a professional relationship with Respondent Wuebbels for about 20 years and worked on a house owned by Mike Henson in Belleville in 2019, upon which the Petitioner also was working after painting for Trademasters. (T. 106-108) He said the Petitioner was removing flooring, carpet, baseboard, carpet pad, kitchen cabinets and a cast iron sink. (T. 108-109) He said he never saw the Petitioner favoring his right arm or working with his left arm. (T. 110) He said the Petitioner did not appear to be injured or hurt in his right shoulder in any way or have any type of problems with his right arm. (Id.) When pressed on cross-examination about his ability to observe the Petitioner, Mr. Bell acknowledged that he was not watching what the Petitioner did, and there was no reason to pay particular attention to him or to notice if his right arm was hurt or not. (T. 113-114) He admitted to having no specific recollection of how the Petitioner was using his arms on the job, whether the Petitioner was working strictly below the waist or above it or which hand he was working with. (T. 114-115, 120) He said he did not watch the Petitioner remove cabinets and did not remember whether the Petitioner was working with anybody. (T. 120)

Mike Henson, owner of the property upon which the Petitioner was working, testified that he hired the Petitioner to perform demolition work after Trademasters completed painting – including removing carpet, baseboard trim, tack strip, kitchen cabinets and a sink. (T. 129-130) He said he did not notice the Petitioner favoring his right arm or shoulder, complain about his right

arm or shoulder or try to use his left arm instead of his right. (T. 130) He said that during the painting, he saw the Petitioner work with his right arm above shoulder level patching drywall on a stairwell. (T. 131)

On cross-examination, Mr. Henson stated that at the time of the rehab project, he was working full time at his regular job and was at the rehab job site at least four or five times a week. (T. 136) He said he did not observe the Petitioner removing the sink, carpet or other debris. (T. 137) He admitted that in the times he observed the Petitioner, he had no reason to observe which arm he was using. (T. 139) He said he couldn't tell just by looking at the Petitioner whether his right shoulder hurt him. (T. 140)

Jo Wuebbels, wife of Respondent Wuebbels, testified that she was the office manager for Trademasters, and her duties included payroll and maintaining records. (T. 143) She stated that when she observed the Petitioner after the accident until he quit, she did not see him favoring his right shoulder, trying to work with his left arm only nor complaining about his right shoulder hurting. (T. 148-149) On cross-examination, she acknowledged that during the winter, she would be at the office once a month or so, but in March she would be there three or four days a week for two or three hours. (T. 151-152) She said that most of the time she would come in after the workers left to go out on jobs and would be gone before they got back. (T. 152-153)

Both Respondent Wuebbels and Mrs. Wuebbels testified that at the time of the accident, Respondent Wuebbels had no workers' compensation insurance. (T. 153, 192) At arbitration, the Petitioner submitted certification by NCCI Holdings, Inc., designee of the Illinois Workers' Compensation Commission for collecting proof of workers' compensation insurance coverage information on Illinois employers, that there was no policy information showing proof of insurance on December 19, 2018, for David Wuebbels d/b/a Trademasters Painting & Wallpaper. (PX4)

Respondent Wuebbels testified that the Petitioner texted him on the day he quit and said he could not work for Respondent Wuebbels because Respondent Wuebbels didn't have insurance. (T. 186)

On March 27, 2019, Dr. Climaco ordered an MRI of the right shoulder, which was performed on April 12, 2019, at St. Elizabeth's Hospital. (PX1, PX2) Radiologist Dr. Daniel Keys found: 1) massive full-thickness rotator cuff tear involving the entire supraspinatus and infraspinatus with retracted tendon stumps, associated muscle edema and developing muscle atrophy; 2) moerate partial tear of the subscapularis tendon; 3) ruptured biceps long head tendon; 4) tiny partial tear of the teres minor; 5) mild to moderate glenohumeral degenerative changes with torn labrum; and 6) unfused and degenerative os acromiale. (PX2) On his intake form for the MRI, the Petitioner responded "No" to the questions of: "Have you ever injured this area before?" and "Is this related to a recurring or previously existing condition?" (Id.) In his testimony, the Petitioner acknowledged these responses and explained that he had irritated his shoulder before but had not injured it and that it was just his opinion that he didn't have a pre-existing condition in his right shoulder. (T. 91)

The Petitioner admitted filing an application for unemployment benefits on April 7, 2019, and working for Respondent Wuebbels through April 9, 2019, but he did not know why he filed the application before he stopped working. (T, 73-75) He acknowledged telling Dr. Climaco on April 14, 2019, that he could not work but said he could on his unemployment paperwork. (T. 76) He explained he could work on a limited basis. (Id.) The Petitioner admitted that he worked a job painting at an AutoZone in June 2019 but did not know if he was receiving unemployment benefits at that time. (T. 81-82)

The Petitioner followed up with Dr. Climaco on April 15, 2019, who diagnosed a traumatic complete tear of the right rotator cuff. (PX1) The Petitioner reported being unable to work due to pain with raising his arm. (Id.) He also reported a burning sensation. (Id.) Dr. Climaco noted that the Petitioner had two steroid injections, anti-inflammatories, Biofreeze, light stimulation, etc., with no benefit and said the Petitioner needed to see orthopedics for possible repair. (Id.) Dr. Climaco gave work restrictions of no lifting over 15 pounds, no reaching above shoulders, no climbing ladders or scaffolding and no crawling. (Id.)

The Petitioner testified that Dr. Climaco referred him to Dr. Donald Weimer, an orthopedic surgeon at HSHS Medical Group Multispecialty Care. (T. 33-34) The Petitioner saw Dr. Weimer on April 30, 2019, with complaints of right shoulder pain and weakness that he related to an injury that occurred at work when he fell from a ladder. (PX3) He reported prior problems with the shoulder, that he was being treated for arthritis in the shoulder and received a cortisone injection on December 14, 2018, and another one after the accident, which did not help. (Id.) He said he was taking an anti-inflammatory and pain medications. (Id.)

Dr. Weimer performed an examination, performed X-rays and reviewed the MRI. (Id.) He said the MRI showed retracted tears of the supraspinatus, infraspinatus and superior subscapularis with atrophy evident in all three of these muscles. (Id.) He noted a tear of the long biceps tendon, a posterior labral tear and an os acromiale of the meso variant. (Id.) He diagnosed traumatic complete tear of the right rotator cuff. (Id.) Dr. Weimer believed there had been an acute exacerbation of symptoms from those chronic problems secondary to the fall. (Id.) He recommended physical therapy before any surgical consideration, noting that success rate with surgical treatment would not be high. (Id.) He said that if the physical therapy was not successful, he would consider surgery including rotator cuff repair and/or superior capsular reconstruction.

(Id.) He said that if that surgery was not possible or successful, the Petitioner would be looking at a reverse shoulder arthroplasty. (Id.) He said that with or without surgery, the Petitioner was looking at a significant impact on his ability to continue to work in his present position. (Id.)

On May 23, 2019, Dr. Climaco referred the Petitioner to physical therapy. (PX1) On June 14, 2019, the Petitioner followed up with Dr. Climaco for osteoarthritis of the knees and shoulder pain. (RX1) Dr. Climaco diagnosed primary osteoarthritis of the left, acute pain of the right knee and a complete tear of the right rotator cuff, unspecified whether traumatic and performed joint/aspiration/steroid injections to the both knees and to the right shoulder. (Id.) At future visits, Dr. Climaco continued to prescribe pain medication. (Id.)

The Petitioner underwent physical therapy from June 18, 2019, through July 19, 2019, at St. Elizabeth's Copper Bend Physical Therapy. (PX2) He testified that the physical therapy improved his condition but did not resolve it. (T. 35)

On August 29, 2019, the Petitioner returned to Dr. Weimer, and they discussed surgical options. (PX3) Dr. Weimer thought the best option was shoulder replacement. (Id.) Dr. Weimer performed a right reverse total shoulder replacement on January 8, 2020, at St. Elizabeth's Hospital. (PX2, PX3) At a follow-up visit with Dr. Weimer on January 21, 2020, the Petitioner reported doing well. (PX3)

The Petitioner underwent physical therapy from January 29, 2020, through February 26, 2020, at St. Elizabeth's O'Fallon Medical Center Physical Therapy. (Id.) At his last visit, Physical Therapist Jill Stone reported that the Petitioner continued to report activities he was performing that he should not have been doing. (Id.)

The Petitioner testified that the surgery helped his condition. (T. 37) At his visit with Dr. Weimer on March 3, 2020, the Petitioner reported that he was still having some mid-humeral pain

and was taking pain medication via his primary physician. (PX3) Dr. Weimer found he no longer needed physical therapy and ordered that he remain off work until May 11, when he could return with permanent restrictions of no pushing, pulling or lifting greater than 25 pounds with the right arm. (Id.) The Petitioner was to return in January 2021, but no further records were submitted. (Id.)

On January 23, 2023, the Petitioner underwent a Section 12 examination by Dr. Mitchell Rotman, an orthopedic surgeon at The Orthopedic Center of St. Louis. (RXD Respondent Deposition Exhibit 2) The Petitioner gave a history of falling backwards down a 6-foot embankment when the bracket of the ladder broke. (Id.) He said he fell backwards more towards his right side, using both arms to support himself as he fell. (Id.) He said he thought his pain would get better, but it never did. (Id.) He felt he may have injured both shoulders in the accident. (Id.) He said that after the accident, he was trying to do jobs with his left side or at least compensating with his left side. He said he would hold his right arm towards his side and do things from his elbow down. (Id.)

The Petitioner told Dr. Rotman that at that time he could not do overhead activities or anything with his arms extended for prolonged periods of time because he did not have the endurance. (Id.) He complained of stiffness and pain with overhead activities of both shoulders, night pain, weakness and trouble sleeping on either side. (Id.) He reported significant arthritis. (Id.)

Dr. Rotman reviewed a letter from Respondent Wuebbels' attorney that set forth various facts, including a detailed recitation of the Petitioner's work on the side job in March 2019 that counsel said the property owner witnessed. (RXD Petitioner's Exhibit 3) The letter stated that the property owner never saw the Petitioner favor his right shoulder or arm, appear injured in any way,

complain about his right shoulder or arm or appear to have any problems with his right shoulder or arm. (Id.)

Dr. Rotman also reviewed medical records from HSHS Family Medicine and Dr. Weimer, including records regarding the left shoulder replacement surgery in 2022 and a visit to Dr. Weimer in January 2021. (RXD Respondent's Exhibit 2.) Records regarding the left shoulder surgery and the visit to Dr. Weimer in January 2021 were not submitted at arbitration. In his recitation of Dr. Weimer's records, Dr. Rotman identified an accident date of December 19, 2019. (Id.) He reviewed what he identified as a "left" shoulder MRI from April 12, 2019, showing a chronic rotator cuff tear with retraction that looked irreparable. (Id.) He reviewed a left shoulder MRI from May 20, 2022, that showed a much less involved tear that looked like it should have been a repairable rotator cuff. (Id.)

A physical examination revealed: both shoulders showing significant atrophy of his supraspinatus and infraspinatus fossas; ability to lift his left arm to 130 and right to 140; a little crepitus on the anterior aspect of his right shoulder; smooth left shoulder motion; external rotation to 60-70 degrees on the right and 30-40 degrees on the left; a little bit of discomfort with stretching, more so on the right and with rotation just on a few maneuvers on his left; not "really" having any pain on his right shoulder with 4/5 external rotation strength, 4/5 abduction and flexion strength with no pain with strength testing; "quite good" internal rotation getting to L3 on the right and L2 on the left; and clicking in his right shoulder that did not cause any discomfort. (Id.) Dr. Rotman also examined the Petitioner's neck, elbows and hands. (Id.)

Dr. Rotman stated that the Petitioner was doing well from his bilateral reverse total shoulders. (Id.) He was surprised that the Petitioner required a reverse total shoulder on the left considering the smaller nature of the rotator cuff and lack of arthropathy. (Id.) He said the right

rotator cuff pathology was "definitely chronic" with no evidence of acute injury, noting that the tendon was thinned out or retracted. (Id.) He said the Petitioner might have been a candidate for just a debridement and a cleanup procedure on both shoulders and might have done just as well without having a reverse total shoulder. (Id.) He was not surprised that the Petitioner was able to work following the fall given the fact that these were chronic issues and that he had most likely been working with these types of tears in his shoulder prior to the fall. (Id.) He said he frequently sees individuals with these types of rotator cuff tears who function quite well. (Id.) He said that if the Petitioner had an acute injury on December 19, 2018, he would have had the complete inability to elevate his arm for two to three months, which obviously was not the case based on the history supplied to him. (Id.) He said the Petitioner "certainly" would not have been able to rip out carpet and do the activities described in counsel's letter. (Id.) He suspected that all the Petitioner's issues in his shoulders were chronic and pre-existing, but he "certainly may have triggered pain if he fell like he did." (Id.) He added that the Petitioner's subjective complaints with regards to pain seemed "a little bit magnified" considering how well he was functioning, but he could "certainly" see why he would have difficulty doing overhead painting for any prolonged period of time. (Id.)

Speaking generally of individuals with bilateral reverse total shoulders, Dr. Rotman recommended avoiding jobs or activities that involve any type of strenuous overhead activities. (Id.) He said the Petitioner would require no restrictions if he were working from the elbows down with the shoulders at his side. (Id.)

On June 2, 2023, Dr. Weimer testified consistently with his records via deposition. (PX5) He opined that, based on what the Petitioner told him, the Petitioner's shoulder symptoms were exacerbated by the work injury and that the fall accelerated the need for surgery. (Id.) He said the

Petitioner would have come to surgery eventually. (Id.) He had no idea when the Petitioner would have needed the surgery without the fall occurring. (Id.)

Regarding the muscle edema noted on the MRI, Dr. Weimer said it could have been there because of the fall. (Id.) He said a fall could create edema in the muscles if one fell on one's shoulder that would still be seen a few months later on the MRI. (Id.) He stated that he would not see the degree of atrophy the Petitioner had in four months, adding this would not indicate the rotator cuff tear happened four months prior. (Id.) He did not think the fall caused any tears, but it caused him to have increased pain. (Id.) He explained that the os acromiale seen on the MRI was a congenital condition that did not happen with trauma and could cause a rotator cuff tear. (Id.)

Dr. Weimer said the Petitioner's shoulder injury would have affected his ability to perform painting work in that he would have to compensate somewhat using the other arm for things because of the weakness and would have difficulty doing overhead activities. (Id.) He said that with his elbow near his side, pushing or pulling or pushing wouldn't be terribly difficult, and anything overhead for any substantial length of time would be difficult. (Id.) He stated it might not be very difficult to carry a heavy bucket of paint because the arm is at the side but lifting a heavy bucket overhead would be difficult. (Id.)

As to the permanent 25-pound weight restriction, Dr. Weimer said this was his standard for a reverse shoulder replacement, adding that the shoulder could be dislocated if it is pulled really hard. (Id.) He said that at his final visit on January 7, 2021, visit, the Petitioner was very pleased with the results of the surgery, reporting good pain relief and much better function. (Id.) Dr. Weimer said range of motion testing turned out "really well" – having at least about 80 or 85 percent of normal motion. (Id.) He characterized the result as "fabulous." (Id.)

On cross-examination, Dr. Weimer was given a hypothetical of the Petitioner working full time after the injury until April 9, 2019. (Id.) He didn't think these facts would change his opinion. (Id.) Counsel for Respondent Wuebbels also gave Dr. Weimer the facts as laid out in his letter to Dr. Rotman. (Id.) Dr. Weimer said this scenario said this, too, would not change his opinion. (Id.) He said if the side job involved work "low down," ripping up carpet and not raising the arm over the head, one would be able to that. (Id.) He added that to some degree people bear through the pain because they have to work and make a living. (Id.)

Regarding the Petitioner's left shoulder, Dr. Weimer stated that the Petitioner was likely to develop a rotator cuff tear from impingement at the acromion at the acromioclavicular (AC) joint. (Id.) He said he performed a reverse shoulder replacement on the left as well and that the Petitioner would also have the same permanent restrictions on the left as he had on the right. (Id.)

On June 15, 2023, Dr. Rotman issued an addendum report and corrected errors in his original report as to the date of the accident. (RXD Respondent Deposition Exhibit 3) He also reviewed the MRI report from April 12, 2019. (Id.) His opinions remained unchanged. (Id.) He said the report was consistent with the need for a reverse total shoulder that was performed on the right shoulder. (Id.) He noted some findings that suggested more of an acute component to the chronic condition – edema in the muscle of the torn tendons and bone marrow edema on the os acromiale. (Id.) He added that it would not take a whole lot to create swelling in the shoulder from all of the Petitioner's chronic conditions, comparing it to an individual with advanced knee arthritis that might get swollen from any kind of stressful activities or even just regular activities of daily living. (Id.) He stated that individuals with os acromiale issues have a much higher incidence of rotator cuff tears, which would be another reason why the Petitioner had such a significant chronic condition. (Id.) He added that prior to the MRI, the Petitioner had been doing

a significant amount of strenuous activities with his side jobs that he opined could have been resulted in the edema more so than the accident. (Id.) He said there was no way within reasonable medical certain that the findings of swelling or edema would be specifically related to the accident versus any of the other heavier strenuous activities that occurred afterwards. (Id.)

On November 8, 2023, Dr. Climaco testified consistently with his records at a deposition. (PX7) He said that on the day after the accident, the Petitioner complained of right shoulder pain as he had in his visit before the accident, but he also complained of weakness, could not perform the exam correctly because of pain and could not raise his arm above shoulder level. (Id.) Dr. Climaco agreed that the Petitioner suffered an injury in the fall. (Id.) Dr. Climaco also stated that the Petitioner had no significant improvement after the injection on March 14, 2019, as he normally had after prior injections. (Id.) Dr. Climaco said the Petitioner could perform tasks below shoulder level with his injury. (Id.)

Dr. Rotman testified consistently with his reports at a deposition on March 21, 2024. (RXD) He opined that with the findings on the MRI, the Petitioner would have eventually needed a surgery for his right shoulder if he had not fallen. (Id.) He said the need for surgery could have been at any time, such as the time of his last injection before the fall. (Id.)

As to the MRI finding of edema in the muscles, Dr. Rotman explained that finding suggested there was a recent aggravation or triggering of discomfort, which would have occurred close to the time the MRI was obtained and not at the time of the fall several months before the MRI. (Id.) He said if there was any edema from the fall, it would have been gone by the time of the MRI. (Id.) He explained the os acromiale finding on the MRI similarly to Dr. Weimer. (Id.)

Dr. Rotman opined that the fall did not aggravate the Petitioner's pre-existing right shoulder condition nor accelerate the need for total reverse right shoulder surgery, based on: the

Petitioner being able to work after the accident "and do all these things he did;" the edema seen later on the MRI; the Petitioner's condition significantly deteriorating in six weeks or so; and the chronic findings on the MRI. (Id.)

Dr. Rotman said the fact that the Petitioner's left shoulder later had the same diagnosis and treatment as the right shoulder did not factor into his opinion as to causation of the right shoulder. (Id.) He added that a study showed that individuals with chronic rotator cuff tears commonly have a similar process going on the opposite side without any trauma. (Id.)

On cross-examination, Dr. Rotman stated that he had not seen Dr. Climaco's records until he was shown office visit notes from March 14, 2019, and March 27, 2019, at the deposition. (Id.) Regarding the letter from Respondent Wuebbels' counsel that detailed observations of the Petitioner performing the side job in March 2019, Dr. Rotman said that is not the usual type of record he relies on in formulating opinions, but he found it to be helpful. (Id.) He said he did not request the information in the letter. (Id.)

Dr. Rotman agreed that the work accident described to him by the Petitioner could cause an injury to someone's shoulder, could cause an aggravation to pre-existing conditions and could increase the pain level of an individual with such pre-existing conditions. (Id.) He agreed that if the fall increased the Petitioner's pain level, that would be one of the considerations in determining whether a surgery should be performed and could accelerate the need for surgery. He also agreed that the reverse right shoulder replacement was the appropriate care for a person in the Petitioner's condition. (Id.) He further agreed that after the injury, the Petitioner would have been capable of doing work below elbow level but would have been inhibited in working overhead. (Id.)

The Petitioner testified that he was unable to return to work as a painter with the restrictions because he could not move ladders, do drywall repair overhead, lift power washers and lift paint

buckets. (T. 37-40) He said his pain was not as bad, but he felt catching with movement of his arm and sometimes pain like a pinprick or electric shock in his right shoulder a couple of times a day, which he said he did not have prior to the work injury. (T. 40-42) He said the injury has affected his ability to perform his ceramics hobby, gardening and tinkering. (T. 42-45) On cross-examination, he admitted that his left shoulder and knee conditions also factor into his loss of a normal life. (T. 54)

Respondent Wuebbels expressed anger at various times during the hearing -- interrupting witness testimony and making remarks to the Petitioner's attorney during objections. (T. 121, 167-168, 181-182) He also made extraneous comments that had to be stricken, such as: "I had three workers and he ran two of them off, they didn't like him." (T. 177) When that comment was stricken, Respondent Wuebbels stated: "I mean, this is my life we're talking about." (T. 178) Although the record does not reflect an exchange that occurred during a break, the Arbitrator notes that Respondent Wuebbels angrily told the Petitioner he was trying to ruin him.

At the time of Arbitration, the Petitioner was not employed. (T. 53)

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 considers the credibility of the witnesses. There were inconsistencies throughout – most having little to do with the issues to be determined.

The Arbitrator finds the Petitioner to be credible. His testimony was generally consistent with his reports to the doctors.

The Arbitrator finds significant issues with Respondent Wuebbels' credibility. His animosity towards the Petitioner was obvious in his demeanor and the comments he made, as

quoted above. He has a lot at stake if an award is made and reimbursement is pursued by the State. His testimony also revealed his desire to defeat the Petitioner's claim. For example, he said that after the accident he saw the Petitioner using his right arm to carry heavy objects like paint buckets "a lot," but then said he did not recall seeing the Petitioner carrying a bucket.

As to the testimony of Mr. Bell and Mr. Henson, they both appeared to want to support Respondent Wuebbels' version of the facts – specifically the Petitioner's ability to use his right arm after the accident and whether he injured his right shoulder working on the side job in March 2019. However, when pressed about their ability to observe the Petitioner, their original testimony changed. Mr. Bell acknowledged that he was not watching what the Petitioner did, and there was no reason to pay particular attention to him or to notice if his right arm was hurt or not. He admitted having no specific recollection of how the Petitioner was using his arms on the job, whether the Petitioner was working strictly below the waist or above it, which hand he was working with and did not see the Petitioner remove cabinets. Similarly, Mr. Henson said he did not observe the Petitioner removing the sink, carpet or other debris, admitted that in the times he observed the Petitioner, he had no reason to observe which arm he was using and said he couldn't tell just by looking at the Petitioner whether his right shoulder hurt him.

ISSUES (A) & (B): Was Respondent operating under and subject to the Illinois Workers' Compensation Act; Was there an employee-employer relationship?

Respondent Wuebbels acknowledged that he was operating a business in the state of Illinois and that the Petitioner was his employee. Pay records and evidence of Respondent Wuebbels directing the Petitioner's work and supplying a vehicle and materials for the jobs further support that there was an employee-employer relationship. Therefore, the Arbitrator finds

Respondent Wuebbels was subject to the Act and that there was an employee-employer relationship.

ISSUES (C), (D), and (E): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? What was the date of the accident? Was timely notice of the accident given to Respondent?

An injury is an accident 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. *Matthiessen and Haegler Zinc Co. v. Industrial Commission,* 284 Ill. 378, 120 N.E.2d 249 (1918).

The Petitioner provided unrebutted testimony that on December 19, 2018, he fell when the ladder he was on collapsed. He immediately reported the accident to Respondent Wuebbels. The accident was witnessed by a coworker, but no one called him to testify. With the exception of Dr. Climaco noting that the Petitioner fell back, the Petitioner's testimony as to what occurred was consistent with what he reported to the doctors.

In addition, the photos of the Petitioner's bruises taken the day after the accident support a finding that the fall occurred. Regarding the photo of the broken ladder, Respondent Wuebbels denied it was his ladder. The identifying label on the side of the ladder was not visible in the photo. As stated above, the Arbitrator finds the Petitioner to be more credible than Respondent Wuebbels and finds this photo supports the contention that the accident occurred.

Therefore, the Arbitrator finds the Petitioner has proved by a preponderance of the evidence that an accident occurred on December 19, 2018, that arose out of and in the course of his employment by Respondent Wuebbels, and timely notice of the accident was given to Respondent Wuebbels.

ISSUE (F): Is Petitioner's current condition of ill-being causally related to the injury?

An accident need not be the sole or primary cause as long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Indus. Comm'n,* 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill.Dec. 70 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hosp. v. Workers' Comp. Comm'n,* 371 Ill.App.3d 882, 888, 864 N.E.2d 266, 309 Ill.Dec. 400 (5th Dist. 2007). A claimant with a preexisting condition may recover where employment aggravates the condition or accelerates the need for surgery. *Caterpillar Tractor Co. v. Industrial Comm.,* 92 Ill. 2d 30, 36, 440 N.E.2d 861, 65 Ill.Dec. 6 (1982). When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital*, 371 Ill.App.3d at 888.

Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Industrial. Comm'n*, 77 Ill. 2d 469, 471-472, 397 N.E.2d 834, 34 Ill.Dec. 162 (1979); *Gano Elec. Contracting v. Industrial Comm'n*, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724, 197 Ill.Dec. 502 (4th Dist. 1994); *International Harvester v. Industrial Com.*, 93 Ill.2d 59, 63-64, 442 N.E.2d 908, 66 Ill.Dec. 347 (1982).

Dr. Rotman and Dr. Weimer agreed that the Petitioner had pre-existing rotator cuff tears in his right shoulder. Dr. Rotman believed the Petitioner's current condition was caused by these tears and not the fall. Dr. Weimer believed the fall exacerbated the Petitioner's shoulder symptoms, and the fall accelerated the need for surgery. Although he said the Petitioner would

have come to surgery eventually, he had no idea when the Petitioner would have needed the surgery without the fall occurring. Dr. Climaco also believed the Petitioner suffered a shoulder injury from the fall.

The Arbitrator notes shortcomings in the bases for Dr. Rotman's opinions. He stated that the recitation of the Petitioner's activities working on the side job in March 2019 contained in the letter from Respondent Wuebbels' attorney was helpful in his analysis. However, these alleged facts were not borne out by the testimony, as stated above. Reliance on these "facts" is misplaced.

In addition, Dr. Rotman did not review Dr. Climaco's records in his evaluation. Because these notes occurred closer in time to the accident, they contained information that should have been considered by Dr. Rotman for a thorough analysis in a Section 12 examination.

The Arbitrator also notes that Dr. Rotman agreed that the work accident could cause an aggravation to pre-existing conditions and could increase the pain level of an individual with such pre-existing conditions, accelerating the need for surgery.

As further support of a finding that the fall aggravated the Petitioner's right shoulder condition and accelerated the need for surgery, the Petitioner testified that his pain was different after the accident than before. This was borne out by Dr. Climaco's testimony that the Petitioner's complaints and testing were different after the accident than before. Also, the injection Dr. Climaco performed on March 14, 2019, provided no significant improvement, as his prior injections had.

As to the contention that the Petitioner's ability to perform work after the accident was proof that the Petitioner's right shoulder condition was not causally related to the accident, the Arbitrator notes Dr. Weimer's testimony that the Petitioner could have compensated for the injury by using his other arm or using his right arm below his waist. Dr. Climaco similarly testified that

the Petitioner could perform tasks below shoulder level with his injury. Also, as noted above, Mr. Bell and Mr. Henson's testimony failed to show that the Petitioner had unfettered use of his right shoulder. Similarly, there was no persuasive evidence that the Petitioner's shoulder was injured during his side job in March 2019 rather than in the accident on December 19, 2018.

Lastly, Dr. Weimer and Dr. Climaco's opinions deserve greater weight, as they were treating physicians who had more opportunities to become familiar with the Petitioner and his condition.

For all these reasons, the Arbitrator finds that the fall aggravated the Petitioner's pre-existing shoulder condition and accelerated the need for surgery, making current condition of ill-being causally related to the injury.

ISSUES (G): What were Petitioner's earnings?

Section 10 of the Act provides: "Where the employment prior to the injury extended to a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee actually earned wages shall be followed."

According to the pay records submitted, the Petitioner worked for Respondent Wuebbels for 35 weeks before the accident and earned $23,787.00. Therefore, the Arbitrator finds that the that the Petitioner's average weekly wage was $679.63.

ISSUES (H) and (I): What were the Petitioner's age and marital status at the time of the accident?

The Petitioner was 55 years old at the time of the accident and was single.

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?

Although he disagreed on whether the medical treatment was causally related to the work accident, Dr. Rotman agreed in his second report after reviewing the MRI report that a shoulder replacement was the appropriate treatment for the Petitioner's condition. Based on this and the findings above regarding causation and Dr. Weimer's rationale for the services rendered, the Arbitrator finds that the medical expenses incurred were reasonable and necessary in the care and treatment of the Petitioner's injuries. The Arbitrator finds that Petitioner is entitled to medical benefits itemized in Petitioner's Exhibit 10, The Arbitrator finds Respondent Wuebbels has not paid all charges relating to the Petitioner's reasonable and necessary medical care. As a result, Respondent Wuebbels shall pay these charges per to the medical fee schedule as provided in Section 8(a) and Section 8.2 of the Act. No credits were claimed on the Request for Hearing.

ISSUE (K): Is Petitioner entitled to receive TTD benefits?

The Petitioner was returned to work on May 11, 2020, following the surgery on January 8, 2020. Based on the findings above, the Arbitrator finds the Petitioner is entitled to 17 and 6/7ths weeks of temporary total disability benefits for that period.

ISSUE (L): What is the nature and extent of the injury?

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

(i) **Level of Impairment.** No AMA impairment ratings were produced, therefore the Arbitrator gives this factor no weight.

(ii) **Occupation.** The Petitioner was not working at the time of arbitration. His customary work is as a painter, which requires overhead work and lifting. He said he is unable to perform such work. However, it is difficult if not impossible to determine whether this is due to the condition of his right or left shoulder. The Arbitrator notes that at his latest physical examination, which was with Dr. Rotman, his right shoulder appeared to be doing better than his left. However, there is still some impairment in the functioning of the right shoulder. In addition, there was no evidence that the Petitioner sought alternative employment. Therefore, the Arbitrator places little weight on this factor.

(iii) **Age.** The Petitioner was 55 years old at the time of the injury. He would have 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.** Aside from the Petitioner's contention that he can no longer perform work as a painter, there was no evidence regarding his earning capacity in any other type of employment as there was no evidence of any efforts to pursue other employment. Therefore, the Arbitrator places no weight on this factor.

(v) **Disability.** The Petitioner testified that with his restrictions, he could not move ladders, do drywall repair overhead, lift power washers and lift paint buckets. His pain was not as bad, but he felt catching with movement of his arm and sometimes pain like a pinprick or electric shock in his right shoulder a couple of times a day. He said the injury has affected his ability to perform his ceramics hobby, gardening and tinkering but admitted that his left shoulder and knee conditions also factor into his loss of a normal life. As stated above, it is difficult to determine

how much of the Petitioner's disability is due to his right shoulder. A year after the surgery, Dr. Weimer characterized the results as "fabulous" and said the Petitioner had at least about 80 or 85 percent of normal motion. Dr. Weimer testified that his standard restrictions on a reverse shoulder replacement is no pulling or lifting over 25 pounds. The Arbitrator notes there was no functional capacity evaluation performed to determine the level of function of his right shoulder. Therefore, the Arbitrator places some weight on this factor.

Thus, the Arbitrator finds the Petitioner's permanent partial disability to be 15 percent of the person as a whole as it pertains to the Petitioner's right shoulder.

ISSUE (O): Insurance Coverage

Petitioner filed a Second Amended Application on August 19, 2020, adding the Injured Workers' Benefit Fund as a Respondent. The Petitioner presented a certification from NCCI Holdings, Inc., showing there was no evidence that Respondent Wuebbels had workers' compensation insurance on December 19, 2018. Respondent Wuebbels and Mrs. Wuebbels admitted that the business did not have insurance at that time.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC017368
Case Name	Dustin Pendegraft v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0202
Number of Pages of Decision	11
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Joseph L. Moore

DATE FILED: 5/6/2025

/s/Marc Parker, 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

Dustin Pendegraft,

Petitioner,

vs. NO: 23 WC 017368

SOI/Graham Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, and prospective medical 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 September 10, 2024, is hereby affirmed and adopted.

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

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

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

MAY 6, 2025
MP:yl
o 5/1/25
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	23WC017368
Case Name	Dustin Pendegraft v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Joseph L. Moore

DATE FILED: 9/10/2024

/s/ Adam Hinrichs, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 10, 2024 4.53%

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

September 10, 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)

DUSTIN PENDERGRAFT,
Employee/Petitioner
v.
STATE OF ILLINOIS/GRAHAM CORR. CTR.,
Employer/Respondent

Case # **23** WC **017368**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Adam Hinrichs**, Arbitrator of the Commission, in the city of **Springfield**, on **July 29, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **June 5, 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 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 $**74,100.00**; the average weekly wage was $**1,425.00**.

On the date of accident, Petitioner was **31** years of age, ***single*** with **0** dependent child(ren).

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 **$if any** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**if any** for other benefits, for a total credit of **$ any paid**.

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

ORDER

Petitioner has failed to prove that (a) he sustained a repetitive/cumulative trauma injury arising out and in the course of his employment, and that (b) his current condition of ill-being is causally related to a work accident.

Petitioner’s claim for benefits under the Illinois Workers’ Compensation Act is denied.

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

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

Signature of Arbitrator

September 10, 2024

FINDINGS OF FACT

Background

On June 5, 2023, Petitioner was a 31-year-old Correctional Sergeant for Respondent. (AX1; PX6) He filed an Application for Adjustment of Claim on July 7, 2023, alleging injuries to his bilateral upper extremities as a result of repetitive trauma from his job duties. (AX2) Respondent disputes accident, causal connection, liability for medical expenses, and the need for related prospective medical care. (AX1)

Petitioner's Testimony and Work History

Petitioner began his career with the Illinois Department of Corrections in January of 2016 at Southwestern Correctional Center as a Correctional Officer. (T.12) He transferred to Graham in June of 2022, and was promoted to sergeant in November of 2023. (T.29, 40) Prior to his employment with Respondent, he worked for Prairie Farms Dairy as a vacation relief worker loading trucks, cleaning, and general duties. (PX7) As a Correctional Officer and Sergeant, Petitioner performed routine wing checks daily, locked and unlocked doors several hours daily, moved and searched inmate property, and dealt with inmates. (T.12)

Petitioner was working at Southwestern Correctional Center when the pandemic began, and he stated that his job duties doubled. (T.13) Since inmate labor was unavailable, Petitioner testified that he absorbed twice as many duties if not more, and staff had to personally deliver necessities to the inmates. (T.13-14) Petitioner took some time off work due to another work-related injury for approximately a year total (5-6 months following each procedure) and was transferred to Graham Correctional Center in the interim. (T.17-18, 28-29) Petitioner testified that he still performed the same duties, including increasing keying and pushing carts full of food to deliver to each house due to the lockdown. (T.18-20, 30-31) Petitioner testified that all of the keys in the facility are larger than the general house keys used by the public; and the locks do not work smoothly, so it takes effort and grip to operate them. (T.19, 39) Petitioner testified that although the pandemic has passed, Petitioner testified on cross-examination that the facility remains short-staffed, so they are "still on lockdown at least a few times a week." (T.27)

Petitioner supplemented his testimony with a written job description and career timeline. (PX6; PX7) In these exhibits, he described that as a Correctional Officer, he unlocked and locked doors, used restraints, moved property, performed shakedowns of cells, performed cell extractions and restrained combative inmates, wrote reports, and at times even lifted inmates during medical emergencies. (PX7) Petitioner acknowledged on cross-examination that each day is different, but he also testified that there was no part of his job that did not require the use of his hands and arms. (T.12-13, 31-32)

Medical History

Petitioner testified that he suffered a work injury to his cervical spine in 2020 as a result of a chain of events set into motion by angry inmates, and he ultimately required disc replacement at four levels in his cervical spine in two separate surgeries. (T.17) Petitioner took time off work following his procedures and returned to full duty work. (T.17-18) During the treatment of his cervical spine in 2022 Petitioner transferred to Graham as a Correctional Officer. (T.17-18, 25-26) Petitioner returned to full duty employment at Graham in December 2022. (T.25-26) Petitioner testified that his symptoms worsened upon his return to work. (T.19) He testified:

> "When I would use my hands, like we turn a lot of keys there. As I would go and unlock cells, I noticed that my hands would get numb and I'd have to switch hands often. They would actually kind of hurt as I would need to use my hands more." (T.19)

Petitioner testified that he does not suffer from gout, hypothyroidism, diabetes, high blood pressure, rheumatoid arthritis, obesity, smoking addiction, or sleep apnea. (T.14. 40)

Petitioner sought treatment for his symptoms on June 5, 2023, presenting to Metro East Orthopedics with complaints of bilateral hand numbness and tingling. (PX3, 6/5/23) Dr. Bradley noted Petitioner had worked for the Department of Corrections for 7.5 years and was transferred from Southwest Correctional Center to Graham Correctional Center during the pandemic. *Id.* He also noted that Petitioner had a medical history of multilevel disc replacement. *Id.* Petitioner initially believed that his upper extremity paresthesia emanated from his neck and would resolve with cervical spine treatment, but when he returned to work following his spine procedure, his upper extremity tingling returned. *Id.* Dr. Bradley noted that Petitioner utilized Folger Adams keys extensively while working at Southwest. *Id.* Petitioner candidly reported that the majority of keys and locks were different than they were at Southwest and that he did not bar rap; however, he reported he uses "a significant amount of chuckholes which are very difficult for him." *Id.*

Dr. Bradley noted that Petitioner's x-ray findings in correlation to his reported symptoms were consistent with carpal tunnel, but he noted there was no response to clinical testing such as Phalen's or Tinel's. *Id.* He recommended an EMG and nerve conduction study, which only showed evidence of mild to moderate left cubital tunnel syndrome. *Id.*; (PX4) Petitioner returned to Dr. Bradley following the studies, and Dr. Bradley noted that Petitioner's examination findings were "fairly soft" and produced only mild symptoms with orthopedic testing. (PX3, 6/19/23) Given the mild studies and Petitioner's ongoing spine care, Dr. Bradley believed a diagnostic injection might benefit Petitioner, but he wished to consult with Petitioner's cervical spine specialist and recommended conservative care with bracing, medication, and a home exercise program. *Id.*

Petitioner followed up with Dr. Bradley a year later on June 20, 2024, and he continues to report bilateral numbness and tingling in his upper extremities. (PX3, 6/20/24) He noted that Petitioner reported no improvement in his symptoms with conservative care. *Id.* Dr. Bradley's physical examination showed some slight progression of Petitioner's condition, with Tinel's being positive over the elbows bilaterally and Phalen's being positive over the wrists bilaterally. *Id.* Since Petitioner had been cleared by his neck surgeon since the prior visit, Dr. Bradley noted it was safe to treat Petitioner's upper extremity conditions. *Id.* Given that they had failed to respond to conservative care thus far, Dr. Bradley did not believe Petitioner would gain any sustained benefit from steroid injection. *Id.* He believed the most productive method of treatment would be decompressive carpal tunnel release with possible ulnar nerve transposition. *Id.* Dr. Bradley also noted that he reviewed the evaluation performed by Respondent's examiner, and though they did not disagree on all points, Dr. Bradley disagreed on causation and believed that Petitioner's work did contribute to his conditions. *Id.*

Dr. Evan Crandall: Section 12 Exam and Testimony

Respondent had Petitioner evaluated by Dr. Evan Crandall on August 29, 2023. (RX3) Dr. Crandall wrote that Petitioner's upper extremity complaints started in 2020 after Petitioner suffered a neck injury. *Id.* Petitioner reported numbness when driving and during sleep and weakness that made him drop things. *Id.* When asked what he believed caused his symptoms, he stated that he was "unsure" what caused it, but he thereafter stated, ". . . I do have a lot of repetitive duties that involve the use of my hands and arms, such as turning keys, property, use of restraints, report writing, popping chucks, pushing cars, shake downs, handling individuals in custody, typing, write, firearm." *Id.* Petitioner also reported that he used to be on the tactical team. *Id.*

After conducting his own examination, obtaining x-rays, and reviewing medical records, Dr. Crandall concluded that Petitioner suffered from left ulnar neuropathy, but he did not believe that Petitioner suffered a work injury that caused or contributed to his current neuropathy complaints in his left elbow. *Id.* He did not believe that Petitioner's complaints of bilateral hand numbness or tingling were related to any upper extremity compression neuropathy, and he declined to give any opinion as to whether it was due to cervical spine disease since he does not treat the spine. *Id.* He further opined that Petitioner's work exposure did not aggravate a pre-existing condition. *Id.* Causation aside, he believed Petitioner's treatment had been reasonable to evaluate for peripheral nerve compression. *Id.* He also agreed that "additional treatment is necessary"; but he believed this should be limited to conservative care and attributed the need for same to "a personal medical condition". *Id.* He further noted that Petitioner had no unusual behaviors during the examination. *Id.*

Dr. Crandall testified by way of deposition on May 28, 2024. (RX4) On direct exam, Dr. Crandall testified consistent with this report.

On cross exam, Dr. Crandall opined that only positions in a factory setting using tools and lifting hundreds of thousands of pounds per day were "hand intensive" positions. *Id.* at 23. However, he admitted Petitioner had no comorbid risk factors for compression neuropathy. *Id.* at 27. Dr. Crandall did not believe that a patient can have positive clinical findings for compression neuropathy but have a negative electrodiagnostic study. *Id.* at 38-39. He testified that he would never perform surgery on a patient with a negative nerve conduction study and called it "bad medicine" done "only in orthopedics for the plaintiff side". *Id.* at 39.

When asked what was most likely causing Petitioner's symptoms, Dr. Crandall stated, "The most likely candidate is the residual cervical neck damage." *Id.* at 46. Yet, just a short time later, he was asked whether Petitioner's left cubital tunnel findings on nerve studies were just coincidental, and he stated, "I don't think it's related to a cervical neck abnormality. I mean I don't think one causes the other. I think – it's possible that the nerve test is correct and he does have mild compression at the elbow . . ." *Id.* at 47. He later stated that he was "not conceding" that Petitioner had any sort of injury, work-related or not. *Id.* at 51.

Dr. Matthew Bradley Testimony

Dr. Bradley also testified by way of deposition. (PX5) Dr. Bradley testified that anything that required the repetitive use of the hands or the elbows would cause microtrauma, thought he use of vibratory or impact-type instruments was the most common occupational risk factor. *Id.* at 10. He also testified that he reviewed Petitioner's records from Petitioners prior injuries as well as the reports from Respondent's examiners in both claims, and a 250-plus page job site analysis commissioned by Respondent. *Id.* at 11, 25. He testified that he also had ample experience treating correctional staff from different facilities. *Id.* at 13.

Dr. Bradley testified that the fact that Petitioner's symptoms diminished while he was off work was consistent with his diagnosis of carpal tunnel syndrome. *Id.* at 18. He also testified that a negative nerve study does not necessarily mean that a patient does not suffer from carpal tunnel syndrome. *Id.* at 20. He explained:

> "That kind of stuff happens quite frequently. These EMGs are – they're tests that are very hard to perform. They're very much dependent upon the individual that's performing them.
> And they don't – it's not always a perfect picture. They're basically looking at how fast nerve conducts the electricity. And some people can have pretty significant symptoms with minor slowing of the electricity, and some people can have major slowing and just minor symptoms.

> And so it's a clinical picture. It's looking at the whole bit of information – the patient's symptoms, the physical exam, the EMG. But in general, carpal tunnel is a diagnosis that's made by physical exam and not by any tests. There's no test that's really good at diagnosing it. So it's part of the diagnosis, but it doesn't completely rule out carpal tunnel." *Id.* at 21-22.

Dr. Bradley noted that Petitioner had no major comorbid risk factors for compression neuropathy, as chewing tobacco was only considered a mild contributing factor. *Id.* at 22. Dr. Bradley testified that "everything seems to point to [Petitioner] having carpal tunnel syndrome, and I certainly believe his job activities would contribute to that development." *Id* at 26.

On cross-examination, Dr. Bradley testified that, "I wanted to do a diagnostic injection…he may very well not have carpal tunnel at all. I don't know. The only way to know is to put a shot in the wrist…but I certainly would not operate on this gentleman at all until I knew he had carpal tunnel." *Id* at 39. Dr. Bradley also noted that Petitioner's symptoms increased when his activity level increased during the pandemic and abated when he was able to rest during his off time for his other injury. *Id.* at 44-45.

Petitioner's Prior Work-Related Cervical Spine Injury: 20WC 018922

Respondent's Exhibit 7 placed into evidence Petitioner's prior workers' compensation case. (RX7) In that case, 20WC 018922, Arbitrator AuBuchon found in favor of the Petitioner and found that, prior to surgery, his bilateral upper extremity symptoms including "…pain deep within the shoulder and into the upper arm, numbness and tingling particularly in the ulnar distribution and tightness…" stemmed from his cervical injury confirmed by MRI. (RX7, p. 4-5). Petitioner testified, "prior to surgery, his hands were numb, pain radiated down his arm…" and, "surgery improved his symptoms, but they got worse again," necessitating a second surgery, a three-level cervical disc replacement. (RX7, p. 6-7).

After his second surgery with Dr. Gornet, "[o]n June 19, 2023, the Petitioner reported some tingling in his hands that Dr. Gornet believed was more related to peripheral entrapment and placed the Petitioner at maximum medical improvement for his neck." (RX7 p. 8). Arbitrator AuBuchon found in favor of Petitioner, finding Dr. Gornet's opinion persuasive that the symptoms, including pain that radiated into the bi-lateral trapezius, shoulders and arms, was related to Petitioner's cervical injury. (RX7 p. 11).

CONCLUSIONS OF LAW

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

The Arbitrator finds that Petitioner has not met his burden. The record shows that Petitioner's objective medical findings are absent, his physical exam findings are inconsistent, and his complaints are more likely related to his cervical spine injury from a prior workers' compensation claim.

First, Petitioner's EMG does not support a finding of bilateral hand and elbow compression neuropathies. The EMG only showed evidence of mild to moderate left cubital tunnel syndrome in Petitioner's non-dominant arm. (PX4)

Second, after describing Petitioner's physical exam findings as "fairly soft" and finding only mild symptoms with orthopedic testing, Dr. Bradley testified that, "I wanted to do a diagnostic injection…he may very well not have

carpal tunnel at all. I don't know. The only way to know is to put a shot in the wrist…but I certainly would not operate on this gentleman at all until I knew he had carpal tunnel." ((PX3, 6/19/23; PX5 at 39). However, at Petitioner's last office visit, Dr. Bradley proposed to do the surgery because a diagnostic injection would provide little use. (PX3, 6/20/24). At that visit, Dr. Bradley noted that he did not believe Petitioner would gain any sustained benefit from steroid injection, so the next step should be decompressive carpal tunnel release with possible ulnar nerve transposition. *Id.* By Dr. Bradley's own testimony, he did not confirm Petitioner's diagnosis, which had little support on physical exam, and no support on objective testing, while recommending a surgical intervention that he testified he would not perform without said confirmation.

Third, in Petitioner's prior workers' compensation case, Arbitrator AuBuchon found Petitioner's treating surgeon, Dr. Gornet's, opinion persuasive and that Petitioner's ongoing symptoms, including pain that radiated into the bi-lateral trapezius, shoulders and arms, was related to Petitioner's cervical injury. (RX7 p. 11). Prior to the cervical surgeries, Arbitrator AuBuchon found that Petitioner suffered from bilateral upper extremity symptoms including "…pain deep within the shoulder and into the upper arm, numbness and tingling particularly in the ulnar distribution and tightness," which were related to Petitioner's cervical injury. (RX7, p. 4-6).

Finally, while there was a period of time Petitioner worked at Graham after returning to work post-cervical surgeries, it was only a matter of months. Petitioner testified regarding increased work due to lockdown from COVID-19. However, Petitioner was off work recovering from his surgeries during most of this period of time, as he returned to work full duty in December 2022 and filed this claim with a manifestation date in June 2023. This very short time frame, coupled with the lack of objective evidence supporting a finding of bilateral hand and elbow compression neuropathies, points to the reemergence of the same symptoms Petitioner described suffering due to his prior compensable workers' compensation cervical injury, not to a new work injury.

Given the totality of the evidence, the Arbitrator finds that Petitioner has failed to meet his burden of proving by a preponderance of the evidence that (a) he sustained an accidental injury that arose out of and in the course of his employment, and (b) that his current condition of ill-being is related to the alleged work injury.

Petitioner's claim for benefits under the Act is denied. All other issues are rendered moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC025234
Case Name	Dawanna Thomas v. University of Illinois
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0203
Number of Pages of Decision	12
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Russell Haugen
Respondent Attorney	Timothy Steil

DATE FILED: 5/6/2025

/s/Marc Parker, 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)
CHAMPAIGN			☐ PTD/Fatal denied
	☐	Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Dawanna Thomas,

Petitioner,

vs. NO: 19 WC 025234

University of Illinois,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 27, 2024, is hereby affirmed and adopted.

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

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

Under Section 19(f)(2), 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.

MAY 6, 2025
MP:yl
o 5/1/25
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	19WC025234
Case Name	Dawanna Thomas v. University of Illinois
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	Russell Haugen
Respondent Attorney	Timothy Steil

DATE FILED: 9/27/2024

/s/Adam Hinrichs, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 24, 2024 4.27%

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

Dawanna Thomas
Employee/Petitioner

v.

University of Illinois
Employer/Respondent

Case # **19** WC **025234**

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 **Adam Hinrichs**, Arbitrator of the Commission, in the city of **Urbana, IL**, on **8/12/2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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 **8/23/2019**, 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 $**48,693.03**; the average weekly wage was $**710.80**.

On the date of accident, Petitioner was **38** years of age, ***single*** 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 $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

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

ORDER

Respondent shall pay Petitioner **$473.87** per week for **10 4/7 weeks** for Petitioner's period of temporary total disability from August 24, 2019 through September 24, 2019 and June 24, 2020 through August 4, 2020

Respondent shall pay all medical charges for Petitioner's reasonable, necessary and related medical treatment, as outlined in Petitioner's Exhibit 4. Respondent shall pay these medical charges consistent with the medical fee schedule, and pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the IWCC.

Respondent shall pay Petitioner permanent partial disability benefits of **$426.48/week for 50 weeks**, because the injuries sustained caused an 10% 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.

Signature of Arbitrator

September 27, 2024

FINDINGS OF FACT

Petitioner began working for Respondent in 2014. She has worked as a BSW, caterer, and a cook. As of August 2019, she was working as a cook and as extra help as a caterer. (TX pp. 12-13). In her caterer position, she was required to set up and tear down for events, and would occasionally have to serve food at these events. (TX p. 13). If the event was a buffet style, the food would be served out of chafers, which are the metal containers that hold the food and keep the food warm on the tables. (TX pp. 13-14).

Petitioner testified that on August 23, 2019, while working a catering shift for Respondent, she had to quickly change the chafers out from one size to a different size. She further testified that she had to move four to five chafers which each weighed at least 35 lbs. This required her to grab the correct chafers from the back room with a cart, pull the wrong chafers off the table and onto the cart, and place the correct chafers back on the table. (TX pp. 14-15, 37-39). Petitioner further testified that while she was moving these chafers from the table to the cart, she noticed pain in her right shoulder. Petitioner described it as a shooting pain from her right shoulder down into her elbow. (TX p. 15).

Petitioner testified that she did not have any of these symptoms in her right shoulder and right arm prior to August 23, 2019. She further testified that she never had treatment to her right shoulder prior to August 23, 2019. She further testified that she was working full duty without restrictions as of August 23, 2019. (TX p. 16).

Petitioner testified that she notified her supervisor after she started to feel pain in her shoulder on August 23, 2019. (TX p. 16). Petitioner further testified that she was told that she could not leave early, so she finished working her shift that evening. (TX pp. 16-17).

On August 23, 2019, Petitioner was evaluated at the emergency department of OSF Heart of Mary Medical Center, and reported right shoulder pain since yesterday and lifting a lot at work. (PX2 p. 8). The history also references complaints of left shoulder pain and that Petitioner reported having a cyst removed in the same shoulder three months prior. (PX2 p. 4). Petitioner was diagnosed with a right shoulder strain and right shoulder pain after heavy lifting and repetitive movements at work. (PX2 p. 7). She was provided with medications and instructed to follow up with Dr. Murdy Smita. (PX2 p. 8).

On August 25, 2019, Petitioner was seen at the emergency department of Carle. At that time, she reported right arm pain and tingling that started Friday after heavy lifting at work. (PX3 p. 216). She further reported that she has been taking the medications given to her at OSF but it is not helping her pain. (PX3 p. 216). She was diagnosed with overuse injury of the right pectoral girdle and instructed to follow up with occupational medicine and an ortho. (PX3 p. 220). She was further instructed to rest, use a sling, and perform activity as pain allows. (PX3 p. 226).

Petitioner was evaluated by Dr. David Zeman at Carle Orthopedic and Sports Medicine on August 27, 2019. At that time, Petitioner reported that she developed right shoulder pain while at work on Friday as a result of too much heavy lifting. On examination, Petitioner was guarded and limited due to pain. (PX3 p. 211). Dr. Zeman's assessment was right shoulder strain and subdeltoid bursitis. Dr. Zeman administered a corticosteroid injection into Petitioner's right shoulder. Petitioner was restricted to left-arm work only and was recommended to undergo occupational therapy. (PX3 p. 212).

Petitioner testified that she provided the light-duty note to Respondent following the that appointment but Respondent was unable to accommodate her restrictions. (TX pp. 17-18).

On September 6, 2019, Petitioner underwent an occupational therapy evaluation at Carle Therapy Services. Petitioner reported that she developed right shoulder pain after work one day. She further reported that she works as a cook and lifts heavy pots and pans at work. (PX3 pp. 205-206). Petitioner was recommended to undergo skilled therapy for pain management to improve her range of motion, strength and function of her right upper extremity. (PX3 p. 208).

On September 24, 2019, Petitioner returned to Dr. Zeman at Carle. Petitioner reported minimal improvement regarding her right shoulder pain. She further reported that the injection and the physical therapy had not been beneficial. Petitioner requested to have her restrictions removed so she could return to work. Dr. Zeman's assessment was right shoulder bursitis with failed response to corticosteroid injection and minimal progress with physical therapy. Petitioner was recommended to proceed with an MRI and her restrictions were changed to 50 lb. maximum lift. (PX3 pp. 193-194).

Petitioner underwent an MRI to her right shoulder on October 18, 2019. The radiologist's interpretation was possible tearing of the posterior glenoid labrum, infiltration of the rotator interval fat which can be seen with adhesive capsulitis, and mild infraspinatus tendinopathy. (PX3 pp.190-191).

On October 28, 2019, Petitioner was re-evaluated by Dr. Zeman. Petitioner reported that she has been working but her shoulder pain has continued. Dr. Zeman reviewed the MRI and diagnosed a symptomatic labral tear of the right shoulder. Dr. Zeman discussed treatment options with Petitioner that included surgical referral, a glenohumeral injection, or wait it out. Petitioner was referred to Dr. Bane for a surgical consultation. (PX3 p. 187).

On October 31, 2019, Petitioner was seen at Carle emergency department for increased pain in her right shoulder. She was diagnosed with chronic right shoulder pain. (PX3 pp. 181-186). Petitioner was seen at OSF emergency department on November 2, 2019. Petitioner reported ongoing right shoulder pain since a work accident in May of 2018. Petitioner was provided prescriptions of Flexeril, Neurontin, Zofran and Ultram. (PX2 pp. 21-31). Petitioner returned to the emergency department at Carle on November 4, 2019. Petitioner reported ongoing right shoulder pain with radiating pain into her chest. Petitioner was prescribed ibuprofen, norflex, and prednisone. It was noted that Petitioner was showing signs consistent with drug-seeking behavior. (PX3 pp. 169-178).

On November 18, 2019, Petitioner was evaluated by Dr. Robert Bane at Carle Orthopedics. At that time, Petitioner reported that on August 23, 2019, she was moving a food tray at work for a catering event and felt pain in her right shoulder. She further reported constant pain in her right shoulder since this time despite undergoing physical therapy, injections and several emergency department visits. Following a review of the MRI and an examination, Dr. Bane indicated that Petitioner likely had a frozen shoulder and possibly a posterior labral tear. Petitioner was recommended to remain on the restrictions and to undergo an injection. (PX3 pp. 152-159). On November 20, 2019, Petitioner underwent a right shoulder injection with Dr. Bane. (PX3 pp. 148-151).

Petitioner attended a telemedicine visit with Dr. Bane on April 17, 2020. Petitioner reported ongoing right shoulder pain but indicated that the medications were helping. She further reported that she has continued to work with the restrictions but lifting above her head or away from her body aggravated her pain. Dr. Bane recommended Petitioner to proceed with manipulation under anesthesia and arthroscopy. (PX3 pp. 123-132).

On June 24, 2020, Petitioner underwent a right shoulder manipulation arthroscopy with lysis of adhesions and labral debridement by Dr. Bane. Her pre-op and post-op diagnoses were adhesive capsulitis with fraying of the labrum in the right shoulder. (PX3 pp. 56-73).

Petitioner underwent a physical therapy evaluation at Carle on July 9, 2020. At that time, she was recommended to undergo skilled therapy. (PX3 pp. 48-53). Petitioner attended one additional therapy session on July 27, 2020. Petitioner reported that she was in too much pain to continue with her therapy. She was discharged for multiple no shows and cancellations. (PX3 pp. 33-45).

Petitioner attended a telemedicine visit with Danny McFarlin, PA on August 26, 2020. At that time, Petitioner reported that she continued to have pain and occasionally had numbness and tingling in her right upper extremity. The impression was status post right shoulder arthroscopy and manipulation under anesthesia for adhesive capsulitis. Petitioner was recommended to undergo an injection. (PX3 pp. 28-31). On September 3, 2020, Petitioner received a right shoulder fluoroscopic guided steroid injection. (PX 3 p. 21).

On September 25, 2020, Petitioner was re-evaluated by Danny McFarlin, PA. Petitioner reported that she continued to have pain and the recent injection did not provide any relief. On examination, Petitioner had decreased range of motion and spasms of the trapezius muscle. The impression was persistent chronic right shoulder pain with adhesive capsulitis. Petitioner was provided with a cortisone injection and recommended to undergo an MRI of the shoulder. (PX3 pp. 11-13).

Petitioner underwent an MRI of her right shoulder on October 26, 2020. The radiologist's impression was tendinosis of the infraspinatus, no significant tear, status post acromioplasty, very small amount of fluid within the subacromial subdeltoid space, and mild AC arthrosis. (PX3 pp. 9-10).

Petitioner testified that she did not proceed with any more surgeries to her right shoulder because she could not take more time off work. She further testified that she has not received any additional treatment to her right shoulder since October 2020. (TX p. 22).

Petitioner testified that she did not work from August 24, 2019 through September 24, 2019 and from June 24, 2020 through August 4, 2020. She further testified that she has not sustained any type of new injury or accident to her right shoulder since August 23, 2019. (TX pp. 22-23).

Petitioner testified that she continues to have pain on a daily basis in her right shoulder. She has pain with sweeping or cooking. She has pain when she raises her arm over her head or behind her back. She further testified that she uses ice, heat, ibuprofen, and Tylenol to treat her right shoulder pain. She is right-hand dominant. She is currently unemployed and lives in Texas. (TX pp. 23-25).

TESTIMONY OF MICHAEL DOWNES

Respondent called Michael Downes as witness. Mr. Downes testified that he is currently employed by Respondent as a unit manager for catering. He testified that on August 23, 2019, he was an extra help catering supervisor and he was Petitioner's supervisor at that time. (TX pp. 46-48). Mr. Downes testified that the event that day required three to four employees to work the event, which was for approximately 75 guests. (TX pp. 51-52; RX 7). He testified that the warm food would be put in chafers which were also filled with water to keep the food warm. He testified that there were two different sized chafers, a rectangular one and a circular one. The rectangular chafer weighed anywhere from 25 – 34 lbs. (TX pp. 54-57; RX 7 p. 6). Mr. Downes testified that he did recall that the chafers had to be switched out during the event, just as Petitioner described in her testimony. (TX pp. 57-58). He further testified that Petitioner told him that her back was hurting that day but did not say anything to him about her shoulder hurting. (TX pp. 59-60).

Mr. Downes testified that the chafers would weigh more than 34 lbs. after being filled with the warm food and water. (TX p. 67). He testified that a total of four chafers had to be moved that day, and it was possible that Petitioner was the employee to move the chafers. (TX pp. 69-72).

TESTIMONY OF ROBERT BANE, M.D.

Dr. Robert Bane testified by way of evidence deposition on September 19, 2022. Dr. Bane is a board-certified orthopedic surgeon at Carle in Champaign, Illinois. (PX1 pp. 5-6). Dr. Bane testified that his practice mainly involves the treatment of shoulders and knees. He performs approximately 900 surgeries every year. (PX1 p. 6). Dr. Bane testified at great length regarding the care and treatment he performed for Petitioner with respect to her right shoulder. (PX1 pp. 8-20). He testified that Petitioner's treatment for her right shoulder was reasonable and necessary. (PX1 p. 20). Dr. Bane opined that when Petitioner transferred the chafers on August 23, 2019, it precipitated an inflammatory reaction which contributed to the development of adhesive capsulitis. (PX1 pp. 20-23). He also testified that the fraying in the labrum that was discovered intraoperatively was not related to the work accident. (PX1 p. 25). He testified that Petitioner would have likely been at maximum medical improvement a year after the surgery was completed. (PX1 pp. 48-49).

TESIMONTY OF NIKHIL VERMA, M.D.

On August 2, 2023, Dr. Verma testified by way of evidence deposition. Dr. Verma is board certified in orthopedic surgery and his medical practice focuses on treatment for the shoulder, knee, and elbow. (RX10 pp. 5-6). He testified that 5% of his practice involves independent medical examinations and records reviews. (RX10 pp. 6-7). He testified that he performed a records review of Petitioner and authored a report following that review. (RX10 pp. 8-9, RX9). Following a review of the records, Dr. Verma opined that Petitioner's diagnosis was adhesive capsulitis post arthroscopic release of the right shoulder. He opined that this condition was idiopathic and developed insidiously. (RX10, pp. 7-12). He testified that Petitioner's treatment was reasonable and necessary. (RX10, pp. 12-13). He testified that he did not examine the Petitioner, did not have any medical records of Petitioner complaining of pain in her right shoulder prior to August 23, 2019, and agreed that all of the medical records he reviewed indicated that Petitioner's right shoulder complaints began on August 23, 2019. (RX10 pp.16-17).

CONCLUSIONS OF LAW

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

Petitioner testified that on August 23, 2019, while working in catering for Respondent she was required to move chafers at an event since the wrong chafers were put out on the table. This required her to grab the correct chafers from the back room, transfer the wrong chafers from the table to the cart, and to put the correct chafers back on the table. She had to move 4-5 chafers that weighed at least 35 lbs. As she was lifting and moving these chafers, she felt pain in her right shoulder and right arm.

Petitioner's supervisor, Michael Downes, testified that the chafers had to be changed on August 23, 2019. He testified that it was possible that Petitioner performed that task on that date. He confirmed that four chafers had to be moved and that they weighed approximately 25-35 lbs. when empty, weighing more when they were filled with food and water.

Petitioner filled out an accident report on August 26, 2019, in which she reported that on August 23, 2019, she injured her right shoulder and back while pushing, pulling, and lifting equipment. (RX 6). Further, the

contemporaneous medical indicates Petitioner reporting pain in her right shoulder secondary to an incident at work.

The Arbitrator finds that Petitioner's credibility is not negatively affected based on the fact that she has filed two other workers' compensation claims. Petitioner testified that she sustained an accident at work on July 28, 2017 and that was corroborated by the accident report, RX3, which confirms that the accident was witnessed. For her other workers' compensation claim, Petitioner proceeded to trial and was awarded benefits for a disfigurement, which the Arbitrator in that case did not find as large as the Petitioner described it. (RX1).

Accordingly, based on a preponderance of the credible evidence including Petitioner's testimony, confirmed by Michael Downes testimony, as well as the medical records indicating the development of right shoulder pain after lifting at work, the Arbitrator finds that Petitioner has met her burden, and that an accident arising out of and in the course of her employment occurred on August 23, 2019.

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

Having considered the testimony, all the medical evidence, and the chain of events, the Arbitrator concludes that Petitioner's current condition of ill-being with respect to the adhesive capsulitis in her right shoulder is casually related to her August 23, 2019 work injury.

In support of this finding, the Arbitrator relies on the fact that prior to the August 23, 2019 accident, Petitioner had worked for Respondent for four years as a BSW, cook, and caterer. She further testified that she did not have any prior issues with her right shoulder and was working full duty without restrictions as of August 23, 2019. Furthermore, there is no medical evidence that Petitioner sought treatment to her right shoulder prior to August 23, 2019. Immediately following the accident, Petitioner had an onset of pain in her right shoulder. She subsequently sought treatment on August 23, 2019 which began an uninterrupted course of care for Petitioner's right shoulder.

Dr. Bane opined that Petitioner's work activities on August 23, 2019, precipitated an inflammatory process in Petitioner's right shoulder that contributed to the development of adhesive capsulitis. The Arbitrator is persuaded by the opinion of Dr. Bane as he examined the Petitioner, performed the corrective procedure, and was thus in the best position to judge the cause of Petitioner's complaints. The Arbitrator notes that Dr. Verma never examined the Petitioner, never had any discussions with Petitioner regarding her explanation of the events that occurred on August 23, 2019, and had no evidence that Petitioner sought treatment for her right shoulder prior to the accident date.

Given the chain of events, the testimony of the Petitioner supported by the record, and the persuasive opinion of Dr. Bane, the Arbitrator finds that Petitioner's current condition of ill-being in her right shoulder is causally related to her work injury.

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?

Incorporating the above, the Arbitrator finds that all of medical services provided to Petitioner for the treatment of her right shoulder was reasonable, necessary, and related to her work injury. The Respondent has not paid all appropriate charges for these reasonable and necessary medical services.

The Respondent shall pay all outstanding medical bills for Petitioner's reasonable and necessary medical care as outlined in Petitioner's Exhibit 4, pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall make this

payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the IWCC.

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

Petitioner was placed on light-duty restrictions from Dr. Zeman on August 27, 2019. Petitioner testified that she provided those restrictions to Respondent, but they were not able to accommodate her restrictions. Petitioner further testified that she did not work from August 24, 2019 through September 24, 2019. This testimony was unrebutted.

Dr. Bane testified that Petitioner would have been restricted from all work activities following the surgery for six weeks. Petitioner testified that she did not work from June 24, 2020 through August 4, 2020.

Based on the Arbitrator's findings herein, and Petitioner's credible unrebutted testimony, the Arbitrator finds that Respondent is liable for temporary total disability benefits from August 24, 2019 through September 24, 2019 and from June 24, 2020 through August 4, 2020.

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

With regard to the issue of nature and extent, the Arbitrator notes that pursuant to Section 8.1b of the Act, for accidental injuries occurring after September 1, 2011, permanent partial disability shall be established using the five enumerated criteria, with no single factor being the sole determinant of disability. Per 820 ILCS 305/8.1b(b), the criteria to be considered are as follows: (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 records. Applying this standard, the Arbitrator makes the following findings:

With regard to subsection (i) of §8.1b(b): the Arbitrator notes that no AMA impairment report was submitted into evidence. The Arbitrator lends no weight on this factor.

With regard to subsection (ii) of §8.1b(b): the Petitioner was employed as a cook and caterer for Respondent at the time of the accident, and she was able to return to work in her prior capacity following her treatment. The Arbitrator lends some weight to this factor.

With regard to subsection (iii) of §8.1b(b): the Arbitrator notes that Petitioner was 38 years old at the time of the accident and has a significant number of years remaining in her work life. The Arbitrator places moderate weight to this factor.

With regard to subsection (iv) of §8.1b(b): the Arbitrator notes that there is no evidence of diminution of Petitioner's earning capacity as it relates to this work injury. The Arbitrator places some weight on this factor.

With regard to subsection (v) of §8.1b(b): the Petitioner testified to pain complaints in her right, dominant arm. The medical records document her pain complaints, as well as her failure to complete the course of care recommended by her surgeon, including physical therapy and follow up visits. The Arbitrator places greater weight on 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 10% loss of use to her person as a whole pursuant to §8(d)(2) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC025348
Case Name	Joseph A Dippel v. Vertical Holdings, LLC dba Premier Employer Services & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0204
Number of Pages of Decision	21
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Phillip Risley
Respondent Attorney	Sidney Gui

DATE FILED: 5/6/2025

/s/ Amylee Simonovich, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOSEPH A. DIPPEL,

Petitioner,

vs. NO: 18 WC 025348

VERTICAL HOLDINGS, LLC d/b/a PREMIER EMPLOYER SERVICES; STATE TREASURER as *ex-officio* custodian of the Injured Workers' Benefits Fund,

Respondents.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent, State Treasurer as ex-officio custodian of the Injured Workers' Benefit Fund (IWBF), and notice given to all parties, the Commission, after considering the issues of the employer-employee relationship, benefit rates, calculation of the wages, nature and extent of the disability, liability of the IWBF, and liability and existence of borrowing-lending relationship, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part thereof.

With regards to the $8,892.00 Petitioner received from BRIDGE HRO, and which Respondent receives a credit, the Commission finds this credit is for lost-time benefits, and is not to be applied against the permanency award.

The Commission strikes the body of paragraph three on page 10 of the narrative portion of the Arbitrator's award for issue (G). The Commission replaces this paragraph with:

"Petitioner has the burden of establishing all elements of his case. The Commission notes that the Petitioner and Respondent Vertical Holdings stipulated to an AWW of $780.00. The IWBF disputed the issue of the AWW, but did not propose an alternate rate. The Commission finds that

the Petitioner has met his burden of proof regarding the AWW. The Petitioner's testimony was that he worked a full-time 40 hour week in the time prior to the accident, and that he was paid $19.50 per hour. The Petitioner's testimony was corroborated by Petitioner's Exhibit D, which shows a history of 40 hours per week of hourly wage or holiday pay for the majority of periods from May 6, 2018, through August 11, 2018, the last full pay period prior to the accident. The rate of pay in that period is consistently $19.50 or higher. Consistent with *Walker v. Industrial Commission*, 345 Ill.App.3d 1084 (4th Dist. 2004) the Petitioner and Respondent Vertical Holdings are bound to their stipulations. The Commission finds the Petitioner had earnings of $19.50 per hour x 40 hours per week, for an AWW of $780.00, and his earnings during the year preceding the injury were $14,738.22."

Finally, the Commission observes Petitioner's personal identity information was unredacted from Petitioner's Exhibits. The Commission cautions Counsel to adhere to Supreme Court Rule 138. Ill. S. Ct. R. 138 (eff. Jan. 1, 2018).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on May 10, 2024, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner reasonable and necessary medical services for causally related treatment, as provided in Section 8(a) and 8.2 of the Act, as follows:

1. Illinois Orthopedic Network in the amount of $27,397.71;
2. Midwest Specialty Pharmacy in the amount of $829.17;
3. Metro Anesthesia in the amount of $3,473.05; and
4. MedSource, LLC in the amount of $1,955.00.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent Employer, Vertical Holdings, LLC d/b/a Premier Employer Services, shall pay to Petitioner the sum of $468.00/week for a period of 15 weeks, as provided in §8(d)(2) of the Act, because the injuries sustained caused permanent partial disability to the extent of 3% loss of use of person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent Employer, Vertical Holdings, LLC d/b/a Premier Employer Services is entitled to a credit of $8,892.00 for lost-time benefits, and is not to be applied against the permanency award.

IT IS FURTHER ORDERED BY THE COMMISSION that the 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 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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $40,800.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

May 6, 2025

o:3/25/2025
AHS/ps
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	18WC025348
Case Name	Joseph A Dippel v. Vertical Holdings, LLC dba Premier Employer Services and IWBF
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Crystal Caison, Arbitrator

Petitioner Attorney	Phillip Risley
Respondent Attorney	Matt Gorski, Sidney Gui

DATE FILED: 5/10/2024

/s/Crystal Caison, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF MAY 7, 2024 5.155%

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Joseph A. Dippel,
Employee/Petitioner

Case # **18** WC **025348**

v.

Consolidated cases:

Vertical Holdings, LLC dba Premier Employer Services;
State Treasurer as *ex-officio* custodian
of the Injured Workers' Benefits 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 **Crystal L. Caison**, Arbitrator of the Commission, in the city of **Chicago**, on **October 4, 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 Liability of the IWBF; Proof of Non-Insurance

FINDINGS

On **8/15/18**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $; the average weekly wage was **$780**.

On the date of accident, Petitioner was **36** years of age, **single** with **1** 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 $**8,892** for TTD, for a total credit of $**8,892**.

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

ORDER

Respondent Employer, Vertical Holdings, LLC d/b/a Premier Employer Services shall pay all reasonable and necessary medical services subject to the Fee Schedule as provided in Sections 8(a) and 8.2 of the Act, and more specifically as follows:

1. Illinois Orthopedic Network in the amount of $27,397.71;
2. Midwest Specialty Pharmacy in the amount of $829.17;
3. Metro Anesthesia in the amount of $3,473.05; and
4. MedSource, LLC in the amount of $1,955.00.

The Arbitrator orders Respondent Employer, Vertical Holdings, LLC d/b/a Premier Employer Services to pay Petitioner the sum of $468.00/week for a period of 15 weeks, as provided in §8 (d)(2) of the Act, because the injuries sustained caused/resulted in permanent partial disability to the extent of 3.0% loss of use of person as a whole.

Respondent Employer, Vertical Holdings, LLC d/b/a Premier Employer Services is entitled to a credit of $8,892.00 for the payments received by Petitioner when he was off work. The Arbitrator finds no TTD is owed.

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 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.

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 10, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Joseph A. Dippel, Petitioner, v. Vertical Holdings, LLC d/b/a Premier Employer Services; State Treasurer as ex-officio Custodian of the Injured Workers' Benefit Fund, Respondent.	)	Case No. 18WC025348

PROCEDURAL HISTORY

This matter proceeded to hearing on October 5, 2023 in Chicago, Illinois before Arbitrator Crystal L Caison. Two Request for Hearing forms were introduced into evidence as to the two Respondents, Vertical Holdings, LLC, d/b/a Premier Employer Services and Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund ("IWBF", "the Fund"). Respondent-Employer disputed all issues except average weekly wage, age, marital status, dependent status, and agreed that there were no applicable §8(j) credits. Arbitrator's Exhibit ("AX"1). The IWBF disputed all issues. AX 2. Both request for hearing forms also contested liability of the IWBF and Proof of Non-Insurance. AX 1, AX 2.

THE ARBITRATOR MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner Testimony

Petitioner, Joseph Dippel, testified that in August 2018 he resided in Carol Stream, IL. Petitioner was unmarried and had a dependent daughter. Petitioner stated that his employer on 8/15/18 was Vertical Holdings Inc., d/b/a Premier Staffing and he had been working for them for approximately three to six months prior to that date. Petitioner first learned of Vertical Holdings through Tom Keenan. Petitioner knew Keenan as the owner of Keenan Transit, a trucking company based out of Carol Stream, IL. Keenan Transit consisted of a warehouse in Carol Stream

with the name "Keenan Transit" on the building exterior, a few interior offices within the warehouse, and a parking lot for trucks. Petitioner obtained his class A CDL and went to the Keenan Transit warehouse with a completed application. He spoke to Keenan about getting a job with the company. Keenan directed him to apply through Vertical Holdings, as Keenan Transit reportedly did not hire directly and used a staffing agency for their drivers. Petitioner went to Vertical Holdings and completed paperwork at their office, which he testified at various times to being in Geneva, IL or South Batavia, IL. Petitioner testified that he never went to the Vertical Holdings office again and did not report his 8/15/18 injury to Vertical Holdings at any point. Petitioner believed he was hired by Vertical Holdings but testified that he was trying to get a job at Keenan Transit, because they were a union job.

Job Duties

Once he began working for Vertical Holdings, Petitioner reported daily to Bud Hines. Petitioner described Hines as the "operations manager" and as "dispatch". Petitioner directly reported to Hines but could not definitively testify to what company Hines worked for. Petitioner believed Hines to be an employee of Keenan Transit. Hine's office was located inside Keenan Transit's warehouse in Carol Stream, along with Keenan's office. Hines would tell Petitioner where to go, what time to be there, what truck to take, and what time to come in the next shift. Petitioner would punch in each day on a timeclock inside of the Keenan Transit warehouse. Petitioner would pick up trucks at the Keenan Transit warehouse for his deliveries to various locations. Petitioner's delivery routes were all local Illinois routes. Every night after his deliveries were completed, he would come into the Keenan Transit warehouse to drop off paperwork and would get start times for the next morning from Hines, which Hines posted on a message board. The message board would indicate the start time drivers were given for the next day, which truck to take, and also posted general information, such as union information. Petitioner testified that all legal paperwork such as bill of ladings, IFTA, and other documents used to track his truck driving and deliveries were provided by Keenan Transit at the warehouse and the name Keenan Transit was printed on all such paperwork. The trucks Petitioner drove were pre-loaded with cargo inside of the Keenan Transit warehouse before each delivery. Petitioner was not involved with loading. Petitioner testified that the trucks had different company names emblazoned on the truck exterior. Some were marked as Keenan Transit trucks, others as Phoenix, and others still with other

company names Petitioner could not recall. Petitioner could not recall the name printed on the truck he was driving on 8/15/18.

Accident

On 8/15/18, Petitioner had a delivery to make in Evanston, IL. He arrived at the delivery address and proceeded to take the pallet jack for delivery through a set of double doors at the front of the location. Petitioner testified that the pallet jack belonged to Vertical Holdings. On cross-examination he testified that the pallet jack was from inside Keenan's warehouse. Petitioner indicated the pallet was loaded with heavy goods and he was delivering the pallets by himself. He testified that the pallet jack was not "the best pallet jack in the world" but was "not a major issue".

The pallet jack's front had double wheels and Petitioner recalled that it was missing a chunk of wheel in front and was bent, so the wheels did not roll easily. He also recalled that the hydraulics were not very reliable. While he was trying to move the pallets to the lift gate with the pallet jack, Petitioner had to fight with the pallet a bit due to the incline his vehicle was parked on. As he pulled it, the pallet jack started moving forward and towards him. Petitioner turned the wheels with intent to push the pallets instead, but during he felt a tear in the abdomen area. Petitioner stated that he had never felt anything like that before, but he finished his delivery job and called Hines to report his injury after completing the delivery.

Petitioner testified that he told Hines he was wrestling the pallet jack off the truck and felt something tear. Hines referred him to go get it checked out at Concentra after he returned the truck to Carol Stream.

Testimony regarding Medical Care

Petitioner visited Concentra same-day and then again following up a day or two later. Petitioner recalls that Concentra tried to tell him that he did not have a hernia, but he insisted that he did and they did diagnose him with a hernia. Petitioner went to Illinois Orthopedic Network after Concentra diagnosed his hernia, and he underwent surgery. Post-operatively the hernia got better. Petitioner recalls being told that surgery went well and he was "textbook" as far as hernias go. After a week or two of pain when moving, he got better. He kept Hines informed during his treatment. On October 25, 2018 he was released to return to work full duty effective November 5, 2018.

Earnings/TTD

Petitioner testified that he worked for Respondent-Employer for three to six months before his injury and was working full time at a rate of $19.50 per hour. Petitioner was not sure exactly how long prior to his accident he had been working for Respondent-Employer but confirmed that the wages in evidence accurately reflected his pay from Respondent-Employer. PXD; Vertical Holdings Respondent's Exhibit "VH – (RX"1). Petitioner testified that he was paid via direct deposit before and after his accident. Petitioner was not informed that a different company began issuing those payments after the accident. Petitioner testified that he "just thought it was Keenan". He explained that he really did not know how the payments worked, just that pay just came to him by direct deposit.

Petitioner's Current Condition

Petitioner did return to work full duty for Respondent-Employer and was directed by Hines to go work for Gexpro in Aurora, IL. Petitioner described Gexpro as an "account" of Keenan's and that Keenan Transit provided Gexpro with their drivers. Petitioner testified that he still has discomfort if he is doing something active, but he feels that he has learned to deal with it. He also described having occasional sharp pains that reminded him of the injury, but that typically he just notices a general, everyday discomfort. Petitioner denied any prior history of accidents or injuries to his abdomen. He still maintains a valid class A CDL.

Summary of Medical Care

Petitioner treated on 8/15/18 at Concentra and was diagnosed ultimately with an umbilical hernia. PX E

Petitioner then followed up on August 17, 2018 with Dr. Wiesman at Illinois Orthopedic Network to address further care for this hernia. PX F. Petitioner reported to Dr. Wiesman that he had been pushing a skid weighing 600 lbs. when he felt pain, a pop, and inflammation in the low back. *Id.* at 4. A correction of the hernia was recommended and Petitioner was placed on light duty with no getting in and out of his truck, no climbing, bending, squatting, and no heavy lifting. *Id.* Surgery was recommended, pending authorization. *Id.*

On September 20, 2018, Petitioner underwent an umbilical hernia repair surgery with Dr. Wiesman, which was done under anesthesia. *Id.* at 6; PX I.

On September 27, 2018, Petitioner followed up post-operatively with Dr. Wiesman and was noted to be doing really well. PX F at 10. Petitioner was kept off work while recovering, but a full release was indicated to be possible in the future. *Id.*

On October 25, 2018, Petitioner followed up again and was noted to be recovering nicely, with only 2/10 pain reported. *Id.* at 12. Petitioner's incision was well healed and he was released to return to full duty work effective November 5, 2018. *Id.* Petitioner was discharged from further care. *Id.* No further records were placed in evidence.

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).

At arbitration, Petitioner answered all questions asked of him and with no apparent attempt to evade the questions. When asked to describe his symptoms as related to his current condition, he did not appear to exaggerate his complaints. In fact, Petitioner stated that he feels that he has learned to deal with everyday discomfort post-surgery.

The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable. Overall, Petitioner was a credible witness.

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

Pursuant to §3 of the Illinois Workers' Compensation Act, the Arbitrator finds Petitioner was engaged in carriage via motor vehicle, loading and unloading and work that included warehouse or storehouses. *820 ILCS 305/3 (3)(4)*. In order to recover under the Illinois Workers' Compensation Act, a petitioner must show by a preponderance of the evidence that he suffered a disabling injury arising out of and in the course of his employment. *Illinois Bell Telephone Co. v. Industrial Commission*, 131 Ill.2d 478, 483 (1989).

Petitioner testified that he was injured while moving a pallet with a pallet jack and felt a tear while maneuvering the pallet jack in the bed of the truck after driving to Evanston, Illinois to make a delivery of goods. Further, Petitioner was paid by Respondent, Vertical Holdings, LLC, as set forth in Petitioner's Exhibit D. Petitioner testified he went to Vertical Holdings, LLC's address to complete the paperwork when he was hired by the staffing agency and then sent to the Carol Stream warehouse that Petitioner refers to as Keenan Transit.

Based on the foregoing, the Arbitrator finds that Respondent is subject to the Act because it is engaged in the extra hazardous activity of carriage by motor vehicle, and because it employed more than two employees. §3(3).

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

§ 1(a)4 of the Illinois Workers' Compensation Act states, in part:

> Where an employer operating under and subject to the provisions of this Act loans an employee to another such employer and such loaned employee sustains a compensable accidental injury in the employment of such borrowing employer and the borrowing employer does not provide or pay benefits or payments due such injured employee, such loaning employer is liable to provide and pay all benefits or payments due such employee under this Act and as to such employee the liability of such loaning and borrowing employers is joint and several . . .

Illinois courts have addressed this particular issue many times. In *A.J. Johnson Paving Company v. The Industrial Commission et al.*, 82 Ill. 2d 341 (Ill. 1980), the Illinois Supreme Court stated, "The inquiry required for the determination of the existence of the loaned-employee status is, therefore, twofold: (1) whether the special employer, Johnson, had the right to direct and control the manner in which claimant performed the work and (2) whether there existed a contract of hire between claimant and Johnson. The existence of the loaned-servant situation is generally a question of fact to be determined by the Industrial Commission. We will not disturb the Commission's findings on the question unless contrary to the manifest weight of the evidence." *Id.* at 348.

As to the first prong of this test, the Supreme Court in Johnson found that Johnson (the borrowing employer) had the right to control the manner of work performed, the hours worked; he received instructions from the foreman at Johnson; no supervisors were there from DeMarr (the loaning employer). Likewise, in the case at bar, Petitioner's schedule was controlled by Kennan Transit; Petitioner was told which truck to use to make deliveries; Petitioner was told where he must drive to make those deliveries. Petitioner used the borrowing employer's trucks and equipment, including the pallet jack he was using when injured.

As to the second prong of this test, the Illinois Supreme Court in Johnson stated, "Essential to the employer-employee relationship between Johnson and the claimant is the existence of the employment contract, express or implied. In order to establish such a contract there must be at least an implied acquiescence by the employee in the relationship. This acquiescence can be established by the fact the claimant here was aware that the paving job was being performed by Johnson and by the fact that he accepted Johnson's control over the work in that he complied with the foreman's instructions.

Petitioner testified he was hired by Respondent, Vertical Holdings, LLC doing business as Premier Employer Services after learning Keenan Transit hired its drivers from a staffing agency named Vertical Holdings, LLC. *T.* at 37-40. Petitioner did not wear a uniform for his employment. *T.* at 65. Petitioner went to Kennan Transit warehouse in Carol Stream to find out his schedule each day. *T.* at 67. The tools used were located at the same warehouse in Carol Stream. *T.* at 67. Petitioner clocked in or punched in at the same warehouse in Carol Stream. *T.* at 69-70. The names on the trucks included Phoenix, Keenan, and a couple of others. *T.* at 71. The operations

manager at the Carol Stream warehouse directed Petitioner which trucks to drive and where to make his deliveries. *T.* at 71.

Petitioner went to work at the borrowing employer warehouse in Carol Stream, followed the schedule provided to him by the borrowing employer and clocked in and out as designated by the borrowing employer. Petitioner acquiesced to the borrowing employers' demands and requirements.

Under Illinois law, the loaning employer is jointly and severally liable for Petitioner's damages and must pay damages to Petitioner. The loaning employer may have a right to reimbursement from the borrowing employer or their right may be waived by an agreement to the contrary between the two employers. *Ft. Dearborn Cartage Co.v. Rooks Transfer Co.*, 136 Ill. App. 3d 371 (Ill. App. Ct. 1st Dist. 1985).

Based on the foregoing, the Arbitrator finds that Petitioner was a loaned and borrowed employee. Respondent, Vertical Holdings, LLC doing business as Premier Employer Services is jointly and severally liable to Petitioner under the clear meaning of the Illinois Workers' Compensation Act, § 1(a)4.

Therefore, the Arbitrator finds that Respondent is an employer under § 1(a)(4).

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

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

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

characteristics." Id. at ¶ 38. "A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties." Id. at ¶ 46.

Based on Petitioner's testimony and contemporaneous medical records, the Arbitrator finds that Petitioner suffered an accident that arose out of and in the course of his employment.

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

Based on the medical records and Petitioner's testimony, the Arbitrator finds that the date of accident is 8/15/18.

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

Pursuant to § 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 failure to give the statutorily required notice is a bar to recovery under the Act. Silica Sand Transport, Inc. v. Industrial Comm'n, 197 Ill. App. 3d 640, 651, 554 N.E.2d 734, 143 Ill. Dec. 799 (1990). Notice to agents of the employer (i.e. supervisors or foremen) can constitute notice to the employer. See McLean Trucking Co. v. Industrial Comm'n, 72 Ill. 2d 350, 354, 381 N.E.2d 245, 21 Ill. Dec. 167 (1978).

The purpose of the notice requirement is to enable the employer to investigate the employee's alleged industrial accident. White v. Illinois Workers' Compensation Comm'n, 374 Ill. App. 3d 907, 911, 873 N.E.2d 388, 313 Ill. Dec. 764 (2007). Giving notice of an injury is insufficient if the employer is not apprised that the injury is work related. Id. Because the legislature has mandated a liberal construction on the issue of notice, if some notice has been given, although inaccurate or defective, then the employer must show that it has been unduly prejudiced. Eileen Farina v. State Farm Mutual Insurance, 2014 Ill. Wrk. Comp. LEXIS 205, *9-10, 14 IWCC 210; See Gano Electric Contracting v. Industrial Comm'n (Moore), 260 Ill. App. 3d 92, 631 N.E.2d 724 (4th Dist. 1994).

Based on the testimony from Petitioner, the Arbitrator finds that timely notice was given.

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).

Based on the medical records, the Arbitrator finds that Petitioner suffered an umbilical hernia as a result of this 8/15/18 accident.

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

Based on the testimony from Petitioner, The Arbitrator finds timely notice was provided to Respondent, Vertical Holdings, LLC d/b/a Premier Employer Services. Petitioner's Exhibit A shows the Application for Adjustment of Claim was filed and mailed to Respondent within 30 days after the work injury of 8/15/18 to their address of 1508 S. Batavia Avenue, 3rd Floor, Geneva, IL.

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

The medical records show that Petitioner was 36 , and the Arbitrator finds the same.

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

Based on Petitioner's testimony, the Arbitrator finds that Petitioner was single with one dependent child.

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:

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

Overall, the Arbitrator finds Petitioner's treatment as it relates to the umbilical hernia to be reasonable and necessary and finds that Respondent has not paid for said treatment. As such, the Arbitrator orders Respondent to pay the medical bills identified below pursuant to the medical fee schedule and §s 8(a) and 8.2 of the Act:

1. Illinois Orthopedic Network in the amount of $27,397.71;
2. Midwest Specialty Pharmacy in the amount of $829.17;
3. Metro Anesthesia in the amount of $3,473.05; and
4. MedSource, LLC in the amount of $1,955.00.

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

TPD/MAINTENANCE

The Arbitrator finds Petitioner is not entitled to temporary partial disability or maintenance benefits.

TTD

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

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. Archer Daniels Midland Co. v. Indus. Comm'n, 138 Ill.2d 107, 118 (1990).

Petitioner seeks TTD from 8/15/2018 through 11/5/2018. Petitioner testified that he continued to receive normal direct deposits while he was off work. The Parties stipulated that Petitioner received $8,892.00 in TTD that Respondent paid through Bridge HRO.

Therefore, the Arbitrator finds no TTD is owed.

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

PPD FACTORS

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

Under § 8.1b(b)(i), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The statute does not require the claimant to submit an impairment rating. It only requires that the Commission consider such a report if in evidence and regardless of which party submitted it. See Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n, 2015 IL App (5th) 140445WC, ¶ 17, 43 N.E.3d 556. The Arbitrator gives no weight to this factor.

Under § 8.1b(b)(ii), the Arbitrator notes that the record reveals Petitioner was employed as a CDL truck driver who picks up and delivers products at the time of the accident. Petitioner testified that he operated an electronic lift gate and used pallet jack to move pallets on and off the truck. Because Petitioner's current condition of ill-being does not prevent him from returning to his prior job duties, he was able to perform prior to 8/15/18. The Arbitrator gives some weight to this factor.

Under § 8.1b(b)(iii), the Arbitrator notes that Petitioner was 36 years old at the time of the accident. There is nothing in the record that indicates Petitioner's age had any impact on his condition of ill-being. The Arbitrator gives little weight to this factor.

Under § 8.1b(b)(iv), the Arbitrator notes that no evidence was offered regarding Petitioner's future earning capacity. The Arbitrator gives no weight to this factor.

Under § 8.1b (b) (v)- the Arbitrator notes that the medical records reflect that Petitioner suffered an umbilical hernia on 8/15/18 and an umbilical hernia repair was performed. Petitioner underwent a course of treatment. On 10/25/18, Petitioner was noted to be recovering nicely, with only 2/10 pain reported. Petitioner's incision was well healed and he was released to return to full duty work with no restrictions effective 11/5/18. Petitioner was discharged from further care.

Petitioner testified that he is still having pain and some limitations. The Petitioner testified that he experiences discomfort about every day and occasionally has sharp pain when exerting himself or lifting heavy items. The Arbitrator gives greater weight to this factor.

Based upon the above factors and the record taken as a whole, the Arbitrator orders Respondent to pay Petitioner the sum of $468.00/week for a period of 15 weeks, as provided in §8 (d)(2) of the Act, because the injuries sustained caused/resulted in permanent partial disability to the extent of 3.0% loss of use of person as a whole.

Issue O, whether Respondent is in compliance with the Act and whether the Injured Workers' Benefit Fund is liable, the Arbitrator finds as follows:

A certification from NCCI stating that "Vertical Holdings, LLC" did not have workers' compensation insurance of 8/15/18. (PX C) Therefore, Arbitrator finds the same.

As such, the Arbitrator further finds the Injured Workers' Benefit Fund liable and the Treasurer, as ex-officio custodian of the Fund, is ordered to pay the Petitioner's award to the extent set by statute. The Respondent shall reimburse the Fund.

It is so ordered:

Crystal L. Caison

Arbitrator Crystal L. Caison

May 10, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC018827
Case Name	Stephanie Mabry v. State of Illinois - Chester Mental Health Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0205
Number of Pages of Decision	23
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	James Keefe Jr
Respondent Attorney	Kenton Owens

DATE FILED: 5/6/2025

/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

STEPHANIE MABRY,

Petitioner,

vs. NO: 21 WC 18827

STATE OF ILLINOIS,
CHESTER MENTAL HEALTH CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, the reasonableness and necessity of the medical treatment and charges, temporary total disability, prospective medical treatment, 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 August 7, 2024 is hereby affirmed and adopted.

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

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

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

MAY 6, 2025

CAH/tdm
d: 5/1/25
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	21WC018827
Case Name	Stephanie Mabry v. State of Illinois - Chester Mental Health Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	James Keefe Jr
Respondent Attorney	Kenton Owens

DATE FILED: 8/7/2024

/s/ Jeanne AuBuchon, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF AUGUST 6, 2024 4.70%

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

August 7, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Stephanie Mabry
Employee/Petitioner

v.

Chester Mental Health Center
Employer/Respondent

Case # **21** WC **18827**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Herrin**, on **6/5/24**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **7/5/2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**49,679.88**; the average weekly wage was $**1,559.31**.

On the date of accident, Petitioner was **46** 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 $**121,492.25** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**121,492.25**.

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 in Petitioner's Exhibit 7, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given credit for amounts paid and hold Petitioner harmless for payments made by the group provider in accordance with Section 8(j) of the Act. Respondent shall pay such expenses directly to the providers pursuant to the fee schedule.

Respondent shall pay Petitioner temporary total disability benefits of $1,039.54/week for 112-3/7 weeks, commencing 7/6/20 through 8/31/22, as provided in Section 8(b) of the Act. Respondent shall be given a credit for $121,492.25 paid.

Respondent shall pay Petitioner the sum of $871.73/week for a further period of 141.2 weeks because the injuries sustained caused: 10% loss of the left eye, pursuant to Section 8(e) of the Act; 5 percent loss of the body as a whole due to the concussion, pursuant to Section 8(d)2 of the Act; and 20% loss of use of the person as a whole as to the cervical spine, pursuant to Section 8(d)2 of the Act.

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

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

Jeanne L. Aubuchon

Signature of Arbitrator

August 7, 2024

PROCEDURAL HISTORY

This matter proceeded to trial on June 5, 2024. The issues in dispute are: 1) the causal connection between the accident and the Petitioner's eye, head and cervical spine conditions; 2) liability for medical bills; 3) entitlement to TTD benefits; and 4) the nature and extent of the Petitioner's injury. The parties stipulated that if there is an award of medical bills, the Respondent shall pay them directly to the providers pursuant to the fee schedule.

FINDINGS OF FACT

At the time of the accident, the Petitioner, who was 46 years old, was employed by the Respondent as a registered nurse. (AX1, T. 12) On July 5, 2020, a patient punched her in the face. (T. 13) He hit her in the nose and across her eye, and she went backwards, hitting her head on a wall. (T. 13-14) In her Notice of Injury, the Petitioner reported eye and nose injuries. (RX1)

The next day, the Petitioner went to Chester Memorial Hospital. (T. 14) Those records were not produced at arbitration. On July 7, 2020, the Petitioner went to the emergency room at SIH Memorial Hospital Carbondale and reported facial pain and blurry vision. (T. 14, PX1) She also reported seeing flashing lights the day before. (PX1) The records from SIH reflect that Chester Memorial Hospital performed CT scans of the head, facial bones and cervical spine that were negative for fracture or acute findings. (Id.) There was concern for retinal detachment due to seeing flashing lights. (Id.) The Petitioner was given medications and eye drops and was directed to go to the BJC Hospital emergency department. (Id.)

The Petitioner went to BJC Hospital on July 8, 2020. (T. 14, PX2) She testified that she could barely open her eye and was having pain in her neck and shoulder and numbness and tingling in her hands. (T. 15) At the hospital, she described the assault and complained of right-sided headache, blurred vision, photophobia, flashes of color out of her temporal field, pain and

tenderness of the left elbow and pain in the neck, trapezius and shoulder. (PX2) She was diagnosed with blurry vision from trauma. (Id.) The ophthalmology resident explained it was anticipated that the Petitioner's symptoms would continue to improve, as there was no structural damage to the eye that they were able to see. (Id.) The doctor recommended over-the-counter anti-inflammatories, dim lighting and artificial tears. (Id.) Elbow X-rays were normal. (Id.) The Petitioner was taken off work until July 14, 2020. (Id.)

The Petitioner testified that prior to the accident, she was not having any issues with her left eye. (T. 16) She said she previously had six lumbar spine surgeries and suffers from Crohn's disease. (T. 20-21)

On February 24, 2021, the Petitioner saw Dr. Jordan Morgeson, an optometrist at the Marion Eye Center and complained of trouble seeing, blurred vision, flashes and floaters. (PX6) Dr. Morgeson diagnosed unspecified injury of the left eye and orbit, age-related cataracts, classical migraine, keratoconjuct sicca (dry eye disease), vitreous degeneration of the left eye and bilateral astigmatism. (Id.) The Petitioner returned to Dr. Morgeson on March 34, 2021. (Id.) Optical coherence tomography (OCT) scan was performed and revealed syneresis OS (condensing of the vitreous gel inside the eye). (Id.) The records from Marion Eye Center were unclear as to what treatment was rendered, and Dr. Morgeson did not testify.

The Petitioner underwent a Section 12 examination on March 8, 2021, performed by Dr. James Doll, a physical medicine and rehabilitation specialist. (RX2) The Petitioner described the accident and gave a history of her treatment, which she said was focused on her head and eye symptoms without attention to her neck symptoms, although she had ongoing pain primarily at the base of her skull worse on the left than right. (Id.) She reported pain, difficulty turning her head

from side to side, although also due to feelings of dizziness. (Id.) She denied radiating symptoms from her neck into her extremities. (Id.)

Dr. Doll reviewed medical records and performed a physical examination. (Id) He deferred any opinions regarding the Petitioner's head injury to her treating specialists. (Id.) Regarding the cervical spine, Dr. Doll opined that the Petitioner's current complaints were not medically causally related to the work accident. (Id.) He noted that the Petitioner did not report neck pain on July 5, 2020; that in her physical examination on July 7, 2020, her neck was supple and non-tender; and that his examination revealed diffuse subjective complaints and no abnormal objective findings. (Id.) Dr. Doll said there were no indications for further diagnostic testing, physical restrictions or treatments of the cervical spine in relation to the work injury. (Id.) He found the Petitioner to be at maximum medical improvement involving her cervical spine. (Id.)

On July 9, 2021, the Petitioner saw her primary care provider, Dr. Rustambir Singh at SIU Medicine. (PX3) She reported that she was continuing to treat with her neurologist, who had released her to work light duty. (Id.) The Petitioner felt she could not return to work because of dizziness, ringing ears and headaches. (Id.) Dr. Singh took the Petitioner off work until August 9, 2021. (Id.)

On cross-examination, the Petitioner acknowledged that she went zip-lining but did not remember when. (T. 28) When confronted with a Facebook post from July 13, 2021, that showed her zip-lining, she acknowledged that she posted the picture. (T. 29-30, RX8) She explained that the activity did not cause pain because she wore a specialty belt around her lower waist, and it did not affect her shoulder or neck. (T. 39) She said she also wore a brace under her clothing that supported her shoulder and kept her from moving it too far or too much. (Id.) In one of the comments on the post, she stated that she "did it July 4th weekend." (RX8)

The Petitioner returned to Dr. Singh on August 9, 2021, with neck pain, blurry vision and dizziness. (PX3) She reported that she was not happy with the treatment she was getting from Dr. Alam, whom she said would only treat one symptom at a time and did not address her dizziness and vision changes. (Id.) She requested a referral to a different neurologist for a second opinion. (Id.) She also underwent cervical X-rays, which showed mild degenerative disc disease at C5-6 and straightening of the normal lordosis. (Id.) Dr. Singh placed a referral for neurology and advised the Petitioner to go to the emergency room if she continued to have falls. (Id.)

That same day, the Petitioner went to the emergency department at SIH Memorial Hospital Carbondale complaining of dizziness and syncope over the past year that worsened over the past week. (PX1) The Petitioner testified that she got dizzy and passed out at home. (T. 25) She reported to medical staff that she passed out four times that day and three times the day before, losing consciousness for 30 minutes. (PX1) She reported that she was punched a year ago and since then had syncopal episodes and vision issues. (Id.) She also complained of severe headaches. (Id.) The Petitioner was admitted to the hospital and underwent CT scans of the head and cervical spine, a shoulder X-ray, an electroencephalogram (EEG) and ultrasound of the carotid artery, all of which were unremarkable. (Id.) She also underwent blood and urine testing. (Id.) A neurologist felt the Petitioner's symptoms were most likely due to vertigo on top of postural tachycardia syndrome (POTS). (Id.) It was recommended that she follow up with an ear, nose and throat doctor for vestibular therapy and with the brain and spine institute. (Id.) She was discharged on August 11, 2021, with medication and orders for an MRI of the cervical spine. (Id.)

On August 19, 2021, the Petitioner returned to Dr. Singh for vertigo, anxiety, dizziness, POTS, chronic neck pain and chronic low back pain with left-sided sciatica. (Id.) She reported

that the medications prescribed at the hospital provided a lot of relief, but her dizziness persisted. (Id.) Dr. Singh continued the medications. (Id.)

It appears from the records that a cervical MRI was performed on September 3, 2021. The report was not submitted as evidence at arbitration.

The Petitioner saw Dr. Singh on September 16, 2021, with the same complaints and repeated her request for a second opinion from another neurologist. (Id.) Dr. Singh made the referral. (Id.) The Petitioner testified that Dr. Singh referred her to a neck specialist, Dr. Matthew Gornet, an orthopedic spine surgeon at The Orthopedic Center of St. Louis. (T. 17-18)

On September 27, 2021, Dr. Doll issued an addendum report after reviewing additional medical records. (RX3) He found that despite continued treatment for post-concussional syndrome and dizziness, the Petitioner had not yet reached maximum medical improvement for her occupational head injury. (Id.)

On October 14, 2021, the Petitioner saw Dr. Gornet and complained of neck pain to the base of her neck, frequent daily headaches, bilateral trapezial pain (left worse than right), pain between her shoulder blades, dizziness, and numbness, tingling and intermittent pain in her left arm and hand. (Id.) She also had low back pain to both sides and bilateral foot tingling (left worse than right). (PX4) She described the accident and her treatment. (Id.)

Dr. Gornet examined the Petitioner and took X-rays, which he said showed some subtle loss of disc height at C5-6, no instability and no fracture. (Id.) He reviewed the cervical MRI from September 3, 2021, and saw suggestion of disc pathology at C4-5. (Id.) He noted that there were no foraminal views available and stated it was probably not a diagnostic study. (Id.) An MRI with foraminal views was performed that day. (Id.) Radiologist Dr. Matthew Ruyle found: 1) left foraminal protrusion at C5-6 resulting in moderate to severe left foraminal stenosis, along

with a separate midline annular tear and protrusion resulting in dural displacement but no central canal stenosis; and 2) central annular tears and protrusions at C2-3, C4-5 and C6-7 resulting in dural displacement but no central canal stenosis or foraminal stenosis. (Id.) Dr. Gornet read the study as showing central disc protrusions at C4-5 and C5-6 and maybe even subtly at C6-7 with secondary tears. (Id.) He stated that in looking at left-sided foraminal views, the Petitioner had obvious structural disc pathology. (Id.) He said that going out into the foramen, there was a fairly significant herniation at C5-6 that significantly blocked the foramen. (Id.) He said right-sided foraminal views showed disc pathology predominantly at C4-5 and C5-6. (Id.) A CT scan performed that day revealed no evidence of any major bony or facet changes. (Id.)

Dr. Gornet recommended a single steroid injection at C5-6 and, if she did not improve, cervical disc replacements at C4-5 and C5-6. (Id.) He opined that the Petitioner's symptoms and requirement for treatment were causally connected to the work injury. (Id.) He stated that the Petitioner had clear objective changes that were consistent with her subjective complaints, and the MRI showed clear objective pathology at C4-5 and C5-6 due to the higher resolution scan and having the foraminal views. (Id.) He gave light-duty work restrictions with a 10-pound limit and no overhead work. (Id.) The Petitioner testified that the Respondent did not allow her to come back to work with those restrictions. (T. 38)

On November 2, 2021, the Petitioner underwent a left C5-6 interlaminar epidural steroid injection performed by pain management specialist Dr. Helen Blake at the Orthopedic Ambulatory Surgery Center of Chesterfield. (Id.) The Petitioner testified that the injection did not give her a lot of benefit. (T. 18) At a follow-up visit on January 10, 2022, Dr. Gornet recommended the disc replacements and asked the Petitioner to back off her use of narcotic pain medication. (Id.) At another visit on March 24, 2022, the Petitioner maintained that she was not taking narcotics, but

she had been receiving refills from Dr. Singh. (Id.) She claimed that she needed to continue to fill them or she would be discharged from pain management. (Id.) Dr. Gornet stated that he would be happy to continue treatment after she remained off the narcotic for three to four months. (Id.)

During this time, the Petitioner continued to see Dr. Singh for medication refills. (RX3) There were references in various medical records to treatment by a neurologist, but these records were not submitted at arbitration.

Dr. Gornet testified consistently with his records at a deposition on February 10, 2022. (PX5) He stated that the pathology he saw in the October 14, 2021, MRI correlated very well with the Petitioner's symptoms – with both the symptoms and pathology both being on the left side. (Id.) He said the types of pathology seen on the MRI are the types that are seen with acute injuries such as an injury to the disc and disc mechanism. (Id.) He said that the assault was a type of mechanism of injury that could cause a cervical injury. (Id.) In discussing whether the Petitioner had radicular symptoms, he stated that the pain was being mitigated by narcotics, so that her symptoms may not come to the forefront as normal for quite some time because it is being pushed down by her high-dosed narcotics. (Id.)

The Petitioner had a follow-up visit with Dr. Gornet's physician assistant on March 24, 2022, and was again instructed to stop taking narcotics. (PX4)

On May 9, 2022, the Petitioner underwent a Section 12 examination by Dr. Michael Chabot, an orthopedic surgeon at Orthopedic Specialists. (RX4) She described her accident and treatment, stating that her attorney referred her to Dr. Gornet. (Id.) She complained of left shoulder pain greater than neck pain with paresthesias and tingling radiating into the left arm, restricted range of motion of the left shoulder and some weakness in the left arm. (Id.) She said her ability to walk long distances had reduced because of dizziness. (Id.)

Dr. Chabot reviewed medical records and injury reports. (Id.) Included in the records he reviewed was an apparent record from SIH Memorial Hospital from October 19, 2021, regarding lumbar spine X-rays and MRI that revealed evidence of spinal fusion and hardware. (Id.) He referred to a treatment note from that date indicating the Petitioner was undergoing spinal fusion surgery and had placement of a central venous catheter. (Id.)

Dr. Chabot said X-rays revealed: well-preserved disc space height at all levels except C5-6, where there was mild disc space narrowing; mild anterior spondylosis at C5-6 and mild uncovertebral joint hypertrophy; minimal foraminal narrowing at C5-6 with no evidence of significant neural compression; no fracture; and no instability. (Id.) On the cervical MRI from September 3, 2021, Dr. Chabot saw evidence of mild disc degeneration and spondylosis at C5-6 with mild disc spur complex resulting in mild foraminal narrowing and no evidence of acute focal disc herniation or disc pathology at C4-5 and C5-6. (Id.) He reviewed the cervical CT scan and found evidence of moderate disc space narrowing and anterior spondylosis at C5-6 and mild bulging and disc spur complexes resulting in no center or foraminal narrowing at C5-6. (Id.) He also reviewed a cervical MRI report from the study performed on October 14, 2021, that suggested midline annular tear and protrusion at C4-5 and a protrusion at C5-6 with moderate to severe left foraminal stenosis. (Id.)

Dr. Chabot diagnosed: 1) history of facial contusion; 2) cranial contusion; 3) findings most consistent with left shoulder adhesive capsulitis; 4) left shoulder pain; 5) musculoskeletal related neck pain; and 6) history of chronic back pain. (Id.) In his findings, Dr. Chabot noted: medical records failed to document any complaints of neck or shoulder pain following the accident; a physical examination lacked evidence of activity radiculopathy that could be related to the work accident; and MRI and CT studies suggesting obvious disc pathology at C4-5 and C5-6 that were

not present based on his review. (Id.) He said there were no acute changes at C4-5 or C5-6 but age-related changes unrelated to the work injury. (Id.) He opined that the Petitioner was not a candidate for surgery and said the surgery suggested by Dr. Gornet had a high likelihood of not addressing the Petitioner's ongoing complaints. (Id.) He said his examination strongly suggested the majority of the Petitioner's present complaints were associated with left shoulder pathology – specifically adhesive capsulitis – for which the Petitioner shoulder undergo additional treatment by a shoulder specialist. (Id.) He said the Petitioner could return to work in a limited capacity with limited use of the left shoulder extremity. (Id.) He said the Petitioner could perform supervisory and clerical/administrative type duties. (Id.) He found that the medical treatment was reasonable and necessary. (Id.)

Dr. Chabot testified consistently with his report at a deposition on June 24, 2022. (RX5) He suggested that the facial contusion also resulted most likely in a strain to the neck. (Id.) He differed from Dr. Gornet's reading of the imaging studies in that he didn't see anything to suggest any evidence of disc herniations. (Id.) He also opined that the adhesive capsulitis he found was not related to the work accident based on the Petitioner's initial complaints of facial and neck pain. (Id.) He said the Petitioner did not have neurologic changes suggesting active radiculopathy, and her diagnostic studies failed to document significant neural compression. (Id.)

As to the two MRIs, Dr. Chabot said he reviewed the September 3, 2021, MRI films, adding that if he did not include the October 14, 2021, films in his report, it was not forwarded to him. (Id.) He disputed the radiologist's reading of the October 14, 2021, MRI by stating that was not what he saw on the September 3, 2021, study nor on the CT scan, which he said evaluates foraminal stenosis in some way even better because the images emphasize bone and allow visualization of the openings much better. (Id.)

On cross-examination, Dr. Chabot fielded questions about the references in his records review of the Petitioner undergoing lumbar surgery in October 2021. (Id.) He said he the SIH note from October 19, 2021, indicated she "was undergoing a L5-S1 fusion." (Id.) He acknowledged that he didn't have an operative report for such a surgery. (Id.) When informed that the Petitioner's lumbar surgeries were years prior, Dr. Chabot stated it was possible they were two prior procedures at different times. (Id.) Dr. Chabot also was confronted with the BJC Hospital emergency room note from July 8, 2020, that the Petitioner's neck pain continued severe. (Id.) He acknowledged that would suggest that the pain was present earlier than that day. (Id.)

Dr. Chabot also acknowledged that it was possible that the type of trauma the Petitioner experienced in the accident could cause a degenerative neck condition to produce symptoms. (Id.) However, he qualified that by saying there were no specific complaints confirming that an isolated level was the source of the complaint nor or diagnostic studies confirming that was expressly the source of the Petitioner's complaints. (Id.)

On August 9, 2022, the Petitioner underwent another Section 12 examination of her left shoulder by Dr. Michael Nogalski, an orthopedic surgeon at Orthopedic Associates. (RX6) Dr. Nogalski reviewed the Petitioner's medical records and examined the Petitioner. (Id.) He pointed out that the records showed there were not really any symptoms with respect to the left shoulder until Dr. Chabot's report. (Id.) He said that other complaints documenting "shoulder" referred to cervical pains and radiating pain into the shoulder area. (Id.) He did not believe there was a causal relationship between the work accident and a shoulder injury. (Id.) Dr. Nogalski testified consistently with his report at a deposition on November 14, 2022. (RX7)

At arbitration, the Petitioner identified an undated social media post about getting a Jeep, which she said she acquired less than a year prior to arbitration. (T. 33-34, RX10) She identified

another post where she had written that she had been walking about 30 minutes and had walked just over seven miles. (T. 34, RX11) She believed that post was within the past 12 months. (T. 37-38) The Petitioner identified another social media post from July 2022 that showed her holding her granddaughter. (T. 30-32, RX9) She explained that to take the picture, someone picked up her granddaughter and put her into her arms, took the picture and took her granddaughter from her because she could not hold her granddaughter for more than just a couple of seconds. (T. 37-38)

The Petitioner testified that she did not have the neck surgery because work comp denied it. (T. 19) At the time of arbitration, the Petitioner was not working due to undergoing treatment for cancer that would preclude her from having surgery. (T. 19-20) She said she was still having quite a bit of pain in her neck and numbness in her hand. (T. 21-22) She said she has trouble sleeping and reaching. (Id.) Regarding her left shoulder, she said she can't raise her arm all the way up or over her head. (T. 22-23) She demonstrated raising her arm to shoulder height. (T. 23) Regarding the concussion, the Petitioner testified that she still had severe dizziness and headaches. (T. 24) She said she had to wear reading glasses, which she did not have to prior to the accident. (T. 16)

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 considers the Petitioner's credibility. The Petitioner's testimony and reports to the medical providers were consistent. The Respondent attempted to call the Petitioner's reports in question by confronting her with various Facebook posts. However, this evidence was not persuasive. Regarding the zip-lining post, the Arbitrator

notes that one of the Petitioner's comments stated this occurred on the July 4 weekend. Her accident occurred on July 5, 2020, which was a Sunday. It appears that the Petitioner went zip-lining before the accident. Why she stated that she was wearing a brace under her clothing is unknown – other than the fact that Respondent's counsel questioned the Petitioner as though the activity occurred after her accident because it was posted afterwards. Causing the Petitioner to justify her actions. The post regarding the Jeep and walking bears no relation to the Petitioner's neck injury. As to the photos of the Petitioner holding her granddaughter, she explained that she did not actually lift her granddaughter and held her for only seconds. There was an inconsistency in the Petitioner testifying that Dr. Singh referred her to Dr. Gornet versus her telling Dr. Chabot that her attorney referred her. This appears to be a recall issue and bears little relevance. The Arbitrator finds the Petitioner to be generally credible.

Issue F: Is Petitioner's current condition of ill-being causally related to the accident?

An accident need not be the sole or primary cause as long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Indus. Comm'n,* 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill.Dec. 70 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hosp. v. Workers' Comp. Comm'n,* 371 Ill.App.3d 882, 888, 864 N.E.2d 266, 309 Ill.Dec. 400 (5th Dist. 2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm.,* 92 Ill. 2d 30, 36, 440 N.E.2d 861, 65 Ill.Dec. 6 (1982).

When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury

and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital*, 371 Ill.App.3d at 888.

Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Industrial. Comm'n*, 77 Ill. 2d 469, 471-472, 397 N.E.2d 834, 34 Ill.Dec. 162 (1979); *Gano Elec. Contracting v. Industrial Comm'n*, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724, 197 Ill.Dec. 502 (4th Dist. 1994); *International Harvester v. Industrial Com.*, 93 Ill.2d 59, 63-64, 442 N.E.2d 908, 66 Ill.Dec. 347 (1982).

The Petitioner had pre-existing degenerative disease in her cervical spine according to Dr. Chabot, and he credited her pre-existing condition to that rather than to the accident. He said the Petitioner likely suffered a neck strain. However, this alleged strain apparently never healed. The Petitioner continued to experience cervical symptoms.

There are several other reasons that the Arbitrator finds Dr. Chabot's opinions to be unreliable. First, he attributed the shoulder pain the Petitioner was experiencing to adhesive capsulitis that he said was unrelated to the work accident. However, no other doctor made such a diagnosis. Dr. Nogalski found no evidence of adhesive capsulitis and stated that the Petitioner's complaints referred to cervical pains and radiating pain into the shoulder area. The Arbitrator sees Dr. Chabot's findings of adhesive capsulitis as a red herring, diverting attention away from the Petitioner's cervical condition. Second, Dr. Chabot misconstrued the medical records as showing the Petitioner underwent lumbar surgery in 2021. Her lumbar surgeries occurred years before.

Lastly – and most importantly – Dr. Chabot also lacked information that Dr. Gornet had, specifically the films for the MRI scan from October 14, 2021. Dr. Chabot had Dr. Ruyle's report,

which Dr. Chabot disputed by stating that the findings were not what he saw on the September 3, 2021, study nor on the CT scan. Dr. Gornet stated that the October 14, 2021, MRI was more powerful and included more views. His diagnosis was based on this additional information that was seen on the later MRI.

The Arbitrator notes that Dr. Doll also opined in his report that the Petitioner's neck symptoms were unrelated to the work accident. However, Dr. Doll did not testify to explain his opinion.

Dr. Gornet thoroughly explained his causation findings based on the Petitioner's complaints, the reported mechanism of injury and the October 14, 2021, MRI. Because of this and the issues with Dr. Chabot's evaluation described above, the Arbitrator gives more weight to Dr. Gornet's opinions.

In addition, the circumstantial evidence supports a finding of causation. There was no evidence that prior to the accident the Petitioner had any cervical spine issues. She was able to work full duty without restrictions. Afterwards, she experienced continuing symptoms and a decreased ability to perform her job.

Lastly, regarding an alleged delay in reporting neck symptoms, the Arbitrator finds there was no unreasonable delay. The Petitioner complained of continuing neck and shoulder symptoms three days after the accident.

As to the Petitioner's concussion and eye injury, there was no suggestion that these were not related to the accident.

Therefore, the Arbitrator finds that the Petitioner has met her burden of proving by a preponderance of the evidence that the accident of July 5, 2020, was a contributing factor to her concussion and her eye and cervical spine conditions.

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

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

Based on the findings above regarding causation and the opinion of Dr. Chabot that the Petitioner's treatment was reasonable and necessary, the Arbitrator also finds that the treatment received was reasonable and necessary, and the Respondent has not paid the bills for this treatment. Therefore, the Respondent is ordered to pay the medical expenses contained in Petitioner's Exhibit 7 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. The Respondent shall pay the medical expenses directly to the providers pursuant to the fee schedule.

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

According to the Request for Hearing (AX1), the parties dispute temporary total disability benefits for the period of July 6, 2020, through August 21, 2022.

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

On the Request for Hearing, the Respondent accepted TTD for the period of July 19, 2020, through February 30, 2022. The records show BJC Hospital took the Petitioner off work from July

8, 2020, through July 14, 2020, and Dr. Singh took the Petitioner off work beginning July 8, 2020. Dr. Gornet gave the Petitioner light duty restrictions on October 14, 2021, with no end date. These restrictions were not accommodated.

Based on this and the findings above regarding causation, the Arbitrator finds that the Petitioner was entitled to TTD benefits from July 6, 2021, through August 21, 2022. The Respondent is entitled to a credit of $121,498.25 in TTD 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 AMA impairment ratings were produced, therefore the Arbitrator gives this factor no weight.

(ii) **Occupation.** The Petitioner is not working due to undergoing cancer treatments. She is still a registered nurse but, because of Dr. Gornet's restrictions, cannot work for the Respondent. There was no evidence that the Petitioner has attempted to find another nursing job within her restrictions. Therefore, the Arbitrator places some weight on this factor.

(iii) **Age.** The Petitioner was 46 years old at the time of the injury. She has several 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 testified that she has pain in her neck and numbness in her hand, has trouble sleeping and reaching, can't raise her arm over her head, still has dizziness and headaches and has to wear reading glasses. It is difficult to judge the level of the Petitioner's neurological injuries from the concussion, as there were no medical records submitted to substantiate continued neurological defects. Regarding the cervical spine, the Petitioner has not undergone the recommended surgery, so there is no reason to believe that her condition has improved. 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 eye, pursuant to Section 8(e) of the Act; 5 percent of the body as a whole regarding the head injury, pursuant to Section 8(d)2 of the Act; and 20 percent of the body as a whole regarding the cervical spine, pursuant to Section 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC000287
Case Name	Edward Hall v. Caribbean Jerk Palace & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0206
Number of Pages of Decision	18
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Michael Rom
Respondent Attorney	Charlene Copeland

DATE FILED: 5/6/2025

/s/Amylee Simonovich, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

EDWARD HALL,

Petitioner,

vs. NO: 21WC000287

CARIBBEAN JERK PALACE & 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 State Treasurer as Ex-Officio Custodian of the Injured Workers' Benefit Fund ("IWBF") herein and notice given to all parties, the Commission, after considering the issues of the extent of temporary total disability and the nature and extent of 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 thereof.

The Commission corrects a scrivener's error in the Findings section of the Decision on page 3 regarding Petitioner's age. Petitioner's age is corrected, striking "28" and replacing it with "32".

The Commission corrects a scrivener's error in the Order section of the Decision on page 3 regarding Permanent Partial Disability, striking "8 weeks" and replacing it with "8.8 weeks". The final paragraph of page 13 is similarly corrected, striking "8 weeks" and replacing it with "8.8 weeks".

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 August 1, 2024, is modified as stated herein, and otherwise affirmed and adopted.

25IWCC0206

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner reasonable and necessary medical services of $304.00 (Premier Orthopaedics & Hand Center) for causally related treatment, as provided in Sections §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of $400.00/week for 51-6/7 weeks, commencing 11/3/2020 through 10/31/2021, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner permanent partial disability benefits of $360.00/week for 8.8 weeks, because the injuries sustained caused the 40% loss of the left fourth (little) finger, as provided in Section 8(e)5 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the 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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $24,300.00. 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.

MAY 6, 2025

o:3/25/2025
AHS/ps
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	21WC000287
Case Name	Edward Hall v. Caribbean Jerk Palace & IWBF
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	James Byrnes, Arbitrator

Petitioner Attorney	Michael Rom
Respondent Attorney	Charlene Copeland

DATE FILED: 8/1/2024

/s/James Byrnes, Arbitrator
Signature

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Edward Hall Case # **21** WC **000287**
Employee/Petitioner

v.

Caribbean Jerk Palace & 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 **James Byrnes**, Arbitrator of the Commission, in the city of **Chicago**, on **June 7, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES (The Injured Workers' Benefit Fund)

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 **Was proper notice of hearing provided to employer and IWBF, and liability of IWBF**

FINDINGS

On **11/2/2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$31,200.00** the average weekly wage was **$600.00.**

On the date of accident, Petitioner was **28** years of age, ***single*** with **1** dependent child.

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

Respondent's employer ***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 reasonable and necessary medical services of $**304.00** (Premier Orthopaedics & Hand Center), as provided in Sections 8(a) and 8.2 of the Act.

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $**400.00**/week for **51-6/7** weeks, commencing **11/3/2020 through 10/31/2021**, as provided in Section 8(b) of the Act.

Permanent Partial Disability

Respondent shall pay Petitioner permanent partial disability benefits of $**360.00**/week for **8** weeks, because the injuries sustained caused the **40% loss of the left fourth (little) finger**, as provided in Section 8(e)5 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.

Signature of Arbitrator

August 1, 2024

ICArbDec

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

EDWARD HALL,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 21WC000287
CARIBBEAN JERK PALACE &	)	
STATE TREASURER AS *EX-OFFICIO*	)	
CUSTODIAN OF INJURED WORKERS'	)	
BENEFIT FUND,	)	
	)	
Respondent.	)	

MEMORANDUM OF DECISION OF ARBITRATOR

This matter proceeded to hearing on Petitioner's Request for Hearing in Chicago, Illinois before Arbitrator James Byrnes on **June 7, 2024**. Petitioner, Edward Hall ("Petitioner"), brought an action pursuant to the Illinois Worker's Compensation Act (the "Act"), seeking relief from the Respondents, Caribbean Jerk Palace[1] ("Respondent") and the Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund ("IWBF").

On June 7, 2024, a hearing was held on all issues and proofs were closed. Petitioner was represented by Michael Rom. Respondent Caribbean Jerk Palace was not represented, despite being provided with notice of the hearing date. Assistant Attorney General Charlene Copeland appeared on behalf of the IWBF. Petitioner's Exhibits 1-9 were admitted into evidence. Respondent IWBF submitted no exhibits into evidence. All issues were in dispute. (*See* Arbitrator's Exhibit 1)

FINDINGS OF FACT

Job Duties

Petitioner, Edward Hall was a single male, 32 years of age at the time of the injury, with one dependent child. He testified that he was employed by Caribbean Jerk Palace as a cook and began working there six months prior to the accident. Petitioner testified that all the tools belonged to the owner of the restaurant, Renoras McDonald, who also hired him. Those tools included grills, knives, cutting boards and other items used as a cook.

[1] The correct name of this entity pursuant to the Illinois Secretary of State is Caribbean Jerk Palace, Corporation.

Petitioner was paid $17.50 an hour and worked 40 hours a week. Petitioner stated he was paid weekly by check and was given a work shirt to wear with the company's logo on it. (PX 7) Petitioner testified that his supervisor was Angel McDonald, the wife of the owner, and that both came in two to three times a week, and that sometimes Renoras, the owner, would cook.

The Petitioner testified his work duties included putting together orders for customers, in a fast-paced, busy kitchen. This included using knives to cut chicken.

Accident

On November 2, 2020, Petitioner was working in the kitchen of the restaurant cutting up chicken with a meat cleaver when another employee walked by and brushed up against him causing the knife to slip and cut his left small finger. According to Petitioner, there was no bone loss from the finger, but the tip of the finger could not be re-attached.

Notice

Petitioner testified that he called the owner the day of the accident and told him what had happened. The owner replied that "He was barking up the wrong tree." He phoned the owner again the next day telling him he needed surgery; however, the owner again responded by telling Petitioner "He was barking up the wrong tree."

Prior Medical Condition

No evidence was submitted showing that Petitioner had a pre-existing condition concerning his left little finger.

Summary of Medical Records

Petitioner drove himself to Advocate South Suburban Hospital Emergency Room. He provided a history of chopping off the tip of his "left pinky finger" while chopping chicken at work that day. (PX 3, p. 4) X-rays of the Petitioner's left hand revealed an amputation of the 5th distal phalanx, but no additional fractures or dislocations. (*Id.*, p. 7) The examination revealed an amputation of the 5th left digit just distal to the DIP joint. (*Id.*, p. 9) A discussion was held with Dr. Kung, who stated the fingertip was not salvageable, and recommended IV antibiotics, oral Augmentin and a follow up visit in his office the next day. The bleeding was controlled, and Petitioner was discharged with additional dressing supplies, as well as prescriptions for Norco and Augmentin. (*Id.*, p. 14)

On November 3, 2020, Petitioner sought treatment at Premier Orthopaedic and Hand Center. (PX 5) He was seen by Dr. John Kung, who noted an amputation of the left small finger at the level of the base of the nail, with the tip of the bone visible in the wound. (*Id.*, p. 1) Dr. Kung diagnosed an open wound of the left little finger with damage to the nail and a complete traumatic transphalangeal amputation. (*Id.*, p. 2) Dr. Kung discussed the treatment options and Petitioner elected to proceed with an incision and drainage, with possible bone shortening, and closure of the wound. The Petitioner was to schedule the surgery and in the meantime was advised

to remain off work until after the surgery. (*Id*., pp.2-3) The Petitioner testified that he never underwent the proposed surgery due to lack of insurance, and that the finger took about six months to heal on its own, through self-care, including cleaning and changing of his bandages.

The Petitioner incurred charges totaling $2,788.00 for his treatment at the emergency department at Advocate South Suburban Hospital; after adjustments, the total balance is zero. (PX 4) He also incurred charges of $304.00 for his treatment at Premier Orthopaedic & Hand Center on November 3, 2020. That amount remains unpaid. (PX 6)

Petitioner's Current Condition

The Petitioner testified that the nail and tip of the left little finger are still sensitive and numb. He can make a fist with his left hand, but does notice some loss of strength in that hand as compared to the right hand. He also cannot put pressure on the finger if performing push-ups. He no longer wishes to go forward with the surgery proposed by Dr. Kung.

The Petitioner testified that he remained off work after the accident and began to seek alternative employment in November of 2021. He eventually returned to work on a full duty basis on February 6, 2022. He currently works for a company transporting new cars from the Ford plant to different rail yards for shipment. He submitted a check stub for his first week of work which reflects an hourly rate of $13.50.

While off work following the accident, Petitioner did not receive any TTD or other types of benefits. He also testified that his medical bills remain unpaid.

Lack of Workers' Compensation Insurance

According to a certification letter from NCCI Holdings, Inc., the Respondent Caribbean Jerk Palace did not carry workers' compensation insurance on the November 2, 2020, date of accident. (PX 1)

Notice of Hearing to Respondent

According to information from the Office of the Secretary of State, Respondent Caribbean Jerk Palace is listed as a domestic Illinois corporation, with Renoras McDonald listed as the president and corporate agent. Angel McDonald is listed as secretary of the corporation. (PX 9)

The Petitioner submitted evidence of service upon Respondent Caribbean Jerk Palace, as well as corporate officers Renoras McDonald and Angel McDonald, via certified mail at the corporate address. A fourth notice of hearing was sent to the address of the location where the accident occurred. The letters sent to the Respondent and its corporate officers were dated March 15, 2024, and advised of the trial set to proceed at the Illinois Workers' Compensation Commission at the Richard J. Daley Center in Chicago on June 7, 2024. Proof of delivery and receipt of these letters is evidenced by the green certified receipt cards signed by Mr. McDonald as agent on March 20, 2024. (PX 2)

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).

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

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

Section 3 of the Illinois Workers' Compensation Act states that the provisions of the Act shall automatically apply to all employers and their employees engaged in any business deemed to be "extra hazardous," including any enterprise in which sharp edge cutting tools are employed (Section 3(8)) and any business or enterprise serving food to the public for consumption on the premises wherein any employee as a substantial part of the employee's work uses hand cutting instruments, slicing machines or other devices for cutting of meat or other food wherein any employee is in the hazard of being scalded or burned by hot grease, hot water, hot foods or other hot fluids, substances or objects (Section 3(14)). 820 ILCS 305/3

Petitioner testified that he became employed by Respondent as a cook and food preparer six months prior to his injury. Petitioner testified that the business was engaged in the preparation of food to be sold to the public. Petitioner testified that he used instruments such as knives and cooking appliances which were provided by the Respondent.

Based on the automatic coverage provision of Section 3 of the Act, the Arbitrator finds the Petitioner has established by a preponderance of the evidence that on November 2, 2020, the Respondent was operating under and subject to the Illinois Workers' Compensation Act.

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

To determine whether a claimant is an employee or an independent contractor, several factors are considered. "The single most important factor is whether the purported employer has a right to control the actions of the employee. Also, of great significance is the nature of the work performed by the alleged employee in relation to the general business of the employer. Additional factors to consider are the method of payment, the right to discharge, the skill the work requires, which party provides the needed instrumentalities, and whether income tax has been withheld. Finally, a factor of lesser weight is the label the parties place upon their relationship. The term "employee," for purposes of the Act, should be broadly construed." *Ware v. Indus. Comm'n*, 318 Ill. App. 3d 1117, 1122 (2000); see *Roberson v. Indus. Comm'n* (P.I. & I. Motor Express, Inc.), 225 Ill. 2d 159, 174-176 (2007).

Petitioner's testimony was that he was hired by the owner, registered agent and president of Respondent, Renoras McDonald, to work for Caribbean Jerk Palace as a cook. Petitioner testified that his hours and assignments were controlled by Mr. McDonald and that all equipment used in the operation were provided by Mr. McDonald as owner and proprietor of Respondent. The Petitioner testified that he was supervised by Angel McDonald, the secretary of the corporation. Further evidence of the employee-employer relationship was a paycheck issued to Petitioner by the Respondent. (PX 7)

Based upon the testimony of the Petitioner and the exhibits entered into evidence, the Arbitrator finds that Petitioner has established by a preponderance of the evidence that on November 2, 2020, an employee-employer relationship existed between the Petitioner and the Respondent.

***Regarding Issue (C), did an accident occur that arose out of and in the course of the Petitioner's employment by Respondent, the Arbitrator finds as follows*:**

The Petitioner testified that on November 2, 2020, he was cutting chicken at Respondent's restaurant, performing his duties as a cook, when he cut his left little finger with a knife. Petitioner experienced immediate pain in the left little finger and subsequently sought medical attention at Advocate South Suburban Hospital and with Dr. John Kung. The history of the work accident set forth in the medical records corroborates Petitioner's testimony regarding the circumstances of the accident.

The Arbitrator finds Petitioner has established by a preponderance of the evidence that on November 2, 2020, he sustained an accidental injury which arose out of and in the course of his employment with Respondent.

***Regarding Issue (D), what was the date of the accident, the Arbitrator finds as follows*:**

Based upon the testimony of the Petitioner and the medical records from the emergency room, the Arbitrator finds that Petitioner has established by a preponderance of the evidence that the date of accident was November 2, 2020.

***Regarding Issue (E), was timely notice of the accident 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 failure to give the statutorily required notice is a bar to recovery under the Act. *Silica Sand Transport, Inc. v. Industrial Comm'n,* 197 Ill. App. 3d 640, 651 (1990).

Petitioner testified that he called the owner (Renoras McDonald) the day of the accident and told him what had happened. He phoned the owner again the next day telling him he needed surgery. This notification was well within 45 days of the accident of November 2, 2020, and Petitioner's testimony was unrebutted.

Based on the above, the Arbitrator finds that Petitioner has established by a preponderance of the evidence that he provided Respondent with timely notice of the accident as defined by the Act.

***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. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005).

The Petitioner testified that he never had any problems with his left little finger prior to the date of accident. All medical records in evidence from Advocate South Suburban Hospital and Premier Orthopaedic & Hand Center corroborate Petitioner's testimony that he injured his left little finger cutting chicken while working for the Respondent. The Arbitrator viewed Petitioner's left little finger and noted the tip of that finger is missing.

Based on the above, the Arbitrator finds that the Petitioner has established by a preponderance of the evidence that his current condition of ill-being regarding his left little finger is causally related to the accidental injuries sustained on November 2, 2020.

***Regarding Issue (G), what were Petitioner's earnings, the Arbitrator finds as follows*:**

Section 10 of the Act states that "compensation shall be computed on the basis of the 'Average weekly wage'" of the Petitioner, and also states that "where the employment prior to the injury extended to a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee actually earned wages shall be followed." 820 ILCS 305/10.

Petitioner testified that he was paid $17.50 an hour and worked 40 hours a week. He explained that he had worked there for six months prior to the injury. No evidence was offered regarding the "weeks and parts thereof" Petitioner actually worked during his six-month employment with Respondent. On the Request for Hearing form Petitioner claims his wages for

the 52 weeks prior to the accident were $31,200.00, and that his average weekly wage, calculated pursuant to Section 10 of the Act, was $600.00.

Based on the above, the Arbitrator finds Petitioner has established by a preponderance of the evidence that his average weekly wage was $600.00 at the time of the accident.

***Regarding Issue (H), what was Petitioner's age at the time of the accident, the Arbitrator finds as follows*:**

Petitioner claims on the Request for Hearing form that he was 28 years old at the time of the accident on November 2, 2020. The records from Advocate South Suburban Hospital note Petitioner's date of birth is December 1, 1991.

Based on the above, the Arbitrator finds Petitioner was 28 years old at the time of the accident of November 2, 2020.

***Regarding Issue (I), what was Petitioner's marital status at the time of the accident, the Arbitrator finds as follows*:**

The Petitioner testified that he has never been married and had one minor dependent at the time of the accident of November 2, 2020.

Based on the above, the Arbitrator finds Petitioner established by a preponderance of the evidence that he was single with one dependent child on the date of the accident of November 2, 2020.

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

On the date of the accident, Petitioner drove to Advocate South Suburban Hospital and was seen in the emergency department for medical treatment. The treatment included x-rays of the affected finger, as well as closure of the wound, prescription medication and referral to a hand specialist, Dr. Kung at Premier Orthopaedic & Hand Center. Dr. Kung examined the Petitioner's finger and recommended surgical incision, drainage and possible bone shortening (the surgery never took place).

As a result of the above treatment, the Petitioner incurred medical expenses in the amount of $2,788.00 at Advocate South Suburban Hospital, which after adjustments resulted in a zero balance from that provider. He also incurred medical expenses of $304.00 for treatment rendered by Premier Orthopaedic & Hand Center. The evidence submitted at trial shows this balance to be unpaid.

Based on the above, the Arbitrator finds the treatment rendered by Advocate South Suburban Hospital and Premier Orthopaedic & Hand Center was reasonable and necessary to cure

or alleviate the Petitioner's condition of ill-being regarding his left little finger. The only bill that currently shows a balance is that from Premier Orthopaedic & Hand Center ($304.00).

The Arbitrator therefore finds that Respondent is liable for payment of $304.00 in reasonable and necessary medical expenses, as provided in Section 8(a) and 8.2 of the Act.

***Regarding Issue (K), what temporary benefits are in dispute, the Arbitrator finds as follows*:**

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n*, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

To be entitled to TTD benefits, it is the claimant's burden to prove not only that he did not work but also that he was unable to work. *Holocker v. Illinois Workers' Compensation Comm'n,* 2017 IL App (3d) 16036WC, ¶35. The touchstone for determining whether claimant is entitled to TTD is whether the claimant's conditions had stabilized to the extent that they are able to reenter the workforce. *Id*. at ¶40.

Petitioner alleges that he was entitled to temporary total disability benefits from the date after the accident, November 3, 2020, through his return to work on February 6, 2022, that being the date that he returned to work for a different employer. Petitioner testified that he was not paid by the Respondent for the time that he missed from work. The Arbitrator notes that the record from Dr. Kung indicates that Petitioner could not return to work until he completed the surgical procedure recommended to the left little finger which did not take place due to lack of insurance.

The Petitioner, however, alternatively testified that it took about six months for the left little finger to heal on its own through self-care and that it was "nowhere near fully healed" at that point. He began to seek alternative employment in November of 2021, as he felt comfortable enough with his finger condition to return to work at that time.

Based on the above, the Arbitrator finds that Petitioner's condition had stabilized to the point he was able to return to the workforce by November 1, 2021. The Arbitrator therefore awards Petitioner TTD benefits for the period of November 3, 2020, through October 31, 2021, a period of 51-6/7 weeks, at a rate of $400.00 per week.

***Regarding Issue (L), what is the nature and extent of the injury, the Arbitrator finds as follows*:**

Pursuant to Section 8.1b of the Act, certain criteria and factors must be weighed in determining the level of permanent partial disability for accidental injuries occurring on or after September 11. The factors are: "(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 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.

The Arbitrator notes that there was no impairment report entered into evidence. Therefore, the Arbitrator gives no weight to this factor.

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes the Petitioner used cutting tools in his job working as a cook but that he now has chosen to work in the business of transporting cars from one location to another. There is no medical evidence of any permanent restrictions due to the accident. The Arbitrator gives no weight to this factor.

Under Section 8.1b(b)(iii), the age of the employee at the time of the injury, the Petitioner was 28 years old at the time of the accident and therefore was a younger individual and will have to live with the results of the injury to his left little finger for a greater period of time. Therefore, the Arbitrator gives greater weight to this factor.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the testimony and medical records show that Petitioner has lost a portion of his left little finger and no evidence was submitted regarding whether that injury has any effect on his future earning capacity and therefore the Arbitrator gives no weight to this factor.

Under Section 8.1b(b)(v), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner sustained an open wound of the left little finger with damage to the nail and a complete traumatic transphalangeal amputation (without bone loss) distal to the DIP joint. At the hearing, he complained of sensitivity and pressure at the tip of his finger as well as a cold sensation when the weather gets cold. He can make a full fist with his left hand but testified to some loss of strength as compared to the right hand. The Arbitrator observed the fact that Petitioner was missing a portion of his left little finger which was deformed at that location. The medical records submitted into evidence indicate that this is consistent with the treatment rendered at the time of injury and the Arbitrator notes that surgery was recommended to repair the left little finger which did not take place due to lack of insurance. The Arbitrator gives greater weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 40% loss of use of the left fourth (little) finger, pursuant to §8(e)5 of the Act which corresponds to 8 weeks of permanent partial disability benefits at a weekly rate of $360.00.

***Regarding Issue (O), was proper notice of hearing provided to the employer and IWBF, and liability of IWBF to Petitioner, the Arbitrator finds as follows*:**

Section 4(d) of the Act provides for the establishment of an Injured Workers' Benefit Fund ("IWBF") "for payment of workers' compensation benefits for injured employees when the employer has failed to provide coverage … and has failed to pay the benefits due to the injured employee." 820 ILCS 305/4(d). That section of the Act also provides that the State Treasurer shall be ex-officio custodian of the IWBF and shall be joined with the employer as a party Respondent in the application for adjustment of claim. (*Id.*)

According to information from the Office of the Secretary of State, Respondent Caribbean Jerk Palace is listed as a domestic Illinois corporation, with Renoras McDonald listed as the president and corporate agent. Angel McDonald is listed as secretary of the corporation. (PX 9)

According to a certification letter from NCCI Holdings, Inc., the Respondent Caribbean Jerk Palace did not carry workers' compensation insurance on the November 2, 2020, date of accident. (PX 1)

The Petitioner submitted evidence of service upon Respondent Caribbean Jerk Palace, as well as corporate officers Renoras McDonald and Angel McDonald, via certified mail at the corporate address. A fourth notice of hearing was sent to the address of the Respondent's restaurant, where the accident occurred. The letters sent to the Respondent and its corporate officers were dated March 15, 2024, and advised of the trial set to proceed at the Illinois Workers' Compensation Commission at the Richard J. Daley Center in Chicago on June 7, 2024. Proof of delivery and receipt of these letters is evidenced by the green certified receipt cards signed by Mr. McDonald as agent on March 20, 2024. (PX 2)

The Arbitrator finds that the IWBF has been properly named as a Respondent this matter. The Arbitrator further finds that the IWBF did not object to proper notice of this hearing and that proper notice of the hearing was given to the Respondent-Employer Caribbean Jerk Palace as well as its corporate agent and president, Renoras McDonald. The Arbitrator finds Petitioner met his burden of showing that adequate notice of the hearing on June 7, 2024, was provided to both Respondent Caribbean Jerk Chicken and to the IWBF. The matter proceeded on an *ex-parte* basis against Respondent Caribbean Jerk Chicken and the State Treasurer, as ex-officio custodian of the IWBF, was represented at the hearing by the Attorney General's office.

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.

It is hereby ordered:

James M. Byrnes, Arbitrator

August 1, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC030488
Case Name	Mark Crawford v. I Restore STL LLC
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0207
Number of Pages of Decision	18
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Nathan Lanter
Respondent Attorney	Daniel Broombaugh

DATE FILED: 5/7/2025

/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: Temporary disability	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARK CRAWFORD,
Petitioner,

vs. NO: 23 WC 30488

I RESTORE STL, LLC,
Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission modifies the Decision of the Arbitrator with respect to the award of temporary disability benefits. The Commission observes that the Arbitrator awarded temporary total disability (TTD) benefits at a rate of $679.21 per week from 10/30/23 through 08/26/24, totaling 43-1/7 weeks. However, the Request for Hearing Form for the October 10, 2023 accident indicates that the parties stipulated to an AWW of $1,019.84, which results in a TTD rate of $679.89. See AX 3/T. 88. Accordingly, the Commission modifies the Arbitrator's Decision and awards TTD benefits at a rate of $679.89 per week from 10/30/23 through 08/26/24, totaling 43-1/7 weeks.

The Commission also observes that the Arbitrator awarded 9 weeks of temporary partial disability (TPD) at a rate of $266.79 per week from 08/27/24 through 10/29/24. However, the Commission is unable to find support for the TPD rate of $266.79 in the record. As noted above, the parties stipulated at trial that Petitioner's AWW was $1,019.84. Further, the Commission finds that while working at the restaurant and bar called "Loose Ends," Petitioner worked an average of 27.5 hours per week at $15/hour, which results in an AWW of $412.50. Accordingly, the

Commission calculates the TPD rate as $1,019.84 - $412.50 = $607.34; $607.34 x 2/3 = $404.89 TPD rate. Finally, the Commission observes that the TPD period of 08/27/24 through 10/29/24 in fact represents 9-1/7 weeks. Therefore, the Commission modifies the Arbitrator's Decision and awards TPD benefits at a rate of $404.89 per week from 08/27/24 through 10/29/24, totaling 9-1/7 weeks.

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated December 9, 2024, is modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of $679.89/week for a total of 43-1/7 weeks for the period of 10/30/23 through 08/26/24.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary partial disability benefits of $404.89/week for a total of 9-1/7 weeks for the period of 08/27/24 through 10/29/24.

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

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $53,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

May 7, 2025
o: 05/01/25
CMD/jjm
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC030488
Case Name	Mark Crawford v. I Restore STL LLC
Consolidated Cases	24WC011389;
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Nathan Lanter
Respondent Attorney	Michael Karr

DATE FILED: 12/9/2024

/s/ Jeanne AuBuchon, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF DECEMBER 3, 2024 4.31%

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)

Mark Crawford
Employee/Petitioner

v.

IRestore STL
Employer/Respondent

Case # **23** WC **30488**

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 **Collinsville**, on **10/29/24**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **10/10/23**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

Timely notice of these accidents ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to these accidents.

In the year preceding the injury, Petitioner earned $**53,031.60**; the average weekly wage was $**1,019.84**.

On the date of accident, Petitioner was **27** years of age, ***married*** with **1** dependent child.

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

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

Respondent is entitled to a credit of $**0** if any medical bills were paid through its medical group plan for which credit may be allowed under Section 8(j) of the Act.

ORDER

Respondent shall pay the reasonable and necessary medical expenses outlined in Petitioner's Exhibit 5, except for those from Absolute Chiropractic, pursuant to §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 and hold Petitioner harmless from any claims arising from the expenses for which it receives credit.

Respondent shall pay Petitioner TTD benefits from 10/30/23 thru 08/26/24, for a total of 43 1/7 weeks, at a rate of $679.21 per week and TPD benefits from 08/27/24 thru 10/29/24, for a total of 9 weeks, at a rate of $266.71 per week.

Respondent shall authorize and pay for Petitioner's medical treatment recommended by Dr. Weber, including an orthopedic consultation, pursuant to 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

December 9, 2024

ICArbDec19(b)

PROCEDURAL HISTORY

This matter proceeded to trial on October 29, 2024, pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) 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 current low back condition; 3) payment of medical bills; 4) entitlement to prospective medical care to the Petitioner's low back; and 6) entitlement to temporary total disability benefits (TTD) and temporary partial disability (TPD) benefits.

This case was consolidated with 24WC11389 involving an accident on April 27, 2023, also involving the Petitioner's low back.

FINDINGS OF FACT

At the time of the accident in this case, the Petitioner was 27 years old and had been employed by the Respondent as an assistant production manager, delivering materials, supervising job sites and running the supply store. (T. 11, 14-15) He said his job required him to perform lifting and helping coworkers performing their job duties. (T. 15)

The Petitioner acknowledged that he injured his low back working for a different employer on October 7, 2021, when leaning over a manhole to pull a hose. (T. 15-16) At that time, he underwent treatment at Concentra beginning on October 8, 2021, and was diagnosed with a lumbar strain. (PX4) He was prescribed a muscle relaxant, anti-inflammatory and an oral steroid and was referred to physical therapy. (Id.) He was given work restrictions. (Id.) Lumbar spine X-rays showed vertebral heights and alignment were within normal limits, there were no bony abnormalities, disc spaces were preserved, and paravertebral issues were unremarkable. (Id.) The Petitioner returned to Concentra on October 11, 2021, and reported improvement in his pain and

range of motion, stating that his pain was only triggered then by lifting. (Id.) Restrictions were modified. (Id.) On October 18, 2021, the Petitioner reported his pain was improved, and he had good range of motion. (Id.) He was returned to work full duty without restrictions. (Id.)

The Petitioner said his symptoms resolved in a week or two. (T. 18-19) He said that in the six months before April 2023, he did not suffer any injuries to his low back, was not experiencing any significant low back pain, was not experiencing pain radiating into his right leg, did not experience any significant low back tension or stiffness and did not seek any medical treatment for his low back. (T. 19-20) He said he had no difficulties performing his job duties for the Respondent and was working full duty with no restrictions. (T. 20-21)

The Petitioner testified that on April 27, 2023, he was at the Belleville Country Club picking up leftover materials from a job. (T. 21) He said he loaded 60 bundles of shingles weighing about 100 pounds into the back of a pickup truck. (T. 21-22) He said that by the time he transported the shingles to the warehouse, he noticed his back getting sore. (T. 21) He said that he went to lunch, got out of the truck and "basically fell out" because his lower back wouldn't cooperate. (Id.) He said he was experiencing low back pain and pain going into his right leg. (T. 21-22)

The Petitioner testified that the injury was witnessed by coworker Chris Conway and that afterwards, he notified supervisor Mike Peeples, who was the production manager for the Respondent. (T. 22-23) He admitted that he did not complete a written incident report. (T. 23)

Kirk Kupsky, owner of the Respondent, testified that he ran the day-to-day operations of the company, which included roofing, siding and guttering. (T. 59) He said that the Petitioner's job included picking up leftover materials from job sites. (T. 60-61) He said that the Petitioner "constantly complained" about low back soreness. (T. 61)

Mr. Kupsky produced a calendar of jobs and stated that there were no jobs going on the day of the Petitioner's accident or the two days before that. (T. 63, RX1) He said he did not know exactly where the Petitioner was working on April 27, 2023. (T. 64) When asked when he first learned the Petitioner was alleging an injury on April 27, 2023, Mr. Kupsky said he didn't know there was a "direct really bad injury," adding that otherwise he would have sent him to the hospital or a doctor. (T. 64) On cross-examination, Mr. Kupsky admitted that it was possible that the Petitioner was lifting shingles on April 27, 2023, and injured his low back. (T. 70)

Following the accident, the Petitioner sought treatment from Absolute Chiropractic upon referral by Mr. Kupsky. (Id.) On May 8, 2023, the Petitioner saw chiropractor Dr. Bridget Lybarger and reported pain in the right and left lumbar, right sacroiliac and right buttock regions associated with prolonged or chronic illness plus normal lifting duties at work. (PX3) He said his back "goes out" and has for years. (Id.) Dr. Lybarger performed chiropractic manipulative therapy (CMT) to the thoracic and lumbar spine and pelvis. (Id.) She advised the Petitioner to use a rotation of ice and heat and to perform stretching. (Id.) The Petitioner returned to Dr. Lybarger on May 11, 2023, and reported that his complaint stayed the same since his last visit. (Id.) Dr. Lybarger performed CMT. (Id.)

The Petitioner testified that the treatment did not provide total relief. (T. 26) He said he was experiencing occasional mild discomfort but was able to perform his job duties. (T. 28)

On October 10, 2023, the Petitioner was assisting a coworker moving copper sheeting when he squatted down and felt pain in his lower back and felt more pain in his low back and right leg while continuing to assist his coworker. (T. 29) He said the injury was witnessed by Patrick Brady. (T. 30) He said he went to the office and notified Mr. Peeples, Brook Hedenhausen and a

coworker named Ron. (Id.) He said he was told to lay on the couch and, after an hour or so, was told to take the rest of the day off. (T. 31)

Mr. Kupsky testified that he heard about "the pallet thing" then explained that "it was four sheets of copper" about three feet long and about as thick as four pieced of paper. (T. 65) He said they were not extremely heavy and can be picked up with one hand. (T. 65-66) When asked if the Petitioner would have had any reason to remove the pallet of copper, Mr. Kupsky stated that the copper was taken to a couple of job sites, explained what the copper is used for and that it was specific to one job. (T. 66-67) He said the Petitioner would not have any reason to move the copper by hand because there were pallet jacks. (T. 67) On cross-examination, Mr. Kupsky admitted that it was possible that the Petitioner injured his low back on October 10, 2023, in the way he described. (T. 71)

The Petitioner testified that Mr. Conway, who also was his cousin, suggested that he go to St. Clair Chiropractic. (T. 31-32) The Petitioner presented to St. Clair Chiropractic on October 13, 2023, and reported an "old injury" to his back that occurred on October 10, 2023, when he pushed a pallet. (PX1) He reported that this condition had occurred multiple times over the last few years. (Id.) Chiropractor Dr. Gary Mueller diagnosed dysfunction of the cervical, thoracic and lumbar region; intervertebral disc degeneration in the lumbar region; muscle spasm of the back; spondylosis without myelopathy or radiculopathy in the lumbar; and low back pain. (Id.) Dr. Mueller performed CMT. (Id.) The Petitioner continued to treat with Dr. Mueller for two more visits with no change in his condition. (Id.)

The Petitioner then sought treatment on October 30, 2023, from Dr. Chad Weber, a chiropractor at Chiro-Med with whom the Petitioner had been treating for some time. (T. 34, PX2) On his intake forms, the Petitioner reported that his condition was related to a work injury with his

primary complaint being his lower back that he had for three weeks. (PX2) He also stated that he had a similar condition a few months prior. (Id.) He reported that his condition had worsened and thought his condition was caused by repetitive stress from labor duties. (Id.) He said his injury occurred when he squatted to help a coworker push a pallet of copper. (Id.) He complained of lumbar, right sacroiliac, right pelvic and right anterior leg discomfort with sharp pain and numbness radiating down the right sacroiliac, right buttock, right posterior leg, right posterior knee, right calf, right ankle, right foot, right hip, right anterior leg, right anterior knee and right shin. (Id.)

After an examination, Dr. Weber diagnosed lumbar radiculopathy, sprain of the ligaments of the lumbar spine, lumbar spondylosis with radiculopathy, other muscle spasm and subluxation complex of the lumbar, sacral and pelvic regions. (Id.) Dr. Weber recommended and performed therapeutic modalities, electrical stipulation and mechanical traction. (Id.) He took the Petitioner off work. (Id.)

At future visits, Dr. Weber added therapeutic exercises, stretching and adjustments and recommended that the Petitioner avoid heavy lifting. (Id.) Dr. Weber also added diagnoses of sprains to the right and left hips and subluxation complex of the lower extremity. (Id.) He requested an MRI, but it was not approved. (Id.)

The Petitioner testified that the treatment he received at St. Clair Chiropractic and Chiro-Med did not provide lasting relief. (T. 34-35) The Petitioner believed the October 2023 injury was worse than the April 2023 injury. (T. 35) The Petitioner testified that his employment with the Respondent was terminated on or about October 23, 2023, because of budget cuts. (T. 38-39)

On May 1, 2024, the Petitioner was involved in a motor vehicle accident in which a car struck the bed of his truck. (T. 35, 56) He said the accident did not cause any new symptoms to

his low back but did aggravate his symptoms, making his lower back really sore and causing numbness in his right leg. (T. 35-36) He said that aggravation resolved and he was back to where he was prior to the motor vehicle accident. (T. 36)

The Petitioner informed Dr. Weber about the accident on May 8, 2024, and said the accident not only exacerbated his low back pain and sciatica but also caused an injury to his neck. (PX2) He reported that his low back pain and sciatica increased in intensity, and the numbness and tingling in his legs had gotten more constant. (Id.) Dr. Weber opined that the motor vehicle accident exacerbated the previous injury from the work accident but did not cut off the causal connection between the work accident and the Petitioner's current condition. (Id.)

The MRI was performed on September 30, 2024, at MRI Partners of Chesterfield and showed: 1) bilateral L5 pars defects with L5-S1 grade 1 anterolisthesis, bilateral foraminal herniated and cranially extruded disc fragments resulting in severe right greater than left foraminal stenoses but no central canal stenosis; and 2) central broad-based herniation at L4-5 extending into the medial foramina resulting in mild bilateral foraminal stenosis but no central canal stenosis. (Id.)

Dr. Weber reviewed the MRI on October 2, 2024, and said it showed obvious, severe damage to the L4-5 and L5-S1 disc levels. (PX2) He referred the Petitioner for pain management and a surgical consultation. (Id.) On October 14, 2024, Dr. Weber prescribed the Petitioner a lumbar spine decompression brace. (Id.) As of the date of arbitration, the Petitioner had 59 visits to Dr. Weber. (Id.) At his last visit on October 21, 2024, his chief complaints were lumbar, right sacroiliac, right pelvic and right anterior leg discomfort. (Id.) He reported some relief while wearing the brace. (Id.) Muscle, sensory and palpation testing showed improvement. (Id.) Range

of motion was limited. (Id.) Straight leg raise, Kemp's test and Valsalva's testing was unchanged. (Id.)

The Petitioner testified that he wants to undergo the treatment recommended by Dr. Weber. (T. 37) At the time of arbitration, the Petitioner was working as a cook at a bar/restaurant about 25-30 hours per week at $15 per hour since around the end of August 2024. (T. 39-41) He said the job does not require heavy lifting. (T. 40) He said that as the day progresses, the pain in his lower back gets more noticeable and starts shooting down his right leg. (T. 42) He said he takes ibuprofen and uses a topical ointment. (Id.)

On cross-examination, the Petitioner testified that he participates in fishing tournaments once a month and has no physical issues in doing that. (T. 54-55) The Petitioner testified that Dr, Weber never told him he could not go fishing. (T. 56-57)

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 his medical care providers.

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. A compensable injury occurs in the course of employment when it is sustained while a clamant is at work or while he or she performs reasonable activities in conjunction with his or her employment. *Id.* To satisfy the "arising out of" requirement, it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. *Id.* at ¶36.

Mr. Kupsky admitted that it was possible that the Petitioner injured his low back on October 10, 2023, in the way he described. He did not state that helping move a pallet of copper was outside of the Petitioner's job duties.

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

Issue (F): Is Petitioner's current condition of ill-being causally related to the accident?

An accident need not be the sole or primary cause as long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Indus. Comm'n,* 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill.Dec. 70 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hosp. v. Workers' Comp. Comm'n,* 371 Ill.App.3d 882, 888, 864 N.E.2d 266, 309 Ill.Dec. 400 (5th Dist. 2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm.,* 92 Ill. 2d 30, 36, 440 N.E.2d 861, 65 Ill.Dec. 6 (1982).

When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury

and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital*, 371 Ill.App.3d at 888.

Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Industrial. Comm'n*, 77 Ill. 2d 469, 471-472, 397 N.E.2d 834, 34 Ill.Dec. 162 (1979); *Gano Elec. Contracting v. Industrial Comm'n*, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724, 197 Ill.Dec. 502 (4th Dist. 1994); *International Harvester v. Industrial Com.*, 93 Ill.2d 59, 63-64, 442 N.E.2d 908, 66 Ill.Dec. 347 (1982).

Because there was no expert testimony regarding causation, the Arbitrator relies on circumstantial evidence. Although the Petitioner experienced previous low back problems and sought treatment in 2021, he was released to work full duty and was able to perform manual duties until the accident on April 27, 2023. After that accident, he experienced pain in the right and left lumbar, right sacroiliac and right buttock regions and sought treatment from Dr. Lybarger. Although the Petitioner testified that treatment did not provide total relief and that he was experiencing occasional mild discomfort, he was able to perform his job duties and did not seek further treatment. After the October 10, 2023, accident, the Petitioner's symptoms were worse and have not returned to baseline. He has been in treatment continuously since and has been unable to work. The Arbitrator found in 24WC11389 that the October 10, 2023, accident broke the causal connection between the Petitioner's current condition and the April 27, 2023, accident.

The Arbitrator also must consider whether the motor vehicle accident on May 1, 2024, broke the causal connection between the Petitioner's current condition and the October 10, 2023, accident. 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).

The Petitioner testified that the motor vehicle accident did not cause any new symptoms to his low back but did aggravate his symptoms, making his lower back really sore and causing numbness in his right leg. He said that aggravation resolved, and he was back to where he was prior to the motor vehicle accident. In his treatment notes, Dr. Weber opined that the motor vehicle accident exacerbated the previous injury from the work accident but did not cut off the causal connection between the work accident and the Petitioner's current condition. The Arbitrator finds the motor vehicle accident did not break the causal connection between the Petitioner's current condition and the October 10, 2023, work accident.

Therefore, the Arbitrator finds that the Petitioner's current low back condition is 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 causation and no contrary evidence, the Arbitrator finds that the medical costs listed in Petitioner's Exhibit 5 – with the exception of the bills from Absolute Chiropractic – were reasonable and necessary to treat the injuries suffered in the October 10, 2023, accident.

Therefore, the Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 5 – with the exception of the Absolute Chiropractic bills – 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 has continued to experience symptoms in his low back area and has not returned to his pre-accident condition. Dr. Weber has recommended a consultation with an orthopedic specialist. There was no evidence that such further treatment is unreasonable or unnecessary.

Therefore, the Arbitrator finds that the Petitioner is entitled to prospective medical care, specifically the orthopedic consult recommended by Dr. Weber. The Respondent shall authorize and pay for such.

Issue (L): What temporary benefits are in dispute? (TTD and TPD)

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).

Dr. Weber ordered the Petitioner to be off work beginning October 30, 2023, and he remained off work until he started a job as a cook at Loose Ends on August 27, 2024 – for a total of 43 1/7 weeks. He now earns $15.00 per hour and works between twenty-five to thirty hours per week. The Arbitrator finds it reasonable to conclude the Petitioner worked an average of 27.5 hours or $412.50 per week. Based on this, the Petitioner is entitled to TPD benefits of $266.79 per week from August 27, 2024, through October 29, 2024, for a total of 9 weeks.

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	18WC037507
Case Name	Allen Cunningham v. Consolidated High School District 230
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0208
Number of Pages of Decision	14
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Mark Masur
Respondent Attorney	Kisa Sthankiya

DATE FILED: 5/9/2025

/s/Maria Portela, Commissioner

Signature

25IWCC0208

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

ALLEN CUNNINGHAM,

Petitioner,

vs. NO: 18 WC 37507

CONSOLIDATED HS DIST 230,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection and nature and extent 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, but corrects the following clerical error:

In the Order section of the Decision, the Arbitrator awarded Petitioner 45% loss of person as a whole, 15% loss of the use of the right leg, and 30% loss of use of a right thumb for a total of 374.35 weeks. However, the Commission corrects the total number of weeks from 374.35 weeks to 280.5 as 45% loss of a person as a whole equals 225 weeks, 15% loss of use of the leg equals 32.35 weeks, and 30% loss of use of the right thumb equals 22.8 weeks.

Additionally, on page 7 of the Arbitrator's Decision, the Commission strikes the second sentence under the analysis of factor (iv) which states: "However, the permanent physical and cognitive impairments from which Petitioner suffers may negatively affect his future earning capacity if a change in occupation occurs in the future."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $813.87 per week for a period of 280.05 weeks, as provided in §§8(d)2, 8(e)12 and 8(e)1 of the Act, for the reason that the injuries sustained caused the 45% loss of the person as a whole, 15% loss of use of the right leg, and 30% loss of use of the right thumb.

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.

May 9, 2025

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

MEP/dmm
O: 41525
49

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC037507
Case Name	Allen Cunningham v. Consolidated High School District 230
Consolidated Cases	
Proceeding Type	
Decision Type	***3rd Corrected Decision***
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Mark Masur
Respondent Attorney	Kisa Sthankiya

DATE FILED: 2/22/2024

/s/William McLaughlin, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 21, 2024 5.10%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION (3)

ALLEN CUNNINGHAM
Employee/Petitioner

v.

CONSOLIDATED HIGH SCHOOL DISTRICT 230
Employer/Respondent

Case # **18** WC **37507**

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 **December 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. [x] Is Petitioner's current condition of ill-being causally related to the injury?
G. [ ] What were Petitioner's earnings?
H. [ ] What was Petitioner's age at the time of the accident?
I. [ ] What was Petitioner's marital status at the time of the accident?
J. [ ] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [ ] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [ ] TTD
L. [x] What is the nature and extent of the injury?
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On **October 30, 2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**115,443.64**; the average weekly wage was $**2,220.07**.

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

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

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

Respondent shall be given a credit, **All TTD paid** $ for TPD, $ for maintenance, and $ for other benefit.

Respondent is entitled to a credit of $**106,202.**42 under Section 8(j) of the Act.

ORDER

Respondent has paid Petitioner all TTD.
Respondent shall be given a credit for 106,202.42 under section 8 (j) of the act.
Respondent has or shall pay the medical expenses pursuant to the fee schedule as provided in Section 8(a) and 8.2 of the Act (per party stipulation).

Respondent shall pay Petitioner permanent partial disability benefits of $813.87 per week for 374.35 weeks, because the injuries sustained caused the serious and permanent disability to the extent of 45% person as a whole as provided in Section 8(d)2 of the Act, 15% loss of use of a right leg as provided in Section 8(e)12 of the Act, and 30% loss of use of a right thumb as provided in Section 8(e)1 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

February 22, 2024

FINDINGS OF FACT

Petitioner, Allen Cunningham, was born on March 8, 1967, and is presently 56 years of age. (p. 13) He and his wife Joy have 12-year-old twin boys (p 12).

Petitioner has been employed by Respondent, Consolidated High School District 230, since August of 2000, (p. 14). On October 30, 2018, he was a freshman English teacher at Andrew High School and a freelance photographer. (p. 15) He testified that most of his photography work was in high school sports. (p. 15)

On October 30, 2018, Petitioner sustained an accident while working for Respondent when he was struck by a motor vehicle in the school parking lot. (p. 16) The impact of the accident flipped Petitioner onto the hood of the car and then onto the pavement where he landed on his left side and his head on the ground. (p 16) The accident was captured on the school surveillance camera and is consistent with the Petitioner's testimony. (PX 24).

The petitioner testified that his only prior head injury a concussion playing soccer in high school at age 16 or 17, (p. 18).

After this accident Petitioner went into the school and reported the event. Kristin, Petitioners supervisor, who was present at the arbitration hearing, called his wife Joy who came to the school and promptly drove Petitioner to Silver Cross Hospital (p. 21). Petitioner testified he was in bad shape by the time he arrived at the hospital. (p. 21-22) He presented with symptoms of left sided neck pain and stiffness down into the shoulders; bilateral wrist pain; and knee, thumb, and hip pain (p. 22). Imaging was done of the brain, head, neck, left thigh, chest, both hands, both wrists and pelvis. (PX 3 and p. 22) He was admitted overnight and discharged with a diagnosis of a brain contusion. (PX 3)

Petitioner testified that he already had a scheduled day off on October 31, 2018 (p 22 - 23). On October 31st while at his son's school Halloween party, he became nauseous, struggled to understand what his son was saying to him in addition to experiencing a great deal of pain in his neck, and had trouble keeping track of what he was supposed to be doing. Accordingly, he left the party early (p 23 - 24).

On November 5, 2018, Petitioner commenced follow-up medical care with his PCP, Dr. Jill Patterson. (p. 24) She prescribed rest, both physically and mentally, and restricted Petitioner from working. (p. 24 and PX 4) Petitioner treated with Dr. Patterson over four additional visits through January 7, 2019. (p. 24 and PX 4) She diagnosed a traumatic brain injury / severe concussion. (PX 4) In addition to his physical injuries, Petitioner continued to experience headaches, difficulty sleeping, ringing in his ears, vertigo, memory difficulties, fatigue, and difficulties focusing. (p. 24 - 25) The headaches were difficult for him to describe because he had never experienced anything like that in his life. (p. 25) Dr. Patterson's records document that, before the accident, Petitioner was physically active, ran several miles a day, and lifted five days a week. (PX 4)

Petitioner testified his condition worsened and he was referred to several additional physicians, including Dr. Semba of Parkview Orthopaedics for the right knee, right hand, right thumb, and left hip injuries and Dr. McCarty of Shirley Ryan Ability Lab for the brain injuries. (p. 26 and 40) Due to right knee pain, swelling and clicking, Dr. Semba performed right knee surgery under general anesthesia on February 18, 2019. (PX 12) The surgery consisted of a complex posterior medial meniscus repair, and loose body removal. The knee was also injected with Marcaine for postoperative comfort. (PX 12) Postoperative physical therapy ensued from March 13 through May 22, 2019 (PX 5).

On June 3, 2019, at Respondent's request, Petitioner was evaluated by Dr. Troy at Advanced Orthopaedic & Spine Care on June 3, 2019. (p. 29) Dr. Troy confirmed that Petitioner continued to have residual right knee symptoms and that he experienced only a 25% improvement post-operatively. (RX 2) The Dr. prescribed a follow-up right knee MRI revealing a chronic medial collateral ligament injury. (RX 2) Dr. Troy stated that Petitioner's right knee condition was directly related to and a proximate result of the October 30, 2018, accident. (RX 2) Dr. Troy further confirmed that Petitioner had ongoing right-hand symptoms around the ulnar and radial collateral ligament and wrist CMC joint and he recommended an MRI of the right thumb. (RX 2) He opined that all treatment to date had been reasonable and necessary, and he did not find Petitioner was at MMI. (RX 2)

Petitioner's right hand and thumb symptoms continued unabated for the first six months of 2019. (p. 29) He was referred to Dr. Bednar of Loyola Medicine who treated Petitioner from June 20, 2019, through May 28, 2020 (p 30). On June 20, 2019, Dr. Bednar, administered a cortisone injection into the MP joint in the right hand providing only temporary relief. (p. 30-31) On August 5, 2019, he performed right thumb metacarpophalangeal joint arthrodesis, inserting two Kirchner wires over the dorsal cortex of the phalangeal of the metacarpal head and reducing the proximal phalanx on the metacarpal. (PX 14) From September 16, 2019, through October 29, 2019, post operative physical therapy was performed at ATI over 19 sessions. (p. 31-32 and PX 8). Because Petitioner continued to experience symptoms in and around his hardware site, Dr. Bednar surgically removed the implant and hardware and performed an extensor tenolysis on May 18, 2020. (p 32 and PX 15) Petitioner was last seen by Dr. Bednar on May 28, 2020, at which point a home exercise program was prescribed and performed (p 33).

For his left shoulder injury, Petitioner was referred to Dr. Marra of Northwestern Medicine in early February of 2020. (p. 34) Petitioner testified he had significant range of motion deficits, weakness, and could barely take his shirt off without experiencing significant pain (p 34 - 35). On March 10, 2020, Dr. Marra administered a cortisone injection into the shoulder which Petitioner described as providing him the best six weeks since the accident. (p. 35-36) However, the relief was short lived, and the shoulder symptoms returned. (p. 36) On September 2, 2020, Dr. Marra performed left shoulder surgery consisting of repair of a full thickness rotator cuff tear, capsular release, and extensive debridement of the glenohumeral joint. (PX 17) Postoperative physical therapy was performed over 39 sessions from September 3, 2020, to March 10, 2021. (p. 36 and PX 9)

Petitioner continued to experience left shoulder pain and weakness (PX 7). On February 22, 2021, an MRI arthrogram revealed additional pathology. (p. 37) On March 2, 2021, Dr. Marra administered a second steroid injection which provided no relief whatsoever (p. 36 – 37). On May 3, 2021, Dr. Marra performed a second shoulder surgery consisting of revision left rotator cuff repair, bursectomy, removal of foreign material inside the shoulder and debridement of the

glenohumeral joint. (PX 18) The operative report reveals a recurrent full thickness tear of the supraspinatus tendon. (PX 18) On May 6, 2021, Dr. Marra prescribed postoperative therapy which was performed at Loyola over 23 sessions from May 3 through August 3, 2021. (PX 10)

On June 30, 2021, Respondent had Petitioner evaluated by Dr. Ellen Voronov of DuPage Medical Group. (p. 38 and PX 23) She opined that Petitioner sustained a traumatic brain injury with subsequent neurologic symptoms of concussion, and neurocognitive deficits. (PX 23) Dr. Voronov also opined that Petitioner sustained injuries to multiple joints including his bilateral knees, left hip, left shoulder and bilateral thumbs and that he was experiencing ongoing left shoulder pain. (PX 23) She further opined that all of these injuries were directly related to the October 30, 2018, accident. (PX 23) Given Petitioner's left shoulder range of motion deficits and pain, Dr. Voronov agreed with Dr. Marra that additional physical therapy was needed. (PX 23) She also opined that Petitioner needed to continue taking Amitriptyline at bedtime as he finds it beneficial for his sleep pattern and mood and restricted Petitioner from overhead shoulder activities. (PX 23)

For his brain injury, Petitioner was referred by his PCP to Dr. McCarty at the Shirley Ryan Ability Lab. He was first seen on January 8, 2019, and was admitted to the day rehabilitation program. (PX 1) Dr. McCarty ordered an MRI of the brain and prescribed intensive occupational, physical, cognitive, speech, and balance therapy. (p. 41-42) Therapy was performed over 19 sessions from January 25, 2019, through early April 2019. (PX 1) Petitioner testified that the speech and cognitive therapy consisted of answering questions, reading information, working on logic problems, and engaging in discussions with members of the group who would comment on information they heard. (p. 42) Petitioner was restricted from driving all together from Thanksgiving of 2018 through early May of 2019 (p 42).

After discharge from the day rehabilitation program at Shirley Ryan, Dr. McCarty referred Petitioner for further treatment to include vocational rehabilitation and physical, occupational, and speech therapy. This was done over nine visits from April 28 through June 10, 2019, until it was terminated based on the IME opinions of Dr. Itkin of **Leading Neurologic Opinion** (PX 1; p 43). Dr. Itkin agreed with Dr. McCarty that Petitioner sustained a traumatic brain injury resulting in subsequent neurologic symptoms of concussion, including neurocognitive delay, fatigue, headaches, dizziness, and difficulty with multitasking. (RX 1) He also agreed that Petitioner's treatment had been reasonable and necessary. (RX 1) However, Dr. Itkin felt Petitioner had reached maximum medical improvement "strictly from a neurologic standpoint of view as it relates to the concussion," and he did not think there is need for any further "strictly neurologic treatment" as it relates to the accident. (RX 1) He also felt that it would be wise for Petitioner's neurologist to start going down on the Amitriptyline, contrary to the opinions of Dr. McCarty and Respondent's examiner, Dr. Voronov. (PX 1, PX 19 and RX 1) Petitioner testified that the IME with Dr. Itkin was brief, lasting several minutes wherein he was asked to recall several numbers. (p. 44)

Petitioner continued treating with Dr. McCarty the remainder of 2019 through the end of 2022. Dr. McCarty testified that Petitioner improved with the medical treatment she provided after Dr. Itkin's IME. (PX 1) Her records and evidence deposition document significant ongoing cognitive difficulties consisting of headaches, short term memory deficits, challenges with concentration, following conversations, and noise and light sensitivity. (PX 1 and PX 19) Background noise was also very difficult and caused an increase in symptoms. (PX 1 and PX 19) During this 2 1/2-year period, Dr. McCarty managed Petitioner's ongoing symptoms and medications. (PX 1 and PX 19) He last saw Dr. McCarty on December 5, 2022. (p. 48) She instructed him to follow-up in a year

and to continue taking Amitriptyline daily for sleep and headaches and Sumatriptan as needed for more severe headaches. (p. 48-49 and PX 1) Petitioner takes Amitriptyline daily and Sumatriptan as needed (p 49). He testified he had to take Sumatriptan once in the last six months for an intense headache lasting six days approximately 30 days prior to arbitration. (p. 49-50)

The frequency and intensity of Petitioner's headaches vary. On June 1, 2022, Petitioner provided Dr. McCarty with a history of worsening headaches with impaired concentration, light sensitivity, making his brain feel like concrete, requiring him to take Sumatriptan. (PX 1) In his December 5, 2022, visit, he provided Dr. McCarty with a history of 4/10 headaches on a pain scale although less frequent and intense. (PX 1)

Although Respondent disputes that Petitioner lost consciousness in the accident, the dispute is pointless because it does not dispute that Petitioner sustained a brain injury because of the accident. Dr. McCarty specifically testified that a person could sustain a traumatic brain injury, concussion, and post-concussion syndrome without positive loss of consciousness. (PX 19, pg. 54) She further opined that none of her opinions would change if Petitioner did not experience a loss of consciousness. (PX 19) Dr. Itkin concedes that a brain injury was sustained, and Respondent failed to offer any contrary medical evidence.

Petitioner testified that he continues to experience ongoing residual symptoms and functional limitations because of his occupational injuries. (p. 51-64) His right knee is very painful, particularly when kneeling or twisting. (p. 51) He testified his worst pain in the past six months was 4-5 out of 10 and his best day was 1 out of 10. (p 51 - 53). His knee is sensitive first thing in the morning when taking his first few steps. (p. 52) Prolonged standing causes him pretty intense pain (p. 52 and 54). He experiences daily symptoms to varying degrees. (p. 53) He ices and elevates the leg/knee to alleviate his symptoms. (p. 54)

Petitioner described his right hand and thumb pain as the most intense of all the injuries (8-9 out of 10 on a bad day and 2 out of 10 on a good day in the last six months). (p. 58-59) Petitioner's right hand and thumb are incredibly sensitive to cold. If he holds anything cold, he experiences shooting pains into his wrist and up his arm. (p. 55) When it is cold outside, his hand and thumb throb. (p. 55) He has weakness and range of motion deficits as demonstrated at trial (p. 55-57) Specifically, he cannot touch his thumb and pinky finger and has limited flexion and extension of the thumb (p 55 - 57). Prolonged writing causes cramping in the thumb and hand. He has dropped things like cans, dishes, and cell phones due to his difficulties. (p. 57-58) Keeping his hand warm and rubbing the inside and outside of his hand helps his symptoms. (p. 59)

Petitioner continues to experience pain, weakness, and range of motion deficits in his left shoulder (4 out of 10 on his worst day and 1 out of 10 on his best day in the last six months.) (p. 60-62) A strap holding his camera hangs over his left shoulder while performing his photography work causing his shoulder muscles to cramp. (p. 60) He has range of motion deficits as demonstrated at trial in that he cannot raise his hand above belt line when reaching behind his back (p 61). On occasion, he has to ice the shoulder several hours a day and takes Ibuprofen for the pain. (p. 62) He testified the more he does, the more discomfort he experiences. (p 62)

Petitioner testified his greatest residual problem stemming from his brain injury is his inability to sleep. (p. 64) He sleeps three to four hours a night. (p. 64) He goes to bed early, wakes up at 1:00 or 2:00 a.m. every night and sometimes cannot fall back asleep. (p. 64) Petitioner testified that he

has challenges tracking conversations and background noise causes problems and headaches. (p. 65-66) He must screen out background noise if he is having a serious conversation. (p. 65-66) He continues to wear ear plugs for his ongoing noise sensitivities. (p. 65) Petitioner testified he does not do well in social settings and has ongoing memory deficits like calling a student by the wrong name and forgetting the pledge of allegiance. (p. 66-67) He still experiences ongoing small headaches several times a week and experienced a significant headache once in the past six months lasting six days. (p. 67-68)

Petitioner testified that he was physically fit and very active before the accident, running and lifting weights. (p. 63 and 69-70 and PX 1 and PX 4) Petitioner testified he no longer runs due to swelling and pain in the right knee and now walks on a treadmill instead. (p. 70) His weightlifting is limited, and he is unable to perform military presses due to the shoulder injury. (p. 63) He also enjoyed rollerblading with his wife and children and now this activity causes him right knee difficulty. (p. 68)

Petitioner has also made teaching changes because of the accident. He testified he must write everything down and uses his written outline while teaching in the classroom. (p. 71) He also answers student's questions differently. (p. 71-72) He now slowly processes the questions to make sure he doesn't miss anything and processes the answers slowly so that he can answer appropriately. (p. 71-72)

Petitioner's wife, Joy Cunningham, also testified to the impact of the accident. Joy is a school librarian for the Frankfort School District. (p. 91) She testified she has been married to Petitioner for 25 years and has known him more than 29 years. (p. 91-92) Since the accident, she has noticed significant changes in his disposition and temperament. She testified that Petitioner used to be the most patient and kind person she had ever known. He was extremely patient with their children. (p. 93) Now, Petitioner struggles with patience, has a short fuse, and can be set off by things that would not have bothered him before. (p. 94-95)

Joy has also noticed cognitive differences in Petitioner since the accident. (p. 97-98) He used to be cognitively sharp with excellent multitasking skills. (p. 93) He took pride in being able to recall student's names years after graduating. (p. 93-94) Now, he has memory lapses such as difficulty recalling people's names including family members. (p. 98) Joy indicated that Petitioner cannot multitask and something as simple as making breakfast must be done in the exact same order or it will throw him off. (p. 98) Joy must remind Petitioner to take his medicine at 5:30 p.m. daily. (p. 98) Joy was consistent with Petitioners testimony in regard to his sleeping habits. (p. 99-100).

Joy also testified that Petitioner used to enjoy being around people prior to the accident but they no longer get together with friends and family because she never knows what kind of day Petitioner will have. (p. 95-96) If he is having a bad day, Petitioner can't physically be around people. (p. 96).

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

The primary causation dispute relates to permanency. (p. 8). Respondent paid all TTD and agreed to be responsible for all medical bills Petitioner incurred. (p. 5-6)

The uncontested facts established that the Petitioner was struck by a motor vehicle while walking in drop-off/parking lot area outside of Andrew High school. As a result of the impact, he sustained a traumatic brain injury and a number of orthopaedic injuries. Petitioner had no previous injuries to his right knee, right hand, thumb, or left shoulder. Petitioners only prior injury was a minor concussion in high school from which he had one medical visit and no residual symptoms. or two. Following the car accident, Petitioner sought immediate medical treatment for orthopedic and brain injuries. (PX 1 - PX 19 and PX 23).

Respondent's IME, Dr. Troy corroborated the opinions of the treating Drs. Semba and Bednar in which it was concluded that Petitioner sustained injuries to his right knee, right hand, right thumb, that these injuries were causally related to the October 30, 2018 accident, and that the treatment provided for these injuries had been reasonable and necessary. Respondent's IME from Dr. Voronov likewise confirmed that all of Petitioner's injuries, including the left shoulder injury, were casually connected to the October 30, 2018, accident and that the treatment had been reasonable and necessary. Respondent stipulated that it is responsible for all of the medical bills with respect to Petitioner's left shoulder medical treatment including the two surgeries. (p. 5)

In regard to the brain/head injury, Dr. McCarty testified that Petitioner sustained a traumatic brain injury with post-concussion syndrome, and this is corroborated in whole or in part by Dr. Patterson and the records from Silver Cross Hospital. (PX 19, PX 4, and PX 3) Dr. Itkin concurred that Petitioner sustained a traumatic brain injury with subsequent neurologic symptoms of concussion, including neurocognitive delay, fatigue, headaches, dizziness, and difficulty with multitasking. (RX 1)

Arbitrator acknowledges that even though Dr. Itkin opined that Petitioner had reached MMI and required no ongoing treatment as of June 11, 2019 (RX 1), Arbitrator gives more credibility to Dr. McCarty whom disagreed with said conclusion (PX 19) and continued to treat Petitioner through his most recent visit on December 5, 2022, and continued to prescribe various medications in an effort to manage petitioners symptoms, ultimately concluding that Amitriptyline and Sumatriptan worked best.

Taken as a whole, the credible testimony of the Petitioner, the stipulation of the parties, the medical records and exhibits, including the deposition testimony of Dr. McCarty, the Arbitrator finds that the petitioner has proven by a preponderance of the evidence that his conditions of ill-being in the right knee, right hand, right thumb, left shoulder, and brain/head are causally connected to the accident of October 30, 2018

In support of the Arbitrator's Decision with respect to (L) Nature and Extent the Arbitrator finds as follows:

Petitioner's date of accident is after September 1, 2011, and therefore the provisions of Sections 8.1(b) of the Act are applicable to the assessment of permanent partial disability in this matter.

Regarding subsection (i) of Section 8.1(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.

8.1 (b) (ii) Occupation:

Petitioner is a high school English teacher. His job requires mental and cognitive acuity and considerable standing while teaching. Petitioner sustained a traumatic brain injury and concussion resulting in a constellation of cognitive symptoms including ongoing headaches, noise sensitivity, memory loss, difficulty concentrating, and sleep difficulties. Petitioner testified that prolonged standing in the classroom causes his right knee symptoms to increase requiring him to sit during class. He has changed his teaching methods in that he now prepares and relies upon a written outline when teaching and takes more time in listening and responding to questions to ensure he provides appropriate responses. His wife testified that his memory is impaired and that he has a diminished ability to multitask. The Arbitrator concludes that the Petitioner's permanent partial disability will be greater than an individual who does not require mental and cognitive acuity or the ability to stand for prolonged periods in the workplace. As a result, this factor will be given greater weight.

8.1 (b) (iii) Age:

Petitioner was 51 at the time of the injury. The Arbitrator notes that Petitioner's brain, right knee, right hand, right thumb, and left shoulder injuries will likely be magnified and deteriorate with age. The records reveal that Petitioner may need additional shoulder treatment including a total shoulder replacement, which has already been discussed by Dr. Marra but deferred given the Petitioner's age. (PX 7, pg. 62-63) Dr. Marra also noted that despite the second surgical procedure, he anticipated Petitioner may continue to have pain with rest and significant pain even after a successful repair. (PX 7, pg. 62-63). Petitioner takes ongoing medications for his headaches, sleep difficulties, and insomnia. The Arbitrator concludes that Petitioner's permanent partial disability will be greater than a similarly aged person who will not require future medical care and whose condition will not deteriorate with age. As a result, this factor will be given greater weight.

8.1 (b) (iv) Future earning capacity:

Petitioner's future earning capacity at the present time appears to be undiminished as he has returned to full duty work as a high school teacher for Respondent. However, the permanent physical and cognitive impairments from which Petitioner suffers may negatively affect his future earning capacity if a change in occupation occurs in the future. Because of this, the Arbitrator gives less weight to this factor.

8.1 (b) (v) Evidence of Disability:

Petitioner has demonstrated evidence of disability which is corroborated by his treating medical records. He and his wife testified credibly and consistently with the records. The Arbitrator notes that Petitioner suffered a full thickness tear of his rotator cuff and an aggravation to his glenohumeral arthritis of his left shoulder requiring two surgeries. A rotator cuff repair, capsular release and extensive debridement was performed in 2020. A revision left rotator cuff repair for a recurrent tear, debridement of the glenohumeral joint and removal of foreign material was performed in 2021. Petitioner has ongoing symptoms and functional limitations in the left shoulder consisting of pain, weakness, range of motion deficits noted by the Arbitrator, and difficulties lifting weights which he regularly lifted prior to the accident.

Petitioner also injured his right knee. Dr. Semba performed right knee surgery consisting of a repair of a complex posterior medial meniscus tear and loose body removal. Petitioner continues to experience residual symptoms and difficulties in the right knee consisting of pain and swelling, as well as difficulties with prolonged standing, running, and rollerblading.

Petitioner also injured his right thumb/hand. Dr. Bednar performed a right thumb metacarpophalangeal joint arthrodesis in 2019. Due to persistent pain, particularly at the hardware site, Dr. Bednar performed a second surgery for removal of implanted hardware and extensor tenolysis in 2020. Petitioner continues to experience ongoing residual symptoms and functional limitations consisting of pain, range of motion deficits, and weakness. Anything cold causes his hand/thumb to throb. He has difficulty holding onto items due to his pain, weakness, and range of motion deficits. Prolonged writing causes cramping in the hand and thumb.

Finally, Petitioner sustained a traumatic brain injury. He underwent an extensive course of treatment by Dr. McCarty. He had documented symptoms and functional limitations noted throughout his treatment. These symptoms and limitations are corroborated by the undisputed testimony of Petitioner and his wife. Petitioner continues to take medications daily and will do so into the foreseeable future to help him with headaches, insomnia, and sleep difficulties. He continues to experience cognitive symptoms including memory difficulties, concentration difficulties, irritability, impatience, noise sensitivity, and several small headaches per week. Because of all of this, the Arbitrator gives greater weight to this factor.

Based on all the above factors and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of:

A) 45% loss of use of a person as a whole (for the shoulder and head injuries);
B) 15% loss of use of a right leg; and
C) 30% loss of use of a right thumb.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC029391
Case Name	Skyler Spanabel v. Churchhill Downs, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0209
Number of Pages of Decision	22
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Stephen Martay
Respondent Attorney	Kari Hardenbrook

DATE FILED: 5/9/2025

/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

SKYLER SPANABEL,

Petitioner,

vs. NO: 19 WC 029391

CHURCHILL DOWNS, INC,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of employer/employee, accident, benefit rates, 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

On September 2, 2019, Petitioner, a professional jockey, was injured at Arlington Park ("Arlington") when the horse she was riding flipped over in the gate prior to the race. Petitioner was transported to the emergency room with fractures in her right arm and underwent surgery. She attended physical therapy for several months and was released full duty on May 21, 2020. Petitioner filed a workers compensation claim against the racetrack, Arlington, alleging an employer/employee relationship existed. Petitioner was successful at Arbitration and benefits were awarded. Respondent appealed the award.

In Illinois, horse racing is governed by the Illinois Horse Racing Act (the Act) and administered through the Illinois Racing Board (the Board). The Board is comprised of 11 members, appointed by the Governor, to regulate horse racing through the enforcement of the Act and its rules and regulations. Licensed racetracks, such as Arlington, are required to conduct a certain amount of horse races per year. In addition to hosting races, the tracks also board horses, but otherwise have no control over the horses, horse owners, trainers, jockeys, or other participants.

Pursuant to the Act, and to help enforce the rules and regulations promulgated by the Board, three Stewards are required at each race event. Two of the three Stewards are employees of the State of Illinois and one Steward, also known as the Association Steward, is an employee of the racetrack. Although an employee of the racetrack, the Association Steward is not hired or discharged without Board approval. All Stewards are controlled by the Board.

Petitioner, like all professional jockeys, was required to be licensed by the various States she rode in and was duly licensed by the Illinois Racing Board in Illinois. Additionally, Petitioner had to submit an application to the Stewards and undergo a physical examination to race at Arlington. If Petitioner or any jockey violated a safety rule or regulation, the Stewards could impose fines, suspensions, or license revocations. If a jockey was unable to race on a given day, the Stewards exerted every effort to replace the jockey and ensure the race proceeded.

Petitioner had been a professional jockey for two years at the time of her injury. In 2019, Petitioner testified she participated in approximately 120 races for various owners and trainers. She earned $100 per race as a "mount fee, "and was paid additional earnings if she placed first, second, or third. The mount fees and the method of their payment were prescribed by rule and negotiated between the Jockey's Guild and the Illinois Thoroughbred Association. Petitioner's earnings were distributed on a weekly basis from the "purse accounts" of the individual horse owners whose horses she rode. Horse owners deposited funds into their individual accounts to cover all mount fees and winnings. Arlington was required to maintain the purse accounts and distribute the funds in accordance with the Illinois Horse Racing Act. There were no withholdings for social security, taxes, etc. from Petitioner's earnings.

As an independent jockey, Petitioner contacted different owners and trainers to obtain mounts for herself. She filed taxes as a sole proprietorship. She was responsible for providing her own riding equipment, except for the silk colors of the various horse owners whose horses she rode, which were provided by the horse owners or by Arlington if the owners failed to provide silks. Anthony Petrillo, President of Arlington at the time of Petitioner's injury, testified the Act required each horse to have a distinct color "silk" and number so they could be identified during the race. Arlington provided no instruction to Petitioner, could not hire or discharge Petitioner, and had no contractual relationship with Petitioner.

Regarding Petitioner's current condition of ill-being, Petitioner testified she worked full duty as a jockey in Florida and continued to have stiffness in her right arm.

II. CONCLUSIONS OF LAW

A. Employer/Employee

Whether a person is an employee or an independent contractor depends upon an analysis of all the facts and circumstances of each particular case. As stated in *Coontz v. Industrial Com. (1960), 19 Ill.2d 574, 577*: "No single facet of the relationship between the parties is determinative, but many factors, such as the right to control the manner in which the work is

done, the method of payment, the right to discharge, the skill required in the work to be done, and the furnishing of tools, materials or equipment have evidentiary value and must be considered. (*Henn v. Industrial Com., 3 Ill.2d 325*.) Of these factors, the right to control the work is perhaps the most important single factor in determining the relation, (*Crepps v. Industrial Com., 402 Ill. 606*,) inasmuch as an employee is at all times subject to the control and supervision of his employer, whereas an independent contractor represents the will of the owner only as to the result and not as to the means by which it was accomplished. *Immaculate Conception Church v. Industrial Com., 395 Ill. 615; Besse v. Industrial Com., 336 Ill. 283; Lawrence v. Industrial Com., 391 Ill. 80*. *Clark v. Industrial Com*., 54 Ill. 2d 311, 314-315, 297 N.E.2d 154, 156, 1973 Ill. LEXIS 343, *5-6

In applying the above principles to the facts of the present case, the Commission views the evidence differently than the Arbitrator and finds an employer/employee relationship did not exist between the parties. Petitioner was a professional jockey independently licensed through the State of Illinois. She both marketed herself and solicited mounts from various horse owners and trainers. She provided her own equipment, outside of the "silks" provided by the horse owner or Respondent if the horse owner failed to provide a "silk." Petitioner's earnings were based on the number of races she participated in and her winnings. As a skilled jockey, Petitioner had control of her schedule, performance, and work.

Petitioner was subject to discipline by the Stewards if she violated any rule or regulation. Unlike the Arbitrator, the Commission does not find the Stewards oversight of Petitioner supportive of an employment relationship with Respondent. The Courts have found Stewards are representatives of the Illinois Racing Board at race meets licensed by the Board, who supervise horse racing meets as provided by the rules and regulations of the Board and are empowered to investigate violations of Board rules and to revoke or suspend occupational licenses upon a finding that the rules have been violated. *Baker v. Illinois Racing Bd*., 101 Ill. App. 3d 580, 56 Ill. Dec. 554, 427 N.E.2d 959, 1981 Ill. App. LEXIS 3550 (Ill. App. Ct. 5th Dist. 1981). Respondent's witness, Mr. Petrillo, credibly testified the Stewards were statutorily mandated positions under the control of the Board. We agree and find any action on the part of the Stewards, including the Association Stewards, was independent of Respondent.

In *Clark v. Industrial Com*., 54 Ill. 2d 311, 297 N.E.2d 154, 1973 Ill. LEXIS 343*,* the Supreme Court upheld a Commission decision finding there was no employer/employee relationship between a professional jockey and owner of the horse he was injured on. The court weighed the various factors and determined the owner did not exercise sufficient control over the jockey, did not pay the jockey directly, and did not furnish equipment to the jockey outside of the "silks." Moreover, the jockey rode for multiple owners and trainers throughout the year, was highly skilled, and once the race began, the owner could not discharge the jockey and the jockey had exclusive control during the race. Here, the Commission finds Respondent had less control than the horse owner in *Clark.* Respondent had no control of Petitioner's schedule, could not hire or discharge Petitioner, had no vested interest in Petitioner's performance or outcomes, conducted no pre- or post-race discussions with Petitioner, never completed employment documentation with Respondent, was not in a contractual relationship with Petitioner, and did not compensate Petitioner.

Finally, the evidence showed horse racing was a highly regulated and unique business largely controlled by the State of Illinois. Racetracks, in this case Arlington, were venues for public wagering and for individual proprietorships to conduct their business with significant oversight by the State. Accordingly, the Commission reverses the Arbitrator's finding on employer/employee and denies all benefits. All remaining issues are moot.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed on June 20, 2024, is reversed for the reasons stated above.

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.

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.

May 9, 2025
o: 3/27/25
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	19WC029391
Case Name	Skyler Spanabel v. Churchhill Downs, Inc.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Jacqueline Hickey, Arbitrator

Petitioner Attorney	Stephen Martay
Respondent Attorney	Kari Hardenbrook

DATE FILED: 6/20/2024

/s/Jacqueline Hickey, Arbitrator

Signature

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Skyler Spanabel
Employee/Petitioner

v.

Arlington Race Track/Churchill Downs
Employer/Respondent

Case # **19** WC **29391**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Arbitrator Jacqueline Hickey**, Arbitrator of the Commission, in the city of **Chicago**, on **November 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. ☐ 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 2, 2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**13,511.00**; the average weekly wage was $**844.43**.

On the date of accident, Petitioner was **19** 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, $**0.0** for maintenance, and $**0.00** for other benefits, for a total credit of $**0.00**.

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

ORDER

The Arbitrator finds Petitioner has proven by a preponderance of the evidence that an employee-employer relationship existed on September 2, 2019.

The Arbitrator finds Petitioner sustained a permanency loss of 18% loss of the use of the right arm pursuant to Section 8(e) of the Act. This award amounts to 45.54 weeks of permanency at the rate of $506.66/week totaling $23,073.29.

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

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

Jacqueline C. Hickey

Signature of Arbitrator

June 20, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

SKYLER SPANABEL,	)	
	)	
Petitioner,	)	
vs.	)	
	)	**No. 19 WC 29391**
ARLINTGON RACE TRACK/	)	
CHURCHILL DOWNS	)	
	)	
Respondent.	)	

RIDER TO DECISION

This matter proceeded to hearing on November 30, 2023 in Chicago, Illinois before Arbitrator Jacqueline Hickey on the Parties' Request for Hearing. Issues in dispute include: Employee-Employer relationship, Petitioner's earnings and Nature & Extent of Petitioner's injuries. See Arbitrator's Exhibit "Ax" 1.

FINDINGS OF FACT

Petitioner's Testimony

General background

Petitioner, Skyler Spanabel, was a 19-year-old single woman with no children under the age of 18 and worked for Churchill Downs, Inc. on September 2, 2019 (Ax1). Petitioner testified that she was employed as a jockey and had been a jockey at Arlington Park, which was owned by Churchill Downs, Inc. for two years (Tr. 11). Petitioner testified that she was hired to work at Arlington Park in 2018 and went into great detail about how someone is cleared to become a jockey at Arlington Park (Tr. 14-16).

During cross examination, petitioner testified that she had been a jockey for about two years before her injury and had ridden multiple horses for multiple different owners and trainers (Tr. 35). She had primarily raced at Arlington race track but had occasionally raced at Hawthorne Racetrack (Tr.37). Per Equibase, petitioner had about 120 race starts in 2019 before the incident, and she had raced numerous horses and sometime multiple different horses a day (Tr. 38; Rx16 pgs. 460-465). These horses could belong to different owners and trainers (Tr. 38).

Testimony regarding requirements for a Jockey

To become a jockey, petitioner had to "go to the stewards" (Tr. 14). Petitioner testified that the stewards, who were to her knowledge employees of Arlington, would enforce the rules for Arlington upon jockeys, owners, and trainers (Tr. 15). According to Petitioner, you have to put in an application then get cleared to race by stewards who work at Arlington Park (Tr. 15). Stewards are the people at Arlington Park that enforce rules for the jockeys, owners and trainers (Tr. 15).

This hiring process involves a background check, fingerprinting, a physical examination, and an interview about why someone should be deemed safe to ride at their track (Tr. 14-15).

Jockey pre-race procedures

Following that process, Petitioner testified that she was cleared by the stewards to ride at Arlington Park (Tr. 16). Petitioner testified that as a jockey, she must wear certain colors – either Arlington's or the owner's colors (Tr. 22-23). Petitioner was not allowed to own any horses or bet on any horses (Tr.23). During cross, petitioner confirmed that when filling out the application, taking a drug test or interviewing with the stewards, no one else from Arlington or Churchill Downs was present (Tr.51). Petitioner reported to the stewards and clerk of scales, whom petitioner considered to be her supervisors (Tr. 52). To be a jockey, petitioner must be licensed and the licensing process and procedures are performed by the stewards (Tr. 60-61). Petitioner must pay a fee to be licensed (Tr. 63).

Once Petitioner was cleared to race at Arlington, she testified that she then goes around to horse owners and trainers to get placed as the jockey on their horses (Tr. 16-17). Sometimes, Arlington Park contacts the jockey directly for a race if a certain jockey is unavailable (Tr. 24). If hired, Petitioner would find out whether she secured a job or in was a jockey for a certain race based upon a website uploaded through Arlington Park called Equibase. This is a website that takes every racetracks' entries and results so the public, trainers and owners may be able to see who is going to ride what horse on what day or what place they finished (Tr.17). Petitioner has to be at Arlington Park 90 minutes before a race and check in at the jockey's room (Tr. 19). She also must be weighed to make sure she passes weight for the race (*Id*.). Following the pre-race procedures, Petitioner then presents to her horse for the race and runs the race (Tr. 21).

Once petitioner is on the list to race, she would confirm that she was going to ride that horse and appear hour and a half before the race is expected to start (Tr18). She would present to the jockey's room, sign in, verify her correct weight and get ready to race. (Tr 19). Petitioner testified that she had her own equipment that met Arlington's rules, like a helmet, which could be different at other racetracks (Tr19 -20). Once petitioner is dressed and ready, she would check in with the Clerks of Scales to confirm that she is wearing the correct uniform (Tr.20).

Jockey post-race procedures

Following the race, there are different post-race procedures depending on the finish of the race. Following a win, the jockey must present to the winner's circle for photos (Tr. 20). For 2nd, 3rd and 4th, the jockey must be weighed again (*Id*.). These procedures are all mandatory (*Id*.). In terms of payment, Petitioner testified that she was paid at the end of the week by a bookkeeper at Arlington Park (Tr. 21). She was paid $100.00 per race no matter the finish of the horse plus some additional money if the horse finished 1st, 2nd or 3rd (Tr. 21-22). Petitioner was clear that the checks came from Arlington Park (Tr. 22). Petitioner testified that she was not paid directly by the owners of the horses (*Id*.). The payment comes out of the purse money and she would get a percentage (Tr 22). Petitioner testified that the money comes from Arlington, not the owner (Tr 22). Taxes were not taken out of the checks (Tr 22). During cross, petitioner testified that she raced weekly at Arlington and received a check from Arlington that included base mount fees and percentage of winnings, if she won (Tr 53). The checks were not hourly or salary (Tr 53). Basically the number of jobs, horses she rode a week, determined petitioner's pay check (Tr 54).

Once petitioner walks out to the paddock and officially mounts the horse, she is guaranteed the base mount fee (Tr 55). If petitioner doesn't show or she doesn't ride a single race, she doesn't get paid (Tr. 55-56). Petitioner testified that the checks come from the bookkeep who manages the books for Arlington and writes the check to the jockeys on behalf of Arlington (Tr 56).

Petitioner testified that she was paid $9,266 by Arlington per the 2018 tax return (Tr28; Rx.10 – 12) and $13,511 in 2019 tax return (Tr 28; Rx13-15). Petitioner testified that she had been working at Arlington in 2019 for roughly 16 weeks before the incident (Tr 28). Petitioner testified that she earned about $844.43 per week (Tr. 28). In petitioner's 2018 and 2019 tax records, petitioner is listed as sole proprietorship with Arlington International Race Course as gross receipt of sale and in the individual tax form she listed two employers – Rain Pay Master and LTF Club Management (Tr. 58 – 59, Rx10-12 and Rx.13-15).

Additional rules and requirements for Jockeys

In terms of rules at Arlington Park for jockeys, Petitioner noted that she cannot own a horse, she cannot be on any horse races, she is subject to random drug and alcohol testing and she must follow safety rules established by the stewards of Arlington Park (Tr. 23). She can also be suspended and fined if the stewards deem anything a jockey does, breaks the rules of Arlington Park (Tr. 24-25).

Petitioner agreed to take random drug tests and breathalyzers, and to ride safe during every race (Tr 23). If petitioner breaks the rules, she would either be suspended or pay a fine (Tr. 23). The stewards would determine if a jockey is riding safe, and if anything was done unsafely or a test was failed, and then a jockey would receive a minimum three-day suspension keeping them from work (Tr 23-25). The suspension would not just apply to Arlington, but to any other racetrack in North America (Tr 25). A fine can be given for any reason (Tr 25). Petitioner testified that she was either suspended or fined in June 2019 (Tr 25). Petitioner changed position from one path to another during a race and it was deemed that she affected another horse, and thus, she was placed on a three-day suspension (Tr25-26). She also believed she was fined $100 to $200 (Tr 26). Petitioner had seen other jockeys fired at Arlington and specifically recalled a jockey refusing to take a breathalyzer and after a couple of times refusing, he was revoked to race at Arlington (Tr 26). The stewards decide if a person can't ride anymore, and they inform Churchill/Arlington (Tr 27).

Petitioner's current condition

Petitioner testified that she continues to have issues with her right arm and there was a scar on the outside of her right forearm (Tr 30). She continues to do some of her therapy exercises she learned to keep it well maintained and working properly (Tr 31). She reported that it becomes stiff when it is cold and she sometimes wears a brace when she rides to protect it and provide a little support (Id.). Petitioner has hardware in her arm that can't be removed (Id.). She sometimes takes over the counter medications when it hurts, but nothing has been prescribed (Tr.32). During cross, petitioner testified that she sustained another injury to her right arm, elbow in 2022 (Tr. 33). The scar on her right forearm is from 2019 incident and the 2022 incident (Id.).

Petitioner testified that there was an "occupational accident policy", which was given to her and not something she paid for (Tr. 29). The policy covered the injury she sustained while at Arlington including the medical bills and weekly benefit checks for her missed time (Tr. 29; Rx6). Petitioner testified that her medical bills related to this injury were paid (Tx. Pg. 32; Rx. No 7). Petitioner did not race from the time of the injury until end of May 2020 when she was released from her doctor (Tr 30). Petitioner is currently working as a jockey in Florida (Tr. 30) and she is not under any restrictions from her doctors (Tr.33).

Day of Accident on 9/2/19

On September 2, 2019, petitioner testified that she rode horse named Ms. Juliana for trainer Gary Delong and owner Stoney Creek (Tr. 41-42). The morning of the race, petitioner spoke to Mr. Delong about riding as jockey for the horse (Tr. 46). When asked whether anyone from Arlington ordered her to ride that horse, petitioner testified "No" (Tr.48). Petitioner was also asked whether she knew if anyone from Arlington ordered Mr. Delong to let her ride that horse, she testified "No" (Tr. 48) Mr. Delong met petitioner at the paddock to assist petitioner onto the horse before the race (Tr. 45). A paddock judge would be present at the time but would not provide petitioner with any instructions or equipment other than telling jockeys to mount the horses (Tr. 49). Petitioner wore the silk uniform, red and black, provided by Stony Creek (Tr. 47). Petitioner provided her own helmet and crop (Tr.47). Petitioner was unaware whether Mr. Delong or Stony Creek had workers' compensation insurance (Id.) Petitioner was asked whether Arlington ever reached out to her to run a race, and petitioner indicated that "yes, they have" (Tr. 24). Petitioner testified that if a jockey is unable to ride a race, there had been times when "they" will call another jockey and ask them if they would be willing to ride the horse (Tr. 24).

Petitioner testified that on September 2, 2019 she was in the starting gates when the horse she was on flipped over on to her and broke her right arm (Tr. 11-12). The Arbitrator notes that Accident is not in dispute.

Medical Treatment

Petitioner was taken from the racetrack by ambulance to Northwest Community Hospital (Tr. 12). Petitioner was diagnosed with a grade 1 open right radial shaft fracture and closed ulnar shaft fracture which was displaced (Px1 at 14-15). She underwent an irrigation and excisional, including skin, subcutaneous tissue and bone fragments from the right forearm open fracture and an open reduction and internal fixation surgery of radial shaft and ulnar shaft fractures to the right forearm (Px1 at 15). The surgery was performed by Dr. Paul Papierski (*Id*.).

Dr. Papierski saw Petitioner for a follow-up on September 6, 2019 and he recommended Petitioner see occupational therapy for a custom molded orthosis (Px4 at 13). He also noted that Petitioner would be returning to Grand Rapids, MI and would continue her medical treatment there (*Id*.). Petitioner started an extensive round of physical therapy at Northern Physical Therapy on September 11, 2019 (Px 5 at 251).

Petitioner presented to Metro Health at the University of Michigan on September 26, 2019 to have her sutures from the surgery removed (Px3 at 12). She was also advised to continue with her therapy (*Id*.). She went back to the emergency room at Metro Health on October 6, 2019 and was referred to an orthopedic surgeon in Grand Rapids (Px3 at 16).

Petitioner then established care at Orthopedic Associates of Michigan on October 18, 2019 (Px2 at 38). She was advised to continue her therapy, remain off work and stop wearing the wrist splint (Px2 at 39). Petitioner followed-up on December 6, 2020 and was advised to remain off work through February 3, 2020 (Px2 at 14). At a visit on January 3, 2020 she was advised to continue her therapy (Px2 at 35). At a follow-up on January 31, 2020 Petitioner was advised to transition to work conditioning and she was released to ride a pony but not released to race (Px2 at 13 & 33).

Due to some concern of Petitioner's fracture line, she was referred for a CT of the right arm at a follow-up on March 13, 2020 (Px2 at 31). She also attended her final therapy session on that same date (Px5 at 25-31). A CT of the right arm was done on March 20, 2020 at Metro Health and showed an ununited fracture (Px3 at 28). Due to Covid restrictions, Petitioner had a telehealth visit with Orthopedic Associated of Michigan on April 17, 2020 and she was released to horse training but not to horse racing (Px2 at 28). Petitioner had a final visit on May 21, 2020 and she was released back to full duty work and discharged from medical care (Px2 at 25).

Petitioner testified that she is still working as a jockey in Florida (Tr. 30). She noted that the right arm still gives her trouble in terms of getting stiff when it is cold (Tr. 31). To treat the arm, she sometimes wears a brace and continues doing the exercises she learned in physical therapy (*id*.). Petitioner also takes occasional over the counter medications to treat the pain (*id*.). She also still has the hardware placed in her arm at the time of surgery (*id*.).

Testimony of Anthony Petrillo- Respondent Witness

Mr. Petrillo testified that his current profession was as an executive at Churchill Downs, but that he was employed as Senior Vice President of Churchill Downs, Incorporated and President of Arlington Park Racecourse, LLC (hereinafter referred to as "Arlington") in 2019 (Tr. 67). Mr. Petrillo was responsible for the overall operation control of the racecourse and ten other business units (Tr 67-68). Mr. Petrillo oversaw the daily operations and strategic development of the company (Tr 68). As President, Mr. Petrillo oversaw the regulation of racing and conduct of racing under the Illinois Racing Board and worked with different cultures of the industry including the Jockeys' Guild, Illinois Thoroughbred Horseman's Association and the Illinois Racing Board (Tr 68). Although the Arlington Park Racecourse closed on September 25, 2021 Mr. Petrillo continued to work for Churchill at Arlington in 2020 (Tr 97).

Mr. Petrillo testified that the racetrack is a highly regulated entity as all conditions of the race fall underneath the regulation of State employees, the State stewards and one association steward from Arlington (Tr 69). The stewards are responsible for overseeing the conduct of racing (Tr. Pg. 69). Mr. Petrillo testified that Arlington Park Racecourse is a marketplace, a physical brick and mortar facility, where owners, trainers bring their horses and other sole proprietors, entities or contracts can come and earn a living conducting their business at the racecourse (Tr. 69). Arlington Park Racecourse applies for an organizational license that is either approved or denied by the Board (Tr 74). If approved, there are certain conditions that the racetrack must meet and certain activities that the racetrack must perform, which is governed or overseen by the Board (Tr 74 -75). He testified that the checks issued to the jockeys did come from a bookkeeper hired by Arlington Park and the checks issued reflect that they are written by Arlington Park (Tr. 109-110).

His testimony about the stewards at Arlington Park was that there are three stewards at each race meet and that two of them were employed by the state and one was employed by Arlington Park (Tr. 72). He testified that Arlington Park essentially did not have much power and only operated by permission of the Illinois Racing Board (Tr. 74-78). The tracks are ordered by the State to conduct certain number of races per day, over a certain number of days a year with a lot of regulation on the day, which the stewards oversee (Tr. 72). Mr. Petrillo testified that third steward is an association steward employed by the track (Tr. 72) The State requires and enforces the racetrack to employee this association steward (Tr 72-73). Mr. Petrillo testified that the stewards do not answer to Arlington, but to the State (Tr. 73). The track answers to the State (Tr. Pg. 73). During cross, Mr. Petrillo further testified that the Board requires the track to employ a steward to help oversee the regulation of racing on behalf of the Board (Tr. 99). The senior State steward is the most prominent with the most responsibility (Tr. 100). The subordinate State steward is delegated responsibilities in his absence (Tr. 100). To the best of Mr. Petrillo's knowledge the State steward had a higher pay rate than the association steward (Tr. 100). The association steward paid by Arlington is less than six figures (Tr101). Mr. Petrillo testified that Arlington does not have the ability to hire or fire the association steward as any hiring and dismissal must be approved by the Board (Tr. 101).

Mr. Petrillo also testified regarding the horses that were raced at Arlington. For horse owners and trainers, Arlington provides free housing, stables for the horses (Tr. 75). There is no cost to the owners to house the horses (Tr 75). The trainer is responsible for making sure the horse is fit to race (Tr. 75). The owner is responsible for the trainer and the trainer is employed by the owner (Tr. 75-76). The owners and trainers are not agents or employees of Arlington (Tr. 77). Mr. Petrillo testified that Arlington does not tell the owners or trainers how to race their horses, how to train their horses, or who can or cannot ride or exercise their horses (Tr. 76). Arlington does not provide the owners or trainers with any equipment or horse feed (Tr. 76). Mr. Petrillo testified that Arlington cannot tell a trainer who can or cannot ride a horse in a race (Tr. 77). Arlington does not own any horses (Tr. 77).

The Jockeys' Guild (hereinafter "Guild") represents jockeys and ensures the health, welfare and benefits for jockeys (Tr 69). The Guild establishes the minimum mount fees, working conditions at racetracks and negotiates agreements to benefit jockeys (Tr. 69-70). Mr. Petrillo testified that each racetrack has an agreement with the Guild to provide an accident insurance policy for the jockeys (Tr 70). The application to become a jockey that the stewards take is an occupational license that is designed by, distributed by and approved by the Board (Tr. 73). The licensing fee is not paid to Arlington but to the State (Tr 73). A jockey is specifically licensed to participate or ride a horse in race while a different occupational license is issued by the Board to exercise horses for training on behalf of the trainer of the horse (Tr 77).

Mr. Petrillo testified that Arlington cannot tell a jockey where to ride or what horse to ride (Tr 78). Arlington cannot hire or fire a jockey from riding, cannot control the manner in which a jockey rides a horse nor does Arlington provide any equipment to a jockey to ride a horse (Tr 78-79). Specifically, Mr. Petrillo testified that no one from Arlington directed petitioner to run in the race on the day of the accident or in any race (Tr. 87). Arlington could not have fired or kept petitioner from riding the day of the incident or on any day (Tr 87). Arlington never told petitioner when to ride or provided any equipment (Tr. 87). Arlington never had any control over petitioner's job duties (Tr 95).

During cross, Mr. Petrillo testified that Arlington could not prevent a jockey from racing at their track (Tr 104). The State stewards, Board or an owner or trainer are the only people who can prevent a jockey from racing (Tr 104).

As for the silk colors, Mr. Petrillo testified that each owner has their own design which a jockey is required to wear by the Board (Tr. 79). If the owner did not bring their silks, the racecourse is required by the Board to provide a generic silk that is uniquely identifiable so the stewards and track announcer can identify the horse on the track (Tr. 79). This is required by the State and enforced by the stewards (Tr. 80). Mr. Petrillo testified that if an owner doesn't have their silks, the track is required to provide some type of generic silk that makes the horse distinguishably identifiable during a race (Tr. 119). He further testified that the silks are for the announcers and everyone's sake (Tr 119-120). Silks are described in the program and the public can also follow the horses (Tr 120). There are a number of distinguishing factors, and the silk would be one of them along with a number that is required by the State and a specific saddle towel color (Tr 120).

Mr. Petrillo testified that is not possible for a jockey who was suspended or told not to come back to Arlington to race (Tr 105). They must be licensed to race to get on a horse (Tr. 105). The jockey cannot be named to a mount by a trainer or owner unless the jockey is licensed (Tr. 105-106). When a jockey fails to show up for a race, the trainer will ask another jockey to race (Tr 106). There are instances when a jockey cannot race and they must talk to the State stewards and ask for permission to be released from that mount (Tr. 106-107). The stewards will direct the jock's room custodian to make an announcement to see if anyone would like the mount (Tr 107). The jock's room custodian is a regulatory position that the tracks are required to provide by the State and paid by Arlington (Tr 107). During re-direct, Mr. Petrillo clarified that if anything happens between when a jockey is named on a horse and the race, the trainer will seek out another jockey and get approval from the State to replace the jockey on the mount (Tr 113-114). If a situation occurs on the day of the race and the jockey receives permission from the State to be released from that mount, the trainer will ask another jockey if they will ride that horse (Tr 114). If that is not able to occur, then the stewards will request or direct the jock's room custodiam to make an announcement on their behalf to any jockey interested in riding that horse (Tr. 114).

The jock's room custodian takes direction from the State's steward to solicit someone to ride that horse in that race at last minute (Tr. 115). The jock's room custodian cannot order or tell a jockey to ride a horse and he cannot tell or order a trainer to use a certain jockey (Tr 115). During re-cross Mr. Petrillo testified that the stewards care whether the horse has a jockey because they have a statutory responsibility to ensure that those races are conducted as publicized to the public and in the best interest of the public (Tr. 117-118). There is advanced wagering and to reserve the integrity of the race, the stewards are required to do everything in their power and authority to ensure that the horse runs (Tr. 118). There are instances when a horse can't run and again the horse can only be released with permission of the stewards (Tr. 118).

Arlington makes money off the commission from wagering that takes place on races (Tr. 76). Mr. Petrillo testified that petitioner has never been hired or employed by Arlington Racetrack and/or Churchill Downs (Tr 86, 95). Arlington does not have any employment documentation, payroll records or application for petitioner (Tr. 86). Arlington also does not have a background check or drug testing (Tr. 86-87).

Mr. Petrillo testified that the Illinois law establishes how the money earned and paid are conducted (Tr. 81). Transactions are conducted through bets and a certain amount of the money goes to the racetrack to underwrite their expenses and another portion is held in a purse account (Tr. 81). He testified that the purse account is separated from Arlington's cash flow or business operation (Tr. 81). Mr. Petrillo further testified that the State requires Arlington to act as a financial institution, similar to a bank, and distribute the purse account (Tr. 81). The owner and trainers establish an account and deposit money from an outside source, and Arlington would distribute the purse money under a statutory split into the accounts (Tr. 82).

In regard to the jockeys' mount fees, he testified that a trainer must have sufficient funds of money to cover that mount fee in their account and the track must validate this before a trainer can nominate a jockey to race (Tr. 82). Arlington would notify the State of the lack of funds, and then the State tells the trainer to deposit money into the account. (Tr. 82-83). The bookkeeper is a person that keeps records of accounts established by owners and trainers (Tr. 84). The bookkeeper is responsible for writing the checks from the purse money account, Arlington International Racetrack (Tr. 84). Mr. Petrillo testified that the law requires that these be separate accounts that cannot be co-mingled with Arlington's money (Tr. 85). During cross, Mr. Petrillo testified that bookkeeper was hired by Arlington (Tr. 108). For check payments to be issued, the owner or trainer would complete a form that directs the bookkeeper to issue a check to a certain entity (Tr 109). Arlington does not have authority to distribute money without authorization from the account holder (Tr. 109). Mr. Petrillo compared the situation to a bank (Tr. 109). The check a jockey receives does not look like a check an Arlington employee would receive (Tr. 110). One is written from the purse account by the bookkeeper, and the other is written from a payroll account held be a separate entity (Tr. 110). The owners and trainers do not pay jockeys directly as it is regulated and the State requires Arlington to hold that money (Tr. 112). Mr. Petrillo testified that the Arlington International Racecourse payments documented in petitioner's 2018 and 2019 tax record appear to be, to the best of his knowledge, the purse earnings paid out by the bookkeeper (Tr. 88; Rx.1-2, 10-15).

During cross, it was asked whether Arlington Racecourse needed jockeys to ride horses to operate as a business (Tr. 111). Mr. Petrillo testified, "No, not necessarily" as Arlington has other licenses in which they are able to conduct wagering as well as off track betting locations (Tr 111). He testified that to conduct a race, you need a jockey to ride a horse (Tr. 112). However, during re-direct, Mr. Petrillo also agreed that without owners or horses there would be no races either (Tr 117). Mr. Petrillo testified that Respondent's Exhibit No. 3 and No. 4 pertain to the blanket accident policy purchased by Churchill Downs through Berkley Health and Life Insurance Company and corresponding renewal (Tr 89-90; Rx3& 4). The purpose of the accident insurance is to cover when a jockey is injured on the track (Tr 90-91). This policy covers any jockey injured on the track regardless of employment status, negligence or liability (Tr 91). This policy was negotiated by the Guild to ensure jockeys would have some type of coverage (Tr. 91). Jockeys do not pay into the accident insurance (Tr. 92). The accident is funded and paid by Arlington. Mr. Petrillo testified that petitioner received disability benefits and medical coverage through this accident policy for the accident on September 2, 2019 (Tr.92; See Rx5-8).

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. 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).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her to be a credible witness. The Arbitrator finds Petitioner's testimony to be straight forward, truthful, and generally consistent with the records as a whole. 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. Any inconsistencies in her testimony/histories given are not attributed to an attempt to deceive the finder of fact.

Regarding the issue (B), was there an employee-employer relationship, the Arbitrator finds the following:

When analyzing employee-employer relationships, the Arbitrator must look to case law to determine the difference between an independent contractor and an employee. No rigid rule of law exists to determine whether a worker is an employee or an independent contractor. *Ware v. Industrial Comm'n, 318 Ill. App. 3d 1117, 1122, 743 N.E.2d 579, 583 (2000)*. "The difficulty arises not from the complexity of the applicable legal rules, but from the fact-specific nature of the inquiry." (*Id*.). The Arbitrator must look to the facts of each case and determine for him or herself whether a claimant is an employee or independent contractor. The court considers whether the employer may control the manner in which the person performs the work; whether the employer dictates the person's schedule; whether the employer pays the person hourly; whether the employer withholds income and social security taxes from the person's compensation; whether the employer may discharge the person at will; whether the employer supplies the person with material and equipment; and whether the employer's general business encompasses the person's work. *Roberson v. Industrial Comm'n, 225 Ill. 2d 159, at 175, 866 N.E.2d at 200 (2007)*. The court also considers the skill the work requires. *Labuz,* 2012 IL App (1st) 113007WC, ¶ 30, 981 N.E.2d 14. No single factor is determinative, and the determination rests on the totality of the circumstances. *Roberson*, 225 Ill. 2d at 175, 866 N.E.2d at 200. The "right to control the manner of the work" is generally the most important factor (*Roberson*, 225 Ill.2d at 176) and "whether the employer's general business encompasses the person's work" is also important (*Id.* at 175).

In *Roberson*, the Supreme Court used this method to uphold a Commission decision finding a truck driver to be an employee, despite owning his own truck and having signed an agreement with the trucking company labeling him an independent contractor. In doing so, it noted that Illinois Appellate Courts had previously found work arrangements of this type to constitute employment, in particular citing *Ware v. Industrial Comm'n*, 318 Ill. App. 3d (2000). The court in *Ware* found the question of control of the work to be decisive, noting that the driver in that case "had no customers of his own," but served customers designated by the company; that the claimant's work as a freight hauler was central to the company's business was also key. *Ware*, 318 Ill. App. 3d at 1124-25. The question of who provided tools and materials was judged relevant although less decisive than control of the work (*Id.* at 1125), while "the label the parties apply to their relationship" and the absence of payroll tax deductions were accorded little weight. *Id.* at 1127. Further, a worker with a professional license or similar advanced skills is more likely to be seen as a contractor than a less skilled individual. *Id.*

Overall, the Arbitrator finds the testimony of Petitioner to be more credible and persuasive than that of Mr. Petrillo. While Mr. Petrillo was knowledgeable as to state horsing regulations and other State Board related matters, Petitioner in her performance of the jockey role, seemed more knowledgeable as to the innerworkings between the jockeys, stewards, trainers etc while racing at Arlington. There are certainly factors in favor of both sides as to Petitioner's designation for being employed versus an independent contractor, however the Arbitrator finds the factors weigh in favor of Petitioner and Respondent having an employee-employer relationship on the date of accident.

Respondent cites extensive case law, however every single case shown below, involves a workers' compensation claim brought against a horse owner and/or trainer. The clear and apparent distinction with all of those case and this case before the Arbitrator, is that this case is brought against the race track itself, Arlington.

In the case, *Clark v. Industrial Com.,* 54 Ill. 2d 311 (1973), the claimant, a professional jockey, was thrown from a horse he was riding in the Arlington Park Futurity on 9/7/1963 *(Id*. at 312). The Commission affirmed the Decision that an employer-employee relationship did not exist between the jockey and owners of the horse. The Circuit reversed and the owners appealed (*Id.* at 312). In this case, claimant was a free-lance jockey riding for different owners and different tracks *(Id.* at 312). The Supreme Court found many factors in this case that pointed to independent contractor – nature of work and skill required, claimant provided own equipment with a hired valet to maintain, he had free-lance status riding for different owners, he hired an agent to obtain mounts, and the nature of the payment as each race and subsequent winnings and fees went through the racetrack without deductions providing evidence that claimant considered himself self-employed (*Id.* at 315) Ultimately the Illinois Supreme Court agreed with the Commission that the owners did not possess that degree of control over claimant's riding of Am-A-Star in the Arlington Park Futurity and found that there was no employer-employee relationship between claimant, the jockey, and respondent, the owners and trainer *(Id.* at 317-18).

In a civil suit, the 1st District Appellate Court affirmed a summary judgment for horse owner and trainer as the Court found the defendant jockey was an independent contractor. *See Lang v Silva,* 306 Ill. App. 3d 960 (1st Dis. July 29, 1999). Since the Illinois Supreme Court case, the Commission has had the opportunity to address whether a horse exerciser was an independent contractor or an employee of horse owner, trainer. In *Gabino Gutierrez, Petitioner, v. Hondo Ranch DBA FJK Enterprises and Illinois Insurance Guaranty Fund, Respondent,* 20 IWCC 0387 (July 8, 2020), the Commission found that an employee-employer relationship did not exist finding that claimant did not exclusively ride for respondent, he was paid on a cash basis with no deductions, he had specialized skill and the instructions given were generalized instructions not direct supervision. Commissioner Tyrell dissented finding that claimant's job as a horse exerciser or hot walker was not a specialized skill and that the services claimant provided did not represent a separate business but instead formed a regular part of respondent's commercial enterprise. Commissioner Tyrell also noted that petitioner did take on extra work but only after he finished his work for respondent and only with respondent's permission.

In this case, the employer-employee relationship appears to stars before Petitioner is even cleared to work at Arlington Park as a jockey. According to Petitioner, you have to put in an application then get cleared to race by stewards who work at Arlington Park (Tr. 15). Stewards are the people at Arlington Park that enforce rules for the jockeys, owners and trainers (Tr. 15). This hiring process involves a background check, fingerprinting, a physical examination and an interview about why someone should be deemed safe to ride at their track (Tr. 14-15). Following that process, Petitioner testified that she was cleared by the stewards to ride at Arlington Park (Tr. 16). As for the stewards, Petitioner testified that they worked for Arlington Park (Tr. 15) while Mr. Petrillo testified that only one of the three stewards was employed by Arlington Park and that they operate per the Board and the state regulations (Tr. 72). Either way, at least one of the three people that cleared Petitioner to race at Arlington Park was an employee of Arlington Park. Per Petitioner, the stewards are in charge of every aspect of pre-race, race and post-race rules. Petitioner was clear and persuasive in her testimony that to jockeys, the stewards are seen as the supervisors. Petitioner testified that the stewards as a group and/or without distinguishing who is a state steward versus who is an Arlington steward, dictated much of what she did as a Jockey at Arlington. While there was some testimony as to the senior steward versus association steward, there was no testimony as to who this person was at the time of the incident, no testimony if the stewards identified themselves as State versus Arlington Steward or wore anything for example that would clarify this distinction to jockeys, trainers, owners etc. The Arbitrator also notes that there were no stewards called to testify by either side to further clarify this issue. Petitioner, despite her young age, appears to have extensive experience as a jockey and partaking in 190+ races at Arlington prior to her injuries. It was clear from her testimony, of the great control the stewards as a whole had over her job as a Jockey at Arlington.

With regards to schedule, similar to the many trucking cases in Illinois case law, Petitioner chose when she raced and which trainers/owners she spoke with in order to race their horses. The jockeys are hired/retained by owners and trainers, but the jockeys must confirm with Arlington Park that they will be available to ride at their designated times (Tr. 18). Per Petitioner's testimony, jockeys also must check in at Arlington Park 90 minutes prior to the start of their race (*id.)*. Once Petitioner arrives at Arlington Park, she must report to the designated jockey's room and also go through a weigh in process (Tr. 19).

Petitioner does bring her own equipment, but that equipment must meet certain regulations (*id*.). The jockey must also wear certain mandated colors which are provided by the horse owners or Arlington Park (*id.).*

Following the pre-race procedures, Petitioner then presents to her horse for the race and runs the race (Tr. 21). Following the race, there are different post-race procedures depending on the finish of the race. Following a win, the jockey is required to present to the winner's circle for photos (id.). For 2nd, 3rd and 4th, the jockey must be weighed again (id.). Per Petitioner's testimony, these procedures are all mandatory (id.).

With regards to payment, Petitioner testified that she was paid at the end of the week by a bookkeeper at Arlington Park (Tr. 21). She was paid by this Arlington bookkeeper, albeit it being a separate account that holds the "purse money" from the trainers/ owners. She was paid $100.00 per race no matter the finish of the horse plus some additional money if the horse finished 1st, 2nd or 3rd (Tr. 21-22). Despite being paid directly by Arlington and not the horse owners, Respondent did not withhold taxes and petitioner was listed as a sole proprietorship in her tax forms.

In terms of rules at Arlington Park for jockeys, Petitioner noted that she cannot own a horse, she cannot be on any horse races, she is subject to random drug and alcohol testing, and she must follow safety rules established by the stewards of Arlington Park (Tr. 23). She can also be suspended and fined if the stewards deem anything a jockey does breaks the rules of Arlington Park (Tr. 24-25). Again, at least one of the stewards making these determinations is an employee of Arlington Park (Tr. 72).

In order to race as a jockey in Illinois, similar to truck drivers, jockeys are required to have a specialized license and have to be cleared by the stewards. With regard to equipment, jockeys, as petitioner testified provide their own helmet and equipment, but either Arlington via the stewards or the owners/trainers provide her silks to wear. This is a requirement to step on to the track.

Per *Roberson*, it is also clear to the Arbitrator that Arlington's primary business is horse racing and the betting that takes (took) place there, just like any other racetrack. Its general business of horse racing encompasses petitioner's work as a jockey and jockeys are needed for Arlington to conduct its business. While jockeys typically seek out the trainers/owners to find horses to race, the fact that stewards are required to find jockeys for available horses scheduled to race, also show that necessity of the jockey role to respondent's business. It is clear that Arlington Park was a horse racetrack which could not conduct its races without jockeys. Per Mr. Petrillo, "to conduct races, you need a jockey to ride a horse in order to conduct a race" (Tr. 111-112). Arlington Park's general business clearly encompassed the work of Petitioner as a jockey.

The testimony of Mr. Petrillo gave some insight into the inner workings of horse racing in Illinois, but was not very persuasive that essentially the State of Illinois and the Illinois Racing Board largely controlled Arlington Park. Of note was that Mr. Petrillo did acknowledge that Arlington Park was mainly regulated and controlled by stewards (71-73). He noted that two stewards were employed by the state, and one was employed by Arlington Park (Tr. 72).

Mr. Petrillo went into detail about how the stewards license the jockeys (Tr. 77-78) and how the stewards enforce the rules put forth by the Illinois Racing Board (Tr. 80). Again, one of the three stewards was employed by Arlington Park (Tr. 72). Overall, it appears the stewards at Arlington, as a group, did have hiring and firing power, and would be seen as agents of Arlington, in the eyes of the jockeys who raced there. The Arbitrator finds this reasonable to conclude. While previous cases clearly do not find an employee employer relationship between jockeys and the horse owners and trainers, for which the Arbitrator agrees with those analyses, there is enough evidence here to show that there is an employee-employer relationship between petitioner and Arlington racetrack/Churchill Downs. That is an important distinction here.

After weighing all the factors, the Arbitrator finds Petitioner has proven by a preponderance of the evidence that an employee-employer relationship existed on September 2, 2019.

Regarding the issue (G), what were Petitioner's earnings, the Arbitrator finds the following:

Having found an employee-employer relationship existed between Petitioner and Respondent, the Arbitrator must rely on the exhibits presented at trial as well as testimony presented at trial to determine Petitioner's average weekly wage. In 2019 petitioner had a Sole Proprietorship listing the business as Skylar Spanabel Jockey with gross receipt of sales totaling $15,201, costs of goods sold totaling $14,750.00 leaving a gross income listed of $451.00 (Rx. 13 Pg. 413-414). Of that amount, Arlington International Racecourse listed $13,511 of the gross amount of sale (Rx. 13 Pg. 421). Respondent's Exhibit 13 and Petitioner's testimony, show Petitioner claimed an income in 2019 at Arlington Park of $13,511.00. The Arbitrator relies on both Petitioner's testimony and Respondent listing $13,511 as the earnings Petitioner was paid as a jockey while racing for Arlington. Per Petitioner's testimony, which was deemed to be credible, she earned those wages over the course of roughly 16 weeks in 2019, as Arlington Park is operated on a seasonal basis (Tr. 28). Petitioner's employment is classified as seasonal employment and so her average weekly wage should be calculated pursuant to the findings as set down in *Sylvester v. Industrial Commission*, 197 Ill.2d 225, 258 Ill.Dec. 548, i.e., "weeks and parts thereof" during which the employee actually earned wages. That is the reasonable approach in determining average weekly age in this case.

The Arbitrator finds Petitioner has proven by a preponderance of the evidence that her earnings during the year preceding the injury were $13,511.00 and the average weekly wage pursuant to Section 10 of the Act was $844.43.

Regarding the issue (L), what is the nature and extent of the injury, the Arbitrator finds the following:

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); *Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n,* 2016 IL App (1st) 152576WC, ¶ 22, 67 N.E.3d 959. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b). "None of the factors set forth in section 8.1b is to be the sole determinant of the claimant's disability." *Corn Belt Energy Corp. v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3d) 150311WC, ¶ 49.

For factor (i) no AMA rating was introduced into evidence. Therefore, the Arbitrator gives no weight to this factor.

As for factor (ii), Petitioner worked as a jockey. This is a highly dangerous sport as confirmed by Mr. Petrillo during his testimony (Tr. 91). She returned to the same position after completing medical care and currently works as a jockey in Florida per her testimony. Therefore, the Arbitrator gives some weight to this factor.

As for factor (iii), Petitioner suffered this work-injury at age 19. She will have to live and work with this injury for many years as she was very young when this injury happened. Therefore, the Arbitrator gives moderate weight to this factor.

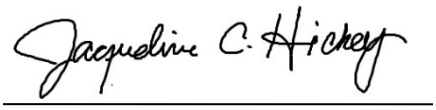
As for factor (iv), Petitioner's future earning capacity: Petitioner testified that she is still working as a jockey in Florida (Tr. 30). She is working without restrictions. Therefore, the Arbitrator gives more weight to this factor.

As for factor (v) evidence of disability corroborated by the treating medical records, petitioner sustained a traumatic open fracture of the right radial shaft and closed fracture of the right ulnar shaft, both displaced. The medical records note that Petitioner still has the hardware placed in her arm at the time of surgery. Petitioner's condition eventually resolved and she was released from care without any restrictions. Petitioner noted that the right arm still gives her trouble in terms of getting stiff when it is cold (Tr. 31). To treat the arm, she sometimes wears a brace and continues doing the exercises she learned in physical therapy. Petitioner also takes occasional over the counter medications to treat the pain. Therefore, the Arbitrator gives greater weight to this factor.

Based on the factors, and the record taken as a whole, the Arbitrator finds Petitioner sustained permanent partial disability to the extent of 18% loss of the use of the right arm (or 45.54 weeks) pursuant to Section 8(e) of the Act. This award amounts to 45.54 weeks of permanency at the rate of $506.66/week totaling $23,073. 29.

For the reasons stated above, Petitioner is entitled to an award of benefits under The Illinois Workers' Compensation Act consistent with the findings herein.

It is so ordered:



Jacqueline C. Hickey
Arbitrator

June 20, 2024

June 20, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC000641
Case Name	Irma Cooper v. Lanphier High School
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0210
Number of Pages of Decision	33
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Warren Danz
Respondent Attorney	John Langfelder

DATE FILED: 5/9/2025

/s/Carolyn Doherty, Commissioner

Signature

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

IRMA COOPER,

Petitioner,

vs. NO: 23 WC 641

LAMPHIER HIGH SCHOOL,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under Section 19(b) of the Act by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective care, temporary total disability, and permanent partial disability, 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 thereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

The Commission modifies the finding of causal connection and the awards of medical expenses and temporary total disability benefits.

I. Causal Connection

The Commission affirms the Arbitrator's findings that Petitioner's condition of ill-being of the cervical and lumbar spine causally related to the injury resolved as of April 19, 2023, and that Petitioner's condition of ill-being of the right knee causally related to the injury resolved as of May 22, 2023. The Commission modifies the Corrected Decision of the Arbitrator to find that Petitioner's current, ongoing condition of ill-being of the right shoulder is also causally related to the accident of October 26, 2022.

The Commission acknowledges that Petitioner's prior treatment records note chronic bilateral shoulder pain. Dr. Herrin and Dr. Li, the Section 12 examiner, both opined that Petitioner likely had a rotator cuff tear prior to the accident date. Dr. Warrington's opinion is broadly consistent on this point. However, Petitioner's examinations in December 2021 and August 2022 note a full range of motion in Petitioner's extremities and she worked full-duty without restrictions. Dr. Herrin opined that the fall likely aggravated Petitioner's pre-existing right shoulder condition. Dr. Herrin also opined that the cervical spine and shoulder symptoms could mimic or overlap. Dr. Warrington likewise opined that when someone has multiple injuries, some things can be suppressed until other conditions improve.

Dr. Li, the Section 12 examiner, agreed that the mechanism of injury could cause a rotator cuff injury, but asserted that Petitioner's early treatment history following the October 26, 2022 accident, including the December 13, 2022 visit with Dr. Sharma, did not indicate any right shoulder deficits. However, Dr. Li's opinion is not supported by the records or diagnoses from Petitioner's other treating physicians. The record shows that Petitioner reported right shoulder pain on initial treatment. On November 7, 2022, Petitioner was assessed by Dr. Briggs with strains of the neck and right shoulder rotator cuff. On November 23, 2022, the bilateral shoulder examination showed reduced active range of motion with pain at 50 degrees, while passive range of motion was intact, but muscle strength was 4/5. On December 13, 2022, Dr. Sharma found that Petitioner had full bilateral shoulder range of motion without significant pain or discomfort and 5/5 strength in her shoulders. However, on the next day, December 14, 2022, Petitioner reported shoulder pain to Dr. Warrington, who found upper extremity motor strength was only 4/5, though showing complete range of motion with moderate resistance. Dr. Li's opinion that Petitioner exhibited symptom magnification to Dr. Prasad and in the Section 12 examination is also entitled to less weight when considered in the context of these early treatment records. Accordingly, the Commission prefers the opinion of Dr. Herrin and concludes that the current condition of Petitioner's right shoulder represents an aggravation of a previously asymptomatic rotator cuff tear caused by the work accident in this case.

II. Medical Expenses / Prospective Care

Based on the above findings regarding causal connection, the Commission affirms the Corrected Decision of the Arbitrator awarding Petitioner's necessary and reasonable medical expenses related to the cervical spine, lumbar spine, and right knee through May 23, 2023. Based on the Commission's findings regarding causation, the Commission modifies the Corrected Decision of the Arbitrator to award Petitioner's reasonable and necessary medical expenses related to the right shoulder, including the unpaid bills from the Orthopedic Center, Springfield MRI, and the Springfield Clinic. Respondent is entitled to a credit for amounts already paid.

Petitioner also sought review of the denial of prospective care, asserting that the Commission should award further medical treatment for the rotator cuff injury. Dr. Herrin recommended surgery, but not until after consulting with Dr. Graves regarding the status of Petitioner's cervical condition. Dr. Nord suggested that the window for surgery may have already passed and Dr. Herrin acknowledged that the longer one waits regarding shoulder surgery there is potentially a lower likelihood of success. Petitioner did not testify regarding her

desire for surgery. Given this record, the Commission does not award prospective care at this time, but observes that this case is remanded per Section 19(b) of the Act and our decision is not a bar to a subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability related to the causally connected right shoulder, if any.

III. Temporary Total Disability

The Arbitrator awarded Petitioner temporary total disability (TTD) benefits for a period of 15 and 6/7ths weeks, from February 1, 2023 through May 22, 2023, at the rate of $393.10 per week. The Arbitrator also awarded Respondent a credit of $12,291.15 for TTD already paid, by agreement of the parties. The Commission modifies the award to extend the TTD payments through the September 24, 2024 hearing date, as Petitioner's right shoulder condition has not reached maximum medical improvement (MMI).

IV. Permanent Partial Disability

The Commission affirms the Arbitrator's award of permanent partial disability (PPD) benefits representing a 10% loss of person as whole for her cervical and lumbar conditions, and a 12% loss of use of the right leg for Petitioner's right knee at the rate of $368.00 per week. The Commission declines to award additional PPD benefits regarding Petitioner's right shoulder at this time, as she has not reached MMI for that condition. As noted above, this case is remanded pursuant to Section 19(b) of the Act and our decision is not a bar to a subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability related to the causally connected right shoulder, if any.

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Corrected Decision of the Arbitrator dated November 22, 2024, is modified as stated herein. The Commission otherwise affirms and adopts the Corrected Decision of the Arbitrator.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner's condition of ill-being of the cervical and lumbar spine causally related to the injury resolved as of April 19, 2023, and that Petitioner's condition of ill-being of the right knee causally related to the injury resolved as of May 22, 2023.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner established a causal connection between the October 26, 2022, work accident and the current condition of ill-being of her right shoulder.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner's reasonable and necessary medical services related to the treatment of her cervical and lumbar spine, and right knee through May 23, 2023, as well as for the treatment of her right

shoulder, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be awarded a credit for medical benefits that have been paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $ 393.10 per week for a period of 86 weeks, commencing February 1, 2023, through September 24, 2024, as provided in Section 8(b) of the Act. Respondent shall receive a credit of $12,291.15 for TTD already paid, by agreement of the parties.

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

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

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

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.

May 9, 2025
O: 05/01/25
CMD/kcb
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC000641
Case Name	Irma Cooper v. Lanphier High School
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Corrected Decision
Commission Decision Number	
Number of Pages of Decision	28
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Warren Danz
Respondent Attorney	John Langfelder

DATE FILED: 11/22/2024

/s/Edward Lee, Arbitrator
Signature

INTEREST RATE WEEK OF NOVEMBER 19 2024 4.31%

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

Irma Cooper
Employee/Petitioner

v.

Lanphier High School
Employer/Respondent

Case # **23** WC **000641**

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 **Edward Lee**, Arbitrator of the Commission, in the city of **Springfield**, on **September 24, 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 the date of accident, **October 26, 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.

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

In the year preceding the injury, Petitioner's average weekly wage was $589.70.

On the date of accident, Petitioner was **61** years of age, ***married*** with **0** dependent children.

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

ORDER

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

Petitioner's condition of ill-being of the cervical and lumbar spine causally related to the injury resolved as of April 19, 2023.

Petitioner's condition of ill-being of the right knee causally related to the injury resolved as of May 22, 2023.

Petitioner's condition of ill-being of the right shoulder is not causally related to the injury and is denied.

Petitioner is entitled to TTD benefits from 2/1/23 through 5/22/23 at the rate of $393.10 per week.

Petitioner is awarded 10% loss of person as whole for her cervical and lumbar conditions at the rate of $368.00 per week and is awarded 12% loss of use of the right leg for her right knee at the rate of $368.00 per week.

Respondent is entitled to credit for TTD benefits payments of $12,291.15 and medical benefits paid.

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

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

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

Edward Lee **NOVEMBER 22 2024**
Signature of Arbitrator

IRMA COOPER **Case # 23 WC 000641**
Employee/Petitioner

v.

LANPHIER HIGH SCHOOL
Employer/Respondent

The following testimony and evidence were presented at arbitration:

Testimony

Petitioner Irma Cooper has degrees in Business Administration and Theology and was a permanent substitute teacher for Springfield School District 186 working at Lanphier High School. (Transcript at 37-38) Petitioner stated she taught Kindergarten to 12th Grade but at Lanphier she taught 9th-12th Grades. (Tr. 39-40) She described the school building as older, being built in the 1900s with two levels with flights of stairs leading up to the second floor. (Tr. 40-41) She testified that she used different stairs going to different classes and classrooms and staff, faculty, janitors, and students all used the same stairs. (Tr. 42-43)

Petitioner was shown Petitioner's Exhibit #10, identified as one photo of the stairs and stated that the public used those stairs if there was a PTA meeting or specific event, but otherwise it was used by staff, faculty, janitors and students. (Tr. 43-44) She stated this staircase looked like the other staircases and was made the same as the others. (Tr. 44) She described a flat plank thing or iron piece that went around the top of the steps on the edge of the steps and said she used the stairs about 15-30 times per day. (Tr. 45-46)

She stated her general health was good, but after her fall, she had chronic pain every day, all day in her neck, shoulder areas, elbow, ribs, head, fingers, knee, back, and head. (Tr. 47) She said she had constant pain and stiffness in her right shoulder and her injuries were getting worse. (Tr. 48) She denied any treatment for her right shoulder, head, neck, or low back prior to her fall and said she did not complain about her right shoulder. (Tr. 49) She testified about a fall in 2018 when she stepped off a curb onto a rock, but said it was her left shoulder with the fall shaking her whole body including her shoulders and back. (Tr. 49-50) She testified she was pre-diabetic and went to Central Counties Health Centers for diabetes checks or health issues. (Tr. 50-51) She stated she had no problems raising her right arm, right hand, right knee or any other parts of her body prior to the fall and denied any symptoms or right shoulder problems prior to the fall. (Tr. 52-53) She testified that she had not been diagnosed or treated for her shoulders or knee prior to the fall. (Tr. 54)

At the time of the fall, Petitioner said she was in English class and took a student to the nurse's office. As she was walking back going up the stairs, she made it to the top of the stairs when her foot caught the lip of the step and threw her on the floor. (Tr. 55-56) She said the fall knocked the wind out of her and the right side of her body hurt. (Tr. 56-57) She stated she fell on her knees and elbow and that her knee hit on the piece of iron or strip because it snagged her pants, and her knee was bothering her when she got up. (Tr. 57) She stated she was embarrassed by falling and was limping on her knee. (Tr. 57-58) She stated she told Mr. Fisher but did not make a report. (Tr. 57-58)

She stated Mr. Pennick came up behind her after the fall and was saying "get up, get up" and then Mr. Weir came out his office and she was helped up off the floor. (Tr. 58-59) She continued to work and stated she was getting sore and stiff in her whole body but still went to school, classes, and work. (Tr. 59-61) She was told to fill out an incident report by Mr. Weir and went to Urgent Care on November 4, 2022. (Tr. 60-61) She stated she was not able to lift her arm and was referred to Dr. Sharma. (Tr. 62) She said she was not able to raise her arm at this visit and denied that Dr. Sharma examined her right

arm or her right leg, denied that he put his hands on her neck or that he performed a physical exam. (Tr. 63-65) Petitioner stated that he tried to raise her arm on the second visit (March 28, 2023) and she said no because it hurt. (Tr. 64)

Petitioner saw chiropractic physician Dr. Warrington (12/14/22) and treated through May 2023. (Tr. 65) She testified that she discussed her entire case and injuries with Dr. Warrington. (Tr. 66-67) Dr. Warrington referred her to Dr. Herrin for her right knee (4/24/23). (Tr. 66-68) She had MRIs of her cervical spine and right knee done before this visit and an MRI was later recommended for the right shoulder. (Tr. 69) She returned to Dr. Herrin after a right shoulder MRI was done and he indicated she had a rotator cuff tear. (Tr. 69-70) Petitioner stated Dr. Herrin's right shoulder treatment recommendations and treatment for the right knee were not approved by workers' compensation and she last saw Dr. Herrin on June 1, 2023. (Tr. 70-71) She stated she had limited movement at these visits and her husband does a lot of massaging on the areas of pain in her knee, arm and shoulder. (Tr. 71-72) Petitioner testified that right shoulder surgery was discussed but stated that it would be more harmful than good and that it was the doctor's preference not to mess with it. (Tr. 72)

Petitioner said she saw Dr. Nord (Petitioner IME - 6/22/23) and Dr. Li (Respondent IME - 6/21/23). She said she told Dr. Li about her symptoms and complaints and that he attempted to manipulate her right arm and shoulder, but she was in pain at the time of the exam. (Tr. 74) She stated she has not seen any doctors since the end of 2023 and has not had any treatment since July 2023. (Tr. 75-76) She stated her condition has not progressed and she is less active. Petitioner described constant pain in her neck with throbbing, stiffness, and soreness in her low back, shoulders, right hip, and right knee and denied any symptoms prior to the accident. (Tr. 80-81)

On cross examination, Petitioner confirmed the dates of her fall (October 26, 2022) and first medical visit (November 4, 2022). (Tr. 83) She filled out an incident report as required in which she stated how the fall happened. (Tr. 84) She testified there were no liquids or substances on the stairs, and she did not have anything in her hands and was not on her cellphone. (Tr. 84-85) She testified that Mr. Weir and Mr. Pennick came up after and helped her up but did not see her fall. (Tr. 85) She testified that as a permanent substitute teacher, she works through the school year on a year-to-year basis and is assigned a certain classroom. (Tr. 85) She testified that the first quarter of this school year she was a student advocate in the classrooms observing students and assisting the teacher as asked. (Tr. 85-86) Prior to the fall, she was in a second-floor classroom and had been up and down the stairs multiple times that day. (Tr. 86) After her fall, she testified she went back to the classroom and continued to work and was still going up and down the stairs. (Tr. 86-87) She went to Priority Care (11/4/22) with x-rays done for all her complaints. She went to Occupational Health (11/7/22 & 11/23/22) followed by Dr. Sharma (12/13/22) and Dr. Warrington (12/14/22) with MRIs of her neck and right knee (12/19/22) (Tr. 88) Her husband had been to Dr. Warrington for chiropractic treatment, she had been seeing Dr. Steriu at Central Counties and when she saw any of her doctors, she told them what her complaints were and what happened to her. (Tr. 89-90)

She was taken off work at some point during her chiropractic treatment but had continued to work up to that time. (Tr. 90-91) She saw Dr. Prasad and returned to went back to Occupational Health and Dr. Sharma. (Tr. 90) She saw Dr. Herrin for her right knee (4/24/23) and Dr. Graves for her neck. (Tr. 91) She had an MRI of her right shoulder (5/11/23) and saw Dr. Herrin on June 1, 2023 for her right shoulder. (Tr. 91) Other than her primary care physician (Dr. Steriu) and the IME physicians (Dr. Li & Dr. Nord), she has not seen anyone else for her right shoulder after Dr. Herrin. (Tr. 92) She stated Dr. Herrin could not do anything until she saw another doctor for her neck. (Tr. 92) She testified that after her visit to Dr. Herrin, she has had no other treatment for her right shoulder other than her husband's massages. (Tr. 92-93)
Petitioner acknowledged she had other falls prior to this injury and stated she is not taking insulin for her diabetes. (Tr. 93) She confirmed she saw Dr. Warrington for her neck and that the fall occurred at the top of the steps at the second floor. (Tr. 96-97)

Charles Cooper is married to Petitioner and testified as to payments he made on certain medical bills. He was shown MRI bills of $1,600.00 and $600.00 and stated he paid them out of pocket. (Tr. 25-26) He was shown a copy of a bill from Orthopedic Center but did not know what was paid although it was represented by Respondent's counsel that all but $266.00 was paid. (Tr. 28) Mr. Cooper testified he attended his wife's medical visits and she complained of head, neck,

right shoulder, right arm, right knee and back pain. (Tr. 29-30) He said she was very active in her church ministry and is a licensed minister and very outgoing. (Tr. 28-29) He testified that he was at her visits to Dr. Sharma and that Dr. Sharma did not examine her, but did say he saw Dr. Sharma maneuver and manipulate her right arm and that Petitioner said it hurt after which Dr. Sharma got mad and ended the visit. (Tr. 30-33) Mr. Cooper testified that her condition has gotten worse and that he was her doctor and treats her at home 24/7 every day. (Tr. 33) Upon cross examination, he testified he only knew what he heard at each visit and does not have a medical degree or background. (Tr. 35) He stated he paid $1,600.00 for the cervical & thoracic MRIs dated 10/12/23 and $600.00 for a right shoulder MRI dated 5/11/23. (Tr. 35-36)

Daniel Pennick is an attendance coach at Lanphier High School and checks on students who are not at school, are tardy or do not attend. (Tr. 8-9) He goes throughout the building on his walk-throughs and stated the stairs were cement steps with a metal type mixture and all were made alike. (Tr. 10-11) On 10/26/22, he said he saw Petitioner on the ground getting up, helped her up and she went on her way. (Tr. 11-12) He was shown the photo of the stairs (Pet. Ex. #10) and said it had a metal strip like lid and all steps were alike. (Tr. 13-14) Mr. Pennick stated the public uses the front stairs and staff and students use the back stairs and repeatedly go up and down. (Tr. 15-16) On cross examination, he stated he had been at Lanphier for 3 years and the fall occurred at the second floor with Petitioner on all fours at the top when he saw her. (Tr. 16-17) He did not recall seeing Mr. Weir and was on his way from the lunchroom doing a hallway sweep. (Tr. 17-18) He stated she was on the second-floor landing and halfway on the landing and halfway on the stairs. (Tr. 19-20) He stated there was two-way traffic on the stairway with handrails on each side. He took those stairs multiple times per day and did not recall any chips, breaks, broken concrete or cement, and was not involved in completing any report. (Tr. 22-23)

Gary Bailey testified for Petitioner. He is a retired masonry contractor and testified about the various companies he worked for during his career and that his background was on the job training. (Tr. 98-100) He was asked about the single photo of the stairs (Pet. Ex. #10) and he said it was a photo he was asked to review by Petitioner's counsel along with the accident report completed by Petitioner. (Tr. 100-101) He testified that he saw the metal strips were worn on top and if you get a magnifying glass, it shows wear on the bottom and people have been tripping on this before. (Tr. 101) He testified that the metal strips should not be there and it would be a trip hazard and make a gap or opening where you would snag your foot or shoe. (Tr. 101) He stated that the metal strip was the only thing that would cause her fall. (Tr. 102-103)

On cross examination, Mr. Bailey stated his experience was general construction and he retired 4 years ago. (Tr. 103-104) He testified that any information about the incident was provided by Petitioner's counsel and he was interviewed but made no report. (Tr. 104) He questioned why they would tear out a set of steps and put in a new one after someone was injured. (Tr. 105) He again testified that by looking at the photo with a magnifying glass you would see the lip and that it is worn, and he was only testifying as to that photo. (Tr. 106) He indicated his opinion was based on the stairs (Pet. Ex. #10) being torn out and replaced as that was the information he was given. (Tr. 107-108) He testified that he never inspected the stairs, never took any measurements, and stated he was seeing the metal strip in the photo. (Tr. 108) He testified he did not do any type of inspection or take any measurements of the stairway and his only source of information was the photo, the incident report and information given by Petitioner's counsel. (Tr. 109)

Gina McLaughlin Schurman has been employed by Respondent Springfield School District #186 for 33 years and is the Assistant Superintendent of Human Resources. Her job duties include hiring staff, bargaining & negotiating contracts with 5 various unions, staffing 33 schools, determining the number of staff that each building needs, daily managing of employees and is involved in worker's compensation claims. (Tr. 111) She testified she was hired in 1992 as a teacher and was at Lanphier High School from 1992-2009 as a teacher, guidance dean and assistant principal. She was a member of the Teacher's Union and bargained contracts for the Union and was hired in Human Resources based on her contractual background and negotiation experience, leading to her current position as she had worked both sides of the table. (Tr. 111-112) She testified that Lanphier was two different buildings put together by a bridge with a middle school (Edison) on one side and the high school (Lanphier) on the other. (Tr. 112) She testified she was very familiar with the premises including the stairways located at those facilities. (Tr. 113)

Ms. Schurman testified that she knew Ms. Cooper by name and her position was permanent substitute teacher, which is a position in all the high schools. (Tr. 113) Permanent substitutes are different than floating substitutes. Permanent substitute teachers were there to be a daily support in whatever capacity they are needed. (Tr. 113) She testified that they are employed on an annual basis and are hired for that school year only and released at the end of the school year. (Tr. 114) She testified that the budget is reassessed each year to determine staffing needs and then staff is hired for the next year. (Tr. 114) She testified that a permanent substitute must re-apply each year to be hired for the next school year. (Tr. 114) She testified that incident reports are required to be completed after any work injury and are completed by the employee as they take additional training and have a username & password and the employee must complete on their own. (Tr. 115) She testified that an incident report was completed for this fall. (Tr. 115-116)

Ms. Schurman testified that she is familiar with the stairway where the incident occurred and stated the photo appeared to be the stairway outside of the north office. (Tr. 116) She explained that the north office is along the north side (Converse Street) of the building. (Tr. 116-117) She was shown the photo (Pet Ex. #10) and she stated it was not clear to her whether the photo was from the basement to the first floor or from the first floor to the second landing, but knew the stairway. (Tr. 117) She testified that the top of the photo was not the second floor itself as it would be open to the right as there is a hallway that direction and it looked like the photo was taken at one of the landings. (Tr. 117) She testified it did not appear that the photo was the area where the fall occurred, but it was the same stairway, which was in the Edison building that had been demolished and is now a parking lot as part of the renovation of Lanphier High School. (Tr. 118-119)

She described the steps as very solid block steps with the same steps throughout the Edison building. She heard the testimony regarding the metal strip but did not know that was clear and did not recall there being a metal strip on the steps. The Arbitrator questioned Ms. Schurman about the prior testimony she heard concerning the steps and she testified she had used the stairway many times in the past and did not recall that there was a metal strip. (Tr. 119-120) She testified she was not aware of any issue with the stairway or those stairs prior to the demolition and disagreed with prior testimony as to its use. She testified that the stairs were used by everyone including the public. (Tr. 120) She testified that the buildings were open to the public more than people know but they do limit access during the day for safety reasons. (Tr. 120) She stated that if you were going to the old cafeteria, to the second floor or to the basement, you would use these stairs and teachers, staff, students and anyone needing access to those areas would use those stairs. (Tr. 121)

She was not aware of any report of any falls on that stairway and was not aware of broken cement or concrete, chips or defects on those stairs. (Tr. 121-122) She stated that if there were broken pieces, they would have shut down the stairs as other stairs could be used to get to the same areas but denied there was any shutdown of that stairway. (Tr.122)

On cross-examination, she testified that there would be over 100 staff and teachers and 1000-1200 students using that stairway daily. (Tr. 123) She confirmed that parents and the public could use it but not during the school day. (Tr. 123) She was aware that Petitioner was a permanent substitute prior to the fall and a principal would have recommended her for that position. (Tr. 124) She testified they do a background check on every employee, make a recommendation, and approve the hire, but evaluation of character or truthfulness is not part of that criteria. (Tr. 124-125)

Thomas Weir testified via evidence deposition as he was unavailable to appear at time of trial. (Resp. Ex. #17) Mr. Weir has been employed by Respondent at Lanphier High School since August 2022 and his current title is 10th grade assistant principal but then he was Guidance Dean/Discipline Dean. (Resp. Ex. #17 p. 6) His office was located on the second floor of the Edison wing and the first door to the right at the top of the stairs. (Resp. Ex. #17 p. 7) He stated he did not see the incident but saw Petitioner on all fours with her knees in contact with the steps with her hands on the landing part and her knees on top of the last step. (Resp. Ex. #17 p. 7-8) He did not recall her saying anything specific about how or why she fell and helped her up by giving her his hand and she was able to get up using 50% her power and 50% his power. (Resp. Ex. #17 p. 8) She was on the second floor when she stood up and appeared she was coming up the steps as she was on the last step. (Resp. Ex. #17 p. 9) He did not recall anyone else around and Petitioner walked back to her room without any

further assistance. (Resp. Ex. #17 p. 9). He did not see any injuries, did not hear Petitioner complain of anything, she did not tell him at any time she was hurt, and he was not aware she was claiming any injuries from this fall. (Resp. Ex. #17 p. 9-10) He thought the incident occurred between late morning and the lunch shifts and the stairway comes to the second floor with his office to the right so she would walk past his office to go to her classroom. (Resp. Ex. #17 p. 10) He testified he is familiar with the stairway as he took it on a daily basis and multiple times each day. (Resp. Ex. #17 p. 11-12)

Mr. Weir stated the stairs were cement with handrails on both sides and wide enough so one person could go up and one person down without bumping into each other. (Resp. Ex. #17 p. 11-12) He testified the handrails were in good shape and there was no lip on the steps. (Resp. Ex. #17 p. 12) He testified there were no chips or breaks in the stairs and the steps were in good condition. (Resp. Ex. #17 p. 12-13) He was shown the photo (Pet. Ex. #10) and stated it was the same stairway but at the basement level. (Resp. Ex. #17 p. 13) He stated that the top of the picture was a different landing as it is a picture of the landing between the basement and the first floor. (Resp. Ex. #17 p. 14) He testified it was not the exact location but the same stairway that he took on a daily basis. (Resp. Ex. #17 p. 14) He testified he was not aware of any chips, cracks or other defects in the stairs and that there was no lip on the steps. (Resp. Ex. #17 p. 15) He testified that he recalled the shape of the steps, took the steps every day and it was clear in his mind there was no lip on the stairs. (Resp. Ex. #17 p. 15) Mr. Weir stated the injured employee was responsible for completing an incident report and was not aware of a report being made or that any injuries were being claimed. (Resp. Ex. #17 p. 16) He stated he did not complete any part of the report, was not asked to complete any part of the report, was not interviewed for any part of the report and was not aware he was named as a witness until he was contacted for the deposition. (Resp. Ex. #17 p. 16-17) He knows Daniel Pennick but did not recall him being present at the scene and principal Artie Doss did not talk to him about the incident. (Resp. Ex. #17 p. 17-18)

On cross-examination, Mr. Weir stated that he had been an administrator at Riverton School District and Saint Agnes (grade school), and taught at SHG, Lanphier and Riverton High Schools. (Resp. Ex. #17 p. 18) He stated Petitioner was able to get up on her own after he offered help and 50% was his help and 50% was her power. (Resp. Ex. #17 p. 19-20) He testified he did not know how long she was on the floor before seen and stated both hands were in front of her and her knees were on the ground. (Resp. Ex. #17 p. 20) He testified that the stairway was three floors (basement, first floor & second floor) (Resp. Ex. #17 p. 21-22) He testified that students, teachers and personnel routinely used the stairs. (Resp. Ex. #17 p. 22) He testified he had graduated Lanphier High School in 1989 and the stairs were there since at least 1985 before being demolished for a parking lot. (Resp. Ex. #17 p. 22-23) He testified that she fell at the top of the last step and did not recall Petitioner saying how she fell or saying she caught her foot on a metal strip. (Resp. Ex. #17 p. 23-24) He agreed the steps were concrete but did not recall any metal strip on the edge. (Resp. Ex. #17 p. 24-25)

Mr. Weir stated he did not know of any difference in the top step other than its appearance in the photo and said he did not know if it showed polished concrete or a metal strip as he did not recall a metal strip on the edge of the steps in that stairway. (Resp. Ex. #17 p. 25-26) He testified there were no other incidents of other people falling there for any reason. (Resp. Ex. #17 p. 26) He testified that she walked off to the classroom and did not remember her making any complaints. (Resp. Ex. #17 p. 27-29) He stated that if there was any repair needed somebody would be called in to repair them and is unaware of any repairs. (Resp. Ex. #17 p. 28-29) Mr. Weir testified that he had nothing to do with filling out the injury report and after reviewing the report, testified Petitioner completed the report. (Resp. Ex. #17 p. 30) He testified that the injured person fills out online, he was not contacted to make a statement, did not complete any report, did not provide a written statement and that any questions about the incident report should be directed to the head of HR (Gina McLaughlin Schurman) (Resp. Ex. #17 p. 30-35) On redirect, he did not recall any metal strips being on that stairway and did not recall seeing any papers or books on the floor that had to be picked up after her fall. (Resp. Ex. #17 p. 35-36) He again testified he did not recall any metal strips and testified he thought it was polished concrete in the photo, not a metal strip. (Resp. Ex. #17 p. 38-40; Pet. Ex. #10)

Medical Evidence and Treatment History

The fall occurred on October 26, 2022 and Petitioner completed an Incident Report describing her fall on November 4, 2022. (Resp. Ex. #1) Petitioner said she was walking back to the classroom after taking a student to the nurse and made it to the top of the steps when her foot caught the last step and she tripped and fell. (Resp. Ex. #1) She said her right knee, hands and elbow hit the floor. She listed Mr. Weir and Mr. Pennick as witnesses. (Resp. Ex. #1) The report indicated no object or substance caused her fall. (Resp. Ex. #1) The report indicated she hit her right knee and became more sore, stiff and achy in her muscles and joints and listed pain in both wrists, elbow, right hip, right shoulder, neck, low back, and upper back and getting worse. (Resp. Ex. #1)

On November 4, 2022, Petitioner was seen at HSHS Priority Care. (Resp. Ex. #2) She gave a history of going up the stairs, missing a step and landing on her hands and elbows and sliding on her knees with pain in her neck, right shoulder, left shoulder, right elbow, bilateral wrists, right hip and right knee with continued pain and wanted to rule out fractures. (Resp. Ex. #2 p. 4, 25) Petitioner insisted on x-rays being taken of all body parts that hurt and x-rays were taken of her right hip, left and right shoulders, right elbow, right and left wrists, and cervical spine. She stated she did not hit her head or lose consciousness and had a bruise to her right knee. (Resp. Ex. #2 p. 25) She had no headache, no neurological symptoms or weakness, no other swelling or bruising, and no numbness, weakness or tingling was noted, but she was limping. (Resp. Ex. #2 p. 25)

X-rays were negative with no evidence of acute osseous abnormalities. The right shoulder showed degenerative changes of mild to moderate degree in the AC joint and head of the humerus but no acute bony abnormalities. (Resp. Ex. #2 p. 12) Cervical spine showed normal vertebral heights & alignments, no acute fracture, minimal degenerative changes, and prevertebral soft tissue within normal limits. (Resp. Ex. #2 p. 5) The left shoulder, left wrist, right wrist, right elbow and right hip showed no acute fracture or dislocation and soft tissue unremarkable. (Resp. Ex. #2 p. 5, 10, 14, 17) The right knee showed no malalignment, mild degenerative changes, more pronounced in medial compartment with follow-up studies if patient's symptoms persisted. (Resp. Ex. #2 p. 20, 25)

A physical exam showed normal range of motion with tenderness in cervical spine, the right shoulder had normal appearance with diffuse nonspecific tenderness to palpation and pain with abduction but not internal or external rotation. (Resp. Ex. #2 p. 28) The left shoulder, right elbow, right wrist, left wrist, right hip, right knee, all had diffuse tenderness to palpation. (Resp. Ex. #2 p. 28) The right knee had very small bruising with mild swelling and tenderness to palpation with full range of motion. (Resp. Ex. #2 p. 28) Petitioner was advised there were no acute fractures in any of the x-rays and was given a soft neck collar, right elbow sleeve, bilateral cockup splints, a right knee brace and range of motion exercises for her shoulders with Tylenol and rest for pain and off work until seen by Occupational Health. (Resp. Ex. #2 p. 29)

On November 7, 2022, Petitioner was seen at HSHS Occupational Health with a history of going up stairs and slipping on last step and falling on her right side. (Resp. Ex. #3 p. 10) She was assessed with strain/sprain injuries of the neck, right shoulder, right hip and a right knee contusion and given restrictions of no use of stairs and seated work only with a follow-up in two weeks. (Resp. Ex. #3 p. 10)

On November 23, 2022, Petitioner returned for bilateral hand pain and neck discomfort. (Resp. Ex. #3 p. 7) Bilateral cervical radiculopathy to palms of both hands was noted with bilateral shoulder and right elbow discomfort. (Resp. Ex. #3 p. 7) She had grip strength reduction in the right hand and pain in neck when rotating head left to right. (Resp. Ex. #3 p. 7) She presented with concerns for cervical radiculopathy due to a positive Spurling's test and due to decrease in grip strength bilaterally and for a tibial plateau fracture given pain when walking and chronicity of pain symptoms and was referred to Orthopedic surgery. (Resp. Ex. #3 p. 8)

On December 13, 2022, Petitioner saw Dr. Sharma for evaluation of her cervical spine. (Resp. Ex. #4 p. 6) Petitioner gave a history of walking up the stairs, tripping and falling and landing on her back and having neck pain ever since. (Resp Ex. #4 p. 6) She stated all her pain was localized in her neck region but had other aches and pains throughout her entire body. (Resp. Ex. #4 p. 6) She denied any radicular symptoms and had full bilateral shoulder range of motion without significant

pain or discomfort. (Resp. Ex. #4 p. 6) There was no tenderness to palpation or muscle spasm through her upper trapezius and she had 5/5 strength in her shoulders, biceps, triceps and grip strength. (Resp. Ex. #4 p. 6) Cervical spine x-rays were reviewed and showed mild degenerative changes with no acute abnormalities. (Resp. Ex. #4 p. 7) Dr. Sharma stated Petitioner would benefit from formal physical therapy and a home exercise program, modification of activities and would see the response over the next 7-8 weeks. (Resp. Ex. #4 p. 7) Dr. Sharma noted Petitioner had neck pain radiating into shoulder since the fall 6 weeks ago, but alignment was normal, and his impression of her cervical spine was normal. (Resp. Ex. #4 p. 8)

On December 14, 2022, Petitioner saw chiropractic physician Dr. Warrington. (Resp. Ex. #5). Petitioner presented with chief complaints of neck and right knee pain, with pain in her back, shoulders, left foot, hips & ribs, and headaches. She gave a history of going up the stairs at school and her foot caught the top step and she went down on top of the step. (Resp. Ex. #5 p. 1) Fractures were ruled out with x-rays and she was referred to an orthopedist who said she did not need surgery but recommended therapy and she was being seen for a consult. (Resp. Ex. #5 p.1) The notes indicated she had signs of concussion with slower speech and decision making, with pain in her neck and right knee getting worse. (Resp. Ex. #5 p. 1) The physical exam was positive for cervical pain, thoracic pain, lumbar pain, and right knee pain but negative for shoulder impingement. Chiropractic treatment was given for her neck and back with ice for her knee and MRIs of her neck and right knee were ordered to rule out a medical meniscus tear and any disc herniation. (Resp. Ex. #5 p. 2-4)

On December 19, 2022, Petitioner returned with complaints of neck and right knee pain. He indicated there were lingering effects of concussion and multiple strains, sprains and contusions from the fall. (Resp. Ex. #5 p. 9) Treatment was given to her neck and back and she was instructed to use ice on her knee. (Resp. Ex. #5 p. 10)

On December 19, 2022, the MRI of the right knee showed moderate to severe chondromalacia of the patella, mild degenerative joint disease, osteoarthritis, medial worse than lateral and a thin Baker's cyst. (Resp. Ex. #15 p. 9-10) The MRI of the cervical spine showed no significant disc bulge, no foraminal narrowing, spinal canal was patent at all levels and was an unremarkable MRI of the cervical spine. (Resp. Ex. #15 p. 8)

On December 20, 2022, Dr. Warrington reviewed the MRI readings of the cervical spine and right knee and continued chiropractic care for those areas. On December 21, 2022, Petitioner showed pain behavior with movements and was noted to have multiple strains, sprains, and contusions from the fall. (Resp. Ex. #5 p. 13) Petitioner received chiropractic treatment for her cervical spine and right knee on 12/21/22, 12/26/22, 12/27/22, and 12/28/22. (Resp. Ex. #5 p. 13-20)

On January 2, 2023, Petitioner presented for treatment of her neck and right knee pain and it was noted that her spasms, tenderness and edema had decreased while her active range of motion and strength had increased since last visit. (Resp. Ex. #5 p. 21) On January 4, 2023, Dr. Warrington noted definite functional objective gains and her spasms, tenderness and edema had decreased and her active range of motion and strength were increasing. (Resp. Ex. #5 p. 23) Petitioner received chiropractic treatment for her neck and right knee pain on 1/5/23, 1/9/23, 1/11/23, and 1/12/23. (Resp. Ex. #5 p. 27-32) As of January 18, 2023, Petitioner continued to show signs of improvement. (Resp. Ex. #5 p. 33) She was re-evaluated on January 23, 2023 and noted to have cervical radiculopathy and grip strength deficiencies with shooting pain to her triceps and elbow. (Resp. Ex. #5 p. 35-39) She indicated she was better with weekends off and work was aggravating her symptoms, but her right knee was better. (Resp. Ex. #5 p. 39) Dr. Warrington considered an orthopedic consult for her right knee and said her concussion symptoms were better but still had blurry vision and was considering a brain scan. (Resp. Ex. #5 p. 39) She continued with chiropractic treatment on 1/25/23, 1/26/23, and 1/30/23. (Resp. Ex. #5 p. 40-44) Dr. Warrington wrote a note for Petitioner to be off work for 2 weeks until 2/13/23 and continued chiropractic treatment for neck and right knee pain. (Resp. Ex. #5 p. 46)

She received chiropractic treatment on 1/31/23, 2/1/23, 2/2/23, 2/3/23, 2/6/23, 2/8/23, and 2/9/23 and was off work as of 2/1/23. (Resp. Ex. #5 p. 49-60) On 2/9/23, Dr. Warrington wrote another note stating Petitioner would be off work for the

next 4 weeks. (Resp. Ex. #5 p. 61) On 2/13/23, Petitioner received treatment for her neck, back and right knee and was referred to pain management for consult and treatment. (Resp. Ex. #5 p. 63)

On February 16, 2023, Dr. Warrington stated Petitioner was to be seen for a right knee evaluation by Dr. Rodney Herrin. (Resp. Ex. #5 p. 66) Dr. Warrington wrote a letter to Petitioner's counsel outlining her treatment to that date stating her chief complaints were cervical, thoracic, lumbar sprain/strain injury, right knee sprain/strain, headaches, concussion, and rib strain/sprain. (Resp. Ex. #5 p. 67-69) He stated Petitioner was doing better, had waxing/waning symptoms, and treatment was helping. (Resp. Ex. #5 68) She was taken off work as it was offsetting the positive effects of chiropractic treatment and she was getting better when evaluated on 2/9/23. (Resp. Ex. #5 p. 68) He indicated there would be two additional chiropractic visits.

On February 22, 2023, Petitioner saw Dr. Prasad for neck and back pain on referral from Dr. Warrington for consult and treatment. She described radiating pain and concussion symptoms and abnormal blood sugars. (Resp. Ex. #5 p. 70) She stated chiropractic treatment made her better, her symptoms were waxing & waning and she was to see an orthopedist for her right knee. (Resp. Ex. #5 p. 70) A physical exam showed spasms and tenderness in the neck region with trigger points in the trapezius bilaterally, and orthopedic testing was positive for cervical, thoracic and lumbar pain. (Resp. Ex. #5 p. 70-71) Trigger point injections were given. (Resp. Ex. #5 p. 71) On 2/24/23, Petitioner returned to Dr. Prasad for neck and back pain and was given trigger point injections. (Resp. Ex. #5 p. 73-75) On 2/27/23, she saw Dr. Prasad and was given trigger point injections for her neck and given general range of motion stretching to be conducted 3 times per day. (Resp. Ex. #5 p. 76-78)

On February 28, 2023, Petitioner returned to HSHS Occupational Health. (Resp. Ex. #3 p.1-4) She was complaining of headaches the last 3 weeks along with dizziness and blurry vision and still had pain in her neck, shoulder and both wrists. (Resp. Ex #3 p. 2) She presented with a new finding of migraine headaches, which she said were due to cervical radiculopathy and had not been back to work since her fall. (Resp. Ex. #3 p. 2) She was encouraged to attempt physical therapy as prescribed by Orthopedics and since her migraine pain may be due to cervical radiculopathy, she was referred to Neurology for evaluation. (Resp. Ex. #3 p. 3)

On March 25, 2023, Petitioner saw Dr. Steriu at Central Counties Health Center with a history of uncontrolled diabetes, neuropathy, chronic bilateral shoulder pain and osteoarthritis in the bilateral hips. (Resp. Ex. #10 p. 7) She reported she had a fall sometime last year for which she did not seek medical advice, had a neck collar and an inability to move her neck left to right. She had significant pain at the level of the right shoulder, was unable to abduct or rotate the shoulder, had a brace on the right wrist and right knee but refused any imaging or work up for her right shoulder, neck, right wrist or right knee. (Resp. Ex. #10 p. 7-8) She was not moving the right shoulder or neck, had limited mobility in her neck and was walking with a limp. Petitioner stated she did not remember when she fell last year but did not want to provide further details or seek medical advice. (Resp. Ex. #10 p. 8-10) Dr. Steriu encouraged her to seek further medical advice and recommended imaging of right knee, right shoulder, neck and right wrist, which Petitioner declined but said she would attend her next appointment. (Resp. Ex. #10 p. 10-12)

On March 28, 2023, Petitioner returned to Dr. Sharma for evaluation of neck pain with a history of tripping, falling and landing on her back with pain and discomfort since and that the pain is located primarily in her neck. (Resp. Ex. #4 p. 2) She had an MRI of the cervical spine and denied any radicular symptoms, no tenderness in her groin or weakness in her extremities. (Resp. Ex. #4 p. 2) Dr. Sharma evaluated her past medical history and stated she ambulated in a wheelchair with cockup wrist splints on both wrists, a knee brace on her right knee and a cervical collar, which were not present at her initial evaluation in December 2022. (Resp. Ex. #4 p. 2-3) A physical exam showed dermatomes & myotomes upper extremities were within normal limits, and diffuse tenderness in cervical spine with pain on rotation to right & left. There was no tenderness to palpation or muscle spasms through the upper trapezius, 5/5 strength in shoulders, bicep flexion and grip strength. (Resp. Ex. #4 p. 2-3) Dr. Sharma noted the cervical MRI was negative for any acute abnormalities and was perfectly normal and her symptoms were out of proportion to what he was seeing clinically and radiographically.

(Resp. Ex. #4 p. 3) Dr. Sharma again stated she was now in a cervical collar, right knee brace and bilateral wrist splints, and none of these symptoms were present when seen on December 13, 2022. (Resp. Ex. #4 p. 3) Petitioner was saying all her symptoms were stemming from her fall, had treated with Dr. Prasad and Dr. Warrington, a local chiropractor, but she had not complied with Dr. Sharma's recommendation for formal physical therapy. (Resp. Ex. #4 p. 3) Dr. Sharma could not explain why she was in a cervical collar or why she was having pain and discomfort diffusely in her entire body and that it was reasonable for her scheduled appointment with Dr. VanFleet to see if he is able to see anything on the MRI. (Resp. Ex. #4 p. 3)

On April 24, 2023, Petitioner saw Dr. Herrin for her right knee and gave a history of returning to her classroom going up a set of stairs and at the top step, her foot caught the lip of the stairs and she fell forward on her right side and hit her right knee with pain ever since. (Resp. Ex. #6 p. 27) She reported other injuries to her neck and shoulders and was wearing a neck brace. (Resp. Ex. #6 p. 27-28) The x-ray and MRI findings were reviewed, she was given an injection and therapy was recommended. (Resp. Ex. #6 p. 27-28) No surgical intervention or arthroscopic procedure was recommended, and she was not a candidate for a knee replacement. She continued off work per Dr. Warrington's note. (Resp. Ex. #6 p. 27)

On May 11, 2023, she was evaluated by Therapy for right knee pain and arrived in a neck brace, two braces on each wrist worn incorrectly, and two knee braces. She said the prior injection did not help and she has pain all the time. She stated she was a permanent substitute teacher, and her job duties are standing or sitting to teach with steps to climb. (Resp. Ex. #6 p. 22) The therapist reported Petitioner came to the evaluation with an abundance of braces not worn correctly and an inability & unwillingness to move her right leg. (Resp. Ex. #6 p. 23) It was noted that she was able to sit in a chair in the lobby and walk to the back of the facility for evaluation but when asked to perform any type of activity to assess her muscle strength, she reported her leg would not move. (Resp. Ex. #6 p. 23) Her husband helped her with certain movements, but they were not able to complete an assessment as she stated it hurt too much anytime they tried to get her to move, and Therapy was unsure if anything would be accomplished due to her significant self-limiting behavior. (Resp. Ex. #6 p. 23)

On May 11, 2023, an MRI of the right shoulder was performed and showed a ruptured & retracted supraspinatus and a ruptured & retracted infraspinatus with associated mild bursitis and moderate muscle atrophy. (Resp. Ex. #15, p. 6-7)

On May 16, 2023, Petitioner returned to therapy for her right knee and the therapist stated Petitioner would not listen to suggestions for getting on the bike, did not make any attempt to bend her right knee and refused to take her knee brace off. (Resp. Ex. #6 p. 20) Petitioner stated she did not do much at home and was repeatedly told that she would feel her muscles since they had not been used in a while and therapy was recommended for two times a week for 6 weeks. (Resp. Ex. #6 p. 20-21)

On May 22, 2023, Petitioner returned to Dr. Herrin for right knee pain related to primary osteoarthritis which was aggravated by her work injury. She stated the injection did not help and therapy was making her symptoms worse. (Resp. Ex. #6 p. 18) She was offered Viscosupplementation injections and to follow up once approved and continue off work per Dr. Warrington's note. (Resp. Ex. #6 p. 18) She was wearing a neck brace, back brace, 2 wrist braces, a right elbow brace and 2 knee braces at this visit. (Resp. Ex. #6 p. 18)

On May 23, 2023, Petitioner saw Dr. Graves for evaluation of cervical pain and gave a history of falling down some stairs and developing pain in the neck, shoulders, and other joints. A cervical MRI was unremarkable and he did not see any high-grade stenosis to explain her symptoms. (Resp. Ex. #6 p. 15) She complained of neck pain radiating to her shoulders, right arm, shoulder blade & hand, numbness & tingling in her hands & fingers, and headaches, low back pain, right buttock and leg pain, which were treated with medications, physical therapy, chiropractic care, and injections without relief. (Resp. Ex #6 p. 15) Review of the x-rays showed no significant osteoarthritis, or obvious fracture or dislocation and the cervical MRI did not demonstrate any significant stenosis. (Resp. Ex. #6 p. 16)

On June 1, 2023, Petitioner saw Dr. Herrin for right shoulder pain and was assessed with a tear of the right supraspinatus and tear of the right infraspinatus with right shoulder pain and moderate muscle atrophy. Petitioner stated she was going up the stairs and fell at the last step when her foot caught and she fell forward, hitting the right side of her body, right knee and right shoulder but did not hit her head. She denied any issues with her shoulder prior to this incident. (Resp. Ex #6 p. 12) She had significant decreased range of motion, loss of strength and 10/10 pain. (Resp. Ex #6 p. 12) She was in a cervical collar with limited range of motion but was difficult to assess on exam due to guarding. (Resp. Ex. #6 p. 12) The MRI findings were reviewed and showed the supraspinatus & infraspinatus tears with moderate muscle atrophy. (Resp. ex. #6 p. 12) She was diagnosed with a rotator cuff tear with atrophy, and Dr. Herrin recommended a right shoulder scope with repair of the supraspinatus and infraspinatus with possible decompression, possible capsular relief and possible graft, but stated they needed to get clearance for the cervical spine first due to her neck complaints and once cleared, scheduling for the right shoulder scope could move forward. (Resp. Ex. #6 p. 12)

On October 3, 2023, Petitioner was seen for neck pain radiating into her shoulders and low back pain radiating down her bilateral lower extremities. The MRI from December 2022 was fairly unremarkable and given her symptoms, a follow-up MRI was ordered as the prior MRI did not demonstrate any high-grade stenosis or foraminal stenosis. (Resp. Ex. #6 p. 11) MRIs of the cervical & thoracic spines were performed on October 12, 2023. (Resp. Ex. #15 p. 3-5)

On October 24, 2023, Petitioner saw her PCP (Dr. Steriu) with a history of uncontrolled diabetes, neuropathy, chronic bilateral shoulder pain and osteoarthritis in the bilateral hips. She had full range of motion of her extremities and continued to refuse to be on insulin despite an A1C of 12.6. There was no mention of the fall, injuries sustained in the fall or the wearing of any braces. (Resp. Ex. #10 p. 2-6)

On November 16, 2023, Petitioner saw Dr. Graves for follow up on imaging and review of the cervical & thoracic MRIs demonstrated no high-grade stenosis that would explain any symptoms. (Resp. Ex. #6 p. 3-4) The cervical MRI showed only a minor bulge at C6-7. (Resp. Ex. #15 p. 3) Dr. Graves ordered a lumbar MRI to rule out any other pathology. On December 14, 2023, Petitioner underwent a lumbar MRI which showed L-4 degenerative spondylolisthesis and an L3-4 disc bulge with minimal foraminal narrowing. (Resp. Ex. #15 p. 1)

On June 21, 2023, Petitioner was seen for an Independent Medical Exam by Dr. Lawrence Li at the request of Respondent. (Resp. Ex. #7) Dr. Li reviewed medical records and the MRIs of the cervical, right knee and right shoulder. He noted the right shoulder MRI done on 5/11/23 showed a complete rupture of the supraspinatus and infraspinatus with moderate retraction and moderate muscle atrophy. (Resp. Ex. #7 p. 2) Petitioner gave a history of going up the stairs, tripping on the top step and landing on her right side. He summarized her medical treatment history and noted Dr. Herrin's surgical recommendation but did not know what surgery was being recommended. Her complaints included cervical spine stiffness, limited range of motion of the right shoulder and pain in the left shoulder, lumbar pain and right knee pain and he could perform only a limited exam. (Resp. Ex. #7 p. 2) She denied any prior conditions and removed her cervical collar for the exam but had no range of motion and any movement resulted her moving her entire body. Strength testing was 5/5 and sensation was normal but touching anywhere in the musculature was painful. Petitioner could not move her right shoulder passively without causing pain so no provocative testing could be performed, and she also had limited active range of motion of her left shoulder. He was unable to perform an exam of the lumbar spine as Petitioner was sitting in a chair and her right knee had diffuse pain everywhere. (Resp. Ex. #7 p. 3)

Dr. Li stated that her history was consistent with the notes of the providers that she fell after tripping on the top step and she fell on her right side although she told Dr. Sharma she fell on her back. Dr. Li did not have the notes of Dr. Herrin or Dr. Graves at the time of the IME. (Resp. Ex. #7 p. 4) Dr. Li stated Petitioner suffered an injury in the fall but the severity of her complaints was so extreme that they were not credible. (Resp. Ex. #7 p. 4) Dr. Li stated the subjective complaints of cervical pain were far greater than the objective findings on the MRI. He stated further imaging was needed for the lumbar spine, and the right shoulder MRI showed a large rotator cuff tear, which could cause dysfunction and explain her

weakness. Dr. Li stated the mechanism of injury was consistent but the history early on and her initial visit to Dr. Sharma did not indicate she had any deficits in the right shoulder. (Resp. Ex. #7 p. 4)

Dr. Li noted Petitioner had weakness and objective findings of a rotator cuff tear, but her left shoulder was also weak, and she did not fall on her left shoulder. (Resp. Ex. #7 p. 4) Dr. Li stated she had an injury to her right knee, but her subjective complaints were far greater than the objective MRI findings. Dr. Li stated Petitioner could return to teaching but be restricted from any over chest use of her right arm and restricted from lifting, pushing or pulling with her right arm. (Resp. #7 p. 5) Dr. Li stated the treatment to date was reasonable and necessary and she had reached MMI for her cervical spine and right knee and there was no need for further treatment of those conditions. Dr. Li recommended further work up for the lumbar with MMI for the lumbar being determined after diagnostic studies were completed. (Resp. Ex. #7 p. 5) Dr. Li stated Petitioner's subjective complaints were far beyond what would normally be expected, and she exhibited significant pain behavior. (Resp. Ex. #7 p. 5-6) Regardless of causation, Dr. Li stated Petitioner would need a right shoulder arthroscopy and rotator cuff repair followed by 4 months of physical therapy. (Resp, Ex, #7 p. 5-6)

On June 22, 2023, Petitioner was seen for an IME with Dr. Lawrence Nord, which was arranged by Petitioner's counsel. (Resp. Ex. #13 p. 1-7) Petitioner complained of functional impairment of memory, vision, cervical spine, right shoulder and right knee secondary to loss of motion, pain, swelling and weakness and rated her pain as 10/10 in her cervical spine, right shoulder, right arm and right knee. (Resp. #13 p. 5) He assessed her with a concussion, right cervical radiculitis, right cubital & right carpal tunnel syndrome, right shoulder adhesive capsulitis, right shoulder rotator cuff tear and right knee degenerative joint disease/osteoarthritis. (Resp. Ex. #13 p. 6) Dr. Nord stated these conditions were either caused or aggravated by the fall and recommended medical treatment and testing despite stating there was no physician patient relationship, and that he would not be able to offer medical advice. (Resp. Ex. #13 p. 1, 6) Dr. Nord provided addendums to his IME report to answer questions posed by Petitioner's counsel but his assessments did not change. (Resp. Ex. #13 p. 8, 15, 20)

Pre-Accident Medical

Petitioner was seen for primary care treatment at Central Counties Health Centers and HSHS Medical Group. (Resp. Ex. #10 & #11) On July 2, 2018, Petitioner stepped off a curb and fell forward on both hands injuring her wrist, knee, right hand and right ankle and complained of bilateral wrist pain and bilateral shoulder pain. She reported an old shoulder injury and falling on it made it worse and she was stiff all over. (Resp. Ex. #10 p. 94) She was assessed with right shoulder pain, left shoulder pain, left wrist pain, right wrist pain and neck pain and referred to physical therapy. (Resp. Ex. #10 p. 96)

On 2/9/20, she was seen with a history significant for type 2 diabetes and chronic bilateral shoulder pain. (Resp. Ex. #10 p. 66) Petitioner had not been seen for 6 months and admitted being noncompliant with all medication, not checking her blood glucose and continued complaints of bilateral shoulder pain. (Resp. Ex. #10, p. 66) She was referred to physical therapy to evaluate and treat her bilateral shoulder pain. (Resp. Ex. #10 p. 68) On 4/27/20, she returned for recheck with chronic bilateral shoulder pain and medical noncompliance for her diabetes. She failed to bring in her glucose log and had not been checking her blood sugar on a regular basis and was counseled on the negative outcomes of noncompliance with treatment of diabetes. (Resp. Ex. #10 p. 62-64)

On 5/29/20, Petitioner presented with left hip pain radiating to her left thigh for 6 months and that her leg was giving out and she was dragging her leg when she walked. (Resp. Ex. #10 p. 55) On 7/17/20, she followed up with dizziness, left hip pain and chronic bilateral shoulder pain. (Resp. Ex. #10 p. 51) On 11/19/20, Petitioner was requesting a new referral to therapy for bilateral hip pain and was counseled to check her glucose level if she was dizzy. (Resp. Ex. #10 p. 49) On 12/2/20, she was seen for diabetes and chronic bilateral shoulder pain and her diabetes was poorly controlled placing her at risk for complications. (Resp. Ex. #10 p. 43) On 12/30/20, she was seen for a follow-up for diabetes and chronic bilateral shoulder pain.

On 8/30/20, Petitioner was seen for right wrist pain after falling down stairs 3 days before. X-rays were negative for fracture but she had difficulty picking up things like a gallon of milk, and stated she had muscle spasms of the neck, arthritis, previous left rotator cuff tear, type 2 diabetes and left & right trapezius muscle spasm, decreased range of motion, and was given a right wrist splint and instructed to ice her right wrist and shoulders for pain. (Resp. Ex. #11, p. 26)

On 1/29/21, Petitioner had a pre-operative physical for a partial nephrectomy which documented her significant uncontrolled diabetes, neuropathy, chronic bilateral shoulder pain and osteoarthritis in the bilateral hips. (Resp. Ex. #10 p. 30) Subsequent visits documented the same history of uncontrolled diabetes, neuropathy, chronic bilateral shoulder pain and osteoarthritis in the bilateral hips. (Resp. Ex. #10 p. 14, 21-22, 26) On 7/28/21, Petitioner was seen in follow-up for wrist pain, blurred vision, and diabetes, and had not been checking her blood sugars or watching her diet and her sugars were elevated and out of control. (Resp. Ex. #11 p. 31-57)

On 12/29/21, Petitioner was seen for a return to work evaluation with a history of diabetes, arthritis, and low back pain. She had post-COVID sequela and remained very exhausted and lethargic, tiring easily, and low back pain worse the last couple weeks. She had acute pain of the left hip and left shoulder due to trauma (10/8/15) and may need an orthopedic consult for further evaluation. She was assessed with chronic midline low back pain and x-rays of her back showed vertebral heights and alignment normal at all levels with scattered degenerative changes, and no evidence of fracture or malalignment. (Resp. Ex. #11 p. 66-87)

On 4/22/22 she was seen for an annual follow-up and had shortness of breath on exertion but felt more energetic than before. She stated her family was concerned about her wrist not having full strength. (Resp. #4 p. 10) Her active history problems included right shoulder pain and knee pain. (Resp. Ex. #4 p. 12)

On 8/2/22, Petitioner was seen in follow-up with the same history of uncontrolled diabetes, neuropathy, chronic bilateral shoulder pain and osteoarthritis in the bilateral hips. (Resp. Ex. #10 p. 14) On 9/25/22, Petitioner was seen for pain and given instructions for pain management. (Resp. Ex. #11 p. 104)

Medical Deposition Testimony

Dr. John Warrington is a chiropractic physician and has been in practice for almost 27 years. (Resp. Ex. #12 p. 4) He stated he first saw Petitioner on 12/14/22 with a history of going up steps at school and caught her foot at top of step and fell on top of steps. She complained of neck & right knee pain and pain in her back, shoulders, left foot, headaches, hips and ribs. (Resp. Ex. #12 p. 6-7) He performed a physical exam which showed spasms in her neck (severe), thoracic (moderate), low back & hips (moderate) and that neck testing was positive for a disc, and she had a thoracic & lumbar strain/sprain. (Resp. Ex. #12 p. 7-8)

Dr. Warrington testified he performed a shoulder depression which is a neck test in which you push down on the shoulder to stretch the nerves and it caused pain. He testified that a shoulder impingement test was performed and was negative, which ruled out a shoulder impingement. (Resp. Ex. #12 p. 8-9) He diagnosed her with a cervical disc injury, thoracic & lumbar sprain/strain and right knee sprain/strain, headaches and rib sprain/strain. Petitioner was still working and he provided her with multiple therapies and chiropractic manipulations with her neck and right knee being the primary concerns. (Resp. Ex. #12 p. 11-13) Dr. Warrington testified that MRIs of her cervical spine and right knee were ordered and performed on 12/19/22 and showed no significant bulges in the cervical spine and severe chondromalacia of the patella in her right knee. (Resp. Ex. #12 p. 15-16) He stated the cervical MRI told him it was a whiplash and he was treating a cervical radiculopathy.

Dr. Warrington stated he did not see Petitioner very often in April or May, but later ordered an MRI for the right shoulder which showed tears of the supraspinatus and infraspinatus with bursitis and muscle atrophy. (Resp. Ex. #12 p. 17-20) He testified that the shoulder injury occurred within a year based on the atrophy. (Resp. Ex. #12 p. 20-21) Dr. Warrington

testified that her neck was getting better and then all of a sudden she had an inability to use her shoulder which led to the MRI. (Resp. Ex. #12 p. 22-23) He stated he believed the shoulder tear, neck, thoracic, lumbar sprain-strain, concussion right knee and rib strains were related to the fall. (Resp. Ex. #12 p. 28) After May 2023, he stated he saw Petitioner one time in August 2023 and has not seen her since. (Resp. Ex. #12 p. 29) He stated he had no information about any prior injury and was not treating her for the right shoulder as transferred to Dr. Herrin, but if she had no complaints before the fall, he believed the fall was the cause to a reasonable degree of chiropractic certainty. (Resp. Ex. #12 p. 30-32) He stated that the time for a tear to be retracted would be 6 months to a year. (Resp. Ex. #12 p. 31-32)

On cross-examination, Dr. Warrington testified that he did not see or have Petitioner's prior medical records or films and she gave a history of falling hard. (Resp. Ex. #12 p. 33-34) He testified that he ordered x-rays, relied on Petitioner's history and that her primary complaints were neck and right knee pain. (Resp. Ex. #12 p. 34-35) He stated that blurred vision, slow speech & decision making could mean she had a concussion but was not aware that Petitioner did not hit head in the fall. He testified that she could get a concussion from her brain rattling around but it could be her normal condition and he stated he was not treating her for a concussion and did not diagnose her with a concussion. (Resp. Ex. #12 p. 35-36)

Dr. Warrington testified he conducted a physical exam of all body parts she complained of, and she had a negative straight leg raise for her lumbar. Dr. Warrington testified that she had a negative shoulder impingement test and demonstrated the shoulder testing (Hawkins) he performed. Dr. Warrington showed that he raised Petitioner's arm and in moving her arm would bring it up and internally rotate it and Petitioner's documented response was negative. (Resp. Ex. #12 p. 37-38) Dr. Warrington confirmed he only ordered an MRI for the cervical and right knee and no other testing of other body parts. (Resp. Ex. #12 p. 38-39)

Dr. Warrington testified that he gave her chiropractic treatment for her neck, back and right knee and documented her progress at each visit, which showed she was improving based on her responses and his observations. (Resp. Ex. #12 p. 39-40) He testified that her active range of motion and strength was increasing with spasms & tenderness decreasing. (Resp. Ex. #12 p. 39-40) He stated definite functional gains were noted as of 12/28/22 and she was feeling better and various movements and activities were better as of 1/9/23. (Resp. Ex. #12 p. 40-41) The treatment was reducing her pain complaints and she was continuing to work although she stated treatment helped better when she was off weekends. (Resp. Ex. #12 p. 41) Dr. Warrington stated she first mentioned radiating right arm pain on 1/23/23 and he diagnosed this as a radiculopathy. (Resp. Ex. #12 p. 41-43) She continued to work full time as of 1/26/23 and her symptoms were waxing & waning and he decided to take her off work to let the treatment and healing work. (Resp. Ex. #12 p. 43)

Dr. Warrington testified that she was off work as of February 1, 2023 and he continued with the same treatment plan. (Resp. Ex. #12 p. 44) He testified that he took her off another 4 weeks on February 9, 2023 until March 9, 2023 as being off work helped her. (Resp. Ex. #12 p. 44) He testified that he referred her to Dr. Herrin for right knee pain and that she was seen by Dr. Prasad (February 22nd, 24th & 27th) for trigger point injections for her neck and back. (Resp. Ex. #12 p. 45) Dr. Warrington testified that after 2/16/23, he next saw her on 3/30/23 with some additional visits up to April 19, 2023 and he was continuing the same treatment plan for her neck, back and right knee. (Resp. Ex. #12 p. 46)

Dr. Warrington stated he ordered an MRI of the right shoulder but did not have a recollection on why, but testified that as of the visit of February 16, 2023, there was no indication of the need for an MRI of the right shoulder. (Resp. Ex. #12 p. 48) He testified that she was taken off work to promote healing and to let the chiropractic treatment work and another note was given on March 27, 2023 to be off work until May 22, 2023. (Resp. Ex. #12 p. 48-50) Dr. Warrington agreed that the concussion symptoms and blurred vision could be due to other conditions. (Resp. Ex. #12 p. 50-51) He testified that he did not see any records before or after the fall and based his opinions on her history & complaints and his exam. (Resp. Ex. #12 p. 51-52) He testified he did not recall her wearing a cervical collar and formed his treatment plan for her neck, back and right knee based on her history, complaints, exam observations, and testing performed. (Resp. Ex. #12 p. 52) He testified that he did not know what she was doing since being off work, or since February 16, 2023, as she did not provide

that information. (Resp. Ex. #12 p. 52-53) Dr. Warrington testified there was no indication, notation, or documentation from December 14, 2022 to February 16, 2023 that Petitioner could not move her arm. (Resp. Ex. #12 p. 54-55)

Dr. Rodney Herrin is an orthopedic surgeon at Orthopedic Center of Illinois, is board certified and specializes in Sports Medicine and treating and operating on shoulders and knees. (Resp. Ex. #9 p. 4-5) Dr. Herrin testified that he saw Petitioner for the first time on April 24, 2023 for complaints of right knee pain and a history of going up stairs on 10/26/22, tripping and falling on her right side and right knee. (Resp. Ex. #9 p. 5-6) Dr. Herrin stated Petitioner told him she saw Dr. Warrington and Dr. Prasad, was kept off work, had aching and throbbing in her right knee, but not a lot of other detail. (Resp. Ex. #9 p. 6) Dr. Herrin testified that he performed a physical exam and there was no effusion or swelling and it was tender to palpation. He read the x-rays and MRI of the right knee, which showed moderate to severe chondromalacia of the patella. (Resp. Ex. #9 p. 7-8) Dr. Herrin stated he did not review any prior records, his assessment was right knee pain related to primary osteoarthritis aggravated by a work injury, and he recommended a cortisone injection and physical therapy. (Resp. Ex. #9 p. 8)

Dr. Herrin testified that he next saw Petitioner on May 22, 2023 and she said she was not improved from the injection and he suggested viscosupplementation injections. (Resp. Ex. #9 p. 9-10) He stated she was seeing Dr. Graves for evaluation of her neck. (Resp. Ex. #9 p. 10) Dr. Herrin testified that she was not a surgical candidate for her knee and has not seen her since this visit for her knee. (Resp. Ex. #9 p. 10-11) He testified that she definitely had arthritis that might have been aggravated somewhat but it was not a significant problem related to the fall. (Resp. Ex. #9 p. 10-12) There was no surgical recommendation, and this was only a temporary aggravation of a prior problem. (Resp. Ex. #9 p. 13-14)

Dr. Herrin testified that he saw Petitioner on June 1, 2023 for right shoulder complaints and she gave a history of falling on her right side and hurting her knee and apparently her shoulder. (Resp. Ex. #9 p. 15) He stated he saw the MRI films of May 11, 2023 and she had limited range of motion. Dr. Herrin said he thought she may have adhesive capsulitis but with limited painful motion you cannot tell clinically about the rotator cuff and need to rely on the MRI results. (Resp. Ex. #9 p. 15-16) Dr. Herrin stated she would not move her shoulder and the MRI indicated rotator cuff tears involving the supraspinatus and infraspinatus. (Resp. Ex. #9 p. 17) Dr. Herrin stated surgery was an option with rotator cuff repair of the supraspinatus and infraspinatus and subacromial decompression, but Petitioner had other issues and needed to be cleared for her neck first before shoulder surgery could be performed (Resp. Ex. #9 p. 17-19) Dr. Herrin testified that he wanted Dr. Graves to give a cervical recommendation before considering shoulder surgery. (Resp. Ex. #9 p. 19)

Dr. Herrin testified that the MRI showed a large tear with retraction and atrophy and he did not think that occurred between the date of accident and the date of the MRI (5/11/23) and that something was going on in her shoulder prior, which was made worse in the fall. (Resp. Ex. #9 p. 22) Dr. Herrin testified that he believed the fall may have aggravated the shoulder as it is not uncommon for a 60 year old woman to have a rotator cuff tear or pathology. (Resp. Ex. #9 p. 22-23) Dr. Herrin stated that the longer you wait on the shoulder there is potentially a less likelihood of success, but he wanted to see what Dr. Graves said because if she needs cervical surgery, that surgery would proceed first. (Resp. Ex. #9 p. 23-25) Dr. Herrin stated if she does not need cervical surgery, they would address the shoulder. (Resp. Ex. #9 p. 24-25)

On cross-examination, Dr. Herrin stated he first saw Petitioner on referral from her chiropractor for right knee complaints and reviewed the x-rays (11/4/22) and MRI (12/19/22) but no other films as focused on the right knee. (Resp. Ex. #9 p. 27-28) Dr. Herrin testified that he saw no prior records and relied on what she told him that she tripped going up stairs. (Resp. Ex. #9 p. 28) Dr. Herrin confirmed his diagnosis of right knee primary osteoarthritis aggravated in the fall and that the mechanism was not that extensive to cause continued problems related to the fall. (Resp. Ex. #9 p. 29) Dr. Herrin agreed that viscosupplementation injections treat symptoms of osteoarthritis and any future knee replacement would be due to primary osteoarthritis. (Resp. Ex. #9 p. 29-30) Dr. Herrin stated Petitioner has not returned for her right knee and testified that he took the easy way out by continuing the off work note of Dr. Warrington. (Resp. Ex. #9 p. 30-31)

Dr. Herrin testified that the findings on the MRI could have been age related and degenerative. (Resp. Ex. #9 p. 31) He testified that the MRI showed retraction and atrophy and they do not retract and atrophy that quickly if totally normal before. (Resp. Ex. #9 p. 32-33) Dr. Herrin stated the mechanism could aggravate the condition. (Resp. Ex. #9 p. 33) Dr. Herrin testified that they would do a release if the shoulder was frozen at time of surgery but would need to address the shoulder as it may not be repairable and could have been non-repairable at the time of the exam. (Resp. Ex. #9 p. 35-36) Dr. Herrin testified that diabetes could be a contributing factor to a frozen shoulder and a negative outcome for surgery. (Resp. Ex. #9 p. 37) Dr. Herrin testified that he was going by the MRI results as Petitioner was guarding her shoulder during the exam and any information regarding the fall or complaints of pain came from Petitioner as he did not see any other records and did not order any other diagnostic studies other than what was performed previously. (Resp. Ex. #9 p. 38, 41-42)

Dr. Lawrence Li is an orthopedic surgeon at Orthopedics & Shoulder Center. (Resp. Ex. 8(a)) He is board certified and focuses his practice on shoulders, hands and knees including operating on upper & lower extremities and evaluating spinal conditions for non-operative treatment. (Resp. Ex. 8(a) p. 4) Dr. Li stated he sees patients and performs surgeries three days a week on shoulders, hands and knees which is the bulk of his surgeries. (Resp. Ex. 8(a) p. 5-6) Dr. Li testified that he performs rotator cuff repairs every week and is involved in evaluating shoulder issues that do not require surgical repair. (Resp. Ex. 8(a) p. 6)

Dr. Li testified that he performed an IME on Petitioner on June 1, 2023. He testified that he took a history from Petitioner, completed a physical exam and authored a report containing his opinions. He reviewed the medical records and actual films provided and identified his six-page report which was marked as Exhibit B to his deposition. (Resp. Ex. 8(a) p. 7-8) He stated Petitioner gave a history of tripping on the top step and falling and identified the records he reviewed for the report. (Resp. Ex. 8(a) p. 8-9) Dr. Li stated Mr. Cooper attended the IME with his wife and they insisted she could not get on the table for an exam so he interviewed her in the sitting position, performed a limited exam, documented her current complaints and that she denied any problems prior to the incident. (Resp. Ex. 8(a) p. 9-10)

Dr. Li testified that there was no significant pathology caused by the fall and her subjective complaints were far greater than any objective findings. Dr. Li stated the cervical findings were degenerative and not caused by the fall but may have been temporarily exacerbated. (Resp. Ex. 8(a) p. 14) There was a contusion or strain of the lumbar based on the mechanism. Dr. Li stated the right knee findings were degenerative and not caused by the fall but may have been temporarily aggravated. (Resp. Ex. 8(a) p. 15) Dr. Li testified there was a large right rotator cuff tear with moderate atrophy consistent with a tear that was pre-existing before the accident. (Resp. Ex. 8(a) p. 15) Dr. Li testified there were no deficits in the right shoulder at her visit to Dr. Sharma (12/13/22) and the weakness and findings of rotator cuff tear on the right and her left shoulder were the same, but she did not fall on her left side. (Resp. Ex. 8(a) p. 15-16) Dr. Li testified the right rotator cuff tear was pre-existing based on the atrophy already in the muscle. (Resp. Ex. 8(a) p. 16-17) Dr. Li testified that there were no right shoulder complaints at the visit to Dr. Sharma or the 12/14/22 visit to Dr. Warrington. (Resp. Ex. 8(a) p. 17-18)

Dr. Li stated Petitioner could return to work with limited restrictions of no over the chest use of the right arm, but these restrictions were not related to the fall as the rotator cuff tear pre-dated the accident. (Resp. Ex. 8(a) p. 18-19) Dr. Li stated she was at MMI for her cervical and right knee conditions and an MRI of the lumbar spine was needed to determine further pathology or treatment. (Resp. Ex. 8(a) p. 19) Dr. Li testified that she needed further treatment for her right shoulder but that was pre-existing and not related to the fall. (Resp. Ex. 8(a) p. 19-20) Dr. Li testified that the amount of pain and limitation of function were way beyond what would be expected based on what was known about the pathology. (Resp. Ex. 8(a) p. 20-21) Dr. Li stated no further treatment was required for the cervical or right knee, and he recommended a lumbar MRI for that condition. (Resp. Ex. 8(a) p. 21) Dr. Li testified that the shoulder arthroscopy and rotator cuff repair would require 4 months of rehab and the rotator cuff was definitely repairable but could also be treated nonoperatively. (Resp. Ex. 8(a) p. 21-22)

Dr. Li stated he was provided and evaluated additional records after the IME which included the lumbar MRI, initial Priority Care visit, OCI records (4/24/23 to 11/16/23), Central Counties Health Center records, reports of Dr. Nord, and the visit to Dr. Sharma of 3/28/23. (Resp. Ex. 8(a) p. 23-24) Dr. Li testified that he had no changes in his opinions on the cervical or right knee, that no further treatment is related, and she was at MMI for those conditions. (Resp. Ex. 8(a) p. 24) Dr. Li testified he reviewed the film of the lumbar MRI and it showed there were simply degenerative changes, and nothing caused by the fall and no further treatment was needed. He stated her subjective complaints were greater than the objective findings and she was at MMI for the lumbar with no need for further treatment as of the date of the IME. (Resp. Ex. 8(a) p. 24-25) Dr. Li testified Petitioner clearly had shoulder problems prior to the fall as there was documented neuropathy chronic bilateral shoulder pain, and there was no change in his opinion that the tear pre-dated the fall. (Resp. Ex. 8(a) p. 26-27) Dr. Li testified there were no prior records or notes indicating an inability to move the arm and the records before and after the fall did not document any significant difference in pain. (Resp. Ex. 8(a) p. 27-28)

Dr. Li testified that rotator cuff pathology could be age related and degenerative and result in eventual tearing. (Resp. Ex. 8(a) p. 28) Dr. Li testified that uncontrolled diabetes affects everything negatively including a higher incidence of degenerative tearing and decreased healing and a person would be predisposed to frozen shoulders. (Resp. Ex. 8(a) p. 29-30) Dr. Li stated he did not believe she had a frozen shoulder, but she would not let him examine her and had limited motion. Dr. Li stated there was no documentation of an inability to move the arm from the date of the fall to the visit to Dr. Sharma. (Resp. Ex. 8(a) p. 30) Dr. Li testified that as of the date of the IME (June 1, 2023), there was no further treatment needed for the cervical, right knee or lumbar and she was at MMI for those conditions. (Resp. Ex. 8(a) p. 30-31) Dr. Li again testified that the need for a rotator cuff repair was not related to the fall and the tear occurred prior to the fall based on the examination, records, and review of the actual film. (Resp. Ex. 8(a) p. 31-32)

On cross examination, Dr. Li stated his original report included a shoulder exam and opinions and the history was the same so he had no reason to change after review of the additional records. He agreed she complained of a lot of pain at the IME and had a knee and neck brace on and pain in those areas at the time. (Resp. Ex. 8(a) p. 35-38) Dr. Li stated he did not know what her current condition was and stated a fall could temporarily aggravate those conditions. Dr. Li stated the fall only temporarily aggravated the knee and there was no pathology to result in the need for a knee replacement. (Resp. Ex. 8(a) p. 38-40) Dr. Li testified that any aggravation was temporary and there were no permanent aggravations based on the MRI findings of the neck and right knee. (Resp. Ex. 8(a) p. 41-42) Dr. Li stated the lumbar recommendation was for an MRI and she was at MMI after review of that MRI. (Resp. Ex. 8(a) p. 41-42) Dr. Li stated he agreed with Dr. Prasad's statement that there was symptom magnification. (Resp. Ex. 8(a) p. 42-44)

Dr. Li testified that the mechanism was consistent with one that can cause an injury to the rotator cuff, but it did not cause the tear that was diagnosed. (Resp. Ex. 8(a) p. 44) Dr. Li corrected questioning by Petitioner's counsel stating that the results of the MRI showed the atrophy leading to the determination that the tear was not caused in the fall. (Resp. Ex. 8(a) p. 44-45) Dr. Li testified that atrophy takes longer than 12 months and agreed that the fall could aggravate an underlying preexisting condition but, in this case, there were no complaints at the Sharma exam, Dr. Prasad noted symptom magnification and her reports of pain were way out of proportion at the IME. (Resp. Ex. 8(a) p. 45-46) Dr. Li stated if there was neck pain radiating to the right arm, you may get overlapping symptoms in 25% of the cases but you can distinguish that by physical exam and clinical studies. (Resp. Ex. 8(a) p. 47-49) Dr. Li testified that she had full bilateral shoulder range of motion without significant pain or discomfort at the visit to Dr. Sharma and full range of motion means full. (Resp. Ex. 8(a) p. 49-50) He agreed she needed a rotator cuff repair and was not at MMI, but the shoulder was not related. (Resp. Ex. 8(a) p. 50) Dr. Li stated the shoulder clearly predated the fall and the extent of the atrophy showed it predated the fall. (Resp. Ex. 8(a) p. 50-52) Dr. Li stated she had full range of motion two months before the fall and full range of motion 2 months after the fall. (Resp. Ex. 8(a) p. 54-55)

Dr. Li stated the fact she was performing her job duties does not mean she was asymptomatic. (Resp. Ex. 8(a) p. 55) Dr. Li stated you cannot assume the shoulder was frozen just because there was a tear. (Resp. Ex. 8(a) p. 55-58) Dr. Li again stated she was using the shoulder before and after with full range of motion and could have had symptoms before and

after. (Resp. Ex. 8(a) p. 58) Although she did not have complaints of right shoulder pain on 8/7/22, Dr. Li stated you would expect complaints with her visit to Dr. Sharma if it was related. (Resp. Ex. 8(a) p. 59-60) Dr. Li testified he did not believe the fall caused the pathology in the right shoulder and agreed repair is better sooner than later, but the right shoulder predated the fall and was not causally related based on the entire clinical presentation. (Resp. Ex. 8(a) p. 62-63)

Dr. Li stated it was Petitioner's choice if she chose to pursue surgery and her condition could have been temporarily aggravated. (Resp. Ex. 8(a) p. 64-65) The amount of atrophy and retraction led to his opinion that the rotator cuff predated the fall as there was a moderate amount not mild, and that amount of atrophy was greater than would be expected since it was less than one year since the fall. (Resp. Ex. 8(a) p. 65-66) Dr. Li stated that Dr. Sharma's notes clearly stated she had full range of motion. (Resp. Ex. 8(a) p. 66) Dr. Li stated that masking overlap can be considered but examination and testing by the orthopedic specialist rules this out as she still had full range of motion on March 28, 2023. (Resp. Ex. 8(a) p. 67-68) Dr. Li testified that the last record he reviewed was her PCP visit of October 24, 2023 and she had full range of motion at that time. (Resp. Ex. 8(a) p. 68-69)

Dr. Li testified it was clear to him that Petitioner went to Dr. Sharma for neck pain, and she had full strength and full range of motion of both shoulders at that time. (Resp. Ex. 8(a) p. 72-73) Dr. Li testified that any aggravation of the lumbar had fully resolved, and any treatment or injury from the fall had resolved as of the date of the IME and there were no objective findings to support subjective complaints of the cervical, lumbar, or right knee. (Resp. Ex. 8(a) p. 74-75) Dr. Li testified that the rotator cuff tear predated the fall and Petitioner could undergo surgery for that condition, but it was not related to the fall. (Resp. Ex. 8(a) p. 75-76)

Resp. Ex. #8(b)
The deposition of Dr. Li was originally commenced on April 8, 2024 and suspended by agreement once it was learned that neither party had a complete copy of Dr. Li's IME report which was for examination of the cervical spine, right shoulder, right knee and lumbar spine. The limited testimony given by Dr. Li prior to suspension for the cervical, right knee and lumbar conditions mirrors the testimony given in his deposition of April 15, 2024 and was admitted into evidence as Exhibit 8(a).

Dr. Lawrence Nord is retired from the practice of orthopedic surgery and saw Petitioner at the request of Petitioner's counsel for an IME on June 22, 2023. (Resp. Ex. #14, p. 5-6) Dr. Nord stated Petitioner gave him a history of catching her toe on the lip of the last step and falling forward on her right side, hands, elbow, right shoulder, and knee. (Resp. Ex. #14 p. 8) He performed a physical exam with Petitioner reporting 10/10 pain and limited motion, and diagnosed her with concussion, right cervical radiculitis, right cubital tunnel & right carpal tunnel syndrome, right shoulder adhesive capsulitis, right shoulder rotator cuff tear and right knee degenerative joint disease/osteoarthritis. (Resp. Ex. #14 p. 9-12) Dr. Nord said she had a rotator cuff tear with adhesive capsulitis and stated she was asymptomatic before the accident and symptomatic after the accident. (Resp. Ex. #14 p. 16) He was provided additional records after the IME but his opinions remained the same and said Petitioner should have a closed manipulation for the adhesive capsulitis and then consider repair of the rotator cuff. (Resp. Ex. #14 p. 21-22) He agreed with Dr. Warrington's off work note, and stated the fall aggravated any underlying condition. (Resp. Ex. #14 p. 23-24). He was asked by Petitioner's counsel if she should undergo right shoulder surgery and he stated his treatment recommendations were not followed, the window of opportunity had been missed and he recommended against surgery. (Resp. Ex. #14 p. 25-26) He also stated that Petitioner was at MMI, was permanently disabled and her rotator cuff was caused by the fall and there would be no benefit from surgery or therapy. (Resp. Ex. #14 p. 25-26, 32)

On cross examination, Dr. Nord stated he retired on 12/21/17 and does IMEs, depositions, and impairment ratings and that 90% of the time he is evaluating cases for plaintiff attorneys. He saw Petitioner at the request of Petitioner's counsel and agreed he was not offering medical advice, was not rendering treatment, he only saw the radiologist readings not the actual films and he saw no prior records at the time of the IME. (Resp. Ex. #14 p. 37-39) He agreed the chiropractor was seeing Petitioner for her neck, back and knee and he relied on the chiropractor's records for the basis of his six findings.

(Resp. Ex. #14 p. 44-47) Dr. Nord stated she had adhesive capsulitis due to the rotator cuff tear and there was adhesive capsulitis noted on the radiologist readings. (Resp. Ex. #14 p. 50-51)

Dr. Nord testified that the basis of his opinion regarding the rotator cuff tear was that Petitioner could move her arm before the fall but could not move her arm after the fall. (Resp. Ex. #14 p. 53) He testified that Petitioner had risk factors of hypertension, uncontrolled diabetes, age, gender, & obesity, but the carpal tunnel & cubital tunnel syndromes were related to the fall as she had no symptoms before and had them after. (Resp. Ex. #14 p. 55). Dr. Nord stated he provided additions to his IME report based on information and questions provided by Petitioner's counsel, including the question regarding recommendation of shoulder surgery. (Resp. Ex. #14 p. 59) Dr. Nord stated his recommendations were not being followed and disputed that Petitioner had uncontrolled diabetes and testified that you would not operate on a patient that is an uncontrolled diabetic. (Resp. Ex. #14 p. 59, 61-62, 63-65) Dr. Nord admitted he did not review her diabetic history or condition and testified that you would want diabetes to be under control before considering surgery. (Resp. Ex. #14 p. 65)

Dr. Nord agreed that Dr. Herrin was waiting for Petitioner to be cleared by Dr. Graves for her cervical spine before considering shoulder surgery. (Resp. Ex. #14 p. 66) Dr. Nord testified that she had a normal cervical MRI besides some mild disc bulging and received therapy for her neck but there was no indication of a severe problem with her neck. (Resp. Ex. #14 p. 66, 68-69) Dr. Nord disagreed with the approach of her treating physicians and said the shoulder should have been addressed immediately as he assumed she could not move her shoulder after the fall. (Resp. Ex. #14 p. 69-70) Dr. Nord acknowledged that there were symptoms of shoulder pain prior to the fall and said she would not be able to move her arm or have full range of motion with a tear. (Resp. Ex. #14 p. 73-75) In subsequent questioning, Dr. Nord could not reconcile or explain the findings of full range of motion by her physicians after the fall based on the history that Petitioner gave him and his opinion that she would not be able to move her arm because of the tear after the fall. (Resp. Ex. #14 p. 76-92)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

On October 26, 2022, Petitioner was walking up a stairway returning to a second-floor classroom and made it to the top of the stairs when her foot caught the lip of the step and she fell. (Tr. 55-56; Resp. Ex. #1) She testified that she fell on her knees and elbow and that she hit her knee on the piece of iron or strip because it snagged her pants, and her knee was bothering her when she got up. (Tr. 57) Petitioner personally filled out an incident report as required and described how the accident happened. (Tr. 84, Resp. Ex. #1) The report indicated no object or substance caused her injury and her testimony confirmed that fact. (Resp. Ex. #1; Tr. 84-85) She testified there was no liquid or substance on the stairs, and she had nothing in her hands and was not on a cellphone. (Tr. 84-85) She testified that Mr. Weir and Mr. Pennick came up after and helped her up but did not see her fall. (Tr. 85; Resp. Ex. #1) Petitioner testified she had been up and down the stairs multiple times that day and after the fall she continued to work and go up and down the stairs. (Tr. 86-87)

A photo of the stairway was admitted into evidence and shown to Petitioner and the testifying witnesses. (Pet. Ex. #10) During questioning of the witnesses, the Arbitrator noted the photo spoke for itself. (Tr. 13)

Petitioner testified that the staff, faculty, janitors, and students all used the same stairs. (Tr. 42-43) When shown the photo, Petitioner stated that the public used those stairs if there was a PTA meeting or specific event, but otherwise it was used by staff, faculty, janitors, and students. (Tr. 43-44) She stated this stairway looked like the other stairways and was made the same as the others. (Tr. 44) She described a flat plank thing or iron piece that went around the top of the step and were on the edge of the steps. (Tr. 45) She estimated she used the stairs about 15-30 times per day. (Tr. 45-46)

Mr. Bailey, a retired masonry contractor, testified on behalf of Petitioner and was shown the photo. He testified that by looking at the photo with a magnifying glass you would see the lip and that it was worn. (Tr. 106) He was told the stairs were torn out and replaced and questioned why they would tear out a set of steps and put in a new one after someone was injured, which was information he was given by Petitioner's counsel. (Tr. 105, 107-108) Mr. Bailey never inspected the stairs, had no measurements, and testified he was seeing a metal strip in the photo. (Tr. 108) He testified that the metal strips were worn on top and if you get a magnifying glass, it showed wear on the bottom and people have been tripping on this before. (Tr. 101) He stated that the metal strip was the thing that caused her fall. (Tr. 102-103)

Gina McLaughlin Schurman testified she was very familiar with the premises and stairways as she had worked at that location for 17 years. (Tr. 113) She described the steps as very solid block steps with the same steps throughout the building and did not recall a metal strip on the steps and maintained that testimony when questioned by the Arbitrator as she had used the stairway many times in the past. (Tr. 119-120) She stated she disagreed with prior testimony as to use of the stairs and testified the stairs were used by everyone including the public although access was limited during the day for safety reasons. (Tr. 120) She testified she was not aware of any reports of any falls on that stairway and was not aware of broken cement or concrete, chips, or defects on those stairs as they would shut down the stairs but denied there as any shutdown of that stairway. (Tr. 121-122) She estimated that there would be over 100 staff and teachers and 1000-1200 students using that stairway daily in addition to parents and the public. (Tr. 123)

Petitioner had been asked to take a student to the nurse's office as her duties included assisting the teachers as asked and that task was completed. (Tr. 85-86) Petitioner was walking back to the classroom and going upstairs when she fell on the stairs which were also used by 1100-1300 people, teachers and students, daily. The stairs were not broken, cracked or chipped and there was no liquids or foreign substances on the stairs. Based on the preponderance of the evidence the Arbitrator finds the stairs were not defective. However, the Petitioner's work required her to walk from classroom to classroom, going up and downstairs and taking students to and from the nurse's office

Analyzing the facts of this case in accordance with *McAllister*, the Arbitrator finds the Petitioner was performing "Acts that the employee might reasonably be expected to perform incident to his or her assigned duties". Consequently, the Arbitrator finds that Petitioner met her burden and proved she sustained an accident that arose out of her employment because her employment required her to use the stairs 15 to 30 time a day along with 1100 to 1300 other people.

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

Petitioner first sought medical treatment on November 4, 2022 with complaints of pain in her neck, right shoulder, left shoulder, right elbow, bilateral wrists, right hip and right knee and insisted on x-rays being taken on every body part that hurt, which were all negative. She was assessed with strain/sprain injuries of the neck, right shoulder, right hip and a right knee contusion. (Resp. Ex. #3 p. 10) She returned for bilateral hand pain and neck discomfort and was referred to Orthopedics. (Resp. Ex. #3 p. 8) On December 13, 2022, Petitioner saw Dr. Sharma and stated all her pain was localized in her neck. (Resp. Ex. #4 p. 6) She had full bilateral shoulder range of motion without significant pain or discomfort, 5/5 strength in her shoulders, biceps, triceps and grip strength. (Resp. Ex. #4 p. 6) Cervical x-rays showed mild degenerative changes with no acute abnormalities. (Resp. Ex. #4 p. 7)

On December 14, 2022, Petitioner started chiropractic treatment with Dr. Warrington for neck and right knee pain. The physical exam was positive for cervical pain, thoracic pain, lumbar pain, and right knee pain but negative for shoulder impingement. MRIs of her neck and right knee ruled out a meniscus tear and disc herniation. (Resp. Ex. #5 p. 2-4) Petitioner continued to receive chiropractic treatment for cervical and right knee pain through 2/16/23 with improvements of her symptoms. (Resp. Ex. #5 p. 21, 23, 33) Dr. Warrington wrote notes for Petitioner to be off work from 2/1/23 through 5/22/23 and she continued chiropractic treatment for her neck and right knee pain. (Resp. Ex. #5 p. 46, 61) Petitioner saw Dr. Prasad for neck and back pain and received trigger point injections for that pain. (Resp. Ex. #5 p. 70-78)

On March 28, 2023, Petitioner saw Dr. Sharma for pain located primarily in her neck. (Resp. Ex. #4 p. 2) Dr. Sharma stated she was in a wheelchair with splints on both wrists, a knee brace and a cervical collar, which were not present at her visit on December 13, 2022. (Resp. Ex. #4 p. 2-3) Her range of motion of upper extremities was within normal limits, and she had 5/5 strength in shoulders, bicep flexion and grip strength. (Resp. Ex. #4 p. 2-3) The cervical MRI was negative for any acute abnormalities and was perfectly normal and her symptoms were out of proportion to what was seen clinically and radiographically. (Resp. Ex. #4 p. 3) Dr. Sharma could not explain the use of a cervical collar or why she was having pain and discomfort diffusely in her entire body. (Resp. Ex. #4 p. 3)

On April 24, 2023, Petitioner saw Dr. Herrin for right knee pain and was given an injection. (Resp. Ex. #6 p. 27-28) She was seen twice for physical therapy but was not cooperative and had an inability & unwillingness to move her right leg with inconsistent movements observed. (Resp. Ex. #6 p. 23) On May 22, 2023, Petitioner reported to Dr. Herrin that therapy made her right knee pain worse and Viscosupplementation injections were offered. (Resp. Ex. #6 p. 18) On May 23, 2023, Petitioner saw Dr. Graves and he stated her cervical MRI was unremarkable with no high-grade stenosis to explain her symptoms. (Resp. Ex. #6 p. 15)

An MRI of the right shoulder on May 11, 2023, showed tears of the supraspinatus and infraspinatus with retraction and atrophy. (Resp. Ex. #15, p. 6-7) On June 1, 2023, Petitioner saw Dr. Herrin for her right shoulder and assessed with the tears of the supraspinatus and infraspinatus with retraction and atrophy. (Resp. Ex #6 p. 12) Dr. Herrin recommended a right shoulder scope with repair of the supraspinatus and infraspinatus but needed clearance for the cervical spine due to her neck complaints. (Resp. Ex. #6 p. 12) Petitioner was seen for an IME with Dr. Li on June 21, 2023 and an IME with Dr. Nord on June 22, 2023.

On October 24, 2023, Petitioner saw her primary care physician (Dr. Steriu) with a history of uncontrolled diabetes, neuropathy, chronic bilateral shoulder pain and osteoarthritis in the bilateral hips. She had full range of motion of her extremities and there was no mention of the fall, injuries sustained in the fall or the wearing of any braces. (Resp. Ex. #10 p. 2-6)

On November 16, 2023, Dr. Graves stated his review of the cervical & thoracic MRIs demonstrated no high-grade stenosis that would explain any symptoms. (Resp. Ex. #6 p. 3-4) The cervical MRI showed only a minor bulge at C6-7. (Resp. Ex. #15 p. 3) Dr. Graves ordered a lumbar MRI to rule out any other pathology, which was the same recommendation given by IME physician Dr. Li on June 21, 2023.

On December 14, 2023, Petitioner underwent a lumbar MRI. (Resp. Ex. #15 p. 1) Dr. Li testified he reviewed the actual film of the lumbar MRI and it showed there were simply degenerative changes, nothing caused by the fall and no further treatment was needed. He stated her subjective complaints were greater than the objective findings and she was at MMI for the lumbar spine with no need for further treatment as of June 21, 2023, the date of the IME. (Resp. Ex. 8(a) p. 24-25)

Petitioner complained of four injuries in this fall for which she received treatment: (1) cervical; (2) right knee; (3) right shoulder; & (4) lumbar. Petitioner denied any issue or problem with these body parts and conditions prior to her fall. Petitioner's medical treatment history prior to the fall at Central Counties Health Center and HSHS Medical Group as outlined above contradict that claim. (Resp. Ex. #10 & #11) Prior complaints and problems included uncontrolled diabetes, neuropathy, chronic bilateral shoulder pain, bilateral wrist pain, low back pain, blurred vision, and bilateral hip osteoarthritis. (Resp. Ex. #10 & #11)

The Arbitrator finds the following for each condition of ill-being.

(1) Cervical

Petitioner was referred to Dr. Sharma for cervical pain and she stated all her pain was localized in her neck region. (Resp. Ex. #4 p. 6) She denied any radicular symptoms and had full bilateral shoulder range of motion without significant pain or discomfort. (Resp. Ex. #4 p. 6) Cervical spine x-rays showed mild degenerative changes with no acute abnormalities. (Resp. Ex. #4 p. 7) Dr. Sharma's impression of her cervical spine was normal. (Resp. Ex. #4 p. 8)

Dr. Warrington testified Petitioner complained of neck & right knee pain and pain in her back, shoulders, left foot, headaches, hips and ribs. (Resp. Ex. #12 p. 6-7) He performed a physical exam and testing and diagnosed her with a cervical disc injury, thoracic & lumbar sprain/strain and right knee sprain/strain, headaches and rib sprain/strain. He treated her with therapies and chiropractic manipulations with her neck and right knee being the primary concerns. (Resp. Ex. #12 p. 11-13) Dr. Warrington testified that the MRI of her cervical spine showed no significant bulges and severe chondromalacia of the patella in her right knee. (Resp. Ex. #12 p. 15-16) Dr. Warrington testified he did not recall her wearing a cervical collar during his treatment of her neck, back and right knee. (Resp. Ex. #12 p. 52)

On March 28, 2023, Dr. Sharma noted the cervical MRI was negative for any acute abnormalities and her symptoms were out of proportion to what he was seeing clinically and radiographically. (Resp. Ex. #4 p. 3)

On June 21, 2023, Dr. Li performed an IME and Dr. Li testified that there was no significant pathology caused by the fall and her subjective complaints were far greater than any objective findings. Dr. Li stated the cervical findings were degenerative and not caused by the fall but may have been temporarily exacerbated. (Resp. Ex. 8(a) p. 14)

Dr. Nord performed an IME on June 22, 2023 at Petitioner's request. Dr. Nord testified that she had a normal cervical MRI besides some mild disc bulging and received therapy for her neck but there was no indication of a severe problem with her neck. (Resp. Ex. #14 p. 66, 68-69)

On November 16, 2023, Petitioner saw Dr. Graves for cervical pain and Dr. Graves stated a review of the cervical & thoracic MRIs demonstrated no high-grade stenosis that would explain any symptoms and there was only a minor bulge at C6-7. (Resp. Ex. #15 p. 3-4)

Petitioner received chiropractic treatment for her cervical spine through February 16, 2023, followed by trigger point injections by Dr. Prasad on February 22nd, 24th & 27th, 2023. Dr. Warrington testified that he provided some additional chiropractic treatments between March 30, 2023 and April 19, 2023. (Resp. Ex. #12 p. 46) There was no further cervical treatment except the negative MRI of October 12, 2023 and the questionable wearing of a cervical collar, which Petitioner was wearing at time of arbitration. Dr. Warrington testified Petitioner was not wearing a cervical collar during his chiropractic treatment. On 3/28/23, Dr. Sharma stated her cervical MRI was negative/normal, her symptoms were out of proportion on what was seen and he could not explain the use of a cervical collar. (Resp. Ex. #4 p. 3)

Based on the medical records and testimony of the treating and IME physicians, Petitioner sustained a cervical strain/sprain that resolved after a course of chiropractic treatment and trigger point injections. The Arbitrator finds that any condition of ill being related to her cervical spine resolved as of April 19, 2023.

(2) Right knee

Petitioner testified that she landed on her right knee when she fell, which was consistent in the medical records. She underwent x-rays and an MRI and her treatment for the knee was ice, some therapy and a cortisone injection on April 24, 2023. Dr. Herrin testified she was not a surgical candidate for her knee and has not seen her since May 22, 2023 for her knee. (Resp. Ex. #9 p. 10-11) Dr. Herrin testified that she definitely had arthritis that might have been aggravated somewhat in the fall but it was not a significant problem related to the accident. (Resp. Ex. #9 p. 10-12) Dr. Herrin testified this was only a temporary aggravation of a prior problem. (Resp. Ex. #9 p. 13-14) Dr. Herrin testified that

viscosupplementation injections treat symptoms of osteoarthritis and any future treatment would be due to osteoarthritis. (Resp. Ex. #9 p. 29-30)

The opinions of Dr. Li were in agreement with the opinions of Dr. Herrin. Dr. Li stated the right knee findings were degenerative and not caused by the fall but may have been temporarily aggravated. (Resp. Ex. 8(a) p. 15) Dr. Li stated no further treatment was required for the right knee. (Resp. Ex. 8(a) p. 21)

Based on the medical records and testimony, Petitioner sustained a temporary aggravation of a pre-existing condition in her right knee, which resolved as of May 22, 2023. The Arbitrator finds that any condition of ill being related to her right knee resolved as of May 22, 2023.

(3) Right Shoulder

Petitioner testified as to the limited motion in her right arm/shoulder that she said was related to the fall. Petitioner claimed she had no problem with the shoulder prior to the fall, but Petitioner's prior medical records documented chronic bilateral shoulder pain with uncontrolled diabetes. Petitioner's medical records and testimony of her treating physicians also contradict Petitioner's claim and leads to the Arbitrator's finding that the current condition of ill being in Petitioner's right shoulder is not causally related to the fall.

Dr. Sharma's physical exam of December 13, 2022 showed Petitioner denied any radicular symptoms and had full bilateral shoulder range of motion without significant pain or discomfort. (Resp. Ex. #4 p. 6) There was no tenderness to palpation or muscle spasm through her upper trapezius and she had 5/5 strength in her shoulders, biceps, triceps and grip strength. (Resp. Ex. #4 p. 6)

Dr. Warrington testified he conducted a physical exam of all body parts Petitioner complained of and he testified that she had a negative shoulder impingement test and demonstrated the shoulder testing (Hawkins) he performed. Dr. Warrington showed that he raised Petitioner's arm and in moving her arm would bring it up and internally rotate it and Petitioner's documented response was negative. (Resp. Ex. #12 p. 37-38) Dr. Warrington testified there was no indication during the course of chiropractic treatment in the records from December 14, 2022 to February 16, 2023 that Petitioner could not move her right arm. (Resp. Ex. #12 p. 54-55)

Petitioner returned to Dr. Sharma on March 28, 2023 for pain located primarily in her neck. (Resp. Ex. #4 p. 2) Dr. Sharma reviewed her past medical history and stated she ambulated in a wheelchair with bilateral wrist splints, a knee brace and cervical collar, which were not present at her visit of December 13, 2022. (Resp. Ex. #4 p. 2-3) A physical exam showed upper extremities were within normal limits, and diffuse tenderness in cervical spine with pain on rotation to right & left. There was no tenderness to palpation or muscle spasms through the upper trapezius, 5/5 strength in shoulders, bicep flexion and grip strength. (Resp. Ex. #4 p. 2-3) Dr. Sharma noted the cervical MRI was negative for any acute abnormalities and was perfectly normal and her symptoms were out of proportion to what he was seeing clinically and radiographically. (Resp. Ex. #4 p. 3) Dr. Sharma could not explain why she was in a cervical collar or why she was having pain and discomfort diffusely in her entire body. (Resp. Ex. #4 p. 3)

An MRI of the right shoulder was performed on May 11, 2023 and she saw Dr. Herrin on June 1, 2023. Dr. Herrin testified that the MRI showed a large tear with retraction and atrophy and he did not think that occurred between the date of accident and the date of the MRI and that something was going on in her shoulder prior to the fall. (Resp. Ex. #9 p. 22) Dr. Herrin testified that he believed the fall may have aggravated the shoulder as it is not uncommon for a 60 year old woman to have a rotator cuff tear or pathology. (Resp. Ex. #9 p. 22-23)

Dr. Li testified there was a large right rotator cuff tear with moderate atrophy consistent with a tear that pre-existed the fall. (Resp. Ex. 8(a) p. 15) Dr. Li testified there were no deficits in the right shoulder at her visit to Dr. Sharma (12/13/22) and

the weakness and findings of rotator cuff tear on the right and her left shoulder were the same. (Resp. Ex. 8(a) p. 15-16) Dr. Li testified the right rotator cuff tear was pre-existing based on the atrophy already in the muscle. (Resp. Ex. 8(a) p. 16-17) Dr. Li testified that there were no right shoulder complaints at the visit to Dr. Sharma or the 12/14/22 visit to Dr. Warrington. (Resp. Ex. 8(a) p. 17-18)

Dr. Li testified that she needed further treatment for her right shoulder but that it was pre-existing and not related to the fall. (Resp. Ex. 8(a) p. 19-20) Dr. Li testified that the amount of pain and limitation of function were way beyond what would be expected based on what was known about the pathology. (Resp. Ex. 8(a) p. 20-21) Dr. Li testified Petitioner clearly had shoulder problems prior to the fall as there was documented neuropathy chronic bilateral shoulder pain, and his opinion remained that the tear pre-dated the fall. (Resp. Ex. 8(a) p. 26-27) Dr. Li testified there were no prior records or notes indicating an inability to move the arm and the records before and after the fall did not document any significant difference in pain. (Resp. Ex. 8(a) p. 27-28)

Dr. Li testified that rotator cuff pathology could be age related and degenerative and result in eventual tearing. (Resp. Ex. 8(a) p. 28) Dr. Li testified that uncontrolled diabetes affects everything negatively including a higher incidence of degenerative tearing and decreased healing and a person would be predisposed to frozen shoulders. (Resp. Ex. 8(a) p. 29-30)

The Arbitrator finds the testimony of orthopedic surgeons Dr. Herrin and Dr. Li to be credible and persuasive as to the right rotator cuff tear pre-dating the accident and gives their testimony greater weight.

The testimony of IME physician Dr. Nord that the rotator cuff tear was caused by the fall assumed that Petitioner could move her arm before the fall and could not after, but that assumption is not supported and contradicted by the medical evidence and physical exams and testing of Dr. Sharma and Dr. Warrington. It is also contrary to the findings of her primary care physician (Dr. Steriu) who documented full range of motion of her extremities during the exam of October 24, 2023. (Resp. Ex. #10 p. 2-6)

Based on Petitioner's medical records & treatment history, the testimony of Dr. Herrin and Dr. Li and the exams of Dr. Sharma, Dr. Warrington and Dr. Steriu, the Arbitrator finds that Petitioner's condition of ill-being for her right shoulder is not causally related to the accident of October 26, 2022 and is denied.

(4) Lumbar

Dr. Li stated there was a contusion or strain of the lumbar based on the mechanism and recommended an MRI to determine further treatment needed or necessary. On December 14, 2023, Petitioner underwent a lumbar MRI. (Resp. Ex. #15 p. 1) Dr. Li testified he reviewed the actual film of the lumbar MRI and it showed there were simply degenerative changes, nothing caused by the fall and no further treatment was needed. He stated her subjective complaints were greater than the objective findings and she was at MMI for the lumbar spine with no need for further treatment as of June 21, 2023, the date of the IME. (Resp. Ex. 8(a) p. 24-25)

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Based on the medical records and testimony of the treating and IME physicians, Petitioner sustained a lumbar strain/sprain that resolved after a course of chiropractic treatment and trigger point injections. The Arbitrator finds that any condition of ill being related to her lumbar spine resolved as of April 19, 2023.

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 adopts his findings as to (C) Accident and (F) Causation as his findings in (J) Medical. After the fall, Petitioner first sought medical care on November 4, 2022. After visits to Occupational Health and Dr. Sharm, Petitioner

underwent chiropractic treatment for her neck, back and right knee with Dr. Warrington through February 16, 2023, after which she received trigger point injections for cervical and lumbar pain with Dr. Prasad. She saw Dr. Herrin for her right knee on 4/24/23 and for her right shoulder on 6/1/23.

The medical testimony and evidence showed Petitioner sustained sprain/strain injuries to her cervical and lumbar spine and temporary aggravations of pre-existing conditions in her right knee and right shoulder.

The medical testimony and evidence showed the condition of ill being in her right shoulder was not causally related to the fall and the visit to Dr. Herrin of June 1, 2023 is denied.

Causally related treatment for her cervical and lumbar spine ended as of her last visit to Dr. Warrington on February 16, 2023 and with Dr. Prasad on February 27, 2023. Dr. Herrin testified that any aggravation to her right knee had resolved as of the visit of May 22, 2023. There was no further treatment for the cervical spine after the visit to Dr. Graves on May 23, 2023.

The Arbitrator finds that the medical services up to May 23, 2023 were reasonable and necessary with the exception of the right shoulder MRI of May 11, 2023, which was not causally related to the fall. Respondent shall pay the reasonable charges related to the cervical, lumbar and right knee through May 23, 2023 pursuant to the Fee Schedule with credit for any medical payments made.

K. What temporary benefits are in dispute?

Petitioner testified she was a permanent substitute teacher and she worked through the school year on a year-to-year basis and is assigned a certain classroom. (Tr. 85) Ms. Schurman testified that a permanent substitute teacher is employed on an annual basis and hired for that school year and released at the end of the school year. (Tr. 114) Ms. Schurman testified that a permanent substitute must re-apply each year to be hired for the next school year. (Tr. 114)

Petitioner continued to work after her fall and during her medical and chiropractic treatment. Petitioner's symptoms were improving and Dr. Warrington decided to take her off work to let the chiropractic treatment and healing work. (Resp. Ex. #12 p. 43) Dr. Warrington testified she was off work as of February 1, 2023 and he continued with the same treatment plan. (Resp. Ex. #12 p. 44) He testified that he took her off another 4 weeks on February 9, 2023 until March 9, 2023 as being off work helped her. (Resp. Ex. #12 p. 44) Dr. Warrington testified that she was taken off work to promote healing and let the chiropractic treatment work and an additional slip was given on March 27, 2023 to be off work until May 22, 2023. (Resp. Ex. #12 p. 48-50) There were no further work notes given or presented.

The medical testimony and evidence showed Petitioner was kept off work through May 22, 2023 by Dr. Warrington. This date coincided with the May 22, 2023 visit to Dr. Herrin for the right knee at which time causally related treatment for any aggravation ended. Petitioner's employment as a permanent substitute ended at the end of the school year (June 2, 2023) and Petitioner was required to reapply for the next school year. There was no evidence or testimony presented that Petitioner reapplied for a permanent substitute position and no medical documentation submitted that restricted Petitioner from work.

The Arbitrator finds Petitioner was temporarily disabled from February 1, 2023 through May 22, 2023. Based on the finding that Petitioner's conditions of ill being causally related to the fall resolved as of May 22, 2023, Petitioner's claim for TTD benefits after May 22, 2023 is denied.

L. Nature & extent

In addressing an award of permanent partial disability, the Arbitrator must address the factors set forth in Section 8.1(b) of the Act:

1. **AMA Impairment evaluation**:

No AMA Impairment evaluation was submitted so this factor is given no weight.

2. **Occupation of the injured employee:**

Petitioner is a permanent substitute teacher and her duties include sitting and standing while teaching and observing students in classrooms. Petitioner was employed on a year-to-year basis and did not reapply for her position. There was no medical testimony or evidence limiting her ability to sit or stand. Therefore, little weight is given to this factor.

3. **Age of the employee at time of injury:**

Petitioner is currently 63 years old and there was no testimony or evidence presented that her age would adversely impact her reapplication or employment. Therefore, little weight is given to this factor.

4. **Employee's future earning capacity:**

Petitioner did not reapply for her position as a permanent substitute which is required as the position is year-to-year. Petitioner has two college degrees and did not present any testimony, evidence or documentation that the fall and injuries had any adverse effect on Petitioner's future earning capacity with Respondent or any other potential employer. Therefore, little weight is given this factor.

5. **Evidence of disability corroborated by the medical records:**

Petitioner testified that she was having ongoing cervical, lumbar, right shoulder and right knee pain at the time of arbitration. but further testified that she has not been seen or returned for any medical treatment for any condition since December 14, 2023. There is evidence of disability corroborated by the treatment medical records and the Petitioner's testimony of having ongoing pain causally related to her fall on October 26, 2022. Any injury to the right shoulder is not causally related. Petitioner has not had any right shoulder treatment since her visit to Dr. Herrin on June 1, 2023 and has declined to have any further treatment for that condition.

Based upon the medical evidence and the above factor analysis, the Arbitrator finds that Petitioner is entitled to a permanent partial disability award of 10% loss of person as a whole for the cervical and lumbar sprain/strain injuries and 12% loss of use of the right leg for the temporary aggravation of her right knee.

N. Is Respondent due any credit?

Respondent paid TTD benefits in the amount of $12,291.15 and medical benefits in the amount of $15,416.08.

The Arbitrator finds Respondent is entitled to credit for the amounts paid.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC004127
Case Name	Israel Nieves v. Evans Electric
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0211
Number of Pages of Decision	24
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Randall Sladek
Respondent Attorney	Adam Maciorowski

DATE FILED: 5/13/2025

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Israel Nieves,

Petitioner,

vs. NO: 21 WC 4127

Evans Electric,

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 7, 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.

May 13, 2025
o: 5/7/25
CAH/rm
052

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC004127
Case Name	Israel Nieves v. Evans Electric
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Randall Sladek
Respondent Attorney	Adam Maciorowski

DATE FILED: 11/7/2024

/s/William McLaughlin, Arbitrator

Signature

INTEREST RATE WEEK OF NOVEMBER 6 2024 4.26%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Israel Nieves
Employee/Petitioner

v.

Evans Electric
Employer/Respondent

Case # **21** WC **04127**

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 **September 11, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **July 30, 2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**124,802.89**; the average weekly wage was $**2400.05**.

On the date of accident, Petitioner was **48** 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 $**14,525.94** 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 Respondent shall authorize and pay pursuant to Sec 8 (a) and 8.2 of the act for the surgeries for a total hip-replacements, for both hips, as recommended by Dr. Domb, and any other reasonable and necessary medical services necessitated by said surgeries.

The Arbitrator also Orders prospective care and treatment to Petitioner's shoulders including injections per the orders of Dr. Domb.

The Arbitrator further finds that the petitioner's condition of ill being in his bilateral hips and the need for treatment including surgery is causally related to the July 30, 2020 accident. The Arbitrator further finds that petitioner's condition of ill being in his bilateral shoulders and the need for treatment is causally related to the July 30, 2020, electrocution accident. Finally, the Arbitrator finds that Petitioner's condition of ill being in the neck and lower back is related to the July 30, 2020, electrocution accident. Respondent is Ordered to pay for all reasonably related medical treatment for these conditions.

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 7 2024

Signature of Arbitrator

ICArbDec19(b)

Israel Nieves Petitioner v. Evans Electric, No. 21 WC 004127

Findings of Fact

The above-referenced matter proceeded to trial before Arbitrator William McLaughlin on September 11, 2024.

Petitioner, Israel Nieves, testified that he was employed as electrician and has been working for Respondent, Evans Electric, since August 2019 (Tr. 7-8). Prior to working for the Respondent, Petitioner worked for a company called Meade, beginning in May 2018. (Tr. 32) While with Meade Petitioner received training on vault work and regularly worked in ComEd vaults. (Tr. 33) Petitioner testified that he was assigned to work for the Respondent through his union (Tr. 8) Petitioner testified that Meade informed him that he was to start working for Respondent. (Tr. 33) He confirmed that he had no other employment since he started working with the Respondent. (Tr. pg. 8)

On July 30, 2020, the date he was injured, Petitioner was employed as a foreman. (Tr. 9) As a foreman, Petitioner received orders from a general foreman, who gets instructions from a project manager, who is instructed by ComEd. (Tr. 10) On the day of his injury, Petitioner was working at a ComEd vault, which he testified was his first day at that specific location. (Tr. 34) His work involved making a ComEd vault safe for other contractors. (Tr 34) He started his day by reporting to the Meade yard, where Meade supervisors determined work assignments. (Tr. 39) Petitioner testified the vault team consisted of four people, including a general foreman from Respondent and two journeymen from Meade. Mike McGuire, the Respondent's general foreman, had previously worked for Meade like Petitioner. A project manager from Meade assigned the team's tasks. (Tr. 37) Petitioner testified that the truck he used for work was kept parked on the Meade lot. (Tr. 34) Petitioner's personal tools, as well as tools owned by Respondent, were kept in the vehicle and used on job sites. (Tr. 34) Petitioner testified that he wore clothing with Respondent's name, though he also had Meade shirts. (Tr. 36) Petitioner also confirmed that while vault work was always done by Meade for ComEd, any overtime was determined by ComEd. (Tr. 40) Petitioner received W-2 forms from Respondent for the years 2019 through 2022 and he was on Respondents payroll in July 2020. (Tr 65) Petitioner further testified that Respondent paid taxes for him during that period. (Tr. 66) Petitioner testified to filing an employment application and submitting it to Respondent approximately one week prior to starting. (Tr. pg. 67) Petitioner

testified that he receives a different pay rate for night work, though this is often mislabeled as "overtime." He explained that he is not able to refuse these assignments, whether they occur at night or on weekends. (Tr. 29-31)

On July 30, 2020, the date of injury, Petitioner was assigned to enter a ComEd vault in Oak Park and insulate a bus. He described this task as a process involving the use of rubber matting to insulate live electricity in order to protect other tradesmen without electrical backgrounds. (Tr. 8- 9) During his inspection of the vault, Petitioner testified he made accidental contact with live electricity. (Tr.10) The electricity entered through his left elbow and exited his lower back. (Tr.12) Paralyzed and unable to breathe or move, Petitioner described being in extreme pain before he lost consciousness. (Tr. 12) He was eventually carried out of the vault by two colleagues, and collapsed upon reaching street level, where he awaited emergency services. He was taken to Loyola in Maywood, where he was admitted to the emergency department and treated for entrance and exit wounds on his left elbow and lower back. (Tr. 13-14)

Following the injury, Petitioner was off work until October 2020. (Tr. 21) Petitioner returned to work in October 2020, as a foreman. (Tr. 21) He testified he was placed on light duty work restrictions by Dr. Evans to lift no more than 30 pounds due to his shoulder injury. (Tr. 21) He returned to work full-time but not at full duty, as he was unable to perform the physical tasks expected of him due to the persistent pain in his hips, shoulders, and back. (Tr. 26) Petitioner testified that upon his return, he continued to do vault work for ComEd with Respondent's general foreman, Mike McGuire, who received the assignments from Meade. (Tr. 43) Petitioner testified he had gone through annual training with Meade in 2021, related to vault work. (Tr. 69) Petitioner continued to work in ComEd vaults until August 1, 2023. At which time Comed released him from their system, (Tr. 44) Since August 1, 2023, Petitioner has been doing commercial electrical work exclusively for Respondent. He currently holds the title of journeyman, earns union wages for his work, but no longer performs heavy lifting or manual labor. (Tr. 45-46)

Testimony of John Martin

Mr. Martin testified that he has been employed by Respondent since 2011 and his current position is Vice President. His responsibilities include overseeing the operations of the company. testified to knowing Petitioner for quite some time, both before and during Petitioner's employment with Respondent. He testified that Petitioner, had worked for Meade before being employed by Respondent in 2019. (Tr..71-73)

Mr. Martin testified that on the date of the accident, both Mike McGuire, the general foreman, and Petitioner were assigned to work with Meade, and that Meade had the contract with Comed and controlled what Petitioner did while working on the project at ComEd. (Tr. 73) Mr. Martin testified that Meade provided the

truck that Petitioner used, and while Petitioner primarily used his own hand tools, certain equipment like the generator and other job specific tools used on the vault were provided by Meade. (Tr. 74)

Mr. Martin stated that Meade would set the hours and determined overtime, as directed by ComEd, and that Petitioner and Mike McGuire took their instructions from Meade. (Tr. 75-76)

Mr. Martin confirmed that Petitioner reported to Mike McGuire, who was an employee of Respondent. Mike McGuire, in turn, received his orders from Meade, and Meade was receiving instructions from ComEd. (Tr. 78-79). Mr. Martin testified that Meade could not directly fire Petitioner, however they could inform Respondent that they did not want him working on that job. (Tr. pg. 76) Mr. Martin confirmed that Respondent paid Petitioner's salary, but Meade would reimburse Respondent for the hours worked and vehicle usage. (Tr. 76). Mr. Martin testified that Petitioner was employed by Respondent and that Respondent paid his salary and taxes. (Tr. 77)

Petitioner's Medical Treatment

Pre-Accident Treatment

Respondents Exhibit 2, are Medical Records from Dr. Houlihan and Advocate Medical Group which indicated that Petitioner presented to Advocate Medical Group on September 26, 2027, with complaints of back pain A physical examination showed no abnormalities. He was advised to use heat and stretching exercises for management osteopathic manipulative therapy. The injury was managed conservatively, and although radiographic follow-ups were conducted, no surgical intervention was ever required. (RX2 pg. 353-354).

On May 25, 2011, the Petitioner presented to Dr. Houlihan with back complaints that he stated he had been experiencing back pain for 1-2 years. He reported the pain worsened with leaning forward, standing up from a seated position, and described it as a sharp pain in his left buttock that radiated down his left leg. (RX2 pg. 301) He denied any history of injury or trauma; though the report referenced notes from a 2010 visit to Castle Orthopedics where an MRI had shown a small left paracentral disc protrusion affecting the left S1 nerve. (RX2 pg. 301) A lumbar epidural steroid injection was offered, but the Petitioner chose conservative treatment. (RX2 pg. 301) Petitioner returned for multiple follow ups over the next month, with similar complaints, Petitioner managed pain with Vicodin and a conservative treatment plan. (RX2 pg. 293, 296)

On December 23, 2015, while lifting a generator at work with a coworker, the Petitioner felt a "pop" in his left arm, resulting in a work-related injury to his left arm and shoulder. (RX2 pg. 130) He underwent surgery to repair a torn bicep tendon in his left arm on January 4, 2016. (RX2 pg. 130) He then underwent a left shoulder arthroscopy, rotator cuff repair, subacromial decompression, distal clavicle excision on July 6, 2016. (RX2 pg. 80) Following the surgery, Petitioner made repeated complaints to Dr. Houlahan of chronic left

shoulder pain. (RX2 pg. 80, 129) Petitioner testified he regularly saw his primary care provider, Dr. Houlahan, following this accident. (Tr. 56-57)

Post-Accident Treatment

Immediately following the current accident on July 30 2020, He was taken to the Loyola Hospital Emergency Department.. (Tr. 13)

Petitioner was admitted to Loyola Hospital Emergency Department and presented with 1% partial thickness electrical burn on his left flank, and entrance and exit wounds on his left elbow and lower back. (RX1 pg. 49) Petitioner experienced a brief loss of consciousness. Initially, Petitioner was unable to move his left arm but gradually regained motion; he complained of left shoulder soreness and left flank pain but denied any other issues including any right shoulder pain. (RX1 pg. 49) An EKG was conducted without abnormal changes and the traumatic workup was negative. (RX1 pg. 61) Petitioner was placed in observation overnight to monitor for any possible cardiac arrhythmias. (RX1 pg. 61) A CT scan of the head was normal. (RX1 pg. 90) X-rays were taken of petitioner's left forearm, humerus, and elbow and the findings included: 1. No acute fracture of malalignment and 2. Postsurgical changes at the proximal long head biceps tendon and distal biceps tendon. (RX1 pg. 87-89) Petitioner was discharged from the emergency department to home with wound care and pain management medications. (RX1 pg. 53) Petitioner was prescribed Bacitracin ointment, ibuprofen, levothyroxine, and oxycodone. (RX1 pg. 81-82)

On July 31, 2020, the Petitioner attended an occupational therapy session, where prior shoulder injuries and surgeries were noted. On August 7, 2020, the Petitioner visited the Loyola Burn Clinic and was seen by Paula Petersen, APN. Petitioner was taking ibuprofen and oxycodone for pain. He reported itching, pulsating in the left temple, and twitching in the left arm up to the shoulder. The Petitioner was advised to stop using Bacitracin and was prescribed Gabapentin. He was instructed to begin physical therapy and to remain off work.

On August 17, 2020, the Petitioner returned to the Burn Clinic and was seen by Dr. Yuk Ming Liu. Petitioner's left arm and flank had improved since the previous visit, though he continued to experience burning, jabbing, and twitching sensations in his left arm, chest, and flank. Concerned that his chest pain might be heart-related, the Petitioner requested a cardiology referral. He also reported pain in his right shoulder, where impact occurred during the accident, as well as headaches in the left temple. Additionally, the Petitioner mentioned poor sleep and increased anxiety, as compared to before the accident. Upon examination, both of the Petitioner's burn wounds had decreased in size but still showed surrounding erythema. He was prescribed physical therapy for both shoulders and referred to cardiology and psychology. X-rays of the right shoulder revealed acromioclavicular joint osteoarthritis with no acute fractures. An EKG showed a normal sinus rhythm

with nonspecific T-wave abnormalities, but no significant changes from the study conducted on July 30, 2020. The Petitioner was given a work status note stating he was unable to return to work.

On August 19, 2020, Petitioner presented to Loyola's Cardiology Outpatient Center and was seen by Dr. Caroline Ball. Petitioner continued to complain of chest pain and noted that increased paid since weaning off his pain medications. Petitioner described his chest pain as sharp or stabbing, and occurring every other day, primarily at rest, for about 5 minutes at a time. Petitioner stated that the pain occasionally radiated to his arm. Petitioner also reported rib tightness and left temple pain since the accident. Petitioner was prescribed an echocardiogram to assess left ventricular ejection fraction post-electric injury, and a treadmill stress test.

On August 24, 2020, the Petitioner visited ATI for an initial physical therapy evaluation. The records from ATI were submitted as evidence in Petitioner's Exhibit 7. The Petitioner continued with physical therapy three times a week until January 15, 2021, to address conditions including cervicalgia, lumbar spondylosis, bilateral shoulder issues, and lateral epicondylitis.

On August 31, 2020, Petitioner to the Loyola Burn Clinic. Petitioner reported continued sleep difficulty due to hip pain and twitching to left arm up to his shoulder. Petitioner was instructed to remain off of work. An X-ray of Petitioner's left hip showed left hip osteoarthritis.

On September 8, 2020, Petitioner was seen by Grace Zintak, PA on Loyola's Orthopedics Unit. Petitioner was complaining of neck, back, bilateral shoulder, and bilateral hip pain. Petitioner also reported feeling weak in his arms and legs, and that he had numbness and tingling intermittently in his left upper extremity. It was noted that Petitioner had left distal and proximal biceps shoulder surgeries in 2016. Upon examination, it was noted that Petitioner had a bruise on his right scapula and a second-degree burn well healing on his left flank and left elbow. Petitioner had mild tenderness to palpation over his posterior cervical spinous muscle and bilateral sacroiliac joints. Petitioner also had pain with range of motion of both of his hips radiating into his groin. An x-ray taken of the lumbar spine showed normal lumbar spine examination without dynamic instability and an x-ray taken of the cervical spine showed no acute fracture of the cervical spine as well as low-grade uncovertebral osteoarthritis and 2mm retrolisthesis C3 on C4 with low grade dynamic instability. An x-ray of the hips showed bilateral hip osteoarthritis with no acute fracture. Physical therapy was ordered for Petitioner's neck, low back, and hips.

On September 15, 2020, Petitioner had an echocardiogram which showed normal global left ventricular ejection fraction. Cardiac structures should not be visualized adequately due to Petitioner's habitus or the conditions at the time of the study. An exercise stress test performed the same day was stopped due to Dyspnea. On September 17, 2020, Petitioner returned to the Loyola Burn Clinic. Petitioner complained of pain to the back of the neck with weakness and decreased range of motion and left hip pain with walking. He was still reporting

sleeping troubles due to shoulder pain, and twitching to the left arm. He was instructed to remain off of work and to follow up in 2 weeks. He returned to the burn clinic on October 2, 2020. Petitioner complained of pain to back of the neck with weakness and decreased range of motion and left hip pain with walking. Petitioner wanted to return to work light duty. Upon examination, Petitioner had deep thickness burn to left flank, which was healed, left elbow with deep burn healed and hyperpigmented, and decreased range of motion of both arms. Petitioner was instructed he could return to work in a supervising role only.

On October 6, 2020, Petitioner followed up with Loyola's Orthopedics team and was seen by Grace Zintak, PA for his neck, back, hip, and shoulder pain. Petitioner stated he was making significant improvement with physical therapy and that his neck and low back pain were almost completely resolved. Petitioner reported that he continued to have bilateral shoulder pain but felt like it was decreasing. His complaints of hip pain were also lessening. Upon examination, Petitioner had some pain with range of motion of the bilateral shoulders as well as his hips, with his hip pain radiating to his groin. It was recommended that Petitioner continue with physical therapy and possible referral to hip and shoulder specialists if he did not improve.

On October 23, 2020, Petitioner returned to for an orthopedics appointment to follow up on his neck, back, hip, and shoulder pain. Petitioner stated that on October 14, 2020, at physical therapy, his shoulder pain, low back, and hip pain were aggravated from lifting weights. Petitioner stated his neck pain resolved. Petitioner reported decreased range of motion of both shoulders, increased soreness, and pain that radiates into his left upper arm. Petitioner's back pain radiated into his buttocks, and he reported right sided groin pain. It was noted that Petitioner could benefit from any injections and possibly surgical intervention. Petitioner received referrals for shoulder and hip specialists, and for therapy at the Chicago Electrical Trauma Rehabilitation Institute. An MRI of the lumbar spine was also ordered.

On October 27, 2020, Petitioner presented to Trauma Surgical Critical Care Burn Unit and was seen by Dr. Arthur Sanford. Petitioner complained of pain to the back of the neck with weakness and decreased range of motion and left hip pain. Decreased range of motion to his bilateral arms was also noted. Petitioner's burns were healed. Petitioner's gabapentin was increased to 900mg. He was instructed he could return to work, supervising only, once he graduated from physical therapy.

On November 16, 2020, the petitioner underwent an MRI of the lumbar spine. The largest and most inferior disc space was identified as L5-S1, which suggested a transitional lumbosacral junction. The MRI revealed severe left neural foraminal narrowing at L5-S1, with otherwise mild degenerative changes observed.

On November 27, 2020, Petitioner returned to see Grace Zintak, PA on the Loyola Orthopedics team for a follow up regarding his neck, back, hip, and shoulder pain. Petitioner reported that his neck pain had returned. Petitioner also continued to have bilateral shoulder pain, worse with overhead movement and worse on his right

side. Petitioner's back, hip and groin pain were unchanged. It was recommended that Petitioner see a shoulder and hip specialist for his pain. Injections were also being considered to manage his back pain.

On December 7, 2020, Petitioner presented to Dr. Nicholas Michael Brown at Loyola for right hip and groin pain. Upon examination it was noted that Petitioner ambulated with an antalgic gait and that both hips were stiff and painful, more on the right than the left. The doctor informed Petitioner that the electrocution accident would not necessarily have caused arthritis in his hips but could have exacerbated the pain of his existing arthritis. Dr. Brown suggested continuing with physical therapy and in the future considering injections or joint replacement if other conservative treatments failed.

On December 10, 2020, Petitioner was seen by Dr. Douglas Evans, an orthopedic surgeon with Loyola, with complaints of bilateral shoulder injury. Petitioner described pain on the left side in a multifocal pattern from his forearm to his posterior arm, posterior shoulder, chest and pectoral region. On his right side, Petitioner's pain was primarily over the lateral aspect of his shoulder. Upon examination, Petitioner has a positive Hawkins impingement on the right side and a negative Hawkins impingement on the left side. The impression gathered was right shoulder impingement with possible rotator cuff injury and left shoulder multifocal pain. Dr. Evans recommended that Petitioner continue with physical therapy for both upper extremities and an MRI of the right shoulder. Dr. Evans also recommended work restrictions of no work over the level of the shoulder and no lifting greater than 30lbs. Dr. Evans noted that both shoulders appear to be related to the work-related incident.

On December 28, 2020, Petitioner got an MRI of his right shoulder which gave the impression of tendinosis and low-grade partial-thickness tearing of the supraspinatus and infraspinatus tendons, no full-thickness rotator cuff tear, superior labral tear-fraying, trace glenohumeral joint effusion, and minimal subacromial subdeltoid bursitis.

On January 18, 2021, Petitioner returned to Dr. Brown. Petitioner's chief complaint was bilateral hip pain. Petitioner stated that the pain was affecting all aspects of his life and his mental health, and he was interested in surgery. Upon examination it was noted that Petitioner ambulated with a significantly antalgic gait. Petitioner decided to proceed with bilateral arthroplasty. Petitioner was provided with a work note which stated that he is able to return to work with restrictions: supervisory only, no use of tools or lifting greater than 35lbs.

On January 21, 2021, Petitioner returned to see Dr. Evans at Loyola Orthopedics for a follow up of his shoulders. Petitioner reported pain primarily over the posterior aspect of his right shoulder, unchanged from the last visit. Petitioner's diagnosis was a right shoulder impingement with rotator cuff tendinosis versus partial-thickness tear and superior labral tear, as well as left shoulder multifocal pain. Petitioner was recommended to continue with physical therapy, as well as a subacromial injection in the right shoulder. Petitioner received an

injection in the subacromial space with 10g of Kenalog. The doctor suggested that if he still had difficulty with his shoulder in 6 weeks, he may have to consider an arthroscopic evaluation with subacromial decompression and biceps tenodesis. Petitioner was provided with a return to work note with the same 30lbs. lifting restriction and no overhead work.

On March 4, 2021, Petitioner returned to Dr. Evans for a follow up of his right shoulder. Petitioner continued to have pain but noted some improvement with physical therapy and the corticosteroid injection. Petitioner demonstrated full forward flexion and abduction without shrugging during examination, but a positive Hawkins impingement sign and tenderness anteriorly over his shoulder were also observed. Dr. Evans recommended that Petitioner finish out his physical therapy to see if it can improve his pain and symptoms to avoid surgical treatment.

On July 11, 2021, the petitioner visited Dr. Houlahan for a routine follow-up on his various medical conditions and a full physical exam. (PX2 pgs. 529) The doctor recorded that he continued to experience chronic left shoulder pain from the work-related injury on December 23, 2015. (PX2 pgs. 529) He also noted the multiple procedures Petitioner had undergone, including the left bicep tendon repair on January 4, 2016, and a left shoulder arthroscopy, rotator cuff repair, subacromial decompression, and distal clavicle excision on July 6, 2016. (PX2 pgs. 529) Dr. Houlahan recorded that Petitioner had not yet returned to full duty from his most recent work-related injury. (PX2 pgs. 529) There was no report of right shoulder or hip pain.

On October 5, 2021, the petitioner returned to Dr. Houlahan with complaints of extreme fatigue and possible mild depression. (PX2 pgs. 529) Again, Dr. Houlahan noted the ongoing chronic left shoulder pain from the December 2015 work injury, along with the previous surgeries. (PX2 pgs. 529)

Deposition of Dr. Benjamin G. Domb

Dr. Domb testified to being Board Certified in Orthopedic Surgery and Sports Medicine and received his medical degree from John Hopkins. (PX4 pgs. 8, 10)

On June 9, 2022, Petitioner was seen at the American Hip Institute by Dr. Domb. Petitioner complained of bilateral hip and bilateral shoulder pain. Petitioner's pain was localized to the anterior groin and anterior and posterior shoulder which he described as constant and sharp. X-ray's were performed and reviewed by Dr. Domb. Petitioner was diagnosed with severe osteoarthritis in both hips and a likely labral tear of the left shoulder and a likely slap tear and posterior labral tear of the right shoulder. Dr. Domb stated that Petitioner would be a good candidate for right posterior Birmingham Hip Resurfacing with Femoroplasty, Capsulorrhaphy, and possible conversion to total hip arthroplasty. Petitioner received a work status which stated

he may return to work with restrictions: no lifting greater than 5-10 pounds, no kneeling, and no pushing or pulling reviewed those records. (PX4 pgs. 23, 25)

On August 11, 2022, Petitioner was seen by Dr. David Weiss at Shirley Ryan Ability Labs. (PX3 pgs. 17) He was referred for neck, back, bilateral hip, and shoulder pain following the electrical injury. He reported persistent neck, back, bilateral hip, and shoulder pain, more severe on the left side. He described the pain in his hips and shoulders as sharp, with a burning sensation, relieved by massage but worsened by prolonged sitting or standing. He also reported paresthesias on his left chest wall and shoulders. Assessment showed full range of motion and normal joint stability in all extremities, normal strength in all myotomes, symmetric reflexes, and trigger points in the left pectoralis minor and major and left quad lumborum. (PX3 pgs. 18) Petitioner had full flexibility of cervical paraspinal muscles but lacked 25% flexibility in lumbosacral lateral flexors and 20 degrees in hamstrings, with tight hip adductors and piriformis muscles. A positive Ober's test was noted, with normal strength in serratus anterior, rhomboids, lower trapezius, hip extensors, and hip abductors, though the left hip abductor showed a slightly abnormal firing pattern. Dr. Weiss recommended daily use of a deep tissue massager, orthotics for hyperpronation correction, physical therapy and home exercise program for inflexibility, as well as Voltaren gel and ice packs daily. (PX3 pgs. 18)

On August 18, 2022, Petitioner returned to Dr. Domb for bilateral shoulder and hip pain. Dr. Domb testified that this was the last time he had seen Petitioner. (PX4 pgs. 28) Petitioner described his shoulder pain as constant and sharp. Dr. Domb testified that he examined the shoulders on August 18, 2022, and had MRIs of the left shoulder and right shoulder. (PX4 pgs. 16) The MRIs of the left shoulder showed a partial thickness tear of the supraspinatus, and the right shoulder showed fraying of the supraspinatus. (PX4 pgs. 17) Dr. Domb testified that he believed the shoulder injuries were causally related to the work injury. (PX4 pgs. 18) He testified to recommending cortisone injections and physical therapy. (PX4 pgs. 17-18) Dr. Domb reviewed the MRI’s of the left shoulder and right shoulder taken the week before. Petitioner received injections into both subacromial joints. Petitioner was prescribed physical therapy and instructed to follow up in 8 weeks.

Independent Medical Examinations and Deposition of DR. Wolin.

On May 4, 2021, the petitioner was evaluated by Dr. Preston Wolin for an Independent Medical Examination; Dr. Wolin’s Report and subsequent addendums was entered into evidence as Respondent’s Exhibit 3 and the deposition of Dr. Wolin was entered into evidence as Respondent’s Exhibit 4. Dr. Wolin testified that he is a board-certified orthopedic surgeon, who received his medical degree from University of Illinois and did a residency with Northwestern. (RX4 pg. 7) He testified that he is a practicing surgeon at Weiss

Memorial Hospital. (RX4 pg. 8) He testified that his area of focus with regards to treating patients is shoulders, elbows, knees, and ankles. (RX4 pg. 9)

On the date of evaluation, Petitioner reported bilateral shoulder pain, with the right shoulder being worse than the left, and pain when performing activities away from the body. (RX3 pg. 4) The petitioner reported osteoarthritis in both hips, with the left hip being more affected than the right, and increased pain when walking. (RX3 pg. 4) Upon examination, there was tenderness in the subacromial space and biceps groove on the right side. (RX3 pg. 5) The doctor testified that Petitioner's diagnosis upon examination was a partial thickness tear of the rotator cuff of the right shoulder; left shoulder pain, etiology uncertain; osteoarthritis of the left hip; and right hip pain, etiology uncertain. (RX4 pg. 23)

Dr. Wolin testified that he believed the Petitioner was at MMI for his left shoulder and his right hip at the time of the evaluation. (RX4 pg. 25) After reviewing the MRI scan of petitioner's right shoulder taken December 26, 2020, showing a small shallow, partial thickness rotator cuff tear with fraying of the superior labrum, Dr. Wolin testified that he was unable to say whether the condition was causally connected to the work accident, or that the Petitioner required any further work restrictions. (RX4 pg. 26) He testified that the fraying visible on the MRI is a condition that develops gradually over time, and he found no evidence of an acute injury to the right shoulder. (RX4 pg. 31-32) He also testified that he believed the right shoulder was also at MMI. (RX4 pg. 34)

Dr. Wolin was unable to find a causal connection to the work injury for the Petitioner's condition of his hips. (RX4 pg. 34) He testified that he was at MMI right hip. (RX4 pg. 35) For the left hip, he recommended arthroplasty. (RX4 pg. 35) He testified that after reviewing the diagnostic studies to the left hip, he did not see anything that would indicate an acute injury. (RX4 pg. 36) He testified that he was unable to give an opinion on whether the work injury aggravated or accelerated any of the petitioner's shoulder or hip conditions. (RX4 pg. 39) Dr. Wolin testified that he recommended a 20lbs. weightlifting restriction for the right shoulder, and no climbing or working on uneven surfaces for the left hip. (RX4 pg. 24)

On September 9, 2022, Dr. Wolin reviewed records from Dr. Domb dated August 18, 2022. Dr. Wolin stated he was still unable to state whether the condition of either shoulder is related to an alleged work injury in 2020. (RX3 pg. 8) Dr. Wolin stated he would like to see the MRI of August 2022 before commenting further. (RX3 pg. 8)

On August 9, 2023, after reviewing records of Petitioner's visits to Dr. Domb concerning hip and shoulder pain, Dr. Wolin disagrees with Dr. Domb's conclusions. (RX3 pg. 14) He argues that there is insufficient data to establish causality, or treatment needs for the shoulder conditions. (RX3 pg. 14-15) He points out that the left shoulder could have had a pre-existing partial rotator cuff tear, as indicated by past

surgery, and that Dr. Domb did not account for this. (RX3 pg. 14-15) Similarly, the MRI of the right shoulder shows fraying, but there is no clear evidence linking it to the injury or confirming it as symptomatic. (RX3 pg. 14-15).

Conclusions of Law

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 testimony. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission holds that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It's the function of the Commission to judge credibility of witnesses and resolve conflicts in medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665 (2009).

Expert opinions must be supported by facts and are only as valid as the facts underlying them. *Gross v Illinois Workers' Compensation Commission, 2011 IL App (4th) 100615WC*. 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 the witness' testimony. *O'Dette v. Industrial Commission* (1980) 79 Ill.2d 249, 253, 403 N.E.2d 221, 223; *Hosteny v Workers' Compensation Commission* (2009) 397 Ill.App. 3d 665, 674.

The Arbitrator finds the testimony of the Petitioner to be credible and consistent with medical records and history.

(B) In support of the Arbitrator's decision regarding whether Petitioner and Respondent were operating under the Illinois Workers' Compensation or Occupational Diseases Act and their relationship was one of employee and employer, the Arbitrator finds as follows:

Whether an employment relationship exists is a threshold question in a workers' compensation claim. *Keating v. 68th & Paxton, LLC*, 401 Ill. App. 3d 456, 467 (2010) Absent such a relationship, there can be no liability under the Act. *Roberson v. Industrial Commission*, 225 Ill. 2d 159 (2007) Factors that help determine an employment relationship include: the right to control the manner in which the work is done, the method of payment, the right to discharge, the skill required in the work to be done, who provides tools, materials, or equipment, whether the workman's occupation is related to that of the alleged employer, and whether the alleged employer deducted for withholding tax. The right to control the work is done is the most important factor in determining the relationship. *Wenholdt v. Industrial Commission*, 95 Ill. 2d 76 (1983).

To establish a lending/borrowing employee relationship the Illinois Supreme Court in A.J. Johnson v. Industrial Commission, 82 Ill. 2d 341, 412 N.E. 2d 477 (1980) has established that for a borrowing employer relationship to exist two factors need to be present:

1. The borrowing employer has to have exercised control over the employee,
2. There has to be implied or explicit consent by the employee to employment with the borrowing employer.

In addition to be considered a borrowed employee, the employee must consent, either expressly or impliedly, to working for the borrowing employer. This can be proven in the employee's acquiescence of the borrowing employer's direction to do new work. *Barraza v. Tootsie Roll Industries, Inc.* 294 Ill. App. 3d 539 (1997). Next, the borrowing employer must have control over the employee for a borrowed employee relationship to exist. *Willfong v. Dean Evans Co.*, 287 Ill. App. 3d 1099 (1997). Additional factors to consider in determining if the employee is a borrowed employee include the manner of hiring, how the employee is paid, the nature of the work involved, direction and supervision of employee's work, and the right to discharge the employee. *Crespo v. Weber Stephen Products Co.*, 275 Ill. App. 3d 638 (1995).

The Arbitrator considered the criteria in the above-mentioned cases as well as the testimony presented and concludes that an employee employer relationship did exist between the Petitioner and the Respondent.

The management control structure in this matter went from ComEd, to a project manager at Meade, to a general foreman at Evans, to Petitioner who was a foreman at Evans. Petitioner is a union electrician working out of Local 134 and his employment is governed by a union agreement. All assignments come from ComEd through Meade to Petitioners supervisor McGuire who is an employee of the respondent. Petitioner received assignments and remained under the control of McGuire and Respondent. The location of the accident site is a Com Ed vault on a public street. Petitioner was serving as a foreman and "bus specialist" electrician doing specialized work for Com Ed.

To be considered a borrowed employee, the employee must consent, either expressly or impliedly, to working for the borrowing employer. This can be proven in the employee's acquiescence of the borrowing employer's direction to do new work. *Barraza v. Tootsie Roll Industries, Inc.* 294 Ill. App. 3d 539 (1997). Next, the borrowing employer must have control over the employee for a borrowed employee relationship to exist. *Willfong v. Dean Evans Co.*, 287 Ill. App. 3d 1099 (1997). Additional factors to consider in determining if the employee is a borrowed employee include the manner of hiring, how the employee is paid, the nature of the work involved, direction and supervision of employee's work, and the right to discharge the employee. *Crespo v. Weber Stephen Products Co.*, 275 Ill. App. 3d 638 (1995).

Arbitrator concludes that there was never any explicit consent by Petitioner to become a borrowed employee based on the evidence in this matter. Because Arbitrator finds that there no explicit consent the issue becomes whether there was there an implicit consent. In reaching his decision that there was not an implicit consent Arbitrator considered that the Petitioner was issued a truck with specialized equipment from Respondent and was allowed to take that truck home. Petitioner was issued a badge and keys by ComEd. Petitioner reported to a general foreman, McGuire, who was employed by Respondent. Arbitrator also notes that Petitioner had left the employ of Meade to join Respondent on assignment by the union hall. (Tr. 8.) In addition, Petitioner was performing other work for Evans (Tr. 64).

Arbitrator considered in determining the employment relationship is the right to discharge. Respondent clearly held this power over Petitioner. (Tr. 76) With regards to the equipment used during employment, the hand tools were a combination of Petitioner and the respondent's, here was not uniform requirement noted in the evidence,

though Petitioner did testify to having both Meade and Respondent's shirts. (Tr 36) Arbitrator also considered the manner in which Petitioner was paid for his work. Even though Meade might have reimbursed respondent for the work Petitioner performed, Respondent paid Petitioner's salary and paid payroll taxes for Petitioner. Therefore, Arbitrator concludes this is further evidence of Petitioners employment with Respondent.

(F) In support of the Arbitrator's decision regarding whether the Petitioner's current condition of ill-being is causally related to the work injury, the Arbitrator finds as follows:

The Arbitrator finds that the Petitioner did sustain an accident on July 30, 2020. The Arbitrator also finds that the Petitioner's need for left hip arthroplasty was causally related to the work-related accident on July 30, 2020. This conclusion is based on the medical evidence and testimony presented.

To obtain compensation under the Act, Section 1(b)(3)(d) of the Act states the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of employment. Petitioner has meet that burden in this case. The Petitioner did sustain injuries from his July 30, 2020, workplace accident; and as a result of the accident, Petitioner suffered a exacerbation of his pre-existing injuries to his shoulders and hips.

Petitioner testified that on July 30, 2020, while working in a ComEd vault he contacted live electricity in the back of his right shoulder. (Tr. 10). Petitioner pulled away and then contacted additional electricity to his left side. The second contact was at his left elbow with an exit at his low back. At the time of the first contact to his right shoulder Petitioner was projected forward to an additional electric shock to his left elbow. (Tr. 11-12). After he came to on the ground, Petitioner was carried out by his co-workers and transported via ambulance to Loyola Medical Center emergency department where he was admitted overnight.

At the emergency department Petitioner was initially treated for burns. (Tr.14). The emergency department records stated that petitioner contacted live electricity and was thrown six feet from standing. The records indicate multiple first and second degree burns to his right shoulder, left arm and left lower flank. A prior left

shoulder surgery was noted. He was prescribed a head CT and an xray of the left shoulder and arm. He was admitted to the burn ICU overnight. (PX.1).

In August 2020 Petitioner was being treated for in the Loyola Burn Surgery clinic for injuries to the his right shoulder, left flank, and left arm. He noticed left hip pain getting progressively worse and he was taking ibuprofen daily. (Tr.15).
Petitioner was prescribed left hip physical therapy. The physical therapy records noted loss of full range of motion to his hip. On September 11,2020 Petitioner had neck pain, back pain, bilateral hip pain and bilateral shoulder pain after the work injury of July 30, 2020. (Tr.16). His pain was in the low back and hip joints. He had pain walking, pain standing, pain sitting, and pain sleeping. The pain was deep in his hip joints. (Tr.17).

On October 30, 2020, due to lack of progress with conventional physical therapy, Petitioner was referred to a shoulder specialist and a hip specialist. He was also referred to the Chicago Electric Trauma Rehabilitation Institute for specialized care. Cite. No authorization was provided for this referral. (Tr.19). was referred to Dr. Brown at Loyola for follow up orthopedic care. Dr. Brown opined that the accident has exacerbated a pre-existing condition in the right hip as a result of his electrocution. Physical therapy for the right shoulder was prescribed and a bilateral MRI was prescribed. (Tr. 20).

Petitioner was given a 30-pound lifting restriction by Dr. Evans. Petitioner had already returned to work. He was a foreman supervising others so his return to work did not require lifting. (Tr.)
Petitioner had various other appointments between December 8, 2020 and June 30, 2021 with complaints of right shoulder pain and hip pain which become unbearable. An MRI confirmed a tear in his shoulder. Dr. Brown recommended bilateral hip arthroplasties. (Tr.22). Dr. Evans administered a subacromial injection on the right shoulder. Dr. Houlahan assessed chronic pain in both hips and acute pain in right shoulder.
On June 30, 2022, r. Domb who prescribed a total hip replacement for both hips. Petitioner returned to Dr. Domb on August 18, 2022, for bilateral shoulder injections. This is the last date of treatment for these parts of the body. (Tr. 24-26).
Dr. Domb testified that the work injury had either caused or aggravated his hip condition and was causally related to his need for treatment at that time. (PX 4 pg. 11-13).

Petitioner testified that his symptoms have remained the same from August 18, 2022, to the hearing date of September 11, 2024. (Tr. 27).

Based on the testimony of the Petitioner, the medical records and the depositions of the Doctors, including that of the Sec 12, examiner Dr. Wolin, The Arbitrator give greater weight and credibility to Petitioner's treating doctors including Dr. Domb.

Therefore, Arbitrator finds that Petitioner suffered a work-place electrocution injury on July 30, 2020. As a result of his electrocution Petitioner suffered first and second degree burns as noted in the medical records. The Arbitrator further finds that the Petitioner's condition of ill being in his bilateral hips, shoulder, neck, and lower back, are causally related to the July 30, 2020, electrocution accident.

(G) In support of the Arbitrator's decision regarding what were the Petitioner's earnings and average weekly wage, the Arbitrator finds as follows:

Petitioner alleged an average weekly wage of $2,400.05. (Arb.1) Respondent alleged Petitioner's average weekly wage was $2,043.00. (Arb.1) The dispute between the parties is over how to calculate the average weekly wage. Normally, overtime should be excluded from the calculation of average weekly wage calculations. (820 ILCS 305/10) However, it has been held that overtime is the hours an employee works in excess of his regular hours, and hours which were consistently worked or mandatory are not considered overtime. *Airborne Express, Inc. v. Illinois Workers' Compensation Commission*, 372 Ill.App.3d 549 (1st Dist. 2007).

Respondent's Exhibit 7 are weekly wage statements for the Petitioner. Petitioner testified that he receives a different pay rate for night work, though this is often mislabeled as "overtime." (Tr.29-30) He explained that he is not able to refuse these assignments from Meade, as directed by ComEd, whether they occur at night or on weekends. (Tr. 31) Petitioner's testimony that his overtime hours not real overtime and were mandatory was uncontradicted at trial. Since the Arbitrator finds overtime to have been mandatory and regular. Accordingly, Petitioner's average weekly wage was $2,400.05.

(J) In support regarding whether Respondent has paid for all reasonable and necessary medical services, the Arbitrator finds as follows:

Based on the above outlined conclusions of law, the Arbitrator finds that the medical treatment was reasonable, necessary, and causally related to treat Petitioner's injuries. The Arbitrator finds that Respondent shall pay for all medical services derived from the injury be paid by the Respondent per the fee schedule

(K) In support regarding whether the Petitioner is entitled to prospective medical care, the Arbitrator finds as follows:

The Arbitrator adopts the findings of Fact of Issue B regarding causation in its entirety and orders the prospective medical treatment including:
The surgeries per the June 30, 2022 advice of Dr. Domb who prescribes total hip replacement for both hips.
The Arbitrator also Orders prospective care and treatment to Petitioner's shoulders including injections per the orders of Dr. Domb and any further treatment related to conclusions outlined above.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC001049
Case Name	Jennifer Richardson v. St. Mary's Hospital
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0212
Number of Pages of Decision	12
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Francis Lynch
Respondent Attorney	Andrew (AJ) Sheehan

DATE FILED: 5/14/2025

/s/Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JENNIFER RICHARDSON,

Petitioner,

vs. NO: 23 WC 01049

ST. MARY'S HOSPITAL,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, and prospective medical, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial 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 13, 2024 is hereby affirmed and adopted.

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

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

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

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

May 14, 2025
O:050625
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	23WC001049
Case Name	Jennifer Richardson v. St. Mary's Hospital
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	Francis Lynch
Respondent Attorney	Andrew (AJ) Sheehan

DATE FILED: 6/13/2024

/s/Adam Hinrichs, 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
ARBITRATION DECISION
19(b)

Jennifer Richardson
Employee/Petitioner

v.

St. Mary's Hospital
Employer/Respondent

Case # **23** WC **001049**

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 **Adam Hinrichs**, Arbitrator of the Commission, in the city of **Springfield**, on **April 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, **02/03/2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**84,600.36**; the average weekly wage was $**1,626.93**.

On the date of accident, Petitioner was **51** years of age, ***married*** with **1** dependent child.

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

Respondent shall be given a credit of $**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 $**any paid** under Section 8(j) of the Act.

ORDER

Respondent shall provide and pay for the reasonable, necessary and related medical care prescribed by Dr. Sullivan, specifically a total right knee replacement surgery, as well as any reasonable, necessary, and related follow up care.

Respondent shall pay all medical charges for Petitioner's reasonable, necessary and related medical treatment, as outlined in Petitioner's Group Exhibit 1. Respondent shall pay all medical charges consistent with the medical fee schedule, and pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the IWCC.

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 13, 2024

FINDINGS OF FACT

Petitioner's Testimony

Jennifer Richardson ("Petitioner") worked as a surgical technician before becoming a Registered Nurse in 2001. (Trial Transcript "TT" at 11). She worked at Decatur Memorial Hospital for 9 years before she began working in Springfield for almost 15 years, and then began working at St. Mary's Hospital ("Respondent"). (TT at 11). Six months before the February 3, 2022 work accident, she began working as the nurse educator for Respondent. (TT at 12).

Prior to the work accident, Petitioner testified she only had hip pain, which required a total hip replacement, and back pain, which required surgery. But she testified she "never had any trouble with any other pain," including right knee pain, and she never noticed any issues with her knees before the work accident. (TT at 14). She testified she never felt achy or that her knees cramped while working before the work accident. (TT at 14). Regarding her weight, she testified she had "been heavy [her] whole nursing career, yes, about the same weight, yes, give or take 20 pounds." (TT at 14).

On February 3, 2022, it was snowy out, as a snowstorm had just been through the area the day prior. (TT at 17-18). On this date, Petitioner drove to work, parked in the parking lot, and walked through the Emergency Room ("ER") doors, where she slipped on water that had been tracked in from the snow outside. (TT at 19). She fell onto her right knee, fell back, and hit her head. (TT at 19). She felt right-sided knee pain. (TT at 22).

Petitioner went to the ER at Respondent for initial treatment. (TT at 23). There, she noticed her right knee was swollen and painful, and she was having a hard time walking on it. (TT at 24). X-rays were taken that showed no fractures or dislocations, but did show osteoarthritis of the right knee. (TT at 48).

Thereafter, Petitioner treated at St. Mary's Occupational Health and Wellness, where x-rays were taken, and an examination was performed. (TT at 28). She testified she told the doctors she never had pain in her right knee like this before the work accident. (TT at 30). She was diagnosed with a right knee contusion. (TT at 50). Physical therapy was recommended, but she was never contacted about setting it up, so she asked to treat with Dr. Donald Sullivan, an orthopedic surgeon. (TT at 31).

Petitioner began treating with Dr. Sullivan, who performed her prior total hip replacement. (TT at 33). She told Dr. Sullivan she never had any right knee pain prior to this work accident. (TT at 33). Dr. Sullivan diagnosed right knee osteoarthritis. (TT at 50). Injections were recommended which provided relief for three or four months, but did not provide permanent relief. (TT at 35; 40). Physical therapy was never ordered. (TT at 36).

After the injection, Petitioner did not return to Dr. Sullivan for some time because she was dealing with other non-work-related health issues. (TT at 37). As a result, her right knee treatment "kind of took a back burner at that point." (TT at 37). Petitioner's non-work-related condition involved pulmonary emboli, which prevented her from working. (TT at 37). The Petitioner testified that when the first injection wore off after a few months, it took her awhile to get back to see Dr. Sullivan because she was dealing with the pulmonary emboli. (T.40).

When Petitioner was able to follow up with Dr. Sullivan, she underwent another series of injections for the right knee until she "reached her maximum," which only provided temporary relief, and a total knee replacement was recommended. (TT at 41).

Petitioner testified she moved residences because she could not go up or down stairs after the work accident. (TT at 43). She testified she never had any problems getting around before the work accident. (TT at 43). Petitioner adamantly denied she told Respondent's Section 12 examiner, Dr. Nathan Mall, she had occasional soreness in the right knee before the work accident. (TT at 50-51).

Medical Treatment

On February 3, 2022, Petitioner treated at St. Mary's Emergency Room (Respondent's Exhibit 2 "RX2" at 36). She reported falling and landing on her right knee and left hip. (RX2 at 36). She complained primarily of left hip pain, but also reported diffuse right knee and diffuse low back pain. (Id.) X-rays of the right knee showed arthritic changes and no evidence of fracture. (RX2 at 39-40). She was taken off work until February 5, 2022. (RX2 at 42).

On February 8, 2022, Petitioner treated at St. Mary's Occupational Health and Wellness. (PX2 at 1). She complained of right knee pain after the fall at work. (Id.). She reported burning in her right knee, with visible bruising, but the bruising and swelling was improving. (Id.). On exam, there was tenderness along the medial and lateral aspects of the right knee, as well as to the patella. (Id.) Her weight was listed at 315 pounds, and her BMI was 46.5 which was categorized as obese. (Id.). She was diagnosed with a right knee contusion and given no work restrictions. (PX2 at 2).

On February 24, 2022, Petitioner returned to St. Mary's Occupational Health and Wellness reporting no significant improvement since the last visit, with numbness at the front of the right knee, and intermittent pressure in her right leg. (RX2 at 46). Physical examination showed tenderness to palpation and mild swelling. (RX2 at 11). She was diagnosed with a right knee contusion, recommended to undergo physical therapy, and returned to work regular duty. (RX2 at 47).

On March 14, 2022, Petitioner sought treatment with Dr. Donald Sullivan. (PX2 at 2). Petitioner reported pain in the medial aspect of her right knee, worse with weightbearing, and occasionally requiring assistance with ambulation. (Id.) Dr. Sullivan performed an injection which provided immediate relief. (PX3 at 3). X-rays showed significant degenerative changes, mostly medial compartment, and quite significant patellofemoral joint changes. (PX3 at 3). Dr. Sullivan released Petitioner with a work restriction of ambulatory assistance as needed. (PX3 at 4).

On January 16, 2023, Petitioner followed up with Dr. Sullivan. (PX3 at 8). She reported significant relief for a significant period of time following the injection that took place ten months prior. (Id). Dr. Sullivan noted little change in her condition with pain mostly at the medial aspect of the right knee. (Id.). X-rays showed significant degenerative changes, now mostly in the lateral compartment, and quite significant patellofemoral joint changes. (PX3 at 9). Dr. Sullivan performed another injection which again provided immediate relief. (Id.). Dr. Sullivan provided no work restrictions, and stated that Petitioner was not at maximum medical improvement (MMI) and should she undergo a total knee replacement, she would be MMI within one year. (Id.).

On April 17, 2023, Petitioner followed up with Dr. Sullivan. (PX3 at 14). She reported significant relief from the last injection and wanted another one as she reported pain along the medial aspect of the right knee, and Dr. Sullivan noted little change in her condition. (Id.). Dr. Sullivan performed another injection, which again gave her immediate relief. (PX3 at 16). He discussed the need for a total knee replacement and allowed her to work without restrictions. (PX3 at 16).

On July 19, 2023, Petitioner returned to Dr. Sullivan's office for complaints of right knee pain. (PX3 at 21). It was discussed with Petitioner that she may need a total knee replacement "based on her symptoms, the progression on her x-rays, and response to nonoperative treatment." (PX3 at 23). Dr. Sullivan testified that this appointment was with his nurse practitioner, who provided an injection, from which Petitioner again reported immediate relief. (PX3 at 21, PX6 at 28-29)

Dr. Nathan Mall's Section 12 Exam & Report

Pursuant to Section 12, on December 27, 2023, Petitioner was examined by Dr. Nathan Mall, a board-certified orthopedic knee surgeon, at the request of Respondent. Petitioner reported continuing right knee pain after the work accident where she slipped and fell directly onto her right knee. (RX1 at 3). She worked for several weeks after the work accident until developing a pulmonary embolism and other unrelated pulmonary issues that took her off work. (Id).

During the examination, Petitioner reported that she did not have any issues with the right knee prior to the work accident. (RX1 at 3). Dr. Mall reported that Petitioner admitted to soreness on occasion in the right knee, and indicated she's a "big girl" and has a hard job. (Id.). When asked if she has noticed worsening valgus deformity in her knees, she stated, because of her weight, she has not really noticed this. (RX1 at 3).

Dr. Mall performed a physical examination that showed significant valgus deformity to both knees upon standing inspection and inspection on the table with the right knee being more significant. (RX1 at 4). X-rays showed severe osteoarthritis, greater on the right side, with significant patellofemoral arthritis and some osteophyte formation, diffuse joint space narrowing, and spiking of the tibial spaces. (Id.).

Dr. Mall diagnosed right knee severe osteoarthritis and right knee contusion, among other conditions. (RX1 at 11). He noted she has severe osteoarthritis in the right knee which is a chronic degenerative condition and highlighted that one of the greatest risk factors for developing this condition and associated symptoms is obesity. (RX1 at 12). Dr. Mall explained:

> "With a BMI of 47, this is drastically greater than 30, and it is well known that the risk increases exponentially as the BMI increased above 30, This is clearly a significant risk factor in her case. While a knee contusion can cause some pain and symptoms in the knee, this is not going to drastically change the overall trajectory of this condition for her . . . While certainly there can be an aggravation of underlying osteoarthritis, I believe there needs to be significant force associated with this such as seen in a fracture of significant ligamentous injury. There is no evidence of a fracture on her initial x-rays, and there is no evidence of ligamentous injury on her clinical examination either at the time of the accident or currently." (RX1 at 12).

Dr. Mall further explained other causes of worsening pain associated with knee osteoarthritis is valgus deformity and flexion contractures, of which Petitioner suffers from both. (RX1 at 12). This is a progression condition in that the osteoarthritis is causing worsening valgus deformity. (Id.). The valgus deformity, which predates the osteoarthritis, puts an additional load through the knee on a constant basis with every step Petitioner takes. (Id.). This preexisting degenerative condition combined with her obesity "is a much greater risk factor for the development of symptoms associated with osteoarthritis than a single ground level fall that produced no structural damage to the knee." (Id.).

Dr. Mall noted that, regardless of causation, Petitioner would be a very poor candidate for a total knee arthroplasty, given her morbid obesity and chronic lung issues which would put her a significant risk for pulmonary issues and DVT if she were to undergo that procedure. (RX1 a 13).

Dr. Mall opined that her work accident would not have caused, aggravated, or accelerated her condition because it would not have produced enough force to change the natural history and progression of arthritis in her right knee. (RX1 a 14). He explained, while a knee contusion can certainly cause some pain and swelling, requiring a short course of physical therapy, it would not have produced enough force to accelerate her underlying degenerative condition. (Id.). Dr. Mall opined her current condition regarding her knee is simply the natural progression of her underlying osteoarthritis and malalignment. (RX1 a 15).

Dr. Mall placed Petitioner at maximum medical improvement as a result of the work accident and opined she would have reached maximum medical improvement after the initial injection or about four-to-six weeks after the work accident of February 3, 2022. (RX1 a 15).

Dr. Donald Sullivan's Testimony

Dr. Sullivan testified by way of deposition on November 17, 2023. He testified that initially treated Petitioner for right knee pain on March 14, 2022. (PX6 at 9). Dr. Sullivan testified that she had no previous knee problems or complaints of pain before her fall at work (Id. at 11, 13) He reviewed the initial x-rays to show significant degenerative changes mostly at the medial compartment and quite significant at the patellofemoral joint, with a bow to the leg (varus). (Id at 12).

Dr. Sullivan testified that the fall at work aggravated or exacerbated Petitioner's preexisting knee condition causing it to become symptomatic, which is why he performed a knee injection and prescribed anti-inflammatories. (PX6 at 14-15). Dr. Sullivan testified that, "It is most likely, more probable than not, that the onset of her knee pain was associated with the fall." (PX6, p. 16) Dr. Sullivan explained, a minor injury that wouldn't have hurt you when you were younger, and had a pristine knee, will cause arthritis to "rear its head" when you are older and your knee is more worn-out. (Id. at 34). Dr. Sullivan further testified he recommended a total knee replacement because the injections did not provide long-term relief, they only provided relief for less than six months, and the surgery is necessary for her to recover from her work accident. (Id. at 15, 25, 36-38).

Dr. Sullivan testified on cross-examination that her initial x-rays did not show any acute fractures. (PX6 at 43). Dr. Sullivan testified that a morbidly obese individual puts a significant amount of pressure and force on the knee throughout their activities of daily living, more so than someone who isn't morbidly obese. (Id at 47-48).

On re-direct examination, Dr. Sullivan forcefully testified that "this is an acute exacerbation of a chronic condition, period. End of sentence." (PX6 at 53)

CONCLUSIONS OF LAW

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

The Petitioner must show that some act or phase of employment was a causative factor in her resulting condition of ill-being. *Sisbro Inc. v. Industrial Commission*, 207 Ill. 2d 193, 205 (2003). A claimant may be entitled to benefits under the Act even though they suffer from a preexisting condition of ill-being. *Id.* at 205. "[I]n preexisting condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease such that the employee's current condition of

ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *Id*. at 204–05.

The Petitioner suffered an undisputed traumatic slip and fall accident arising out of and in the course of her employment when she fell on her right knee. The parties also agree that Petitioner's BMI has been consistently high, in the mid-40s, for a sustained period of her life. Petitioner's treating surgeon and the Respondent's examiner agree that the Petitioner's knees have been placed under sustained stress from her elevated BMI, leading to significant degenerative changes in her knees. Moreover, it is undisputed that Petitioner's knee complaints are localized in her right knee only, and that she has no complaints of pain in her left knee, despite similar levels of degeneration.

Petitioner was working full duty with no knee pain, and was not receiving medical care for her knees, when she arrived for work on February 3, 2022. Following her accident, the Petitioner had immediate symptoms in her right knee, and promptly treated for her complaints of pain in the ER. While Petitioner's symptoms temporarily abated with medication and injections, they always returned within three to four months. While Petitioner did have a ten-month period between her first injection and her second injection, she explained this delay in treatment as she had a severe non-work-related medical condition that took precedence. The record is clear that when her right knee symptoms returned, they were the same symptoms she had experienced following the accident. The Arbitrator observed the Petitioner and found her to be credible, with her testimony supported by the record.

Respondent's examiner, Dr. Mall, while finding that Petitioner has a large body mass that landed on her right knee causing an injury, opined that her accident would not have caused, aggravated, or accelerated her knee condition because it did not have produced enough force, which would have resulted in a fracture or ligament damage, to change the natural history and progression of the arthritis in Petitioner's right knee. Dr. Mall opined her current condition regarding her knee is simply the natural progression of her underlying osteoarthritis and malalignment.

Dr. Sullivan testified that this was an acute exacerbation of a chronic condition, and explained that even a minor injury that wouldn't have hurt you when you were younger, and had a pristine knee, will cause arthritis to wake up and cause problems when you are older and your knee is more worn-out.

The Arbitrator is persuaded by the opinion of Dr. Sullivan. Petitioner had significant degeneration in both knees with no pain complaints or treatment prior to the undisputed work accident when the force of her body weight landed on her right knee. After the fall, Petitioner had ongoing and consistent complaints in her right knee that required medical attention. Petitioner had temporary relief from her pain complaints with injections, but her same pain complaints always returned after a short period. These facts support Dr. Sullivan's opinion that Petitioner suffered an acute exacerbation of a chronic condition causing a previously asymptomatic chronic knee condition to become symptomatic and require medical attention.

Given the chain of events, the persuasive opinion of Dr. Sullivan, and the totality of the evidence, the Arbitrator finds the Petitioner has met her burden, and finds that Petitioner's current condition of ill being in her right knee is causally related to her 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 Arbitrator finds as follows:

Incorporating the above, the Arbitrator finds the medical care Petitioner has received to date, related to this claim, to be reasonable and necessary. Respondent shall pay the reasonable, necessary and related medical expenses contained in Petitioner's Exhibit 1, and shall have credit for any amounts paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

Issue K: Is the Petitioner is entitled to any prospective medical care? The Arbitrator finds as follows:

Incorporating the above, the Arbitrator finds that the Petitioner has yet to reach maximum medical improvement, and is entitled to prospective medical treatment.

The Arbitrator finds Dr. Sullivan's opinions persuasive, and finds his prescribed surgical course of care is reasonable and necessary to cure and relieve the effects of Petitioner's work injury. Respondent is ordered to provide and pay for Petitioner's prescribed medical care, namely the right total knee replacement, pursuant to Section 8(a) and 8.2, and subject to the medical fee schedule, as well as any other reasonable, necessary and related follow-up care.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC012078
Case Name	David Hunter v. State of Illinois - Chester Mental Health
Consolidated Cases	22WC021094 21WC021413
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0213
Number of Pages of Decision	16
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Aaron Wright

DATE FILED: 5/14/2025

/s/Kathryn Doerries, 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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DAVID HUNTER,

Petitioner,

vs. NO: 21 WC 012078

STATE OF ILLINOIS – CHESTER MENTAL HEALTH CENTER,

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, 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 January 02, 2024, is hereby affirmed and adopted.

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

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

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

May 14, 2025
O050625
KAD/as
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	21WC012078
Case Name	David Hunter v. SOI/Chester Mental Health
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Aaron Wright

DATE FILED: 1/2/2024

THE INTEREST RATE FOR THE WEEK OF DECEMBER 27, 2023 5.08%

/s/ Edward Lee, Arbitrator
Signature

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

January 2, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation

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

DAVID HUNTER
Employee/Petitioner

v.

SOI/CHESTER MENTAL HEALTH
Employer/Respondent

Case # **21** WC **012078**

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 **Herrin**, on **November 1, 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

B. ☐ 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 9, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**55,353.87**; the average weekly wage was $**1,064.49**.

On the date of accident, Petitioner was **59** years of age, ***single*** with **0** dependent child(ren).

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

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

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

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

ORDER

Respondent shall pay the reasonable and necessary medical services of outlined in Petitioner's group exhibit related to treatment of Petitioner's injuries through March 7, 2022, 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.

Permanent partial disability benefits awarded in companion case 22WC021094.

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_____ **JANUARY 2, 2024**

Signature of Arbitrator

FINDINGS OF FACT

Background

These three consolidated claims came before the Arbitrator for resolution of disputed issues of causal connection and liability for medical expenses pertaining solely to the right shoulder and the nature and extent of all injuries. (T.9, 10; AX1, AX3, AX5) The parties stipulated that all three accidents arose out of and in the course of his employment as a Security Therapy Aide I and that his current condition of ill-being in his cervical spine and right arm are causally related to his work accidents. (T.9, 12)

21WC021413
November 12, 2020

He suffered his first accident on November 12, 2020, when he was assaulted while trying to restrain an unruly patient and injured his neck, right shoulder, and right arm/elbow. (T.13; AX2) He was seen at Sparta Convenient Care the next day and diagnosed with acute partial rupture of the right arm extensor tendon with epicondylitis and was taken off work until he could be cleared by orthopedics. (PX3) Petitioner followed up at Family Health Centre Orthopedics on November 18th, where it was noted that despite Petitioner's diagnosis, he received little to no care from urgent care. (PX4) Petitioner was sent for x-rays at Sparta Community Hospital, which were negative for fracture. (PX5) On examination, Petitioner exhibited tenderness over the lateral epicondyle and biceps tendon in his right dominant upper extremity. (PX4) His assessment was acute lateral epicondylitis and bicipital tendinitis of the right elbow. *Id.* He was prescribed Meloxicam and placed on light duty. *Id.* On December 2, 2020, Petitioner was doing much better. *Id.* He was instructed to wean from the Meloxicam and permitted to return to unrestricted duty. *Id.*

21WC012078
April 9, 2021

Petitioner suffered his second accident on April 9, 2021, when he was again assaulted by an unruly patient and again suffered injury to his left eye, neck, right shoulder, and right arm/elbow along with psychological injury. (T.15; AX4)

Petitioner was seen at Chester Memorial Hospital the following day with complaints of a painful and red left eye, head and neck pain, and dizziness with nausea. (PX6) CT imaging of his head, face, and neck were negative for fracture. *Id.* His assessment was acute neck sprain, contusion of the temple region, and traumatic subconjunctival hemorrhage of the left eye. *Id.* Petitioner was taken off work and instructed to follow up with his specialist within two to four days. *Id.*

Petitioner was seen at the Marion Eye Center on April 15, 2021, for complaints of blurry vision, irritation, pain, pressure, swelling, redness, and light sensitivity secondary to a work-related contusion to his left orbit. (PX7) Petitioner used antibacterial drops with cold compresses as often as tolerated for the first 48 hours after the injury and then switched to warm compresses. *Id.* Petitioner was advised to continue rest and warm compress therapy for a full 10 days post-accident and follow up with the clinic. *Id.* Petitioner continued to suffer blurred vision with inability to read fine print during follow-up, at which time he was assessed with a refractive error. *Id.* He was recommended for refractive surgery consultation but did not wish to pursue same. *Id.*

On April 19, 2021, Petitioner sought treatment at Steeleville Clinic for "work/stress issues" and reported being hit in the eye as well as his history of three prior left shoulder surgeries that included a replacement. (PX8) He was struggling with work stress on top of his lingering grief from the death of his wife three years prior and reported he would be seeing a counselor through Respondent's Employee Assistance Program (EAP). *Id.* Petitioner was diagnosed with anxiety/depression and given medical leave papers to be off for the next month. *Id.* Petitioner returned in May with persistent anxiety and was prescribed a trial of fluoxetine and kept off work through June 25, 2021. *Id.* Petitioner was thereafter referred to the Vorhees Wellness Center through Respondents EAP. (PX9) Notably, Petitioner's level of overall social and work function as a result of his bereavement and occupational illness was poor. *Id.* Petitioner began counseling at Real Solutions Professional Counseling and continued to treat at the Steeleville Clinic for medicinal management with Fluoxetine. (PX8; PX12)

Petitioner came under the care of Dr. Kevin Rutz on April 29, 2021, with a chief complaint of neck pain. (PX10) He took the history of the assault and noted that approximately 4 days after the incident, Petitioner developed neck pain that was "radiating into the right anterior shoulder" in addition to the pain in his right elbow, numbness in the 4th and 5th digits of his hand, and decreased strength. *Id.* Dr. Rutz noted Petitioner's right elbow tendinitis as well as his history of three left shoulder injuries from a prior injury. *Id.* X-rays of Petitioner's cervical spine demonstrated moderate to severe disc degeneration at C5-6, moderate degeneration at C6-7, and bilateral foraminal narrowing from C5 to 7 with upper cervical and facet arthropathy. *Id.* Exam revealed diminished cervical flexion and extension reproducing his neck pain and dizziness with cervical extension. *Id.* It also showed increased pain with right shoulder range of motion and signs of impingement. *Id.* He was sent for an MRI of the cervical spine for to evaluate his pain and radiculopathy. *Id.*

The MRI taken at Greater Missouri Imaging on May 3, 2021, showed a C6-7 left paracentral protrusion with a caudally extruded disc fragment extending below the interspace creating central canal stenosis and severe bilateral foraminal stenosis, C5-6 right lateral recess epicenter large broad-based protrusion creating central canal stenosis and severe right lateral and left foraminal stenosis, a separate left foraminal protrusion with spurring contributing to left foraminal stenosis, left-sided C4-5 facet arthropathy with foraminal stenosis, right-sided C2-3 facet arthropathy with central protrusion creating right foraminal stenosis, and a central annular tear and protrusion at C3-4 resulting in dural displacement. (PX11)

Petitioner returned to Dr. Rutz on May 11, 2021, again with pain in his neck radiating into his right arm and positive impingement signs into his right shoulder. (PX10) He was given a right shoulder injection in the subacromial bursa and scheduled for a C6 nerve root block at Greater Missouri Imaging to help determine which symptoms were coming from his neck and which were coming from the shoulder to help guide his care. *Id.*; (PX11, 5/11/21) Petitioner reported on May 25, 2021, that he experienced some improvement from the shoulder injection, but limited improvement from his right C6 selective nerve root block, as he still had pain in his anterior shoulder along with numbness and tingling going down through his right upper extremity. *Id.* Dr. Rutz reviewed Petitioner's MRI and noted the nerve impingement at C5-6 and C6-7 consistent with his radicular complaints. (PX10, 5/25/21) He recommended two-level discectomy and arthroplasties at C5-6 and C6-7. *Id.* He also stated that after Petitioner's nerve impingement in his neck was cared for, he might require evaluation by an upper extremity specialist. *Id.*

Petitioner obtained pre-operative clearance, and on July 1, 2021, he underwent C5-6 and C6-7 total disc replacement. (PX13) At C6-7 objective intraoperative findings confirmed a left-sided disc herniation partially calcified and causing left-sided spinal cord compression, and a C5-6 partially-calcified right-sided disc herniation causing cord compression. *Id.* During the post-operative visit on July 15, 2021, Petitioner had some aching and soreness in his neck with radiation into his upper trapezial musculature. (PX10) Imaging showed good placement of the prostheses without subsidence of hypertrophy. *Id.* He returned to Dr. Rutz on August 17, 2021, and continued to report substantial improvement in his neck symptoms, but still had residual tingling in his 4th and 5th fingers of his right hand. *Id.* Dr. Rutz placed Petitioner at maximum medical improvement with respect to his cervical spine but recommended that he see an upper extremity specialist, as he believed that Petitioner's continued problems were referable to his shoulders and biceps. *Id.* Petitioner also remained on leave of absence under the direction of his mental health practitioner at Steeleville Clinic through October 25, 2021. (PX8)

Petitioner came under the care of Dr. Matthew Bradley for his right upper extremity on August 23, 2021. (PX14) He took the history of the accident and Petitioner's complaints of right shoulder and elbow pain with upper extremity paresthesia that occurred with the injury. *Id.* Petitioner reported frequent clicking or catching in his medial elbow with severe burning pain down into his hand with flexion and extension of his right elbow, and he denied any significant history of right shoulder or elbow pain or radicular symptoms prior to the work injury. *Id.*

Physical examination was positive for impingement signs of the right shoulder, pain to palpation of the ulnar nerve with possible instability of the ulnar nerve translating anterior over the medial epicondyle during elbow flexion, and positive Tinel's sign. *Id.* Dr. Bradley's assessment was possible partial right rotator cuff tear with traumatic impingement syndrome and traumatic cubital tunnel with an unstable ulnar nerve. *Id.* He recommended an MRI scan of the right shoulder and an EMG and nerve conduction study of the right upper extremity. *Id.* He recommended conservative care with home therapy exercises and anti-inflammatory medication in the meantime. *Id.*

The MRI taken on September 3, 2021, revealed a moderate partial intrasubstance delaminating tear of the supraspinatus tendon, a moderate partial tear of the subscapularis tendon in its mid-portion, a SLAP tear with extension anteriorly, and acromioclavicular arthropathy. (PX15) The EMG completed on September 20th showed likely residual cervical radiculopathy in the right hand with an underlying component of diabetic type neuropathy and significant chronic ulnar neuropathy across the right elbow with sensory axonal loss. (PX16) Dr. Bradley reviewed the findings on September 20th, and he recommended surgery by way of right shoulder SLAP repair and possible rotator cuff repair with right elbow ulnar nerve neurolysis. (PX14)

On October 6, 2021, Dr. Bradley performed a right shoulder labral repair, biceps tenotomy, rotator repair, subacromial decompression, and ulnar neurolysis. (PX13) Objective intraoperative findings confirmed a torn labrum, tearing of the supraspinatus tendon, a partial tear of the labrum, and fraying of the biceps tendon with chronic tendinopathy in the right shoulder, and chronic inflammatory tissue and tightness of the fascia of the right elbow. *Id.* Petitioner was given a cervical plexus injection for acute post-operative pain. *Id.* Petitioner reported improvement in his right shoulder and elbow pain on October 21, 2021, and was referred for physical therapy. (PX14; PX17) However, Petitioner's exam on December 6, 2021, was consistent with post-operative subacromial bursitis, so he was given a subacromial injection and instructed to continue his therapy

and exercise program while taking anti-inflammatory medication while he was kept off work. (PX14)

Petitioner gradually improved with therapy until he was released to light duty on January 10, 2022, and then full duty on March 7, 2022. (PX14) Petitioner's pain and range of motion had improved significantly, but he was instructed to continue his home therapy program and anti-inflammatory medication as needed. *Id.*

22WC021094
July 28, 2022

Petitioner suffered his third injury on July 28, 2022, when he fell to the ground while trying yet again to restrain a violent patient and yet again suffered injury to his neck, right shoulder, and right elbow/arm along with psychological injury. (T.16, AX6)

Petitioner was seen at the emergency department at Sparta Community Hospital, where he was evaluated for neck pain, acute right cervical radiculopathy, and right upper extremity injury as a result of being physically assaulted at work and landing on his right side with two people on top of him. (PX5) CTs of Petitioner's head and cervical spine and x-rays of his right shoulder and elbow were negative for fracture, but the attending clinician suspected that Petitioner suffered soft tissue injury along with the partial laceration of his right biceps tendon. *Id.* Petitioner was taken off work for a week, given hydrocodone, and instructed to see his primary care provider. *Id.*

Petitioner returned to Dr. Bradley on August 1, 2022, with right shoulder and elbow pain with burning into his hand after his recent work injury. (PX14) He noted that Petitioner had fully recovered from his prior injury and was able to return to work and perform all necessary job requirements without significant pain or dysfunction until the most recent injury. *Id.* However, Petitioner's current findings on exam were again positive for impingement, and biceps provocative testing was also positive along with signs of ulnar irritation. *Id.* Dr. Bradley ordered MRIs of Petitioner's right shoulder and right elbow out of concern for re-injury. *Id.*

Petitioner was seen at Steeleville Clinic on August 2nd, and reported the history of the accident and his complaints of an immediate onset of pain in his right shoulder and neck. (PX5) Examination showed pain with external rotation of his shoulder with tenderness to palpation of the right bicep. *Id.* He was given ibuprofen to take instead of the narcotics given in the emergency room, and instructed continue his treatment with Dr. Bradley and follow up with his counselor. *Id.* Petitioner saw his counselor later the same month for a 60 minute session of psychotherapy. (PX12) He also continued to receive medication from his primary care physician. (PX8)

New MRIs taken on August 16, 2022, revealed right shoulder injuries of partial thickness articular surface tearing of the distal insertional fibers of the supraspinatus tendon without a full thickness supraspinatus tendon tear, infraspinatus tendinosis, detachment of the long head of the biceps tendon from its anchor possibly representing a full thickness tear with retraction, and complex nondisplaced tearing throughout the glenoid labrum. (PX15) With respect to Petitioner's right elbow, the images showed a partial thickness tear of the origin fibers of the common flexor tendon and a small partial thickness interstitial tear with common extensor tendinosis. *Id.*

On August 29, 2022, Dr. Bradley reviewed the MRI findings and advised Petitioner than given the substantial recurrent tearing, simple repair was not likely to result in long-standing pain

relief or improved function in his shoulder. (PX14) He also noted the pain from the substantial tearing to the common flexor tendon of Petitioner's elbow was not respondent to conservative care and was making it difficult for Petitioner to use his right elbow. *Id.* He noted that Petitioner suffered substantial injury to his left shoulder in the past and was pleased with the outcome of his left reverse total arthroplasty. *Id.* Consequently, he recommended a right reverse total shoulder replacement and right medial epicondylectomy with flexor tendon repair for the elbow and referred Petitioner for preoperative CT imaging of his right upper extremity at Rayus Radiology, which showed moderate right glenohumeral osteoarthritis. (PX14; PX19) In the meantime, he placed Petitioner on sedentary duty. (PX14)

Petitioner obtained an independent psychiatric evaluation with Dr. Adam Sky on October 25, 2022. (PX18) He believed that Petitioner developed significant psychiatric disability as a result of the injuries he sustained in the course of his occupational duties. *Id.* While he believed that Petitioner was at maximum medical improvement, he noted he would still require ongoing psychiatric care and treatment through psychotherapy and medication for his major depressive disorder and anxiety. *Id.*

On November 30, 2022, Petitioner underwent right reverse total shoulder arthroplasty, right medial epicondylectomy, and right medial elbow flexor tendon repair. (PX13) Objective intraoperative findings showed an approximately 75% tear of the right elbow medial epicondyle while the shoulder findings consisted of near complete tearing of the glenoid labrum with marked instability and tearing of the subscapularis of the rotator cuff. *Id.* Petitioner reported he was doing well during the follow-up on December 15, 2022, and Dr. Bradley referred Petitioner for physical therapy. (PX14) On February 16, 2023, Petitioner reported some persistent weakness but had no complaints of pain. *Id.* Dr. Bradley advised Petitioner to continue working on regaining his strength in therapy and allowed him to return to light duty work. *Id.* During the final visit on March 30, 2023, Dr. Bradley noted Petitioner had an excellent outcome despite any limitations in strength, range of motion and/or function and placed him at maximum medical improvement with permanent restrictions of no lifting greater than 20 pounds, no repetitive or overhead use of the right upper extremity, and no inmate contact. *Id.*

Petitioner retired from Respondent's facility as of August 22, 2023. (T.18-19)

At trial, Petitioner testified that he was miserable prior to his operations, but experienced marked improvement following his treatment. (T.22) Despite the improvement from his treatment, Petitioner testified that he still has increased symptoms with increased activity. (T.23) Petitioner testified that he has increased pain in his neck if he overexerts himself. (T.23) He also testified that certain ranges of motion in his right shoulder "are murder and pain" and he has not regained his prior functional capacity. (T.24) He testified that he is careful with any activity, and he can no longer play golf. (T.24-25) He also testified that pain on contact, movement, or lifting with his right elbow, and he stated that he has effectively lost the ability to lift overhead. (T.25) He testified on cross-examination that his ability to care for family property, fish, hunt, and cut wood have also been adversely affected. (T.31-33)

Petitioner testified to no prior injuries to his cervical spine, right shoulder, or right elbow before his work accidents and affirmed he served his time in the Navy without incident or injury. (T.26) Petitioner stipulated at trial that although he was treated for PTSD, he claimed no permanent partial disability for same. (T.18)

Respondent had Petitioner examined by Dr. Timothy Farley on December 20, 2022, and he noted the history of Petitioner's accident on July 28, 2022, as well as his previous injury in April of 2021, and all of the treatment and diagnostic studies received thereafter. (RX4) He also reviewed Respondent's documentation and the work comp medical report forms. *Id.* He conducted his own physical examination of Petitioner and noted he did not get the sense of symptom magnification. *Id.* Dr. Farley's assessment was status post right reverse total shoulder replacement and right elbow revision nerve surgery. *Id.* He did not believe there was a direct causal relationship between Petitioner's current condition and the procedure performed on Petitioner's right shoulder, but he believed there was a possible causal relationship between Petitioner's injury on July 28, 2022, and Petitioner's right elbow surgery. *Id.*

With respect to whether Petitioner's treatment was reasonable and necessary, Dr. Farley felt that that was as a "complicated question." *Id.* He stated that he was "entirely unclear" on how Petitioner ended up with a reverse total shoulder replacement, which he believed was unnecessary, as it was a procedure that was designed to deal with arthropathy and rotator cuff deficiency. *Id.* He indicated that this was a procedure that he performed only on older individuals with lower physical demands. *Id.* He felt that if there was concern for arthritis, a standard total replacement would have been more appropriate. *Id.* He did not feel Petitioner's elbow operation was unreasonable. *Id.* He believed that Petitioner would reach maximum medical improvement three to four months after his shoulder replacement. *Id.*

CONCLUSIONS OF LAW

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

Of Petitioner's multiple injuries, the only condition in dispute is his right shoulder condition.

Circumstantial evidence, especially when entirely in favor of the claimant, is sufficient to prove a causal nexus between an accident and the resulting injury. *Gano Electric Contracting v. Industrial Comm'n*, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724, 728 (1994); *International Harvester v. Industrial Comm'n*, 93 Ill.2d 59, 63-64, 442 N.E.2d 908, 910-911 (1982). A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the workers' compensation claimant's injury. *Shafer v. Illinois Workers' Comp. Comm'n*, 2011 IL App (4th) 100505WC, 976 N.E.2d 1 (2011). A doctor's testimony is not required to establish causation and the extent of disability when there is a clear causal chain and the medical reports in the record corroborate the employee's testimony. *Gubser v. Industrial Comm'n*, 248 N.E.2d 75 (Ill. 1969); see also *Union Starch & Refining Co. v. Indus. Comm'n*, 37 Ill. 2d 139, 144, 224 N.E.2d 856, 859 (1967). The Commission is also not required to accept a medical opinion simply because it is the only one in the record. *Fickas v. Indus. Comm'n*, 308 Ill. App. 3d 1037, 1042, 721 N.E.2d 1165, 1169 (1999). 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).

Though Respondent presented the opinion of Dr. Farley purportedly to dispute Petitioner's right shoulder condition, the Arbitrator does not find his opinion relevant as to causation. Dr. Farley gave no explanation for concluding that Petitioner's right shoulder condition was not causally related to his work accidents. He merely challenged the type of operation performed following Petitioner's third injury on July 28, 2022. (RX4) The Arbitrator finds a basis for his opinion is necessary in light of the fact that the circumstantial evidence creates a direct link to Petitioner's right shoulder complaints and his undisputed accidents, and the medical records clearly portray objective evidence of injury consistent with Petitioner's mechanisms of injury. Without a credible explanation for his opinion, Dr. Farley's conclusion is simply without support and at odds with the preponderance of the evidence. Here, the record is clear that Petitioner suffered no prior injuries to his right shoulder, cervical spine, or right elbow before his work accidents and affirmed he served his time in the Navy without incident or injury. (T.26) Moreover, his complaints surfaced contemporaneous to the injury, and the record is devoid of any intervening injury. Consequently, the Arbitrator finds that Petitioner's current condition of ill-being in his right shoulder is causally related to his accidental work injuries.

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

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

21WC021413
November 12, 2020

The Arbitrator finds all care and treatment rendered as a result of his first accident reasonable and necessary. Petitioner received appropriate conservative care and was able to return to unrestricted work.

Respondent shall pay all reasonable and necessary medical benefits contained in Petitioner's group exhibit through December 7, 2020. Respondent shall have credit for any amounts paid through its group carrier and shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

21WC012078
April 9, 2021

The Arbitrator finds Petitioner's care and treatment has been reasonable and necessary. Petitioner was treated appropriately with conservative care for his injuries and received surgical

care for his conditions that proved refractory to such care. Petitioner improved with his care as outlined in his records and was able to return to full unrestricted duty until his third work accident.

Respondent shall thus pay all reasonable and necessary medical benefits contained in Petitioner's group exhibit through March 7, 2022. Respondent shall have credit for any amounts paid through its group carrier and shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

22WC021094
July 28, 2022

Respondent disputes the necessity of Petitioner's reverse total right shoulder replacement based on Dr. Farley's December 2022 report deeming it unnecessary. (RX4) Dr. Farley agreed, however, that the care Petitioner received for his right elbow was reasonable and necessary. (RX4) The Arbitrator does not find said procedure unreasonable.

It is undisputed that Petitioner suffered significant injuries to his right shoulder on two occasions. Petitioner responded well to the operation performed on his right shoulder following his second accident, but suffered extensive recurrent tearing following his third injury. Dr. Bradley assessed these new injuries and felt that simple repair would not adequately address Petitioner's condition given the complexity of the tearing and other pathology visualized on Petitioner's imaging. (PX14, 8/29/22) Dr. Farley stated in his report that he only utilized such a procedure in aged patients in the setting of arthropathy. However, Petitioner was 61 years of age at the time of his third accident, and his CT scan taken at Rayus in November of 2022 evidenced "moderate glenohumeral osteoarthritis" with osteophyte formation and glenohumeral joint space narrowing. (PX19) Though Dr. Farley referenced this imaging study, he made no reference to the osteoarthritis and simply stated that Petitioner suffered from a "mild degree of arthritic change" with postsurgical changes. (RX4) Dr. Bradley noted that Petitioner was "extremely happy" with the results of the reverse total shoulder replacement of his left shoulder, and given the extensive scar tissue found intraoperatively and the osteoarthritis present on CT scan, the Arbitrator does not find his selected course of surgical treatment unreasonable or unnecessary. (PX14; PX19)

Respondent shall pay all reasonable and necessary medical benefits contained in Petitioner's group exhibit through April 12, 2023, when Petitioner completed therapy for his right elbow. Respondent shall have credit for any amounts paid through its group carrier and shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

<u>Issue (L)</u>: What is the nature and extent of the injury?

21WC021413
November 12, 2020

After consideration of the five factors enumerated in 820 ILCS 305/8.1b, namely (i) the reported level of impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records, t**he**

Arbitrator finds Petitioner suffered no permanent partial disability as a result of this accident.

21WC012078
April 9, 2021

Based upon the overlap and proximity of Petitioner's treatment for his second and third accidents, the Arbitrator awards permanent partial disability benefits under 22WC021094.

22WC021094
July 28, 2022

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

(i) **Level of Impairment**: Neither party submitted an AMA rating. The Arbitrator places no weight on this factor.

(ii) **Occupation**: Petitioner is unable to return to work for Respondent. The Arbitrator places substantial weight on this factor.

(iii) **Age**: Petitioner was 61 years old at the time of his injury. He has diminished healing capacity as a result thereof. The Arbitrator places greater weight on this factor.

(iv) **Earning Capacity**: As a result of his permanent restrictions limiting his activity prohibiting him from contact with inmate patients, Petitioner can no longer continue his occupation. The Arbitrator places substantial weight on this factor.

(v) **Disability**: As a result of his April 2021 accident, Petitioner suffered disc injuries from C2 though C7 that ultimately required C5-6 and C6-7 total disc replacement. (PX13) Petitioner also suffered from traumatic tears and injury to his right shoulder and right elbow following his April 2021 and July 2022 work accidents. As a result of the April 2021 accident, he underwent right shoulder labral repair, biceps tenotomy, rotator repair, subacromial decompression, and ulnar neurolysis. (PX13) Following the July 2022 accident, he underwent right reverse total shoulder arthroplasty, right medial epicondylectomy, and right medial elbow flexor tendon repair. (PX13)

Despite the improvement from his treatment, Petitioner testified that he still has increased symptoms with increased activity. (T.23) Petitioner testified that he has increased pain in his neck if he overexerts himself. (T.23) He also testified that certain ranges of motion in his right shoulder "are murder and pain" and he has not regained his prior functional capacity. (T.24) He testified that he is careful with any

activity, and he can no longer play golf. (T.24-25) He also testified that pain on contact, movement, or lifting with his right elbow, and he stated that he has effectively lost the ability to lift overhead. (T.25) He testified on cross-examination that his ability to care for family property, fish, hunt, and cut wood have also been adversely affected. (T.31-33) The Arbitrator finds Petitioner's testimony credible and consistent with his treating records. Dr. Bradley ultimately placed Petitioner on permanent restrictions of no lifting greater than 20 pounds, no repetitive or overhead use of the right upper extremity, and no inmate contact. (PX13) The Arbitrator places significant weight on this factor.

Based upon the foregoing factors, the Arbitrator finds Petitioner suffered serious and permanent injuries that resulted in the 25% loss of his body as a whole for the injuries to his cervical spine, the 25% loss of his body as a whole for the injuries to his right shoulder and 15% loss of use for injuries to his right arm.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC021413
Case Name	David Hunter v. State of Illinois - Chester Mental Health
Consolidated Cases	21WC012078 22WC021094
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0214
Number of Pages of Decision	16
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Aaron Wright

DATE FILED: 5/14/2025

/s/Kathryn Doerries, 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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DAVID HUNTER,

Petitioner,

vs. NO: 21 WC 021413

STATE OF ILLINOIS – CHESTER MENTAL HEALTH CENTER,

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, 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 January 02, 2024, is hereby affirmed and adopted.

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

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

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

May 14, 2025
O050625
KAD/as
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	21WC021413
Case Name	David Hunter v. SOI/Chester Mental Health
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Aaron Wright

DATE FILED: 1/2/2024

THE INTEREST RATE FOR THE WEEK OF DECEMBER 27, 2023 5.08%

/s/ Edward Lee, Arbitrator
Signature

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

January 2, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation

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

DAVID HUNTER
Employee/Petitioner

v.

SOI/CHESTER MENTAL HEALTH
Employer/Respondent

Case # **21** WC **021413**

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 **Herrin**, on **November 1, 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 12, 2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**54,600.00**; the average weekly wage was $**1,0500.00**.

On the date of accident, Petitioner was **59** years of age, ***single*** with **0** dependent child(ren).

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

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

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

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

ORDER

Respondent shall pay the reasonable and necessary medical services of outlined in Petitioner's group exhibit related to the treatment of the injury through December 7, 2020, 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.

No permanent partial disability benefits are awarded for this injury.

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_____ **JANUARY 2, 2024**

Signature of Arbitrator

FINDINGS OF FACT

Background

These three consolidated claims came before the Arbitrator for resolution of disputed issues of causal connection and liability for medical expenses pertaining solely to the right shoulder and the nature and extent of all injuries. (T.9, 10; AX1, AX3, AX5) The parties stipulated that all three accidents arose out of and in the course of his employment as a Security Therapy Aide I and that his current condition of ill-being in his cervical spine and right arm are causally related to his work accidents. (T.9, 12)

21WC021413
November 12, 2020

He suffered his first accident on November 12, 2020, when he was assaulted while trying to restrain an unruly patient and injured his neck, right shoulder, and right arm/elbow. (T.13; AX2) He was seen at Sparta Convenient Care the next day and diagnosed with acute partial rupture of the right arm extensor tendon with epicondylitis and was taken off work until he could be cleared by orthopedics. (PX3) Petitioner followed up at Family Health Centre Orthopedics on November 18th, where it was noted that despite Petitioner's diagnosis, he received little to no care from urgent care. (PX4) Petitioner was sent for x-rays at Sparta Community Hospital, which were negative for fracture. (PX5) On examination, Petitioner exhibited tenderness over the lateral epicondyle and biceps tendon in his right dominant upper extremity. (PX4) His assessment was acute lateral epicondylitis and bicipital tendinitis of the right elbow. *Id.* He was prescribed Meloxicam and placed on light duty. *Id.* On December 2, 2020, Petitioner was doing much better. *Id.* He was instructed to wean from the Meloxicam and permitted to return to unrestricted duty. *Id.*

21WC012078
April 9, 2021

Petitioner suffered his second accident on April 9, 2021, when he was again assaulted by an unruly patient and again suffered injury to his left eye, neck, right shoulder, and right arm/elbow along with psychological injury. (T.15; AX4)

Petitioner was seen at Chester Memorial Hospital the following day with complaints of a painful and red left eye, head and neck pain, and dizziness with nausea. (PX6) CT imaging of his head, face, and neck were negative for fracture. *Id.* His assessment was acute neck sprain, contusion of the temple region, and traumatic subconjunctival hemorrhage of the left eye. *Id.* Petitioner was taken off work and instructed to follow up with his specialist within two to four days. *Id.*

Petitioner was seen at the Marion Eye Center on April 15, 2021, for complaints of blurry vision, irritation, pain, pressure, swelling, redness, and light sensitivity secondary to a work-related contusion to his left orbit. (PX7) Petitioner used antibacterial drops with cold compresses as often as tolerated for the first 48 hours after the injury and then switched to warm compresses. *Id.* Petitioner was advised to continue rest and warm compress therapy for a full 10 days post-accident and follow up with the clinic. *Id.* Petitioner continued to suffer blurred vision with inability to read fine print during follow-up, at which time he was assessed with a refractive error. *Id.* He was recommended for refractive surgery consultation but did not wish to pursue same. *Id.*

On April 19, 2021, Petitioner sought treatment at Steeleville Clinic for "work/stress issues" and reported being hit in the eye as well as his history of three prior left shoulder surgeries that included a replacement. (PX8) He was struggling with work stress on top of his lingering grief from the death of his wife three years prior and reported he would be seeing a counselor through Respondent's Employee Assistance Program (EAP). *Id.* Petitioner was diagnosed with anxiety/depression and given medical leave papers to be off for the next month. *Id.* Petitioner returned in May with persistent anxiety and was prescribed a trial of fluoxetine and kept off work through June 25, 2021. *Id.* Petitioner was thereafter referred to the Vorhees Wellness Center through Respondents EAP. (PX9) Notably, Petitioner's level of overall social and work function as a result of his bereavement and occupational illness was poor. *Id.* Petitioner began counseling at Real Solutions Professional Counseling and continued to treat at the Steeleville Clinic for medicinal management with Fluoxetine. (PX8; PX12)

Petitioner came under the care of Dr. Kevin Rutz on April 29, 2021, with a chief complaint of neck pain. (PX10) He took the history of the assault and noted that approximately 4 days after the incident, Petitioner developed neck pain that was "radiating into the right anterior shoulder" in addition to the pain in his right elbow, numbness in the 4th and 5th digits of his hand, and decreased strength. *Id.* Dr. Rutz noted Petitioner's right elbow tendinitis as well as his history of three left shoulder injuries from a prior injury. *Id.* X-rays of Petitioner's cervical spine demonstrated moderate to severe disc degeneration at C5-6, moderate degeneration at C6-7, and bilateral foraminal narrowing from C5 to 7 with upper cervical and facet arthropathy. *Id.* Exam revealed diminished cervical flexion and extension reproducing his neck pain and dizziness with cervical extension. *Id.* It also showed increased pain with right shoulder range of motion and signs of impingement. *Id.* He was sent for an MRI of the cervical spine for to evaluate his pain and radiculopathy. *Id.*

The MRI taken at Greater Missouri Imaging on May 3, 2021, showed a C6-7 left paracentral protrusion with a caudally extruded disc fragment extending below the interspace creating central canal stenosis and severe bilateral foraminal stenosis, C5-6 right lateral recess epicenter large broad-based protrusion creating central canal stenosis and severe right lateral and left foraminal stenosis, a separate left foraminal protrusion with spurring contributing to left foraminal stenosis, left-sided C4-5 facet arthropathy with foraminal stenosis, right-sided C2-3 facet arthropathy with central protrusion creating right foraminal stenosis, and a central annular tear and protrusion at C3-4 resulting in dural displacement. (PX11)

Petitioner returned to Dr. Rutz on May 11, 2021, again with pain in his neck radiating into his right arm and positive impingement signs into his right shoulder. (PX10) He was given a right shoulder injection in the subacromial bursa and scheduled for a C6 nerve root block at Greater Missouri Imaging to help determine which symptoms were coming from his neck and which were coming from the shoulder to help guide his care. *Id.*; (PX11, 5/11/21) Petitioner reported on May 25, 2021, that he experienced some improvement from the shoulder injection, but limited improvement from his right C6 selective nerve root block, as he still had pain in his anterior shoulder along with numbness and tingling going down through his right upper extremity. *Id.* Dr. Rutz reviewed Petitioner's MRI and noted the nerve impingement at C5-6 and C6-7 consistent with his radicular complaints. (PX10, 5/25/21) He recommended two-level discectomy and arthroplasties at C5-6 and C6-7. *Id.* He also stated that after Petitioner's nerve impingement in his neck was cared for, he might require evaluation by an upper extremity specialist. *Id.*

Petitioner obtained pre-operative clearance, and on July 1, 2021, he underwent C5-6 and C6-7 total disc replacement. (PX13) At C6-7 objective intraoperative findings confirmed a left-sided disc herniation partially calcified and causing left-sided spinal cord compression, and a C5-6 partially-calcified right-sided disc herniation causing cord compression. *Id.* During the post-operative visit on July 15, 2021, Petitioner had some aching and soreness in his neck with radiation into his upper trapezial musculature. (PX10) Imaging showed good placement of the prostheses without subsidence of hypertrophy. *Id.* He returned to Dr. Rutz on August 17, 2021, and continued to report substantial improvement in his neck symptoms, but still had residual tingling in his 4th and 5th fingers of his right hand. *Id.* Dr. Rutz placed Petitioner at maximum medical improvement with respect to his cervical spine but recommended that he see an upper extremity specialist, as he believed that Petitioner's continued problems were referable to his shoulders and biceps. *Id.* Petitioner also remained on leave of absence under the direction of his mental health practitioner at Steeleville Clinic through October 25, 2021. (PX8)

Petitioner came under the care of Dr. Matthew Bradley for his right upper extremity on August 23, 2021. (PX14) He took the history of the accident and Petitioner's complaints of right shoulder and elbow pain with upper extremity paresthesia that occurred with the injury. *Id.* Petitioner reported frequent clicking or catching in his medial elbow with severe burning pain down into his hand with flexion and extension of his right elbow, and he denied any significant history of right shoulder or elbow pain or radicular symptoms prior to the work injury. *Id.*

Physical examination was positive for impingement signs of the right shoulder, pain to palpation of the ulnar nerve with possible instability of the ulnar nerve translating anterior over the medial epicondyle during elbow flexion, and positive Tinel's sign. *Id.* Dr. Bradley's assessment was possible partial right rotator cuff tear with traumatic impingement syndrome and traumatic cubital tunnel with an unstable ulnar nerve. *Id.* He recommended an MRI scan of the right shoulder and an EMG and nerve conduction study of the right upper extremity. *Id.* He recommended conservative care with home therapy exercises and anti-inflammatory medication in the meantime. *Id.*

The MRI taken on September 3, 2021, revealed a moderate partial intrasubstance delaminating tear of the supraspinatus tendon, a moderate partial tear of the subscapularis tendon in its mid-portion, a SLAP tear with extension anteriorly, and acromioclavicular arthropathy. (PX15) The EMG completed on September 20th showed likely residual cervical radiculopathy in the right hand with an underlying component of diabetic type neuropathy and significant chronic ulnar neuropathy across the right elbow with sensory axonal loss. (PX16) Dr. Bradley reviewed the findings on September 20th, and he recommended surgery by way of right shoulder SLAP repair and possible rotator cuff repair with right elbow ulnar nerve neurolysis. (PX14)

On October 6, 2021, Dr. Bradley performed a right shoulder labral repair, biceps tenotomy, rotator repair, subacromial decompression, and ulnar neurolysis. (PX13) Objective intraoperative findings confirmed a torn labrum, tearing of the supraspinatus tendon, a partial tear of the labrum, and fraying of the biceps tendon with chronic tendinopathy in the right shoulder, and chronic inflammatory tissue and tightness of the fascia of the right elbow. *Id.* Petitioner was given a cervical plexus injection for acute post-operative pain. *Id.* Petitioner reported improvement in his right shoulder and elbow pain on October 21, 2021, and was referred for physical therapy. (PX14; PX17) However, Petitioner's exam on December 6, 2021, was consistent with post-operative subacromial bursitis, so he was given a subacromial injection and instructed to continue his therapy

and exercise program while taking anti-inflammatory medication while he was kept off work. (PX14)

Petitioner gradually improved with therapy until he was released to light duty on January 10, 2022, and then full duty on March 7, 2022. (PX14) Petitioner's pain and range of motion had improved significantly, but he was instructed to continue his home therapy program and anti-inflammatory medication as needed. *Id.*

22WC021094
July 28, 2022

Petitioner suffered his third injury on July 28, 2022, when he fell to the ground while trying yet again to restrain a violent patient and yet again suffered injury to his neck, right shoulder, and right elbow/arm along with psychological injury. (T.16, AX6)

Petitioner was seen at the emergency department at Sparta Community Hospital, where he was evaluated for neck pain, acute right cervical radiculopathy, and right upper extremity injury as a result of being physically assaulted at work and landing on his right side with two people on top of him. (PX5) CTs of Petitioner's head and cervical spine and x-rays of his right shoulder and elbow were negative for fracture, but the attending clinician suspected that Petitioner suffered soft tissue injury along with the partial laceration of his right biceps tendon. *Id.* Petitioner was taken off work for a week, given hydrocodone, and instructed to see his primary care provider. *Id.*

Petitioner returned to Dr. Bradley on August 1, 2022, with right shoulder and elbow pain with burning into his hand after his recent work injury. (PX14) He noted that Petitioner had fully recovered from his prior injury and was able to return to work and perform all necessary job requirements without significant pain or dysfunction until the most recent injury. *Id.* However, Petitioner's current findings on exam were again positive for impingement, and biceps provocative testing was also positive along with signs of ulnar irritation. *Id.* Dr. Bradley ordered MRIs of Petitioner's right shoulder and right elbow out of concern for re-injury. *Id.*

Petitioner was seen at Steeleville Clinic on August 2nd, and reported the history of the accident and his complaints of an immediate onset of pain in his right shoulder and neck. (PX5) Examination showed pain with external rotation of his shoulder with tenderness to palpation of the right bicep. *Id.* He was given ibuprofen to take instead of the narcotics given in the emergency room, and instructed continue his treatment with Dr. Bradley and follow up with his counselor. *Id.* Petitioner saw his counselor later the same month for a 60 minute session of psychotherapy. (PX12) He also continued to receive medication from his primary care physician. (PX8)

New MRIs taken on August 16, 2022, revealed right shoulder injuries of partial thickness articular surface tearing of the distal insertional fibers of the supraspinatus tendon without a full thickness supraspinatus tendon tear, infraspinatus tendinosis, detachment of the long head of the biceps tendon from its anchor possibly representing a full thickness tear with retraction, and complex nondisplaced tearing throughout the glenoid labrum. (PX15) With respect to Petitioner's right elbow, the images showed a partial thickness tear of the origin fibers of the common flexor tendon and a small partial thickness interstitial tear with common extensor tendinosis. *Id.*

On August 29, 2022, Dr. Bradley reviewed the MRI findings and advised Petitioner than given the substantial recurrent tearing, simple repair was not likely to result in long-standing pain

relief or improved function in his shoulder. (PX14) He also noted the pain from the substantial tearing to the common flexor tendon of Petitioner's elbow was not respondent to conservative care and was making it difficult for Petitioner to use his right elbow. *Id.* He noted that Petitioner suffered substantial injury to his left shoulder in the past and was pleased with the outcome of his left reverse total arthroplasty. *Id.* Consequently, he recommended a right reverse total shoulder replacement and right medial epicondylectomy with flexor tendon repair for the elbow and referred Petitioner for preoperative CT imaging of his right upper extremity at Rayus Radiology, which showed moderate right glenohumeral osteoarthritis. (PX14; PX19) In the meantime, he placed Petitioner on sedentary duty. (PX14)

Petitioner obtained an independent psychiatric evaluation with Dr. Adam Sky on October 25, 2022. (PX18) He believed that Petitioner developed significant psychiatric disability as a result of the injuries he sustained in the course of his occupational duties. *Id.* While he believed that Petitioner was at maximum medical improvement, he noted he would still require ongoing psychiatric care and treatment through psychotherapy and medication for his major depressive disorder and anxiety. *Id.*

On November 30, 2022, Petitioner underwent right reverse total shoulder arthroplasty, right medial epicondylectomy, and right medial elbow flexor tendon repair. (PX13) Objective intraoperative findings showed an approximately 75% tear of the right elbow medial epicondyle while the shoulder findings consisted of near complete tearing of the glenoid labrum with marked instability and tearing of the subscapularis of the rotator cuff. *Id.* Petitioner reported he was doing well during the follow-up on December 15, 2022, and Dr. Bradley referred Petitioner for physical therapy. (PX14) On February 16, 2023, Petitioner reported some persistent weakness but had no complaints of pain. *Id.* Dr. Bradley advised Petitioner to continue working on regaining his strength in therapy and allowed him to return to light duty work. *Id.* During the final visit on March 30, 2023, Dr. Bradley noted Petitioner had an excellent outcome despite any limitations in strength, range of motion and/or function and placed him at maximum medical improvement with permanent restrictions of no lifting greater than 20 pounds, no repetitive or overhead use of the right upper extremity, and no inmate contact. *Id.*

Petitioner retired from Respondent's facility as of August 22, 2023. (T.18-19)

At trial, Petitioner testified that he was miserable prior to his operations, but experienced marked improvement following his treatment. (T.22) Despite the improvement from his treatment, Petitioner testified that he still has increased symptoms with increased activity. (T.23) Petitioner testified that he has increased pain in his neck if he overexerts himself. (T.23) He also testified that certain ranges of motion in his right shoulder "are murder and pain" and he has not regained his prior functional capacity. (T.24) He testified that he is careful with any activity, and he can no longer play golf. (T.24-25) He also testified that pain on contact, movement, or lifting with his right elbow, and he stated that he has effectively lost the ability to lift overhead. (T.25) He testified on cross-examination that his ability to care for family property, fish, hunt, and cut wood have also been adversely affected. (T.31-33)

Petitioner testified to no prior injuries to his cervical spine, right shoulder, or right elbow before his work accidents and affirmed he served his time in the Navy without incident or injury. (T.26) Petitioner stipulated at trial that although he was treated for PTSD, he claimed no permanent partial disability for same. (T.18)

Respondent had Petitioner examined by Dr. Timothy Farley on December 20, 2022, and he noted the history of Petitioner's accident on July 28, 2022, as well as his previous injury in April of 2021, and all of the treatment and diagnostic studies received thereafter. (RX4) He also reviewed Respondent's documentation and the work comp medical report forms. *Id.* He conducted his own physical examination of Petitioner and noted he did not get the sense of symptom magnification. *Id.* Dr. Farley's assessment was status post right reverse total shoulder replacement and right elbow revision nerve surgery. *Id.* He did not believe there was a direct causal relationship between Petitioner's current condition and the procedure performed on Petitioner's right shoulder, but he believed there was a possible causal relationship between Petitioner's injury on July 28, 2022, and Petitioner's right elbow surgery. *Id.*

With respect to whether Petitioner's treatment was reasonable and necessary, Dr. Farley felt that that was as a "complicated question." *Id.* He stated that he was "entirely unclear" on how Petitioner ended up with a reverse total shoulder replacement, which he believed was unnecessary, as it was a procedure that was designed to deal with arthropathy and rotator cuff deficiency. *Id.* He indicated that this was a procedure that he performed only on older individuals with lower physical demands. *Id.* He felt that if there was concern for arthritis, a standard total replacement would have been more appropriate. *Id.* He did not feel Petitioner's elbow operation was unreasonable. *Id.* He believed that Petitioner would reach maximum medical improvement three to four months after his shoulder replacement. *Id.*

CONCLUSIONS OF LAW

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

Of Petitioner's multiple injuries, the only condition in dispute is his right shoulder condition.

Circumstantial evidence, especially when entirely in favor of the claimant, is sufficient to prove a causal nexus between an accident and the resulting injury. *Gano Electric Contracting v. Industrial Comm'n*, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724, 728 (1994); *International Harvester v. Industrial Comm'n*, 93 Ill.2d 59, 63-64, 442 N.E.2d 908, 910-911 (1982). A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the workers' compensation claimant's injury. *Shafer v. Illinois Workers' Comp. Comm'n*, 2011 IL App (4th) 100505WC, 976 N.E.2d 1 (2011). A doctor's testimony is not required to establish causation and the extent of disability when there is a clear causal chain and the medical reports in the record corroborate the employee's testimony. *Gubser v. Industrial Comm'n*, 248 N.E.2d 75 (Ill. 1969); see also *Union Starch & Refining Co. v. Indus. Comm'n*, 37 Ill. 2d 139, 144, 224 N.E.2d 856, 859 (1967). The Commission is also not required to accept a medical opinion simply because it is the only one in the record. *Fickas v. Indus. Comm'n*, 308 Ill. App. 3d 1037, 1042, 721 N.E.2d 1165, 1169 (1999). 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).

Though Respondent presented the opinion of Dr. Farley purportedly to dispute Petitioner's right shoulder condition, the Arbitrator does not find his opinion relevant as to causation. Dr. Farley gave no explanation for concluding that Petitioner's right shoulder condition was not causally related to his work accidents. He merely challenged the type of operation performed following Petitioner's third injury on July 28, 2022. (RX4) The Arbitrator finds a basis for his opinion is necessary in light of the fact that the circumstantial evidence creates a direct link to Petitioner's right shoulder complaints and his undisputed accidents, and the medical records clearly portray objective evidence of injury consistent with Petitioner's mechanisms of injury. Without a credible explanation for his opinion, Dr. Farley's conclusion is simply without support and at odds with the preponderance of the evidence. Here, the record is clear that Petitioner suffered no prior injuries to his right shoulder, cervical spine, or right elbow before his work accidents and affirmed he served his time in the Navy without incident or injury. (T.26) Moreover, his complaints surfaced contemporaneous to the injury, and the record is devoid of any intervening injury. Consequently, the Arbitrator finds that Petitioner's current condition of ill-being in his right shoulder is causally related to his accidental work injuries.

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

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

21WC021413
November 12, 2020

The Arbitrator finds all care and treatment rendered as a result of his first accident reasonable and necessary. Petitioner received appropriate conservative care and was able to return to unrestricted work.

Respondent shall pay all reasonable and necessary medical benefits contained in Petitioner's group exhibit through December 7, 2020. Respondent shall have credit for any amounts paid through its group carrier and shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

21WC012078
April 9, 2021

The Arbitrator finds Petitioner's care and treatment has been reasonable and necessary. Petitioner was treated appropriately with conservative care for his injuries and received surgical

care for his conditions that proved refractory to such care. Petitioner improved with his care as outlined in his records and was able to return to full unrestricted duty until his third work accident.

Respondent shall thus pay all reasonable and necessary medical benefits contained in Petitioner's group exhibit through March 7, 2022. Respondent shall have credit for any amounts paid through its group carrier and shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

22WC021094
July 28, 2022

Respondent disputes the necessity of Petitioner's reverse total right shoulder replacement based on Dr. Farley's December 2022 report deeming it unnecessary. (RX4) Dr. Farley agreed, however, that the care Petitioner received for his right elbow was reasonable and necessary. (RX4) The Arbitrator does not find said procedure unreasonable.

It is undisputed that Petitioner suffered significant injuries to his right shoulder on two occasions. Petitioner responded well to the operation performed on his right shoulder following his second accident, but suffered extensive recurrent tearing following his third injury. Dr. Bradley assessed these new injuries and felt that simple repair would not adequately address Petitioner's condition given the complexity of the tearing and other pathology visualized on Petitioner's imaging. (PX14, 8/29/22) Dr. Farley stated in his report that he only utilized such a procedure in aged patients in the setting of arthropathy. However, Petitioner was 61 years of age at the time of his third accident, and his CT scan taken at Rayus in November of 2022 evidenced "moderate glenohumeral osteoarthritis" with osteophyte formation and glenohumeral joint space narrowing. (PX19) Though Dr. Farley referenced this imaging study, he made no reference to the osteoarthritis and simply stated that Petitioner suffered from a "mild degree of arthritic change" with postsurgical changes. (RX4) Dr. Bradley noted that Petitioner was "extremely happy" with the results of the reverse total shoulder replacement of his left shoulder, and given the extensive scar tissue found intraoperatively and the osteoarthritis present on CT scan, the Arbitrator does not find his selected course of surgical treatment unreasonable or unnecessary. (PX14; PX19)

Respondent shall pay all reasonable and necessary medical benefits contained in Petitioner's group exhibit through April 12, 2023, when Petitioner completed therapy for his right elbow. Respondent shall have credit for any amounts paid through its group carrier and shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

<u>Issue (L)</u>: What is the nature and extent of the injury?

21WC021413
November 12, 2020

After consideration of the five factors enumerated in 820 ILCS 305/8.1b, namely (i) the reported level of impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records, t**he**

Arbitrator finds Petitioner suffered no permanent partial disability as a result of this accident.

21WC012078
April 9, 2021

Based upon the overlap and proximity of Petitioner's treatment for his second and third accidents, the Arbitrator awards permanent partial disability benefits under 22WC021094.

22WC021094
July 28, 2022

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

(i) **Level of Impairment**: Neither party submitted an AMA rating. The Arbitrator places no weight on this factor.

(ii) **Occupation**: Petitioner is unable to return to work for Respondent. The Arbitrator places substantial weight on this factor.

(iii) **Age**: Petitioner was 61 years old at the time of his injury. He has diminished healing capacity as a result thereof. The Arbitrator places greater weight on this factor.

(iv) **Earning Capacity**: As a result of his permanent restrictions limiting his activity prohibiting him from contact with inmate patients, Petitioner can no longer continue his occupation. The Arbitrator places substantial weight on this factor.

(v) **Disability**: As a result of his April 2021 accident, Petitioner suffered disc injuries from C2 though C7 that ultimately required C5-6 and C6-7 total disc replacement. (PX13) Petitioner also suffered from traumatic tears and injury to his right shoulder and right elbow following his April 2021 and July 2022 work accidents. As a result of the April 2021 accident, he underwent right shoulder labral repair, biceps tenotomy, rotator repair, subacromial decompression, and ulnar neurolysis. (PX13) Following the July 2022 accident, he underwent right reverse total shoulder arthroplasty, right medial epicondylectomy, and right medial elbow flexor tendon repair. (PX13)

Despite the improvement from his treatment, Petitioner testified that he still has increased symptoms with increased activity. (T.23) Petitioner testified that he has increased pain in his neck if he overexerts himself. (T.23) He also testified that certain ranges of motion in his right shoulder "are murder and pain" and he has not regained his prior functional capacity. (T.24) He testified that he is careful with any

activity, and he can no longer play golf. (T.24-25) He also testified that pain on contact, movement, or lifting with his right elbow, and he stated that he has effectively lost the ability to lift overhead. (T.25) He testified on cross-examination that his ability to care for family property, fish, hunt, and cut wood have also been adversely affected. (T.31-33) The Arbitrator finds Petitioner's testimony credible and consistent with his treating records. Dr. Bradley ultimately placed Petitioner on permanent restrictions of no lifting greater than 20 pounds, no repetitive or overhead use of the right upper extremity, and no inmate contact. (PX13) The Arbitrator places significant weight on this factor.

Based upon the foregoing factors, the Arbitrator finds Petitioner suffered serious and permanent injuries that resulted in the 25% loss of his body as a whole for the injuries to his cervical spine, the 25% loss of his body as a whole for the injuries to his right shoulder and 15% loss of use for injuries to his right arm.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC021094
Case Name	David Hunter v. State of Illinois - Chester Mental Health
Consolidated Cases	21WC012078 21WC021413
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0215
Number of Pages of Decision	16
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Aaron Wright

DATE FILED: 5/14/2025

/s/Kathryn Doerries, 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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DAVID HUNTER,

Petitioner,

vs. NO: 22 WC 021094

STATE OF ILLINOIS – CHESTER MENTAL HEALTH CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, and nature and extent of disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 02, 2024, is hereby affirmed and adopted.

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

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

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

May 14, 2025
O050625
KAD/as
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	22WC021094
Case Name	David Hunter v. SOI/Chester Mental Health
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Aaron Wright

DATE FILED: 1/2/2024

THE INTEREST RATE FOR THE WEEK OF DECEMBER 27, 2023 5.08%

/s/ Edward Lee, Arbitrator
Signature

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

January 2, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation

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

DAVID HUNTER
Employee/Petitioner

v.

SOI/CHESTER MENTAL HEALTH
Employer/Respondent

Case # **22** WC **021094**

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 **Herrin**, on **November 1, 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

C. ☐ 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, 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 $**58,676.31**; the average weekly wage was $**1,128.39**.

On the date of accident, Petitioner was **61** years of age, ***single*** with **0** dependent child(ren).

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

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

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

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

ORDER

Respondent shall pay the reasonable and necessary medical services of outlined in Petitioner's group exhibit related to the treatment of Petitioner's injuries through April 12, 2023, 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 permanent partial disability benefits of **$677.03**/week for **250** weeks, because the injuries sustained caused Petitioner's (25% cervical spine and 25% right shoulder) loss of his body as a whole, as provided in § 8(d)2 of the Act.

Respondent shall pay permanent partial disability benefits of **$677.03**/week for **37.95** weeks, because the injuries sustained cause the **15%** loss of the right arm, as provided in § 8(e) of the Act.

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

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

Edward Lee_____ **JANUARY 2, 2024**

Signature of Arbitrator

FINDINGS OF FACT

Background

These three consolidated claims came before the Arbitrator for resolution of disputed issues of causal connection and liability for medical expenses pertaining solely to the right shoulder and the nature and extent of all injuries. (T.9, 10; AX1, AX3, AX5) The parties stipulated that all three accidents arose out of and in the course of his employment as a Security Therapy Aide I and that his current condition of ill-being in his cervical spine and right arm are causally related to his work accidents. (T.9, 12)

21WC021413
November 12, 2020

He suffered his first accident on November 12, 2020, when he was assaulted while trying to restrain an unruly patient and injured his neck, right shoulder, and right arm/elbow. (T.13; AX2) He was seen at Sparta Convenient Care the next day and diagnosed with acute partial rupture of the right arm extensor tendon with epicondylitis and was taken off work until he could be cleared by orthopedics. (PX3) Petitioner followed up at Family Health Centre Orthopedics on November 18th, where it was noted that despite Petitioner's diagnosis, he received little to no care from urgent care. (PX4) Petitioner was sent for x-rays at Sparta Community Hospital, which were negative for fracture. (PX5) On examination, Petitioner exhibited tenderness over the lateral epicondyle and biceps tendon in his right dominant upper extremity. (PX4) His assessment was acute lateral epicondylitis and bicipital tendinitis of the right elbow. *Id.* He was prescribed Meloxicam and placed on light duty. *Id.* On December 2, 2020, Petitioner was doing much better. *Id.* He was instructed to wean from the Meloxicam and permitted to return to unrestricted duty. *Id.*

21WC012078
April 9, 2021

Petitioner suffered his second accident on April 9, 2021, when he was again assaulted by an unruly patient and again suffered injury to his left eye, neck, right shoulder, and right arm/elbow along with psychological injury. (T.15; AX4)

Petitioner was seen at Chester Memorial Hospital the following day with complaints of a painful and red left eye, head and neck pain, and dizziness with nausea. (PX6) CT imaging of his head, face, and neck were negative for fracture. *Id.* His assessment was acute neck sprain, contusion of the temple region, and traumatic subconjunctival hemorrhage of the left eye. *Id.* Petitioner was taken off work and instructed to follow up with his specialist within two to four days. *Id.*

Petitioner was seen at the Marion Eye Center on April 15, 2021, for complaints of blurry vision, irritation, pain, pressure, swelling, redness, and light sensitivity secondary to a work-related contusion to his left orbit. (PX7) Petitioner used antibacterial drops with cold compresses as often as tolerated for the first 48 hours after the injury and then switched to warm compresses. *Id.* Petitioner was advised to continue rest and warm compress therapy for a full 10 days post-accident and follow up with the clinic. *Id.* Petitioner continued to suffer blurred vision with inability to read fine print during follow-up, at which time he was assessed with a refractive error. *Id.* He was recommended for refractive surgery consultation but did not wish to pursue same. *Id.*

On April 19, 2021, Petitioner sought treatment at Steeleville Clinic for "work/stress issues" and reported being hit in the eye as well as his history of three prior left shoulder surgeries that included a replacement. (PX8) He was struggling with work stress on top of his lingering grief from the death of his wife three years prior and reported he would be seeing a counselor through Respondent's Employee Assistance Program (EAP). *Id.* Petitioner was diagnosed with anxiety/depression and given medical leave papers to be off for the next month. *Id.* Petitioner returned in May with persistent anxiety and was prescribed a trial of fluoxetine and kept off work through June 25, 2021. *Id.* Petitioner was thereafter referred to the Vorhees Wellness Center through Respondents EAP. (PX9) Notably, Petitioner's level of overall social and work function as a result of his bereavement and occupational illness was poor. *Id.* Petitioner began counseling at Real Solutions Professional Counseling and continued to treat at the Steeleville Clinic for medicinal management with Fluoxetine. (PX8; PX12)

Petitioner came under the care of Dr. Kevin Rutz on April 29, 2021, with a chief complaint of neck pain. (PX10) He took the history of the assault and noted that approximately 4 days after the incident, Petitioner developed neck pain that was "radiating into the right anterior shoulder" in addition to the pain in his right elbow, numbness in the 4th and 5th digits of his hand, and decreased strength. *Id.* Dr. Rutz noted Petitioner's right elbow tendinitis as well as his history of three left shoulder injuries from a prior injury. *Id.* X-rays of Petitioner's cervical spine demonstrated moderate to severe disc degeneration at C5-6, moderate degeneration at C6-7, and bilateral foraminal narrowing from C5 to 7 with upper cervical and facet arthropathy. *Id.* Exam revealed diminished cervical flexion and extension reproducing his neck pain and dizziness with cervical extension. *Id.* It also showed increased pain with right shoulder range of motion and signs of impingement. *Id.* He was sent for an MRI of the cervical spine for to evaluate his pain and radiculopathy. *Id.*

The MRI taken at Greater Missouri Imaging on May 3, 2021, showed a C6-7 left paracentral protrusion with a caudally extruded disc fragment extending below the interspace creating central canal stenosis and severe bilateral foraminal stenosis, C5-6 right lateral recess epicenter large broad-based protrusion creating central canal stenosis and severe right lateral and left foraminal stenosis, a separate left foraminal protrusion with spurring contributing to left foraminal stenosis, left-sided C4-5 facet arthropathy with foraminal stenosis, right-sided C2-3 facet arthropathy with central protrusion creating right foraminal stenosis, and a central annular tear and protrusion at C3-4 resulting in dural displacement. (PX11)

Petitioner returned to Dr. Rutz on May 11, 2021, again with pain in his neck radiating into his right arm and positive impingement signs into his right shoulder. (PX10) He was given a right shoulder injection in the subacromial bursa and scheduled for a C6 nerve root block at Greater Missouri Imaging to help determine which symptoms were coming from his neck and which were coming from the shoulder to help guide his care. *Id.*; (PX11, 5/11/21) Petitioner reported on May 25, 2021, that he experienced some improvement from the shoulder injection, but limited improvement from his right C6 selective nerve root block, as he still had pain in his anterior shoulder along with numbness and tingling going down through his right upper extremity. *Id.* Dr. Rutz reviewed Petitioner's MRI and noted the nerve impingement at C5-6 and C6-7 consistent with his radicular complaints. (PX10, 5/25/21) He recommended two-level discectomy and arthroplasties at C5-6 and C6-7. *Id.* He also stated that after Petitioner's nerve impingement in his neck was cared for, he might require evaluation by an upper extremity specialist. *Id.*

Petitioner obtained pre-operative clearance, and on July 1, 2021, he underwent C5-6 and C6-7 total disc replacement. (PX13) At C6-7 objective intraoperative findings confirmed a left-sided disc herniation partially calcified and causing left-sided spinal cord compression, and a C5-6 partially-calcified right-sided disc herniation causing cord compression. *Id.* During the post-operative visit on July 15, 2021, Petitioner had some aching and soreness in his neck with radiation into his upper trapezial musculature. (PX10) Imaging showed good placement of the prostheses without subsidence of hypertrophy. *Id.* He returned to Dr. Rutz on August 17, 2021, and continued to report substantial improvement in his neck symptoms, but still had residual tingling in his 4th and 5th fingers of his right hand. *Id.* Dr. Rutz placed Petitioner at maximum medical improvement with respect to his cervical spine but recommended that he see an upper extremity specialist, as he believed that Petitioner's continued problems were referable to his shoulders and biceps. *Id.* Petitioner also remained on leave of absence under the direction of his mental health practitioner at Steeleville Clinic through October 25, 2021. (PX8)

Petitioner came under the care of Dr. Matthew Bradley for his right upper extremity on August 23, 2021. (PX14) He took the history of the accident and Petitioner's complaints of right shoulder and elbow pain with upper extremity paresthesia that occurred with the injury. *Id.* Petitioner reported frequent clicking or catching in his medial elbow with severe burning pain down into his hand with flexion and extension of his right elbow, and he denied any significant history of right shoulder or elbow pain or radicular symptoms prior to the work injury. *Id.*

Physical examination was positive for impingement signs of the right shoulder, pain to palpation of the ulnar nerve with possible instability of the ulnar nerve translating anterior over the medial epicondyle during elbow flexion, and positive Tinel's sign. *Id.* Dr. Bradley's assessment was possible partial right rotator cuff tear with traumatic impingement syndrome and traumatic cubital tunnel with an unstable ulnar nerve. *Id.* He recommended an MRI scan of the right shoulder and an EMG and nerve conduction study of the right upper extremity. *Id.* He recommended conservative care with home therapy exercises and anti-inflammatory medication in the meantime. *Id.*

The MRI taken on September 3, 2021, revealed a moderate partial intrasubstance delaminating tear of the supraspinatus tendon, a moderate partial tear of the subscapularis tendon in its mid-portion, a SLAP tear with extension anteriorly, and acromioclavicular arthropathy. (PX15) The EMG completed on September 20th showed likely residual cervical radiculopathy in the right hand with an underlying component of diabetic type neuropathy and significant chronic ulnar neuropathy across the right elbow with sensory axonal loss. (PX16) Dr. Bradley reviewed the findings on September 20th, and he recommended surgery by way of right shoulder SLAP repair and possible rotator cuff repair with right elbow ulnar nerve neurolysis. (PX14)

On October 6, 2021, Dr. Bradley performed a right shoulder labral repair, biceps tenotomy, rotator repair, subacromial decompression, and ulnar neurolysis. (PX13) Objective intraoperative findings confirmed a torn labrum, tearing of the supraspinatus tendon, a partial tear of the labrum, and fraying of the biceps tendon with chronic tendinopathy in the right shoulder, and chronic inflammatory tissue and tightness of the fascia of the right elbow. *Id.* Petitioner was given a cervical plexus injection for acute post-operative pain. *Id.* Petitioner reported improvement in his right shoulder and elbow pain on October 21, 2021, and was referred for physical therapy. (PX14; PX17) However, Petitioner's exam on December 6, 2021, was consistent with post-operative subacromial bursitis, so he was given a subacromial injection and instructed to continue his therapy

and exercise program while taking anti-inflammatory medication while he was kept off work. (PX14)

Petitioner gradually improved with therapy until he was released to light duty on January 10, 2022, and then full duty on March 7, 2022. (PX14) Petitioner's pain and range of motion had improved significantly, but he was instructed to continue his home therapy program and anti-inflammatory medication as needed. *Id.*

22WC021094
July 28, 2022

Petitioner suffered his third injury on July 28, 2022, when he fell to the ground while trying yet again to restrain a violent patient and yet again suffered injury to his neck, right shoulder, and right elbow/arm along with psychological injury. (T.16, AX6)

Petitioner was seen at the emergency department at Sparta Community Hospital, where he was evaluated for neck pain, acute right cervical radiculopathy, and right upper extremity injury as a result of being physically assaulted at work and landing on his right side with two people on top of him. (PX5) CTs of Petitioner's head and cervical spine and x-rays of his right shoulder and elbow were negative for fracture, but the attending clinician suspected that Petitioner suffered soft tissue injury along with the partial laceration of his right biceps tendon. *Id.* Petitioner was taken off work for a week, given hydrocodone, and instructed to see his primary care provider. *Id.*

Petitioner returned to Dr. Bradley on August 1, 2022, with right shoulder and elbow pain with burning into his hand after his recent work injury. (PX14) He noted that Petitioner had fully recovered from his prior injury and was able to return to work and perform all necessary job requirements without significant pain or dysfunction until the most recent injury. *Id.* However, Petitioner's current findings on exam were again positive for impingement, and biceps provocative testing was also positive along with signs of ulnar irritation. *Id.* Dr. Bradley ordered MRIs of Petitioner's right shoulder and right elbow out of concern for re-injury. *Id.*

Petitioner was seen at Steeleville Clinic on August 2nd, and reported the history of the accident and his complaints of an immediate onset of pain in his right shoulder and neck. (PX5) Examination showed pain with external rotation of his shoulder with tenderness to palpation of the right bicep. *Id.* He was given ibuprofen to take instead of the narcotics given in the emergency room, and instructed continue his treatment with Dr. Bradley and follow up with his counselor. *Id.* Petitioner saw his counselor later the same month for a 60 minute session of psychotherapy. (PX12) He also continued to receive medication from his primary care physician. (PX8)

New MRIs taken on August 16, 2022, revealed right shoulder injuries of partial thickness articular surface tearing of the distal insertional fibers of the supraspinatus tendon without a full thickness supraspinatus tendon tear, infraspinatus tendinosis, detachment of the long head of the biceps tendon from its anchor possibly representing a full thickness tear with retraction, and complex nondisplaced tearing throughout the glenoid labrum. (PX15) With respect to Petitioner's right elbow, the images showed a partial thickness tear of the origin fibers of the common flexor tendon and a small partial thickness interstitial tear with common extensor tendinosis. *Id.*

On August 29, 2022, Dr. Bradley reviewed the MRI findings and advised Petitioner than given the substantial recurrent tearing, simple repair was not likely to result in long-standing pain

relief or improved function in his shoulder. (PX14) He also noted the pain from the substantial tearing to the common flexor tendon of Petitioner's elbow was not respondent to conservative care and was making it difficult for Petitioner to use his right elbow. *Id.* He noted that Petitioner suffered substantial injury to his left shoulder in the past and was pleased with the outcome of his left reverse total arthroplasty. *Id.* Consequently, he recommended a right reverse total shoulder replacement and right medial epicondylectomy with flexor tendon repair for the elbow and referred Petitioner for preoperative CT imaging of his right upper extremity at Rayus Radiology, which showed moderate right glenohumeral osteoarthritis. (PX14; PX19) In the meantime, he placed Petitioner on sedentary duty. (PX14)

Petitioner obtained an independent psychiatric evaluation with Dr. Adam Sky on October 25, 2022. (PX18) He believed that Petitioner developed significant psychiatric disability as a result of the injuries he sustained in the course of his occupational duties. *Id.* While he believed that Petitioner was at maximum medical improvement, he noted he would still require ongoing psychiatric care and treatment through psychotherapy and medication for his major depressive disorder and anxiety. *Id.*

On November 30, 2022, Petitioner underwent right reverse total shoulder arthroplasty, right medial epicondylectomy, and right medial elbow flexor tendon repair. (PX13) Objective intraoperative findings showed an approximately 75% tear of the right elbow medial epicondyle while the shoulder findings consisted of near complete tearing of the glenoid labrum with marked instability and tearing of the subscapularis of the rotator cuff. *Id.* Petitioner reported he was doing well during the follow-up on December 15, 2022, and Dr. Bradley referred Petitioner for physical therapy. (PX14) On February 16, 2023, Petitioner reported some persistent weakness but had no complaints of pain. *Id.* Dr. Bradley advised Petitioner to continue working on regaining his strength in therapy and allowed him to return to light duty work. *Id.* During the final visit on March 30, 2023, Dr. Bradley noted Petitioner had an excellent outcome despite any limitations in strength, range of motion and/or function and placed him at maximum medical improvement with permanent restrictions of no lifting greater than 20 pounds, no repetitive or overhead use of the right upper extremity, and no inmate contact. *Id.*

Petitioner retired from Respondent's facility as of August 22, 2023. (T.18-19)

At trial, Petitioner testified that he was miserable prior to his operations, but experienced marked improvement following his treatment. (T.22) Despite the improvement from his treatment, Petitioner testified that he still has increased symptoms with increased activity. (T.23) Petitioner testified that he has increased pain in his neck if he overexerts himself. (T.23) He also testified that certain ranges of motion in his right shoulder "are murder and pain" and he has not regained his prior functional capacity. (T.24) He testified that he is careful with any activity, and he can no longer play golf. (T.24-25) He also testified that pain on contact, movement, or lifting with his right elbow, and he stated that he has effectively lost the ability to lift overhead. (T.25) He testified on cross-examination that his ability to care for family property, fish, hunt, and cut wood have also been adversely affected. (T.31-33)

Petitioner testified to no prior injuries to his cervical spine, right shoulder, or right elbow before his work accidents and affirmed he served his time in the Navy without incident or injury. (T.26) Petitioner stipulated at trial that although he was treated for PTSD, he claimed no permanent partial disability for same. (T.18)

Respondent had Petitioner examined by Dr. Timothy Farley on December 20, 2022, and he noted the history of Petitioner's accident on July 28, 2022, as well as his previous injury in April of 2021, and all of the treatment and diagnostic studies received thereafter. (RX4) He also reviewed Respondent's documentation and the work comp medical report forms. *Id.* He conducted his own physical examination of Petitioner and noted he did not get the sense of symptom magnification. *Id.* Dr. Farley's assessment was status post right reverse total shoulder replacement and right elbow revision nerve surgery. *Id.* He did not believe there was a direct causal relationship between Petitioner's current condition and the procedure performed on Petitioner's right shoulder, but he believed there was a possible causal relationship between Petitioner's injury on July 28, 2022, and Petitioner's right elbow surgery. *Id.*

With respect to whether Petitioner's treatment was reasonable and necessary, Dr. Farley felt that that was as a "complicated question." *Id.* He stated that he was "entirely unclear" on how Petitioner ended up with a reverse total shoulder replacement, which he believed was unnecessary, as it was a procedure that was designed to deal with arthropathy and rotator cuff deficiency. *Id.* He indicated that this was a procedure that he performed only on older individuals with lower physical demands. *Id.* He felt that if there was concern for arthritis, a standard total replacement would have been more appropriate. *Id.* He did not feel Petitioner's elbow operation was unreasonable. *Id.* He believed that Petitioner would reach maximum medical improvement three to four months after his shoulder replacement. *Id.*

CONCLUSIONS OF LAW

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

Of Petitioner's multiple injuries, the only condition in dispute is his right shoulder condition.

Circumstantial evidence, especially when entirely in favor of the claimant, is sufficient to prove a causal nexus between an accident and the resulting injury. *Gano Electric Contracting v. Industrial Comm'n*, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724, 728 (1994); *International Harvester v. Industrial Comm'n*, 93 Ill.2d 59, 63-64, 442 N.E.2d 908, 910-911 (1982). A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the workers' compensation claimant's injury. *Shafer v. Illinois Workers' Comp. Comm'n*, 2011 IL App (4th) 100505WC, 976 N.E.2d 1 (2011). A doctor's testimony is not required to establish causation and the extent of disability when there is a clear causal chain and the medical reports in the record corroborate the employee's testimony. *Gubser v. Industrial Comm'n*, 248 N.E.2d 75 (Ill. 1969); see also *Union Starch & Refining Co. v. Indus. Comm'n*, 37 Ill. 2d 139, 144, 224 N.E.2d 856, 859 (1967). The Commission is also not required to accept a medical opinion simply because it is the only one in the record. *Fickas v. Indus. Comm'n*, 308 Ill. App. 3d 1037, 1042, 721 N.E.2d 1165, 1169 (1999). 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).

Though Respondent presented the opinion of Dr. Farley purportedly to dispute Petitioner's right shoulder condition, the Arbitrator does not find his opinion relevant as to causation. Dr. Farley gave no explanation for concluding that Petitioner's right shoulder condition was not causally related to his work accidents. He merely challenged the type of operation performed following Petitioner's third injury on July 28, 2022. (RX4) The Arbitrator finds a basis for his opinion is necessary in light of the fact that the circumstantial evidence creates a direct link to Petitioner's right shoulder complaints and his undisputed accidents, and the medical records clearly portray objective evidence of injury consistent with Petitioner's mechanisms of injury. Without a credible explanation for his opinion, Dr. Farley's conclusion is simply without support and at odds with the preponderance of the evidence. Here, the record is clear that Petitioner suffered no prior injuries to his right shoulder, cervical spine, or right elbow before his work accidents and affirmed he served his time in the Navy without incident or injury. (T.26) Moreover, his complaints surfaced contemporaneous to the injury, and the record is devoid of any intervening injury. Consequently, the Arbitrator finds that Petitioner's current condition of ill-being in his right shoulder is causally related to his accidental work injuries.

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

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

21WC021413
November 12, 2020

The Arbitrator finds all care and treatment rendered as a result of his first accident reasonable and necessary. Petitioner received appropriate conservative care and was able to return to unrestricted work.

Respondent shall pay all reasonable and necessary medical benefits contained in Petitioner's group exhibit through December 7, 2020. Respondent shall have credit for any amounts paid through its group carrier and shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

21WC012078
April 9, 2021

The Arbitrator finds Petitioner's care and treatment has been reasonable and necessary. Petitioner was treated appropriately with conservative care for his injuries and received surgical

care for his conditions that proved refractory to such care. Petitioner improved with his care as outlined in his records and was able to return to full unrestricted duty until his third work accident.

Respondent shall thus pay all reasonable and necessary medical benefits contained in Petitioner's group exhibit through March 7, 2022. Respondent shall have credit for any amounts paid through its group carrier and shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

22WC021094
July 28, 2022

Respondent disputes the necessity of Petitioner's reverse total right shoulder replacement based on Dr. Farley's December 2022 report deeming it unnecessary. (RX4) Dr. Farley agreed, however, that the care Petitioner received for his right elbow was reasonable and necessary. (RX4) The Arbitrator does not find said procedure unreasonable.

It is undisputed that Petitioner suffered significant injuries to his right shoulder on two occasions. Petitioner responded well to the operation performed on his right shoulder following his second accident, but suffered extensive recurrent tearing following his third injury. Dr. Bradley assessed these new injuries and felt that simple repair would not adequately address Petitioner's condition given the complexity of the tearing and other pathology visualized on Petitioner's imaging. (PX14, 8/29/22) Dr. Farley stated in his report that he only utilized such a procedure in aged patients in the setting of arthropathy. However, Petitioner was 61 years of age at the time of his third accident, and his CT scan taken at Rayus in November of 2022 evidenced "moderate glenohumeral osteoarthritis" with osteophyte formation and glenohumeral joint space narrowing. (PX19) Though Dr. Farley referenced this imaging study, he made no reference to the osteoarthritis and simply stated that Petitioner suffered from a "mild degree of arthritic change" with postsurgical changes. (RX4) Dr. Bradley noted that Petitioner was "extremely happy" with the results of the reverse total shoulder replacement of his left shoulder, and given the extensive scar tissue found intraoperatively and the osteoarthritis present on CT scan, the Arbitrator does not find his selected course of surgical treatment unreasonable or unnecessary. (PX14; PX19)

Respondent shall pay all reasonable and necessary medical benefits contained in Petitioner's group exhibit through April 12, 2023, when Petitioner completed therapy for his right elbow. Respondent shall have credit for any amounts paid through its group carrier and shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

<u>Issue (L)</u>: What is the nature and extent of the injury?

21WC021413
November 12, 2020

After consideration of the five factors enumerated in 820 ILCS 305/8.1b, namely (i) the reported level of impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records, t**he**

Arbitrator finds Petitioner suffered no permanent partial disability as a result of this accident.

21WC012078
April 9, 2021

Based upon the overlap and proximity of Petitioner's treatment for his second and third accidents, the Arbitrator awards permanent partial disability benefits under 22WC021094.

22WC021094
July 28, 2022

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

(i) **Level of Impairment**: Neither party submitted an AMA rating. The Arbitrator places no weight on this factor.

(ii) **Occupation**: Petitioner is unable to return to work for Respondent. The Arbitrator places substantial weight on this factor.

(iii) **Age**: Petitioner was 61 years old at the time of his injury. He has diminished healing capacity as a result thereof. The Arbitrator places greater weight on this factor.

(iv) **Earning Capacity**: As a result of his permanent restrictions limiting his activity prohibiting him from contact with inmate patients, Petitioner can no longer continue his occupation. The Arbitrator places substantial weight on this factor.

(v) **Disability**: As a result of his April 2021 accident, Petitioner suffered disc injuries from C2 though C7 that ultimately required C5-6 and C6-7 total disc replacement. (PX13) Petitioner also suffered from traumatic tears and injury to his right shoulder and right elbow following his April 2021 and July 2022 work accidents. As a result of the April 2021 accident, he underwent right shoulder labral repair, biceps tenotomy, rotator repair, subacromial decompression, and ulnar neurolysis. (PX13) Following the July 2022 accident, he underwent right reverse total shoulder arthroplasty, right medial epicondylectomy, and right medial elbow flexor tendon repair. (PX13)

Despite the improvement from his treatment, Petitioner testified that he still has increased symptoms with increased activity. (T.23) Petitioner testified that he has increased pain in his neck if he overexerts himself. (T.23) He also testified that certain ranges of motion in his right shoulder "are murder and pain" and he has not regained his prior functional capacity. (T.24) He testified that he is careful with any

activity, and he can no longer play golf. (T.24-25) He also testified that pain on contact, movement, or lifting with his right elbow, and he stated that he has effectively lost the ability to lift overhead. (T.25) He testified on cross-examination that his ability to care for family property, fish, hunt, and cut wood have also been adversely affected. (T.31-33) The Arbitrator finds Petitioner's testimony credible and consistent with his treating records. Dr. Bradley ultimately placed Petitioner on permanent restrictions of no lifting greater than 20 pounds, no repetitive or overhead use of the right upper extremity, and no inmate contact. (PX13) The Arbitrator places significant weight on this factor.

Based upon the foregoing factors, the Arbitrator finds Petitioner suffered serious and permanent injuries that resulted in the 25% loss of his body as a whole for the injuries to his cervical spine, the 25% loss of his body as a whole for the injuries to his right shoulder and 15% loss of use for injuries to his right arm.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC022998
Case Name	Wesley S. Young v. State of Illinois - Pontiac Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0216
Number of Pages of Decision	12
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Alexis Ferracuti
Respondent Attorney	Bradley Defreitas

DATE FILED: 5/16/2025

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MC LEAN)

☒ 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

Wesley S. Young,

Petitioner,

vs. No. 21 WC 022998

State of Illinois, Pontiac Correctional Center,

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 issue of nature and extent of the 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 4, 2024, is hereby affirmed and adopted.

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

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

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

May 16, 2025

/s/ *Marc Parker*
Marc Parker

MP/mcp
o-05/15/25
068

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC022998
Case Name	Wesley S. Young v. State of Illinois - Pontiac Correctional Center
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	Alexis Ferracuti
Respondent Attorney	Bradley Defreitas

DATE FILED: 10/4/2024

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

October 4, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

/s/ Maureen Pulia, Arbitrator

Signature

INTEREST RATE WEEK OF OCTOBER 1 2024 4.215%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

WESLEY YOUNG,
Employee/Petitioner

v.

STATE OF ILLINOIS, PONTIAC CORRECTIONAL CENTER,
Employer/Respondent

Case # **21** WC **22998**

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 Puia**, Arbitrator of the Commission, in the city of **Bloomington**, on **9/16/24**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **7/25/21**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**59,365.86**; the average weekly wage was $**1,141.65**.

On the date of accident, Petitioner was **26** 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 $**00** for TTD, $**00** for TPD, $**00** for maintenance, and $**00** for other benefits, for a total credit of $**00**.

Respondent is entitled to a credit of $**00** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $684.99/week for 26.875 weeks, because the injuries sustained caused the 12.5% loss of the petitioner's right 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.

Maureen P. Pulia

OCTOBER 4 2024

Signature of Arbitrator

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 26 year old Corrections Office, sustained an accidental injury to his right knee that arose out of and in the course of his employment by respondent on 7/25/21. On the date of injury petitioner worked Special Ops in the prison, and was Team Leader for the Tactical Unit that was part of the emergency response team. Petitioner was hired as a Corrections Officer on 9/19/16.

Prior to 7/25/21 petitioner sustained a laceration right above his right knee on a bed frame on 3/23/19 while restraining a combative inmate at work. It was repaired with 2 sutures. Petitioner testified that he also underwent a prior arthroscopy of his right knee with a partial lateral meniscectomy in March of 2020 that was not work related.

On 7/25/21 petitioner responded to an inmate fight in the protective custody yard. Orders were given for the inmates to stop fighting and get on the ground. Six of the inmates refused to come off the yard and the team was directed to go in the yard and get them. The unit formed a line to contain them. As they started approaching the inmates the inmates got up off the ground and began fighting the officers. Petitioner was kicked in the right knee, and felt a pop. Once the inmates were secured, petitioner reported the injury to Major Brown.

Petitioner first sought treatment at the emergency room at St. James – John Albrecht Medical Center on 7/25/21. Petitioner complained of pain and swelling to his right knee after trying to subdue inmates involved in a fight at Pontiac Correctional Center. Petitioner reported a pain level of 10/10 with increased flexion. X-rays of the right knee showed soft tissue swelling and edema within the anterior knee, as well as possible small knee joint effusion. Following an examination, Dr. Dowling assessed a knee strain, and alleged assault.

Petitioner was seen at McLean County Orthopedics by Alex Franz, PA, in Dr. Joseph Novotny's office on 7/26/21. Petitioner complained of right knee pain, difficulty bearing weight, and requiring a knee stabilizer for support. Following an examination, PA Franz assessed a rupture of the quadriceps tendon. He was given a brace for walking activities. He was also given work restrictions. PA Franz ordered an MRI of the right knee.

On 8/5/21 petitioner underwent an MRI of the right knee. The impression was intact ligaments; no evidence for medial meniscal tear; evidence of previous partial lateral meniscectomy without evidence for meniscal retear; mild chondromalacia changes of the femoral trochlea; and, mild joint effusion in addition to a mild Baker's cyst.

On 8/12/21 petitioner followed up with PA Frantz. Petitioner reported ongoing pain, but was not as sensitive to touch as he had been. PA Frantz noted that the MRI of the right knee showed no evidence of a retear. An examination revealed that petitioner's right knee was quite stiff and had limited range of motion. He

was still wearing the knee immobilizer. It was believed that petitioner was developing some arthrofibrosis. Petitioner was started on a Medrol Dose Pack, and a course of physical therapy was ordered. He was referred to Dr. Novotny.

Petitioner underwent a course of physical therapy from 8/19/21 through 10/28/21 at Carle McLean County Orthopedics.

On 9/2/21 petitioner presented to Dr. Joseph Novotny at McLean County Orthopedics. He reported that his pain had not changed significantly, but his swelling was slightly reduced. Dr. Novotny examined petitioner and felt he had a partial quadricep avulsion based upon his examination and MRI results. He recommended a hinged brace to 30 degrees range of motion during weightbearing, and full range of motion during rehabilitation efforts.

On 10/14/21 petitioner followed up with Dr. Novotny. Petitioner complained of weakness, swelling, increased pain, and painful decreased range of motion. Following an examination, Dr. Novotny noted that petitioner's hinged knee sleeve was opened to 50 degrees flexion. He continued petitioner in therapy and on the same work restrictions.

On 4/7/22 petitioner underwent an EMG/NCS of the right leg that was normal. There was no electrodiagnostic evidence of a focal neuropathy, polyneuropathy or radicular pattern.

After his EMG, petitioner testified that he only took over the counter medications. He testified that he takes 5-6 Tylenol a month.

Although petitioner testified that he followed up with Dr. Novotny through July of 2022, the arbitrator notes that the subpoenaed records from Carle McLean County Orthopedics only include records through 11/5/21, as noted on page 1 of 333 of PX4.

When reviewing PX1 – Medical Billing Exhibit, the arbitrator notes that there are billing records Carle McLean County Orthopedics for treatment after 11/5/21.

PX1 shows the following:

1. That petitioner underwent physical therapy with Sarah Follmer on 4/12/22, 4/19/22, 4/21/22, 4/26/22, and 5/26/22. No medical records for these dates of service were offered into evidence.
2. That petitioner was seen by Dr. Paul Naour on 4/27/22 at Carle McLean County Orthopedics for his right knee pain. No medical record for this date of service was offered into evidence.

3. That petitioner followed up with Dr. Novotny on 5/10/22. No medical record for this date of service was offered into evidence, but the bill shows that petitioner's right knee was aspirated and an injection was performed on that date.

4. That petitioner followed-up with Dr. Novotny on 1/10/23. No medical record for this date of service was offered into evidence.

Petitioner testified that he underwent Pain Management in 2022. The only record from Pain Management in the records was the EMG, and associated bill dated 4/7/22. No other records or bills for pain management were offered into evidence by petitioner.

Petitioner testified that he last saw Dr. Novotny in July of 2022, however, none of the medical records offered into evidence by petitioner were for any visits with Dr. Novotny after 10/14/21. However, there is a medical bill that reflects petitioner did see Dr. Novotny on 1/10/23.

Petitioner testified that he still has pain in his right knee that is 7/10 at its worst. He denied any numbness or tingling. Petitioner reported difficulty with range of motion of the right knee, mostly with bending. He stated that when this happens, he straightens out his right leg and the pain goes away. Petitioner denied any difficulty sleeping unless his right knee is in a weird position. He reported pain with rigorous physical activity, and getting on and off his riding lawnmower. He also testified that this right knee can get aggravated when he is on uneven terrain or stairs.

Petitioner testified that in his current position of Sergeant, he currently deals with more violent individuals. His duties include hostage rescue, firearm instructor, transfer of high risk inmates, and high profile custody transfers. He testified that in this current job he sometimes has more pain then he did in the position of Corrections Officer. Petitioner testified that he is able to perform all the duties of his current job.

Petitioner testified that when he is performing the duties of a firearm instructor on the range, the surfaces are uneven, he has to move ammunition, and he has to bend and squat more. Petitioner testified that these activities will occasionally cause him more pain. He also testified that his right knee problems make running more difficult. He denied any difficulty restraining inmates.

Petitioner testified that he uses his left leg and upper body more, so that he does not need to use his right leg as much. Petitioner stated that he still works out, but no longer does any power lifting. He noticed that his right knee gets more aggravated at work than it does at home. He noted difficulty playing tag with his daughter.

Petitioner testified that in the year preceding the injury, he volunteered for overtime. He also testified that he believed that if he did not volunteer for overtime in the year preceding the injury, it would have been

mandated. Petitioner testified that in his current position as Sergeant overtime is mandatory, and he can be called on to respond to any statewide issue.

The parties have stipulated that if the petitioner's overtime wages are to be included in his average weekly wage, his earnings during the year preceding the injury would be $70,856.22, with an average weekly wage of $1,362.62, and if the petitioner's overtime wages are not to be included in his average weekly wage, his earnings during the year preceding the injury would be $59,365.86, with an average weekly wage of $1,141.65.

G. WHAT WERE PETITIONER'S EARNINGS?

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

In the case at bar, petitioner testified that in the year preceding the injury, he volunteered for some overtime. He also testified that he believed that if he did not volunteer for overtime in the year preceding the injury, it would have been mandated. However, petitioner failed to offer any credible evidence to support the periods of mandatory overtime he allegedly worked in the year preceding the injury.

Respondent offered into evidence a wage statement for petitioner. It lists the regular and overtime wages for the 24 pay periods ending 7/31/20 through 7/15/21. During these 24 pay periods petitioner earned overtime wages in 19 of the periods, totaling $11,490.36. During these 24 pay periods petitioner earned as little as $66.67 in overtime wages in one pay period, and as much as $1,644.47 in overtime wages during another pay period, with the rest somewhere in between. The arbitrator finds it significant that the wage statement does not include the overtime hours petitioner worked in any of these pay periods. This, coupled with the fact that petitioner testified that he volunteered for overtime in the year preceding the injury in order to get the hours he wanted; that he could not identify any of the overtime that was mandatory in the year preceding the injury; that

he failed to offered into evidence any document such as the union contract or respondent's policy that mandated overtime, the arbitrator finds the petitioner has failed to prove by a preponderance of the credible evidence that his overtime in the year preceding the injury was mandatory and should be included in his average weekly wages.

Given that the parties have stipulated that if the petitioner's overtime wages are to be included in his average weekly wage, his earnings during the year preceding the injury would be $70,856.22, with an average weekly wage of $1,362.62, and if the petitioner's overtime wages are not to be included in his average weekly wage, his earnings during the year preceding the injury would be $59,365.86, with an average weekly wage of $1,141.65, the arbitrator finds the petitioner's earnings during the year preceding the injury were $59,365.86, with an average weekly wage of $1,141.65.

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

With regard to the nature and extent of the injury, the Arbitrator makes the following conclusions of law. In support of this conclusion, the Arbitrator notes the following:

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

With regard to subsection (i) of §8.1b(b), the arbitrator notes that neither party submitted an impairment rating. Therefore, no weight is given to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the petitioner was a Corrections Officer on 7/25/21. Petitioner was eventually released to full duty work and promoted to Sergeant. In his capacity as a Sergeant he deals with more violent individuals. His duties include hostage rescue, firearm instructor, transfer of high risk inmates, and high profile custody transfers. Petitioner testified that he is able to perform all the duties of his current job with respondent. For these reasons, the arbitrator gives lesser weight to this factor.

With regard to subsection (iii) of §8.1b(b), the age of the employee, the arbitrator notes petitioner was 26 years old on the date of injury. Given his age, the arbitrator finds the petitioner probably had at least 30 years of gainful employment remaining. For this reason, the Arbitrator gives greater weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earning capacity, the arbitrator notes that petitioner offered no evidence as it relates to his future earning capacity, other than the fact that he was promoted to Sergeant after the accident. For this reason, the Arbitrator gives little weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the arbitrator notes that as a result of the injury petitioner sustained an injury to his right knee.

An MRI of the right knee showed intact ligaments; no evidence for medial meniscal tear; evidence of previous partial lateral meniscectomy without evidence for meniscal retear; mild chondromalacia changes of the femoral trochlea; and, mild joint effusion in addition to a mild Baker's cyst. It also showed no evidence of a retear. An EMG/NCS of the right leg was normal. Dr. Novotny assessed a partial quadricep avulsion.

Petitioner underwent conservative treatment that included a course of physical therapy. Petitioner testified that he still has pain in his right knee that is 7/10 at its worst. He denied any numbness or tingling. Petitioner reported difficulty with range of motion of the right knee, mostly with bending. He stated that when this happens, he straightens his right leg out and the pain goes away. Petitioner denied any difficulty sleeping unless his right knee is in a weird position. He reported pain with rigorous physical activity, and getting on and off his riding lawnmower. He also testified that his right knee can get aggravated when he is on uneven terrain or stairs.

Petitioner testified that in his current job as a Sergeant he sometimes has more pain than he did in his position as a Corrections Officer. Petitioner testified that when he is performing the duties of a firearm instructor on the range, the surfaces are uneven, he has to move ammunition, and he has to bend and squat more. Petitioner testified that these activities will occasionally cause him more pain. He also testified that his right knee problems make running more difficult.

Petitioner testified that he uses his left leg and upper body more, so that he does not need to use his right leg as much. Petitioner stated that he still works out, but no longer does any power lifting. He noticed that his right knee gets more aggravated at work than it does at home. He noted difficulty playing tag with his daughter.

For these reasons, the arbitrator gives greater weight to this factor.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner sustained a 12.5% loss of use of his right leg pursuant to Section 8(e)10 of the Act pursuant to Section 8(e)12 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC005546
Case Name	Cheryl Harris v. Citgo Petroleum
Consolidated Cases	
Proceeding Type	Motion
Decision Type	Commission Decision
Commission Decision Number	25IWCC0217
Number of Pages of Decision	3
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Curtis Burke
Respondent Attorney	Miles Cahill

DATE FILED: 5/15/2025

/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: Down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHERYL HARRIS,
Petitioner,

vs. Nos: 24 WC 5546

CITGO PETROLEUM,
Respondent.

ORDER ON PETITIONER'S MOTION TO DISMISS REVIEW

This matter comes before the Commission on Petitioner's Motion 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.

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. 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 15, 2025

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

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

DLS/dw
R- 4/9/25
46

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC011148
Case Name	Antwoine Smith v. FedEx
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0218
Number of Pages of Decision	11
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Joshua Rudolfi
Respondent Attorney	Carol Cesaretti

DATE FILED: 5/16/2025

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANTWOINE SMITH,

Petitioner,

vs. NO: 23 WC 11148

FEDEX,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 25, 2024 is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

MAY 16, 2025
O: 05/15/25
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	23WC011148
Case Name	Antwoine Smith v. FedEx
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	Joshua Rudolfi
Respondent Attorney	Carol Cesaretti

DATE FILED: 11/25/2024

/s/ Jessica Hegarty, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 19, 2024 4.31%

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
19(b)

Antwoine Smith
Employee/Petitioner
v.
FedEx Express
Employer/Respondent

Case # **23** WC **11148**

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 **Wheaton**, on **8/21/2024**. 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, **1/31/2023**, 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 $**46,119.32**; the average weekly wage was $**886.91**.

On the date of accident, Petitioner was **37** years of age, ***married*** with **3** dependent children.

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

Respondent shall be given a credit of $**23,099.34** for TTD, $**3,683.91** for TPD, $**0** for maintenance, and $**14,878.09** for other benefits, for a total credit of $**41,661.34**.

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

ORDER

- Respondent shall pay Petitioner temporary total disability ("TTD") benefits of $591.27/week for 68 & 2/7 weeks, commencing 1/31/2023, through 8/6/2023, and 11/4/2023, through 8/21/2024, as provided in Section 8(b) of the Act;

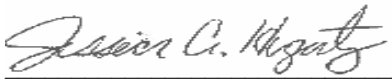
- Respondent shall be given a credit of $23,099.34 for TTD benefits that have been paid, $3,683.91 for TPD benefits paid, and $14,878.09, for medical benefits paid, for a total credit of $41,661.34.

- Petitioner is entitled to prospective medical care namely the L4-S1 fusion surgery as recommended by Dr. Sean Salehi along with all reasonable and necessary pre- and post-operative care.

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

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

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



Signature of Arbitrator

ICArbDec19(b) **November 25, 2024**

ADDENDUM TO THE DECISION OF THE ARBITRATOR

This matter proceeded to hearing on August 21, 2024, pursuant to Petitioner's 19(b) claim. (Arbitrator's Exhibit "Arb." 1). Respondent disputes the issues of accident, causal connection, Petitioner's entitlement to temporary total disability ("TTD") benefits, and prospective medical care. (Arb. 1).FINDINGS OF FACT

Petitioner testified that on January 31, 2023, he had worked for Respondent as a courier for approximately two years, one month. His job duties required him to load his truck with packages, drive the truck, and deliver packages to residential homes and businesses. (Transcript of Hearing "T" p. 6).

On the afternoon of January 31, 2023, Petitioner was in the course of his regular job duties for Respondent when he slipped and fell on an icy parking lot after making a delivery at a trucking company in Lombard. (T., pp. 6-7). According to Petitioner, the parking lot had not been shoveled or salted and turned into a sheet of ice. (Id., p. 7). Petitioner landed on the right side of his body. After his fall, Petitioner experienced immediate pain in his low back. Petitioner reported the accident to his supervisor and was sent to Concentra for treatment the same day. (Id., pp. 7-8).

The records from Concentra reflect that Petitioner presented on January 31, 2023, with a history of left lower back pain that radiated to his left buttocks and posterior thigh after a slip and fall accident on ice in which he fell on his right side and twisted his back. (Petitioner's Exhibit "PX" 1, p. 238). On exam, a positive left seated leg raise was noted along with antalgic gait on the left side. Petitioner was unable to lay in a supine position due to pain and tenderness in the right paraspinal region was noted. Petitioner had difficulty with heel and toe walking. Muscle spasms were noted upon palpation of Petitioner's left lumbar region. (Id.). X-rays revealed no acute findings. Petitioner was diagnosed with a lumbar back strain and various medications were prescribed. Physical therapy was prescribed to address "objective impairment, functional loss, and return to full activities." Petitioner was placed on modified work restrictions (Id., pp. 241-242).

Petitioner testified that he was unable to return to work for Respondent as he was restricted from driving. (T, p. 8). Petitioner began receiving TTD benefits at that time and began a course of physical therapy at Concentra. (Id.). According to Petitioner, he participated in physical therapy at Concentra from February 1 through February 6, 2023, after which he transitioned his therapy to Athletico. (Id. at 9).

On March 23, 2023, Petitioner underwent a lumbar spine MRI at SimonMed IL. The interpreting radiologist's impression noted a left foraminal disc herniation at L3-L4, no significant spinal canal stenosis, and multilevel neural foraminal narrowing, moderate on the left at L3-L4 and bilaterally at L5-S1. (PX 1, pp. 74-75).

On March 30, 2023, Cheryl Bisbee, PAC, reviewed the recent MRI noting a left foraminal disc herniation at L3-L4 and multilevel foraminal narrowing moderate at L3-4. Petitioner was referred to an orthopedic specialist and to physiatry for a possible lumbar injection. (Id. at 79).

On April 6, 2023, Petitioner presented to Dr. Sean Salehi, at Concentra for initial consult. (Id. at 70). Petitioner reported a history of a work injury on January 31 2023, when he slipped on ice and "twisted in the process in order to ensure that he did not fall when he felt a pain in the left-sided low back." (Id.) Since that time, Petitioner reported pain in his low back that radiated to his left buttock with occasional numbness down into the left leg. Petitioner also reportedly felt "a little bit unsteady at times" on the left leg but denied any falls. Dr. Salehi reviewed the recent MRI noting a "moderate-sized hemangioma at L5, T2 signal loss at L4-5, mild circumferential disc bulges at L4-5 and L5-S1 without neural compression. (Id.). Dr. Salehi diagnosed Petitioner with disc bulges at L4-L5 and L5-S1. The doctor did not believe Petitioner was a surgical candidate.

Petitioner was referred to Dr. Sajjad Murtaza for a sacroiliac ("SI") joint injection as Dr. Salehi though Petitioner's pain was emanating from his hip. (Id.)

On April 18, 2023, Petitioner presented to Dr. Murtaza at Concentra with a history of slipping on ice and twisting his body to the right. (PX 1, p. 64). The doctor noted Petitioner did not fall to the ground, his right hand was on the ground. Petitioner rated his pain was at a 6-7/10. Dr. Murtaza reviewed the lumbar MRI noting a left foraminal disc herniation and facet hypertrophy at L3-4 causing moderate left foraminal stenosis and mild-to-moderate bilateral neural foraminal stenosis at L4-5 and L5-S1 due to a global disc bulge and facet hypertrophy with no significant central canal stenosis. The doctor noted Petitioner had no significant signs of radicular symptoms beyond the buttock. Based on his exam of Petitioner and MRI findings, the doctor believed Petitioner's symptoms emanated from the SI joint. The plan was to proceed with a diagnostic and therapeutic SI joint injection. Dr. Murtaza continued Petitioner's work restrictions of no lifting over 20 lbs., no pushing/pulling over 25 lbs., and limited bending. (Id. p. 65).

Petitioner testified that he underwent pain management with Dr. Murtaza in April and June 2023 and that he underwent an SI joint injection and two epidural steroid injections to his lumbar spine. Petitioner testified that those injections did not help to relieve alleviate his pain. (T., p. 12).

On July 11, 2023, Petitioner followed up with Dr. Murtaza with persistent complaints of radicular pain down his left lower extremity. (PX 1. p. 50) Petitioner reported that the pain radiated from his back down his posterolateral left leg down to his foot. Petitioner reported that when he bent down, he felt his back locked up and he had to roll onto the ground. Dr. Murtaza noted Petitioner had listhesis, disc herniations, facet issues, and SI joint discomfort. The doctor noted Petitioner did not experience significant relief "with the epidural injections" or with physical therapy. Petitioner reportedly had weakness and buckling in his left leg and difficulty with any type of activities involving the lower spine. On examination, the doctor noted tenderness to palpation of the lower spine and complaints of bilateral rotational pain, worse on the left side. The doctor also noted hypertonicity, positive facet loading, and tenderness to palpation throughout the "gastrocs," the buttocks on the left side. In addition, Dr. Murtaza noted left greater than right lower extremity weakness and antalgic gait. The doctor's impression noted, "This is a male with a herniated disc, left sided foraminal stenosis, facet arthropathy, and listhesis." Dr. Murtaza recommended that Petitioner follow up with Dr. Salehi "sooner rather than later" noting that Petitioner "had not progressed well" with physical therapy or with the injections administered thus far. (Id.).

On July 20, 2023, Petitioner followed up with Dr. Salehi who noted that previously administered injections did not help Petitioner's symptoms and that Petitioner continued to have low back pain with radiation into his left leg. Dr. Salehi recommended an L4-S1 fusion if Petitioner could not tolerate the pain, or an FCE if Petitioner opted not to undergo surgery. Petitioner indicated that he wished to think about his decision. (PX 1, pp 43).

On August 3, 2023, Petitioner returned to Dr. Salehi and reported that he had episodes of "near falls." (Id. at 37). Petitioner indicated that he wished to proceed with surgery and Dr. Salehi noted that he would request authorization. (Id.).

Petitioner testified that he was still on light duty restrictions and was able to return to work for a short period and received partial benefit checks. (T., 14-15). The Arbitrator notes the parties stipulated that Petitioner worked light duty from August 7, 2023, through November 3, 2023, and was paid $3,683.91 in temporary partial disability ("TPD") benefits. (Arb. #1).

Petitioner followed up with Dr. Salehi on September 7, 2023 and October 19, 2023 and it was noted that surgical approval was pending. (PX 1, pp. 32 and 27).

On November 7, 2023 a utilization review report was authored by Genex at Respondent's request that certified the proposed surgery requested by Dr. Salehi as reasonable and necessary. (PX 2, Deposition Exhibit #3).

Petitioner followed up with Dr. Salehi on November 16, 2023 and it was noted that Petitioner had fallen a few weeks prior due to numbness and pain in his left leg. (PX 1, pp 22). Dr. Salehi continued to recommend surgery and noted that surgery was now approved and would be scheduled. (Id.).

On December 1, 2023, Petitioner presented to Dr. Andrew Zelby pursuant to Respondents' request. (Resp. Ex. "RX" #1, pp 62). Dr. Zelby diagnosed Petitioner with mild lumbar degenerative disc disease and spondylosis with radiculitis without radiculopathy. (RX 1, p. 66). Dr. Zelby opined that Petitioner had at most a temporary exacerbation of a pre-existing and mild degenerative condition. Id. The epidural steroid injections and physical therapy were reasonable, necessary, and related to the accident. Petitioner required no further medical care and could return to work in a full duty capacity. (Id.).

On January 4, 2024, Petitioner followed up with Dr. Salehi and reported that he had fallen on Christmas. (PX 1, pp 16). Dr. Salehi reviewed the IME report from Dr. Zelby and noted that a lumbar fusion for the diagnosis of an annular tear (a diagnosis which Dr. Zelby agreed with) is widely practiced and accepted in the field of Neurosurgery and follows the guideline set forth by the American Association of Neurological Surgeons. (Id.). Dr. Salehi continued to recommend surgery and opined that the need for surgery was causally related to Petitioner's work accident. (Id.).

On January 19, 2024 Dr. Zelby authored an addendum report and opined that the guidelines that Dr. Salehi was using would exclude Petitioner from surgery due to the minimal nature of the degenerative changes. (RX 1, pp 68-69). Dr. Zelby continued to disagree with the need for surgery and again opined that Petitioner required no further medical care. (Id.).

Regarding his current condition, Petitioner testified that his low back pain remained at a 6 out of 10 and he continued to have pain that radiated down his left leg. (T, pp.16-17). Petitioner would have the surgery performed immediately should the Arbitrator award it. (Id., p. 17). Prior to January 31, 2023, Petitioner never had any prior low back complaints and never had an issue working his full duty job. (Id., pp. 17-18). Since the accident, Petitioner has been unable to work except for a short period of light duty. (Id., p. 18). Petitioner continues to take over the counter pain medication. (Id., p. 18). Petitioner testified that he is certified in Java Script but has not worked as a web designer, except in creating a website for himself. (Id., pp. 26, 31).

Testimony of Dr. Sean Salehi

Dr. Sean Salehi testified by way of evidence deposition. (PX 2). Dr. Salehi is a board-certified neurosurgeon who performs approximately 200 surgeries per year. (Id. at 6). Dr. Salehi testified that he is recommending an L4-S1 fusion for Petitioner and that he believes the need for this surgery is causally related to the Petitioner's work accident. (Id. at 22). In support, the doctor noted that Petitioner had no pre-existing symptoms prior to his accident. Further, the mechanism of injury was a competent cause of Petitioner's symptoms and Petitioner's lower back symptoms corelated with the MRI findings and Petitioner's examination findings. (Id. at 23). Dr. Salehi testified that at his initial consult Petitioner reported a history of a January 31, 2023, accident when he slipped on ice and twisted in order to ensure that he did not fall to the ground. (Id., at 25). Petitioner reported left-sided low back pain with radiation to the left buttock with occasional numbness down into the left leg. (Id., p. 10). Petitioner also reportedly felt unsteady at times on the leg but had not fallen. (Id.). On exam, Petitioner had a normal gait, tenderness over the left SI joint, negative sciatic notch tenderness, and his range of motion was moderately limited in all directions. The doctor also noted decreased strength of the left leg and the left

lateral calf and his reflexes were absent in the knees and 1+ in the ankles. (Id., p. 10). Dr. Salehi reviewed the lumbar MRI performed on March 23, 2023, noting a moderately-sized hemangioma at L5, which is like a birthmark in the bone, T2 signal loss at L4-5, and mild circumferential disc bulge at L4-5 and L5-S1 with no neural compression. (Id., p. 11). At that point, Dr. Salehi did not feel that Petitioner was a surgical candidate. Dr. Salehi felt that Petitioner was having lower back pain, mechanical back pain, that could be stemming from SI joint dysfunction. Accordingly, Dr. Salehi referred petitioner to Dr. Murtaza for an injection of the SI joint. (Id., p. 11-12).

Dr. Salehi next saw Petitioner on July 20, 2023, when Petitioner reported that he had underwent an epidural injection and an SI joint injection which had made much of a difference in his symptoms. (Id., p. 12). Petitioner reported persistent lower back pain with radiation down the left leg to the knee and the calf. Petitioner reported that his left leg felt weak and that he had two falls downstairs as a result of that weakness. He rated his pain at a 6 to 10 out of 10. His lower back pain was throbbing and any position would aggravate his symptoms. On examination, Petitioner had weakness in the iliopsoas and quadricep, which could have been indicative of pain in the extremity or nerve root compression. "But again, in this case, it wouldn't make sense because to have a nerve root compression result in an iliopsoas weakness, you have to have like a herniation at L1-2 or like L2-3." (Id., pp.13-14). He did not find any issues with Petitioner's L1-2 or L2-3. (Pet. Ex. 2 p. 32).

Dr. Salehi recommended a 2-level lumbar fusion at L4-S1 noting that Petitioner's symptoms had had been present for more than six months and he was unresponsive to conservative care. The doctor noted if Petitioner decided not to undergo surgery, he should proceed with a functional capacity evaluation to determine permanent work restrictions. (Id., p. 14)

When Petitioner followed up with Dr. Salehi on August 3, 2023, his complaints remained the same. On exam the doctor noted a positive sciatic notch tenderness on the left but the rest of the exam was more or less the same as his prior exam. Petitioner told the doctor that his pain was intolerable and that he wanted to proceed with the L4-S1 fusion. (Id., p. 16).

Dr. Salehi disagreed with Dr. Zelby's opinion that surgery is not indicated and that Petitioner's condition was only temporarily exacerbated by the fall. (Id. at 19). Dr. Salehi cited guidelines published by the Congress of Neurological Surgeons put out in 2005 and updated in 2014 that are based on meta-analysis in literature that supports the use of a fusion surgery for someone who has mechanical back pain, annular tears, and is not responsive to conservative care. (Id. at 21-22). Dr. Salehi testified that surgery was approved prior to Dr. Zelby's IME. (Id. at 18).

Testimony of Dr. Andrew Zelby

Dr. Andrew Zelby testified by way of evidence deposition. (RX 1). Dr. Zelby is a board-certified neurosurgeon. (Id. at 7). Dr. Zelby testified that Petitioner's MRI revealed age related degenerative changes, and no acute or traumatic changes in the spine. (Id. 21-22.) He diagnosed Petitioner with radiculitis, not radiculopathy, and opined that he required no further medical care based on the MRI findings and "essentially normal" neurologic examination. (Id. at 25-27). He testified that Petitioner is not a surgical candidate based on the mildness of the degenerative changes in Petitioner's spine. (Id. at 29). Dr. Zelby opined that the studies cited by Dr. Salehi in support of his surgical recommendation do not make Petitioner a good candidate for surgery due to the mildness of the annular tears and degenerative changes. (Id. at 34). He does not believe Petitioner will get better following surgery. (Id.).

CONCLUSIONS OF LAW

ACCIDENT

The Arbitrator finds that Petitioner was injured in an accident that arose out of and in the course of his employment by Respondent. Petitioner's testimony concerning accident was credible and uncontroverted. Further, Petitioner's contemporaneous medical records all corroborate Petitioner's unrebutted testimony that he slipped and fell on ice while making a delivery on January 31, 2023.

CAUSAL CONNECTION

The Arbitrator finds that Petitioner's current condition of ill-being is causally related to his January 31, 2023 work accident. The Arbitrator found the opinions of Dr. Salehi reasonable, persuasive, and substantiated by the facts in evidence including the chain of events which demonstrated that the 37-year-old Petitioner was physically capable of working his full-time job for Respondent for approximately two years prior to his accident but was unable to resume such work after his accident. The medical records in evidence document that Petitioner was asymptomatic prior to his accident and has been consistently symptomatic with low back pain and radiation down the left leg since his accident. Dr Salehi opined that Petitioner's physical examination and diagnostic testing was consistent with his complaints. The Arbitrator was not persuaded by the opinions of Dr. Zelby regarding the temporary nature of Petitioner's condition as this opinion is not supported by the records in evidence and Petitioner's credible testimony. In this case, the facts show that Petitioner worked for Respondent for over two years without issue, had a slip and fall accident on January 31, 2023, that resulted in immediate and consistent complaints of pain in the low back and numbness down the left leg. The Arbitrator finds that Petitioner has proven a causal connection by the preponderance of credible evidence.

TTD BENEFITS

The Arbitrator finds that Petitioner is entitled to TTD benefits from January 31, 2023, through August 6, 2023, and November 4, 2023, through August 21, 2024, a period of 68 2/7 weeks. Petitioner has been on a light duty work status ever since his date of accident, January 31, 2023. Respondent has not accommodated these restrictions (with the exception of the period from August 7, 2023 through November 3, 2023, for which TPD was properly paid). Petitioner continues to remain off work due to non-accommodation of his restrictions as of the date of trial. Accordingly, Petitioner is awarded 68 & 2/7 weeks of TTD less Respondent's stipulated credit of $23,099.34 for TTD benefits already paid.

PROSPECTIVE MEDICAL CARE

The Arbitrator finds that Petitioner is entitled to prospective medical care in the form of the fusion surgery as recommended by Dr. Salehi along with all reasonable and necessary, pre- and post-operative medical care. The Arbitrator finds the opinion of Dr. Salehi more persuasive than the opinions of Dr. Zelby. Dr. Salehi opined that Petitioner has failed conservative medical care and requires an L4-S1 fusion surgery. He further cites several meta-studies supporting the use of a fusion surgery in situations such as Petitioners. Respondent sent Dr. Salehi's request for surgery to utilization review to determine the reasonableness and necessary of the requested treatment pursuant to Section 8.7 of the Illinois Workers' Compensation Act. The UR report indicates that the request for surgery should be certified as the criteria are met for reasonableness and necessity in this case. This report contradicts Dr. Zelby's opinion and bolsters the opinion of Dr. Salehi. Accordingly, the Arbitrator finds that Petitioner established entitlement to the prospective surgery recommended by Dr. Salehi.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC012104
Case Name	Brian Keating v. University of Chicago
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0219
Number of Pages of Decision	25
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Charles Candiano
Respondent Attorney	Dennis Noble

DATE FILED: 5/19/2025

/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

Brian Keating,

Petitioner,

vs. NO: 14 WC 012104

University of Chicago,

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 care, 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 August 27, 2024, is hereby affirmed and adopted.

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

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

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

MAY 19, 2025
MP:yl
o 5/15/25
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	14WC012104
Case Name	Brian Keating v. University of Chicago
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	22
Decision Issued By	Jacqueline Hickey, Arbitrator

Petitioner Attorney	Charles Candiano
Respondent Attorney	Dennis Noble

DATE FILED: 8/27/2024

/s/Jacqueline Hickey, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF AUGUST 27, 2024 4.685%

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

Brian Keating
Employee/Petitioner

v.

University of Chicago
Employer/Respondent

Case # **14** WC **12104**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jacqueline Hickey**, Arbitrator of the Commission, in the city of **Chicago**, on **04-30-24**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **01-16-2013**, 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 $**102,642.80**; the average weekly wage was $**1973.90**.

On the date of accident, Petitioner was **48** years of age, ***married*** with **2** dependent children.

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

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

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

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

ORDER

THE ARBITRATOR FINDS THAT THE PETITIONER FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HIS MENTAL CONDITION AROSE OUT OF HIS EMPLOYMENT WITH RESPONDENT. THE ARBITRATOR HEREBY DENIES BENEFITS AND FINDS THAT ALL REMAINING ISSUES ARE MOOT. SEE RIDER TO DECISION.

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

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

Jacqueline C. Hickey

Signature of Arbitrator

August 27, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Brian Keating,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. **14WC012104**
University of Chicago,	)	
	)	
	)	
Respondent.	)	

RIDER TO DECISION

This matter proceeded to hearing on April 30, 2023 in Chicago, Illinois before Arbitrator Jacqueline Hickey on the parties' Request for Hearing. Issues in dispute include accident, causation, TTD and nature & extent. See Arbitrator's Exhibit "Ax" 1.

FINDINGS OF FACT

Petitioner's Testimony

The Petitioner, Brian Keating, was employed by Respondent as a pediatric catheter lab technician and had worked in that position for five years before the incident on January 16, 2013. (Arb. Tr. At 10-11) Before January 16, 2013, the alleged date of accident, Petitioner claimed a problem with his compensation for not being paid while being on call during the time he was on vacation from Christmas through New Year's. (Arb. Tr. At 14-15) After receiving his paycheck, the Petitioner went to his manager, Sarah Kundrat. (Arb. Tr. At 16-17)

The Petitioner testified that he met with Sarah Kundrat to discuss the paycheck and was told there was a new policy; however, the Petitioner was not told what the new policy was and was not referred to anyone else for an explanation. (Arb. Tr. At 18-19) Instead the Petitioner was promised by Sarah Kundrat that she would obtain the new policy and provide it to the Petitioner. The Petitioner testified Sarah was not allowed to approach him at work but did not know where that information came from. (Arb. Tr. At 20-21)

Incident

On January 16, 2013, the Petitioner was prepping a patient when Sarah Kundrat entered the lab. The Petitioner testified he immediately started hyperventilating, felt dizzy, and his heart was racing. The Petitioner then called an administrator requesting that Sarah be removed from the room. (Arb. Tr. At 21-22) The Petitioner testified that when the administrator came, he could see through the plexiglass a conversation between the administrator and Sarah. When the administrator left Sarah returned to the room. The Petitioner testified that as his condition worsened, he left the room and went to the adult ER. While walking to the emergency room, the Petitioner thought he passed out going down the stairs. (Arb. Tr. At 22-23)

Summary of Medical Treatment

The following history was taken at the ED at UCOM on January 16, 2023.

History of Present Illness
HPI
Pt is a 48 y/o male with hx of questionable 18S presenting to the ed with the following. For the past 2 weeks pt has had problems at work with his bosses "misinforming him and not paying him the money they owned". Pt has been really anxious. This morning pt was in the lab and had to work with one of the managers he was having problems with he asked that he doesn't work with her but was still made to do so. Pt became dizzy, With sob, sweaty/ clamming, felt hot and cool he felt like he was going to pass out. As he left the cath lab and was walking down the stairs, he found himself at the bottom of the stairs. Unclear if any head trauma but + loc. He endorses

some elbow pain and back pain. These symptoms may have started around 9am. Pt Also endorses a hx of bloody diarrhea x 1 week, unclear how much blood, pt endorses he had c. Diff and this started afterwards in 2010. Pt endorses with his IBS flareups he doesn't take medications because it hasn't

ED Provider Notes by Nwando Onaedo Okafor, M.D. H 1i16/2013 12:05 PM (contimmd} Version ·1 of 1 been a problem. Last colonoscopy was oct 2010. Pt endorses as he was leaving the lab today, he found himself at the bottom of the steps and his not sure How he got there. No headache/ nausea/ vomiting/ neck pain. hx of syncope last yr with urination and 15 yrs ago with mild epilepsy. + total body tingling inside (PX3; pp. 201-202)

On January 18, 2013, the Petitioner returned to UCOM on an outpatient basis. The following history was provided.

"Working with head HR rep regarding the mistreatment. Had an episode of panic attack when seeing one of his bosses on Monday because he was so upset. Told another supervisor that he could not be around this person and to keep them out of the work environment. Then on Wednesday that person came in during the case and he felt faint, sweaty and flushed. He scrubbed out and went to ED where he fainted in a chair. Did not hit his head per him. ED wanted to get a head CT but the pt didn't want to wait and left." (PX 3; pp.241)

The Petitioner testified that he followed up with his primary physician, Amber Pincavage, MD who advised the Petitioner to take a few days off and referred the Petitioner to a psychiatrist. The petitioner testified that the Respondent did not have a psychiatrist available, so he sought a consultation with Doctor Snyder in Indiana on February 23rd, 2013. Between the ER visit and the appointment with Doctor Snyder the Petitioner attempted to return to work but was met by an armed security guard and taken to the HR President suite and was told he would need to go through occupational medicine to get cleared for work. (Arb. Tr. At 25-26) The Petitioner testified that he was cleared by Occupational Medicine the following day[1] but was unable to perform his duties, claiming he had problems focusing and concentrating and was exhausted. (Arb. Tr. At 28)

[1] Per Respondent's Exhibit #2 the fitness for duty examination took place on January 24, 2013.

On January 25, 2013, Petitioner was evaluated by Dr. Pincavage at the request of Respondent, prior to going back to work. Dr. Pincavage wrote the following:

"Prior to speaking to Dr. Lelyveld I confirmed he had a HIPAA release form signed by the patient and he faxed it to me. He found no medical reason the patient could not return to work but wanted to speak to me {irsl. I discussed with him that the patient's anxiety was isolated to this one situation and he was not noting additional symptoms in other areas of his life and his symptoms were improved. I notified him if the patient continued to have symptoms or worsened we would consider medication and psychotherapy. Patient's IBS symptoms also had resolved at this time. I agreed that the patient could return to work. He will follow-up with me as scheduled." (PX 3; pp. 250-251)

In a "Memo to File" dated February 5, 2013, Dr. Steven Lelyveld, the UCOM medical director, detailed a meeting with the Petitioner who requested a copy of his chart. Dr. Lelyveld noted that the Petitioner immediately took the doctor's chart and compared it with the copy that was given. The memo also details other discussions concerning the fitness for duty evaluation, the ED visit and the level of treatment provided, a recounting of events on January 25, 2013, and the Petitioner being upset about being escorted around and out of the building by security. The Petitioner also requests the doctor attach a stack of emails to his chart, asking the doctor to assist him in getting the money he was owed and in making his workplace less stressful. Dr. Lelyveld wrote the Petitioner was clearly anxious and upset, and that the "blanket accusations against everyone" bordered on "the persecution complex of people with paranoid ideation." (RX 9 pp. 59)

On February 18, 2013, Dr. Pincavage wrote that the Petitioner emailed that the situation was getting worse, and he was still feeling anxious and that this was affecting his ability to function. Dr. Pincavage recommended a psychiatry evaluation and placed a referral. (PX3; pp. 281) On the following day, Registered Nurse Evelyn Edmond wrote that the Petitioner spoke with

Mary Kay Fullenkamp claiming his privacy was invaded by security claiming security was listening to his conversation when he was at UCOM in January. (PX3; pp. 284)) On February 20, 2013, Petitioner phoned Dr. Pincavage that he arranged for an appointment with a psychiatrist in Indiana, and to wait to take certain medications until after the psychiatry appointment on Saturday. (PX3; pp. 288-289)

On February 26, 2013, Dr. Pincavage noted that the Petitioner had emailed her regarding not going to work due to IBS symptoms, reporting several bowel movements a day. The Petitioner also wrote of experiencing "more anxiety" and was considering applying for disability or workman's compensation. The Petitioner reported seeing a psychologist over the weekend, rather than the recommended psychiatrist. Dr. Pincavage wrote:

As for his anxiety, I told the patient he needs to be evaluated by a psychiatrist as well. He does not want to come to UCMC although I already placed referral for him here. I recommended he ask the psychotherapist for a recommendation in his area. I am concerned the patient is exhibiting paranoid behavior and may have psychosis because he has been very paranoid about various administrative offices at his work and his employer and doesn't want to correspond on his work email account anymore. He has also told me he has been constantly emailing various offices in the medical center about his complaints which sounds to be an abnormal amount. Based on this I think he needs full psychiatrist evaluation before starting medication as it may not be anxiety alone. (PX3; pp. 291-292)

On February 26, 2023, the Respondent sent an overnight termination letter to the Petitioner (PX 17). The Petitioner testified that he was terminated for sending inappropriate photos of a bloody tissue from "my butt" to Sarah to prove he was sick and could not work. (Arb. Tr. At 58-59)

On February 28, 2013, the Petitioner was evaluated by Clinical Psychologist, Dr. Margaret Snyder from Psychological Services in Plymouth, Indiana. (PX1) The Petitioner provided a history of experiencing "considerable" anxiety over the past two years triggered initially in 2010 or early 2011, when the Petitioner was accused of drinking at an office party while being on call. The Petitioner also referenced a two-year on-going dispute about the on-call pay. Dr. Snyder noted that the Petitioner was extremely stressed about his work environment, and that the level of anxiety may distort perceptions. Dr. Snyder wrote that the Petitioner's attempts to prove that his perceptions of being wrongly accused and "harassed" to be correct, that the Petitioner had become overwhelmed by feelings of helplessness and hopelessness, and that the Petitioner had become highly suspicious of the motives of others, to the point of "paranoia," affecting his ability to trust "almost everyone associated with work."

Dr. Snyder noted five diagnostic impressions that included the following:

1. Posttraumatic Stress Disorder, Occupational Problem (perceives a hostile work environment).
2. Obsessive/Compulsive personality trait (perfectionism and extremely conscientious about matters of ethics and standards of practice).
3. Insomnia, loss of appetite and weight loss.
4. Work related stress.
5. Functioning is seriously impaired by anxiety and obsessive thinking.

Dr. Snyder recommended the Petitioner consult with a physician about medication to reduce compulsive thinking, seek counselling to improve coping strategies and stress management. Dr. Snyder concluded her report noting that until there was emotional stability and a return to normal functioning (memory function), the Petitioner should avoid working in any capacity where his errors could cause inadvertent harm to others. (RX1 pp. 5-7)

The Petitioner testified that after his visit with Dr. Snyder, he sought treatment with Dr. Robert Reff on March 12, 2013, but stopped treating with Dr. Reff because he could not afford the treatment. (Arb. Tr. At 31-32) The Petitioner submitted as evidence the records of Dr. Reff which detail the treatment for seven visits from March 12, 2013 to September 9, 2013, and three visits from March 28, 2014 to May 2, 2014. (PX5)

On January 11, 2014, the Petitioner left a voicemail with Dr. Reff that he taken a job in Michigan and transferring care to "Dr. Rick Diaz." (RX10 pp. 39) The Petitioner testified that he began a position in adult catheterization in November of 2013 at St. Joseph Hospital, located in Ann Arbor, Michigan but was unable to perform those duties due to anxiety attacks.[2] The Petitioner testified that he sought psychiatric care in Ann Arbor with Dr. Ruth Diaz. (Arb. Tr. At 32-35) The records of Dr. Diaz were offered as evidence by Petitioner and note treatment from January 10, 2014 to February 20, 2014. (PX 9) At the hearing, the Petitioner testified he saw Dr. Diaz only once. (Arb. Tr. At 36)

The Petitioner then returned to Indiana and began treatment at Porter-Starke with psychiatrist, Dr. Samir Gupta on May 22, 2014, and remains under Dr. Gupta's care, seeing the doctor every "couple of months." (Arb. Tr. At 38-39) Per the evidence offered at arbitration, Dr. Gupta first evaluated the Petitioner on June 16, 2014, noting that the Petitioner was having job difficulties with Respondent. Dr. Gupta wrote that the Petitioner "became rather obsessed with the financial support he had been promised." (RX8; pp.12)

[2] Payroll records offered as evidence show Petitioner underwent orientation at Sr. Joseph Mercy Hospital on November 4, 2013, and worked until January 7, 2014. (PX 19 pp. 3-6)

Section 12 Examiner- Dr. Kulik, M.D.

At the request of Respondent, the Petitioner was evaluated on June 11, 2018, by Forensic Psychiatrist, Andrew Segovia Kulik, MD. (RX7). Regarding the incident at work, the Petitioner related that when his new supervisor took over a year before, his on call pay stopped due to a "new policy" and that he asked HR to investigate, and HR reportedly did not. (RX7; pp. 6) In his report, Dr. Kulik opined the Petitioner met criteria for Paranoid Personality Disorder. When the Petitioner's pay structure became an issue, the Petitioner believed that he was being wrongfully targeted and mistreated. Dr. Kulik opined that the Petitioner's anger and feelings of being wronged festered, resulting in repeated antagonistic emails, aggressive interactions with other employees and human resources, and "a difficult situation for all involved." Dr. Kulik wrote that the Paranoid Personality Disorder was not causally related to the events described by the Petitioner, noting the disorder is developed during one's lifetime, and are not created by day-to-day interactions. (RX 7; pp. 9)

Testimony of Dr. Reff, M.D. - treating physician

On October 25, 2022, Dr. Robert Reff provided testimony at his evidence deposition that his initial diagnosis as of March 2023, was that the Petitioner suffered from a generalized anxiety disorder as well as a major depressive disorder-single episode, severe at that point without psychotic features. (PX12; pp. 8) Dr. Reff testified that the Petitioner had been experiencing anxiety over the past two years at least, triggered initially when a supervisor accused him of drinking at an office party while on call. The arbitrator notes this would have been prior to 2013,

possibly in 2010 or 2011 per the exhibits submitted into evidence. (PX12; pp. 49) Dr. Reff did receive a “long” packet of emails from the Petitioner regarding an ongoing dispute about on-call pay, which Dr. Reff considered “subjective and not necessarily confirmatory” on the issue. When asked if it was possible that the Petitioner had subjective feelings that are not necessarily on what was really occurring, Dr. Reff testified “Yes, with some latitude.” (PX12; pp. 50) When Dr. Reff was asked to explain his assessment of why this should be considered a work injury, Dr Reff stated:

In my opinion, what occurred with Mr. Keating started out by just being overloaded by the amount of work he was being required to do; essentially, being on call seven days a week, 24 hours a day, ad infinitum ...

The amount of stress that goes into that is astronomical. The amount of pressure associated with that is, again, astronomical because you're always carrying a pager. If it goes off at any time, day or night, it doesn't matter what you are doing, where you are, if it goes off, you've got to go. That, I believe, set the stage. And then the conflicts that began and escalated between Mr. Keating and his manager is what overwhelmed him. It was the -- basically, it was the final straw.

And at that point, I believe he experienced a severe major depression along with anxiety. And so the combination of both the work as well as the interaction with his manager, in my opinion, is what contributed and caused his depression and anxiety.
(PX11 pp.30-31)

In his cross examination, Respondent asked if Petitioner was the only employee that ever experienced this kind of problem. Dr. Reff testified:

It doesn't matter how many employees, you know, experience that, that kind of problem. It can be -- you know, he can be one out of a hundred that experiences it in the way in which he experiences it, but it caused him to not be able to function.
(PX11 p.54)

Dr. Reff testified that people who become overwhelmed by psychosocial stressors are also at risk of having a major depressive episode, a major anxiety episode, or a combination of the two. (PX12 p.30) The stress imposed on Petitioner as a result of being on-call, 24/7, 365 days per year for nearly 5 years is secondary to Petitioner's employment with Respondent per the doctor. Dr. Reff explained that the incident on 1-16-13 was caused by a constellation of factors that contributed and caused him to become severely depressed. (PX12 p.72) Dr. Reff testified that inasmuch as Dr. Kulik was not a neuropsychologist, he was not qualified to administer the test that Dr. Kulik relied upon to make his determination that Petitioner was malingering. Dr. Reff further testified that no psychiatric professional should make such a finding on the basis of a single test. Beyond that, Dr. Reff testified that Petitioner's score on the TOMM test was "more consistent with severe major depression and lack of test motivation than anything else." (PX12 p.65) Dr. Reff testified, at great length, concerning Petitioner's diagnosis of generalized anxiety disorder as well as a major depressive disorder, single-episode, severe. (PX12 p.8) Petitioner's single episode of major depression culminated on January 16, 2013. Dr. Reff testified Petitioner had experienced no prior episode of Major Depression and there is no record of Petitioner having experienced any subsequent episode of major depression. Rather, the episode that culminated on January 16, 2013, persists, and has never gone away. (PX12 p.86)

Section 12 Examiner- Dr. Dinwiddie, M.D.

On May 1, 2023, the Petitioner underwent a psychiatric evaluation by Dr. Stephen H. Dinwiddie, MD of Northwestern Medicine, Division of Forensic Psychiatry, at the request of the

Respondent. (RX8) Dr. Dinwiddie wrote that to address the Petitioner's claims, the events prior to January 16, 2013 must be summarized, starting with the July 18, 2011 performance review noting his interactions with "Dr. T."[3] In response to the review, the Petitioner wrote the physician in question operates in a confrontational manner, creating a hostile work environment. In September of 2011 a series of emails between the Petitioner and UCOM staff noted the Petitioner was "misinformed" regarding his pay when taking time off work earlier in the month for a health condition. In November of 2011, the Petitioner and "Dr. T" engaged in a heated and loud conversation, and that a witness recalled the Petitioner said "that he couldn't take the snide remarks that makes the staff look bad and that he was already angry about her spreading lies about him. That she (Dr. T) lied about the staff going to Risk Management and other lies about him and was tired of it because nothing happens to her (Dr. T) but he was always in trouble…" (RX8; pp. 6-7) Dr. Dinwiddie also provided a summary of the numerous email conversations sent by the Petitioner to Karen Stratton on January 13, 2013, claiming "harassment and intimidation" for reporting policy changes affection his pay, claiming for the past year his manger had allegedly threatened to reduce his pay for asking about the call policy. A meeting to address the issue was scheduled for January 17, 2013; however, on January 16, 2013, the Petitioner suffered an anxiety attack and was seen in the Emergency Department but he left against medical advice. (RX8; pp. 7)

Dr. Dinwiddie eventually diagnosed the Petitioner as having a schizoaffective disorder, depressed type, noting the psychotic condition was likely traced to late 2011 when the Petitioner

[3] The author omitted the name of the physician.

complained of others lying about him and spreading untruths. Over the next two years, and leading up to the event on January 16, 2013, Dr. Dinwiddie noted the evidence suggested the Petitioner had ongoing concerns of a "persecutory nature," and that his reaction to having his supervisor present during the procedure on January 16, 2013, demonstrated the presence of persecutory delusions. (RX8; pp. 15) Dr. Dinwiddie concluded that the Petitioner developed persecutory delusions substantially prior to January 16, 2013, and that the mental illness was of "gradual but progressive onset and unequivocally manifested with psychotic symptoms evident prior to January 16, 2013." (RX8; pp. 18)

CONCLUSIONS OF LAW

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

Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. *820 ILCS 305/1(b)3(d)*. To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980) including that there is some causal relationship between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989). An employee's injury is compensable under the Act only if it arises out of and in the course of the

claimant's employment. 820 ILCS 305/2 (West 2012). Both elements must be present at the time of the claimant's injury in order to justify compensation. *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483 (1989).

In *Pathfinder v Industrial Comm'n,* 62 Ill.2d 556, 562, 343 N.E.2d 913, 916 (1976), the Supreme Court addressed the question of whether an employee can recover for psychological disability when the accident caused no physical injury. The court held that an employee who suffers a sudden, severe emotional shock traceable to a definite time, place, and cause, which causes psychological injury or harm has suffered an accident within the meaning of the Act, though no physical trauma or injury was sustained. *Id.* At 563, 343 N.E.2d at 917. In *General Motors Parts Division v. Industrial Comm'n*, 168 Ill. App. 3d 678, 522 N.E.2d 1260 (1988), the court held that "whether a worker has suffered the type of emotional shock sufficient to warrant recovery should be determined by an objective, reasonable-person standard, rather than a subjective standard that takes into account the claimant's occupation and training." *Id*. 33.

"To allow compensation for any mental diseases and disorders caused by on-the-job stressful events or conditions would open a floodgate for workers who succumb to the everyday pressures of life." *Chicago Board of Education, 169 Ill. App. 3d 459 at 466, 523 N.E.2d 912 at 917*. Recovery for non-traumatically-induced mental injuries is limited to those who can establish that: (1) The mental disorder arose in a situation of greater dimensions than the day-to-day emotional strain and tension which all employees must experience; (2) the conditions exist in reality, from an objective standpoint; and (3) the employment conditions, when compared with

the nonemployment conditions, were the major contributory cause of the mental disorder. *Chicago Board of Education v. Industrial Comm'n, 169 Ill. App. 468 (1988); Runion v. The Industrial Commission (Owens-Illinois, Inc.), 245 Ill. App. 3d 470 at 473* (1993).

The Arbitrator finds that the alleged incident on the day in question of 1/16/13, involved Petitioner's manager Sarah's presence in the catheter lab. There was no physical or verbal altercation, argument, or further incident between the manager and petitioner, despite alleged prior issues. Illinois case law appears clear that claimants can successfully prove compensability where there no physical trauma or injury if an employee suffers a sudden, severe emotional shock traceable to a definite time, place, and cause, which causes psychological injury or harm has suffered an accident within the meaning of the Act. However, whether a worker has suffered the type of emotional shock sufficient to warrant recovery should be determined by an objective, reasonable-person standard, rather than a subjective standard as well. While Petitioner claims to have suffered a severe emotional shock in the form of a panic or anxiety attack, his response to Sarah's presence in the lab, is not reasonable from the objective person perspective. Petitioner perceived harassment or intimidation from management due to an alleged pay dispute. However, it appears Petitioner's perceptions were not based in reality. After reviewing and relying on the more persuasive medical evaluations, determinations and diagnoses of the Section 12 Examiners, specifically Dr. Dinwiddie, the Arbitrator finds Petitioner has failed to prove his alleged mental injury arises out of and was in the course of his employment with Respondent. See below for further discussion.

For the present case, there are differing diagnoses for the Petitioner's mental disease including paranoia, major depression, and schizoaffective disorder, depressed type; however, the common factors allegedly contributing to the Petitioner's mental condition are consistent and include the prior allegations that the Petitioner drank while on call in 2011, and later that his pay was somehow affected by a change in on call pay policy. The Arbitrator finds no disciplinary action was taken for the alleged drinking episode, and no mention of the incident in the Petitioner's Employee Review for the period ending on June 30, 2011. (RX5; pp. 41-46) In addition, there is no specific evidence introduced by the Petitioner to support allegations that a policy regarding on-call pay existed at all or had been changed in a way to detrimentally affect his affect his pay. Petitioner, per the numerous emails in evidence, appeared very absorbed or obsessed with this alleged pay dispute and it is not entirely clear to the Arbitrator where this stemmed from. Petitioner had prior issues with a Dr. T as well, as documented in respondent's reports. He then had disagreements and issues with his manager/supervisor Sarah. The Arbitrator is not necessarily finding that Petitioner is not credible but more so, he is not reliable due to the likelihood that he is suffering from delusions and paranoia of a persecutory nature, per the Section 12 examiners. Petitioner may very well believe he is being harassed or lied to about his pay, but the Arbitrator does not find the evidence objectively supports all that Petitioner has claimed.

The Arbitrator also finds the Petitioner failed to prove that the alleged accusations of drinking on duty and the on-going pay dispute were extraordinary to his employment, leading to his alleged mental injury and trauma. Furthermore, according to the doctors involved in the

Petitioner's treatment, and the opinion evidence from Dr. Kulik and Dr. Dinwiddie, the Petitioner's perception of events was likely delusional and may not have existed in reality. It is clear from the various emails and other documents submitted into evidence that Petitioner perceived that he was being intimidated or harassed by different supervisors, Dr. T and then Sarah, at different times during his employment with Respondent. However, the Arbitrator is not convinced by Petitioner or the evidence that Petitioner's perceptions were reasonable nor the reality of the situation. The medical evidence further suggests that the Petitioner had outside stress from the pending birth of a child which may also have impacted stress and anxiety levels as well. In addition,

Overall, the Arbitrator finds Dr. Kulik and Dr. Dinwiddie to be more persuasive in their observations, analysis, and medical conclusions relating to Petitioner's mental health conditions then treater Dr. Reff. However, the Arbitrator is also persuaded by the medical records of treater, Dr. Snyder. The Petitioner provided her a history of experiencing "considerable" anxiety over the past two years triggered initially in 2010 or early 2011, when the Petitioner was accused of drinking at an office party while being on call. He also referenced a two-year on-going dispute about the on-call pay. Even Dr. Snyder noted that the Petitioner was extremely stressed about his work environment, and that his level of anxiety may distort perceptions. This is in line with what the section 12 physicians found.

Dr. Dinwiddie, in making his final diagnoses, had access to extensive 60+ pages of emails (also submitted into evidence) that gave the background of all that Petitioner was alleging. Both Section 12 Examiners, come to plausible conclusions regarding Petitioner's

diagnoses. The case law is that clear and requires a sudden, severe emotional shock to occur and that a reasonable person standard be applied. Here, petitioner alleges that his supervisor, Sarah, walked into his pediatric catheter lab while he was working, and he then suffered some sort of panic or anxiety attack, and he walked to the ER. Despite petitioner alleging or arguing that Sarah was previously intimidating him or harassing him due to the alleged ongoing on call pay dispute, there is no persuasive or convincing evidence of this other than what petitioner claims in testimony. Further, there is no evidence that despite this alleged prior history between Sarah and Petitioner, that Sarah did or said anything when she entered the catheter lab on the day of incident. Petitioner did have a more severe reaction to Sarah entering the lab (i.e., a panic or anxiety) however this is not a normal or reasonable reaction that the average person would have under the circumstances. The Arbitrator finds it more likely than not that Petitioner unreasonably perceived he was being targeted or harassed due to delusions or paranoias he had prior to the claimed date of accident 1/16/13, per the Section 12 Examiners' opinions. The explanations these doctors gave are more convincing and plausible than what Dr. Reff testified to.

In his report, Dr. Kulik also opined the Petitioner met criteria for Paranoid Personality Disorder. When the Petitioner's pay structure became an issue, the Petitioner believed that he was being wrongfully targeted and mistreated. Dr. Kulik opined that the Petitioner's anger and feelings of being wronged festered, resulting in repeated antagonistic emails, aggressive interactions with other employees and human resources, and "a difficult situation for all involved." Dr. Kulik wrote that the Paranoid Personality Disorder was not causally related to the

events described by the Petitioner, noting the disorder is during one's lifetime, and are not created by day-to-day interactions. (RX 7; pp. 9)

Dr. Dinwiddie again opined Petitioner as having a schizoaffective disorder, depressed type**,** noting the psychotic condition was likely traced to late 2011 when the Petitioner complained of others lying about him and spreading untruths. Over the next two years, and leading up to the event on January 16, 2013, Dr. Dinwiddie noted the evidence suggested the Petitioner had ongoing concerns of a "persecutory nature," and that his reaction to having his supervisor present during the procedure on January 16, 2013, demonstrated the presence of persecutory delusions. (RX8; pp. 15) Dr. Dinwiddie concluded that the Petitioner developed persecutory delusions substantially prior to January 16, 2013, and that the mental illness was of "gradual but progressive onset and unequivocally manifested with psychotic symptoms evident prior to January 16, 2013." (RX8; pp. 18)

In conclusion, the Arbitrator finds that the Petitioner's mental condition was not a compensable illness under the Workers' Compensation Act as Petitioner failed to prove with credible evidence that the incident on January 16, 2013, arose of and was in the course of his employment with Respondent. All other issues raised are hereby rendered moot. Benefits are therefore denied.

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

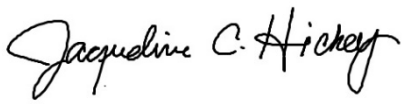
J. MEDICAL BILLS

K. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

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

Based on Petitioner's failure to prove a compensable accident and the above denial of benefits, the Arbitrator finds the remaining issues listed above, to be moot.

It is so ordered:



Jacqueline C. Hickey
Arbitrator

8-26-24

August 27, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC043692
Case Name	Gregory Thomas v. Caraustar Industries Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0220
Number of Pages of Decision	29
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Michael Trybalski, Michael Trybalski
Respondent Attorney	Joseph R. Needham

DATE FILED: 5/19/2025

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

GREGORY THOMAS,

Petitioner,

vs. NO: 12 WC 43692

CARAUSTAR INDUSTRIES, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein, and notice given to all parties, the Commission, after considering the issues of accident, accident date, benefit rates, causal connection, medical expenses, temporary total disability (TTD) benefits, permanent partial disability (PPD) benefits and evidentiary rules, and being advised of the facts and applicable law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator which is attached hereto and made a part hereof.

The Commission affirms and clarifies the Arbitrator's decision with respect to the TTD and PPD awards to state that Petitioner is entitled to TTD benefits from (1) September 27, 2012 through November 28, 2012, (2) August 14, 2013 through March 24, 2014, and (3) April 13, 2016 through August 31, 2016. Petitioner is also entitled to PPD benefits of: (1) 12.5% loss of the person as a whole for the right shoulder, (2) 20% loss of the person as a whole for the cervical spine, and (3) 7.5% loss of the person as a whole for the lumbar spine. These awards will be paid at the TTD rate of $827.29 and PPD rate of $744.56 which corresponds to Petitioner's AWW of $1,240.94. The Commission affirms the Arbitrator's reasoning on these issues.

The Commission further affirms the Arbitrator's findings and conclusions related to the third factor (Petitioner's age) under Section 8.1b(b) of the Act but gives little weight to this factor.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 30, 2024 is hereby modified as stated and otherwise affirmed and adopted.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

May 19, 2025

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

CAH/pm
O: 5/15/25
052

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC043692
Case Name	Gregory Thomas v. Caraustar Industries Inc
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	26
Decision Issued By	Efi James, Arbitrator

Petitioner Attorney	Michael Trybalski
Respondent Attorney	Joseph R. Needham

DATE FILED: 8/30/2024

/s/Efi James, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF AUGUST 27, 2024 4.685%

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

Gregory Thomas
Employee/Petitioner

v.

Caraustar Industries
Employer/Respondent

Case # **12** WC **43692**

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 **Efi James**, Arbitrator of the Commission, in the city of **Chicago, IL**, on **June 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. ☒ 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 **BCBS Subrogation Interest, TTD Overpayment Claim**

FINDINGS

On **9-17-12**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**64,528.88**; the average weekly wage was $**1,240.94**.

On the date of accident, Petitioner was **54** 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 $**9,995.26** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**9,995.26**.

Respondent shall be given a credit of $**5,679.09** for medical benefits paid.

ORDER

Medical benefits
Respondent to pay Petitioner and Petitioner's counsel directly for the following outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act: Dr. Samuel Matthew ($7,100.00); Pronger Smith Medical Care ($3,420.37); Athletico ($80.00); Open MRI of Olympia Fields ($3,700.00); Illinois Back Institute ($6,330.00); Abdul Amine, M.D. ($2,046.49) and Universal Rehabilitation, P.C. ($12,005.00) for a total of $34,681.86. Respondent shall be given a credit in the amount of $1,560.48 for payments made to Pronger Smith regarding service dates from 10/30/12-11/27/12 & 12/26/12-1/23/23 under Section 8(j) of the Act. Respondent shall be given a credit for $5,679.09 in payment of medical treatment received by Petitioner, as outlined in Respondent's Exhibit 5.

TTD
Respondent shall pay Petitioner temporary total disability benefits of $827.29/week for 62 & 4/7 weeks, commencing September 27, 2012 through November 28, 2012; August 14, 2013 through March 24, 2014 and April 3, 2016 through August 31, 2016 as provided in Section 8(b) of the Act, for a total TTD award of $51,764.71. Respondent shall be given a credit of $9,995.26 for temporary total disability benefits already issued, amounting to a total award of TTD of $41,769.45. Respondent's claim for a TTD overpayment credit is denied.

Subrogation Interest
Respondent shall be liable for reimbursement of the subrogation interests asserted by Blue Cross & Blue Shield and Optum.

Permanent Partial Disability
Respondent shall pay Petitioner the sum of **$774.56**/week for a total period of **200** weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained to the right shoulder caused **12 ½ %** loss of use to the person as a whole, the injuries sustained to the cervical spine caused **20 %** loss of use to the person as a whole and the injuries sustained to the lumbar spine caused **7 ½ %** loss of use to the person as a whole for a total permanent partial disability award of $148,912.00.

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 30, 2024

ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Gregory Thomas,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 12 WC 43692
Caraustar Industries	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on June 6, 2024, in Chicago, Illinois before Arbitrator Efi James. The issues in dispute were accident, causation, earnings, medical, TTD, nature and extent of the injuries, BCBS subrogation claim and TTD overpayment pursuant to Arbitrator's Exhibit 1. (AX 1)

Job Duties

Petitioner Gregory Thomas testified that he was employed by Respondent, Caraustar Industries, on September 17, 2012 as a first printing pressman. (Tr. 13) He had worked for Respondent since 1987. (Tr. 14) His duties as a printing pressman included controlling color imaging, hanging plates, loading board to the press weighing almost 500 pounds and pulling rollers weighing 60 pounds out of the printing press. (Tr. 14, 17) Petitioner testified he did his work on large machines. (Tr. 16)

Accident

On September 17, 2012, Petitioner testified he was working on a press when sheets came through the press landing on swords that are supposed to automatically eject the sheets once they start stacking up. (Tr. 18) He testified that when the swords did not eject the sheets of paper, he had to get a long hook to pull the swords back. When he went to pull the swords back, the hook slipped, causing him to fall back, hitting his neck, right shoulder and low back against a rail. (Tr. 18-19) Petitioner testified he felt pain right away and notified his employer (Tr. 19)

Petitioner testified that he first sought medical treatment on September 21, 2012, with his primary care physician, Dr. Samuel Matthew. (Tr. 20) His employer had also directed him to Clearing Clinic where he was seen on September 27, 2012. (Tr. 20) Petitioner testified that he complained of pain in his neck, right shoulder, and low back. (Tr. 21)

Petitioner testified that he was seen at Pronger Smith Medical Center by Dr. Robert Markus, where he complained of pain in his low back, neck and right shoulder. (Tr. 28) Dr. Markus recommended therapy for his low back and right shoulder. (Tr. 29) He was referred to a specialist for the cervical spine. (Tr. 29) Petitioner testified he began therapy and was returned to

work light duty as of November 28th, 2012. (Tr. 29) Petitioner testified he was off work from September 27, 2012, through November 28, 2012. (Tr. 30)

Petitioner testified Respondent scheduled an independent medical examination with Dr. Andrew Zelby in January of 2013. (Tr. 30) Following Dr. Zelby's examination, Respondent did not authorize any further medical treatment or off-work benefits. (Tr. 32) Petitioner testified he went back to work light duty in November 2012 through August of 2013. (Tr. 32)

Petitioner underwent right shoulder surgery with Robert Markus on August 14th, 2013. (Tr. 33) Dr. Markus performed an endoscopic subacromial decompression on the right shoulder at Ingalls Same Day Surgery Center. (Tr. 34) After surgery, Petitioner testified he began therapy and was off work until March 24th, 2014 when he was cleared to return to work full duty as it related to the right shoulder. (Tr. 34)

Petitioner testified that he underwent neck surgery on April 13th, 2016 and since then, has not worked for Respondent or any other employer and has not received TTD benefits. (Tr. 38) Petitioner further state that he subsequently applied for SSDI benefits, which were retroactively awarded going back to 2016. (Tr. 39)

Summary of Medical Records

In March 2011, prior to the accident date at issue, Petitioner treated with Dr. Samuel Matthew for an injury sustained at work. (PX 1, pg. 3) He experienced a popping sensation with severe low back pain, exhibited positive straight leg raise as well as other spinal symptoms, and was diagnosed with a lumbar sprain/strain. An MRI was ordered, and physical therapy recommended. Petitioner was restricted from all pushing and lifting, and excessive bending or stooping. On March 30, 2011, an MRI revealed L4-L5 disc bulges, stenosis, foraminal narrowing and multilevel facet joint degeneration. On April 3, 2011, Petitioner was noted to have received little relief for his low back pain. (PX 1, pg. 3) He only slightly improved but still symptomatic on July 16, 2011 but discontinued use of a back brace by August 20, 2011, but continued to require some pain medication. His symptoms steadily decreased but he remained in physical therapy through March 13, 2012. (PX 1, pg. 4-5) On March 13, 2012, Petitioner was noted to be in considerably less pain and discomfort. He was discharged from care without mention of future treatment or restrictions. (PX 1, pg. 5-6)

On March 29, 2012, Petitioner began treatment at Clearing Clinic after being struck in his head with a machine guard. He complained of 3/10 head pain and 6/10 neck pain. (RX 3, pg. 4-5) Head and cervical x-rays revealed moderate cervical degeneration. (RX 3, pg. 6-9) He was diagnosed with a head contusion and neck strain, prescribed pain medication and released to regular work duties. (RX 3, pg. 5)

On April 12, 2012, Petitioner returned to Dr. Matthew for neck pain radiating into his arms and hands. He was referred to Neurology, an MRI was recommended and he was prescribed medications for pain and muscle spasms. Petitioner was told to avoid neck movement as much as possible. (PX 1, pg. 7)

Petitioner returned to Clearing Clinic on April 17, 2012. (RX 3, pg. 25) His head pain was 0/10 but mild neck pain persisted. He remained unrestricted in his activities, was instructed to discontinue medications, and was discharged from care. (RX 3, pg. 25)

Petitioner was evaluated by Dr. Matthew on September 21, 2012 with complaints of pain in his neck, low back, and right shoulder (PX 1, pg. 8) Petitioner noted that his symptoms began after he slipped "while on his job operating a printing press" on September 17, 2012. (PX 1, pg. 8) He was diagnosed with neck trauma, lumbar trauma, and right shoulder trauma with possible internal derangement, lumbosacral strain/sprain with lumbar radiculopathy, and cervical strain with possible radiculopathy. He was to limit or avoid repetitive bending and stooping, avoid raising his right arm, avoid pushing/pulling and lifting, and to continue the use of pain medications and muscle relaxants. (PX 1, pg. 8-9; RX 4a, pg. 4) Dr. Matthew recommended an MRI of the lumbar spine, cervical spine, and right shoulder. (PX 1, pg. 9) Petitioner continued to treat with Dr. Matthew through September 5, 2015. (PX 1, pg. 17)

On September 27, 2012, at Respondent's direction, Petitioner presented to Clearing Clinic for an initial evaluation. (PX 3, pg. 4) At that time, Petitioner noted "pain located in the lower back and right shoulder". (PX 3, pg. 4) Petitioner advised that the symptoms arose 10 days earlier (PX 3, pg. 4) Records reflect that "the cause of this problem is probably related to work activities". (PX 3, pg. 4)

Petitioner was seen at MetroSouth Medical Center on October 9, 2012 to obtain MRI imaging of his lumbar spine and right shoulder. (PX 4, pg. 3-4) The lumbar MRI revealed mild degenerative disc disease at L4-L5, with small disc bulges, minimal anterolisthesis and marked facet hypertrophy, with mild secondary central canal stenosis and minimal foraminal narrowing, unchanged from a prior study performed on March 18, 2011. (PX 4, pg. 3) There were no prior images available for comparison regarding the right shoulder. The right shoulder MRI noted "mild rotator cuff tendinopathy in the supraspinatus tendon with two small focal areas of partial tendon tear. No high-grade tendon tear or complete rotator cuff disruption or reaction. Small foci of bony edema in the humeral head and acromion compatible with areas of degenerative reactive edema or minor contusion. No fractures are identified". (PX 4, pg. 6)

On October 30, 2012, Petitioner was seen by Dr. Robert Markus of Pronger Smith Medical Care (PX 5) Petitioner complained of "pain in the right shoulder blade radiating down the right arm with occasional pins and needles sensation in the right hand as well as low back pain". It was further noted that "patient reported he sustained the injury when the printing press jammed and he was attempting to free the mechanism when something slipped and he jerked backwards, twisting". (PX 5, pg. 3)

Dr. Markus noted that "MRI of right shoulder showed evidence of supraspinatus tendinopathy and possible small partial thickness tear. MRI of the lumbar spine show degenerative changes most notably at L4-L5 essentially unchanged from a prior study done in 2011. Plain x-rays of the cervical spine show disc narrowing at C5-C6 and C6-C7". (PX 5, pg. 4) Regarding the lumbar spine Dr. Markus opined that he "would regard the patient as having acute on chronic supraspinatus tendinopathy as well as exacerbation of pre-existing lumbar degenerative disc disease". (PX 5, pg. 4) Dr. Markus recommended Petitioner obtain an MRI of the cervical spine, and return for follow up. (PX 5, pg. 4) Petitioner was to remain off work. (PX 5, pg. 4)

MRI imaging of Petitioner's cervical spine was obtained on November 16, 2012 at Northwestern Medical Imaging (PX 7) Petitioner related his symptoms to trauma – specifically while performing a pulling motion on September 17, 2012. (PX 7, pg. 7) Dr. Srdjan Mirkovic noted that Petitioner "presents with significant MRI findings" and that "sustained a traumatic event to the cervical spine". (PX 7, pg. 9)

Dr. Mirkovic recorded that Petitioner "presents with aggravation of pre-existing degenerative condition of the cervical spine. His symptoms have persisted since September 17, 2012". (PX 7, pg. 9) Dr. Mirkovic opined that "it is more likely than not that his symptoms are work related given onset of exacerbation of symptoms following the events on September 17, 2012". (PX 7, pg. 9) He recommended that Petitioner obtain CT imaging of the cervical spine and opined "I believe that he would benefit from multilevel anterior cervical discectomies and fusion with instrumentation and possible C5 corpectomy". (PX 7, pg. 9-10)

On November 27, 2012, Petitioner was seen for a follow up examination with Dr. Markus who noted that the cervical spine MRI evidenced "significant central and foraminal stenosis". (PX 5, pg. 14) Dr. Markus referred Petitioner to a spine specialist for an evaluation of cervical spine pathology. Further, Dr. Markus noted "we'll pursue physical therapy for shoulder and back" (PX 5, pg. 15) Petitioner was cleared to work light duty with no lifting over 10 lbs. and no above-shoulder work. (PX 5, pg. 15) Petitioner began physical therapy of his lumbar spine and right shoulder on December 26, 2012. (PX 5, pg. 20) Petitioner continued physical therapy on his low back and right shoulder through January 23, 2013. (PX 5, pg. 20-30)

In January 2013, Petitioner's right shoulder pain was reduced, but his neck and back pain persisted with no objective change in his condition. His injuries were attributed to trauma sustained at work months prior; Dr. Matthew's February 28, 2013 report attributes Petitioner's conditions to a history of work-related injuries. (PX 1, pg. 11-12)

Petitioner treated with Dr. Srdjan Mirkovic at NOI Orthopedics on May 14, 2013, for neck pain, right shoulder pain and right upper extremity numbness from his shoulder to his hand. Petitioner described his injury of September 17, 2012. He diagnosed Petitioner with cervical myelopathy due to a traumatic event to the cervical spine which was aggravated on September 17, 2012. (PX 8, pg. 6-8)

On August 2, 2013, Petitioner was seen by Dr. Bruce Dolinsky at Pronger Smith Medical Care, with complaints of shoulder pain upon referral by Dr. Matthew. Dr. Dolinsky recommended steroid injections, which Petitioner did not want due to his diabetic condition. He requested a surgical referral and was referred back to Dr. Markus. (PX 5, pg. 39-40) On August 6, 2013 Dr. Markus recommended endoscopic subacromial decompression surgery to address right shoulder impingement. (PX 5, pg. 41-42)

Dr. Markus performed an endoscopic right shoulder subacromial decompression on August 14, 2013, using radiofrequency ablation. The preoperative diagnosis and postoperative diagnosis were recalcitrant impingement. (PX 10, pg. 4) Petitioner was prescribed post-op physical therapy. (PX 5, pg. 43-44)

Petitioner returned to Dr. Matthew on September 21, 2013 status post right shoulder. (PX 1, pg. 14) Cervical and lumbar MRIs were reviewed which showed multilevel cervical foraminal stenosis and lumbar degenerative disc disease with marked facet hypertrophy and a small disc bulge at L4-L5, with central canal stenosis and neuraforminal narrowing. He was to follow up with Dr. Markus and return as needed in two months. (PX 1, pg. 14) Petitioner demonstrated full range of motion of the right shoulder in a follow up with Dr. Markus on October 8, 2013. He requested and was prescribed additional physical therapy. (PX 5, pg. 47-48)

An October 30, 2013 cervical MRI showed reversal of the cervical spine Grade 1 retrolisthesis of C5 over C6, multilevel disc desiccation, reduced disc height C4-C7, with mild disc protrusions at

all levels C3 through C7. (PX 14, pg. 3-4; RX 4b, pg. 8-9) An October 31, 2013 lumbar MRI revealed early desiccation and 3mm disc protrusion at L4-5, with small disc bulges, Grade 1 anterolisthesis and marked facet hypertrophy, with mild secondary central canal stenosis and minimal foraminal narrowing, unchanged from prior studies. (PX 14, pg. 7-8; RX 4b, pg. 12-13)

On November 13, 2013, Petitioner began treatment with Dr. Reem Bitar at Pronger Smith Medical Care. He complained of neck and back pain following an injury at work the previous March when an 80lb guard fell on his head and snapped his head forth and back. He also described a subsequent injury on September 17, 2012 that caused right shoulder pain and intermittent lumbar pain. He was status post right shoulder surgery but complained of pain from the neck down the left arm above the elbow, as well as low back pain radiating into the right leg. Petitioner was to take Gabapentin for cervical radiculopathy, lumbar disc degeneration and neck pain, as well as begin therapy for the lumbar spine. (PX 5, pg. 49-50) Dr. Bitar administered an L4-L5 injection on December 3, 2013. (PX 5, pg. 53)

Petitioner's neck and back pain persisted and he received therapy at Illinois Back Institute. (PX 1, pg. 14) On January 29, 2014, he reported lumbar pain relief following an injection, but the pain returned after a month of physical therapy, radiating into the right leg. On February 26, 2014, Dr. Reem Bitar performed a second "lumbar epidural steroid injection at L4-L5 towards the right". (PX 5, pg. 59) On March 19, 2014, Dr. Reem Bitar cleared Petitioner to return to work without restrictions as it relates to the back. (PX 5, pg. 63)

From March 26, 2014 through September 5, 2015, Petitioner treated with Dr. Matthew and his condition was unchanged but slightly improved with subjective symptoms. He was diagnosed with Grade 1 retrolisthesis of C5 over C6, and Grade 1 anterolisthesis of L4 over L5. (PX 1, pg. 15) On October 27, 2014, a lumbar MRI revealed early Grade 1 anterolisthesis L4 over L5, associated osteoarthritis, and sacroiliac osteoarthritis osteophytes. (PX 1, pg. 12-13) A cervical MRI revealed degeneration without significant spondylolysis or listhesis. (PX 14, pg. 9-10) On November 19, 2014 Petitioner was directed to continue his current medications and therapy at the Illinois Back Institute. (PX 1, pg. 16)

Petitioner treated at the Illinois Back Institute on March 6, 2015, with complaints of 6/10 low back pain and neck pain radiating into his arms. (PX 16, pg. 4) Therapy began on March 10, 2015 which included spinal traction and therapeutic exercise. (PX 16, pg. 30) Petitioner continued to receive therapy through June 1, 2015. (PX 16)

Petitioner treated with Dr. Wayel Kaakaji of the Illinois Back Institute in October 2015. He related neck and back pain due to an injury sustained in 2012 when he was hit atop his head with a falling press guard. He was restricted from work for a year before returning to unrestricted work duties, but continued to have neck and back troubles. Dr. Kaakaji recorded that "my recommendation is for surgery for the cervical spine, in the form of a C5 corpectomy with arthrodesis from C4-C6 with allograft and plating". (PX 18, pg. 9) Dr. Kaakaji further opined "he may need further surgery in the near or distant future, as he has more problems with his neck, but my goal is to preserve as much of his spine without fusion in order to allow him more years of work". (PX 18, pg. 9) Dr. Kaakaji noted "there is absolutely no guarantee that he would be able to return back to work after neck surgery. I explained to him that he may consider other vocations in order to avoid a physically demanding job". (PX 18, pg. 9) According to Dr. Kaakaji, "if untreated, cervical spinal cord compression will likely lead to further problems and ultimately perhaps paralysis and severe dysfunction". (PX 18, pg. 10) With regard to Petitioner's lumbar spine, Dr. Kaakaji recommended updated MRI imaging. (PX 18, pg. 10)

October 22, 2015 cervical x-rays showed advancing degenerative changes with mild retrolisthesis C4 over C5, and C5 over C6, with narrowing disc space C4 through T1. (PX 18, pg. 52) On October 22, 2015, a lumbar MRI revealed degenerative disc disease with central stenosis particularly at L4-5, and lumbar x-ray showed minor anterior displacement L4 over L5, stable in flexion and extension, with moderate disc space narrowing at levels T12 to L2. (PX 18, pg. 53-54)

On January 6, 2016, Petitioner returned to Dr. Kaakaji and requested cervical surgery. Dr. Kaakaji ordered a new cervical MRI, as previous studies showed a stable cervical spine. Repeat MRI was reviewed to show significant stenosis C3 through C7 with spinal cord atrophy and myelomalacia, for which fusion surgery was warranted.

On January 15, 2016, Petitioner was seen by Dr. Kaakaji who noted that "my recommendation to him is to seek surgery at a university setting because of the complexity of his problem and the long-term nature of the consequences". (PX 18, pg. 46) Dr. Kaakaji further recorded that "I do not believe that surgery will make it easier for him to work, as a matter of fact, I believe that he is extremely limited in the ability to work and the variety of work duties that he can perform either now or after surgery". (PX 18, pg. 46) Dr. Kaakaji noted that he had reviewed updated MRI imaging of Petitioner's cervical spine and that "compared to reports of the previous MRIs, there is evidence of significant stenosis at multiple levels from C3-C4 down to C6-C7. There is atrophy and myelomalacia of the spinal cord". (PX 18, pg. 55)

Petitioner began treatment with Dr. Abdul Amine in January 2016 for upper neck pain, shoulder pain, arm pain with tingling and weakness, and low back pain. Physical examination and a review of Petitioner's diagnostics produced a diagnosis of cervical radiculopathy, stenosis and myelopathy warranting two-level cervical decompression and fusion. (PX 19, pg. 4) Petitioner was discharged from therapy at Athletico by his physician on April 3, 2016 after 50 therapy sessions. (PX 12, pg. 171-172)

On April 13, 2016, Dr. Amine performed anterior cervical discectomy of C4-C5 and C5-C6 with inter-body fusion at both levels. On May 24, 2016, Dr. Amine recorded that "I don't think he can return to his previous job which he has done for 29 years as a printing press; so I am going to ask him to wait an additional 4 weeks and heal some more before we discuss returning him to the same job or a modified job". (PX 19, pg. 5)

On June 1, 2015, Petitioner complained of increased low back pain following a week of working overtime. On July 5, 2016, upon referral from Dr. Matthew, Petitioner initiated treatment with Universal Rehabilitation for neck, shoulder, back and low back pain. (PX 24, pg. 4-5) Therapy notes reflect that Petitioner's work involves "prolonged standing, prolonged sitting, prolonged walking, prolonged forward bending, working with a bent neck, excessive reaching, lifting light objects, lifting heavy objects, carrying light objects, carrying heavy objects". (PX 24, pg. 10) He received therapy for the neck and bilateral shoulders, through September 7, 2018. (PX 24, pg. 67) At the time of his discharge Petitioner still had complaints of "severe pain and stiffness" in the neck and upper back. (PX 24, pg. 67)

A cervical MRI was performed on August 13, 2015 due to increasing neck pain. The findings were essentially unchanged from the prior study, with the exception of focal cervical cord edema at C5-C6, reported as a fresh finding. (PX 14, pg. 14-15) A lumbar MRI performed on August 15, 2015 due to worsening low back pain revealed 4mm anterolisthesis of L4 over L5 with mild

diffuse posterior disc bulge and mild bilateral facet hypertrophy causing mild canal stenosis, plus degenerative sacroiliac osteophytes, reported as unchanged from the study performed in October 2014. (PX 16, pg. 18-19)

Section 12 Examination with Dr. Andrew Zelby on January 16, 2013

Petitioner was seen by Dr. Andrew Zelby pursuant to a Section 12 independent medical examination at Respondent's request on January 16, 2013. Following that examination, Dr. Zelby prepared an IME report dated January 16, 2013., as well as an addendum dated February 20, 2023. The parties obtained the deposition testimony of Dr. Zelby on July 17, 2023. (RX 1)

Dr. Zelby performed an initial examination of Petitioner on January 16, 2013. (RX 1, pg. 7) He examined Petitioner's cervical and lumbar spine conditions, but not Petitioner's right shoulder. (RX 1, pg. 27) Petitioner related to Dr. Zelby three separate injuries: a low back injury in April 2011, a May 2012 head and neck injury, and the September 17, 2012 injury for which Dr. Zelby examined him. (RX 1, pg. 11-13)
Clinical examination revealed Petitioner had limited cervical range of motion, mostly with hyperextension. (RX 1, pg. 13-14) His thoracic exam was normal, while his lumbosacral exam revealed limited hyperextension. (RX 1, pg. 14) After assessing Petitioner's November 12, 2012 cervical MRI report only, Dr. Zelby diagnosed Petitioner with cervical spondylosis with myelopathy, not based on his clinical findings but based on the report describing multilevel spinal cord compression and lumbosacral spondylosis and spondylolisthesis. (RX 1, pg. 16-17)

Petitioner's October 9, 2012 lumbar MRI report and November 12, 2012 cervical MRI report were reviewed by Dr. Zelby. (RX 1, pg. 14-15) Dr. Zelby noted that the findings of anterolisthesis, stenosis, spondylosis, retrolisthesis, facet degeneration, and disc osteophyte, all had been present, likely for years, prior to September 2012. (RX 1, pg. 15) For the lumbar condition, Dr. Zelby diagnosed Petitioner with a strain, and recommended he continue physical therapy. (RX 1, pg. 20) For Petitioners cervical condition, Dr. Zelby noted Petitioner required surgery to decompress the spinal cord, but Dr. Zelby could not give a more detailed description of the surgery until reviewing MRI images. (RX 1, pg. 17)

Dr. Zelby stated that he "would not recommend that Mr. Thomas pursue unrestricted full duty at this time. He may work in a light physical demand level, lifting 20 pounds occasionally and 10 pounds frequently, with no work above shoulder height". (RX 1, pg. 6)

Upon reviewing the November 16, 2012 MRI images, Dr. Zelby authored an addendum report on February 20, 2023 with a recommendation on the type of cervical fusion Petitioner required. (RX 1, pg. 15) Dr. Zelby read Petitioner's November 2012 cervical MRI to reveal kyphosis, meaning a little forward bend, with ossification of the posterior longitudinal ligament from the top of C5 to the bottom of C7, and broad-based disc protrusion or disc/osteophyte complex with near complete effacement of the ventral CSF, and mild to moderate spinal cord compression at each level. (RX 1, pg. 22-23) He opined that Petitioner's condition was not acute but degenerative, and the treatment he required was necessary irrespective of the September 2012 occurrence. (RX 1, pg. 25) Dr. Zelby opined Petitioner's condition was not exacerbated, aggravated, or altered in any way because of his reported fall on September 17, 2012. (RX 1, pg. 26)

Section 12 Examination with Dr. JS Player on September 13, 2018

Dr. JS Player performed a Section 12 independent medical examination of Petitioner on September 13th, 2018. (RX 2) The parties obtained the deposition testimony of Dr. Player on June 13, 2023. Dr. Player offers opinions regarding Petitioner's right shoulder, lumbar spine, and cervical spine.

At the time of Dr. Player's examination, Petitioner complained of pain all the time, with numbness down both arms and intermittent numbness and cramping in both hands and fingers. He told Dr. Player his right shoulder surgery made his shoulder better, but he continued to complain of pain and pressure in the shoulder. His neck surgery worsened his symptoms, with pain across the back of the neck radiating down both arms with occasional cramping and numbness in the hands and fingers. His lumbar pain remained the same. (RX 2, pg. 22-23)

Dr. Player noted that upon clinical examination, Petitioner walked with a normal gait without assistance and observed Petitioner "carried his cane" as a precaution. Dr. Player further noted he had no abnormal curvatures, cervical, thoracic, or lumber spine; his shoulders were symmetrical, pelvis was level, gait was normal without a limp and he had fluid and reciprocal right shoulder arm swing patterns. (RX 2, pg. 24-25) Dr. Player noted Petitioner was markedly limited with cervical spine motion, minimally limited with lumbar spine motion, but he could not test the bilateral shoulder range of motion because of a muscle spasm. (RX 2, pg. 26)

Dr. Player noted Petitioner's cervical complaints were consistent with his objective findings, but his lumbar symptoms were inconsistent and were not supported with positive objective neurologic findings. He had radicular complaints into the right lower extremity but his straight leg raising testing was negative for pain radiating down the leg, which are inconsistent. He had no motor weakness; his normal non-antalgic gait and easy ability to rise and walk on both heels and toes indicates normal motor strength in both lower extremities with no myelopathic symptoms. (RX 2, pg. 29-30) He had no lower extremity atrophy attributable to the work injury, with equal, normal, and symmetrical lower extremity deep tendon reflexes and no pathological reflexes, also inconsistent with lower extremity neurological pathology. (RX 2, pg. 31)

Dr. Player noted Petitioner's normal and fluid right shoulder/arm swing pattern indicated good shoulder range of motion, consistent with a good to fair post-operative result from his shoulder impingement surgery. He opined the absence of measurable upper extremity atrophy meant there was no loss of muscle. (RX 2, pg. 29-30) Dr. Player explained shoulder impingement is not nerve impingement but rather rotator cuff tendon impingement caused by a boney encroachment poking the tendon. (RX 2, pg. 63-64)

Dr. Player opined Petitioner's cervical and lumbar spine conditions were ongoing and unresolved at the time of the September 2012 incident. (RX 2, pg. 34) He further opined that the MRI reports reveal no increase in pathology affecting the cervical or the lumbar spine caused by the September 17, 2012 accident. (RX 2, pg. 36) He found the September 2012 accident did not cause, aggravate, or worsen Petitioner's lumbar condition. (RX 2, pg. 39) He diagnosed Petitioner's lumbar condition as degenerative disc disease caused by the March 2011 incident, when Petitioner first became symptomatic and opined that the September of 2012 accident did not meaningfully accelerate that condition. (RX 2, pg. 38, 41)

Dr. Player opined Petitioner's cervical diagnosis was C4-C7 cervical radiculopathy and myelomalacia with residuals following cervical spine surgery, caused by the March 2012 axial load compression injury. (RX 2, pg. 40-41) He stated that the September 2012 incident did nothing to cause, worsen or aggravate the cervical condition. (RX 2, pg. 39-40) According to Dr.

Player, "there is a causal relationship between the September 2012 work exposure and aggravation of the examinee's necessarily preexisting right shoulder impingement condition." (RX pg. 40) Dr. Player opined that the "right shoulder subacromial decompression surgery, including RF ablation, was medically necessary and related to the September 2012 work exposure". (RX 2, pg. 40)

Dr. Player opined Petitioner reached MMI for his lumbar and right shoulder conditions no later than September 13, 2018 when Dr. Player performed his evaluation. The cervical condition was a bit more fluid, as Petitioner was contemplating additional treatment. (RX 2, pg. 41-42) Dr. Player performed an AMA impairment rating on Petitioner's shoulder injury, finding him impaired to the extent of 2% of the whole body based on a diagnosis of impingement syndrome derived from the operative report. (RX 2, pg. 63) He found no basis to increase the rating based on Petitioner's age, his recovery or his potential earnings capacity. (RX 2, pg. 43-45) Petitioner required work restrictions, but not as a consequence of the September 2012 work injury. (RX 2, pg. 45-46) Dr. Player testified that "if an impairment rating were performed for a different diagnosis, then there would undoubtedly be a different impairment rating". (RX 2, pg. 63)

Prior Medical Condition

Petitioner testified that prior to his injury on September 17, 2012, he testified he had pinched nerves in his neck shooting across both sides of his shoulder which felt worse after the accident in question. (Tr. 27-28) He further testified that prior to September 17, 2012, he was having stabbing pains in his low back which also felt worse after the accident on September 17, 2012. (Tr. 28) Petitioner testified he had a prior work injury in March of 2011 that involved an injury to his low back while at work. (Tr. 22) He had sought some treatment with his primary care physician, was eventually released from his care and returned to his normal work duties. (Tr. 22) He further testified that in March, 2012, he was inside the press cleaning a roller when a piston gave way that holds the guard up causing the guard to strike him on the top of the head, snapping his neck back. (Tr. 23) Petitioner testified he did experience neck pain. (Tr. 47) His medical treatment consisted of six doctors' visits between April 2012 and August 2012. (Tr. 24)

Petitioner's Current Condition

Petitioner testified that on the date of this hearing, he did not have any ongoing symptoms or pain in his right shoulder. (Tr. 34) Functionally, he testified that he did not have the same strength in that right shoulder as he had before this injury. (Tr. 35)

Regarding his low back, Petitioner testified he underwent therapy with Dr. Markus and 2 injections with Dr. Bitar which provided him no relief. (Tr. 40) Dr. Matthew recommended low back surgery but Petitioner testified he refused surgery because he had a bad result after the surgery on his neck which he now regretted because he had been in pain ever since. (Tr. 41) Petitioner testified that every day, he has ongoing pain in his neck and low back. (Tr. 42) Physically, Petitioner testified that he did not feel capable of returning to his job because he could not pull heavy pounds of paper. (Tr. 44)

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 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).

A decision by the Commission cannot be based upon speculation or conjecture. *Deer and Company v. Industrial Commission,* 47 Ill.2d 144, (1970). A Petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. *Illinois Institute of Technology v. Industrial Commission,* 68 Ill.2d 236, (1977).

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

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him be a credible witness. The Arbitrator finds Petitioner's testimony as to his accident to be straight forward, truthful, and consistent. Petitioner's description of the accident and subsequent physical complaints remained consistent throughout. Petitioner was honest and forthright in his testimony related to prior injuries and medical history. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions or internal inconsistencies that would deem the witness unreliable specifically as it relates to his description of the accident or his current condition of ill-being.

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

Petitioner bears the burden of proving by a preponderance of the evidence that an injury arose out of and in the course of his employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). For an injury to arise out of one's employment, "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*

To determine whether a claimant's injury arose out of his employment, we must categorize the risk to which the claimant was exposed. *Dukich v. Illinois Workers' Compensation Comm'n*, 2017 Ill. App (2d) 160351WC. There are three categories of risk: (1) risks distinctly associated with the employment; (2) personal risks to the employee; and (3) neutral risks which have no particular employment or personal characteristics. *Caterpillar Tractor Co., v. Industrial Comm'n*, 129 Ill. App.3d 149, 162 (2000). An injury arises out of a claimant's employment if at the time of injury, the claimant was performing an act reasonably expected to be performed for his

employment, or casually related to what the claimant must do to complete his job duties, even if the activity involves everyday activities. *Id* Moreover, the Court noted that a risk is distinctly associated with a claimant's employment if at the time of 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 58.

Petitioner testified he was working on a printing press on September 17, 2012. Sheets of paper came through the press landing on swords that are supposed to automatically eject once the sheets started stacking up. He testified that when the swords did not eject the sheets of paper that had stacked up, he had to get a long hook and pull the swords back. When he went to pull the sword back, the hook slipped, causing him to fall back, hitting his neck, right shoulder and low back up against the guardrail. Petitioner testified he felt pain right away. This description of the accident at trial, in the treating medical records and at both IME's have remained consistent throughout. Respondent offered no evidence to contradict Petitioner's account of what occurred on September 17, 2012.

At his first doctor's visit with Dr. Matthew on September 21, 2012, Petitioner advised that these symptoms began after he slipped "while on his job operating a printing press". On September 27, 2012, Petitioner presented to Clearing Clinic at Respondent's request where Petitioner noted his "pain located in the lower back and right shoulder" and it was noted that "the cause of this problem is probably related to work activities". Also on September 27, 2012, Petitioner completed and signed an Employee Statement of Injury. (PX 28) In that report, Petitioner provides a consistent description of the accident as described above.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner has met his burden in establishing the occurrence of an accident on September 17, 2012 which arose out of and in the course of Petitioner's employment by Respondent.

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

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, 11 N.E.3d 453. "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

The Arbitrator finds that Petitioner's current condition of ill-being as it relates to his right shoulder, low back and cervical spine are causally related to the incident of September 17, 2012. In so finding the Arbitrator relies on the medical opinions offered at trial as well as Petitioner's testimony.

Right Shoulder

Specifically, as it relates to the right shoulder, there is no dispute as to whether the Petitioner's current condition of ill being as it relates to the right shoulder is causally related to the work accident on September 17, 2012.

Petitioner was first evaluated by his primary care physician, Dr. Samuel Matthew on September 21, 2012 where he complained of pain in his neck, low back, and right shoulder. (PX 1, pg. 8) A right shoulder MRI noted "mild rotator cuff tendinopathy in the supraspinatus tendon with two small focal areas of partial tendon tear. No high-grade tendon tear or complete rotator cuff disruption or reaction. Small foci of bony edema in the humeral head and acromion compatible with areas of degenerative reactive edema or minor contusion". (PX 4, pg. 6)

Petitioner presented to Clearing Clinic at the request of Respondent for an evaluation where he complained of "pain located in the lower back and right shoulder" which began 10 days prior. (PX 3, pg. 4) Records note "the cause of this problem is probably related to work activities". (PX 3, pg. 4)

On October 30, 2012, Petitioner was seen by Dr. Robert Markus at Pronger Smith Medical Care. (PX 5) Petitioner complained of "pain in the right shoulder blade radiating down the right arm with occasional pins and needles sensation in the right hand as well as low back pain". It was noted "patient reported he sustained the injury when the printing press jammed and he was attempting to free the mechanism when something slipped and he jerked backwards". (PX 5, pg. 3)

After a course of physical therapy, records note Petitioner's improvement was slow and minimal through May 30, 2013. On July 17, 2013, Dr. Matthew noted he had been treating Petitioner for work-related trauma. On August 2, 2013, Petitioner was seen by Dr. Bruce Dolinsky at Pronger Smith Medical Care, with complaints of shoulder pain. (PX 1, pg. 11-12) Upon examination, Dr. Dolinsky referred Petitioner back to Dr. Markus for a surgical evaluation. (PX 5, pg. 39-40) On August 6, 2013, Dr. Markus recommended endoscopic subacromial decompression surgery to address right shoulder impingement. (PX 5, pg. 41-42)

Dr. Markus performed endoscopic right shoulder subacromial decompression on August 14, 2013, using radiofrequency ablation. The preoperative diagnosis and postoperative diagnosis were recalcitrant impingement. (PX 10, pg. 4) Petitioner was then directed to begin physical therapy. (PX 5, pg. 43-44) Petitioner continued to have increased pain in his right shoulder and was prescribed additional physical therapy. (PX 5, pg. 47-48)

Respondent's IME doctor, Dr. JS Player, diagnosed Petitioner with "right shoulder impingement syndrome status/post-surgical repair". (RX 2, pg. 40) Dr. Player noted that "right shoulder impingement symptoms were not documented in the medical record until after the September 2012 work exposure". (RX 2, pg. 40) According to Dr. Player, "there is a causal relationship between the September 2012 work exposure and aggravation of the examinee's necessarily preexisting right shoulder impingement condition". (RX 2, pg. 40)

Dr. Player opined further that the "right shoulder subacromial decompression surgery, including RF ablation, was medically necessary and related to the September 2012 work exposure". (RX 2, pg. 40) Dr. Player found Petitioner to be at MMI. (RX 2, pg. 42)

The Arbitrator further relies upon the testimony of Petitioner that prior to September 17, 2012 he'd never had any medical treatment, pain or symptoms in his right shoulder. Respondent offers no medical records regarding treatment of Petitioner's right shoulder until after this date of loss.

Cervical Spine

The Arbitrator finds that Petitioner's current condition of ill-being as it relates to his cervical spine, is causally related to the incident of September 17, 2012. In so finding, the Arbitrator relies on the medical opinions and testimony offered at trial.

In a workers' compensation case, the claimant has the burden of proving, by a preponderance of the evidence, all of the elements of his claim." *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 867 (2010). "'[A] preexisting condition does not prevent recovery under the Act if that condition was aggravated or accelerated by the claimant's employment.'" *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 470, (2011). Further, "[e]very natural consequence that flows from an injury that arose out of and in the course of the claimant's employment is compensable unless caused by an independent intervening accident that breaks the chain of causation between a work-related injury and an ensuing disability or injury." *Vogel v. Ill. Workers' Comp. Comm'n*, 354 Ill. App. 3d 780 (2005).

Prior to this injury, Petitioner treated at Clearing Clinic on March 29, 2012, after being struck on his head with a machine guard. At that time, Petitioner complained of 6/10 neck pain. (RX 3, pg. 4-5) Cranial and cervical x-rays revealed moderate cervical degeneration. He was diagnosed with a head contusion and neck strain, prescribed pain killers and released to perform regular work duties. (RX 3, pg. 5)

In a follow-up examination on April 17, 2012, Petitioner remained unrestricted in his activities, was instructed to discontinue medications and was discharged from care. (RX 3, pg. 25) Petitioner's neck pain was further improved through August 22, 2012, and he was told to return only on an as needed basis. (PX 1, pg. 8)

After the accident on September 17, 2012, Petitioner was seen by his primary care physician, Dr. Samuel Matthew. (PX 1, pg. 8) Petitioner complained of pain in the neck, low back, and right shoulder (PX 1, pg. 8) Petitioner noted that these symptoms began after he slipped "while on his job operating a printing press" in September 2012. (PX 1, pg. 8) He was diagnosed with neck trauma and cervical strain/sprain possibly with radiculopathy. Petitioner continued to treat with Dr. Matthew through September 5, 2015. (PX 1, pg. 17) Petitioner began treatment with Dr. Srdjan Mirkovic at NOI Orthopedics.

Dr. Mirkovic recorded that Petitioner "presents with aggravation of pre-existing degenerative condition of the cervical spine. His symptoms have persisted since September 17, 2012". (PX 7, pg. 9) Dr. Mirkovic opined that "it is more likely than not that his symptoms are work related given onset of exacerbation of symptoms following the events on September 17, 2012". (PX 7, pg. 9) Dr. Mirkovic noted that Petitioner would benefit from multilevel anterior cervical discectomies and fusion with instrumentation and possible C5 corpectomy". (PX 7, pg. 9-10)

Petitioner was seen by Dr. Mirkovic again on May 14, 2013. Clinical exam included a positive Spurling's test, full strength and symmetric reflexes, normal sensory exam and negative Tinel and Phalen testing. Dr. Mirkovic's assessment was cervical myelopathy due to a traumatic event to the cervical spine aggravated on September 17, 2012. (PX 8, pg. 6-8)

Petitioner began treatment with Dr. Wayel Kaakaji of the Illinois Back Institute on October 7, 2015, due to an injury sustained in 2012 when he was hit atop his head with a falling press guard weighing 80lbs. Dr. Kaakaji recommended surgery for the cervical spine, in the form of a C5 corpectomy with arthrodesis from C4-C6 with allograft and plating". (PX 18, pg. 9). The Arbitrator finds that although the initial injury to the cervical spine did in fact occur in March 2012 when Petitioner was struck in the head, that condition had resolved to the extent it no longer effected his ability to work full duty, no longer required pain medication and no longer required ongoing medical treatment. It was only after the September 17, 2012 accident aggravated his pre-existing cervical condition, did Petitioner find himself unable to work in a full duty capacity and requiring surgical intervention.

On April 13, 2016, Dr. Amine performed anterior cervical discectomy of C4-C5 and C5-C6 with inter-body fusion at both levels. The preoperative diagnosis and postoperative diagnosis was C4-5 and C5-6 stenosis, herniated disc and radiculopathy. (PX 19, pg. 7-8) He complained of post-operative neck pain as of April 14, 2016. (PX 21, pg. 93)

Dr. Andrew Zelby, Respondent's Section 12 examiner, opined that Petitioner's condition was not acute but degenerative, and the treatment he required was necessary irrespective of the September 2012 occurrence. (RX 1, pg. 25) The Arbitrator has reviewed the medical records and finds the opinions of both Dr. Matthews and Dr. Mirkovic to be more credible than the opinion of Dr. Zelby. Although Dr. Zelby opined Petitioner's condition was not exacerbated, aggravated, or altered in any way because of his fall on September 17, 2012, this opinion is inconsistent with the fact that the Petitioner only required surgical intervention after the September 17, 2012 accident. In making this finding, the Arbitrator also considers that Dr. Zelby did not review medical records following the March 2012 incident and did not review records regarding treatment Petitioner received prior to the September 17, 2012 incident. Dr. Zelby also admitted to not reviewing any imaging or had any comparison studies of Petitioner's cervical spine performed prior to September 2012. (RX 1, pg. 31)

Dr. JS Player, a second Section 12 examiner for Respondent, diagnosed Petitioner with "C4-C7 lumbar radiculopathy and myelomalacia with residuals following cervical spine surgery". (RX 2, pg. 41) Dr. Player opined that "the examinee may have experienced temporary cervical and lumbar symptoms following the September 2012 incident; however, that incident neither caused nor aggravated the examinee's pre-existing cervical and lumbar degenerative conditions. (RX 2, pg. 41) Again, this opinion mirrors that of Dr. Zelby and does not consider the change in Petitioner's medical circumstance, which was the need for both work restrictions and surgical intervention, that was caused by this aggravation of a pre-existing condition due to the September 17, 2012 accident.

It is important to note that a pre-existing condition does not prevent recovery if that condition was aggravated or accelerated by the claimant's employment. A Petitioner need only establish that an accident was a cause of his condition. *Sisbro, Inc. v. Industrial Commission*, 207 Ill.2d 193, 205 (2003). A Petitioner, with a pre-existing condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Commission*, 92 Ill.2d 30, 36 (1982). The Arbitrator emphasizes that although Petitioner may have had a pre-existing condition that caused him some pain and discomfort due to an injury on March 11, 2012, Petitioner was working full duty without restrictions on September 17, 2012 and no surgery had been recommended. In fact, Petitioner was not prescribed pain medication and had been discharged from care 5 months prior to the accident of September 17, 2012.

Lumbar Spine

The Arbitrator further finds a causal connection between the incident of September 17, 2012 and the condition of ill-being present in Petitioner's lumbar spine. In support of this, the Arbitrator relies on the various medical opinions and testimony offered at trial.

In March 2011, prior to the injury in question, Petitioner experienced a popping sensation with severe low back pain and was diagnosed with a lumbar sprain/strain. Pain medication was prescribed, an MRI was ordered, and physical therapy recommended. Petitioner was restricted from all pushing and lifting, and excessive bending or stooping. On March 30, 2011, an MRI revealed L4-L5 disc bulges, stenosis, foraminal narrowing and multilevel facet joint degeneration. His symptoms steadily decreased but he remained in physical therapy through March 2012. (PX 1, pg. 4-5) On March 13, 2012, Petitioner was noted to be in considerably less pain and discomfort. He was discharged from care without mention of future treatment or restrictions. (PX 1, pg. 5-6)

After the September 2012 accident, Petitioner was evaluated by Dr. Matthew with complaints of pain in his low back and was diagnosed with lumbosacral strain/sprain with lumbar radiculopathy. (PX 1, pg. 9) On September 27, 2012, Clearing Clinic records reflect that the cause of Petitioner's lumbar complaints "is probably related to work activities". (PX 3, pg. 4)

Petitioner was seen at MetroSouth Medical Center on October 9, 2012 where a lumbar MRI revealed mild degenerative disc disease at L4-L5, with small disc bulges, minimal anterolisthesis and marked facet hypertrophy, with mild secondary central canal stenosis and minimal foraminal narrowing, unchanged from a prior study performed on March 18, 2011. (PX 4, pg. 3)

On November 13, 2013, Petitioner began treatment with Dr. Reem Bitar who administered L4-L5 injections on December 3, 2013 and February 26, 2014. (PX 5, pg. 53, 58) The Arbitrator finds it important to note there was no record of any recommendation for lumbar injections prior to September 17, 2012.

At the request of Respondent, Dr. Zelby performed an initial examination of Petitioner on January 16, 2013. (RX 1, pg. 7) He examined Petitioner's lumbar spine conditions. Petitioner's lumbosacral exam revealed limited hyperextension. (RX 1, pg. 14) Dr. Zelby diagnosed Petitioner with multilevel spinal cord compression and lumbosacral spondylosis and spondylolisthesis. (RX 1, pg. 16-17) He later reviewed a lumbar MRI from October 9, 2012 and noted that the findings of anterolisthesis, stenosis, spondylosis, retrolisthesis, facet degeneration, and disc osteophyte, all had been present, likely for years, prior to September of 2012. (RX 1, pg. 15) For the lumbar condition, Dr. Zelby diagnosed Petitioner with a strain, and recommended he continue physical therapy. (RX 1, pg. 20)

The Arbitrator finds the medical opinions of Petitioner's treating physicians as more credible than that of Dr. Zelby. The Arbitrator notes that Dr. Zelby ignores the fact that it was only after the date of accident on September 17, 2012, that Petitioner's lumbar condition worsened to the point that he was given work restrictions and was prescribed pain medications and muscle relaxants. (PX 1, pg. 8-9; RX 4a, pg. 4)

The Arbitrator again emphasizes that although Petitioner may have had a pre-existing condition that caused him some pain and discomfort due to an injury in March 2011, Petitioner was

working full duty without restrictions on September 17, 2012. As early as March 13, 2012, Petitioner was in considerably less pain and discomfort as it relates to his prior back injury and was discharged from care without mention of future treatment or restrictions. (PX 1, pg. 5-6) In the five months prior to the September 17, 2012 accident, pain medication had not been prescribed and injections and surgery had not been recommended to relieve Petitioner's back pain.

Dr. JS Player performed a Section 12 IME of Petitioner on September 13th, 2018. (RX 2) The parties obtained the deposition testimony of Dr. Player on June 13, 2023. Regarding Petitioner's lumbar spine, Dr. Player noted that Petitioner walked with a normal gait without assistance. Dr. Player further noted he had no abnormal curvatures of the lumber spine and was minimally limited with lumbar spine motion. (RX 2, pg. 26) Dr. Player found Petitioner's lumbar symptoms were inconsistent and were not supported with positive objective neurologic findings. (RX 2, pg. 29-30)

Dr. Player found that the September 2012 accident did not cause, aggravate, or worsen Petitioner's lumbar condition. Dr. Player opined Petitioner's lumbar spine conditions were ongoing and unresolved at the time of the September 2012 incident. (RX 2, pg. 34) The Arbitrator finds this statement to be incredible and without merit given that Petitioner had not sought or been recommended medical treatment, physical therapy, injections or surgical intervention in the 6 months prior to this date of accident. Incredibly, Dr. Player opined that the September of 2012 incident did not meaningfully accelerate that condition. He completely ignores the evidence that as early as March 13, 2013, Petitioner's lumbar spine condition had improved and that Petitioner was experiencing "greater movement and considerably less pain and discomfort" in that area. (PX 1, pg. 5) Petitioner was discharged with very minimal pain/discomfort and other symptomology to low back. (PX 1, pg. 5)

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner has met his burden in establishing a causal connection between the incident of September 17, 2012 and the condition of ill being present in his right arm/shoulder, cervical spine, and lumbar spine.

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

Section 10 of the Act provides that the weekly benefits to which an injured employee is entitled for PPD under section 8 of the Act shall be computed on the basis of his or her average weekly wage. 820 ILCS 305/10 (West 2012). The statute defines "average weekly wage" as the actual earnings of the employee, excluding bonuses. The claimant has the burden of establishing his average weekly wage. *Edward Don Co. v. Industrial Comm'n*, 344 Ill. App. 3d 643, 655 (2003).

When an employee has worked for the employer for 52 weeks prior to the accidental injury, the average weekly wage is calculated by determining the regular earnings and dividing by the "number of weeks and parts thereof." 820 ILCS 305/10. If an employee does not work the full 52 weeks, then the Courts have used a "parts thereof" analysis when calculating average weekly wage. *Peoria Roofing & Sheet Metal Co. v. Industrial Commission*, 181 Ill.App.3d 616, 537 N.E.2d 381, 130 Ill.Dec. 314 (3d Dist. 1989).

Respondent produced payroll evidence in the form of Petitioner's weekly earnings receipts, reflecting Petitioner's full payroll earnings for the 52 weeks preceding the injury. (RX 6; RX 7)

Those receipts reflect compensation totaling $70,971.57 during the 52 weeks preceding the injury, with $3,306.53 paid in overtime premiums beyond the base the base rate of pay, $2,834.86 paid in 401k employer contributions, and $300 in bonuses. Petitioner's hourly rate of pay was $29.72 through the earnings period ending June 1, 2012. (RX 6; RX 7) Beginning with the two-week period ending June 15, 2012, Petitioner's hourly earnings increased to $30.53. (RX 7, pg. 14) Petitioner earned an additional $0.25 per hour for 141.75 hours paid as a shift differential/increase, and an additional $0.15 per hour for 18.25 paid as a separate shift differential/increase. (RX 6; RX 7)

Calculating all of Petitioner's regular and overtime hours worked and paid at the base rate of pay plus all shift differential earnings, while excluding remunerations paid as Respondent's 401k contributions, bonuses, and overtime premium for the overtime hours included at the base rate of pay, Petitioner procured total Section 10 earnings of $64,530.18 over the 52 weeks prior to trial. Calculating Petitioner's Average Weekly Wage based upon those earnings produces a weekly average of $1,240.96. Petitioner's Average Weekly Wage, calculated pursuant to Section 10 and the stipulations of the parties, is $1,240.96.

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:

Under Section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of a claimant's injury. The claimant has the burden of proving that the medical services were necessary, and the expenses incurred were reasonable. *City of Chicago v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 258, 267 (1st Dist., 2011). Based upon the finding that Petitioner's current condition of ill-being is causally related to the injury in question, The Arbitrator finds that the medical services that have been rendered to Petitioner are reasonable and necessary as it relates to the treatment for the right shoulder, cervical spine and lumbar spine.

The Arbitrator finds Respondent liable for the outstanding medical charges as follows: Dr. Samuel Matthew (PX 2); Pronger Smith Medical (PX 6); Athletico (PX 13); Open MRI of Olympia Fields (PX 15); Illinois Back Institute (PX 17); Dr. Abdul Amine (PX 20) and Universal Rehabilitation. (PX 25) In so finding, the Arbitrator relies on the medical records introduced at trial.

Even Respondent's Section 12 examiner, Dr. JS Player outlined Petitioner's medical treatment to date and opined that "regardless of causation, there is no indication in any of the treatment delineated in the medical record or described the examinee was unwarranted, unreasonable or excessive". (RX 2, pg. 42)

Pursuant to the medical fee schedule and as provided in Sections 8(a) and 8.2 of the Act, Respondent shall satisfy the medical charges totaling $34,681.86 as said charges were for the reasonable and necessary medical treatment of Petitioner's September 17, 2012 work-related injuries. Respondent shall receive a credit for any payments already issued to those providers for the relevant dates of service.

Overall, the Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment. As such, the Arbitrator orders Respondent to pay

Petitioner and Petitioner's counsel directly for the following outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act:

Dr. Samuel Matthew	$ 7,100.00
Pronger Smith Medical Care	$ 3,420.37
Athletico	$ 80.00
Open MRI of Olympia Fields	$ 3,700.00
Illinois Back Institute	$ 6,330.00
Abdul Amine, M.D.	$ 2,046.49
Universal Rehabilitation, P.C.	$12,005.00
TOTAL	**$34,681.86**

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

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

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n*, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

To be entitled to TTD benefits, it is the claimant's burden to prove not only that he did not work but also that he was unable to work. *Holocker v. Illinois Workers' Compensation Comm'n,* 2017 IL App (3d) 16036WC, P35 (3rd Dist., 2017). The fundamental purpose of the Act is to provide injured workers with financial protection until they can return to the work force. Id. When determining whether an employee is entitled to TTD benefits, the test is whether the employee remains temporarily totally disable as a result of a work-related injury and whether the employee is capable of returning to the work force. Id. The touchstone for determining whether claimant is entitled to TTD is whether the claimant's conditions had stabilized to the extent that they are able to reenter the workforce. *Id*.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner is entitled to further disputed TTD benefits. This determination is based on the medical records and Petitioner's testimony.

The record establishes that Petitioner was initially off work from September 27, 2012 through November 28, 2012. Petitioner was paid TTD benefits at a rate of $908.66/week.

On November 27, 2012, Dr. Robert Markus advised Petitioner to return to work light duty with no lifting over ten pounds, no repeated bending, pushing or pulling, and no overhead work, beginning November 28, 2012. (PX 5, pg. 18) Petitioner worked in a light duty capacity from November 29, 2012 through August 13, 2013.

Petitioner underwent right shoulder surgery on August 14, 2013 with Dr. Robert Markus of Pronger Smith. (PX 5) From August 14, 2013 until March 24, 2014, Petitioner was kept off

work. Dr. Markus cleared Petitioner to return to work full duty beginning March 24, 2014. (PX 5, pg. 63) Petitioner testified and it is undisputed by Respondent that he received no TTD/TPD benefits during this period of time.

Petitioner testified he returned to work on March 25, 2014. Petitioner stated that he worked until April 12, 2016 when he underwent cervical spine surgery. Petitioner testified he has not returned to work for Respondent in any capacity. Petitioner has not held employment anywhere else since that time either. (Tr. 37) Petitioner further testified that in 2018 he applied for SSDI benefits and that those benefits were retroactively approved back to September of 2016. Petitioner was therefore medically unfit for work and without any TTD benefits from April 13, 2016 through August 21, 2016.

Respondent shall pay Petitioner temporary total disability benefits of $827.29/week for 62 & 4/7 weeks, commencing September 27, 2012 through November 28, 2012; August 14, 2013 through March 24, 2014 and April 3, 2016 through August 31, 2016 as provided in Section 8(b) of the Act, for a total TTD award of $51,764.71. Respondent shall be given a credit of $9,995.26 for temporary total disability benefits already issued, amounting to a total award of TTD of $41,769.45.

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

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." *Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n,* 2016 IL App (1st) 152576WC, 67 N.E.3d 959. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b). "None of the factors set forth in section 8.1b is to be the sole determinant of the claimant's disability." *Corn Belt Energy Corp. v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3d) 150311WC.

Under Section 8.1b(b)(i), *AMA impairment rating*, the Arbitrator notes that, regarding Petitioner's alleged right shoulder condition, an AMA impairment rating was prepared by Dr. Player. That report is contained within Dr. Player's September 13, 2018 IME report. Dr. Player noted a 4% Total Upper Extremity impairment, or a 2% Whole Person Impairment as it relates to the right shoulder only. As such the Arbitrator gives ***some*** weight to this factor as it relates to the right shoulder.

Under Section 8.1b(b)(i), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence as it relates to Petitioner's cervical spine and lumbar spine. The statute does not require the claimant to submit an impairment rating. It only requires that the Commission consider such a report if in evidence and regardless of which party submitted it. *See Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n*, 2015 IL App (5th) 140445WC, ¶ 17, 43 N.E.3d 556. Therefore, the Arbitrator gives ***no*** weight to this factor as it relates to the cervical spine and lumbar spine.

Under Section 8.1b(b)(ii), *occupation of the employee*, the Arbitrator notes that at the time of his alleged injuries, Petitioner was working as a "printing pressman" for the Respondent. Petitioner

testified that his position/title was that of "first pressman" and that, as such, he was the head of the printing press machines he operated. (Tr. 12) Petitioner testified that had been employed by the Respondent since 1987. (Tr. 13) His duties as a printing pressman included controlling color imaging, hanging plates, loading board to the press weighing almost 500 pounds and pulling rollers weighing 60 pounds out of the printing press. The Arbitrator gives ***great*** weight to this factor.

Under Section 8.1b(b)(iii), *Petitioner's age*, the Arbitrator notes that at the time of his injuries, Petitioner was fifty-four years old, married, and with one (1) minor dependent. No evidence was presented as to how Petitioner's age affected his disability. However, the Arbitrator notes that Petitioner was an older worker in a job that requires. Accordingly, the Arbitrator finds that his age increases Petitioner disability. In support of this finding, the Arbitrator relies on the holding *Flexible Staffing Services v. Illinois Workers' Compensation Commission*, 2016 IL App (1st) 151300WC (1st Dist. 2016) (holding that the Commission can make reasonable inferences from the medical evidence as it relates to how the claimant's age affects his disability).

Under Section 8.1b(b)(iv), *Petitioner's Future Earning Capacity,* the Arbitrator notes that Petitioner did not return to his pre-injury position with the Respondent. Petitioner testified that the last time he worked for the Respondent was just prior to his April 2016 cervical spine surgery. Petitioner testified that he has not worked for Respondent or any other employer since his April 2016 surgery. (Tr. 37) The Arbitrator finds that Petitioner's future income could be affected by the work-related accident of September 17, 2012. In support of this finding, the Arbitrator relies on the holding *Flexible Staffing Services v. Illinois Workers' Compensation Commission*, 2016 IL App (1st) 151300WC (1st Dist. 2016) (holding that the Commission can make reasonable inferences from the medical evidence as it relates to how the factor affects disability).

The Arbitrator gives ***great*** weight to this factor.

Under Section 8.1b(b)(v), *evidence of disability corroborated by medical records,* regarding Petitioner's right shoulder, MRI imaging of Petitioner's right shoulder evidenced "mild right rotator cuff tendinopathy with two small areas of partial tendon tear". (PX 1, pg. 9) Petitioner required extensive physical therapy and surgical intervention. On August 14, 2013, Petitioner underwent a right shoulder endoscopic subacromial decompression surgery with Dr. Robert Markus.

At trial, Petitioner testified that although he was not experiencing pain in his right shoulder, he did have a loss of strength/use of his arm. (Tr. 41) Petitioner testified he was not capable of performing his job duties "because the type of work that it was, there's no way my shoulder would let me do that type of work anymore. And the rest of my body won't let me do that type of work anymore. There's no way in the world I could be pulling and pulling heavy pounds of paper and stuff like that. I just can't do it. I can barely walk sometimes". (Tr. 43)

The Arbitrator gives ***great*** 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 a 10% loss of use of the person as a whole as it relates to the right shoulder pursuant to Section 8.1(b) of the Act which, corresponds to 50

weeks of permanent partial disability benefits at a weekly rate of $744.56 for a total of $37,228.00.

As it relates to Petitioner's cervical spine, an MRI revealed "disc protrusions at C3-C7 with spinal canal stenosis and indentation of thecal sac facet hypertrophy several levels C4-C7 and osteophyte complex at that level". (PX 5, pg. 50) Petitioner's cervical injury also required physical therapy and surgical intervention. On April 13, 2016, Dr. Amine performed anterior cervical discectomy of C4-C5 and C5-C6 with inter-body fusion at both levels.

Dr. Kaakaji opined "I do not believe that surgery will make it easier for him to work, as a matter of fact, I believe that he is extremely limited in the ability to work and the variety of work duties that he can perform either now or after surgery". (PX 18, pg. 46) Dr. Abdul Amine similarly opined that he did not think Petitioner could return to his previous job "which he has done for 29 years as a printing press". (PX 19, pg. 5) Petitioner testified at trial that he continues to experience pain/symptoms in his neck "every day". (Tr. 41)

The Arbitrator gives ***great*** 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 a 22.5% loss of use of the person as a whole as it relates to the cervical spine pursuant to Section 8.1(b) of the Act which, corresponds to 112.5 weeks of permanent partial disability benefits at a weekly rate of $744.56 for a total of $83,763.00.

As it relates to Petitioner's lumbar spine injury, an MRI of Petitioner's lumbar spine revealed a "disc protrusion at L4-L5 with effacement of thecal sac and spinal stenosis and facet hypertrophy". (PX 5, pg. 50) His condition required physical therapy and steroid injections. Surgical intervention was discussed, but ultimately rejected by Petitioner.

Petitioner testified as to ongoing symptoms in his lumbar spine at the time of trial. (Tr. 41) Petitioner stated that he had pain in his low back "every day". (Tr. 41)

The Arbitrator gives ***great*** 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 a 7 1/2% loss of use of the person as a whole as it relates to Petitioner's lumbar spine pursuant to Section 8.1(b) of the Act which, corresponds to 37.5 weeks of permanent partial disability benefits at a weekly rate of $744.56 for a total of $27,921.00.

Issue O, regarding the BCBS subrogation interest asserted by Petitioner, and regarding Respondent's claim for overpaid TTD benefits, the Arbitrator finds as follows:

The Arbitrator finds Respondent liable for the subrogation interests asserted by Blue Cross & Blue Shield. (PX 26) and Optum (PX 27). Respondent shall reimburse those carriers for any related payments made. Reimbursement shall be made through Petitioner's counsel with funds going directly to Petitioner's counsel's office.

Respondent's claim for TTD overpayment is denied.

CONCLUSION

In light of the above facts and considerations, the Arbitrator finds that Petitioner has met his burden in establishing the occurrence of an accident on September 17, 2012 which arose out of and in the course of Petitioner's employment by Respondent. Petitioner's current condition of ill-being as it relates to his right shoulder, low back and cervical spine are causally related to the incident of September 17, 2012. Petitioner's Average Weekly Wage, calculated pursuant to Section 10 and the stipulations of the parties, is $1,240.96. Pursuant to the medical fee schedule and as provided in Sections 8(a) and 8.2 of the Act, Respondent shall satisfy the medical charges totaling $34,681.86 as said charges were for the reasonable and necessary medical treatment of Petitioner's September 17, 2012 work-related injuries. Respondent shall receive a credit for any payments already issued to those providers for the relevant dates of service. Respondent shall pay Petitioner temporary total disability benefits of $827.29/week for 62 & 4/7 weeks, commencing September 27, 2012 through November 28, 2012; August 14, 2013 through March 24, 2014 and April 3, 2016 through August 31, 2016 as provided in Section 8(b) of the Act, for a total TTD award of $51,764.71. Respondent shall be given a credit of $9,995.26 for temporary total disability benefits already issued, amounting to a total award of TTD of $41,769.45. the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of a 40% loss of use of the person as a whole (12 ½% loss of use of the person as a whole for the right shoulder, 20% loss of use of a person as a whole for the cervical spine and 7 ½% loss of use of the person as a whole as it relates to the lumbar spine) pursuant to Section 8.1(b) of the Act which, corresponds to 200 weeks of permanent partial disability benefits at a weekly rate of $744.56 for a total of $148,912.00. The Arbitrator finds Respondent liable for the subrogation interests asserted by Blue Cross & Blue Shield. (PX 26) and Optum (PX 27). Respondent shall reimburse those carriers for any related payments made. Respondent's claim for TTD overpayment is denied.

It is so ordered:

Arbitrator Efi James

August 30, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC012594
Case Name	Michael Gay v. Bay State Milling
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0221
Number of Pages of Decision	15
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	David Feuer
Respondent Attorney	Kenneth Smith

DATE FILED: 5/19/2025

/s/Maria Portela, Commissioner

Signature

25IWCC0221

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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL GAY,

Petitioner,

vs. NO: 19 WC 12594

BAY STATE MILLING,

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, temporary total disability benefits, nature and extent, and whether the Petitioner exceeded the two-physicians rule, 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 award of permanent partial disability benefits, though modifies factor (v) of the §8.1(b)b analysis and assigns significant weight to this factor. The Commission also modifies the awards for medical expenses and temporary total disability benefits as more fully set forth below.

The Commission modifies the award of medical expenses. The Commission reverses the award to the Chicago Center for Sports Medicine in the amount of $935.00 as this bill is not included in evidence. The only reference to this allegedly outstanding amount is contained in the Petitioner's Exhibit List. The Commission further clarifies that the award of the remaining medical bills listed by the Arbitrator should be paid pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall receive a credit for all bills paid per Rx2.

The Commission acknowledges that Respondent made payments towards numerous dates

of service per Rx2, however cannot determine whether these payments were per the Fee Schedule, and thus whether the balances are balance billing. The Act makes it clear that balance billing is prohibited. Section 8.2(e).

The Commission vacates the award of temporary total disability benefits for the period of February 19, 2019 through December 22, 2020, and instead awards the periods of February 22, 2019 through March 7, 2019, April 2, 2019 through April 12, 2019 and July 28, 2020 through December 15, 2020 based on the reasoning below:

Although the VA records are not in evidence, Petitioner credibly testified that he went to the VA for his left shoulder on February 22, 2019. (T. 26) The February 22, 2019 record was read into evidence that stated Petitioner could return to work on March 8, 2019. (T. 28, 31) Petitioner was next seen on April 2, 2019, at which time he was taken off work. (Px2) Petitioner was released to modified/sedentary duty work by Dr. Robinson on April 12, 2019 (Px1), but at that time he had already resigned. Petitioner was continued on modified duty restrictions. He underwent surgery on July 28, 2020 and was off work at that time. Petitioner underwent an FCE on December 1, 2020 at which time permanent restrictions were imposed. (Px5) Petitioner was ultimately released at MMI on December 15, 2020. (Px4)

The Commission therefore awards temporary total disability benefits from February 22, 2019 through March 7, 2019, April 2, 2019 through April 12, 2019, and July 28, 2020 through December 15, 2020.

Additionally, as explained below, the Commission finds that the Petitioner did not exceed his choice of two physicians. In both the Order section of page 2 and on page 8 of the Arbitrator's Decision under "Choice of Physicians", the Commission strikes the word "three" and replaces with the word "two".

Petitioner initially treated at the VA Hospital. Petitioner did not enter those records into evidence and Petitioner is not claiming any of the bills from Jesse Brown. However, this does not negate that the VA was Petitioner's first choice of physicians. Petitioner allegedly underwent an MRI and possibly injections prior to seeking care with Dr. Mohiuddin, a pain physician.

Dr. Mohiuddin and ION – Illinois Orthopaedic Network – would have been Petitioner's second choice of physicians. Dr. Mohiuddin's intake notes indicate that Petitioner was "referred by: unknown" and Dr. Mohiuddin checked off that there was a referral to orthopedics and kept Petitioner off work. (Px2) Petitioner next went to Dr. Robinson though on its face, it is unclear how Petitioner ended up there 10 days later. There is nothing in Dr. Robinson's note to indicate if Petitioner was referred or how Petitioner became her patient. (Px2) However, at the top of the records of both Chicago Center for Sports Medicine as well as ION, they indicate "Insurance: Illinois Orthopedic Network (WMC)." Petitioner testified that Dr. Robinson referred him to Dr. Tu and that he was also referred to Illinois Ortho Network. (T. 15-16) Petitioner further testified that he only picked the VA Hospital/Jesse Brown as his choice of physicians and that he was referred to all other doctors. (T. 16) He testified that he "picked the place in Tinley Park, my first choice after Jesse Brown. That's where I went. After that I didn't pick anything else."

In the August 13, 2019 record of Dr. Primus (Px1), Dr. Primus' record notes: "We also discussed with him the fact that we are no longer working under ION as independent contractors and so would refer him back to ION and his attorney for further management and decision on moving forward with us or finding another provider under ION." It was after this visit with Dr. Primus that Petitioner was next treated with Dr. Tu.

Given that Petitioner was referred by Dr. Mohiuddin to orthopedics and then was seen by another ION physician, Dr. Robinson, and then Dr. Robinson referred Petitioner to Dr. Primus, these are all within the chain. Dr. Primus' last note indicates Petitioner would be referred back to ION since they were leaving the ION network, and Petitioner was referred back to Dr. Tu – all within this second chain of physicians.

Additionally, it should be noted that Px2 is comprised of the records of ION – Illinois Orthopaedic Network. The records produced contain the records of Dr. Mohiuddin, Dr. Primus, Dr. Robinson and Dr. Tu. Further, the billing contained in Px2 for ION, includes the bills for visits with all 4 physicians, thus despite the physicians treating Petitioner out of different facility locations, given that Dr. Mohiuddin referred Petitioner to orthopedics and given that all physicians were part of the ION network, all physicians who treated Petitioner were within the chain of referrals from Petitioner's second choice of physicians, and therefore Petitioner did not exceed his choice of physicians.

Finally, the Commission corrects the following scrivener's errors:

In the third paragraph on page 4 of the Arbitrator's Decision, the last sentence is incomplete. The Commission modifies this sentence to read: "Regarding his treatment on February 22, 2019, at the Jesse Brown VA Center, he was seen or treated at the outpatient clinic, and authorized to return to work on March 8, 2019. (Id., 26-27)."

In the third sentence of the first full paragraph on page 5 of the Arbitrator's Decision, the Commission strikes "2029" and replaces it with "2019".

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $415.73 per week for a period of 23-5/7 weeks, from February 22, 2019 through March 7, 2019, April 2, 2019 through April 12, 2019 and July 28, 2020 through December 15, 2020, 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 $374.16 per week for a period of 87.5 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 17.5% loss of use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $38,428.34 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 $35,950.56. 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.

May 19, 2025

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

MEP/dmm
O: 32525
49

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC012594
Case Name	Michael Gay v. Bay State Milling
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	David Feuer
Respondent Attorney	Kenneth Smith

DATE FILED: 12/11/2023

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

/s/ Jessica Hegarty, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Michael Gay
Employee/Petitioner

v.

Bay State Milling
Employer/Respondent

Case # **19** WC **012594**

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 **Joliet**, on **October 2, 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 **February 18, 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 $**32,426.94**; the average weekly wage was $**623.60**.

On the date of accident, Petitioner was **67** 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 $**4,817.61** for TTD, $ for TPD, $ for maintenance, and $ for other benefits, for a total credit of $**4,817.61**.

Respondent is entitled to a credit of $**40,357.99** under Section 8(j) of the Act.

ORDER

Causal Connection

The Arbitrator finds a causal connection between the February 18, 2019, work accident and Petitioner's condition of ill-being on December 15, 2020.

Choice of Physicians

The Arbitrator finds that Petitioner did not exceed his choice of three physicians per the testimony of Petitioner and the treating medical records in evidence.

Medical benefits

Respondent shall pay the following reasonable and necessary medical services, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act:

Chicago Center for Sports Medicine (PX 1):	$935.00
Illinois Orthopedic Network (PX 2):	$17,470.83
Q-Med Assist/Gabachief Medical Inc. (PX 3):	$9,974.55
Premier Health Services (PX 6):	$2,846.88
Preferred Open MRI (PX 7):	$1,500
Midwest Specialty Pharmacy (PX 8)	$6,636.08

Temporary Total Disability

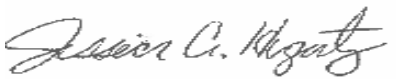
Respondent shall pay Petitioner temporary total disability benefits of $415.73/week for 95 6/7th weeks, commencing 02/19/2019 through 12/22/2020, as provided in Section 8(b) of the Act.

Permanent Partial Disability

the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of **17.5% loss of use of his person as a whole** pursuant to §8(d)2 of the Act. (See attached Addendum for the Arbitrator's analysis pursuant to Section 8.1(b) 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 Jessica Hegarty

DECEMBER 11, 2023

ADDENDUM TO THE DECISION OF THE ARBITRATOR

The Respondent disputes the following issues: causal connection, unpaid medical bills, TTD from February 19, 2019, through December 22, 2020, and the nature and extent of Petitioner's injuries (Arb. 1; Transcript pp. 4-5) Respondent claims no liability for TTD after Petitioner voluntarily resigned from his job on April 3, 2019, and Respondent claims that Petitioner exceeded his choice of 3 physicians. (Id.)

On February 18, 2019, Petitioner was employed by Respondent as a safety sanitation engineer whose duties included cleaning the facility and disposing of garbage which required repetitive lifting of bags filled with trash (T9). On February 18, 2019, as Petitioner lifted a stack of rubbish at work, he felt pain and experienced locking in his left shoulder (Id.,11).

Petitioner testified that he sought treatment at the Jessie Brown VA Medical Center ("VA Center") that day where he underwent x-rays and was given pain medication. He was also given a note that he could return to work on March 8, 2019. He later underwent an injection to his left shoulder at the VA Center. Regarding his treatment on February 22, 2019, at the Jesse Brown VA Center, he was (Id., 26-27).

Petitioner testified he sought treatment with Dr. Dore Robinson. He could not recall visiting Dr. Primus in July 2019 and reporting a history of returning to work on April 1, 2019, and leaving work because they made him push a broom.

Petitioner eventually sought treatment with Dr. Kevin Tu at Illinois Orthopedic Network who performed surgery on his shoulder in July 2020, according to his testimony.

Petitioner testified he was off of work from February 19, 2019, and never returned to work. He resigned his position with Respondent on April 3, 2019. Petitioner testified that his doctor advised him to stay off work and that was when he quit his job. He is now 72 years old and is retired.

Prior to his February 18, 2019 work injury, Petitioner had no problems with his left shoulder.

Petitioner testified he was involved in an automobile accident in November 2022 that further injured his left arm. Petitioner testified that he had a left arm nerve reaction a couple of weeks after the accident and was throwing up blood. He testified he is currently undergoing medical treatment related to injuries sustained in that accident. Petitioner testified that the car accident impacted his ability to move his left arm. He cannot raise his arm any longer. Thus, the auto accident made it worse.

Petitioner testified that after he underwent left shoulder surgery related to his work accident but before the November 2022, car accident, he experienced pain in his left shoulder when lifting items such as milk at the grocery store.

MEDICAL RECORDS

Evidence was introduced at the hearing that on February 22, 2019, Petitioner was treated at the outpatient clinic at the Jesse Brown VA Medical Center and was off of work until March 8, 2019, due to a "severe shoulder" condition.

On April 2, 2019, Petitioner presented to the Illinois Orthopedic Network "ION" where Dr. Shoeb Mohiuddin, a pain management physician, noted a history of repetitive lifting of 20 lb. bags at work and the onset of left shoulder pain that has become unbearable. (PX 2) The doctor noted that Petitioner treated at the VA Hospital

where he underwent a left shoulder MRI which Dr. Mohiuddin reviewed noting a partial tear of the rotator cuff. On examination, the doctor noted tenderness at the AC joint and supraspinatus weakness at a 4/10. Dr. Mohiuddin noted a diagnosis of impingement syndrome and a partial rotator cuff tear. Physical therapy was ordered, and cyclobenzaprine was prescribed. The doctor noted Petitioner may not return to work. (Id.)

On April 12, 2019, Petitioner presented at the Chicago Center for Sports Medicine and Orthopedic Surgery for initial consult with Dore Robinson, DO., who noted a history of left shoulder pain while lifting 30 to 50 lb. garbage cans at work 6 weeks ago. (PX 4) Petitioner's complaints of pain with overhead activity, reaching behind, and throwing objects were noted. Petitioner reportedly underwent a cortisone injection on March 29, 2029, which provided little relief. Petitioner was sent back to work with restrictions on April 1, 2019, and was "made to push a broom". On exam, positive Neers, Hawkins, and Speeds signs were noted along with tenderness to palpation over the proximal humerus, subacromial space, and bicipital groove. MRI showed a partial thickness supraspinatus tear and tendinitis. Dr. Robinson diagnosed Petitioner with impingement syndrome of the left shoulder and bicipital tendinitis Physical therapy was ordered, Mobic was prescribed, and sedentary work restrictions were noted. (Id.)

Petitioner followed up with Dr. Robinson on May 13, 2019, at which time his sedentary work restrictions were continued. (Id.)

On June 11, 2019, Petitioner returned to the Chicago Center for Sports Medicine and Orthopedic Surgery where Dr. Gregory Primus, an orthopedic surgeon, noted Petitioner's report of some improvement in his symptoms although his complaints of left shoulder pain and limited motion persisted. (Id.) On examination, positive Hawkins, Speed, and Neer signs were noted. On review of the left shoulder MRI, Dr. Primus noted a partial thickness supraspinatus tear, tendinitis, AC arthrosis, and a SLAP lesion with increased fluid "in the groove". The doctor recommended surgery to repair the rotator cuff and continued Petitioner's sedentary work restrictions. (Id.)

Petitioner followed up with Dr. Primus on August 13, 2019, at which time he reported persistent left shoulder pain. (Id.) Petitioner had finished his course of physical therapy and reported little benefit. Dr. Primus continued to recommend surgery noting that conservative treatment had failed. (Id.)

On November 14, 2019, Petitioner underwent a Section 12 exam with Dr. Michael Cohen who diagnosed a partial left rotator cuff and impingement syndrome which he causally related to repetitive lifting at work on February 18, 2019. (RX 4) Dr. Cohen did not believe that Petitioner needed surgery at that time and recommended additional physical therapy and an epidural steroid injection. Dr. Cohen opined that Petitioner was not at MMI but could return to restricted work with no overhead use of the left shoulder. (Id.)

On October 24, 2019, Dr. Kevin Tu, an orthopedic surgeon at G & T Orthopedics & Sports Medicine, noted that Petitioner presented on referral from Dr. Mohiuddin. (PX 4) Petitioner reported the onset of left shoulder pain while repetitively lifting 20 lb. bags overhead at work on February 18, 2019. Petitioner complained of persistent left shoulder pain while lifting overhead and reaching. Dr. Tu noted that conservative treatment, including therapy and a cortisone injection, had failed to alleviate Petitioner's symptoms. MRI imaging demonstrated a partial thickness rotator cuff tear. Dr. Tu agreed that Petitioner required arthroscopic subacromial decompression and possible rotator cuff repair. The doctor noted sedentary work restrictions pending authorization of surgery. (Id.)

On December 4, 2019, Petitioner followed up with Dr. Tu who continued to recommend surgery and sedentary work restrictions. (Id.)

On June 10, 2020, Petitioner presented for a second IME with Dr. Cohen at which time the doctor found that Petitioner would benefit from left shoulder surgery for his impingement syndrome. Dr. Cohen testified that surgery for impingement syndrome could include a repair of the torn rotator cuff and agreed that both procedures were appropriate. (RX 4)

On July 28, 2020, Petitioner underwent surgery at Illinois Orthopedic Network performed by Dr. Tu consisting of arthroscopic subacromial decompression and extensive debridement of the left shoulder. (PX 4) Postoperatively, Petitioner was off of work. On August 4, 2020, Dr. Tu ordered physical therapy and Petitioner presented at ATI for initial evaluation on August 7, 2020. (Id.)

On August 25, 2020, Dr. Tu noted Petitioner had been compliant with the postoperative protocol and was doing well with his left shoulder. Physical therapy was continued. Dr. Tu noted "reasonable restrictions" including no lifting with the left arm. (Id.)

On September 22, 2020, Dr. Tu noted Petitioner's report of left shoulder pain at a 9 out of 10 that radiates to his posterior arm. Petitioner had missed several physical therapy sessions due to his reported inability to sleep at night. Petitioner was encouraged to attend his physical therapy sessions 2-3 times per week for the next month. Light-duty work restrictions were continued. (PX 2)

On October 20, 2020, Dr. Tu noted Petitioner's report of persistent left shoulder pain. The doctor noted his range of motion had improved significantly. A repeat left shoulder MRI and continued therapy 2-3 times per week for the next month was ordered. The doctor noted work restrictions of no lifting greater than five pounds. (Id.)

On October 26, 2020, Petitioner underwent an MRI of his left shoulder at Preferred Open MRI. (Id.) Significant patient motion during the testing was noted which limited the study. High-grade bursal surface tearing of the mid and distal supraspinatus tendon was noted. A full-thickness component was noted as "possible". Suspect tearing of the posterior and inferior labrum was also noted. (Id.)

On November 17, 2020, Dr. Tu noted that Petitioner was having difficulty with overhead reaching. The imaging from the recent MRI was not available for review. Dr. Tu reviewed the MRI report noting it was negative for a full-thickness rotator cuff tear. Treatment options were discussed. Dr. Tu noted Petitioner had a partial thickness rotator cuff tear. Petitioner indicated he would proceed with a functional capacity evaluation ("FCE") to determine if permanent restrictions are required. The doctor continued the prior 5 lb. lifting restrictions. (Id.)

On November 21, 2020, Petitioner was discharged from physical therapy. (Id.) His functional limitations were noted as carrying over 15 lbs., lifting overhead more than 5 lbs., pulling/pushing tasks, and reaching into a bank machine. Petitioner reported 0/10 pain at rest and 6/10 pain during activity.

Petitioner underwent an FCE on December 1, 2020, at ATI and followed up with Dr. Tu on December 15, 2020, at which time the doctor reviewed the FCE noting the evaluation was deemed valid by the examining physical therapist who determined Petitioner was incapable of lifting more than 10 lbs. on a frequent basis. (Id.) Dr. Tu released Petitioner from treatment, per the restrictions of the FCE, and noted that he had reached maximum medical improvement ("MMI").

CONCLUSIONS OF LAW

CAUSAL CONNECTION

Although causal connection is listed as a disputed issue on the stipulation sheet (Arb.1), Respondent's IME examiner Dr. Cohen, agreed that Petitioner's partially torn left rotator cuff tear and impingement syndrome was causally related to his repetitive lifting activities at work on February 18, 2019. There is no evidence of any intervening accidents between the accident date and December 15, 2020, when he was released at MMI by Dr. Tu. Accordingly, the Arbitrator finds in Petitioner's favor on this issue. The Arbitrator finds a causal connection between the February 2019 work accident and Petitioner's condition of ill-being on December 15, 2020.

TTD

Recovery of temporary total disability benefits requires a claimant to prove by a preponderance of the evidence, that the injuries arose out of, and in the course of, his employment and that the claimant had a resultant incapacity to work. *Pemble v. Industrial Commission, 181 III.App.3d 409, 536 N.E.2d 1349 (1989).* The claimant must prove not only that he did not work but that he was unable to work. *Gallentine v. Industrial Commission, 201 III.App.3d 880, 559 N.E.2d 526 (1990*). The inability to work is found where the employee cannot work without endangering his life or his health. *Swindle v. Industrial Commission. 126 111.3d 793, 467 N.E.2d 1074 (1984).* An award for temporary total disability is justified even though the incapacity does not immediately follow an injury as long as the incapacity is directly traceable to, and the result of, the injury. *Whitney Productions, Inc. v. Industrial Commission, 274 III.App.3d 28, 210 Ill.Dec. 770, 653 N.E.2d 965 (1995)*. Furthermore, the court has held that an employee should not be denied compensation merely because he attempted to work as long as he could after the injury. (Id.)

Petitioner claims entitlement to temporary total disability ("TTD") benefits from February 19, 2019, through December 22, 2020. (Arb. 1)

Regarding Petitioner's resignation on April 3, 2019, the Arbitrator finds the preponderance of credible evidence in the record indicates that Petitioner retired not by choice but rather due to his inability to work within the work restrictions outlined by his treating doctors. The medical records contained in Petitioner's Exhibit 2 indicate that Petitioner returned to work for Respondent on April 1, 2019, but "was made to push a broom" after which he quit his job because he could not perform his assigned work. The Arbitrator finds sufficient evidence in the record regarding Petitioner's inability to work during the claimed time period noting the following:

1. Petitioner was authorized off of work by the VA hospital between February 22, 2019, and March 8, 2019;

2. On April 2, 2010, off-work restrictions were continued by Dr. Mohiuddin;

3. Sedentary restrictions were instituted by Dr. Robinson on April 12, and continued on May 13, 2019, by Dr. Robinson and by Dr. Primus on June 11, 2019;

4. There is no indication that Petitioner's restrictions were discontinued at any point between June of 2019, and November 14, 2019, when Respondents Section 12 examiner agreed that Petitioner should be restricted from any overhead use of his left shoulder;

5. Thereafter, Dr. Tu, on October 24, 2019, noted sedentary work restrictions pending authorization of surgery. These restrictions remained in place until Petitioner underwent surgery on July 28, 2020;

6. Postoperatively, Petitioner was off work, per Dr. Tu's orders until August 25, 2020, when Dr. Tu noted "reasonable restrictions" to include no lifting of his left arm and on September 22, 2020, when light duty work restrictions were noted by Dr. Tu which were continued until he released Petitioner at MMI on December 15, 2020, with permanent light duty work restrictions consistent with the valid FCE performed on December 1, 2020;

The Arbitrator finds that Petitioner has established entitlement to temporary total disability ("TTD") benefits from February 19, 2019, through December 22, 2020.

Respondent shall pay Petitioner temporary total disability benefits of $415.73/week for 95 and 6/7th weeks, commencing February 19, 2019, through December 22, 2020, as provided in Section 8(b) of the Act.

Respondent shall be credited for TTD benefits paid from February 19, 2019, through March 26, 2020, and July 28, 2020, and August 18, 2020, in the amount of $4817.61. (Arb. 1)

CHOICE OF PHYSICIANS

The Arbitrator finds that Petitioner did not exceed his choice of three physicians per the testimony of Petitioner and the treating medical records in evidence.

MEDICAL BILLS

The Arbitrator has reviewed the disputed medical records and corresponding treatment records and finds the following bills represent reasonable and necessary medical treatment and services for injuries causally related to Petitioner's work accident on February 18, 2019. Accordingly, Respondent shall pay the following reasonable and necessary medical services, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act:

Chicago Center for Sports Medicine (PX 1):	$935.00
Illinois Orthopedic Network (PX 2):	$17,470.83
Q-Med Assist/Gabachief Medical Inc. (PX 3):	$9,974.55
Premier Health Services (PX 6):	$2,846.88
Preferred Open MRI (PX 7):	$1,500
Midwest Specialty Pharmacy (PX 8)	$6,636.08

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NATURE & EXTENT OF PETITIONER'S INJURIES

Section 8.1(b) of the Illinois Workers' Compensation Act ("Act") addresses the factors that must be considered in determining the extent of permanent partial disability for accidents occurring on or after September 1, 2011. 820 ILCS 305-8.1(b). Specifically, Section 8.1(b) states that 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 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 subsection (i) No AMA evaluation pursuant to 8.1(b)(a) was submitted. The Arbitrator gives no weight to this factor.

With regard to subsection (ii) the occupation of the employee, the Arbitrator notes that Petitioner was employed by Respondent as a Proof Safety Sanitation Engineer at the time of his accident. Petitioner testified his duties required him to maintain a clean and dry atmosphere in Respondent's facility which he estimated to be approximately 20,000 square feet. Petitioner cleaned the floors with a broom and mop and was responsible for handling and disposing of rubbish. Petitioner handled 1500-pound bags filled with product which he was required to dump into machines to process. Petitioner was required to dispose of material by lifting and placing it into a garbage compactor. The Arbitrator gives greater weight to this factor noting that Petitioner was unable to resume his pre-accident job due to his injuries and permanent sedentary job restrictions noted by Dr. Tu on December 15, 2020.

In regard to subsection (iii), Petitioner was 67 years of age at the time of his injury. Petitioner retired following the accident. The Arbitrator gives this factor some weight noting the accident necessitated Petitioner's retirement.

With regard to subsection (iv), the Petitioner's future earning capacity, the Arbitrator notes that Petitioner retired following his accident as his injuries left him unable to work his pre-accident full-duty job. The Arbitrator gives this factor some weight.

Finally, in regard to subsection (v), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner had surgery to repair a torn left rotator cuff and address his left shoulder impingement syndrome. The Petitioner has permanent limitations concerning the use of his left arm and shoulder and was found to be incapable of lifting more than 10 pounds overhead frequently. The Arbitrator finds Petitioner's testimony regarding his level of pain at the time he was released at MMI by Dr. Tu consistent with the evidence of disability contained in the treating medical records. The Arbitrator recognizes that Petitioner injured his left arm in a subsequent car accident that increased his level of disability and is unrelated to the accident in this case.

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 **17.5% loss of use of his person as a whole** pursuant to §8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC032780
Case Name	Melvin Armstead v. Jackson Park Hospital & Medical Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0222
Number of Pages of Decision	15
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Peter Bobber
Respondent Attorney	Matthew Daley

DATE FILED: 5/19/2025

/s/Maria Portela, Commissioner

Signature

25IWCC0222

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

MELVIN ARMSTEAD,

Petitioner,

vs. NO: 19WC032780

JACKSON PARK HOSPITAL & MED. CTR.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, temporary total disability, medical expenses and nature and extent, 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 permanency award and the analysis under three of the five factors in §8.1(b)b of the Act. Regarding factor (ii), despite having been released to work with no restrictions, Petitioner chose to stop working. He testified that he believed he would be a "danger to my fellow workers" because he "saw double figures" and had to close his left eye "to get a clear vision." *T.31*. However, there is no medical evidence or causation opinion to support this testimony. In fact, he admitted that he went to the eye doctor for the double vision and was diagnosed with cataracts. *T.36*. Regarding Petitioner's left hand, he testified, "It still hurts me sometimes. I can't raise my arm at times." *T.32*. He also has trouble holding things. *T.32-33*. The initial hospital records do indicate that Petitioner had only 3/5 strength in his left hand. However, this was measured during the first week after he sustained the thenar eminence contusion. It is also significant that Petitioner's x-ray revealed, "Absent 2nd finger tip and distal 2nd tuft." *Px1 at 21, T.103*. It is unclear what Petitioner's left-hand strength was prior to his work accident. There is no medical opinion regarding whether Petitioner's missing index fingertip is related to any loss of strength versus the work contusion. On October 31, 2019, Dr. Crudup documented "swelling and decreased strength" and, on November 14, 2019, he wrote Petitioner's hand had "some swelling" with "noted weakness." *Px2 at 6, 10; T.295, 299*. However, no measurements of grip strength were documented. At Petitioner's last visit on December 30, 2019, Dr. Crudup wrote, "hand swelling almost resolved never

did therapy but is ready to RTW no restrictions." *Px2 at 15, T.304*. There was no mention of any strength deficiency at that visit. Petitioner also testified that he suffered a stroke in 2021. *T.14*. It is unclear to what extent that has caused Petitioner's continued complaints of weakness and difficulty holding objects. Based on the above, we give this factor only "some weight." For factor (iv), we agree that no evidence was submitted with regard to Petitioner's future earning capacity. Therefore, we modify the decision to give this factor no weight. Regarding factor (v), we reiterate our analysis under factor (ii) and give this factor "some weight." We also correct a clerical error by striking "December 30, 2021" and replacing it with "December 30, 2019."

Based on our analysis, we reduce the permanency award for the left eye orbital wall fracture from 10% to 5% of the person-as-a-whole under §8(d)2 of the Act. We affirm the award of 5% loss of use of the left hand under §8(e).

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $550.00 per week for a period of 12-1/7 weeks, 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 $495.00 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 the 5% loss of use of the person-as-a-whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $495.00 per week for a period of 10.25 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 5% loss of use of the left hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the medical expenses, as provided in PX1 for the emergency room and intensive care unit treatment from October 7, 2019 through October 13, 2019 at Jackson Park Hospital & Medical Center, 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 $70,700.00. 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.

May 19, 2025

/s/ *Maria E. Portela*

SE/
O: 4/15/25
49

/s/ *Amylee H. Simonovich*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC032780
Case Name	Melvin Armstead v. Jackson Park Hospital & Medical Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Crystal Caison, Arbitrator

Petitioner Attorney	Peter Bobber
Respondent Attorney	Matthew Daley

DATE FILED: 7/16/2024

/s/Crystal Caison, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JULY 16, 2024 4.985%

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

MELVIN ARMSTEAD
Employee/Petitioner

v.

JACKSON PARK HOSPITAL & MED. CTR.
Employer/Respondent

Case # **19** WC **032780**

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 **5/6/2024**. 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. ☒ 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 **10/7/2019**, 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 $**49,900.00**; the average weekly wage was $**825.00**.

On the date of accident, Petitioner was **77** 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 pay Petitioner temporary total disability benefits of **$550.00/week** for **12 1/7** weeks, commencing **10/07/2019** through **12/31/2019**, as provided in Section 8(b) of the Act.

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

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

ORDER

Respondent shall pay for the reasonable and necessary medical services, as provided in PX1 for the emergency room and intensive care unit treatment from October 7, 2019 through October 13, 2019 at Jackson Park Hospital & Medical Center, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Petitioner's claim for unpaid bills from JenCare Senior Medical Center for treatment between October 17, 2019 through December 30, 2019 are not awarded, as the billing statement indicates "N/A" for all charges listed.

Respondent shall pay Petitioner permanent partial disability benefits of $**495.00** for **50** weeks, because of the injuries sustained caused the **10%** loss of the person as a whole, as provided in § 8(d)2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $**495.00** for **10.25** weeks, because of the injuries sustained caused the **5%** loss of use of Petitioner's left hand, as provided in §8(e) of the Act.

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

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

Crystal L. Caison

Signature of Arbitrator

July 16, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Melvin Armstead Petitioner, v. Jackson Park Hospital & Medical Center. Respondent.	)	Case No. 19WC032780

PROCEDURAL HISTORY

This matter proceeded to hearing on May 6, 2024 before Arbitrator Crystal L. Caison. The issues in dispute include causal connection, medical bills, temporary total disability benefits (TTD) benefits and nature and extent. (AX 1).

THE ARBITRATOR MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 77-year-old man, was employed by Respondent as an operating engineer. Arbitrator's Exhibit 1 ("AX 1"); Transcript of Proceedings on Arbitration, pp. 15-16 ("Tr. 15-16"). On Monday, October, 7, 2019, Petitioner and a co-worker were working in a utility room in the basement. At the inside of the entrance of the utility room, there was a "breaching." Petitioner described the "breaching" as steel duct work that extended down from the ceiling to approximately three and a half feet above the ground. Tr. 38-39. Petitioner explained that the process of entering or exiting the utility room required him to bend down to walk under the breacher. In the moments leading up to the accident, Petitioner received a call from his boss which required him to leave the utility room due to the difficulty he had hearing his boss over the loud

noises in the utility room. Tr. 20. As Petitioner was leaving the utility room, he struck his head and left arm on the breaching as he fell to the ground. Tr. 18-20. Petitioner landed on his left side and injured his outstretched left hand. Petitioner noticed after hitting his head and falling to the ground that he was bleeding from his head. Tr. 20. Petitioner testified that he was not light-headed or dizzy prior to the accident. Tr. 20-21. Following the accident, the co-worker he was with, Willie Lanfair, helped Petitioner to his feet and carried him upstairs to the emergency department.

Petitioner was experiencing numbness in his head and left hand/arm when he arrived in the emergency department. Tr. 22. Emergency room physicians performed a physical examination, x-ray of his left hand and CT scan of his head. Tr. 22. Petitioner was diagnosed with a left orbital fracture, trace hematuria, uncontrolled hypertension, elevated troponin, and mild hyponatremia. (PX 1, 22) Petitioner was then transferred to the intensive care unit ("ICU") for closer monitoring of vitals and his uncontrolled blood pressure. (PX 1, at 25"). Petitioner was held in the ICU for six days where his head bandages were changed, physical examinations were regularly conducted to assess his head and left-hand conditions, and blood pressure was monitored until he was released on October 13, 2019. (PX 1, 12-84)

After being released from the ICU, Petitioner followed up with his primary care physician, Dr. Crudup, at JenCare Senior Medical Center on October 17, 2019. Tr. 23-24. Petitioner presented with complaints of persistent headaches and left arm pain. Tr. 24; (PX 2, 5-7) Petitioner followed up with Dr. Crudup on October 31, 2019 with complaints of left-hand swelling and decreased strength. (PX 2, 8-10) Due to Petitioner's continued complaints of pain following the work accident, Dr. Crudup ordered Petitioner off work for another two weeks. Tr. 25; (PX 2, 8) Petitioner's third visit with Dr. Crudup after the work accident took place on November 14, 2019. (PX 2, 11-14) Due to the persistent left-hand swelling and weakness, Dr. Crudup ordered physical therapy and that Petitioner remain off work until therapy was done. Tr. 25; (PX 2, 11) Petitioner testified that he did not attend physical therapy. Tr. 26. Petitioner's saw Dr. Crudup again on December 30, 2019. Tr. 26-27; (PX 2, 15-18). At this visit, Dr. Crudup noted that Petitioner's left-hand swelling had improved, and he released Petitioner back to work effective January 1, 2020. (PX 2, 15)

Petitioner testified that although Dr. Crudup released him back to work, he decided that he could not return because he felt he was a danger to his fellow workers due lingering issues he was having following the work accident. Tr. 31. These issues included having double vision in

his left eye following the left sided orbital fracture he sustained in this incident as well as lingering pain and weakness in his left hand that caused and continue to cause him to drop items he tries to hold. Tr. 31-32. Petitioner testified that prior to this accident, he intended on working until the day he died. Tr. 34.

Petitioner testified that while he was off work from October 7, 2019 through December 30, 2019, he did not receive any workers' compensation benefits or any other compensation from Respondent. Tr. 29-30.

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

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

The Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. Overall, the Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable. The Arbitrator notes that any confusion or inconsistencies in his testimony appears to be the result of Petitioner's stroke he suffered in 2021.

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 testified that his head bandages were replaced twice a day for each of the six days he was under ICU care. The records indicate that the condition of his head and left hand were continuously assessed throughout his admission. Tr. 23; (PX 2, 22-84) On the date of Petitioner's admission to the ICU, his record states, "Pt was taken to ER for further evaluation and has been admitted to the ICU for closer monitoring of vitals *and* his uncontrolled blood pressure." (PX 2, 12) (emphasis added). The Jackson Park Hospital records indicate that the condition of Petitioner's head and left hand were continuously assessed throughout his time in the ICU at Jackson Park. (PX 2, 22-84)

Petitioner next treated with Dr. Crudup at JenCare Senior Medical Center on October 17, 2019 and presented with a "terrific headache" and left arm pain. Tr. 24. Dr. Crudup notes the October 7, 2019 work accident in his history of Petitioner's condition. (PX 2, 5) Petitioner followed up with Dr. Crudup on October 30, 2019 for continued complaints of left-hand swelling and decreased strength. (PX 2, 8) Dr. Crudup ordered Petitioner off work for another two weeks. *Id.* On November 14, 2019, Petitioner saw Dr. Crudup for a third time for his [left] hand swelling and weakness. (PX 2, 11) Dr. Crudup ordered physical therapy and that Petitioner remain off work until therapy was complete. *Id.* Petitioner's last visit with Dr. Crudup was on December 30,

2019. At that time, although Petitioner had not completed any physical therapy, Dr. Crudup noted the [left] hand swelling was almost resolved and Petitioner was ready to return to work with no restrictions. (PX 2, 15)

Additionally, it has long been held that "a chain of events which demonstrate 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* Comm'n, 93 Ill.2d 59, 63-64 (1982). Furthermore, "[w]hen the claimant's version of the accident is uncontradicted and his testimony is unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award." *Id.* at 64.

It is well established that 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 (1st Dist. 2000). Petitioner testified that his blood pressure was only an issue if he didn't take his medication. Tr. 42-43. The emergency department providers noted that Petitioner told them he took his medication that morning. (PX 1, 12) Petitioner testified and told emergency department providers that prior to the accident, he had no sensations of light-headedness, dizziness, or palpitations. Tr. 20-21. Respondent has not provided any evidence that Petitioner had any other symptoms of uncontrolled blood pressure immediately preceding the work accident. Since Petitioner's condition changed immediately following the accident, an inference is created that his subsequent condition was the result of his work accident. Circumstantial evidence is sufficient to prove causal nexus between an accident and the resulting injury, such as a chain of events showing Petitioner's ability to perform manual duties before the accident and decreased ability to perform immediately after an accident. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill.2d 469 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 96-97 (1994); *International Harvester v. Indus. Comm'n*, 93 Ill.2d 59 (1982).

Based upon the record as a whole, the Arbitrator finds that the Petitioner has met his burden of proving by preponderance of the evidence that his current condition of ill-being relating to his head and left hand are causally related to the work accident of October 7, 2019. However, the Arbitrator notes that the injuries resolved by December 30, 2019 when Dr. Crudup returned Petitioner to work without restrictions effective January 1, 2020.

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

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

Having found the Petitioner's current condition of ill-being relating to his head and left hand are causally related to the work accident of October 7, 2019, the Arbitrator finds the Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment. As such, the Arbitrator orders the Respondent to pay reasonable and necessary and related medical charges for treatment from October 7, 2019 through October 13, 2019, as provided in Sections 8(a) and 8.2 of the Act, and more specifically to **Jackson Park Medical Center** in the amount of $**46, 421.10.** (PX 1) The Arbitrator notes that the treatment at **JenCare Senior Medical Center** was reasonable and necessary. However, shows "N/A" for charges for all of Petitioner's visits. Thus, no amount is awarded.

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

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

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. Archer Daniels Midland Co. v. Indus. Comm'n, 138 Ill.2d 107, 118 (1990).

On November 14, 2019, Petitioner's treating physician, Dr. Crudup, ordered Petitioner off work until physical therapy was complete. (PX 2, 11) Petitioner remained off work until his next visit with Dr. Crudup on December 30, 2019, at which point Petitioner was released back to work with no restrictions. (PX 2, at 15) Although Petitioner did not attend any physical therapy appointments, Petitioner was not returned to work until December 30, 2019, effective January 1, 2020.

Based upon the foregoing and the record as a whole, the Arbitrator finds that Respondent is liable for **12 1/7 weeks** of temporary total disability (TTD) benefits, from October 7, 2019 through December 31, 2019 as provided in Section 8(b) of the Act at a weekly rate of **$550.00**.

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.

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 an operating engineer. The Arbitrator notes that Petitioner performed manual labor for the majority of his working life. His job as an operating engineer required clear vision and substantial use of both hands to accomplish his work duties. Petitioner testified that he

could no longer see clearly without closing his left eye and could not firmly grasp or hold items in his left hand following the work accident. The Arbitrator gives this factor greater weight.

With regard to subsection (iii) of § 8.1b(b), the Arbitrator notes, at the time of the accident, Petitioner was 77 years old. The Arbitrator gives this factor moderate weight.

With regard to subsection (iv) of § 8.1b(b), the Arbitrator notes that there was no evidence submitted with regards to Petitioner's future earning capacity. The Arbitrator gives this factor some weight.

With regard to subsection (v) of § 8.1b(b), evidence of disability corroborated by the treating medical records. The Arbitrator notes Petitioner's last visit with Dr. Crudup was on December 30, 2021, in which Dr. Crudup notes that Petitioner's [left]-hand swelling was almost resolved. (PX 2, 15) While Petitioner was cleared to return for work at this visit, the treating physician noted that swelling remained. The Arbitrator notes that while the records do not indicate any severe ongoing issue with Petitioner's head or left hand, it does make clear that the left hand had not healed to 100% as evidenced by the lingering swelling. The Arbitrator gives this factor significant weight.

Based upon the findings as to nature and extent, the Respondent shall pay Petitioner the sum of **$495**/week for a period of **60.25** weeks, because the injuries sustained caused **10%** loss of the person as a whole and **5%** loss of use of the left hand, as provided in §8(d)(2) and §8(e) of the Act.

It is so ordered:

Crystal L. Caison

Arbitrator Crystal L. Caison

July 16, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC032232
Case Name	Armaline Mirretti v. Elmhurst University
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0223
Number of Pages of Decision	14
Decision Issued By	Carolyn Doherty, Commissioner, Marc Parker, Commissioner

Petitioner Attorney	Philip Turcy
Respondent Attorney	Rich Lenkov

DATE FILED: 5/20/2025

/s/Carolyn Doherty, Commissioner

Signature

DISSENT

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ARMALINE MIRRETTI,
Petitioner,

vs. NO: 23 WC 32232

ELMHURST UNIVERSITY,
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 accident, causal connection, medical expenses, prospective medical care and temporary disability benefits, and being advised of the facts of law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part thereof.

The Commission modifies the Decision of the Arbitrator with respect to the "CONCLUSIONS" section titled as: "2. Petitioner's injury was a personal, and not employment risk." The facts of this case establish that Petitioner was involved in a voluntary recreational activity at the time of the alleged accident and that benefits were appropriately denied pursuant to Section 11 of the Act. The Commission strikes the personal risk analysis and related conclusions from the Decision of the Arbitrator.

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated November 18, 2024, is modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that 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.

May 20, 2025
o: 05/15/25
CMD/jjm
045

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

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

DISSENT

I respectfully dissent from the Decision of the Majority. Petitioner was required to attend her employer's "Boojay Buzz Fest." While school business was discussed, it is clear that Halloween was the theme of the event. Attendees were not free to leave the event until the costume contest was completed. In my view, Petitioner being injured while participating in the costume contest is no different than an employee being injured playing basketball or softball at a mandatory company picnic. Those cases are compensable. I believe the mandatory attendance at the event is controlling. Further, Petitioner was encouraged by her supervisors to participate. For the forgoing reasons, I respectfully dissent.

May 20, 2025
o: 05/15/25
MP
045

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC032232
Case Name	Armaline Mirretti v. Elmhurst University
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Philip Turcy
Respondent Attorney	Rich Lenkov

DATE FILED: 11/18/2024

/s/ Paul Seal, Arbitrator
Signature

INTEREST RATE WEEK OF NOVEMBER 13 2024 4.31%

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

25IWCC0223

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ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(B)

ARMALINE MIRRETTI Case #**23 WC 032232**

Employee/Petitioner
v.

ELMHURST UNIVERSITY
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 Seal**, Arbitrator of the Commission, in the city of **Geneva, Illinois on 8/27/24**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

B. ☐ Was there an employee-employer relationship?

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

D. ☐ What was the date of the accident?

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

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

G. ☐ What were Petitioner's earnings?

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

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

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

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

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

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

N. ☐ Is Respondent due any credit?

O. ☐ Other _____

FINDINGS

On **10/31/23**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

Timely notice of the alleged 10/31/23 accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the alleged 10/31/23 work accident.

In the year preceding the alleged injury, Petitioner earned $**43,212.00.** The average weekly wage was $**831.00.**

On the alleged 10/31/23 accident date, Petitioner was **60** years of age, **married** with **0** dependents under the age of 18.

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

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

Respondent shall be given a credit of $**0** 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 did not prove by a preponderance of the evidence that she sustained a compensable accident that arose out of and in the course of her employment on 10/31/23. To the extent that causation, medical treatment necessity, TTD and prospective medical are disputed, it is based on the accident liability of Respondent. Thus, Petitioner failed to prove by a preponderance of evidence that her condition of ill-being is causally related to the alleged 10/31/23 work accident. Petitioner failed to prove that her treatment was reasonable, related ***and*** necessary in relation to her alleged 10/31/23 work accident. Petitioner failed to prove that she was entitled to any temporary total disability benefits in relation to her alleged 10/31/23 work accident. Petitioner failed to prove that she was entitled to any prospective medical benefits. Petitioner's request for benefits is denied.

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

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

NOVEMBER 18 2024

_____

Signature of Arbitrator

STATEMENT OF FACTS

1. Trial Testimony

a. Petitioner

Petitioner has been employed at Elmhurst University for 18 years, for the Office of the President supporting the Board of Trustees and the Office of Admissions. (T. 17).

Elmhurst University held a mandatory meeting called the Bluejay Buzz. 3 times per year, from 8:15 AM – 9:30 AM. The President provided an update on the state of the college. (T. 18 – 19). All Office of Admissions employees began their workday at 8:00 AM and were clocked in during the Bluejay Buzz. (T. 19).

At Halloween, the event was called the Boojay Buzz. (T. 20). The Boojay Buzz was implemented by the President around 2017. (T. 20 – 21). The information relayed during the Boojay Buzz, including information on the recent board meeting and status of recruitment, was the same as during the regular Bluejay Buzz. (T. 21). Petitioner attended every Bluejay Buzz, as they were mandatory. (T. 22). She believed that the costume party and the Boojay Buzz meeting were related. (T. 43).

On 10/31/23, Petitioner attended the Boojay Buzz and reported on the bicycle program. (T. 23). Petitioner is an avid bicyclist, known around campus as "the bike girl," and chair of the university bicycle program (T. 23 – 24). As part of the program, Petitioner collects, maintains and rents out bicycles. (T. 24).

Prior to the Boojay Buzz, the Vice-President met with the counselors and decided on a theme for the costume party. (T. 25 – 26). The theme was announced to the staff at the daily 8:30 AM meeting. (T. 26). Petitioner participated in the costume party as part of the Office of Admissions since 2017. (T. 26). In 2023, the Office of Admissions voted on a "Barbie and Ken" theme. (T. 26). Petitioner was not going to participate, as the 2 prior years were cancelled and Petitioner spent time and money on costumes that were unused. (T. 27). Petitioner spoke to Vice-President Christine Grenier and changed her mind about participating. (T. 28).

After speaking with Ms. Grenier, Petitioner informed her husband that she had changed her mind and was going to dress as Bicycle Barbie. (T. 33 – 34). Petitioner painted a helmet pink and collected a pink jersey and socks to wear. (T. 37). On 10/31/23, Petitioner arrived at work around 7:45 AM. (T. 38). She used an older, used bicycle from the bicycle program as part of her costume. (T. 41).

After the announcements, President VanAken asked that anyone who wants to participate in the individual costume contest to step to the front. (T. 42). Petitioner was standing along the wall by the exit door. (T. 42). She then went to retrieve her bicycle to participate in the individual

costume contest. (T. 46). While riding her bicycle, Petitioner fell and experienced a right ankle trimalleolar fracture. (T. 47).

The Frick Center, where Petitioner's injury occurred, contains a cafeteria on the lower level and a student center on the main floor. (T. 51 – 52). The room where Petitioner fell was a large, open event room with a tile floor. (T. 52). There were no defects in the floor. (T. 52). There were no lighting issues. (T. 52). Before her accident, Petitioner had never ridden her bicycle in the Frick Center. (T. 53). She had previously ridden her bicycle in the Koplin Memorial Hall to her office. (T. 53). Petitioner generally does not ride her bicycle indoors. (T. 54). As an avid cyclist, bicycle safety is important to Petitioner. (T. 55).

Petitioner did not subpoena testimony from the President or the Vice-President. (T. 56). Petitioner's get-well card did not state that the costume party was a mandatory event. (T. 57; PX6). Petitioner is aware that there is a difference between being ordered or mandated to do something as opposed to being encouraged. (T. 58). None of the correspondence or invitations regarding the Boojay Buzz stated that the costume party was mandatory. (T. 58; PX5; RX1 – RX5).

Regardless of whether the event was mandatory, it was Petitioner's idea to ride the bicycle. (T. 59). Petitioner's manager approved the idea. (T. 59). Petitioner was not ordered to ride the bicycle as part of her costume. (T. 60). Bringing the bicycle indoors was a voluntary act. (T. 60 – 61). Riding the bicycle indoors was a voluntary act. (T. 61). The bicycle Petitioner used was a cruiser, without any gears. (T. 62). Petitioner's fall was not caused by anything on the floor. (T. 62).

Petitioner has participated in the Boojay Buzz since it began. (T. 63). She is aware of people previously using bicycles as part of their costume. (T. 64). A few years ago, employees from the Office of Admission were dressed as E.T. and Elliot. (T. 64). They were not arrested by security for riding the bicycle. (T. 64). Petitioner did not consider riding a bicycle as part of her costume to be dangerous. (T. 66).

After her injury, Petitioner was off work for 9 days. (T. 50). She was given a get-well card. (T. 31; PX6). The card was signed by Ms. Grenier, who wrote "I hope you heal quickly. Remind me not to encourage you to dress up for Halloween again." (T. 32; PX6). After 9 days, she started working 4 hours per day from home, through the beginning of January. (T. 50).

Petitioner underwent surgery and had hardware placed in her ankle for stability. (T. 47 – 48). Post-surgically, Petitioner underwent physical therapy. (T. 49). Her medical bills were either unpaid or paid by her husband's insurance. (T. 51).

In January, 2024 Petitioner returned to full time remote work. (T. 50). She returned to in-office full duty work in April. (T. 51). Petitioner has not been paid any TTD benefits. (T. 51). Petitioner is not currently undergoing physical therapy. (T. 50).

b. <u>Jim Fitzgerald</u>

Mr. Fitzgerald has been employed by Elmhurst University for 11 years. (T. 68). He is the Executive Director of Human Resources. (T. 69). He was present at the Boojay Buzz as all

employees working daytime shifts were expected to attend. (T. 69). He did not wear a costume, as wearing a costume was not mandatory. (T. 70).

Mr. Fitzgerald did not witness Petitioner's fall. (T. 70). He became aware of Petitioner's fall a few minutes after it occurred. (T. 71). He was responsible for reporting Petitioner's claim to Travelers Insurance. (T. 71). He was not surprised when Petitioner's claim was denied. (T. 72). Mr. Fitzgerald did not challenge the denial. (T. 72). He did not ask that the claim be escalated at Travelers. (T. 73).

Mr. Fitzgerald is not an expert in bicycle safety. (T. 80). However, the act of riding a bicycle inside the student union was dangerous as it occurred on a tile floor. (T. 78). No one ordered Petitioner to ride a bicycle indoors. (T. 80). Wearing a costume at the Boojay Buzz is encouraged but not mandatory. (T. 81). He is not aware of anyone previously riding a bicycle as part of their costume. (T. 81). As part of his work, Mr. Fitzgerald reports all Workers' Compensation claims to Travelers Insurance. (T. 81). Travelers decides whether a claim is compensable. (T. 82).

c. John Escalante

Mr. Escalante is the Elmhurst University Executive Director of Public Safety. (T. 86). His responsibilities include oversight of daily safety and security operations. (T. 86). Previously, he was the Northwestern Illinois University Chief of Police. (T. 87). Before that, he worked as a Chicago Police Department officer for 30 years. (T. 88). For a period, he worked as a First Deputy Superintendent and for an interim period as the Police Superintendent. (T. 88).

Mr. Escalante witnessed Petitioner riding her bicycle, which slipped out from underneath her, causing her to fall. (T. 89; RX6). There were close to 100 employees present in Founders' Lounge when Petitioner fell. (T. 90 – 91). Around 50 employees were standing around the route that Petitioner used to ride her bicycle. (T. 90 – 91). Riding the bicycle was not a safe act, as there were a lot of people, tables and chairs present. (T. 92). Riding the bicycle in a clear area indoors was also unsafe. (T. 92). Mr. Escalante has a significant amount of experience in observing busy events. (T. 93 – 94).

Mr. Escalante has never witnessed an employee riding a bicycle during the Boojay Buzz. (T. 94). Petitioner rode her bicycle around 10 feet before she fell. (T. 94 – 95). She was within a few feet of other people when she fell. (T. 95 – 96). The people nearby were not an obstruction to Petitioner riding her bicycle. (T. 97). Petitioner did not hit anyone with her bicycle. (T. 97).

Petitioner riding the bicycle was dangerous because it was indoors, around a significant amount of people, tables, chairs and food. (T. 98). Petitioner riding her bicycle was not a danger to other people at the event. (T. 100 – 101).

CONCLUSIONS

Regarding Issue (C): Whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent:

Petitioner failed to prove that an accident occurred, which arose out of and in the course of her employment with Respondent. Therefore, all claims for compensation are denied.

The Illinois Workers' Compensation Act (the "Act") provides: "To obtain compensation under this Act, an 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. A petitioner must establish both the "arising out of" and the "in the course of" elements were present to prove a compensable injury. *Univ. of Ill. v. Indus. Comm'n*, 365 Ill. App. 3d 906, 910 (2006).

1. **Petitioner's injury occurred during a voluntary recreational activity.**

Section 11 of the Illinois Workers' Compensation Act states:

> Accidental injuries incurred while participating in voluntary 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. (820 ILCS 305/11) (from Ch. 48, par. 138.11)

In deciding if an event was voluntary and recreational, the Commission considers whether the employee was compelled to participate, the organization and sponsorship of the event and the benefit conferred to the employee. *Law Offices of William W. Schooley v. Industrial Commission of Illinois,* 502 N.E. 2d 1186, 1189 (5th Dist. 1987).

The Commission and several Illinois courts have repeatedly found that activities are voluntary and recreational where there is lack of a direct order, implied order or pressure **from the employer** to participate:

1) *Gooden v. Indus. Comm'n (Allstate Ins. Co.)*, 366 Ill. App. 3d 1064, 1066 (Ill. App. Ct. 1st Dist. July 12, 2006): Appellate Court found that Petitioner's participation in a volleyball game during a company picnic fell under Section 11 when the picnic was not mandatory and **employees were not punished for not attending.**
2) *Dowdle v. South Berwyn School*, 18 I.W.C.C. 0710 (2018): The Commission found that Petitioner's participation in a kickball game fell under Section 11 based on testimony from supervisors **that participation was strictly voluntary**, and Petitioner was not ordered or assigned to participate in the game.
3) *Pickett v. Industrial Commission*, 252 Ill. App.3d 355, 192 Ill Dec.109, 625 N.E.2d 69 (1st District 1993): The Appellate Court found that Petitioner's participation in a basketball game fell under Section 11 when Petitioner was not pressured by his employer to participate, **despite the fact that Petitioner was clocked in** during the game and the travel, uniform and location were provided by the Employer.

Gooden is most analogous to the instant case. Petitioner, an employee of Allstate Insurance, was injured while playing volleyball at a company picnic. *Id.* at 1064-65. As with this case:

1. The picnic was scheduled during business hours on a "regularly scheduled business day." *Id.* at 1064
2. The Allstate operations manager testified that the picnic was **not mandatory**, no employees were punished for not attending and all employees received their full wages whether they chose to work or attend the picnic. *Id.* at 1064
3. The manager further testified that no employees were ordered, assigned, or pressured to attend the picnic. *Id.*

The Appellate Court held that Petitioner made a voluntary choice in attending the picnic because he was not assigned to attend. *Id.* at 1066. Petitioner would not have been penalized or lost pay or vacation time for missing the picnic. *Id*. The Court further found that Petitioner was not ordered to attend the picnic in part because there was **no clear order** by Respondent, and he had the option to work instead. *Id*.

Applying the factors from *Gooden, Dowdle* and *Pickett* all weigh in favor of finding that Petitioner's injury was not compensable. Petitioner testified that:

1) There is a difference between being ordered or mandated to do something and being encouraged. (T. 58).
2) None of the correspondence or invitations regarding the Boojay Buzz state that the costume party is mandatory. (T. 58; PX5; RX1 – RX5).
    a. The get-well card, which Petitioner submitted as the **principal piece of evidence showing that the event was mandatory**, explicitly states "I hope you heal quickly. Remind me not to **encourage** you to dress up for Halloween again." (T. 32; PX6).
3) She changed her mind about participating in the Boojay Buzz costume party following conversations with the President and Vice-President. However:
    a. Neither the President nor Vice-President were present to testify in support of Petitioner
    b. Petitioner was aware that she had the opportunity to subpoena their testimony and require that they appear. **She elected not to do so.** (T. 56)
    c. Petitioner testified that she informed her husband that she had changed her mind about participating in the costume contest. (T. 32 – 33). **He was similarly not present to testify in support of Petitioner.**

To the contrary, two employees were called to testify – Mr. Fitzgerald and Mr. Escalante:

a. Both testified that participation in the costume party was **voluntary.**
b. **Neither participated in the costume party and neither testified that they were reprimanded for not participating.**

The Boojay Buzz costume party was a Section 11 voluntary recreational activity. Petitioner bears the burden of showing that her participation in the event was mandatory and not voluntary.

She failed to meet that burden and, therefore, her injury did not arise out of and in the course of her employment.

2. **Petitioner's injury was a personal, and not employment related risk.**

Assuming *arguendo* that the Boojay Buzz was not a Section 11 voluntary recreational activity, Petitioner's injury nonetheless did not arise out of her employment. The risk that Petitioner would fall off a bicycle being used as part of a costume was personal and not an employment related risk.

To determine whether Petitioner's injury arose out of his or her employment, the arbitrator must categorize the risks to which the claimant was exposed. *Dukich v. Illinois Workers' Compensation Comm'n,* 2017 IL App (2d) 160351WC, ¶31. The first step in risk analysis is to determine whether Petitioner's injuries arose out of an employment-related risk — a risk distinctly associated with Petitioner's employment. *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124828. Petitioner must show that the injury had its origin in some risk connected with or, incidental to, her employment so as to create a causal connection between her injury and employment. *Id.* at ¶36. Generally, a risk is distinctly associated with Petitioner's employment if, at the time of the occurrence, Petitioner 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.

McAllister v. Illinois Workers' Compensation Comm'n, 2020 IL 124828, ¶46.

No evidence was submitted showing that Petitioner was explicitly instructed to ride a bicycle as part of her costume. To the contrary, Petitioner had the opportunity to subpoena testimony from her superiors to support that point, but she **elected not do so**. Thus, even if we assume that the Boojay Buzz event was not a voluntary recreational activity and that Petitioner's participation in the costume party was mandatory, Petitioner bears the burden of showing that the risk of her **falling off a bicycle while riding indoors** was an employment-related risk, i.e. that the act of riding a bicycle as part of a costume party was an act that she might **reasonably be expected to perform** incident to her assigned duties.

Here, Mr. Fitzgerald testified that:

1) No one ordered Petitioner to ride a bicycle indoors. (T. 80).
2) The act of riding a bicycle inside the student union was **dangerous** as it occurred on a tile floor. (T. 78).

Similarly, Mr. Escalante testified that:

1) Riding the bicycle was **not a safe act**, as there were a lot of people, tables and chairs present. (T. 92).

2) Riding the bicycle indoors, **even if it was in an entirely clear area, was also unsafe**. (T. 92).

Based on the testimony that Petitioner's act of riding a bicycle indoors on a tile floor, around 100 invited guests, tables, chairs and food was inherently unsafe, there is no basis to find that Petitioner's actions were "reasonably expected" incident to her job duties. Moreover, **Petitioner directly testified that her use of a bicycle as part of her costume was personal and voluntary:**

Q. Okay. And that day you decided on your own to bring a bicycle and ride it inside a building, correct?

A. As part of the meeting, yes.

Q. As part of this costume contest, right?

A. As part of my costume.

Q. Okay. And again, be it documentary evidence or oral evidence in the form of testimony, you've got nothing to show that you were ordered to bring a bicycle inside this costume event; correct?

A. **Correct.**

Q. That was voluntary right? Ma'am? That was voluntary, correct?

A. It was part of a costume that I was asked to wear.

Q. Right. But my question is, bringing the bike inside was voluntary; right?

A. **Yes.**

Q. Riding the bike inside was voluntary, correct?

A. **Yes.**

(T. 60 – 61).

Given Petitioner's admission that her decision to ride a bicycle as part of her costume was a **voluntary** decision, Petitioner's risk of injury was a personal risk. Personal risks generally do not arise out of employment, except when the work place conditions significantly contribute to the injury or expose the employee to an added or increased risk of injury. *McAllister*, 2020 IL 124828, ¶42. Here:

1) Petitioner testified that her fall was not caused by anything on the floor. (T. 62).

2) Mr. Escalante testified that Petitioner was within a few feet of other people when she fell. (T. 95 – 96). The people nearby were not an obstruction to Petitioner riding her bicycle. (T. 97). Petitioner did not hit anyone with her bicycle. (T. 97).

No evidence was submitted showing that the workplace conditions contributed to Petitioner's injury or exposed her to an increased risk of injury. Thus, the personal risk of falling off a bicycle during a costume contest did not arise out of Petitioner's employment and her request for benefits is denied.

Given the entirety of the evidence of record, even assuming that meeting attendance was required, the petitioner failed to prove by a preponderance or the greater weight of the evidence that wearing a costume, let alone attending as Bicycle Barbie and riding her bicycle inside a building of the respondent employer was mandated. Again, the petitioner testified that she was not going to attend in costume but changed her mind, mentioning disappointment and encouragement from Ms. Grenier. The arbitrator does not find that this equates to mandatory or required participation in the costume part of the meeting. The petitioner's accidental injuries did not arise out of and in the course of her employment with the respondent.

Regarding Issue (F): Whether Petitioner's current condition of ill-being is causally related to the alleged injury:

Based on the Arbitrator's finding that Petitioner failed to prove an accidental injury arising out of and in the course of her employment with Respondent, Petitioner's current condition of ill-being is moot. Therefore, all claims for compensation are denied.

Regarding Issue (J): Whether the medical services that were provided to Petitioner reasonable and necessary:

Based on the Arbitrator's finding that Petitioner failed to prove an accidental injury arising out of and in the course of her employment with Respondent, the reasonableness and necessity of Petitioner's treatment is moot. Therefore, all claims for compensation are denied.

Regarding Issue (K): Whether Petitioner is entitled to prospective medical benefits:

Based on the Arbitrator's finding that Petitioner failed to prove an accidental injury arising out of and in the course of her employment with Respondent, the reasonableness and necessity of Petitioner's treatment is moot. Therefore, all claims for compensation are denied.

Regarding Issue (L): Whether temporary benefits are in dispute:

Based on the Arbitrator's finding that Petitioner failed to prove an accidental injury arising out of and in the course of her employment with Respondent, whether Petitioner is entitled to TTD or TPD benefits is moot. Therefore, all claims for compensation are denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC030886
Case Name	Douglas Grenell v. Quincy Transit Lines
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0224
Number of Pages of Decision	31
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Bridgette Kolb
Respondent Attorney	John Fassola

DATE FILED: 5/22/2025

/s/Kathryn Doerries, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DOUGLAS GRENELL

Petitioner,

vs. NO: 17 WC 030886

QUINCY TRANSIT LINES,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of benefit rates, wage calculations, 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 modifying only to correct three scrivener's errors. The Commission initially corrects the spelling of Respondent in the case caption on page one of the Arbitrator's Decision by striking "Qunicy" and substituting "Quincy", so the named Respondent is "Quincy Transit Lines."

The Commission further strikes "Petitioner" and substitutes "Respondent" in the last sentence on page 22 of the Arbitrator's Decision, so the sentence now reads, "[h]owever, the Respondent put on no testimony to refute that agents of the Respondent were unaware of the concurrent employment."

Finally, the Commission strikes "2018" from the second line in the first sentence, on page 24 of the Arbitrator's Decision, and substitutes "2017" so the sentence now reads, "[b]ased on the findings above regarding causation, the Arbitrator finds the Petitioner was entitled to TTD benefits from September 28, 2017, through October 5, 2017; from December 18, 2017, through April 11, 2018; from November 19, 2019, through January 8, 2020; and from June 17, 2020, through December 24, 2020."

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on December 22, 2023, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $934.86 per week for a period of 52-1/7 weeks, commencing September 28, 2017, through October 5, 2017; from December 18, 2017, through April 11, 2018; from November 19, 2019, through January 8, 2020; and from June 17, 2020, through December 24, 2020, 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 $790.64 per week for a period of 175 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 22.5% loss of use of the person as a whole as to Petitioner's cervical spine and 12.5% of the person as a whole as to Petitioner's lumbar spine.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical services listed in Petitioner's Exhibit 7, pursuant to the medical fee schedule, as provided in §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 §8(j) 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.

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.

May 22, 2025
O050625
KAD/bsd
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/s/*Kathryn A. Doerries*
Kathryn A. Doerries

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC030886
Case Name	Douglas Grenell v. Quincy Transit Lines
Consolidated Cases	
Proceeding Type	
Decision Type	Amended Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	28
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Bridgette Kolb
Respondent Attorney	John Fassola

DATE FILED: 12/22/2023

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

/s/ Jeanne AuBuchon, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
AMENDED ARBITRATION DECISION

Douglas Grenell
Employee/Petitioner

v.

Qunicy Transit Lines
Employer/Respondent

Case # **17** WC **30886**

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 **November 21, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **9/27/17**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**72,918.93**; the average weekly wage was $**1,402.29**.

On the date of accident, Petitioner was **52** 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 $**2,839.59** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**2,839.59**.

Respondent is entitled to a credit $173,120.68 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 pay Petitioner temporary total disability benefits of $934.86/week for 52 1/7ths weeks, commencing 9/28/2017 through 10/5/2017, 12/18/2017 through 4/11/2018, 11/19/2019 through 1/8/2020, and 6/17/2020 through 12/24/2020, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $790.64/week for 175 weeks, because the injuries sustained caused the 22.5% loss of use of the person as a whole as to Petitioner's cervical spine and 12.5% of the person as a whole as to Petitioner's lumbar spine, 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.

Jeanne L. AuBuchon

Signature of Arbitrator

DECEMBER 22, 2023

PROCEDURAL HISTORY

This matter proceeded to trial on November 21, 2023, on all disputed issues. The issues in dispute are: 1) the causal connection between the accident and the Petitioner's cervical and lumbar conditions; 2) the Petitioner's average weekly wage (AWW), specifically regarding concurrent employment; 3) liability for medical bills; 4) entitlement to TTD benefits from September 28, 2017, through October 15, 2017, from December 18, 2017, through April 11, 2016; from November 19, 2019, through January 8, 2020, and from June 17, 2020, through December 24, 2020; and 5) the nature and extent of the Petitioner's injury.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 52 years old and employed by the Respondent as a transit bus driver. (AX1, T. 12) He testified that at the time, he also was working hauling milk from a farm to the dairy every day that he wasn't driving the bus. (T. 31) He said he was paid daily by the load and started that job a year or so before his work accident. (T. 32, 55) He assumed everybody with the city was aware of this employment. (Id.) He said he filled out paperwork that went into his file and that the dispatcher/scheduler Tom Vandermaiden and Tina Barry, who checked everyone in in the morning, knew about his other job. (T. 32-33) He said neither currently worked for the Respondent. (T. 55) When confronted with an Outside Employment Notice dated October 17, 2017, the Petitioner stated that was the second notice that he filled out. (T. 51) The Petitioner submitted pay statements showing his earnings from the dairy job. (PX10)

On September 27, 2017, he was driving a bus when another driver in the lane to his right made a left turn in front of him and the vehicles collided. (T. 15) He said he felt pain in his neck and back. (Id.)

The Petitioner testified that he had no prior neck or back problems or treatment. (T. 12-14) He said he had prior right shoulder treatment, which consisted of X-rays and CT scan, after an ATV accident but did not miss any time from work due to his right shoulder. (T. 14, 39-40) Records from Quincy Medical Group showed that at an office visit to his primary care provider, Dr. Taylor Moore, for diabetes and hypertension management 12 days before the work accident, the Petitioner complained of worsening right shoulder pain that was radiating down his right arm. (PX2) X-rays showed separation of the right acromioclavicular (AC) joint (where the collarbone and shoulder blade meet). (Id.) Dr. Moore prescribed a muscle relaxant. (Id.)

Following the work accident, the Petitioner was taken to Blessing Hospital by ambulance. (T. 14-15, PX1, PX3) He complained of neck and back pain. (PX3) Cervical X-rays and a CT scan showed disc space narrowing and anterior and posterior spondylosis (abnormal wear on the cartilage and bones) from C4 through C6, right foraminal (opening between the vertebrae through which nerves exit the spine) narrowing at C4-5, bilateral foraminal narrowing at C5-6 and posterior central disc bulge at C2-3. (Id.) The Petitioner was diagnosed with strain of the muscle, fascia (connective tissue) and tendon at the neck level and muscle spasm of the back. (Id.)

The next day, the Petitioner saw Certified Medical Assistant Nicole Neisen at the Quincy Medical Group Employee Clinic and complained of pain to the right side of the neck into the trapezius (muscle over the back of the neck and shoulder) and right side of the lumbar region. (PX2) CMA Neisen reviewed the CT scan, diagnosed neck pain and acute midline low back pain, prescribed pain medication and referred the Petitioner to physical therapy. (Id.)

The Petitioner also saw Nurse Practitioner Mary Decker at Quincy Medical Group Orthopedics and Sports Medicine that day and complained of right shoulder pain that had continued since the ATV accident four years prior. (Id.) He also complained of radiating right

arm pain, paraspinal pain and pain in the right trapezius area from the work injury. (Id.) NP Decker diagnosed chronic right shoulder pain, right arm weakness and neck pain. (Id.) She recommended physical therapy and a possible neurosurgery referral. (Id.)

The Petitioner testified that from September through November 2017, his neck and back were feeling worse, and he was having a terrible time with physical therapy – coming out of physical therapy worse than when he was going in. (T. 18) He said he may have experienced improvement here and there. (T. 20)

The Petitioner underwent physical therapy at Quincy Medical Group Physical Therapy from September 29, 2017, through November 24, 2017. (PX2) During therapy, the Petitioner reported improvement in his neck but not his low back, rating his neck pain on October 13, 18 and 25, after treatment as 0/10. (Id.) The Petitioner did not recall making these reports. (T. 41-42, 44) Later therapy visits focused on the Petitioner's low back. (Id.)

On October 4, 2017, he reported definite improvements to Dr. Moore, with some mild right neck and low back discomfort but no radiating symptoms. (Id.) Dr. Moore prescribed a muscle relaxant and anti-inflammatory and allowed the Petitioner to return to work without restriction. (Id.) On October 13, 2017, the Petitioner called Dr. Moore's office and reported that he started experiencing a different type of pain in his right hip and back after he "rolled out of bed wrong." (Id.) On October 20, 2017, he reported persistent pain in his right low back periodically radiating towards the groin region. (Id.) He had no weakness or numbness in his extremities. (Id.) Dr. Moore diagnosed pain of the right sacroiliac (SI) joint (linking the pelvis and lower spine) and performed a steroid injection. (Id.) The Petitioner told the physical therapist on October 25, 2017, that the injection gave no long-term relief. (Id.)

On November 30, 2017, the Petitioner reported to Dr. Moore that the pain in his left lower back was radiating down his leg. (Id.) Dr. Moore stated that the Petitioner had resolution of his neck pain, but his pain seemed to be constantly changing. (Id.) Dr. Moore prescribed a different muscle relaxant and ordered an MRI. (Id.) The MRI was performed on December 13, 2017, and showed mild diffuse disc bulging and mild facet arthritis at L3-4, L4-5 and L5-S1 with no disc herniation or spinal stenosis. (Id.)

The Petitioner presented to Dr. Ernest Wallace, a family medicine doctor at the Quincy Medical Group ambulatory care clinic, on December 15, 2017, with neck pain in the left trapezius and left deltoid that he said had been going on for the past several days. (Id.) He felt that he slept on it wrong the past weekend and it did not get better. (Id.) Dr. Wallace prescribed pain medication and performed a steroid injection. (Id.) The Petitioner returned to Dr. Wallace on December 17, 2017, with continued severe left neck and arm pain. (Id.) Dr. Wallace prescribed a muscle relaxant and pain medication. (Id.)

The Petitioner denied that the first time he complained of left-sided neck pain was mid-December 2017. (T. 46) He testified that on December 18, 2017, he was in so much pain that he had to go to the emergency room because he couldn't function anymore. (T. 21) Blessing Hospital records show the Petitioner complained of pain in his left neck with radiation to his left shoulder, left periscapular region (between the shoulder blade and spine) and down the posterior aspect of the left arm all the way to his fingers. (PX3)

An MRI performed that day showed: a central disc protrusion at C2-3 with component off midline towards the right effacing the anterior aspect of the thecal sac (membranous sheath surrounding the spinal cord) and approaching the anterior aspect of the cord with mild central canal stenosis (narrowing of the space where the spinal cord is located), minimal foraminal narrowing

on the left and retrolisthesis (vertebrae slipping backward on one another); spondylosis and retrolisthesis at C3-4 with the disc and osteophyte (bone spur) effacing the anterior aspect of the thecal sac off midline towards the right and approaching the anterior aspect of the cord, minimal or mild central canal stenosis and moderate neural foraminal narrowing on the right due to spurring from the uncovertebral joints (small joints on each side of the disc) and facet joints (connections between the bones of the spine where nerve roots pass); disc disease at C4-5 effacing the anterior aspect of the thecal sac with minimal central canal stenosis and minimal to mild bilateral neural foraminal narrowing; disc space narrowing at C5-6 with minimal effacement of the anterior aspect of the thecal sac, minimal central canal stenosis and minimal or mild neural foraminal narrowing on the right and mild-to-moderate on the left; disc protrusion at C6-7 extending into the left neural foramina at the medial aspect and bony component adjacent to the disc level creating neural foraminal narrowing severe more inferiorly and overall mild neural foraminal narrowing; and spondylosis at C7-T1 without significant central canal stenosis or neural foraminal narrowing. (Id.)

The Petitioner was diagnosed with cervical spondylotic radiculopathy and admitted for pain management. (Id.) He was given narcotics and intravenous steroids and did not improve. (Id.) Neurosurgeon Dr. Reuben Morris, Jr., recommended surgery, and on December 21, 2017, performed discectomies (removal of the damaged part of the disc) and fusions at C5-6 and C6-7. (Id.) The Petitioner's symptoms improved the next day, and he was discharged. (Id.)

The Petitioner testified that after the surgery, he noticed some improvement, but it was short-lived. (T. 22) He felt his neck was back to what it was after the accident. (Id.)

The Petitioner next treated at Quincy Medical Group Occupational Medicine on January 2, 2018, and saw Dr. Anthony Biggs, a sports medicine physician. (PX2) He reported right-sided

radicular low back pain. (Id.) Dr. Biggs reviewed the December 13, 2017, lumbar MRI and ordered X-rays of the SI joints and sacrum coccyx (tailbone). (Id.) The X-rays showed no abnormalities. (Id.)

The next day, the Petitioner followed up from his cervical surgery with Nurse Practitioner Anita Arnold at Quincy Medical Group reporting some improvement of overall pain. (Id.) On January 8, 2018, the Petitioner went to Quincy Medical Group Internal Medicine and saw Advanced Practice Registered Nurse Courtney Kruthoff, to whom he reported that his neck pain was progressing, radiating down the left side behind the shoulder and down the anterior arm to the forearm. (Id.) He said this was the pain that he had prior to surgery. (Id.) He was prescribed pain medication and instructed to follow up with neurosurgery. (Id.) Cervical X-rays showed mild degenerative changes. (Id.)

On January 9, 2018, the Petitioner saw Nurse Practitioner Anita Arnold at Quincy Medical Group Neurosurgery and complained of increased left arm and shoulder pain. (Id.) She noted that the X-rays showed no hardware complications at the site of the fusion. (Id.) She adjusted the Petitioner's nerve pain medication and ordered a CT scan. (Id.)

The Petitioner returned to Dr. Biggs on January 17, 2018, for his low back. (Id.) Dr. Biggs reported that the Petitioner's symptoms were stable and released him. (Id.)

On January 25, 2018, the Petitioner followed up with Dr. Morris and said he felt he had the same left shoulder and arm pain that he had prior to surgery, but it was much less severe. (Id.) Dr. Morris recommended physical therapy and discussed another surgery if he was not better. (Id.) The Petitioner had one physical therapy session at Quincy Medical Group on January 25, 2018. (Id.) Also on that date, a cervical spine CT was performed that showed stable mild multilevel spondyloarthropathy (inflammatory arthritis) above the levels that had been fused. (Id.) There

were disc bulges at C2-3, C3-4 and C4-5 with mild spinal canal stenosis. (Id.) At C5-6, where the fusion was performed, there was persistent moderate right and moderate-to-severe left neural foraminal stenosis in association with osteophytes. (Id.)

The Petitioner saw Dr. Morris off-schedule on January 29, 2018, because of persistent pain in his left arm and shoulder with radiation to his fingers and radiation into the occipital area (back of the head) with occipital headache. (Id.) Dr. Morris stopped physical therapy and recommended surgery to re-explore the C5-6 interspace and remove further osteophytes on the left at the C5-6 foramen. (Id.) On February 14, 2018, Dr. Morris performed a surgical exploration, a foraminotomy (enlarging the area around the spinal column), refusion of C5-6 and replacement of an anterior cervical plate at C5-7. (PX2)

After that surgery, the Petitioner noticed improvement. (T. 22-23) At a visit with Dr. Morris on March 5, 2018, the Petitioner felt the bulk of his left shoulder and arm pain had resolved, although he had some intermittent aching along the lateral aspect of his arm and forearm and some interscapular pain. (Id.) He testified that at that time, he was feeling a little bit better in his neck, so he was able to turn his attention to his lower back and start seeking treatment for it. (T. 23)

The Petitioner returned to Dr. Biggs on March 6, 2018, for follow-up evaluation of right-sided lower back pain with occasional radiation that he said went away for a few days at a time but returned for a few days. (Id.) Dr. Biggs reviewed imaging studies and referred the Petitioner to the spine and joint wellness department. (Id.)

On March 22, 2018, the Petitioner went to Quincy Medical Group Interventional Spine and Joint Wellness and saw Dr. Howard Dedes, a pain management specialist. (Id.) The Petitioner complained of right-sided low back pain, which was also felt in his buttock and worsened with prolonged activities or prolonged sitting. (Id.) Dr. Dedes reviewed the December 2017 MRI and

found mild spondylosis with facet arthropathy at L3-S1, and diffuse disc bulging at L3-4 and L4-5 but no significant stenosis. (Id.) He said it was possible that the Petitioner had facet syndrome exacerbated by the accident, but upon examination, it appeared that most of the Petitioner's pain was consistent at that time with moderate sacroiliitis. (Id.) He recommended SI joint injections and exercises. (Id.) Dr. Dedes performed a right SI joint injection on March 23, 2018. (Id.)

The Petitioner underwent physical therapy for his cervical spine at Advance Physical Therapy & Sports Medicine from March 27, 2018, through April 25, 2018, for a total of nine visits. (PX6) He was discharged on May 11, 2018, after Dr. Morris discontinued therapy. (Id.)

On April 4, 2018, the Petitioner reported to Dr. Biggs that his low back had been pain-free since the injection, and Dr. Biggs allowed the Petitioner to return to work with no restrictions. (PX2) The Petitioner testified that the injections helped, but they were short-lived. (T. 24)

The Petitioner followed up with Dr. Morris regarding his neck on April 5, 2018, and reported that his pain was almost completely gone. (Id.) Dr. Morris allowed the Petitioner to return to work starting April 11, 2018, with no restrictions. (Id.)

On April 26, 2018, the Petitioner returned to Dr. Dedes and reported 85 percent improvement in his low back pain from the injection. (Id.) Dr. Dedes recommended continuing a home exercise program and another injection if the Petitioner's pain flared in the future. (Id.) On the same day, the Petitioner reported to his primary care physicians that he had no pain and reported to Dr. Morris that he had occasional posterior medial upper arm and interscapular pain that was nowhere near as severe as his pain before the second surgery. (Id.) On May 23, 2018, the Petitioner called Dr. Morris's office and reported increased neck pain and pain between his shoulder blades. (Id.) He saw Dr. Morris on May 30, 2018, and Dr. Morris recommended over-the-counter anti-inflammatories. (Id.)

Also on May 30, 2018, the Petitioner went to Dr. Dedes's office and reported that the SI joint injection lasted until the past two weeks, and he was having pain again in his right SI area. (Id.) Dr. Dedes performed another right SI joint injection on June 27, 2018. (Id.)

The Petitioner returned to Dr. Morris on July 5, 2018, and reported left parascapular pain with some paresthesias (abnormal sensation, typically tingling or prickling) and a sensation of cramping in the posterior left arm. (Id.) Dr. Morris recommended physical therapy. (Id.) The Petitioner underwent physical therapy again from July 18, 2018, through August 3, 2018, for a total of six visits. (PX6) At the last visit, the therapist noted that the Petitioner tolerated that day's treatment without complaints of pain or difficulty. (Id.)

On July 24, 2018, the Petitioner underwent a Section 12 examination by Dr. Robert Bernardi, a neurosurgeon at Olive Surgical Group. (RX1, Deposition Exhibit 2) Dr. Bernardi took a history from the Petitioner, reviewed medical records and imaging studies and performed a physical examination. (Id.)

Regarding the Petitioner's low back, Dr. Bernardi diagnosed: lumbosacral segmentation abnormality, which he said was congenital; L4-5 and L5-S1 degenerative disc disease and L4-5 degenerative facet disease, which he said did not develop acutely or as a manifestation of trauma; and right low back pain of uncertain etiology with possible SI joint dysfunction, which he said was causally related to the work accident. (Id.) Dr. Bernardi stated that if the Petitioner's low back symptoms recurred, he may need one or two additional right SI joint injections. (Id.) He said it would be reasonable for the Petitioner to use an over-the-counter anti-inflammatory but did not think he needed additional physical therapy or surgical intervention. (Id.)

As to the Petitioner's neck, Dr. Bernardi diagnosed: multilevel degenerative disc and facet disease and foraminal stenosis, which he said were not caused by the accident; right-sided neck

pain, which he said were related to the accident; left C6-7 foraminal disc herniation and left C7 radiculopathy, which he said were acute and responsible for the left periscapular and arm pain for which the Petitioner underwent two operations but were not related to the accident; status post-surgery at C5-6 and 6-7; and left periscapular/arm pain. (Id.)

In explaining his opinion that the left C6-7 foraminal disc herniation and left C7 radiculopathy could not be attributed to the work accident, he pointed out that the Petitioner's pain was initially lateralized to the right and had "pretty much resolved" by October 25, 2017. (Id.) He noted that the Petitioner then complained of left-sided neck and arm pain beginning December 15, 2017. (Id.) He said it was not possible for an injury to or irritation of the left C6 or C7 nerve root to manifest itself as right-sided neck pain, nor it was possible that the accident produced nerve root compression that did not become symptomatic for more than two months. (Id.)

Dr. Bernardi thought the immediate right-sided symptoms, which could have been muscular or an aggravation of underlying spondylosis, were work-related and that the Petitioner reached maximum medical improvement on October 25, 2017. (Id.) Although he determined the Petitioner's continuing left-sided problems were unrelated to the accident, Dr. Bernardi recommended a CT myelogram if he did not improve in a month to assess his healing from the fusion and any residual foraminal stenosis. (Id.)

On August 9, 2018, the Petitioner saw Dr. Morris and said he felt physical therapy exacerbated his neck symptoms and that his pain returned to baseline after two or three days of rest. (PX2) Dr. Morris recommended a CT myelogram. (Id.) This was performed on September 12, 2018, and Dr. Morris reviewed it on September 26, 2018, stating that it showed some residual osteophytosis (formation of bone spurs) at C5-6 on the left. (Id.) Dr. Morris said he would not

recommend surgery but offered the Petitioner an opportunity to see someone else and suggested a trial of a transcutaneous electrical nerve stimulation (TENS) unit. (Id.)

The Petitioner called Dr. Dedes's office on August 29, 2018, requesting another SI joint injection. (Id.) Dr. Dedes recommended a nerve block injection, which was performed on September 26, 2018, and resulted in 90 percent relief. (Id.) The next day, the Petitioner reported that relief lasted 30 minutes. (Id.) When it was explained that the Petitioner would need a second injection, the Petitioner stated he did not want a band aid and wanted to see a neurosurgeon. (Id.) Dr. Dedes referred the Petitioner to neurosurgery. (Id.)

The Petitioner saw Dr. Daniel Kimple, another neurologist at Quincy Medical Group, on October 11, 2018. (Id.) Regarding the Petitioner's cervical spine, Dr. Kimple reported that the problem was stable. (Id.) Regarding the lumbar spine, he recommended electromyography and nerve condition study (EMG/NCS) and noted that the Petitioner's reported back pain seemed out of proportion to findings on his MRI. (Id.) He prescribed a muscle relaxant. (Id.) Dr. Kimple performed the studies on October 17, 2018, and stated there was evidence of mild polyneuropathy (simultaneous malfunction of many peripheral nerves) versus local irritation changes at the L5-S1 nerve roots. (Id.) He said the findings favored the left side greater than the right and there was no evidence of myotome denervation (loss of nerve supply to muscles) changes within the lower extremities. (Id.)

On November 1, 2018, Dr. Morris saw the Petitioner regarding his neck and opined he was doing well but had residual neck pain that he thought was due to the Petitioner's underlying arthritis in addition to the effects of the accident. (Id.) The Petitioner underwent another lumbar spine MRI on November 16, 2018, that Dr. Morris discussed with the Petitioner on November 19, 2018, and said demonstrated a posterior bulge at L4-5 and a degenerated disc at L5-S1 with

evidence of a small annular fissure. (Id.) He noted modest foraminal stenosis at L5-S1. (Id.) He thought the Petitioner's lumbar spine symptoms were at least in part related to the accident and stated that the Petitioner did not need any further neurosurgical follow up. (Id.) Regarding the cervical spine, he though the Petitioner reached maximum medical improvement but would have some residual symptoms. (Id.)

The Petitioner testified that from September 2018 through the beginning of 2019, he noticed his neck gradually starting to get worse again and the nerves down his shoulder and left arm were giving him problems again. (T. 25) He said that during that time, his low back was gradually starting to get worse with nerve problems going down the backs of both legs and buttocks and foot numbness. (T. 25-26)

On May 14, 2019, the Petitioner returned to Quincy Medical Group and saw neurosurgeon Dr. Mark Gold for continuing low back pain, neck pain and left brachial pain in the buttock area and recently developing pain in the right buttock. (PX2) Dr. Gold reviewed the diagnostic studies and said there was no significant change between the 2017 and 2018 lumbar MRIs. (Id.) His impression was that the Petitioner had bilateral SI joint pain with the left side worse than the right, and he recommended referral to Dr. Rena Stewart, an orthopedic trauma surgeon at Quincy Medical Group to see if the Petitioner was a candidate for SI joint fusion and recommended referral to the Blessing Pain Clinic. (Id.) He said there was no obvious surgically amenable problem. (Id.)

The Petitioner saw Dr. Stewart on June 17, 2019, who recommended CT-guided SI joint injection, keeping a diary rating his pain score every hour after the injection and a visit to the clinic once the injection was done. (Id.) The injection was performed on June 28, 2019. (Id.) The Petitioner returned to Dr. Stewart on July 18, 2019, and reported that the injection gave him no relief. (Id.) Dr. Stewart noted that the Petitioner did not keep a pain diary pursuant to her

instructions but had vague notes about worsening pain in the SI joint after the injection. (Id.) Nor did he attend the pain clinic. (Id.) She said the Petitioner was "graft" and somewhat angry with her nurses, and when she informed him that lack of improvement from the injection indicated that the SI joint was not the pain indicator and therefore surgery was not indicated, he became very angry and near verbally abusive towards Dr. Stewart. (Id.) She consulted with Dr. Gold, and they agreed that the Petitioner should treat with interventional pain management. (Id.)

On July 31, 2019, the Petitioner saw Dr. Christopher Bieniek, an orthopedic surgeon at Midwest Orthopedic Specialists, who ordered a lumbar MRI that was performed on August 3, 2019, and was similar to the 2018 MRI. (PX4) Dr. Bieniek referred the Petitioner to Dr. Rahul Basho, another orthopedic surgeon at Midwest Orthopedic Specialists. (Id.) Dr. Basho saw the Petitioner on August 22, 2019, took X-rays, reviewed an MRI and examined the Petitioner. (Id.) He found lumbarized S1 (S1 separated from the sacrum and lumbar spine), degenerative disc disease at L4-5 and L5-S1 and some left foraminal stenosis at L5-S1. (Id.) He diagnosed lumbar radiculopathy and recommended a transforaminal injection at L5-S1 for diagnostic and therapeutic purposes. (Id.) The injection was performed on September 17, 2019, by pain management specialist Dr. Luvell Glanton at Hannibal Regional Hospital. (PX5) The Petitioner returned to Dr. Basho on October 3, 2019, and reported significant relief of the symptoms of left leg pain for a short amount of time. (PX4) Dr. Bosho recommended a left L5-S1 laminotomy (removing a portion of the back of the spinal bone), foraminotomy and decompression of the lateral recess (sides of the spinal canal). (Id.)

Dr. Basho performed the surgery on November 19, 2019. (PX4, PX5) At a follow-up visit on December 4, 2019, the Petitioner reported that his symptoms of radiculopathy had resolved. (Id.) Dr. Basho ordered physical therapy. (PX4) The Petitioner underwent physical therapy at

Advance Physical Therapy & Sports Medicine from December 5, 2019, through January 3, 2020, for a total of eight visits. (PX6) On January 7, 2020, the Petitioner reported significant improvement but occasional radicular symptoms. (PX4) Dr. Basho allowed him to return to work. (Id.) The Petitioner testified that following that surgery, his nerve issues were gone. (T. 27)

At the request of his attorney, the Petitioner saw Dr. David Raskas, an orthopedic spine surgeon at the Orthopedic and Spine Institute of St. Louis, on April 3, 2020. (T. 27) The Petitioner complained of residual pain in the left side of his neck that radiated down the left arm and some residual left-sided low back pain. (PX8, Deposition Exhibit 2) The Petitioner reported that while seeing Dr. Moore before his surgery, his neck pain would wane and wax in terms of intensity. (Id.) Dr. Raskas reviewed medical records and imaging studies and performed a physical examination. (Id.)

On the CT scan performed September 17, 2017, Dr. Raskas saw soft-tissue density in the left-sided neural foramen at C6-7 that appeared to represent herniated disc tissue he also saw on the MRI performed on December 18, 2017. (Id.) He said the herniation on the CT scan was missed by the radiologist and Dr. Bernardi. (Id.) Dr. Raskas relied on this reading of the CT scan in forming his opinion that the Petitioner's left-sided complaints were causally related to the work accident. (Id.) He believed this finding accounted for the Petitioner's neck pain that later became full-blown left C7 radiculopathy and caused the necessity for the cervical surgeries. (Id.)

Regarding the Petitioner's lower back, Dr. Raskas also opined that the work accident contributed to the Petitioner's low back pain and the necessity for lumbar surgery. (Id.) On the December 13, 2017, MRI, he saw disc bulging and stenosis at L4-5 and disc protrusion at L5-S1. (Id.) His descriptions of the November 16, 2018, and August 3, 2019, MRIs were similar. (Id.)

On the August 3, 2019, MRI he noted there may have been some impingement of the exiting nerves on both the right and left sides as the L5 roots exit at L5-S1. (Id.)

Dr. Raskas recommended further treatment of the Petitioner's cervical spine – specifically a C5 and C7 selective nerve root block, EMG/NCS testing and a myelogram. (Id.) For the low back, Dr. Raskas recommended an MRI to evaluate the Petitioner's chronic low back complaints, as he did not think they were adequately addressed to the Petitioner's satisfaction. (Id.)

The Petitioner returned to Midwest Orthopedic Specialists on April 23, 2020, for his neck and arm pain, and an MRI was ordered and was performed on April 29, 2020. (PX4, PX5) On May 7, 2020, Dr. Basho reviewed the MRI and found multilevel foraminal stenosis with broad-based disc bulges at C3-4 and C4-5. (PX4) He diagnosed cervical radiculopathy and recommended an injection. (Id.) Dr. Glanton performed a cervical epidural steroid injection at C4-5 on May 14, 2020. (PX5) On May 21, 2020, the Petitioner reported temporary relief, and Dr. Basho recommended a C3-5 anterior discectomy and fusion with exploration of the fusion at C5-7 and removal of hardware. (PX4)

Dr. Basho performed the surgery on June 17, 2020. (PX4, PX5) At follow-up visits with Dr. Basho, the Petitioner reported doing well and having no pain. (PX4) He testified at arbitration that that after the surgery, the nerve pain in his arm was gone. (T. 28) He said he did have problems with his throat and being able to swallow. (T. 29) He saw otolaryngologist Dr. Harry Ruth at Quincy Medical Group on July 14, 2020, who ordered speech therapy. (PX2) On September 8, 2020, the Petitioner reported to Dr. Basho that the speech therapy was ineffective. (PX4) He reported relief of his preoperative symptoms of radiculopathy but described the new onset of pain in a diamond-shaped region in the base of his neck. (Id.) Dr. Basho allowed the Petitioner to return to work without restrictions on December 22, 2020. (Id.)

Dr. Bernardi performed a second Section 12 examination on June 22, 2021. (RX1, Deposition Exhibit 3) He reviewed additional medical records and imaging studies. (Id.)

Regarding the left L5-S1 decompression performed by Dr. Basho on November 19, 2019, Dr. Bernardi noted that the Petitioner's initial low-back symptoms were lateralized to the right, but the Petitioner did not report left-sided low back/leg symptoms until he saw Dr. Gold on May 14, 2019. (Id.) He said that extended temporal delay did not support a causal relationship with the work accident. (Id.) He also was not convinced the Petitioner was experiencing lumbar radiculopathy before surgery, as no examiner documented any lower extremity weakness or reflex changes that would support such a diagnosis. (Id.) Dr. Bernardi stated that the decision to proceed with surgery was based, in large part on the Petitioner's response to the injections – a response that is entirely subjective. (Id.) He said the Petitioner's improvement after surgery is not sufficient to draw cause-effect conclusions, as people get better for a variety of reasons. (Id.) He also posed the question of how a left-sided decompression alleviate the Petitioner's right-sided leg pain. (Id.)

Dr. Bernardi critiqued Dr. Raskas's findings of a left-sided disc protrusion at C7 on the non-contrast CT scan, stating that the test is not specific or sensitive enough to diagnose a disc protrusion. (Id.) Dr. Bernardi again pointed out that the Petitioner's initial complaints of neck pain were entirely lateralized to the right and the Petitioner did not complain of left-sided pain until 10 weeks later. (Id.) He acknowledged there often is a delay between the rupturing of a disc and the onset of appropriate symptoms but said that delay is typically measured in hours or a day at the most. (Id.) Dr. Bernardi reiterated his opinion that the Petitioner's left-sided neck and arm pain – nor the surgery therefor – could be causally related to the work accident, adding that the Petitioner's pre-operative complaints were not consistent with C4 or C5 radiculopathy in that C4 root involvement would not refer to the arm and C5 involvement would cause pain down the

anterior aspect of the arm and forearm not the posterior portion. (Id.) Dr. Bernardi noted that the Petitioner did not have weakness or atrophy in his C5 innervated muscles. (Id.) He added that the pre-operative myelogram did not show meaningful left-sided stenosis at either C3-4 or C4-5. (Id.)

Dr. Bernardi said the Petitioner may have sustained a muscular injury to his neck from the work accident, with his initial symptoms and the fact that his symptoms resolved within four weeks as being consistent with this. (Id.) He said the etiology of the Petitioner's right-sided low back pain reported after the accident was uncertain. (Id.) He did not believe the imaging studies revealed an abnormality amenable to surgical intervention. (Id.) He thought the Petitioner exhausted reasonable non-operative treatment and believed he was at maximum medical improvement. (Id.)

The Petitioner returned to Dr. Basho on June 22, 2021, and reported marked improvement from his pre-operative status but said he had some stiffness and occasional pain in the neck. (PX4) Dr. Basho found the Petitioner achieved maximal recovery level. (Id.)

Dr. Raskas performed a second examination of the Petitioner on September 10, 2021. (PX8, Deposition Exhibit 3) He agreed with Dr. Bernardi that a CT scan is not as sensitive and specific as an MRI, but said the test can diagnose disc protrusions and herniations. (Id.) He said he would not have performed cervical spine surgery based on the CT scan alone because the Petitioner only had neck pain at the time and did not develop radicular pain until later. (Id.)

As to Dr. Bernardi's statement that the Petitioner's symptoms were inconsistent with C4 or C5 radiculopathy, Dr. Raskas explained that sensory patterns are not consistently clinically always the same – noting that throughout his 26 years as an orthopedic spine surgeon, he has surgically treated patients for stenosis who demonstrated pain symptoms as the Petitioner did. (Id.) Regarding the improvement the Petitioner experienced during physical therapy, Dr. Raskas stated

that such improvement does not lead to a condition being treated to maximum medical improvement, which was borne out by the Petitioner's history, physical and medical records. (Id.)

Dr. Raskas also stated that the Petitioner's swallowing difficulties was the result of his surgeries, pointing to research supporting to this conclusion. (Id.) He said the Petitioner's prognosis was guarded, as June 22, 2021, X-rays and X-rays at the time of the examination showed fractured screws and non-unions of the fusions at two out of the four levels that were fused. (Id.) He said it was likely that at least some of the Petitioner's persistent neck pain is related to these non-unions. (Id.)

Dr. Raskas diagnosed cervical pseudoarthrosis with hardware failure, chronic dysphagia secondary to anterior cervical decompression and fusion, chronic low back pain and post-laminectomy syndrome. (Id.) He reiterated his opinion that the work accident caused injuries to the Petitioner's cervical and lumbar spine that necessitated the surgeries. (Id.) He did not recommend further treatment for the Petitioner's low back and recommended further testing to determine if additional surgery is needed for the non-unions of the fusions. (Id.)

The Petitioner returned to Dr. Basho on July 21, 2022, because he was still having residual pain. (T. 30) He reported pain from the suboccipital region to the base of the neck and pain wrapping around the left shoulder to the left forearm. (PX4) Dr. Basho ordered and MRI and CT scan, which were performed on August 2, 2022, and showed multilevel degenerative changes with no significant spinal canal stenosis but moderate-to-severe right C4-5 neural foraminal stenosis. (Id.) On October 20, 2022, Dr. Basho diagnosed cervical radiculopathy and recommended using Tylenol for pain. (Id.)

Dr. Raskas testified consistently with his reports at a deposition on July 19, 2023. (PX8) He explained that when someone has a narrowed neural foramen and experiences trauma that

produces neck pain, that can cause someone to develop symptoms radiating down the arm. (Id.) He said a disc herniation might cause neck pain but not immediate radiculopathy because when there is pressure on the nerve root for a while, the root becomes dysfunctional, and the patient develops signs and symptoms of radiculopathy. (Id.) He said this is not unusual. (Id.)

In addition to the need for the initial cervical fusion surgery, Dr. Raskas said the extension of the fusion on June 17, 2020, was causally related to the accident because the first fusion put adjacent segment stress on those levels. (Id.)

Dr. Bernardi testified consistently with his reports at a deposition on August 11, 2023. (RX1) He explained his critique of Dr. Raskas's left-sided finding on the September 27, 2017, CT scan by stating that the bony anatomy of the neck is delicate with protuberances and projections off of them that create artifact that can distort what is seen on the scan, making a CT scan an inadequate test for determining if a disc herniation is present. (Id.) He added that the radiologist who read the CT scan made no comment about a disc herniation at C6-7 and that even if there was a herniation, there was no way to say it was caused by the work accident. (Id.)

On cross-examination, Dr. Bernardi acknowledged that the Petitioner did not see any doctors on October 25, 2017 – the date he chose for the Petitioner being at maximum medical improvement related to his neck – and said that date could be extended a month to when the Petitioner saw Dr. Moore and had no complaints about his cervical spine. (Id.) It was revealed during cross-examination that Dr. Bernardi did not have the records related to the nerve block injection on September 26, 2018. (Id.) Upon learning of the injection, he stated that the block would have been reasonable to try because the work accident could have aggravated his L4-5 facet disease. (Id.) However, he testified that on the follow up office visit the next day, September 27, 2018, Petition's lumbar condition would no longer be related to the date of accident. (Id.)

The Petitioner still drives a bus for the Respondent and was able to perform all his necessary job functions. (T. 12, 35) He said his neck and back starts hurting by the end of the workday after bouncing around on the streets and potholes. (T. 35-36) He said he no longer drives the milk truck. (T. 34) He said his neck and back bother him when sleeping, walking and standing for a long period in one spot. (T. 36-37) He said he has to adjust his pillows at a certain angle, and he spends a lot of nights in the recliner. (Id.) He said his throat doesn't drain right anymore because of the problems he had with it, causing him to wake up choking if he lays flat. (T. 37)

CONCLUSIONS OF LAW

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

First, the Arbitrator finds the Petitioner's testimony regarding his symptoms and their progression to not be credible, as they conflicted with his reports to the medical providers. However, his reports to his doctors were consistent in the medical records. As the Petitioner's reports to his medical providers were closer in time to the events as they occurred, the Arbitrator relies upon these reports rather than his testimony regarding his symptoms.

Issue F: Is Petitioner's current condition of ill-being causally related to the accident?

An accident need not be the sole or primary cause as long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. 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). When a preexisting condition is present, a claimant must show

that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital*, 371 Ill.App.3d at 888.

Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Industrial. Comm'n*, 77 Ill. 2d 469, 471-472, 397 N.E.2d 834, 34 Ill.Dec. 162 (1979); *Gano Elec. Contracting v. Industrial Comm'n*, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724, 197 Ill.Dec. 502 (4th Dist. 1994); *International Harvester v. Industrial Com.*, 93 Ill.2d 59, 63-64, 442 N.E.2d 908, 66 Ill.Dec. 347 (1982).

The Petitioner apparently had pre-existing degenerative conditions in his spine – specifically, foraminal stenosis. The circumstantial evidence supports a finding that the Petitioner's condition after the accident was not solely attributable to the pre-existing degenerative conditions. Aside from a shoulder injury from an ATV accident that resulted in a CT scan, there was no evidence that the Petitioner had prior cervical or lumbar spine issues or that he received treatment for any such injuries.

Dr. Bernardi opined that the Petitioner's initial low back pain and right-sided neck pain were causally related to the work accident. As of his first examination, Dr. Bernardi recommended additional SI injections if the Petitioner's low back pain should recur. He found the Petitioner to be at MMI as to his neck as of October 25, 2017 – when he stopped complaining of neck pain. Less than two months later, the Petitioner sought treatment for left-sided neck and arm pain that resulted in three surgeries. Dr. Bernardi said it was not possible that these symptoms were related

to the accident because the Petitioner did not complain of left-sided symptoms until more than two months after the accident.

Dr. Raskas disagreed and found evidence of a left-sided herniated cervical disc on the CT scan that was confirmed by the MRI. By drawing from his experience with patients in his practice, Dr. Raskas rebutted Dr. Bernardi's conclusions that it was impossible for the Petitioner to develop left-sided radiculopathy from the work accident. This theory also applies to the Petitioner's low back. Although early treatment for the low back focused on the right side, Dr. Raskas pointed out that the MRIs showed nerve impingement on both sides. The Petitioner also complained of left-sided low back pain less than two months after the accident.

Therefore, the Arbitrator finds that the Petitioner's cervical and lumbar spine conditions were causally related to the accident of September 27, 2017.

Issue G: **What were the Petitioner's earnings?**

The issue is whether income from the Petitioner's concurrent employment as a dairy truck driver should be included in his AWW. Section 10 of the Act provides: "When the employee is working concurrently with two or more employers and the respondent employer has knowledge of such employment prior to the injury, his wages from all such employers shall be considered as if earned from the employer liable for compensation." 820 ILCS 305/10.

The Petitioner testified that dispatcher/scheduler Tom Vandermaiden and Tina Barry, who checked everyone in in the morning, knew about his other job. This testimony was unrebutted. The Petitioner insisted that he gave written notice of concurrent employment prior to the accident. However, the only written proof of notification of concurrent employment was the Outside Employment Notice that was submitted after the accident. This casts doubt on the Petitioner's testimony that he provided written notice before the accident. However, the Petitioner put on no

testimony to refute that agents of the Respondent were unaware of the concurrent employment. Therefore, the Arbitrator finds the Petitioner proved his concurrent employment by a preponderance of the evidence. Thus, the Arbitrator finds the Petitioner's AWW is $1,402.29.

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 causation findings above and Dr. Raskas' opinions that the treatment the Petitioner received was related to the work accident, the Arbitrator finds that the treatment was reasonable and necessary, and the Respondent has not paid the bills for this treatment. Therefore, the Respondent is ordered to pay the medical expenses contained in Petitioner's Exhibit 7 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 temporary total disability benefits for various periods while he was off work for his initial treatment and for his surgeries.

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 causation, the Arbitrator finds the Petitioner was entitled to TTD benefits from September 28, 2018, through October 5, 2017; from December 18, 2017, through April 11, 2018; from November 19, 2019, through January 8, 2020; and from June 17, 2020, through December 24, 2020. The Respondent is entitled to a credit of $2,839.59 in TTD 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 ratings were submitted. Therefore, the Arbitrator gives this factor no weight.

(ii) **Occupation.** The Petitioner continues to work as a bus driver for the Respondent and is able to perform his duties. Therefore, the Arbitrator places some weight on this factor.

(iii) **Age.** The Petitioner was 52 years old at the time of the injury. He has several work years left during which time he will need to deal with the residual effects of the injuries. The Arbitrator places some weight on this factor.

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

(v) **Disability.** The Petitioner's testimony and corroboration by the medical records showed that he continues to experience pain in his neck and back. As a result of the last cervical surgery, he has problems with swallowing. The Arbitrator puts significant weight on this factor.

Therefore, the Arbitrator finds the Petitioner's permanent partial disability to be 22.5 percent of the person as a whole as to his cervical spine and 12.5 percent of the person as a whole as to his lumbar spine.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC001348
Case Name	Michael A Blottiaux v. NPO Northern Pipeline Construction
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0225
Number of Pages of Decision	35
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Jeffrey Alter
Respondent Attorney	Nicholas Rubino

DATE FILED: 5/22/2025

/s/Kathryn Doerries, Commissioner

Signature

25IWCC0225

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

MICHAEL A. BLOTTIAUX,

Petitioner,

vs. NO: 20 WC 001348

NPO NORTHERN PIPELINE CONSTRUCTION,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, TTD, medical expenses, and nature and extent of disability, and being advised of the facts and law, reverses the Arbitrator's Decision regarding causal connection, vacates the award of temporary total disability benefits, and modifies the award of medical benefits and permanent partial disability, for the reasons stated below.

On July 10, 2018, Petitioner sustained an accident while working at a jobsite located at the Nicor Gas facility in Elk Grove Village. As a result of that accident, Petitioner sustained a nondisputed left hip injury and back strain. Petitioner also claimed, and the Arbitrator agreed, that the accident aggravated Petitioner's pre-existing spondylolisthesis for which Petitioner underwent a fusion at L5-S1. The Arbitrator awarded medical expenses, TTD benefits for the period of disability following the spine surgery, and PPD benefits representing 21.5% loss of the person as a whole. The Commission views the evidence differently and finds Petitioner failed to prove by the preponderance of the evidence that the accident aggravated his spondylolisthesis. The Commission therefore vacates the award for TTD benefits. The Commission finds Petitioner reached MMI on November 20, 2018, and awards medical benefits for treatment of the left hip and low back provided through November 20, 2018. All other medical expenses are denied. The Commission modifies the Arbitrator's award for PPD benefits and finds Petitioner's injuries resulted in a 5% loss of the person as a whole. The Commission strikes the Conclusions of Law and Order in the Arbitrator's Decision, which is attached hereto and made a part hereof.

Findings of Fact

Past Medical History

It is undisputed that Petitioner's lumbar spine had spondylolisthesis secondary to a pars defect. Petitioner had a long-standing history for chronic low back pain. Petitioner agreed on cross-examination that he had been treating with a chiropractor, Dr. Campobasso, over the course of approximately 17 years by the time of his work accident in 2018. (T. 82-83) In addition to treatment for the lumbar spine, Petitioner testified he also received chiropractic treatment for his neck, thoracic spine, shoulders, and ankle. (T. 83)

The available medical records documented chiropractic treatment with Dr. Campobasso from November 2002 through April 2018. (RX7) During that period, Petitioner treated with his chiropractor every year, with the number of visits varying from year to year. The handwriting in the chiropractic records is often illegible; however, a sufficient number of the office visit notes are fairly understandable. Dr. Campobasso's chiropractic records are pre-formatted forms (one page per visit) with separate sections containing grids with check-boxes for subjective complaints and objective findings. There are additional sections for orthopedic/neurologic exam findings, assessment, and treatment plan. The section for subjective complaints contains horizontal rows for various anatomical regions and joints of the body and vertical columns for various types of symptoms.

At his first documented visit in November 2002, Petitioner complained of neck and upper back pain. (RX7 at 224) In July 2003, Petitioner complained of bilateral heel pain and was diagnosed with plantar fasciitis. (RX7 at 212) In November 2003, Petitioner complained of low back and upper back pain and stiffness, approximately 15 years before the work accident. (RX7 at 211) The chiropractor documented radiating right leg pain in March and June of 2007. (RX7 at 197, 192) The chiropractor also documented sciatica pain radiating into the left leg in January 2016. (RX7 at T. 1510) Aside from those few visits in 2007 and 2016, there is no evidence for ongoing radicular or radiating lower extremity symptomology preceding the work accident. The chiropractic records do, however, consistently reflect several years of ongoing low back pain and stiffness with intermittently documented findings of pain during range of motion testing. (RX7) On cross-examination, Petitioner agreed he received chiropractic manipulation at L5-S1 in 2016. (T. 89-90) Petitioner also agreed he received chiropractic manipulation at L5-S1 on June 29, 2017. (T. 90) And during the months leading up to his work accident, Petitioner agreed he received chiropractic treatment for low back pain on March 26, April 4, and April 19, 2018, which included treatment directed to the L5-S1 level. (T. 91-92) Petitioner agreed that Dr. Campobasso diagnosed a misalignment at L5-S1. (T. 91) Petitioner agreed his last visit preceding the work accident occurred on April 24, 2018, about two and a half months before the accident, and included treatment for the L5-S1 level. (T. 92)

Medical records from Physicians Immediate Care show Petitioner underwent annual physical examinations to renew his Department of Transportation (DOT) certification required for his employment as a heavy equipment operator. (RX8) Despite his years of ongoing chiropractic treatment for thoracic and lumbar complaints, Petitioner denied having any back problems during

each of his annual physicals between February of 2013 and January 2019. (RX8 at 3-4, 47-48, 51-52, 65-66, 85-86, 95-96)

Accident

On July 10, 2018, while working as a foreman at a job site located at a Nicor Gas facility in Elk Grove Village, Petitioner gave instructions to an employee operating a backhoe, after which the operator engaged the backhoe and inadvertently caused the attached excavating bucket to strike Petitioner. (T. 37-38) Petitioner testified he was pushed into a ditch, with his left leg landing inside the ditch up to his waist while his right leg and arms came to rest on a steel road plate covering part of the ditch. (T. 37-38) Photos of the worksite depicting the scene of the accident were admitted into evidence. (RX6) The photos showed a long narrow ditch with a steel plate covering a portion of the ditch. A few feet away from the ditch was a round hole dug into the ground adjacent to the steel plate. On cross-examination, Petitioner viewed the photos and testified he fell into the hole and not the ditch. (T. 119) Petitioner testified coworkers assisted him getting out. (T. 39) Petitioner testified he reported the accident, after which Respondent's safety auditor, Rick Marrero, came to the worksite and gathered information needed to prepare an injury report. (T. 40-41) The injury report documented a left hip injury. (RX5) No other injuries were indicated.

Petitioner testified he experienced pain from his "arms down to my knees and leg from being in the hole like that." (T. 40-41) Petitioner continued working and noticed he was feeling worse. (T. 41) Later that night, Petitioner had pain in his "lower body, legs, hips." (T. 41) Petitioner further testified his pain continued to worsen over time. (T.41-42) Petitioner testified his symptoms were different than the pain he previously treated for in April 2018. (T. 44) When asked how his symptoms were different, Petitioner testified, "radiating in my hips and lower." (T. 44) In August of 2018, his right foot began to hurt. (T. 45) Petitioner testified his treatment focused on his "lower back, hips, hip area." (T. 46) Petitioner testified his right foot pain began getting worse and traveling up the leg. (T. 47)

Post-Accident Treatment

After the accident of July 10, 2018, Petitioner continued working and had no treatment for two weeks. He returned to his chiropractor on July 23, 2018. Petitioner presented with complaints for stiffness and pain in the thoracic and lumbar regions, the same complaints Petitioner reported before the accident. (PX1 at 10) Petitioner testified the chiropractic adjustments he received on July 23, 2018, were the same adjustments he received before the accident. (T. 95) Petitioner testified he reported the work injury to "them" (Dr. Campobasso's clinic) during his July 23, 2018 visit. (T. 44) Though he reported the injury, Petitioner *did not* testify he reported radicular symptoms to Dr. Campobasso.

Petitioner saw his chiropractor three additional times in July with the same complaints. (PX1 at 11, 12, 13) There were no documented radicular or radiating lower extremity complaints during the month of July 2018. (PX1 at 10-13) It should be noted that the subjective complaints section in the chiropractic records included one column in the grid for radicular symptoms. There were no boxes checked for any radicular complaints during the month of July 2018. Additionally, the chiropractor's assessments listed Petitioner as "fair" on July 25, 2018 but then listed his

condition as "good" during the next three office visits in July 2018. *Id.* No work restrictions were issued during this period. Additionally, the subjective complaints section included a column of boxes for the patient's "pain level." Each box included a pre-formatted "__/10" for each row of the listed anatomical regions and joints. None of the pain level boxes were completed during the month of July 2018.

There was a one-month gap with no treatment in August 2018. (PX1) Petitioner did not miss any time from work. Petitioner testified his right foot started hurting during the month of August. (T.45)

Petitioner resumed treatment in September and saw Dr. Campobasso on September 5, 2018, September 6, and September 10, 2018. He presented with the same low back and upper back pain as he had before the accident. (PX1 at 14, 15, 16) Again, there were no documented radicular or radiating lower extremity symptoms during the month of September 2018. No work restrictions were issued. None of the pain level boxes were completed during the month of September 2018.

On September 10, 2018, Petitioner presented to Dr. O'Connor, a podiatrist at Premier Podiatry, complaining of pain in the right heel. (PX3 at 4) The documented history indicated Petitioner had been feeling pain in the heel of his right foot for a period of "*6-8 months*" which placed the onset of the heel pain sometime between January 2018 and March 2018. (Emphasis added.) (PX4 at 5-6) Dr. O'Connor noted Petitioner had a past history for heel pain eight years prior which was successfully treated with a cortisone injection. Dr. O'Connor diagnosed plantar fasciitis and administered an injection. (PX3 at 6) Petitioner returned for follow-up on October 1, 2018 and received a second injection. (PX3 at 2-4) There were no documented complaints for radiating or radicular lower extremity pain during the podiatry visits. Petitioner agreed he did not report the work accident to the podiatrist. (T. 96-97)

On October 23, 2018, Petitioner returned to his chiropractor, at which time his only documented complaint was *thoracic* pain. (PX1 at 17) There was no reference to low back pain and no mention of any radiating pain in the lower extremities. Petitioner next saw the chiropractor on November 2, 2018, for lumbar and thoracic pain. (PX1 at 18) There were no documented radicular or radiating complaints and no work restrictions issued.

On November 5, 2018, Petitioner saw his primary care physician, Dr. Thomas, for an annual physical at Braidwood Healthcare Center. (PX2 at 16) He reported having right heel pain over the past "two months" which wrapped around to the top of the foot. Petitioner reported undergoing two injections from his podiatrist with temporary relief. Petitioner denied trauma. Petitioner did not report any low back complaints or radiating complaints and there was no mention of his work accident. Dr. Thomas noted elevated blood pressure and instructed Petitioner to monitor his blood pressure at home and return for follow-up.

On November 20, 2018, Petitioner presented to Dr. Talamayan at Physicians Immediate Care. (PX4 at 17) Petitioner complained of intermittent pain involving the "left hip to the knee" since being hit by a machine in July. Petitioner denied back pain. (PX4 at 18) As reflected in the more detailed history of present illness, Petitioner reported he fell at work in July when hit by a

machine and had left hip pain which resolved. Petitioner reported his left hip pain started up again "6-8 weeks ago." (PX4 at 17) Petitioner denied new injury and reported his pain was radiating to the knee. (PX4 at 17) He also complained of diarrhea, fever, and body aches. This visit to Physicians Immediate Care took place four months after the accident and represented the first treatment visit where a complaint of a radiating nature was documented. On examination, Dr. Talamayan noted normal active and passive range of motion for the left hip, normal strength, and normal sensation in the left lower extremity. (PX4 at 18-19) X-rays of the left hip were negative for fracture or dislocation. It was Dr. Talamayan's impression that Petitioner had sustained a work-related left hip strain which had resolved. Dr. Talamayan placed Petitioner at MMI and released Petitioner for full duty without restrictions. (PX4 at 19) Dr. Talamayan also advised Petitioner to follow up with his primary care physician for his "chronic/intermittent hip pain" and other medical problem. (PX4 at 19)

On December 3, 2018, Petitioner returned to his primary care physician for follow-up concerning his high blood pressure. At that visit, Petitioner reported his work accident and complained of intermittent low back pain and left hip pain since the accident. (PX2 at 13) Petitioner also complained of radiating pain to the knee with a "weak feeling." (PX2 at 13) Dr. Thomas ordered MRI studies for the hip and lumbar spine and indicated a referral for orthopedic evaluation would likely be made after the MRI reports were obtained.

An MRI of the lumbar spine performed on December 11, 2018, demonstrated chronic bilateral pars fracture at L5 with a minimal circumferential disc bulge. (PX2 at 19-20) The medical testimony later confirmed this was a pre-existing defect of long-standing duration. The MRI of the left hip showed findings suggestive of underlying cam-type deformity and femoroacetabular impingement syndrome and mild insertional tendinosis of the gluteus minimus tendon. (PX2 at 22-23) After those studies were obtained, Petitioner saw his chiropractor five times in December 2018. Dr. Campobasso documented radicular complaints on December 17, 2018. (PX1 at 19) This was the first time that Dr. Campobasso documented radicular complaints. Dr. Campobasso also documented radicular complaints during treatment visits on December 18 and December 26, 2018. (RX7 at 41, 43) Based on the records showing Dr. Campobasso documented radicular complaints in December 2018, we infer that the absence of such complaints in Dr. Campobasso's earlier records was not an inadvertent omission; but rather, Petitioner more likely did not report any radicular complaints to Dr. Campobasso between July 23, 2018 and November 2, 2018.

On January 13, 2019, Petitioner underwent an annual physical examination at Physicians Immediate Care to renew his Department of Transportation (DOT) certification. Despite the alleged worsening of his back pain and onset of radicular pain, Petitioner denied having any back related medical problems. (RX8 at 125-126)

On February 25, 2019, Petitioner presented to Advanced Foot and Ankle Center of Joliet for right heel pain. (PX13 at 2) Dr. Tiernan, a podiatrist, evaluated Petitioner and noted his past history for plantar fasciitis eight years ago which resolved following an injection. Petitioner reported similar heel pain "began in June again" and underwent two injections which failed to help. Based on his findings, Dr. Tiernan diagnosed tarsal tunnel syndrome with "PTTD" (posterior tibial tendon dysfunction). (PX13 at 4) Dr. Tiernan prescribed a medrol dospak with a pain patch

and strapping for the foot. He also casted Petitioner's foot for custom orthotics with instructions for Petitioner to return in two weeks.

On March 14, 2019, Petitioner presented to Dr. Santiago-Palma at Oak Orthopedics Spine and Pain Center. (PX5 at 8) Petitioner complained of low back pain, located on the "right (*into right foot)*." (Emphasis added.) (PX5 at 9) The doctor discussed the MRI results with Petitioner and recommended "right transforaminal epidural steroid injections at L5 and S1." This is the first documented complaint for radiating *right* lower extremity symptoms, which was eight months after the accident. There was no documented complaint of left sided symptoms at this visit.

On March 26, 2019, Petitioner presented for a physical therapy evaluation at ProMotion. (PX9 at 17) Petitioner reported being struck by backhoe at work. Petitioner reported he experienced immediate low back pain, located central and right of the spine, with radiating pain into the anterior aspect of the left thigh. Petitioner reported his left lower extremity pain had resolved. (PX9 at 17) Petitioner also reported feeling pain in the medial aspect of the right thigh and into the right heel. This history described bilateral lower extremity symptoms starting with the accident; however, there were no documented radiating left-sided complaints until four months after the accident when Petitioner presented to Physicians Immediate Care on November 20, 2018, and no right-sided lower extremity complaints until eight months after the accident when Petitioner presented to Dr. Santiago-Palma on March 14, 2019.

Dr. Santiago-Palma administered right-sided epidural steroid injections at L5 and S1 on May 20, 2019. (PX5 at 6) Petitioner returned for follow-up on June 13, 2019 and reported no improvement. (*Id*.) Dr. Santiago-Palma recommended an orthopedic surgical evaluation. (PX5 at 8)

On June 25, 2019, Petitioner presented to Dr. Coleman at Midwest Orthopedics at Rush. As reflected in his medical records, Petitioner presented for a new patient evaluation concerning right lower extremity pain. (PX6 at 44) There was no mention of left hip pain and no mention of left lower extremity pain. Petitioner denied having back pain. Petitioner reported he fell into a hole after being struck by a backhoe in June (*sic*) 2018. Petitioner further reported he began experiencing right leg pain; however, according to Dr. Coleman's documented history the right leg pain started in September 2018. (PX6 at 44) Dr. Coleman noted that "today, the patient is able to localize his daily pain to his right posterior lower leg with radiation into the right heel of his right foot." Dr. Coleman's examination was negative for objective neurological findings. Dr. Coleman noted Petitioner's lumbar spine had full range of motion and there was no tenderness to palpation of the midline or paraspinal musculature. Dr. Coleman reviewed the MRI and noted a pars defect at L5-S1 causing instability. (PX6 at 45) His diagnoses included spinal stenosis and radiculopathy. Dr. Coleman ordered a CT scan, which was read by the radiologist as showing bilateral spondylolysis at L5 without spondylolisthesis. (PX6 at 46) Dr. Coleman re-evaluated Petitioner on August 27, 2019, at which time Petitioner was described as having right posterior leg pain radiating to his right heel with new findings for decreased strength and decreased sensation. (PX6 at 36-38) Dr. Coleman reviewed the CT scan and again noted a pars defect at L5-S1. Dr. Coleman diagnosed grade 1 isthmic spondylolistheses and recommended a fusion at L5-S1. (PX6 at 38)

At Respondent's request, Dr. Ghanayem examined Petitioner for an IME and opined that Petitioner's spondylolisthesis was not caused by or aggravated by the accident. Respondent then denied authorization for the recommended surgery. A year later, Petitioner returned to Dr. Coleman, at which time Dr, Coleman noted Petitioner's condition had progressed with bilateral leg symptoms. (PX6 at 28-30) Petitioner elected to use his group health insurance and underwent the fusion with Dr. Coleman on October 1, 2020. Petitioner was off work and claimed TTD for a period of 13-4/7 weeks from October 1, 2020 through January 4, 2021. (AX1) Petitioner was released for full duty work by Dr. Coleman's physician assistant on December 22, 2020. (PX6 at 15) Petitioner later retired in September 2022. (T. 77)

Deposition Testimony of Dr. Coleman and Dr. Ghanayem

Dr. Coleman testified Petitioner first presented to him on June 25, 2019, complaining of back pain and right lower extremity pain radiating all the way down to the heel of his right foot, which Petitioner attributed to his work accident nine months before. (PX11 at 10-12) Dr. Coleman diagnosed radiculopathy secondary to spondylolisthesis at L5-S1 which he described as a form of instability. (PX11 at 13, 14-15) Dr. Coleman further testified that the type of instability Petitioner had was "isthmic spondylolisthesis" created by a pars defect. (PX11 at 13-14) Dr. Coleman described this condition as akin to a gap in the L5 bone, which can cause the L5 and S1 bones, like building blocks, to become unstable over time and start to slide around each other, and in turn cause disc degeneration and pinching of nerves. (PX11 at 14) The CT scan he ordered confirmed the pars defect and diagnosis. (PX11 at 16) Dr. Coleman explained that isthmic spondylolisthesis is a "developmental condition" not caused from trauma and which pre-dated Petitioner's accident. (PX11 at 17-18) He later testified that most pars defects initially form in teenage years and are asymptomatic throughout the course of one's life unless aggravated by trauma or repetitive activity. (PX11 at 57-58) It was Dr. Coleman's understanding that Petitioner's pre-existing condition was either asymptomatic or minimally symptomatic before the accident. (PX11 at 25) On the question of causation, Dr. Coleman opined that the need for the lumbar fusion was causally related to the accident because Petitioner's spine developed a progressing radiculopathy which was not present before the accident. (PX11 at 25)

On cross-examination, Dr. Coleman testified he had not seen any medical records from other treating providers. (PX11 at 37-38) Dr. Coleman testified he always asks every patient about the history of the patient's problem and when did it start. Dr. Coleman testified he would have likely documented prior medical history if Petitioner had reported it. (PX11 at 56) At trial, Petitioner agreed he did not disclose his 15 years of chiropractic treatment to Dr. Coleman. (T. 104) Regarding the development of radiculopathy in the setting of trauma, Dr. Coleman testified he would expect to see either immediate nerve pain or developing nerve pain within four to six weeks after an accident. (PX11 at 59-60) Asked in follow-up about a four-month or six-month gap, Dr. Coleman testified that would be a long time and indicated causation would be less likely at six months. (PX11 at 60-61) Later in the deposition, Dr. Coleman testified to the following:

> I think if there was -- if there was clear evidence in the medical record that stated that the patient, like, had no neurologic leg pain *for six months*, let's say, to use your example, then that would change my causal -- causation opinion. (Emphasis added.) (PX11 at 64)

Dr. Coleman then testified that a 3-month gap in time would fall in a gray area:

> Like I said before, I -- I would love to see the -- for something to be directly causally related, clearly I'd love to see the onset of symptoms in the four to six-week time frame. I think ***three months is a gray area***, and then six months is a bit too long, so I don't know. (Emphasis added.) (PX11 at 65)

Dr. Ghanayem also provided a timeframe for causation purposes. Dr. Ghanayem opined that the work accident of July 10, 2018, did not aggravate Petitioner's spondylolisthesis. (RX3 at 19) Dr. Ghanayem testified that if an accident were to aggravate a person's spondylolisthesis, he would expect symptoms to occur right away or the next day or develop slowly over the week. (RX3 at 20) Dr. Ghanayem agreed it would not take three or four months for an accident to cause radicular complaints. (RX3 at 20) Dr. Ghanayem later testified that the vast majority of patients who develop symptomatic spondylolisthesis do so without trauma. (RX3 at 55) Dr. Ghanayem opined that Petitioner sustained a low back muscular strain which would have reached MMI one month post-accident. (RX3 at 44)

Conclusions of Law

Decisions of the Commission must 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). Employees seeking benefits under the Act bear the burden to prove all elements of their claims by a preponderance of the evidence, including that a causal connection exists between the condition of ill-being and the work accident. *Tazewell County v. Illinois Workers' Compensation Comm'n*, 2025 IL App (4th) 230754WC, PP24-25. In cases involving a preexisting condition, an employee's recovery depends "on the employee's ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205-206, 797 N.E.2d 665 (2003). Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. vs. Industrial Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665 (2003). In *Tazewell County*, supra, the Court ruled that where a pre-existing asymptomatic condition becomes painful as a result of a work related activity, the symptomatic condition is compensable as an aggravation of a pre-existing condition even in the absence of any organic or structural change. *Tazewell County,* 2025 IL App (4th) 230754WC, PP27-31. Where a claimant's pre-existing condition was already symptomatic before a work accident, causation may still be found to exist if evidence is presented to establish that the work accident aggravated the condition or caused further deterioration. See *Schroeder vs. Illinois Workers' Compensation Comm'n*, 2017 IL App (4th) 160192WC. In *Schroede*r, the Court ruled that the salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been. *Schroede*r, 2017 IL App (4th) 160192WC at P26.

The Commission has on prior occasion found an aggravation of a pre-existing lumbar spine condition where the evidence showed a "new onset of radiculopathy" following a work accident. See e.g., *Arellano vs. Buckhead Meat & Seafood*, 25 IWCC 0016; 2025 Ill. Wrk. Comp. LEXIS

50 (issued January 14, 2025), where it was noted that that the "radicular complaints were *documented promptly*" and the claimant "was assessed with right sided sciatic radiation and radiculopathy *within 4 days of her injury*." (Emphasis added.) This Commission also found an aggravation where the claimant sustained a lifting injury and reported radiating leg pain *12 weeks* later, followed by an MRI confirming additional disc pathology compared with a pre-accident MRI and an EMG confirming radiculopathy. See *Egan vs. City, Water, Light and Power*, 15 IWCC 474; 2015 Ill. Wrk. Comp. LEXIS 475.

Conversely, the Commission previously determined a claimant failed to prove an aggravation of a pre-existing lumbar spine condition where the onset of radicular symptoms was first documented *four* months after the accident. See *Maroney vs. Joe's Towing & Recovery*, 19 IWCC 484; 2019 Ill. Wrk. Comp. LEXIS 801. In *Maroney*, the claimant fell on ice and sustained back and neck injuries. The claimant presented to the emergency room where he complained of pain involving his neck, back and hip with no radiating pain. A CT scan of the lumbar spine showed disc bulges at multiple levels. Four months later, the claimant experienced increased back pain while driving the tow truck over a "bouncy" road. The claimant returned to the emergency room where he complained of back pain with pain radiating down the left leg to the ankle. He further reported the radiating pain began with the fall on ice four months earlier. The claimant underwent surgery after an MRI showed an extruded disc at L5-S1 causing nerve root compression. The claimant testified at trial that his symptoms never went away during the intervening four month period. The employer's IME physician, Dr. Weiss, noted that the CT scan performed months earlier did not show any herniation and in his opinion the work accident caused only a lumbar strain which resolved. Dr. Weiss further opined that the disc herniation occurred when the claimant developed recurrent back pain four months after the accident, which coincided with the first documented onset of radiating leg pain and represented a natural progression of the pre-existing degenerative condition. The arbitrator found causation; however, on review the Commission reversed, finding the history taken at the second hospital visit and the claimant's testimony were not credible given the absence of radiating leg pain during the first hospital visit and the four month gap in treatment. The Commission further found Dr. Weiss's opinions more credible based on the earlier CT scan. The Appellate Court affirmed this decision in an unpublished Rule 23 order. *Maroney v. Illinois Workers' Comp. Comm'n*, 2021 IL App (3d) 200213WC. See also, *Carlton vs. Peoria Public Schools District #105,* 18 IWCC 227, 2018 Ill. Wrk. Comp. LEXIS 110, where it was noted that the employer's Section 12 physician, Dr. Zelby, testified that the onset of radicular symptoms associated with a herniated disc would typically begin within 24-48 hours, and no later than 6-8 weeks (two months) after the incident, and the treating physician, Dr. Kube, agreed that the medical literature supported a 4-6 week time period.

In the case at bar, Dr. Coleman and Dr. Ghanayem both agreed that the accident in question did not cause the pars defect and did not cause the resulting isthmic spondylolisthesis at L5-S1. It is clear that Petitioner had a long-standing history of chronic low back pain before the accident, and in the months leading up to the accident, he received chiropractic treatment for low back pain on March 21, 2018, March 26, 2018, April 2, 2018, April 19, 2018, and April 24, 2018. It is also clear that Dr. Campobasso had diagnosed a misalignment at L5-S1 and directed chiropractic treatment at that level prior to the accident. Dr. Ghanayem testified that the chiropractic treatment Petitioner received for back complaints over the 10-year period preceding the accident was consistent with a chronic symptomatic process for Petitioner's spondylolisthesis. (RX3 at 26)

After the work accident, Petitioner continued to have the same low back pain. Petitioner saw Dr. Campobasso on four occasions in July 2018, with the same documented complaints as he had before the accident. After a one month gap with no treatment in August 2018, Petitioner saw Dr. Campobasso for two treatment visits in September 2018 with the same documented complaints. During the next month in October 2018, there were no documented complaints for low back pain, as Petitioner complained of right heel pain on October 1, 2018, diagnosed as plantar fasciitis, and "thoracic" pain on October 23, 2018. The chiropractic records that followed the accident contained no documented complaints or findings to establish the pre-existing pain had increased in intensity or became more constant than before the accident. Additionally, Petitioner was able to work after the accident and his testimony that he mostly sat in his truck after the accident was self-serving. Mr. Johnathon Brock, a regional safety manager for Respondent, testified that Petitioner continued working full duty with no restrictions until he underwent surgery. (T. 135) Accordingly, Petitioner was required to prove that the subsequent development of radiculopathy was causally related to the accident and not the result of the normal degenerative process of his pre-existing condition. *Sisbro,* 207 Ill. 2d 193, 205-206.

Based on the medical opinion testimony, resolution of the disputed causation issue therefore turns on whether Petitioner has proven by the preponderance of the credible evidence that he developed radicular symptoms within a medically reasonable timeframe. Dr. Coleman and Dr. Ghanayem both provided timelines they deemed acceptable in order to causally connect the onset of lumbar radiculopathy with trauma. Dr. Coleman testified that radicular symptoms should ideally manifest within 4-6 weeks for causation, and while a one to two month delayed onset would not necessarily negate causation, he testified that three months would fall into a grey area and beyond that time period causation is unlikely. Dr. Ghanayem provided a more restrictive timeline, testifying that if an accident were to aggravate a person's spondylolisthesis, he would expect symptoms to occur right away or the next day or develop slowly over a week. (RX3 at 20) Dr. Ghanayem agreed that it would not take three or four months for an accident to cause radicular complaints. (RX3 at 20)

When Petitioner first described radiating pain per the medical records, he reported the radiating pain had started with the accident; however, he never offered any explanation why he waited so long to report his radiating pain. The Commission finds Petitioner's testimony and statements in the medical records regarding the onset of his radicular pain unreliable as the first documented complaint for radiating left lower extremity symptoms came four months after the accident and the first documented complaint for radiating right lower extremity symptoms came eight months after the accident. During the two-month period between the accident on July 10, 2018, and September 10, 2018, Petitioner saw Dr. Campobasso on seven occasions and thus had seven opportunities to report radiating lower extremity pain if indeed he was experiencing radiating symptoms. Petitioner also saw the chiropractor on October 23, 2018 and November 2, 2018, with no documented radicular complaints. Petitioner saw a podiatrist, Dr. O'Connor, on October 1, 2018, for pain in his right heel and offered no complaints regarding back pain or radiating lower extremity pain. Petitioner also presented for an annual checkup with his primary care physician on November 5, 2018, and did not report any radiating lower extremity pain.

On review, Petitioner asserts he reported "experiencing pain in his back and legs after being struck by a backhoe" during his first post-accident visit on July 23, 2018. (Petitioner's response

brief at 3, citing PX1 at 10.) Though the word "hoe" appears in the history, we note the box for radicular complaints was not checked and we are unable to discern any reference to radiating symptoms in the chiropractor's illegible handwritten comments. (PX1 at 10) Unfortunately, Dr. Campobasso was not deposed in this case and thus there is nothing in the transcript to verify what was reported. Compare, *Eagle Sheet Metal Co. v. Industrial Com.*, 81 Ill. 2d 31, 35, 405 N.E.2d 762 (1980), where the treating physician testified the claimant verbally informed him of the accident despite the omission of this information in his medical records.

Petitioner also points to the podiatry records which document pain in the heel of the right foot. Though Petitioner was diagnosed with plantar fasciitis, he contends the heel pain was actually a radicular symptom, which he mistakenly believed was unrelated to the accident due to his having been diagnosed with plantar fasciitis in the past. This argument is not, however, supported by the evidence. Initially, we note that the medical records are conflicting regarding the onset of the heel pain. On September 10, 2018, Dr. O'Connor recorded a 6-8 month history of heel pain which pre-dated the accident. (PX4 at 5-6) Further, assuming the heel pain started after the accident in August as testified to by Petitioner, the medical testimony was insufficient on this point. In describing the symptoms of radiculopathy, Dr. Coleman testified there is a "bunch of possible neurological symptoms" that could correlate with radiculopathy and patients will frequently complain of back pain radiating into the buttock and "go down into the hamstring, calf, heel, sole of the foot, top of the foot" and can also be accompanied by numbness and weakness. (PX11 at 63) Dr. Coleman did not, however, identify *isolated* heel and foot pain as a radicular symptom. During a discussion on cross-examination regarding the medical records referencing leg and foot symptoms, Dr. Coleman testified in pertinent part:

> I mean, the devil is in the details. Leg swelling is completely different than -- than radiculopathy type symptoms. So, yeah, I all -- all leg symptoms are not the same and foot symptoms are not leg symptoms and vice versa. (PX11 at 50)

Dr. Coleman testified he was unaware of the podiatry treatment that preceded his involvement. (PX11 at 68) He was never asked to review the specific complaints and findings contained in the podiatry records. Dr. Coleman never testified that Petitioner's heel pain as described in the podiatry records was a consistent or early sign for the radiculopathy he later diagnosed in October 2018. Likewise, Dr. Ghanayem's testimony did not support this contention. On direct examination, Dr. Ghanayem testified that numbness in the bottom of the foot during straight leg raising cannot be related to a spine problem. (RX3 at 17) He further added, "That is not what a positive straight leg raise is." *Id.* When the foot and heel symptoms were later brought up on cross-examination, Dr. Ghanayem testified as follows (RX3 at 39-40):

> Q. Earlier you testified that the petitioner reported experiencing numbness in his right foot and numbness in his right calf radiating to his knee. Isn't it true that the petitioner's subjective complaints are consistent with the MRI findings?
>
> A: They are not.

Q: Just for the record, experiencing numbness and pain in your foot that radiates to your knee, that would not be consistent with the MRI findings?

A: That is a correct statement, it would not be consistent.

Based on the foregoing, there is insufficient evidence for us to conclude that the heel pain diagnosed as plantar fasciitis was in actuality an early sign or symptom of radiculopathy.

The Commission further notes Petitioner failed to disclose his past medical history to his treating surgeon. Petitioner also denied having any back problems during his annual physical examinations, *before and after* the accident, while renewing his Department of Transportation (DOT) certification required for his employment. This evidence reflects negatively on Petitioner's credibility concerning the timeline relative to the onset of his radicular symptoms.

The mere existence of testimony does not require its acceptance. See *Moore v. Illinois Workers' Comp. Comm'n*, 2023 IL App (3d) 220524WC-U, P86, (citing collected cases). See also, *Smith vs. Industrial Comm'n*, 98 Ill. 2d 20, 24, 455 N.E.2d 86 (1983) ("The fact that respondent offered no conflicting medical testimony and that the claimant's testimony is not controverted does not mandate a finding in claimant's favor.") Internal inconsistencies in a claimant's testimony or conflicts between the claimant's testimony and medical records may be taken to indicate unreliability. *McCauslin vs. Ascend Wellness Holdings, LLC*, 25 IWCC 0177; 2025 Ill. Wrk. Comp. LEXIS 212. When comparing a claimant's testimony with the medical records, a key hallmark of reliability exits where the accident, event, or onset of symptoms is documented contemporaneously with or in near proximity to the matter in question. The documented histories (or lack thereof) contained in medical records created contemporaneously with or shortly after an alleged accident may be given more weight than subsequent medical histories and trial testimony. See *Ader vs. Ill. Workers' Comp. Comm'n*, 2021 IL App (1st) 200688WC-U, P47. See also *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 677, 928 N.E.2d 474 (2009) ("Significantly, claimant's medical records contemporaneous to June 4, 2004, and August 2, 2004, do not reference claimant reporting a work injury.")

The Commission finds that Petitioner failed to prove by a preponderance of the evidence that his radiating lower extremity symptoms began within a medically reasonable timeframe following the accident as set forth by Dr. Coleman. Accordingly, the Commission finds Petitioner failed to prove a sufficient temporal relationship between his accident and the subsequent development of radiculopathy, and therefore, Petitioner failed to prove the accident contributed to or aggravated his pre-existing degenerative condition. The Commission finds Petitioner sustained a low back muscular strain and left hip strain which reached MMI on November 20, 2018.

Issue J Were the medical services that were provided to Petitioner reasonable and necessary?

The Commission adopts the Conclusions in Issue (F) and incorporates those conclusions into this section regarding Petitioner's entitlement to medical expenses. Therefore, based on the Commission's findings regarding causation, the Commission finds that Petitioner's medical treatment for his lumbar spine after November 20, 2018 was not causally related to the subject work accident. We direct Respondent to pay Petitioner reasonable and necessary medical bills

related to treatment for the left hip and low back provided through and including November 20, 2018, as provided under Sections 8(a) and 8.2 of the Act.

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

The Commission adopts the Conclusions in Issue (F) and incorporates those conclusions regarding Petitioner's entitlement to TTD. Therefore, based on the Commission's findings regarding causation, the Commission finds that Petitioner's lumbar spine condition was not causally related to the subject work accident. The Commission concludes therefore, that Petitioner is not entitled to TTD for the period he was off work following the lumbar spine surgery. The Commission vacates the arbitration award for TTD benefits.

Issue L What is the nature and extent of the injury?

The Commission adopts the Conclusions in Issue (F) and incorporates those conclusions regarding Petitioner's entitlement to PPD benefits. The Commission must consider the five factors set forth in Section 8.1b(b) of the Act for guidance in determining the nature and extent of any permanent partial disability. The five factors are: (i) the reported level of impairment pursuant to subsection, if any; (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 factor shall be the sole determinate 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 are explained below. The enumerated factors were considered as follows:

With regard to subsection (i) of Section 8.1b(b), the Commission notes that no impairment report and/or an opinion was submitted into evidence. The Commission, therefore, gives no weight to this factor.

With regard to subsection (ii) of Section 8.1b(b), the occupation of the employee, the Commission notes that the Petitioner was employed as a heavy equipment operator and foreman for Respondent at the time of the injury. After returning to work in January 2021, Petitioner performed his regular job duties without restrictions until he retired in 2022. The Commission gives little weight to this factor.

With regard to subsection (iii) of Section 8.1b(b), the age of the employee at the time of injury, the Commission notes that the Petitioner was 50 years old at the time of the accident. The Commission gives some weight to this factor.

With regard to subsection (iv) of Section 8.1b(b), there is no evidence to suggest Petitioner's future earning capacity was impacted by the accident, and no evidence to suggest Petitioner retired earlier than planned due to the accident. The Commission therefore gives little weight to this factor.

With regard to subsection (v) of Section 8.1b(b), the evidence of disability corroborated by the treating medical records, the Commission notes that Petitioner suffered a compensable left hip

strain and low back strain on July 10, 2018, and was released to full duty with no restrictions. The Commission gives some weight to this factor.

The Commission notes that determination of permanent disability is not simply a calculation, but a valuation of all five factors as stated in the Act. Therefore, having considered the factors enumerated in Section 8.1b(b) of the Act, 820 ILCS 305/8.1b(b), the Commission finds that as result of the accidental injury sustained on July 10, 2018, the Petitioner has sustained a 5% loss of use of the person as a whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's award dated September 30, 2024, is reversed regarding causation, the award of temporary total disability benefits is vacated, and the award of medical benefits and permanent partial disability are modified, and is otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the reasonable and necessary medical expenses for treatment related to the left hip and low back incurred through and including November 20, 2018. Respondent is entitled to a credit for all awarded bills that it has paid or compromised through its group medical plan for which credit may be allowed under Section 8(j) of the Act through the date of hearing and shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of TTD benefits is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the sum of the applicable maximum PPD rate of $813.87 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 5% 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 $21,056.75. 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.

May 22, 2025

KAD/swj
O32525
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/s/*Kathryn A. Doerries*
Kathryn A. Doerries

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC001348
Case Name	Michael A Blottiaux v. NPO Northern Pipeline Construction
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Crystal Caison, Arbitrator

Petitioner Attorney	Jeffrey Alter
Respondent Attorney	Nicholas Rubino

DATE FILED: 9/30/2024

/s/Crystal Caison, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 24, 2024 4.27%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Michael Blottiaux
Employee/Petitioner

v.

Northen Pipeline Construction
Employer/Respondent

Case # **20** WC **001348**

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 **6/10/24**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **7/10/2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**148,854.00**; the average weekly wage was $**2,862.58**.

On the date of accident, Petitioner was **50** years of age, ***single*** with **0** dependent children.

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

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

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

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

The Arbitrator finds that conditions of ill-being suffered by Petitioner to his low back and left hip are causally related to the work accident of 7/10/18.

The Arbitrator orders the Respondent to pay reasonable and necessary and related medical charges for treatment **directly to Petitioner**, as provided in Sections 8(a) and 8.2 of the Act and more specifically identified as due to Grundy Radiologist in the amount of $1,370.00, Promotion Physical Therapy in the amount of $79,929.00, and Midwest Operating Engineers Welfare Fund in the amount of $80,201.97.

The Arbitrator specifically excludes any non-related treatment, including but not limited, to Petitioner's condition of plantar fasciitis.

Respondent is entitled to a credit for all awarded bills that it has paid or compromised through its group medical plan for which credit may be allowed under Section 8(j) of the Act through the date of hearing. (RX 4) Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit.

The Arbitrator finds that Respondent is liable for **13 4/7 weeks** of temporary total disability (TTD) benefits, from October 1, 2020, through January 4, 2021 as provided in Section 8(b) of the Act.

The Arbitrator finds that Petitioner has sustained a **21.5%** loss of the person as a whole as provided in §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

September 30, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Michael A. Blottiaux Petitioner, v. NPO Northern Pipeline Construction. Respondent.	)	Case No. 20WC001348

PROCEDURAL HISTORY

This matter proceeded to hearing on June 10, 2024 before Arbitrator Crystal L. Caison. The issues in dispute include causal connection, medical bills, temporary total disability benefits (TTD) benefits and nature and extent. (AX 1).

THE ARBITRATOR MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner testified he was employed by Respondent as a heavy equipment operator, foreman, on July 10, 2018. (T. 35). On July 10, 2018, he reported he was struck by an excavator bucket while giving direction to an operator. (T. 37-38). Petitioner testified he was struck in the front of his body, arms, belly, and the top of his legs, and he was knocked back about eight to ten feet. (T. 38). Petitioner stated he was spun around and fell into a ditch with his left leg going into the ditch up to his waist and with his right leg and arms on a steel road plate on top of the ground. (T. 38).

Petitioner testified on the date of the occurrence he began to feel pain in his lower body, legs, and hips. (T. 41-42). Petitioner went to work the next day. (T. 42). Petitioner testified he did not seek treatment for two weeks, when he went to a chiropractor, Joseph Campobasso on July 23, 2018. (T. 52). At the time of this first appointment, Petitioner reported radiating pain in his

hips and "lower." (T. 44). Petitioner went to the chiropractor in July, August, and September 2018. (T. 44-45). During this time, Petitioner testified he continued to work full-duty and without restrictions. (T. 46).

Petitioner testified he experienced low back pain, that would come and go, and right foot pain that radiated upwards toward his knee. (T. 64). Petitioner testified that Dr. Colman recommended a lumbar spine CT scan and was recommended to work full duty. (T. 65). Petitioner testified he was recommended for a lumbar fusion on August 27, 2019. (T. 66).

Petitioner testified he underwent the lumbar fusion with Dr. Colman on October 1, 2020. (T. 71). After surgery, Petitioner was taken off-work completely and recommended for physical therapy. (T. 72). Petitioner underwent physical therapy until his appointment on January 4, 2021. Petitioner was then released to return to work full-duty and without restrictions. Petitioner continued to undergo physical therapy until he was discharged on November 18, 2021. Petitioner worked full duty and without restrictions until he voluntarily retired in September 2022. (T. 77).

On cross examination, Petitioner testified he sought treatment for seventeen years and included treatments for her neck, thoracic spine, lumbar spine, shoulders, and ankle. (T. 83). Petitioner first sought treatment for his low back with Joseph Campobasso, a chiropractor, on January 15, 2003. (T. 82- 83). Petitioner underwent chiropractic sessions for low back pains. (T. 84. Petitioner testified at that time, he suffered from low back pain complaining of numbness, and radiating symptoms. (T. 85). Petitioner sought treatment through June 2007 for those complaints. (T. 85).

Petitioner testified that he took a DOT test from every year between 2010 and 2019. (T. 100). Petitioner testified he filled out a questionnaire regarding his health conditions. (T. 101). Petitioner testified he was asked on all of those questionnaires from 2010 to 2019 as to whether he had a spine problem, specifically neck or back. (T. 101-102). Between 2010 and 2017, Petitioner checked the box that he had no neck, back, or spine conditions. (T. 102). He underwent a physical examination at the DOT test, which also checked his neck, back, gain, reflexes, and joints. (T102). From 2010 to 2017, he passed all those examinations. (T. 102).

Petitioner testified he did not inform Dr. Colman of his fifteen years of chiropractic treatment to the L5-S1 level. (T. 104-105). Petitioner testified he did not inform Dr. Colman he was treating for his L5-S1 level two and half months before the work accident. (T. 105).

Medical Treatment

July 11, 2007- April 24, 2018, Petitioner first sought treatment for his lumbar spine. (RX7, p. 188). Petitioner presented to his chiropractor, Dr. Joseph Campobasso, at least for one course of treatment per year. (RX 7).

Around November 24, 2014, the chiropractic treatment was specifically to Petitioner's L5-S1 level. (RX 7, 77).

During Petitioner's treatments and visits in early 2018, Petitioner was specifically reporting low back and lumbosacral complaints, with the chiropractor ordering manipulations specifically to treat the L5-S1 level. (RX 7, 54-58). During his treatments in April 2018, Petitioner had complaints of pain and stiffness in the lumbar spine, and examination revealed spasm and range of motion pain. (RX 7, 54-56)

July 23, 2018 through December 28, 2018, the chiropractic treatment continues. The chiropractic records reflect that there are check boxes for the Petitioner's "type" of symptoms including those for radicular complaints. (RX 7) Between July 23, 2018 and November 12, 2018, there are no complaints of radicular complaints. (RX 7, 45-53)

November 20, 2018, Petitioner presented to Physicians Immediate Care. Petitioner reported body aches, left hip pain, thigh pain, and knee pain. (PX 4, 21) The records notes Petitioner reports he fell as (*sic*) work in July…symptoms have since resolved. However, pain noted on L hip again 6-8 weeks ago. Pain radiating to knee. No numbness or weakness." (RX 8, 101). Petitioner reported no history of spine, back, or neck conditions and also past his spine, back, and neck examinations. *Id*. Petitioner underwent an x-ray of his left hip and was advised to "follow up with primary care physician for chronic/intermittent hip pain as well as other medical problems." (PX 4, 23-24)

December 3, 2018, Petitioner returned to Dr. Thomas reporting the work accident of July 10, 2018. On examination, Dr. Thomas noted tenderness of the lumbar spine and limited range of motion in the left hip.(PX 2, 13-14). Dr. Thomas ordered MRIs of the lumbar spine and left hip, as well as an x-ray of the eye.(PX 2, 14, PX 7, 40,42) Dr. Thomas recommended physical therapy and referred Petitioner to an orthopedic physician.(PX 2, 14)

December 11, 2018, Petitioner underwent the recommended lumbar spine MRI and x-ray on at Morris Hospital (PX 7); which revealed chronic spondylolysis with bilateral pars facture at L5 and a disc bulge with moderate foraminal narrowing at L5-S1. (PX 7, 38) The

MRI revealed mild tendinosis of the gluteus minimus tendon and findings suggestive of femoroacetabular impingement syndrome. *Id*. at 36.

February 25, 2019, Petitioner presented to Breck Tiernan, DPM at Advanced Foot and Ankle Center due to continued radiating foot pain that began five months ago and had gradually worsened. Petitioner provided the podiatrist with a history of his previous diagnosis and treatment for plantar fasciitis. (PX 13) Petitioner underwent an x-ray of his right foot and was diagnosed with tarsal tunnel syndrome and posterior tibial tendon dysfunction. Dr. Tiernan recommended a custom orthotic and Medrol Dosepack which Petitioner testified did not provide any pain relief. *Id*.

March 14, 2019, Petitioner presented to Dr. Juan C. Santiago-Palma of Oak Orthopedics. (PX 5) Petitioner completed an intake form noting he was hit by equipment at work and was experiencing right foot pain but was unsure whether his foot symptoms were related to his work injury. *Id*. at 12-13. Petitioner reported experiencing low back pain radiating into his right foot following his work injury. Dr. Santiago-Palma reviewed the MRIs dated December 11, 2018, diagnosed Petitioner with lumbrosacral radiculopathy and degeneration of lumbosacral intervertebral disc and recommended an epidural steroid injection. (PX 5 10-11)

March 16, 2019, Petitioner was recommended for a lumbar epidural steroid injection (ESI) and continued physical therapy through May 9, 2019.

May 20, 2019, Petitioner underwent the lumbar ESI.

June 25, 2019, Petitioner first sought treatment with Dr. Colman at Midwest Orthopedics at Rush. Petitioner reported that he "was hit by a backhoe, causing him to twist and fall into a hole. He began experiencing right leg pain from this accident in 09/2018. Today, the patient is able to localize his daily pain to his right posterior lower leg with radiation into the heel of his right foot."(PX 6, 44.) Petitioner provided Dr. Colman a history of his treatment and advised Dr. Colman that his work activities have decreased. *Id*. Dr. Colman reviewed and interpreted the MRI of December 11, 2018, to show a pars defect causing instability at L5-S1; as a result he prescribed gabapentin and recommended a CT scan of the Petitioner's spine. *Id*. at 45.

August 27, 2019, Petitioner returned to Dr. Colman complaining of right posterior thigh and leg pain that radiated down into his right heel, which has been persistent since his work injury. *Id*. at 48 Dr. Colman examined Petitioner recording decreased strength to L4 and S1 on the right and decreased sensation to S1 on the right. On examination, Dr. Colman noted there was a 2-3mm

motion on flexion and extension of the lumbar spine, which was consistent with dynamic instability at that level. *Id*. at 38-39 Dr. Colman also reviewed the MRI, which revealed nerve irritation at L5-S1 and interpreted the CT scan to show a pars defect at L5-S1, rendering a diagnosis of spinal stenosis with grade 1 isthmic spondylolisthesis at L5-S1. *Id*. Given that conservative methods had been exhausted, Dr. Colman recommended an L5-S1 transforaminal lumbar interbody fusion. *Id*.

May 18, 2020, at the request of the Respondent, Petitioner was seen by Dr. Alexander Ghanayem. Dr. Ghanayem authored a report without reviewing any radiology tests, concluded that Petitioner had reached MMI one month after his work accident and recommended an EMG as he did not know the cause of Petitioner's symptoms. *Id*.

July 21, 2020, Petitioner returned to Dr. Colman reporting bilateral radiculopathy as well as significant leg and back pain. (PX 6, 30) Dr. Colman recommended an MRI of the spine and ordered an EMG pursuant to Dr. Ghanayem's recommendation. Dr. Colman recommended an L5-S1 transforaminal lumbar interbody fusion. *Id.* at 31.

October 1, 2020, Petitioner underwent the recommended fusion at Rush University Medical Center and remained off work through January 4, 2021. (PX 8, 39-41; PX 6, 217-221)

October 20, 2020, and November 11, 2020, Petitioner returned to Dr. Colman reporting that his back and right lower extremity complaints had largely resolved, and Dr. Colman recommended physical therapy. (PX 6, 16-23)

November 11, 2020, Petitioner returned to Dr. Colman reporting that his back and right lower extremity complaints had largely resolved, and Dr. Colman recommended physical therapy. (PX 6, 16-23)

March 22, 2021, Petitioner returned to Dr. Colman reporting achy low back pain that was irritated with work activities. Dr. Colman noted that Petitioner had been dealing with this problem for quite some time prior to surgery and his body was still recovering not only from the surgery itself but also from how he was carrying himself prior to surgery. Dr. Colman recommended physical therapy and a home exercise program.

June 20, 2021, Petitioner underwent an x-ray of his eye and MRIs of the lumbar spine and bilateral hips at Morris Hospital. (PX 7, 6-12)

June 22, 2021, Petitioner returned to Dr. Colman with concerns about possible hardware damage after taking an awkward step a month prior and experiencing low back pain radiating to

his hips and legs as well as groin pain. (PX 6, 6) Dr. Colman reviewed the lumbar MRI and reassured Petitioner that the hardware was in place. *Id.* at 7. Dr. Colman also reviewed the MRI of the right hip that showed a nondisplaced tear of the anterior superior labrum and femoroacetabular impingement syndrome; and the left hip showed femoroacetabular impingement syndrome. *Id.* at 6. Dr. Colman recommended additional physical therapy for Petitioner's back that he continued to undergo at Pro-Motion Physical Therapy through November 18, 2021. *Id.* at 7; PX 9

Johnathan Brock's Testimony

Johnathan Brock's testified on behalf of Respondent. (T. 129). Mr. Brock is the regional safety manager from Northern Pipeline Construction. (T. 129). He testified as part of his job, he was responsible for the information on injuries, illness, and problems with employees at the company, including knowledge of workers' compensation claims. (T. 130-131). He testified he was aware of Petitioner's workers' compensation claim. (T. 131). Mr. Brock testified regarding Respondent's Exhibit 5, which is an initial injury report for Respondent. (T. 132-133). The report confirmed Petitioner refused medical treatment on the date of the occurrence. (T. 133). It also asserts Petitioner injured his left lower hip. (T. 133). Mr. Brock also testified regarding Petitioner's work capabilities. (T. 134-135). Mr. Brock testified that if there were issues with an employee's ability to perform job duties, he would be given that information. (T. 135-136). He was never advised Petitioner was unable to perform his job duties. (T. 136).

Deposition of Dr. Coleman

Petitioner's treating physician, Dr. Matthew Colman, M.D., one of Petitioner's treating physicians testified by way of evidence deposition on October 24, 2023. (PX 11) Dr. Colman opined Petitioner provided him with a history of accident of being in a work accident in late 2018, where he was struck by a backhoe and caused him to twist and fall backward into a hole. *Id.* at 11.

Dr. Colman testified that at the time of Petitioner's first evaluation on June 25, 2019, Petitioner complained of back pain and right lower extremity pain with radiated down his left leg to the heel and to his right foot. *Id.* at 12. Dr. Colman completed x-rays which revealed spondylolisthesis at L5-S1, and reviewed an MRI, which showed the same. *Id.* at 13. Specifically,

Dr. Colman noted there was isthmic spondylolisthesis, which meant there was a gap in the L5 bone, which over time, can get unstable and slide around on each other. *Id.* at 14. Dr. Colman

opined Petitioner's condition was developmental, did not occur as the result of trauma, and "was clearly there before the accident." *Id.* at 18.

Dr. Colman testified "to his knowledge" Petitioner was not receiving any medical treatment for his condition prior to July 10, 2018. (PX 11, 18). Dr. Colman opined that Petitioner's work accident aggravated a previously asymptomatic condition. *Id.* at 18-19. Dr. Colman testified that he ordered and completed a transforaminal lumbar interbody fusion on October 1, 2020. (PX 11, 24; 28)

On cross examination, Dr. Colman testified he did not know the size of the backhoe, how far Petitioner fell backward, how deep the hole was, the type of ground he was on, how he landed as a result of the impact, or any mechanism regarding the type of fall sustained. (PX 11, 40-41) Dr. Colman further testified he did not even know which part of his body was struck by the backhoe. *Id.* at 41. Dr. Colman testified he had no prior treatment records or any knowledge of prior medical treatment with Petitioner's chiropractor, Dr. Campobasso. *Id.* at 42. Dr. Colman had no knowledge that Petitioner had sought chiropractic treatment to his lumbar spine dating back to 2007. *Id.* at 43. Dr. Colman was unaware that Petitioner was treating with a podiatrist for his right foot, nor was he aware of increased complaints of right foot plantar fasciitis after his work accident. *Id.* at 48. Dr. Colman was unaware of pre-existing left leg swelling complained of by Petitioner. *Id.* at 48-50. Dr. Colman was unaware Petitioner did not complain of radiating symptoms for the first month after his accident. *Id.* at 50-51.

Dr. Colman testified Petitioner's pre-existing pars defect could have been aggravated by repetitive trauma for the ten years prior to his work accident if there were neurological symptoms during that time. *Id.* at 58-59. Dr. Colman was asked about the onset timeframe for an aggravation of a pre-existing pars defect/isthmic spondylolisthesis. *Id.* at 59. Dr. Colman testified he would, "expect a patient who had a trauma which accelerated or aggravated a previously asymptomatic isthmic spondylolisthesis…to either have immediate nerve pain or two develop nerve pain within four to six weeks of the accident." *Id.* at 59-60. When asked about the development of nerve pain four to six months after a trauma, Dr. Colman asserted, "[t]hat's a pretty long period of time. I think that gets into, like, the longer-term chronic period of time, when we're talking about six months. I think that would be less likely that I would link something causally." (PX11, p. 60-61) He stated three months would be a grey area for causation. *Id.* at 65-66. Dr. Colman opined that

if Petitioner's complaints and onsets of symptoms were later on (as he had not reviewed records before his first visit, then that would change his causation opinion. *Id.* at 64.

Dr. Colman testified regarding Petitioner's unrelated foot and tibial condition. (PX11, p. 68). Petitioner's EMG revealed right tibial CMAP. *Id.* Dr. Colman was unaware Petitioner had a pre-existing diagnosis of right leg tibial tendinitis. *Id.* Dr. Colman testified that condition could have been contributing to what Petitioner believed were neurological complaints. *Id.* at 68-69. He opined "peripheral mononeuropathies and non-neurologic extremity pain and potentially confused with radiculopathy. *Id.*

Deposition of Dr. Ghanayem

Dr. Alexander Ghanayem, M.D., Respondent's Section 12 Medical Examiner, testified by way of evidence deposition on February 19, 2024. (RX 3) Dr. Ghanayem evaluated Petitioner on May 18, 2020. (RX 3, 13). Dr. Ghanayem testified Petitioner provided a history of accident where he was struck by an excavator with his bucket elevated causing him to fall to his left, with his left foot going into a hole three feet down and his right foot standing on the ground. *Id.* at 14-19.

Dr. Ghanayem opined Petitioner did not aggravate his spondylolisthesis from the work accident of July 10, 2018. (RX 3, 19) Dr. Ghanayem opined Petitioner did not have a presentation of a spine problem given his subjective complaints, how his back pain started six weeks before the IME versus the time of the accident, and the neurological issues/numbness did not fit a spine problem. *Id.* at 19.

Dr. Ghanayem opined for an aggravation of asymptomatic spondylolisthesis to be related to an accident, the onset would occur immediately, the next date, or within a week. (RX 3, 20). A delay from July to November, especially given the timing of the development of the numbness, does not fit an aggravation diagnosis/opinion. *Id.* Dr. Ghanayem opined that it would not take three to four months for radicular complaints to develop. *Id.* Dr. Ghanayem further opined Petitioner would have reached maximum medical improvement within one month of his accident date, as his later complaints were unrelated to the occurrence. *Id. at* 21.

Dr. Ghanayem testified regarding an addendum report completed upon review of Petitioner's MRI exam. (RX 3, 22) Dr. Ghanayem opined the MRI revealed minimum spondylolisthesis without significant neurologic compression at L5-S1. *Id.* The MRI review did

not change any of his previously provided opinions. *Id.* Petitioner did not necessitate the surgery performed by Dr. Colman as it related to his work accident. *Id. at* 23.

Dr. Ghanayem testified Petitioner having sought chiropractic care for a decade prior to the work accident was consistent with his condition being a degenerative process. (RX 3, 26) The condition Petitioner suffered from of degenerative spondylolisthesis becomes symptoms slowly over time and become chronic. *Id. at* 26-27. The work accident did not aggravate, accelerate, or exacerbate his condition. *Id. at* 27. Dr. Ghanayem opined Petitioner may have suffered some back muscle sprain but did not aggravate or injure his spondylolisthesis. *Id. at* 44. Dr. Ghanayem specifically detailed that the mechanism of injury reported by Petitioner, being pushed from the right side of his body, with his left foot going into a hole, is an "incorrect mechanism to aggravate spondylolisthesis being on the side of [the] body and being pushed laterally into a hole." *Id. at* 50. "[B]eing shifted laterally… it doesn't happen." *Id. at* 56). He added the "predictable [mechanism of injury] to aggravate spondylolisthesis is hyperextension," noting a situation where someone was struck in the back and then hyperextended their back would be the proper mechanism. *Id. at* 55-56.

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony,

as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).

The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable. Overall, Petitioner was a credible witness.

The Arbitrator finds Dr. Colman and Dr. Ghanayem credible but finds Dr. Colman more persuasive.

The Arbitrator finds Johnathan Brock credible.

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).

Additionally, it has long been held that "a chain of events which demonstrate 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* Comm'n, 93 Ill.2d 59, 63-64 (1982). Furthermore, "[w]hen the claimant's version of the accident is uncontradicted and his testimony is unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award." *Id.* at 64.

It is well established that 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 (1st Dist. 2000). Since Petitioner's condition changed immediately following the accident, an inference is created that his subsequent condition was the result of his work accident. Circumstantial evidence is sufficient to prove causal nexus between an accident and the resulting injury, such as a chain of events showing Petitioner's ability to perform manual duties before the accident and decreased ability to perform immediately after an accident. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill.2d 469 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 96-97 (1994); *International Harvester v. Indus. Comm'n*, 93 Ill.2d 59 (1982).

In this case, Petitioner's condition of ill-being with respect to his low back and left hip are causally related to the work accident of July 10, 2018, under the "chain of events" analysis based upon the evidence reflecting a new onset of symptoms to Petitioner's low back.

Ten years prior to this date of accident, Petitioner underwent an injection after being diagnosed with plantar fasciitis and did not necessitate any medical treatment to his right foot until the July 10, 2018, accident. Additionally, Petitioner testified that prior to this accident, Petitioner only received chiropractic manipulations for his minor "achy" low back pain which did not require orthopedic treatment, radiology diagnostics, or any additional medical treatment. Petitioner testified that he was able to perform all aspects of his job duties as a foreman with no difficulties prior to July 10, 2018, when Petitioner was struck in his upper torso by the steel bucket of an excavator and pushed 8 to 10 feet away into a 4-foot-deep ditch.

The Petitioner described twisting his body while the bucket was pushing him and ultimately falling backwards landing in a split position with his left foot inside the ditch and his right foot on top of the steel plate. Immediately after being lifted out of the ditch, Petitioner testified that he had experienced immediate pain from his arms down to his legs. Following the accident, Petitioner testified that there was a safety shut down, the incident was reported to Rick Marrero, a safety auditor, and then Petitioner continued to work the remainder of his shift.

Petitioner testified that he continued to experience worsening pain from his waist down and had difficulty working. Petitioner sought chiropractic treatment for his back and hip pain reporting the work injury to Dr. Campobasso on July 23, 2018. Petitioner testified that approximately four weeks after the work injury, he began experiencing radiating pain into his

right heel. Petitioner testified that he did not know that his right foot pain could be coming from his back, so he continued to undergo treatment for his foot condition with a podiatrist.

The Arbitrator notes that the records from Diamond Therapy confirm Petitioner's mechanism of injury. On July 23, 2018, Dr. Campobasso noted Petitioner reported being hit by a backhoe that swung him into a 4-foot hole. Petitioner continued to undergo treatment with Dr. Campobasso for his low back and left hip pain from July 2018 through December 2018.

On September 10, 2018, and October 1, 2018, Petitioner sought treatment with a podiatrist for his right heel pain and was diagnosed again with plantar fasciitis, undergoing two cortisone injections. Petitioner experienced no relief in symptoms following the injections. On November 5, 2018, Petitioner reported experiencing radiating right foot pain for two months and swelling in the left leg to his primary care doctor, Dr. Jennifer Thomas of Braidwood Healthcare Center. Throughout this time period, Petitioner continued to work for the Respondent, and testified that he experienced worsening pain from his waist down and continued to have difficulty performing all aspects of his work.

On November 20, 2018, Petitioner presented to Physician's Immediate Care and Petitioner testified that he reported low back pain and left hip pain radiating down to his left leg. The records also reflect Petitioner's testimony confirming that Petitioner complained of body aches after the accident. Petitioner underwent an x-ray of his left hip and was released with instructions to follow up " with PCP for chronic/ intermittent hip pain as well as other medical problem".

On December 3, 2018, Petitioner returned to Dr. Thomas. The records reflect "he was struck by a backhoe, struck him in upper torso, blocked his face with his hands, caused a twisting motion to the left as he fell backwards into a ditch, has had intermittent low back pain, and left hip pain since, pain is sharp and radiates to the knee. Dr. Thomas ordered an MRI of the left hip and lumbar spine and referred Petitioner to physical therapy and to an orthopedic doctor, Dr. Santiago-Palma. The left hip MRI revealed mild tendinosis of the gluteus minumus tendon and femoroacetabular impingement syndrome. The lumbar MRI, it revealed chronic spondylosis with bilateral pars fracture at L5-S1.

Petitioner sought treatment for his right foot at Advanced Foot & Ankle Center on February 25, 2019, wherein the records reflect that Petitioner reported radiating foot pain for five months. The medical records are consistent with Petitioner's testimony that he experienced radiating pain in his right foot four to six weeks after his work injury, specifically, in August of

2019. Petitioner was diagnosed with tarsal tunnel syndrome, received a custom orthotic and a Medrol Dosepack which provided no relief to Petitioner's pain.

On March 14, 2019, Petitioner was examined by Dr. Santiago-Palma and reported low back pain which radiated into the right foot after being struck by a backhoe at work. (PX 5, 12-13). Dr. Santiago-Palma diagnosed Petitioner with lumbosacral radiculopathy and recommended an L5-S1 epidural steroid injection, which Petitioner underwent on May 20, 2019. Petitioner testified and the records reflect that the injection provided minimal relief. Petitioner was referred to an orthopedic surgeon. Petitioner participated in physical therapy at Pro-Motion Physical therapy beginning on March 16, 2019.

On June 25, 2019, Petitioner sought treatment with Dr. Matthew Colman reporting right lower extremity pain. Dr. Colman testified that the symptoms Petitioner reported reflect radiculopathy, and not of pure plantar fasciitis or tibial tendon pathology, which was also consistent with the findings of Dr. Santiago-Palma. Dr. Colman reviewed the MRI dated December 11, 2018, and testified that it revealed a pars defect causing instability at L5-S1, which was also confirmed on the CT scan. Notably, Dr. Colman's physical examination of Petitioner was also consistent with the finding of dynamic instability at L5-S1.

Dr. Colman testified that the need for the lumbar fusion was casually related to the Petitioner's work injury of July 10, 2018. Dr. Colman testified that the need for the surgery was causally related to Petitioner's work injury because Petitioner had an onset of significant and progressive radiculopathy following the work accident which was not present prior to the accident and the symptoms correlated well with the imaging findings. Additionally, Dr. Colman testified that the mechanism of injury was a sufficient mechanism to aggravate a previously asymptomatic, or minimally symptomatic, isthmic spondylolisthesis. The Petitioner's credible testimony and the medical records reflect that Petitioner's surgery was successful in alleviating Petitioner's complaints of back pain and lower right extremity symptoms. Petitioner testified, and the records reflect that immediately following surgery, Petitioner's leg pain had resolved.

Based upon the record as a whole, the Arbitrator finds that the Petitioner has met his burden of proving by preponderance of the evidence that his current condition of ill-being relating to his low back and left hip condition are causally related to the work accident of July 10, 2018.

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

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

Having found the Petitioner's current condition of ill-being relating to his low back and left hip condition are causally related to the work accident of July 10, 2018, the Arbitrator finds the Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment. As such, the Arbitrator orders the Respondent to pay reasonable and necessary and related medical charges for treatment **directly to Petitioner**, as provided in Sections 8(a) and 8.2 of the Act and more specifically identified as due to Grundy Radiologist in the amount of $1,370.00, Promotion Physical Therapy in the amount of $79,929.00, and Midwest Operating Engineers Welfare Fund in the amount of $80,201.97. The Arbitrator specifically excludes any non-related treatment, including but not limited, to Petitioner's condition of plantar fasciitis.

Respondent is entitled to a credit for all awarded bills that it has paid or compromised through its group medical plan for which credit may be allowed under Section 8(j) of the Act through the date of hearing. (RX 4) Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit.

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

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

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n, 236 Ill.2d

132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. Archer Daniels Midland Co. v. Indus. Comm'n, 138 Ill.2d 107, 118 (1990).

Petitioner testified and the medical records reflect that he was temporarily totally disabled from October 1, 2020, through January 4, 2021. Dr. Colman testified that he recommended Petitioner remain off work following the L5-S1 transforaminal lumbar interbody fusion beginning October 1, 2020, through January 4, 2021.

Based upon the foregoing and the record as a whole, the Arbitrator finds that Respondent is liable for **13 4/7 weeks** of temporary total disability (TTD) benefits, from October 1, 2020, through January 4, 2021 as provided in Section 8(b) 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.

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 general foreman. His job duties included assigning tasks to other employees and perform work requiring him to lift up to 80 pounds and operating heavy machinery such as excavators and backhoes. The Petitioner voluntarily resigned his employment in September 2022. 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 50 years old. The Arbitrator gives this factor moderate weight.

With regard to subsection (iv) of § 8.1b(b), the Arbitrator notes that there was no evidence submitted with regards to Petitioner's future earning capacity. The Arbitrator gives this factor some weight.

With regard to subsection (v) of § 8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator finds that the Petitioner accident of July 10, 2018, resulted in left hip mild tendinosis of the gluteus minimums tendon and femoroacetabular impingement syndrome and directly aggravated and accelerated his preexisting pars defect and instability at L5-S1 necessitating a lumbar fusion. Petitioner's credible testimony and the medical records support that Petitioner sustained a work-related injury requiring extensive physical therapy, injections and ultimately a lumbar fusion. Petitioner testified that he continues to experience lower back pain and is very limited on the activities he can perform. Petitioner testified that this injury affected his daily life activities as he cannot wash dishes for more than 10-15 minutes without pain, lay on the ground to work on cars, or weed whip his yard for 30 minutes without experiencing hours of pain. The Arbitrator gives this factor significant weight.

Based upon the findings as to nature and extent, the Arbitrator finds that Petitioner has sustained a **21.5%** loss of the person as a whole as provided in §8(d)(2) of the Act.

It is so ordered:

Crystal L. Caison
Arbitrator Crystal L. Caison

September 30, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	07WC023948
Case Name	Kelley Thomas v. ADT/TYCO Fires & Security
Consolidated Cases	08WC008399 12WC013431
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0226
Number of Pages of Decision	14
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Neal Strom
Respondent Attorney	Rory McCann

DATE FILED: 5/23/2025

/s/Amylee Simonovich,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KELLEY THOMAS,

Petitioner,

vs. NO: 07 WC 23948

ADT/TYCO FIRE & SECURITY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the Petitioner and the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical, 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 6, 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 $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.

May 23, 2025
O041525
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	07WC023948
Case Name	Kelley Thomas v. ADT/TYCO Fires & Security
Consolidated Cases	08WC008399; 12WC013431;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Neal Strom
Respondent Attorney	Rory McCann

DATE FILED: 6/6/2024

/s/Elaine Llerena, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 4, 2024 5.155%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Kelley Thomas
Employee/Petitioner
v.
ADT/Tyco Fire & Security
Employer/Respondent

Case # **07** WC **023948**

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 **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 **April 20, 2007**, 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 $**48,171.24**; the average weekly wage was $**926.37**.

On the date of accident, Petitioner was **40** years of age, ***married*** with **2** dependent children.

Respondent shall be given a credit of $**13,586.76** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**13,586.76**.

Respondent is entitled to a credit as detailed in Respondent's Exhibit 2 under Section 8(j) of the Act.

ORDER

Petitioner is entitled to temporary total disability benefits from April 20, 2007, through September 21, 2007, and Respondent is entitled to a credit of $13,586.76 for temporary total disability benefits paid, per the stipulation of the parties.

Respondent shall pay outstanding reasonable and necessary medical services as detailed in PX29 for the April 20, 2007, work accident, as provided in Sections 8(a) and 8.2 of the Act.

See case 12WC013431 for award regarding 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.

Signature of Arbitrator

June 6, 2024

FINDINGS OF FACT

This matter was heard before Arbitrator Elaine Llerena on September 27, 2023. The issues in dispute were causal connection, medical bills, temporary total disability benefits and permanency. (AX1)

This case, 07WC023948, is consolidated with 08WC008399 and 12WC013431. This case addresses the work accident on April 20, 2007.

Testimony

Petitioner testified he started working for Respondent in October 1997 as an alarm installer technician. (T. 10) He performed commercial and residential work and was a member of Local IBEW 134. *Id.* Prior to working for Respondent he attended South Suburban College and Prairie State College and was certified in an electrical apprenticeship program. *Id.* He also worked for a roofer's union and as a Certified Nursing Assistant. (T. 10-14)

FIRST ACCIDENT: APRIL 20, 2007

Petitioner testified that he was in a motor vehicle accident on April 20, 2007. Petitioner testified that, upon impact, his body went back and forth. (T. 16) Petitioner noticed dizziness and pain in his neck, back, shoulder, legs and arms. He was taken by ambulance to St. James Hospital Emergency Department.

Petitioner testified he did not have pain or physical problems prior to the April 20, 2007, accident. He testified since April 20, 2007, he has had constant pain. (T. 24)

Petitioner testified he returned to work on or about September 22, 2007, to the same job he had done previously as a residential and commercial installer. He testified that, upon his return to work, he noticed he had an increase in pain to his neck, back and left arm with tingling into his hands.

SECOND ACCIDENT: OCTOBER 11, 2007

Petitioner testified he was involved in another motor vehicle accident on October 11, 2007. Petitioner noticed an increase of pain in his left hip, lower back, left leg, neck and arms, as well as dizziness and tingling in his hands.

This second accident caused him to be off work from October 12, 2007, to January 22, 2008. Petitioner returned to work, but not his prior job, on January 23, 2008. Petitioner testified that the pain was worse after his second accident. He testified he had trouble turning his head to one side or the other to see oncoming traffic. (T. 30)

THIRD ACCIDENT: FEBRUARY 14, 2012

On February 14, 2012, Petitioner was working in a crawl space while on his hands and knees. Petitioner twisted his body while crawling out of the crawl space and felt an increase in pain.

Respondent terminated Petitioner's employment on or about August 19, 2014. Petitioner filed a grievance with the union and a labor arbitration hearing was held some 18 months later. During the time between Petitioner's termination and the arbitration hearing on his grievance, Petitioner worked for Broadband Interactive, where he picked up modems and little parts that connect the internet. Petitioner testified he had to

resign because the job became too heavy, and the company wanted him to tag 50 to 60 doors per day. The tagging required Petitioner to get in and out of his vehicle, make stops, tag the door and try to retrieve equipment. He testified that he noticed an increase in pain when getting in and out of the car and loading and unloading the equipment. Petitioner also worked for Larson Express picking up medical specimens. He left this job because he had to walk with and lift a cooler filled with medical specimens. Petitioner stated he aggravated the pain in his neck as a result of this job. (T. 69) Petitioner testified he worked for a company called Need It Now, a small package delivery service. The small packages turned into bigger and bigger and heavier and heavier packages, so he left. (T. 71) Petitioner also worked for Door Dash. (T. 95) Petitioner testified that since 2015 he has worked for Lyft and Uber. Petitioner testified he works 20 to 30 hours per week for the ride share companies, but work is dependent on the demand and his ability to remain in his car. (T. 74) His pain increases in his neck, arm, shoulders, low back and hip the longer he remains in his car. (T. 75) Petitioner acknowledged helping clients with their luggage from time to time. (T. 97) Petitioner also conducted his own job search.

The labor arbitration decision found Petitioner should be reinstated to his position with Respondent with full seniority but no back pay. (PX22) Petitioner did not work for Respondent again despite his attempts to do so.(T. 56) Petitioner explained that he went to Respondent's human resources department and spoke to Nancy McGarrick and submitted his light duty restrictions. Petitioner also met with the regional human relations manager, John Roberts, and gave him his light duty restrictions. (T. 58)

Petitioner conducted a self-directed job search from November 19, 2014, through October 1, 2016. (PX27) He testified he did find work from time to time and tried to stay busy. (T. 66) At Petitioner's attorney's request, Petitioner participated in a vocational assessment with Vocamotive. *Id.*

Petitioner testified he has daily pain that limits him. He continues to have neck pain, shoulder pain, left bicep pain, and tingling in his thumb and index finger with numbness. He has low back pain with radiation to the groin and into his left leg. He has difficulty walking and notices the that his left side goes out on him. (T. 79)

Petitioner agreed that he has no walking or work hour restrictions. (T. 96) Petitioner also testified that he worked full duty until his termination on August 19, 2014. (T. 75-76)

Job Duties

Petitioner explained that his job as a residential installer involved the following: installing, testing, repairing and inspecting telecommunications equipment. Petitioner indicated that his job was considered a heavy type of job and involved climbing, balancing, stooping, bending, twisting, kneeling, squatting and reaching.

The International Brotherhood Electrical Workers Collective Bargaining Agreement shows the hourly rates Petitioner would have been making after 42 and 48 months on the job as a residential installer. (PX28) In 2020, Petitioner would have been making $33.39 an hour as of May 1st. As of November 1, 2020, he would have been earning $33.89 an hour. As of November 1, 2021, he would have been earning $34.57 an hour.

Summary of Medical Records

Petitioner's Exhibit 1 contains the records of Franciscan Health Olympia Fields Emergency Room. The history taken indicates that Petitioner was seat belted and stopped when rear-ended. Petitioner complained of left neck pain, back pain and stated he was forgetful. (PX1)

Petitioner followed up with Dr. Hassan Ibrahim, his primary care physician, on April 30, 2007. (PX2) Dr. Ibrahim ordered a cervical spine and brain MRI and referred Petitioner to Dr. Kevin Fagan, a neurologist. On May 19, 2007, Petitioner underwent the MRI of the cervical spine, the results of which revealed a tiny left paramedian disc protrusion at C5-C6 accompanying minor disc bulge and degenerative changes.

Petitioner saw Dr. Fagan on May 22, 2007. (PX3) Petitioner reported the accident and complained of continued pain, occasional numbness and tingling in both arms and legs, and headaches that radiate from the neck up to the occipital parietal area. Dr. Fagan reviewed the MRIs and found no serious pathology on either one. Dr. Fagan believed Petitioner had a post-concussion syndrome with headaches, vertigo and lightheadedness and cervical and lumbar strain, likely producing intermittent radicular symptoms into his arms and legs. Dr. Fagan ordered an EMG and recommended physical therapy to help his neck and low back. Dr. Fagan also recommended that Petitioner be given administrative duty only and no lifting more than 10-15 pounds. Petitioner underwent physical therapy from May 29, 2007, through July 24, 2007. (PX4) The discharge note from physical therapy noted that Petitioner was unable to progress.

Petitioner underwent the EMG on May 29, 2007, the results of which revealed electrical evidence consistent with a left lumbar radiculopathy with partial denervative changes seen in predominately left L5 innervated muscles. (PX3) On May 30, 2007, Petitioner underwent an MRI of the thoracic spine, the results of which were unremarkable. (RX6) On May 31, 2007, Petitioner underwent an MRI of the lumbar spine which showed mild lower lumbar facet change and slight disc bulge at L4-L5. (RX7)

Dr. Fagan reviewed the EMG on June 19, 2007, and diagnosed Petitioner as having post-concussion syndrome, continued physical therapy with an emphasis on work hardening and continued Petitioner's restrictions. On July 12, 2007, Dr. Fagan noted Petitioner's symptoms had worsened. Dr. Fagan found Petitioner had anxiety, ordered additional MRIs and suggested a second neurologic opinion.

On July 25, 2007, Petitioner underwent a Section 12 examination (IME) with Dr. Karen Levin at Respondent's request. (RX8) Petitioner described the accident and complained of weakness in his arms and legs, more left than right. Dr. Levin examined Petitioner and reviewed Petitioner's medical records. Dr. Levin found Petitioner's symptomatology was unusual for the type of injury sustained. Dr. Levin found that Petitioner's complaints were most consistent with peripheral neuropathy, however, Dr. Levin noted that EMG results were negative for neuropathy. Dr. Levin opined that Petitioner's symptoms were not related to the April 20, 2007, accident and that, from a neurological standpoint, Petitioner had reached maximum medical improvement (MMI).

Petitioner saw Dr. Charles Wang on August 1, 2007. (PX5) Petitioner complained of headaches, dizziness, lightheadedness, neck pain, left shoulder pain, numbness and tingling in his limbs and groin, low back pain, and left leg pain. Dr. Wang found Petitioner to have a history of motor vehicle accident on April 20, 2007, with improving post-concussion syndrome and worsening of his neck, left shoulder and back pain, numbness and tingling in his hands and feet, and genital and anal numbness and tingling. Dr. Wang ordered additional MRIs, another course of physical therapy, and kept Petitioner off work.

On September 7, 2007, Petitioner underwent the additional MRIs. The cervical spine MRI revealed a small left paramedian disc herniation at C5-6, questionable tiny left-sided disc herniation at C6-7. The lumbar spine MRI showed slight disc bulging at L4-5.

On September 19, 2007, Dr. Wang reviewed the MRIs and noted that the IME had released Petitioner to return to work. Petitioner reported that he returned to work and, as a result, had significantly increased neck pain, left arm pain, extensive forearm pain and tingling into his hands, as well increased lumbosacral buttock

numbness and groin numbness. Dr. Wang took Petitioner off work and recommended C6-C7 selective transforaminal steroid injections.

Petitioner returned to Dr. Wang on October 23, 2007. Petitioner reported the October 11, 2007, accident, the development of left biceps pain and complained of tingling in his hands, left lumbar pain, and buttock pain that radiated into his left knee and left big toe. Dr. Wang ordered cervical and lumbosacral MRIs. Petitioner underwent the MRIs on October 24, 2007. The pelvic MRI showed a cyst at the posterior aspect of the right femoral head and minimal bilateral greater trochanter bursitis. The brain MRI showed minor chronic left mastoid inflammatory changes. On November 1, 2007, Petitioner underwent a right C6 transforaminal epidural steroid injection administered by Dr. Christine Villoch. On November 26, 2007, Petitioner returned to Dr. Wang and reported only temporary relief from the injection. On January 14, 2008, Dr. Wang recommended another steroid injection and referred Petitioner for a neurosurgical consultation. Dr. Wang found there was a causal connection between the Petitioner's April 20, 2007, accidental injury and the October 11, 2007, accidental injury, as the accidents exacerbated his pre-existing degenerative spine disease.

On February 13, 2008, Petitioner saw Dr. Kenneth Heiferman. Dr. Heiferman determined that Petitioner was not a surgical candidate and recommended an EMG. On March 13, 2008, Petitioner reported that he was working full duty and that the medications had significantly helped his symptoms, but that he was not back to normal. On April 23, 2008, Dr. Wang recommended a cervical MRI and EMG of the left upper extremity. On July 28, 2008, Petitioner underwent an EMG, the results of which found mild left lower cervical radiculopathy. (PX6) On November 24 ,2008, Petitioner reported that he continued to work but still had pain in his left neck and shoulder with numbness. (PX5) On February 16, 2009, Petitioner received the left C6 transforaminal epidural steroid injection from Dr. Villoch. On February 23, 2008, Petitioner reported to Dr. Wang that the effects of the injection had not yet taken effect. Petitioner complained of some dizziness lately, especially when he moved his head from side to side or up and down.

On May 18, 2009, Petitioner reported that he had some improvement in his pain and numbness following the injection. Petitioner complained of a new, shocking feeling in his left elbow when touched by an object that worsened when driving. Dr. Wang ordered an EMG/NCV of the left upper extremity to rule out ulnar neuropathy and radiculopathy. On June 1, 2009, Petitioner underwent the EMG/NCV study which found nothing remarkable. On August 17, 2009, Petitioner complained of new significant stiffness in his neck that prevented him from driving and limited his ability to turn his head. Petitioner also complained of right shoulder area pain. Dr. Wang recommended physical therapy and medication changes.

Dr. Wang's evidence deposition was taken on December 2, 2009. (PX12) His testimony was consistent with his findings and opinions in the medical records. Dr. Gleason's evidence deposition was taken on April 13, 2010. (RX14) His testimony was consistent with his findings and opinions in the medical records.

On April 20, 2010, Petitioner reported two recent visits to the emergency room due to neck and left arm pain. (PX8) Dr. Wang recommended another C6 injection by Dr. Villoch and referred Petitioner for a neurosurgical consultation. Petitioner saw Dr. Edward Mkrdichian on May 17, 2010. Dr. Mkrdichian opined that Petitioner was suffering from at least a left C6, possible C7 radiculopathy. Dr. Mkrdichian stated the MRI showed a C5-C6 herniation. He recommended another MRI and discussed plans for C5-C6 anterior cervical discectomy fusion. On August 19, 2010, Dr. Mkrdichian recommended conservative care or surgery with no guarantee of success.

Petitioner continued to follow up with Dr. Wang, who recommended another steroid injection. On July 18, 2011, Petitioner saw Dr. Villoch who recommended that Petitioner attempt physical therapy again and consider another C7 transforaminal epidural steroid injection.

On February 23, 2012, Petitioner underwent an MRI of the lumbar spine, which showed mild degenerative bulging disc at L4-5, accompanying facet and ligament hypertrophy with mild central canal and inferomedial foraminal narrowing with slight progression as compared to the May 2007 MRI. (RX11) On February 28, 2012, Petitioner underwent the cervical spine MRI, which showed degenerative bulging disc at C5-6, accompanying a small left paracentral protrusion with mild cord encroachment and central canal narrowing more prominent than in May 2007, and right uncinate spur with foraminal narrowing. (RX12) On March 5, 2012, Dr. Wang reviewed the MRI and sent Petitioner back to Dr. Villoch for pain management. (PX8) On April 6, 2012, Dr. Adeel Zzahmad administered a left L4 transforaminal epidural steroid injection. On June 25, 2012, Dr. Villoch administered a left C6 transforaminal epidural steroid injection.

On July 24, 2012, Petitioner underwent an IME with Dr. Thomas Gleason at Respondent's request. (RX13) Dr. Gleason examined Petitioner and reviewed Petitioner's medical records related to the April 20, 2007, and February 14, 2012, accidents. Dr. Gleason diagnosed Petitioner with left cervical radicular syndrome, left lumbar radicular syndrome, and numbness of the left second and third digits with positive Tinel's sign suggesting carpal tunnel syndrome, and possible cubital tunnel syndrome. Dr. Gleason found that Petitioner was capable of at least light to medium full-time work without any restrictions. Dr. Gleason opined that Petitioner's current condition of ill-being was not causally related to the work event on February 14, 2012. Further, Dr. Gleason found that Petitioner had reached MMI as it related to any work injury sustained on February 14, 2012.

On December 3, 2012, Dr. Wang noted that Petitioner complained of an increase in leg pain, burning and pain in his left knee, calf and medial foot. Dr. Wang recommended physical therapy and that Petitioner continue to see Dr. Villoch. Dr. Wang provided the following work restrictions: no lifting more than 15 pounds, no bending, crawling, twisting, lifting overhead and no climbing ladders or working in crawl spaces or attics.

Dr. Gleason's evidence deposition was taken on February 12, 2013. (RX15) His testimony was consistent with the findings and opinions in his IME report.

On May 28, 2013, Petitioner saw Dr. Villoch and reported that he had been on light duty work for the last 9 months and was doing worse. Petitioner complained of daily pain that was exacerbated about twice a month. (PX8) Petitioner complained of pain is in his neck with radiation to the left upper extremity with numbness and tingling into the first through third digits intermittently and increased back pain with radiation into both legs. Dr. Villoch recommended that Petitioner consider a chronic pain program. On June 4, 2013, Petitioner returned to Dr. Wang complaining of difficulty sleeping, constant neck pain, left arm and forearm pain, and a shocking sensation in his left leg. Petitioner reported that physical therapy had helped his overall pain. Dr. Wang continued physical therapy. On September 19, 2013, Dr Wang modified Petitioner's work restrictions to return to regular duty with no ladders, crawl spaces or attics effective September 24, 2013. On November 21, 2013, Petitioner saw Dr. Daniel Hurley. Petitioner reported difficulty sleeping and recent emergency room visit for a pain flare up. On December 17, 2013, Dr. Wang modified Petitioner's work restrictions to carrying no more than 15 pounds, try limited ladder climbing (no more than 2-3 steps), limited climbing, no crawl spaces or attics, no bending, and no more than one flight of stairs at a time. On April 15, 2015, Dr. Wang again modified Petitioner's work restrictions to limited climbing to no more than 2-3 steps at work, no crawl space, no heavy lifting and no bending over.

On November 4, 2015, Petitioner saw Dr. Matthew Co. Dr. Co ordered new MRIs of the cervical and lumbar spine and an x-ray of the left hip to decide whether additional steroid injections would be beneficial. On August 22, 2016, Petitioner reported that he was working part time for Uber and no longer for Respondent. Petitioner stated he was in a lot of pain and had more bad days than good. On September 26, 2018, Dr. Co noted

that the workers' compensation carrier did not approve the physical therapy or the imaging that was recommended.

On January 20, 2020, Petitioner underwent an IME with Dr. Alexander Ghanayem at Respondent's request. (RX17) Dr. Ghanayem issued his report on July 23, 2020. Petitioner recounted the April 20, 2007, October 11, 2007, and February 14, 2012, work accidents. Dr. Ghanayem examined Petitioner and reviewed Petitioner's medical records. Dr. Ghanayem found that the two auto accidents resulted in cervical sprains that required no more than 6-8 weeks of physical therapy for each, and that the cervical injections Petitioner received were unnecessary. As for the February 2012 accident, Dr. Ghanayem found that Petitioner could have suffered no more than a back sprain. Dr. Ghanayem opined that, as for the two accidents in 2007, Petitioner would have reached MMI no later than early 2008. Following the February 2012 accident, Dr. Ghanayem found that Petitioner would have reached MMI no later than June of 2012 and that Petitioner could return to work full duty without any restrictions.

On February 28, 2020, Petitioner reported new pain and soreness/weakness in his biceps. Dr. Wang recommended physical therapy. On March 26, 2020, Petitioner had a telehealth visit with Dr. Co. Petitioner reported pain is primarily in the lower neck with radicular pain to the left arm and to the biceps (some to the right) as well as low back pain with pain to the left groin and left leg. On December 21, 2020, Petitioner underwent MRIs of the cervical spine and brain. The brain MRI showed no abnormalities. The cervical spine MRI, as comparted to the MRI from August 2010, showed degenerative changes which had progressed, mild to moderate spinal stenosis at C5-C6 and C6-C7 and severe right foraminal stenosis at C5-C6, with lesser degrees of foraminal narrowing elsewhere. On January 12, 2021, Petitioner underwent a lumbar spine MRI which showed multilevel degenerative changes of the lumbar spine, mild spinal canal stenosis at the L4 and L4-L5, multilevel neural foraminal narrowing, and severe bilateral neural foraminal stenosis at L4-L5. (PX7)

Dr. Ghanayem's evidence deposition was taken on June 16, 2021. (RX18) His testimony was consistent with his findings and opinions in his IME report.

On June 23, 2021, Dr. Wang recommended that Petitioner see Dr. Dean Karahalios for a neurosurgical consultation. (PX8) On October 7, 2021, Petitioner underwent an EMG/NCV study that found mild cervical radiculopathy effecting the C6 nerve root, mild lumbar radiculopathy in the left lower extremity effecting the L3 or less likely the L2 nerve root. On December 15, 2021, Petitioner saw Dr. Karahalios. (PX19) Petitioner complained of worsening neck pain radiating into the back of his head with spasms and intermittent pain radiating into his bilateral upper extremities into the biceps, left greater than right, with parethesias in his index finger and thumb bilaterally. In the lumbar spine, Petitioner reported worsening low back pain radiating into his bilateral groin region, left greater than right, as well as laterally and anteriorly into the dorsum of his feet with numbness, tingling, and subjective weakness. Dr. Karahalios reviewed all the diagnostic tests and found Petitioner to be symptomatic related to the degenerative changes seen in his lumbar spine and recommended a left transforaminal epidural steroid injection at the L4-L5 level. With respect to the Petitioner's degenerative cervical condition, Dr. Karahalios found that it was likely responsible for his radicular symptoms and neck pain. Dr. Karahalios recommended a 3-level anterior cervical discectomy and fusion at C4-5, C5-6, and C6-7.

On January 21, 2022, Dr. Wang issued a narrative report in which he opined that there was a causal connection between Petitioner's accidental injuries and his condition of ill-being. (PX8) Dr. Wang further opined Petitioner had the same restrictions previously stated in his earlier notes, which are also causally connected to Petitioner's accidental injuries. On March 15, 2022, Dr. Anastasia Kopetelova administered a left lumbar/sacral transforaminal epidural steroid injection at L4-5. (PX11) On April 6, 2022, Petitioner had a telehealth visit with Dr. Wang and reported new bilateral arm and shoulder pain in addition to the neck pain and

stiffness. (PX8) Petitioner reported that he did have the neurosurgical consultation with Dr. Karahalios but was undecided whether he would proceed with his recommendations.

On June 6, 2022, Petitioner underwent another IME with Dr. Ghanayem at Respondent's request. (RX19) Petitioner complained of continued neck pain with radiation into the back of his shoulders and into his arms, occasional numbness in the thumb and index finger of both hands, left more than right, and low back pain with bilateral groin pain. Dr. Ghanayem examined Petitioner and reviewed Petitioner's medical records. Dr. Ghanayem found that Petitioner had disc degeneration at L4-L5 and L5-S1 on the lumbar study, and multilevel spondylosis without spinal cord compression or cord signal changes in the cervical study. Dr. Ghanayem opined that the new MRI findings were the result of natural aging and not related to the three previous work accidents. Dr. Ghanayem explained that his opinion from 2020 was unchanged by anything gleaned from this examination and that Petitioner had reached MMI and could return to full work duty without any restrictions.

On June 30, 2023, Dr. Wang's second evidence deposition was taken. (PX13) His testimony was consistent with his findings and opinions in the medical records.

Vocational Assessment

Petitioner underwent a vocational assessment conducted by Joseph Belmonte, a certified rehabilitation counselor, on March 27, 2019, at the request of Petitioner's attorney. (PX17) Mr. Belmonte reviewed Petitioner's history, training/education and medical records. Mr. Belmonte concluded that Petitioner did not have any transferable skills and that his courier service jobs did not constitute stable employment. He opined that Petitioner had lost access to usual and customary line of occupations. Mr. Belmonte determined that Petitioner was employable as a retail clerk, small parts assembler, office clerk, administrative clerk and customer service representative and that his probable wage-earning potential in these occupations was between $10.00-$14.00 an hour. Mr. Belmonte opined that Petitioner was a viable candidate for vocational rehabilitation.

On January 18, 2022, Mr. Belmonte's evidence deposition was taken. (PX24) His testimony was consistent with his findings and opinions in his vocational assessment 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 (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that Respondent stipulated that Petitioner sustained an accident that arose out of and in the course of his employment on April 20, 2007. Petitioner was dizzy and felt pain in his neck, back, shoulder, legs and arms following the accident. The May 19, 2007, MRI of the cervical spine revealed a tiny left paramedian disc protrusion at C5-C6 accompanying minor disc bulge and degenerative changes. The May 29, 2007, EMG revealed electrical evidence consistent with left lumbar radiculopathy with partial denervative changes seen in predominately left L5 innervated muscles. The May 30, 2007, MRI of the thoracic spine was normal, but the May 31, 2007, MRI of the lumbar spine showed mild lower lumbar facet change and slight disc bulge at L4-L5. On August 1, 2007, Dr. Wang noted that Petitioner complained of headaches, dizziness, lightheadedness, neck pain, left shoulder pain, numbness and tingling in his limbs and groin, low back pain, and left leg pain, and that Petitioner had a history of motor vehicle accident on April 20, 2007, with improving post-concussion syndrome and worsening of his neck, left shoulder and back pain, numbness and tingling in his

hands and feet, and genital and anal numbness and tingling. Petitioner underwent additional cervical and lumbar MRIs, the results of which showed a small left paramedian disc herniation at C5-6, questionable tiny left-sided disc herniation at C6-7 and slight disc bulging at L4-5. On September 19, 2007, Petitioner complained of significantly increased neck pain, left arm pain, extensive forearm pain and tingling into his hands, as well increased lumbosacral buttock numbness and groin numbness following his return to work. Dr. Wang ordered C6-C7 selective transforaminal steroid injections. Petitioner then sustained a second work accident on October 11, 2007.

The Arbitrator notes that Dr. Levin found Petitioner's symptomatology was unusual for the type of injury sustained and opined that Petitioner's symptoms were not related to the April 20, 2007, accident and that, from a neurological standpoint, Petitioner had reached MMI. However, the Arbitrator notes that Petitioner continued to complain of ongoing pain in and problems with his neck, left arm, lumbar spine and groin. These were all symptoms and issues Petitioner did not have prior to the April 20, 2007, work accident. Further, Dr. Wang had ordered additional treatment. As such, the Arbitrator finds that Dr. Levin's findings and opinions are not supported by the medical records and diagnostic evidence. Therefore, the Arbitrator finds the findings and opinions of Petitioner's treaters more persuasive than those of Dr. Levin.

Based on the above, the Arbitrator finds that Petitioner's conditions of ill-being are causally related to the April 20, 2007, work accident.

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

The Arbitrator notes her finding above that Petitioner's conditions of ill-being are causally related to the April 20, 2007, work accident. The Arbitrator further notes that Petitioner continued to have pain and problems following the April 20, 2007, work accident and that Petitioner continued to undergo treatment as a result of this accident.

Based on the above, Respondent shall pay outstanding medical expenses incurred during treatment for the April 20, 2007, work accident as outlined in PX29. Respondent is entitled to a credit as detailed in RX2 under Section 8(j) 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 that at trial the parties placed temporary total disability benefits as an issue in dispute; however, the parties stipulated on the Request for Hearing form that Petitioner is entitled to temporary total disability benefits from April 20, 2007, through September 21, 2007. (AX1) The parties further stipulated that Respondent is entitled to a credit of $13,586.76 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:

The Arbitrator notes that the body parts that Petitioner sustained injuries to in this case are the same as those in case 08WC008399 and 12WC013431. Therefore, the Arbitrator refers to her award of permanency in case 12WC013431.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	08WC008399
Case Name	Kelley V, Thomas v. ADT/TYCO Fire & Security
Consolidated Cases	07WC023948 12WC013431
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0227
Number of Pages of Decision	14
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Neal Strom
Respondent Attorney	Rory McCann

DATE FILED: 5/23/2025

/s/Amylee Simonovich,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KELLEY THOMAS,

Petitioner,

vs. NO: 08 WC 08399

ADT/TYCO FIRE & SECURITY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the Petitioner and the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical, 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 6, 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 $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.

May 23, 2025
O041525
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	08WC008399
Case Name	Kelly Thomas v. ADT
Consolidated Cases	07WC023948; 12WC013431;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Neal Strom
Respondent Attorney	Rory McCann

DATE FILED: 6/6/2024

/s/Elaine Llerena, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 4, 2024 5.155%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Kelley Thomas
Employee/Petitioner
v.
ADT/Tyco Fire & Security
Employer/Respondent

Case # **08** WC **008399**

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 **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 **October 11, 2007**, 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 $**48,171.24**; the average weekly wage was $**926.37**.

On the date of accident, Petitioner was **40** years of age, ***married*** with **2** dependent children.

Respondent shall be given a credit of $**9,263.55** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**9,263.55**.

Respondent is entitled to a credit as detailed in Respondent's Exhibit 3 under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $617.58 per week for 15 weeks, commencing October 12, 2007, through January 22, 2008, as provided in Section 8(b) of the Act.

Respondent shall pay outstanding reasonable and necessary medical services as detailed in PX29 for the October 11, 2007, work accident, as provided in Sections 8(a) and 8.2 of the Act.

See case 12WC013431 for award regarding 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.

Signature of Arbitrator

June 6, 2024

FINDINGS OF FACT

This matter was heard before Arbitrator Elaine Llerena on September 27, 2023. The issues in dispute were causal connection, medical bills, temporary total disability benefits and permanency. (AX2)

This case, 08WC008399, is consolidated with 07WC023948 and 12WC013431. This case addresses the work accident on October 11, 2007.

Testimony

Petitioner testified he started working for Respondent in October 1997 as an alarm installer technician. (T. 10) He performed commercial and residential work and was a member of Local IBEW 134. *Id.* Prior to working for Respondent he attended South Suburban College and Prairie State College and was certified in an electrical apprenticeship program. *Id.* He also worked for a roofer's union and as a Certified Nursing Assistant. (T. 10-14)

FIRST ACCIDENT: APRIL 20, 2007

Petitioner testified that he was in a motor vehicle accident on April 20, 2007. Petitioner testified that, upon impact, his body went back and forth. (T. 16) Petitioner noticed dizziness and pain in his neck, back, shoulder, legs and arms. He was taken by ambulance to St. James Hospital Emergency Department.

Petitioner testified he did not have pain or physical problems prior to the April 20, 2007, accident. He testified since April 20, 2007, he has had constant pain. (T. 24)

Petitioner testified he returned to work on or about September 22, 2007, to the same job he had done previously as a residential and commercial installer. He testified that, upon his return to work, he noticed he had an increase in pain to his neck, back and left arm with tingling into his hands.

SECOND ACCIDENT: OCTOBER 11, 2007

Petitioner testified he was involved in another motor vehicle accident on October 11, 2007. Petitioner noticed an increase of pain in his left hip, lower back, left leg, neck and arms, as well as dizziness and tingling in his hands.

This second accident caused him to be off work from October 12, 2007, to January 22, 2008. Petitioner returned to work, but not his prior job, on January 23, 2008. Petitioner testified that the pain was worse after his second accident. He testified he had trouble turning his head to one side or the other to see oncoming traffic. (T. 30)

THIRD ACCIDENT: FEBRUARY 14, 2012

On February 14, 2012, Petitioner was working in a crawl space while on his hands and knees. Petitioner twisted his body while crawling out of the crawl space and felt an increase in pain.

Respondent terminated Petitioner's employment on or about August 19, 2014. Petitioner filed a grievance with the union and a labor arbitration hearing was held some 18 months later. During the time between Petitioner's termination and the arbitration hearing on his grievance, Petitioner worked for Broadband Interactive, where he picked up modems and little parts that connect the internet. Petitioner testified he had to

resign because the job became too heavy, and the company wanted him to tag 50 to 60 doors per day. The tagging required Petitioner to get in and out of his vehicle, make stops, tag the door and try to retrieve equipment. He testified that he noticed an increase in pain when getting in and out of the car and loading and unloading the equipment. Petitioner also worked for Larson Express picking up medical specimens. He left this job because he had to walk with and lift a cooler filled with medical specimens. Petitioner stated he aggravated the pain in his neck as a result of this job. (T. 69) Petitioner testified he worked for a company called Need It Now, a small package delivery service. The small packages turned into bigger and bigger and heavier and heavier packages, so he left. (T. 71) Petitioner also worked for Door Dash. (T. 95) Petitioner testified that since 2015 he has worked for Lyft and Uber. Petitioner testified he works 20 to 30 hours per week for the ride share companies, but work is dependent on the demand and his ability to remain in his car. (T. 74) His pain increases in his neck, arm, shoulders, low back and hip the longer he remains in his car. (T. 75) Petitioner acknowledged helping clients with their luggage from time to time. (T. 97) Petitioner also conducted his own job search.

The labor arbitration decision found Petitioner should be reinstated to his position with Respondent with full seniority but no back pay. (PX22) Petitioner did not work for Respondent again despite his attempts to do so.(T. 56) Petitioner explained that he went to Respondent's human resources department and spoke to Nancy McGarrick and submitted his light duty restrictions. Petitioner also met with the regional human relations manager, John Roberts, and gave him his light duty restrictions. (T. 58)

Petitioner conducted a self-directed job search from November 19, 2014, through October 1, 2016. (PX27) He testified he did find work from time to time and tried to stay busy. (T. 66) At Petitioner's attorney's request, Petitioner participated in a vocational assessment with Vocamotive. *Id.*

Petitioner testified he has daily pain that limits him. He continues to have neck pain, shoulder pain, left bicep pain, and tingling in his thumb and index finger with numbness. He has low back pain with radiation to the groin and into his left leg. He has difficulty walking and notices the that his left side goes out on him. (T. 79)

Petitioner agreed that he has no walking or work hour restrictions. (T. 96) Petitioner also testified that he worked full duty until his termination on August 19, 2014. (T. 75-76)

Job Duties

Petitioner explained that his job as a residential installer involved the following: installing, testing, repairing and inspecting telecommunications equipment. Petitioner indicated that his job was considered a heavy type of job and involved climbing, balancing, stooping, bending, twisting, kneeling, squatting and reaching.

The International Brotherhood Electrical Workers Collective Bargaining Agreement shows the hourly rates Petitioner would have been making after 42 and 48 months on the job as a residential installer. (PX28) In 2020, Petitioner would have been making $33.39 an hour as of May 1st. As of November 1, 2020, he would have been earning $33.89 an hour. As of November 1, 2021, he would have been earning $34.57 an hour.

Summary of Medical Records

Petitioner's Exhibit 1 contains the records of Franciscan Health Olympia Fields Emergency Room. The history taken indicates that Petitioner was seat belted and stopped when rear-ended. Petitioner complained of left neck pain, back pain and stated he was forgetful. (PX1)

Petitioner followed up with Dr. Hassan Ibrahim, his primary care physician, on April 30, 2007. (PX2) Dr. Ibrahim ordered a cervical spine and brain MRI and referred Petitioner to Dr. Kevin Fagan, a neurologist. On May 19, 2007, Petitioner underwent the MRI of the cervical spine, the results of which revealed a tiny left paramedian disc protrusion at C5-C6 accompanying minor disc bulge and degenerative changes.

Petitioner saw Dr. Fagan on May 22, 2007. (PX3) Petitioner reported the accident and complained of continued pain, occasional numbness and tingling in both arms and legs, and headaches that radiate from the neck up to the occipital parietal area. Dr. Fagan reviewed the MRIs and found no serious pathology on either one. Dr. Fagan believed Petitioner had a post-concussion syndrome with headaches, vertigo and lightheadedness and cervical and lumbar strain, likely producing intermittent radicular symptoms into his arms and legs. Dr. Fagan ordered an EMG and recommended physical therapy to help his neck and low back. Dr. Fagan also recommended that Petitioner be given administrative duty only and no lifting more than 10-15 pounds. Petitioner underwent physical therapy from May 29, 2007, through July 24, 2007. (PX4) The discharge note from physical therapy noted that Petitioner was unable to progress.

Petitioner underwent the EMG on May 29, 2007, the results of which revealed electrical evidence consistent with a left lumbar radiculopathy with partial denervative changes seen in predominately left L5 innervated muscles. (PX3) On May 30, 2007, Petitioner underwent an MRI of the thoracic spine, the results of which were unremarkable. (RX6) On May 31, 2007, Petitioner underwent an MRI of the lumbar spine which showed mild lower lumbar facet change and slight disc bulge at L4-L5. (RX7)

Dr. Fagan reviewed the EMG on June 19, 2007, and diagnosed Petitioner as having post-concussion syndrome, continued physical therapy with an emphasis on work hardening and continued Petitioner's restrictions. On July 12, 2007, Dr. Fagan noted Petitioner's symptoms had worsened. Dr. Fagan found Petitioner had anxiety, ordered additional MRIs and suggested a second neurologic opinion.

On July 25, 2007, Petitioner underwent a Section 12 examination (IME) with Dr. Karen Levin at Respondent's request. (RX8) Petitioner described the accident and complained of weakness in his arms and legs, more left than right. Dr. Levin examined Petitioner and reviewed Petitioner's medical records. Dr. Levin found Petitioner's symptomatology was unusual for the type of injury sustained. Dr. Levin found that Petitioner's complaints were most consistent with peripheral neuropathy, however, Dr. Levin noted that EMG results were negative for neuropathy. Dr. Levin opined that Petitioner's symptoms were not related to the April 20, 2007, accident and that, from a neurological standpoint, Petitioner had reached maximum medical improvement (MMI).

Petitioner saw Dr. Charles Wang on August 1, 2007. (PX5) Petitioner complained of headaches, dizziness, lightheadedness, neck pain, left shoulder pain, numbness and tingling in his limbs and groin, low back pain, and left leg pain. Dr. Wang found Petitioner to have a history of motor vehicle accident on April 20, 2007, with improving post-concussion syndrome and worsening of his neck, left shoulder and back pain, numbness and tingling in his hands and feet, and genital and anal numbness and tingling. Dr. Wang ordered additional MRIs, another course of physical therapy, and kept Petitioner off work.

On September 7, 2007, Petitioner underwent the additional MRIs. The cervical spine MRI revealed a small left paramedian disc herniation at C5-6, questionable tiny left-sided disc herniation at C6-7. The lumbar spine MRI showed slight disc bulging at L4-5.

On September 19, 2007, Dr. Wang reviewed the MRIs and noted that the IME had released Petitioner to return to work. Petitioner reported that he returned to work and, as a result, had significantly increased neck pain, left arm pain, extensive forearm pain and tingling into his hands, as well increased lumbosacral buttock

numbness and groin numbness. Dr. Wang took Petitioner off work and recommended C6-C7 selective transforaminal steroid injections.

Petitioner returned to Dr. Wang on October 23, 2007. Petitioner reported the October 11, 2007, accident, the development of left biceps pain and complained of tingling in his hands, left lumbar pain, and buttock pain that radiated into his left knee and left big toe. Dr. Wang ordered cervical and lumbosacral MRIs. Petitioner underwent the MRIs on October 24, 2007. The pelvic MRI showed a cyst at the posterior aspect of the right femoral head and minimal bilateral greater trochanter bursitis. The brain MRI showed minor chronic left mastoid inflammatory changes. On November 1, 2007, Petitioner underwent a right C6 transforaminal epidural steroid injection administered by Dr. Christine Villoch. On November 26, 2007, Petitioner returned to Dr. Wang and reported only temporary relief from the injection. On January 14, 2008, Dr. Wang recommended another steroid injection and referred Petitioner for a neurosurgical consultation. Dr. Wang found there was a causal connection between the Petitioner's April 20, 2007, accidental injury and the October 11, 2007, accidental injury, as the accidents exacerbated his pre-existing degenerative spine disease.

On February 13, 2008, Petitioner saw Dr. Kenneth Heiferman. Dr. Heiferman determined that Petitioner was not a surgical candidate and recommended an EMG. On March 13, 2008, Petitioner reported that he was working full duty and that the medications had significantly helped his symptoms, but that he was not back to normal. On April 23, 2008, Dr. Wang recommended a cervical MRI and EMG of the left upper extremity. On July 28, 2008, Petitioner underwent an EMG, the results of which found mild left lower cervical radiculopathy. (PX6) On November 24 ,2008, Petitioner reported that he continued to work but still had pain in his left neck and shoulder with numbness. (PX5) On February 16, 2009, Petitioner received the left C6 transforaminal epidural steroid injection from Dr. Villoch. On February 23, 2008, Petitioner reported to Dr. Wang that the effects of the injection had not yet taken effect. Petitioner complained of some dizziness lately, especially when he moved his head from side to side or up and down.

On May 18, 2009, Petitioner reported that he had some improvement in his pain and numbness following the injection. Petitioner complained of a new, shocking feeling in his left elbow when touched by an object that worsened when driving. Dr. Wang ordered an EMG/NCV of the left upper extremity to rule out ulnar neuropathy and radiculopathy. On June 1, 2009, Petitioner underwent the EMG/NCV study which found nothing remarkable. On August 17, 2009, Petitioner complained of new significant stiffness in his neck that prevented him from driving and limited his ability to turn his head. Petitioner also complained of right shoulder area pain. Dr. Wang recommended physical therapy and medication changes.

Dr. Wang's evidence deposition was taken on December 2, 2009. (PX12) His testimony was consistent with his findings and opinions in the medical records. Dr. Gleason's evidence deposition was taken on April 13, 2010. (RX14) His testimony was consistent with his findings and opinions in the medical records.

On April 20, 2010, Petitioner reported two recent visits to the emergency room due to neck and left arm pain. (PX8) Dr. Wang recommended another C6 injection by Dr. Villoch and referred Petitioner for a neurosurgical consultation. Petitioner saw Dr. Edward Mkrdichian on May 17, 2010. Dr. Mkrdichian opined that Petitioner was suffering from at least a left C6, possible C7 radiculopathy. Dr. Mkrdichian stated the MRI showed a C5-C6 herniation. He recommended another MRI and discussed plans for C5-C6 anterior cervical discectomy fusion. On August 19, 2010, Dr. Mkrdichian recommended conservative care or surgery with no guarantee of success.

Petitioner continued to follow up with Dr. Wang, who recommended another steroid injection. On July 18, 2011, Petitioner saw Dr. Villoch who recommended that Petitioner attempt physical therapy again and consider another C7 transforaminal epidural steroid injection.

On February 23, 2012, Petitioner underwent an MRI of the lumbar spine, which showed mild degenerative bulging disc at L4-5, accompanying facet and ligament hypertrophy with mild central canal and inferomedial foraminal narrowing with slight progression as compared to the May 2007 MRI. (RX11) On February 28, 2012, Petitioner underwent the cervical spine MRI, which showed degenerative bulging disc at C5-6, accompanying a small left paracentral protrusion with mild cord encroachment and central canal narrowing more prominent than in May 2007, and right uncinate spur with foraminal narrowing. (RX12) On March 5, 2012, Dr. Wang reviewed the MRI and sent Petitioner back to Dr. Villoch for pain management. (PX8) On April 6, 2012, Dr. Adeel Zzahmad administered a left L4 transforaminal epidural steroid injection. On June 25, 2012, Dr. Villoch administered a left C6 transforaminal epidural steroid injection.

On July 24, 2012, Petitioner underwent an IME with Dr. Thomas Gleason at Respondent's request. (RX13) Dr. Gleason examined Petitioner and reviewed Petitioner's medical records related to the April 20, 2007, and February 14, 2012, accidents. Dr. Gleason diagnosed Petitioner with left cervical radicular syndrome, left lumbar radicular syndrome, and numbness of the left second and third digits with positive Tinel's sign suggesting carpal tunnel syndrome, and possible cubital tunnel syndrome. Dr. Gleason found that Petitioner was capable of at least light to medium full-time work without any restrictions. Dr. Gleason opined that Petitioner's current condition of ill-being was not causally related to the work event on February 14, 2012. Further, Dr. Gleason found that Petitioner had reached MMI as it related to any work injury sustained on February 14, 2012.

On December 3, 2012, Dr. Wang noted that Petitioner complained of an increase in leg pain, burning and pain in his left knee, calf and medial foot. Dr. Wang recommended physical therapy and that Petitioner continue to see Dr. Villoch. Dr. Wang provided the following work restrictions: no lifting more than 15 pounds, no bending, crawling, twisting, lifting overhead and no climbing ladders or working in crawl spaces or attics.

Dr. Gleason's evidence deposition was taken on February 12, 2013. (RX15) His testimony was consistent with the findings and opinions in his IME report.

On May 28, 2013, Petitioner saw Dr. Villoch and reported that he had been on light duty work for the last 9 months and was doing worse. Petitioner complained of daily pain that was exacerbated about twice a month. (PX8) Petitioner complained of pain is in his neck with radiation to the left upper extremity with numbness and tingling into the first through third digits intermittently and increased back pain with radiation into both legs. Dr. Villoch recommended that Petitioner consider a chronic pain program. On June 4, 2013, Petitioner returned to Dr. Wang complaining of difficulty sleeping, constant neck pain, left arm and forearm pain, and a shocking sensation in his left leg. Petitioner reported that physical therapy had helped his overall pain. Dr. Wang continued physical therapy. On September 19, 2013, Dr Wang modified Petitioner's work restrictions to return to regular duty with no ladders, crawl spaces or attics effective September 24, 2013. On November 21, 2013, Petitioner saw Dr. Daniel Hurley. Petitioner reported difficulty sleeping and recent emergency room visit for a pain flare up. On December 17, 2013, Dr. Wang modified Petitioner's work restrictions to carrying no more than 15 pounds, try limited ladder climbing (no more than 2-3 steps), limited climbing, no crawl spaces or attics, no bending, and no more than one flight of stairs at a time. On April 15, 2015, Dr. Wang again modified Petitioner's work restrictions to limited climbing to no more than 2-3 steps at work, no crawl space, no heavy lifting and no bending over.

On November 4, 2015, Petitioner saw Dr. Matthew Co. Dr. Co ordered new MRIs of the cervical and lumbar spine and an x-ray of the left hip to decide whether additional steroid injections would be beneficial. On August 22, 2016, Petitioner reported that he was working part time for Uber and no longer for Respondent. Petitioner stated he was in a lot of pain and had more bad days than good. On September 26, 2018, Dr. Co noted

that the workers' compensation carrier did not approve the physical therapy or the imaging that was recommended.

On January 20, 2020, Petitioner underwent an IME with Dr. Alexander Ghanayem at Respondent's request. (RX17) Dr. Ghanayem issued his report on July 23, 2020. Petitioner recounted the April 20, 2007, October 11, 2007, and February 14, 2012, work accidents. Dr. Ghanayem examined Petitioner and reviewed Petitioner's medical records. Dr. Ghanayem found that the two auto accidents resulted in cervical sprains that required no more than 6-8 weeks of physical therapy for each, and that the cervical injections Petitioner received were unnecessary. As for the February 2012 accident, Dr. Ghanayem found that Petitioner could have suffered no more than a back sprain. Dr. Ghanayem opined that, as for the two accidents in 2007, Petitioner would have reached MMI no later than early 2008. Following the February 2012 accident, Dr. Ghanayem found that Petitioner would have reached MMI no later than June of 2012 and that Petitioner could return to work full duty without any restrictions.

On February 28, 2020, Petitioner reported new pain and soreness/weakness in his biceps. Dr. Wang recommended physical therapy. On March 26, 2020, Petitioner had a telehealth visit with Dr. Co. Petitioner reported pain is primarily in the lower neck with radicular pain to the left arm and to the biceps (some to the right) as well as low back pain with pain to the left groin and left leg. On December 21, 2020, Petitioner underwent MRIs of the cervical spine and brain. The brain MRI showed no abnormalities. The cervical spine MRI, as comparted to the MRI from August 2010, showed degenerative changes which had progressed, mild to moderate spinal stenosis at C5-C6 and C6-C7 and severe right foraminal stenosis at C5-C6, with lesser degrees of foraminal narrowing elsewhere. On January 12, 2021, Petitioner underwent a lumbar spine MRI which showed multilevel degenerative changes of the lumbar spine, mild spinal canal stenosis at the L4 and L4-L5, multilevel neural foraminal narrowing, and severe bilateral neural foraminal stenosis at L4-L5. (PX7)

Dr. Ghanayem's evidence deposition was taken on June 16, 2021. (RX18) His testimony was consistent with his findings and opinions in his IME report.

On June 23, 2021, Dr. Wang recommended that Petitioner see Dr. Dean Karahalios for a neurosurgical consultation. (PX8) On October 7, 2021, Petitioner underwent an EMG/NCV study that found mild cervical radiculopathy effecting the C6 nerve root and mild lumbar radiculopathy in the left lower extremity effecting the L3 or less likely the L2 nerve root. On December 15, 2021, Petitioner saw Dr. Karahalios. (PX19) Petitioner complained of worsening neck pain radiating into the back of his head with spasms and intermittent pain radiating into his bilateral upper extremities into the biceps, left greater than right, with parethesias in his index finger and thumb bilaterally. In the lumbar spine, Petitioner reported worsening low back pain radiating into his bilateral groin region, left greater than right, as well as laterally and anteriorly into the dorsum of his feet with numbness, tingling, and subjective weakness. Dr. Karahalios reviewed all the diagnostic tests and found Petitioner to be symptomatic related to the degenerative changes seen in his lumbar spine and recommended a left transforaminal epidural steroid injection at the L4-L5 level. With respect to the Petitioner's degenerative cervical condition, Dr. Karahalios found that it was likely responsible for his radicular symptoms and neck pain. Dr. Karahalios recommended a 3-level anterior cervical discectomy and fusion at C4-5, C5-6, and C6-7.

On January 21, 2022, Dr. Wang issued a narrative report in which he opined that there was a causal connection between Petitioner's accidental injuries and his condition of ill-being. (PX8) Dr. Wang further opined Petitioner had the same restrictions previously stated in his earlier notes, which are also causally connected to Petitioner's accidental injuries. On March 15, 2022, Dr. Anastasia Kopetelova administered a left lumbar/sacral transforaminal epidural steroid injection at L4-5. (PX11) On April 6, 2022, Petitioner had a telehealth visit with Dr. Wang and reported new bilateral arm and shoulder pain in addition to the neck pain and

stiffness. (PX8) Petitioner reported that he did have the neurosurgical consultation with Dr. Karahalios but was undecided whether he would proceed with his recommendations.

On June 6, 2022, Petitioner underwent another IME with Dr. Ghanayem at Respondent's request. (RX19) Petitioner complained of continued neck pain with radiation into the back of his shoulders and into his arms, occasional numbness in the thumb and index finger of both hands, left more than right, and low back pain with bilateral groin pain. Dr. Ghanayem examined Petitioner and reviewed Petitioner's medical records. Dr. Ghanayem found that Petitioner had disc degeneration at L4-L5 and L5-S1 on the lumbar study, and multilevel spondylosis without spinal cord compression or cord signal changes in the cervical study. Dr. Ghanayem opined that the new MRI findings were the result of natural aging and not related to the three previous work accidents. Dr. Ghanayem explained that his opinion from 2020 was unchanged by anything gleaned from this examination and that Petitioner had reached MMI and could return to full work duty without any restrictions.

On June 30, 2023, Dr. Wang's second evidence deposition was taken. (PX13) His testimony was consistent with his findings and opinions in the medical records.

Vocational Assessment

Petitioner underwent a vocational assessment conducted by Joseph Belmonte, a certified rehabilitation counselor, on March 27, 2019, at the request of Petitioner's attorney. (PX17) Mr. Belmonte reviewed Petitioner's history, training/education and medical records. Mr. Belmonte concluded that Petitioner did not have any transferable skills and that his courier service jobs did not constitute stable employment. He opined that Petitioner had lost access to usual and customary line of occupations. Mr. Belmonte determined that Petitioner was employable as a retail clerk, small parts assembler, office clerk, administrative clerk and customer service representative and that his probable wage-earning potential in these occupations was between $10.00-$14.00 an hour. Mr. Belmonte opined that Petitioner was a viable candidate for vocational rehabilitation.

On January 18, 2022, Mr. Belmonte's evidence deposition was taken. (PX24) His testimony was consistent with his findings and opinions in his vocational assessment 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 (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that Respondent stipulated that Petitioner sustained an accident that arose out of and in the course of his employment on October 11, 2007. Petitioner had been undergoing treatment for injuries to his head, neck, back, shoulder, legs and arms following the April 20, 2007, work accident. On October 23, 2007, Petitioner returned to Dr. Wang and reported the October 11, 2007, accident, and complained of left biceps pain and of tingling in his hands, left lumbar pain, and buttock pain that radiated into his left knee and left big toe. Petitioner underwent pelvic and brain MRIs on October 24, 2007, which showed a cyst at the posterior aspect of the right femoral head and minimal bilateral greater trochanter bursitis, and minor chronic left mastoid inflammatory changes in the brain. Petitioner continued to have pain and problems and continued to follow up with Dr. Wang and started treating with Dr. Heiferman and Dr. Mkrdichian as a result. On July 28, 2008, Petitioner underwent an EMG, the results of which found mild left lower cervical radiculopathy. Dr. Mkrdichian diagnosed Petitioner as having left C6, possible C7 radiculopathy. Petitioner continued to report

problems with his neck and back and extremities. Petitioner also went to the emergency room two times in 2010 due to neck and left arm pain.

The Arbitrator notes that Petitioner did not have any of these symptoms or problems prior to April 20, 2007, and October 11, 2007. Dr. Wang opined that there was a causal connection between the April 20, 2007, and October 11, 2007, work accidents as they exacerbated Petitioner's pre-existing degenerative spine disease. The Arbitrator also notes that Dr. Ghanayem found that the April 20, 2007, and October 11, 2007, accidents resulted in cervical sprains that required no more than 6-8 weeks of physical therapy for each, and that the cervical injections Petitioner received were unnecessary. However, the Arbitrator notes that Dr. Ghanayem's findings and opinions are not supported by the medical records and diagnostic exams which show herniations and evidence of radiculopathy. Therefore, the Arbitrator finds the findings and opinions of Petitioner's treaters more persuasive than those of Dr. Ghanayem.

Based on the above, the Arbitrator finds that Petitioner's conditions of ill-being were exacerbated by the October 11, 2007, work accident are causally related to the October 11, 2007, work accident.

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

The Arbitrator notes her finding above that Petitioner's conditions of ill-being are causally related to the October 11, 2007, work accident. The Arbitrator further notes that Petitioner continued to have pain and problems following the October 11, 2007, work accident and that Petitioner continued to undergo treatment as a result of this accident.

Based on the above, Respondent shall pay outstanding medical expenses incurred during treatment for the October 11, 2007, work accident as outlined in PX29. Respondent is entitled to a credit as detailed in RX3 under Section 8(j) 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 that the parties stipulated that Petitioner was off work and entitled to temporary total disability benefits from October 12, 2007, through January 22, 2008. The Arbitrator further notes that Petitioner reported that he was working full duty when he saw Dr. Heiferman on February 13, 2008.

Based on the above, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from October 12, 2007, through January 22, 2008.

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

The Arbitrator notes that the body parts that Petitioner sustained injuries to in this case are the same as those in case 07WC023948 and 12WC013431. Therefore, the Arbitrator refers to her award of permanency in case 12WC013431.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC013431
Case Name	Kelley V Thomas v. ADT/TYCO Fire & Security
Consolidated Cases	07WC023948 08WC008399
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0228
Number of Pages of Decision	18
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Neal Strom
Respondent Attorney	Rory McCann

DATE FILED: 5/23/2025

/s/Amylee Simonovich,Commissioner

Signature

25IWCC0228

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

Kelley V. Thomas,

Petitioner,

vs. NO: 12 WC 013431

ADT/Tyco Fire & Security,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by both parties herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, prospective medical, temporary total disability, temporary partial disability, maintenance 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.

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 affirms the Arbitrator's findings as to casual connection. However, the Commission disagrees with the Arbitrator's award of temporary total disability through the date of hearing on September 27, 2023.

TTD benefits are available from the time an injury incapacitates an employee from work until such time as the employee is as far recovered or restored as the permanent character of the injury will permit. *Westin Hotel v. Industrial Comm'n,* 372 Ill. App. 3d 527 (2007). The dispositive test for when temporary total disability benefits cease is when the claimant's condition is stabilized, i.e., reached MMI. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 594 (2005); *F&B Manufacturing Co. v. Industrial Comm'n*, 325 Ill. App. 3d 527, 531 (2001). Once the injured employee has reached MMI, he is no longer eligible for TTD benefits. *Nascote Industries v. Industrial Comm'n,* 353 Ill. App. 3d 1067, 1072 (2004).

We agree with the Arbitrator's finding that Petitioner had been placed on work restrictions by Petitioner's treating physician, Dr. Wang, at the time of his termination. The restrictions included a 15-pound carrying limitation, limited ladder climbing/no more than 2-3 steps, limited climbing, no crawl spaces or attics, no more than one flight of stairs at a time, and no bending.

PX8, p.196. The Commission finds it significant that those work restrictions were issued by Dr. Wang on June 27, 2014, and were identified as permanent in nature, a detail which was not documented in the Arbitration Decision. *Id*. This demonstration of the permanency of Petitioner's condition was further supported by the Petitioner's own testimony, wherein he testified he believed the restrictions he was given on that date became permanent. T.48. We find that Petitioner reached maximum medical improvement as of June 27, 2014, the date he was provided with permanent restrictions. Petitioner was no longer entitled to temporary total disability benefits as of the time he reached maximum medical improvement. Further, Dr. Wang's permanent restrictions were voluntarily accommodated by Respondent through the date of his termination on August 19, 2014, well after he reached maximum medical improvement. T.50. As such, the award for temporary total disability was inappropriate and is hereby vacated.

However, the Commission finds that Petitioner provided ample evidence that following his termination from employment with Respondent, an award of maintenance benefits was appropriate. Under Section 8(a) of the Act (820 ILCS 305/8(a)), 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." Since maintenance is awarded incidental to vocational rehabilitation, an employer is obligated to pay maintenance only "while a claimant is engaged in a prescribed vocational-rehabilitation program." *Euclid Beverage v. Ill. Workers' Comp. Comm'n,* 2019 IL App (2d) 180090WC ¶ 28, citing *W.B. Olson, Inc.*, 2012 IL App (1st) 113129WC, ¶ 39. An employee's self-directed job search or vocational training may constitute a vocational-rehabilitative program. *Roper Contracting v. Industrial Comm'n*, 349 Ill. App. 3d 500, 506 (2004). The primary goal of rehabilitation is to return the injured employee to work. *Schoon v. Industrial Comm'n*, 259 Ill. App. 3d 587, 594 (1994).

Here, the permanent restrictions of Dr. Wang prevented Petitioner from returning to work in the same capacity in which he was employed at the time of his injury. Petitioner introduced a Vocational Assessment and Rehabilitation Plan authored by Certified Rehabilitation Counselor Lisa Helm (hereinafter "CRC Helm") from Vocamotive, which indicated that based upon the medical opinion of Dr. Wang Petitioner had lost access to his usual and customary employment, which at the time of his injury paid approximately $29.00 an hour. Her report further demonstrated the jobs for which Petitioner was suited based upon the restrictions of Dr. Wang would have paid in the range of $10.00 to $14.00 an hour and that vocational rehabilitation for mitigation of wage loss exposure would be appropriate. PX17, p.11,14. The Commission notes that no evidence was introduced to provide a contrary vocational opinion. Further, Petitioner's tax returns from 2014 to 2015 support an actual reduction in Petitioner's earnings. PX18.

The Commission further finds that Petitioner provided sufficient evidence to show his intention to return to the workforce via a self-directed job search following his termination from Respondent's employ and that his self-directed job search constituted a vocational-rehabilitative program. Petitioner testified that after his termination and during the period of time he was awaiting an arbitration decision regarding his termination, he was seeking and obtaining work. T.54-55. Petitioner additionally testified that he sought and obtained employment with Broadband Interactive, Need It Now and Larson Express. T.53-54. He provided employment records from Broadband Interactive and Larson Express to support his testimony. PX20, 21. His efforts to

obtain employment were also documented in the report of CRC Helma's vocational assessment of Petitioner. PX17. As Petitioner has shown permanent restrictions that prevent him from returning to work in his prior occupation, resulting in a reduction of his earning capacity, as well as his documented efforts to find employment within said restrictions, the Commission awards maintenance from August 20, 2014 through May 17, 2015.

Petitioner's job search efforts during that period were successful and on May 18, 2015, he began employment with Larson Express, where pursuant to the wage information provided, he was employed until June 29, 2015. PX21. After his short employment with Larson Express, he resumed his job search under the same permanent work restrictions, with the same inability to return to his prior employment without accommodation. He again found employment with Broadband Interactive on October 6, 2015. The Commission awards additional maintenance from June 30, 2015 through October 5, 2015, representing the period in which Petitioner was performing his job search prior to securing his employment with Broadband Interactive.

Petitioner was hired at Broadband Interactive as a customer retention technician and his duties included driving to subscriber's residences, working with them to restart their service, and/or retrieving modems or internet parts from subscribers that were unable or unwilling to continue their service. T.52, PX20. As part of his efforts to obtain employment with Broadband Interactive, Petitioner filled out an Application for Employment, underwent drug testing and agreed to a background investigation. PX20, p.23-24, 26, 31. Upon being hired, Petitioner entered into a formal Employment Agreement, a "Workplace Rules and Regulations" agreement, and a "Driver Requirements" agreement. PX20, p.4-11, 12-18, 20-22. He was offered preventative group health (PX20, p.27) and provided with a company tablet to document his time worked and the activities he performed. PX20, p.39-41. Petitioner was paid based upon a compensation schedule and his weekly timesheets (PX20, p.4, 16), and he had federal income taxes withheld. PX20, p.47. The position most closely resembled that of an "outside deliverer", which CRC Helma noted was, according to the Dictionary of Occupational Titles, classified as an unskilled (SVP-2) position at the light level of physical demand. PX17, p.10. This estimation was supported by Petitioner's testimony, including his description of the position as "light duty". T.51. CRC Helma had also opined the positions available to him at the time of her assessment included "customer service representative" and "driver (within capabilities)". PX17, p.11. This would suggest there was a stable labor market for the position Petitioner obtained with Broadband Interactive. The Commission finds that the evidence submitted with regard to Petitioner's employment with Broadband Interactive demonstrated suitable employment.

Petitioner testified he resigned his employment with Broadband Interactive due to his difficulty getting in and out of a vehicle and walking door to door. T.68. However, this was not part of the permanent restrictions as issued by Dr. Wang on June 27, 2014, or any other restrictions in the admitted medical records. Accordingly, the Commission finds this to be a voluntary departure from suitable employment and finds the Petitioner is not entitled to further maintenance.

The Commission modifies the §8.1b(b) Factor (ii) on page 12 of the Decision, striking the word "capacity" and replacing it with "position, with permanent restrictions".

The Commission modifies the second to last sentence of the second paragraph on page 6

of the Decision, striking "2008" and replacing it with "2009".

The Commission modifies the second paragraph of the section addressing Issue J, on page 10 of the Decision, striking "under Section 8(j) of the Act".

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on June 6, 2024, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay outstanding reasonable and necessary medical services as detailed in PX29, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for any related medical expenses it has already paid as demonstrated in RX1.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of temporary total disability benefits is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner maintenance benefits of $617.58/week for 52 5/7 weeks, commencing on August 20, 2014 through May 17, 2015 and again on June 30, 2015 through October 5, 2015 as provided in Section 8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner permanent partial disability benefits of $555.82/week for 150 weeks, because the injuries sustained caused the 30% loss of use of the person as a whole, as provide in Section 8(d)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.

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.

May 23, 2025

o: 4/15/2025
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	12WC013431
Case Name	Kelley V Thomas v. ADT/TYCO Fire & Security
Consolidated Cases	07WC023948; 08WC008399;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Neal Strom
Respondent Attorney	Rory McCann

DATE FILED: 6/6/2024

/s/Elaine Llerena, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 4, 2024 5.155%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Kelley Thomas
Employee/Petitioner
v.
ADT/Tyco Fire & Security
Employer/Respondent

Case # **12** WC **013431**

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 **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 **February 14, 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 $**48,171.24**; the average weekly wage was $**926.37**.

On the date of accident, Petitioner was **40** years of age, ***married*** with **2** dependent children.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**20,000.00** for PPD advances, for a total credit of $**20,000.00**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $617.58 per week for 475-2/7 weeks, commencing August 19, 2014, through September 27, 2023, as provided in Section 8(b) of the Act.

Respondent shall pay outstanding reasonable and necessary medical services as detailed in PX29, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $555.82 per week for 150 weeks, because the injuries sustained caused the 30% loss of use 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

June 6, 2024

FINDINGS OF FACT

This matter was heard before Arbitrator Elaine Llerena on September 27, 2023. The issues in dispute were causal connection, medical bills, temporary total disability benefits and permanency. (AX3)

This case, 12WC013431, is consolidated with 07WC023948 and 08WC008399. This case addresses the work accident on February 14, 2012.

Testimony

Petitioner testified he started working for Respondent in October 1997 as an alarm installer technician. (T. 10) He performed commercial and residential work and was a member of Local IBEW 134. *Id.* Prior to working for Respondent he attended South Suburban College and Prairie State College and was certified in an electrical apprenticeship program. *Id.* He also worked for a roofer's union and as a Certified Nursing Assistant. (T. 10-14)

FIRST ACCIDENT: APRIL 20, 2007

Petitioner testified that he was in a motor vehicle accident on April 20, 2007. Petitioner testified that, upon impact, his body went back and forth. (T. 16) Petitioner noticed dizziness and pain in his neck, back, shoulder, legs and arms. He was taken by ambulance to St. James Hospital Emergency Department.

Petitioner testified he did not have pain or physical problems prior to the April 20, 2007, accident. He testified since April 20, 2007, he has had constant pain. (T. 24)

Petitioner testified he returned to work on or about September 22, 2007, to the same job he had done previously as a residential and commercial installer. He testified that, upon his return to work, he noticed he had an increase in pain to his neck, back and left arm with tingling into his hands.

SECOND ACCIDENT: OCTOBER 11, 2007

Petitioner testified he was involved in another motor vehicle accident on October 11, 2007. Petitioner noticed an increase of pain in his left hip, lower back, left leg, neck and arms, as well as dizziness and tingling in his hands.

This second accident caused him to be off work from October 12, 2007, to January 22, 2008. Petitioner returned to work, but not his prior job, on January 23, 2008. Petitioner testified that the pain was worse after his second accident. He testified he had trouble turning his head to one side or the other to see oncoming traffic. (T. 30)

THIRD ACCIDENT: FEBRUARY 14, 2012

On February 14, 2012, Petitioner was working in a crawl space while on his hands and knees. Petitioner twisted his body while crawling out of the crawl space and felt an increase in pain.

Respondent terminated Petitioner's employment on or about August 19, 2014. Petitioner filed a grievance with the union and a labor arbitration hearing was held some 18 months later. During the time between Petitioner's termination and the arbitration hearing on his grievance, Petitioner worked for Broadband Interactive, where he picked up modems and little parts that connect the internet. Petitioner testified he had to

resign because the job became too heavy, and the company wanted him to tag 50 to 60 doors per day. The tagging required Petitioner to get in and out of his vehicle, make stops, tag the door and try to retrieve equipment. He testified that he noticed an increase in pain when getting in and out of the car and loading and unloading the equipment. Petitioner also worked for Larson Express picking up medical specimens. He left this job because he had to walk with and lift a cooler filled with medical specimens. Petitioner stated he aggravated the pain in his neck as a result of this job. (T. 69) Petitioner testified he worked for a company called Need It Now, a small package delivery service. The small packages turned into bigger and bigger and heavier and heavier packages, so he left. (T. 71) Petitioner also worked for Door Dash. (T. 95) Petitioner testified that since 2015 he has worked for Lyft and Uber. Petitioner testified he works 20 to 30 hours per week for the ride share companies, but work is dependent on the demand and his ability to remain in his car. (T. 74) His pain increases in his neck, arm, shoulders, low back and hip the longer he remains in his car. (T. 75) Petitioner acknowledged helping clients with their luggage from time to time. (T. 97) Petitioner also conducted his own job search.

The labor arbitration decision found Petitioner should be reinstated to his position with Respondent with full seniority but no back pay. (PX22) Petitioner did not work for Respondent again despite his attempts to do so. (T. 56) Petitioner explained that he went to Respondent's human resources department and spoke to Nancy McGarrick and submitted his light duty restrictions. Petitioner also met with the regional human relations manager, John Roberts, and gave him his light duty restrictions. (T. 58)

Petitioner conducted a self-directed job search from November 19, 2014, through October 1, 2016. (PX27) He testified he did find work from time to time and tried to stay busy. (T. 66) At Petitioner's attorney's request, Petitioner participated in a vocational assessment with Vocamotive. *Id.*

Petitioner testified he has daily pain that limits him. He continues to have neck pain, shoulder pain, left bicep pain, and tingling in his thumb and index finger with numbness. He has low back pain with radiation to the groin and into his left leg. He has difficulty walking and notices the that his left side goes out on him. (T. 79)

Petitioner agreed that he has no walking or work hour restrictions. (T. 96) Petitioner also testified that he worked full duty until his termination on August 19, 2014. (T. 75-76)

Job Duties

Petitioner explained that his job as a residential installer involved the following: installing, testing, repairing and inspecting telecommunications equipment. Petitioner indicated that his job was considered a heavy type of job and involved climbing, balancing, stooping, bending, twisting, kneeling, squatting and reaching.

The International Brotherhood Electrical Workers Collective Bargaining Agreement shows the hourly rates Petitioner would have been making after 42 and 48 months on the job as a residential installer. (PX28) Petitioner would have been making $33.39 an hour as of May 1, 2020. As of November 1, 2020, he would have been earning $33.89 an hour. As of November 1, 2021, he would have been earning $34.57 an hour.

Summary of Medical Records

Petitioner's Exhibit 1 contains the records of Franciscan Health Olympia Fields Emergency Room. The history taken indicates that Petitioner was seat belted and stopped when rear-ended. Petitioner complained of left neck pain, back pain and stated he was forgetful. (PX1)

Petitioner followed up with Dr. Hassan Ibrahim, his primary care physician, on April 30, 2007. (PX2) Dr. Ibrahim ordered a cervical spine and brain MRI and referred Petitioner to Dr. Kevin Fagan, a neurologist. On May 19, 2007, Petitioner underwent the MRI of the cervical spine, the results of which revealed a tiny left paramedian disc protrusion at C5-C6 accompanying minor disc bulge and degenerative changes.

Petitioner saw Dr. Fagan on May 22, 2007. (PX3) Petitioner reported the accident and complained of continued pain, occasional numbness and tingling in both arms and legs, and headaches that radiate from the neck up to the occipital parietal area. Dr. Fagan reviewed the MRIs and found no serious pathology on either one. Dr. Fagan believed Petitioner had a post-concussion syndrome with headaches, vertigo and lightheadedness and cervical and lumbar strain, likely producing intermittent radicular symptoms into his arms and legs. Dr. Fagan ordered an EMG and recommended physical therapy to help his neck and low back. Dr. Fagan also recommended that Petitioner be given administrative duty only and no lifting more than 10-15 pounds. Petitioner underwent physical therapy from May 29, 2007, through July 24, 2007. (PX4) The discharge note from physical therapy noted that Petitioner was unable to progress.

Petitioner underwent the EMG on May 29, 2007, the results of which revealed electrical evidence consistent with a left lumbar radiculopathy with partial denervative changes seen in predominately left L5 innervated muscles. (PX3) On May 30, 2007, Petitioner underwent an MRI of the thoracic spine, the results of which were unremarkable. (RX6) On May 31, 2007, Petitioner underwent an MRI of the lumbar spine which showed mild lower lumbar facet change and slight disc bulge at L4-L5. (RX7)

Dr. Fagan reviewed the EMG on June 19, 2007, and diagnosed Petitioner as having post-concussion syndrome, continued physical therapy with an emphasis on work hardening and continued Petitioner's restrictions. On July 12, 2007, Dr. Fagan noted Petitioner's symptoms had worsened. Dr. Fagan found Petitioner had anxiety, ordered additional MRIs and suggested a second neurologic opinion.

On July 25, 2007, Petitioner underwent a Section 12 examination (IME) with Dr. Karen Levin at Respondent's request. (RX8) Petitioner described the accident and complained of weakness in his arms and legs, more left than right. Dr. Levin examined Petitioner and reviewed Petitioner's medical records. Dr. Levin found Petitioner's symptomatology was unusual for the type of injury sustained. Dr. Levin found that Petitioner's complaints were most consistent with peripheral neuropathy, however, Dr. Levin noted that EMG results were negative for neuropathy. Dr. Levin opined that Petitioner's symptoms were not related to the April 20, 2007, accident and that, from a neurological standpoint, Petitioner had reached maximum medical improvement (MMI).

Petitioner saw Dr. Charles Wang on August 1, 2007. (PX5) Petitioner complained of headaches, dizziness, lightheadedness, neck pain, left shoulder pain, numbness and tingling in his limbs and groin, low back pain, and left leg pain. Dr. Wang found Petitioner to have a history of motor vehicle accident on April 20, 2007, with improving post-concussion syndrome and worsening of his neck, left shoulder and back pain, numbness and tingling in his hands and feet, and genital and anal numbness and tingling. Dr. Wang ordered additional MRIs, another course of physical therapy, and kept Petitioner off work.

On September 7, 2007, Petitioner underwent the additional MRIs. The cervical spine MRI revealed a small left paramedian disc herniation at C5-6, questionable tiny left-sided disc herniation at C6-7. The lumbar spine MRI showed slight disc bulging at L4-5.

On September 19, 2007, Dr. Wang reviewed the MRIs and noted that the IME had released Petitioner to return to work. Petitioner reported that he returned to work and, as a result, had significantly increased neck pain, left arm pain, extensive forearm pain and tingling into his hands, as well increased lumbosacral buttock

numbness and groin numbness. Dr. Wang took Petitioner off work and recommended C6-C7 selective transforaminal steroid injections.

Petitioner returned to Dr. Wang on October 23, 2007. Petitioner reported the October 11, 2007, accident, the development of left biceps pain and complained of tingling in his hands, left lumbar pain, and buttock pain that radiated into his left knee and left big toe. Dr. Wang ordered cervical and lumbosacral MRIs. Petitioner underwent the MRIs on October 24, 2007. The pelvic MRI showed a cyst at the posterior aspect of the right femoral head and minimal bilateral greater trochanter bursitis. The brain MRI showed minor chronic left mastoid inflammatory changes. On November 1, 2007, Petitioner underwent a right C6 transforaminal epidural steroid injection administered by Dr. Christine Villoch. On November 26, 2007, Petitioner returned to Dr. Wang and reported only temporary relief from the injection. On January 14, 2008, Dr. Wang recommended another steroid injection and referred Petitioner for a neurosurgical consultation. Dr. Wang found there was a causal connection between the Petitioner's April 20, 2007, accidental injury and the October 11, 2007, accidental injury, as the accidents exacerbated his pre-existing degenerative spine disease.

On February 13, 2008, Petitioner saw Dr. Kenneth Heiferman. Dr. Heiferman determined that Petitioner was not a surgical candidate and recommended an EMG. On March 13, 2008, Petitioner reported that he was working full duty and that the medications had significantly helped his symptoms, but that he was not back to normal. On April 23, 2008, Dr. Wang recommended a cervical MRI and EMG of the left upper extremity. On July 28, 2008, Petitioner underwent an EMG, the results of which found mild left lower cervical radiculopathy. (PX6) On November 24 ,2008, Petitioner reported that he continued to work but still had pain in his left neck and shoulder with numbness. (PX5) On February 16, 2009, Petitioner received the left C6 transforaminal epidural steroid injection from Dr. Villoch. On February 23, 2008, Petitioner reported to Dr. Wang that the effects of the injection had not yet taken effect. Petitioner complained of some dizziness lately, especially when he moved his head from side to side or up and down.

On May 18, 2009, Petitioner reported that he had some improvement in his pain and numbness following the injection. Petitioner complained of a new, shocking feeling in his left elbow when touched by an object that worsened when driving. Dr. Wang ordered an EMG/NCV of the left upper extremity to rule out ulnar neuropathy and radiculopathy. On June 1, 2009, Petitioner underwent the EMG/NCV study which found nothing remarkable. On August 17, 2009, Petitioner complained of new significant stiffness in his neck that prevented him from driving and limited his ability to turn his head. Petitioner also complained of right shoulder area pain. Dr. Wang recommended physical therapy and medication changes.

Dr. Wang's evidence deposition was taken on December 2, 2009. (PX12) His testimony was consistent with his findings and opinions in the medical records. Dr. Gleason's evidence deposition was taken on April 13, 2010. (RX14) His testimony was consistent with his findings and opinions in the medical records.

On April 20, 2010, Petitioner reported two recent visits to the emergency room due to neck and left arm pain. (PX8) Dr. Wang recommended another C6 injection by Dr. Villoch and referred Petitioner for a neurosurgical consultation. Petitioner saw Dr. Edward Mkrdichian on May 17, 2010. Dr. Mkrdichian opined that Petitioner was suffering from at least a left C6, possible C7 radiculopathy. Dr. Mkrdichian stated the MRI showed a C5-C6 herniation. He recommended another MRI and discussed plans for C5-C6 anterior cervical discectomy fusion. On August 19, 2010, Dr. Mkrdichian recommended conservative care or surgery with no guarantee of success.

Petitioner continued to follow up with Dr. Wang, who recommended another steroid injection. On July 18, 2011, Petitioner saw Dr. Villoch who recommended that Petitioner attempt physical therapy again and consider another C7 transforaminal epidural steroid injection.

On February 23, 2012, Petitioner underwent an MRI of the lumbar spine, which showed mild degenerative bulging disc at L4-5, accompanying facet and ligament hypertrophy with mild central canal and inferomedial foraminal narrowing with slight progression as compared to the May 2007 MRI. (RX11) On February 28, 2012, Petitioner underwent the cervical spine MRI, which showed degenerative bulging disc at C5-6, accompanying a small left paracentral protrusion with mild cord encroachment and central canal narrowing more prominent than in May 2007, and right uncinate spur with foraminal narrowing. (RX12) On March 5, 2012, Dr. Wang reviewed the MRI and sent Petitioner back to Dr. Villoch for pain management. (PX8) On April 6, 2012, Dr. Adeel Zzahmad administered a left L4 transforaminal epidural steroid injection. On June 25, 2012, Dr. Villoch administered a left C6 transforaminal epidural steroid injection.

On July 24, 2012, Petitioner underwent an IME with Dr. Thomas Gleason at Respondent's request. (RX13) Dr. Gleason examined Petitioner and reviewed Petitioner's medical records related to the April 20, 2007, and February 14, 2012, accidents. Dr. Gleason diagnosed Petitioner with left cervical radicular syndrome, left lumbar radicular syndrome, and numbness of the left second and third digits with positive Tinel's sign suggesting carpal tunnel syndrome, and possible cubital tunnel syndrome. Dr. Gleason found that Petitioner was capable of at least light to medium full-time work without any restrictions. Dr. Gleason opined that Petitioner's current condition of ill-being was not causally related to the work event on February 14, 2012. Further, Dr. Gleason found that Petitioner had reached MMI as it related to any work injury sustained on February 14, 2012.

On December 3, 2012, Dr. Wang noted that Petitioner complained of an increase in leg pain, burning and pain in his left knee, calf and medial foot. Dr. Wang recommended physical therapy and that Petitioner continue to see Dr. Villoch. Dr. Wang provided the following work restrictions: no lifting more than 15 pounds, no bending, crawling, twisting, lifting overhead and no climbing ladders or working in crawl spaces or attics.

Dr. Gleason's evidence deposition was taken on February 12, 2013. (RX15) His testimony was consistent with the findings and opinions in his IME report.

On May 28, 2013, Petitioner saw Dr. Villoch and reported that he had been on light duty work for the last 9 months and was doing worse. Petitioner complained of daily pain that was exacerbated about twice a month. (PX8) Petitioner complained of pain is in his neck with radiation to the left upper extremity with numbness and tingling into the first through third digits intermittently and increased back pain with radiation into both legs. Dr. Villoch recommended that Petitioner consider a chronic pain program. On June 4, 2013, Petitioner returned to Dr. Wang complaining of difficulty sleeping, constant neck pain, left arm and forearm pain, and a shocking sensation in his left leg. Petitioner reported that physical therapy had helped his overall pain. Dr. Wang continued physical therapy. On September 19, 2013, Dr Wang modified Petitioner's work restrictions to return to regular duty with no ladders, crawl spaces or attics effective September 24, 2013. On November 21, 2013, Petitioner saw Dr. Daniel Hurley. Petitioner reported difficulty sleeping and recent emergency room visit for a pain flare up. On December 17, 2013, Dr. Wang modified Petitioner's work restrictions to carrying no more than 15 pounds, try limited ladder climbing (no more than 2-3 steps), limited climbing, no crawl spaces or attics, no bending, and no more than one flight of stairs at a time. On April 15, 2015, Dr. Wang again modified Petitioner's work restrictions to limited climbing to no more than 2-3 steps at work, no crawl space, no heavy lifting and no bending over.

On November 4, 2015, Petitioner saw Dr. Matthew Co. Dr. Co ordered new MRIs of the cervical and lumbar spine and an x-ray of the left hip to decide whether additional steroid injections would be beneficial. On August 22, 2016, Petitioner reported that he was working part time for Uber and no longer for Respondent. Petitioner stated he was in a lot of pain and had more bad days than good. On September 26, 2018, Dr. Co noted

that the workers' compensation carrier did not approve the physical therapy or the imaging that was recommended.

On January 20, 2020, Petitioner underwent an IME with Dr. Alexander Ghanayem at Respondent's request. (RX17) Dr. Ghanayem issued his report on July 23, 2020. Petitioner recounted the April 20, 2007, October 11, 2007, and February 14, 2012, work accidents. Dr. Ghanayem examined Petitioner and reviewed Petitioner's medical records. Dr. Ghanayem found that the two auto accidents resulted in cervical sprains that required no more than 6-8 weeks of physical therapy for each, and that the cervical injections Petitioner received were unnecessary. As for the February 2012 accident, Dr. Ghanayem found that Petitioner could have suffered no more than a back sprain. Dr. Ghanayem opined that, as for the two accidents in 2007, Petitioner would have reached MMI no later than early 2008. Following the February 2012 accident, Dr. Ghanayem found that Petitioner would have reached MMI no later than June of 2012 and that Petitioner could return to work full duty without any restrictions.

On February 28, 2020, Petitioner reported new pain and soreness/weakness in his biceps. Dr. Wang recommended physical therapy. On March 26, 2020, Petitioner had a telehealth visit with Dr. Co. Petitioner reported pain is primarily in the lower neck with radicular pain to the left arm and to the biceps (some to the right) as well as low back pain with pain to the left groin and left leg. On December 21, 2020, Petitioner underwent MRIs of the cervical spine and brain. The brain MRI showed no abnormalities. The cervical spine MRI, as compared to the MRI from August 2010, showed degenerative changes which had progressed, mild to moderate spinal stenosis at C5-C6 and C6-C7 and severe right foraminal stenosis at C5-C6, with lesser degrees of foraminal narrowing elsewhere. On January 12, 2021, Petitioner underwent a lumbar spine MRI which showed multilevel degenerative changes of the lumbar spine, mild spinal canal stenosis at the L4 and L4-L5, multilevel neural foraminal narrowing, and severe bilateral neural foraminal stenosis at L4-L5. (PX7)

Dr. Ghanayem's evidence deposition was taken on June 16, 2021. (RX18) His testimony was consistent with his findings and opinions in his IME report.

On June 23, 2021, Dr. Wang recommended that Petitioner see Dr. Dean Karahalios for a neurosurgical consultation. (PX8) On October 7, 2021, Petitioner underwent an EMG/NCV study that showed found mild cervical radiculopathy effecting the C6 nerve root and mild lumbar radiculopathy in the left lower extremity effecting the L3 or less likely the L2 nerve root. On December 15, 2021, Petitioner saw Dr. Karahalios. (PX19) Petitioner complained of worsening neck pain radiating into the back of his head with spasms and intermittent pain radiating into his bilateral upper extremities into the biceps, left greater than right, with parethesias in his index finger and thumb bilaterally. In the lumbar spine, Petitioner reported worsening low back pain radiating into his bilateral groin region, left greater than right, as well as laterally and anteriorly into the dorsum of his feed with numbness, tingling, and subjective weakness. Dr. Karahalios reviewed all the diagnostic tests and found Petitioner to be symptomatic related to the degenerative changes seen in his lumbar spine and recommended a left transforaminal epidural steroid injection at the L4-L5 level. With respect to the Petitioner's degenerative cervical condition, Dr. Karahalios found that it was likely responsible for his radicular symptoms and neck pain. Dr. Karahalios recommended a 3-level anterior cervical discectomy and fusion at C4-5, C5-6, and C6-7.

On January 21, 2022, Dr. Wang issued a narrative report in which he opined that there was a causal connection between Petitioner's accidental injuries and his condition of ill-being. (PX8) Dr. Wang further opined Petitioner had the same restrictions previously stated in his earlier notes, which are also causally connected to Petitioner's accidental injuries. On March 15, 2022, Dr. Anastasia Kopetelova administered a left lumbar/sacral transforaminal epidural steroid injection at L4-5. (PX11) On April 6, 2022, Petitioner had a telehealth visit with Dr. Wang and reported new bilateral arm and shoulder pain in addition to the neck pain and

stiffness. (PX8) Petitioner reported that he did have the neurosurgical consultation with Dr. Karahalios but was undecided whether he would proceed with his recommendations.

On June 6, 2022, Petitioner underwent another IME with Dr. Ghanayem at Respondent's request. (RX19) Petitioner complained of continued neck pain with radiation into the back of his shoulders and into his arms, occasional numbness in the thumb and index finger of both hands, left more than right, and low back pain with bilateral groin pain. Dr. Ghanayem examined Petitioner and reviewed Petitioner's medical records. Dr. Ghanayem found that Petitioner had disc degeneration at L4-L5 and L5-S1 on the lumbar study, and multilevel spondylosis without spinal cord compression or cord signal changes in the cervical study. Dr. Ghanayem opined that the new MRI findings were the result of natural aging and not related to the three previous work accidents. Dr. Ghanayem explained that his opinion from 2020 was unchanged by anything gleaned from this examination and that Petitioner had reached MMI and could return to full work duty without any restrictions.

On June 30, 2023, Dr. Wang's second evidence deposition was taken. (PX13) His testimony was consistent with his findings and opinions in the medical records.

Vocational Assessment

Petitioner underwent a vocational assessment conducted by Joseph Belmonte, a certified rehabilitation counselor, on March 27, 2019, at the request of Petitioner's attorney. (PX17) Mr. Belmonte reviewed Petitioner's history, training/education and medical records. Mr. Belmonte concluded that Petitioner did not have any transferable skills and that his courier service jobs did not constitute stable employment. He opined that Petitioner had lost access to usual and customary line of occupations. Mr. Belmonte determined that Petitioner was employable as a retail clerk, small parts assembler, office clerk, administrative clerk and customer service representative and that his probable wage-earning potential in these occupations was between $10.00-$14.00 an hour. Mr. Belmonte opined that Petitioner was a viable candidate for vocational rehabilitation.

On January 18, 2022, Mr. Belmonte's evidence deposition was taken. (PX24) His testimony was consistent with his findings and opinions in his vocational assessment 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 (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that Respondent stipulated that Petitioner sustained an accident that arose out of and in the course of his employment on February 14, 2012. Petitioner had been undergoing treatment for injuries sustained to his head, neck, back, shoulder, legs and arms following the April 20, 2007, and October 11, 2007, work accidents. The February 23, 2012, MRI of the lumbar spine showed mild degenerative bulging disc at L4-5, accompanying facet and ligament hypertrophy with mild central canal and inferomedial foraminal narrowing with slight progression as compared to the May 2007 MRI. The February 28, 2012, cervical spine MRI showed degenerative bulging disc at C5-6, accompanying a small left paracentral protrusion with mild cord encroachment and central canal narrowing more prominent than in May 2007, and right uncinate spur with foraminal narrowing. On December 21, 2020, Petitioner underwent MRIs of the brain and cervical spine. The brain MRI showed no abnormalities. The cervical spine MRI, as compared to the MRI from August 2010, showed degenerative changes which had progressed, mild to moderate spinal stenosis at C5-C6 and C6-C7 and

severe right foraminal stenosis at C5-C6, with lesser degrees of foraminal narrowing elsewhere. The January 12, 2021, lumbar spine MRI showed multilevel degenerative changes of the lumbar spine, mild spinal canal stenosis at the L4 and L4-L5, multilevel neural foraminal narrowing, and severe bilateral neural foraminal stenosis at L4-L5. Petitioner continues to complain of pain and problems following the work accidents. The medical records show that in 2022, Petitioner continued to complain of neck pain with radiation into the back of his shoulders and into his arms, occasional numbness in the thumb and index finger of both hands, left more than right, and low back pain with bilateral groin pain. Petitioner also remained on working restrictions.

The Arbitrator notes that Petitioner did not have any of these symptoms or problems prior to the April 20, 2007, October 11, 2007, and February 14, 2012, work accidents. Dr. Wang opined that there was a causal connection between Petitioner's accidental injuries and his conditions of ill-being. The Arbitrator also notes that Dr. Ghanayem opined that Petitioner's conditions were not causally related to the work accidents. However, the Arbitrator notes that Dr. Ghanayem's findings and opinions are not supported by the medical records and diagnostic exams which show herniations, radiculopathy, and worsening/progression of these injuries/symptoms following the accidents. Further, the Arbitrator notes that Petitioner did not have any work restrictions prior to the work accidents. Therefore, the Arbitrator finds the findings and opinions of Petitioner's treaters more persuasive than those of Dr. Ghanayem.

Based on the above, the Arbitrator finds that Petitioner's conditions of ill-being were exacerbated by the February 14, 2012, work accident are causally related to the February 14, 2012, work accident.

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

The Arbitrator notes her finding above that Petitioner's conditions of ill-being are causally related to the February 14, 2012, work accident. The Arbitrator further notes that Petitioner continued to have pain and problems following the February 14, 2012, work accident and that Petitioner continued to undergo treatment as a result of this accident.

Based on the above, Respondent shall pay outstanding medical expenses incurred during treatment for the February 14, 2012, work accident as outlined in PX29. Respondent is entitled to a credit as detailed in RX1 under Section 8(j) 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:

Petitioner claims entitlement to temporary total disability, temporary partial disability or maintenance benefits from August 19, 2014, through September 27, 2023. The Arbitrator notes that Petitioner testified that he worked full duty until his termination on August 19, 2014, yet he had been placed on work restrictions by Dr. Wang. The Arbitrator further notes that Petitioner conducted a self-directed job search from November 19, 2014, through October 1, 2016. The Arbitrator finds that Petitioner conducted this job search in good faith and put forth effort in trying to find employment. The Arbitrator notes that Petitioner did not return to work for Respondent after the union arbitration order reclassified the termination as an unpaid suspension in 2016.

The Illinois Appellate Court has stated that the dispositive test for when temporary total disability benefits cease is when the claimant's condition is stabilized, i.e., reached MMI. *Sunny Hill of Will County*

Medical Devices v. Industrial Commission, 344 Ill. App. 3d 752, 760, (4th District 2003). To be entitled to temporary total disability benefits, the claimant must prove not only that he did not work, but that he was unable to work. Freeman United Coal Mining Company v. Industrial Commission, 382 Ill. App.3d 170, 175, 741 N.E.2d, 1144, 1148 (2000). The Arbitrator notes that while Dr. Wang had placed restriction on Petitioner, he had not taken Petitioner off work. The record does not support a finding that Petitioner had been restricted from working, instead it supports finding that Petitioner's condition had not stabilized after August 19, 2014. As previously noted, the MRIs from 2020 and 2021, showed progression of Petitioner's lumbar and cervical conditions.

Based on the above, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from August 19, 2014, through September 27, 2023.

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 residential installer at the time of the accident and that he was able to return to work in his 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 40 years old at the time of the accident. The Arbitrator gives this factor its appropriate weight.

With regard to subsection (iv) of Section 8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that the vocational assessment found that Petitioner could find work that paid $10.00-$14.00 an hour based on his medical condition after the work accidents and employment and education history. The Arbitrator gives this factor some 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 remains on restrictions following the accidents and continued to have pain and problems as a result of the work accidents. The Arbitrator gives this factor substantial 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 30% 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	19WC005760
Case Name	Norman Walter v. XPO Supply Chain dba Jacobson Warehouse Company
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0229
Number of Pages of Decision	15
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Nancy Shepard
Respondent Attorney	Brian Bendoff

DATE FILED: 5/23/2025

/s/Amylee Simonovich,Commissioner

Signature

25IWCC0229

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

Norman Walter,

Petitioner,

vs. NO: 19 WC 005760

XPO Supply Chain dba Jacobson Warehouse Company,

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 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 relies on the detailed recitation of facts provided in the Decision of the Arbitrator, in addition to the following stated facts.

Initially, Petitioner received emergent treatment at the Unity Point Health Trinity Rock Island emergency room for what was thought to be internal injuries. PX3. Once the emergent internal conditions were ruled out, he was released to his primary care physician for further care. PX3.

At his first visit with his primary care physician, Dr. Tibble, two days after the initial accident, on December 7, 2018, Petitioner had complaints of pain in his abdomen, back and upper arm/neck. PX5, p. 367.

Petitioner's orthopedic complaints were also mentioned at the time of his first visit at Concentra on December 21, 2018, where he complained of left sided chest pain and abdominal pain, as well as pain in the knees bilaterally and neck pain that radiated to his shoulders. PX7, p.4. Petitioner reported headaches that coincided with his neck pain. *Id*. His right knee was noted to be diffusely tender over the anterior aspect and his cervical spine was noted to be tender. PX7, p.5-7.

Petitioner underwent conservative therapy including physical therapy and work restrictions through Concentra, as well as medication management and diagnostic studies through Dr. Tibble. PX7; PX5.

On December 26, 2018, Petitioner followed up with Concentra, noting continued complaints of pain in his upper back and neck. He noted occasional radiation of the pain to the right arm with occasional tingling to the right hand. PX7, p.13-16.

On January 9, 2019, Petitioner returned to Concentra for follow up of his upper back and neck complaints. PX7, p.41-43. He reported he was better but continued to have pain in the back of his neck that radiated to his upper back. He was given work restrictions/modified duty of no driving company vehicles due to functional limitations.

When Petitioner returned to see Dr. McKnight at Concentra on January 16, 2019, he reported his pain had been worse in the prior two days and that his neck pain was shooting down his back. Additional physical therapy was recommended. PX7, p.44-46.

On January 23, 2019, Petitioner returned to see Dr. McKnight at Concentra. PX7, p.57-59. Petitioner reported he still had pain in his neck and upper back with occasional headaches. He denied radiation of pain to the arms and hands that day but reported some tingling in the right hand occasionally. The plan was to hold his physical therapy until an MRI of his cervical spine was completed.

On March 7, 2019, Petitioner returned to Dr. Tibble in follow up. PX5, p.874-879. Dr. Tibble noted Petitioner had previously been treating his neck pain with occupational medicine, but they had advised him there was nothing they could do. He noted that he had seen Petitioner for the syncopal episode, but he had never seen him for the neck pain, as it had been managed by occupational health. On his review of systems, Petitioner was positive for abdominal pain, right knee pain and neck pain. Physical examination showed a decreased cervical spine range of motion with rotation, flexion and extension. There was spinous process or transverse process tenderness. Dr. Tibble reviewed the cervical MRI, noting the multilevel degenerative disk disease with varying degrees of cervical canal stenosis bilaterally. Dr. Tibble referred him to an orthopedic specialist for definitive management and return to work evaluation. Dr. Tibble gave Petitioner a work restriction of no driving.

On March 26, 2019, Petitioner saw Dr. William Payne, an orthopedic specialist. PX5, p.1047-1056. Dr. Payne noted Petitioner had complaints of neck pain after a motor vehicle accident, four months prior. Petitioner reported pain that radiated down both his arms. Dr. Payne noted Petitioner "had no pain prior to the accident". He reviewed the MRI, which showed herniated cervical disks and the x-ray showing cervical spondylolysis. He diagnosed a cervical herniated disc at C5-6 and C6-7. He recommended an EMG/NV of the upper extremities, physical therapy, a C5-6 epidural steroid injection, tramadol and Medrol dose pack. He kept Petitioner off work.

On March 28, 2019, Petitioner saw Dr. Julie Wehner for a Section 12 medical examination at Respondent's request. RX1. Dr. Wehner noted that Petitioner's orthopedic examination was

normal. She noted Petitioner's MRI showed degenerative changes throughout his cervical spine consistent with age. Dr. Wehner concluded that Petitioner sustained a cervical sprain based on the mechanism of injury. She opined Petitioner had reached maximum medical improvement and was medically capable of returning to work without restriction.

On April 22, 2019, following his right knee therapy, Dr. Javors released Petitioner from care to return on an as needed basis. T.21. Petitioner testified that he did not return to Dr. Javors. *Id*.

On May 7, 2019, Petitioner followed up with Dr. Payne to review the EMG results. PX5, p.1118-1123. His onset of symptoms was five months prior, and they had been gradually improving since that time. His current symptoms were listed as a pain in the neck, ringing in the ears, and blurred vision. The paresthesia in his hands had resolved. He reported low back pain. Dr. Payne recommended a neurology consult for dizziness, blurred vision; an epidural steroid injection at C5-6, and a referral to an ENT for ringing in the ears/hearing loss, ophthalmology for blurred vision, physical therapy for low back and neck and tramadol. On May 8, 2019, an off work note issued. PX5, p.1162.

On May 15, 2019, Petitioner was seen by Dr. Rajive Adlaka at Pain Control Associates, LLC. PX9, p.16-17. Petitioner had complaints of neck pain with radiating pain into his right upper arm. He noted the pain had begun several days after the December 5, 2018 motor vehicle accident when Petitioner's 18-wheeler ended up in a ditch and Petitioner could not recall what had happened. He reported the pain as constant, sharp and intense pain that had been decreasing with physical therapy. Petitioner complained of back pain but noted the neck pain was worse. A home exercise program was discussed. Dr. Adlaka recommended a cervical epidural steroid injection, which Petitioner underwent on May 20, 2019. PX9, 14.

On June 4, 2019, Petitioner followed up with Dr. Payne, and his resident, Dr. Grace Sasaki. PX5, p.1186-1194. It was noted that Petitioner had gotten the cervical epidural steroid injection which he reported helped him 50/50. He had finished physical therapy. He had a neuro consult scheduled for June 28, 2019. He had been taking tramadol as needed for pain. He denied numbness, and tingling. On review of systems, Petitioner was positive for back pain and neck pain and dizziness. On physical examination, Petitioner had tenderness in the cervical and thoracic regions. The assessment was that of neck pain and degenerative joint disease of the cervical spine. A second epidural steroid injection at C4-5 was recommended. Petitioner was to follow through with the neurology appointment on June 28, 2019, continue Tramadol as needed for pain and remain off work.

On June 5, 2019, Petitioner followed up with Dr. Adlaka at Pain Control Associates. PX9, p.11-12. Dr. Adlaka noted a "moderate reduction in pain" following the ESI. His physical therapy had stopped. Dr. Adlaka recommended a second epidural steroid injection and weaning from the Tramadol. Petitioner was to continue a home exercise program and consider back injections.

On June 19, 2019, Petitioner returned to Pain Control Associates and was seen by Dr. Krisha Parameswar. PX9, p.9-10. Petitioner reported a 60% improvement of neck pain and resolution of radicular arm pain and headaches following the first cervical epidural steroid

injection. Petitioner had no more arm pain or headaches. His vision had improved with less pain. Petitioner also reported improved activities of daily living with a better ability to dress, cook and do yardwork. His pain was 3/10 and mostly in the left neck, into the scapular region and traveling pain into his left shoulder. A second cervical epidural steroid injection was recommended, as he had failed physical therapy and NSAIDs and wanted to get off of using opiates. In the interim, he was to continue with tramadol and home exercise program.

On July 2, 2019, Petitioner followed up with Dr. Payne for his neck pain. PX5, p.1219-1232. He reported the pain was bad that day and he was having difficulty with range of motion. He was taking tramadol for his pain. He noted that he was still having pain in his right arm and had one injection with no change in his pain. PX5, p.1227. Dr. Payne noted that he did not agree that Petitioner had reached maximum medical improvement and recommended he continue treatment. PX5, p.1231. Petitioner was to see an ENT, get another injection and continue with pain management. He was given refills of tramadol, naprosyn and voltaren gel.

On July 17, 2019, Petitioner was seen by Dr. Adlaka at Pain Control Associates. PX9, p.6-7. He reported radiating pain from his neck into his right upper arm. His cervical epidural steroid injection had afforded 60% relief. His arm pain had returned. He reported occasional headaches. He had been through physical therapy and was on medications. His pain level was 6/10. His pain was mostly in the left neck and into the scapular region. He also reported traveling pain into his left shoulder. He had remained off work. A cervical epidural steroid injection was discussed, as well as a possible cervical medial branch block at some point. Petitioner was to continue with tramadol and his home exercise program until follow up.

On August 14, 2019, Petitioner was seen by Dr. Parameswar at Pain Control Associates. PX9, p.4-5. He had received approval for the cervical epidural steroid injection through his PPO. His pain level was 5/10. He had tingling in both hands and fingers. He was to continue his pain medications and home exercise program until the cervical epidural steroid injection.

On August 20, 2019, Petitioner returned in follow up to Dr. Payne and his resident Dr. Mehta. PX5, p.1299-1304. Petitioner stated he felt the same as he did at the last office visit. He had upcoming neurology, a pain management and ENT appointments. He continued to take tramadol and naproxen with some relief. Petitioner had complaints of midline neck pain radiating into both arms, with significantly more pain in his right arm. He stated the pain was also going into his upper back between the shoulder blades and causing regular headaches diffusely over the back of his head. His last epidural steroid injection was in May 2019, which he said provided some relief of his symptoms. His pain was 5/10. The plan was for an epidural steroid injection with pain management on August 25, 2019, and a referral for greater occipital nerve trigger point injections at pain management. He was to attend his neurology and ENT appointments, and continue tramadol, naprosyn, and voltaren gel.

On August 26, 2019, Petitioner underwent a second cervical epidural steroid injection with Dr. Adlaka at Pain Control Associates. PX9, p. 2.

On September 17, 2019, Petitioner followed up with Dr. Payne and his resident, Dr. Hilton, for a follow up of his neck pain. PX5, p.1342-1347. Petitioner reported taking tramadol and

Tylenol for pain. He also reported having an epidural steroid injection a week prior and that the pain had somewhat subsided. He stated he had numbness and tingling in his right arm and pain "between his shoulder blades" but that both had improved slightly since the injection. The plan was for him to undergo another epidural steroid injection with pain management. He was to continue tramadol, Naprosyn, and voltaren gel and physical therapy.

On October 15, 2019, Petitioner followed up with Dr. Payne and his resident, Dr. D'Abamo, for his chronic neck, back and head pain since a tractor-trailer accident in December. PX5, p.1413-1418. It was noted that Petitioner had received epidural steroid injections in the past and was scheduled to receive another epidural steroid injection after his last visit. However, due to his insurance being cancelled, he was unable to continue the epidural steroid injection or therapy. He no longer required tramadol, which he was taking for the pain. Petitioner was still using naprosyn and voltaren gel, which seemed to help his symptoms. He denied weakness or numbness in his upper or lower extremities. His pain was 2/10. He was to continue with naprosyn and voltaren gel. The plan was for Petitioner to obtain another epidural steroid injection, continue with physical therapy and obtain an MRI of the cervical spine, once his insurance was reinstated. This was Petitioner's last visit with Dr. Payne. Petitioner was released to return to work without restrictions. PX5, p.1424.

On May 24, 2022, Petitioner was seen in with his PCP, Dr. Tibble. PX6, p.6-20. His employment was listed as retired. PX6, p.6. His cervical radiculopathy was listed as a diagnosis considered at the visit, although no specific complaints were noted. Petitioner had general complaints of chronic arthritis for which he took daily NSAIDs. No additional treatment recommendations related to his cervical diagnosis were given. Petitioner was to return in approximately six months.

The Commission affirms the Arbitrator's finding that Petitioner's cervical spine and right knee conditions of ill-being are causally related to injuries sustained in the work accident on December 7, 2018. However, the Commission disagrees with the Arbitrator's finding that these conditions reached maximum medical improvement as of March 26, 2019 and finds the date of maximum medical improvement for these conditions to be October 15, 2019.

The Commission finds that the Arbitrator based his finding that Petitioner was at maximum medical improvement for the cervical spine and right knee conditions as of March 28, 2019, on a lack of lasting improvement following this date and the causation opinions of Dr. Wehner. The Commission is not persuaded by the opinions of Dr. Wehner, as her opinions were based upon her findings that Petitioner did not initially document cervical pain and that Petitioner did not have radicular complaints. We do not find these statements to be an accurate representation of the medical records. The treatment at the emergency room on the date of accident was focused on internal injuries, however, two days later, on December 7, 2018, Petitioner reported the neck/upper arm, back, and abdomen pain since being discharged. PX5, p.367-373. Petitioner consistently continued to report cervical complaints after that, including complaints of radicular symptoms emanating from his neck on December 21, 2018, December 26, 2018, January 9, 2019, March 26, 2019, May 1, 2019, June 19, 2019, July 17, 2019, and August 20, 2019. PX7, p.4-7, 13-16, 40-53; PX5, p.1047-1056, 1291-1304; PX9, p.6-7, 9-10, 16-17. Further, while Dr. Wehner noted he

had an underlying degenerative condition, she made no opinion as to whether the semi-truck accident would have exacerbated or aggravated that underlying condition, choosing to focus on a diagnosis of a cervical strain.

Further, the Commission finds the medical records demonstrate improvement in Petitioner's condition as a result of the treatment rendered. After March 28, 2019, Petitioner continued to undergo pain management treatment. On June 19, 2019, Petitioner reported to Dr. Parameswar a 60% improvement in his neck pain following his first cervical epidural steroid injection, as well as improvement in the functional performance of his activities of daily living. PX9, p.9-10. This result appears to have been repeated following the August 26, 2019 cervical epidural steroid injection, as demonstrated in Petitioner's report to Dr. Payne's resident on September 17, 2019 that his pain had somewhat subsided. PX5, p.1342. Petitioner reported that the numbness and tingling of his right arm and the pain "between his shoulder blades had both improved slightly since the injection." *Id*. Based upon that improvement, Dr. Payne had recommended Petitioner undergo another cervical epidural steroid injection. PX5, p.1346. Petitioner's pain level was also at its lowest report at 2 out of 10. PX5, p.1413.

Petitioner's treatment for his work-related conditions ceased as of his last office visit with Dr. Payne on October 15, 2019. PX5, p.1413-1418. Petitioner testified that this cessation of treatment was due to insurance issues. T.26-27. However, treatment records from Franciscan Health Olympia Fields and Petitioner's primary care physician, Dr. Tibble, were introduced into evidence and demonstrate that Petitioner sought medical care after October 15, 2019. PX4, p.267-332; PX6. No complaints related to Petitioner's cervical or right knee conditions were present in those post October 15, 2019 treatment records. As such, the Commission finds that Petitioner voluntarily chose not to seek additional medical care and places Petitioner at maximum medical improvement at the time of his last related treatment on October 15, 2019.

Further, while the Commission agrees the Petitioner is entitled to temporary total disability benefits, we disagree with the period awarded. Petitioner was consistently treating with Dr. McKnight, Dr. Tibble, Dr. Payne, Dr. Parameswar and Dr. Adlaka through October 15, 2019. From the outset of his treatment, Petitioner was routinely provided restrictions of no driving that kept him off work by Concentra physician, Dr. McKnight. PX7, p.7, 16, 33, 43, 59, 62, 65, 68. After Petitioner was released by Dr. McKnight on March 1, 2019, at which time he was explicitly advised he did not have clearance to return to driving, (PX7, p.68) Petitioner continued his treatment with Dr. Tibble on March 7, 2019, where he was again restricted from driving. PX5, p.878. Petitioner then began treatment with Dr. Payne on March 26, 2019, at which time he was taken off work. PX5, p.1051, 1055. Petitioner's treatment with Dr. Payne continued, he was consistently prescribed opioids for pain throughout his treatment that would have prevented him from returning to work as a truck driver. PX5, p.1051, 1122, 1192, 1232, 1304, 1347. Dr. Payne's records on October 15, 2019 demonstrate that as of that date Petitioner was no longer taking the opioid, Tramadol, and that he was being released without restriction. PX5, p.1413-1424. The Commission finds as of October 15, 2019, Petitioner would have been able to return to work full duty, thus eliminating his entitlement to temporary total disability.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

25IWCC0229

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on May 6, 2024, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay any and all reasonable and necessary medical services related to the Petitioner's cervical and right knee condition stemming from Petitioner's December 5, 2018 accident incurred through October 15, 2019, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Payment of said expenses shall be made directly to the Petitioner and his attorney. Respondent shall receive credit for any related medical expenses it has already paid, as well as a credit of $6,389.40 pursuant to Section 8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $829.10/week for 44 6/7 weeks, commencing on December 6, 2018 through October 15, 2019 as provided in Section 8(b) of the Act. Respondent shall receive a credit for any TTD it has already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner permanent partial disability benefits of $746.19/week for 25 weeks, as provided in Section 8(d)2 of the Act, as the injuries sustained caused 5% loss of use of the person as a whole and 2.15 weeks, as provided in Section 8(e) of the Act, as the injuries sustained caused 1% 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.

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.

May 23, 2025

o: 4/15/2025
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	19WC005760
Case Name	Norman Walter v. XPO Supply Chain DBA Jacobson Warehouse Company
Consolidated Cases	
Proceeding Type	
Decision Type	***Corrected Decision***
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	Nancy Shepard
Respondent Attorney	Brian Bendoff

DATE FILED: 5/6/2024

/s/Gerald Granada, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF APRIL 30, 2024 5.165%

25IWCC0229

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
CORRECTED ARBITRATION DECISION

NORMAN WALTER
Employee/Petitioner

v.

XPO LOGISTICS, INC.
Employer/Respondent

Case # **19** WC **005760**

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 **Gerald Granada**, Arbitrator of the Commission, in the city of **Joliet**, on **April 22, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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 5, 2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**64669.80**; the average weekly wage was $**1243.65**.

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

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

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

Respondent shall be given a credit of $**10,186.09** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**10,186.09**.

Respondent is entitled to a credit of $**6,389.40** under Section 8(j) of the Act.

ORDER

Respondent shall pay any and all reasonable and necessary medical services related to Petitioner's cervical and right knee condition stemming from Petitioner's December 5, 2018 accident incurred through May 28, 2019, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Payment of said expenses shall be made directly to the Petitioner and his attorney. Respondent shall receive credit for any related medical expenses it has already paid.

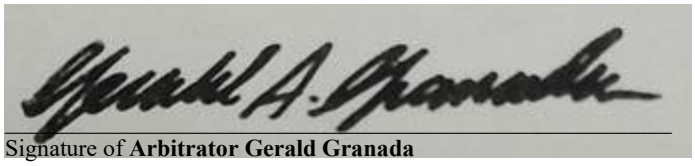
Respondent shall pay Petitioner temporary total disability benefits of $829.10 /week for 16 1/7 weeks, commencing 12/6/18 through 3/28/19, as provided in Section 8(b) of the Act. Respondent shall receive a credit for any TTD it has already paid.

Respondent shall pay Petitioner permanent partial disability benefits of $746.19 per week for 25 weeks, because the injuries sustained cause 5% loss of use the man as a whole.

Respondent shall pay Petitioner permanent partial disability benefits of $746.19 per week for 2.15 weeks, because the injuries sustained cause 1% loss of use of the right leg.

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 Gerald Granada**

May 6, 2024

FINDINGS OF FACT

This case involves Petitioner Norman Walter who alleges to have sustained injuries while working for Respondent XPO Logistics, Inc. on December 5, 2018. Respondent disputes Petitioner's claims, with the issues being: 1) causation; 2) medical expenses; 3) TTD; and 4) nature and extent.

On December 5, 2018, the Petitioner worked for Respondent as a truck driver. He was delivering materials when he was involved a single car accident, in which he had a syncopal episode while driving. He testified that he was unsure what caused him to begin losing consciousness. He was drinking water when he began to choke. He woke up after his truck had come to a stop, and his stomach was pressed against the steering wheel. Petitioner testified that his airbags did not deploy.

Medical Treatment

On December 5, 2018, Petitioner was transported by Advanced Medical Transport, an EMS service to the Trinity emergency department in Rock Island. His initial complaints were of shoulder pain, left chest pain and right upper quadrant pain. His chest CT scan did not show any fractures. He underwent a CT scan of the abdomen and pelvis with contrast, which revealed a lesion in his liver, but were noted not likely caused by the accident according to the treating physician Dr. Vanderlinden. The Petitioner was instructed to return to the emergency department as no significant traumatic injury was noted on the CT scans.

On December 21, 2018, Petitioner went to Concentra in Hammond, Indiana. On this date, the Petitioner continued to complain of left sided chest pain and abdominal pain. He rated the pain at a 3-4/10, which became worse as the day went on. He denied pain with deep breathing. Petitioner also reported pain in his knees bilaterally. Petitioner reported having had a knee replacement surgery two years prior, and that his knee felt swollen. He also complained of neck pain that radiated to his shoulders. That pain was also rated at a 4/10, which became worse as the day continued. Furthermore, Petitioner reported headaches occasionally coinciding with his neck pain. Petitioner's right knee appeared normal but was diffusely tender over the anterior aspect. Petitioner had full range of motion but had pain with flexion. Petitioner's cervical spine was noted to be tender. Palpation revealed no bilateral muscle spasms. Right and left side bending reflected an active range of 35 degrees with pain. With respect to the lumbar spine, Petitioner had a negative straight leg raise test. Petitioner was assessed with bilateral knee contusions, a strain of the neck and a contusion of the abdominal wall. He was referred to physical therapy for a contusion of the knees and neck. Petitioner was to undergo physical therapy three times a week for two weeks. Petitioner was referred to his primary care physician for evaluation of the causation of his syncopal episode and was returned to work full duty but for the limitation that he may not drive company vehicles.

On December 26, 2018, Petitioner returned to Concentra with continued complaints of neck pain but reports of his knees feeling better with full range of motion and normal strength. His thoracic spine and lumbar spine were normal on physical examination. No medications were prescribed on this date. The Petitioner was to return in one week, and his return to work restrictions remained the same. He followed up with Concentra on January 2, 2019 with similar complaints and continued work restrictions. At his January 9, 2019 visit, Dr. McKnight of Concentra noted that Petitioner's muscle injuries were improving, but that he would need a syncope workup before being cleared to drive a commercial vehicle.

On February 4, 2019, Petitioner saw Dr. John Tribble at Franciscan Health in Park Forest, Illinois to follow up on his syncopal episode and complaints of chronic right ear pain. Dr. Tribble noted Petitioner completed a CT scan of his head and an EEG, which were both negative. The Petitioner denied any subsequent syncopal episodes or presyncopal symptoms. He noted that Petitioner was currently on work restrictions from Dr.

McKnight for neck pain/chronic neck pain and was scheduled to undergo an MRI. Dr. Tribble also noted that Petitioner had taken oral antibiotics at the behest of an ENT for the right ear symptoms. Dr. Tribble cleared Petitioner to work without restrictions as a result of the syncopal episode. He noted that Petitioner was currently on restrictions from Dr. McKnight and recommended a final return to Dr. McKnight after a workup and management of Petitioner's neck pain. Petitioner was discharged on this date with eustachian tube dysfunction instructions. Petitioner returned to Dr. Tribble on February 19, 2019 with complaints of sharp pain in his right knee that had persisted for the last four months and had progressively worsened since his motor vehicle accident. Dr. Tribble noted that Petitioner underwent an x-ray in December 2018, which was noted to be negative, and that Petitioner underwent a right knee replacement in 2016 with Dr. Javors. Dr. Tribble assessed Petitioner with chronic knee pain, prescribed lidocaine gel, and ordered physical therapy for his right knee. Dr. Tribble referred Petitioner back to Dr. Javors for further imaging studies and management for the right knee.

On February 25, 2019, Petitioner attended High Tech Medical Park in Palos Heights, Illinois for an MRI of the cervical spine without contrast. The radiologist noted multilevel degenerative disc disease of the cervical spine, noting disc osteophyte complexes at every level with mild bilateral facet arthrosis. There was straightening of the expected cervical lordosis with mild retrolisthesis at C4 on C5 and C5 on C6. No evidence of compression fractures was noted.

On March 1, 2019, Petitioner returned to Dr. McKnight at Concentra. The Petitioner reported that his neck and upper back were no better. Dr. McKnight reviewed the MRI of the cervical spine. She opined that Petitioner had been adequately treated for the muscle sprain associated with the motor vehicle accident. She concluded that he had severe degenerative changes to the cervical spine that were not work related. Dr. McKnight opined that Petitioner was at MMI with respect to the injuries sustained in his motor vehicle accident.

On March 18, 2019, Petitioner saw Dr. Javors, who noted that noted that since the accident Petitioner was having increased right knee pain and prior to that event "his knee was doing great." He advised that there was no evidence of loosening of the hardware or fracture. He felt that Petitioner probably "irritated it, mostly likely from hitting on dashboard or steering wheel." He recommended that Petitioner start therapy and continue the medications as recommended by Dr. Tibble. Following his right knee therapy, Dr. Javors indicated that Petitioner was better after 15 sessions of PT, had minimal fluid on exam and was released from care to return on as needed basis. Petitioner testified that he did not return to Dr. Javors.

On March 28, 2019, Petitioner saw Dr. Julie Wehner for an independent medical examination at Respondent's request. Dr. Wehner noted that Petitioner's orthopedic examination was normal. Dr. Wehner noted Petitioner's MRI showed degenerative changes throughout his cervical spine consistent with age. With respect to the cervical spine, Dr. Wehner concluded that Petitioner sustained a cervical sprain based on the mechanism of injury and that Petitioner was medically capable of returning to work at full duty without restrictions. Dr. Wehner assessed Petitioner with a 0% impairment rating per the Sixth Edition of the AMA Guidelines.

On April 2, 2019, Petitioner underwent an EMG prescribed by Dr. William Payne. The EMG reflected no evidence of cervical radiculopathy or peripheral neuropathy in the upper extremities.

Petitioner underwent physical therapy from April, 2019 through May, 2019. Upon his discharge from physical therapy, Petitioner rated his neck pain at a 1/10. Petitioner continued to report low levels of cervical discomfort, mild end range tightness and mildly reduced range of motion. Petitioner had returned to driving his regular automobile at this time although had not transitioned to his semi-truck for work.

On June 4, 2019, Petitioner followed up with Dr. Payne, who administered a number of epidural steroid injections over the course of treating Petitioner. The injections only gave Petitioner partial, temporary relief.

Dr. Payne assessed Petitioner with neck pain and degenerative joint disease at the cervical spine. Dr. Payne continued to treat Petitioner with injections and pain medication while keeping Petitioner off work through October 15, 2019 – at which time Petitioner was returned to full duty work.

On June 28, 2019, Petitioner saw Dr. Young-il Ro for a neurology consult. Dr. Ro noted that Petitioner's EMG and nerve conduction studies were negative. Petitioner reported complaints of a headache, neck pain, numbness in the fingers on both sides, blurred vision on the right side and tinnitus. Dr. Ro's neurological examination of Petitioner was essentially normal.

At the time of hearing, Petitioner testified that he had obtained new employment. He was employed as a delivery driver for Monarch Auto Supply, where he drives a car to various mom-and-pop gas stations to deliver auto parts. He testified that he typically drove no further than 15 miles away from his house and has issues with bouncing on the road. He also briefly held a forklift driving job but could not continue that job because of the issues with bouncing. In his free time, he gardens, rides motorcycles, and goes to campgrounds where he rides a golf cart, despite his complaints of not being able to sit for long periods of time and issues with bouncing on the road. His current complaints are occasional neck pain and right knee swelling/stiffness for which he takes over the counter medication.

CONCLUSIONS OF LAW

1. Regarding the issue of causation, the Arbitrator finds that the Petitioner has met his burden of proof. In support of this finding, the Arbitrator relies on the Petitioner's testimony and the preponderance of the medical evidence showing that Petitioner had sustained a sprain/strain injury to his cervical spine as a result of his December 5, 2018 motor vehicle accident. Furthermore, Petitioner sustained trauma to his right knee that appeared to have aggravated his chronic knee pain. There was no evidence offered to rebut Petitioner on this issue. Therefore, the Arbitrator concludes that the Petitioner's current condition of ill-being in his cervical spine and right knee are causally connected to his undisputed December 5, 2018 work accident.

2. Regarding the issue of medical expenses, the Arbitrator finds that the Petitioner's medical treatment related to his cervical spine and right knee through March 28, 2019 have been reasonable and necessary in addressing his work-related conditions. The records show that the Petitioner was determined to be at MMI as of March 1, 2019 by Dr. McKnight, and subsequently on March 28, 2019 by Dr. Wehner. The records show that the treatment Petitioner received after March 28, 2019 was not reasonable or necessary as evidenced by pain treatment with little to no lasting improvement in Petitioner's condition and normal follow up test results. Accordingly, the Arbitrator awards the Petitioner any medical expenses incurred through March 28, 2019 subject to the Fee Schedule related to treatment of his cervical spine and right knee stemming from the December 5, 2018 work accident. Respondent shall receive a credit for any medical expenses it may have already paid.

3. Regarding the issue of TTD and consistent with the findings above, the Arbitrator further finds that Petitioner was temporarily totally disabled from December 6, 2018 - the date immediately following his accident, through the date he was placed at MMI on March 28, 2019 by Dr. Wehner. Therefore, Respondent shall pay Petitioner TTD for this time period and Respondent shall receive a credit for any TTD it may have already paid.

4. Regarding the issue of the nature and extent of the Petitioner's injuries, the Arbitrator applies the factors set forth in Section 8.1b of the Act and notes the following: (i) an impairment rating of 0% of the whole body according to Dr. Wehner was submitted into evidence and the Arbitrator gives considerable weight and relevance to this factor; (ii) Petitioner was a truck driver who was released to return to work with no restrictions following his accident - a factor to which the Arbitrator gives significant weight and relevance; (iii) Petitioner was 63 years old at the time of injury - a factor to which the Arbitrator gives some weight and relevance; (iv) there was no direct evidence of future earnings being impacted due to this injury and the Arbitrator gives no weight and relevance to this factor; (v) there was evidence of disability which show that the Petitioner sustained a sprain/strain to his neck and an aggravation of his chronic right knee condition, for which he underwent care in the form of injections, physical therapy and medication from which Petitioner still has continued complaints of some neck discomfort, and knee swelling and stiffness - the Arbitrator gives great weight and relevance to this factor. Based on the factors above, the Arbitrator concludes the injuries sustained by Petitioner caused a 5% loss of use of the person as a whole and 1% loss of the right leg as a result of his work incident.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC011306
Case Name	Monica Cruz v. Will County Sheriff's Department
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0230
Number of Pages of Decision	12
Decision Issued By	Stephen Mathis, Commissioner, Christopher Harris, Commissioner

Petitioner Attorney	Matthew Smart
Respondent Attorney	Lauren Kus

DATE FILED: 5/23/2025

/s/Stephen Mathis,Commissioner

Signature

DISSENT

/s/Christopher Harris,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

Monica Cruz,

Petitioner,

vs. NO. 22WC011306

Will County Sheriff's Department,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection and 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 July 8, 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 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.

May 23, 2025
SJM/sj
o-5.7.25
44

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

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

DISSENT

While I agree with the offensive nature of Petitioner's work accident, the principal inquiry is whether Petitioner's alleged current condition of mental ill-being causally related to the July 26, 2020 injury. The evidence is insufficient with respect to this issue.

Petitioner confirmed that she did not treat with any psychiatric provider from the date of accident until 2023, when she attended her first visit with a mental health professional. The therapy records were not offered into evidence but Petitioner testified to discussing the work accident with her therapist. However, she testified that the need for treatment was due to personal issues. Petitioner was asked to clarify her treatment with the therapist and she confirmed several times that the reasons for therapy were unrelated to the July 26, 2020 work accident. Furthermore, the initial treatment records from 2020 did not document any complaints or concerns of mental traumas due to the assault at work.

By her own admissions and the evidentiary record as a whole, Petitioner failed to establish that her claimed mental injury is causally related to the July 26, 2020 work accident, and any alleged permanent disability would not be work-related. The Arbitrator's PPD award, while nominal, is manifestly against the weight of the evidence.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC011306
Case Name	Monica Cruz v. Will County Sheriff's Department
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Roma Dalal, Arbitrator

Petitioner Attorney	Matthew Smart
Respondent Attorney	Lauren Kus

DATE FILED: 7/8/2024

/s/ Roma Dalal, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JULY 2, 2024 5.155%

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

Monica Cruz
Employee/Petitioner

v.

Will County Sheriff's Department
Employer/Respondent

Case # **22** WC **011306**

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 **Joliet**, on **May 15, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **July 26, 2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**119,634.63**; the average weekly wage was $**1,500.00**.

On the date of accident, Petitioner was **57** 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**.

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

ORDER

Based on the attached findings, and the record taken as a whole, the Arbitrator finds that Petitioner sustained a permanent injury to her person that arose out of and in the course and scope of her employment with Respondent.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule for the following dates of service July 27, 2020, September 7, 2020 and November 5, 2020 as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for amounts paid.

Respondent shall pay Petitioner permanent partial disability benefits of $871.73/week for 5 weeks, because the injuries sustained caused the 1% 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

July 8, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF WILL)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Monica Cruz,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 22 WC 011306
Will County Sheriff's Dept.,	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on Petitioner's Request for Hearing in Joliet, Illinois before Arbitrator Roma Dalal on May 15,2024. Issues in dispute include causal connection and nature and extent. The parties agreed that there are three date of service claimed in regards to medical bills. Respondent indicated they believed the medical bills were paid but would pay the same if they were not. (Arb. Ex.1, T.4).

Monica Cruz (hereinafter referred to as "Petitioner") was employed with the Will County Sheriff's Department (hereinafter referred to as "Respondent") as a deputy correctional officer for the past 19 years (T.8). Petitioner testified that this was an adult detention facility, many who are convicted of violent criminal behavior. (T.9). Petitioner noted that she had sustained both verbal and physical abuse. She testified that her job duties vary from day to day, but that on July 26, 2020, she was assigned to distribute lunch to a grouping of cells. She testified that the normal protocol for such a task is that she is assisted by another inmate, and that she brings trays of lunch to each individual cell, unlocking each cell-door's "chuck hole,' providing the inmate with their lunch, and then coming back to retrieve their tray after their mealtime had ended. (T.10-11).

On the day of the incident, Petitioner went to dayroom 11, where the perpetrator was. She was serving lunch and Mr. Williams, the perpetrator, would not allow her to close the chuckhole like she did with everyone else. (T.12-13). Mr. Williams continued to keep his arm hanging out of his cell's "chuck hole" which prevented Petitioner from being able to close the door properly. Petitioner refused to remove his arms. (T.13). After about 20 minutes, she began collecting the food. She walked past Mr. Williams's cell, and he stated something about needing toilet paper and she said okay. Then, he flung a cup of yellow substance that had a strong order of urine in her direction. It made contact with her face, neck and uniform. (T.14). She testified that she went to an eye-wash station and washed her face. (T.15). She then reported

the incident. (T.15). She was also concerned about possible exposure to any diseases or illnesses the inmate might have. (T.16). When she went home, she felt very upset and violated. (T.18).

Per the Employee First Injury Report, Petitioner had urine splashed in her face. Petitioner was referred to Physicians' Immediate Care for treatment. It was noted that an inmate threw urine on her and made contact with her face and clothing. She was concerned about the inmate having an infectious disease. (PX1).

Per the incident report, Petitioner was in the medical unit serving lunch with the pod workers. Upon entering day room 11, inmate Williams began addressing her with derogatory remarks. She provided him lunch, and he would not allow her to close the chuckhole as his arms were hanging out. As she was collecting the food trays, she saw in his hand that he was holding a cup full of an unknown yellow substance. The substance landed on her right side of the face and uniform. She was interested in pursuing charges. (PX2).

Petitioner proceeded to Physicians Immediate Care the next day and was given a blood test and a TDAP shot. The blood test was to test for communicable diseases. (T.18). Petitioner was released back to full duty and received negative blood tests within 24 hours. (T.19) During those 24 hours Petitioner testified she felt anxious. (T.19).

Petitioner followed up on September 7, 2020 and had similar blood work done. Again, her results were negative. Lastly her final blood draw was November 5, 2020 and the results were again negative. (T.20). Petitioner testified she felt very anxious and was not sure if she could come back to work. She testified she found her inner strength and came back to work. (T.22-23). She had to see the individual from time to time in the jail and that gave her anxiety every time. (T.23). Petitioner further testified to the anger and emotional discomfort of having to still see the offender at the prison in the months following the incident, and how no official attempts were made to separate Petitioner from having to interact further with the offender. (T.23).

Petitioner testified she came under the care of a mental health professional in 2023 and had undergone approximately five sessions. (T.24). Petitioner stated the incident is a constant thought in the back of her mind. (T.24).

On Cross-Examination, Petitioner testified that the day after the incident she returned to work. Petitioner confirmed that the liquid did not get into her mouth, but got onto her face, right side of her lip, eye, and cheek. (T.26). She did not swallow the liquid. (T.27). Petitioner confirmed she went to Physicians Immediate Care and was released to full duty work. (T.28). She confirmed her regular full duty included interacting with inmates. (T.29). Petitioner confirmed she did not take any medications relating to the July 26, 2020 accident. In addition, between 2020 and 2023 she did not treat with any medical provider related to this accident. (T.31).

Petitioner noted that she began seeing her therapist for personal reasons, however, did discuss her accident during the sessions. (T.32). Petitioner did agree that she last treated for this incident on November 5, 2020, and was not prescribed any psychiatric diagnosis or medications as a result of the incident and did not receive any psychiatric treatment for this incident. (T.31-33). Petitioner testified she continues to work her full-time job as a correctional officer today and continues to request and work overtime. (T.34).

She noted that although she worked overtime, she did consider alternatives to her employment after this event. (T.37)

Deputy Chief Doreice Burse

Respondent called Deputy Chief Doreice Burse to testify on behalf of Respondent. Chief Burse was the lieutenant at the jail on July 26, 2020, and spoke with Petitioner after the incident. (T.40). Chief Burse confirmed Petitioner worked full duty as well as overtime following the accident. (T.42). Petitioner continued working with male inmates and had never complained about her job. (T.43-44). Chief Burse said Petitioner had made a request to work the courthouse or visual, but she could not remember when. (T.45). Chief Burse testified Petitioner never asked her to be moved to a different part of the facility to avoid the offender, nor did Petitioner ever ask for time off for this incident. She also admitted it was possible Petitioner might have spoken to other supervisors about being moved away from the offender, but that she could only testify that Petitioner never asked her to be moved. (T.48-49).

Chief Burse also testified there is no policy regarding any physical alternation between an inmate and an officer (T.49). Chief Burse confirmed this was a tough job. (T.52).

Medical Summary

Petitioner presented to Physicians Immediate Care on July 27, 2020 with a chief complaint of contamination of the head. Petitioner was asymptomatic with exposure to urine on July 26, 2020. Petitioner reported she had urine thrown towards her face, denied getting in her mouth or ears, possibly in her ears. The inmate was well known to Petitioner and had multiple events of throwing bodily fluids on officers. (PX3, p.1-3). Petitioner was given a Tdap vaccination. The nurse assessed Petitioner with contact and suspected exposure to other viral communicable diseases and ordered a workup that included a lab panel evaluating HIV, Hepatitis B, and Hepatitis C. (PX3, p.5). Petitioner was to return on September 7, 2020 and released to full duty work. (PX3, p.6).

Petitioner returned on September 7, 2020 to Physicians Immediate Care. (PX3, p.8). Petitioner was ordered another set of labs to evaluate Hepatitis C and HIV and told Petitioner that she would be notified of the lab test results within five days. Petitioner was released to work without restrictions that day and was to return on November 7, 2020 for another set of labs. (PX3, p.11).

Petitioner followed up November 5, 2020. Labs were taken, and she was restricted from work solely for the unrelated right wrist condition. (PX3, p.12-13).

All lab work was negative for any communicable diseases.

CONCLUSIONS OF LAW

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

Decisions of an Arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate

witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

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

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her testimony to be persuasive. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and finds the witness reliable.

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

The Findings of Fact and Conclusions of Law, as stated above, are adopted herein. To obtain compensation under the Act, a claimant must prove that some act or phase of his 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. To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980) including that there is some causal relationship between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989) It is well established that the Act is a humane law of remedial nature and is to be liberally construed to effect the purpose of the Act - that the burdens of caring for the casualties of industry should be borne by industry and not by the individuals whose misfortunes arise out of the industry, nor by the public. *Shell Oil v. Industrial Comm'n,* 2 Ill.2nd 590, 603 (1954). Decisions of an Arbitrator shall be based exclusively on evidence in the record of proceeding and material that has been officially noticed. *820 ILCS 305/1.1(e)*.

The Arbitrator finds that Petitioner's current condition of ill-being is causally related to the incident of July 26, 2020. Under Illinois law, to obtain compensation under the Workers' Compensation Act, a Petitioner must show by a preponderance of the evidence that he suffered a disability arising out of and in the course of his employment. 820 ILCS 305/2. The arising out of component under the Workers' Compensation Act addresses the causal connection between a work-related injury and the Petitioner's condition if ill-being. 820 ILCS 305/2. To satisfy the "arising out of" component for obtaining workers' compensation, 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 injury. *Sisbro, Inc. v. Industrial Commission*, 797 N.E.2d 665 (Ill.Sup.Ct. 2003). A workers' compensation claimant need prove only that some act or phase of the employment was a causative factor in the ensuing injury. 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 the workers' compensation claimant's ill-being. *Brian Vogel v. Industrial Commission*, 821 N.E.2d 807 (Ill.App.2 Dist. 2005). Here, Petitioner credibly testified that this incident still bothers her to the present. Given the vile nature of having bodily fluids thrown in your face, the Arbitrator finds that testimony believable, and the severity of the incident is competent enough to still cause problems for a victim years in the future. Petitioner's person was further violated each time she had to go in for bloodwork, furthering both the physical and psychological nature of the incident.

The Arbitrator notes that Petitioner did not seek treatment with a mental health professional for a number of years following this incident, and when she did, she admitted that this incident was not the sole inciting factor of her decision to seek treatment. The Arbitrator does not find a requirement under the Act that a Petitioner claiming psychological injury must have to submit to examination or treatment with a mental health professional. Furthermore, when the inciting event is so vile and offensive in and of itself, it supposes the fact that any reasonable person would be adversely impacted from a similar event.

Based on the evidence set forth above, the Arbitrator finds that Petitioner's current condition of ill-being regarding is causally related to her work accident of July 26, 2020.

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

The Arbitrator finds that the parties stipulated that there were three dates of service with Physicians Immediate Care, with those dates being July 27, 2020, September 7, 2020, and November 5, 2020. It was stipulated that if those bills were unpaid, Respondent would be responsible for payment of same.

With regard to issue "L", what is the nature and extent of the injury, the Arbitrator finds as follows:

The Findings of Fact and Conclusions of Law, as stated above, are adopted herein.

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.

With regard to subsection (i) of § 8.1b(b), the Arbitrator notes no party introduced an impairment rating at trial and as such, no weight is given to this factor.

With regard to subsection (ii) of § 8.1b(b), the Arbitrator notes Petitioner is still employed with Respondent as a correctional officer and is noted to have thick skin. She has to continue to work with inmates and is subject to both mental and physical abuse. The Arbitrator therefore gives moderate weight to this factor based on the mental demands of Petitioner's job.

With regard to subsection (iii) of § 8.1b(b), the age of the employee at the time of the injury, the Arbitrator notes Petitioner was 57 years old at the time of the accident. Petitioner is now 61 years old. As such she has a limited number of work years left. Given the length of her estimated work life, the Arbitrator gives great weight to this factor.

With regard to subsection (iv) of § 8.1b(b), the Arbitrator concludes Petitioner's earnings were not impacted from the injury. Petitioner never missed any time off work and continues to work overtime. As such, the Arbitrator finds Petitioner is capable of making the same amount in wages as she was making previous to her injury. There is no evidence Petitioner has a diminished earning capacity. As Petitioner's injury did not truly affect her earning capacity, the Arbitrator assigns significant weight to the lack of effect Petitioner's injury had on Petitioner's wages.

With regard to subsection (v) of § 8.1b(b), the Arbitrator finds Petitioner presented to Physician Immediate Care for three visits. Although Petitioner's tests were negative, Petitioner's testimony evidenced that she sustained a traumatic work event when getting urine thrown at her person. It was a physical and mental violation. Based on the same the Arbitrator gives this factor moderate weight.

Based on the above factors, and the record taken as a whole, the Arbitrator finds Petitioner sustained permanent partial disability to the extent of 1% loss of use of the person pursuant to Section 8(d)(2) of the Act. Respondent shall pay Petitioner permanent partial disability benefits of $871.73 for 5 weeks or $4,358.65.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC003608
Case Name	Eric Stratton v. Bloom Township High School District 206
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0231
Number of Pages of Decision	21
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Crystal Figueroa
Respondent Attorney	Megan Inskeep

DATE FILED: 5/23/2025

/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

Eric Stratton,

Petitioner,

vs. NO. 22WC003608

Bloom Township High School District 206,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 24, 2024, is hereby affirmed and adopted.

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

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

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

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

May 23, 2025

SJM/sj
o-5.7.25
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC003608
Case Name	Eric Stratton v. Bloom Township High School District 206
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Efi James, Arbitrator

Petitioner Attorney	Crystal B. Figueroa
Respondent Attorney	Dan Swanson

DATE FILED: 5/24/2024

/s/Efi James, Arbitrator
Signature

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

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION
19(b)

ERIC STRATTON
Employee/Petitioner
v.
BLOOM TRAIL HIGHSCHOOL DISTRICT 206
Employer/Respondent

Case # **22WC 003608**

Consolidate 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 partially heard by the Honorable **Efi James**, Arbitrator of the Commission, in the city of **Chicago**, on **March 8th, 2024.** After reviewing all the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

Disputed Issues

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

FINDINGS

On **8/30/2021**, Petitioner was operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$39,907.40**; the average weekly wage was **$767.45**.

On the date of accident, Petitioner was **57** 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 $**29,236.00** for TTD, $0.00. for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $ **29,236.00**.

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

ORDER

Respondent shall pay Petitioner reasonable, related, and necessary medical services in the amount of **$ 4,100.94** as provided in sections 8(a) and 8.2 of the Act, and as is set forth below. Payment shall be in accordance with the medical fee schedule and shall be tendered directly to the Petitioner.

Respondent shall pay Petitioner Temporary Total Disability benefits of $511.64/week for 113 and 4/7 weeks, commencing January 4th, 2022 through March 8th, 2024, as provided in Section 8(b) of the Act.

Respondent shall approve and pay for the left total knee replacement and any necessary post-operative care as prescribed by Dr. Chaddia as provided in Section 8(a) and 8.2 of the Act.

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

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at a 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.

May 24, 2024

Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

ERIC STRATTON,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 22WC003608
BLOOM TOWNSHIP HIGH SCHOOL DISTRICT 206 ,	)	
	)	
	)	
Respondent.	)	

PROCEDURAL HISTORY

This matter proceeded to hearing on March 8, 2024, in Chicago, Illinois before Arbitrator Efi James on Petitioner's 19(b), 8(a) Motion. The issues in dispute include Causal Connection, Medical and Prospective Medical Care. (Arbitrator's Exhibit "AX" 1)

FINDINGS OF FACT

Job Duties

At trial, Petitioner testified he was currently 59 years-old and on August 30, 2021 was employed at Bloom Township High School District 206 as a security officer. (Tr. 9-10) Petitioner testified he had been employed at Bloom Township High School District 206 for five to six years. (Tr. 10) Petitioner testified his job duties consisted of monitoring the hallways, breaking up aggressive behavior such as fighting, walking around the school, and checking doors. *Id.* Petitioner testified he also had bus duties, which entails being outside to break up fights among the kids themselves or between neighborhood kids who pick fights with the kids getting on the bus. *Id.*

Prior Medical Condition

Petitioner testified that he did not have any previous problems to his left knee nor had he received any prior treatment to his left knee. (Tr. 14-15) Before Petitioner's work accident, he was working his regular full-duty job. (Tr. 15)

Accident

Petitioner testified that, on August 30, 2021, he was doing "check ins" of students coming in when he heard over the radio that security was needed in the guidance counselor's office. (Tr. 11) Upon clearing his area, he headed over to the dean's office where a 27-year-old individual, who was not a student, was sitting there due to

having been found looking up guns on the computer. *Id.* Petitioner testified that he looked at the 27-year-old gentleman and confirmed that he was not a student here. *Id.* Shortly thereafter, it was discovered that this 27-year-old had entered the school and had given someone else's name. *Id.* Petitioner suddenly heard "Stratton, Stratton," and he came out running, when he saw the 27-year-old man fighting with an officer. (Tr. 11-12) Petitioner testified that he went in to help by grabbing the man and taking him and the officer over the desk, where he impacted his left knee on the cement ground, which he described as having thin carpet over it. (Tr. 12-13) Upon impacting his left knee, Petitioner could see through his pants that his left knee was swollen, and he was "in so much pain." (Tr. 13) Petitioner arrested the individual, but when removing the cuffs to cuff him in the back instead of the front, another fight broke out. (Tr. 12) Petitioner was able to put the cuffs back on, and he laid the individual on the ground until the police arrived. *Id.*

Petitioner's Testimony

Petitioner testified that after this incident, his supervisor, Principal Moore, told him that he needed to go to the hospital. (Tr. 14) Petitioner testified that he although he declined to go to the hospital, he was sent home by Principal Moore. *Id.* Petitioner testified that when he arrived at home, he called his worker's compensation adjuster who told him to take some Tylenol and that he should be fine. *Id.*

Petitioner testified prior to the work accident he was working full duty, did not have any issues to his left knee and had not received any left knee treatment in the past. (Tr. 15)

Petitioner described the treatment he received following the work accident, including initial treatment at Concentra, physical therapy, left knee arthroscopy and partial medial meniscectomy, and additional post-operative treatment with Dr. Ankur Chaddia. (Tr. 15-28) Petitioner testified "after the surgery I was feeling wonderful." (Tr. 20) He further testified that he thought that was it and then "whatever was in there wore off and there was pain, tears and everything else". (Tr. 20-21) Petitioner testified he was in constant pain. (Tr. 21)

Petitioner testified that Dr. Garelick explained that the left knee arthroscopy would not address the degenerative osteoarthritis. (Tr. 37-38) Petitioner testified on August 2, 2022, he returned for treatment with Dr. Chaddia and reported 0 out of 10 pain. He testified "that was just the one day that I felt good." (Tr. 24-25) He testified that he was released to full-duty work and advised to follow up as needed. Petitioner testified Dr. Chaddia did not mention that he no longer needed surgery and it was his understanding the knee surgery was still not approved. (Tr. 25)

Petitioner testified he returned to work only for "some hours" and experienced swelling and aching after "walking at school and up and down the stairs." (Tr. 58, 72) He ultimately returned for treatment with Dr. Chaddia on September 6, 2022, at which time Dr. Chaddia recommended a left total knee arthroplasty and placed Petitioner off work. (Tr. 25-26) Petitioner testified Dr. Chaddia did not recommend additional physical therapy treatment, injections, or knee aspirations. Petitioner indicated he did not find any relief from the physical therapy and injections. (Tr. 60-62)

Petitioner further testified he never treated with Dr. David Garelick after the surgery and therefore did not agree that Dr. Garelick ever informed him that patients with degenerative arthritis usually take longer to recover from a knee arthroscopy, that Petitioner was noncompliant with physical therapy, nor that Petitioner would be released to return to work. (T.41-44) However, after commencing treatment at Illinois Orthopedic Network, he admitted he was not attending his physical therapy sessions consistently. (T.46) Even after pursuing treatment with Dr. Chaddia, he denied Dr. Chaddia discussed transitioning Petitioner to a light duty or full duty work status on July 5, 2022. (T.54-55)

At the time of trial, Petitioner testified he rated his pain 5 out of 10 in a sedentary position and he continued to take pain medication prescribed by Dr. Chaddia. While in a standing position, he rated his pain 6 to 7 out of 10

due to the pressure from his weight onto his knee. (T. 27-28) Petitioner described pain while walking up and down stairs at home (7 stairs in front, 13 stairs up to the bedroom, and 14 down to the basement), completing household duties, and on long walks with his wife. (T.28-33)

Medical Summary

Petitioner was first seen at Concentra Medical Center (PX1) Specifically, he was seen here from September 14, 2021 through February 11th, 2022. (Tr. 15) Petitioner's testified that he did not see a doctor immediately after his accident because he was advised to first ice his left knee. (Tr. 16; PX 1, pg. 182)

On September 14, 2021, the history that Petitioner provided the doctors at Concentra Medical Center was that a trespasser entered the building and attacked another officer. (PX 1, pg. 186) He further elaborated that he assisted in taking the subject down, impacting his left knee with the ground. *Id.* Petitioner reported pain, swelling, throbbing, and tenderness upon touch to the left knee. (PX 1, pg. 182) On physical examination, there appeared to be grade 2 effusion and tenderness over the anterior knee. An x-ray demonstrated soft tissue swelling, joint effusion, and mild osteoarthrosis without acute bone abnormality. Petitioner was diagnosed with a left knee strain and prescribed Naproxen, advised to use a large, hinged knee support, and was referred for physical therapy treatment three times per week for two weeks. Petitioner was placed on light duty restrictions. (PX 1, pgs. 176-200, 202, 210) Petitioner began physical therapy treatment on September 15, 2021. (PX 1, pg. 168)

Petitioner underwent an x-ray of the left knee on September 14, 2021, which revealed soft tissue swelling, joint effusion, and mild osteoarthrosis without acute bone abnormality. (PX 1, pg. 179) Petitioner's assessment was left knee strain, and he was prescribed 500 mg of Naproxen and physical therapy. (PX 1, pg. 180) As Petitioner testified, he underwent physical therapy at Concentra. (Tr. 17) Petitioner testified physical therapy was painful to his left knee. Petitioner was released to return to work with restrictions consisting of no squatting, no kneeling, and wearing a splint/brace. (Tr. 17)

Petitioner returned for follow-up treatment at Concentra on September 17, 2021 with Dr. Stewart. He reported he was working regular duty and his symptoms occurred intermittently. Petitioner presented with stiffness and tenderness. Dr. Stewart noted Petitioner demonstrated functional improvement following three physical therapy visits. He was recommended to continue physical therapy. (PX 1, pgs. 148-162) During the September 20, 2021 physical therapy session, Petitioner reported he felt "a lot better" and the therapist noted Petitioner was progressing "faster than expected." (PX 1, pg. 143-144)

On September 27, 2021, Petitioner returned for follow-up treatment with Dr. Emily Opiola, NP. Due to ongoing pain complaints, Petitioner was advised to start Ibuprofen 800mg, Methylprednisolone 4mg, wear an ace wrap, and continue physical therapy treatment three times per week for two weeks. An MRI of the left knee was also ordered. (PX 1, pgs. 121-134, 204, 219)

Petitioner underwent an MRI of the left knee at Simon Med on October 20, 2021. (PX 2) The relevant findings were grade 2/3 chondrosis of the medial joint space compartment, a mildly complex tear of the body and posterior one third of the medial meniscus and large joint effusion. (PX 2, pg. 19) Due to continued pain and swelling, Petitioner was referred to an orthopedic surgeon, Dr. David Garelick, who is also at Concentra. Petitioner's assessment was a tear of the medical meniscus of the left knee, (PX 1, pg. 106)

On October 26, 2021, Petitioner returned for follow-up treatment with Dr. Stewart and indicated he had been working modified duty. Upon review of the MRI and the physical examination, Petitioner was assessed with a left knee strain and left knee tear of the medial meniscus. (PX 1, pgs. 95-108) Petitioner was advised to continue working with restrictions. (PX 1, pg. 110)

Petitioner's initial consultation with orthopedic surgeon, David Garelick, was on November 5, 2021. (PX 1, pg. 67) Petitioner reported the mechanism of injury and denied any prior left knee injuries. Petitioner was only taking Ibuprofen which did not provide him relief. Petitioner was diagnosed with a left knee medial meniscus tear and mild medial compartment degenerative arthritis. (PX 1, pg. 67) Dr. Garelick noted that, at this stage, Petitioner has undergone physical therapy and ibuprofen, both of which were not too helpful. *Id.* Dr. Garelick discussed treatment options with Petitioner. Dr. Garelick recommended a left knee arthroscopy and debridement for the medial meniscus tear versus a knee aspiration and corticosteroid injection. Petitioner requested to proceed with the knee aspiration and injection. Petitioner was dispensed Diclofenac 75mg #15. (PX 1, pgs. 64-68, 205, 224) Dr. Garelick advised that a knee arthroscopy would be helpful, however, it would not address Petitioner's underlying degenerative arthritis. *Id.*

Petitioner underwent a left knee injection on November 12, 2021, which included an aspiration of 70 cc of clear synovial fluid and then an injection. (PX 1, pg. 63) Petitioner followed up on December 16, 2021, in which he reported his knee being filled up with fluid and lots of pain, especially at night. (PX 1, pg. 59) Dr. Garelick noted that Petitioner's swelling persisted and that his effusion was significant. *Id.* Dr. Garelick again recommended a left knee arthroscopy. Petitioner agreed to proceed with the knee arthroscopy on January 4, 2022. (PX 1, pgs. 56-59)

On January 4, 2022, Petitioner underwent a left knee arthroscopy, chondroplasty of the femoral trochlea and partial medial meniscectomy at Amita Health St. Joseph Hospital. (PX 3) Petitioner's pre-operative diagnosis indicated left knee medial meniscus tear and the post-operative diagnoses indicated a left knee medial meniscal tear and left knee degenerative joint disease. According to the operative report, Petitioner was made aware that the surgery may not completely cure his discomfort. Petitioner was prescribed hydrocodone-acetaminophen and ibuprofen. (PX 3, pgs. 37-38, PX 4, pg. 67) Post surgery, Petitioner continued to follow up at Concentra. (Tr. 21) Petitioner testified that he initially felt wonderful after the surgery; however, "whatever was in there" wore off and there was "pain, tears, and everything else." (Tr. 20-21)

Petitioner presented for post-operative treatment with Dr. Garelick on January 14, 2022. Upon physical examination, Dr. Garelick noted Petitioner demonstrated no use of any ambulatory aide, calf was soft and non-tender and there was no drainage from his incisions. As such, he recommended physical therapy treatment and continued Petitioner off work. Dr. Garelick expected Petitioner to return to regular duty 6-weeks post operative care. (PX 1, pgs. 52-55)

Petitioner began physical therapy on January 18, 2022 at Concentra. (PX 1, pgs. 44-47) During the course of his physical therapy sessions, Petitioner reported he was "getting better," and felt "less stiff." Petitioner's therapist confirmed Petitioner was benefitting from the current treatment as noted by a reduction in symptoms. (PX 1, pg. 29)

On February 11, 2022, Petitioner returned to Dr. Garelick with continued complaints of pain and swelling in the left knee. Dr. Garelick noted that Petitioner had not been very compliant with therapy. Dr. Garelick noted that Petitioner had a fair amount of degenerative arthritis in the medial compartment of the knee on the end of the medial femoral condyle and the femoral trochlea. (PX 1, pg. 13) He explained that patients of Petitioner's age group that have underlying degenerative arthritis at the time of an arthroscopy take a little longer to get better. Therefore, Petitioner may always have some low-grade discomfort. Dr. Garelick aspirated 58 cc of essentially clear fluid from Petitioner's left knee and encouraged Petitioner to attend therapy. Dr. Garelick explained Petitioner would remain off work at that time but would be released to work regular duty or with restrictions in three weeks. (PX 1, pg. 13, PX 4, pg. 6)

Petitioner presented for an initial evaluation of acute left knee pain with Ronnie Mandel, D.O. at Illinois Orthopedic Network on February 14, 2022. (PX 4) Petitioner reported he continued to follow up with his orthopedic surgeon post operative care; however, he noted on February 11, 2022 the surgeon had to aspirate his

left knee due to the severity of his swelling. At the time of treatment, he continued to report left knee swelling, pain, and difficulty with range of motion and ambulating. Petitioner reported taking an anti-inflammatory and Diclofenac Sodium. Upon physical examination, Dr. Mandel noted Petitioner was a well appearing male obese, mild effusion noted in the anterior compartment of the knee with tenderness to palpation and had abilities to flex his knee 90 degrees and extend 165 degrees. Dr. Mandel advised Petitioner he needed to consistently attend physical therapy treatment which he recommended three times per week for four weeks. Should the pain and swelling be persistent, he would order a repeat MRI for further evaluation. Petitioner was continued off work. (PX 4, pgs. 79-84)

Petitioner was referred to South Suburban Physical Therapy where he was seen from February 22, 2022 through June 22, 2022. (PX 6) During Petitioner's initial therapy appointment, his assessment was medical meniscal tear with subsequent arthroscopy and meniscectomy of the left knee. He denied taking any pain medication from March 10, 2022 through March 14, 2022. (PX 6, pgs. 19-26) Petitioner testified he was not consistently attending physical therapy because he "couldn't walk on it" and he had his grandson buy him some crutches. (Tr. 46-47) Petitioner further testified that he went to the physical therapy facility to show them his knee, and that they agreed he could not participate in physical therapy. (Tr. 47)

On March 8, 2022, Petitioner returned for follow-up care at ION. Petitioner reported his swelling improved although he was not back to baseline. He rated his pain at 2/10 with complaints of occasional discomfort and swelling. There was improved ambulation. Physical examination demonstrated moderate edema, diffusely mildly tender to palpation and full range of motion. Dr. Mandel noted Petitioner was attending physical therapy with significant improvement. The plan was for Petitioner to continue to consistently attend physical therapy and to remain off work in the interim. He was prescribed a topical gel for his knee and was advised to follow-up in four weeks for re-evaluation. (PX 4, pgs. 85-87)

Petitioner underwent a second MRI of the left knee on March 17, 2022. (PX 4, pg. 88) The MRI revealed a horizontal tear of the posterior horn of the medial meniscus; grade 1 meniscal injury in the posterior and anterior horn of the lateral meniscus; significant joint effusion seen extending to suprapatellar bursa; fluid signals noted in between medial collateral ligament and medial meniscus raising possibility of meniscocapsular separation; lateral collateral ligament sprain; grade 1 strain in the distal quadriceps tendon; and grade 1 sprain in the ligamentum patella. (PX 4, pgs. 88-89) As a result of these findings, ION referred Petitioner to Dr. Ankur Chaddia from Suburban Orthopaedics. (PX 5)

On April 5, 2022, Petitioner was referred to Suburban Orthopedics and commenced treatment with Dr. Ankur Chaddia. Petitioner reported a consistent mechanism of injury of his work accident and provided an overview of his treatment. Upon review of the radiology and after completing a physical examination, Dr. Chaddia recommended over the counter NSAIDs, cryotherapy as needed, immobilization, home exercise program, physical therapy, potential injections and a possible repeat scope versus total knee arthroscopy. After a physical examination and having reviewed diagnostics, Petitioner was diagnosed with left knee post traumatic/post meniscectomy osteoarthritis aggravation. (PX 5, pg. 69) Petitioner was placed off work and was advised to follow-up in four weeks. (PX 5, pgs. 66-69)

On May 3, 2022, Petitioner returned to Suburban Orthopedics and reported persistent swelling. A monovisc injection was administered to the left knee joint. Petitioner was continued off work and recommended to continue physical therapy three times per week for four weeks. (PX 5, pgs. 61-65) Dr. Chaddia testified the monovisc injection "was to help provide lubrication inside the knee and treat the pain and dysfunction from the osteoarthritis." (PX 7, pg. 26) Petitioner had a series of additional follow up appointments in which he continued to complain of left knee pain. (Tr. 24)

On June 7, 2022, Petitioner returned for follow-up care at Suburban Orthopedics with Dr. Chaddia. He reported intermittent left knee swelling and described throbbing pain which radiated to the medial side. He noted his

pain was “bad" since the last office visit. He continued to undergo physical therapy three times per week with no improvement and rated his pain at 5/10. He denied taking any pain medications. Dr. Chaddia recommended ongoing physical therapy treatment, over the counter NSAIDs and continued Petitioner off work. (PX 5, pgs. 56-60)

On July 5, 2022, Petitioner returned for follow-up care with Dr. Chaddia. Petitioner stated he had some concerns about pain at his injection site that occurred at random and during his daily activities. He reported intermittent throbbing pain which radiated to the medial side as well as intermittent swelling. Petitioner rated his pain at 3-4/10 and denied taking any pain medications. Upon physical examination, Dr. Chaddia noted that Petitioner would likely transition to light duty versus full duty within four weeks. (PX 5, pg. 52-55)

It should be noted that Petitioner testified that his pain fluctuated throughout the course of his treatment. (Tr. 69) He testified that the pain medication made him constipated. (Tr. 69-70) Petitioner testified that he could not go to the bathroom for four or five days at a time and he felt that was dangerous so he did not take them. (Tr. 69-70)

During Petitioner’s August 2, 2022 office visit, Petitioner reported some stiffness in the mornings, but a pain level of 0/10. (PX 5, pg. 49) During direct examination, Petitioner testified that was one day when he felt good. (Tr. 24-25) Dr. Chaddia released Petitioner to full duty work on August 2, 2022 and instructed him to follow up as needed. He also recommended Petitioner weight bear as tolerated and range of motion as tolerated. (PX 5, pg. 51)

Petitioner testified he returned to work for one day, which consisted of 8 hours. (Tr. 25, 71) Upon returning to work, Petitioner noticed that walking at school and going up and down stairs was making his left knee swell and ache. (Tr. 72) Petitioner testified he called Dr. Chaddia’s office to make an appointment, and the next available appointment date was on September 6, 2022. (Tr. 72-73)

On September 6, 2022, Petitioner returned for treatment with Dr. Chaddia. (PX 5, pg. 43) Petitioner reported he returned to work and started having increased pain with extended walking. He stated he had stiffness in the mornings and with prolonged walking in the left knee. Petitioner described it felt like it was “bone on bone". He noted throbbing, sharp, nagging pain in his left knee; however, he denied any numbness and tingling. He rated his pain at 6/10 and indicated he was taking Tylenol as needed. Given the ongoing pain complaints and physical examination, Petitioner was recommended to undergo a left total knee arthroplasty. He was advised to follow-up in four weeks. Petitioner was placed off work and recommended to take over the counter NSAIDs. The surgery was pending insurance approval. Dr. Chaddia diagnosed left knee osteoarthritis. (PX 5, pg. 43-47)

On October 4, 2022, Petitioner complained of mild worsening symptoms. He reported constant pain for the past two weeks and started to affect his sleep. Dr. Chaddia again recommended a total left knee arthroplasty, over the counter NSAIDs and continued Petitioner off work. (PX 5, pg. 38-42) Petitioner continued to follow-up with Dr. Chaddia who continued to make the same recommendations and advised Petitioner to remain off work.

On March 21, 2023, Petitioner returned for follow-up treatment with Dr. Chaddia and reported sharp throbbing pain, as well as nerve pain in the left knee. There was also inflammation in the left knee with walking or any activity. He experienced slight numbness and tingling and rated his pain at 6-7/10. Petitioner reported taking Tylenol and Advil as needed. His physical examination findings remained the same and Dr. Chaddia continued to recommend the left total knee arthroplasty and over the counter NSAIDs. Petitioner remained off work. (PX5, pp13-17)

On March 22, 2023, Dr. Chaddia prepared a causation opinion regarding Petitioner's ongoing left knee condition and treatment. According to Dr. Chaddia's report, he noted that the MRI completed on March 18,

2022, demonstrated a persisting medial meniscus tear with significant effusion and advanced/progressive osteoarthritis of the knee joint. At that time, he diagnosed left knee post-traumatic and post meniscectomy osteoarthritis aggravation that was persisting despite conservative treatment. Thus, Petitioner received post-operative corticosteroid injection and viscosupplementation injections. A repeat arthroscopic procedure versus a total knee arthroplasty were discussed. Interestingly, Dr. Chaddia noted that in August 2022, Petitioner attempted "to cope with it and live with his condition as is." He returned to full duty work and was released from care. Shortly thereafter, he returned for additional treatment in September with complaints that he was experiencing recurring stiffness, pain, throbbing and nagging in his left knee. At that time, Dr. Chaddia recommended a total knee arthroplasty. Dr. Chaddia opined that Petitioner's work accident aggravated his underlying knee osteoarthritis and following his knee surgery, Petitioner never fully restored to his pre-injury baseline level despite his treatment. Thus, it was his opinion that Petitioner's condition was permanent, and the injury and arthroscopic surgery had aggravated and accelerated the osteoarthritis. Thus, Petitioner required a total knee arthroplasty. (PX 4, pgs. 159-160)

Thereafter, Petitioner returned to Dr. Chaddia for additional treatment on April 18, 2023. Petitioner reported that his left knee "is all right today". Petitioner reported pain with prolonged standing as well as numbness and tingling radiating into the left foot. He also reported fluid on his left knee. There was some sharp, shooting, throbbing, as well as nerve pain in the left knee. There was also inflammation in the left knee with walking or any activity. He rated his pain at 5/10 and indicated that he was taking Tylenol and Advil as needed. Petitioner reported he was also taking prescribed medication which he was not aware of the name at the time of his visit. Dr. Chaddia conducted a physical examination, and his findings remained the same. He again recommended a total knee arthroplasty, over the counter NSAIDs and noted that Petitioner should remain off work. (PX 5, pgs. 8-12)

On May 16, 2023, Petitioner again reported that his left knee was "doing okay." He reported constant swelling in the left knee and described his pain as dull and sharp depending on the activity. He noted that his pain comes and goes, and noted pain with prolonged standing/walking. He denied any numbness and tingling and rated his pain at 5/10. Petitioner reported that he was taking Tylenol and Advil on an as needed basis, as well as his prescribed medications. Physical examination remained the same. Dr. Chaddia did not recommend any additional treatment besides the left total knee arthroplasty, over the counter NSAIDs and continued Petitioner off work. (PX 5, pgs. 76-80)

On June 20, 2023, Petitioner returned to Dr. Chaddia. Petitioner reported that "his condition was better" and denied any pain at the time. He also denied any radiating pain and reported mild numbness at night only. He was taking Advil and Tylenol as needed and rated his pain at 2/10. Physical examination demonstrated an antalgic gait, limited range of motion, mild tenderness and mild swelling. Dr. Chaddia diagnosed left knee osteoarthritis. Dr. Chaddia released Petitioner from care at maximum medical improvement and advised him to follow-up on an as needed basis. He further discussed a number of treatment options which include injection, surgical intervention in the form of a knee replacement and nonsurgical options like medications, lifestyle modification, exercise and physical therapy, and use of supportive devices or change in footwear. Dr. Chaddia also discussed the natural history of degenerative joint disease of the knee which typically has exacerbations and remissions. Dr. Chaddia placed Petitioner on permanent work restrictions of no lifting more than 25 pounds, as well as no squatting, bending, and kneeling, limited standing and walking to four hours per day intermittently. (PX 4, pgs. 171-174) Dr. Chaddia opined that "to a reasonable degree of medical and orthopaedic surgical certainty that the diagnosed condition is more likely than not causally connected to the injury" as described on the date of accident. He went on to state that "the reported history and mechanism as well as the subsequent clinical course and physical examination is consistent, correlates, and the basis for my opinion". (PX 4, pg. 173)

August 21, 2023: Dr. Ankur Chaddia's Deposition Testimony

On August 21, 2023, Dr. Ankur Chaddia testified in an evidence deposition as it relates to this matter. (PX 7) He testified he was an orthopedic surgeon, licensed to practice in the state of Illinois and has been board certified since 2011. (PX 7, pgs. 6-7) Dr. Chaddia testified that 95 percent of his practice involves the treatment of patients and 5 percent involves administrative work. (PX 7, pg. 7) He also testified to performing approximately 200 knee surgeries per year. (PX 7, pg. 8)

Dr. Chaddia testified Petitioner was referred to his care from Illinois Orthopedic Network due to post-operative left knee pain. (PX 7, pg. 8) Petitioner began treatment on April 5, 2022, at which time Petitioner provided a history of his work accident and treatment. (PX 7, pgs. 8-9) Dr. Chaddia performed a physical examination and reviewed the MRI images. Dr. Chaddia testified that he performed a physical examination that showed mild swelling in the left knee. His flexion was limited by 10 degrees. He also had tenderness on the joint line, medial and lateral knees. (PX 7, pg. 10) He opined that the March 18, 2022 MRI demonstrated some residual tearing." (PX 7, pg. 10-11) Dr. Chaddia further explained "the complex tear has been addressed, but there is some residual tearing seen on the posterior horn of the medial meniscus. The new MRI, often times after a meniscectomy surgery or repeat MRI, it is difficult to distinguish if the meniscus is re-torn or if it is just a post-surgical change." (PX 7, pg. 24)

Dr. Chaddia testified that he performed a physical examination that showed mild swelling in the left knee. His flexion was limited by 10 degrees. He also had tenderness on the joint line, medial and lateral knees. He ultimately diagnosed left knee post-traumatic, post-meniscectomy osteoarthritis aggravation. (PX 7, pg. 12)

Dr. Chaddia testified Petitioner had "some underlying cartilage, loss, or arthritis on the surface of the bones, on the inner side of the knee, or medial side of the knee," which he determined was a "second problem." Furthermore, he indicated Petitioner had "signs and symptoms of pain and swelling and dysfunction from the osteoarthritis or loss of cartilage…that was persisting, despite the arthroscopic meniscus surgery." (PX7, p12) Dr. Chaddia opined that the injury caused the osteoarthritis to be aggravated, as well as the meniscus loss and meniscus surgery, in many cases, can lead to worsening or aggravation of underlying osteoarthriris, as in this case occurred. (PX 7, pg. 12) Thus, he recommended over-the-counter anti-inflammatory medication, physical therapy, viscosupplementation injections, and discussed a possibility of a repeat arthroscopic procedure versus a total knee arthroplasty. (PX 7, pg. 13)

Dr. Chaddia testified the arthroscopy would consist of "another cleaning or debridement-type surgery, a possible removal of any residual meniscus tearing that was not addressed the first time, or, that is, you know, still continued to cause problems." (PX 7, pg. 15) The knee replacement would consist of a "full-knee replacement," which would address the cartilage lost." (PX 7, pg. 16) He explained Petitioner would benefit from the knee replacement due to the medium degree of cartilage loss and failed relief from the corticosteroid and meniscal supplementation injection, one scope surgery and therapy. (PX 7, p 16)

Petitioner continued to treat with Dr. Chaddia and he advised Petitioner that he could pursue surgery under his own insurance…versus [he] could release [Petitioner] with restrictions as the surgery he recommended had been denied by the workers' comp carrier. (PX 7, pg. 18). Dr. Chaddia ultimately released Petitioner at maximum medical improvement with permanent restrictions until the knee surgery was performed. (PX 7, pgs. 19-20)

Dr. Chaddia further testified that he received the IME report of Dr. Jacobs and in response, testified under oath to a reasonable degree of medical certainty that, after a physical examination and having reviewed diagnostics, that Petitioner has an aggravation of underlying knee osteoarthritis and some degree of progressive acceleration of structural osteoarthritis, as a result of the occupational injury and meniscus surgery. (PX 7, pg. 18) Dr. Chaddia went on to state that Petitioner "had some degree of structure arthritis that had developed as many people often have, but it was not painful or symptom-producing or treatment-requiring, prior to his fall. And, as a result of his fall, the scope surgery he had, the arthritis became symptomatic and causing dysfunction and that the structural arthritis accelerated, requiring treatment". (PX 7, pg. 25)

The basis for Dr. Chaddia's opinion is that, prior to the surgery, Petitioner had no knee pain, impairment, disability, or dysfunction; Petitioner was never fully restored to pre-injury baseline level despite all the treatment he underwent. (PX 7, pgs. 18-19) Dr. Chaddia further testified that Petitioner's physical examination and diagnostic studies correlated with his subjective complaints, as well as his injury and arthroscopic findings. (PX 7, pg. 19) He stated that he had "all the nonsurgical options and a prior scope, he was unable to tolerate and function working in a full-duty capacity in a normal sense". (PX 7, pg. 29) Finally, Dr. Chaddia opined that it is possible that Petitioner could return to work full duty after a knee replacement and full recovery. (PX 7, pg. 20)

December 19, 2023: Dr. Joshua Jacobs's Deposition Testimony

On December 19, 2023, Dr. Joshua Jacobs completed his evidence deposition. (RX1) He testified he was an orthopedic surgeon, licensed to practice in the state of Illinois since 1981, and currently board certified. (RX 1, pgs. 4-5) Dr. Jacobs advised that 10 percent of his practice was spent treating patients. (RX 1, pg. 10) Dr. Jacobs testified he performed an independent medical examination of Petitioner on November 29, 2022 at Respondent's request. (RX 1, pgs. 10-13) He reviewed Petitioner's treatment records and images, obtained a medical history from Petitioner, obtained a description of the work accident from Petitioner and performed a physical examination. (RX 1, pgs. 13-21). Dr. Jacobs testified that the history Petitioner provided was consistent with the histories contained in the medical records. (RX 1, pg. 16)

On November 29, 2022, Petitioner presented for a Section 12 examination at Respondent's request with Dr. Joshua Jacobs. Dr. Jacobs reviewed Petitioner's treatment records from September 14, 2021 through October 4, 2022. He also reviewed the radiological images and reports and obtained x-ray images of Petitioner's left knee and hip at the time of the examination. During the physical examination, Dr. Jacobs noted that Petitioner exhibited guarding and an exaggerated pain response. There was no effusion, but there was evidence of diffuse tenderness about the left knee. Extremes of motion elicited pain in the anterior aspect and there was no instability to varus and valgus stress in maximal extension and 30 degrees of flexion. Petitioner had a negative Lachman and McMurray tests. Dr. Jacobs diagnosed moderate to severe left knee osteoarthritis, which he opined was pre-existing, as well as degenerative medial meniscus tear and morbid obesity. He opined Petitioner sustained a left knee contusion and degenerative tear of the medial meniscus, which both temporarily exacerbated the underlying osteoarthritis. He agreed with Dr. Chaddia's initial assessment that Petitioner reached maximum medical improvement on August 2, 2022. While he opined Petitioner's treatment was reasonable and necessary, he further explained the treatment after August 2, 2022 was not causally related to the work accident but was related to the pre-existing and progressive left knee osteoarthritis. Due to Petitioner's left knee osteoarthritis, he opined Petitioner should be placed on work restrictions including no walking, standing in excess of one hour per day and no lifting in excess of 25 pounds. (RX 2
On November 21, 2023, Dr. Joshua Jacobs authored an addendum records review. Dr. Jacobs reviewed Petitioner's treatment records from November 2, 2022 through June 20, 2023, and the evidence deposition transcript of Dr. Ankur Chaddia. Upon review of the materials, Dr. Jacobs opined his original diagnosis and findings remained the same. He explained Petitioner's clinical course was consistent with the natural history of knee arthritis, which had become progressively severe and more symptomatic with time. He also opined Petitioner's morbid obesity was also a risk factor for the progression of knee arthritis. Dr. Jacobs opined Petitioner reached maximum medical improvement on August 2, 2022 when he reported to Dr. Chaddia he was "doing well" and also reported 0/10 pain, which indicated resolution of the temporary exacerbation associated with the work accident. Due to Petitioner's ongoing pain complaints as a result of the underlying osteoarthritis, Dr. Jacobs recommended additional conservative treatment and eventually a left total knee arthroplasty once the left knee becomes progressively painful, disabling and refractory to conservative management. (RX 3)

Upon review of the October 20, 2021 MRI report, Dr. Jacobs testified the results demonstrated a grade II to III chondrosis of the medial joint space compartment and a mildly complex tear of the body and posterior one-third

of the medial meniscus, as well as a large knee effusion and distension of the prepatellar and superficial intrapatellar bursa. He opined the findings were consistent with a degenerative condition and may or may not have been related to an acute event. (RX 1, pgs. 17-18) Thereafter, he testified the March 17, 2022 MRI demonstrated a horizontal tear of the posterior horn of the medial meniscus and another meniscal injury involving the lateral meniscus. (RX 1, pg. 18) He testified both reports were consistent with a degenerative process involving the knee. (RX 1, pgs. 18-19)

Following a physical examination, Dr. Jacobs diagnosed pre-existing left knee osteoarthritis, which was not causally related to the work injury. (RX 1, pgs. 20-22) He testified the meniscal tears were more difficult to attribute because meniscal tears can occur in a degenerative knee with just normal activities, as well as with acute injury such as the injury Petitioner sustained when he fell on his knee. Thus, the meniscal injury may have been associated with a work-related injury. (RX 1, pgs. 22-23) Consistent with Dr. Chaddia's findings, Dr. Jacobs agreed Petitioner reached maximum medical improvement as of August 2, 2022 for the work injury, but he was not at MMI as it related to the left knee osteoarthritis. (RX 1, pg. 23)

Dr. Jacobs testified that Petitioner's report of only taking Tylenol or Advil as needed for pain relief from March 21, 2023 through May 16, 2023, would indicate Petitioner was being very stoic about tolerating his pain or he actually had less pain and less pain medication requirements. (RX 1, pgs. 25-26) Upon review of Petitioner's treatment and reported condition through June 20, 2023, Dr. Jacobs' testified Petitioner's condition was consistent with the natural history of osteoarthritis, which the symptoms tend to vary. [The symptoms] come and go, and they get more severe. At the time of the last office visit, Petitioner "seemed to be going through a period where he was relatively less symptomatic." (RX 1, pgs. 26-27)

Dr. Jacobs further testified the total knee replacement was causally related to the pre-existing osteoarthritis of the knee, not to the work-related injury. (RX 1, pg. 27) He reached this opinion based on Petitioner's natural progression of osteoarthritis, major risk factor including morbid obesity (BMI of 38), and the fact fairly significant arthritis was noted shortly after the injury both on arthroscopy surgery and imaging study. (RX 1, pgs. 27-28) While he agreed a total knee replacement would be indicated in the future if Petitioner's symptoms became refractory to conservative treatment, he opined based on Petitioner's report of 2 out of 10 pain and only taking medications occasionally during the last office visit on June 20, 2023, a total knee replacement was not indicated at that time. (RX 1, pgs. 28-29, 38)

Dr. Jacobs further testified the work accident may have temporarily aggravated Petitioner's left knee osteoarthritis but did not advance his pre-existing condition. (RX 1, pgs. 33-34) He explained the aggravation lasted through August 2, 2022, when Petitioner was relatively asymptomatic. (RX 1, pgs. 32-33) Therefore, while the work accident was the cause for Petitioner to undergo a knee arthroscopy, he felt it did not accelerate the need for a total knee arthroplasty. (RX 1, pgs. 38-39)

Petitioner's current condition

Petitioner testified he has not seen any other doctor since his last appointment with Dr. Chaddia on June 20, 2023. (Tr. 62-63) Petitioner testified his left total knee replacement has not been approved, and that he still wants the surgery because he feels pain every day and experiences sleepless nights. (Tr. 26-27) He testified he would not want to undergo surgery if he had zero pain. (Tr. 70) He testified he needs the surgery, and it is because he has been in pain after years of conservative treatment, which is "very uncomfortable." (Tr. 70)

On a scale from one to ten with ten being the highest level of pain, Petitioner rate his pain level a five in a sit-down position. (Tr. 27) To alleviate his pain, Petitioner tries standing and massaging it. Petitioner also testified he takes pain medication prescribed by Dr. Chaddia. (Tr. 27-28) He testified that he only takes medication every other day because he knows it clogs his system. (Tr. 28) Petitioner testified that his pain level is a five to

maybe six or seven when in a standing position due to the pressure he puts on his legs, specifically his knee. (Tr. 28)

As for daily activities, Petitioner testified he can no longer go on long walks as a result of his work injury. (Tr. 30) Before the accident, he would walk with his wife whether that be downtown, by the lake, or go shopping. Today, he said he cannot do those walks because he is in the "doghouse." He said his knee is "very painful," and it is painful when he walks. As for weather changes, Petitioner testified he experiences shooting pain when it is raining and before it is raining. Petitioner did not experience these symptoms prior to his work accident. (Tr. 30)

Petitioner testified he has stairs in his home; specifically, he has seven stairs in the front, 13 stairs that go up to his bedroom, and 14 stairs that go down to the basement. (Tr. 31) When going up and down stairs, he feels pressure on his knee, so he takes one step at a time. (Tr. 31) Before his work accident, he did not feel pressure in his knee nor did he take one step at a time, as he was in "pretty good health." (Tr. 31-32)

Petitioner testified when he sleeps, he is "very uncomfortable" at night, and he is in constant pain as it feels as if the joint of his knee is rubbing bone on bone. (Tr. 32) Thus, if he turns at night, it touches a nerve and jolts, and that is painful. *Id.* Before the accident, he did not experience these issues, and he slept like a baby. (Tr. 32)

As for household chores, Petitioner testified he tries to vacuum, but he can only do so much. (Tr. 33) He testified that, when vacuuming, he stops, and then vacuums again. Petitioner testified he gets frustrated when doing his household chores. (Tr. 33)

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 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).

A decision by the Commission cannot be based upon speculation or conjecture. *Deer and Company v. Industrial Commission,* 47 Ill.2d 144, (1970). A Petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. *Illinois Institute of Technology v. Industrial Commission,* 68 Ill.2d 236, (1977).

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

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him be a credible witness. The Arbitrator finds Petitioner's testimony as to his accident to be straight forward, truthful, and consistent. Petitioner's description of the accident and subsequent physical complaints remained consistent throughout. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any

material contradictions or internal inconsistencies that would deem the witness unreliable specifically as it relates to his description of the accident or his current condition of ill-being.

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. 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, 11 N.E.3d 453. "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

The Arbitrator concludes that the current condition of Petitioner's ill being is causally related to the work accident of August 30, 2021. It is important to note that the accident of August 30, 2021 is not in dispute. On that date, Petitioner testified he worked his full duty job as a security guard for Respondent for five to six years before the work accident. (Tr. 10) Before the work accident, Petitioner had not sought any medical treatment for his left knee. (Tr. 14-15)

In reviewing the experts' opinions, the Arbitrator finds Dr. Chaddia's testimony more persuasive than Respondent's Section 12 expert's opinion, Dr. Jacobs. Dr. Chaddia testified under oath and to a reasonable degree of medical certainty that, after a physical examination and having reviewed diagnostics, that Petitioner has an aggravation of underlying knee osteoarthritis and some degree of progressive acceleration of structural osteoarthritis, as a result of the occupational injury and meniscus surgery. The basis for Dr. Chaddia's opinion is that, prior to the surgical recommendation, Petitioner had no knee pain, impairment, disability, or dysfunction; Petitioner was never fully restored to pre-injury baseline levels despite the totality of treatment in this case. There is no evidence in the record that Petitioner had any symptomatic left knee issues or pain complaints, had ever treated with a medical professional for left knee problems, had been diagnosed with osteoarthritis of the left knee or had ever been recommended any type of surgery, specifically a left knee replacement prior to the date of this accident.

Dr. Chaddia testified that Petitioner's post-surgery left knee MRI, dated March 17th, 2022, showed some residual tearing on the posterior horn of the medial meniscus, which may be due to a torn medial meniscus not having been completely removed from the first surgery. (PX 7, pg. 24)

Dr. Jacobs testified that Petitioner's osteoarthritis is pre-existing, and that Petitioner suffered only a temporary aggravation. He did acknowledge that Petitioner was working his full duty job for six years prior to the work accident, that he was asymptomatic and did not have prior issues with his left knee. (RX 1, pg. 30) Further, Dr. Jacobs agreed with Dr. Chaddia that the second MRI of the left knee (post-surgery) showed residual tearing, which was not present in the first MRI (pre-surgery). Dr. Jacobs further testified it is possible the meniscal tear present in his left knee *is* causally related to the work accident. (RX 1, pgs. 31-32) He further testified that the knee surgery done by Dr. Garelick from Concentra was causally related to the work accident. (RX 1, pgs. 36, 39)

Both experts agree that residual tearing is present in the post-surgery MRI of the left knee, and that it is not present in the first MRI. Additionally, both experts agree Petitioner experienced an aggravation of his osteoarthritis, which was asymptomatic prior to the work accident. Thus, based upon the evidence presented at trial, including medical opinions, and witness testimony, the Arbitrator finds that Petitioner established a causal connection between the work-related accident of August 30, 2021, and his current condition of ill- being

regarding the left knee. In making this determination, the Arbitrator finds the opinions of Dr. Chaddia to be more credible than the opinions of Dr. Jacobs.

Based on these findings, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to the injury.

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

Under Section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of a claimant's injury. The claimant has the burden of proving that the medical services were necessary, and the expenses incurred were reasonable. *City of Chicago v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 258, 267 (1st Dist., 2011). Based upon the finding that Petitioner's current condition of ill-being is causally related to the injury in question, The Arbitrator finds that the medical services that have been rendered to Petitioner are reasonable and necessary as it relates to the treatment for the left knee through June 20, 2023.

The Arbitrator, having found Petitioner's treatment to be reasonable and necessary, further finds that Respondent has not paid for said treatment. As such, the Arbitrator orders Respondent to pay Petitioner directly for the following outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act: Midwest Specialty Pharmacy: $3,082.94; Suburban Orthopaedics: $549.00 and AMITA Ascension St. Joseph-Chicago: $469.00

The total bills awarded total $4,100.94. Based on the record as a whole and the Arbitrator's finding with respect to casual connection, the Arbitrator finds Respondent shall pay reasonable and necessary services of $4,100.94 as detailed herein, as provided in Sections 8(a) and 8.2 of the Act.

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

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

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n*, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

To be entitled to TTD benefits, it is the claimant's burden to prove not only that he did not work but also that he was unable to work. *Holocker v. Illinois Workers' Compensation Comm'n,* 2017 IL App (3d) 16036WC, P35 (3rd Dist., 2017). The fundamental purpose of the Act is to provide injured workers with financial protection until they can return to the work force. Id. When determining whether an employee is entitled to TTD benefits, the test is whether the employee remains temporarily totally disable as a result of a work-related injury and whether the employee is capable of returning to the work force. Id. The touchstone for determining whether claimant is entitled to TTD is whether the claimant's conditions had stabilized to the extent that they are able to reenter the workforce. *Id*.

Evidence admitted at trial, including Petitioner's testimony, shows that Petitioner was working light duty, but full-time hours from August 30, 2021, the date of the accident, through January 3, 2022. Petitioner was off work

from January 4, 2022 to the present. As Petitioner testified, he returned to work for one day, which was 8 hours. (Tr. 71) Petitioner testified that he did attempt to return to work for one day, which consisted of 8 hours. (Tr. 25, 71) Upon returning to work, Petitioner noticed that walking at school and going up and down stairs was making his left knee swell and ache. (Tr. 72) Petitioner was *not* working *through* September 6th, 2022 (the date he returned to see Dr. Chaddia and was placed off work again). (Tr. 71-72) On September 6, 2022, Petitioner returned for treatment with Dr. Chaddia. (PX 5, pg. 43) Petitioner reported he returned to work and started having increased pain with extended walking. He stated he had stiffness in the mornings and with prolonged walking in the left knee. Petitioner described it felt like it was "bone on bone". He noted throbbing, sharp, nagging pain in his left knee; however, he denied any numbness and tingling. He rated his pain at 6/10 and indicated he was taking Tylenol as needed. Dr. Chaddia ultimately released Petitioner at maximum medical improvement with permanent restrictions until the total knee replacement was performed. (PX 7, pgs. 19-20)

Dr. Chaddia continues to recommend left total knee replacement, as Petitioner's condition has not stabilized. Petitioner has exhausted all forms of conservative care plus a more invasive procedure in the form of a left knee arthroscopy and is still in pain. Dr. Chaddia has not placed Petitioner at maximum medical improvement.

Based on the above, the Arbitrator finds Respondent liable for 113 4/7 weeks of temporary total disability benefits (1/4/22 through 3/8/24) at a weekly rate of $511.63, which corresponds to $58,106.55 to be paid directly to Petitioner.

Respondent has paid temporary total disability benefits in the amount of $29,236.00 for which credit may be allowed under Section 8(j) of the Act. Based on the findings above, the Arbitrator does not find a TTD overpayment from September 7, 2022 through March 7, 2023

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

Section 8(a) of the Act entitles a claimant to compensation for all necessary medical, surgical, and hospital services 'thereafter incurred' that are reasonably required to cure or relieve the effects of the injury." *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 593, 834 N.E.2d 583, 593, 296 Ill. Dec. 26 (2005) (quoting 820 ILCS 305/8(a) (West 2002)). Questions regarding a claimant's entitlement to prospective medical care are questions of fact for the Commission to resolve and its decisions on factual matters will not be disturbed on appeal unless they are against the manifest weight of the evidence. *Dye v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 110907WC, ¶ 10, 981 N.E.2d 1193, 367 Ill. Dec. 465. Stanly v. Ill. Workers' Comp. Comm'n, 2016 IL App (1st) 152301WC-U, ¶ 44.

The medical records submitted at trial, as well as Petitioner's testimony, indicate that Petitioner has exhausted conservative treatment as well as more invasive treatment in the form of a left knee arthroscopy and continues to be in pain.

Dr. Chaddia, a board-certified orthopedic surgeon, testified to a reasonable degree of medical certainty that the left total knee replacement surgery he is recommending is causally related to Petitioner's work accident. He recommends a left total knee replacement instead of a repeat arthroscopy because Petitioner already underwent a left knee arthroscopy and did not get any lasting relief.

The Arbitrator is mindful that, while waiting for left knee total replacement surgery approval, Petitioner attempted to return to work. Unfortunately, Petitioner was only able to return to his job as a security guard for only one day due to the pain and swelling in his left knee. The Arbitrator also notes that Petitioner testified that he wants to proceed with the left total knee replacement surgery because he experiences pain and sleepless nights.

Based on the medical records and opinions of Dr. Chaddia, the Arbitrator finds that Respondent shall approve and pay for the left total knee replacement and any necessary post-operative care as prescribed by Dr. Chaddia as provided in Section 8(a) and 8.2 of the Act.

CONCLUSION

In light of the above facts and considerations, the Arbitrator finds Petitioner's current condition of ill-being is causally related to the injury of August 30, 2021. The Arbitrator further finds Petitioner's treatment to be reasonable and necessary and that Respondent has not paid for said treatment. As such, the Arbitrator orders Respondent to pay Petitioner directly for the following outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act: Midwest Specialty Pharmacy: $3,082.94; Suburban Orthopaedics: $549.00 and AMITA Ascension St. Joseph-Chicago: $469.00. The Arbitrator finds Respondent liable for 113 4/7 weeks of temporary total disability benefits (1/4/22 through 3/8/24) at a weekly rate of $511.63, which corresponds to $58,106.55 to be paid directly to Petitioner. Respondent has paid temporary total disability benefits in the amount of $29,236.00 for which credit may be allowed under Section 8(j) of the Act. Based on the findings above, the Arbitrator does not find a TTD overpayment from September 7, 2022 through March 7, 2023. Finally, the Arbitrator finds that Respondent shall approve and pay for the left total knee replacement and any necessary post-operative care as prescribed by Dr. Chaddia as provided in Section 8(a) and 8.2 of the Act.

Arbitrator Efi Poziopoulos James

May 24, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC018618
Case Name	Alpha S Koches v. ADM
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0232
Number of Pages of Decision	15
Decision Issued By	Amylee Simonovich, Commissioner, Maria Portela, Commissioner

Petitioner Attorney	Alex Rabin
Respondent Attorney	Jessica Bell

DATE FILED: 5/23/2025

/s/Maria Portela,Commissioner

Signature

DISSENT

/s/Amylee Simonovich,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

ALPHA S. KOCHES,
Petitioner,

vs. NO: 18 WC 18618

ADM,
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, notice, temporary total disability benefits and permanent partial 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 affirms the Decision of the Arbitrator, but adds the following after the second paragraph on page 6 of the Arbitrator's Decision:

> Petitioner's treating physician, Dr. Mark Greatting, authored a letter on July 25, 2022, wherein he opined on his treatment of Petitioner's left cubital and carpal tunnel syndrome, his previous opinion letter, and Dr. Li's IME report of January 31, 2022. Dr. Greatting stated: "My opinion concerning the causation of these conditions in Mr. Koches' left upper extremity are unchanged from the letter I sent to you in August 2020. I do not agree with Dr. Li's opinion that the left cubital and carpal tunnel syndrome are solely related to the patient's type I diabetes mellitus. He does have type I diabetes mellitus as well as obesity which can contribute to the development of condition such as left cubital and carpal tunnel syndrome. I also do feel his work activities as I understand them were a significant contributing factor either causing him to develop these conditions or aggravating or accelerating the symptoms of these conditions to the point where he was a candidate for surgical treatment." (Px1)

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 8, 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.

May 23, 2025

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

MEP/dmm
O: 050625
49

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

DISSENT

I respectfully dissent from the opinion of the majority and would reverse the Decision of the Arbitrator. After carefully considering the totality of the evidence, I believe Petitioner met his burden of proving a causal relationship between his carpal and cubital tunnel syndromes and his work duties. Petitioner provided credible testimony regarding his repetitive duties at work and use of vibratory tools, as well as the credible medical opinion of Dr. Greatting to support a diagnosis of carpal and cubital tunnel syndrome causally related to his work activities.

Petitioner worked for Respondent as a welder/fabricator for one and a half years, then as a pressure relief valve technician for four and a half years. T. 11, 27. Petitioner would test, rebuild and certify the valves. Valves could range from a half inch inlet and a foot long to a 10-inch inlet and five feet tall. Petitioner was not required to lift more than 50 pounds without assistance. T.12.

Petitioner would receive a valve bolted to a pallet. It would be lifted and placed and bolted to a test stand at a test flange. Six-inch long, ¾ inch bolts would be driven through both flanges, secured with a nut, and tightened. Threading the nuts onto the bolts would begin by hand and be completed by means of two opposed wrenches. Once the valve was secured by bolting the flange to the test stand, a quick-release hose would be connected and pressurized air would be run through it. The valve would be tested by being pressurized to a designated pressure until it released, and then re-pressurized for a total of three tests. T.12-16

If the valve passed the tests it would be removed from the test stand, moved to a work bench, and a repair tag would be affixed to the valve by use of a cordless drill gun, hammer, and

pliers. After being tagged the valve would be taken and put back onto the pallet and lag bolted down to the pallet by means of an air impact wrench. T.17.

Valves which failed testing would be rebuilt. Rebuilding a valve required first unbolting it and removing it from the test stand. The valve would be secured into a v-shaped wedge of angle iron. The set screw on the top surface of the valve would be removed, either by hand or by use of an impact driver, and then the bonnet bolts would be loosened. Loosening bonnet bolts was often done by hand with the aid of big wrenches and cheaters pipes. Once the bonnet was off, the valve would be disassembled to allow access to the disc. Then the valve would be flipped, and the nozzle would be removed with a wrench. T.18-21

Once the valve was disassembled, a four-and-a-half-inch grinder would be used to clean the valve outlet flange of corrosion or foreign material. The disc and nozzle were polished by hand with lapping compound. All other parts were placed in a sandblast cabinet. Once all parts were cleaned and polished the valve was reassembled. T.22-25.

One hundred percent of Petitioner's job required forceful, repetitive, activity with his wrists. T.26. The grinder, the air impact wrench, and the drill gun all vibrated. The wrenches and cheater pipes required hard pulling with the wrists. T.26.

Mr. Joseph Coleman, plant superintendent, testified he heard Petitioner's testimony regarding his job duties, and agreed with his testimony." T. 55.

Although he was right hand dominant, Petitioner used his left hand more due to a prior right shoulder injury in 2015. T. 44-45, 70-72.

Petitioner went off work for an unrelated leg/foot injury in November 2017. The physician treating this, Dr. Stevens, noticed atrophy in his hands between his forefinger and his thumb. T. 28. Thereafter, Petitioner underwent an EMG on April 9, 2018, which showed a moderate-to-severe sensorimotor axonal polyneuropathy; a mild median mononeuropathy at the left wrist (carpal tunnel syndrome); and a moderate-to-severe ulnar mononeuropathy at the left elbow. RX4.

Petitioner alleges a manifestation date of May 15, 2018, the first date he saw Dr. Greatting. However, Dr. Greatting's records indicate this was actually May 17, 2018. PX5. Petitioner described to Dr. Greatting frequent heavy forceful and repetitive activities with his upper extremities. Clinically, Petitioner had severe left cubital tunnel syndrome and symptoms consistent with significant left carpal tunnel syndrome. Dr. Greatting prescribed surgery, but cautioned that some of the symptoms may be related to his peripheral neuropathy.

On July 10, 2018, Petitioner underwent anterior submuscular transposition of left ulnar nerve and release of the left carpal tunnel by Dr. Greatting. PX4. At his post-operative follow-up on July 25, 2018, he discussed with Dr. Greatting whether his work activities contributed to the development of his condition. Dr. Greatting noted that while he does have diabetes with peripheral neuropathy, and is slightly obese, in reviewing Petitioner's specific job duties, these work activities over time could have contributed to the development of, or accelerated or aggravated the symptoms of, his left cubital and carpal tunnel syndromes. Dr. Greatting stated, "He does have other risk

factors including diabetes and obesity which also could contribute to the development of these problems, but I do feel these work activities as he describes them to me and as I understand them could also be a significant contributing factor." Dr. Greatting reiterated this opinion in subsequent letters dated August 31, 2020 and July 25, 2022. PX1, 2.

Petitioner was examined pursuant to Section 12 of the Act by Dr. Lawrence Li on May 20, 2019. RX1. Dr. Li testified by way of evidence deposition on January 31, 2022. RX2. Dr. Li testified that Petitioner has diabetic neuropathy to such a severe degree it involved his upper extremities, his lower extremities, and the impact of that was so severe, anything else would have basically no impact because his polyneuropathy was so severe he developed this independent of anything else, and while his job did require him to do some forceful gripping and use of power tools, it was not that repetitive and the work was variable. RX2, p. 10-11, 14-15.

Dr. Li recognized that carpal tunnel syndrome can have a multifaceted etiology for both cause and aggravation. RX2, p. 18. He also recognized that without diabetes, someone who has a job with forceful gripping and using power tools could develop or aggravate carpal tunnel syndrome. RX2, p. 22.

The Commission has consistently found that a claimant alleging repetitive trauma must show that the work activities are a cause of their condition, but they do not have to establish the work activities are the sole or even the primary cause of that condition. *Dorhesca Randell v. St. Alexius Medical Center*, 13 I.W.C.C. 0135 (2013). The 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).

Further, it is axiomatic that employers take their employees as they find them. *Baggett v. Indus. Comm'n*, 201 Ill.2d 187, 199 (2002). "When workers' 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. Indus. Comm'n*, 89 Ill.2d 432, 434 (1982). Thus, even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Caterpillar Tractor Co. v. Indus. Comm'n*, 92 Ill.2d 30, 36 (1982); *Williams v. Indus. Comm'n*, 85 Ill.2d 117, 122 (1981); *County of Cook v. Indus. Comm'n*, 69 Ill.2d 10, 18 (1977); *Town of Cicero v. Indus. Comm'n*, 404 Ill. 487 (1949) (It is a well-settled rule that where an employee, in the performance of his duties and as a result thereof, is suddenly disabled, an accidental injury is sustained even though the result would not have obtained had the employee been in normal health).

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. Indus. Comm'n*, 99 Ill. 2d 401, 406-07 (1984); *Hosteny v. Ill. Workers' Comp. Comm'n*, 397 Ill. App. 3d 665, 675 (2009); *Fickas v. Indus. Comm'n*, 308 Ill. App. 3d 1037, 1041 (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 Co. v. Indus. Comm'n*, 309 Ill. 91 (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. Ill. Workers' Comp. Comm'n*, 2011 IL App (4th) 100615WC.

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 (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. 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. *Int'l Vermiculite Co. v. Indus. Comm'n*, 77 Ill.2d 1 (1979); *ARA Servs., Inc. v. Indus. Comm'n*, 226 Ill. App. 3d 225 (1992).

Generally, defects in the bases for an expert's opinion are matters of weight rather than admissibility. See *In re L.M.*, 205 Ill. App. 3d 497, 512, 563 N.E.2d 999, 150 Ill. Dec. 872 (1990). Assigning weight to evidence is primarily a matter for the Commission. *ABF Freight Sys. v. Ill. Workers' Comp. Comm'n*, 2015 IL App (1st) 141306WC, ¶ 19.

After weighing the evidence, I found the opinions of Dr. Geatting to have greater credibility than those of Dr. Li. Dr. Li testified as to several assumptions he was making regarding Petitioner's abilities. There is no dispute that the petitioner suffers from diabetes which was contributory to his development of carpal and/or cubital tunnel syndrome. Dr. Li testified that carpal/cubital tunnel are multifactorial, but opined that the Petitioner's illnesses were solely related to his diabetes without contribution by work duties or obesity. Dr. Li's opinion was that the Petitioner's work was variable, and he testified to making several assumptions regarding forcefulness, handedness, and the manner of Petitioner's work. Petitioner described to Dr. Greatting frequent heavy forceful and repetitive activities with his upper extremities.

Dr. Li's assumptions regarding the Petitioner's duties were rebutted by Petitioner's sworn testimony regarding his job duties. Petitioner testified that 100% of his day required forceful and repetitive use of his wrists, and that he used vibratory tools for cleaning and disassembling valves. Petitioner's testimony was affirmed by the Respondent's witness Joseph Coleman, who was present to observe Petitioner's testimony. Mr. Coleman also affirmed Petitioner's testimony regarding a prior right side shoulder injury. Petitioner's sworn testimony of using his left arm more than his right is inconsistent with Dr. Li's assumptions, but consistent with the left-greater-than-right nature of his carpal/cubital syndrome. Weighing the bases of the differing opinions, I find Dr. Li's opinions less credible than those of Dr. Greatting.

I also disagree with the Arbitrator's analysis with regard to the manifestation date of Petitioner's condition. The manifestation date is the date on which both the fact of the Petitioner's injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person. In *Peoria County Belwood Nursing Home v. Indus. Comm'n*, 115 Ill. 2d 524, 531 (1987). In *A. C. & S. v. Indus. Comm'n*, the Appellate Court held the manifestation date need not occur during employment. 304 Ill. App. 3d 875 (1999). In that

case, although the claimant was laid off on June 10, 1993, the Commission found the manifestation date was June 22, 1993, when he was diagnosed with carpal tunnel syndrome. The modern rule allows compensation even when an injury occurs at a time and place remote from the employment if its cause is something that occurs entirely within the time and place limits of employment. *A. C. & S.*, citing 2 L. Larson, Larson's Workers' Compensation Law § 29.22, at 5-531 (1998). See also *Oscar Mayer & Co. v. Indus. Comm'n*, 176 Ill. App. 3d 607, 612 (1988) ("we reject any interpretation of this opinion which would permit the employee to always establish the date of the accident in a repetitive-trauma case by reference to the last day of work); *Castaneda v. Indus Comm'n*, 231 Ill. App. 3d 734, 738 (1992) ("It is thus clear that a claimant's last day of exposure to repetitive trauma is not, in and of itself, the day of accident for the purposes of repetitive injury cases"); *White v. Ill. Workers' Comp. Comm'n*, 374 Ill. App. 3d 907, 913 (2007) ("The accident date in a repetitive trauma case turns on when certain facts would have become plainly apparent to a reasonable person, and such awareness can arise for the first time after termination of employment.").

It is clear from the various accepted methods of determining a manifestation date that the rule to be applied is flexible. The workers compensation act is a humane law of a remedial nature that should be liberally construed to achieve its purpose. *Patterson v. State of Ill.*, 21 I.W.C.C. 0507, citing, *Hagne v. Derek Polling Const*., 388 Ill. App. 3d 380 (2009).

For the foregoing reasons, I would reverse the Decision of the Arbitrator and find causal connection for Petitioner's cubital and carpal tunnel condition of ill-being.

May 23, 2025

o: 05/06/25
AHS/pcs
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/s/ *Amylee H. Simonovich*
Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC018618
Case Name	Alpha S Koches v. ADM
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Dennis Atteberry
Respondent Attorney	Jessica Bell

DATE FILED: 5/8/2023

THE INTEREST RATE FOR THE WEEK OF MAY 2, 2023 4.90%

/s/William Gallagher, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF Sangamon)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Alpha S. Koches
Employee/Petitioner

v.

ADM
Employer/Respondent

Case # 18 WC 18618

Consolidated cases: _____

An *Application for Adjustment of CLim* 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 Springfield, on March 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 May 15, 2018, Respondent was operating under and subject to the provisions of the Act.

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

On this date, Petitioner did 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 $40,395.68; the average weekly wage was $776.84.

On the date of accident, Petitioner was 41 years of age, single with 0 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $3,000.00 for other benefits, for a total credit of $3,000.00.

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

ORDER

Based upon the Arbitrator's Conclusion of Law attached hereto, 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.

William R. Gallagher, Arbitrator

MAY 8, 2023

ICArbDec p. 2

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained a repetitive trauma injury arising out of and in the course of his employment by Respondent. The Application alleged a date of accident (manifestation) of May 15, 2018, and that Petitioner sustained an injury to his "left hand and arm" as a result of "repetitive use of vibrating tools (impacts, grinders, air nailer)" (Arbitrator's Exhibit 2). Respondent disputed liability on the basis of accident, notice and causal relationship. In regard to temporary total disability benefits, Petitioner claimed he was entitled to temporary total disability benefits of six weeks, commencing July 10, 2018, through August 21, 2018. Respondent agreed Petitioner was disabled during the aforestated period of time; however, Respondent disputed liability for temporary total disability benefits (Arbitrator's Exhibit 1).

Petitioner became employed by Respondent in January, 2012. At the time of the accident, Petitioner worked as a Pressure Relief Valve Technician (PRV Technician) and had worked in that capacity for four and one-half years. Prior to Petitioner working as a PRV Technician, Petitioner was a welder and grinder for approximately one and one-half years.

Petitioner testified his job duties as a PRV Technician consisted of testing, rebuilding and certifying pressure valves. The pressure valves Petitioner worked on varied considerably in size and weight. The pressure valves could be one-half inch to five feet tall. The larger pressure valves could weigh up to 2,000 pounds.

When Petitioner tested a valve, the valve would be received at his workstation on a pallet. Petitioner would remove the valve from the pallet and place it on a test stand. If the valve weighed more than 50 pounds, it would be moved by an overhead crane. Petitioner did not lift/move valves which weighed over 50 pounds. After the valve was placed on the test stand, it would be attached to a flange on the test stand with metal bolts. Petitioner initially used his hands to tighten the bolts and completed tightening them with wrenches.

Petitioner would then proceed with the testing of the valve by connecting an air hose. The valves were tested three times with the air pressure being raised to the set point for the valve being tested. The valves would be tested by releasing the air pressure. If the valves averaged the pressure test point in the three tests, it would be "certified" with a repair tag. The repair tag was attached to the valve by Petitioner drilling a hole into the body of the valve, holding a rivet with pliers and using a hammer to set the rivet and hold it in place. The valve would then be returned to the pallet.

If a valve did not pass the test, it had to be rebuilt. The procedure for rebuilding the valve started with unbolting it from the stand and moving it to a workbench. Petitioner would use either a wrench or air impact gun to remove the bolts depending on the size of the valve. Petitioner testified that sometimes the bolts were easy to remove, but, on other occasions, removal of the bolts required significant force. Petitioner cleaned the valve using a grinder and sandblaster as well as different polishing compounds. Petitioner had to use both hands in a circular movement to polish the valve. At that time, the valve would be reassembled, tested and certified.

Petitioner testified he performed all three of the preceding functions on valves for his entire eight hour shift. The allocation between the tasks varied from day-to-day. Petitioner stated that, while

working, he used his left arm/hand performing forceful, extension, flexing and gripping for all eight hours of his shift. Petitioner testified he used grinders, air impact wrenches, hammer drill guns, and sandblasters all of which vibrated.

Petitioner testified he was right hand dominant; however, Petitioner previously sustained a work-related injury to his right shoulder in 2015. Because of Petitioner's right shoulder injury, he started using his left hand/arm to a much greater degree due to the discomfort he still experienced in his right shoulder. Petitioner testified that after he completed his shift at work, he continued to experience tingling/numbness in both hands and dropped things.

Petitioner began losing time from work in November, 2017, because of an unrelated foot injury. While Petitioner was off work, his right hand/arm symptoms improved; however, he continued to experience left hand/arm symptoms. Dr. Benjamin Stevens was treating Petitioner for his foot injury and observed Petitioner had atrophy in his hands. Because of this, Dr. Stevens referred Petitioner to Dr. Cecil Baker for EMG studies.

Dr. Baker saw Petitioner on April 9, 2018. At that time, he performed EMG/nerve conduction studies on Petitioner's left hand/arm. The diagnostic studies were positive for left carpal tunnel and cubital tunnel syndrome. Dr. Baker referred Petitioner to Dr. Mark Greatting, an orthopedic surgeon (Petitioner's Exhibit 3).

Dr. Greatting evaluated Petitioner on May 17, 2018 (not May 15, 2018, as indicated in the Application) and he reviewed the diagnostic studies performed by Dr. Baker. Dr. Greatting opined Petitioner had severe cubital tunnel syndrome and significant carpal tunnel syndrome in his left arm/hand. He recommended Petitioner undergo surgery consisting of a left ulnar nerve transposition and left carpal tunnel release. In regard to Petitioner's work duties, Dr. Greatting noted Petitioner worked as a welder/mechanic/operator and had to perform frequent heavy forceful and repetitive activities with his upper extremities (Petitioner's Exhibit 5). Petitioner testified he contacted Bruce Nielson, the plant supervisor, within a week after his May appointment with Dr. Greatting and informed him he was diagnosed with a work-related condition.

On July 10, 2018, Dr. Greatting performed surgery on Petitioner's left elbow and hand. The surgery consisted of an anterior submuscular transposition of the left ulnar nerve and a release of the left carpal tunnel (Petitioner's Exhibit 4).

Dr. Greatting saw Petitioner on July 25, 2018, and Petitioner asked Dr. Greatting about whether his work activities contributed to the development of his cubital and carpal tunnel syndrome conditions. Dr. Greatting’s medical record of that date noted Petitioner had diabetes with peripheral neuropathy and was slightly obese. Petitioner informed him he rebuilt large pressure relief valves and used hand tools, air driven power tools, and grinders which caused him to perform forceful gripping/grasping with both arms and he repetitively used his elbows, forearms, wrists and hands on a regular basis at work. Dr. Greatting acknowledged Petitioner had diabetes and obesity which could contribute to the development of his left upper extremity conditions, but opined Petitioner's work activities could have been a significant contributing factor (Petitioner's Exhibit 1).

At the request of Petitioner's counsel, Dr. Greatting prepared a report dated August 31, 2020. He noted Petitioner had diabetes, but also indicated it was "poorly controlled" and Petitioner was slightly obese. He again noted these conditions could be contributing factors, but, based upon Petitioner's description of his work activities for the preceding six years, he reaffirmed his opinion they could have been a contributing factor to the development, acceleration or aggravation of his left cubital and carpal tunnel syndrome conditions (Petitioner's Exhibit 2).

At the direction of Respondent, Petitioner was examined by Dr. Lawrence Li, an orthopedic surgeon, on May 20, 2019. In connection with his examination of Petitioner, Dr. Li reviewed information regarding Petitioner's work activities and medical records/reports provided to him by Respondent. In regard to the information regarding Petitioner's job duties, Dr. Li was informed Petitioner had a low impact job in regard to body stresses and a fairly low volume of work (Respondent's Exhibit 1).

In his review of Petitioner's medical records/reports, Dr. Li noted Petitioner had insulin dependent diabetes as well as hypertension. On examination, he noted Petitioner was six foot one inch tall and weighed 300 pounds. Dr. Li opined the cubital and carpal tunnel syndrome procedures were medically reasonable; however, he opined the conditions were not work-related. Dr. Li opined Petitioner had severe polyneuropathy as revealed in the EMG studies, the cause of which was diabetes. He opined these two conditions, in addition to Petitioner's obesity, were the cause of his cubital tunnel and carpal tunnel syndrome conditions. He noted there was not adequate frequency of Petitioner's job duties to have caused either of the conditions and Petitioner would have had cubital tunnel and carpal tunnel syndrome conditions regardless of his job duties (Respondent's Exhibit 1).

Dr. Li was deposed on January 31, 2022, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Li's testimony was consistent with his medical report and he reaffirmed the opinions contained therein. In regard to causality, Dr. Li testified there was no relationship between Petitioner's work activities and his cubital tunnel and carpal tunnel syndrome conditions. Dr. Li stated Petitioner's diabetic neuropathy was so severe that Petitioner would have developed the upper extremity conditions independent of anything else, including Petitioner's job duties. He acknowledged Petitioner had to do some forceful grasping and use of power tools, but it was not that repetitive (Respondent's Exhibit 2; pp 10-11).

Dr. Li further explained that the complications of diabetes were attacking and destroying the nerves which is what happened to Petitioner. He noted this was not confined to the left cubital tunnel and carpal tunnel areas, but throughout Petitioner's entire body. Dr. Li noted the atrophy which was observed in both of Petitioner's arms and legs were related to his diabetic condition (Respondent's Exhibit 2; pp 11-13).

Dr. Li testified regarding Petitioner's taking the valves apart which sometimes required the use of power tools, but not constantly. He stated Petitioner cleaned the valves which was a task less stressful than using impact wrenches. Dr. Li did not have specific information as to the exact amount of force Petitioner was required to use with gripping and using some of the tools (Respondent's Exhibit 2; pp 14-17).

On cross-examination, Dr. Li was asked how many hours Petitioner spent using power tools and gripping. Dr. Li could not provide specific amounts of time for either, but, for each task he testified it was "variable" (Respondent's Exhibit 2; p 23).

On cross-examination, Petitioner agreed he was previously diagnosed with diabetes and there were periods of time in which it was not well controlled. Petitioner also conceded that, in 2005, he sought medical treatment for numbness, tingling and stiffness in three fingers of his left hand. Treatment records for this prior medical care were not tendered into evidence at trial.

Joseph Coleman, Respondent's plant superintendent, testified at trial. Coleman has been employed by Respondent for 14 years and was familiar with Petitioner. Coleman stated he was also a PRV Technician and had worked in that capacity for Respondent in the past. Coleman testified Petitioner's testimony regarding his job duties was consistent with his understanding; however, he stated that not every valve required repair and/or cleaning. Some valves would be tested and certified. In regard to Petitioner's grinding, Coleman testified this was not done with a power grinder, but with a wire wheel, the purpose of which was to remove debris from the valves. Coleman testified that every day in the job of a PRV Technician is different and Petitioner would have worked on a wide variety of valves.

Conclusion of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner did not sustain a repetitive trauma injury to his left arm/hand arising out of and in the course of his employment by Respondent on May 15, 2018, and his current condition of ill-being is not causally related to his work activities.

In support of this conclusion the Arbitrator notes following:

On the date of the alleged accident (manifestation), May 15, 2018, Petitioner was not working for Respondent and had not worked for Respondent, since November, 2017, a period of approximately six months.

Petitioner's primary treating physician, Dr. Greatting, opined Petitioner's left cubital tunnel and carpal tunnel syndrome conditions were related to Petitioner's work activities which Petitioner had performed for the preceding six years. As noted herein, Petitioner had not worked for Respondent for approximately six months prior to his initial evaluation by Dr. Greatting.

Dr. Greatting also acknowledged Petitioner's poorly controlled diabetes and obesity would have been conditions which contributed to the development of Petitioner's left upper extremity conditions.

Respondent's Section 12 examiner, Dr. Li, opined Petitioner's polyneuropathy was so severe that it was not limited to Petitioner's left upper extremity, but to Petitioner's entire body. The cause of this condition was Petitioner's diabetes. Dr. Li opined this condition was so severe Petitioner would have developed cubital tunnel and carpal tunnel syndrome conditions regardless of his job duties.

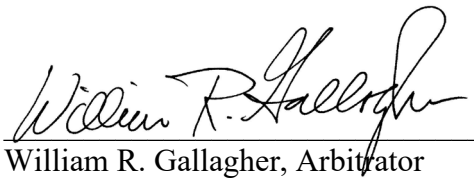
Dr. Li also had information regarding Petitioner's job duties which he obtained both from the Petitioner and Respondent. He noted that, while Petitioner did engage in forceful gripping and the use of power tools, it was not repetitive.

Although the medical records regarding same were not tendered into evidence, Petitioner had previously experienced numbness/tingling and stiffness in three fingers of his left hand in 2005, for which he had sought medical treatment.

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

Joseph Coleman, Respondent's plant superintendent, testified he was a PRV Technician and had previously worked for Respondent in that capacity. While he agreed Petitioner's description of his job duties was consistent with his understanding of same, he testified it varied from one day to another and there were occasions in which valves only required testing and certification.

In regard to disputed issues (E), (J), (K), and (L), the Arbitrator makes no conclusions of law because these issues are rendered moot because of the Arbitrator's conclusion of law in disputed issues (C) and (F).



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC020350
Case Name	Robert Ross v. Federal Express Corporation
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0233
Number of Pages of Decision	24
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Gary Stone
Respondent Attorney	Matthew Sheriff

DATE FILED: 5/27/2025

/s/Raychel Wesley,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBERT ROSS,

Petitioner,

vs. NO: 19 WC 20350

FEDERAL EXPRESS,

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 whether Petitioner's conditions are causally related to his June 6, 2019 work accident, entitlement to incurred medical expenses, and the nature and extent of Petitioner's permanent disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as set forth below but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

CONCLUSIONS OF LAW

I. Medical Expenses

On July 22, 2019, Dr. Connor prescribed Terocin patches to address Petitioner's "neuropathic symptoms." PX6. Petitioner offered into evidence a $489.18 bill for Terocin. PX5. The Arbitrator found the Terocin prescription was reasonable and necessary and further found Respondent liable for the associated cost. The Commission views the evidence differently.

Pursuant to §8.7(i)(4) of the Act, when payment for medical services has been denied pursuant to utilization review, "the employee has the burden of proof to show by a preponderance of the evidence that a variance from the standards of care used by the person or entity performing the utilization review…is reasonably required to cure or relieve the effects of his or her injury." *820 ILCS 305/8.7*. Here, Respondent obtained a utilization review of the July 22, 2019 Terocin

prescription. In his January 20, 2020 report, Dr. Martin Saltzman non-certified the Terocin; the Clinical Rationale indicates the requested service did not meet the established criteria for medical necessity:

> The Official Disability Guidelines offer the following recommendations regarding the requested Terocin. These guidelines indicate that topical private label medications are not recommended, as they are not FDA approved and not recommended on an evidence-based guideline. These formulations are not clinically tested for safety or efficacy. RX6.

The Commission's review of the record does not reveal the requisite evidence to demonstrate by a preponderance of the evidence that a variance from the standards of care as set forth by Dr. Saltzman is necessary. To the contrary, we observe Petitioner testified the Terocin patches were of no benefit, which corroborates Dr. Saltzman's non-certification.

The Commission finds Petitioner failed to rebut the presumption created by the valid U.R. non-certification. The Commission finds Respondent is not liable for the Terocin patches, and we vacate the award of $489.18 in Terocin prescription costs.

II. Permanent Disability

The Arbitrator provided the requisite §8.1b(b) analysis and concluded Petitioner's injuries resulted in 7% loss of use of the person as a whole as well as 10% loss of use of the right foot. While the Commission agrees with the Arbitrator's analyses of factors (i), (ii), (iii), and (v), we view the evidence differently with respect to §8.1b(b) factor (iv) – future earning capacity. Specifically, we note the Arbitrator's factor (iv) analysis relies, in part, on the possibility of future surgery. The Commission finds this is impermissible speculation and does not properly assess Petitioner's current disability. The Commission strikes the factor (iv) analysis on both the Order and Page 15 of the Decision and substitutes the following:

> §8.1b(b)(iv) – future earning capacity There is no evidence that Petitioner's accidental injury resulted in an adverse impact on his future earning capacity. The Commission finds this factor weighs in favor of decreased permanent disability.

The Commission modifies the person as a whole award and finds Petitioner sustained 5% loss of use of the person as a whole. The award of 10% loss of use of the right foot is affirmed.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 4, 2024, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of $3,403.14 for medical expenses, as provided in §8(a), subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of $489.18 for Terocin costs is vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $324.00 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 the 5% loss of use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $324.00 per week for a period of 16.7 weeks, as provided in §8(e)11 of the Act, for the reason that the injuries sustained caused the 10% loss of use of the right foot.

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 $17,100. 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

May 27, 2025

/s/ *Raychel A. Wesley*

RAW/mck

O: 5/7/25

/s/ *Stephen J. Mathis*

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/s/ *Christopher A. Harris*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC020350
Case Name	Robert Ross v. Federal Express Corporation
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Gary Stone
Respondent Attorney	Raymond Asher

DATE FILED: 6/4/2024

/s/William McLaughlin, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 4, 2024 5.155%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Robert Ross
Employee/Petitioner

v.

Federal Express
Employer/Respondent

Case # **2019** WC **020350**

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

DISPUTED ISSUES

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

FINDINGS

On **June 6, 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 $**28,080.00**; the average weekly wage was $**540.00**.

On the date of accident, Petitioner was **36** years of age, ***single*** with **2** dependent children.

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

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

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

ORDER

Respondent shall pay reasonable and necessary medical services of $**3,892.32**, as provided in Section 8(a) 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 Petitioner was employed as a driver/courier at the time of the accident and obtained a job as a driver after this accident. He currently works in security primarily in a seated position. As of Petitioner's last visit with Dr. Connor on August 23, 2022, the doctor noted Petitioner's continued symptoms and kept him off work. Because of this fact, the Arbitrator therefore gives some weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 36 years old at the time of the accident. Because of his young age Petitioner is likely to live with his symptoms for a long time. As such, the Arbitrator gives greater weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes no specific evidence was presented as to an impairment of future earning capacity, however, on August 23, 2022, Dr. Connor noted that if symptoms persisted Petitioner may require surgical intervention. In addition, Dr. Connor continued to keep Petitioner off work. This would certainly impair his earning capacity. Therefore, the Arbitrator gives some weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes as of Petitioner's last visit with Dr. Connor on August 23, 2022, the doctor continued to keep Petitioner off work and noted persistent low back pain that radiates to his right leg as well as right foot numbness and tenderness to touch along with right foot pain and swelling especially with prolonged walking or any attempt at higher impact activity. Dr. Connor indicated Petitioner's symptoms remained significant. Because of these findings, the Arbitrator 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 10% loss of use of the right foot pursuant to §8(e) of the Act and 7% person as a whole pursuant to §8(d)2 .

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 4, 2024

FINDINGS OF FACTS

The Petitioner, Robert Ross, was a 36-year-old driver delivering packages for Federal Express on June 6,2019, the date of this accident, Petitioner worked a part-time shift that began in the afternoon (Tr. p.8). On June 6, 2019, Petitioner walked into the Federal Express building to begin work when a co-employee ran over his right foot and ankle with a hand cart used to lug and load packages and his foot ended up under the cart. He felt immediate pain in his right ankle and sat down on the ground. After a short time, Petitioner was directed by his manager to go to Amita Health Medical Group on Busse Road and was taken there by a co-employee (Tr. pp.8-13).

Upon arrival at Amith Health, Petitioner related that was working for Fed Ex when a co-worker rolled an empty, 35-pound cart over his right foot (Px 1, p.1). Petitioner complained of pain and swelling in his right foot and walked with a limp (Tr. p.13 and Px 1, p.1). X-rays were negative and he had mild-to-moderate tenderness of the right medial foot mostly over the heel and midfoot (Px 1, p.1). Petitioner was given an ACE wrap and crutches as his limp was prominent (Tr. p.13 and Px 1, p.1). He was instructed to elevate his right foot as much as possible and was given Naproxen to take every 12 hours (Tr. pp.13-14 and Px 1, p.1). He was given restrictions of no climbing stairs or ladders, sitting and standing as tolerated, and was instructed to use crutches (Px 1, p.2). Petitioner went home that evening and testified that he was in excruciating pain and had difficulty sleeping (Tr. pp.14-15).

Petitioner did not return to work the following day (Tr. p.15). On June 10, 2019, Petitioner returned to Amita Health and reported he still had the same right foot pain (Px 1, p.18). At that time Petitioner was using the crutches when walking, using the ACE wrap, and taking Naproxen (Tr. p.16 and Px 1, p.18). A 25-pound lifting and pulling/pushing restriction was given, and he was encouraged to discontinue using the crutches (Px 1, p.21). Petitioner returned to work with these restrictions (Tr. p.17). On June 14, 2019, Petitioner returned to Amita Health indicating that walking makes his right foot condition worse, and the ACE wrap made it better (Tr. p.17 and Px 1, p.25).

On June 18, 2019, Petitioner presented to the University of Illinois Urgent Care with complaints of right foot/ankle pain. (Px 2, p.13). He was on light duty but still had to stand all day which is very painful (Px 2, p.13). Weight bearing and walking make the pain worse (Px 2, p.13). The physician increased the Naproxen and encouraged the use of ice, the ACE bandage, and

crutches (Px 2, p.15). Additionally, Petitioner was given a medium orthopedic shoe or boot (Tr. pp.21-22 and Px 2, p.12).

On June 19, 2019, Petitioner returned to Amita Health and had complaints that his ankle was not getting better (Tr. pp. 24-25 and Px 1, p.32). He complained of sharp pain travelling up the right leg and tingling and numbness of his toes (Px 1, p.32). After this visit, he was taken off work and instructed to use crutches, a post-op shoe or boot, and take the medication (Tr. p.23 and Px 1, p.36). Petitioner described the boot as big and bulky and came up to the middle of his right leg and had straps from the toe to the top of the boot (Tr. p.26). Using the boot on the right foot caused Petitioner to shift all his weight to the left side of his body when walking (Tr. p.24).

Petitioner returned to Amita on June 24, 2019, and reported pain of 8/10 and the pain was shooting up his right leg with tingling in his toes (Px 1, p.43). He was encouraged to do exercises moving his foot up and down while sitting and to walk and weight bear with the boot but without the crutches (Px 1, p.46). He was returned to work with sitting only restrictions. (Px 1, p.47). Due to the pain and how the boot was throwing off the way Petitioner was walking, he had to use the crutches sometimes (Tr. p.27).

The July 1, 2019, record from Amita notes Petitioner's pain level of 7/10 and that he is using both the boot and the crutches as his pain while standing was not getting better. (Px 1, p.50). The work restrictions were continued, and he was referred to Dr. Jennifer Connor, a podiatrist, for further treatment (Tr. pp. 27-28 and Px 1, p.52).

On July 22, 2019, Petitioner was seen by Dr Connor at Orthopaedic & Rehabilitation Centers and provided the history of the injury and rated his right foot pain as 9/10 and that his foot gets numb especially about the toes (Px 3, p.1). Petitioner discussed with Dr. Connor that he was using a boot (Tr. p.28). Dr. Connor performed an examination which revealed swelling of the midfoot, pain with external rotation, and diffuse stiffness of the foot and ankle (Px 3, p.2). Dr. Conner diagnosis was dislocation of tarsometatarsal joint of the right foot and sprain of the right foot (Px 3, p.2). Dr. Connor felt the numbness was likely secondary to the crushing injury to the soft tissues including the sensory nerves (Px 3, p.2). An MRI of the right foot was ordered, light duty (sitting only) was recommended, and Terocin cream or patch was ordered for the nerve symptoms as well as Mobic (Meloxicam) (Px 3, p.2, p.6, and p.8). Petitioner was to continue taking anti-inflammatories. (Px 3, p.2 and p.6).

On August 1, 2019, an MRI of Petitioners right foot was performed which revealed diffuse soft tissue swelling surrounding the extensor tendons including the anterior tibialis as well as a small tibiotalar effusion (Px 3, p.12-13). On August 5, 2019, Dr. Connor reviewed the MRI findings with Petitioner and recommended physical therapy and continued light duty. (Px 3, p.19 and Tr. pp.30-31). Petitioner began physical therapy on August 19, 2019, at Dr. Connor's office (Px 3, p.25). The physical therapist advised Petitioner to continue to wear the CAM boot (Px 3, p.30). After several sessions of physical therapy, Petitioner returned to Dr. Connor on September 9, 2019 and reported that therapy was helping but he still has pain when he walks particularly without the boot (Px 3, p.37). Dr. Connor recommended continuing the same treatment course and work restrictions and Petitioner continued to use the boot (Px 3, p.38 and Tr. p.32).

Petitioner continued physical therapy along with home exercises, and continued to use the boot (Px 3, p.50). On October 21, 2019, Dr. Connor found swelling of the midfoot and the medial plantar heel as well as diffuse stiffness of the right foot and ankle (Px 3, p.51). On December 2, 2019, Dr. Connor noted Petitioner was still wearing the boot and his pain reached a maximum of 8/10 when walking too long (Px 3, p.57). Petitioner was performing home exercises and was not able to attend physical therapy due to family issues (Px 3, p.57). Dr. Connor recommended continued physical therapy and prescribed Tramadol for pain (Px 3, p.58). On December 3, 2019, the physical therapist, Oliver Parbo, noted Petitioner had an impaired gait while wearing the CAM boot (Px, p.68). This was observed through January 2020 (Px 3, p.78, p.81, and p.85).

On January 24, 2020, Petitioner at an appointment with Dr. Connor and complained of left hip and low back pain which was present for about a week (Px 3, p.87 and Tr. pp.33-34). Petitioner attended this appointment in a wheelchair and reported being in bed for a few days (Px 3, p.87). Petitioner testified that using the boot and the crutches caused the pain in his left hip and low back (Tr. p.35). The physical examination revealed pain with straight leg raising and tenderness to the left hip extending up to the left side of the low back (Rx 3, p.88). Dr. Connor recommended Petitioner go to the emergency room, ordered an MRI of the lumbar spine, and prescribed Flexeril (Px 3, p.88 and p.92). The MRI of the lumbar spine performed on January 29, 2020, revealed 3-4 mm disk herniation at L4-L5 and a 2-3 mm disk protrusion/herniation at L5-S1 (Px 3, p.97).

Petitioner had prior low back issues before this accident happened (Tr. p.36 and Rx 7). However, the pain intensified, after Petitioner started walking with the boot (Tr pp.37-38).

Between June 6, 2019 (the date of this accident) and January 24, 2020, Petitioner was not receiving any medical treatment for his low back (Tr. p.38).

On February 3, 2020, Petitioner returned to Dr. Connor with complaints of low left back pain and swelling, stiffness, and pain in his right foot when applying too much pressure (Px 3, p.99). Dr. Connor recommended physical therapy for the lumbar spine and suggested wearing a normal shoe rather than the boot to help normalize his gait (Px 3, p.101). Further, Dr. Connor noted that the pain is likely due to or at least exacerbated by his long-standing time in a walking boot causing alterations to his gait (Px 3, p.101). She further recommended he remain off work (Px 3, p.101).

Petitioner began physical therapy with complaints of severe low back pain and walked with a limp using one crutch (Px 3, p.115). Petitioner returned to Dr. Connor on March 2, 2020, using one crutch and reported that he has transitioned out of the walking boot and into shoes (Px 3, p.116). His only issue with right foot is swelling and he has back pain any time his back is not in a straight position (Px 3, pp.116-117). Dr. Connor noted low back pain radiating to the left side and that Petitioner did not have similar symptoms prior to this injury (Px 3, p.117). Dr. Connor reiterated her opinion that the low back pain was related to the use of the boot which altered his gait (Px 3, p. 117). Dr. Connor recommended continuing physical therapy and prescribed a supportive back brace and instructed Petitioner to stay out of the walking boot so as to normalize his gait (Px 3, p.117).

On March 10, 2020, Petitioner was seen in physical therapy with limitations due to low back and right foot sensitivity (Px 3, p.125). Petitioner was provided education and a home exercise program to minimize low back and right foot pain (Px 3, p.125).

On April 13, 2020, a remote visit with Dr. Connor was required due to Covid (Px 3, p.127). Petitioner reported he has been performing his home exercises consistently and using the back brace which is helping (Px 3, p.127). Dr. Connor recommended he continue home exercises while under quarantine (Px 3, p.128). Petitioner continued seeing Dr. Connor regularly and performing physical therapy and home exercises through the end of 2020 for his continued complaints of right foot and low back pain (Px 3, pp.132-167). Dr. Connor continued to place work restrictions for the Petitioner (Px 3, pp.132-167).

On June 17, 2020, Petitioner attended an independent medical examination with Dr. George Holmes. Petitioner informed Dr. Holmes as to the history of the injury and the injuries he

sustained to his right foot and his back (Rx 3 and Tr. p.42). Petitioner testified that Dr. Holmes only examined his right foot and informed him he was only there to examine his foot. (Rx 3 and Rx 4 and Tr. pp.42-43). After examining Petitioner's feet, Dr. Holmes opined that Petitioner sustained a contusion and could return to a sedentary or semi-sedentary job (Rx 3, p.2). Any other opinions would be predicated on his review of the prior medical information when provided (Rx 3, p.2). Some of the available medical records were provided to Dr. Holmes and an addendum report was issued on July 8, 2020, in which Dr. Holmes opined that Petitioner was at MMI and did not require any restrictions due to the original work injury (Rx 4, p.2). TTD was terminated as of July 22, 2020 (Rx 1, p.1).

On December 9, 2020, Petitioner was seen at Concentra-Occupational Health Centers of Illinois for a DOT medical examination. The form completed by Petitioner did not reflect any neck or back problems (Rx 8, p.73-83). Petitioner testified the only reason he omitted any problems with his neck or back was so they would hire him because he did not have any funds or any support to take care of himself or his children (Tr. pp.88-89). Petitioner testified that the examination did not include his back and he was not asked to bend (Tr. pp.82-83). The physical examination was ordered by FedEx Ground 600 (Rx 8, p.83).

Petitioner continued his treatment with Dr. Connor in 2021 with consistent complaints of pain and stiffness in his lower back with radiation into his left buttock and thigh, and numbness in the right toes and foot (Px 3, p.168, p.176, p.183, and p.194). Dr. Connor continued to assert that Petitioner was not capable of performing his full duty work activities which included prolonged walking and standing (Px 3, p.169, p.177, p.184, and p.195).

On June 15, 2021, Dr. Connor elaborated on her previous opinions regarding his foot and lumbar spine. Dr. Connor reviewed the MRI report and imaging from January 2019 as well as the MRI report and Dr. Salehi's office note from May 2019, and noted that both MRI reports note disc herniations at L4-L5 and L5-S1 (Px 3, p.192-193). She stated that this did not change her opinion that Petitioner's symptoms are related to his injury in that prolonged time walking in a CAM boot can exacerbate symptoms related to lumbar disc herniation, even if it is pre-existing (Px 3, p.192). Dr. Connor noted that although the herniated discs were present prior to the accident of June 6, 2019, the injury required the use of a CAM walker boot which exacerbated the lumbar spine condition, thereby making it related (Px 3, p.192).

Dr. Connor noted Petitioner would be able to perform sedentary to very light duty relative to the lumbar spine and that these restrictions are related to the accident of June 6, 2019 (Px 3, p.193). With respect to the right foot, Dr. Connor diagnosed his condition as crushing injury with subsequent soft tissue injury and neuritis which is related to the accident of June 6, 2019 (Px 3, p.193). The most recent complaints related to the right foot have been persistent numbness/paresthesias (Px 3, p.193). Petitioner may benefit from additional physical therapy for desensitization (Px 3, p.193).

Dr. Connor reviewed the IME report from Dr. Holmes from July 2020 and noted the report was specific to Petitioner's foot injury (Px 3, p.193). Dr. Connor opined that while Petitioner does not have any structural abnormality of the foot that would prevent him from working as a driver, he does have persistent neuritis and depending on the degree of symptoms, he may or may not be able to tolerate his work (Px 3, p.193). Moreover, the IME report does not address the related lumbar spine injury and the two diagnoses cannot be separated from one another (Px 3, p.193). Dr. Connor reiterated that Petitioner cannot return to work without restrictions as it relates to the lumbar spine (Px 3, p.193).

Throughout the course of treatment in 2021 and 2002, Dr. Connor provided recommendations for treatment including physical therapy, medication, and work restrictions (Px 3, pp.168-251).

Petitioner last saw Dr. Connor on August 23, 2022, at which time he reported right foot swelling and pain, especially with prolonged walking or any attempts at higher impact activity as well as numbness in his foot (Px 3, p.247 and Tr. p.47). His foot was very tender to touch (Px 3, p.247). Additionally, Petitioner had persistent low back pain that radiated to the right leg (Px 3, p.247). Much of the pain is when Petitioner is bending or trying to get in and out of a chair even when he is sitting too long (Px 3, p.247, Tr. p.48). At that time, Petitioner was taking Ibuprofen once a day for pain (Px 3, p.247). Petitioner reported he did not see the pain management doctor because he did not want injections as Petitioner testified, he is afraid of needles (Px 3, p.247 and Tr. p.21). Physical examination revealed tenderness to palpation of the right foot with associated hypersensitivity (Px 3, p.248). As for the lumbar spine, straight leg raise was positive on the right and Petitioner was uncomfortable and shifting frequently (Px 3, p.248). Petitioner testified that surgery for his back was offered and discussed with Dr. Connor (Tr. p.51). Dr. Connor noted

Petitioner was not interested in surgery or injections and planned to manage his symptoms, which remain significant, utilizing medications and home exercises (Px 3, p.248).

Petitioner testified that currently he has swelling in his right heel, tingling in his toes, and slight pain that comes up his leg (Tr. p.52). Petitioner further testified he has back problems across the low back and has problems with the way he sleeps, lays down, and sits (Tr. pp.52-53). He has to constantly switch positions to relieve some of the pain (Tr. p.52). Petitioner is working in security at Wrigley Field where he sits most of the time watching security cameras (Tr. p.53). Further, Petitioner testified he cannot stand for a long period of time (Tr. p.53). He takes Ibuprofen 800 milligrams at least twice a day depending on how bad the pain is (Tr. p.54).

CONCLUSIONS OF LAW

C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMOLYMENT WITHTHE RESPONDANT?

The Arbitrator finds that the Petitioner sustained accidental injuries that arose out of and in the course of his employment. The Arbitrator finds the Petitioners testimony to be credible as to the injury.

Petitioner testified that on June 6, 2019, while working for the Respondent, a co-employee ran over his right foot and ankle with a hand cart used to lug and load packages. (Tr. pp.8-11). As a result, the Petitioner's right foot and ankle were injured. (Px 1, Px 2, and Px 3). The Petitioners testimony of the accident is consistent and corroborated in the medical records. There was no evidence that was presented contradicting or disputing the accident. Therefore, the Arbitrator finds that Petitioner sustained accidental injuries that arose out of and in the course of his employment.

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

Having found that Petitioner sustained accidental injuries that arose out of and in the course of his employment, the Arbitrator further finds that the Petitioner's condition of ill-being is causally connected to the injury.

While working for the Respondent the evidence established a co-employee ran over his right foot and ankle with a hand cart used to lug and load packages and his foot ended up under the cart. He felt immediate pain in his right ankle and sat down on the ground (Tr. p.8-10).

Eventually, Petitioner developed pain in his low back which Arbitrator finds was a result of the original injury to the foot.

RIGHT ANKLE AND RIGHT FOOT

Petitioner testified that after his right ankle and foot were run over with a hand cart, he felt immediate pain in his right ankle and sat down on the ground (Tr. p.10). He was then directed by his manager to seek medical treatment at Amita Health Medical Group and was taken there by a co-employee (Tr. pp.12-13). He complained of pain and swelling in his right foot and walked with a limp (Tr. p.13 and Px 1, p.1). X-rays were negative and Petitioner was given an ACE wrap and crutches. (Tr. p.13 and Px 1, p.1). He was instructed to elevate his right foot as much as possible and was given Naproxen to take every 12 hours (Tr. pp.13-14 and Px 1, p.1). He was given restrictions of no climbing stairs or ladders, sitting and standing as tolerated, and instructed to use crutches (Px 1, p.2). Petitioner went home that evening and was in excruciating pain and had difficulty sleeping (Tr. pp.14-15). After approximately 6 weeks of treatment with Amita Health, Petitioner was referred to Dr. Jennifer Connor, a podiatrist, for further treatment (Tr. pp. 27-28 and Px 1, p.52).

On July 22, 2019 Petitioner was seen by Dr. Jennifer Connor at Orthopaedic & Rehabilitation Centers and provided the history of the injury (Px 3, p.1). He rated his right foot pain as 9/10 and that his foot gets numb especially about the toes (Px 3, p.1). Petitioner discussed with Dr. Connor that he was using a boot (Tr. p.28). Dr. Connor performed an examination which revealed swelling of the midfoot, pain with external rotation, and diffuse stiffness of the foot and ankle (Px 3, p.2). Her diagnosis was dislocation of tarsometatarsal joint of the right foot and sprain of the right foot (Px 3, p.2). Dr. Connor felt the numbness was likely secondary to the crushing injury to the soft tissues including the sensory nerves (Px 3, p.2). An MRI of the right foot was ordered, light duty (sitting only) was recommended, and Terocin cream or patch was ordered for the nerve symptoms as well as Mobic (Meloxicam) (Px 3, p.2, p.6, and p.8). Petitioner was to continue taking anti-inflammatories and return on August 2, 2019 (Px 3, p.2 and p.6).

On August 1, 2019, an MRI of the right foot was performed which revealed diffuse soft tissue swelling surrounding the extensor tendons including the anterior tibialis as well as a small tibiotalar effusion (Px 3, p.12-13). On August 5, 2019, Dr. Connor reviewed the MRI ,and recommended physical therapy and continued light duty which was available (Px 3, p.19 and Tr. pp.30-31). Petitioner began physical therapy on August 19, 2019. The physical therapist advised Petitioner to continue to wear the CAM boot (Px 3, p.30). on September 9, 2019 saw Dr. Conner and reported that therapy was helping but he still has pain when he walks particularly without the boot (Px 3, p.37). Dr. Connor recommended continuing the same treatment course and work restrictions and Petitioner continued to use the boot (Px 3, p.38 and Tr. p.32).

Petitioner continued physical therapy along with home exercises, and continued to use the boot (Px 3, p.50). On October 21, 2019, Dr. Connor found swelling of the midfoot and the medial plantar heel as well as diffuse stiffness of the right foot and ankle (Px 3, p.51). On December 2, 2019, Dr. Connor noted Petitioner was still wearing the boot and his pain reached a maximum of 8/10 when walking too long (Px 3, p.57). Petitioner was performing home exercises and was not able to attend physical therapy due to family issues (Px 3, p.57). Dr. Connor recommended continued physical therapy and prescribed Tramadol for pain (Px 3, p.58).

Petitioner continued his medical treatment with Dr. Connor throughout the first half of 2020 with complaints of right foot pain and swelling (Px 3, pp.87-127). He was using a crutch but had transitioned out of the boot as he began to experience back pain (Px 3, p.116).

On June 17, 2020, Petitioner attended an independent medical examination with Dr. George Holmes scheduled by the Respondent. Petitioner informed Dr. Holmes as to the history of the injury and the injuries he sustained to his right foot and his back (Rx 3 and Tr. p.42). Petitioner testified that Dr. Holmes only examined his foot and informed him he was only there to examine his foot, which is reflected in the IME reports of Dr. Holmes (Rx 3 and Rx 4 and Tr. pp.42-43). After examining Petitioner's feet, Dr. Holmes opined that Petitioner only sustained a contusion and could return to a sedentary or semi-sedentary job (Rx 3, p.2). Any other opinions would be predicated on his review of the prior medical information when provided (Rx 3, p.2). Despite concluding that Petitioner only sustained a contusion, Dr. Holmes indicated he wished to review the MRI scan and an EMG/nerve conduction velocity study to determine if there was a neurologic component to the complaints of the entire foot feeling as though it was asleep (Rx 3, p.2).

Subsequently, some medical records were provided to Dr. Holmes. The MRI scan was not provided, although a report of that MRI was included (Rx 4, pp.2-3). An addendum report was issued on July 8, 2020, in which Dr. Holmes opined that Petitioner was at MMI, that his current condition was relatively benign and at that point was not related to the work incident, and Petitioner did not require any restrictions due to the original work injury (Rx 4, p.2). Arbitrator notes Dr. Holmes provided his opinions without viewing the MRI scan or the EMG, both of which he requested at the time of the examination (Rx 3 and Rx 4).

Arbitrator gives more weight to Dr. Connor diagnosis than that of Dr. Holmes. Dr. Conner saw Petitioner approximately 25 times from July 22, 2019, through August 23, 2022. Dr. Connor noted tenderness as well as numbness of the right foot throughout her examinations (Px 3). As of the last visit on August 23, 2002, Dr. Connor noted Petitioner reported right foot swelling and pain, especially with prolonged walking or any attempts at higher impact activity as well as numbness in his foot (Px 3, p.247 and Tr. p.47). His foot was very tender to touch (Px 3, p.247). Further, Dr. Connor noted Petitioner was not interested in surgery or injections and planned to manage his symptoms, which remain significant, utilizing medications and home exercises (Px 3, p.248).

Dr. Connor opined that Petitioner's diagnosis is crushing injury with subsequent soft tissue injury and neuritis of the right foot (Px 3, p.193). Petitioner testified he did not have any problems with his right foot or right ankle before this accident and there is no evidence in the records of any injury or medical treatment for the right foot or ankle prior to June 6, 2019 (Tr. pp.51-52). Dr. Connor treated Petitioner contrasted with the one examination performed by Dr. Holmes. The Arbitrator concludes, as to the foot and ancle, Petitioner's current condition of ill-being as to his right foot and ankle is causally connected to the injury.

LOW BACK

On January 24, 2020 Petitioner had an unscheduled appointment with Dr. Connor with new complaints of left hip and low back pain which was present for about a week (Px 3, p.87 and Tr. pp.33-34). Petitioner attended this appointment in a wheelchair and reported being in bed for a few days (Px 3, p.87). Petitioner testified that using the boot and the crutches caused the pain in his left hip and low back (Tr. p.35). The physical examination revealed pain with straight leg raising and tenderness to the left hip extending up to the left side of the low back (Px 3, p.88). Dr. Connor recommended Petitioner go to the emergency room, ordered an MRI of the lumbar spine,

and prescribed Flexeril (Px 3, p.88 and p.92). The MRI of the lumbar spine performed on January 29, 2020, revealed a 3-4 mm disk herniation at L4-L5 and a 2-3 mm disk protrusion/herniation at L5-S1 (Px 3, p.97).

Petitioner had prior low back issues and had seen neurosurgeon, Dr. Sean Salehi before this accident happened (Tr. p.36 and Rx 7). On May 30, 2019, a week before this accident, Dr. Salehi reviewed the MRI of the lumbar spine performed on May 29, 2019, and reassured Petitioner that the imaging revealed no significant pathology (Rx 7, p.4) The only treatment recommendations Dr. Salehi made pertained to the cervical spine and the right arm (Rx 7, p.46).

Petitioner testified that although he had low back pain before this accident, the pain was not the same as after Petitioner started walking with the boot (Tr. pp.37-38). Between June 6, 2019 (the date of this accident) and January 24, 2020, Petitioner was not receiving any medical treatment for his low back (Tr. p.38).

On February 3, 2020, Petitioner returned to Dr. Connor with complaints of low left back pain and swelling, stiffness, and pain in his right foot when applying too much pressure (Px 3, p.99). After examining the Petitioner and reviewing the MRI results, Dr. Connor recommended physical therapy for the lumbar spine and suggested wearing a normal shoe rather than the boot to help normalize his gait (Px 3, p.101).

Dr. Connor concluded that Petitioner's low back pain was likely due to or at least exacerbated by the long-standing time in a walking boot that caused alterations in his gait (Px 3, p.101). The medical records just prior to the onset of Petitioner's low back pain corroborate Dr. Connor's opinions. On December 3, 2019, physical therapist Oliver Parbo noted Petitioner had an impaired gait while wearing the CAM boot (Px 3, p.68). This was also observed and noted by physical therapist Agnes Kim on January 16, 2020 (Px 3, p.85).

On June 15, 2021, Dr. Connor elaborated on her previous opinions regarding the injuries sustained by the Petitioner and the cause of those injuries (Px 3, pp.192-193). Dr. Connor reviewed the MRI report and imaging from January 2019 as well as the MRI report and Dr. Salehi's office note from May 2019 (Px 3, p.192). Dr. Connor noted that both MRI reports note disc herniations at L4-L5 and L5-S1 (Px 3, p.192). She stated that this did not change her opinion that Petitioner's symptoms are related to his injury in that prolonged time walking in a CAM boot can exacerbate symptoms related to lumbar disc herniation, even if it is pre-existing (Px 3, p.192). Dr. Connor noted that although the herniated discs were present prior to the accident of June 6, 2019, the injury

required the use of a CAM walker boot which exacerbated the lumbar spine condition, thereby making it related (Px 3, p.192). Dr. Connor went on to state that Petitioner required treatment regarding his lumbar spine which included physical therapy, injections by pain management, and ultimately surgery if the symptoms are persistent (Px 3, p.194).

Dr. Connor noted Petitioner would be able to perform sedentary to very light duty relative to the lumbar spine and that these restrictions are related to the accident of June 6, 2019 (Px 3, p.193).

The Arbitrator notes that on December 9, 2020, Petitioner was seen at Concentra-Occupational Health Centers of Illinois for a DOT medical examination ordered by FedEx Ground and did not report any neck or back problems (Rx 8, pp.72-83). Petitioner testified he omitted any problems with his neck or back was so they would hire him because he did not have any funds or any support to take care of himself or his children (Tr. pp.88-89). Arbitrator finds the Petitioners testimony credible as to this issue. Arbitrator gives greater weight that during the examination Petitioner testified that the examination did not include his back and he was not asked to bend (Tr. pp.82-83). In addition, given the objective findings revealed on the lumbar MRI and the consistent findings and complaints of back pain beginning in January 2020, the Arbitrator accepts the Petitioner's testimony for the omission of these complaints.

Arbitrator gives less weight to Dr. Holmes' conclusions. Dr. Holmes examined Petitioner on one occasion, June 17, 2020, and only examined his feet as testified by the Petitioner and as reflected in his report of that date (Tr. pp.42-43 and Rx 3). Subsequently, Dr. Holmes was provided with only select number of medical records from the treatment Petitioner underwent from the date of the accident through March 20, 2020 (Rx 4, pp.1-2). Dr. Holmes was not given Dr. Connor's note of January 24, 2020, that specifically detailed the onset of Petitioner's back problems nor was he provided with any MRI images of Petitioner's lumbar spine (Rx 4). Dr. Holmes did not render any opinions regarding the low back condition (Rx 4 and Tr. p.42). Dr. Holmes indicated he was only going to address the foot injury when he specifically stated that Petitioner does not require any restrictions due to the original work injury (Rx 4, p.3).

In reaching his findings Arbitrator notes that Dr. Connor was the only physician that possessed the pertinent information regarding the Petitioner's low back condition, treated that condition consistently for over two years, and provided an opinion as to the cause of Petitioner's low back condition (Px 3). Therefore, the Arbitrator places greater weight on the findings and

opinions of the Petitioner's treating physician, Dr. Connor, and finds that the Petitioner's current condition of ill-being as to his low back is causally connected to the injury.

It is well settled that where an injury is a contributing factor, compensation will be allowed even if it is possible that the Petitioner's condition of ill-being resulted from other contributing factors or degenerative processes. (See *International Vermiculite Company v. Illinois Industrial Commission,* 76 Ill.2d 1, 31 Ill. Dec. 789, 394 N.E.2d 1166 (1979)). Furthermore, where an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Sisbro, Inc. v. Industrial Commission*, 207 Ill.2d 193, 205 (2003). Numerous claims have been brought where the initial injury has resulted in an altered gait which then causes injury to another body part. For example (and for persuasive purposes only), in *Rehkemper & Son Building Co. v. IWCC (Kevin Cook),* Petitioner sustained an injury to his right leg on February 24, 2011. *Rehkemper & Son Building Co. v. IWCC (Kevin Cook),* 2015 Il App (5th) 140481WC-U. Approximately a year later, Petitioner developed back pain which his treating doctor attributed to an altered gait. Id. at ¶15. The Arbitrator found that the Petitioner failed to establish a causal relationship between the back condition and the accident largely relying on the IME opinion and the fact that the back condition did not manifest until 11 months after the accident. Id. at ¶19. The Commission modified the decision and found that the back condition was causally related to the accident and found it reasonable that over time the Petitioner may start to experience back symptoms as a result of an altered gait. Id at ¶20. On appeal, the Appellate Court affirmed the Commission decision. Id. at ¶46.

Accordingly, the Arbitrator finds that the Petitioner's current condition of ill-being as to his low back is causally connected to the injury.

J. WERE THE MEDICAL SERVIS PROVED TO THE PETITIONER REASONABLE AND NECESSARY AND HAS THE RESPONANT PAID ALL APPROIATE CHARGESFOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES?

The Arbitrator finds that the medical services provided to Petitioner were reasonable and necessary and Respondent has not paid all appropriate charges for all reasonable and necessary medical services.

Beginning in July 2019 and continuing through August 2022, Dr. Connor examined Petitioner and formulated a treatment plan on each occasion to address the findings (Px 3). On June 15, 2021, Dr. Connor noted that Petitioner required treatment for his lumbar spine that included physical therapy, corticosteroid injections, and ultimately surgery if the symptoms persisted (Px 3, p. 193). On August 23, 2022, Dr. Connor stated that Petitioner is planning to continue to manage his symptoms, which remain significant, utilizing NSAIDs and home exercise program as instructed by physical therapy. (Px 3, p.248). Arbitrator gives greater weight to Dr. Connor who managed Petitioner's care and that Dr. Conner's recommendations were reasonable and necessary. There was no significant evidence presented to contradict Dr. Conner. Where the employer fails to introduce evidence to suggest the services rendered were not necessary or that the charges were not reasonable, an award to the Petitioner who presents some evidence in support of an award for reasonable and necessary medical expenses will be upheld (see *Shafer v. IWCC*, 2011 IL App (4th) 100505WC). In his initial IME report, Dr. Holmes states once he has further medical records, it would be possible to address other issues such as treatment thus far and future recommendations (Rx 3, p.2). After reviewing a limited number of medical records, Dr. Holmes then opined that Petitioner did not require any further treatment, but this is limited to the right foot and ankle (Rx 4, p.3). Dr. Holmes did not issue any opinions as to the reasonable and necessary nature of the treatment Petitioner underwent to that point (Rx 4).

Given the above, the Arbitrator finds that the remaining bill from Orthopaedic and Rehabilitation Centers in the sum of $3,108.26 and the bill from Rx Development Associates for Meloxicam in the sum of $294.88 are reasonable and necessary (Px 4 and Px 5).

With respect to the recommendation for Terocin patches, Respondent did submit a report from Genex dated January 20, 2020 (Rx 6). The report states that the treatment did not meet the established criteria for medical necessity (Rx 6, p.1). However, this is a rebuttable presumption. Given the extensive treatment provided by Dr. Connor and the fact that the author of the report did not examine the Petitioner and had limited access to the medical records, the Arbitrator finds that the treatment recommendation for Terocin patches and the cost thereof was reasonable and necessary. As such, Respondent shall pay Petitioner the sum of the sum of $3,892.32 as listed in paragraph 7 of Arbitrator's Exhibit 1.

L. **WHAT IS THE NATURE AND EXTENT OF THE INJURY?**

As to the issue of the nature and extent of the injury, the Arbitrator finds that the Petitioner is entitled to receive the sum 7% loss of a man as a whole (35 weeks of permanent partial disability)

and 10% loss of use of the right foot (16.7 weeks of permanent partial disability) at a rate of $324.00 per week and in support thereof adopts Petitioner's Exhibits 1, 2, and 3.

In accordance with Section 8.1b of the Act, the Arbitrator has considered the following factors when reaching his decision regarding the issue of permanency:

(i) No permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator therefore gives no weight to this factor.

(ii) The occupation of the injured employee:

Petitioner was employed as a driver/courier at the time of the accident and obtained a job as a driver after this accident. He currently works in security primarily in a seated position. As of Petitioner's last visit with Dr. Connor on August 23, 2022, the doctor noted Petitioner's continued symptoms and kept him off work (Px 3, pp.247-250). As such, the Arbitrator gives some weight to this factor.

(iii) The age of the employee at the time of the injury:

Petitioner was 36 years of age at the time of the injury. Because of his young age, Petitioner is likely to live with his symptoms for a long time. As such, the Arbitrator gives greater weight to this factor.

(iv) The employee's future earning capacity:

No specific evidence was presented as to an impairment of future earning capacity, however, Dr. Connor noted that if symptoms persisted Petitioner may require surgical intervention (Px 3, p.193). In addition, Dr. Connor continued to keep Petitioner off work as of August 23, 2022 (Px 3, p.250). This would certainly impair his earning capacity. Therefore, the Arbitrator gives some weight to this factor.

(v) Evidence of disability corroborated by the treating medical records:

As of the last visit with Dr. Connor on August 23, 2022, the doctor continued to keep Petitioner off work and noted persistent low back pain that radiates to his right leg as well as right foot numbness and tenderness to touch along with right foot pain especially with prolonged walking or any attempt at higher impact activity (Px 3, pp.247-250). Dr. Connor indicated Petitioner's symptoms remained significant (Px 3, p.248). Therefore, the Arbitrator gives greater weight to this factor.

The Act provides that no single enumerated factor shall be the sole determinant of disability. In weighing all the factors, the Arbitrator gives greater weight to the physical examination findings of Dr. Connor that endured for over 3 years after the accident. This implies the symptoms will likely continue and lead to further medical treatment, additional disability, and potential loss of earnings.

Therefore Arbitrator finds that the Petitioner is entitled to receive an amount representing 7% loss of a man as a whole and 10% loss of use of the right foot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC007194
Case Name	Adrian Cangas v. Pavement Systems, Inc
Consolidated Cases	
Proceeding Type	Remand
Decision Type	Commission Decision
Commission Decision Number	25IWCC0234
Number of Pages of Decision	15
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Kenneth Lubinski
Respondent Attorney	Gregory Rode

DATE FILED: 5/27/2025

/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

ADRIAN CANGAS,

Petitioner,

vs. NO: 18 WC 007194

PAVEMENT SYSTEMS, INC.,

Respondent.

DECISION AND OPINION ON APPELLATE COURT REMAND

This matter comes before the Commission pursuant to a Rule 23 Remand Order of the Appellate Court of Illinois, First District, in the case of *Cangas v. The Illinois Workers' Compensation Comm'n*, 2024 Il. App (1st) 240564WC-U, to determine and award the claimant the temporary total disability (TTD) benefits to which he is entitled and for further proceedings. The Appellate Court affirmed in part, and reversed in part, the judgment of the Circuit Court in case number 2023 L 050432 and affirmed in part, and reversed in part, the Commission's decision in case number 23 IWCC 0315. The Appellate Court affirmed that part of the Circuit Court's judgment which affirmed the Commission decision finding that the Petitioner's cervical condition, attendant cervical medical expenses and prospective cervical surgery are not causally related to the work accident on October 25, 2017, and vacated that portion of the Circuit Court's judgment affirming the Commission's TTD award and affirmed the Circuit Court's judgment in all other respects. Further the Appellate Court reversed and vacated the Commission's TTD award, affirming all else, and remanded this matter to the Commission with directions to determine and award the claimant the TTD benefits to which he is entitled and for further proceedings. After considering the Remand Order, and the entire record, the Commission vacates its prior TTD award and finds that Petitioner is entitled to 31-2/7 weeks of TTD commencing October 30, 2017, through June 5, 2018. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327 (1980).

Background

For context, as follows, the Appellate Court summarized the background of the appeal as taken from the evidence introduced at an arbitration hearing held on June 23, 2022, pursuant to section l9(b) of the Act (820 ILCS 205/19(b) (West 2020)):

> At all times relevant, the claimant was employed by Pavement as a certified mechanic. It is undisputed that, on October 25, 2017, while working for Pavement, the claimant was walking in Pavement's shop to a desk when he slipped on glass beads that had been spilled on the floor and fell. He testified that his right foot slipped, and as he fell, his left knee slammed into the concrete floor. He stated that his body twisted to the left with his arm and shoulder behind his back. His right hand also struck the floor. The claimant testified that he landed with his left leg underneath him and his back on the floor. He stated that he experienced pain in his left knee, left elbow, left shoulder and right hand. At the time of the claimant's fall, Pavement's office manager, Lisa Debellis, was standing in the shop. Debellis saw the claimant fall and asked him if he needed an ambulance; the claimant declined. Debellis brought the claimant a chair, which he used to help him stand. Debellis stated that the claimant fell mostly on his hands and arms. Describing the claimant's fall, Debellis stated that his impact was not significant and that he went down slowly. She saw no hyperextension motion.
>
> The claimant testified that he continued working following his fall, doing a few small tasks. He stated that he experienced pain in his left knee, left bicep, left shoulder, and left arm, and he left work early and went home at approximately 2:00 p.m. October 25, 2017, was the last day that the claimant worked for Pavement. The claimant admitted that he worked on October 28, 2017, at his part-time job with the City of Chicago as a motor pool truck driver but stated that he did not perform any physical duties that day. October 28, 2017, was the last day that the claimant worked for the City of Chicago.
>
> On October 29, 2017, the claimant presented at Palos Community Hospital, complaining of injuries to his left knee, right hand and wrist, right index finger, left shoulder, and left arm. The record of that visit does not reflect that the claimant complained of numbness, tingling, or pain in his neck or spine. The claimant gave a history of having fallen while working four days earlier. X- rays were taken of the claimant's thoracic spine, which revealed no acute findings. X-rays of the claimant's left knee showed an osseous fragment of the interior pole patella and moderate joint effusion. X-rays of the claimant's right wrist, right fourth finger *[sic],* and left shoulder showed no acute findings. The claimant was diagnosed as suffering from injuries to his knee and shoulder and sprains of his right wrist and right index finger. He was prescribed pain medication, advised to refrain from

weight bearing on his left leg, and told to seek follow-up care with an orthopedic specialist.

On October 30, 2017, the claimant was seen by Dr. Regan at Southwest Orthopedics. Dr. Regan had treated the claimant for earlier left knee problems which included a February 9, 2017, MRI and arthroscopic surgery on March 21, 2017. At the time of his October 30 visit, the claimant complained of pain in his left knee and shoulder, and he gave a history of having slipped and fallen while working. As of that visit, Dr. Regain diagnosed the claimant as suffering from left knee degenerative changes and rotator cuff strain. He placed the claimant on off-work status.

On November 1, 2017, the claimant completed a Form 45 accident report which states that he injured his left knee, left shoulder, and right hand.

The claimant continued to treat with Dr. Regan through February 5, 2018. During that period he continued to complain of knee and shoulder pain. Dr. Regan provided conservative treatment, prescribing physical therapy and administering cortisone injections to the claimant's knee and shoulder.

When the claimant was seen on November 13, 2017, he complained of left shoulder and left knee pain. Dr. Regan recommended that the claimant undergo physical therapy for his left knee and an MRI of his shoulder.

The claimant began physical therapy at Heights Physical therapy on November 20, 2017. His initial evaluation was for a shoulder injury which was diagnosed as a left shoulder rotator cuff tear.

On orders from Dr. Regan, the claimant had an MRI of his left shoulder on November 28, 2017, which revealed no tears. On December 4, 2017, Dr. Regan prescribed physical therapy for the claimant's left shoulder condition.

A December 28, 2017, MRI of the claimant's knee, compared to his February 9, 2017, MRI, showed post-operative changes from his March 2017 surgery and tears and chondromalacia similar to the study before the October 25, 2017, work accident. When the claimant was seen by Dr. Regan on December 21, 2017, he complained of both knee and shoulder pain.

On January 9, 2018, Nicholas Marchesano, an investigator with Marshall Investigative Group, conducted video-taped surveillance of the claimant. The video shows the claimant unloading, forcibly pulling, and carrying various items from his truck to his back yard, including bumper liners, car parts, a large painting, a wire cable, a milk crate, a side panel, the top tray of a toolbox, a folding car seat, a bucket

seat, and a tire. The claimant is seen walking without a cane and moving his head in all directions.

Dr. Regan's notes of the claimant's January 15, 2018, visit reflect that he continued to complain of both knee and shoulder pain. Dr. Regan administered a cortisone injection to the claimant's left knee and advised him that a repeat arthroscopy was a possibility. On that same day, the claimant was last seen at Heights Physical Therapy.

On January 18, 2018, Dr. Regan administered a cortisone injection to the claimant's shoulder. When the claimant last saw Dr. Regan on February 5, 2018, he reported that the cortisone injection to his shoulder had not given him much relief. Dr. Regan advised the claimant to return to physical therapy. During the course of his treatment of the claimant through February 5, 2018, Dr. Regan kept the claimant on off-work status.

When the claimant was treating with Dr. Regan, he was provided nurse case management services by Eileen Skisak, a nurse employed by Custom Case Management. Skisak attended the claimant's appointments with Dr. Regan. She testified that, during those appointments, the claimant reported left shoulder pain, but he never complained of or reported an injury to his cervical spine. According to Skisak, the claimant told her that he was unable to work.

On February 21, 2018, the claimant sought a second opinion from Dr. Ronak Patel at Hinsdale Orthopedics. He provided a history of a work accident and complained of left knee and left shoulder pain. The notes of that visit reflect that, on physical examination of the claimant, Dr. Patel found no evidence of quad atrophy and tenderness only at the joint line. He noted almost full range of motion of the left knee, full and normal left knee strength, equal and full active and passive elevation of the left shoulder, and full external rotation and internal rotation of the left shoulder equal to that on the right side. Dr. Patel recorded a normal examination of the claimant's cervical spine. X-rays of the claimant's cervical spine showed severe arthritis and spondylosis. As of that examination, Dr. Patel diagnosed left shoulder and knee pain, cervical spine pathology, and a lateral meniscus tear. Dr. Patel opined that the claimant's left knee condition was exacerbated by his work-injury. He referred the claimant to Dr. Ashraf Darwish at Hinsdale Orthopedics for an evaluation of his cervical spine and maintained the claimant on off-work status.

Additional surveillance of the claimant was conducted on February 27, 2018. The video of that surveillance shows the claimant putting fluids into two vehicles and cleaning the headlights on his pickup truck which required his bending and moving his head up and down and from side to side. The claimant is seen working under a pickup truck while lying on his back.

The claimant first saw Dr. Darwish on March 1, 2018. The notes of that visit reflect that the claimant's chief complaint was cervical pain. According to Dr. Darwish, the claimant also complained of left-sided shoulder and periscapular pain and numbness and tingling in his left hand. A cervical X-ray revealed that the claimant had severe degenerative changes from C2 through C7. As of that visit, Dr. Darwish's diagnosis was cervicalgia, cervical disc degeneration, and cervical radiculopathy on the left. He maintained the claimant on off-work status and ordered an MRI of the claimant's cervical spine.

Surveillance of the claimant was again conducted on March 2, 2018. The video shows the claimant lifting and carrying grocery bags.

The claimant was next seen by Dr. Patel on March 13, 2018. On examination of the claimant's left knee, Dr. Patel found him to have a posterior horn root tear of the lateral meniscus. Dr. Patel recommended a cortisone injection and advised the claimant that he will need a knee replacement in the future.

On April 10, 2018, the claimant received a cortisone injection which was administered by Dr. Patel. According to the notes of that visit, the claimant had left shoulder pain consistent with cervical spine etiology. Dr. Patel advised the claimant to do only low impact activities. He also told the claimant to consider an additional injection and surgery. Dr. Patel continued the claimant on off-work status.

When the claimant saw Dr. Patel on April 17, 2018, Dr. Patel's diagnosis was a lateral meniscus tear. Dr. Patel noted that he did not recommend surgery or any further treatment for the claimant's knee condition, and he confirmed that there was nothing further that he could offer for the claimant's knee condition. Dr. Patel gave the claimant a letter placing him on off-work status.

On May 11, 2018, the claimant had the MRI scan of his cervical spine recommended by Dr. Darwish. The scan revealed a large posterior disc osteophyte at C4-5 causing severe left and moderate severe right foraminal narrowing and multiple levels of bilateral foraminal narrowing, degenerative disc disease, and osteophytes. The scan suggested myelomalacia at C5-6, severe multilevel degenerative changes from C3 through C7, reversal of the normal cervical lordosis centered at C4, mild cervical levoscoliosis, trace anterolisthesis at C7, and incidental findings regarding the adenoids, tonsils, left sinus, and left thyroid.

On May 18, 2018, the claimant again saw Dr. Darwish. Dr. Darwish reviewed the claimant's May 11 MRI, finding that the scan revealed disc osteophyte at C3-4 and disc protrusion at C4-5. Dr. Darwish diagnosed stenosis and recommended that the claimant undergo an anterior cervical discectomy and fusion from C3 through C6. Dr. Darwish again placed the claimant on off-work status.

The claimant was next seen by Dr. Patel on June 5, 2018, and received a cortisone injection. As of that visit, Dr. Patel released the claimant to work with the recommendation that he not lift more than 10 to 15 pounds, not kneel and squat, and not engage in prolonged standing or walking.

The claimant continued to treat with Dr. Darwish from August 3, 2018, through October 25, 2019. During that period, Dr. Darwish continued to recommend surgery. When the claimant last saw Dr. Darwish on October 25, 2019, Dr. Darwish restricted the claimant to no lifting greater than 10 pounds and instructed the claimant to follow up with his primary care physician.

At the request of Pavement, Dr. Jay Levin completed a medical evaluation of the claimant on December 13, 2018. When deposed, Dr. Levin stated that he had reviewed the claimant's medical records from both prior to and after October 25, 2017, the claimant's diagnostics, and the surveillance videos. Dr. Levin opined, within a reasonable degree of medical and surgical certainty, that the claimant suffered a left knee contusion as a result of his accident on October 25, 2017. He testified that there was no difference in the MRIs of the claimant's left knee from before and after his work accident and that the claimant reached maximum medical improvement (MMI) from his left knee injury within four to six weeks after his work accident. Dr. Levin opined, within a reasonable degree of medical and surgical certainty, that as result of his work accident, the claimant sustained a left shoulder contusion which required no further treatment, and that the claimant had reached MMI from that condition within four to six weeks post October 25, 2017. Dr. Levin testified that he agreed with Dr. Regan's assessment that the findings of the MRI of the claimant's left shoulder were not clinically significant. On cross-examination, Dr. Levin admitted that, when he performed a Spurling's test on the claimant's right, the claimant reported pain on the left. Dr. Levin found the reaction unexpected as any symptoms should have been on the right. He also performed a Speeds test which was negative bilaterally. According to Dr. Levin, the claimant's negative Speeds test was evidence that he did not have a labral tear of the left shoulder. From his review of the surveillance videos, Dr. Levin concluded that the claimant's ability to move objects from the rear of his truck was inconsistent with a shoulder labral tear of any significance. Dr. Levin also opined that the claimant suffered a right wrist sprain as a result of his work injury which, based on his examination and the X-ray findings, was at MMI within four to six weeks after his work accident. It was Dr. Levin's opinion that the claimant could have returned to unrestricted work within 4 to 6 weeks post-accident. Finally, Dr. Levin opined, within a reasonable degree of medical and surgical certainty, that the claimant did not suffer any cervical injury that was caused by, aggravated, or accelerated by his October 25, 2017, work accident. According to Dr. Levin, there is nothing within the claimant's medical records of a mechanism of injury to his cervical spine nor is

there any description of hyperextension or of the claimant's head snapping forward or backwards. Dr. Levin stated that, when he inquired of the claimant, he denied having neck pain after his fall. He testified that the claimant's spondylolisthesis, stenosis, and myelomalacia preexisted his work accident and were consistent with the claimant's age. Dr. Levin also found Dr. Patel's February 21, 2018, diagnosis of a possible cervical spine component to the claimant's symptoms to be inconsistent with Dr. Patel's examination on that same day which showed normal cervical range of motion and normal cervical muscle strength. Dr. Levin admitted that it was possible that the claimant's work accident caused a degree of disc protrusion on the right at C5-6, but that was clinically insignificant since the claimant's symptoms involved the left shoulder.

The deposition of Dr. Darwish was taken on April 30, 2019. Dr. Darwish is a board- certified orthopedic surgeon with a specialty in spine surgery. He testified that he first saw the claimant on March 1, 2018, and last saw him before the deposition on March 22, 2019. Dr. Darwish opined, within a reasonable degree of medical and surgical certainty, that the claimant's October 2017 work accident exacerbated his pre-existing cervical stenosis and cervical degenerative changes. According to Dr. Darwish, individuals with cervical stenosis and myelopathy do not always have neck pain, and they often have nerve related pain in their upper or lower extremities and in their shoulders around the shoulder blades. He stated that patients with cervical disc herniations or cervical stenosis will complain more of upper extremity issues. Dr. Darwish testified that the claimant had a greater risk of incurring a spinal cord injury due to his underlying stenosis. He stated that, at the time of his deposition, his diagnosis, treatment recommendations, and work status recommendation remained the same. It was his belief that the claimant was complaining of what he thought were shoulder issues but were in fact related to his cervical spine. Dr. Darwish opined that the claimant's need for spine surgery is causally related to his work accident. He stated that the claimant should remain on work restrictions of no lifting greater than 10 pounds. Dr. Darwish admitted that he did not review the claimant's pre-accident medical treatment records or the surveillance videos. He also admitted that the findings on the MRIs of the claimant's cervical spine were consistent with the claimant's age and could have been caused by either trauma or degeneration. Dr. Darwish testified that the osteophytes seen on the claimant's MRIs developed over time and he could not say when they occurred. Dr. Darwish also acknowledged that, when the claimant was first seen and completed a pain diagram, he did not complain of pain going down his left arm and into his hand. He also admitted that the claimant's varying degrees of pain could have been from degenerative progression and not from trauma. Dr. Darwish acknowledged that the positive Werdnig-Hoffman sign recorded in his records could indicate a central nervous system problem unrelated to the claimant's spine. He also acknowledged that hyperactive reflex entry in his records could also be a sign of a central nervous system problem unrelated to the claimant's cervical spine.

Dr. Darwish testified that his surgery recommendations were based on his examination of the claimant, the claimant's subjective complaints, and the claimant's diagnostic findings. According to Dr. Darwish, if a patient presented without pain but with diagnostic and exam findings, he would still recommend surgery.

Surveillance of the claimant on June 15, 2021, showed him standing by his pickup truck, the bed of which was loaded with large barrels. The claimant can be seen moving his head in a fluid manner.

At arbitration, the claimant testified that he continues to experience pain in his bicep, shoulder blade, forearm, and left knee, and that he has lost strength in his left arm. He testified that he doesn't walk like he did before the accident. However, according to Debellis, Pavement's office manager, the claimant walked slowly and shuffled before his October 25, 2017, fall. John Land, Pavement's corporate secretary and General Superintendent, also testified that the claimant walked with a limp before his October 25, 2017, accident. The claimant testified that he cannot walk as far as he was able to prior to October 25, 2017. Prior to his accident he was able to walk 4 or 5 miles. He also testified that, since his work accident, he can no longer dance, cut grass, shovel snow, do laundry, or climb a ladder. According to the claimant, he cannot lift or climb with his left arm due to weakness. The claimant testified that he has been unable to have the spine surgery recommended by Dr. Darwish under his health insurance due to the pendency of his workers' compensation claim. The claimant admitted that, in January 2018, he opted to and began receiving social security benefits. He is also enrolled in Medicare.

Following the arbitration hearing held on June 3, 2022, pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2020)), the arbitrator issued a written decision on August 12, 2022, finding that, on October 25, 2017, the claimant sustained an accident which arose out of and in the course of his employment with Pavement, resulting in injuries to his left shoulder, left knee, right wrist, and cervical spine. The arbitrator awarded the claimant 240 2/7 weeks of temporary total disability benefits (TTD) for the period from October 25, 2017, through June 3, 2022, at the rate of $1,027.09 per week against which Pavement was granted a credit of $22,432.00 for TTD benefits paid to the claimant. The arbitrator ordered Pavement to pay the following medical expenses incurred by the claimant: $4,309.90 to Palos Community Hospital, $4,280.00 to Hinsdale Orthopedics, $5,095.59 to Southside Orthopedics, and $4,670.00 to Heights Physical Therapy. In addition, the arbitrator ordered Pavement to approve and pay for prospective medical care for the claimant, consisting of an anterior cervical discectomy and fusion from C3-4, C4-5, and C5-6, including necessary post-operative care.

Pavement filed a petition for review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). On July 24, 2023, the Commission issued a unanimous decision affirming and adopting the arbitrator's findings of fact and finding of causation between the claimant's left shoulder, left knee and right wrist injuries and his work-related accident. The Commission reversed the arbitrator's finding of a causal connection between the claimant's cervical spine condition and his work-related accident, finding that that the claimant failed to prove that his cervical spine condition is causally connected to his work accident. The Commission reversed the arbitrator's award of prospective medical care for the claimant's cervical spine condition, reversed the arbitrator's award of medical expenses related to the claimant's cervical spine condition, and reversed the award of $4,309.90 in medical bills from Palos Community Hospital, finding that the bills had been paid by Pavement. In addition, the Commission reversed the arbitrator's award of $5,095.59 in medical bills from Southside Orthopedics, finding that no supporting bills had been introduced into evidence, and denied the bills in their entirety. The Commission reduced the award of expenses to Heights Physical Therapy to $303.00 and reduced the award of medicals bills owed to Hinsdale Orthopedics to $1,237.00. The Commission reduced the claimant's TTD award to 9 5/7 weeks for the period from October 25, 2017, through January 1, 2018, and denied TTD benefits for any period thereafter. In all other respects the Commission affirmed and adopted the arbitrator's decision. The Commission remanded the matter back to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n,* 78 Ill. 2d 327 (1980).

The claimant sought a judicial review of the Commission's decision in the circuit court of Cook County. On February 28, 2024, the circuit court confirmed the Commission's decision. *Cangas v. Ill. Workers' Compensation Comm'n*, 2024 IL App (1st) 240564WC-U ¶4-¶35.

Petitioner then appealed to the Appellate Court. The Appellate Court affirmed the Commission Decision on all issues and Conclusions of Law except the award of TTD, remanding the case to the Commission "with directions to determine and award the claimant the TTD benefits to which he is entitled based on the evidence of record, reasonable inferences, and relevant authority and consistent with the opinions expressed herein and for further proceedings." *Cangas* at ¶49.

Conclusions of Law

Temporary Total Disability

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). In order to prove his 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, 49. The fact that a claimant is capable of working with restrictions or limitations does not bar him from receiving temporary total disability benefits if no positions fitting those limitations are available. *Messamore v. Industrial Comm'n*, 302 Ill. App. 3d 351,356 (1999). However, once an injured employee has reached MMI, he is no longer eligible for TTD benefits. *Archer Daniels Midland Co*., 138 Ill. 2d at 118. Factors to be considered in determining whether a claimant has reached MMI include whether he has been released to return to work, medical evidence and testimony concerning the claimant's injury, the extent of his injury, and whether the injury has stabilized. *Nascote Industries v. Industrial Comm'n*, 353111. App. 3d 1067, 1072 (2004). *Cangas* at ¶45.

Based upon the Appellate Court Remand Order, and the entirety of the record, the Commission finds that Petitioner is entitled to TTD commencing October 30, 2017, through June 5, 2018, based upon the following.

Petitioner treated with Dr. Thomas Regan both before and after the subject work accident on October 25, 2017. (PX4) Before the subject accident, Petitioner's February 9, 2017, left knee MRI documents:

Conclusion:
1). Chronic flap tear from anterior body to posterior root of the medial meniscus. Chronic complex radial flap tear in the posterior horn lateral meniscus.
2. 1 x 2cm area of grade 4 chondromalacia of lateral trochlea with osteochondral erosion. Focal grade 4 chondromalacia in the posterior nonweightbearing medial femoral condyle with osteochondral erosion. (PX4, T. 457)

Dr. Regan performed two surgeries on Petitioner's left knee, one in 2003 and one on March 21, 2017, approximately seven months prior to the subject work accident. (PX4, T. 444, 458)

Dr. Regan's March 20, 2017, office note confirms that Petitioner's left knee MRI was positive for meniscus as well as degenerative pathology. *Id*. On November 13, 2017, Dr. Regan noted that Petitioner "has some early degenerative changes on the x-rays of his knee." (PX3, T. 448) In December 2017, Dr. Regan ordered an MRI of Petitioner's left knee. (PX3, 451-452) The December 28, 2017, left knee MRI documented the following:

COMPARISON**:** Exam is correlated with prior left knee MRI dated 02/09/2017.

FINDINGS: ACL, PCL, LCL, and MCL are intact. Trizonal tear involves the posterior horn body of the medial meniscus. Lateral meniscus is degenerated.

Inflammation is noted within Hoffa's fat. High-grade trochlear groove and less so patellar chondromalacia **is** present. When compared to the prior study, findings are similar. Susceptibility anteriorly does suggest prior surgery. Small size lateral meniscus posterior horn likely is related to meniscectomy change.

Both studies are globally affected by motion.

CONCLUSION:

1. Interval surgery. Small posterior horn root lateral meniscus for which meniscectomy change and stable remnant tearing is favored.
2. 3-4cm trizonal pattern of tearing involves the posterior horn body of the meniscus. This appearance is similar to the prior study.
3. Intermediate-grade to high-grade trochlear groove and less so patellar chondromalacia. This is stable as well.
4. Please see above.

After a cortisone injection in his left knee, on February 5, 2018, Dr. Regan suggested Petitioner go back to physical therapy to keep his quadriceps strong. (PX4, T. 456) Petitioner was given an off work note and scheduled for another appointment on February 5, 2018. (PX4, T. 463)

Petitioner did not return to Dr. Regan thereafter. He began treating with Dr. Ronak Patel of Hinsdale Orthopaedics commencing on February 21, 2018, for his left shoulder and left knee. (PX3, T. 344) Petitioner reported two previous left knee arthroscopic meniscectomies in 2003 and 2017. Regarding his left knee, he reported intermittent pain for about four months and during activity. He denied instability or a sense of giving out. He denied mechanical symptoms, including clicking, catching and locking. *Id.* He denied weakness, redness, joint pain, no change, numbness, tingling, electric shocks, popping, clicking, catching, grinding and instability. *Id.* He reported swelling. *Id.* Dr. Patel reviewed x-rays and reported no fracture of the proximal tibia, proximal fibula, distal femur and patella, no dislocation and minimal lateral compartment joint space narrowing. (PX3, T. 345) On inspection, Dr. Patel found no evidence of quad atrophy and no effusion (PX3, T. 346) Testing the left knee meniscus, Petitioner reported pain on hyperextension. Dr. Patel noted the tests produced a positive McMurray and Apley's Compression. Dr. Patel's Impression notes that Petitioner's knee "is feeling better but still does not have full extension." (PX3, T. 351)

On April 17, 2018, Dr. Patel's Impression notes document that there was nothing else he could offer Petitioner regarding his left knee. (PX3, 376) Dr. Patel's records confirm that Petitioner last saw him on June 5, 2018. (PX3) Petitioner was released to "[r]eturn to regular work/activity with no restrictions as of 06/05/2018" by Dr. Patel. (PX3, T. 402) Dr. Patel made recommendations for work modifications. (PX3; T. 402) The Commission notes that this recommendation for modifications make the work status note ambiguous, however, Dr. Patel never testified. The work

status note "instructions" further state that Petitioner "will follow-up with Dr. Darwish going forward." *Id.* Petitioner testified that the last time he saw Dr. Patel for his knee, he said there was nothing further he could do for Petitioner, and he had not recommended any surgery or further treatment for the knee. (T. 104, 131-132) Therefore, the Commission finds that Petitioner's left knee condition had stabilized, and he was at maximum medical improvement for his left knee on June 5, 2018, four years before the arbitration hearing.

The Commission notes that Dr. Patel referred Petitioner to Dr. Darwish for cervical treatment, which, based upon our findings under causal connection, was deemed a non-work-related condition. (PX3, 11-12; T. 519-520)

Dr. Jay Levin evaluated Petitioner on December 13, 2018, six months after Dr. Patel released Petitioner from care for his left knee. Dr. Levin authored a Section 12 opinion report on the same date. (RX21, DepX3, T. 905) Dr. Levin requested an additional diagnostic for review before responding to Respondent's interrogatories and authored a second Section 12 opinion report dated January 8, 2019. (RX21, DepX4; T. 918) Dr. Levin reviewed surveillance video at Respondent's request and authored a third, final Section 12 opinion report on January 11, 2019. (RX21, Dep X5; T. 951) After evaluating Petitioner on December 13, 2018, and reviewing the Petitioner's medical treatment records, Dr. Levin noted that "the examinee's MRI of the left knee dated December 28, 2017 has been reviewed by myself as noted above. The official radiology interpretation also described that the appearance on that study was similar to a prior study." (RX21, DepX4, p. 12; T. 930)

After his evaluation of Petitioner and review of all of Petitioner's treating medical records, including review of pre- and post-work accident MRIs of Petitioner's left knee, Dr. Levin authored his opinion regarding his diagnosis of Petitioner's left knee condition and the basis of his opinion, noting Petitioner had a prior history of left knee arthroscopic meniscectomy in 2003 and March of 2017 consistent with comments he made to Dr. Levin when he was seen on December 13, 2018, as well as comments made on April 10, 2018, to Dr. Patel. Dr. Levin compared the post-injury MRI obtained of his left knee dated December 28, 2017, as compared to a previous MRI dated February 9, 2017, and diagnosed Petitioner with a left knee contusion. (RX21, DepX4, p. 15; T. 933)

Dr. Levin further opined that based on his diagnosis, Petitioner was at MMI for his left knee between zero and 4-6 weeks post accident. (RX21, DepX4, p. 16; T. 934) Further, after evaluating Petitioner's left knee, and the entirety of the medical records, Dr. Levin, opined Petitioner did not require any future treatment to cure or relieve the effects of any injury sustained to the left knee in this accident. *Id.* Dr. Levin further opined that Petitioner would have been able to return to full unrestricted capacity in both jobs as it related to his left knee injury by 0 to 4-6 weeks post injury. *Id.*

After reviewing the surveillance videos, Dr. Levin authored his third and final report and opined that, [h]aving reviewed this video surveillance and the totality of information he knew

about Petitioner, "this does not modify or amend the opinions expressed in my January 8, 2019, report." (RX21, DepX5)

Dr. Levin testified consistent with his reports and was of the opinion that Petitioner could have worked several months before Dr. Patel released him to return to work full-duty with respect to his left knee. (RX21, 17, 37) Dr. Levin testified there was nothing physically keeping Petitioner from returning to full-duty work. (RX22, 107) Dr. Levin further testified the pathology in Petitioner's left knee should not preclude him from climbing. *Id*. Dr. Levin testified that on the MRI performed on December 28, 2017, the radiologist reported comparisons with a prior MRI and from surgery. Dr. Levin testified that there was no change to the knee from the October 25, 2017, incident. (RX22, 109)

The Commission finds the surveillance videos persuasive as to Petitioner's physical capabilities consistent with Dr. Levin's opinion thereof. The Commission finds that Dr. Levin, having the advantage of examining Petitioner six months after Dr. Patel last saw him, and having reviewed both pre- and post-work accident diagnostics of the left knee and the surveillance videos, was in the best position to assess whether Petitioner was able to work full duty with no restrictions with respect to his left knee. The Commission further notes that Petitioner presented no evidence that he attempted to return to work after June 5, 2018, despite John Land's testimony that Respondent could have accommodated a 10-pound weight restriction. (T. 204-205) Land, the corporate secretary and general superintendent testified that one of his job titles is also "risk management" for Respondent. (T. 199, 203) Land testified that Petitioner never contacted him at any time about returning to work. (T. 208) The Commission notes Petitioner testified that he had maintained his Class A CDL through the date of the hearing, allowing him to operate any tractor-trailer vehicle "to 80,000 pounds." (T. 95) Petitioner further testified that he also has a tanker license allowing him to operate a truck pulling a trailer. *Id*. Therefore, the Commission finds that Petitioner failed to prove he was entitled to TTD after June 5, 2018, when he was released by Dr. Patel to return to work for his left knee.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission's prior decision on Review is modified on the issue of TTD and all else is affirmed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $1,027.09 per week for a period of 31-2/7 weeks, commencing October 30, 2017, through June 5, 2018, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act. Respondent shall be given credit of $22,432.00 for TTD paid. This award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the sum of $303.00 for medical expenses at Heights Physical Therapy and the sum of $1,237.00 for medical expenses regarding the left knee at Hinsdale Orthopedics through June 5, 2018, under §8(a) and

§8.2 of the Act. Medical expenses and prospective medical treatment regarding the cervical spine are, 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 expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $11,200.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

May 27, 2025
KAD/bsd
O04/15/25
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	20WC005429
Case Name	Marie Dessalines v. Parkway Gardens Senior Living
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0235
Number of Pages of Decision	21
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	David Jerome
Respondent Attorney	Jay Lory

DATE FILED: 5/28/2025

/s/Amylee Simonovich,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARIE DESSALINES,

Petitioner,

vs. NO: 20 WC 05429

PARKWAY GARDENS SENIOR LIVING,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical, 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 April 30, 2024 is hereby affirmed and adopted.

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

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

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

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

May 28, 2025
O: 050625
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	20WC005429
Case Name	Marie Dessalines v. Parkway Gardens Senior Living
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	David Jerome
Respondent Attorney	Jay Lory

DATE FILED: 4/30/2024

/s/Bradley Gillespie, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF APRIL 30, 2024 5.165%

25IWCC0235

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)

Marie Dessalines
Employee/Petitioner

v.

Parkway Gardens Senior Living
Employer/Respondent

Case # **20** WC **05429**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Mt Vernon**, on **3/21/24**. 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, **11/30/19**, 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 $**20,252.01**; the average weekly wage was $389.46.

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

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

Respondent shall be given a credit of **$0** for TTD, $**0** for TPD, $**0** for maintenance, and $**$3,624.98** for medical benefits, for a total credit of $0.

Respondent is entitled to a credit of $**93.26** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services of $56,102.79 as provided in Section 8(a) of the Act pursuant to the medical fee schedule. Respondent shall be provided a credit of $3,624.98 for amounts paid and $93.26 under 8(j).

Respondent shall pay lost time benefits from 6/12/20 to 12/1/20, representing 24 4/7 weeks at $259.64/week pursuant to Section 8(b) of the Act.

Respondent shall pay for prospective medical care treatment to include the surgery recommended by Dr. Raskas and any follow up care in conjunction therewith.

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

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

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

Bradley D. Gillespie
Signature of Arbitrator

ICArbDec19(b)

April 30, 2024

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARIE DESSALINES,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	**Case No.: 20 WC 005429**
	)	
Parkway Gardens Senior Living,	)	
Employer/Respondent.	)	

19(b) DECISION OF ARBITRATOR

FINDINGS OF FACT

Marie Dessalines, Petitioner, who is a 53-year-old and was a Patient Care Assistant who began working for Respondent in July 2011. Her activities included taking care of patients, such as bathing them, taking them to the dining room, bringing them to bed, putting them in bed, putting their clothes in the laundry room, feeding those who couldn't, and helping those that needed help. Her job required her to lift and maneuver patients weighing between 100 to 200 pounds. Her job also required a lot of bending and stooping. Petitioner considered this job to be very physical.

Petitioner testified that she worked between 24 to 40 hours per week for Respondent. In addition, Petitioner began working at Addus HomeCare, working an additional 20 hours per week. Petitioner advised a supervisor for Respondent and no one had objected to her taking this position.

On November 30, 2019, Respondent was working at the Memory Care Unit helping a sick patient. The patient tried to get up, after he had fallen. Petitioner and another nurse tried to help lift him up and while doing so, he pushed them off and fell on top of her, causing her to lay out in the seated position with the patient on top of her. Petitioner described the patient as being in his 80s and weighing approximately 200 pounds, which landed directly on her.

Petitioner testified that immediately after this event, she developed symptoms in her low back. Petitioner immediately advised her supervisor of the accident and sought medical treatment at Express Medical Urgent Care. Petitioner advised the doctor about her low back pain caused by her work accident. At the time of this visit, approximately two days after the accident, Petitioner had developed symptoms in her right leg.

The medical records from Express Medical Urgent Care recorded Petitioner had chronic low back pain but had reinjured herself at work while lifting a patient. She was noted to have moderate low back pain, as well as symptoms into the left lower lumbar spine and right lower lumbar spine with radiating pain bilaterally into the buttocks. Following evaluation, Petitioner was diagnosed with having a muscle strain in the low back.

The medical records from Peterson Chiropractic on December 16, 2019, indicated Petitioner had constant low back pain with burning discomfort in the side of the right hip. Her pain

level was recorded as a 2 and reported to increase with movement. Dr. Peterson diagnosed Petitioner with having somatic dysfunction to the pelvic region, cervical, thoracic, and lumbar spine. She followed up with Dr. Peterson on December 18, 2019, and December 23, 2019. Dr. Peterson had previously treated Petitioner on November 9, 2018.

Petitioner testified that after being seen at Express Medical Urgent Care, her employer sent her to Concentra Medical Center, who referred her for physical therapy. Medical records from Concentra Medical Center indicate Petitioner was initially evaluated on January 9, 2020. At that time, the doctor noted Petitioner had sustained an injury to her low back while trying to lift a patient up from the floor. She was noted to have constant pain that was worse with lifting, with symptoms sometimes radiating down to both thighs and ankles. Following evaluation, she was diagnosed with back pain as well as a lumbosacral sprain. She was referred for physical therapy, which was completed at the same facility. By January 24, 2020, the doctor at Concentra noted ongoing problems and referred her for a physiatry appointment.

On February 12, 2020, Petitioner was evaluated by Dr. Daniel Brunkhorst. Dr. Brunkhorst noted Petitioner had lumbar spine pain that began following an accident on November 30, 2019. Following evaluation, Dr. Brunkhorst identified Petitioner as having lumbar radiculopathy as well as a lumbar disc displacement. Dr. Brunkhorst referred Petitioner for an MRI which was completed on February 21, 2020. The MRI was read as showing an L4-L5 grade 1 anterolisthesis with mixed erosive and hypertrophic facet arthropathy, ligamentum flavum hyper trophy and central broad-based protrusion that extends into both foramina, mild bilateral foraminal stenosis, and moderate to severe central canal stenosis. It was also read as showing right lateral recess protrusion at L5-S1 with bilateral facet and ligamentum flavum hypertrophy resulting in moderate central canal stenosis and moderate to severe bilateral foraminal stenosis.

Thereafter, Petitioner followed up with Dr. Brunkhorst for ongoing medical care as well as physical therapy. Following the MRI, Dr. Brunkhorst referred Petitioner to Dr. David Raskas for orthopedic evaluation. Dr. Raskas evaluated Petitioner on April 13, 2020. The doctor reported Petitioner developed low back pain and bilateral posterior leg pain following a work accident on November 30, 2019, when Petitioner was picking up a patient who was on the floor.

On April 13, 2020, Dr. Raskas noted Petitioner advised him of prior low back problems but noted that she had not really had any treatment for her low back since 2018. Petitioner noted prior to this accident, her back would ache with some intermittent radiation down her left leg. She noted her symptoms were not significant enough to interfere with her life or her work. However, since this accident, she had to walk leaning forward on the grocery cart and resting her arms on the grocery cart. Moreover, she had not been able to return to work.

Following evaluation, Dr. Raskas diagnosed her with having a lumbar disc herniation, lumbar spondylolisthesis, lumbar facet arthropathy, and foraminal stenosis of the lumbar region. Dr. Raskas noted Petitioner developed back pain with a radicular component that clearly worsened as a result of the work injury of November 30, 2019. Dr. Raskas noted Petitioner was functioning working full duty and was able to perform all her activities of daily living. As a result, the doctor related the symptoms to the work accident. Dr. Raskas provided work restrictions and referred her to Dr. Feinberg for lumbar injections, due to the symptoms that began following the work injury.

On July 22, 2020, Petitioner was seen by Dr. Feinberg at Frontenac Surgery and Spine Care Center. At the time of this visit, Dr. Feinberg recorded that Petitioner injured herself on November 30, 2019, while lifting a patient at work. Since that date, she was noted to have excruciating pain in her back and symptoms down both of her legs that rendered her unable to return to work. She was noted to have difficulty bending over and lifting, with symptoms going down both of her legs below her knees. She was noted to have symptoms from her low back radiating down to the ankle with her left being greater than the right with regards to pain in the low back.

Dr. Feinberg reviewed the MRI of February 20, 2020, and concluded that it showed discogenic disease at L4-5 with spondylolisthesis as well as instability at 7 mm flexion/extension differential. Dr. Feinberg also noted that L5-S1 showed a herniated disc with foraminal stenosis bilaterally. As a result, Dr. Feinberg diagnosed Petitioner with having lumbar radiculopathy; lumbar facet pain; and lumbar spondylosis without myelopathy. Petitioner underwent a bilateral L4-5 transforaminal epidural steroid injection.

While undergoing this treatment, Petitioner testified that the treating doctors provided her with some level of work prescription that the employer accommodated. Petitioner was required to complete Modified Duty Worksheets leading up to her termination on June 12, 2020. Petitioner's Exhibit # 12 confirms that Petitioner only completed the Modified Duty Worksheets following this work accident, with no such modifications being required prior to this accident.

Petitioner noted that when she was terminated, she was still on light duty restrictions by Dr. Raskas. Thereafter, she was not provided any type of lost time benefits through the workers' compensation carrier. Petitioner testified that while she was on light duty, she was able to continue her work activities at Addus because these activities were lighter in nature. On December 1, 2020, she began working full time at Addus as they were able to provide her with additional clients with work within her restrictions.

Petitioner followed up with Dr. Raskas on July 27, 2021. At the time of the visit, she noted that the lumbar injections helped a little bit but the main assistance in reducing her symptoms was activity modification. Dr. Raskas noted Petitioner was not doing any bending, lifting, or twisting activities of any significance, which helped to reduce her symptoms. However, she continued to have low back pain that required her to wear a back brace to alleviate the symptoms. Following examination, Dr. Raskas diagnosed spondylolisthesis at L4-5 that he believed was stable. Dr. Raskas noted the only meaningful treatment at this stage would be a fusion from L4 to S1. At that time, Petitioner was unsure as to whether she wanted to proceed forward with medical treatment.

Petitioner testified that when Dr. Raskas originally recommended surgery to her low back, she did not want surgery because she was scared. However, she now wants to undergo the medical procedure. Petitioner testified Dr. Raskas was the first doctor in her life to ever recommend surgery.

On August 11, 2021, Dr. Raskas had a telephone conference with Petitioner's brother to try to bridge the language barrier. Dr. Raskas explained the nature of the surgical procedure and the risks associated with this procedure.

On September 7, 2021, Petitioner underwent an MRI at MRI Partners of Chesterfield. The MRI was read as showing central protrusions at L4-5 and L5-S1 with facet arthropathy, moderate central canal stenosis at both levels, moderate bilateral foraminal stenosis at both levels, facet joint diastasis bilaterally at L4-5 likely indicating instability at this level, and central protrusion with facet arthropathy at L3-4 resulting in mild bilateral foraminal stenosis.

Petitioner testified while undergoing treatment, the insurance company sent her to Dr. Kitchens as part of a medical evaluation. She noted that there was no interpreter present at the evaluation and that she had trouble sometimes understanding the doctor. Regardless, Petitioner testified that she advised Dr. Kitchens of her work accident and described how her symptoms have changed after the accident. Petitioner testified that it was her understanding that Dr. Kitchens was recommending surgery similar to Dr. Raskas.

On July 12, 2022, Petitioner followed up with Dr. Raskas indicating that she continues to have the same back pain that continues to radiate into her legs. She was noted to continue to wear her back brace while working light duty. Petitioner stated that she did not have to do any lifting of patients like she had in the past but continues to experience the symptoms consistently on a daily basis. Dr. Raskas reviewed the previous MRI from 2013 and noted the changes in films and continues to recommend a two-level anterior/posterior fusion from L4 to S1 as the L5-S1 level was demonstrating evidence of instability.

Petitioner testified that she was last evaluated by Dr. Raskas in July 2022. At that time, he was still recommending surgery to her low back. Petitioner continues to want to proceed forward with the surgery. She noted that her symptoms are in the same area as her back, although the symptoms are beginning to become more painful and she is feeling shock in her back. Petitioner testified that she has not had any new accidents or injuries since the event of November 30, 2019.

Petitioner testified that her low back pain is located around her tailbone and goes under the leg area. She noted the pain is present all the time and she describes it as simply being a lot of pain that does not allow her to sit or stand for too long. She notes that when she sits for too long and tries to stand up, it feels like there is a force on her back. Petitioner noted her pain symptoms are traditionally a 6/10 but can go as high as a 7/8. She noted that her symptoms increase when she stands for too long, wakes up in the middle of the night, or sits too long.

Petitioner testified she continues to have symptoms in both of her legs going all the way to the ankle. She noted she has instability in her legs that sometimes makes her walk funny. Petitioner noted her lower extremity symptoms are related to the increased symptoms in her low back.

Petitioner testified that since this injury, she continues to wear a back brace recommended to her by Dr. Brunkhorst, uses an electronic TENS unit, and uses heating pads. She noted that since this accident, she has not been able to bend over to touch her toes. She notes that when she does this, it feels like her bones are sticking out. As result, she has purchased an extension grabber to assist in picking things up from the ground. Petitioner testified at the end of the day, her low back symptoms increase. She also noted her low back wakes her up at night.

Petitioner testified prior to the work accident, she had sustained injury to her low back in 2013. She received treatment with her family doctor, Dr. David LeBeau, who recommended an MRI and referred her to Interventional Pain Management. On February 25, 2013, Petitioner underwent an MRI at Imaging Center of Wolf Creek. This MRI was read as showing mild central canal stenosis at L4-5 due to congenitally short pedicles, facet joint hypertrophy, a small disc bulge, left L4-5 facet joint mild to moderate inflammatory changes with right L4 foraminal annular tear, and small disc bulge at L5-S1 with central annular tear. The disc bulge abuts but does not displace the S1 roots.

The medical records at Peterson Healthcare Clinic indicate Petitioner was evaluated on February 25, 2013, with low back pain that was described as being 3/10. There was no indication of symptoms down either leg. She was diagnosed with having sciatica and lumbosacral segment dysfunction. An MRI was recommended. Petitioner followed up on two separate occasions ending on March 3, 2013. She followed up again on November 26, 2013, indicating low back pain with symptoms that were 6/10. Petitioner followed up and completed chiropractic manipulation with subsequent visits ending on December 9, 2013.

Petitioner was seen again at Peterson Healthcare Clinic on January 26, 2016 for low back pain. She followed up for one subsequent visit ending on February 5, 2016. Petitioner was not seen again until October 12, 2018. At that time, she was seen for left hip and buttock discomfort with the diagnosed condition of a sprain of the posterior sacroiliac segment. Petitioner followed up and completed chiropractic manipulation for four visits concluding on November 9, 2018. During this medical treatment, Petitioner was never provided any work restrictions, nor were there discussions of symptoms going down either lower extremities.

When January 18, 2017, Petitioner was seen at Memorial Hospital, where she underwent an MRI of her low back. At that time, she was diagnosed with having lumbar disc degeneration and facet arthropathy favoring L4-5 and L5-S1.

On February 9, 2017, Petitioner was evaluated by Dr. LeBeau, who noted she was continuing to have back pain that was unsuccessful with physical therapy. As result, Dr. LeBeau referred her to Dr. Wynndel Buenger at Interventional Pain Consultants.

Petitioner was evaluated by Candace Charles, PA, at Interventional Pain Consultants on March 15, 2017. At that time, Petitioner was noted to have right low back pain going into her left hip posteriorly laterally down to her ankle for the past five years. She stated she initially injured herself at work attempting to lift a patient. She was noted to have undergone a recent MRI and had undergone physical therapy without improvement of her symptoms. At that time, she was noted to have low back pain, neck pain, and shoulder pain. Following evaluation, she was noted to have chronic low back pain, degenerative lumbar spinal stenosis, facet arthritis of the lumbosacral region, lumbar radiculopathy, and foraminal stenosis of the lumbosacral region. At that time, she underwent an injection into her lower back.

Petitioner followed up on March 27, 2017 and noted the injection had not assisted with her symptoms. She was noted to have problems taking Norco, which is why the doctor attempted to switch her to Nucynta. Petitioner had three additional visits with the last occurring on April 26,

2017. At that time, Petitioner noted that she was unable to obtain medications due to the cost. She was noted to have low back pain with no indication of symptoms going down either leg. Petitioner was provided sample medications with a recommendation to follow-up in three weeks. Petitioner did not follow-up. The medical records from Interventional Pain Consultants do not indicate any work restrictions during the course of this treatment.

Petitioner testified that she received an injection to her low back in 2017. She was offered pain medications but did not take them as she did not like the way they made her feel. Petitioner testified that while undergoing this treatment she was never referred to orthopedist, nor did any doctor suggest the possibility of surgery to her low back.

Petitioner testified that leading up to the accident, she continued have occasional low back pain that sometimes were due to her job duties. Petitioner testified that she was able to perform all of her work activities and was not provided any work restrictions. Petitioner noted she was able to perform all of her activities including bending, stooping, lifting, and manipulating patients.

Petitioner followed up with Dr. LeBeau multiple times in 2018 and 2019, with no indication of ongoing low back problems. Petitioner was evaluated for cardiac issues and annual gynecological examinations, with the last complaint of low back symptoms occurring on February 15, 2018. At the time of that visit, Dr. LeBeau did not identify any symptoms down either leg, nor did he provide any form of work restrictions.

However, following the accident of November 30, 2019, the low back symptoms became more severe as she felt pain going down the back of her legs that began a couple of days after the accident. She also had a shocking sensation in her back. Petitioner noted that she had difficulty in her low back as well as an inability to bend over.

On cross-examination, Petitioner testified she has continued to have low back pain since 2011 due to the incident with Respondent. Petitioner noted that she had x-rays taken of her low back in 2012 and an MRI completed in 2013. She did not recall an MRI being completed in 2017. Petitioner noted she was treating with a chiropractor, Dr. Peterson, and Dr. LeBeau. She stopped treating with Dr. Peterson because they didn't send her back to see him. Dr. LeBeau referred her for pain management, where she underwent two injections into her back which didn't help. Petitioner noted that she never talked about surgery with Dr. LeBeau.

Petitioner stopped treating with Dr. LeBeau because he retired. Instead, she began seeing Dr. Khale from O'Fallon, Illinois, until he passed away. She is now seeing Dr. Amadeep. Petitioner testified that she did not go to Dr. Amadeep or Dr. Khale for her low back as she was already seeing Dr. Raskas.

Petitioner testified that following this injury, she had treatment with Express Urgent Care, Concentra, Dr. Brunkhorst, Dr. Raskas, and Dr. Feinberg. Of those doctors, she only had an interpreter at one visit with Dr. Raskas when her brother went with her.

Petitioner testified that her work at Addus is much different as there is no lifting or bending. She simply helps people get around. Petitioner testified that if a resident fell, she would call 911

for assistance. Petitioner testified that she has a driver's license and uses a booster seat to help her be more comfortable when driving. Petitioner noted that she uses a walker to assist her from time to time when she walks to areas such as markets.

Petitioner testified that she had one motor vehicle accident prior to this accident where she did not sustain an injury as it was a minor accident.

On redirect, Petitioner testified that while undergoing treatment prior to this accident, no doctor ever told her that she needed surgery. Further, prior to this accident, no doctor had provided her with any work restrictions. All of the work restrictions began following this accident. Similarly, the only recommendations for surgery with both Dr. Kitchens and Dr. Raskas occurred after this accident. Petitioner testified that she believes her symptoms became much worse at her low back following this accident. The symptoms in her legs are new since this accident. She noted that she continues to have problems with her low back at the tailbone and into the buttocks.

On re-cross, Petitioner testified that she did not feel pain going down her legs before this accident. She testified that if the records show that, she did not recall there being symptoms down her legs.

On redirect, Petitioner testified that at one point, she did have right low back pain going into her left hip as well as pain down to her ankle for five years. However, the symptoms got better. As result, from 2018 up until this injury, she was not having any symptoms down her lower extremities and she was working full duty.

At trial, Petitioner identified Petitioner's Exhibit #14 as being the Medical Bill Summary regarding the treatment for her low back. These medical bills are as follows:

Dr. Daniel Brunkhorst - $22,306.00
Concentra - $2671.30
Dr. Barry Fienberg – $3,399.00
Frontenac Surgery Center – $17,884.00
Dr. David LeBeau - $261.00
MRI Partners of Chesterfield – $5,400.00
Dr. David Raskas – $4,181.49

Medical Testimony

Petitioner admitted into evidence the deposition of the treating doctor, Dr. David Raskas. Dr. Raskas testified on April 6, 2022, regarding the medical treatment he had provided up to that date. Dr. Raskas testified that when he first examined Petitioner, she described a work accident while she was trying to assist in lifting a patient back up. The patient did not really help with this and while in the lifting motion, it put the load on her back causing her to have symptoms in her low back.

Dr. Raskas testified, regarding his understanding of her previous history, that she had injured her back three times before at work necessitating conservative treatment, injections,

therapy, and medications. Dr. Raskas noted that in the year leading up to the accident, she had no treatment to her low back, and she was able to perform all of her work activities. Dr. Raskas concluded that this prior low back condition had been treated conservatively in an adequate fashion.

Moreover, Dr. Raskas noted Petitioner had a very physical job helping individuals at the senior living center. Despite the previous low back injuries, she was able to perform all of these work activities. However, following the injury, Petitioner was noted to have significant pain in her back as well as pain radiating into both of her legs. Dr. Raskas noted that the significance of the pain radiating into the legs indicated that there was nerve root compression caused by a combination of disc herniation, spinal stenosis, and instability.

Dr. Raskas noted that at the time of the initial physical examination, she had a kyphotic posture, difficulty bending forward from an upright position, reproduction of back pain on extension, and decreased sensation in the dorsum of her left foot that followed the L5 nerve root distribution. Dr. Raskas also noted that she had absent patellar reflex on the left.

Dr. Raskas testified that as he reviewed the MRI taken on February 21, 2020, he saw a central broad-based 4 ½ to 5 mm disc herniation that extended into the neuroforamen. He also noted that there was facet arthropathy and ligamentum flavum hypertrophy, moderate to severe left greater than right foraminal stenosis that did not change much in weight-bearing position, moderate to severe central canal stenosis which was unchanged with weight-bearing, and right lateral recess protrusion at L5-S1. Dr. Raskas explained that he saw pressure on her nerves due to the combination of disc herniations and the structure of her spine that explained her back complaints and radicular complaints.

Dr. Raskas testified that as he reviewed the MRI, there was a significantly unstable spondylolisthesis at L4-5. He explained that when she lies down, the spondylolisthesis almost completely reduces to zero. However, when she stands and bends forward it can move up to 7 mm which would produce back and leg symptoms due to the nerves being compressed by the change in position in the spine. Dr. Raskas concluded that these MRI findings were objective evidence of their being compression caused by an unstable spondylitic condition.

Dr. Raskas testified that when considering the MRI findings in conjunction with the physical examination, he would expect her to have the back pain and physical examination findings. Dr. Raskas believed that this was a very typical and straightforward case where the problems with spondylolisthesis and foraminal stenosis with disc herniation reproduce back pain with extension, decreased sensation in the L5 nerve root, and pressure on her L4 nerve root caused patellar tendon reflex to be gone. Dr. Raskas noted the findings were very specific and correlate with the radiographic findings.

Dr. Raskas testified that it is possible to have spondylitic instability as well as a herniation without symptoms. If the patient had these findings with no symptoms, Dr. Raskas indicated that he would not provide treatment. As a result, it was the onset of the symptoms, in conjunction with the radiographic findings and physical examination, that determined the recommendation for care. In Petitioner's case, Petitioner was not having symptoms in her low back leading up to the accident,

and that all of these problems began following the accident of November 30, 2019. As a result, Dr. Raskas believed that the work injury served to aggravate the underlying condition leading to his working diagnosis and recommendations for medical care.

Dr. Raskas concluded Petitioner had spondylolisthesis at L4-5, a herniated disc, and foraminal stenosis. He noted that some of the structural changes were present before the accident and Petitioner had sustained prior injuries, but that the treatment that predated the accident had resolved the symptoms leading up to the accident.

Dr. Raskas concluded that as of April 13, 2020, he recommended injections for both therapeutic and diagnostic purposes. Dr. Raskas noted that it was significant to him that her problems continued for months after the accident. At the time of the visit, Dr. Raskas provided her work restrictions that included no lifting, pushing, or pulling greater than 10 pounds; no repetitive bending, twisting, or squatting activity; and an ability to alternate between sitting and standing.

On July 27, 2021, Petitioner followed up with Dr. Raskas. At that time, Dr. Raskas noted that Petitioner had undergone the injections and had some temporary relief but nothing that was sustained. He described that her leg symptoms seem to be better, but she continued to have low back pain requiring the use of a back brace for pain. Dr. Raskas noted that at the time of the new visit, there was no significant change to her physical examination. As a result, Dr. Raskas recommended a lumbar fusion from L4 to S1 because he did not believe that any other treatment was going to meaningfully change and alleviate the pain and discomfort that she was experiencing.

Dr. Raskas testified that he subsequently followed up with Petitioner and her brother who could help to translate the conversation. At that point, Petitioner indicated she wanted to undergo the surgery to correct the unstable spondylitic condition. Dr. Raskas testified that if this condition is not surgically corrected, it could lead to greater disability and deconditioning. Dr. Raskas noted that the condition will progressively deteriorate to the point where she is no longer able to work because she would not be able to stand or walk very far and would likely become disabled.

At that time, Dr. Raskas completed a second MRI which occurred on September 13, 2021. Dr. Raskas noted that it looked similar to the previous MRI and confirmed his recommendations for medical care. Dr. Raskas noted that the MRI showed spondylolisthesis at L4-5 and L5-S1. Similarly, Dr. Raskas completed standing x-rays that provided information that assisted in his recommendation for surgery. Given the totality of the radiographs, Dr. Raskas concluded Petitioner continues to have an unstable condition at L4-5 and L5-S1. As a result, he recommended an interbody fusion and laminectomy from L4 to S1.

Dr. Raskas testified that postoperatively, he would expect Petitioner to be off approximately six weeks and then returned to some light duty or part-time duty. Dr. Raskas said it would take approximately 4 to 6 months for the bone to grow together before she can start physical therapy. The total recovery is between 9 to 12 months before she would be released fully. Dr. Raskas noted that the recommendation for surgery was due to the work accident that aggravated the underlying condition necessitating medical care. Dr. Raskas noted that until the surgery is completed, she would not be at maximum medical improvement and would continue to have the 10-pound lifting restriction.

Dr. Raskas testified that he disagreed with the conclusions of Dr. Kitchens. Dr. Raskas believed that while the herniations and spondylitic condition could've predated the work accident, it was the accident that aggravated the neurophysiology that was going on inside her back. Dr. Raskas noted that the neurophysiology is how the nerves are being irritated and transmitting messages to the brain that are producing pain or loss of function. Similarly, this includes the inflammatory component of pain that gets aggravated when you have an injury that is also continued. Dr. Raskas noted that in the past the inflammatory component to her low back went away entirely and this material physiological change can't be measured by pictures and can only be measured by the patient's clinical condition.

Dr. Raskas noted that an MRI cannot measure the physiology of the body meaning that it cannot show how the patient is feeling, strength, sensations, or reflexes. Such elements can only be done by a clinical diagnosis. In Petitioner's case, the work accident made the condition symptomatic, which matched her physical examination findings and radiographic tests, which led to the recommendation for surgery.

Respondent offered the deposition of Dr. Daniel Kitchens, who examined Petitioner on November 1, 2021. Dr. Kitchens recorded that on November 30, 2019, Petitioner was working as an aide in patient care and a patient had fallen on the floor. As Petitioner and a nurse attempted to lift the patient from the floor, they were unable to do so, which caused Petitioner to injure her low back. Following examination, Dr. Kitchens diagnosed Petitioner with having a chronic degenerative disc disease at L4-5 and L5-S1, and a grade one spondylolisthesis at L4-5 that were seen on the MRI of February 25, 2013. Dr. Kitchens concluded that the medical condition seen on the MRI was not caused by the work accident. As a result, Dr. Kitchens placed Petitioner at maximum medical improvement and did not believe that she needed any work restrictions due to the accident.

On cross-examination, Dr. Kitchens testified that when he compared the MRI of 2013 to the MRI of 2020, there were changes in the findings. Dr. Kitchens noted that the spondylosis at L4-5 had changed from 4.7 mm to 6.2 mm. Additionally, the central canal measurement had gone from 7.8 mm to 7.9 mm. Finally, the bulging disc at L4-5 identified in 2020 was not seen in the MRI from 2013. Dr. Kitchens noted that these two levels are unstable as defined with the spondylolisthesis.

Dr. Kitchens testified that a patient could have the bulging discs and spondylitic conditions identified in the MRIs in 2013 and 2020 without having any symptoms. He acknowledged that if there were no symptoms, there would be no need for medical treatment. As a result, Dr. Kitchens acknowledged that it is the onset of symptoms, coupled with the physical findings and radiographic findings, that help to identify when treatment becomes necessary.

Dr. Kitchens noted Petitioner advised him the symptoms in her low back were made worse by the work accident of trying to lift the patient on November 30, 2019. Dr. Kitchens testified that the symptoms noted in 2013 were different in severity when compared to the symptoms she described in 2020. However, Dr. Kitchens did not believe that the symptoms were made worse

after the accident. Instead, Dr. Kitchens believes that her symptoms worsened because of her underlying degenerative disc problem and her spondylolisthesis.

Dr. Kitchens states as follows:

> Q: Let me phrase it this way. By her history, her symptoms in her low back were made worse by that work accident of trying to lift the patient, correct?
>
> A: That's what she says but I don't buy that.
>
> Q: You don't buy that her symptoms were made worse after the accident?
>
> A: No sir. I don't buy that the accident caused her symptoms to worsen. Her symptoms worsened because of her underlying degenerative disc problem and her spondylolisthesis.
>
> Q: So you're saying if she was just standing there, her low back symptoms would have increased on their own, absent an event?
>
> A: Yes sir. Spondylolisthesis symptoms worsened without an event. That's the difference between causation and correlation.
>
> Q: Right. But in this situation, on causation, when you have a patient who has a certain level of symptoms prior to the accident, sustains an accident, and has an increased level of symptoms by her history, you can causally relate the increased symptomology to that event, correct?
>
> A: Well, I can't, unless there's some obvious objective abnormality.
>
> Q: But you just said previously that a person could have increased to subjective symptoms following an event with their not necessarily being an objective change in pathology.
>
> A: You can have increased symptoms but that doesn't make it causally related. That would be a correlation. So a patient can have a report of increased symptoms but it doesn't prove that the symptoms -- increased symptoms were caused by the event. That's just a correlation.

Dr. Kitchens testified that by Petitioner's report, the symptoms in her low back increased as a result of trying to lift the patient. Further, Dr. Kitchens acknowledged that it is that increased symptomology coupled with her physical examination findings and radiographic findings that determined the course of medical care. In the present case, Dr. Kitchens testified the surgery recommended by Dr. Raskas was a reasonable option. He noted that Dr. Raskas was the first doctor recommending surgery to Petitioner and it occurred following this accident.

Respondent admitted the medical report from Dr. Gregory Cizek from Therapeutic and Diagnostic Imaging. Dr. Cizek did not examine Petitioner but simply reviewed the MRIs from 2013, 2017, and 2020. Dr. Cizek concluded that the post-accident MRI films were of improved quality compared to the previous studies. Dr. Cizek concluded that post accident there is now a questionable loss of disc height at L4-5 but the doctor did not believe that it indicated a new herniation. Dr. Cizek also concluded that the central stenosis at L4-5 had progressed throughout the images with increased facet arthropathy, particularly on the right at L5-S1, and may be developing a facet cyst.

Dr. Cizek concluded that the images do not indicate significant focal changes and could be accounted for by time and expected degenerative changes at the levels. Dr. Cizek does not address whether the work accident may or could have caused or aggravated the condition in the low back.

CONCLUSIONS OF LAW

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill. 2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 442 N.E.2d 908 (1982).

When a pre-existing condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the pre-existing [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). Accidental injury need only be a causative factor in the resulting condition of illbeing. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 673 (2003) (emphasis added). Even when a pre-existing 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. v. Indus. Comm'n*, 207 Ill. 2d 193, 797 N.E.2d 665 (2003).

Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Indus. Comm'n*, 359 Ill. App. 3d 582, 834 N.E.2d 583 (2005). 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).

As the Appellate Court has pointed out, 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 Corp. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1205, 734 N.E.2d 900, 248 Ill. Dec. 609 (2000). Here, there was no record of hernia problems or symptoms prior to the work accident. The accident caused symptoms that persisted through the time of the arbitration hearing.

In the present case, it is stipulated that Petitioner sustained an injury to her low back while lifting a patient who had fallen on November 30, 2019. Following this work accident, Petitioner was seen at Express Urgent Care, Concentra Medical Center, Peterson Health Clinic, and Dr. Daniel Brunkhorst before being referred to Dr. David Raskas for an orthopedic consultation. Based upon the symptoms, physical examination, and radiographic findings, Dr. Raskas recommended a fusion from L4 to S1. Respondent's expert, Dr. Daniel Kitchens, agrees on the need for surgery but does not believe that Petitioner's condition was related to the work accident despite acknowledging Petitioner's low back symptoms began following the work accident. As a result, the Arbitrator concludes the opinions of Dr. Raskas are more credible than Dr. Kitchens, as his medical conclusions best comport with the legal standard regarding the aggravation of a pre-exiting condition.

Petitioner testified that on November 30, 2019, she was working as a Patient Care Attendant in the Memory Care Unit for Respondent when she sustained an accident to her low back. Petitioner credibly testified that on the date of accident, a patient had fallen and while she and a nurse were trying to lift him up, he pushed them off and fell on top of her. She described that the patient was in his 80s and weighed approximately 200 pounds. Petitioner described that she initially felt pain in her low back. Within a couple of days, she noticed problems going down her legs.

Petitioner's testimony is supported by the medical records of Express Medical Urgent Care, Dr. Ronald Peterson, Concentra Medical Center, Dr. Brunkhorst, Dr. Feinberg, and Dr. Raskas. All of these doctors record the onset of low back pain that began on November 30, 2019, and continued throughout the course of medical treatment. Even Respondent's expert, Dr. Daniel Kitchens, acknowledged that by Petitioner's history, Petitioner's low back problems began following this work accident.

It should be noted that Petitioner had a prior low back injury in 2013, underwent occasional chiropractic care with Dr. Ronald Peterson and had injections at Interventional Pain Consultants. During this medical treatment, Petitioner was noted to have low back pain as well as symptoms down the left lower extremity. However, it should be noted that this medical treatment was completed in April 2017. Petitioner continued to follow-up with Dr. LeBeau with a mention of low back problems on February 15, 2018, with no mention of radicular symptoms down either leg. Further, when Petitioner followed up with Dr. LeBeau several times in 2018, there is no mention of any problems in the low back. Moreover, Petitioner is seen by Dr. Peterson for chiropractic care with the primary area of concern being her left hip and not her low back. As a result, the medical records indicate that while Petitioner had prior low back problems, these problems had resolved for the most part by early 2018, leading up to the work accident of November 30, 2019.

Additionally, Petitioner testified to the nature of her work duties. Petitioner described that her work activities included extensive bending and stooping while also lifting patients that can weigh 200 pounds. Petitioner described her job as very physical, and this characterization was confirmed by Dr. Raskas and Dr. Kitchens. Petitioner testified that leading up to this work accident, she was able to perform all her work activities and had no work restrictions or problems from 2018 up until this accident. However, after this accident, Petitioner has been provided ongoing work restrictions due to the ongoing symptoms that began following this work accident. As a result, the work accident served to change Petitioner's medical condition and work abilities immediately following this work accident. While Dr. Kitchens tries to describe it as "correlating" to the work accident, Dr. Raskas properly concludes that the work accident served to aggravate the condition in Petitioner's back causing the onset of symptoms, work restrictions, and need for medical care.

As a result, the Arbitrator concludes Petitioner's current condition is medically causally related to the work accident of November 30, 2019. Petitioner's change in physical status and onset of symptoms have necessitated the medical recommendations noted by Dr. Raskas.

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 Act entitles Petitioner to recovery for reasonable and necessary medical services for emergency care, services from any first choice of physician and referrals therefrom, and services from any second choice of physician and referrals therefrom. 820 ILCS 305/8(a).

Petitioner testified to medical treatment that she undertook following this work accident to try to reduce or resolve the symptoms in her low back that began following this work accident. Petitioner testified to the medical bill summary set for on Petitioner's Group Exhibit #14. As a result, the Arbitrator finds Respondent shall pay the medical expenses contained in Petitioner's Group Exhibit #14, pursuant to the Illinois Medical Fee Schedule, as provided in sections 8(a) and 8.2 of the Act.

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

The Act entitles Petitioner to recovery for reasonable and necessary medical services for emergency care, services from any first choice of physician and referrals therefrom, and services from any second choice of physician and referrals therefrom. 820 ILCS 305/8(a).

The Arbitrator finds that Petitioner is entitled to further medical treatment by Dr. Raskas. The credible medical evidence supports the need for further medical care in the form of the surgery recommended by both Dr. Raskas and Dr. Kitchens. The need for surgery remains due to the symptoms that began following the work accident of November 30, 2019. As a result, Petitioner is entitled to prospective medical care for this accident.

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

An employee is temporarily totally incapacitated from the time an injury incapacitates her from work until such time as she is as far recovered or restored as the permanent character of her injury will permit. ***Archer Daniels Midland Co. v. Indus. Comm'n***, 138 Ill.2d 107, 118 (1990). The ability to do light or restricted work does not preclude a finding of temporary total disability. ***Id***. at 121.

Following the work accident of November 30, 2019, Petitioner was provided light duty restrictions by all of her treating doctors including Express Medical Urgent Care, Concentra Medical Center, Dr. Daniel Brunkhorst, Dr. Barry Feinberg, and Dr. David Raskas. Respondent accommodated the work restrictions until terminating Petitioner on June 12, 2020. Petitioner remained off work from that job until starting full-time for Addus HomeCare on December 1, 2020. Therefore, the Arbitrator finds Petitioner is entitled to temporary total disability benefits for the period of June 13, 2020, until December 1, 2020, totaling 24 4/7 weeks at the TTD rate of $259.64/week.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC022590
Case Name	Songo Bailey v. Village of Calumet Park
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0236
Number of Pages of Decision	19
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	
Respondent Attorney	Kisa Sthankiya

DATE FILED: 5/28/2025

/s/Amylee Simonovich,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Songo Bailey,

Petitioner,

vs, No. 23WC022590

Village of Calumet Park,

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 the causal connection, medical expenses, prospective medical, temporary total disability, and the evidentiary issues, 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 (1980).

The Commission corrects scrivener's errors beginning on page 5 of the Medical Summary section of the Decision. In the first sentence of the first paragraph of that section, the date September 1, 2023, is corrected, striking "2023" and replacing it with "2022". The second paragraph of that section is also corrected, the date September 8, 2023, is corrected, striking "2023" and replacing it with "2022". On page 6, in the fourth paragraph of that section, the date September 15, 2023, is similarly corrected, striking "2023" and replacing it with "2022". On page 7, in the tenth paragraph of that section, the date January 16, 2024, is similarly corrected, striking "2024" and replacing it with "2023".

The Commission modifies the second paragraph of page 13 of the narrative portion of the Arbitrator's award for issue (J), striking "deferring to" and replacing with "relying on".

The Commission modifies the sixth paragraph of page 13 of the narrative portion of the Arbitrator's award for issue (K), striking "and minimize any possible wage loss".

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 June 11, 2024, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner for reasonable and necessary medical services, pursuant to the medical fee schedule, of $7,200.00 to Premier Healthcare Services, $10,731.50 to Flexus Medical, and $621.00 to Parkview Orthopedics, as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay for reasonable and necessary prospective medical care related to the left hip, including surgery and related care as recommended by Dr. Bigart. Respondent shall pay for reasonable and necessary prospective medical care related to the right shoulder, including surgery and related care as recommended by Dr. Shah.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $1,041.26/week for 30 6/7 weeks, commencing 9/5/23 through 4/5/2024, as provided in Section 8(b) of the Act.

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

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

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

Under Section 19(f)(2), 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.

May 28, 2025
O:4/15/2025
AHS/ps
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	23WC022590
Case Name	Songo Bailey v. Village of Calumet Park
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Efi James, Arbitrator

Petitioner Attorney	Matthew Coleman
Respondent Attorney	Glenn Blackmon

DATE FILED: 6/11/2024

/s/Efi James, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 11, 2024 5.165%

STATE OF ILLINOIS)
)SS.
COUNTY OF _____)

☐ 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)

Songo Bailey
Employee/Petitioner

v.

Village of Calumet Park
Employer/Respondent

Case # 23 WC 022590

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 Efi James, Arbitrator of the Commission, in the city of Chicago , on 4/5/2024. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other Respondent Credit for prior left leg settlement is not waived

FINDINGS

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

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

On this date, Petitioner ***did*** 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 $**81,218.23**; the average weekly wage was $**1,561.89**.

On the date of accident, Petitioner was **44** years of age, with 1 dependent child.

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

Respondent is entitled to a credit of $**50,062.07** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner for reasonable and necessary medical services, pursuant to the medical fee schedule, of $**7,200.00** to **Premier Healthcare Services**, $**10,731.50** to **Flexus Medical**, and $**621.00** to **Parkview Orthopedics**, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay for reasonable and necessary prospective medical care related to the left hip, including surgery and related care as recommended by Dr. Bigart. Respondent shall pay for reasonable and necessary prospective medical care related to the right shoulder, including surgery and related care as recommended by Dr. Shah.

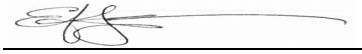
Respondent shall pay Petitioner temporary total disability benefits of $**1,041.26**/week for **30 6/7** weeks, commencing **9/5/23** through **4/5/2024**, as provided in Section 8(b) of the Act.

Respondent's ability to allege a future credit for a prior left leg settlement is not waived

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

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

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



Signature of Arbitrator

June 11, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

SONGO BAILEY,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 23WC022590
VILLAGE OF CALUMET PARK,	)	
	)	
	)	
Respondent.	)	

PROCEDURAL HISTORY

This matter proceeded to trial at the Illinois Workers' Compensation Commission in Chicago, Illinois before Arbitrator Efi James on April 5, 2024. The issues presented at trial were Causal Connection, Medical Benefits, TTD benefits, Prospective Medical Treatment, and Respondent's credit for a prior settlement Petitioner received for a left leg injury. (Arbitrator's Exhibit "AX" 1)

FINDINGS OF FACT

Job Duties

At trial, Petitioner testified that he has worked for Respondent, Village of Calumet Park, for 23 years. (Tr. 8) Petitioner testified that he first worked for Respondent as a firefighter for 13 years. (*Id.*) Petitioner testified that he was then presented with a choice of working for the Fire Department part-time or Public Works full time. (*Id.*) Petitioner testified that he continued working for Public Works, but also continued to work as a firefighter for Robbins. (*Id.*)

Petitioner testified that at the time of the accident, he was a foreman, but was switching over to safety coordinator. (Tr. 9) Petitioner described his job duties. He testified that he was responsible for training, creating policies and procedures, helping with downed trees, cutting grass, picking up trash, and everything in between. (Tr. 9-10) In addition, he would be responsible for additional seasonal activities like snow removal and plowing. (Tr. 10) Petitioner testified that his job duties would at times be heavy, "like with trees". (Tr. 10-11)

Prior Medical Condition

Petitioner testified that prior to the accident on August 31, 2022, his back was fine. (Tr. 11) He testified that he had injured his low back in 2013 attempting to make a rescue in his capacity as a firefighter. (Tr. 11-12) Petitioner testified he was off work for 6 months, went to physical therapy and returned to work in his full duty capacity (*Id.*) Petitioner further testified that between 2013 and August 31, 2022, he did not have low back pain and never saw a doctor or missed work due to low back pain. (Tr. 12) He also testified that he has never had left hip pain, was never treated for left hip pain and never missed work due to left hip pain. (Tr. 13) He also

testified that he has never had right shoulder pain, was never treated for right shoulder pain and never missed work due to right shoulder pain. (Tr. 12-13)

Accident

Petitioner testified that, on August 31, 2022, he and another co-worker were in the process of swapping out empty chlorine tanks to replace them with full tanks. (Tr. 14) Close to the end, Petitioner testified that they were performing a two-man lift with a dolly to hold the cylinder on top. (*Id*.) He testified that they had to take a step up. (*Id.*) While they were moving the tank, the tank started to shift towards the ground. (*Id.*) Petitioner testified that the chlorine tank weighed between 280-300 pounds. (Tr. 15) To stop the tank from falling, Petitioner testified that he did a move to catch it and pull it back. (*Id.*) Petitioner testified that he felt immediate pain in the lower back, like a sharp pinching pain in the lower back. (*Id.*)

Petitioner testified that he did not feel immediate pain anywhere else after the injury. (Tr. 16) Petitioner testified that he continued to work that day. (*Id.*) Petitioner testified that he reported his accident to his supervisor, Director Smith, and the person in charge of workers' compensation, Teri Raney. (*Id.*)

Petitioner's Testimony

As a former firefighter, Petitioner testified he is trained to work through bumps and bruises. He testified that he has a higher than normal tolerance from pain. (Tr. 17) He testified that on the night of the accident, he iced the area and took Ibuprofen. (Tr. 17)

Petitioner testified that the next morning he could barely put his shoes on or bend down due to low back pain. (Tr. 18; PX 1) He reported to work and was sent to Respondent's occupational clinic, Physicians Immediate Care, for medical treatment. (Tr. 18-19; PX 1) Petitioner testified that he completed an incident report that day, called a Form 45. (*Id.*)

Petitioner further testified that not long after the date of accident, he did not remember the exact date, but thought it was within the week of the accident, he tried to get out of bed and his entire body "locked up" with shooting in his right shoulder. (Tr. 21, 46)

Petitioner testified that when he initially reported the accident, he only reported an injury to his low back. (Tr. 77) Petitioner testified that he did not initially report an injury to the left hip or right shoulder because of the severe back pain, he would not have noticed anything else. (Tr. 47)

Medical Summary

Petitioner first sought treatment at Physicians Immediate Care on September 1, 2023. (PX 1, pg. 1) Petitioner reported an injury on August 31, 2022 lifting a chlorine tank. (*Id.*) Petitioner reported that he felt a sharp pain in his lumbar spine. (*Id.*) Physical examination showed reduced range of motion of the lumbar spine. (PX 1, pg. 4) He had tenderness of the lumbar and sacral muscles. (*Id.*) X-rays of the lumbar spine were negative for any acute injury. (PX 1, pg. 4-5) There was mild to multilevel degenerative disk disease and facet arthropathy. (PX 1, pg. 4-5) Petitioner was diagnosed with low back pain. (*Id.*) Physicians Assistant Hayley Skabelund advised that Petitioner return to work on September 8, 2022 with restrictions of no lifting greater than 30 pounds. He was also prescribed a back brace and pain medications. (PX 1, pg. 19)

Petitioner testified that he continued to work in a light-duty capacity for Respondent. (Tr. 22-23) Petitioner then returned to Physicians Immediate Care on September 8, 2023, and was again evaluated by PA Skabelund. (PX 1, pg. 21) Petitioner again reported lumbar spine pain. (*Id.*) He reported improvement with bracing. (*Id.*) There

was pain shooting up towards the shoulder. (*Id.*) Petitioner was diagnosed with low back pain. (PX 1, pg. 22) PA Skabelund advised that Petitioner should remain on light-duty restrictions. (*Id.*) She advised him regarding conservative measures and use of a back support during the workday. (*Id.*)

Petitioner returned to Physicians Immediate Care Center on September 15, 2023. (PX 1, pg. 34) Petitioner reported pain in the sacrum and the right posterior shoulder. (*Id.*) Upon physical examination, Petitioner demonstrated tenderness of the thoracic muscles and sacral muscles. (PX 1, pg. 35) He had mid-line sacral tenderness and was diagnosed with low back pain. (PX 1, pg. 36) Petitioner was prescribed medication and physical therapy. (*Id.*) Petitioner testified that Respondent continued to accommodate his light duty restrictions. (Tr. 22)

Petitioner was seen at Physicians Immediate Care Center on September 22, 2022. (PX 1, pg. 53) Petitioner continued to report 5/10 back pain worse with sleeping and moving around. (*Id.*) He reported only mild temporary improvement with a muscle relaxer. (*Id.*) The diagnosis continued to be low back pain. (PX 1, pg. 35) PA Skabelund continued to recommend physical therapy and light-duty restrictions. (*Id.*)

Petitioner next saw PA Skabelund on September 29, 2022. (PX 1, pg. 65) At that time, Petitioner reported continued lumbar spine discomfort interfering with his sleep at night. (*Id.*) He was scheduled to begin physical therapy the following week. (*Id.*) Petitioner was again diagnosed with low back pain. (PX 1, pg. 66) Petitioner began physical therapy through PTSIR in Blue Island, Illinois on October 4, 2022. (PX 3, pg. 291) It was noted that Petitioner had a stinging sensation in his low back. Petitioner stated that the pain had worsened and began to spread across his low back and eventually started to radiate into his left hip and groin. (*Id.*)

Petitioner presented to Physicians Immediate Care for reevaluation on October 13, 2022. (PX 1, pg. 77) Petitioner reported some improvement with physical therapy but was still experiencing persistent low back and pain in his right shoulder. (PX. 1, pg. 77) During this visit, Petitioner reported his pain was constant and rated his pain as of 5/10. PA Skabelund again diagnosed low back pain and Petitioner was told to continue physical therapy. (PX 1, pg. 79) She also advised that Petitioner could return to work without restrictions on October 13, 2022. (*Id.*) Petitioner was to follow up with Physicians Immediate Care on October 20, 2022. (*Id.*)

Petitioner sent email correspondence to the Illinois Public Risk Fund claim adjuster, Robert Parrino, Respondent's workers' compensation coordinator, Teri Raney, and his immediate supervisor, Marci Smith, regarding questions and concerns about his medical treatment and full-duty work release. (Tr. 24-25; PX 4) Petitioner was very unsatisfied with his treatment at Physicians Immediate Care. (Tr. 25-26); PX 4) Petitioner stated that at every appointment, he waited 2-3 hours for a 5-minute visit, or "vitals check." (Tr. 25-26; PX 4) He requested to see his own doctor. (PX 4) Despite his full-duty work release, Respondent continued to accommodate Petitioner's work restrictions. (Tr. 28)

Petitioner testified that he was referred to Dr. Chintan Sampat at Parkview Orthopaedic Group by his primary care physician (Tr. 28) Petitioner was seen by Dr. Sampat on December 16, 2022 for low back pain radiating down the left lower extremity, left-sided hip pain, and right-sided shoulder pain. (PX 2, pg. 73) Dr. Sampat recommended MRIs of the left hip and the lumbar spine. (PX 2, pg. 75) He also recommended an MRI of the right shoulder. Dr. Sampat noted positive impingement sign in the right shoulder and painful left hip range of motion. (PX 2, pg. 74). Dr. Sampat did not impose any specific work restrictions but noted Petitioner's current symptoms were related to his work accident because he was asymptomatic prior to his August 31, 2022 injury. (PX 2, pg. 75)

Petitioner then returned to Parkview for an evaluation with Dr. Sampat on January 3, 2023. (PX 2, pg. 68) Petitioner was there for review of his lumbar spine MRI results. (*Id.*) The lumbar spine MRI revealed: 1) congenital osseous narrowing of the spinal canal secondary to shortened pedicles; mild degenerative disc

disease at L4-L5 and L5-S1; mild spinal canal stenosis at L4-L5; moderate bilateral foraminal narrowing at L4-L5, L5-S1; and moderate degenerative changes affecting the facet joints at L4-L5. (PX 2, pg. 70) Due to persistent low back pain radiating down his left lower extremity, Dr. Sampat recommended that Petitioner undergo left-sided L4-S1 epidural steroid injections with Dr. Chad Lee. (PX 2, pg. 70) Petitioner was advised to follow up with his primary care provider due to his history of diabetes and hypertension to see if it was safe to proceed. (*Id.*) They also discussed the hip MRI. (*Id.*) Dr. Sampat encouraged Petitioner to follow up with Dr. Bigart for evaluation of his left hip condition. (*Id.*) Dr. Sampat also recommended an MRI of the right shoulder. (*Id.*) Petitioner continued with physical therapy through PTSIR. (PX 3)

Petitioner was then evaluated by Dr. Kevin Bigart at Parkview on January 16, 2024 for his left hip symptoms. (PX 2, pg. 64) At the examination, Petitioner described the accident, and reported that it caused significant pain in his back and left-sided hip and leg. (*Id.*) X-rays of the left hip showed moderately advanced osteoarthritis. (PX 2, pg. 66) There was narrowing of the joint space, especially superolaterally. (*Id.*) There was subchondral sclerosis and osteophyte formation of the left hip. (*Id.*) Right hip x-rays also showed joint space narrowing, osteophyte formation, and subchondral sclerosis. (*Id.*) The left hip MRI evidenced: 1) moderate degenerative changes effecting the left hip joint; 2) moderative sized left hip effusion; and 3) abnormal signal intensity superior acetabular labrum, compatible with labral degeneration and tearing. (PX 2, pg. 65) Dr. Bigart diagnosed Petitioner with a labral tear and aggravation of left hip arthritis and recommended an intraarticular left hip injection for pain and range of motion. Dr. Bigart assessed that Petitioner's work injury in August of 2022 aggravated his low back as well as his hip on the left side. (*Id.*) This continued to worsen with no prior hip pain or issues. (*Id.*) Dr. Bigart noted there was an aggravation of left hip arthritis that was becoming more symptomatic with range of motion loss. (*Id.*) Dr. Bigart recommended that Petitioner undergo the scheduled diagnostic spine injection, but also mentioned a potential intraarticular left hip injection. (*Id.*) There was also discussion of a potential left hip replacement. (*Id.*)

Petitioner followed up with Dr. Sampat on January 27, 2023 following his lumbar injections. (PX 2, pg. 61) Petitioner reported some relief, with other side effects like fatigue. (PX 2, pg. 61) Dr. Sampat ordered continued physical therapy and recommended a follow-up after his hip injection. (PX 2, pg. 61) On February 17, 2023, Petitioner reported continued relief of his low back symptoms after the injection. (PX 2, pg. 51) On March 10, 2023, Dr. Sampat noted Petitioner's left hip was likely causing his low back symptoms. (PX 2, pg. 50) Petitioner saw Dr. Sampat again on March 10, 2023. (*Id*. at p. 50) Dr. Sampat advised that it appeared that Petitioner's low back pain was likely coming from the hip. (*Id).* Dr. Sampat advised that Petitioner could continue working full duty without restriction because Petitioner felt safe to go ahead and do so. (*Id.*)

Petitioner returned to Dr. Bigart on February 6, 2023 for his left hip. (PX 2, pg. 58) His left hip symptoms remained unchanged. (PX 2, pg. 58) Petitioner underwent a left hip injection on February 17, 2023. (PX 2, pg. 55) Petitioner testified at trial that the hip injection caused him adverse effects like dizziness and light-headedness. (Tr. 30) He testified he lost his appetite and he felt weak for a few weeks before starting to feel normal again. (*Id.*) On that same date, Dr. Sampat referred Petitioner to Dr. Nirav Shah to evaluate his shoulder pain. (*Id.*)

On, March 13, 2023, Petitioner reported only two days of relief following the injection. (PX 2, pg. 44) It was noted that since then, his left hip symptoms had worsened, particularly at night causing him difficulty sleeping. (PX 2, pg. 44) Finding Petitioner had exhausted and failed all conservative treatment available, Dr. Bigart recommended a total left hip replacement. (PX 2, pg. 46) Dr. Bigart ordered continued physical therapy as an alternative benefit, but ultimately felt surgery was the next step in treatment. (PX 2, pg. 46)

Petitioner was examined by Dr. Nirav Shah on March 31, 2023 for evaluation of right shoulder pain. (PX 2, pg. 33) Dr. Shah reviewed MRI imaging of the shoulder. (*Id.*) His right shoulder MRI evidenced the following: arthritic changes; AC joint arthritic changes; glenohumeral joint arthritic changes; and impingement and biceps

tendonitis with loose bodies along the biceps tendon sheath. (PX 2, pg. 33) Dr. Shah diagnosed impingement, biceps tendonitis, and an aggravation of pre-existing arthritic changes in addition to what was now neck pain. (PX 2, pg. 34) Dr. Shah recommended conservative treatment, including medications, modalities, physical therapy, and rehabilitation focused on the shoulder and neck for 6-weeks. (PX 2, pg. 34) Dr. Shah gave Petitioner work restrictions of no lifting greater than 25-pounds. (PX 2, pg. 15) Petitioner was to discontinue physical therapy pending surgical approval. (PX 2, pg. 15)

On April 28, 2023, Petitioner returned to Dr. Sampat. (PX 2, pg. 31) Dr. Sampat noted that Petitioner's back pain was secondary to his left hip pain, causing an abnormal gait resulting in overcompensation affecting his low back. (PX 2, pg. 31) Dr. Sampat noted that he was awaiting approval of injections. (PX 2, pg. 31) Dr. Sampat advised that he could continue to work full-duty without restrictions as it relates to his back but deferred to Dr. Bigart's recommendation regarding the hip. (*Id.)*

Petitioner then returned to Dr. Shah on May 12, 2023. (PX 2, pg. 14) Dr. Shah advised that Petitioner had failed non-surgical treatment. (*Id.*) He recommended that Petitioner proceed with surgery which would include arthroscopic capsular release, debridement, removal of loose bodies, and biceps tenodesis. (*Id.*) Subpectoral biceps tenodesis would be recommended with decompression and distal clavicle excision. (*Id.*) Dr. Shah continued to impose a 25-pound lifting restriction. (PX 2, pg. 15)

Petitioner then returned to Dr. Sampat for evaluation on June 20, 2023. (PX 2, pg. 12) Dr. Sampat continued to reference that Petitioner's back pain was likely related to his hip. (*Id.*) Dr. Sampat advised that they would first treat the hip and then they would plan for further lumbar treatment afterwards. (*Id.*)

Petitioner returned to Dr. Bigart on August 7, 2023 following an independent medical examination ("IME") with Dr. Troy Karlsson on July 11, 2023. (PX 2, pg. 8; RX 1) Dr. Bigart disagreed with Dr. Karlsson's conclusion that Petitioner's right shoulder and left hip conditions were not causally related to the accident and noted that Dr. Karlsson was relying on a select amount of notes and the patient's reports. (PX 2, pg. 8; RX 1) Dr. Bigart opined that Petitioner's initial symptoms were treated as a low back injury because it was unclear if the back affected the hip, or vice versa. (PX 2, pg. 9) Dr. Bigart noted that as the workup and treatment continued, Dr. Bigart found Petitioner's left hip to be the primary source of his pain. (PX 2, pg. 9) He continued to recommend a total left hip replacement. (PX 2, pg. 8) Dr. Bigart diagnosed continued left hip pain with a working diagnosis of an aggravation of a left hip arthritis, which he related to the work injury. (PX 2, pg. 10)

On September 5, 2023, Dr. Sampat noted: "based on my experience, hip and back pathology can often mimic each other. In this case, after reviewing the body parts, the symptoms are emanating from the left hip and are related to his work injury to a reasonable degree of orthopedic and medical certainty" and advised that Petitioner should stay off work (PX 2, pg. 5)

Section 12 Examination on July 11, 2023 with Dr. Troy Karlsson

Petitioner presented for an Independent Medical Examination with orthopedic surgeon, Dr. Troy Karlsson, on July 11, 2023. (RX 1, RX 4) Dr. Karlsson examined Petitioner specifically for the claimed injuries to the right shoulder and left hip. Petitioner described the accident to Dr. Karlsson. (RX 1) Dr. Karlsson asked Petitioner whether he had any problems with his hip and shoulder at the time of the accident. (RX 1, pg. 1) Petitioner responded that after the accident, the pain in his back was so bad that was all he concentrated on at first, but then within a day or two, he was having pain in the left hip and right shoulder as well. (*Id.*) Petitioner advised Dr. Karlsson that the injections he received did not help him at all. (RX 1, pg. 2)

Dr. Karlsson also reviewed some of the medical records documenting Petitioner treatment to date and provided his opinions. (RX 1, pgs. 5-11)) Dr. Karlsson advised that Petitioner's initial complaints were of low back pain

and tenderness in the low back. (RX 1, pg. 9) He noted this was not a referred pain from the hip as he had a normal gait throughout multiple exams early on, and there were palpatory findings at the back. (*Id.*) He found that as late as December 6, 2022, Petitioner was noted to have normal knee and hip range of motion. (*Id.*) Dr. Karlsson also noted there was no mention of any shoulder problems until September 15, 2022. (*Id.*) Dr. Karlsson noted that it seemed to be from the trapezius. (*Id.*) Dr. Karlsson noted there was no joint-centered problem then and this was over two weeks after the injury. (*Id.*)

Dr. Karlsson advised that Petitioner's right shoulder and left hip conditions were not causally related to the accident. (*Id.*) He found that there were no complaints in the right shoulder until September 15, 2022, and even those seemed to be more muscular over the trapezius. (*Id.*) There was also no mention of the hip until October 4, 2022, over a month after the injury. (*Id.*) Even then, Dr. Karlsson noted that Petitioner had a normal gait, and was noted on multiple visits after to have a normal gait. (*Id.*) Dr. Karlsson further advised that there were no acute changes seen on Petitioner's right shoulder MRI. (*Id.*) Any surgery, he felt, was unrelated to the accident in this case. (*Id.*)

Dr. Karlsson declined to provide opinions regarding the back treatment. He commented that Dr. Sampat's opinions that Petitioner's back pain was due to a hip problem was "not tenable." (RX 1, pg. 11) Dr. Karlsson found that there were no hip problems early on even when Petitioner had a back problem, and he had a documented normal gait by several examiners. (*Id.*)

Section 12 Addendum Report of Dr. Karlsson dated March 22, 2024

Respondent provided Dr. Karlsson with additional medical records and diagnostic imaging films. Dr. Karlsson authored an addendum report dated March 22, 2024. (RX 2, pgs. 1-3)

Dr. Karlsson diagnosed left hip degenerative osteoarthritis and some degenerative labral fraying. (RX 2, pg. 3) He also diagnosed degenerative osteoarthritis of the glenohumeral and AC joint, as well as rotator cuff tendinitis and some chronic loose bodies along the biceps sheath. (*Id.*) Dr. Karlsson advised that these diagnoses were not causally related to the original injury. (*Id.*) He cited to the delay in any mention of the right shoulder until September 15, 2022 and the left hip until October 4, 2022. (*Id.*) Dr. Karlsson's opinions remained unchanged from his prior report. (*Id.*)

Section 12 Examination on November 21, 2023 with Dr. Kern Singh

Respondent arranged for Petitioner to be examined by orthopedic spine surgeon, Dr. Kern Singh of Midwest Orthopaedics at Rush, on November 21, 2023. (RX 3, RX 5) Petitioner described his accident to Dr. Singh. (RX 3, pg. 1) Petitioner reported symptoms in his low back at a 6-7/10. (RX 3, pg. 2) He also reported left lower extremity dysesthesias into the foot. (*Id.*) Petitioner reported low back pain at a 6-7/10. (*Id.*)

Dr. Singh performed a physical examination of Petitioner's lumbar spine. (RX 3, pgs. 3-4) Dr. Singh noted that Petitioner displayed full range of motion of the lumbar spine. (RX 3, pg. 3) Strength and sensation were intact in the lower extremities. (*Id.*) Dr. Singh reviewed MRI imaging of Petitioner's lumbar spine, which he indicated showed minimal degenerative lumbar spondylosis without stenosis. (RX 3, pg. 4)

Dr. Singh diagnosed Petitioner with lumbar muscular strain and degenerative lumbar spondylosis without significant stenosis. (*Id.*) Dr. Singh advised that Petitioner sustained a soft tissue muscular strain as a result of the work accident which had resolved. (RX 3, pg. 5) Dr. Singh opined that this strain was work-related. (*Id.*) Dr. Singh indicated that Petitioner's minimal degenerative lumbar spondylosis did not correlate with Petitioner's pain complaints. (*Id.*) Dr. Singh commented that Petitioner had a normal neurological examination. (*Id.*)

Dr. Singh advised that Petitioner's treatment had been excessive and prolonged in nature. (*Id.*) Dr. Singh advised that four weeks of conservative treatment was indicated. (*Id.*) Dr. Singh advised that there was no further indication for treatment as Petitioner's left lower extremity dysesthesias were non-anatomic in nature. (*Id.*) Dr. Singh believed that Petitioner would have been at MMI four weeks after the injury. (*Id.*) Dr. Singh further advised that Petitioner could return to work full-duty. (*Id.*) Dr. Singh provided an impairment rating of 0%. (RX 3, pg. 5-6)

Petitioner's current condition

Petitioner testified that he wished to proceed with the total hip replacement recommended by Dr. Bigart and the right shoulder surgery recommended by Dr. Shah. (Tr. 30, 32) Petitioner testified to wanting to proceed with these surgeries to get his life back. (Tr. 38) Petitioner testified to issues with getting dressed, putting his shoes and socks on, washing dishes, and washing up. (*Id.*) He testified to not being able to play with his daughter. (*Id.*) He testified to being unable to play in a softball league, bowl, or shoot pool. (*Id.*)

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e) Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his 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).

A decision by the Commission cannot be based upon speculation or conjecture. *Deer and Company v. Industrial Commission,* 47 Ill.2d 144, (1970). A Petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. *Illinois Institute of Technology v. Industrial Commission,* 68 Ill.2d 236, (1977).

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

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. The Arbitrator finds Petitioner's testimony as to his accident to be straight forward, truthful, and consistent throughout the medical records. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions or internal inconsistencies that would deem the witness unreliable specifically as it relates to his description of the accident or his current condition of ill-being.

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. 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, 11 N.E.3d 453. "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

The Arbitrator concludes that the current condition of Petitioner's ill being is causally related to the work accident of August 31, 2022. It is important to note that the accident of August 31, 2022 is not in dispute. On that date, Petitioner testified at the time of trial, he had worked for the Village of Calumet Park in a number of different capacities. On the date of accident, he was working his full duty job as a safety coordinator for Respondent. Petitioner and another co-worker were in the process of swapping out empty chlorine tanks to replace them with full tanks weighing between 280-300 pounds. While they were moving the tank, the tank started to shift towards the ground. To stop the tank from falling, Petitioner testified that he did a move to catch it and pull it back. Petitioner testified that he felt immediate pain in the lower back, like a sharp pinching pain in the lower back.

Petitioner testified that when he initially reported the accident, he only reported an injury to his low back which was so severe, he would not have noticed anything else. (Tr. 47) Petitioner stated that his back pain was so bad that was all he concentrated on at first, but then within a day or two, he was having pain in the left hip and right shoulder as well. (*Id.*)

In reviewing the medical opinions in this case, the Arbitrator finds the opinions of Dr. Sampat, Dr. Bigart and Dr. Shah to be more persuasive than the Section 12 opinions of Dr. Karlsson and Dr. Singh.

Regarding the low back injury, objective testing revealed congenital osseous narrowing of the spinal canal secondary to shortened pedicles; mild degenerative disc disease at L4-L5 and L5-S1; mild spinal canal stenosis at L4-L5; moderate bilateral foraminal narrowing at L4-L5, L5-S1; and moderate degenerative changes affecting the facet joints at L4-L5. Dr. Bigart assessed that Petitioner's work injury in August of 2022 aggravated his low back as well as his hip on the left side. Even Respondent's Section 12 Examiner, Dr. Singh, diagnosed Petitioner with lumbar muscular strain and degenerative lumbar spondylosis without significant stenosis. Dr. Singh advised that Petitioner sustained a soft tissue muscular strain as a result of the work accident which had resolved. Dr. Singh opined that this strain was work-related. Petitioner testified that between 2013 and August 31, 2022, he did not have low back pain and never saw a doctor or missed work due to low back pain. Petitioner also testified that he was asymptomatic at the time of this injury.

Regarding the left hip, on September 15, 2022, Petitioner first reported pain in the sacrum area. Dr. Bigart diagnosed Petitioner with a labral tear and aggravation of left hip arthritis which he related to the work injury. It is important to note that Petitioner was asymptomatic prior to his work injury. Dr. Bigart opined that Petitioner's initial symptoms were treated as a low back injury because it was unclear if the back affected the hip, or vice versa. Dr. Sampat noted that Petitioner's back pain was secondary to his left hip pain, causing an abnormal gait resulting in overcompensation affecting his low back. On April 28, 2023, Petitioner was seen by Dr. Sampat who noted that Petitioner's back pain was secondary to his left hip pain, causing an abnormal gait resulting in overcompensation affecting his low back. On September 5, 2023, Dr. Sampat noted: "based on my experience, hip and back pathology can often mimic each other. In this case, after reviewing the body parts, the symptoms are emanating from the left hip and are related to his work injury to a reasonable degree of orthopedic and medical certainty".

The Arbitrator finds that Dr. Karlsson, as it relates to the left hip, relied heavily on what he describes as a delay in reporting of hip complaints. The Arbitrator is not persuaded by this argument. The medical opinions of both treating physicians, Dr. Sampat and Dr. Bigart reveal that low back and hip pain often mimic each other and it was initially difficult to distinguish the low back from the left hip as it relates to Petitioner's pain complaints. Petitioner testified that he has never had left hip pain, was never treated for left hip pain and never missed work due to left hip pain prior to this date of accident. Petitioner testified that he was asymptomatic at the time of this injury.

As it relates to the right shoulder, Respondent's Section 12 Examiner, Dr. Karlsson, opined that Petitioner's right shoulder was not causally related to the accident. He found that there were no complaints in the right shoulder until September 15, 2022, and advised that there were no acute changes seen on Petitioner's right shoulder MRI. Any surgery, he felt, was unrelated to the accident in this case. The Arbitrator is not persuaded by Dr. Karlsson's opinion. The Arbitrator does not find a significant gap in reporting of right shoulder pain as it relates to the date of accident.

Petitioner was examined by Dr. Nirav Shah on March 31, 2023 for evaluation of right shoulder pain and he reviewed MRI imaging of the shoulder. His right shoulder MRI evidenced: arthritic changes; AC joint arthritic changes; glenohumeral joint arthritic changes; and impingement and biceps tendonitis with loose body along the biceps tendon sheath. Dr. Shah diagnosed impingement, biceps tendonitis, and an aggravation of pre-existing arthritic changes in addition to now neck pain. The MRI directly contradicts Dr. Karlsson's finding that the MRI showed no acute changes. The opinion of Dr. Shah, coupled with the fact that Petitioner testified he has never had right shoulder pain, was never treated for right shoulder pain and never missed work due to right shoulder pain prior to this date of accident and the fact that Petitioner testified he was asymptomatic at the time of this injury is more persuasive then the opinions of Dr. Karlsson.

Based on these findings, the Arbitrator finds that Petitioner's current condition of ill-being as is relates to his low back, left hip and right shoulder is causally related to the injury on August 31, 2022.

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:

Under Section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of a claimant's injury. The claimant has the burden of proving that the medical services were necessary, and the expenses incurred were reasonable. *City of Chicago v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 258, 267 (1st Dist., 2011). Based upon the finding that Petitioner's current condition of ill-being is causally related to the injury in question, the Arbitrator finds that the medical services that have been rendered to Petitioner are reasonable and necessary as it relates to the treatment for the low back, left hip and right shoulder.

Specifically, the Arbitrator does not find Dr. Singh's opinion that Petitioner would have been at MMI for a lumbar strain within four weeks to be persuasive. The Arbitrator finds that this is an arbitrary statement and presumes that the course of treatment for every person with the same injury should be the same. Dr. Singh's report indicates that he took Petitioner's medical history, conducted a physical exam, and performed motor strength testing. However, at trial, Petitioner testified that Dr. Singh was only in the room with Petitioner for 5-7 minutes, would not allow him to ask a question, and spoke to his medical assistant the whole time. Despite Petitioner's ongoing complaints of low back pain, Dr. Singh opines he suffered a mere strain and reached MMI 4 weeks after the accident. Dr. Singh offers no explanation for Petitioner's continued back pain. The medical records clearly show that following his lumbar injection, Petitioner's low back symptoms improved. Thus, the Arbitrator finds the opinions and report of Dr. Singh to be unreliable.

Petitioner testified that his low back pain initially masked the pain of his left hip and right shoulder. He reported right shoulder symptoms onset within 2 days of his accident. Dr. Sampat and Dr. Bilgat's records are clear that symptoms of low back and hip injuries can overlap. Petitioner's dissatisfaction with the treatment he received at Respondent's occupational clinic, Physicians Immediate Care, indicates that a proper workup was not done in accordance with his ongoing complaints. Petitioner's email to the claims adjuster and Respondent's workers' compensation representative further evidences his dissatisfaction. In Petitioner's email, he specifically asks for direction in seeking medical treatment with his own doctor. Dr. Karlsson's reliance on the Physicians Immediate Care records and delayed reporting of left hip and right shoulder symptoms is less convincing than those of the treating physicians in this case. Thus, the Arbitrator finds the opinions of Dr. Karlsson to be unreliable.

Finding the opinions of Dr. Karlsson and Dr. Singh to be unreliable and deferring to the medical records and opinions of all Petitioner's treating physicians, the Arbitrator finds Petitioner's medical treatment to date has been reasonable and necessary.

The Arbitrator, having found Petitioner's treatment to be reasonable and necessary, further finds that Respondent has not paid for said treatment. Petitioner submitted medical bills into evidence documenting charges of $7,200.00 for services rendered at Premier Healthcare Services, $10,731.50 for Flexus Medical, and $621.00 for Parkview Orthopaedic Group.

The Arbitrator finds Respondent shall pay reasonable and necessary services of $18,552.50 pursuant to the fee schedule as detailed herein, as provided in Sections 8(a) and 8.2 of the Act.

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

Section 8(a) of the Act entitles a claimant to compensation for all necessary medical, surgical, and hospital services 'thereafter incurred' that are reasonably required to cure or relieve the effects of the injury." *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 593, 834 N.E.2d 583, 593, 296 Ill. Dec. 26 (2005) (quoting 820 ILCS 305/8(a) (West 2002)). Questions regarding a claimant's entitlement to prospective medical care are questions of fact for the Commission to resolve and its decisions on factual matters will not be disturbed on appeal unless they are against the manifest weight of the evidence. *Dye v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 110907WC, ¶ 10, 981 N.E.2d 1193, 367 Ill. Dec. 465. Stanly v. Ill. Workers' Comp. Comm'n, 2016 IL App (1st) 152301WC-U, ¶ 44.

The Arbitrator finds that Petitioner's recommended left hip surgery – a total hip replacement – and post-operative care is reasonable and necessary to alleviate Petitioner's ongoing left hip and low back symptoms. The Arbitrator also finds that Petitioner's recommended right shoulder arthroscopic surgery and any post-operative care is reasonable and necessary to alleviate Petitioner's ongoing right shoulder symptoms. Both surgeries aim to allow Petitioner to return to work in his prior capacity and minimize any possible wage loss.

Since the incident, Petitioner testified that he has difficulties performing routine tasks and daily chores. He testified he has difficulties getting dressed, putting on shoes and socks, washing dishes, showering, and sleeping. He testified that he can no longer play with his youngest daughter the way he used to. Before his work accident, he played in a softball league with friends and enjoyed bowling or playing pool, which he can no longer do. Petitioner testified he wants the surgeries to return to work but also to get his quality of life back.

Based on the medical records and opinions of Dr. Bigart the Arbitrator finds that Respondent shall approve and pay for a total left hip replacement and any necessary post-operative care as prescribed by Dr. Bigart as provided in Section 8(a) and 8.2 of the Act. Based on the medical records and opinions of Dr. Shah, the

Arbitrator finds that Respondent shall approve and pay for a right shoulder arthroscopic surgery and any necessary post-operative care as prescribed by Dr. Shah as provided in Section 8(a) and 8.2 of the Act.

Issue L, whether Petitioner is entitled to TTD/TPD benefits, the Arbitrator finds as follows:

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

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n*, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

To be entitled to TTD benefits, it is the claimant's burden to prove not only that he did not work but also that he was unable to work. *Holocker v. Illinois Workers' Compensation Comm'n,* 2017 IL App (3d) 16036WC, P35 (3rd Dist., 2017). The fundamental purpose of the Act is to provide injured workers with financial protection until they can return to the work force. Id. When determining whether an employee is entitled to TTD benefits, the test is whether the employee remains temporarily totally disable as a result of a work-related injury and whether the employee is capable of returning to the work force. Id. The touchstone for determining whether claimant is entitled to TTD is whether the claimant's conditions had stabilized to the extent that they are able to reenter the workforce. *Id*.

In the instant case, Petitioner claims a period of TTD from August 25, 2023 through April 5, 2024, the date of hearing. (AX 1) The medical records of Dr. Sampat at Parkview Orthopedic Group, from August 7, 2023 reflect that at the time of that visit, Petitioner was still working but struggling through pain. Dr. Sampat continued to recommend hip surgery and told Petitioner to come back on an as needed basis. On September 5, 2023, the last visit with Dr. Sampat, Petitioner was documented to be off work with a continued recommendation of a left hip replacement.

Finding a causal connection between the date of loss and Petitioner's injuries and having reviewed the medical records, the Arbitrator awards TTD benefits from September 5, 2023 to April 5, 2024 (the date of hearing) at the rate of $1,041.26 per week for 30 6/7 weeks.

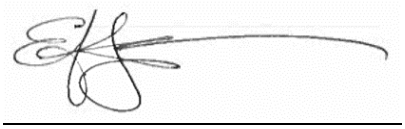
Issue O. whether Respondent's credit for prior left leg settlement is waived, the Arbitrator finds as follows:

Respondent's ability to allege a future credit for a prior left leg settlement is not waived

CONCLUSION

In light of the above facts and considerations, the Arbitrator finds Petitioner's current condition of ill-being is causally related to the injury of August 31, 2022. The Arbitrator finds all Petitioner's medical treatment to date has been reasonable and necessary. The Arbitrator, having found Petitioner's treatment to be reasonable and necessary, further finds that Respondent has not paid for said treatment. Petitioner submitted medical bills into evidence documenting charges of $7,200.00 for services rendered at Premier Healthcare Services, $10,731.50 for Flexus Medical, and $621.00 for Parkview Orthopaedic Group. The Arbitrator finds Respondent shall pay reasonable and necessary services of $18,552.50 pursuant to the fee schedule as detailed herein, as provided in Sections 8(a) and 8.2 of the Act. The Arbitrator further awards TTD benefits from September 5, 2023 to April

5, 2024 (the date of hearing) at the rate of $1,041.26 per week for 30 6/7 weeks. Finally, based on the medical records and opinions of Dr. Bigart, the Arbitrator finds that Respondent shall approve and pay for a total left hip replacement and any necessary post-operative care as prescribed by Dr. Bigart as provided in Section 8(a) and 8.2 of the Act. Based on the medical records and opinions of Dr. Shah, the Arbitrator finds that Respondent shall approve and pay for a right shoulder arthroscopic surgery and any necessary post-operative care as prescribed by Dr. Shah as provided in Section 8(a) and 8.2 of the Act. Respondent's ability to allege a future credit for a prior left leg settlement is not waived



Arbitrator Efi Poziopoulos James

June 11, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	09WC043763
Case Name	Randal Burns v. City of Chicago - Department of Health
Consolidated Cases	
Proceeding Type	8(a)/19(h) Petition
Decision Type	Commission Decision
Commission Decision Number	25IWCC0237
Number of Pages of Decision	6
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	
Respondent Attorney	Matthew Daley

DATE FILED: 5/28/2025

/s/Amylee Simonovich,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RANDALL BURNS,

Petitioner,

vs. NO: 09 WC 043763

CITY OF CHICAGO,

Respondent.

DECISION AND OPINION ON PETITIONER'S
PETITION FOR REVIEW UNDER §19(h) AND §8(a) OF THE ACT

This cause comes before the Commission on Petitioner's Petition for Review under §19(h) and §8(a) of the Act, alleging a material increase in Petitioner's disability since a Commission Decision was issued on May 31, 2022. No Circuit Court Review of the Commission's Decision was filed and the Commission's Decision became a final Decision on June 20, 2021. Petitioner filed a timely Petition for Review under §19(h) and §8(a) of the Act on September 24, 2024. A hearing was held before Commissioner Simonovich on January 16, 2025, in Chicago, Illinois and a record was made. The Commission, having considered the entire record, finds that Petitioner failed to prove by a preponderance of the credible evidence that there had been a material increase in disability. Accordingly, Petitioner's §19(h) Petition for benefits is denied. The Commission also finds Petitioner failed to prove by a preponderance of the evidence that he had unpaid medical bills or prospective medical care which were causally related to the work injury of October 5, 2009.

> The purpose of a proceeding under section 19(h) is to determine if a petitioner's disability has "recurred, increased, diminished or ended" since the time of the original decision of the Industrial Commission. Ill. Rev. Stat. 1985, ch. 48, par. 138.19(h); *Howard v. Industrial Comm'n*, 89 Ill. 2d 428, 433 N.E.2d 657 (1982). To warrant a change in benefits, the change in a petitioner's disability must be material. *United States Steel Corp. v. Industrial Comm'n*, 133 Ill. App. 3d 811, 478 N.E.2d 1108 (1985). In reviewing a section 19(h) petition, the evidence

> presented in the original proceeding must be considered to determine if the petitioner's position has changed materially since the time of the Industrial Commission's first decision. *Howard*, 89 Ill. 2d 428. Whether there has been a material change in a petitioner's disability is an issue of fact, and the Industrial Commission's determination will not be overturned unless it is contrary to the manifest weight of the evidence. *Howard*, 89 Ill. 2d 428; *United States Steel Corp*., 133 Ill. App. 3d 811. *Gay v. Industrial Comm'n*., 178 Ill. App. 3d 129, 132, 532 N.E.2d 1149, 1151 (1989).

Petitioner alleges a material change in his disability and is seeking medical expenses and additional permanency.

BACKGROUND AND HISTORY

Petitioner was employed by Respondent, as a Communicable Disease Control Investigator. On October 5, 2009, Petitioner was involved in a motor vehicle accident while traveling to see a patient in the Roseland area. Petitioner was driving a City of Chicago work van when he was struck on the rear driver's side by another van being pursued by a Chicago Police Department squad car. Petitioner filed an Application for Adjustment of Claim on October 22, 2009, and his case was tried before Arbitrator Christopher Harris on February 24, 2020. The Arbitrator issued a Decision on June 29, 2020, awarding Petitioner the following: 51 5/7 weeks of TTD at $608.03/week, less a credit of $31,529.16; 173.95 weeks of PPD at $547.20/week, for 10% of the body as a whole for the cervical spine and 3% of the body as whole for the lumbar spine as provided in §8(d)(2) of the Act, and 3% of the right leg per §8(e)12 of the Act; and medical services provided through October 3, 2010, pursuant to the medical fee schedule as provided in Sections 8(a) and 8.2 of the Act, or as otherwise negotiated.

A timely Petition for Review was filed by Petitioner. The Commission, after considering the issues of causal connection, medical expenses, earnings, temporary total disability, and nature and extent, and being advised of the facts and law, modified the Decision of the Arbitrator on May 31, 2022. The Commission found Petitioner's current condition of ill-being regarding his cervical spine was not causally related to the work accident subsequent to October 15, 2010. The Commission also modified the Arbitrator's award of medical expenses to include the October 15, 2010, office visit with Dr. Arayan. Finally, the Commission corrected certain scrivener's errors in the Arbitration Decision.

Pertinent to that award was the following from the Commission's Decision:

> After considering the totality of the evidence, the Commission finds Petitioner's cervical condition was not causally related to the work accident subsequent to October 15, 2010. After undergoing months of conservative treatment for his cervical complaints, Petitioner had achieved almost all the goals set by his physical therapist by October 1, 2010. On that date, Petitioner reported experiencing decreased neck pain. Petitioner was no longer using any pain medication and could turn his head without any issues. He also had no problems when driving or backing up his car. Dr. Arayan's examination revealed Petitioner had cervical spine flexion

and extension with no pain. The doctor cleared Petitioner to return to work without any restrictions beginning October 4, 2010. Petitioner then returned to Dr. Arayan on October 15, 2010, and reported having no pain. Petitioner told the doctor that he was tolerating his return to full duty work. Dr. Arayan placed Petitioner at MMI that day. The credible evidence shows that Petitioner made no complaints of symptoms regarding his cervical spine following the October 15, 2010, visit with Dr. Arayan until he visited the ER on December 1, 2010. On that day he complained of increased neck pain. When Dr. Arayan examined Petitioner on December 30, 2010, Petitioner reported that he tolerated working full duty until mid-November 2010 when his neck pain returned. Petitioner told the doctor that his neck pain returned after he slept on his couch for two nights. Petitioner rated his neck pain at 6/10 and reported having difficulty when turning his head while parking his car.

It is clear from the credible evidence that Petitioner's cervical spine complaints completely resolved by October 15, 2010, and did not return until he reportedly slept on his couch for two nights approximately one month later. The reoccurrence of Petitioner's neck pain is unrelated to the work accident. Instead, Petitioner's nights spent sleeping on the couch was the sole cause of his cervical complaints in November 2010. The Commission notes that the severity of Petitioner's cervical complaints in December 2010 were noticeably increased compared to his complaints in October 2010.

The Commission affirmed and adopted the following language from the Arbitrator's Decision:

However, based on the lack of evidence demonstrating a causal connection between Petitioner's subsequent disc bulging and later necessity for a lumbar fusion eight years post-accident, the Arbitrator finds that any and all treatment, injuries, therapy or conditions related to Petitioner's lumbar spine incurred after the MMI date of October 3, 2010, are not causally connected to the October 5, 2009 work injury.

…

The lack of tear in the 2009 MRI, coupled with Petitioner's successful completion of physical therapy in 2010, leads the Arbitrator to not find Petitioner's position credible insofar as the condition of his right knee post August 6, 2010 being causally related to the October 5, 2009 work injury.

…

The Arbitrator finds that the Petitioner's current cause of ill-being as it relates to the right shoulder is not causally related to the work accident of October 5, 2009. From October 5, 2009 through October 3, 2010, the records in evidence credibly show that the Petitioner did not injure his right shoulder in the accident, but more specifically, did not appear to have torn his rotator cuff.

…

The Arbitrator finds Petitioner's left shoulder complaints are not causally related to his work accident of October 5, 2009. The Arbitrator relies on the lack of any corroborating medical records detailing any left shoulder symptoms/treatment in the days, weeks, and months following Petitioner's motor vehicle accident of

> 10/5/09. The Arbitrator notes Petitioner's medical records do not mention any left shoulder pain until October 2014, five years after the accident.
>
> …
>
> The Arbitrator finds Petitioner's bilateral hip complaints and three hip surgeries are not causally related to his work accident of October 5, 2009. Petitioner does not begin to complain of bilateral hip pain until his visit to Dr. Desai on February 1, 2016. (Pet. Ex. 11 at 255). There is also a noted absence of any corroborating medical records detailing any right or left hip symptoms/treatment in the days, weeks, and months following Petitioner's motor vehicle accident. The Arbitrator finds Petitioner's mention of hip pain in the medical records too remote in time from the work accident and notes the lack of causal connection opinions in the record regarding Petitioner's bilateral hip complaints and its relationship to the October 5, 2009 accident. As such, all medical treatment and benefits pertaining to Petitioner's right and left hip is denied.

To conclude, the Commission held that Petitioner's cervical spine condition was no longer causally related as of October 15, 2010, his lumbar spine condition was no longer causally related as of October 3, 2010, his right knee condition was no longer causally related as of August 6, 2010, and that the conditions of ill-being to his bilateral shoulders and bilateral hips were not causally related to the accident on October 5, 2009. The sole condition that remained causally related to the accident was to Petitioner's right wrist.

EVIDENTIARY ISSUES

To begin, the Commission must rule on a pending evidentiary matter. Petitioner's exhibits were objected to by Respondent's counsel, and ruling on that objection was deferred. The exhibits were offered without subpoena under §16 of the Act, or certification under Rule of Evidence 902(11). The Commission sustains the objection and does not admit the medical records into evidence.

POST ARBITRATION HEARING TREATMENT AND COMMISSION TESTIMONY

At the Commission Hearing, Petitioner testified he has not received any medical treatment for his right wrist since the Arbitrator's hearing in 2020. Upon questioning by the Commissioner regarding his medical conditions, Petitioner stated that his right wrist is painful due to the use of a cane. On cross examination, Petitioner confirmed that he has not received medical treatment for his right hand since 2020. He identified his disabling body parts as his hips, shoulders, thoracic spine, and cervical spine.

CONCLUSIONS OF LAW

The Arbitration Hearing was on February 24, 2020. Petitioner testified that he has not sought any treatment for his right wrist since 2020, and that his currently disabling body parts are his hips, shoulders, thoracic spine, and cervical spine.

The Commission notes that the Petitioner suffered compensable injuries to his right wrist,

lumbar spine, cervical spine, and right knee. However, the causal connection between his injury and his cervical spine was terminated as of October 15, 2010, between his injury and his lumbar spine was terminated on October 3, 2010, and between his injury and his right knee was terminated on August 6, 2010. The Petitioner did not allege any material increase in disability as it relates to the right wrist.

As a result, the Commission finds that Petitioner failed to prove that his causally connected disability has materially increased since the Arbitration Hearing. Likewise, the Commission finds that the Petitioner failed to introduce evidence of medical treatment or a need for prospective care for causally connected injuries subsequent to the Arbitration hearing on February 24, 2020.

Finally, the Commission observes Petitioner's personal identity information was unredacted from Petitioner's Exhibits. The Commission cautions the parties to adhere to Supreme Court Rule 138. Ill. S. Ct. R. 138 (eff. Jan. 1, 2018).

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Petition for benefits under §19(h) is denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's Petition for medical benefits under §8(a) for medical treatment is denied.

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.

May 28, 2025
O03252025
AHS/ps
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	23WC027846
Case Name	INSURANCE COMPLIANCE v. CASCONI EXTERIORS
Consolidated Cases	
Proceeding Type	
Decision Type	Commission Decision
Commission Decision Number	25IWCC0238
Number of Pages of Decision	5
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Casey Fitzgerald
Respondent Attorney	

DATE FILED: 5/28/2025

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
)
COUNTY OF MADISON)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ILLINOIS WORKERS' COMPENSATION COMMISSION, INSURANCE COMPLIANCE DIVISION	)	
Petitioner,	)	
vs.	)	23 WC 027846
SHANE GRAYLING, AKA SHANE CASCONI D/B/A CASCONI EXTERIORS,	)	
Respondent.	)	

PETITIONER'S BRIEF AND PROPOSED DECISION

Petitioner, the Illinois Workers' Compensation Commission, Insurance Compliance Department, brings this action, by and through the Office of the Illinois Attorney General, against the above captioned Respondent, alleging violation of Section 4(a) of the Illinois Workers' Compensation Act. Proper and timely notice was provided to Respondent and a hearing was held before Commissioner Marc Parker in Collinsville, Illinois on May 13, 2025. No one appeared on behalf of Respondent. Mr. Casconi of Casconi Exteriors was served with timely and proper notice. On May 13, 2025, the State and its witness appeared in person.

Petitioner alleges that Respondent knowingly and willfully lacked workers' compensation insurance coverage from December 16, 2016 through September 20, 2019 in violation of Section 4(a) of the Illinois Workers' Compensation Act. Petitioner seeks the maximum fine allowed under the Act, $500.00 per day for each of the 1,008 days Casconi Exteriors did business and failed to provide coverage for its employees, which totals $504,000.00.

The Workers' Compensation Commission Insurance Compliance Department Notice of Non-Compliance and Notice of Insurance Compliance Hearing states Casconi Exteriors was not in compliance with the requirements of Section 4(a) of the Act from December 16, 2016 through September 20, 2019. After considering the entire record, the Commission finds that Respondent knowingly and willfully violated Section 4(a) of the Act and Section 7100.100 of the Rules Governing Practice before the Illinois Workers' Compensation Commission, from December 16, 2016 through September 20, 2019. The Commission finds, after reasonable notice and hearing, Respondent knowingly and willfully failed or refused to comply with the provisions of Section 4(a) of the Act and 7100.100(b) of the Rules Governing Practice before the Illinois Workers' Compensation Commission. The Commission assesses a civil penalty under Section 4 of the Act in the sum of $504,000.00 against Respondent for the reasons set forth below:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Petitioner presented Michael Cummins, a Compliance Investigator for the Workers' Compensation Compliance Division of the Illinois Department of Insurance, as a witness at the hearing on May 13, 2025.

2. Investigator Cummins testified he has worked for the Commission for 11 years and his duties include investigating whether or not employers are providing workers' compensation insurance and protection for their employees according to the Illinois Workers' Compensation Act. (T. 5).

3. Investigator Cummins testified he is familiar with Casconi Exteriors because a workers' compensation claim was filed against that company. (T. 6). Upon his investigation, Casconi Exteriors was found not to have workers' compensation insurance. (T. 6).

4. Petitioner's Exhibit 2 is a certified mailing from the Office of the Illinois Attorney General indicating Shane Casconi was serviced with a Notice of Insurance Compliance Hearing on December 12, 2024. (PX2). Petitioner's Exhibit 2 includes a copy of the Notice served upon Mr. Casconi. (PX2).

5. Investigator Cummins testified he conducted several affirmative steps in his investigation of Casconi Exteriors. (T. 6-10). Investigator Cummins searched several databases that indicate employer's revenue and insurance history. (T. 9-10). Investigator Cummins searched the National Council on Compensation Insurance and it indicated Casconi Exteriors was completely without workers' compensation insurance from December 16, 2016 through September 20, 2019. (T. 10). Investigator Cummins concluded that Casconi Exteriors was operating for an extended period of time in violation of the Illinois Workers' Compensation Act.

6. Casconi Exteriors never provided the Workers' Compensation Compliance Division with proof they had workers' compensation insurance for the period of non-compliance.

7. The Workers' Compensation Compliance Division requested insurance information on Casconi Exteriors from the National Council of Compliance Insurance (NCCI). (T. 10). NCCI investigated Casconi Exteriors and certified that Casconi Exteriors did not have workers compensation insurance for the period of December 16, 2016 through September 20, 2019. (PX3, T. 10). The Commission notes the NCCI certification in this case is prima facie proof Respondent did not have the required workers' compensation insurance for the above period. (Rule 7100.100(d)3(D) of the Rules Governing Practice before the Illinois Workers' Compensation Commission).

8. Casconi Exteriors was not registered as a business with the Illinois Secretary of State. (PX4). Casconi Exteriors was not officially incorporated or a licensed business under the auspices of the State of Illinois and was operating on its own. (PX4).

9. The Office of Self-Insurance conducted an investigation and determined Casconi Exteriors was not self-insured with the State of Illinois, such that they would have needed workers'

compensation insurance. (PX4). The Office of Self-Insurance provided a certification of this, finding that Casconi Exteriors was not self-insured. (PX 4).

10. Investigator Cummins confirmed that Casconi Exteriors had employees at the time of the underlying accident and during the period of non-compliance with workers' compensation insurance requirements. (T. 13).

11. The Illinois Department of Revenue provided certified records showing Casconi Exteriors was reporting revenue during the period of non-compliance while they were in operation. (PX5). This indicates that Casconi Exteriors was in fact operating and generating revenue during the period of non-compliance.

12. The Workers' Compensation Compliance Division determined that Casconi Exteriors did not have workers' compensation insurance for the period of non-compliance from December 16, 2016 through September 20, 2019 despite the business being in operation during that time.

13. Investigator Cummins testified he is aware of at least one workers' compensation claim filed against Casconi Exteriors. (T. 6).

14. Investigator Cummins found, for the period of non-compliance from December 16, 2016 through September 20, 2019, Respondent was non-compliant for a total of 1,008 days. (PX6). The fine for this violation is $500 a day as each day is considered a fresh violation of the Act, so the total requested fine for non-compliance is $504,000. (PX6).

15. The total amount of fines being asked to be found against Respondent Casconi Exteriors is $504,000.00.

Respondent knowingly and willfully violated Section 4(a) of the Act. Nevertheless, this Commission analyzes here the culpability of Casconi Exteriors and the applicability of Section 4(a). Section 4 of the Act requires all employers of at least one employee who come within the provisions of Section 3 of the Act, and any other employer who shall elect coverage under Section 2 of the Act, to provide workers' compensation insurance for the protection of their employees. 820 ILCS 305/4. Common law liability of employers to injured employees has been replaced in this State by the workers' compensation system.

The evidence in this case shows Casconi Exteriors had employees during the period of non-compliance. Investigator Cummins testified Casconi Exteriors was engaged in business during the period of non-compliance, thus bringing Casconi Exteriors within the automatic coverage provisions of the Act as a "business or enterprise in which goods, wares or merchandise are produced, manufactured or fabricated." 820 ILCS 305/3(16).

Under Section 4(a) of the Act, Respondent may elect to apply for approval as a self-insurer, insure his liability to pay such compensation in some insurance carrier authorized to do such insurance business in the State or make other provision, satisfactory to the Commission for the securing of the payment of compensation provided for in the Act. The Respondent in this case did

not seek to obtain self-insurer status, obtain traditional workers' compensation insurance, or make other provisions with the Commission.

The next consideration is Casconi Exteriors' knowing violation of Section 4(a) of the Act and the penalty amount appropriate to assess. It is clear that Casconi Exteriors was aware and understood that it was required to obtain workers' compensation insurance for its employees.

This Commission cannot tolerate, nor allow, the taxpayers of this State to endure a business operating without insurance where an employee is injured arising out of his work and in the course of his employment.

In considering the appropriate penalty, other evidence in aggravation includes that the total period of non-compliance is 1,008 days, no brief amount of time. Respondent's failure to carry workers' compensation insurance for a period of almost three years is a flagrant and willful violation of the law that should be punished by the maximum penalty allowed under the Act.

This Commission can, through this case, deter other businesses from disregarding the insurance laws of this State by exacting a severe penalty commensurate with the conduct of Casconi Exteriors. For the forgoing reasons, and after considering the entire record, the Commission finds that Respondent was operating under and subject to the Illinois Workers' Compensation Act under Section 3 and was an employer during the period of non-compliance of December 16, 2016 through September 20, 2019, as denoted in Section 1 of the Act. The Commission finds that Respondent has knowingly and willfully failed to comply with the requirements of Section 4(a) of the Act and shall be assessed penalties under Section 4(d) of the Act. The Commission finds Respondent knowingly and willfully were in non-compliance with Section 4 of the Act for a period of 1,008 days and shall pay a total penalty of $504,000.00 under Section 4 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent, Casconi Exteriors, pay to the Illinois Workers' Compensation Commission the sum of $504,000.00 pursuant to Section 4(d) of the Act.

Marc Parker 5/28/2025

Commissioner Marc Parker

Illinois Workers' Compensation Commission

MAY 28 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC004736
Case Name	Laura C. Napoles v. Ravinia Communities LLC
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0239
Number of Pages of Decision	24
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Jason M. Whiteside
Respondent Attorney	Patrick Jesse

DATE FILED: 5/28/2025

/s/Amylee Simonovich,Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LAURA NAPOLES,

Petitioner,

vs. NO: 17 WC 04736

RAVINIA COMMUNITIES LLC,

Respondent.

DECISION AND OPINION ON REVIEW

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

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

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

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

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.

May 28, 2025
O052025
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	17WC004736
Case Name	Laura C Napoles v. Ravinia Communities LLC
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	Jennifer Bae, Arbitrator

Petitioner Attorney	Jason M. Whiteside
Respondent Attorney	Patrick Jesse

DATE FILED: 11/12/2024

/s/Jennifer Bae, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 6, 2024 4.26%

25IWCC0239

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

LAURA C. NAPOLES
Employee/Petitioner

Case # 17WC004736

v.

Consolidated cases:

RAVINIA COMMUNITIES 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 **Arbitrator Jennifer Bae**, Arbitrator of the Commission, in the city of **Chicago**, on **September 13, 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 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 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 ***$61,500.00***; the average weekly wage was ***$1,182.69***.

On the date of accident, Petitioner was ***56*** years of age, ***married***, 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 ***$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

The Arbitrator finds that Petitioner's condition of ill-being with respect to her concussion is casually related to the accident that occurred on September 15, 2016. The Arbitrator finds Petitioner reached maximum medical improvement on or about February 23, 2017. The Arbitrator finds that Petitioner's ongoing neurological condition of ill-being with respect to her PNES or PTSD diagnosis is not casually related to the accident that occurred on September 15, 2016.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, for dates of service from September 16, 2016 through February 23, 2017, provided in Sections 8(a) and 8.2 of the Act for medical treatment/physical therapy. All medical expenses after February 23, 2017 are hereby denied. Respondent shall be given the applicable credit for any and all medical benefits that have been paid pursuant to Section 8(j) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $709.61/week for 15 weeks, because the injuries sustained caused 3% loss of use of the person as a whole, pursuant to Section 8(d)2 of the Act.

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

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

Jennifer Bae

Signature of arbitrator

November 12, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

LAURA C. NAPOLES,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 17WC004736
RAVINIA COMMUNITIES LLC,	)	
	)	
	)	
Respondent.	)	

MEMORANDUM OF DECISION OF ARBITRATOR

I. PROCEDURAL HISTORY

Ms. Laura C. Napoles ("Petitioner"), by and through her attorney, filed an Application for Adjustment of Claim for benefits under the Workers' Compensation Act ("Act"). *820 ILCS 305/1 et seq. (West 2014).* Petitioner alleged that she sustained an accidental injury on September 15, 2016 while employed by Ravinia Communities LLC ("Respondent"). A hearing was held on September 13, 2024 on the following Issues: causation, medical treatment, and nature and extent.

Petitioner testified in support of her claim. Respondent submitted a report from Dr. Elizabeth Kessler, Respondent's Section 12 examiner, addressing the disputed issues. (RX 1) The parties requested a written decision, including findings of fact and conclusions of law pursuant to the Act. (AX 1)

II. FINDINGS OF FACT

Petitioner testified that she currently lives in Nashville, Tennessee and works as a property manager for Ram Partners. (T. 10-11) In September 2016, Petitioner lived at 3001 West Addison Street, Chicago, Illinois with her husband. (T. 11) She testified that she obtained 2 years of college in addition to taking property management classes at Dale Carnegie. (T. 11) Prior to working for Respondent, Petitioner said she was a property manager for Zeman Homes. (T. 12) She started working for Respondent on February 15, 2016. (T. 12)

Job Duties

For Respondent, Petitioner testified that her duties included property manager, collections, sales, and developing the communities. (T. 12) Developing the communities included getting bids,

testifying at the local council, ordering and transporting manufactured homes into the communities. (T. 13) She said she had a staff of 5 people. (T. 13)

Accident

On September 15, 2016, Petitioner testified that she arrived at her work, 523 East 37th Avenue, Hobart, Indiana, around 8:30 am to start work at 9 am. (T. 15) She explained that Ravinia is a manufactured home community with 637 lots. (T. 15) On the morning of September 15, 2016, Petitioner testified that she spent her entire morning working on evictions. (T. 16) Petitioner testified that she was in the office with a facility director and the maintenance supervisor. (T. 16) Ms. Amelia Laura ("Amelia") from the City of Lake Station came in the office and said she was conducting an inspection in the community that were in the City of Lake Station. (T. 16) Petitioner told Amelia that she would follow her in her own vehicle but Amelia insisted she ride in her golf cart. (T. 16) Petitioner enter an electric golf cart that had no doors. (T. 17) PX 15 consisted of photographs of the electric golf cart that was taken by Petitioner approximately 1 month after the accident that was parked in the City of Lake Station's Municipal building. (T. 18)

Petitioner testified that as she was getting into the cart, Amelia stepped on the gas and she hit her head. (T. 19) When she woke up, Petitioner testified that she was slumped over to the left and her glasses were on her upper lip. (T. 19) She testified that she asked what happened as she was unable to see. (T. 19) Amelia responded by saying, "I bet you are going to sue now." (T. 19) Petitioner testified that she said she didn't care and just wanted to know what had happened to her. (T. 19) After a few minutes, Petitioner testified that she was able to gain her vision but her "hairline hurt so bad." (T. 19) Petitioner explained that Amelia continued to drive the cart and said that she needed to make a stop inside the community. (T. 20) Amelia asked Petitioner to get out of the cart. (T. 20) Petitioner testified that she attempted to get out of the cart but was "tripping over my own feet." (T. 20) Petitioner told Amelia that "something was wrong." (T. 20) Petitioner got back into the cart and Amelia dropped her off in the parking lot of Petitioner's office. (T. 20) Petitioner could not remember how long she was in the parking lot. (T. 20) Petitioner testified that her facility director Chris Poe ("Poe") found her in the parking lot. (T. 20-21) Petitioner testified that Poe asked her what happened and she told him. (T. 21) Once inside of her office, Poe called Jonathan Uritz ("Uritz"), a partner at Ravinia Communities LLC. (T. 21) Petitioner testified that she and Poe told Uritz what had happened to her. (T. 21) Petitioner left work and drove home in Chicago. (T. 22) She then called her doctor, Dr. Laura Wally. (T. 22-23)

Petitioner's Testimony and Medical History of Injury

Petitioner testified that she was an avid walker, walking about 5 to 6 miles a day. (T. 13) Prior to the accident, Petitioner testified she did not any traumatic injury to her head. (T. 13-14) Prior to the accident, Petitioner testified that she was not under any psychiatric treatment, not on a long-term medication for any mental conditions, not on any pain medication, not taking any narcotics on a regular basis. (T. 14) Prior to the accident, Petitioner testified that she loved to travel Internationally. (T. 15)

Petitioner testified that she first sought treatment at Advocate Illinois Masonic Emergency Room ("Advocate") in Chicago. (T. 23) She testified that she complained of brightness of the day causing

pain in her eyes, head pounding, nausea, dizziness, and began to stutter. (T. 23) Petitioner said she had CT scan and was referred to a concussion specialist, Dr. Luke Stephens. (T. 24) Petitioner testified that Dr. Stephens had her walking, closing her eyes, touching her nose, lifting a leg, and balancing on one foot. (T. 24) Dr. Stephens reviewed the CT scan and referred her to physical therapy. (T. 24) Petitioner believed that she had "a pretty bad concussion" and it would "take some time to work through it." (T. 24-25)

Petitioner testified that she followed up with physical therapy immediately. (T. 25) She said she participated in strengthening exercises, walking, balancing, stretches, and "memory type of items." (T. 25)

Petitioner testified that a couple of days after the accident, she started to experience what she would call as "episodes." (T. 25) Petitioner described an episode as feeling a change in her body with slurred speech, coordination was off, could not get a fork or spoon to her mouth, and arms and hands "failing up and down like a chopping motion." (T. 26-27) She demonstrated as both her left and right arms "sort of bending them in an aggressive manner, coming up from a 90-degree fashion, up and then down." (T. 27) In other episodes, Petitioner explained that she would have difficulty walking and sometimes, episodes were caused by noises. (T. 27) She had an incident at a restaurant after physical therapy when she was with her son - someone hit a bell at the counter 3 times that caused a "stirred inside of me, the speech, the arms, the flailing, all started again." (T. 27-28)

Petitioner testified that she last treated with Dr. Stephens around December 23, 2016 when workers compensation denied further treatment. (T. 28)

Petitioner testified that she was contacted by Julie Hicks from Worker's Compensation to schedule an appointment with Dr. Alan Shepard at Northwestern Medicine. (T. 29) At the time, Petitioner did not know who was paying for her medical bills. (T. 29) She said Respondent offered to pay but her bills kept piling up. (T. 29)

There was a stipulation that between December of 2016 and January 17, 2017, this matter was turned over to Respondent's Workers' Compensation insurance carrier, AMC Insurance. (T. 30)

Petitioner testified that she spoke to Dr. Shepard about a neuropsychiatric exam that was approved. (T. 31-32) She claimed that speech therapy was not approved. (T. 31) She further claimed that Dr. Shepard prescribed "something for the muscle spasms" that she was having in the back of her head. (T. 32) She testified that she only saw Dr. Shepard once. (T. 32) She then said she returned to Dr. Shepard to complete a sleep test several weeks later, a 24-hour EEG study. (T. 33)

From September to December of 2016, Petitioner testified that Athletico had her do neck exercises such as looking down as far as she could, chin to chest, left, right, up, down including strengthening. (T. 32)

Petitioner testified that she saw Dr. Timothy McManus, a neuropsychologist, at Ingalls Memorial Hospital. (T. 34) She testified that Dr. McManus gave her series of tests and ended up going to lunch with him in the cafeteria. (T. 34) She explained that during lunch, when she attempted to

reach for the pump of mustard, she could not "hit it." (T. 35) She explained that her arm/hand/eye coordination was off and Dr. McManus sat her down. (T. 35) He called for a wheelchair and transferred her to the emergency room. (T. 35) She further explained that when she woke up, Dr. McManus was sitting in her room. (T. 35) She believed that she had "an episode that had never been seen before." (T. 35) Petitioner testified that she was admitted to hospital on Monday and left on Friday. (T. 36) Dr. Kevin Fagan referred her to Rush University Hospital ("Rush") and she was taken to Rush by ambulance. (T. 36-37)

After arriving at Rush, Petitioner testified that she had an episode. (T. 37) Once she regained cognitive function, Petitioner said she was tired. (T. 38) She claimed that she arrived at Rush on Friday and was discharged on Sunday. (T. 38) She testified that through her stay at Rush, she was plugged into the electrodes and studied. (T. 38-39) She said she may have seen 5 to 6 doctors at Rush. (T. 39) She was told that she suffered left frontal lobe damage. (T. 39) She was prescribed with Celexa and referred to a psychologist. (T. 40) She testified that she was unable to work at this time. (T. 41)

PX 17 is a letter from Dr. Katherine Mary Daley at Rush clearing Petitioner to return to work full duty on February 23, 2017. (T. 41-42) Petitioner testified that she returned to work but was unable to perform her duties. (T. 42) She was unable to drive for 6 months or climb stairs. (T. 42) She testified that she moved into the community where she worked. (T. 42) She explained that she lived at the community from Monday to Friday and her daughter or her husband would pick her up for the weekend back to Chicago. (T. 43)

From March to May of 2017, Petitioner testified that she saw a psychologist, Dr. Adriana Bermeo-Ovalle ("Dr. Bermeo") at Rush. (T. 43-44) Petitioner claimed she was taking Celexa because her brain "no longer produced enough serotonin or any at all to keep me leveled" and to control her emotions. (T. 45) She believed she last saw Dr. Bermeo sometime in February or March of 2018. (T. 45)

Petitioner testified that between 2018 to present, she had 3 episodes. (T. 45) Petitioner claimed that she still sees Dr. Bermeo once a year to discuss her health. (T. 46)

Petitioner testified that she met with an independent medical examiner around August of 2017. (T. 46-47) She said she spent about an hour and no tests were done. (T. 47) Petitioner testified that she had an absolute loss of consciousness and an altered form of consciousness from the accident. (T. 48) She testified that her father passed away on January 31, 2017 during her treatment period. (T. 49) She further testified that she had experienced episodes prior to her father passing away. (T. 49)

Petitioner testified that she stopped working for Respondent on July 22, 2022 when she moved to Nashville to find another employment. (T. 50)

Petitioner believed she owed Ingalls about $37,000.00. (T. 51) Some of the bills were paid by Aetna, a group insurance plan. (T. 51-52) Petitioner confirmed that all entities listed in PX 2 were where she sought treatment. (T. 53)

On cross-examination, Petitioner confirmed that Respondent paid a full salary and accommodated her work restrictions while she was being treated until she was released to full duty. (T. 53-55) Respondent also provided Petitioner a place to stay when she could not drive. (T. 54) Petitioner testified that she had a bump on the front left side of her head but no bruises, scrapes, break in the skin, laceration, or bleeding from the accident. (T. 54-55) Petitioner testified that the cart was taller than her height which is 5'7". (T. 55-58) She said that she had to duck when entering the cart. (T. 58) After the accident, Petitioner said she could not continue to work but was able to drive herself from Hobart, Indiana to her home in Chicago which took about 30 minutes. (T. 58-59)

Petitioner disagreed with the medical records from Advocate dated September 16, 2016 that stated she had not lost consciousness. (T. 60) Petitioner presented with a headache but she believed it subsided because she was given medication at Advocate. (T. 63) Petitioner testified that she never used the word unconscious when describing her condition after the accident to Dr. Stephens, rather she said, "when I woke up." (T. 64) She claimed her husband drove her to the appointments with Dr. Stephens. (T. 65)

When asked about Dr. Stephens' record from October 4, 2016 that stated Petitioner reported symptoms were 90% improved regarding coordination and speech, she responded with, "I don't know how to answer, other than to say peaks and valleys." (T. 65-66)

Dr. Stephens' record from October 14, 2016 indicated, "she reports her symptoms are 90% improved." Petitioner testified that she did not disagree with this but that she believed, "that day was a good day." (T. 67)

The last time Petitioner saw Dr. Stephens was on November 24, 2016 when he referred her to speech therapy. (T. 67) She does not recall if this was because of her insistence. (T. 67)

Petitioner completed physical therapy on December 20, 2016. (T. 67-68) According to the notes from physical therapy, Petitioner "had returned to normal ambulation, normal stair negotiation, prior level of computer and cognitive work activities without increased symptoms." (T. 68) She did not disagree with this note. (T. 68) Petitioner agreed that the physical therapist recommended she seek psychological and emotional support counseling because she was experiencing some personal issues in her life that was causing increase stress. (T. 68-69) With regard to concussion, the physical therapist recommended home exercises once all physical therapy was completed. (T. 69) Petitioner did not disagree with the physical therapy discharge notes indicating that Petitioner's symptoms were 85% improved. (T. 70) She did say that she continued to have episodes. (T. 70)

Petitioner again testified that she experienced 3 episodes after being discharged from treatment. (T. 70-71) She claimed that she did not know what triggered the episodes but they were not triggered by stress. (T. 71) The physical therapy note indicated that Petitioner had an episode that was noted as being balance being off during Thanksgiving of 2016. (T. 71) She did not know what caused this episode. (T. 71-72) Another episode occurred after visiting Petitioner's father where she had difficulty concentrating, memory and vision. (T. 73-74) She disagreed that the several episodes occurred after a visit or contact with her father. (T. 74)

Petitioner testified that the first episode was within the days after the accident. (T. 75) She again testified to her experience of having the first episode. (T. 75) When asked if she reported having the first episode to Dr. Stephens on September 20, 2016, she said, "I should have." (T. 75-76) Petitioner claimed that she had additional episodes from September 20, 2016 to October 4, 2016. (T. 76) When asked if she reported these episodes to Dr. Stephens, she said, "I am sure I would have." (T. 76) She hoped that Dr. Steven's records indicated that she had involuntary movements, difficulty walking, and slurred language. (T. 76)

The therapy notes indicated that she had an episode on October 29, 2016 after a death in the family. (T. 77) Petitioner reported having an episode on November 3, 2016 at home on a couch. (T. 78) On November 15, 2016, Petitioner reported having an episode prior weekend after visiting her father. (T. 78) On November 21, 2016, Petitioner reported having another episode after visiting her father. (T. 78) Petitioner did not recall having an episode during Thanksgiving on November 29, 2016. (T. 78) Petitioner agreed that she was diagnosed with psychogenic non-epileptic seizures ("PNES"). (T. 78-79)

Petitioner agreed that she saw a neurologist, Dr. Shepard and had an EEG and MRI scan of her brain. (T. 79) Petitioner was aware that both studies proved negative. (T. 79) Petitioner confirmed that Dr. Shepard prescribed medication. (T. 79) She further confirmed that Dr. Shepard informed her that the episodes were stress-related and that she should see a psychologist or psychiatrist and consider neuropsychic testing. (T. 80)

Petitioner testified that one episode occurred while she was on the phone with a physical therapist from Athletico. (T. 80) However, she did not recall when it was. (T. 80) She recall driving on Addison Street on the phone with Stephanie from Athletico to make the next appointment. (T. 82) Petitioner said Stephanie asked her what was wrong with her voice because it was "garble and like an elevator." (T. 82) She immediately pulled over and asked Stephanie where she was. (T. 82) She did not know if this incident was documented in the notes from Athletico. (T. 82)

Petitioner said she did not have an episode while she was physically at Athletico or seeing Dr. Stephens or Dr. Shepard. (T. 80-81) She did have an episode in the presence of Dr. McManus in the cafeteria at Ingalls. (T. 81) After being admitted to Ingalls, several tests were completed but the 2 doctors she saw could not diagnose what was causing these episodes. (T. 83) Petitioner was given an option to either go to Rush or Northwestern and she chose to seek further treatment at Rush with Dr. Bermeo. (T. 83-84)

Petitioner confirmed that Dr. Daley referred her to Dr. Bermeo who she believed concluded the work-related accident to her condition of having PNES. (T. 88) Petitioner did not recall seeing Dr. Musil, a neuropsychiatrist. (T. 89)

Petitioner confirmed Dr. Bermeo's notes which indicated on May 11, 2017, she was back to normal, work performance was excellent and that her sales numbers had improved. (T. 90) The only recommendation from Dr. Bermeo was to refrain from driving at least 6 months following the last seizure. (T. 90)

The first time Petitioner saw a psychologist at Rush was 4 months after the last appointment with Dr. Burmeo on May 11, 2017. (T. 90-91) This psychologist was a post-doctoral candidate, Dr. John Burns. (T. 91) Dr. Burns treated Petitioner for post-traumatic stress disorder. (T. 91)

In July of 2018, Petitioner was given a prescription for Codeine after some dental works. (T. 92) She stated that she is allergic to Codeine that caused her to be sick for 3 days and was unable to take Celexa that caused her to have another episode. (T. 93)

Summary of Medical Records

Petitioner was initially seen at Advocate on September 16, 2016. (PX 3 pp. 27-34) Petitioner reported having various stresses in her life, with a relative who had recently died and her father who was ill and subsequently died.

At Advocate, Petitioner gave a history of headache for 24 hours, being struck on the top of the head by a doorframe while getting into a vehicle. She denied any loss of consciousness, any vision abnormalities, nor any nausea. Noted in the past medical history was that Petitioner underwent a partial thyroidectomy. Physical examination revealed normal range of motion and strength. Neurological examination revealed no focal deficit, normal sensory, negative speech, and normal coordination. There was some tenderness over the neck midline. Eye examination revealed normal movement. There was no indication of any type of abrasion or break of the skin. (PX 3 pp. 27-34) Petitioner underwent a CT scan of the cervical spine and brain which were unremarkable. (PX 3 pp. 35-36)

At Advocate on September 20, 2016, Petitioner reported that she had no loss of consciousness. She alleged, however, she had a change in mental status and coworkers commented that she was walking as if she was drunk. She complained of sensitivity to light as well as headaches.

Petitioner commenced physical therapy at Athletico Physical on September 27, 2016. (PX 6 pp. 88-92)

On October 4, 2016, Petitioner returned to Dr. Stephens. Petitioner reported 90% improvement in her symptoms. Petitioner reported her coordination and speech improved. (PX 5 pp. 11-12)

On October 29, 2016, Petitioner reported an episode to her therapist after the death in the family "which ha[d] been causing her more stress." (PX 6 pp. 58-59)

On November 3, 2016, Petitioner reported to her therapist she had an episode at home on her couch. (PX 6 pp. 54-55)

On November 15, 2016, Petitioner reported an episode after visiting with her father who had been kicked out of assisted living. (PX 6 pp. 44-45)

On November 21, 2016 Petitioner reported to her therapist that she had another episode after visiting her father. (PX 6 pp. 41-43)

On December 20, 2016, Petitioner was discharged from therapy. Petitioner was advised she "may benefit from additional referral for psychological emotional support . . . ." Furthermore, Petitioner's therapist noted Petitioner "seem[ed] to have increased symptoms with emotional triggers." (PX 6 pp. 20-22)

On January 9, 2017, Petitioner underwent an evaluation with Dr. Shepard. Petitioner presented for a "work comp referral re head trauma." Petitioner reported hitting her head on a golf cart. Petitioner reported presenting to the emergency room and undergoing a CT scan. Petitioner reported vestibular therapy which helped. Dr. Shepard noted "[t]he only thing that concerns her now are episodes, triggered by emotional stress." Petitioner reported working full time and driving to and from work. Petitioner alleged difficulty finding words. Petitioner reported she was sent to a neurologist to help with "everyday issues." Dr. Shepard opined Petitioner's "episodes are stress related," and recommended Petitioner see a psychologist/psychiatrist and possibly neuropsychic testing. (RX 2)

On January 20, 2017, Petitioner underwent an MRI of the brain at Dr. Shepard's referral. The radiologist indicated the MRI revealed no evidence of acute ischemia, infarction, mass or intracranial hemorrhage. However, there were multiple patchy T2/FLAIR hyperintense signal foci throughout the cerebrum are nonspecific which most likely represent chronic microvascular ischemic changes. (RX 4)

On February 1, 2017, Petitioner underwent an EEG referred by Dr. Shepard. The EEG was within normal limits. (RX 3)

Petitioner underwent a neuropsychological evaluation by Dr. McManus on February 13, 2017. (PX 8 pp. 138-139) She gave a history of falling forward, striking her head above the left eye on the cart and that she was out for a while. There was also no evidence of bruising, laceration, or break of the skin in the emergency room record.

Petitioner advised Dr. McManus took her off work for one month and returned to work part time and was working five days a week around Christmas. She alleged to being slower and being stressed. Dr. McManus noted testing done by Dr. Fagan. (PX 8 pp. 138-139) His examination revealed normal findings with her having normal speech. (PX 8 pp. 134-135)

After 150 minutes of the interview Dr. McManus and Petitioner took a lunch break. (PX 8 pp. 138-139) During the lunch break, Dr. McManus noted that Petitioner was shaking her arms and had a myoclonic jerking. (PX 8 pp. 138-139) She alleged since her injury she had been having difficulty with memory and headaches as well as spells with involuntary movements. Noted in the medical history was the fact that Petitioner had hypothyroidism. She denied having her thyroid checked in the prior 2 years. (PX 8 pp. 138-139) CT of the head and MRI showed no acute findings, and Petitioner admitted to driving prior to this latest episode. (PX 8 p. 140) It was deemed that she was near back to baseline with activities of daily living. The EEG did show a focal swelling on the left but did not lead to a definitive diagnosis. Petitioner then returned and completed the testing. Petitioner referenced stress over her father dying and a relative from an aneurysm. She was

discharged with a differential diagnosis of post-traumatic seizures or post-traumatic paroxysmal dyskinesias or functional deterioration. (PX 8)

Dr. McManus believed Petitioner had a psychogenic nonepileptic seizure disorder while at the facility. He indicated psychological testing of emotional and personality factors contributing to the diagnosis would be useful. (PX 8 pp. 138-139)

On February 17, 2017, Petitioner presented to neurologist, Rush University Medical Center. (PX 12 pp. 334-415) Petitioner reported a history of prior concussions wherein she alleged she struck her head against a moving golf cart. She alleged that she was presenting for spells. Her spells began "a few days after" a reported concussion at the end of 2016. Petitioner alleged the spells occurred two to three times a day. Petitioner alleged that during her spells she stared straight ahead with a blank stare and was unaware of having spells. (PX 12 pp. 334-415)

Petitioner alleged that her arms were going into a karate-chopping maneuver with similar kicking motions. Petitioner reported the episodes were shorter in duration but are now in excess of ten minutes. Petitioner reported no history of febrile seizures or brain infections. She also alleged no family history of seizures. Petitioner underwent continuous video/EEG monitoring which was noted to be within normal limits. Petitioner reported excessive diffuse beta activity was present which the reading physician stated could be due to a benzodiazepine effect. No seizures were recorded. (PX 12 pp. 334-415)

On February 18, 2017 and February 19, 2017, Petitioner underwent continued monitoring and EEG. She did not exhibit any epileptiform activity. No seizures were visualized. Petitioner's continuous EEGs were discontinued. (PX 12 pp. 366-67)

Petitioner reported a history of depression, anxiety, mania, and insomnia. Furthermore, during a mental status examination after the conclusion of the EEG, Petitioner was noted to have abnormal and slow attention/concentration. She was noted to be slow to respond and could not do simple math. She was diagnosed with spells and suspicion of psychogenic non-epileptic seizures (PNES) based upon a description of her family members. Petitioner was released to regular work without restrictions effective February 23, 2017. (PX 17)

On March 6, 2017, Petitioner presented to the Department of Neurological Sciences, Section of Epilepsy, of the Rush University Neurology Department for an evaluation of her alleged psychogenic event or PNES. (PX 12 pp. 312-319)

Petitioner alleged that in September 2016, she was getting into a golf cart when the cart started to move and she struck her head on the frame of the vehicle. Petitioner reported loss of consciousness but reported that she did not know for how long. Petitioner alleged that she "woke up" sometime later to find herself inside the vehicle. Petitioner alleged that she had headache, blurred vision, and confusion. Petitioner reported she subsequently presented to the emergency department and was diagnosed with a concussion.

Three days after the accident, Petitioner alleged her first episode. Petitioner alleged she awoke at 4:30 am and felt hot and cold at the same time. Petitioner alleged her arms were violently moving with sudden abrupt shaking. Petitioner alleged that she could not speak normally, and she was speaking "gibberish." She reported the symptoms lasted on and off for hours. Petitioner then alleged that these symptoms occurred every other day lasting between 30 and 60 minutes a day. Petitioner reported that her symptoms became more severe in hospital or emergency department settings. Petitioner reported in February 2017 her treatment was transferred to Rush for a specific diagnosis and she was diagnosed with PNES. Petitioner reported that since she last left the hospital, her symptoms were greatly diminished and were brief and mild. Petitioner reported that she felt excellent and wanted to get treatment for PNES. Petitioner's prior MRI at Ingalls was reported to be normal. (PX 12 pp. 312-319)

On examination, Petitioner was noted to be depressed and anxious. Petitioner had no suicidal ideation. Petitioner was noted to be awake, alert, and oriented to person place and time. Her memory was normal, as well as normal attention/concentration and language. Physical examination was within normal limits. Her finger-to-toes and heel-to-shin movements were well coordinated. Petitioner was diagnosed with PNES. Petitioner was referred for neuropsychological treatment. She was to follow-up in three months or earlier as needed. (PX 12 pp. 312-319)

May 11, 2017, Petitioner presented to Dr. Bermeo at Rush. (PX12 pp. 290-303) Petitioner alleged no spells/episodes since her last visit. Petitioner reported that she was feeling great and was "back to herself." Petitioner reported her productivity at work was great. Petitioner reported that she and her family agreed that she is "fully back to normal." Petitioner was advised to follow seizure precautions for six months. Petitioner's physical examination was within normal limits. Petitioner was advised follow-up psychotherapy following her mild traumatic brain injury. (PX 12 pp. 290-303)

On September 20, 2017, Petitioner presented to Rush University Medical Center Department of Behavioral Sciences Outpatient Psychotherapy Services. (PX 12 pp. 251-56) Petitioner presented to Dr. Kenleigh Raden-Foreman for a referral from her neurologist for an evaluation of conversion disorder. Petitioner's main complaints were listed as psychogenic non-epileptic seizures and post-traumatic stress disorder. Dr. Raden-Foreman reported Petitioner was appropriately alert and oriented. Petitioner's mood varied appropriately during her interview depending on the topic. Her speech and thought processes were normal. (PX 12 pp. 290-303)

Petitioner reported she was diagnosed with PNES in February of 2017. She reported spells where she would uncontrollably convulse for up to 60 minutes. Petitioner also reported she experienced "space out" seizures wherein she would remain silent and froze for up to an hour. Petitioner alleged seeing prior neurologists and neuropsychologists at several hospitals prior to being transferred to the epilepsy monitoring unit at Rush. Petitioner reported she has been seizure-free since March 3, 2017. Petitioner alleged she is 98% back to normal but would like to regain the last 2%. Petitioner alleged symptoms of PTSD including intrusive memories and dreams, avoidance and internal and external reminders of the events, negative change in cognition or mood, and alterations in arousal and reactivity after her purported head injury. Dr. Rodden-Foreman also noted that Petitioner

alleged symptoms of depression and anxiety. Dr. Rodden-Foreman found that these symptoms were likely affiliated with PTSD rather than separate depressive or anxiety disorders. (PX 12 pp. 290-303)

A detailed social history was taken of Petitioner. Petitioner reported that she was born and raised in Chicago and was the middle child of five siblings. Petitioner reported that her father was a Chicago firefighter, and her mother was a homemaker. Petitioner reported a pleasant childhood and described close relationships with her family members. Petitioner reported that her parents divorced when she was 20 and she "took her mother's side" at that time. However, she stated that she and her father remained close until his death in January of 2017. (PX 12 pp. 290-303)

Petitioner further reported that her husband was no longer attracted to her after seeing her go through her condition and wanted to end the marriage. She reported that they were living separately but he did not file for a divorce. The separation became a significant source of stress for Petitioner who reported that her husband had been one of her primary sources of support. Petitioner alleged she graduated high school and attended some college but did not obtain a degree. Petitioner reported working as a regional manager for the Housing Community. Petitioner alleged that the head injury she sustained led to the development of other symptoms while she was at work and potentially occurred as a result the action of another female co-worker, although Petitioner could not state the same with certainty as she alleged she was partially amnesiac around the specific events that resulted in her injury. Petitioner reported this caused occasional anxiety at work as well as significant anger directed at the unspecified co-worker who Petitioner blamed for her injury. (PX 12 pp. 290-303)

Petitioner reported that her current depressive symptoms were mild to moderate. Her anxiety symptoms were moderate, and she was noted to have been above the clinical "cut-off" for PTSD. (PX 12 pp. 290-303)

Dr. Rodden-Foreman opined that Petitioner was also experiencing distress that met the criteria for PTSD. Petitioner was diagnosed with conversion disorder with attacks and seizures and post-traumatic stress disorder. Petitioner was advised to undergo weekly individual cognitive behavioral and prolonged exposure therapy. (PX 12 pp. 290-303)

Petitioner began her course of psychotherapy at Rush University Psychology. Petitioner initially presented for psychotherapy on September 25, 2017. (PX 12 pp. 248-250) She stated that she was "cheerful" and within normal limits. Petitioner's behavioral observations were also within normal limits. Petitioner was advised to continue psychotherapy on a weekly basis.

On October 2, 2017, Petitioner returned to Rush for psychotherapy treatment. Petitioner was again noted to be within normal limits with a cheerful mood and affect. However, Petitioner reported significant anxiety with the potential of having another seizure. She was noted to have symptoms relative to post-traumatic stress associated with PNES. Petitioner was advised to continue psychotherapy treatment. (PX 12 pp. 245-47)

On October 9, 2017, Petitioner returned for psychotherapy. Petitioner's mental status and behavioral observations were within normal limits. She was counseled on exposure therapy. She was noted to be above the clinical "cutoff" for PTSD scoring 62 out of 80 per the DSM-V checklist. Petitioner's diagnoses included conversion disorder with attacks or seizures and post-traumatic stress disorder. She was advised to continue psychotherapy as instructed. (PX 12 pp. 242-244)

On October 16, 2017, Petitioner returned for psychotherapy. Her mental status and behavioral observations were noted to be within normal limits. Petitioner reported completing her "homework" of listening to her last session's exposure exercise daily. Petitioner voiced anger with the individual who purportedly caused her injury. Petitioner was instructed to continue therapy as previously indicated. (PX 12 pp. 239-241)

Petitioner underwent psychotherapy sessions on October 23, 30, 2017; November 6, 2017, and November 13, 2017. During these sessions, Petitioner was noted to have normal mental and behavioral status. Petitioner talked about varying stressors in her life, including an upcoming trip to Europe and concerns regarding the trip. Petitioner's examination was within normal limits. However, Dr. Rodden-Foreman found Petitioner to be below the clinical "cutoff" for PTSD at this session. Petitioner's score was 35 out of 80 for PTSD. Petitioner's next session was noted to be in three weeks after her vacation. (PX 12 pp. 222-238)

On December 4, 2017, Petitioner returned for psychotherapy. Petitioner reported that while in Italy, she fell and broke her foot. Petitioner reported feeling anxious and depressed following her injury. She was once again found to be above the clinical "cutoff" for PTSD per the DSM-V checklist. Petitioner's diagnoses remained unchanged. Petitioner was advised to continue weekly psychotherapy sessions as instructed. (PX 12 pp. 218-221)

On December 13, 2017, Petitioner attended a psychotherapy session. She alleged increased anxiety and recurrence of nightmares related to the previous trauma. Dr. Rodden-Foreman opined that Petitioner's symptoms no longer met the criteria for PTSD but represented an adjustment disorder. Petitioner was advised she would benefit from cognitive restructuring to address automatic thoughts that perpetuate her anxiety and anger. Petitioner's diagnoses remained unchanged, and she was instructed to continue psychotherapy on a weekly basis. (PX 12 p. 214)

On December 18, 2017, Petitioner returned to Dr. Rodden-Foreman for her psychotherapy session. Petitioner voiced concerns about being in crowded spaces and she did not want to be with her friends or family. Petitioner reported not being in the mood for Christmas decorating. Her diagnoses remained unchanged, and she was advised to continue with her psychotherapy sessions. (PX 12 p. 211)

On January 3, 2018, Petitioner returned to Dr. Rodden-Foreman for her psychotherapy session. Petitioner alleged recent interpersonal issues at work. She described the incident, which was not specified within the record, and discussed an upcoming trip which she was going to take on her own to assist in restoring her independence. Petitioner alleges she was pleased with the progress and hoped that she would continue improving. Her diagnoses were unchanged and was advised to continue psychotherapy weekly. (PX 12 pp. 207-210)

On January 10, 2018, Petitioner attended a psychotherapy session with Dr. Rodden-Foreman. Petitioner reported some interpersonal issues at work. Petitioner reported that the one-year anniversary of her father's death was approaching. Petitioner was counseled on her grief. Petitioner was advised to continue psychotherapy as instructed. (PX 12 p. 203)

Petitioner attended psychotherapy sessions on January 15, 22, 29, 2018 and February 12, and 26, 2018. (PX 12 pp. 185-202)

On February 26, 2018, Petitioner reported that she was recently traveling and had a seizure. Petitioner reported she stopped taking her SSRI medications which control seizures, in order to take medication for an upper respiratory infection. Petitioner reported that after being offered medication for almost a week she had a mild seizure. Petitioner was instructed to continue attending psychotherapy sessions as instructed. She was to return in two weeks after her trip. (PX 12 pp. 185-87)

Petitioner attended psychotherapy sessions on March 5, 19, and March 26, 2018. On March 26, 2018, her scores on the PCL-5, PHQ-9, and GAD-7 had significantly decreased since initiating treatment. All of which were noted to be below the diagnostic “cutoff” points. The diagnoses were conversion disorder with attacks and seizures and adjustment disorder with mixed disturbance in emotions and conduct. Petitioner was advised to continue psychotherapy as previously instructed. (PX 12 pp. 175-184)

On April 2, 2018 Petitioner saw Dr. Rodden-Foreman. Petitioner voiced frustrations of her experience that still bothered her, including being doubted and invalidated by doctors prior to her diagnosis of PNES. Petitioner was instructed that her psychotherapy sessions would be every other week. (PX 12 pp. 157-59)

On April 16, and April 30, 2018 Petitioner attended psychotherapy sessions. By April 30, 2018, Petitioner reported she did not have any significant issues. Petitioner planned to schedule a maintenance session in one month, but intended to cancel the same if she felt she did not need to attend the session. (PX 12 pp. 145-150)

On June 4, 2018, Petitioner returned to Dr. Rodden-Foreman for on-going psychotherapy. At this time, Petitioner's psychotherapy was terminated. Petitioner's PNES was noted to be in remission for over 12 months. Petitioner was noted to have achieved her psychotherapy goals and no longer needed further treatment. Petitioner's diagnosis was conversion disorder with attacks/seizures. (PX 12 p. 137)

On July 31, 2018, Petitioner presented to Rush University Medical Center emergency department. Petitioner reported that she had a seizure. Petitioner's husband reported she had undergone a dental procedure 1-1/2 weeks prior. He reported that she had been unable to eat because she was nauseous and vomiting. Her husband reported that while driving to Rush from Indiana, Petitioner closed her eyes and then started “flailing” her arms and legs and was thrusting back and forth and began screaming. Petitioner's husband indicated that he was uncertain if she lost consciousness, and the episode lasted a few minutes. Her husband denied any recent trauma or falls. He reported a prior

history of a seizure disorder and that Petitioner was taking antiepileptic medication. He indicated that Petitioner's last seizure was 1-1/2 years ago. (PX 12 pp. 94-136)

Upon examination, Petitioner was noted to be disoriented with abnormal coordination. She was flailing her extremities and moving side to side and grunting on her hospital bed and the episode lasted approximately three minutes. Thereafter, she became alert and cooperative. Petitioner alleged facial pain after the dental procedure. (PX 12 pp. 94-136)

On January 6, 2020, Petitioner presented to Rush. Petitioner reported she was involved in a motor vehicle accident (rear ended) at which time she was seen at Swedish Covenant Hospital emergency room and underwent a CT scan which was negative. Petitioner alleged she lost consciousness. (PX 12 pp. 27-41) Upon examination, Petitioner was positive for back pain and headaches. (PX 12 pp. 27-41)

On January 22, 2020, Petitioner returned to her primary care physician at Rush. (PX12:2-26). Petitioner alleged headaches and reported they occurred a few times a week. Ibuprofen does not relieve her headaches. Petitioner reported that it was affecting her vision and therefore she was missing work. Petitioner alleged minimal nausea and no vomiting. Petitioner's physical examination was within normal limits. She was diagnosed with a post-concussion headache after her December 14, 2020 motor vehicle accident. (PX 12 pp. 2-26)

Section 12 Independent Medical Examination: Dr. Elizabeth Kessler

On August 16, 2017 Petitioner presented for a Section 12, independent medical examination with Dr. Kessler at Respondent's request. (RX 1)

Petitioner gave a history of having one foot in the golf cart when the individual started it, resulting in her apparently striking her head, although, she had no recollection of same. She then gave a litany of her symptomatology, including light sensitivity, headaches, and cognitive difficulties.

Dr. Kessler indicates, at best Petitioner sustained a contusion to her head and a cervical strain which would have required minimal treatment and that the physical therapy beyond one day and subsequent testing was not necessary. Dr. Kessler indicated Petitioner's complaints could not be explained by the incident as there is no evidence of Petitioner having a true concussion or any positive abnormalities on exam. Dr. Kessler noted that Petitioner's symptoms resolved once she was treated for nonepileptic seizures. Dr. Kessler opined that Petitioner's conditions were not related to the accident. (RX 1)

Petitioner's Current Condition

Petitioner testified that she is not enrolled in Medicare currently. (T. 50) She takes Celexa every day and is in contact with Dr. Bermeo. (T. 93) She last saw Dr. Bermeo in-person in 2017. (T. 94) Petitioner testified that Dr. Bermeo informed her that she wanted the next appointment to be in-person. (T. 94)

Petitioner testified that Althletico still calls her to check the status of this case, but she believed that other providers wrote the bills off. (T. 94-95)

Petitioner claimed that she was unable to travel but admitted to going to Paris in 2018 after her therapy. (T. 95-96) When asked if she is able to continue with her hobbies and activities, she said, "Now I am." (T. 96)

III. CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

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

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her to be not credible. Petitioner made inconsistent statements and demonstrated symptom magnification. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did find material contradictions that would deem the witness unreliable regarding her symptoms and what caused her symptoms.

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).

The Arbitrator has carefully considered Petitioner's testimony in conjunction with her medical records. Based upon the same, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to the September 15, 2016 work-related accident partially. The Arbitrator further finds that Petitioner reached maximum medical improvement and her condition resolved as of February 23, 2017 when Dr. Daley, Petitioner's treating physician, cleared her to return to work full duty.

The Arbitrator finds that Petitioner's PNES and PTSD conditions are not related to the work-related accident. While Petitioner testified at trial that her PNES "episodes" began days after the work accident, the medical records failed to document any such "episodes."

The Arbitrator finds Petitioner's testimony with regards to her PNES condition less than credible in terms of the cause and onset of those symptoms in related to the work accident. The Arbitrator finds the medical records to be more persuasive and accurate than Petitioner's testimony. The Arbitrator adopts Dr. Shepard's opinion that Petitioner's "episodes are stress related" and Dr. Kessler's opinion that Petitioner 's PNES and PTSD conditions were not related to the accident.

Furthermore, the Arbitrator notes that no medical expert testified or offered any medical opinion in the records that the PNES or PTSD conditions were related to the work accident. At best, it is suggested that Petitioner's condition could be related by Dr. Burns' graduate residence in a note. Otherwise, the record is devoid of any such credible or persuasive medical opinion.

The Arbitrator notes that Petitioner sustained an undisputed work accident on September 15, 2016. The evidence at trial was that Petitioner was entering a golf cart when she struck her head on the frame of the cart. There were no lacerations to the head nor bleeding from the incident. Amelia who was the driver of the golf cart, by Petitioner's own admission, did not even inquire if she needed assistance, indicating the relatively *de minimis* mechanism of injury alleged. In fact, no ambulance was called and Petitioner was able to drive home from Hobart, Indiana to Chicago.

The following day, Petitioner sought treatment at Advocate. Petitioner underwent CT scans of the neck and brain. Both were completely unremarkable for any acute injuries. Thereafter, Petitioner admitted to 90% improvement in her symptoms to Dr. Stephens within weeks of the accident.

Petitioner continued a course of therapy relative to her concussion. Petitioner reported experiencing numerous "episodes" which were essentially triggered due to personal issues. (T 77-78) Dr. Shephard, a neurologist, also opined that the "episodes" were related to emotional stress and not related to the work accident. (RX 2) Furthermore, the diagnostic studies obtained in January and February of 2017 failed to document an ongoing issue related to the mild concussion. (RX 2)

After review of the medical records, witness testimony, and record as a whole, the Arbitrator concludes that Petitioner's concussion is causally related to the accident. However, the Arbitrator finds that Petitioner reached MMI from her concussion on February 23, 2017 when Dr. Daley

returned her to work full duty. The Arbitrator finds Petitioner's treatment after February 23, 2017, was related to personal conditions, as documented by Dr. Shepard's January 9, 2017 notes. The Arbitrator finds that Petitioner's neurological condition as a result of the September 15, 2016 date of accident had stabilized and she was able to continue working for Respondent earning a full salary. In support of this finding, the Arbitrator adopts the opinions of Drs. Shepard, Kessler, and Daley for the same reasons as indicated above.

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

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

Having found that Petitioner's current condition of ill-being terminated as of February 23, 2017, 2016, the Arbitrator denies Petitioner's request for an award of medical bills for treatment after this date.

Petitioner testified that other than Athletico bills, other providers have written off unpaid bills. The Arbitrator finds that all other bills after February 23, 2017 were not related to the work accident. Therefore, the Arbitrator awards the medial bills for Athletic for service dates from September 27, 2016 through December 20, 2016 and any other bills for treatment up to February 23, 2017, pursuant to the medical fee schedule Sections 8(a) and 8.2 of the Act.

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

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

Under Section 8.1b(b)(i), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The statute does not require the claimant to submit an impairment rating. It only requires that the Commission consider such a report if in evidence and regardless of which party submitted it. See *Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n*, 2015 IL App (5th) 140445WC, ¶ 17, 43 N.E.3d 556. Therefore, the Arbitrator gives no weight to this factor.

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes that Petitioner was employed as a property manager. The Arbitrator notes Petitioner continued to work for Respondent through her full duty release to work from Rush on February 23, 2017. Petitioner did not testify as to any issues regarding her injury and her inability to perform her job duties. Arbitrator therefore gives greater weight to this factor.

Under Section 8.1b(b)(iii), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 56 years old at the time of the accident. See *Flexible Staffing Services v. Illinois Workers' Compensation Commission*, 2016 IL App (1st) 151300WC (1st Dist. 2016) (holding that the Commission can make reasonable inferences from the medical evidence as it relates to how the claimant's age affects his disability). Petitioner suffered a minor concussion that resolved within 3 months from the accident. The Arbitrator gives less weight to this factor.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes that Petitioner continued to work for Respondent earning full wages during her treatment. The Arbitrator further notes that Petitioner moved to Tennessee and found alternate employment without any issue. There was no testimony as to Petitioner's current earning. Accordingly, the Arbitrator therefore gives no weight to this factor.

Under Section 8.1b(b)(iv), evidence of disability corroborated by the treating medical records, the Arbitrator finds that Petitioner suffered a mild concussion that resolved within 3 months from the accident. The Arbitrator finds that Petitioner reached maximum medical improvement on February 23, 2017 when Dr. Daley returned her to work full duty. 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 3% loss of use of the person as a whole, pursuant to §8(d)2 of the Act which corresponds to 15 weeks of permanent partial disability benefits at a weekly rate of $709.61.

It is so ordered:

Jennifer Bae

Arbitrator Jennifer Bae

November 12, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	25WC004914
Case Name	INSURANCE COMPLIANCE v. DW TREE LLC AND DREW WELLS (INDIV/PRES) OF DW TREE LLC
Consolidated Cases	
Proceeding Type	
Decision Type	Commission Decision
Commission Decision Number	25IWCC0240
Number of Pages of Decision	5
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Casey Fitzgerald
Respondent Attorney	

DATE FILED: 5/28/2025

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
)
COUNTY OF MADISON)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ILLINOIS WORKERS' COMPENSATION COMMISSION, INSURANCE COMPLIANCE DIVISION	)	
Petitioner,	)	
vs.	)	25 WC 004914
DREW WELLS D/B/A DW TREE LLC,	)	
Respondent.	)	

PETITIONER'S BRIEF AND PROPOSED DECISION

Petitioner, the Illinois Workers' Compensation Commission, Insurance Compliance Department, brings this action, by and through the Office of the Illinois Attorney General, against the above captioned Respondent, alleging violation of Section 4(a) of the Workers' Compensation Act. Proper and timely notice was provided to Respondents and a hearing was held before Commissioner Marc Parker in Collinsville, Illinois on May 13, 2025. No one appeared on behalf of Respondent. Mr. Wells of DW Tree LLC was served with timely and proper notice.

Petitioner alleges that Respondent knowingly and willfully lacked workers' compensation insurance coverage from April 9, 2019 through August 19, 2020, August 21, 2021 through August 23, 2021, and August 21, 2022 through February 13, 2024 in violation of Section 4(a) of the Workers' Compensation Act. Petitioner seeks the maximum fine allowed under the act, $500.00 per day for each of the 1,180 days DW Tress LLC did business and failed to provide coverage for its employees, which totals $590,000.00.

The Workers' Compensation Commission Insurance Compliance Department Notice of Non-Compliance and Notice of Insurance Compliance Hearing states that DW Tree LLC was not in compliance with the requirements of Section 4(a) of the Act from April 9, 2019 through August 19, 2020, August 21, 2021 through August 23, 2021, and August 21, 2022 through February 13, 2024. After considering the entire record, the Commission finds that Respondent knowingly and willfully violated Section 4(a) of the Act and Section 7100.100 of the Rules Governing Practice before the Illinois Workers' Compensation Commission, from April 9, 2019 through August 19, 2020, August 21, 2021 through August 23, 2021, and August 21, 2022 through February 13, 2024. The Commission finds, after reasonable notice and hearing, Respondent knowingly and willfully failed or refused to comply with the provisions of Section 4(a) of the Act and 7100.100(b) of the Rules Governing Practice before the Illinois Workers' Compensation Commission. The Commission assesses a civil penalty under Section 4 of the Act in the sum of $590,000.00 against Respondent for the reasons set forth below:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Petitioner presented Michael Cummins, a Compliance Investigator for the Workers' Compensation Compliance Division of the Illinois Department of Insurance, as a witness at the hearing on May 13, 2025.

2. Investigator Cummins testified he has worked for the Commission for 11 years and his duties include investigating whether or not employers are providing workers' compensation insurance and protection for their employees according to the Illinois Workers' Compensation Act. (T. 5).

3. Upon Investigator Cummins' investigation, DW Tree LLC was found not to have workers' compensation insurance. (T. 5-6).

4. Petitioner's Exhibit 2 is a certified mailing from the Office of the Illinois Attorney General indicating Drew Wells was serviced with a Notice of Insurance Compliance Hearing on May 5, 2025. (PX2).

5. Investigator Cummins testified that DW Tree LLC was located in Collinsville, Illinois. (T. 7).

6. Investigator Cummins testified he conducted additional steps in his investigation of DW Tree LLC. (T. 8-10). Investigator Cummins searched several databases that indicate employer's revenue and insurance history. (T. 8-10). Investigator Cummins searched the National Council on Compensation Insurance and it indicated that DW Tree LLC was completely without workers' compensation insurance April 9, 2019 through August 19, 2020, August 21, 2021 through August 23, 2021, and August 21, 2022 through February 13, 2024. (T. 12). Investigator Cummins concluded that DW Tree LLC was operating for an extended period of time in violation of the Workers' Compensation Act. (T. 12).

7. DW Tree LLC never provided the Workers' Compensation Compliance Division with proof they had workers' compensation insurance for the period of non-compliance.

8. The Workers' Compensation Compliance Division requested insurance information on DW Tree LLC from the National Council of Compliance Insurance (NCCI). (T. 12). NCCI investigated DW Tree LLC and certified that DW Tree LLC did not have workers' compensation insurance for the period of April 9, 2019 through August 19, 2020, August 21, 2021 through August 23, 2021, and August 21, 2022 through February 13, 2024. (PX3, T. 11). The Commission notes the NCCI certification in this case is prima facie proof Respondent did not have the required workers' compensation insurance for the above period. (Rule 7100.100(d)3(D) of the Rules Governing Practice before the Illinois Workers' Compensation Commission).

9. The Office of Self-Insurance conducted an investigation and determined that DW Tree LLC was not self-insured with the State of Illinois, such that they would have not needed workers' compensation insurance. (PX4). The Office of Self-Insurance provided a certification of this, finding that DW Tree LLC was not self-insured. (PX4).

10. Respondent was employing at least two, and likely more, employees during the period of non-compliance. (T. 13).

11. The Illinois Department of Revenue provided certified records showing DW Tree LLC was reporting revenue during the period of non-compliance while they were in operation. (PX5). This indicates that DW Tree LLC was in fact operating and generating revenue during the period of non-compliance.

12. The Worker's Compensation Compliance Division determined that DW Tree LLC did not have workers' compensation insurance for the period of non-compliance from April 9, 2019 through August 19, 2020, August 21, 2021 through August 23, 2021, and August 21, 2022 through February 13, 2024, despite the business being in operation during that time.

13. Investigator Cummins found, for the period of non-compliance from April 9, 2019 through August 19, 2020, August 21, 2021 through August 23, 2021, and August 21, 2022 through February 13, 2024, Respondent was non-compliant for a total of 1,180 days. The fine for this violation is $500 a day as each day is considered a fresh violation of the Act, so the total requested fine for non-compliance is $590,000.

14. The total amount of fines being asked to be found against Respondent DW Tree LLC is $590,000.00.

Respondent knowingly and willfully violated Section 4(a) of the Act. Nevertheless, this Commission analyzes here the culpability of DW Tree LLC and the applicability of Section 4(a). Section 4 of the Act requires all employers of at least one employee who come within the provisions of Section 3 of the Act, and any other employer who shall elect coverage under Section 2 of the Act, to provide workers' compensation insurance for the protection of their employees. 820 ILCS 305/4. Common law liability of employers to injured employees has been replaced in this state by the workers' compensation system.

The evidence in this case shows that DW Tree LLC had employees during the period of non-compliance. Investigator Cummins testified DW Tree LLC was engaged in business during the period of non-compliance, thus bringing DW Tree LLC within the automatic coverage provisions of the Act as a "business or enterprise in which goods, wares or merchandise are produced, manufactured or fabricated." 820 ILCS 305/3(16).

Under Section 4(a) of the Act, Respondent may elect to apply for approval as a self-insurer, insure his liability to pay such compensation in some insurance carrier authorized to do such insurance business in the State or make other provision, satisfactory to the Commission for the securing of the payment of compensation provided for in the Act. The Respondent in this case did not seek to obtain self-insurer status, obtain traditional workers' compensation insurance, or make other provisions with the Commission.

The next consideration is DW Tree LLC's knowing violation of Section 4(a) of the Act and the penalty amount appropriate to assess. It is clear that DW Tree LLC was aware and understood that it was required to obtain workers' compensation insurance for its employees.

This Commission cannot tolerate, nor allow, the taxpayers of this State to endure a business operating without insurance where an employee is injured arising out of his work and in the course of his employment.

In considering the appropriate penalty, other evidence in aggravation includes that the total period of non-compliance is 1,180 days, no brief amount of time. Respondent's failure to carry workers' compensation insurance for a period of over three years is a flagrant and willful violation of the law that should be punished by the maximum penalty allowed under the Act.

This Commission can, through this case, deter other businesses from disregarding the insurance laws of this State by exacting a severe penalty commensurate with the conduct of DW Tree LLC. For the forgoing reasons, and after considering the entire record, the Commission finds that Respondent was operating under and subject to the Workers' Compensation Act under Section 3 and was an employer during the period of non-compliance of April 9, 2019 through August 19, 2020, August 21, 2021 through August 23, 2021, and August 21, 2022 through February 13, 2024, as denoted in Section 1 of the Act. The Commission finds that Respondent has knowingly and willfully failed to comply with the requirements of Section 4(a) of the Act and shall be assessed penalties under Section 4(d) of the Act. The Commission finds Respondent knowingly and willfully was in non-compliance with Section 4 of the Act for a period of 1,180 days and shall pay a total penalty of $590,000.00 under Section 4 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent, DW Tree LLC, pay to the Illinois Workers' Compensation Commission the sum of $590,000.00 pursuant to Section 4(d) of the Act.

Marc Parker 5/28/2025

Commissioner Marc Parker

Illinois Workers' Compensation Commission

MAY 28 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC025938
Case Name	Amanda Larsen v. Village of Carol Stream CSPD
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0241
Number of Pages of Decision	15
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Daniel Murphy
Respondent Attorney	Daniel Arkin

DATE FILED: 5/29/2025

/s/Maria Portela, Commissioner

Signature

25IWCC0241

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

AMANDA LARSEN,

Petitioner,

vs. NO: 17 WC 25938

VILLAGE OF CAROL STREAM and CSPD,

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 causal connection, medical expenses, permanent partial disability benefits and evidentiary rulings and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission affirms the Arbitrator's findings with regard to causal connection, admission of the accident photographs, and the award of 25% loss of use of the left hand. However, the Commission modifies the award of 35% loss of the person as a whole for injuries sustained to the cervical spine to 22.5% loss of use of the person as a whole. Additionally, the Commission clarifies the findings of facts as well as corrects scrivener's errors.

The Commission modifies the findings of fact to include the following:

Petitioner sustained a severe laceration requiring immediate sutures following the August 20, 2017 accident. On August 31, 2017, Petitioner underwent surgery performed by Dr. Makowiec consisting of a left thumb radial digital nerve neurolysis and neuroplasty as well as repair of the thenar muscle. (Px3) Petitioner underwent therapy to retain range of motion and use of her thumb. In November of 2017, Petitioner sought follow up care with Dr. Kiesler due to wrist pain radially and an inability to lift the left thumb away from a tabletop, as well as loss of motion at the thumb joint. (Px3) She underwent an MRI which confirmed right deQuervain's stenosing tenosynovitis. (Px3) Petitioner underwent conservative care which failed.

On January 31, 2018, Petitioner underwent a second surgery of a left first dorsal

compartment release to treat the deQuervains tenosynovitis. (Px3) Petitioner was not released without restrictions to her left hand until June 25, 2018. (Px3) At the time of trial, Petitioner testified she continues to have daily pain in the left thumb and left hand in the areas she injured in the accident of severity of 2/10. She also noted deficits in gripping with the left hand and holding something that is heavy weight with the left hand. She additionally noted restricted motion. (T. 47-51)

On cross examination Petitioner was shown Answers to Interrogatories that she filed in conjunction with the third party claim for the civil suit against the driver of the vehicle that struck her vehicle in this case. She acknowledged that on March 3, 2018, she was involved in an auto accident "temporarily aggravating headaches and neck pain she experienced in the August 20, 2017 accident. (Rx7, T. 81) Petitioner also admitted she was involved in another car accident on October 28, 2020 where she re-injured her neck, among other body parts. (T. 27, 81, Rx7) The Commission notes that although Petitioner was involved in two motor vehicle accidents subsequent to the work accident of August 20, 2017, neither of these incidents rose to the level of a subsequent intervening accident.

With respect to causal connection, the Commission affirms the Arbitrator's Decision, but modifies the first sentence of the second paragraph of page 5 of the Decision to read: "The Arbitrator finds Petitioner proved by the preponderance of the evidence that her current conditions of ill-being relating to her cervical spine and left hand are causally related to her work injury of August 20, 2017, as set forth more fully below."

Moreover, the Commission modifies the award of permanent partial disability benefits from 35% person as a whole to 22.5% person as a whole as it relates to the cervical spine. Petitioner complained of cervical pain immediately following the accident. As time went on, her neck condition worsened and she complained of continued soreness and achiness to the right side of the neck and trapezius to Dr. Robinson. (Px3) On December 20, 2017, Petitioner was referred to Dr. Ward who opined that she sustained an aggravation of her underlying degenerative disc disease as a result of the August 20, 2017 accident. (Px3)

Petitioner was complaining of radicular pain by January 25, 2018. (Px3) The radiculopathy was confirmed by MRI which showed multilevel degenerative disc disease and disc protrusions at C5-6 and C6-7 where there was left-sided foraminal stenosis. (Px3) Petitioner initially opted for conservative treatment in the form of two epidural steroid injections. She underwent the first epidural steroid injection on June 19, 2018. (Px3, 6/19/18 and 7/10/18 notes) She opted to proceed with a second epidural steroid injection on July 27, 2018. (Px3) Additional cervical injections were contraindicated as Petitioner developed hemiplegic migraines after each injection. (Px3)

On February 15, 2019, Petitioner obtained a second opinion from Dr. Ross. (Px3) On April 8, 2019, Petitioner underwent a selective nerve block. (Px3) On April 19, 2019, Dr. Ross recommended surgical intervention as he felt Petitioner failed conservative treatment. (Px5)

On July 22, 2019, Petitioner underwent a 2-level fusion to treat the aggravation of symptoms in her neck caused by the August 20, 2017 work accident. (Px5) Petitioner was able to progress through physical therapy, work hardening and return to work full duty. Petitioner testified

that she was able to perform all aspects of her job as a patrol officer and that there's nothing about the job that she can't do due to the injuries from the accident. (T. 62-63) Petitioner also testified she has no problems at the gun range, she teaches at the police department including defensive tactics and rapid deployment, that she is a field training officer, a member of the honor guard team, an evidence technician and a juvenile officer and that she has no problems doing any of those jobs. (T. 108-112)

Finally, the Commission corrects the following scrivener's errors:

In the last paragraph of issue F of the Arbitrator's Decision, the Commission strikes the word "cause" after the word "intervening", and replaces it with the word "accident" in the five locations it appears within this paragraph.

Additionally the Commission clarifies that the bill for $3,100.75 was from "Northwestern Medicine", not "Midwest Neurosurgery."

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $790.64 per week for a period of 112.5 weeks, as provided in §8(d) of the Act, for the reason that the injuries sustained to the cervical spine caused the 22.5% loss of the person of a whole and $790.64 per week for a period of 51.25 weeks, as provided in §8(e)(9) of the Act, for the reason that the injuries sustained caused the 25% loss of use of the left hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $3,755.75 for the medical expenses outlined in Ax1, 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.

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.

May 29, 2025

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

MEP/dmm
O: 52025
49

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC025938
Case Name	Amanda Larsen v. Village of Carol Stream CSPD
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Daniel Murphy
Respondent Attorney	Daniel Arkin

DATE FILED: 2/20/2024

/s/Frank Soto, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 14, 2024 5.065%

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

Amanda Larsen
Employee/Petitioner

v.

Village of Carol Stream and CSPD
Employer/Respondent

Case # **17** WC **025938**

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 **Wheaton**, on **November 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. ☐ 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 **8/20/2017**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**98,891.52**; the average weekly wage was $**1,901.76**.

On the date of accident, Petitioner was **43** 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 $**90,773.89** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**90,773.89**.

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

ORDER

Medical Benefits

Respondent shall pay the medical bills, as outlined in Arb. Ex. #1, pursuant to Sections 8.2 and 8(a) of the Act, subject to the fee schedule. In the event that Respondent paid those items, Respondent shall be given a credit for those items and shall hold Petitioner harmless for any claims by those providers for services for which Respondent is receiving a credit as provided in Section 8(j) of the Act, as set forth in the Conclusions of Law attached hereto and incorporated herein;

Permanent Partial Disability

Respondent shall pay Petitioner permanent partial disability benefits of 35% loss of use of a man as a whole, pursuant to Section 8(d)(2) of the Act, and 25% loss of the left hand pursuant to Section 8(e) 9 of the Act, as set forth in the Conclusions of Law attached hereto and incorporated herein;

Respondent shall pay Petitioner compensation that has accrued from August 20, 2017 through November 30, 2023 and shall pay the remainder of the award, if any, in weekly payments.

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

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

By: /o/ Frank J. Soto

Arbitrator

February 20, 2024

Procedural History

This case proceeded to trial on November 30, 2023. The disputed issues are whether Petitioner's current conditions is causally connected to her injury, whether Respondent is liable for outstanding medical expenses, and the nature and extent of Petitioner's injury.

Findings of Fact

Accident of August 20, 2017

Amanda Larsen (hereafter referred to as "Petitioner") testified she works as a police officer for the Village of Carol Stream (hereinafter referred to as "Respondent") and that she was involved in a motor vehicle accident on August 20, 2017.

Petitioner was training a recruit and was in the passenger seat of a Ford Explorer police vehicle, which was parked on the shoulder of the road after completing a traffic stop, when the Ford Explorer was struck in the rear by another car and pushed into the car in front causing a second impact to the vehicle.

As a result of this accident, Petitioner's body hit the interior of the vehicle with her face striking the dashboard, her right knee striking the glove box and her left hand striking the computer screen. Petitioner testified she sustained injuries to her head, neck, shoulders, middle back, left arm and left leg from her knee down. She also testified that her left arm was also bleeding.

Petitioner's Prior Medical Treatment

Petitioner testified she has a history of migraine headaches since 2007. She further testified that she takes medication for her migraine headaches and was taking medication for her headaches at the time of this accident. She also testified that she had undergone multiple MRIs and multiple hospitalizations for her headaches prior to August 20, 2017. Petitioner's migraine headaches were described as severe and complex and include numbness and tingling in her limbs.

Petitioner's Post Accident Medical Treatment

Petitioner was taken by ambulance to Central DuPage Hospital. Petitioner remained in the hospital until August 21, 2017. While at the hospital, Petitioner's received sutures in her left hand and underwent CT scans of the head and cervical spine. The CT scan of the head was negative for intracranial process but the CT scan of the cervical spine showed mild degenerative disc disease and endplate osteophyte formation at C5-6 and C6-7 with disc osteophyte complex contributing to mild central canal stenosis. (Px.3, p. 1860). Petitioner was diagnosed as sustaining a closed head injury, left hand laceration, multiple abrasions, and a cervical strain. (Px3, p. 1860).

After being released from the hospital, Petitioner followed up with Dr. Makowiec who performed surgery on August 31, 2017. The surgery consisted of a left thumb radial digital nerve neurolysis and neuroplasty with repair of the left thenar muscle. (Px.3, p. 1926). The postoperative diagnosis was left thumb radial digital nerve neuropraxia injury and contusions and a left thumb thenar muscle repair. (Px.3, p. 1926).

Petitioner also received medical treatment for her right knee, neck and back. Dr. Bare treated Petitioner's right knee while Dr. Ward treated her cervical and thoracic spine. Petitioner attended physical therapy for her neck, knee and midback at NovaCare from September 20, 2017 through November 14, 2017. Petitioner testified her thoracic spine issues resolved within 4-6 months following the accident. Dr. Ward administered 2 epidural steroid injections which, Petitioner testified, triggered migraines causing her to visit the emergency room.

Dr. Ward opined the motor vehicle accident aggravated Petitioner's underlying degenerative disc disease or the caused the development of mid-lumbar facet mediated pain generator. (Px3, p. 1688). Dr. Ward referred Petitioner to Dr. Steinke for a surgical consultation, who diagnosed degenerative cervical disc/herniated disc without myelopathy and foraminal stenosis and recommended C5-6 and C6-7 total disc replacement surgery. (Px3, p. 299).

Petitioner requested a second opinion so Dr. Steinke referred Petitioner to Dr. Ross who opined Petitioner sustained left C6 radiculopathy as a result of her work accident of August 20, 1017. (Px.3, p. 13). On July 22, 2019, Dr. Ross performed a C5-6 and C6-7 anterior cervical discectomies and fusion. (Px13, p. 2096-2098). Petitioner underwent therapy after the cervical fusion surgery at Northwestern Medicine from October 30, 2019 through January 10, 2020. On March 17, 2020, Dr. Ross released Petitioner to return to work full duty as of March 23, 2020 and Dr. Ross found Petitioner reached maximum medical improvement as of July 6, 2020. (Px7, p. 2-3).

Section 12 Examinations and AMA Impairment Rating

The Arbitrator reviewed the medical records and reports from the treating doctors and the Section 12 reports from Dr. Lami, including his AMA Impairment Rating. It is initially noted that Petitioner underwent three surgical procedures as a result of the accident of August 20, 2017, consisting of surgery for her left thumb by Dr. Makowiec on August 31, 2017, surgery with Kiesler for her left hand on January 31, 2018 and surgery by Dr. Ross for her neck on July 22, 2019.

The Arbitrator has also reviewed the medical reports from Dr. Lami dated October 22, 2018 and August 21, 2020. Dr. Lami examined the Petitioner on October 22, 2018 pursuant to Section 12 of the Act and reexamined her on August 21, 2020 pursuant to Sections 12 of the Act. In his report of October 22, 2018, Dr. Lami addressed Petitioner's diagnosis of cervical spondylosis and axial neck pain. Dr. Lami opined that Petitioner's current cervical spine condition was related to her August 20, 2017 accident which aggravated her pre-existing condition. He also discussed a proposed artificial disc replacement surgery. Dr. Lami stated he would personally be hesitant to recommend this surgery for her current symptoms because the type of surgery would be unlikely to increase her neck motion.

Dr. Lami examined the Petitioner again on August 21, 2020. He noted that he previously examined her on October 23, 2018 and that she subsequently underwent a cervical fusion July of 2019, which was followed by post-operative physical therapy. Dr. Lami also noted that the Petitioner was released to return to full duty without restrictions by her surgeon in March of 2020.

Dr. Lami's examination of August 21, 2020, noted that Petitioner's motor results were 5/5, reflexes were symmetric and her sensation was intact. He further noted Petitioner was non-tender to gentle palpation, had no atrophy and had full range of motion of her spine.

Following his examination of the Petitioner and his review of the medical records of Dr. Ross, Dr. Lami documented Petitioner filled out a pain and disability questionnaire, pursuant to the AMA 6th Edition Guidelines an that her score was "1". In response to specific questions, Dr. Lami confirmed that Petitioner underwent a C5 to C7 fusion, without any residual neurological deficit or radiculopathy, and had an excellent response to surgery. He noted that she does not have any symptoms with her spine and that she has reached MMI.

Consistent with the 6th Edition of the AMA Guidelines, Dr. Lami, as outlined in his report, documented that Petitioner has 15% impairment as the result of the two-level spinal fusion.

Petitioner's Current Condition

Petitioner testified relative to the various other body parts that were injured in the August 20, 2017 accident. She testified that she had pain in her knee and mid back for few months following the accident. She also testified that this has all resolved and that she has no conditions, problems or complaints with her knee or mid back at the present time.

Petitioner next testified relative to the resolution of the shoulder pain she had as a result of the accident of August 20, 2017. She testified that she currently has no pain, restrictions with motion or any other issues relative to her shoulder.

Petitioner further testified that the injuries to her face have all cleared up and that she has no continuing complaints or problems.

As to her hip, she also testified her pain has gotten better and she received no medical treatment for her hip as a result of this accident. As to her left thumb and hand, Petitioner testified to complaints of daily pain, which she rated as 2/10. She also testified that there was nothing she cannot do but that she does notice some diminished grip strength in her left hand. Petitioner also testified to experiencing some restricted motion in her left thumb and that she cannot straighten it as fully as she can with her uninjured right thumb.

As to her neck, Petitioner testified that she does not have any pain in her neck but that she does have some occasionally with activities such as birdwatching. She further testified she has some limited range of motion in her neck when she moves her head from side to side.

The Petitioner also testified that she continues to work in a full duty as a police officer for the Village of Carol Stream. She testified she can perform all aspects of her regular job duties.

As a police officer, Petitioner testified she qualifies on the gun range and has no problems with qualifications or any pain or problems when qualifying or firing a weapon. She testified that she has some occasional aching after qualifying but that only lasts for about an hour.

Petitioner also works as a Field Training Officer and is an Evidence Technician. Additionally, she testified that she is an instructor in various aspects of defensive tactics, including handcuffing and button strikes. This includes ground fighting and other very physical activities, all of which Petitioner performs without any problems or difficulties. Additionally, Petitioner is a Rapid Deployment Instructor, which is also done without any problems or complaints.

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. The claimant bears the burden of proving every aspect of his claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223 Ill.App.3d 706, 714 (Ill. App. 5th Dist. 1992).

With Respect to Issue (F) Whether Petitioner's current condition of ill-being is causally related to his injury, the Arbitrator Finds as follows:

In pre-existing condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the pre-existing disease such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of a pre-existing condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill.2d 30, 36-37. When a worker's physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment. *General Electric Co. v. Industrial Comm'n,* 89 Ill.2d 432, 60 Ill. Dec. 629, 433 N.E.2d 671 (1982). When an employee with a preexisting condition is injured in the course and of his employment the Commission must decide whether there was an accidental injury which arose out of the employment, whether the accidental injury aggravated or accelerated the preexisting condition or whether the preexisting condition alone was the cause of the injury. *Sisbro, Inc. Industrial Comm'n*, 207 Ill.2d 193, 278 Ill. Dec. 70,797 N.E.2d 665, (2003). Even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Caterpillar Tractor Co. v. Industrial Comm'n,* 129 Ill.2d 52, 133 Ill. Dec. 454, 541 N.E.2d 665 (1989).

The Arbitrator finds Petitioner proved by the preponderance of the evidence that her current conditions of illbeing are causally related to her work injury of August 20, 2017, as set forth more fully below.

The Arbitrator notes Dr. Lami, who performed Section 12 examinations and diagnosed cervical spondylosis and axial neck pain, opined that Petitioner's current cervical spine condition was related to her August 20, 2017 accident which aggravated her pre-existing condition. As to Petitioner's current spinal complaints, Respondent claims that her current cervical complaints, in part, are the result of a subsequent automobile accident and, therefore, unrelated to her work accident. In essence, Respondent is claiming the subsequent accident was a superseding intervening cause which cuts of the causal connection between the original work-related injury and her ensuring condition. The Arbitrator doesn't find Respondent's position persuasive because there are no medical opinions which state the intervening cause completely broke the causal chain between the original work-related injury and Petitioner's current condition. On the

issue of an intervening cause, the court have consistently held that for an employer to be relieved of liability by virtue of an intervening cause, the intervening cause must completely break the causal chain between the original work-related injury and the ensuring condition. *Boatman v. Industrial Comm'n*, 256 Ill. App. 3d. 1070, 628 N.E.2d 829, 195 Ill. Dec. 365 (1st Dist. 1993).

With Respect to Issue (J) Whether Respondent paid all appropriate changes for all reasonable and necessary medical services, 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).

Petitioner seeks payment of medical bills from Midwest Neurosurgery & Spine in the amount of $3,100.75, Radiology of NI in the amount of $241.00 and Northwestern Medicine in the amount of $194.00. (Arb. Ex. #1). The Arbitrator finds Petitioner proved by the preponderance of the evidence that Respondent is liable for the outstanding medical expenses. As such, Respondent shall pay the medical bills, as outlined in Arb. Ex. #1, pursuant to Sections 8.2 and 8(a) of the Act, subject to the fee schedule. In the event that Respondent paid those items, Respondent shall be given a credit for those items and shall hold Petitioner harmless for any claims by those providers for services for which Respondent is receiving a credit as provided in Section 8(j) of the Act.

With Respect to Issue (L) What is the Nature and Extent of Petitioner's 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 "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 Dr. Lami's report of August 21, 2020 (Respondent Exhibit 4) discusses his examination of the Petitioner and identifies applicable AMA ratings. He concluded that Petitioner has a 15% impairment pursuant to the 6th edition of the AMA Guidelines. The Arbitrator notes that this level of impairment does not necessarily equate to permanent partial disability under the Workers' Compensation Act but instead is a factor to be considered in making such a disability evaluation. The Arbitrator places some weight on this factor in determining permanent partial disability.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee. Petitioner is employed as a police officer. In that position, Petitioner is responsible for the care and safety of the public, herself, and other police officers. As a police officer, Petitioner is likely to be in situations requiring use of force. As such, the Arbitrator gives greater weight to this factor in determining permanent partial disability.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 43 years old at the time of the accident. At that age, Petitioner has a significant life expectancy and work-life expectancy for which she will need to live with her current medical condition. As such, the Arbitrator gives some weight to this factor in determining permanent partial disability.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earning capacity. Petitioner did not proffer testimony regarding whether her future earnings have been negatively impacted by her injury. As such, the Arbitrator gives this factor little weight in determining permanent partial disability.

With regard to subsection (v) of § 8.1b(b), Evidence of disability corroborated by the treating medical records. Petitioner's complaints are corroborated by the medical records. As to her left thumb and hand, Petitioner testified to complaints of daily pain, which she rated as 2/10. She also testified there was nothing she cannot do at this time but that she does notice some diminished grip strength in her left hand. She also testified she has some restricted motion in her left thumb and that she cannot straighten it. As to her neck, Petitioner testified she does not have pain in her neck but that she does experience some limited range of motion in her neck when she moves her head from side to side. The Arbitrator notes Petitioner was able to return to work full duty. As such, the Arbitrator gives this factor some weight in determining permanent partial disability.

Based upon the above, the Arbitrator finds Petitioner sustained permanent partial disability to the extent of 35% loss of use of a man as a whole pursuant to Section 8(d)(2) of the Act and 25% loss of the left hand pursuant to Section 8(e)9 of the Act.

By: /o/ Frank J. Soto February 16, 2024

Arbitrator Date

February 20, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC002776
Case Name	Kellie Wells v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0242
Number of Pages of Decision	33
Decision Issued By	Maria Portela, Commissioner, Amylee Simonovich, Commissioner

Petitioner Attorney	Neal Strom
Respondent Attorney	Daniela Roehm

DATE FILED: 5/29/2025

/s/Maria Portela, Commissioner

Signature

DISSENT

/s/Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KELLIE WELLS,

Petitioner,

vs. NO: 19WC002776

CHICAGO TRANSIT AUTHORITY,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission finds that Petitioner failed to prove she is entitled to vocational rehabilitation and maintenance benefits. In reaching these conclusions, we initially find that Petitioner's permanent restrictions, recommended by Dr. Bernstein, are valid and supported by two valid functional capacity evaluations (FCEs). The first FCE was performed on June 8, 2021, after Petitioner's cervical surgery but prior to her left elbow surgery, which indicated she could lift 32 pounds occasionally. *Px12, T.1114.* The second FCE, on August 2, 2022, after Petitioner's elbow surgery, indicated she could lift 31 pounds occasionally. *Px13, T.1144.* We find that both FCEs are consistent.

On September 23, 2022, Dr. Bernstein released Petitioner at maximum medical improvement (MMI) with permanent restrictions as outlined in the August 2, 2022 FCE. *Px5 at 86, T.618*. Respondent's §12 examiner, Dr. Troy, is the only physician who found that Petitioner could return to work full duty.

We note the Arbitrator wrote that Dr. Troy "admitted that he does not recall if he ever had a job description in this case and there was no job description in his file that was subpoenaed. (RX 7, Pg. 39)." *Dec. 9 and 13*. However, *Px10* contains the records of Dr. Troy that were subpoenaed by Petitioner, and it includes a job description for a "Switchman," dated May 31, 2002. *Px10 at 47, T.686.* Therefore, we find that Dr. Troy had an accurate job description. Nevertheless, we find Dr. Bernstein's opinion regarding Petitioner's permanent restrictions more persuasive than that of Dr. Troy.

The evidence shows that Petitioner's pre-accident job required her to lift more than she was capable of lifting according to the FCEs. Respondent had in its possession the August 2, 2022 FCE report, which indicated Petitioner's job required her to lift 60 pounds. *Px13 at 9, T.1152*. Respondent also had the July 24, 2023 Vocational Evaluation Report that stated, "She believes the written requirements for this job state 50-75 pounds of lifting is required." *Px21 at 4, T.1664*. Respondent also authored the two written job descriptions and neither of them contained weight requirements for lifting, etc. *Px17 (Switchman, dated 5/22/16) and Rx10 (Switch Worker, dated 5/31/02*). If Respondent disputed the information on which the FCEs were based, it could have introduced other evidence to contradict the weight requirements. As it stands, Petitioner's testimony that the springs she lifted weighed about 50 pounds each (*T.17*) is consistent with the other evidence. Therefore, we find that Petitioner's pre-injury job required lifting 60 pounds and the two valid, consistent FCEs reflect that she was only able to achieve about half of that weight.

Based on the above, we find Petitioner is unable to return to her pre-accident employment due to her permanent restrictions. However, the July 24, 2023 Vocational Evaluation Report (*Px21*) highlights the following:

- Petitioner has a high school diploma (3.3 GPA) which she earned at age 16 because she took extra courses to get ahead. *Id. at 3*.
- She reads regularly and goes to the library with her daughter weekly. *Id*.
- In May 2002, she finished a Certified Nurse Assistant program but never worked as a CNA. *Id*.
- In 2002, she completed a pre-construction training program and studied math, language, blueprint reading and spatial relations although she never worked in the construction field. *Id*.
- Petitioner attended Kennedy King Community college from June 2002 to May 2003 but left school because her schedule at Respondent changed and it became too hectic. *Id.*
- She "used to be fantastic" with her computer skills, typed 40-45 words per minute and was proficient in Microsoft Office. She is not intimidated by computer use, though thinks she would benefit from refresher courses. She often helps the older people in her family with computer tasks. *Id. at 4*.
- She has her own vehicle and no criminal history. *Id. at 5*.

- Petitioner is young (42 years old). *Px21 at 7*.
- She has no limitations with sitting, standing, walking, crouching, bending, or performing elevated work. *Id*.
- She can work light duty based on the FCE finding that she has "occasional lifting tolerances of 26.5 pounds from floor-to-waist; 16.5 pounds from waist-to-crown; and can front carry 31.5 pounds." *Id. at 7-8*.
- She has skills transferrable to Passenger Service Representative and Transportation Dispatcher. *Id. at 8*.

The report also states:

> Ms. Wells is alternatively employable. At 42 years old, she is a young woman with many years ahead of her in the workforce. She has a high school diploma and no indication she is subject to learning disabilities or any cognitive limitations which would negatively impact her ability to learn new skills. She has foundational computer skills, lives in a well-populated area, has good interpersonal skills and appears motivated to return to work.
>
> Ms. Wells provided her own job titles of interest. I agree she is qualified and physically able to perform these jobs: Healthcare Representative (Intake Coordinator, Patient Service Representative, Medical Receptionist); Airline Customer Service Worker (Reservations Agent, Customer Service Rep); Case Worker for DCFS (Social Services Assistant, Family Liaison); and Court Clerk.
>
> She is also qualified for and physically able to perform many other jobs which she did not mention during this evaluation which include job titles such as: Office Assistant, Transportation Dispatcher, Front Desk Representative, and other Clerical and Customer-Service positions across a wide variety of industries.
>
> Her most likely wage-earning potential is between $20.00 and $25.00 hourly.

Id. at 8.

In *Greaney v. IC*, 358 Ill. App. 3d 1002 (1st Dist. 2005), the court wrote, "A claimant is generally entitled to vocational rehabilitation when he sustains a work-related injury which causes a reduction in his earning power and there is evidence that rehabilitation will increase his earning capacity. National Tea Co. v. Industrial Comm'n, 97 Ill. 2d 424, 432, 454 N.E.2d 672, 73 Ill. Dec. 575 (1983)." *Id. at 1019*.

The Vocational Evaluation Report indicates that Petitioner had previously earned $36.50 per hour working for Respondent and that her current earning potential was between $20 and $25 per hour. *Px21 at 4, 8*. However, without Petitioner having attempted to obtain a job on her own, she has not proven that vocational rehabilitation is necessary or beneficial to increase her earning capacity. In other words, if Petitioner had engaged in a self-directed job search and found a job earning $15 per hour, then vocational rehabilitation might be beneficial to increase her income to $20 or $25 per hour. Or, if she had been unable to obtain a job at all, after a diligent search, then rehabilitation services would seem necessary. But, if Petitioner is capable of finding a job on her

own, earning $20 or $25 per hour, then vocational rehabilitation would not be necessary or beneficial. We find that Petitioner has not proven that vocational rehabilitation would be beneficial since she has failed to prove what her current earning capacity is.

We believe the only real barrier to Petitioner finding a job at this time is motivation. Petitioner testified:

> Q. Did you make some investigation in looking into various alternative job opportunities?
> A. Yes.
> Q. When you looked into those various job opportunities, what did you realize, if anything, in regards to looking for job opportunities, having worked for CTA for 17 years?
> A. I realized that a lot of the skills that it may take to do these other jobs I don't have, because I have just been at one place of employment all of my life. So I would need a lot of updated training on that, whether it is computer skills or other work-related skills in those different fields. I just don't have that being at one job.

T.68-69. The Vocational Evaluation Report states:

> Ms. Wells has been looking at job postings on Facebook. She does not have a resume; she has not needed one since applying at CTA in 2002. When explaining why she has not applied for jobs recently, she stated she lost her confidence and sense of self-worth after losing her career of 20+ years. She does not know what to do next.

Px21 at 5.

It appears that Petitioner never applied to any jobs after she was released at MMI. She just "looked at job postings on Facebook." Petitioner's claim that she could use some updated training is supported by the vocational report. However, we find that this opinion is not persuasive without Petitioner having ever tried to find a job on her own.

The evidence shows that Petitioner is relatively young, intelligent, an avid reader, computer literate and has good interpersonal skills. We believe she is capable of putting together a resume and applying to jobs online and in person without formal vocational rehabilitation services. We find that she is not as motivated as she would like the Commission to believe.

We also point out that it is not clear to what extent Petitioner receiving retirement disability from Respondent may be affecting her motivation. Petitioner introduced a January 3, 2022 letter from "Retirement Plan for CTA Employees" that indicates:

> SECTION 12 DISABILITY ALLOWANCE
> …
> 12.5 If, at any time, the Board finds that any employee receiving a disability allowance is no longer disabled as defined above, it shall order the discontinuance of the payments provided in this section. …

Px19 at 1, T.1626. This letter refers to a section of the Retirement Plan but the retirement plan documents are not in evidence, so we don't know what "disabled as defined above" means. Thus, it is unclear from the evidence what would happen to Petitioner's retirement disability payments if she were to obtain employment within her restrictions.

In *Currey v. IWCC,* 2022 IL App (1st) 210829WC-U, a Rule 23 Order published after January 1, 2021), the court wrote:

> The claimant relies upon *Schmidgall v. Industrial Commission*, 268 Ill. App. 3d 845, 848-49 (1994) for the proposition that the receipt of social security benefits does not preclude an award of maintenance benefits. However, *Schmidgall* merely holds that the receipt of social security retirement benefits does not *automatically* terminate a claimant's entitlement to TTD benefits, especially when that claimant remains temporarily totally disabled. In other words, *Schmidgall* holds that the receipt of social security benefits does not preclude TTD benefits as a matter of law. *Schmidgall* does not hold or imply that the claimant's receipt of social security benefits may not be considered as evidence that that claimant had stopped looking for full-time work. In fact, we have considered such evidence in prior cases. See *Petermeyer v. Illinois Workers' Compensation Commission*, 2021 IL App (5th) 190514WC-U (affirming the Commission's finding that the claimant's efforts were inadequate to establish that he had engaged in vocational rehabilitation through a self-directed job search where, *inter alia*, he had been receiving social security); *Sutton v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3d) 150657WC-U (affirming the Commission's finding that the claimant's actions demonstrated a lack of motivation to commit to additional vocational rehabilitation services where, *inter alia*, he told his rehabilitation consultant that he was applying for social security). Here, the Commission found that the fact that the claimant was collecting social security, which limited her ability to work full time without forfeiting those benefits, and the fact that she had chosen to work part time so as to maintain those benefits, supported the inference that she was not conducting an ongoing self-directed job search. That inference was reasonable based on the evidence of record.
>
> In sum, the clamant provided insufficient evidence to establish that she was engaged in an ongoing self-directed job search, and the evidence supported a contrary inference. Thus, the Commission's decision to vacate the arbitrator's award of maintenance benefits was not against the manifest weight of the evidence.

Currey v. IWCC, 2022 IL App (1st) 210829WC-U, ¶¶ 73-74

We acknowledge that we were unable to find the *Petermeyer v. IWCC* case, which the court referenced. However, the *Currey* court explained that it had affirmed "the Commission's finding that the claimant's efforts were inadequate to establish that he had engaged in vocational rehabilitation through a self-directed job search where, *inter alia*, he had been receiving social security." Therefore, the Commission finds that it is appropriate to consider the fact that Petitioner is receiving a disability payment from another source in determining whether the claimant is motivated to engage in a diligent job search.

Having found that Petitioner failed to prove she is entitled to formal vocational rehabilitation services, we also find that Petitioner is not entitled to maintenance benefits under §8(a) of the Act. The court in *Greaney* wrote that the claimant:

> testified that he was released to return to work on November 4, 1999, "within the restrictions imposed by the [FCE]." The claimant stated that, following his release, he contacted Michel in order to inquire about a job, and that Michel did not offer him a position within his restrictions. **The claimant then initiated an independent job search and eventually accepted a position** as an x-ray technician with National Testing Service (NTS) on December 25, 1999.

Greaney v. IC, 358 Ill. App. 3d 1002, 1007 (1st Dist. 2005) (*Emphasis added*). The court found:

> The evidence in this case shows that the claimant suffered a work-related injury and that the restrictions arising from that injury impaired his earning power. Further, the record establishes that the claimant's self-created vocational program increased his earning capacity as demonstrated by the positive results of his job search. Therefore, in its original decision, the **Commission properly awarded the claimant maintenance benefits for the period of time he was undertaking his self-created and directed rehabilitation program**…

Id. at 1019-20 (Emphasis added, underline omitted).

Therefore, *Greaney* does not support the Arbitrator's award of maintenance because Petitioner did not engage in a self-directed job search.

Similarly, in *Roper v. IC,* 349 Ill. App. 3d 500 (5th Dist. 2004), the court found:

> The evidence here shows that the claimant suffered a work-related injury and that the restrictions arising from that injury impaired his earning power. Further, the evidence shows that the claimant's self-created vocational program did in fact increase his earning capacity as demonstrated by the positive results of the claimant's job search. Therefore, the **claimant was properly awarded maintenance benefits for the period of time he was undertaking his self-created and directed rehabilitation program**.

Id. at 506 (Emphasis added).

Both *Greaney* and *Roper*, which the Arbitrator cited, are not on point because the claimants in those cases actually engaged in a self-directed job search. We are also mindful of the more recent case of *Asplundh Brush Control v. IWCC*, 2022 IL App (1st) 211522WC-U. Although it is a Rule 23 Order, it was issued after January 1, 2021, so it may be cited for persuasive purposes. The court specifically found:

> **If the claimant is not engaged in some type of physical rehabilitation program, formal job training or a self-directed job search, there is no obligation to provide**

> **maintenance**. *Greaney v. Industrial Comm'n*, 358 Ill. App. 3d 1002, 1019, 832 N.E.2d 331, 295 Ill. Dec. 180 (2005). An employee's self-initiated and self-directed job search or vocational training may constitute a "vocational-rehabilitative program" under section 8(a). *Roper Contracting v. Industrial Comm'n*, 349 Ill. App. 3d 500, 506, 812 N.E.2d 65, 285 Ill. Dec. 476 (2004).

Asplundh Brush Control at ¶ 64.

Based on the above, we find that merely submitting a vocational rehabilitation opinion that Petitioner would benefit from vocational rehabilitation is insufficient to prove entitlement to maintenance benefits without Petitioner having actively "engaged" in any rehabilitation program or job search whatsoever, whether self-directed or not. Neither the Arbitrator's Decision nor Petitioner's brief cites any caselaw to support a finding that Petitioner would be entitled to maintenance under the circumstances here. Petitioner did not engage in a self-directed job search and the evidence shows that, more likely than not, she has the skills, education and ability to obtain a job within her restrictions without the assistance of formal vocational rehabilitation services if she truly had the motivation to do so.

Therefore, we vacate the Arbitrator's awards of maintenance benefits and vocational rehabilitation. Finally, we correct the following clerical errors:

- Page 15, Issue L, paragraph 4, second sentence: strike "of Dr. Troy's second IME that" and replace with "Dr. Bernstein";

- Page 18, last paragraph, line 8, insert "not" between "She does" and "know what to do next."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $1,118.93 per week for a period of 191-2/7 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 shall receive credit for $237,454.33 in temporary total disability benefits paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $5,326.37 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 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)(2) of the Act, Respondent is not required to file an appeal bond in this case. 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.

May 29, 2025 /s/ *Maria E. Portela*

SE/ /s/ *Kathryn A. Doerries*
O: 4/15/25
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DISSENT

I respectfully dissent from the opinion of the majority and would affirm the Arbitrator's Decision regarding Petitioner's entitlement to vocational rehabilitation and maintenance benefits incidental thereto.

Petitioner provided ample evidence to support her request for vocational rehabilitation and maintenance. This was evident in her testimony and submission of the Vocational Rehabilitation Plan and expert opinion of Vocamotive Certified Rehabilitation Counselor, Laura Belmonte.

Section 9110.10(a) of the Rules Governing Practice Before the Illinois Workers' Compensation Commission requires a vocational rehabilitation assessment "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." See *CDW Corp. v. Ill. Workers' Comp. Comm'n*, 2021 IL App (2d) 200562WC-U.

Petitioner submitted such Rehabilitation Plan on the form supplied by the Commission pursuant to Section 9110.10(e). Attached to the form was a detailed Rehabilitation Plan with the following Rehabilitation Goals: "To develop computer skills to provide certifications in Microsoft Office programs to expand labor market access; provide comprehensive job seeking skills instruction; provide comprehensive vocational counseling; evaluate potential for appropriate, cost-effective retraining to mitigate wage loss exposures; facilitate return to work to appropriate occupation within 150 days following training."

Further, Petitioner provided testimony and evidence to support her need for vocational rehabilitation to begin her job search process. Petitioner testified that she felt she needed additional training, as she had only worked in one place of employment her whole life. T.68-69. She felt that she did not have the skills she would need for job opportunities outside of the CTA. *Id*. The Vocamotive Vocational Evaluation Report also specifically noted "Ms. Wells has lost access to her preinjury job and line of occupation which she has performed for nearly 16 years. She is facing a loss of wages. She has not had to look for work since obtaining her job with CTA at age 21. She would certainly benefit from professional assistance in managing this transition."

Petitioner met her burden of proof with her testimony and the expert opinion offered by Ms. Belmonte, in accordance with Section 9110.10. See 820 ILCS 305/8(a) (West 2018) (providing that "[v]ocational rehabilitation may include, but is not limited to, counseling for job searches" and "supervising a job search program").

In contrast to Petitioner's evidence supporting vocational rehabilitation, Respondent failed to produce any evidence that vocational rehabilitation is unnecessary. See *National Tea Co. v. Indus. Comm'n*, 97 Ill. 2d 424, 430 (1983) ("Under these circumstances, the Commission's finding that claimant could not obtain suitable employment, and is therefore eligible for rehabilitation, was not contrary to the manifest weight of the evidence."). Other than questioning Petitioner's motivation, Respondent did not make any arguments on the merits of vocational rehabilitation, deciding to focus solely on the merits of the permanent restrictions themselves.

The Majority finds issue with the lack of a self-directed job search. However, the very traits referenced as a basis for Petitioner's supposed ability to find employment on her own, merely identify Petitioner is the ideal candidate for a successful vocational rehabilitation program. Further, the law does not require claimant to engage in a self-directed job search to prove that rehabilitation services are necessary. In fact, a similar argument was rejected by the Appellate Court in *Howlett's Tree Serv. v. Indus. Comm'n,* 160 Ill. App. 3d 190 (1987). ("Specifically, respondent asserts that the petitioner must establish a good-faith effort to seek employment and show an inability to find employment within his physical restrictions in order to merit rehabilitation expenses to be borne by respondent").

The Act provides for both physical and vocational rehabilitation, and mandates that an employer pay maintenance costs and expenses incidental to that rehabilitation. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1075, 820 N.E.2d 570, 577, 289 Ill. Dec. 794 (2004). Specifically, the Act provides that "[t]he 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." 820 ILCS 305/8(a) (West 2012).

The fundamental purpose of the Act is to afford protection to employees by providing them with prompt and equitable compensation for their injuries. *W.B. Olson, Inc. v. Ill. Workers' Comp*. Comm'n, 2012 IL App (1st) 113129WC, P 50, 981 N.E. 2d 25, 38 (2012). This includes maintenance and vocational rehabilitation under § 8(a) of the Act. *Id.*, at P 39, 981 N.E. 2d at 25. The majority faults Petitioner for losing her confidence, but Ms. Belmonte recognized this for what it is: a transition. Petitioner has lost her career of 16 years and the minimal cost of program being

proposed would expedite her return to the workforce and maximize her earning potential, consistent with the fundamental purpose of the Act. Considering the relative cost and benefits to be derived from the vocational program, there seems little question that, particularly in light of Petitioner's work-life expectancy, the benefits far outweigh the costs. *Howlett's*, at 195.

For these reasons, I would affirm the Arbitrator.

/s/ *Amylee H. Simonovich*

May 29, 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC002776
Case Name	Kellie Wells v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	22
Decision Issued By	Jacqueline Hickey, Arbitrator

Petitioner Attorney	Neal Strom
Respondent Attorney	Daniela Roehm

DATE FILED: 6/10/2024

/s/Jacqueline Hickey, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 4, 2024 5.155%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

KELLIE WELLS
Employee/Petitioner

v.

CHICAGO TRANSIT AUTHORITY
Employer/Respondent

Case # **19** WC **002776**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jacqueline Hickey**, Arbitrator of the Commission, in the city of **Chicago**, on **January 30, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **1/23/19**, 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 $**87,276.80**; the average weekly wage was $**1,678.40**.

On the date of accident, Petitioner was **37** years of age, ***single*** with **2** dependent children.

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

Respondent shall be given a credit of $**237,454.33** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**237,454.33**.

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

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $1,118.93/week for 191 2/7 weeks, commencing DOA 1/23/19 through 9/23/22, as provided in Section 8(b) of the Act. Respondent shall pay Petitioner the temporary total disability benefits that have accrued and shall pay the remainder of the award, if any, in weekly payments.
Respondent shall be given a credit of $237,454.33 for temporary total disability benefits that have been paid.

Maintenance

Respondent shall pay Petitioner maintenance benefits for the time period of 9/24/22 through the trial date of 1/30/24, of $1,118.93/week (70 3/7 weeks). See Rider to Decision.

Vocational Rehabilitation

The Arbitrator finds that Petitioner has permanent restrictions that Respondent cannot and has not accommodated. Petitioner is precluded from returning to her prior position with Respondent due to the permanent restrictions per the FCE. The Arbitrator awards the vocational rehabilitation services that Petitioner seeks. See Rider to Decision.

Penalties

Respondent shall pay to Petitioner penalties of $**0**, as provided in Section 16 of the Act; $**0**, as provided in Section 19(k) of the Act; and $**0**, as provided in Section 19(l) of the Act. See Rider to Decision.

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

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.
STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Jacqueline C. Hickey

Signature of Arbitrator

June 10, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

KELLIE WELLS,	)	
	)	
Petitioner,	)	
v.	)	
	)	Case No. 19WC002776
CHICAGO TRANSIT AUTHORITY,	)	
	)	
Respondent.	)	

RIDER TO DECISION

This matter proceeded to hearing on January 30, 2024, in Chicago, Illinois, before Arbitrator Jacqueline Hickey on Petitioner's Petition for Immediate Hearing under Section 19(b)/8(a). The following issues are disputed: accident, causation, medical bills (see Px23), TTD, maintenance, vocational rehabilitation, and penalties/fees. Nature and Extent is not in dispute per the stipulation by the parties. See Arbitrator's Exhibit 1 (Ax 1);

FINDINGS OF FACT

Testimony of Petitioner

Background

Kellie Wells (hereinafter "Petitioner") testified that on January 23, 2019, she was employed as a switch worker by the Chicago Transit Authority (hereinafter "Respondent"). Petitioner testified she is 42 years old and worked for the Respondent for 17 years. She was working as a switchman at the time of the accidental injury.

She testified her job requires her to manually unlock switches. This requires her to push the switch with a great deal of force using a bar, walk the switch over, and push the switch back down into place. She must manually clean the switch free of debris. She described the task as extremely difficult. She explained if the switches are not oiled, they freeze. She stated if it rains, switches become stiff. (T.14). Petitioner described the job requiring lifting and bending. In order to throw the switches, she had to stoop or bend down. She described the job of throwing switches up to 30 to 40 times per day. (T.18). Petitioner had to bend down and go under the clamp arm to couple trains, move heavy chains, and look for debris. There was a lot of bending, stooping and twisting. The chains are attached from one end of the train to another, and while uncoupling them or coupling them, the chains being heavy have to be pulled. The chains are like springs. They must be stretched. Petitioner described the springs further as cut and round and weighing approximately 50 pounds each. These springs and chains have to be attached and detached every time a train is moved. She stated this task was done four to five times daily. Petitioner described that her job also included climbing up and down trains and climbing onto the stirrups to unlock chains and springs. (T. 19).

Accident
Petitioner testified she was in the railyard on January 24, 2019 while going over the tracks due to a switch. There was a slope leading down to the switch that was extremely icy. She walked over to throw the switch and slipped and fell down the slope onto her left elbow and shoulder.

After the accident, she testified her elbow hurt and she felt disoriented but finished her shift. Later that evening and the next morning, she noticed it was hard to turn her neck and felt pain on her left side. Petitioner testified she had never injured these body parts prior. (A23).

Medical Treatment
As a result of the accidental injury, Petitioner saw a physician's assistant at Midwest Orthopedic Consultants on January 24, 2009. She continued to treat with Midwest Orthopedic Consultants first seeing Dr. Leonard for her arm, shoulder and her elbow pain. He examined her and recommended physical therapy. (PX 14).

Dr. Leonard subsequently referred Petitioner to Dr. Lim at Midwest Orthopedic Consultants. Dr. Lim saw the Petitioner for her spine. She testified she was experiencing numbness from her left shoulder to her fingers in her left hand. (T.30). Dr. Lim advised Petitioner the symptoms were directly related to her fall. (T.30). Dr. Leonard and Dr. Lim treated the Petitioner conservatively prescribing physical therapy, cortisone injections to her left shoulder and elbow and cervical epidural steroid injections. While the Petitioner stated they provided a short-term relief, the Petitioner described her condition as worsening. (T.35).

Dr. Lim recommended cervical surgery. Shortly thereafter, Petitioner was referred to Dr. Avi Bernstein by the Respondent for a Section 12 Independent Medical Evaluation. Dr. Bernstein recommended surgery. Petitioner chose to switch to IME physician, Dr. Bernstein, to perform her cervical surgery. (T. 39-40). Petitioner testified that while awaiting the cervical spine surgery approval, she participated in physical therapy for her shoulder and elbow.

Petitioner testified she had cervical surgery at Lutheran General Hospital. Subsequent to surgery, she was given an order for physical therapy. Physical therapy to her cervical spine was not approved until January 12, 2021 over 3 months later. She started said physical therapy on January 15, 2021 at Impact Physical Therapy.

Petitioner testified she was discharged from physical therapy on April 20, 2021 and was given an order for a Functional Capacity Evaluation. (T. 37). She took her first Functional Capacity Evaluation on June 8, 2021. Petitioner testified the Respondent sent the Functional Capacity Evaluation examiner the combined rail operator job, which was not her job. (A48). She returned to Dr. Bernstein who released her to return to work with restrictions based on that Functional Capacity Evaluation. (T.49).

Petitioner returned to Dr. Leonard on July 7, 2021. She had additional physical therapy for her shoulder and arm and elbow. She testified the left elbow continued to remain the same, and she had additional injections. Dr. Leonard subsequently scheduled surgery for her left elbow. Petitioner had the left elbow surgery at Silver Cross Surgery Center on November 5, 2021. (T.51).

Petitioner returned to Dr. Leonard after surgery and awaited approval for physical therapy. She did not do physical therapy because she testified that it was not approved.

Section 12 Exam

Petitioner was asked to see Section 12 Examiner, Dr. Daniel Troy, by Respondent on April 20, 2022. The Petitioner discussed her job description with Dr. Troy. Dr. Troy had a transit operator job description. Petitioner explained to him that that was not her job, and her job was switchman, and offered Dr. Troy to review that job description. Petitioner testified that Dr. Troy rejected said request. (T.56).

FCE

Petitioner testified she was administered a second Functional Capacity Evaluation, which was recommended by IME Dr. Troy. She testified she received a medical certification from CTA's medical director at CorVel agreeing the Petitioner could not do the same or similar job at CTA. Petitioner testified she spoke to her case manager, Natalie Thompson. She testified the disability medical certificate signed by Dr. Duvall indicated the second Functional Capacity Evaluation report and her job description were not a match. (T. 61-62). She testified the report was dated August 19, 2022 and found her medically unfit to work.

TTD Benefits

Petitioner testified her last temporary total disability payment was on or about April 28, 2022. She testified she received no notice of her compensation being suspended or terminated. (T.62-63). Petitioner saw Dr. Troy on two occasions, the second being December 7, 2022. Between the time of the first Independent Medical Evaluation of April of 2022 and second of December of 2022, she did not receive any weekly compensation payments. She did testify, however, she subsequently received three checks. (T.65). Petitioner also applied for a disability accommodation at CTA and testified that it was rejected. (T.56). She subsequently applied on or about November 1, 2021 for her disability pension. Said pension was approved.

Petitioner's Current Condition

Petitioner testified she currently wakes up with a stiff neck. She does weekly chores like mopping, but she finds it hard performing chores. She notices pain to the left side of her neck. She cannot drive long distances because the constant twisting motion required to drive, causes pain in her neck. She notices numbness and tingling down into her left side. If she lifts while grocery shopping, she notices elbow pain. She notices decreased grip and strength. (T.66). While doing her daughter's and her hair having her arms up, within 5 minutes she gets a burning sensation in her shoulders and into her arm.

Petitioner testified she cannot do the job she was hired to do with the Respondent safely. (T.67). She testified she wants to work and has looked for work but has been unable to find work because she is in need of some training. Specifically, Petitioner testified, "I realized that a lot of the skills that it may take to do these other jobs I don't have, because I have just been at one place of employment all of my life. So I would need a lot of updated training on that, whether it is computer skills or other work-related skills in those different fields. I just don't have that being at one job." (T.69) Therefore, she seeks vocational rehabilitation.

SUMMARY OF MEDICAL CARE & TREATMENT

The Petitioner initially sought care and treatment with Midwest Orthopedic Consultants on January 24, 2019. The initial history given by Petitioner was that of a 37-year-old female switchman for the Chicago Transit Authority presenting with left shoulder and left elbow pain after a fall at work yesterday on ice. Petitioner complained of left shoulder pain radiating into her left hand. She described a popping sensation at her shoulder. She was prescribed physical therapy, ice, rest and elevation. See Px1.

She saw Dr. Leonard at Midwest Orthopedic Consultants for her shoulder and arm and Dr. Lim at Midwest Orthopedic Consultants for her cervical neck pain and stiffness. Each doctor treated Petitioner conservatively for her injuries from the period of February 6, 2019 to February 24, 2022. (PX 1).

Dr. Leonard first saw Petitioner on February 6, 2019 and found lateral epicondylitis in the left elbow, pain in the left shoulder, bursitis in the left shoulder and strain of the muscles and tendons of the rotator cuff of the left shoulder. (PX 1). Dr. Leonard recommended physical therapy, ice, rest, elevation and medication.

While continuing to see Dr. Leonard for her shoulder and arm, Petitioner also saw Dr. Leonard's associate, Dr. Lim, for her cervical neck pain and stiffness. Petitioner saw Dr. Lim on May 10, 2019 for her left-sided upper extremity and neck pain. Dr. Lim recorded a history consistent with an accidental injury at work and explained that she had left upper extremity weakness as well as weakness in her hand. She complained of shooting pain that started at the neck and into the shoulder. She described the pain as sharp, throbbing, aching and burning. She described her symptoms as getting worse, awakening her from sleep. The examination found neurological numbness and cervical spine tenderness. Dr. Lim found loss of range of motion for the cervical flexion, extension and axial rotation motions. He found weakness over the left wrist extensor and a mildly positive spurling sign to the left. (PX 1).

He diagnosed cervical radiculopathy, secondary to a C5-6 and C6-7 herniated nucleus pulposus. He found the Petitioner's symptoms directly relating to the fall onto C5-C6 and C6 to C7. He recommended cervical epidural injections. (PX 1).

During the course of her conservative care and treatment with Dr. Leonard and Dr. Lim, she participated in physical therapy when approved. She was administered injections to her shoulder, arm and epidurals to her cervical spine. (PX 1).

The Respondent requested an Independent Medical Evaluation with Dr. Avi Bernstein on August 12, 2019. Dr. Bernstein found Petitioner suffered a cervical spine injury as a result of a work-related accident. (PX 4). He recommended epidural steroid injections and stated that the treatment would be causally related to the work accident.

The Petitioner had an epidural steroid injection of her cervical spine at Silver Cross Hospital on October 21, 2019. (PX 23). She returned to Dr. Lim on November 8, 2019 who reported that Petitioner felt a 35 to 40 percent improvement after the epidural steroid injection, but, neurologically, found Petitioner was getting worse. She complained of dropping things with her

left upper extremity. He recommended another cervical epidural steroid injection and mentioned that she would be a good candidate for a two-level cervical disc replacement. (PX 1). Petitioner had a second epidural steroid injection on January 16, 2020 at Silver Cross Hospital. (PX 3).

She returned to Dr. Lim who saw her on January 31, 2020. He recommended a C6-C7 disc replacement if physical therapy failed. Dr. Leonard also saw her for her left arm and shoulder on February 13, 2020. He found left recurrent lateral epicondylitis. He ordered an Amniox injection into the left arm with the hope of avoiding surgery. (PX 1).

Respondent requested that Petitioner see Section 12 Examiner, Dr. Avi Bernstein, a second time on April 17, 2020. After examining her and reviewing her MRI scans, Dr. Bernstein recommended an anterior cervical nerve root decompression and reconstruction with total disc arthroplasty of C6-C7. He stated her condition appears to be related to a work injury of January 23, 2019. (PX4)

Dr. Bernstein saw her again on June 25, 2020, and Petitioner requested, subject to insurance approval, that Dr. Bernstein take over her case. While awaiting cervical disc surgery approval of Dr. Bernstein, the Petitioner returned to Dr. Leonard for her left elbow pain who recommended another round of dry needling and physical therapy. (PX1, 4 & 5)

Subsequent to Dr. Bernstein receiving approval for the cervical surgery, Petitioner underwent a C6-C7 cervical micro discectomy with C7 nerve root decompression and C6-C7 total disc arthroplasty at Lutheran General Hospital on September 30, 2020. (PX 5). After surgery, Dr. Bernstein recommended physical therapy. The physical therapy was delayed until January 2021.

While awaiting physical therapy approval for her cervical spine, the Petitioner saw Dr. Leonard on December 20, 2020. Dr. Leonard reported Petitioner had not had any physical therapy since her cervical surgery. She had tried two needling sessions for her elbow pain prior to her cervical surgery. Dr. Leonard found impingement syndrome to the left shoulder, bursitis to the left shoulder and lateral epicondylitis of the left elbow. He opined she needed physical therapy for her neck and shoulder. He stated she still needed treatment for the elbow. (PX1)

Dr. Bernstein saw the Petitioner on January 4, 2021 and on February 15, 2021. On February 15, 2021, the Petitioner reported consistent headaches and difficulty sleeping. She was objectively doing well. Dr. Bernstein wanted her to max out on her physical therapy and then address her elbow issues. (PX5)

Dr. Bernstein saw the Petitioner on April 12, 2021. Although he wanted her to complete her physical therapy and she was then ordered to take a Functional Capacity Evaluation. (PX5)

There were two Functional Capacity Evaluations. The first Functional Capacity Evaluation found that although the Petitioner could return to work with limitations, however the job description given to the examiner was inaccurate according to Petitioner. Petitioner testified that the job description she saw and the job description the examiner reviewed for that Functional Capacity Evaluation was for a rail transit operator, not a switchman. (PX12)

Dr. Bernstein's June 10, 2021 office note concluded the Petitioner can work with restrictions as stated in the Functional Capacity Evaluation. She was initially placed at maximum medical improvement for her cervical spine on or about June 10, 2021 by Dr. Bernstein, based on the FCE. (PX5)

Petitioner returned to Dr. Leonard on July 7, 2021. Dr. Leonard found positive Neer and Hawkins. He found left shoulder impingement and subacromial bursitis. Posterior capsular bursitis and left lateral epicondylitis. He recommended physical therapy and a subacromial injection into the elbow. (PX1)

Although the Petitioner was making progress in physical therapy for her elbow, said physical therapy was discontinued. Dr. Leonard noted the left shoulder impingement syndrome was improving, but the left lateral epicondylitis failed physical therapy for a period of over a year despite injections. He recommended surgery on September 13, 2021. (PX1, 14).

Dr. Leonard performed left lateral elbow surgery on November 11, 2021 at Silver Cross Hospital. (PX 3). She saw him on December 20, 2021, and physical therapy was not yet to be approved by workers' comp. She saw Dr. Leonard again on February 24, 2022 after undergoing an EMG, which was normal. (PX8). Dr. Leonard placed her at MMI for the left elbow and shoulder on February 24, 2022.

The Petitioner was subsequently seen by Section 12 Examiner Dr. Daniel Troy at the request in the Respondent for an Independent Medical Evaluation on April 7, 2022. Despite Dr. Troy finding the Petitioner at maximum medical improvement for her January 23, 2019 accidental injury, he recommended an updated Functional Capacity Evaluation. (PX9, RX4) Dr. Troy opined Petitioner suffered from subjective pain to her cervical spine, left shoulder, and left elbow. The imaging demonstrated degenerative changes and a bulge of the cervical spine, mild biceps tenosynovitis of the left shoulder, and common extensor tendinitis of the left elbow. Regarding the physical examination, the Petitioner demonstrated "very atypical" impingement test results with 5 out of 5 strengths in flexion, abduction, and extension for the left bicep, triceps, and wrist. In regard to the left elbow, Petitioner had full range of motion, full supination and pronation, full radial and ulnar deviation. Petitioner had no numbness or tingling, negative carpal tunnel, no thenar or hypothenar atrophy, no hyperreflexia, negative Hoffman's, and negative Spurling's. Dr. Troy agreed with the treating physician's Dr. Bernstein and Dr. Leonard that Petitioner had reached MMI. Dr. Troy stated, "I believe the claimant is able to return to work full duty. There is no objective reason that she cannot". (PX9)

The Petitioner underwent a second Functional Capacity Evaluation per the recommendation of Dr. Troy. (PX13) The WorkWell Functional Capacity Evaluation was performed on August 2, 2022. Petitioner's efforts during the course of the Functional Capacity Evaluation were maximal. The examiner had the correct job description for a switchman. The examiner conducted the full and complete Functional Capacity Evaluation and concluded that Petitioner's abilities did not match her job requirements. The examiner found Petitioner was limited with above shoulder reaching, floor to waist reaching, waist to overhead lifting, carrying, climbing, ladder reaching with left arm tasks were limited. Specifically, reaching to get into the motor cab or get up into the railcar in the railroad yard. The examiner found the physical limitations presented a barrier to return to work

unless modifications were made. This examiner found the physical requirements of the Petitioner's job had been compared to the Petitioner's performance on the Functional Capacity Evaluation and found there was not a job match. (PX 13).

On December 7, 2022, the Petitioner had a second IME with Dr. Troy. At this time, the Petitioner had not had any treatment since the previous IME. However, Petitioner had an FCE providing permanent restrictions. Dr. Troy again noted atypical impingement test results. Dr. Troy acknowledged the restrictions in the FCE but went on to state "from an objective standpoint, Petitioner should have been able to return to work full duty". (PX9)

Dr. Troy provided a final report on July 28, 2023. That report was an addendum to the December examination clarifying his opinion. Dr. Troy stated, "The claimant can return to work full duty & has been found to be at MMI as of today, December 7, 2022". (RX6)

Dr. Bernstein reviewed the Functional Capacity Evaluation and stated on September 23, 2022, that according to the Functional Capacity Evaluation, the Petitioner could only lift 31 pounds, but the job required 60 pounds. The job required push or pulling 75 pounds, but Petitioner could only push 50 pounds. She was expected to carry equipment and tools weighing 40 pounds, but she was only able to carry 36.5 pounds. She is supposed to be able to reach up with her arm and hold onto rails and pull herself up onto a motor cab from the track but was unable to do so. (PX 5). Dr. Bernstein found the limitations were significant and, despite a good clinical result, the findings of the Functional Capacity Evaluation were reasonable and the findings are permanent. He further stated no further care was indicated and that she was at maximum medical improvement on September 23, 2022 after considering the second Functional Capacity Evaluation and the correct job description. (PX 5).

Testimony of Dr. Daniel Troy- Section 12 Examiner

Dr. Daniel Troy is an orthopedic surgeon who conducted two Independent Medical Evaluations, as well as an addendum, on behalf of the Respondent, CTA, on April 20, 2022, December 7, 2022 and July 28, 2023. (RX 4 and 5).

Dr. Troy testified that on the April visit, he found Petitioner had 90 percent range of motion to the neck. He testified Petitioner had subjective complaints of pain around the left shoulder. She had a prior left elbow arthroscopic surgery and had subjective pain on the outer aspect of the elbow. He testified she had full range of motion of the elbow. In regard to the left shoulder, her external rotation was slightly diminished to T10. She reported discomfort to the anterior aspect of her shoulder with palpation. She had tenderness over the acromial clavicular joint, but Dr. Troy testified this was questionable. Dr. Troy testified she had subjective complaints over the anterior aspect of the medial epicondyle and tenderness over the medial epicondyle. Dr. Troy termed this pain vague. (RX 7, Pgs. 14 &15).

Dr. Troy confirmed the Petitioner had appropriately positioned cervical disc arthroplasty at C6-C7. Dr. Troy testified Petitioner's care was appropriate. (RX 7, Pg. 17). His diagnosis was post C6-C7 cervical disc arthroplasty and status post left elbow arthroscopy. He further testified she had subjective complaints of pain to the left side of her neck with residuals of anterior left shoulder pain. (RX 7, Pg. 18). Dr. Troy causally connected Petitioner's disability to the work injury. (RX7,

p.18). He testified she was at maximum medical improvement and needed no further treatment. He testified she could return to work from an objective standpoint but recommended an updated Functional Capacity Evaluation (RX 7, Pg. 19).

Dr. Troy examined the Petitioner a second time on December 7, 2022. He found slight limitations of range of motion of the cervical spine. He testified Petitioner had subjective complaints along the left cervical spine muscles and into the left trapezius muscle, the trapezius muscle belly and to a lesser degree the right side of her neck, and the right trapezius muscle. (RX 7, Pg. 21).

In regard to the left shoulder, Petitioner had subjective complaints over the outer aspect of her shoulder. She complained of tingling and numbness into her hand, which Dr. Troy termed atypical. She had slight limitations of motion of her shoulder including flexion and abduction. He testified she had "atypical" impingement. (RX 7, Pg. 22). Dr. Troy testified she had mild discomfort with palpation over the outer aspect of the elbow. (RX 7, Pg. 22).

Dr. Troy reviewed the updated FCE from WorkWell and a narrative report from Dr. Avi Bernstein.

Dr. Troy testified Petitioner's treatment was reasonable and necessary since his last IME in April and that she needed no further care or treatment. He testified she was at MMI on December 7, 2022. (RX 7, Pg. 23). Dr. Troy testified on direct examination that Petitioner could return to work based on her objective examination and that his opinion from his first IME remained the same. (RX 7, Pg. 24).

Respondent's Exhibit 6 is dated July 28, 2023, and is an one page IME addendum. This report states Petitioner can return to work full duty. (RX 7, Pg. 25).

On cross-examination, Dr. Troy admitted the anatomical drawing Petitioner filled out for him indicated her injuries and pain consistent with the mechanism of the injury and her subjective complaints. (RX 7, Pg. 28). Dr. Troy agreed he never received the MRI films and did not review same, only reports. Dr. Troy admitted on April 20, 2022 the Petitioner had a 10% reduction in range of motion in the cervical spine. (RX 7, Pg. 31). He admitted there is reduction in extension and range of motion and lateral rotation. Nevertheless, he testified Petitioner's pain is subjectively based on the left side, but agreed the pain was consistent with a mechanism of the injury and consistent with the surgical procedures performed. (RX 7, Pg. 32). In the left upper extremity, he found loss of residual internal rotation. He testified Petitioner had subjective pain over the anterior lateral aspect of the shoulder. Dr. Troy used terms like vague or subjective to describe her pain. However, he admitted patients can have a perfect surgery, but still have pain and subjective complaints. He admits sometimes the subjective complaints precludes a person from full performance of their job. (RX 7, Pg. 34).

Dr. Troy causally connects the Petitioner's subjective symptomology to Petitioner's accidental injury, which is causing her pain and discomfort. He admitted there were some objective testing by Petitioner's doctors that did reflect objective findings. (RX7, Pg. 35). Dr. Troy testified that he reviewed the WorkWell Functional Capacity Evaluation and acknowledged that the FCE noted that Petitioner's abilities did not match her job requirements. (RX 7, Pgs. 39 to 41).

Dr. Troy testified he did not know what Petitioner did for the Respondent, other than what Petitioner had said "walking up and down the lines and throwing switches." He admitted that he does not recall if he ever had a job description in this case and there was no job description in his file that was subpoenaed. (RX 7, Pg. 39). He admitted he does not know how much force it takes to throw a switch or how many times in a given day the Petitioner had to throw a switch. He did admit throwing a switch would take force. (RX 7, Pg. 40).

Dr. Troy acknowledged that even when his patients had an anatomically good surgery but like the Petitioner have subjective complaints of pain, he would take the pain complaints into consideration and his opinion about the patient's ability to work. (RX 7, Pg. 43).

Dr. Troy admitted the Petitioner's patterns of movement and physical responses were consistent during the course of the Functional Capacity Evaluation and that she gave maximum effort. She demonstrated cooperative behavior and demonstrated she was willing to work to maximum abilities at all items that were tested. (RX 7, Pgs. 43 to 44). He admitted she reported discomfort in the neck, left shoulder, elbow and increased tingling in the left ring and middle fingers that were part of the reasons for limitations in her ability to do the switchman job during the FCE.

Dr. Troy admitted the physical limitations on the Functional Capacity Evaluation presented a barrier to the Petitioner returning to work unless modifications could be made. He further acknowledged that the FCE report determined that the Petitioner's performance on the FCE and that the physical requirements of the Petitioner's job of switchman concluded it was not a job match. (Rx7, Pg. 45).

Dr. Troy testified he was unaware of CorVel's medical director's report. He was asked if he knew that doctor worked for CorVel and that doctor found the Petitioner unable to work. (RX7, Pg. 46).

Dr. Troy was asked if there were inconsistencies regarding his conclusions and testimony regarding his December 7, 2022 Independent Medical Examination. Dr. Troy admitted his cervical spine examination was abnormal with a 25% loss of range of motion and pain. (RX7, Pg. 50). He admitted she had an abnormal thoracic spine exam with loss range of motion. He found there was a normal shoulder range of motion. He concluded the limitations set forth in the Functional Capacity Evaluation are secondary to the Petitioner's complaints of pain. (RX 7, Pg. 53).

Dr. Troy was then asked if he was aware the Respondent saw ambiguity in his December 7, 2022 report, and that the Respondent requested a clarification since said date. He testified a letter was sent for clarification but no letter was found in his files, which he later admitted might have been an email. (RX 7, Pg. 56). He was asked when he sent the December 7, 2022 report of Independent Medical Evaluation to the Respondent, but could not answer. (RX 7, Pg. 56 to 57). He was asked when did he receive the request for clarification and could not answer. (RX 7, Pg. 57 to 58). He was asked whether it was June and he stated he did not ever receive the request. He admitted he was unaware that the parties were waiting for a response and clarification between December and June of 2023 (RX 7, Pg. 58). The doctor acknowledged that when Respondent asked for clarification, his opinion remained unchanged that Petitioner was at MMI and could return to work. (RX 7, Pg. 59).

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).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her to be a credible and persuasive 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 Petitioner's testimony is supported by the numerous accident reports, supervisor report and miscellaneous reports contained in petitioner's exhibits. The Arbitrator did not find IME Dr. Troy to be entirely credible or persuasive. See below.

Regarding Issue C: Whether Petitioner sustained accidental injuries that arose out of and in the course of Petitioner's employment:

The Arbitrator hereby incorporates by reference the Findings of Fact contained previously in the Decision of the Arbitrator which delineate the relevant facts and analysis.

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 Comm'n*, 79 Ill. 2d 249, 253 (1980) including that there is some causal relationship between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989) It is well established that the Act is a humane law of remedial nature and is to be liberally construed to effect the purpose of the Act - that the burdens of caring for the casualties of industry should be borne by industry and not by the individuals whose misfortunes arise out of the industry, nor by the public. *Shell Oil v. Industrial Comm'n*, 2 Ill.2nd 590, 603 (1954).

An employee's injury is compensable under the Act only if it arises out of and in the course of the claimant's employment. 820 ILCS 305/2 (West 2012). Both elements must be present at the time of the claimant's injury in order to justify compensation. *Illinois Bell Telephone Co. v.*

Industrial Comm'n, 131 Ill. 2d 478, 483 (1989). Arising out of the employment refers to the origin or cause of the claimant's injury. Cox v. Illinois Workers' Compensation Comm'n, 406 Ill. App.3d 541, 544 (2010). 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).

The Petitioner testified in a truthful and credible manner that she sustained accidental injuries on January 23, 2019. She stated she injured her neck, left shoulder, and left arm after slipping and falling on ice in the rail yard while performing her job as a switchman at the Chicago Transit Authority. The Arbitrator notes that despite accident not being stipulated to by the parties, finds that the Petitioner testified unrebutted that she sustained an accidental injury that arose out of and in the course of her employment with the Respondent. Petitioner submitted into evidence exhibits that further support her testimony. The Arbitrator further finds that her medical history along with her truthful and credible testimony in all doctors' records is consistent with how she sustained her accidental injury. The Arbitrator also did not find any contrary evidence submitted from the Respondent disputing there was a work-related accident and further notes that the IME doctors both found causation for the accident and injuries as well. **Based on the above, the Arbitrator finds that Petitioner sustained an accidental injury that arose out of and in the course of her employment with Respondent.**

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

The Arbitrator hereby incorporates by reference the Findings of Fact contained previously in the Decision of the Arbitrator which delineate the relevant facts and analysis.

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. It is not necessary to prove that the employment was the sole causative factor or even that it was the principal causative factor, but only that it was a causative factor. *Tolbert v. Ill. Workers' Comp. Comm'n*, 2014 IL App (4th) 130523WC, ¶ 1, 11 N.E.3d 453. The Commission may find a causal relationship based on a medical expert's opinion that the injury "could have" or "might have" been caused by an accident. *Mason and Dixon Lines, Inc. v. Industrial Commission*, 99 Ill..2d 174, 182, 457 N.E. 2d 1222, 1226, 75 Ill. Dec. 663 (1983). However, expert medical evidence is not essential to support the Commission's conclusion that a causal relationship exists between a claimant's work duties and his condition of ill-being. *International Harvester v. Industrial Commission*, 93 Ill..2d 59, 63, 442 N.E. 2d 908, 911, 66 Ill. Dec. 347 (1982). A chain of events suggesting a causal connection may also suffice to prove causation. *Consolidation Coal Company v. Industrial Commission*, 265 Ill. at 3d 830, 839, 639 N.E. 2d 886, 892, 203 Ill. Dec. 327 (1994). 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 Company v. Industrial Commission*, 315 Ill. at 3d 1197, 1205 (2000). Thus, even though the employee had a preexisting condition that may make him or her more vulnerable to injury, recovery for an accidental injury will not be denied as long as the employee establishes that the employment was a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Commission*, 207 L.2d 193, 205 (2003).

The Arbitrator finds that the Petitioner sustained accidental injuries to her neck, left shoulder, and left arm as a result of the accident. The Petitioner sought treatment for these injuries on the date of the accident and was continuous in her treatment of the cervical spine and left arm/shoulder until she was released from care, with the permanent restrictions per the most recent FCE.

The treating medical records presented state there was a causal relationship between the Petitioner's accidental injury and resulting condition of ill-being. Specifically, Dr. Bernstein, who was hired as a Section 12 Examiner by Respondent and became the treating surgeon to Petitioner, gives causation for Petitioner's injuries, in addition to Dr. Lim and Dr. Leonard. The Arbitrator relies on Dr. Bernstein's medical reports of evaluation, care/treatment and permanent restrictions, over those opinions provided by Dr. Troy. The Arbitrator further notes that Dr. Troy also substantiated that there was a causal relationship between Petitioner's accidental injury and resulting condition of ill-being and need for medical care/surgeries. The difference in the doctors' opinions (treating physicians versus IME Dr. Troy) comes down to the ability of Petitioner to return to work and whether she has permanent restrictions as a result of her injuries.

The Respondent does not appear to have offered opinions to the contrary in regard to the issue of whether or not there was an accidental injury arising out of her course of employment but does dispute that Petitioner's current condition, and whether she requires permanent restrictions, are causally related to the work accident on 1/23/19. It is the Commission's province to assess the credibility of witnesses, draw reasonable inferences therefrom and determine the weight to give said testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Berry v. Industrial Commission*, 99 L.2d 401, 406-407, 459 N.E. 2d 963, 76 Ill. Dec. 828 (1984); *Hosteny v. Illinois Workers' Compensation Commission*, 397 L.F. 3d 665, 675, 928 N.E. 2d 474, 340 Ill. Dec. 475 (2009); *Fickas v. Industrial Commission*, 308 L.F. 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 L. 91, 138 N.E. 2011 (1923).

The Respondent relies on the opinions of Dr. Troy in denying that Petitioner's currently requires permanent restrictions and that she cannot return to work. In the IME report, Dr. Troy acknowledged the subjective complaints of the Petitioner along with the FCE. (RX5, 7) Dr. Troy testified that the FCE was a subjective report stating, "…FCEs are limited by the patient's subjective complaints. So it's not a discreetly objective test". (RX7) Further stating, "They stopped the test. When someone says they can't lift more, it's from their subjective complaints. It's not objective. It's an observation that they cannot lift more". *Id.* He concluded the limitations set forth in the Functional Capacity Evaluation are secondary to the Petitioner's complaints of pain. (RX 7, Pg. 53). However, Dr. Troy testified Petitioner's treatment was reasonable and necessary since his last IME in April 2022 and that she needed no further care or treatment. He testified she was at MMI on December 7, 2022. (RX 7, Pg. 23). Dr. Troy testified on direct examination that Petitioner could return to work based on her objective examination and that his opinion from his first IME remained the same. (RX 7, Pg. 24).

However, on cross-examination, Dr. Troy admitted the anatomical drawing Petitioner filled out for him indicated her injuries and pain consistent with the mechanism of the injury and her subjective complaints. (RX 7, Pg. 28). Dr. Troy agreed he never received the MRI films and did not review same, only reports. Dr. Troy used terms like vague or subjective to describe her pain. Additionally, he admitted patients can have a perfect surgery, but still have pain and subjective complaints. He admits sometimes the subjective complaints precludes a person from full performance of their job. (RX 7, Pg. 34). Dr. Troy testified that he reviewed the WorkWell Functional Capacity Evaluation and acknowledged that the FCE noted that Petitioner's abilities did not match her job requirements. (RX 7, Pgs. 39 to 41).

Dr. Troy testified he did not know what Petitioner did for the Respondent, other than what Petitioner had said "walking up and down the lines and throwing switches." He admitted that he does not recall if he ever had a job description in this case and there was no job description in his file that was subpoenaed. (RX 7, Pg. 39). He admitted he does not know how much force it takes to throw a switch or how many times in a given day the Petitioner had to throw a switch. He did admit throwing a switch would take force. (RX 7, Pg. 40). Dr. Troy acknowledged that even when his patients had an anatomically good surgery but like the Petitioner have subjective complaints of pain, he would take the pain complaints into consideration and his opinion about the patient's ability to work. (RX 7, Pg. 43). Dr. Troy admitted the physical limitations on the Functional Capacity Evaluation presented a barrier to the Petitioner returning to work unless modifications could be made. He further acknowledged that the FCE report determined that the Petitioner's performance on the FCE and that the physical requirements of the Petitioner's job of switchman concluded it was not a job match. (Rx7, Pg. 45).

The Arbitrator heard the truthful, credible, and precise testimony of the Petitioner and has reviewed all medical records and IME reports and testimony, including the opinions on causation of Dr. Bernstein, Dr. Lim, Dr. Leonard, and Dr. Troy and found the treating physicians' opinions to be persuasive. The Arbitrator notes the Petitioner underwent multiple conservative modalities prior to her having cervical disc surgery and left elbow surgery. Dr Troy also agreed with this care and treatment and gave causation for the injuries and subsequent treatment. The Arbitrator further relies on the FCE reports and specifically the second report which includes the specifics of Petitioner's job and provides permanent restrictions. Dr. Bernstein relied on the second report in providing permanent restrictions. The Arbitrator is not persuaded by Dr. Troy, that the permanent restrictions per the FCE are based solely on subjective complaints after reviewing all the medical evidence. Further, the FCE report was clear and convincing that Petitioner cannot return to her heavy demand job as a switchman, of which the Arbitrator notes it appears that Dr. Troy knew little about. The treating physicians and their opinions regarding causation, medical treatment and eventual permanent restrictions, as well as petitioner's own testimony are more persuasive and credible to the Arbitrator. **Based upon the record as a whole, the Arbitrator finds that Petitioner has proven beyond a preponderance of the evidence that the condition of ill-being that she suffered from as a result of the accidental injury is causally connected to the accident.**

Regarding 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 hereby incorporates by reference the Findings of Fact contained previously in the Decision of the Arbitrator which delineate the relevant facts and analysis.

Under Section 8(a) of the Workers' Compensation Act, the employer has liability to pay for medical services subject to the two-doctor rule. (820 ILCS 305/8(a) (West 2010). Under Section 8(a) of the Act, Petitioner is entitled to recover reasonable medical expenses as a result of her injury which are causally related and necessary to diagnose, relieve, or cure the effects of the claimant's injury. *The Absolute Cleaning/SVMBC v. Illinois Workers' Compensation Commission,* 409 IL at 3d, 463, 470 (Fourth District). 2011).

Respondent disputes its liability for Petitioner's outstanding medical bills on the basis of accident and causation. Doctors Bernstein, Lim and Leonard have opined that Petitioner's treatment was medically necessary and reasonable. IME Dr. Troy also conceded that Petitioner's treatment had overall been reasonable but disputed that petitioner requires permanent restrictions and that she cannot return to her prior position with Respondent on the basis of the theory that the FCE findings and report were based on subjective pain complaints not objective findings. The Arbitrator has found *supra* that Petitioner's condition of ill-being concerning her cervical spine and left arm/shoulder are causally related to the accident. Therefore, the Arbitrator finds all treatment rendered to Petitioner following the work accident, including all treatment rendered by Silver Cross Hospital, RX Development, Impact Physical Therapy, and Midwest Orthopaedics Consultants, to be reasonable, necessary and related.

In light of the above, having reviewed the bills and records of treatment, the Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for all of the said treatment. Petitioner has submitted evidence claiming $6,026.37 in unpaid, outstanding medical bills (PX23).

As such, the Arbitrator orders Respondent to pay Petitioner directly for the following outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act:

Silver Cross Hospital	**$133.00**
RX Development Associates	**$603.37**
Impact Physical Therapy	**$3,661.00**
Midwest Orthopaedics Consultants	**$929.00**
Total:	**$5,326.37**

There is a bill provided by The Spine Center for $700.00 for the date of service June 1, 2020. The provider lists the bill as 'records review'. *PX5 and 23.* Per the record of hearing for this case, the parties agree that there is no report, narrative, or office note for this date. This bill is therefore not awarded to the provider. Respondent is given a credit for any of these bills already

paid, if applicable, however it appears the above-mentioned bills are still outstanding.

Regarding Issue L, What temporary benefits are in dispute, the Arbitrator finds as follows:

The Arbitrator hereby incorporates by reference the Findings of Fact contained previously in the Decision of the Arbitrator which delineate the relevant facts and analysis.

Temporary Total Disability
"The period of temporary total disability encompasses a time from which the injury incapacitates the claimant until such time as the claimant is recovered as much as the character of the injury will permit, 'i.e., until the condition is stabilized." *Gallentine v. Industrial Commission,* 201 Ill. 3d 880, 886, (2nd Dist. 1990). i.e., reached MMI. *Mechanical Devices v. Industrial Commission,* 344 Ill. 3d 752, 760 (4th Dist. 2003). To show entitlement to temporary total disability benefits, the claimant must prove not only that he did not work, but also that he or she was unable to work. *Gallentine,* 201 LF 3d at 887; see also *City of Granite City v. Industrial Commission*, 279 LF 3d 1087, 1090 (5th Dist. 1996).

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 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 Comm'n, 352 Ill. App 3rd 1067, 1072 (2004).*

The Arbitrator finds that Petitioner has proved by a preponderance of the evidence that she is entitled to temporary total disability payment from the date of the accidental injury through 9/23/22. This was the date of Dr. Troy's second IME that reviewed and opined on the Work Well FCE of August 2022. The Arbitrator notes that Petitioner was last found to be at maximum medical improvement by Dr. Bernstein on September 23, 2022. The Arbitrator selected 9/23/22 because this Dr. Bernstein report takes into account the last FCE at WorkWell (8/2/22). This second FCE was recommended by IME Dr. Troy as well, and during the FCE, the correct job description for the Petitioner was reviewed and used for determining Petitioner's ability to return to her switchman job for Respondent. It was after the second FCE that the work restrictions were clear based on Petitioner's job and Dr. Bernstein opines these are permanent. It became clear after the second FCE and Dr. Bernstein's report that Petitioner could not return to her prior job with respondent, without accommodation. The Arbitrator also notes that Respondent claims Petitioner is entitled to TTD through 12/7/22 as well, per the request for hearing form submitted. See AX1. This is likely when the second IME report was received.

There is no dispute that Petitioner could not work for a significant amount of time due to her work-related injuries or was on restrictions that could not be accommodated; and she was paid TTD benefits by Respondent while she was off. Disputes arise as to TTD benefits or maintenance are owed following the imposition of permanent restrictions, whether Petitioner could return to work

for Respondent and whether Petitioner looked for work. Per the evidence submitted by Respondent, the CTA made TTD payments to Petitioner from January 24, 2019 through July 18, 2023. (*RX8)* The Respondent made additional indemnity payments to Petitioner's law firm for $23,497.53 on 8/9/23 (covering 4/29/22-9/22/22), $17,824.55 on 8/9/23 (covering 12/8/22-7/18/23) and $5,914.35 on 10/26/22 (covering 9/23/22-12/7/22). It is unclear if these checks were for back TTD owed or maintenance benefits. There is no additional itemization provided. The Arbitrator notes however that there are biweekly, regular and consistent, checks issued to Petitioner from 2/12/19 through 4/26/22. The Arbitrator notes that the first IME with Dr. Troy was on 4/20/22 which may explain why the biweekly benefits were terminated shortly after. The disputed TTD and/or maintenance period per the RFH form would be from 9/24/22 through the trial date. This time period includes a claim for maintenance from the same time period. However, per the Indemnity ledger submitted, it appears Respondent has paid maintenance benefits following the MMI determination, through July 18, 2023.

Based on the above, the Arbitrator awards Temporary Total Disability benefits from the date of accident 1/23/19 through 9/23/22, or 191 2/7 weeks at $1,118.93/week. The parties stipulated that Respondent paid $237,454.53 in TTD benefits, and the Arbitrator awards a credit for the same to be applied towards any award of TTD and or maintenance benefits herein.

Issue M, penalties, the Arbitrator finds as follows:

The Arbitrator hereby incorporates by reference the Findings of Fact contained previously in the Decision of the Arbitrator which delineate the relevant facts and analysis.

The imposition of Section 19(l) penalties requires the Petitioner to make a written demand or payment of benefits under Section 8(a) or Section 8(b). It also requires the Respondent to fail, neglect, refuse, or unreasonably delay the payment of benefits without good and just cause. See *820 ILCS 305/19(l).* The Court has found that the act of submitting medical bills into evidence at hearing is not the same as tendering them to the employer for payment. See *Theis v. Illinois Workers' Comp. Comm'n*, 2017 IL App (1st) 161237WC.

Regarding the imposition of Section 19(k) penalties and Section 16 attorney fees, the Courts have confirmed that the imposition of these penalties is where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose. These penalties are appropriate when the delay was vexatious, intentional, or merely frivolous. These penalties and fees require a higher standard of proof. See *McMahon v. Industrial Commission*, 183 Ill.2d 499, 515(1998). When the Respondent acts in reliance upon reasonable medical opinion or where there are conflicting medical opinions penalties are not ordinarily awarded. *USF Holland, Inc. v. Industrial Comm'n*, 357 Ill.App.3d 798, 805 (2005).

Sections 19(k) and 16, in pertinent part, both refer to instances where the position taken "does not present a real controversy" and is "frivolous." Section 16 refers to this language found in section 19(k) as well. See 820 ILCS 305/16, 19(k) (West 2012). These penalties and fees address deliberate conduct or actions undertaken in bad faith.

Overall, the Arbitrator finds that petitioner is not entitled to penalties and fees under Sections 19(k), 19(l) and Section 16 because respondent's nonpayment of benefits was neither unreasonable

nor vexatious. Respondent's conduct does not demonstrate bad faith or improper purpose. See below for further analysis. The Respondent had the Petitioner examined for an IME on April 20, 2022. *RX4.* That IME found the Petitioner at MMI and capable of returning to work full duty. *Id.* The Respondent terminated TTD at that time. The Petitioner had an FCE after the IME. The Respondent sent updated records to the IME physician to determine if the opinion changed. That second IME was provided on December 13, 2022. *RX5.* The IME opinion recognized the Petitioner's FCE providing permanent restrictions. *Id.* Nonetheless, the opinion continued to say, "From an objective standpoint, the claimant should have been able to return to work full duty". *Id.* Respondent relied on this report and opinion, but also requested a clarification that same day. *RX11.* The IME physician was not responding to the Respondent's regular requests for a clarification report. The Respondent appears to have kept the Petitioner updated per the correspondence submitted into evidence. *RX12.*

Section 19(l) requires an employee to make a written demand for payment of benefits. The employer has 14 days to provide a written reason for delay of benefits. The reason must be in good and just cause. In this case, the Respondent provided within 14 days, in writing the reason for suspended benefits; the IME report returning the Petitioner to work without restrictions. Dr. Troy disagreed with the FCE findings as well as the opinion for permanent restrictions per the treaters. While the Arbitrator does not find Dr. Troy's opinions entirely persuasive for reasons previously discussed, the arbitrator does not find it unreasonable for Respondent to have relied on their retained expert in this dispute regarding Petitioner's ability to work. The Respondent provided a reasonable legally sufficient argument to suspend benefits at the time that they did. The Respondent continued to act in good faith by obtaining an additional IME report after the continued treatment, despite the disputes. The Arbitrator nots that the Respondent also issued disputed TTD lump sum payments as well, per the indemnity ledger. Again, it appears benefits were paid during the delay in the IME addendum through 7/18/23.

Section 19(k) provides for penalties had the employer provided an unreasonable justification. That section does not apply in this case. Respondent retained a section 12 Examiner who examined Petitioner and issued 3 reports. While there was a lengthy delay for the third IME report, a one-page addendum, the delay was not on the part of the Respondent, but on Dr. Troy. This was an unusual situation to have a long delay. Respondent did not know if Dr. Troy's opinions would change following the second FCE however additional benefits were still issued. The Arbitrator acknowledges the unfortunate months long delay in payment of the back TTD or maintenance, but again reiterates that Respondent was not unreasonable by its reliance in their Section 12 expert and his opinions which released Petitioner back to work full duty. Further it was not unreasonable for respondent to wait for the addendum from the Dr. Troy, despite the unreasonable delay on behalf of the doctor, that was not explained during his testimony. Based on that opinion, which remained unchanged throughout Dr. Troy's IME reports, Respondent could continue to deny (and did deny for some time) maintenance benefits and vocational services, despite some lump same payments.

Section 16 for attorney's fee does not apply in this case as penalties are not warranted as explained above.

Consequently, the Arbitrator finds that Respondent's denial of benefits was not evidence of improper purpose or in bad faith. The Arbitrator also finds that denial of benefits was not

unreasonable given the ongoing dispute at the time of denial or delay. The Arbitrator accordingly finds that respondent's conduct does not amount to bad faith, such that penalties should be awarded. **The Arbitrator denies payment of penalties and fees under Sections 19(k), 19(l) and Section 16 for the reasons previously stated above.**

Issue O, Vocational Rehabilitation Services and Maintenance benefits, the Arbitrator finds as follows:

The Arbitrator hereby incorporates by reference the Findings of Fact contained previously in the Decision of the Arbitrator which delineate the relevant facts and analysis.

Maintenance Benefits

Section 8(a) of the Act (820 ILCS 305/8(a) (West 2012)) authorizes an award of maintenance benefits when a claimant is engaged in a prescribed vocational or physical rehabilitation program. A claimant is not required to request vocational rehabilitation before being entitled to an award of maintenance. *Greaney v. Indus. Comm'n,* 358 Ill. App. 3d at 1019.

Employers are responsible for paying not only TTD, but also maintenance for the time period during which they are disputing the need for vocational rehabilitation pursuant to section 8(a). 820 ILCS 305/8(a). The claimant need not request vocational rehabilitation before maintenance may be awarded. *Roper v. Contracting v. Industrial Comm'n*., 349 Ill. App. 3d 500, 506 (5th Dist. 2004). The employer may be responsible for paying maintenance while the employer is either disputing the need for vocational rehabilitation or determining whether an alternative option is viable, even if maintenance has not been requested. Id.

The Petitioner is requesting maintenance benefits. The Respondent has provided evidence that Petitioner should be able to return to work in her prior position, however the Arbitrator has already rejected the opinions of Dr. Troy and relies on the opinions contained in the FCE reports and provided by the treating physicians, specifically Dr. Bernstein. Petitioner cannot return to her heavy demand job with the CTA, as a switchman, without being accommodated. There has been no accommodation offered and until the trial date, Respondent disputed the need for vocational rehabilitation and/or maintenance, by relying on the opinions of their IME Dr. Troy, that Petitioner could work without restrictions and return to her prior job.

The Petitioner testified that she tried to return to work after the first FCE but was denied an accommodation. Petitioner confirmed she did not reapply for accommodation once she completed treatment. Petitioner testified she was "found unfit" to work and therefore receives disability pension. T. 67. Petitioner also testified she look for jobs on social media but does not have a resume. The Arbitrator notes that Petitioner did undergo a vocational rehabilitation assessment and evaluation in July 2023 as well. It is noted in the report that Petitioner explained that she has not applied for jobs recently after she "lost her confidence and sense of self-worth after losing her career of 20+ years. She does know what to do next." PX21. It appears from the report that petitioner is capable of work, has some computer skills, and history of some post high school education, training, etc. During the vocational assessment, Petitioner also reported worries about any job that would require too much activity and bother her neck and left shoulder. Petitioner previously testified that she looked for work and the Arbitrator finds the Petitioner to be credible. The Arbitrator notes that Petitioner testified that she wants to work. It appears Petitioner requires

further guidance and assistance in searching for a new career and developing new skills to apply for jobs and/or make her a better candidate for said jobs.

Therefore, the Arbitrator finds that from 12/8/22 through the trial date, maintenance benefits are awarded to Petitioner. Further, the Arbitrator notes that if Petitioner successfully participates in and completes vocational rehabilitation that is awarded herein, maintenance benefits would be warranted under Section 8(a) of the Act. The Arbitrator also awards Respondent a credit for any maintenance benefits already paid as well. Per RX8, it appears maintenance benefits were paid from 12/8/22 through 7/18/23.

Vocational Rehabilitation

A claimant is generally entitled to vocational rehabilitation when he sustains a work-related injury which causes a reduction in his earning power and there is evidence that rehabilitation will increase his earning capacity. *Euclid Bev. v. Ill. Workers' Comp. Comm'n,* 2019 IL App (2d) 180090WC ¶ 29. Here is it clear to the Arbitrator, after relying on the Work Well FCE and the opinions of Dr. Bernstein, that Petitioner has permanent restrictions and cannot return to work as switchman for the CTA. In further support of the finding of temporary total disability and/or maintenance benefits, the Arbitrator found previously that the Petitioner's condition was caused by her work accident. She testified that she has looked for work, but has been an employee with the Respondent for over 17 years and was not qualified to apply for certain jobs and needed to develop further skills. In that regard, she sought out a vocational assessment from Vocamotive and the Arbitrator has reviewed Petitioner's Exhibit 21, which is the vocational rehabilitation evaluation report of Vocamotive along with the vocational rehabilitation plan. The proposed plans and job options are reasonable to the Arbitrator. Vocational Rehabilitation will be beneficial to Petitioner under the circumstances.

The Arbitrator finds that the Petitioner is in need of vocational rehabilitation services and awards the same to assist Petitioner in finding a new job/career path, based on the permanent restrictions she now has.

For the reasons stated above, Petitioner is entitled to an award of benefits under The Illinois Workers' Compensation Act consistent with the findings herein.

It is so ordered:

Jacqueline C. Hickey

Jacqueline C. Hickey
Arbitrator

June 7, 2024
Date

June 10, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC030177
Case Name	Nathan Hanger v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0243
Number of Pages of Decision	18
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Jim Vainikos
Respondent Attorney	Thomas Bowman

DATE FILED: 5/29/2025

/s/ Amylee Simonovich, 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

NATHAN HANGER,

Petitioner,

vs. NO: 22 WC 30177

STATE OF ILLINOIS – GRAHAM CORRECTIONAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability, 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 May 2, 2024 is hereby affirmed and adopted.

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

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

Pursuant to Section 19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review.

May 29, 2025
o050625
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	22WC030177
Case Name	Nathan Hanger v. State of Illinois, Graham Correctional Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Jim Vainikos
Respondent Attorney	Thomas Bowman

DATE FILED: 5/2/2024

/s/ Linda Cantrell, 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 2, 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

Nathan Hanger
Employee/Petitioner

v.

State of Illinois/Graham Correctional Center
Employer/Respondent

Case # **22** WC **030177**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Springfield**, on **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 **August 20, 2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did 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 $**67,428.92**; the average weekly wage was $**1,296.71**.

On the date of accident, Petitioner was **35** years of age ***married*** with **4** 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 $**Any and all PEDA benefits paid from 8/31/22 through 11/15/22**, for a total credit of $**Any and all PEDA benefits paid from 8/31/22 through 11/15/22, pursuant to the stipulation of the parties.**

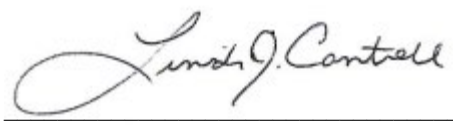
Respondent is entitled to a credit of $**TBD and any and all paid,** under Section 8(j) of the Act, pursuant to the stipulation of the parties.

ORDER

Based on the Arbitrator's finding that Petitioner did not sustain accidental injuries that arose out of and in the course of his employment with Respondent, and that Petitioner's current condition of ill-being is not causally connected to his employment, all medical bills, temporary total disability benefits, and permanent partial disability 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.



Arbitrator Linda J. Cantrell

May 2, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

NATHAN HANGER,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 22-WC-030177
	)	
STATE OF ILLINOIS/GRAHAM CORRECTIONAL CENTER,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Springfield on February 28, 2024. On 11/10/22, Petitioner filed an Application for Adjustment of Claim alleging injuries to his right lower extremity as a result of assisting a co-worker in distress due to an altercation with an inmate on 8/20/22. (AX2)

The parties stipulated that Respondent is entitled to a credit for any and all medical expenses paid through its group medical plan, under Section 8(j) of the Act. The parties further stipulated that Respondent is entitled to a credit for any and all benefits paid under the Illinois Public Employee Disability Act (PEDA) from 8/31/22 through 11/15/22.

The issues in dispute are accident, causal connection, medical bills, temporary total disability benefits, and the nature and extent of Petitioner's injuries.

TESTIMONY

Petitioner was 35 years old, married, with four dependent children at the time of the alleged accident. He was hired by Respondent as a Correctional Officer on 8/5/13. Petitioner worked 7:00 a.m. to 3:00 p.m. at the time of the accident. Petitioner was also a Tactical Officer and responded to elevated situations at the facility that Correctional Officers were not qualified to handle. Petitioner completed a 40-hour training course to become certified as a Tactical Officer and completed ongoing training to maintain his certification. Petitioner testified that his tactical uniform consisted of an orange jumpsuit, stab vest, helmet with face shield, and boots. Sometimes he carried a baton and/or OC spray.

Petitioner testified that on 8/20/22 he was sitting in the "control bubble" when he heard a radio communication that appeared to be an emergency near the healthcare unit. He ran out of

the control center to the healthcare unit where he saw an inmate and Sergeant Matt Woodson on the ground fighting. He stated Sergeant Woodson was walking the inmate to segregation when the altercation occurred. Petitioner testified that he was the first officer to arrive and immediately got down on his knees and grabbed the inmate's legs. Several employees arrived and assisted in restraining the inmate. Two officers restrained the inmate's arms and Petitioner held the inmate's head down toward the ground as they walked him to segregation. Petitioner walked backwards approximately 100 to 150 feet while holding the inmate's head. Petitioner stated the inmate continued to thrust his body up, spit, and threaten the officers throughout the entire walk. He was unsure how long the scuffle lasted, noting it felt like 10 minutes, but it could have been 10 or 15 seconds.

Petitioner testified that as they were entering the first locked door to segregation the inmate reared up and caught him on the bottom of the chin or neck area. Petitioner was thrown off balance backwards, but he was not hurt at all. Petitioner regained control of the inmate and continued to hold his head in a downward position as they walked through the doors. He testified that the doors have jambs at the bottom that are raised 1 to 2 inches off the ground at most which creates a small tripping hazard. He stepped backward onto the door jamb with his right foot. He testified that his adrenaline was going, and he does not recall hearing a pop, pull, or tear in his foot when he stepped on the jamb. Petitioner testified that he could have injured his foot when he initially restrained the inmate as he was on his knees with his toes bent against the ground. The inmate was secured in segregation and Petitioner returned to his assigned post.

Petitioner testified that approximately 30 seconds or 10 minutes after returning to the control bubble his shift commander Major Drannan called him and asked if he was assaulted. Petitioner testified that he was still trying to catch his breath and thoughts and he replied to Major Drannan that he was assaulted. Petitioner went to the Major's office and filled out an incident report. He provided the report to Major Drannan who asked him if he was injured. Petitioner replied "no", but he testified that his right foot was hurting very bad. Petitioner testified that he had undergone a bunionectomy by Dr. Robert Parker on 1/7/22 and he did not know if his soreness was from not using his foot in that manner for a period of time, or if he injured it in the altercation. He testified that he tried to maintain integrity and forced himself to walk normal so Major Drannan would not pull him off his post or send him for medical treatment.

Petitioner finished his work shift that day. He continued to have pain that he disregarded and thought it was soreness from his prior surgery. Petitioner took his boot off at home that evening and stated it hurt so bad it felt like he broke his foot in six different places. Petitioner had a prescheduled appointment with Dr. Parker on 8/22/22 and he waited to seek treatment until then. Petitioner testified that he was released to full duty work following the bunionectomy on 1/31/22. He returned to work and had no pain or issues with his foot from January 2022 until 8/20/22. He performed his full job duties as a Correctional and Tactical Officer during that seven-month period.

Petitioner testified that Dr. Parker diagnosed a fracture through the previous osteotomy. He underwent an injection of the first metatarsal phalangeal joint on 9/19/22 that did not improve

his symptoms. Petitioner underwent a tenotomy and capsulotomy of the 1st MPJ on 10/21/22. On 11/6/22, Petitioner underwent the same surgery again on his right big toe/foot.

On 9/6/23, Petitioner underwent surgery on his right 2nd toe consisting of an arthroplasty with K wire stabilization and elevating the osteotomy of the second metatarsal. Petitioner stated that his second toe was pointing upward, and it was excruciating to walk on. He had a white pad of skin develop on the bottom of his foot and Dr. Parker told him he had hammer toe. Petitioner testified that Dr. Parker told him his second toe had been dislocated for a great time and he had ligament damage in the top of his foot.

Petitioner terminated his employment with Respondent on 11/15/22. He was hired by the Illinois Department of Transportation in Vandalia where he lives. Petitioner testified that he was getting injured working for Respondent and decided to leave employment with the prison. The majority of his job duties with IDOT involved sitting and driving. Petitioner currently works for Lanracorp where he hauls and operates heavy equipment to clear easements. He testified that he cannot perform groundwork because traversing uneven and steep terrains causes pain.

Petitioner testified that from August through November 2022 he received his full salary and was told by Respondent that his injury was service-connected. He then received a letter stating his workers' compensation claim was being denied and he had to pay back his PEDA benefits. He stated Respondent retained all of his accrued benefit time, including sick, PB, vacation, and comp, until he paid back his PEDA benefits, and he did not receive his last paycheck. Petitioner testified that he was never examined at the request of Respondent pursuant to Section 12 of the Act. He testified that all of his medical bills related to his work injury remain outstanding.

Petitioner reviewed an incident report admitted into evidence. (RX1) He testified that the report is a "final" update and he has not seen any prior updates or reports. The report is signed by the Acting Warden and Chief Administrator Vernon DeWitt and Major Drannan. He denied telling Major Mayfield that he broke his big toe in six places. He agreed that his toe was sore since the incident, and he went to his surgeon who diagnosed him with an injury. Petitioner disagreed that he did not initially report the assault on the date of the incident.

Petitioner testified that he cannot run or walk fast since the injury. A majority of his right foot is numb, and he has no "operation" of his first or second toe. He stated that his ligaments are not working anymore. Petitioner testified that he was initially provided a foot brace for drop foot, but it caused more pain. He does not take medication for his foot injury. Petitioner walks on the outside of his foot. He can walk a maximum of 20 to 30 minutes before numbness radiates up his leg and areas of his foot that normally do not hurt becomes painful.

On cross-examination, Petitioner testified that he has gained a lot of weight because his injury prevents him from exercising like he used to. He used to run, jog, and bicycle. He testified that he cannot ride a bicycle without pain. Petitioner testified that he wore a boot after surgery and was transitioned to a medical shoe. He used crutches and transitioned to a cane for a period of time. Petitioner testified that he is not currently treating for his right foot and does not wear any assistive devices.

Petitioner estimated the accident occurred between 10:00 a.m. and 12:00 p.m. He testified that he reported the accident by telephone later the same day after he returned home. He testified that he did not know he was injured before his shift ended because he thought his foot was sore from the prior surgery. Petitioner stated his foot started to swell and bruise, and his toe changed directions. He testified that prior to surgery his toe was curled over his second toe. Petitioner believed Respondent's policy was to report injuries within 24 hours. He testified that his prior bunionectomy was not work-related and he returned to full duty work without restrictions.

Petitioner testified that he was required to wear lace up boots as a Tactical Officer. They were not steel toe, and they did not contain any protective devices. He testified that everyone was aware he was off work for a period of time for a right foot surgery prior to his accident. He testified that IDOT was aware of his foot injury when he was hired. He successfully completed a medical physical prior to being hired by IDOT. While employed by IDOT, he drove a dump truck and a semi, cut down trees, dug ditches with heavy equipment, and mowed. He agreed that his job duties required physical exertion. Petitioner testified that his current employer is aware of his foot injuries. He successfully passed a physical and was cleared to perform his job duties without restriction. He testified that he was not required to run or jump with his foot and only stepping was required.

On re-direct examination, Petitioner testified that he was also treating with Dr. Parker for plantar fasciitis in his right foot and that is why he already had an appointment with him on 8/22/22.

Major Trevor Wright testified on behalf of Respondent. Major Wright is the day shift supervisor in charge of security staff and job assignments. He was hired by Respondent in 2006 and was Petitioner's supervisor. He believed Petitioner was a good employee and not a disciplinary problem. Major Wright testified he was aware of an internal investigation concerning Petitioner and a forgery charge regarding a medical record. Major Wright testified that the outcome of Respondent's investigation was that Petitioner was guilty of forgery and a review board hearing was scheduled. He testified that it was his understanding the investigation did not go anywhere because Petitioner was off work and left employment to work for IDOT. There was no objection to Major Wright's testimony concerning the investigation. Major Wright testified it was Respondent's protocol or procedure to report injuries and altercations with prisoners and failing to do so could result in a failure to report.

MEDICAL HISTORY/ACCIDENT REPORTS

Medical records that pre-dated Petitioner's accident were admitted into evidence. (RX2) On 11/5/21, Petitioner presented to the Springfield Clinic for evaluation of his right foot/big toe. Petitioner reported he sustained an injury on 4/6/19 while resolving a dispute at work when his big toe appeared to be dislocated. (RX2, p. 1) His symptoms started two years prior and gradually progressed to a constant sharp, stabbing pain. Petitioner reported bilateral foot pain for the past several months, right worse than left, and was severe with running. He had pain along the right great toe, joint, and heal. Petitioner reported morning pain in his heal that was gradually worsening. With respect to Petitioner's right foot, Dr. Robert Parker diagnosed plantar fasciitis, moderate hallux valgus deformity with medial drifting, and 2nd, 3rd, and 4th hammertoes with

joint contracture and crowding. Dr. Parker administered an injection into Petitioner's right heal. X-rays confirmed a right bunion deformity and osteoarthritis in the first MTP for which Dr. Parker prescribed Voltaren gel and tablets prior to considering surgery.

On 1/7/22, Petitioner underwent a right Austin Bunionectomy by Dr. Parker. (RX2, p. 10) On 1/27/22, Petitioner requested to return to work without restrictions. He reported he had no soreness wearing his work boots. Dr. Parker released Petitioner to return to work without restrictions on 1/31/22 and ordered him to follow up in two weeks. (RX2, p. 20-23) There is no evidence that Petitioner returned to Dr. Parker until 8/22/22.

On 8/22/22, Petitioner presented to Dr. Parker for right foot pain. (RX2, p. 25) Dr. Parker noted, "Patient had surgery back in Jan and works as corrections – toe was straight but now its turning inward again – possible fracture?" Petitioner reported he was doing well since January 2022 until recently he was involved in an altercation with an inmate, and he apparently injured his right foot. He did not remember the specific injury because he was so pumped up on adrenaline, but he has had pain since the incident. Dr. Parker noted acute tenderness on palpation of the shaft of the 1st metatarsal with some edema. X-rays of Petitioner's right foot revealed bunionectomy changes with interval healing, no new fractures or dislocations, and trace plantar and dorsal calcaneal spurring. (PX1, p. 5 of 133) Dr. Parker diagnosed a traumatic fracture through the previous osteotomy with maintained alignment. Petitioner was placed on restrictions of partial weightbearing with a CAM walking boot and crutches.

On 8/23/22, Major John Drannan prepared an Incident Report. (RX1, p. 7) Major Drannan stated he read an update to a reportable incident from 8/20/22 that stated, "FINAL UPDATE 2: On 08/22/2022, at approximately 8:40PM, Correctional Officer Nathan Hanger called into the facility and spoke with Major Mayfield. Hanger reported his right big toe is broken in six places. Hanger reported the injury is from the physical altercation with individual in Custody NIETHE. Hanger reported his toe had been sore since the incident and he went to his primary care physician today where he was diagnosed with the injury. Hanger reported he also had surgery on the same toe two months ago. Hanger reported his Doctor stated he would be able to work on light-duty but at this time the restrictions from his Doctor have not been reported. Hanger was advised to call and speak to Personnel in the morning."

Major Drannan reported that on the date of the reportable incident Petitioner did not initially report that he had been assaulted by the inmate. Major Drannan became aware Petitioner was assaulted by another employee. He contacted Petitioner by radio to have him come to his office. Major Drannan stated he questioned Petitioner if he had been assaulted by the inmate and Petitioner did not respond verbally for 4 to 5 seconds before replying "Yes". Major Drannan stated he then ordered Petitioner to write up the incident. Major Drannan stated Petitioner did not appear to be injured when he was in his office completing paperwork for 25 to 30 minutes, getting up and down multiple times from the desk. Major Drannan stated he specifically asked Petitioner if he was hurt/injured and Petitioner replied, "No". He stated that at no time did Petitioner appear to be walking abnormally or to be suffering any pain or discomfort. Petitioner did not seek medical treatment following the incident.

On 8/24/22, Petitioner signed and dated an Employee's Notice of Injury. (RX2, p. 2) He reported he responded to a fellow staff member in distress on 8/20/22 at 12:20 p.m. Petitioner reported, "I was assisting in the escort of the individual who assaulted Sergeant Woodson and who was continuing to fight with us. I was walking backwards due to the position of the inmate and lost my footing causing my foot to be jammed [illegible]." Petitioner reported multiple fractures to the bone that attaches to his big toe that were not fractured prior to his accident. A prior pending work-related injury was noted wherein Petitioner dislocated his left shoulder in November 2017 and the claim was being denied.

On 8/24/22, an Illinois Form 45: Employer's First Report of Injury was prepared. (RX1, p.1) The report stated, "EE stated he and other officer were in an altercation. While escorting inmate to restrictive housing EE hurt his right foot by walking backwards." Petitioner sustained a right great toe fracture.

On 8/25/22, Dr. Parker completed an Initial Workers' Compensation Medical Report restricting Petitioner to light duty work for a possible fracture of the right foot. Petitioner was placed on restrictions of partial weightbearing with a CAM walking boot and crutches for six weeks. (RX2, p. 8)

On 9/19/22, Dr. Parker noted Petitioner continued to have considerable pain despite restrictions and anti-inflammatories. He again noted Petitioner's work altercation. Physical examination revealed pain on palpation and range of motion of the 1st MPJ over the area of the previous bunionectomy, increased drifting of the great toe laterally, no inflammation, and mild to moderate swelling. Dr. Parker assessed a fracture of the right foot and his impression was "first MPJ injury contusion turf toe type injury". (RX2, p. 31) He administered an injection into Petitioner's first metatarsophalangeal joint. Dr. Parker ordered Petitioner to continue wearing the CAM boot or tennis shoe. He completed a Physician's Statement indicating a possible right foot fracture and right foot contusion resulting in severe right foot pain. Objective findings included no acute fracture on x-ray, right foot swelling. (RX2, p. 33) He anticipated Petitioner could resume work on 10/10/22.

On 10/10/22, Petitioner reported that since his work accident his big toe was drifting over toward his second toe more than prior to his accident. Petitioner reported complete relief for about a week and a half after the injection and his pain completely returned. Dr. Parker's impression was valgus drifting of the great toe and possible articular damage of the 1st MPJ. Dr. Parker noted that Petitioner's lateral drifting of the 1st MPJ had increased since the last x-ray. He recommended a revision Austin bunionectomy with possible oats graft if there was evidence of articular damage.

On 10/21/22, Dr. Parker performed a tenotomy and capsulotomy of the 1st MPJ. (PX2, RX2, 42) On 10/28/22, Petitioner reported he was doing well and had much less pain than prior to surgery. On 11/11/22, Petitioner was wearing a regular shoe and reported he was ready to return to work at his new job for the state. Dr. Parker released Petitioner to return to work effective 11/15/22 and ordered him to maintain normal shoe gear. (PX1, p. 73 of 133)

On 6/2/23, Petitioner returned to Dr. Parker and reported severe pain in his right foot, constant nerve pain, and an inability to pick up his right great toe. (PX1, p. 75 of 106). He reported he was doing quite well until recently when he developed severe pain in the ball of his foot at the base of his 2nd toe. X-rays revealed the previous osteotomy and intact fixation of the distal right 1st MPJ, previous medial bunionectomy at the 1st metatarsal head with mild residual hallux valgus; mild 1st MTP osteoarthritis; soft tissue swelling along the medial forefoot; small posterior and inferior calcaneal spurs; and mild anterior tibiotalar osteoarthritis. (PX1, p. 6 of 106) Dr. Parker's impression was 2nd MPJ bursitis of the right foot for which he administered an injection.

On 8/29/23, Petitioner presented to Dr. Parker with recurrent pain in the ball of his foot and progressively painful contracted hammertoe of the right 2nd toe. Dr. Parker noted Petitioner was off work for a back issue and wanted to know if there was any permanent treatment for his foot. Dr. Parker assessed contracted rigid hammertoe of the 2nd toe secondary to bursitis. Dr. Parker recommended a 2nd toe arthroplasty with tenotomy and capsulotomy as well as an elevating 2nd metatarsal osteotomy.

On 9/6/23, Dr. Parker performed an arthroplasty with K-wire stabilization of the right 2nd toe and elevating osteotomy of the 2nd metatarsal.

CONCLUSIONS OF LAW

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

"To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Comm'n,* 797 N.E.2d 665, 671 (2003). "In the course of employment" refers to the time, place, and circumstances surrounding the injury. *Id.* That is to say, for an injury to be compensable, it generally must occur within the time and space boundaries of the employment.

An injury "arises out of" one's employment if its origin is in a risk connected with or incidental to the employment. *Id.* A risk is incidental to the employment "…when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties. In order to meet this burden, a claimant must prove that the risk of injury is peculiar to the work *or* that he or she is exposed to the risk of injury to a greater degree than the general public. *McAllister v. Ill. Workers' Comp. Comm'n*, 2020 IL 124848. Illinois courts recognize the following three categories of risks: "1) risks distinctly associated with the employment; 2) risks personal to the employee; and 3) neutral risks which have no particular employment or personal characteristics." *Id.* A risk is distinctly associated with the employment if the employee was "performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties." *Id.*

It is undisputed Petitioner assisted in an altercation between an officer and an inmate on 8/20/22. Petitioner testified that he ran to the scene and immediately got down on his knees and grabbed the inmate's legs. He restrained the inmate until other officers responded. Petitioner assisted in escorting the inmate to segregation by holding the inmate's head in a downward position. Petitioner walked backwards 100 to 150 feet as he held the inmate's head. Petitioner stated the inmate continued to thrust his body up, spit, and threaten the officers throughout the entire walk. As they walked through a set of doors Petitioner stepped on a door jamb with his right foot. He testified that the door jamb was raised 1 to 2 inches off the ground at most and was a small tripping hazard. He testified that his adrenaline was going, and he did not recall hearing a pop, pull, or tear in his foot when he stepped on the jamb. Petitioner testified that he could have injured his foot when he initially restrained the inmate as he was on his knees and his toes were bent against the ground.

Major Drannan admitted Petitioner told him he had been assaulted during the altercation and he told Petitioner to "write up the incident". Major Drannan did not testify at arbitration and no reports prepared by or signed by Petitioner on 8/20/22 were admitted into evidence. However, Petitioner testified unrebutted that his conversation with Major Drannan occurred within 10 minutes of him returning to his assigned post following the incident. Major Drannan acknowledged that Petitioner called Respondent's facility on 8/22/22 to report he injured his right foot during the inmate altercation and that his doctor had placed him on restrictions. On 8/24/22, Petitioner completed an Employee's Notice of Injury and reported, "I was assisting in the escort of the individual who assaulted Sergeant Woodson and who was continuing to fight with us. I was walking backwards due to the position of the inmate and lost my footing causing my foot to be jammed [illegible]." Petitioner did not testify that he lost his footing or jammed his foot while walking through the door.

Petitioner admitted that he denied any injuries while in Major Drannan's office. Petitioner testified that at the time he did not know if his foot hurt because he had not used it in that manner since undergoing a bunionectomy in January 2022, or if he injured it in the altercation. He testified that he tried to maintain integrity and forced himself to walk normal while in Major Drannan's office so he would not get pulled off duty or sent for medical treatment. Major Drannan stated Petitioner sat at a desk and completed paperwork for 25 to 30 minutes, getting up several times, and he did not appear to be injured.

Petitioner testified that he had a prescheduled appointment with his podiatrist for plantar fasciitis, so he waited to seek treatment until then. On 8/22/22, Dr. Parker noted Petitioner was involved in an altercation with an inmate, and he apparently injured his right foot. Petitioner told Dr. Parker that he did not remember the specific injury because he was so pumped up on adrenaline, but he had pain since the incident.

Although Petitioner testified the door jamb created a small tripping hazard as it was raised 1 to 2 inches off the floor at most, the Arbitrator does not find there was a hazardous condition or defect on Respondent's premises that resulted in injuries to Petitioner. Quintessential examples of risks distinctly associated with the employment include "tripping on a defect at the employer's premises, falling on uneven or slippery ground at the work site, or performing some work-related task which contributes to the risk of falling." *See, Dukich*, 2017

IL App (2d) 160351WC at ¶39 (citations omitted). Petitioner testified that he merely stepped on the raised door jamb while walking backwards and holding the inmate's head. He did not trip, fall, or hear any pop, pull, or tear in his foot when he stepped on the door jamb. Petitioner did not testify that he lost his footing or jammed his foot while walking through the door. Petitioner did not specifically associate any of his foot symptoms to stepping on the door jamb.

The Arbitrator finds there is insufficient evidence to support a finding that Petitioner's accident is traceable to a definite time, place, and cause. Petitioner testified that he did not know specifically how he injured his foot on 8/20/22. He did not report a specific mechanism of injury to Dr. Parker on 8/22/22 other than stating he was in an altercation with an inmate. On 8/24/22, Petitioner completed a Notice of Injury and related his foot pain to losing his footing while walking backward and his foot jammed. This mechanism of injury is inconsistent with his testimony that he did not trip, fall, or feel any symptoms in his foot when he stepped on the door jamb. Petitioner testified that he could have injured his foot when he initially restrained the inmate as he was on his knees with his toes bent against the ground.

Based on the evidence as a whole, the Arbitrator finds that Petitioner did not sustain accidental injuries that arose out of and in the course of his employment with Respondent on 8/20/22.

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

Petitioner admitted that he initially denied any injuries on the date of accident. He testified that he was not sure if his foot hurt because he had not used it in that manner since undergoing a bunionectomy on 1/7/22, or if he injured it in the inmate altercation. Petitioner testified that despite his foot hurting very badly, he tried to walk normal to maintain integrity with Major Drannan and so he would not be pulled off duty and sent to medical. Major Drannan testified that Petitioner was in his office filling out paperwork for 25 to 30 minutes and Petitioner did not appear to be injured. He reported that at no time did Petitioner appear to be walking abnormally or to be suffering any pain or discomfort.

The Arbitrator does not find Petitioner's testimony credible that he had no pain or issues with his right foot from January 2022 through 8/20/22. He had a prescheduled appointment with Dr. Parker on 8/22/22 for plantar fasciitis that was diagnosed in November 2021. Petitioner initially sought treatment with Dr. Parker on 11/5/21 for pain in his bilateral feet. Petitioner reported he sustained an injury on 4/6/19 while resolving a dispute at work when his right big toe appeared to be dislocated. His pain had gradually progressed over a two-year period and was constant, sharp, and stabbing. He had pain along the right great toe, joint, and heal. With regard to Petitioner's right foot, Dr. Parker diagnosed plantar fasciitis, moderate hallux valgus deformity with medial drifting, and 2nd, 3rd, and 4th hammertoes with joint contracture and crowding. X-rays confirmed a right bunion deformity and osteoarthritis in the first MTP. Dr. Parker performed a right bunionectomy on 1/7/22 and released Petitioner to full duty work without restrictions on 1/31/22.

Petitioner presented to his prescheduled appointment with Dr. Parker on 8/22/22 and reported right great toe pain. Dr. Parker noted Petitioner's toe was straight following his January

2022 surgery, but now it was turning in again. The Arbitrator notes that this visit was two days after the alleged work accident. Petitioner reported he was doing well until the inmate altercation on 8/20/22; however, the record does not reflect what symptoms Petitioner was experiencing that lead him to schedule an appointment with Dr. Parker prior to the work accident. Four days after the alleged accident, Petitioner completed an Employee's Notice of Injury and reported he was "walking backwards due to the position of the inmate and lost my footing causing my foot to be jammed [illegible]." Dr. Parker's medical record does not contain this history. Dr. Parker suspected a fracture; however, x-rays revealed no new fractures or dislocations and trace plantar and dorsal calcaneal spurring. Dr. Parker diagnosed a traumatic fracture through the previous osteotomy with maintained alignment. On 8/25/22, Dr. Baker completed an Initial Workers' Compensation Medical Report restricting Petitioner to light duty work for a possible fracture of the right foot.

On 9/19/22, Dr. Parker noted pain on palpation and range of motion of the 1st MPJ over the area of the previous bunionectomy, with increased drifting of the great toe laterally. He completed a Physician's Statement indicating a possible right foot fracture and right foot contusion resulting in severe right foot pain. He reported that objective findings included no acute fracture on x-ray, right foot swelling. On 10/10/22, Petitioner reported to Dr. Parker that his big toe was drifting over toward his second toe more than prior to his work accident. Dr. Parker noted that Petitioner's lateral drifting of the 1st MPJ had increased since the last x-ray.

On 10/21/22, Dr. Parker performed a tenotomy and capsulotomy of the 1st MPJ. Preoperative and postoperative diagnoses were hallux valgus and severe joint pain of the right foot. The operative report indicated that the procedure corrected the hallux valgus deformity (bunion) quite well. There was no fracture or dislocation noted intraoperatively. Dr. Parker released Petitioner to return to work effective 11/15/22.

Petitioner testified that he terminated his employment with Respondent on 11/15/22, the day he was released to return to work, and began working for IDOT where his job duties consisted of sitting and driving. There was no testimony as to how long Petitioner worked for IDOT before he became employed by Lanracorp hauling and operating heavy equipment. Despite his sitting and driving job duties, Petitioner continued to have issues with his right foot. He returned to Dr. Parker on 6/2/23 and reported severe pain in his right foot, constant nerve pain, and an inability to pick up his right great toe. He reported he was doing quite well until recently when he developed severe pain in the ball of his foot at the base of his 2nd toe. No acute injuries were noted. X-rays revealed the previous osteotomy and fixation of the distal right 1st MPJ with an intact and well-positioned screw; previous medial bunionectomy at the 1st metatarsal head with mild residual hallux valgus; mild 1st MTP osteoarthritis; soft tissue swelling along the medial forefoot; small posterior and inferior calcaneal spurs; and mild anterior tibiotalar osteoarthritis. Dr. Parker's impression was 2nd MPJ bursitis of the right foot.

On 8/29/23, Petitioner presented to Dr. Parker with recurrent pain in the ball of his right foot and progressively painful contracted hammertoe of the right 2nd toe. The Arbitrator notes that Dr. Parker initially diagnosed Petitioner with 2nd, 3rd, and 4th hammertoes with joint contracture and crowding in November 2021. On 9/6/23, Dr. Parker performed an arthroplasty with K-wire stabilization of the right 2nd toe and elevating osteotomy of the 2nd metatarsal.

Petitioner testified that Dr. Parker told him his second toe had been dislocated for a great time and he had ligament damage in the top of his foot.

An expert medical opinion is not required to establish a causal relationship between an injury and a work accident. That said, the burden of proof is on a claimant to establish the elements of his/her right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. Hansel & Gretel Daycare Center v. Industrial Commission, 158 Ill. Dec. 851, 215 Ill.App.3d 284, 574, N.E. 2d 1244 (Ill. App. 3d. Dist. 1991). The Arbitrator finds that Petitioner has not met his burden of proof that his injuries were causally connected to his employment.

On 8/22/22, Dr. Parker noted Petitioner was recently involved in an altercation with an inmate and he apparently injured his right foot. Petitioner reported to Dr. Parker that he did not remember the specific injury because he was so pumped up on adrenaline. Two days later Petitioner reported to Respondent that he lost his footing and jammed his foot while escorting the inmate. This mechanism of injury is not included in Dr. Parker's records. On 9/19/22, Dr. Parker again noted Petitioner's altercation at work. Dr. Parker's medical records do not contain a causation opinion with respect to Petitioner's right foot condition and he did not testify at arbitration. Petitioner was not examined at Respondent's request pursuant to Section 12 of the Act.

Based on the record as a whole, the Arbitrator finds that Petitioner's current condition of ill-being is not causally connected to his employment with Respondent.

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?

Based on the Arbitrator's finding that Petitioner did not sustain accidental injuries that arose out of and in the course of his employment with Respondent, and that Petitioner's current condition of ill-being is not causally connected to his employment, the Arbitrator denies all medical benefits herein.

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

Based on the Arbitrator's finding that Petitioner did not sustain accidental injuries that arose out of and in the course of his employment with Respondent, and that Petitioner's current condition of ill-being is not causally connected to his employment, the Arbitrator denies all temporary total disability benefits herein.

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

Based on the Arbitrator's finding that Petitioner did not sustain accidental injuries that arose out of and in the course of his employment with Respondent, and that Petitioner's current

condition of ill-being is not causally connected to his employment, the Arbitrator denies all permanent partial disability benefits herein.

Arbitrator Linda J. Cantrell

May 2, 2024
DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC036883
Case Name	Takeisha Smith v. DB Schenker Logistics
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0244
Number of Pages of Decision	13
Decision Issued By	Marc Parker, Commissioner, Christopher Harris, Commissioner

Petitioner Attorney	Robert Keefe, David Plufka
Respondent Attorney	Christopher Vanderbeek

DATE FILED: 5/29/2025

/s/Marc Parker, Commissioner
Signature

DISSENT

/s/Christopher Harris, Commissioner
Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Takeisha Smith,

Petitioner,

vs. No. 18 WC 036883

DB Schenker Logistics,

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 medical expenses, permanent partial disability, and prospective medical care, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Petitioner, a 29-year-old warehouse worker, sustained fractures to her right tibia and fibula on October 26, 2018 when her leg was pinned between a forklift and another machine. She underwent surgery that day with orthopedic surgeon, Dr. Anna Noel Miller. In December 2018, Petitioner began complaining to Dr. Miller of flashbacks and depression. For those symptoms, Dr. Miller recommended Petitioner seek care from a mental health professional.

Because Petitioner continued to have post-operative pain and symptoms in her leg, ankle, and foot, which Dr. Miller believed was related to nerve damage, she referred Petitioner to Dr. Christopher Dy, a neurologist. Dr. Dy confirmed Petitioner's ongoing pain was likely caused by nerve damage, her injuries, and the hardware in her leg. On March 10, 2020, Petitioner opted to undergo a second surgery with Dr. Miller to remove the hardware from her leg.

Dr. Miller also referred Petitioner to podiatrist, Dr. Daniel Thouvenot, for her right foot pain. Petitioner saw Dr. Thouvenot twice: on April 21, 2021, and on December 5, 2021. At the December 2021 visit, Dr. Thouvenot documented Petitioner's complaint of bilateral foot pain, and diagnosed post-traumatic right ankle arthritis. Dr. Thouvenot also recommended custom orthotics.

The Arbitrator awarded Petitioner 40% loss of the right leg under §8(e) of the Act, 5% loss of the right foot under §8(e) of the Act, and 7% loss of the body as a whole under §8(d)2 of the Act, for her PTSD and depression. The Arbitrator also awarded prospective medical care: mental health counseling as recommended by Dr. Anna Miller, and custom orthotics for the right foot consistent with Dr. Thouvenot's recommendations.

The Commission vacates the award of prospective medical care. Such an award is proper when a Petitioner has not reached maximum medical improvement. In this case, Petitioner last saw Dr. Christopher Dy on February 20, 2020. Then, Dr. Dy found Petitioner reached MMI and released her from care. On March 31, 2020, Dr. Miller, released Petitioner from her care, at MMI.

Although Petitioner testified that she suffered "PTSD symptoms" and flashbacks following her October 26, 2018 accident, she offered no testimony at arbitration that she wanted to pursue mental health counseling. Petitioner presented no opinion from any mental health expert that such counseling would be reasonably necessary or causally related to her accident.

Finally, the Commission notes Petitioner has not seen her podiatrist, Dr. Daniel Thouvenot, since December 2022. She admitted she has not used orthotics in her shoes since June 2024. For these reasons, the Commission vacates the award of prospective medical care. 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 July 15, 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 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 $44,200.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

May 29, 2025

/s/ *Marc Parker*
Marc Parker

MP/mcp
o-05/01/25
068

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

DISSENT

The Arbitrator's award of 7% loss of the person as a whole for the alleged extent of Petitioner's mental injury is unsupported by the evidence and excessive. A PPD award of 2% loss of the person as a whole would have been a more appropriate award.

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

May 29, 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC036883
Case Name	Takeisha Smith v. DB Schenker Logistics
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Robert Keefe
Respondent Attorney	Christopher Vanderbeek

DATE FILED: 7/15/2024

/s/Bradley Gillespie, Arbitrator

Signature

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

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

Takeisha Smith
Employee/Petitioner

v.

DB Schenker
Employer/Respondent

Case # **18** WC **036883**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Collinsville**, on **May 16th 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **10/26/18**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**29,550.56**; the average weekly wage was $**568.28**.

On the date of accident, Petitioner was **27** years of age, ***single*** with **2** dependent children.

Petitioner ***has not*** 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

Nature and Extent of Disability
Respondent shall pay Petitioner the sum of $340.97/week for a period of 35 weeks, as provided in § 8(d)2 of the Act, because the injuries sustained caused 7% permanent partial disability referable to the body secondary to post traumatic stress disorder and depression. Respondent shall pay Petitioner the sum of $340.97/week for a further period of 86 weeks, as provided in § 8(e)12 of the Act, because the injuries sustained caused 40% permanent partial disability referable to the right leg. Finally, Respondent shall pay Petitioner the sum of 340.97/week for a further period of 8.35 weeks, as provided in § 8(e)11 of the Act, because the injuries sustained caused 5% permanent partial disability to the right foot.

Other: Prospective Medical Care
Respondent shall authorize and pay for mental health counseling as recommended by Dr Anna Miller. Respondent shall authorize and pay for custom orthotics for Petitioner's right foot consistent with the 2021 recommendations of Dr. Daniel Thouvenot.

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 **July 15, 2024**
Signature of Arbitrator

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TAKIESHA SMITH,	)	
Petitioner,	)	
	)	
	)	
v.	)	**IWCC No.: 18WC036883**
	)	
	)	
DB SCHENKER,	)	
Respondent,	)	
	)	

DECISION OF ARBITRATOR

On November 7th, 2018, Takeisha Smith (hereinafter "Petitioner") filed an Application for Adjustment of Claim alleging injuries to her right leg and body-as-a-whole after being pinned between two forklifts while working for DB Schenker (hereinafter "Respondent"). (Arb. X 2) This matter proceeded to hearing on May 16th, 2024, in Collinsville, Illinois (Arb. X 1). The following issues were in dispute at Arbitration:

- Nature and Extent of Injury
- Prospective Medical Care

FINDINGS OF FACT

Petitioner was born on April 5th, 1991 and was 27 years old at the time of the work accident. (Arb. X 2) (P.X. 4). She worked for Respondent at that time in their Warehouse, filling orders, loading, and unloading trucks and driving a forklift. (T. 11).

On October 26th, 2018, Petitioner was cleaning up a spill of Tide Pods, standing in front of her forklift, when a co-worker lost control of the lift he was driving, spun toward Petitioner, and pinned her between his vehicle and Petitioner's. (T. 12). Petitioner screamed. The co-worker's lift had to be moved to release Petitioner's right leg. (T. 12). She was unable to support any weight on that leg and had to be lifted by co-workers who seated her on a nearby pallet. (T. 12).

Petitioner was taken by ambulance to Anderson Hospital. (T. 13). After a consultation there, Petitioner was moved to Barnes Hospital in Saint Louis because her injuries were considered too complicated and serious. (P.X. 1). At Barnes, Petitioner was admitted for 3 days. (T. 14). Petitioner was diagnosed with a comminuted and displaced fracture of the Tibia/Fibula (P.X. 3). During that initial hospitalization at Barnes, Petitioner's right leg was pinned using an intermedullary rod (or 'nail') that was inserted down through the tibia from just below the right

knee, to just above the ankle. (P.X. 3). The fragments of fractured bone were realigned and secured with additional hardware including wire and screws. (P.X. 3). The fracture did not traverse the leg in a straight line. (P.X. 3). Petitioner testified it appeared to be slanted down the leg rather than straight across the bone. (T. 14).

After discharge from Barnes, Petitioner came under the care of Dr. Anna Miller at the St. Louis Center for Advanced Medicine. (P.X. 4) (T. 15). Dr. Miller was initially concerned about the prospect of deep vein thrombosis following the surgery, and the possibility of pulmonary embolism. (P.X. 4). However, by the December 18, 2018 visit, Dr. Miller also became concerned Petitioner was having difficulty coping emotionally with the effects of her injury. (P.X. 4). Dr. Miller wrote that Petitioner was complaining about 'flashbacks' to the work accident. (P.X. 4). Petitioner confirmed this at arbitration (T. 16). Dr. Miller recommended a mental health evaluation. (T. 16). (P.X. 4). Petitioner testified the Respondent refused to pay for the evaluation. (T. 16). Dr Miller's note from February 12, 2019 (two months after her initial recommendation) reads, in part, "…still awaiting psychiatric counseling for depression and PTSD". (P.X. 4).

Dr. Miller also recommended physical therapy. Her notes from December 18th, 2018, prescribed two visits a week for six weeks, active and passive therapy to both the right ankle and right knee, as well as quadricep and hamstring strengthening, and gait training. (P.X. 4) From July, 2019 to the end of that year, Petitioner went through dozens of therapy visits with ATI physical therapy. (P.X.7)

By July, 2019, Dr Miller records that Petitioner was complaining about the ankle, knee, nerve pain, and an inability to straighten out her foot. (P.X. 4). Petitioner recounted those same complaints at arbitration. (T. 17). Dr. Miller recommended continued physical therapy, and suggested Petitioner may need a referral to the nerve clinic and/or removal of the hardware screws because of her ongoing nerve symptoms. (P.X. 4) For more than a year after that visit, Petitioner continued to treat with Dr. Miller. (P.X. 4). Petitioner continued to complain of right knee pain, Achilles pain, nerve pain, swelling in the knee and leg, sharp pains in the ankle, and an inability to place her right foot flat on the ground. (P.X. 4).

In November of 2019, Dr Miller made plans to release Petitioner at maximum medical improvement (MMI). (P.X. 4). The doctor continued to recommend mental health counseling, and a follow up with doctors in the nerve clinic to address Petitioner's ongoing shooting nerve pain and depression. (P.X. 4). Dr. Miller released Petitioner to light duty. (P.X. 4). Petitioner testified she attempted a return to her regular job, but had to return to Dr. Miller because of continuing pain complaints. (T. 17-18).

In February of 2020, Dr. Miller referred Petitioner to Dr. Christopher Dy, in the nerve clinic at the Center for Advanced Medicine. (P.X. 5). She asked Dr. Dy to offer treatments for Petitioner's persistent nerve pain, and ankle pain. (P.X. 5). Petitioner testified Dr. Dy recommended a nerve surgery that had about a sixty percent chance of being successful. (T. 17). Petitioner declined the surgery. (T. 17). Dr Dy also recommended they remove the screws near

Petitioner's ankle in an effort to reduce her pain and swelling. (T. 17). (P.X. 5). The hardware was removed in March of 2020. (P.X. 5).

After the hardware removal surgery, Dr. Miller saw Petitioner two more times. (P.X. 4). During the visit on March 31, 2020, Dr. Miller placed Petitioner on permanent light duty. (P.X. 4). Petitioner testified those restrictions included no prolonged walking or standing, and limited her to lifting ten pounds; five pounds frequently. (T. 19). Dr. Miller prescribed additional physical therapy focusing on increasing range of motion, muscle stimulation, strengthening the quadricep and hamstring, and improving Petitioner's gait. (P.X. 4).

August 26, 2020, Dr. Miller saw Petitioner for the last time. This was a telemedicine visit (following COVID 19 protocols). (P.X. 4). Petitioner continued to complain of shooting pains in her leg, and an inability to flatten out her right foot. (P.X. 4). Dr. Miller noted the Petitioner's functional capacity evaluation demonstrated she was limited to light duty on a permanent basis. (P.X. 4). Once again, Dr. Miller noted that due to the long-term stress to which Petitioner had been subjected, she would still benefit from mental health counseling for her trauma. (P.X. 4). Dr. Miller specified Petitioner's light duty restriction would include: "lifting 10 pounds maximum with frequent lifting and/or carrying of objects weighing up to 5 pounds. A job is in this category when requiring walking and/or standing to a mild degree or sitting with a degree of pushing and pulling of controls." (P.X. 4). Finally, due to continued complaints regarding Petitioner's right foot and arch collapsing, Dr Miller recommended a long-term orthotic or special shoe, "that she may need a foot specialist to prescribe." (P.X. 4). Petitioner testified these foot and ankle complaints included sharp pains, irritation, and a lack of 'mobility' in her right ankle when attempting to move her right foot 'outward'. (T. 22).

Petitioner next saw Dr. Daniel Thouvenot, a podiatric doctor in Saint Peters, Missouri. (P.X. 6). He examined Petitioner and diagnosed her with post traumatic osteoarthritis, recommending she be fitted with a custom orthotic. (P.X. 6). Petitioner testified these inserts were designed to level her foot and keep pressure off the ankle. (T. 23). Petitioner testified she was unable to get the custom inserts prescribed because Respondent refused to pay for them. (T. 27).

At Arbitration, Petitioner testified she still suffers PTSD and continues to experience a number of anxiety flare ups. (T. 20). Her right knee continues to be painful and pops when she has to stand for longer periods of time. (T. 20). Petitioner testified her ankle swells, is stiff, and she experiences numbness with activity. (T. 20-21). Petitioner walks with a limp which she attributes to the accident. (T. 24). She has difficulty navigating uneven ground, standing for longer than twenty minutes, and sitting. (T. 22-24). Petitioner testified the 2018 work injury has even affected her ability to drive because she cannot always feel the accelerator under her right foot. (T. 25). Due to her permanent restrictions, Petitioner was unable to return to her former job in the warehouse. (T. 19). Respondent placed her in a data entry position, at which Petitioner continues to work. (T. 20).

CONCLUSIONS OF LAW

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

The Arbitrator incorporates by reference the Findings of Fact and Conclusions of Law set forth above as if set out fully herein.

Pursuant to § 8.1(b) of the Illinois Workers Compensation Act (hereinafter "Act"), permanent partial disability from injuries that occur after September 1, 2011 are to be established using the following criteria:

i. The reported level of impairment pursuant to subsection (a) of the Act;
ii. The occupation of the injured employee;
iii. The age of the employee at the time of the injury;
iv. The future earning capacity of the employee; and
v. Evidence of disability corroborated by the treatment medical records

820 ILCS 305/8.1b. The Act further provides that, "no single factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

Ratings
No impairment ratings were offered in evidence. The Arbitrator therefore places no weight on this factor.

Occupation
Petitioner was provided permanent restrictions by her treating doctor prohibiting her from lifting over 10 pounds and standing or sitting for prolonged periods. These restrictions made it impossible for her to return to the warehouse job she was working when she was injured. The Respondent did place her in a lighter job where she continues to work. However, if she were to lose this job, her search for new employment would be limited in the jobs for which she would physically qualify. The Arbitrator places some weight on this factor.

Age
Petitioner was 27 years of age when she suffered this work injury. She testified how the physical and emotional effects of this injury continue to affect her. She can expect to work for another 30 years with these injuries and restrictions, and live another 50 years with these permanent conditions as a result of the work accident. The Arbitrator places significant weight on this factor.

Earning Capacity

There was no evidence (save the evidence regarding her permanent physical restrictions) of reduced earning capacity contained in the record. The Arbitrator places no weight on this factor.

Disability
There is nothing in the medical records to contradict Petitioner's credible testimony that she was physically and emotionally affected by the work accident. Her testimony is not only consistent with the documentary evidence, but the Arbitrator witnessed Petitioner become emotional as she described the accident. Petitioner suffered a dramatic fracture to her right leg, below the knee. The fracture was both comminuted and displaced. That injury, and the hardware required to treat that injury, caused her to suffer permanent disabilities to her right knee, leg, ankle, and foot. Those injuries also caused her to suffer PTSD, which was diagnosed by the treating doctor due to Petitioner's complaints of flashbacks, anxiety, and depression. Petitioner has consistently demonstrated these conditions from the accident date, during more than twenty-two months of treatment, up through the date of arbitration. The records show that Petitioner's ankle and foot disability will require orthotic supports on a permanent basis. Finally, Petitioner's injuries caused the treating doctor to permanently restrict her ability to work; limiting her standing and sitting. Petitioner was further instructed not to lift more than 10 pounds; five pounds frequently. The Arbitrator places significant weight on this factor.

After reviewing the evidence and hearing Petitioner's credible testimony, I find Petitioner sustained permanent partial disability to the extent of 7% loss of use of the body secondary to her PTSD, Depression, and Anxiety pursuant to §8(d)2 of the Act, 40% loss of use of the right leg secondary to the comminuted fracture, two surgeries, and therapy pursuant to §8(e)12 of the Act, and 5% loss of use of the right foot secondary to the nerve complaints and orthotics required to place her foot in normal alignment. §8.1(b) of the Act supports these conclusions.

O. Is Petitioner entitled to prospective medical care?

Dr Miller, in her December 18, 2018, note wrote, "Patient expressed significant concern with flashbacks of injury as well as difficulty coping with the situation mentally. Many traumatically injured patients have these symptoms, as I discussed with her, and I think she would benefit from a mental health evaluation and management and preferably this would be with someone she has previously established a relationship with." Dr Miller followed this up on February 12th, 2019, recommending Petitioner be provided psychiatric counseling for depression and PTSD. Dr. Miller repeated her recommendation for the third time on November 18th, 2019, when she again called for Petitioner to receive, "mental health counseling which should be supported by the work comp team as this is related to her crushing work injury". Even at her final visit with the Petitioner on August 26th, 2020, Dr. Miller took the opportunity to again write about Petitioner's need for mental health counseling into the future. The doctor stated, "…due to

the long-term stress related to this injury and particularly what she has been through with her work and family and the permanent impairment that she could benefit from completion of counseling for this trauma."

At the hearing, Petitioner demonstrated she continues to become emotional simply describing the accident and confirmed that she still struggles emotionally with the impact of her injury.

Petitioner testified that persistent foot complaints caused Dr Miller to refer her to a podiatrist. In her note of August 2020, Dr Miller reported that because of persistent right foot complaints Petitioner needs a long-term orthotic or special shoe that would have to be prescribed by a foot specialist. Petitioner testified at hearing her right foot will not 'straighten out' and instead turns inward, making it difficult to walk. Dr. Thouvenot, a foot specialist, examined Petitioner in December 2022 and recommended she receive a custom orthotic. Petitioner testified at hearing the Respondent refused to pay for those custom inserts. Petitioner has resorted to using store purchased inserts, despite the reference in Dr Thouvenot's record that such inserts may not help her because of the severity of her problem.

The expert opinions of Dr Miller and Dr Thouvenot were not challenged at hearing. And the Arbitrator finds Petitioner's testimony to be credible. Therefore, the Arbitrator finds Petitioner has proven she needs both counseling and custom orthotics into the future. The need for these treatments is causally related to her work injury. Petitioner has proven her entitlement to open medical rights under §8(a) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC006432
Case Name	Shawn Anderson v. Prairie Farms Dairy
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0245
Number of Pages of Decision	28
Decision Issued By	Maria Portela, Commissioner, Kathryn Doerries, Commissioner

Petitioner Attorney	David Jerome
Respondent Attorney	Matthew Terry

DATE FILED: 5/29/2025

/s/Maria Portela, Commissioner

Signature

DISSENT

/s/Kathryn Doerries, Commissioner

Signature

25IWCC0245

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SHAWN ANDERSON,

Petitioner,

vs. NO: 23WC006432

ICE CREAM SPECIALTIES,

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, temporary total disability, medical expenses and nature and extent, 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.

Regarding accident, we agree with the Arbitrator that the "no sandals or open toed shoes" rule was vague. Petitioner testified that his slides were in good condition with proper tread. *T.27*. After he plugged in his phone, if he had not sustained his accident, he would have gone back to his locker and put on his uniform and boots to go on with his workday. *T.32-33*. He testified:

Q. Now, page 2 of the same handbook says -- talks about not wearing open-toed shoes. Was it your understanding when you read that that they meant when you were working?
A. Yes.
Q. Not when you first got to work?
A. No.
Q. Because you couldn't take the footwear to and from work?
A. Yes.

T.23-24. Later he testified:

Q. All right. Now, whenever this accident occurred were you aware of any rule that

prohibited you from going to the break room in your slides to charge that phone?
A. No.
Q. Did you think that you were breaking any plant safety rules?
A. No.
Q. Did you think that you were breaking any of the lessons that you learned in those modules that we talked about?
A. No.

T.35-36.

On cross-examination, Petitioner testified he "Thought I couldn't wear those slides during the work production floor where the actual work is being done." *T.51.* We acknowledge that Petitioner also admitted that he was not supposed to wear sandals in that area (*T.51*) and that wearing sandals was "unreasonable" (*T.57*), which we will address further below. For now, we are focusing on whether the rule itself was vague. On redirect, Petitioner testified:

Q. Now, as we talked about before, you thought you were allowed to wear slides when you were going to plug in your phone, correct?
A. Yes.

T.62. And later:

Q. Now, you were asked whether it was unreasonable to walk into that production floor. Did you think while wearing these slides you could walk across that production floor into the break room without slipping on that water in the production floor?
A. Yes.
Q. Did you?
A. Yes.
Q. Did you do it all the other times?
A. Yes.

T.65. On recross, Petitioner testified that he wore his slides through the production area to charge his phone before starting work between 10 and 25% of the time. *T.67-69.*

Respondent has two applicable rules relevant to the footwear issue. The first is contained in the "Plant Safety Rules…":

> 6. Footwear must be sturdy in good condition, and with proper tread to reduce slipping hazards. ICS will issue a pair of rubber slip-ons that must be worn and left at the plant, do not take home.

Rx1-0001, T.223. Petitioner was not provided a pair of "rubber slip-ons" until after his probationary period and he wore "gym shoes" until then. *T.18-19.* We find Petitioner's testimony credible that he believed that his slides were in good condition with proper tread (*T.27)* and that he believed he could safely walk across the production floor. *T.65.* We point out that the sandals/slides, depicted in the photo in *Px5*, appear to be precisely the type of footwear one would expect to wear to a public pool or spa bathroom/shower to reduce the risk of slipping on wet surfaces. Therefore, we do not believe it was unreasonable for Petitioner to believe that they had "proper tread to reduce slipping hazards," which would satisfy rule #6 above. *Rx1-0001.*

The second footwear rule is contained in the "Rules and Regulations…":

7. **In food processing, good personal hygiene is mandatory**. All employees must maintain a neat and clean appearance. Beards are not allowed; short, neat cropped mustaches will be allowed.

8. Employees cannot wear jewelry (earrings, rings, wristwatches, etc.) and are prohibited from attaching, affixing or displaying objects, articles. jewelry or ornamentation to or through the ear, nose, tongue, or any exposed body part **while at work**. No fake nails or nail polish.

9. Employees will wear the uniform required by management. **No shorts, tank tops, or halter tops are allowed**: **No sandals or open toed shoes are allowed**.

Rx1-002, T.224 (Emphases added).

Reading rules 7, 8 and 9 together, we find it reasonable for someone to conclude that the purpose of these rules is for "good personal hygiene" "in food processing" "while at work." Therefore, we believe a reasonable person could conclude that sandals and open toed shoes were not allowed *while working*; not when merely walking to the break room.

Therefore, we affirm the Arbitrator's finding that Respondent's rules were vague. We find Petitioner's testimony credible that he never wore his slides while working on the production floor (*T.64*) but that he wore them 10 to 25% of the time while walking to the break room before starting work and nobody ever told him he could not do so. *T.63*. We also affirm the Arbitrator's finding that this case is distinguishable from *Saunders* because Petitioner reasonably believed that he was not violating a safety rule and, therefore, his behavior did not take him "entirely out of the sphere of his employment." *See, Saunders v. IC*, 189 Ill. 2d 623, 628, 727 N.E.2d 247, 250 (2000).

On the issue of Petitioner's credibility, the Arbitrator wrote:

As a preliminary issue, the Arbitrator finds the Petitioner to be credible, based on his demeanor and the consistency of his statements. One area that causes some doubt on the Petitioner's credibility was when he answered "yes" to the question of whether he, himself, thought it was unreasonable to walk into the production area wearing his slides but then said he didn't think it was necessary for him to put his boots on to go charge his phone. The Arbitrator believes the Petitioner was confused. There were objections during that portion of the testimony that made it difficult for even the Arbitrator to follow.

Dec. 5. Petitioner testified:

Q. Now back to my question, you would agree that walking through the production area, which is a wet floor, in your sandals would be unreasonable, correct?

MR. JEROME: Objection, Your Honor. Calls for a legal conclusion.

MR. TERRY: I don't think that does.

MR. JEROME: Can I finish my objection? That's a legal standard as to what is reasonable and unreasonable under the case law and so to have him testify what he understands reasonable and unreasonable under the

legal standard is first of all irrelevant and second of all it calls for a legal conclusion.

MR. TERRY: I think it's different --

ARBITRATOR: Well, I don't think that he is asking for the legal conclusion of reasonable and unreasonable. I'm taking it as he's asking whether he himself believes that that was reasonable or unreasonable. Is that what you're asking?

MR. TERRY: Exactly, Your Honor.

ARBITRATOR: Okay. That you can answer, whether you, yourself, believe it was unreasonable for you to walk in that area with those shoes on.

A. I did it. Yes.

T.55-58.

The Arbitrator asked Petitioner if "you, yourself, believe it was unreasonable for you to walk in that area with those shoes on" and he answered, "I did it. Yes." *T.57*. This answer is inconsistent with Petitioner's testimony on redirect that he believed that he was allowed to wear the slides when going to plug in his phone and that he thought he could walk across the production floor wearing the slides without slipping. *T.62, 65*.

In our opinion, the confusing part of that questioning is that, especially to a lay person, anything one does that results in an accident could be considered "unreasonable" in hindsight. That does not mean it is objectively, legally unreasonable. Viewing the evidence as a whole, we believe Petitioner's actions are covered under the "personal comfort doctrine." He was in a location that he was authorized to be and was injured by a defect on Respondent's premises (i.e., soap on the floor). His failure to abide by the "no sandals or open toed shoes" rule is due to vagueness in the rule, which Petitioner reasonably believed only applied while actually performing work.

Respondent argues that, after the accident, Petitioner gave a recorded statement and admitted that he was not to wear sandals in the area of the facility where he wore them. *R-brief at 3, 4, 11, 12, 13*. The recorded statement includes the following excerpt:

Q: Okay, so was the ground slippery?
A: Yeah.
Q: Yeah.
A: Them floors, they're always slippery.
Q: Okay.
A: [Inaudible [00:09:41]] 'cause people falling [Inaudible [00:09:41]].
Q: Yeah, what kind of ...
A: I'm just being real.
Q: Shoes were you wearing?

A: I was wearing my, uh, slides.
Q: Okay, were you supposed to be wearing those in there?
A: No.

Q: Okay, so you're supposed to be wearing your work shoes?
A: My work shoes was already there.
Q: But you weren't, you weren't wearing them in there?
A: No.
Q: Okay, so these are, like, sandals?
A: Uh, yeah.

Rx7, T.302-3 (Emphasis added).

We understand why this recorded statement may seem to contradict Petitioner's testimony that he did not think the rule against sandals applied when he was going to the break room and that it only applied to when he was actually "working." However, Petitioner's recorded statement was given on October 7, 2022. This was *after* Petitioner received a verbal warning on the date of his accident for wearing "flip flops" and failing to follow "mandatory slip resistant foot wear policy." *Rx1-0004*.

Therefore, it seems likely that Petitioner's answer during the recorded statement was influenced by his verbal warning. In other words, Petitioner never admitted that he knew, prior to the accident, that he wasn't supposed to wear the slides in that area. Instead, a reasonable inference is that he told the interviewer he was not supposed to be wearing the slides because he learned that after being reprimanded subsequent to the accident. We find that the recorded statement does not reflect poorly on Petitioner's credibility.

Regarding temporary total disability benefits (TTD), §8(b) of the Act provides, in relevant part, "In cases where the temporary total incapacity for work continues for a period of 14 days or more from the day of accident compensation shall commence on the day after the accident." *820 ILCS 305/8(b)*. Petitioner's accident occurred on October 3, 2022. Therefore, we modify the TTD start date from October 3, 2022 to October 4, 2022. We affirm the end date of February 6, 2023. This results in a TTD period of 18 weeks.

We also make the following clerical changes:

- Page 3, second to last paragraph, third sentence: strike "treat" and replace with "tread"; and

- Page 4, at the end of line 3 and beginning of line 4, we change "were employees" to "were provided to employees".

Finally, we note that the Arbitrator cites to *McAllister v. IWCC* on page 6 as "*McAllister v. Ill. Workers' Comp. Com'n*, 2020 IL 124848, ¶ 32." (*Underline added.*) On page 7, she cites it as "*McAllister*, 2020 IL 12484, at ¶ 36." (*Underline added.*) First, the Supreme Court docket number for this case is 124848 so we correct the citation on page 7. Second, and more importantly, in *Valles v. IWCC*, 2024 IL App (1st) 241032WC-U, the court admonished the Commission for failing to use proper case citations. Although the *McAllister* case may be locatable using the "2020 IL 124848" docket number that the Arbitrator cited, we supplement the citations to *McAllister* on page 6 and 7 to add a reporter citation: "450 Ill. Dec. 309 (2020)."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner

the sum of $522.09 per week for a period of 18 weeks, 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 $469.88 per week for a period of 41.75 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 25% loss of use of the left foot.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the medical expenses in Petitioner's Exhibit 6 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 is entitled to a credit under §8(j) of the Act for payments made by its group health and short-term disability insurance carriers; provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order.

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 $14,000.00. 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.

May 29, 2025 /s/ *Maria E. Portela*

SE/ /s/ *Amylee H. Simonovich*
O: 5/6/25
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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 his accident arose out of his employment.

In *Saunders vs. Industrial Comm'n*, 189 Ill. 2d 623, 727 N.E.2d 247 (2000), the Supreme Court reaffirmed the long-standing limitation on liability where a workplace injury results from the claimant's violation of the employer's safety rules during an activity performed for personal convenience. In *Saunders*, a dispatcher left the shipping department and "hitched a ride" on a forklift operated by a coworker in order to retrieve his lunch from the office, and when the operator made a turn, the forklift ran over the dispatcher's ankle. The employer's safety rules prohibited employees from riding double on the forklifts. The claimant was aware of this rule. Quoting from an early Supreme Court decision in *Republic Iron & Steel Co. vs. Industrial Comm'n*, the Court set forth the legal principles applicable to injuries resulting from violations of safety rules:

> The rule is, that where the violation of a rule or order of the employer takes the employee entirely out of the sphere of his employment and he is injured while violating such rule or order it cannot be then said that the accident arose out of the employment, and in such a case no compensation can be recovered. If, however, in violating such a rule or order the employee does not put himself out of the sphere of his employment, so that it may be said he is not acting in the course of it, he is only guilty of negligence in violating such rule or order and recovery is not thereby barred. *Saunders,* 189 Ill. 2d at 628, quoting *Republic Iron & Steel Co. vs. Industrial Comm'n.*, 302 Ill. 401, 406, 134 N.E. 754 (1922).

The Supreme Court then noted the claimant had chosen a means of travel expressly forbidden by the safety rules and thus had "engaged in a hazardous method of travel, the sole purpose of which was Saunders' personal convenience." *Saunders*, 189 Ill. 2d at 631. Accordingly, the claimant's ankle injury did not arise out of the employment.

The application of this limitation on liability depends on whether the employee was acting within the sphere of employment or outside the sphere of employment during the rule violation. The caselaw holds that an employee shall be considered acting within the sphere of employment if the employee was engaged in the performance of his job duties or performing a task he was instructed to perform. In *Chadwick v. Industrial Com.*, 179 Ill. App. 3d 715, 534 N.E.2d 1000 (1989), a pipefitter sustained fatal injuries after falling 70-75 feet off a scaffold and his death was found compensable despite the decedent's violation of the safety rules. The evidence established that the decedent was not tethered to the lifeline installed on the scaffold because it was inconvenient when moving around ceiling rafters and beams which crossed the scaffold at various locations. After quoting the same passage from *Republic Iron & Steel Co. vs. Industrial Comm'n,* supra, the Court observed that compensation will be allowed "[i]f the employee is attempting to do the work he is employed to do but merely violating a rule as to the manner of doing it." *Chadwick,* 179 Ill. App. 3d at 717. In cases where violations of safety rules have not negated liability, the consistent feature keeping the employee within the sphere of employment has been the fact that the claimant was "*doing exactly the thing he was employed to do*." (Emphasis added.) See *J.S. Masonry, Inc. vs. Industrial Comm'n*, 369 Ill. App. 3d 591, 598, 861 N.E.2d 202 (2006).

In *J.S. Masonry, Inc. vs. Industrial Comm'n*, the Appellate Court had occasion to consider the prior holdings in *Saunders* and *Chadwick* and further explained the dividing line between those cases where compensation is allowed and those where compensation shall be denied:

> Contrary to the Company's arguments, we find no conflict between the holding in *Saunders* and the holding in *Chadwick. Saunders* stands for the proposition that an employee's injury does not arise out of his employment when the injury is the result of an activity prohibited by company rules and conducted solely as a personal convenience. *Saunders*, 189 Ill. 2d. at 631. In *Chadwick,* this court held that an injury suffered while an employee is performing duties for which he was hired arises out of the employment, without regard to the fact that the employee knowingly violated a safety rule. *Chadwick*, 179 Ill. App. 3d at 717-18. The rule in *Saunders* is applicable in cases where the employee is acting outside the sphere of his employment when injured, and the analysis in *Chadwick* is applicable when an injury is sustained while the employee is engaged in an authorized work activity. *J.S. Masonry, Inc.*, 369 Ill. App. 3d at 597.

There are two exceptions to which this limitation on liability will not apply. First, claimants shall not be denied compensation on account of a rule violation if the claimant did not *knowingly* violate the rule. See *City of Mascoutah v. Illinois Workers' Compensation Comm'n*, 2024 IL App (5th) 230480WC-U ("This evidence supports a reasonable inference that the claimant was not made aware of any rule barring back dives and that any such rule was not regularly enforced.") See also, *Sicurella vs. Monarch Construction*, 6 IWCC 777; 2006 Ill. Wrk. Comp. LEXIS 791. Second, claimants shall not be denied compensation if the evidence establishes that the claimant's act or omission in contravention of the rules was itself a custom and practice with the employer's acquiescence or failure to enforce its rules. See *Foreman vs. ABF Freight*, 7 IWCC 003; 2007 Ill. Wrk. Comp. LEXIS 88, citing *United States Steel Corp. vs. Industrial Com.*, 65 Ill. 2d 374, 357 N.E.2d 1176 (1976).

In the case at bar, Petitioner was employed as a machine operator. Respondent was in the business of making ice cream and Petitioner testified his job duties required him to ensure the tanks were full with liquid ice cream. When initially hired, Petitioner was a probationary employee for a period of two months and wore tennis shoes while working. Respondent then provided a payment voucher enabling Petitioner to obtain his mandatory slip-on rubber boots. While working, Petitioner also wore a mandatory white uniform. Petitioner was not permitted to remove his rubber work boots from the premises due to the risk of contamination. (T.20) Petitioner stored his boots inside his locker when he left work at the end of his shift. Petitioner testified he arrived at work on the day of the accident and entered the employee locker room. Petitioner testified he went to pull out his uniform and boots and then went to the bathroom. (T. 29) Petitioner further testified he then went back to his locker and "put my stuff back in my locker because I saw my phone was about to die." (T. 29) Petitioner left the locker room and walked towards the break room to plug in his cell phone for charging. Petitioner admitted this was for his own personal convenience. (T. 52)

In order to reach the break room, the route necessitated that Petitioner walk through the production area and down a hallway. Petitioner testified that sanitizing foamers were used in the production area and that the floor was wet all the time. Petitioner walked through the production area and then slipped in the hallway. At the time of the accident, Petitioner was wearing "Nike slides" which are open toed sandals without heel support. Photos of the sandals were admitted into evidence. (PX5) Petitioner's open toed sandals violated the employer's safety rules, and Petitioner was not performing his job duties or performing a task he was assigned to perform. As such, Petitioner's accident was not of the kind where the employee was attempting to do the work he was employed to do and merely violated a rule as to the manner of doing it. *Chadwick,* 179 Ill. App. 3d at 717. Accordingly, Petitioner was not within the sphere of his employment at the time of his accident. Additionally, when describing the accident, Petitioner testified he stepped on a "brick" which ran across the width of a doorway above floor level, at which time his foot "slipped and went forward, tumbled, and my foot bent forward and broke a bone." (T. 33) A strong inference can be drawn that Petitioner's wearing open toed sandals contributed to the accident or contributed to the severity of the injury.

There is no dispute that Petitioner was placed on notice and received training regarding the Respondent's safety rules. Petitioner's signatures on two sets of written safety rules, one entitled "Plant Safety Rules for Ice Cream Specialties, Inc." and the second "Rules and Regulations Relating to Employment," both signed on February 24, 2022, verify he received the Respondent's safety rules. (RX1 at 1-2) Respondent provided training in the form of modules which were admitted into evidence and Petitioner acknowledged completing the training modules. (RX6; T. 24) Petitioner testified he was aware of the safety rules on the date of his accident. (T. 49)

In awarding compensation, the Arbitrator determined that the safety rules were vague and not previously enforced by the Respondent. I disagree with these findings. The Arbitrator relied on *Sampson vs. Paige Bus Enterprises*, 20 IWCC 0491; 2020 Ill. Wrk. Comp. LEXIS 830, and *Kropp Forge Co. v. Industrial Comm'n*, 225 Ill. App. 3d 244, 252, 587 N.E.2d 1095 (1992). I find the facts in *Sampson* and *Kropp Forge* distinguishable from the facts in the case before us. In *Sampson*, a bus monitor slipped and fell on ice in the company parking lot while wearing gym shoes that allegedly violated the safety rules. The Commission affirmed the arbitrator's finding that the bus company's rules governing footwear were "vague in terms of exactly what type of shoes were required." In *Sampson*, the safety rules prohibited its bus drivers and bus monitors from wearing certain kinds of footwear including open toed sandals, crocs, and gym shoes. The claimant wore what she described as "winter Sketchers." She had one pair of Sketchers for the summer and one pair for the winter which had thicker soles. The claimant routinely wore her Sketchers every day without ever being reprimanded in the past. She further testified that "everyone wore gym shoes." The Commission, in affirming the arbitrator's decision, found the rules unclear as to whether the "winter Sketchers" were in violation of the rules prohibiting gym shoes.

In the case at bar, Petitioner wore open toed sandals which were expressly prohibited by Respondent's rules. Because open toed sandals were specifically named as prohibited footwear, there was no margin for confusion in the case at bar. Additionally, there was no evidence in this case that Petitioner and other employees "routinely" wore open toed sandals every day at work beyond the locker room.

In my view, there was nothing unclear or vague about the rules. Respondent promulgated two safety rules relevant to the disputed "arising out of" issue in this case:

> 6. Footwear must be sturdy in good condition, and with proper tread to reduce slipping hazards. ICS will issue a pair of *rubber slip-ons that must be worn* and left at the plant, do not take home. (Emphasis added.) (RX1 at 1, Plant Safety Rules)
>
> 9 . Employees will wear the uniform required by management. No shorts, tank tops, or halter tops are allowed. *No sandals or open toed shoes are allowed*. (Emphasis added.) (RX1 at 2, Rules and Regulations relating to employment)

Interpreting the two rules together, Respondent required its employees to dress in their uniforms and rubber boots with the understanding there might be circumstances where employees may not be in their boots, and when not wearing the boots, they must wear sturdy footwear with proper tread. Rule number 9 further provided that under no circumstances were sandals or open toed shoes permitted. During the initial claim investigation, Petitioner participated in a telephonic recorded interview with an adjuster from CCMSI on October 7, 2022. (RX7) Petitioner stated the floor was slippery and added, "Them floors, they're always slippery." (RX7 at 8-9) Regarding the use of his sandals, when Petitioner was asked if he was "supposed to be wearing those in there," he answered, "No." (RX7 at 9) During the interview, Petitioner offered no exculpatory explanation for leaving the locker room without dressing in his work uniform and rubber boots, despite his admission that he was not supposed to be wearing his sandals "in there."

At trial, Petitioner testified he believed the rule prohibiting open toed sandals only applied when he was actually working; not when he first arrived at work since he was not permitted to take his work boots home. (T. 23-24) Petitioner further testified that the training materials did not say anything which required he had to wear his boots "the moment" he entered the building. (T. 24) The Arbitrator found this credible and determined the rules were vague because "[i]n looking at the rules

in their entirety, they appear to apply to activities performed while working – not before or after." I disagree with the Arbitrator's finding on this point. First, the distinction between the time of arrival and the commencement of the actual work is immaterial in this case as Petitioner's accident did not occur at the time of his arrival at work. Petitioner had already clocked in and entered the employee locker room intending to dress for work. He removed his uniform and boots from his locker and went to the bathroom. Petitioner then noticed his cell phone needed charging. Petitioner returned his gear to his locker and decided to detour over to the break room without changing into his white uniform and rubber boots. Petitioner testified his work boots were not difficult to put on and took no longer than approximately 30 seconds. (T. 29, 47) Petitioner offered no reasonable justification for exiting the locker room without first donning his gear and entering the production area where he knew the premises were "wet all the time." Second, the rule providing that "*No sandals or open toed shoes are allowed"* was a blanket prohibition and needed no further elaboration. Blanket prohibitions by their very nature apply at all times and in all circumstances, unless otherwise stated. Once Petitioner arrived at work, he was expected to change into his uniform and work boots in the locker room. As such, it is immaterial that the accident occurred after arrival but before Petitioner actually started work, particularly since it was Petitioner who delayed the starting of his work when he decided to bring this cell phone to the breakroom for charging.

As mentioned, the Arbitrator also found that Respondent had not previously enforced its rules and therefore acquiesced to violations of these rules when Petitioner and other employees wore improper footwear inside the facility. Based on my reading of the caselaw, in order to find employer acquiescence by reason of non-enforcement of safety rules, more is needed than uncorroborated anecdotal evidence of workers occasionally violating the rules without reprimand. Whether evidence of employer acquiescence is proffered to address the "in the course of" or the "arising out of" elements, the evidence must show a "custom or practice." See *Foreman vs. ABF Freight*, 7 IWCC 003; 2007 Ill. Wrk. Comp. LEXIS 88, citing *United States Steel Corp. vs. Industrial Com.*, 65 Ill. 2d 374, 357 N.E.2d 1176 (1976). See also *City of Mascoutah v. Illinois Workers' Compensation Comm'n*, 2024 IL App (5th) 230480WC-U, P53. ("The Commission's finding that the claimant's injury occurred in the course of his employment was also supported by the evidence.*** "[I]f the employer has knowledge of or acquiesces in such conduct *as a custom or practice*, the injuries are compensable.")(Emphasis added.)

The Arbitrator relied on *Kropp Forge Co. v. Industrial Comm'n*, 225 Ill. App. 3d 244, 252, 587 N.E.2d 1095 (1992), which I find distinguishable from the case at bar. In *Kropp Forge*, which involved a technician found dead inside a furnace, the Court noted that "the fact that he may have violated safety rules is irrelevant, especially since there was evidence that they were not enforced." The supervisor testified that: (1) hardly anyone ever followed the safety procedures, (2) the employees often performed unscheduled work inside the furnaces, and (3) he never issued disciplinary write-ups and never punished them in any way other than verbally reprimanding them. In short, the evidence in *Kropp Forge* established a custom and practice that existed despite the safety rules.

Similarly, a custom and practice contrary to the safety rules was found in *Foreman vs. ABF Freight*, 7 IWCC 003; 2007 Ill. Wrk. Comp. LEXIS 88. In that case, a dockworker was serving as a human counter-weight for a skid that was too long for the forklift and then fell when the forklift went over a rough spot on the dock plate, at which time the skid on which the claimant was standing and its freight also fell and landed on the dockworker. The employer's safety rules prohibited riding on forklifts; however, the evidence established that while it was "against company policy to ride on the forklifts it was also an accepted way of loading certain freight onto trucks" and was a "common practice on the docks for employees to serve as counterweights when skids were abnormally long." The Commission noted: "According to testimony from several dock employees of ABF Freight, it

was a *daily occurrence for employees to serve as counterweights* on forklifts or to receive rides on the lifts." One witness testified that he and other co-workers rode on the forklifts all the time without receiving any disciplinary action from supervisors. Another employee who also served as union steward testified the supervisors were present and were aware of this custom and practice. The Commission, citing *United States Steel Corp. vs. Industrial Com.*, 65 Ill. 2d 374, 357 N.E.2d 1176 (1976), noted that "*acts customarily performed* by employees with the knowledge and consent of their supervisors which may violate company policies but are necessary and essential for performance of the job, have been found to be incidental to employment." (Emphasis added.)

In *United States Steel Corp. v. Industrial Com.*, 65 Ill. 2d 374, 357 N.E.2d 1176 (1976), a construction laborer used a forklift and sustained a serious leg injury when the forklift hit a bump and tipped over. The claimant had never received formal training and was not certified to operate the forklift. The employer argued the accident was not compensable as the claimant's use of the forklift was forbidden. The parties produced witnesses and presented conflicting evidence for the Commission to consider. The Court upheld the Commission's decision in favor of the claimant as it was the function of the Commission to determine credibility of the witnesses and resolve disputed questions of fact. That being said, the witnesses who testified for the claimant testified that untrained non-certified employees had learned from the authorized operators and from each other how to operate the forklift. One such witness, who had been employed with U.S. Steel for four years, also testified it was customary for employees to operate the forklift and payloader without having been issued a permit.

The case cited by Petitioner on this point also confirms that evidence of a "practice or custom" must be shown in order to establish employer acquiescence. See *Sunnyside Coal Co. v. Industrial Com.*, 291 Ill. 523, 126 N.E. 196 (1920), wherein it was noted that, "If the employer does not know the *practice or custom* the employee is held to be a volunteer acting outside the scope of his authority, and if the employer does know and acquiesces, the employee is held to be acting within the scope of his authority. (Emphasis added.) *Id*. at. 526. The other case cited by Petitioner, *Payne v. Industrial Com.*, 295 Ill. 388, 129 N.E. 122 (1920), is inapposite here as that case involved an act of horseplay which killed the employee and the decedent's death was found not compensable.

Petitioner testified he previously wore his open toed sandals to work and had also worn his sandals in the breakroom with no repercussions. He was unable to provide specifics, however, as to how often he wore sandals during visits to the breakroom to charge his phone. Petitioner agreed he wore sandals in the breakroom less than 50% of his work shifts. (T. 68) When asked if the times he wore sandals was less than 25% of his work shifts, Petitioner testified he didn't know, and when asked in follow-up if it was possible he wore sandals less than 25% of his shifts, Petitioner reiterated he did not know. (T. 68-69) Petitioner also testified that he observed other employees do the same. Mr. Kyle Suydam, one of three production supervisors, testified the employees were subject to a write-up procedure if there is a rule violation and he wrote up Petitioner following the accident due to Petitioner's violation of the safety rules. (T. 73, 75) Unlike the supervisor in *Kropp Forge* who admitted that hardly anyone followed the rules and admitted he never issued written disciplinary write-ups, Respondent's witness testified the rules were enforced and in fact he wrote up Petitioner for his rule violation on the day of the accident. Mr. Suydam also testified he never observed Petitioner or any other employees wearing sandals in the production area or breakroom. Given the risk of contamination, which Petitioner testified to in explaining why the rubber boots were stored on location, I find it incredible that wearing outside streetwear through the production area and breakroom was a common occurrence without repercussion. Petitioner did not produce any witnesses

to corroborate or establish that wearing open toed sandals in contravention of the rules had become a custom or practice.

The Arbitrator noted that, "[a]lthough Mr. Suydam testified that he did not see the Petitioner or others wearing slides on other occasions, he could not speak for other managers." This comes close to improperly shifting the burden of proof onto Respondent. See *First Cash Financial Servs. vs. Industrial Comm'n*, 367 Ill. App. 3d 102, 106 (2006), where the Appellate Court noted "[t]he arbitrator appears to have improperly shifted the burden of proof to First Cash to disprove the existence of a defect on the floor." *Id*. at 106. Likewise, the Respondent was under no obligation to disprove Petitioner's claim. It was Petitioner's burden to prove Respondent did not enforce its rules and that he and other employees customarily wore open toed sandals inside the production area and breakroom without being reprimanded. Petitioner testified he was "unaware" of other employees being written up for wearing improper footwear. (T. 28) By the same token, Petitioner cannot speak for other employees and his being unaware of rule enforcement procedures being instituted for other employees is not the same as knowing that no write-ups were issued. As Petitioner failed to bring any corroborating witnesses to show any credible history of a custom or practice to wear sandals in violation of the safety rules with no repercussions, I believe there was insufficient evidence to establish Respondent's acquiescence or a consistent lack of enforcement.

For the above reasons, I dissent from the majority's opinion and would reverse the Arbitrator's decision and find Petitioner failed to prove his accident arose out of his employment based on his violation of Respondent's safety rules while engaged in conduct he performed for personal convenience.

/s/*Kathryn A. Doerries*

May 29, 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC006432
Case Name	Shawn Anderson v. Prairie Farms Dairy
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	David Jerome
Respondent Attorney	Matthew Terry

DATE FILED: 2/15/2024

/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

SHAWN ANDERSON,
Employee/Petitioner

Case # **23 WC 06432**

v.

Consolidated cases:

ICE CREAM SPECIALTIES
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 **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **COLLINSVILLE**, on **JANUARY 18, 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 **10/3/22**, 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 $24,782.54; the average weekly wage was $783.13.

On the date of accident, Petitioner was 27 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 $6,055.52 for other benefits (short-term disability), for a total credit of $**6,055.52**.

Respondent is entitled to a credit of $13,682.70 under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, as listed in Petitioner's Exhibit 6, as provided in Section 8(2) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $522.09/week for 18 1/7 weeks, commencing 10/3/22 to 2/6/23 as provided in Section 8(a) of the Act. Respondent shall be entitled to a credit of $6,055.52 under 8(j) for short-term disability benefits already paid.

Respondent shall pay the Petitioner permanent partial disability benefits of $469.88 per week for 41.75 weeks because the injuries sustained caused 25% loss of use of the left foot as provided in Section 8(e) of the Illinois Workers' Compensation 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. PuBuchon
Signature of ArbitratDate

ICArbDec19(b) **February 15, 2024**

PROCEDURAL HISTORY

This matter proceeded to trial on January 18, 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 left foot injury; 3) payment of medical bills; 4) entitlement to temporary total disability (TTD) benefits; and 5) the nature and extent of the Petitioner's injury.

The Application for Adjustment of Claim was amended at trial, without objection, to reflect the name of the Respondent as Ice Cream Specialties, Inc. The parties stipulated that there may be additional credit pursuant to Section 8(j) of the Act not reflected in Petitioner's Exhibit 6, and the Respondent would receive credit for those payments.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 27 years old and had been employed by the Respondent as a machine operator, making sure tanks were filled with ice cream liquid. (AX1, T. 16-17) On October 3, 2022, the Petitioner came to work, clocked in, went to his locker, pulled out his uniform and boots, went to the bathroom, went back to his locker and put his stuff back in his locker because he saw his phone was about to die. (T. 28) He then walked through a hallway towards the break room to charge his phone, stepped on a brick that sits above floor level in the doorway, slipped on soap, went forward and tumbled, bending his foot forward and breaking a bone. (T. 29-30, 33-34)

The Petitioner identified a diagram of the facility and described the route he took from when he arrived at work to when he began working. (T. 26-, PX4) He pointed out that the timeclock was inside the employee entrance door and showed his path to the locker room and to the break room, which was designated by a gray line on the diagram.. (T. 26-30, PX4) He

acknowledged walking through the production area, where there are sanitizing foamers and the floor was wet all the time. (T. 47) From the locker area, the path goes through a revolving door into the production area then into a hallway to the break room. (T. 53-54) It was in that hallway where the Petitioner slipped. (T. 54) The parties agreed that an employee must walk through that production area to get to the break room. (T. 54-55) The Petitioner stated that he and other coworkers were allowed to charge their phones, and that the break room was an area the Respondent designated for charging phones. (T. 30-31)

The Petitioner testified that the Respondent supplied him with a uniform but initially did not provide footwear, so he wore gym shoes. (T. 17-18) He said other workers wore similar types of gym shoes. (T. 18) He said his supervisor saw him wearing these shoes and never reprimanded him. (Id.) After about two months, the Respondent provided him with a voucher to buy rubber work boots/slip-ons after he inquired with his supervisor. (T. 18-20) He was not allowed to wear the boots home for contamination purposes and stored them in his locker at work. (T. 20) He said that he wore Nike slides to work before putting on his boots. (T. 25) He named three managers that he walked past in his slides – including Kyle Suydam, who was present for the hearing – before the accident and said he was never told he could not wear them and that he was never disciplined for wearing them. (T. 27-28, 31-32 62-63) He said other workers wore similar slides to work along the same path he took to plug in their phones, and he was unaware of any of them being disciplined. (T. 28, 32, 65) He said he was not aware of any rule prohibiting him to go to the break room in his slides to charge his phone. (T. 36)

On cross-examination, the Petitioner admitted that the floor is wet in the production area and was wet on the date of the accident. (T. 55) He agreed that he, himself, believed it was unreasonable to walk in the production area leading to the break room with his slides on, but then

said he didn't think it was necessary for him to put his boots on to walk through the production area to charge his phone. (T. 57-58)

The Petitioner acknowledged that his employment handbook, which he signed, stated: "Footwear must be sturdy in good condition, and with proper tread to reduce slipping hazards. ICS will issue a pair of rubber slip-ons that must be worn and left at the plant, do not take home." (T. 22-23, RX1) The Petitioner also acknowledged that the handbook provided that no open-toed shoes were allowed, which he understood as applying to when he was working. (T. 23, RX1) He said he had slipped in the rubber boots. (T. 26) The Petitioner testified that he did not recall his training models telling he had to wear rubber slip-ons the moment he entered the building or that he couldn't wear slides or any other type of shoes while he was there. (T. 24) Similarly, he said he did not recall any training modules telling him that he could not attend to personal comfort such as plugging in his phone or going to the bathroom without putting on required footwear first. (T. 25)

Mr. Sudyam testified that he is the production supervisor for the Respondent and was one of the supervisors of the Petitioner on the accident date. (T. 72) He said a write-up procedure occurs if an employee violates a safety rule. (T. 73) He said that on the day of the accident, the Petitioner violated the safety rule providing for footwear to be sturdy, in good condition and with proper treat to reduce slipping hazards and the rules and regulations relating to employment providing that no sandals or open-toed shoes were allowed. (T. 73-75) He was given a written warning. (T. 74, RX1) Mr. Sudyam did not believe that at any of the doorways leading to the production areas were any signs prohibiting or mandating any certain footwear. (T. 88-89)

On cross-examination, Mr. Sudyam said he did not know if any of the other supervisors the Petitioner named in his testimony had seen the Petitioner going through the production floor

with slides on and didn't reprimand him. (T. 90-91) He insisted there was no way that the Petitioner would have slipped if he was wearing his boots because they are slip-resistant. (T. 92) He acknowledged that although the floor was slippery enough that slip-resistant boots were employees, but employees were not provided boots during their probationary periods. (T. 93)

As to company procedures at the beginning of the beginning of the workday, Mr. Sudyam stated that employees are to get dressed on their own time, then clock in for a day's work and be on their job site by the start time wearing their proper personal protection equipment, uniform and shoes. (T. 80) He said that prior to the accident, he had not seen the Petitioner or other employees wearing sandals through the production area to the break room. (T. 80-81) He said that if he had, he would have followed the write-up procedure. (T. 81) He characterized the Petitioner's actions on the day of the accident as unreasonable and for his own personal convenience. (T. 85-86)

The Petitioner provided a recorded statement to the Respondent. (RX7) In that statement, he acknowledged that he wasn't supposed to be wearing slides. (Id.)

Following the accident, the Petitioner was seen at the Belleville Memorial Hospital emergency room and reported that he injured his foot when he stumbled and fell. (PX1). X-rays revealed a mildly displaced transverse fracture of the base of the fifth metatarsal on the left foot. (Id.) The Petitioner was referred to Dr. John Harness, a podiatrist at Total Foot Care. (PX2, PX2) On October 14, 2022, Dr. Harness performed an open reduction and internal fixation of the left fifth metatarsal fracture with a plate and screws. (PX3) The Petitioner had follow-up visits with Dr. Harness who found that the Petitioner was able to return to work and issued a work note stating that the Petitioner was to be off work until February 6, 2023. (PX2)

The Petitioner testified that he still has hardware in his foot that he can feel when he walks and that he still has pain in his foot every day – ranging from 2/10 on a good day and 6/10 on a

bad day. (T. 40-41) He said his pain increases if he bumps it or something falls on it. (T. 41-42) He said he experiences a tingling sensation in his foot when his shoe rubs against it. (T. 42) He said he has problems with his foot if he stands too long. (T. 43)

The Petitioner now works packaging chemicals at Jost Chemicals. (T. 44) He said he has no problems performing physical activities at this job due to his foot, but has to take breaks due to foot pain. (T. 45-46) He said he was making the same amount or more at his new job and the physical requirements were roughly the same. (T. 59)

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, based on his demeanor and the consistency of his statements. One area that causes some doubt on the Petitioner's credibility was when he answered "yes" to the question of whether he, himself, thought it was unreasonable to walk into the production area wearing his slides but then said he didn't think it was necessary for him to put his boots on to go charge his phone. The Arbitrator believes the Petitioner was confused. There were objections during that portion of the testimony that made it difficult for even the Arbitrator to follow.

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 124848, ¶ 32.

The phrase "in the course of employment" refers to the time, place and circumstances of the injury. *Id.* at ¶34. A compensable injury occurs in the course of employment when it is sustained while a clamant is at work or while he or she performs reasonable activities in conjunction with his or her employment. *Id.*

In this case, the Petitioner had clocked in and was preparing to start his shift when he fell while going to the break room to charge his phone. The Arbitrator finds this activity to fall within the "personal comfort doctrine." Under this doctrine, the course of employment is not considered broken by certain acts relating to the personal comfort of the employee. *Eagle Discount Supermarket v. Industrial Com.*, 82 Ill. 2d 331, 339, 412 N.E.2d 492, 45 Ill. Dec. 141 (1980). The Court in *Eagle Discount* found an injury during a lunch break to be compensable. *Id*. at 340. Other acts during a break time in the employment besides 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); *Circuit City Stores, Inc. v. Ill. Workers' Comp. Comm'n* (2009), 391 Ill. App. 3d 913 (helping a co-worker dislodge a product from a vending machine))

In a case with similar facts to those at bar, the Appellate Court found compensable an injury that occurred when the claimant slipped and fell on a wet floor when getting a drink after arriving for work at a nuclear power plant one hour prior to his shift. *Christman v. Industrial Com.*, 159 Ill. App. 3d 479, 482-483, 512 N.E.2d 804, 111 Ill. Dec. 415 (3rd Dist. 1987). The Court found

that the term "employment" contemplates not only actual work time, but a reasonable time before commencing and after concluding actual employment. *Id*. at 482.

The Arbitrator herein finds the act of going to the break room to charge a phone to be an act of personal comfort. Further, it appears to be a common practice for employees to charge their phones in the break room. There was no evidence that this practice was prohibited or discouraged by the Respondent. Therefore, the Arbitrator finds the Petitioner's injury occurred in the course of his employment.

The personal comfort doctrine does not answer the whole question of compensability because it addresses only the "in the course of" requirement; the "arising out of" requirement must be met independently. *Circuit City*, 391 Ill. App. 3d at 921. Examples of "personal comfort" activities found to not be compensable as not arising out of employment include: dancing at a picnic (Karastamatis v. Industrial Comm'n, 306 Ill. App. 3d 206 (1st Dist. 1999)); automobile mechanic working on his own vehicle (Orsini v. Industrial Com., 117 Ill. 2d 38 (1987)).

The "arising out of" component is primarily concerned with causal connection. *McAllister,* 2020 IL 12484, 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.

The first category of risks includes the obvious kinds of industrial injuries and occupational diseases and are universally compensated. *Id*. at ¶40. Examples include tripping on a defect at the employer's premises, falling on uneven or slippery ground at the work site. *Id*. The Arbitrator

finds that the Petitioner slipping and falling on a wet/soapy floor is one such risk. Therefore, the Arbitrator finds that the Petitioner's injury arose out of his employment.

Lastly, there is a question in this case as to whether a violation of safety rules took the Petitioner out of the scope of his employment. Where the violation of a rule or order of the employer takes the employee entirely out of the sphere of his employment and he is injured while violating such rule or order, it cannot be then said that the accident arose out of the employment, and in such a case no workers' compensation can be recovered. *Saunders v. Industrial Commission*, 189 Ill.2d 623, 628, 727 N.E.2d 247 (2000). An employee's conscious violation of a safety rule that is purely for his own personal convenience and in no way is required by or benefits his employer does not arise out of his employment. *Id*. at 631-632.

In *Saunders*, the claimant was injured when riding with someone else on a forklift – "riding double." *Id*. at 625. In that case, there was a specific safety rule against riding double on a forklift that was published in the employer's employee handbook and regularly communicated to employees through training sessions and monthly safety contacts. Id.

The instant case is distinguishable from *Saunders* in that the safety rule at issue there specifically referred to riding double on a forklift. The safety rule here was more general in nature, stating that footwear must be sturdy in good condition, and with proper tread to reduce slipping hazards. The evidence showed that employees were allowed to wear athletic shoes during their probationary period before being issued boots. Another rule stated that no open-toed shoes were allowed, which the Petitioner understood as applying to when he was working. There was no evidence presented to show that the Petitioner was expressly forbidden from wearing street shoes in the area in which he fell.

The Petitioner testified that he and other employees wore slides to work before changing into their boots and that managers were present when these shoes were worn – without any repercussions. The Arbitrator finds this testimony credible. Although Mr. Sudyam testified that he did not see the Petitioner or others wearing slides on other occasions, he could not speak for other managers. In addition, despite this practice, there was no evidence that other employees or the Petitioner prior to this event were disciplined – other than the Petitioner being written up after his accident.

In a similar case before the Commission – *Sampson v. Paige Bus Enterprises*, 20 IWCC 0419 – an employee slipped on ice in an employee parking lot while wearing shoes that allegedly violated the employer's footwear rules. The Commission affirmed and adopted the Arbitrator's decision that the claimant's choice of footwear did not take her out of the sphere of employment, specifically finding that the footwear safety rules were vague and the employer had acquiesced to the claimant wearing the shoes because she had never been disciplined for wearing the shoes previously. *Id*. at 21-22. The Arbitrator found "nothing egregious" about the Petitioner wearing the shoes she chose. *Id*. at 22.

This Arbitrator finds the Respondent's shoe rules to be vague. In looking at the rules in their entirety, they appear to apply to activities performed while working – not before or after. In addition, employees were instructed to not wear the work boots when entering and leaving the facility, as they were required to leave the boots at work. Also, courts have looked at whether employers have enforced safety rules in finding injuries compensable when employees violate rules. See e.g. *Kropp Forge Co. v. Industrial Comm'n*, 225 Ill. App. 3d 244, 587 N.E.2d 1095, 167 Ill. Dec. 480 (1st Dist. 1992) The Arbitrator herein finds that the Respondent acquiesced to the Petitioner and others not following the footwear rule by wearing slides to the break room.

Although the Petitioner made a habit of wearing slides along the path to the break room – as did other employees – there was no evidence of discipline prior to the accident.

Other important facts leading this Arbitrator to find that the Petitioner's alleged violation of the footwear rule does not prohibit compensability of his claim are: 1) the only way to enter the break room was to pass through the production area, where the floors were wet and soapy; and 2) at the entry to the production area there was no warning that only boots or other approved footwear were allowed past that point. These facts, combined with the vagueness of the rules show that it was reasonably foreseeable that employees would go to the break room before having changed into work attire.

The Court in *Saunders* also held that where a rule violation and consequent injury occurred during an activity that did not benefit the employer, the violation took the claimant out of the sphere of the employment, making the injury noncompensable. *Saunders*, 301 Ill.App.3d at 649-650. However, the Arbitrator herein does not reach this inquiry because of the findings above that the rule was vague and not enforced.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that the Petitioner's injuries occurred in the course of and arose out of his employment.

Issue (F): Is Petitioner's current condition of ill-being causally related to the accident?

Based on the findings above regarding accident and there being no evidence that the Petitioner's injury was due to anything but the fall, the Arbitrator finds that the Petitioner's current condition is 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?

Based on the findings above regarding accident and causation, the Arbitrator finds the medical services as listed in Petitioner's Exhibit 6 are reasonable and necessary. Therefore, the Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 6 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)

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, and the stipulation of the parties, the Arbitrator finds that the Petitioner was entitled to TTD benefits from October 3, 2022, through February 6, 2023, and the Respondent is entitled to a credit of $6,055.52 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 now works packaging chemicals, with similar physical demands as his job for the Respondent. The Arbitrator places significant weight on this factor.

(iii) **Age.** The Petitioner was 27 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 injury. 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 still has hardware in his foot that he can feel when he walks, still has pain in his foot every day that increases if he bumps it or something falls on it. He experiences a tingling sensation in his foot when his shoe rubs against it and has problems with his foot if he stands too long. The Arbitrator puts significant weight on this factor.

Therefore, the Arbitrator finds the Petitioner's temporary total disability to be 25 percent of the left foot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC006884
Case Name	Matthew Lawrence v. State of Illinois - Illinois Department of Transportation
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0246
Number of Pages of Decision	22
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 5/29/2025

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MATTHEW LAWRENCE,

Petitioner,

vs. NO: 20 WC 06884

STATE OF ILLINOIS – ILLINOIS DEPT. OF TRANSPORTATION,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical treatment and notice, 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 findings regarding accident and notice, but reverses the Arbitrator's denial of causal connection regarding the right knee and right shoulder and awards medical expenses and prospective medical treatment related to same.

The Commission finds that Petitioner sustained a non-disputed work accident on January 6, 2020, wherein he suffered injuries to his lower back and right leg. The medical records clearly and consistently document continued right leg problems following the January 6, 2020 work accident, despite two lumbar spine surgeries, multiple injections and extensive physical therapy.

On April 11, 2023, Petitioner's right leg gave way while he was climbing up the stairs at home. Petitioner fell, sustaining injuries to his right knee and right shoulder. The Commission finds that Petitioner's right leg giving out and his falling down the stairs at home causing injury to his right leg and right shoulder was a natural consequence of his original January 2020 work accident.

Prior to the January 6, 2020 work accident, Petitioner had no history of pain or treatment to either his right knee or right shoulder. Petitioner was initially injured in an undisputed accident on

January 6, 2020 when exiting a bobcat at work. On January 14, 2020, he presented to Workcare with initial complaints of lower back pain and right leg pain. (Px3) He continued to follow up with Workcare through the remainder of January and February 2020. While treating with Workcare, he had a diagnosis of low back pain and right-side sciatica. (Px3).

On March 9, 2020, Petitioner presented to Dr. Gornet for evaluation. Upon presentation to Dr. Gornet, Petitioner complained of low back pain central to the right side, right buttock, right hip and right leg to his knee and occasionally in his medial thigh. (Px6) Over the next few months, Petitioner underwent a spinal MRI, injections, CT and ultimately decompression and disc replacement surgery by September of 2020. (Px6) At the time of his visit with Dr. Gornet on March 11, 2021, Petitioner complained that he felt he still had some right radiculopathy. (Px6) At follow up visits with Dr. Gornet in May and October of 2021, Petitioner continued to complain of problems with his right leg. Dr. Gornet referred Petitioner to Dr. Phillips for further evaluation. (Px6)

On December 2, 2021, Petitioner underwent nerve conduction studies and a consult with Dr. Phillips. Dr. Phillips noted a pattern of right thigh dysesthetic numbness with dense pinprick loss and noted he was suspicious of a lateral femoral cutaneous neuropathy. (Px13) Petitioner saw Dr. Gornet immediately afterwards and Dr. Gornet noted this was some of Petitioner's original pain from the January 6, 2020, injury. (Px6)

At a follow up visit with Dr. Gornet on April 18, 2022, Petitioner complained that his leg gives out at times. (Px6) Petitioner underwent a transforaminal steroid injection with facet block on May 4, 2022 to treat lumbar radiculopathy. (Px6) Petitioner underwent a microdiscectomy and decompression on July 22, 2022. (Px6) On August 4, 2022, Petitioner continued to complain of ongoing right thigh numbness and tingling which at times radiated down his leg to approximately his foot. (Px6) On September 8, 2022 Petitioner reported he had a sensory feel of weakness in the leg and that he felt a little unsteady on single leg gait on the right. (Px6) At the October 31, 2022 office visit with Dr. Gornet, Petitioner continued to complain of residual back pain. (Px6)

Petitioner underwent an FCE on December 20, 2022 where Petitioner's pain complaints were noted to be high and it was found that Petitioner's functional abilities would not allow him to perform his full duty jobs with the Illinois Department of Transportation. Petitioner specifically reported that standing too long causes his right leg to go numb and that his right foot feels "spongy." He reported if he walks more than 15 minutes he gets right leg and hip/back pain and his leg feels like it wants to give way. (Px14) At the February 2, 2023 visit, Dr. Gornet opined Petitioner was at MMI as to his low back. (Px6)

Following the fall on the stairs at home on April 11, 2023, Petitioner presented to Dr. Bradley on April 17, 2023 with complaints of right shoulder and right knee pain. Dr. Bradley noted that in January of 2020, Petitioner injured his back, shoulder, and knee at the same time while slipping while exiting a Bobcat. Dr. Bradley noted Petitioner also reported a second accident approximately 2 weeks prior to the visit stating that while he was walking, his knee gave out, causing him to fall forward and catch himself with his right shoulder.

Dr. Bradley opined that Petitioner's mechanism of injury was consistent with both a rotator cuff and meniscus tear. (Px15) Dr. Bradley ordered MRIs of the right knee and right shoulder which the Petitioner underwent on April 28, 2023.

Petitioner continued to treat with Dr. Bradley for right shoulder and right knee problems. Petitioner continued to complain of right leg pain and his right leg giving out, particularly with stairs. (Px15) Ultimately, Petitioner's treatment to the right shoulder consisted of injections and physical therapy. On March 13, 2024, Petitioner underwent a right knee arthroscopy. (Px8, Px15 and Px11) Subsequent to his right knee surgery, Petitioner had ongoing right knee problems and continued to follow up with Dr. Bradley. (Px15)

On July 12, 2023, Petitioner was seen by Dr. Yadava. Petitioner reported that his "right leg goes numb from his back surgery and caused his leg to give out" resulting in a fall resulting in right knee pain and right shoulder pain. Dr. Yadava concluded that Petitioner had musculoligamentous as well as possible neurogenic sources to his pain and impairment as well as a deficient right ankle reflex and clear weakness in his right S1 and L5 myotomes. Dr. Yadava opined that there was pathology at the lumbar spine that explained Petitioner's lower extremity weakness and pain. (Px16)

On July 18, 2023 Petitioner underwent a Section 12 exam by Dr. Farley. Dr. Farley did not believe the right knee and right shoulder symptoms were present since the 2020 accident. (Rx3, p. 11) Dr. Farley believed Petitioner was at MMI for both the right shoulder and the right knee at the time of his exam. (Rx3, pp. 15 and 22). Regarding the right shoulder, Dr. Farley opined that the MRI of the right shoulder dated April 18, 2023 showed no pathology although the MRI indicated there was a partial thickness tear in the posterior humeral attachment of the inferior glenohumeral ligament.

Regarding the right knee, Dr. Farley made no diagnosis. However, Dr. Farley acknowledged that Petitioner had right lower extremity weakness which was unrelated to the knee but more related to previous lumbar history. He further opined that the residual weakness in the right lower extremity was most likely related to lumbar injuries and subsequent surgeries. The Commission does not find Dr. Farley's opinions persuasive as they are inconsistent in regard to the right knee and not supported by the evidence with respect to the right shoulder.

In *Lee v. Industrial Comm'n*, 167 Ill.2d 77, 86 (1995), the Illinois Supreme Court addressed whether a subsequent accident to a work accident should be treated as a single accident if the injury would not have occurred "but for" the prior work-related injury and upholding its prior findings in *G.H. Hammond Co. v. Industrial Comm'n*, 288 Ill. 262 (1919), *International Harvester v. Industrial Comm'n*, 46 Ill.2d 238 (1970) and *Fermi National Accelerator Lab v. Industrial Comm'n*, 244 Ill.App.3d 899 (1992).

In *G.H. Hammond Co. v, Industrial Comm'n*, 288 Ill. 262, 265-66 (1919), the court affirmed the Commission's award of compensation to the estate of a deceased worker who had died of complications after a fall which was caused by bone weakness from a prior work-related leg injury. In *International Harvester v. Industrial Comm'n*, 46 Ill.2d 238, 245 (1970), an employee suffered an initial work-related head injury that weakened his skull. Four years later the same employee was struck in the head by his wife. This subsequent injury exacerbated the prior work-related injury and the employee was permanently disabled. The court affirmed the Commission's award of compensation based upon the clear chain of causation between the work-related injury and the subsequent injury, and the lack of an independent intervening cause to disrupt the chain of causation. In *Fermi National Accelerator Lab v. Industrial Comm'n*, 224 Ill.App.3d 899 (1992), an employee who was on crutches due to an industrial accident slipped and fell, injuring his knee and thumb during

a return trip from medical treatment for the work-related injury. The Commission determined, and the circuit court affirmed, that both injuries constituted a single accident and both injuries were thus compensable.

Based on the totality of the evidence, the Commission finds that the Petitioner met his burden of proof that the injuries he sustained on April 11, 2023 were a direct result of the initial work accident of January 6, 2020.

The Commission additionally awards the outstanding, causally connected and reasonable and necessary medical expenses contained in Petitioner's Exhibit 1.

Finally, the Commission awards the prospective medical treatment to the right knee and right shoulder prescribed by Dr. Bradley including, but not limited to the PRP injections and attendant care.

The Commission also corrects the scrivener's error contained in line 1 of the Findings Section of the Arbitrator's Decision. The Commission strikes "4/11/2023" and replaces it with "01/06/2020".

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION the Arbitrator's Decision as to causal connection regarding the right shoulder and right knee conditions is reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the reasonable and necessary medical expenses related to the right shoulder and right knee 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 shall authorize and pay for the prospective medical treatment prescribed by Dr. Bradley, including the PRP injections and follow-up care as needed.

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.

May 29, 2025

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

MEP/dmm
O: 50625
49

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC006884
Case Name	Matthew Lawrence v. State of Illinois - Illinois Dept of Transportation
Consolidated Cases	24WC007240;
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 8/8/2024

/s/Bradley Gillespie, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF AUGUST 6, 2024 4.70%

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

August 8, 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
19(b)

Matthew Lawrence
Employee/Petitioner

v.

State of IL / IDOT
Employer/Respondent

Case # **20** WC **006884**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Herrin, Illinois**, on **July 9, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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, **04/11/2023**, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**66,989.12**; the average weekly wage was $**1,288.25**.

On the date of accident, Petitioner was **45** years of age, ***married*** with **2** dependent children.

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

Respondent ***has*** 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

Petitioner has failed to meet his burden of proof as to causal connection and entitlement to prospective medical benefits as to his right shoulder and right knee. Petitioner is at MMI as of February 2, 2023.

Benefits as to Petitioner's right shoulder and right knee 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.

Bradley D. Gillespie
Signature of Arbitrator

August 8, 2024

ICArbDec19(b)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MATTHEW LAWRENCE,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No.: 20WC006884**
	)	**24WC007240**
ILLINOIS DEPARTMENT OF TRANSPORTATION,	)	
	)	
	)	
Respondent.	)	

19(b) DECISION OF ARBITRATOR

Petitioner proceeded to hearing pursuant to Sections 19(b) and 8(a) on consolidated cases 20WC006884 and 24WC007240. (*See* Arb. Ex. 1; Arb. Ex. 3) On April 21, 2023, Matthew Lawrence [hereinafter, "Petitioner"] filed an Amended Application for Adjustment of Claim alleging injuries to his back, right leg, body as a whole, right shoulder, and right knee as a result of exiting a skid steer while working for the Illinois Department of Transportation [hereinafter, "Respondent"] on January 6, 2020 . (Arb. Ex. 2). Petitioner filed a second Application for Adjustment of Claim on March 14, 2024, alleging injuries to his right shoulder, right knee and body as a whole after his leg gave out due to a work-related low back condition causing him to fall on April 11, 2023. (Arb. Ex. 4) This matter proceeded to hearing on June 11, 2024, pursuant to Sections 19(b) and 8(a) of the Act, in Herrin, Illinois. (Arb. Ex. 1). The following issues were in dispute at arbitration in case number 20WC006884:

- Causal Connection;
- Incurred Medical Treatment and bills, and;
- Prospective Medical Treatment.

The following issues were in dispute at arbitration in case number 24WC007240:

- Accident;
- Notice;
- Causal Connection;
- Medical Bills for treatment of right knee and right shoulder

FINDINGS OF FACT

Testimony of Petitioner

Petitioner testified that he is employed as highway maintainer with Illinois Department of Transportation (IDOT). (Tr. p. 16) He described sustaining injury to his back, radiating down to his knee, after slipping while exiting a piece of equipment at work on January 6, 2020. (Tr. p. 17) Petitioner denied having received any injuries, treatment, workers' compensation claims or

settlements involving his low back or leg prior to January 6, 2020. *Id.* He affirmed that he treated with Dr. Gornet for his spine and ultimately underwent surgery. (Tr. p. 18-19) Prior to said surgery, Petitioner described pain in his lower back which radiated into his right leg and stopped at his knee area. (Tr. p. 19) He denied having episodes of his leg giving out prior to his first surgery. *Id.* Petitioner indicated that after his first spine surgery, his right leg began to give out. (Tr. pp. 19-20) Petitioner estimated this caused him to fall to the ground more times than he could count. (Tr. pp. 20-21) He next came under the care of Dr. Peloza, during Dr. Gornet's illness. (Tr. p. 20) Petitioner underwent a second spine surgery with Dr. Peloza. *Id.* He stated this surgery did not improve his condition and his leg continues to give out. (Tr. p. 21)

Petitioner testified that he sustained another injury on April 11, 2023. *Id.* Petitioner said he was walking up the stairs and his leg gave out, causing him to fall and injure his right shoulder and right knee. (Tr. pp. 21-22) Petitioner stated he continues to have shoulder complications. (Tr. p. 22) He said the physical therapy in which he was participating at the time of his fall was making his condition worse. (Tr. p. 23) Petitioner testified that he informed his physicians, physical therapists, and employer of his fall which had occurred in his home. (Tr. pp. 23-24) Petitioner indicated he informed his supervisor and the woman who handles workers' compensation, Jeni Gunn, to inform them that he had another incident with his knee but received no response. (Tr. p. 24) Petitioner said he informed them the week after his fall. (Tr. p. 27) Since the fall in his home, Petitioner has received treatment to his knee consisting of physical therapy, injections, and surgery. *Id.* Before surgery, Petitioner described having consistent pain in his right knee and that it would give out without warning. *Id.* He said these problems continue today. (Tr. p. 25) For his shoulder, Petitioner described having problems with his range of motion and pain. *Id*. He said he has been treated with injections and physical therapy for his shoulder. (Tr. p. 26) Petitioner confirmed he was paid TTD when he was not working. *Id.*

On cross examination, Petitioner testified that he is alleging the events of April 22, 2023, which occurred in his home amount to a work accident. (Tr. pp. 28-29) Petitioner stated he made a phone call and e-mailed a brief statement to IDOT regarding this event. (Tr. p. 29) Petitioner confirmed he did not call the hotline number for reporting work accidents as he did for his 2020 injury. (Tr. pp. 29-30) Petitioner confirmed he did not complete an Employee's First Notice of Injury form as he did for his 2020 injury. (Tr. p. 30) Petitioner confirmed he did not complete or provide any other written documentation for his 2023 claimed injury as he had in the past for his prior work accident. *Id.* Petitioner stated he did not receive a response from IDOT regarding his email. *Id.* Petitioner said the supervisor who he reported the 2023 accident to was Kerry Oestreicher. (Tr. p. 31) He was unaware if Mr. Oestreicher completed any reporting forms. *Id.* Petitioner agreed the symptoms in his knee changed after his 2023 accident. (Tr. pp. 31-32) He also agreed the symptoms in his right shoulder developed after the 2023 accident. (Tr. p. 32)

On direct examination, Jennifer Gunn testified at arbitration in her capacity as the Safety and Claims Manager for IDOT District 9, a position she has held since January 1, 2019. (Tr. p. 35) Ms. Gunn described her position to require that she keep track of all workers' compensation claim injuries that occur within District 9. (Tr. p. 36) Ms. Gunn was familiar with Petitioner and his accident of January 6, 2020. *Id.* She had received reports and documentation of that accident. *Id.* Ms. Gunn was not familiar with the alleged work accident of April 11, 2021. *Id.*

Ms. Gunn said she became aware of this alleged accident on March 21, 2024, when my office asked her for her file documenting this date of accident. (Tr. p. 37) Ms. Gunn stated Petitioner was on workers' compensation leave on April 11, 2023, due to his prior accident from 2020. *Id.* Ms. Gunn explained that the typical course of reporting a work accident is to notify the supervisor, fill out the IDOT 2039 Incident/Accident Report, call the Gallagher Bassett hotline to report the injury, contact her office, and fill out the workers' compensation claim packet. (Tr. p. 38) Ms. Gunn did not recall receiving any communications from Petition for the 2023 claimed accident. *Id.*

On cross examination, Ms. Gunn testified Kerry Oestreicher is the lead worker at the IDOT Murphysboro yard. (Tr. p. 39) Petitioner's counsel did not ask Ms. Gunn a question, but instead informed her that Petitioner told him twice in the last thirty seconds that he had an e-mail to her and Mr. Oestreicher in his sent e-mail box. *Id*. Ms. Gunn expressed she did not have such an e-mail from Petitioner and does not delete her e-mails. (Tr. pp. 39-40) Ms. Gunn stated Mr. Oestreicher was likely Petitioner's direct supervisor. (Tr. p. 44)

On redirect examination, Ms. Gunn testified he has received supervisor's reports from Mr. Oestreicher in the past and so he would know how to complete those reporting forms. (Tr. p. 45)

On recross examination, Ms. Gunn testified accidents which happen at home would be handled by non-occupational disability. (Tr. p. 46)

The Arbitrator allowed proofs to remain open for Petitioner to provide a copy of the e-mail he testified was sent to Jeni Gunn and Kerry Oestreicher of IDOT and for Respondent to reply. (Tr. pp. 39-43, 48) In the afternoon of July 10, 2024, after the conclusion of in-person testimony that morning, Petitioner provided a copy of an e-mail sent by Petitioner to Jeni Gunn on April 19, 2023. (PX 20). The e-mail was not addressed to Kerry Oestreicher or others. *Id.* Petitioner wrote that his back pain caused his knee to give out on April 11, 2023, while walking up the stairs at his house. *Id.* Petitioner called Mr. Oestreicher who told him he wasn't sure since the fall occurred at home. *Id.* Petitioner's email referred to a handwritten statement, but it was not included. (PX 20)

On July 11, 2024, Eric Mueller, IDOT District 9 Regional Applications Senior Specialist, provided an affidavit describing his role in the search for an e-mail sent by Petitioner to Jennifer Gunn on or after April 11, 2023. (RX 4) Mr. Mueller said the search within IDOT revealed no such e-mail having ever been received. (RX 4).

Documentary Evidence

Petitioner's medical bills and medical records list are contained in Petitioner's Exhibits #1 and #2.

On January 6, 2020, Petitioner presented to WorkCare West and was evaluated by FNP-C Mindy Dudenbostel for right lower back and leg pain located around the SI joint. (PX 3, p. 3) Petitioner provided a consistent history of accident. *Id.* He described his pain as radiating into his right inner thigh to the knee. *Id.* He was prescribed Cyclobenazprine 10mg, instructed to

take to take over the counter pain medications, use moist heat to reduce pain and improvemobility and was placed on light duty. *Id.*

On January 7, 2020, Petitioner provided information used to generate an Illinois Form 45: Employers' First Report of Injury. (RX 1, p. 1) Petitioner reported twisting his back while exiting a bobcat resulting in lower right side back pain. *Id.*

On January 13, 2020, Petitioner completed an IDOT Employee Accident/Incident Report, writing he felt a pain in his back shooting into his right leg after bending over to clear the door to the bobcat. (RX 1, p. 2) This form was signed by his supervisor and bureau chief. *Id.* On the same date, Petitioner completed an Employee's Notice of Injury form. (RX 1, p. 3) Petitioner described bending while placing his foot onto the bucket to exit the bobcat, resulting in pain in his lower back shooting down his right leg. *Id.* Petitioner's supervisor, Kerry Oestreicher, completed a Supervisor's Report of Injury or Illness the same day stating he had no knowledge of the incident. (RX 1, p. 5)

On January 14, 2020, Petitioner returned to WorkCare West for low back pain and sciatica on the right side. (PX 3, p. 5) The pain diagram shows stabbing pain down the back of his right thigh. (PX 3, p. 6)

On January 16, 2020, Petitioner presented to SIH Murphysboro Rehab for a Physical Therapy Initial Evaluation. (PX 4, p. 3) Petitioner reported constant aching pain in the lumbosacral region with radiating symptoms into the medial aspect of the right thigh. *Id.* Petitioner's right knee and right shoulder were not included on his "Problem List". (PX 4, p. 7) Petitioner attended therapy to address his low back pain and sciatica for 12 sessions until February 19, 2020. (PX 4, p. 63)

When he returned to the Occupational Medicine Clinic at WorkCare on January 21, 2020, the Nurse Practitioner felt that the location of the pain was over his right SI joint. (PX 3, p. 8) Petitioner reported stabbing pain which was constant but varied with activity level. *Id.* Petitioner's diagnosis remained the same, as did his light duty restrictions. (PX 3, pp. 8-9) Continued physical therapy was recommended. (PX 3, p. 9)

On February 4, 2020, Petitioner returned to the Occupational Medicine Clinic reporting continuing low back pain and accompanied by sharp pain down the right leg. (PX 3, p. 12) Prednisone was prescribed and his light duty restrictions remained the same. (PX3, p. 13) MRI was ordered. (PX 3, p. 14) On February 4, 2020, Petitioner underwent x-rays of his lumbar spine which showed no acute compression fracture or subluxation, minimal facet arthropathy and a few anterior disc osteophytes. (PX 5, p. 2)

On February 18, 2020, Petitioner returned to WorkCare West for pain in the right lower back. (PX 3, p. 16) His pain radiated into the right inner thigh. *Id.* Petitioner was continued on light duty, but his lifting restriction was increased to carrying and lifting no greater than 50 pounds. (PX 3, p. 18)

On March 9, 2020, Petitioner presented to The Orthopedic Center of St. Louis and Dr. Matthew Gornet for low back pain central to the right side, right buttock, right hip, and right leg

to his knee and occasionally in his medial thigh. (PX 6, p. 1) Dr. Gornet's working diagnosis was low back pain to the right side. (PX 6, p. 2) X-rays and an MRI scan were ordered, and Petitioner was provided with Meloxicam and Cyclobenzaprine for his symptoms. *Id.* Petitioner returned to Dr. Gornet on June 6, 2020, reporting low back, right buttock, right hip, and right leg symptoms. (PX 6, p. 3) He eventually underwent L3-4 and L4-5-disc replacements on September 23, 2020. (PX 6, pp. 4-6) Petitioner improved as expected following surgery and attended physical therapy. (PX 6, pp. 8-16).

On January 19, 2021, Petitioner presented to Athletico Physical Therapy following surgery. (PX 12, p. 272) Petitioner described his 2020 work injury as causing the top and bottoms parts of his body go different directions when he slipped. *Id.* He attended 37 sessions to April 30, 2021. (PX 12, p. 180) At the last appointment, Petitioner reported low back soreness with popping and grinding and also numbness on the outer right thigh. (PX 12, p. 181)

On June 1, 2021, Petitioner returned to Dr. Gornet and was allowed to return to work without restrictions. (PX 6, p. 16) At his one-year surgical follow-up on October 7, 2021, Petitioner described right buttock and right leg pain, which led Dr. Gornet to refer him for a nerve function study to rule out nerve damage. (PX 6, pp. 20-21)

On December 2, 2021, Petitioner underwent an EMG and NCS at Neurological & Electrodiagnostic Institute, Inc. of Saint Louis by Dr. Daniel Phillips for right lower extremity pain and numbness. (PX 13, p. 1) The study was not impressive for lumbar radiculopathy. (PX 13, p. 2) Dr. Phillips was suspicious of lateral femoral cutaneous neuropathy due to a pattern of right thigh dysesthetic numbness with dense pinprick loss. *Id.*

On April 18, 2022, Petitioner returned to Dr. Gornet and complained of anterior thigh pain with numbness and tingling in his right buttock and leg despite having received a femoral cutaneous nerve block. (PX 6, p. 25). Dr. Gornet identified a possible problem at T2-3 which could have been causing Petitioner's pain when comparing the MRI scans. *Id.* Petitioner continued to have right buttock and hip pain wrapping to his anterior thigh. (PX 6, p. 27)

On July 22, 2022, Dr. Peloza performed a microdiscectomy at L2-3, per the recommendation of Dr. Gornet during his illness. (PX 6, pp. 29-31) Petitioner continued to report right thigh numbness and tingling which radiated down his leg to his foot, at times. (PX 6, p. 32) Dr. Gornet noted ongoing numbness laterally and painful dysesthesia on the medial side. (PX 6, p. 36) Dr. Gornet tried multiple maneuvers on physical examination with Petitioner and confidently said there was no weakness in the leg, and it had 5/5 strength. *Id.*

On September 12, 2022, Petitioner returned to Athletico Physical Therapy for his low back. (PX 12, p. 169) He reported pain in the right side of his low back with occasional irritation of the right leg. (PX 12, p. 132) Petitioner attended 18 sessions to October 26, 2022. (PX 12, p. 131)

On October 31, 2022, Petitioner returned to Dr. Gornet and reported the burning dysesthesias in his right leg had stopped. (PX 6, p. 37) The only complaint Petitioner had was some residual back pain. *Id.* Dr. Gornet said the first surgery had helped Petitioner a lot and the second helped him briefly, particularly with his right thigh pain. *Id.*

On December 20, 2022, Petitioner presented to Apex Network Physical Therapy for a Functional Capacity Evaluation. (PX 14, p. 1) His job was described as heavy. (PX 14, p. 2) Petitioner could perform in the medium physical demand category, lifting 30 lbs. *Id.* Petitioner's effort was characterized as acceptable. *Id.*

On February 2, 2023, Petitioner returned to Dr. Gornet and permanent restrictions in line with an FCE of no lifting greater than 20 lbs. were put in place. (PX 6, p. 38) Petitioner was at MMI. *Id.*

On February 6, 2023, Petitioner began documenting daily job searches via written log and continued to do so on a regular basis until May 26, 2023. (PX 18).

On April 17, 2023, Petitioner presented to Metro-East Orthopedics and Dr. Matthew Bradley for right shoulder and knee pain. (PX 15, p. 1) Dr. Bradley documented that Petitioner injured his back, shoulder, and knee in his January 2020 fall. *Id.* The doctor wrote that Petitioner was healthy prior to January 2020 but complained of knee and shoulder pain since then. *Id.* Petitioner informed Dr. Bradley of the second accident which occurred in his home in 2023. *Id.* Petitioner's complaints were medial knee pain with catching and clicking, along with shoulder pain, weakness, and loss of motion. (PX 15, p. 1) MRIs were ordered for suspicion of rotator cuff and meniscus tears. (PX 15, p. 2) Petitioner was taken off work. *Id.* Dr. Bradley said the condition in Petitioner's shoulder and knee were caused by the fall in January 2020. *Id.*

On April 28, 2023, Petitioner had a right knee arthrogram at MRI Partners of Chesterfield which revealed no meniscus or ligamentous injury, no osseous normality, and a medical plica partially extended into the medical inferior margin of the patellofemoral articulation. (PX 7, pp. 6-7) Petitioner also had a right shoulder arthrogram the same day which revealed supraspinatus tendinopathy without tear, no labral tear, partial thickness tear in the posterior humeral attachment of the inferior glenohumeral ligament (HAGL), and small subacromial bursal effusion suggesting bursitis. (PX 7, pp. 8-9)

On May 4, 2023, Petitioner returned to Dr. Bradley for MRI reviews. (PX 15, p. 4) There were no tears, but a partial thickness HAGL lesion and right patellofemoral plica. (PX 15, p. 5) An injection was provided to the knee and PT recommended. *Id.*

On May 25, 2023, Petitioner returned to Dr. Bradley. (PX 15, p. 7). Petitioner reported no particular pain, but rather numbness and tingling in the leg, which he said caused him to feel weak and nearly fall. *Id.* Petitioner described the sensation as cold water dripping down the front of his leg. *Id.* Dr. Bradley said Petitioner was walking with a fully locked knee to prevent falling. (PX 15, p. 8) A repeat NCS was recommended. *Id.*

On June 7, 2023, Petitioner returned to Athletico Physical Therapy for pain in the right knee and shoulder. (PX 12, p. 123) The Initial Evaluation and subsequent appointment records incorrectly state Petitioner had a 50% tear of the rotator cuff and a meniscus tear with daily swelling. (PX 12, pp. 88-126) The records also describe Petitioner's fall in 2023 as consisting of a fall where he stuck his leg out to catch himself and twisted his knee. *Id.* Petitioner attended 11 sessions to July 13, 2023. (PX 12, p. 88)

On June 19, 2023, Petitioner returned to Dr. Bradley and reported the continued giving out of his knee with a cold-water sensation dripping from his low back to his knee. (PX 15, p. 9) Dr. Bradley said he could not identify any etiology for the instability and weakness in Petitioner's quad. (PX 15, p. 11) Dr. Bradley referred Petitioner to Dr. Ravi Yadava for evaluation. *Id.*

On July 12, 2023, Petitioner presented to Dr. Ravi Yadava for evaluation. (PX 16, p. 2) He recounted both of Petitioner's accidents and treatment history. *Id.* Dr. Yadava said Petitioner was not a surgical candidate for his knee. *Id.* Petitioner's Oswestry score revealed a fairly high perceived level of disability. *Id.* Dr. Yadava said there was clear irritation of the femoral nerve at the inguinal ligament which was likely caused by his poor mechanics due to consideration restriction of the hip flexor, weakness in the right gluteal medius, and deficiency of the adductor and quadriceps mechanism which contribute to patellofemoral syndrome and pes anserine bursitis. (PX 15, p. 6) There was severe restriction of the IT band and dense trigger point formation in the vastus latralis. *Id.* The SI joint was considerably inflamed. *Id.* Dr. Yadava recommended another trial of a nerve blockade, this time at the inguinal ligament blocking both the femoral nerve and lateral femoral cutaneous nerve. *Id.* He also said a comprehensive therapeutic program to correct mechanical imbalances, with injections to address pain, would garner the best results as Petitioner's mechanics were his only modifiable risk factor. (PX 15, p. 6)

On July 18, 2023, Petitioner presented to Motion Orthopaedics for an Independent Medical Examination by Dr. Timothy Farley. (RX 2, p. 1) Dr. Farley recounted Petitioner's injury of January 6, 2020, and medical treatment received thereafter. (RX 2, p. 2) Since the 2020 injury, Petitioner told the doctor he experienced episodic weakness in the right lower extremity. *Id.* Petitioner informed Dr. Farley that he was in a normal state of health when he fell at home on the stairs. *Id.* Based on his review of the medical records, Dr. Farley opined that the MRI findings demonstrated no significant abnormality within the shoulder or the knee. (RX 2, p. 10) The knee did not demonstrate any chondral, meniscus, or ligamentous pathology. *Id.* No knee diagnosis was warranted as the lower extremity weakness was more related to the previous lumbar history. *Id.* Dr. Farley said no knee injury occurred for either fall. (RX 2, p. 11) The shoulder had a mild strain in the posterior capsule/inferior band glenohumeral ligament, which the doctor said does not require surgery or further treatment. (RX 2, p. 10) He explained HAGL lesions can cause recurrent instability, but Petitioner had no instability complaints or findings in the shoulder. *Id.* Dr. Farley said this condition was not caused by the fall of January 6, 2020. *Id.*

On July 24, 2023, Petitioner returned to Dr. Bradley with complaints of numbness, tingling, and dripping water sensation to the anterior, lateral thigh. (PX 15, p. 12) Petitioner also reported lateral knee pain. *Id.* Dr. Bradley concluded during this visit that Petitioner's medial patellofemoral plica was causing some of his medial parapatellar pain. (PX 15, p. 14) The repeat NCS showed no lumbar pathology to explain Petitioner's numbness and tingling in the distribution of the lateral femoral cutaneous. *Id.* Dr. Bradley said there was nothing from an orthopedic standpoint to explain the numbness and tingling. *Id.* Despite this, he recommended an arthroscopic excision of the plica. *Id.*

On September 18, 2023, Petitioner returned to Dr. Gornet and reported right-sided thigh pain and numbness with an occasional giving out sensation, particularly with stairs. (PX6, P40). No changes were made at this appointment. (PX 6, p. 40)

On January 11, 2024, Petitioner returned to Dr. Bradley after nearly six months and reported significant medial patellar pain. (PX 15, p. 15) He also reported shoulder pain with cross chest and extension. *Id.* The last page of this record is missing.

On January 31, 2024, Petitioner presented to United Physicians and Dr. Helen Blake for right shoulder pain. (PX 8, p. 6) Petitioner had previously met with Dr. Blake for lumbar injections for radiculopathy. (PX 8, pp. 1-6) Petitioner rated his right shoulder and low back pain at 6 to 10/10 after his fall at his home when his leg gave out. (PX 8, p. 6) Dr. Blake provided a right AC joint injection to address the diagnosis of right AC joint pain. (PX 8, p. 7)

On February 29, 2024, Petitioner returned to Dr. Bradley after shoulder and knee injections which did not alleviate his pains for long. (PX 15, p. 18) Dr. Bradley focused on the largest issue, which was the knee and stated Petitioner failed nonoperative treatment. (PX 15, p. 20) Dr. Bradley recommended diagnostic arthroscopy. *Id.* The doctor felt Petitioner's MRI showing a plica was "certainly consistent with his symptoms and examination." *Id.*

On March 13, 2024, Petitioner underwent a right knee diagnostic arthroscopy, partial medial meniscectomy, excision of medial patellofemoral plica, and excision of portion of the apex of the patella. (PX 11, pp. 12-14)

On March 25, 2024, Petitioner returned to Dr. Bradley following surgery. (PX 15, p. 29) He reported a lot of the preoperative pain had resolved, though he felt some weakness and his knee would flex on him during gait. *Id.* He started in PT. (PX 15, p. 31)

On May 6, 2024, Petitioner returned to Dr. Bradley and his pain was reoccurring in the inferior aspect of the patellar tendon. (PX 15, p. 32) He had pain with extension. *Id.* An injection was given. (PX 15, p. 34) Dr. Bradley said consideration should be given to another MRI or an open evaluation of the patellar tendon insertion on the patella. *Id.*

The parties deposed Dr. Bradley on May 14, 2024. (PX 17, p. 2) On direct examination, Dr. Bradley described Petitioner's 2020 fall as having been caused by a slip while going up a ladder into a backhoe, causing a twisting injury and hurting his right shoulder, right knee, and low back. (PX 17, p. 7) The doctor initially described the 2023 fall as occurring when Petitioner's back gave out causing him to fall on an outstretched arm. *Id.* He was corrected by counsel and agreed it was his leg which gave out. (PX 17, p. 8) Dr. Bradley said Petitioner's mechanism of injury was consistent with a rotator cuff tear and meniscus tear, but those injuries were not present when the imaging was obtained. (PX 17, pp. 9-10) He said Petitioner's shoulder condition improved over the next several months, but his knee continued to be problematic and was giving out. (PX 17, p. 11) Dr. Bradley did an arthroscopy of the knee and intraoperatively observed a medial plica, small medial meniscal tear, and little avulsion fracture. *Id.* The fracture was chronic and encased in scar tissue. *Id.* Dr. Bradly opined that when Petitioner stepped up onto the bobcat in January 2020 there was a twisting injury in a bent position causing the kneecap to pinch the capsule and avulse off a small piece of bone. (PX 17,

pp. 13, 19) He said the mechanism was clearly present and Petitioner had immediate knee pain with persistent symptoms which never got better. *Id.* Dr. Bradley said opinion was the shoulder injury was also caused in January 2020 when Petitioner exited the bobcat and slipped, causing a hyperflexion injury due to his holding onto the handle. (PX 17, p. 16, 19) His diagnosis was a sprain and tendinitis. *Id.* Dr. Bradley indicated Petitioner's knee was doing well at his last visit, which was a week prior to the deposition. (PX 17, p. 14) He did not anticipate additional treatment for his shoulder and said the permanency was zero. (PX 17, pp. 15-16)

On cross examination, Dr. Bradley said he treats shoulders, elbows, wrists, hands, hips, knees, ankles, and feet. (PX 17, p. 18) He met with Petitioner for the first time nearly three years after the accident. *Id.* Dr. Bradley did not have Petitioner's initial injury reports from 2020. (PX 17, p. 20) The doctor understood Petitioner's knee pain to have been present since the 2020 injury. (PX 17, pp. 20-21) He did not obtain Dr. Gornet's records until later but knew there had been some radicular pain emanating from the spine. *Id.* Dr. Bradley stated that though the knee hurt all along, it came to the forefront after his 2023 fall. (PX 17, p. 21) He said Petitioner's radicular pain was mostly resolved by the April 2023 injury and it was mostly knee pain thereafter. *Id.* Likewise, Dr. Bradley said the right shoulder pain had been present since the 2020 fall, according to Petitioner's narrative. *Id*. Dr. Bradley could not locate reports of consistent right shoulder and knee pain documented in the records he possessed and was unsure if Petitioner told Dr. Gornet the same thing he told him. (PX 17, p. 22) As to the December 2022 IME, Dr. Bradley surmised Petitioner could perform the activities but likely not well and confirmed Petitioner would not unlock his knee during his treatment visits. (PX 17, pp. 22-24) He was unsure if Petitioner had been walking this way since his 2020 fall but was positive he had since the one in 2023. (PX 17, p. 28) Dr. Bradley indicated there are a variety of things that can cause HAGL lesions and patellofemoral plica injuries. (PX 17, pp. 25-26) He did not feel the HAGL lesion was causing Petitioner's pain. (PX 17, p. 26) The doctor said plica conditions can be asymptomatic and that some people are even born with it. *Id.* Dr. Bradley agreed Petitioner's leg pain had become more of a weakness than pain by May 25, 2023. (PX 17, p. 27) Dr. Bradley confirmed he had no explanation for the dripping cold water sensation in Petitioner's right leg. (PX 17, pp. 29, 35) He thought Petitioner's knee weakness was really an inhibitory pain weakness. (PX 17, p. 30) The doctor indicated he did not know when the avulsion fracture occurred but that it was caused by one of the two injuries. *Id.* He stated one would certainly feel immediate pain with such a fracture. (PX 17, p. 32) Dr. Bradley referred Petitioner to Dr. Yadava because there was a potential peripheral nerve injury for which he didn't have a good explanation. *Id.* The two doctors agreed that Petitioner's symptoms were emanating from his spine and poor body mechanics. (PX 17, p. 35) Dr. Bradley was uncertain if Petitioner participated in PT for the knee prior to surgery. (PX 17, p. 37) Dr. Bradley said his surgical recommendation was made for the plica alone. *Id.* Dr. Bradley was not overly concerned over Petitioner's pain returning at his most recent visit on May 6, 2024, but rather it is occurring due to increased activity. (PX 17, pp. 40-41) Though Dr. Bradley mentioned the possibility of needing another diagnostic arthroscopy, he said that was an unlikely outcome. (PX 17, pp. 41-42) He said Petitioner should return to work in one month and then hopefully be at MMI 2 to 3 months thereafter. (PX 17, p. 44)

The parties deposed Dr. Farley on June 4, 2024. (RX3, p. 2) On direct examination, Dr. Farley testified Petitioner described slipping on January 6, 2020, as he stepped down from a

bobcat and twisting his body leading to the development of lower back pain. (RX 3, p. 7) Dr. Farley said Petitioner also informed him of a second accident, three years later, when his right knee gave out while at home causing him to feel knee and shoulder pain. (RX 3, pp. 7-8) Dr. Farley stated the symptoms Petitioner had at the time of his examination in the knee and shoulder were not present in 2020 as they developed following the fall at home in April 2023. (RX 3, p. 11) He based this opinion on what Petitioner told him and its correlation with his review of the prior medical records. (RX 3, pp. 11-12) The doctor had concerns over symptom magnification in the shoulder as Petitioner's active range of motion was poor but passive was normal. (RX 3, p. 10) He diagnosed a mild strain without instability. *Id.* Dr. Farley explained the HAGL lesion pathology and said no further treatment would be necessary. (RX 3, pp. 12-15) Petitioner's knee examination was normal. (RX 3, p. 10) Dr. Farley gave no diagnosis for the right knee, while also having knowledge of the presence of a plica. *Id*. He stated plicas are developmental and so are present in a significant number of people. (RX 3, pp. 10, 15) Dr. Farley explained it would be extremely rare for a plica to represent a symptomatic pathology as they do not become symptomatic through injury. *Id.* Plicas are most prevalent in 14-year-old girls and Dr. Flary had never seen one symptomatic in an adult with no prior issues. (RX 3, p. 16) Dr. Farley termed plicas as a diagnosis of exclusion and surgery to correct it is not only rare but has uncertain outcomes as well. (RX 3, p. 18) Dr. Farley indicated that diagnostic arthroscopy does not represent good medicine and a higher bar should be set. (RX 3, p. 19) He said it amounts to an operation to try to figure out what is going on. *Id.* The doctor could recall performing it once in his 20 years of surgery. *Id.* Dr. Farley opined MMI was reached at the time of the MRI scans of April 28, 2023. (RX 3, pp. 15, 22) He did not feel an arthrogram of the knee, as ordered by Dr. Bradley, was needed. (RX3 , p. 17)

On cross examination Dr. Farley testified he typically has the assistance of a PA in an IME which results in them both taking a history from Petitioner. (RX 3, p. 27) Petitioner informed both of them he did not have knee or shoulder complaints until April 2023. (RX 3, p. 28) Dr. Farley indicated Petitioner's right leg symptoms after the 2020 fall were more in his thigh and connected to his lower back complaints, beginning in his buttocks and upper thigh. (RX 3, p. 29) Petitioner reported pain through the thigh toward the knee on January 14, 2020, and Dr. Farley felt this was consistent with what Petitioner told him and described sciatica rather than actual knee pain. (RX 3, pp. 29-30) Dr. Farley said the ligaments in Petitioner's knee did not cause his fall in 2023 as, according to the EMG, there was no radiculopathic weakness or signs of muscles not reacting appropriately in this lower extremity. (RX 3, pp. 20-21, 32, 44) Dr. Farley agreed a sensory feeling of weakness without objective weakness was reported by Petitioner to Dr. Gornet on several occasions. (RX 3, p. 33) Dr. Farley explained that though the EMG and nerve blocks suggested Petitioner lacked a motor radiculopathy, Petitioner could still have sensory complaints, but it would not be associated with weakness. (RX 3, pp. 34-35) Dr. Farley thought most doctors should be able to figure out if symptoms are from the low back or the knee, stating neither Dr. Bernardi (spine IME) and Dr. Gornet commented on any knee issue. (RX3, P36). Dr. Farley did not have the MRI images for direct review but had no reason to disagree with the radiologists' interpretations. (RX 3, pp. 39-40) He agreed Petitioner had no history of right shoulder or knee complaints. (RX 3, pp. 41-42) The doctor was concerned about symptom magnification for Petitioner's shoulder. (RX 3, pp. 37-38)

On June 24, 2024, Petitioner returned to Dr. Bradley and reported difficulty standing and using steps. (PX 15, p. 35) Dr. Bradley reviewed the MRI and said there was a new, small meniscus tear. (PX 15, p. 37) He was not sure if this was causing Petitioner's symptoms as they seemed to be about the patellofemoral joint. *Id.* The prior injection did not provide relief so a PRP injection was recommended as he wanted to treat Petitioner nonoperatively. *Id.*

CONCLUSIONS OF LAW

CASE NO.: 20WC006884

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

The Arbitrator incorporates by reference the Findings of Fact set forth in the paragraphs above as if set forth in their entirety herein.

The Arbitrator finds Petitioner failed to meet his burden of proof to establish his current conditions of ill-being in his right shoulder and right knee are causally connected to the work accident of January 6, 2020.

Petitioner incurred an injury to the lumbar spine due to a twisting injury while exiting a piece of IDOT equipment on January 6, 2020. Petitioner reported a low back injury through written documentation provided to IDOT in the days following this accident. Petitioner's right lower extremity complaints which included a shooting pain into his right leg were contained in the initial accident reports. These complaints of low back pain radiating into his buttocks, hip, and right thigh were echoed in Petitioner's visit with FNP-C Dudenbostel the day after his twisting injury. Petitioner had consistently similar symptoms throughout his medical treatment following his January 6, 2020, accident. Dr. Gornet oversaw Petitioner's treatment from March 9, 2020, forward. He did not refer Petitioner to Dr. Bradley or any other knee or shoulder specialist during his treatment of Petitioner's back condition. Petitioner's treatment was entirely directed at his lumbar spine and sciatica up until the time he was placed at MMI with permanent lumbar spine restrictions on February 2, 2023. Petitioner began a self-guided job search on February 6, 2023. At the IME on July 18, 2023, Petitioner told Dr. Farley he was in a normal state of health before April 2023 and had not yet developed symptoms of right knee and shoulder pain.

No pain complaints were documented in the right knee and shoulder until Petitioner presented to Dr. Bradley on April 17, 2023. Yet, it was Dr. Bradley's testimony that Petitioner's right shoulder and knee symptoms were present and consistent from January 6, 2020, forward. The records clearly prove otherwise. Dr. Bradley had an inaccurate understanding of how both accidents occurred when compared to the accident reports, medical records, IME, and testimony, including that of Petitioner. He lacked the accident reports and some additional medical records presented to Dr. Farley. Dr. Bradley said Petitioner's right knee and shoulder issues began following the fall in 2020 and then progressed in 2023. Dr. Bradley described Petitioner always keeping his knee in a locked position. Petitioner did not do this prior to seeing Dr. Bradley, but the doctor was not sure when this modification began. Petitioner's statements to Dr. Farley and at arbitration do not support Dr. Bradley's narrative. Dr. Farley had an accurate understanding of how each incident occurred. His understanding is corroborated by the records and Petitioner's statements. Dr. Farley correctly recounted the timeline, location, and nature of Petitioner's

symptoms. He correctly understood that there was no mention at all of an injury or treatment to the shoulder in 2020. Dr. Farley explained that although Petitioner's right lower extremity was often discussed in the medical records for the 2020 fall, it was not for the type of pain complaints Petitioner eventually reported to Dr. Bradley, but rather, radicular symptoms emanating from his lumbar spine. Petitioner confirmed this in his IME and arbitration testimony. Dr. Farley was correct in determining Petitioner's knee and back complaints were not the result of the fall on January 6, 2020.

The Arbitrator finds the opinions of Dr. Farley to be more persuasive than those expressed by Dr. Bradley due to the lack of a foundational understanding of the accidents described. Wherefore, the Arbitrator finds and concludes that Petitioner has failed to meet his burden to establish that his right shoulder and knee complaints were causally related to his January 6, 2020 accident.

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

The Arbitrator incorporates by reference the Findings of Fact and Conclusions of Law set forth in the foregoing paragraphs.

Based on the foregoing, the Arbitrator finds and concludes that Petitioner has failed to meet his burden of proof to establish Respondent's liability for the unpaid medical bills related to his right shoulder and knee treatment. As a result, Respondent is not liable for Petitioner's unpaid medical bills for the right shoulder and right knee treatment incurred after his MMI date of February 2, 2023.

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

The Arbitrator incorporates the Findings of Fact and Conclusions of Law set out in the foregoing paragraphs. Wherefore, the Arbitrator finds and concludes that Petitioner has failed to meet his burden of proof to establish entitlement to prospective medical benefits directed at treatment to his right shoulder and right knee.

Petitioner obtained MMI as of February 2, 2023. No further medical treatment is authorized.

CASE NO.: 24WC007237

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

The Arbitrator incorporates by reference the Findings of Fact and Conclusions of Law presented in the foregoing paragraphs.

The Petitioner bears the burden of proving each and every element of his case in order to recover under the Illinois Workers' Compensation Act. *Shelton v. Indus. Com'n*, 267 Ill. App. 3d 211, 221, 641 N.E.2d 1216, 1224 (5th Dist. 1994). In order to satisfy the "arising out of" portion

of the Act, the Petitioner must show that the injury was derived from 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. Indus. Comm'n*, 207 Ill.App.2d 193, 203, 797 N.E.2d 665, 672 (3rd Dist. 2003). The "in the course of requirement speaks to the time, place, and circumstances of the injury." *Orsini v. Indus. Com'n*, 117 Ill. 2d 38, 45, 509 N.E.2d 1005 (1987). "An injury is received in the course of employment where it occurs within a period of employment, at a place where the worker may reasonably be in the performance of his duties, while he is fulfilling those duties or engaged in something incidental thereto." *Scheffler Greenhouses, Inc. v. Indus. Com'n*, 66 Ill.2d 361, 367, 362 N.E.2d 325 (1977).

A secondary accident occurring in the home outside of one's work is not a compensable work accident. (See also *Sven Munck v. Town Machine Tool Company*, 2020 Ill. Wrk. Comp. LEXIS 887).

It is undisputed that Petitioner fell on the staircase in his home on April 11, 2023. Petitioner claims he fell because of residual weakness in his right lower extremity stemming from his prior work accident on January 6, 2020. Petitioner had been placed at MMI for that accident on February 2, 2023. Dr. Gornet and Dr. Farley agreed there was no objective evidence of right lower extremity weakness in Petitioner. Dr. Yadava said the same and highlighted Petitioner's poor body mechanics, restricted IT band, and inflamed SI joint. Petitioner first informed Dr. Gornet his leg was giving out on September 18, 2023, months after his fall at home.

There is no evidence to suggest any injury Petitioner may have suffered on April 11, 2023, had anything to do with the work accident of January 6, 2020, other than the opinions of Dr. Bradley. Petitioner's own testimony was that his shoulder complaints developed, and his right lower extremity symptoms changed after his fall at home. Dr. Farley agreed. The records support this without exception.

Wherefore, the Arbitrator finds and concludes that Petitioner failed to meet his burden of proof to establish he sustained accidental injuries arising out of and in the course of employment on April 11, 2023.

Issue E. Was timely notice of the accident given to Respondent.

The Arbitrator incorporates the Findings of Fact and Conclusions of Law set forth in the foregoing paragraphs. Based upon the Arbitrator's findings and conclusions regarding accident, this issue is moot.

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

The Arbitrator incorporates by reference the Findings of Fact and Conclusions of Law as stated in the foregoing paragraphs. The Arbitrator finds that Petitioner failed to meet his burden of proof regarding accident and notice, therefore, further analysis need not be undertaken regarding causal connection.

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

The Arbitrator incorporates the Findings of Fact and Conclusions of Law set forth in the foregoing paragraphs. As a result of the Findings of Fact and Conclusions of Law set forth above, Respondent is not liable for Petitioner's unpaid medical bills.

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

The Arbitrator incorporates the Findings of Fact and Conclusions of Law set forth in the foregoing paragraphs. Based upon the foregoing Findings of Fact and Conclusions of Law, Petitioner is not entitled to prospective medical treatment.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC007240
Case Name	Matthew Lawrence v. State of Illinois - Illinois Department of Transportation
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0247
Number of Pages of Decision	20
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 5/29/2025

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MATTHEW LAWRENCE,

Petitioner,

vs. NO: 24 WC 07240

STATE OF ILLINOIS – ILLINOIS DEPT. OF TRANSPORTATION,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical treatment and notice, 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 denial of accident, though strikes the Arbitrator's analysis. The Commission incorporates by reference the Decision and analysis contained in Decision 20 WC 006884 finding that the Petitioner's injuries are related to the accident of January 6, 2020.

The Commission strikes all other issues as moot.

IT IS THEREFORE ORDERED BY THE COMMISSION that accident is denied, and all other issues are deemed moot.

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.

May 29, 2025

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

MEP/dmm
O: 50625
49

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC007240
Case Name	Matthew Lawrence v. State of Illinois - Illinois Dept of Transportation
Consolidated Cases	20WC006884;
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 8/8/2024

/s/Bradley Gillespie, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF AUGUST 6, 2024 4.70%

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

August 8, 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
19(b)

Matthew Lawrence
Employee/Petitioner

v.

State of IL / IDOT
Employer/Respondent

Case # **24** WC **007240**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Herrin, Illinois**, on **July 9, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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, **04/11/2023**, 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 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 $**66,989.12**; the average weekly wage was $**1,288.25**.

On the date of accident, Petitioner was **45** years of age, ***married*** with **2** dependent children.

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

Respondent shall be given a credit of $**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

Petitioner has failed to meet his burden of proof as to accident, notice, causal connection, and entitlement to prospective medical benefits as to his right shoulder and right knee.

Benefits are denied.

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

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

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

Bradley D. Gillespie
Signature of Arbitrator

August 8, 2024

ICArbDec19(b)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MATTHEW LAWRENCE,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No.: 20WC006884**
	)	**24WC007240**
ILLINOIS DEPARTMENT OF TRANSPORTATION,	)	
	)	
	)	
Respondent.	)	

19(b) DECISION OF ARBITRATOR

Petitioner proceeded to hearing pursuant to Sections 19(b) and 8(a) on consolidated cases 20WC006884 and 24WC007240. (*See* Arb. Ex. 1; Arb. Ex. 3) On April 21, 2023, Matthew Lawrence [hereinafter, "Petitioner"] filed an Amended Application for Adjustment of Claim alleging injuries to his back, right leg, body as a whole, right shoulder, and right knee as a result of exiting a skid steer while working for the Illinois Department of Transportation [hereinafter, "Respondent"] on January 6, 2020 . (Arb. Ex. 2). Petitioner filed a second Application for Adjustment of Claim on March 14, 2024, alleging injuries to his right shoulder, right knee and body as a whole after his leg gave out due to a work-related low back condition causing him to fall on April 11, 2023. (Arb. Ex. 4) This matter proceeded to hearing on June 11, 2024, pursuant to Sections 19(b) and 8(a) of the Act, in Herrin, Illinois. (Arb. Ex. 1). The following issues were in dispute at arbitration in case number 20WC006884:

- Causal Connection;
- Incurred Medical Treatment and bills, and;
- Prospective Medical Treatment.

The following issues were in dispute at arbitration in case number 24WC007240:

- Accident;
- Notice;
- Causal Connection;
- Medical Bills for treatment of right knee and right shoulder

FINDINGS OF FACT

Testimony of Petitioner

Petitioner testified that he is employed as highway maintainer with Illinois Department of Transportation (IDOT). (Tr. p. 16) He described sustaining injury to his back, radiating down to his knee, after slipping while exiting a piece of equipment at work on January 6, 2020. (Tr. p. 17) Petitioner denied having received any injuries, treatment, workers' compensation claims or

settlements involving his low back or leg prior to January 6, 2020. *Id.* He affirmed that he treated with Dr. Gornet for his spine and ultimately underwent surgery. (Tr. p. 18-19) Prior to said surgery, Petitioner described pain in his lower back which radiated into his right leg and stopped at his knee area. (Tr. p. 19) He denied having episodes of his leg giving out prior to his first surgery. *Id.* Petitioner indicated that after his first spine surgery, his right leg began to give out. (Tr. pp. 19-20) Petitioner estimated this caused him to fall to the ground more times than he could count. (Tr. pp. 20-21) He next came under the care of Dr. Peloza, during Dr. Gornet's illness. (Tr. p. 20) Petitioner underwent a second spine surgery with Dr. Peloza. *Id.* He stated this surgery did not improve his condition and his leg continues to give out. (Tr. p. 21)

Petitioner testified that he sustained another injury on April 11, 2023. *Id.* Petitioner said he was walking up the stairs and his leg gave out, causing him to fall and injure his right shoulder and right knee. (Tr. pp. 21-22) Petitioner stated he continues to have shoulder complications. (Tr. p. 22) He said the physical therapy in which he was participating at the time of his fall was making his condition worse. (Tr. p. 23) Petitioner testified that he informed his physicians, physical therapists, and employer of his fall which had occurred in his home. (Tr. pp. 23-24) Petitioner indicated he informed his supervisor and the woman who handles workers' compensation, Jeni Gunn, to inform them that he had another incident with his knee but received no response. (Tr. p. 24) Petitioner said he informed them the week after his fall. (Tr. p. 27) Since the fall in his home, Petitioner has received treatment to his knee consisting of physical therapy, injections, and surgery. *Id.* Before surgery, Petitioner described having consistent pain in his right knee and that it would give out without warning. *Id.* He said these problems continue today. (Tr. p. 25) For his shoulder, Petitioner described having problems with his range of motion and pain. *Id*. He said he has been treated with injections and physical therapy for his shoulder. (Tr. p. 26) Petitioner confirmed he was paid TTD when he was not working. *Id.*

On cross examination, Petitioner testified that he is alleging the events of April 22, 2023, which occurred in his home amount to a work accident. (Tr. pp. 28-29) Petitioner stated he made a phone call and e-mailed a brief statement to IDOT regarding this event. (Tr. p. 29) Petitioner confirmed he did not call the hotline number for reporting work accidents as he did for his 2020 injury. (Tr. pp. 29-30) Petitioner confirmed he did not complete an Employee's First Notice of Injury form as he did for his 2020 injury. (Tr. p. 30) Petitioner confirmed he did not complete or provide any other written documentation for his 2023 claimed injury as he had in the past for his prior work accident. *Id.* Petitioner stated he did not receive a response from IDOT regarding his email. *Id.* Petitioner said the supervisor who he reported the 2023 accident to was Kerry Oestreicher. (Tr. p. 31) He was unaware if Mr. Oestreicher completed any reporting forms. *Id.* Petitioner agreed the symptoms in his knee changed after his 2023 accident. (Tr. pp. 31-32) He also agreed the symptoms in his right shoulder developed after the 2023 accident. (Tr. p. 32)

On direct examination, Jennifer Gunn testified at arbitration in her capacity as the Safety and Claims Manager for IDOT District 9, a position she has held since January 1, 2019. (Tr. p. 35) Ms. Gunn described her position to require that she keep track of all workers' compensation claim injuries that occur within District 9. (Tr. p. 36) Ms. Gunn was familiar with Petitioner and his accident of January 6, 2020. *Id.* She had received reports and documentation of that accident. *Id.* Ms. Gunn was not familiar with the alleged work accident of April 11, 2021. *Id.*

Ms. Gunn said she became aware of this alleged accident on March 21, 2024, when my office asked her for her file documenting this date of accident. (Tr. p. 37) Ms. Gunn stated Petitioner was on workers' compensation leave on April 11, 2023, due to his prior accident from 2020. *Id.* Ms. Gunn explained that the typical course of reporting a work accident is to notify the supervisor, fill out the IDOT 2039 Incident/Accident Report, call the Gallagher Bassett hotline to report the injury, contact her office, and fill out the workers' compensation claim packet. (Tr. p. 38) Ms. Gunn did not recall receiving any communications from Petition for the 2023 claimed accident. *Id.*

On cross examination, Ms. Gunn testified Kerry Oestreicher is the lead worker at the IDOT Murphysboro yard. (Tr. p. 39) Petitioner's counsel did not ask Ms. Gunn a question, but instead informed her that Petitioner told him twice in the last thirty seconds that he had an e-mail to her and Mr. Oestreicher in his sent e-mail box. *Id*. Ms. Gunn expressed she did not have such an e-mail from Petitioner and does not delete her e-mails. (Tr. pp. 39-40) Ms. Gunn stated Mr. Oestreicher was likely Petitioner's direct supervisor. (Tr. p. 44)

On redirect examination, Ms. Gunn testified he has received supervisor's reports from Mr. Oestreicher in the past and so he would know how to complete those reporting forms. (Tr. p. 45)

On recross examination, Ms. Gunn testified accidents which happen at home would be handled by non-occupational disability. (Tr. p. 46)

The Arbitrator allowed proofs to remain open for Petitioner to provide a copy of the e-mail he testified was sent to Jeni Gunn and Kerry Oestreicher of IDOT and for Respondent to reply. (Tr. pp. 39-43, 48) In the afternoon of July 10, 2024, after the conclusion of in-person testimony that morning, Petitioner provided a copy of an e-mail sent by Petitioner to Jeni Gunn on April 19, 2023. (PX 20). The e-mail was not addressed to Kerry Oestreicher or others. *Id.* Petitioner wrote that his back pain caused his knee to give out on April 11, 2023, while walking up the stairs at his house. *Id.* Petitioner called Mr. Oestreicher who told him he wasn't sure since the fall occurred at home. *Id.* Petitioner's email referred to a handwritten statement, but it was not included. (PX 20)

On July 11, 2024, Eric Mueller, IDOT District 9 Regional Applications Senior Specialist, provided an affidavit describing his role in the search for an e-mail sent by Petitioner to Jennifer Gunn on or after April 11, 2023. (RX 4) Mr. Mueller said the search within IDOT revealed no such e-mail having ever been received. (RX 4).

Documentary Evidence

Petitioner's medical bills and medical records list are contained in Petitioner's Exhibits #1 and #2.

On January 6, 2020, Petitioner presented to WorkCare West and was evaluated by FNP-C Mindy Dudenbostel for right lower back and leg pain located around the SI joint. (PX 3, p. 3) Petitioner provided a consistent history of accident. *Id.* He described his pain as radiating into his right inner thigh to the knee. *Id.* He was prescribed Cyclobenazprine 10mg, instructed to

take to take over the counter pain medications, use moist heat to reduce pain and improvemobility and was placed on light duty. *Id.*

On January 7, 2020, Petitioner provided information used to generate an Illinois Form 45: Employers' First Report of Injury. (RX 1, p. 1) Petitioner reported twisting his back while exiting a bobcat resulting in lower right side back pain. *Id.*

On January 13, 2020, Petitioner completed an IDOT Employee Accident/Incident Report, writing he felt a pain in his back shooting into his right leg after bending over to clear the door to the bobcat. (RX 1, p. 2) This form was signed by his supervisor and bureau chief. *Id.* On the same date, Petitioner completed an Employee's Notice of Injury form. (RX 1, p. 3) Petitioner described bending while placing his foot onto the bucket to exit the bobcat, resulting in pain in his lower back shooting down his right leg. *Id.* Petitioner's supervisor, Kerry Oestreicher, completed a Supervisor's Report of Injury or Illness the same day stating he had no knowledge of the incident. (RX 1, p. 5)

On January 14, 2020, Petitioner returned to WorkCare West for low back pain and sciatica on the right side. (PX 3, p. 5) The pain diagram shows stabbing pain down the back of his right thigh. (PX 3, p. 6)

On January 16, 2020, Petitioner presented to SIH Murphysboro Rehab for a Physical Therapy Initial Evaluation. (PX 4, p. 3) Petitioner reported constant aching pain in the lumbosacral region with radiating symptoms into the medial aspect of the right thigh. *Id.* Petitioner's right knee and right shoulder were not included on his "Problem List". (PX 4, p. 7) Petitioner attended therapy to address his low back pain and sciatica for 12 sessions until February 19, 2020. (PX 4, p. 63)

When he returned to the Occupational Medicine Clinic at WorkCare on January 21, 2020, the Nurse Practitioner felt that the location of the pain was over his right SI joint. (PX 3, p. 8) Petitioner reported stabbing pain which was constant but varied with activity level. *Id.* Petitioner's diagnosis remained the same, as did his light duty restrictions. (PX 3, pp. 8-9) Continued physical therapy was recommended. (PX 3, p. 9)

On February 4, 2020, Petitioner returned to the Occupational Medicine Clinic reporting continuing low back pain and accompanied by sharp pain down the right leg. (PX 3, p. 12) Prednisone was prescribed and his light duty restrictions remained the same. (PX3, p. 13) MRI was ordered. (PX 3, p. 14) On February 4, 2020, Petitioner underwent x-rays of his lumbar spine which showed no acute compression fracture or subluxation, minimal facet arthropathy and a few anterior disc osteophytes. (PX 5, p. 2)

On February 18, 2020, Petitioner returned to WorkCare West for pain in the right lower back. (PX 3, p. 16) His pain radiated into the right inner thigh. *Id.* Petitioner was continued on light duty, but his lifting restriction was increased to carrying and lifting no greater than 50 pounds. (PX 3, p. 18)

On March 9, 2020, Petitioner presented to The Orthopedic Center of St. Louis and Dr. Matthew Gornet for low back pain central to the right side, right buttock, right hip, and right leg

to his knee and occasionally in his medial thigh. (PX 6, p. 1) Dr. Gornet's working diagnosis was low back pain to the right side. (PX 6, p. 2) X-rays and an MRI scan were ordered, and Petitioner was provided with Meloxicam and Cyclobenzaprine for his symptoms. *Id.* Petitioner returned to Dr. Gornet on June 6, 2020, reporting low back, right buttock, right hip, and right leg symptoms. (PX 6, p. 3) He eventually underwent L3-4 and L4-5-disc replacements on September 23, 2020. (PX 6, pp. 4-6) Petitioner improved as expected following surgery and attended physical therapy. (PX 6, pp. 8-16).

On January 19, 2021, Petitioner presented to Athletico Physical Therapy following surgery. (PX 12, p. 272) Petitioner described his 2020 work injury as causing the top and bottoms parts of his body go different directions when he slipped. *Id.* He attended 37 sessions to April 30, 2021. (PX 12, p. 180) At the last appointment, Petitioner reported low back soreness with popping and grinding and also numbness on the outer right thigh. (PX 12, p. 181)

On June 1, 2021, Petitioner returned to Dr. Gornet and was allowed to return to work without restrictions. (PX 6, p. 16) At his one-year surgical follow-up on October 7, 2021, Petitioner described right buttock and right leg pain, which led Dr. Gornet to refer him for a nerve function study to rule out nerve damage. (PX 6, pp. 20-21)

On December 2, 2021, Petitioner underwent an EMG and NCS at Neurological & Electrodiagnostic Institute, Inc. of Saint Louis by Dr. Daniel Phillips for right lower extremity pain and numbness. (PX 13, p. 1) The study was not impressive for lumbar radiculopathy. (PX 13, p. 2) Dr. Phillips was suspicious of lateral femoral cutaneous neuropathy due to a pattern of right thigh dysesthetic numbness with dense pinprick loss. *Id.*

On April 18, 2022, Petitioner returned to Dr. Gornet and complained of anterior thigh pain with numbness and tingling in his right buttock and leg despite having received a femoral cutaneous nerve block. (PX 6, p. 25). Dr. Gornet identified a possible problem at T2-3 which could have been causing Petitioner's pain when comparing the MRI scans. *Id.* Petitioner continued to have right buttock and hip pain wrapping to his anterior thigh. (PX 6, p. 27)

On July 22, 2022, Dr. Peloza performed a microdiscectomy at L2-3, per the recommendation of Dr. Gornet during his illness. (PX 6, pp. 29-31) Petitioner continued to report right thigh numbness and tingling which radiated down his leg to his foot, at times. (PX 6, p. 32) Dr. Gornet noted ongoing numbness laterally and painful dysesthesia on the medial side. (PX 6, p. 36) Dr. Gornet tried multiple maneuvers on physical examination with Petitioner and confidently said there was no weakness in the leg, and it had 5/5 strength. *Id.*

On September 12, 2022, Petitioner returned to Athletico Physical Therapy for his low back. (PX 12, p. 169) He reported pain in the right side of his low back with occasional irritation of the right leg. (PX 12, p. 132) Petitioner attended 18 sessions to October 26, 2022. (PX 12, p. 131)

On October 31, 2022, Petitioner returned to Dr. Gornet and reported the burning dysesthesias in his right leg had stopped. (PX 6, p. 37) The only complaint Petitioner had was some residual back pain. *Id.* Dr. Gornet said the first surgery had helped Petitioner a lot and the second helped him briefly, particularly with his right thigh pain. *Id.*

On December 20, 2022, Petitioner presented to Apex Network Physical Therapy for a Functional Capacity Evaluation. (PX 14, p. 1) His job was described as heavy. (PX 14, p. 2) Petitioner could perform in the medium physical demand category, lifting 30 lbs. *Id.* Petitioner's effort was characterized as acceptable. *Id.*

On February 2, 2023, Petitioner returned to Dr. Gornet and permanent restrictions in line with an FCE of no lifting greater than 20 lbs. were put in place. (PX 6, p. 38) Petitioner was at MMI. *Id.*

On February 6, 2023, Petitioner began documenting daily job searches via written log and continued to do so on a regular basis until May 26, 2023. (PX 18).

On April 17, 2023, Petitioner presented to Metro-East Orthopedics and Dr. Matthew Bradley for right shoulder and knee pain. (PX 15, p. 1) Dr. Bradley documented that Petitioner injured his back, shoulder, and knee in his January 2020 fall. *Id.* The doctor wrote that Petitioner was healthy prior to January 2020 but complained of knee and shoulder pain since then. *Id.* Petitioner informed Dr. Bradley of the second accident which occurred in his home in 2023. *Id.* Petitioner's complaints were medial knee pain with catching and clicking, along with shoulder pain, weakness, and loss of motion. (PX 15, p. 1) MRIs were ordered for suspicion of rotator cuff and meniscus tears. (PX 15, p. 2) Petitioner was taken off work. *Id.* Dr. Bradley said the condition in Petitioner's shoulder and knee were caused by the fall in January 2020. *Id.*

On April 28, 2023, Petitioner had a right knee arthrogram at MRI Partners of Chesterfield which revealed no meniscus or ligamentous injury, no osseous normality, and a medical plica partially extended into the medical inferior margin of the patellofemoral articulation. (PX 7, pp. 6-7) Petitioner also had a right shoulder arthrogram the same day which revealed supraspinatus tendinopathy without tear, no labral tear, partial thickness tear in the posterior humeral attachment of the inferior glenohumeral ligament (HAGL), and small subacromial bursal effusion suggesting bursitis. (PX 7, pp. 8-9)

On May 4, 2023, Petitioner returned to Dr. Bradley for MRI reviews. (PX 15, p. 4) There were no tears, but a partial thickness HAGL lesion and right patellofemoral plica. (PX 15, p. 5) An injection was provided to the knee and PT recommended. *Id.*

On May 25, 2023, Petitioner returned to Dr. Bradley. (PX 15, p. 7). Petitioner reported no particular pain, but rather numbness and tingling in the leg, which he said caused him to feel weak and nearly fall. *Id.* Petitioner described the sensation as cold water dripping down the front of his leg. *Id.* Dr. Bradley said Petitioner was walking with a fully locked knee to prevent falling. (PX 15, p. 8) A repeat NCS was recommended. *Id.*

On June 7, 2023, Petitioner returned to Athletico Physical Therapy for pain in the right knee and shoulder. (PX 12, p. 123) The Initial Evaluation and subsequent appointment records incorrectly state Petitioner had a 50% tear of the rotator cuff and a meniscus tear with daily swelling. (PX 12, pp. 88-126) The records also describe Petitioner's fall in 2023 as consisting of a fall where he stuck his leg out to catch himself and twisted his knee. *Id.* Petitioner attended 11 sessions to July 13, 2023. (PX 12, p. 88)

On June 19, 2023, Petitioner returned to Dr. Bradley and reported the continued giving out of his knee with a cold-water sensation dripping from his low back to his knee. (PX 15, p. 9) Dr. Bradley said he could not identify any etiology for the instability and weakness in Petitioner's quad. (PX 15, p. 11) Dr. Bradley referred Petitioner to Dr. Ravi Yadava for evaluation. *Id.*

On July 12, 2023, Petitioner presented to Dr. Ravi Yadava for evaluation. (PX 16, p. 2) He recounted both of Petitioner's accidents and treatment history. *Id.* Dr. Yadava said Petitioner was not a surgical candidate for his knee. *Id.* Petitioner's Oswestry score revealed a fairly high perceived level of disability. *Id.* Dr. Yadava said there was clear irritation of the femoral nerve at the inguinal ligament which was likely caused by his poor mechanics due to consideration restriction of the hip flexor, weakness in the right gluteal medius, and deficiency of the adductor and quadriceps mechanism which contribute to patellofemoral syndrome and pes anserine bursitis. (PX 15, p. 6) There was severe restriction of the IT band and dense trigger point formation in the vastus latralis. *Id.* The SI joint was considerably inflamed. *Id.* Dr. Yadava recommended another trial of a nerve blockade, this time at the inguinal ligament blocking both the femoral nerve and lateral femoral cutaneous nerve. *Id.* He also said a comprehensive therapeutic program to correct mechanical imbalances, with injections to address pain, would garner the best results as Petitioner's mechanics were his only modifiable risk factor. (PX 15, p. 6)

On July 18, 2023, Petitioner presented to Motion Orthopaedics for an Independent Medical Examination by Dr. Timothy Farley. (RX 2, p. 1) Dr. Farley recounted Petitioner's injury of January 6, 2020, and medical treatment received thereafter. (RX 2, p. 2) Since the 2020 injury, Petitioner told the doctor he experienced episodic weakness in the right lower extremity. *Id.* Petitioner informed Dr. Farley that he was in a normal state of health when he fell at home on the stairs. *Id.* Based on his review of the medical records, Dr. Farley opined that the MRI findings demonstrated no significant abnormality within the shoulder or the knee. (RX 2, p. 10) The knee did not demonstrate any chondral, meniscus, or ligamentous pathology. *Id.* No knee diagnosis was warranted as the lower extremity weakness was more related to the previous lumbar history. *Id.* Dr. Farley said no knee injury occurred for either fall. (RX 2, p. 11) The shoulder had a mild strain in the posterior capsule/inferior band glenohumeral ligament, which the doctor said does not require surgery or further treatment. (RX 2, p. 10) He explained HAGL lesions can cause recurrent instability, but Petitioner had no instability complaints or findings in the shoulder. *Id.* Dr. Farley said this condition was not caused by the fall of January 6, 2020. *Id.*

On July 24, 2023, Petitioner returned to Dr. Bradley with complaints of numbness, tingling, and dripping water sensation to the anterior, lateral thigh. (PX 15, p. 12) Petitioner also reported lateral knee pain. *Id.* Dr. Bradley concluded during this visit that Petitioner's medial patellofemoral plica was causing some of his medial parapatellar pain. (PX 15, p. 14) The repeat NCS showed no lumbar pathology to explain Petitioner's numbness and tingling in the distribution of the lateral femoral cutaneous. *Id.* Dr. Bradley said there was nothing from an orthopedic standpoint to explain the numbness and tingling. *Id.* Despite this, he recommended an arthroscopic excision of the plica. *Id.*

On September 18, 2023, Petitioner returned to Dr. Gornet and reported right-sided thigh pain and numbness with an occasional giving out sensation, particularly with stairs. (PX6, P40). No changes were made at this appointment. (PX 6, p. 40)

On January 11, 2024, Petitioner returned to Dr. Bradley after nearly six months and reported significant medial patellar pain. (PX 15, p. 15) He also reported shoulder pain with cross chest and extension. *Id.* The last page of this record is missing.

On January 31, 2024, Petitioner presented to United Physicians and Dr. Helen Blake for right shoulder pain. (PX 8, p. 6) Petitioner had previously met with Dr. Blake for lumbar injections for radiculopathy. (PX 8, pp. 1-6) Petitioner rated his right shoulder and low back pain at 6 to 10/10 after his fall at his home when his leg gave out. (PX 8, p. 6) Dr. Blake provided a right AC joint injection to address the diagnosis of right AC joint pain. (PX 8, p. 7)

On February 29, 2024, Petitioner returned to Dr. Bradley after shoulder and knee injections which did not alleviate his pains for long. (PX 15, p. 18) Dr. Bradley focused on the largest issue, which was the knee and stated Petitioner failed nonoperative treatment. (PX 15, p. 20) Dr. Bradley recommended diagnostic arthroscopy. *Id.* The doctor felt Petitioner's MRI showing a plica was "certainly consistent with his symptoms and examination." *Id.*

On March 13, 2024, Petitioner underwent a right knee diagnostic arthroscopy, partial medial meniscectomy, excision of medial patellofemoral plica, and excision of portion of the apex of the patella. (PX 11, pp. 12-14)

On March 25, 2024, Petitioner returned to Dr. Bradley following surgery. (PX 15, p. 29) He reported a lot of the preoperative pain had resolved, though he felt some weakness and his knee would flex on him during gait. *Id.* He started in PT. (PX 15, p. 31)

On May 6, 2024, Petitioner returned to Dr. Bradley and his pain was reoccurring in the inferior aspect of the patellar tendon. (PX 15, p. 32) He had pain with extension. *Id.* An injection was given. (PX 15, p. 34) Dr. Bradley said consideration should be given to another MRI or an open evaluation of the patellar tendon insertion on the patella. *Id.*

The parties deposed Dr. Bradley on May 14, 2024. (PX 17, p. 2) On direct examination, Dr. Bradley described Petitioner's 2020 fall as having been caused by a slip while going up a ladder into a backhoe, causing a twisting injury and hurting his right shoulder, right knee, and low back. (PX 17, p. 7) The doctor initially described the 2023 fall as occurring when Petitioner's back gave out causing him to fall on an outstretched arm. *Id.* He was corrected by counsel and agreed it was his leg which gave out. (PX 17, p. 8) Dr. Bradley said Petitioner's mechanism of injury was consistent with a rotator cuff tear and meniscus tear, but those injuries were not present when the imaging was obtained. (PX 17, pp. 9-10) He said Petitioner's shoulder condition improved over the next several months, but his knee continued to be problematic and was giving out. (PX 17, p. 11) Dr. Bradley did an arthroscopy of the knee and intraoperatively observed a medial plica, small medial meniscal tear, and little avulsion fracture. *Id.* The fracture was chronic and encased in scar tissue. *Id.* Dr. Bradly opined that when Petitioner stepped up onto the bobcat in January 2020 there was a twisting injury in a bent position causing the kneecap to pinch the capsule and avulse off a small piece of bone. (PX 17,

pp. 13, 19) He said the mechanism was clearly present and Petitioner had immediate knee pain with persistent symptoms which never got better. *Id.* Dr. Bradley said opinion was the shoulder injury was also caused in January 2020 when Petitioner exited the bobcat and slipped, causing a hyperflexion injury due to his holding onto the handle. (PX 17, p. 16, 19) His diagnosis was a sprain and tendinitis. *Id.* Dr. Bradley indicated Petitioner's knee was doing well at his last visit, which was a week prior to the deposition. (PX 17, p. 14) He did not anticipate additional treatment for his shoulder and said the permanency was zero. (PX 17, pp. 15-16)

On cross examination, Dr. Bradley said he treats shoulders, elbows, wrists, hands, hips, knees, ankles, and feet. (PX 17, p. 18) He met with Petitioner for the first time nearly three years after the accident. *Id.* Dr. Bradley did not have Petitioner's initial injury reports from 2020. (PX 17, p. 20) The doctor understood Petitioner's knee pain to have been present since the 2020 injury. (PX 17, pp. 20-21) He did not obtain Dr. Gornet's records until later but knew there had been some radicular pain emanating from the spine. *Id.* Dr. Bradley stated that though the knee hurt all along, it came to the forefront after his 2023 fall. (PX 17, p. 21) He said Petitioner's radicular pain was mostly resolved by the April 2023 injury and it was mostly knee pain thereafter. *Id.* Likewise, Dr. Bradley said the right shoulder pain had been present since the 2020 fall, according to Petitioner's narrative. *Id*. Dr. Bradley could not locate reports of consistent right shoulder and knee pain documented in the records he possessed and was unsure if Petitioner told Dr. Gornet the same thing he told him. (PX 17, p. 22) As to the December 2022 IME, Dr. Bradley surmised Petitioner could perform the activities but likely not well and confirmed Petitioner would not unlock his knee during his treatment visits. (PX 17, pp. 22-24) He was unsure if Petitioner had been walking this way since his 2020 fall but was positive he had since the one in 2023. (PX 17, p. 28) Dr. Bradley indicated there are a variety of things that can cause HAGL lesions and patellofemoral plica injuries. (PX 17, pp. 25-26) He did not feel the HAGL lesion was causing Petitioner's pain. (PX 17, p. 26) The doctor said plica conditions can be asymptomatic and that some people are even born with it. *Id.* Dr. Bradley agreed Petitioner's leg pain had become more of a weakness than pain by May 25, 2023. (PX 17, p. 27) Dr. Bradley confirmed he had no explanation for the dripping cold water sensation in Petitioner's right leg. (PX 17, pp. 29, 35) He thought Petitioner's knee weakness was really an inhibitory pain weakness. (PX 17, p. 30) The doctor indicated he did not know when the avulsion fracture occurred but that it was caused by one of the two injuries. *Id.* He stated one would certainly feel immediate pain with such a fracture. (PX 17, p. 32) Dr. Bradley referred Petitioner to Dr. Yadava because there was a potential peripheral nerve injury for which he didn't have a good explanation. *Id.* The two doctors agreed that Petitioner's symptoms were emanating from his spine and poor body mechanics. (PX 17, p. 35) Dr. Bradley was uncertain if Petitioner participated in PT for the knee prior to surgery. (PX 17, p. 37) Dr. Bradley said his surgical recommendation was made for the plica alone. *Id.* Dr. Bradley was not overly concerned over Petitioner's pain returning at his most recent visit on May 6, 2024, but rather it is occurring due to increased activity. (PX 17, pp. 40-41) Though Dr. Bradley mentioned the possibility of needing another diagnostic arthroscopy, he said that was an unlikely outcome. (PX 17, pp. 41-42) He said Petitioner should return to work in one month and then hopefully be at MMI 2 to 3 months thereafter. (PX 17, p. 44)

The parties deposed Dr. Farley on June 4, 2024. (RX3, p. 2) On direct examination, Dr. Farley testified Petitioner described slipping on January 6, 2020, as he stepped down from a

bobcat and twisting his body leading to the development of lower back pain. (RX 3, p. 7) Dr. Farley said Petitioner also informed him of a second accident, three years later, when his right knee gave out while at home causing him to feel knee and shoulder pain. (RX 3, pp. 7-8) Dr. Farley stated the symptoms Petitioner had at the time of his examination in the knee and shoulder were not present in 2020 as they developed following the fall at home in April 2023. (RX 3, p. 11) He based this opinion on what Petitioner told him and its correlation with his review of the prior medical records. (RX 3, pp. 11-12) The doctor had concerns over symptom magnification in the shoulder as Petitioner's active range of motion was poor but passive was normal. (RX 3, p. 10) He diagnosed a mild strain without instability. *Id.* Dr. Farley explained the HAGL lesion pathology and said no further treatment would be necessary. (RX 3, pp. 12-15) Petitioner's knee examination was normal. (RX 3, p. 10) Dr. Farley gave no diagnosis for the right knee, while also having knowledge of the presence of a plica. *Id*. He stated plicas are developmental and so are present in a significant number of people. (RX 3, pp. 10, 15) Dr. Farley explained it would be extremely rare for a plica to represent a symptomatic pathology as they do not become symptomatic through injury. *Id.* Plicas are most prevalent in 14-year-old girls and Dr. Flary had never seen one symptomatic in an adult with no prior issues. (RX 3, p. 16) Dr. Farley termed plicas as a diagnosis of exclusion and surgery to correct it is not only rare but has uncertain outcomes as well. (RX 3, p. 18) Dr. Farley indicated that diagnostic arthroscopy does not represent good medicine and a higher bar should be set. (RX 3, p. 19) He said it amounts to an operation to try to figure out what is going on. *Id.* The doctor could recall performing it once in his 20 years of surgery. *Id.* Dr. Farley opined MMI was reached at the time of the MRI scans of April 28, 2023. (RX 3, pp. 15, 22) He did not feel an arthrogram of the knee, as ordered by Dr. Bradley, was needed. (RX3 , p. 17)

On cross examination Dr. Farley testified he typically has the assistance of a PA in an IME which results in them both taking a history from Petitioner. (RX 3, p. 27) Petitioner informed both of them he did not have knee or shoulder complaints until April 2023. (RX 3, p. 28) Dr. Farley indicated Petitioner's right leg symptoms after the 2020 fall were more in his thigh and connected to his lower back complaints, beginning in his buttocks and upper thigh. (RX 3, p. 29) Petitioner reported pain through the thigh toward the knee on January 14, 2020, and Dr. Farley felt this was consistent with what Petitioner told him and described sciatica rather than actual knee pain. (RX 3, pp. 29-30) Dr. Farley said the ligaments in Petitioner's knee did not cause his fall in 2023 as, according to the EMG, there was no radiculopathic weakness or signs of muscles not reacting appropriately in this lower extremity. (RX 3, pp. 20-21, 32, 44) Dr. Farley agreed a sensory feeling of weakness without objective weakness was reported by Petitioner to Dr. Gornet on several occasions. (RX 3, p. 33) Dr. Farley explained that though the EMG and nerve blocks suggested Petitioner lacked a motor radiculopathy, Petitioner could still have sensory complaints, but it would not be associated with weakness. (RX 3, pp. 34-35) Dr. Farley thought most doctors should be able to figure out if symptoms are from the low back or the knee, stating neither Dr. Bernardi (spine IME) and Dr. Gornet commented on any knee issue. (RX3, P36). Dr. Farley did not have the MRI images for direct review but had no reason to disagree with the radiologists' interpretations. (RX 3, pp. 39-40) He agreed Petitioner had no history of right shoulder or knee complaints. (RX 3, pp. 41-42) The doctor was concerned about symptom magnification for Petitioner's shoulder. (RX 3, pp. 37-38)

On June 24, 2024, Petitioner returned to Dr. Bradley and reported difficulty standing and using steps. (PX 15, p. 35) Dr. Bradley reviewed the MRI and said there was a new, small meniscus tear. (PX 15, p. 37) He was not sure if this was causing Petitioner's symptoms as they seemed to be about the patellofemoral joint. *Id.* The prior injection did not provide relief so a PRP injection was recommended as he wanted to treat Petitioner nonoperatively. *Id.*

CONCLUSIONS OF LAW

CASE NO.: 20WC006884

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

The Arbitrator incorporates by reference the Findings of Fact set forth in the paragraphs above as if set forth in their entirety herein.

The Arbitrator finds Petitioner failed to meet his burden of proof to establish his current conditions of ill-being in his right shoulder and right knee are causally connected to the work accident of January 6, 2020.

Petitioner incurred an injury to the lumbar spine due to a twisting injury while exiting a piece of IDOT equipment on January 6, 2020. Petitioner reported a low back injury through written documentation provided to IDOT in the days following this accident. Petitioner's right lower extremity complaints which included a shooting pain into his right leg were contained in the initial accident reports. These complaints of low back pain radiating into his buttocks, hip, and right thigh were echoed in Petitioner's visit with FNP-C Dudenbostel the day after his twisting injury. Petitioner had consistently similar symptoms throughout his medical treatment following his January 6, 2020, accident. Dr. Gornet oversaw Petitioner's treatment from March 9, 2020, forward. He did not refer Petitioner to Dr. Bradley or any other knee or shoulder specialist during his treatment of Petitioner's back condition. Petitioner's treatment was entirely directed at his lumbar spine and sciatica up until the time he was placed at MMI with permanent lumbar spine restrictions on February 2, 2023. Petitioner began a self-guided job search on February 6, 2023. At the IME on July 18, 2023, Petitioner told Dr. Farley he was in a normal state of health before April 2023 and had not yet developed symptoms of right knee and shoulder pain.

No pain complaints were documented in the right knee and shoulder until Petitioner presented to Dr. Bradley on April 17, 2023. Yet, it was Dr. Bradley's testimony that Petitioner's right shoulder and knee symptoms were present and consistent from January 6, 2020, forward. The records clearly prove otherwise. Dr. Bradley had an inaccurate understanding of how both accidents occurred when compared to the accident reports, medical records, IME, and testimony, including that of Petitioner. He lacked the accident reports and some additional medical records presented to Dr. Farley. Dr. Bradley said Petitioner's right knee and shoulder issues began following the fall in 2020 and then progressed in 2023. Dr. Bradley described Petitioner always keeping his knee in a locked position. Petitioner did not do this prior to seeing Dr. Bradley, but the doctor was not sure when this modification began. Petitioner's statements to Dr. Farley and at arbitration do not support Dr. Bradley's narrative. Dr. Farley had an accurate understanding of how each incident occurred. His understanding is corroborated by the records and Petitioner's statements. Dr. Farley correctly recounted the timeline, location, and nature of Petitioner's

symptoms. He correctly understood that there was no mention at all of an injury or treatment to the shoulder in 2020. Dr. Farley explained that although Petitioner's right lower extremity was often discussed in the medical records for the 2020 fall, it was not for the type of pain complaints Petitioner eventually reported to Dr. Bradley, but rather, radicular symptoms emanating from his lumbar spine. Petitioner confirmed this in his IME and arbitration testimony. Dr. Farley was correct in determining Petitioner's knee and back complaints were not the result of the fall on January 6, 2020.

The Arbitrator finds the opinions of Dr. Farley to be more persuasive than those expressed by Dr. Bradley due to the lack of a foundational understanding of the accidents described. Wherefore, the Arbitrator finds and concludes that Petitioner has failed to meet his burden to establish that his right shoulder and knee complaints were causally related to his January 6, 2020 accident.

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

The Arbitrator incorporates by reference the Findings of Fact and Conclusions of Law set forth in the foregoing paragraphs.

Based on the foregoing, the Arbitrator finds and concludes that Petitioner has failed to meet his burden of proof to establish Respondent's liability for the unpaid medical bills related to his right shoulder and knee treatment. As a result, Respondent is not liable for Petitioner's unpaid medical bills for the right shoulder and right knee treatment incurred after his MMI date of February 2, 2023.

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

The Arbitrator incorporates the Findings of Fact and Conclusions of Law set out in the foregoing paragraphs. Wherefore, the Arbitrator finds and concludes that Petitioner has failed to meet his burden of proof to establish entitlement to prospective medical benefits directed at treatment to his right shoulder and right knee.

Petitioner obtained MMI as of February 2, 2023. No further medical treatment is authorized.

CASE NO.: 24WC007237

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

The Arbitrator incorporates by reference the Findings of Fact and Conclusions of Law presented in the foregoing paragraphs.

The Petitioner bears the burden of proving each and every element of his case in order to recover under the Illinois Workers' Compensation Act. *Shelton v. Indus. Com'n*, 267 Ill. App. 3d 211, 221, 641 N.E.2d 1216, 1224 (5th Dist. 1994). In order to satisfy the "arising out of" portion

of the Act, the Petitioner must show that the injury was derived from 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. Indus. Comm'n*, 207 Ill.App.2d 193, 203, 797 N.E.2d 665, 672 (3rd Dist. 2003). The "in the course of requirement speaks to the time, place, and circumstances of the injury." *Orsini v. Indus. Com'n*, 117 Ill. 2d 38, 45, 509 N.E.2d 1005 (1987). "An injury is received in the course of employment where it occurs within a period of employment, at a place where the worker may reasonably be in the performance of his duties, while he is fulfilling those duties or engaged in something incidental thereto." *Scheffler Greenhouses, Inc. v. Indus. Com'n*, 66 Ill.2d 361, 367, 362 N.E.2d 325 (1977).

A secondary accident occurring in the home outside of one's work is not a compensable work accident. (See also *Sven Munck v. Town Machine Tool Company*, 2020 Ill. Wrk. Comp. LEXIS 887).

It is undisputed that Petitioner fell on the staircase in his home on April 11, 2023. Petitioner claims he fell because of residual weakness in his right lower extremity stemming from his prior work accident on January 6, 2020. Petitioner had been placed at MMI for that accident on February 2, 2023. Dr. Gornet and Dr. Farley agreed there was no objective evidence of right lower extremity weakness in Petitioner. Dr. Yadava said the same and highlighted Petitioner's poor body mechanics, restricted IT band, and inflamed SI joint. Petitioner first informed Dr. Gornet his leg was giving out on September 18, 2023, months after his fall at home.

There is no evidence to suggest any injury Petitioner may have suffered on April 11, 2023, had anything to do with the work accident of January 6, 2020, other than the opinions of Dr. Bradley. Petitioner's own testimony was that his shoulder complaints developed, and his right lower extremity symptoms changed after his fall at home. Dr. Farley agreed. The records support this without exception.

Wherefore, the Arbitrator finds and concludes that Petitioner failed to meet his burden of proof to establish he sustained accidental injuries arising out of and in the course of employment on April 11, 2023.

Issue E. Was timely notice of the accident given to Respondent.

The Arbitrator incorporates the Findings of Fact and Conclusions of Law set forth in the foregoing paragraphs. Based upon the Arbitrator's findings and conclusions regarding accident, this issue is moot.

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

The Arbitrator incorporates by reference the Findings of Fact and Conclusions of Law as stated in the foregoing paragraphs. The Arbitrator finds that Petitioner failed to meet his burden of proof regarding accident and notice, therefore, further analysis need not be undertaken regarding causal connection.

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

The Arbitrator incorporates the Findings of Fact and Conclusions of Law set forth in the foregoing paragraphs. As a result of the Findings of Fact and Conclusions of Law set forth above, Respondent is not liable for Petitioner's unpaid medical bills.

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

The Arbitrator incorporates the Findings of Fact and Conclusions of Law set forth in the foregoing paragraphs. Based upon the foregoing Findings of Fact and Conclusions of Law, Petitioner is not entitled to prospective medical treatment.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC023584
Case Name	Paula G. Murray v. II in One Contractors Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0248
Number of Pages of Decision	16
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Arnold Rubin
Respondent Attorney	Martin T. Spiegel

DATE FILED: 5/30/2025

/s/Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PAULA G. MURRAY,

Petitioner,

vs. NO: 23 WC 23584

II IN ONE CONTRACTORS, INC,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission modifies the second paragraph of the Order related to prospective medical, striking "authorize and provide payment", replacing it with "provide and pay".

The Commission further strikes the last sentence of the second paragraph of the Order related to prospective medical in its entirety.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 16, 2024 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner temporary total disability benefits in the amount of $1,423.01/week for 47 4/7 weeks, for a period

of September 8, 2023 through August 5, 2024, which is the period of temporary total disability for which compensation is due.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for prospective medical treatment, including the right shoulder arthroscopy with EUA, possible capsular release and manipulation as recommended by Petitioner's treating physician, Dr. Chudick.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $31,900.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

May 30, 2025
O052025
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	23WC023584
Case Name	Paula G. Murray v. II in One Contractors Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Efi James, Arbitrator

Petitioner Attorney	Arnold Rubin
Respondent Attorney	Martin T. Spiegel

DATE FILED: 10/16/2024

/s/Efi James, Arbitrator
Signature

INTEREST RATE WEEK OF OCTOBER 16 2024 4.27%

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Paula G. Murray
Employee/Petitioner

v.

II in One Contractors Inc.
Employer/Respondent

Case # **23WC023584**

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 **Efi James**, Arbitrator of the Commission, in the city of **Chicago**, on **August 5, 2024**. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's present 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, **9/6/2023**, 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 $**110,995.04**; the average weekly wage was **$2,134.52** .

On the date of accident, Petitioner was **46** years of age, ***single*** with **2** dependent children.

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

Respondent shall be given a credit of $**50,885.11** for TTD, $**-0-** for TPD, $**-0-** for maintenance, and $**-0-** for other benefits, for a total credit of $**50,885.11**.

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

ORDER

- Respondent shall pay Petitioner temporary total disability benefits in the amount of **$1,423.01**/week for **47-4/7** weeks, for the period of **9/8/2023 through 8/5/2024**, which is the period of temporary total disability for which compensation is due.

- Respondent shall authorize and provide payment for the medical treatment, including the right shoulder arthroscopy with EUA, possible capsular release and manipulation as recommended by Petitioner's treating physicians, Dr. Chudik. The authorization shall be in writing and forwarded to Petitioner's attorney.

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 16 2024

_____
Signature of Arbitrator

STATE OF ILLINOIS)
)
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

PAULA G. MURRAY,	)	
	)	
PETITIONER,	)	
vs.	)	23 WC 023584
	)	
II IN ONE CONTRACTORS INC.	)	
	)	
RESPONDENT.	)	

PROCEDURAL HISTORY

This matter proceeded to hearing on August 5, 2024, in Chicago, Illinois before Arbitrator Efi James on Petitioner's Request for Hearing. Issues in dispute include Causal Connection, Prospective Medical and TTD. (Arbitrator's Exhibit "AX" 1)

FINDINGS OF FACT

Job Duties

Petitioner was employed by Respondent on September 6, 2023 as an ironworker. (Tr. 9) She was a union member of Local 1 for 10 years. (Tr. 9)

Petitioner's job duties included installing rebar for buildings and bridges. (Tr. 9) Rebar is the structural membrane of the building and provides stability. (Tr. 10) The rebar can be anywhere from 1 foot to 60 feet long and 1/4 of an inch to 2 inches in diameter. (Tr. 11) Petitioner lifted and carried the rebar that weighed between 5 pounds and 100 pounds. She also lifted cables that weighed between 30 pounds and 100 pounds. (Tr. 12) Petitioner climbed up to 60 feet on ladders, scaffolds and steel beams. Petitioner used a harness, retractable pigtail, wall hook and a structural belt, which consisted of a reel, tie wire, pliers, nips, tape measure and a beater which is like a little hammer. (Tr. 13-14) The tool belt weighed 30 to 40 pounds. (Tr. 14) Petitioner wore the tool belt during her daily activities. She testified that she lifted more than 50 pounds as part of her job duties. (Tr. 30-31)

Prior Medical Condition

Petitioner testified that prior to September 6, 2023 she had never sustained an accident or injury and never received medical treatment for her right shoulder. (Tr. 14-15)

Accident

Petitioner testified she was performing her job duties for Respondent on September 6, 2023. She stated that her right shoulder felt fine prior to her accident. (Tr. 16) Petitioner was working on the Obama Presidential Library site in Hyde Park. (Tr. 15) She arrived at the jobsite at 6:30 AM, and began work at 7:00 AM. (Tr. 16) She was installing a wall on the southwest side. Petitioner was working with rebar that was 11'1" long. (Tr. 16-17) The piece of rebar weighed 18 pounds. Petitioner was working on scaffolding that was 10 feet off the ground. They were working on the vertical rebar that was to be tied to the horizontal rebar. (Tr. 16-17)

At approximately 9:40 am, Petitioner was lifting the rebar up to her co-worker, who was working above her. (Tr. 18) The rebar was laying on the scaffolding and Petitioner picked it up horizontally, set it on her shoulder, carried it to where she was working and slowly lowered it down to the platform. (Tr. 19) Petitioner then lifted it up, holding it like she would a flagpole, with her right hand on the bottom of the rebar and the left hand up higher. (Tr. 20) Her right hand was lifting the rebar and her left hand was stabilizing it. As Petitioner was lifting the rebar to shoulder level, she felt a pop in her right shoulder. The pop was in the joint and Petitioner's arm felt like it was on fire. (Tr. 20-21) Petitioner felt a lot of pain that continued down her entire shoulder to her hand as she continued to tie the rebar in place. Petitioner did not finish work for the day. (Tr. 24)

Summary of Petitioner's Testimony and Medical Records

As a result of the accident of September 6, 2023, Petitioner sought medical treatment at was seen at Physicians Immediate Care. (Tr. 25) She had an X-ray performed of her right shoulder and was released to return to work light duty. (Tr. 25) She reported to work on September 7, 2023 and was advised that light duty work was not available. Petitioner was paid for her work on September 7, 2023 but she did not perform any physical activity that day. (Tr. 25) She began receiving temporary total disability benefits effective September 8, 2023. (Tr. 26) The physician recommended that she undergo an MRI of her right shoulder. (Tr. 26)

Petitioner underwent an MRI of the right shoulder at Hawthorne Imaging on September 14, 2023. (PX 1) The MRI revealed mild tendinosis of the supraspinatus tendon with a small focal low-grade interstitial tear of the mid fibers of the distal supraspinatus tendon, hyperintense signal extending between the glenoid and labrum, which was suspicious for a labral tear, frayed posterior-superior labrum, mild tendinosis of the intra-articular segment of the long head biceps tendon and mild to moderate degenerative changes at the acromioclavicular joint. (PX 1)

After the MRI study, Petitioner was advised to see an orthopedic surgeon. (Tr. 26) Petitioner was seen by Dr. Chudik on September 19, 2023. (PX 2) Petitioner reported that she was pushing rebar up and tying them into place as an iron worker. (PX 2, pg. 5) Dr. Chudik diagnosed Petitioner with right frozen shoulder post work accident of September 6, 2023. (PX 2, pg. 6) Dr. Chudik noted that Petitioner's condition and need for treatment was causally connected to the described accident. (PX 2, pg. 12) He reviewed the MRI and stated that Petitioner had evidence of inferior capsular thickening consistent with frozen shoulder after a traumatic injury at work. (PX 2, pg. 6) Dr. Chudik recommended a GH injection and physical therapy. (PX 2, pg. 6) The injection was performed in the office. (PX 2, pg. 6) It was recommended that Petitioner remain off work. (PX 2, pg. 12)

Petitioner returned to Dr. Chudik on November 1, 2023. Petitioner advised the injection did not provide any relief and she had complaints of pain and instability while in physical therapy. (PX 2, pg. 15) She also complained of radicular pain radiating down her right hand. (PX 2, pg. 15) Dr. Chudik advised that Petitioner was to remain off work and again ordered additional physical therapy. (PX 2, pg. 15)

Petitioner participated in physical therapy at Athletico. (PX 3) As of November 3, 2023, Petitioner had participated in 17 physical therapy sessions to increase her range of motion. (PX 3, pg. 3) On November 17, 2023, Petitioner reported less pain, but still complained of pain with range of motion above the shoulder and tingling in her hand. (PX 3, pg. 6) As of December 12, 2023, Petitioner had attended 30 sessions of therapy. (PX 3, pg. 9) She had some improvements with range of motion and strength, but continued to exhibit deficits of the shoulder with range of motion and strength contributing to functional impairments of lifting and reaching. (PX 3, pg. 9) The physical therapist recommended continued physical therapy. (PX 3, pg. 9)

Petitioner had a follow up appointment with Dr. Chudik on December 13, 2023. (PX 2, pg. 21) Dr. Chudik documented that Petitioner was still experiencing painful clicking in her right shoulder. (PX 2, pg. 23) He recommended continued physical therapy and an injection to the right shoulder. (PX 2, pg. 23) Dr. Chudik performed the injection at his office that same day. (PX 2, pg. 24) He recommended that Petitioner remain off work. (PX 2, pg. 28) Petitioner continued to participate in physical therapy at Athletico. (PX 3)

On January 22, 2024, Dr. Chudik noted that Petitioner was making progress in physical therapy, but she continued to complain of pain and popping in her right shoulder. Dr. Chudik recommended additional physical therapy. He stated that the adhesive capsulitis was resolving, but Petitioner still lacked 5 to 10 degrees of range of motion and was still having pain. They discussed a repeat GH injection, but Petitioner elected to hold off. Dr. Chudik recommended that Petitioner remain off work. (PX 2, pg. 31)

Petitioner continued physical therapy at Athletico. (PX 3) She was again examined by Dr. Chudik on March 8, 2024. (PX 2, pg. 35) Dr. Chudik noted that Petitioner's lack of range of motion had predominantly resolved, but she continued to have sharp pain and popping with any use of the arm and a feeling of instability and dislocation. (PX 2, pg. 36) Dr. Chudik recommended a repeat MRI, physical therapy and a GH joint injection if symptoms continued to persist. (PX 2, pg. 36) Petitioner was advised to remain off work. (PX 2, pg. 39)

Petitioner underwent a repeat MRI of the right shoulder on March 20, 2024 at IBJI. (PX 4) The MRI revealed findings suspicious of adhesive capsulitis and moderate supraspinatus tendinosis with some bursal surface fraying. (PX 4)

Dr. Chudik examined Petitioner on March 25, 2024. (PX 2) Dr. Chudik noted that Petitioner had severe, frequent and sharp right shoulder pain with popping in her right arm with pain and had a "catching feeling" with overhead motion. (PX 2, pg. 42) Physical examination revealed nearly resolved adhesive capsulitis with an impingement of the cuff. (PX 2) Dr. Chudik reviewed the repeat MRI which indicated inferior capsular thickening with a normal, intact cuff and labrum. (PX 2, pg. 43) He recommended and performed a right shoulder subacromial injection. (PX 2, pg. 43) The injection slightly improved the pain, but did not change the popping. (PX 2, pg. 43) Petitioner was told to discontinue therapy for the next two weeks and if symptoms failed to improve, diagnostic shoulder arthroscopy would be discussed. (PX 2, pg. 43) Petitioner was advised to remain off work. (PX 2, pg. 45)

Petitioner attended physical therapy at Athletico on April 9, 2024. (PX 3, pg. 27) The physical therapist noted that the injection helped for two days, but Petitioner returned to baseline with pain and difficulty with motion. (PX 3, pg. 28) On May 2, 2024, the therapist noted that Petitioner had a feeling of instability in the right shoulder with pain and noted that the shoulder "moves from its socket." (PX 3, pg. 32) Petitioner's last physical therapy appointment was on May 2, 2024. (PX 3) She had attended 67 therapy sessions. (PX 3, pg. 33) Petitioner had decreased range of motion and strength in her right arm compared to her left. (PX 3, pg. 33) The physical therapist noted that Petitioner was making gains in physical therapy; however, she continued to have impairment of her shoulder with range of motion and strength that created functional impairments when

moving, lifting and reaching. (PX 3, pg. 33) It was recommended that she return to her physician to discuss surgery. (PX 3, pg. 33)

Petitioner was examined by Dr. Chudik on May 15, 2024. (PX 2, pg. 49) Petitioner reported that due to her frequent pain, she often kept her right elbow bent and close to her body to protect her shoulder. Her right shoulder remained the same and she continued to experience popping and pain with intermittent numbness and tingling in the 4th and 5th digits of the right hand. (PX 2, pg. 49) Dr. Chudik noted that the passive tendon on the ulnar nerve in her elbow aggravated these symptoms. (PX 2, pg. 49) Dr. Chudik noted that Petitioner had failed to progress in physical therapy and had difficulty with range of motion and diffuse cuff strength due to pain. (PX 2, pg. 50) Due to failed progress with conservative care, Dr. Chudik recommended a right shoulder arthroscopy with EUA, possible capsular release and manipulation. (PX 2, pg. 50). (PX 2, pg. 50) Regarding the right elbow, Dr. Chudik diagnosed Petitioner with right cubital tunnel syndrome due to frequent elbow flexion that helped decrease and prevent her shoulder pain. He noted that if the elbow did not improve, he would recommend an EMG. (PX 2, pg. 50) Petitioner was to remain off work. (PX 2, pg. 52)

Dr. Chudik also reviewed the Section 12 report of Dr. Thangamani. (PX 2, pg. 53) He agreed with Dr. Thangamani that Petitioner sustained a work-related accident on September 6, 2023. (PX 2, pg. 53) He agreed that, as a result of the work-related accident of September 6, 2023, Petitioner developed right shoulder adhesive capsulitis. (PX 2, pg. 53) He also agreed that Petitioner received treatment for the right shoulder adhesive capsulitis that was necessary, appropriate and related to the injury. (PX 2, pg. 53) However, Dr. Chudik further opined that Petitioner had not reached maximum medical improvement. (PX 2). He recommended additional treatment of right shoulder arthroscopy with exam and manipulation under anesthesia to manage her unresolved right shoulder pain. (PX 2, pg. 53)

Petitioner had not undergone the recommended surgery as of the date of this hearing. She testified that she would like to undergo the right shoulder surgery as recommended by Dr. Chudik. (Tr. 32)

Respondent's Section 12 Exam with Dr. Vijay Thangamani: May 03, 2024

On May 3, 2024, at the request of her employer, Petitioner was examined by Dr. Vijay Thangamani pursuant to Section 12 of the Act. (RX 1) Dr. Thangamani documented that Petitioner was installing structural membranes when she injured her right shoulder lifting vertical membranes for a wall on September 6, 2023. (RX 1, pg. 1) As she was lifting, she felt a pop and pain in her right shoulder and felt as if it was "on fire". (RX 1, pg. 1) Dr. Thangamani reviewed some of Petitioner's medical records but was not able to review the MRI images from September 14, 2023. (RX 1, pg. 2) He also noted that he did not directly review the repeat MRI images of March 25, 2024. (RX 1, pg. 2)

Upon physical examination, Dr. Thangamani noted that Petitioner had tenderness and popping at the AC joint with range of motion, had excellent passive range of motion with mild limitations with forward flexion and abduction with active range of motion. (RX 1, pg. 3) Dr. Thangamani found that Petitioner did not participate in any extracurricular activities that would have contributed to her current condition. (RX 1, pg. 3) He also noted Petitioner did not appear to have any prior injuries, comorbid conditions or preexisting conditions. (RX 1, pg. 3)

Dr. Thangamani diagnosed Petitioner with adhesive capsulitis. (RX 1, pg. 3) He noted that the diagnosis was supported by objective evidence: the MRI reports, physical examinations and the relative non-traumatic mechanism of accident. (RX 1, pg. 3) He stated that the condition was not attributed to a preexisting medical condition and that a traumatic exposure directly caused the condition. (RX 1, pg. 3) He specifically also noted

that repetitive lifting could have caused the adhesive capsulitis. (RX 1, pg. 4) Dr. Thangamani opined that the treatment to date had been necessary, appropriate and related to the accident. (RX 1, pg. 4)

Dr. Thangamani opined that Petitioner has adhesive capsulitis with 6 months of appropriate conservative care. (RX 1, pg. 4) He stated that she had full range of motion with no evidence of persistent adhesive capsulitis and her current symptoms were "purely subjective" and therefore he did not feel any further treatment was needed. (RX 1, pg. 4) He opined Petitioner was at maximum medical improvement and noted that she may occasionally require over the counter Advil or Aleve. (RX 1, pg. 4) Dr. Thangamani stated that there was no objective orthopedic reason for work restrictions as her MRIs did not report any structural abnormalities. (RX 1, pg. 4) Dr. Thangamani also opined that Petitioner had subjective pain complaints which she may need restrictions for but did not link those complaints to any work exposure. (RX 1, pg. 4)

Petitioner's Current Condition

Petitioner testified regarding her current complaints. Petitioner testified that she experienced pain and loss of motion in her right shoulder. (Tr. 33) She noted the pain is in her joint, collarbone and in the back of her shoulder blade. (Tr. 33) Petitioner testified that she takes 4-5 pills per day, alternating between Tylenol and Motrin for the pain. (Tr. 34) Petitioner also performs stretches that she learned in physical therapy. (Tr. 34) Petitioner stated she is able to lift a 5 pound weight and can lift a 2 pound weight overhead. (Tr. 35) When Petitioner lifts her shoulder, she feels a pull and a pop. (Tr. 36) Petitioner experiences pain when she tries to do the laundry so she has her kids help her due to the pain she experiences lifting a laundry basket weighing 10 to 15 pounds. (Tr. 36-37) She described difficulty in doing dishes due to her right arm being weaker than the left and she has dropped a dish. (Tr. 37-38) Petitioner testified she experiences pain in her right hand when she drives so she uses her left hand instead. She testified that when she tries to drive with her right hand, it strains her right shoulder. (Tr. 39) If she cleans her room, she cleans with her left hand, including sweeping the floor. She does not do any yard work and makes her children do that. She believes that her arm is getting worse and testified that the pain is sometimes unbearable. (Tr. 40) Since September 6, 2022, Petitioner testified she has not sustained any new accidents or injuries involving her right shoulder. (Tr. 32)

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 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).

A decision by the Commission cannot be based upon speculation or conjecture. *Deer and Company v. Industrial Commission,* 47 Ill.2d 144, (1970). A Petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. *Illinois Institute of Technology v. Industrial Commission,* 68 Ill.2d 236, (1977).

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

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her to be a credible witness. The Arbitrator finds Petitioner's testimony as to her accident to be straight forward, truthful, and consistent. Petitioner's description of the accident and subsequent physical complaints remained consistent throughout both within the medical records in evidence as well as the testimony at trial. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions or internal inconsistencies that would deem the witness unreliable specifically as it relates to her description of the accident or her current condition of ill-being.

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. 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, 11 N.E.3d 453. "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

The Arbitrator concludes that Petitioner's current conditions of ill-being in connection with her right shoulder, including the adhesive capsulitis, and her right elbow, including the cubital tunnel syndrome, are causally connected to the work accident of September 6, 2023. The Arbitrator relies on the credible and unrebutted testimony of Petitioner, the medical records admitted into evidence, specifically the medical opinions of Dr. Chudik. *International Vermiculite Company v. Industrial Commission*, 77 Ill.2d 1, 394 N.E.2d 1166 (1979) (holding that the Commission can accord greater weight to the medical opinions of the claimant's treating physicians). The Arbitrator also considered the opinions of Dr. Thangamani, the Section 12 physician. Although Dr. Thangamani finds that the adhesive capsulitis was causally related to the work accident of September 6, 2023, he disagrees with Dr Chudik that her current condition of ill-being is causally related to her work accident of September 6, 2023. The Arbitrator finds the opinions of Dr. Chudik in this case to be more credible than those of Dr. Thangamani.

In the instant case, Petitioner testified that prior to September 6, 2023, she had never sustained any accidents or injuries involving her right shoulder. Further, she had not received any medical treatment for her right shoulder prior to September 6, 2023. No medical records of any prior medical treatment were admitted into evidence. Accordingly, the Arbitrator finds that Petitioner was in good health and had no symptoms or issues with her right shoulder prior to September 6, 2023.

Immediately following the work-related accident of September 6, 2023, Petitioner began a course of medical care for her right shoulder. Following the accident, Petitioner underwent an MRI on September 14, 2023. She also began medical treatment with Dr. Chudik. The medical treatment included follow up appointments, 67 physical therapy sessions, injections and a surgical recommendation.

Petitioner established medical causation of her right shoulder condition through the medical opinions of her treating physician Dr. Chudik. Dr. Chudik opined that as a result of the work-related accident of September 6, 2023, Petitioner developed right shoulder adhesive capsulitis. He stated that Petitioner received treatment for the right shoulder adhesive capsulitis that was necessary, appropriate and related to the injury. The Arbitrator notes that Dr. Thangamani agreed with this assessment. On May 15, 2024, Dr. Chudik set forth his diagnosis of right shoulder adhesive capsulitis and cubital tunnel syndrome. He opined that these conditions were causally related to the work accident of September 6, 2023. He opined that the cubital tunnel syndrome was caused by the mechanism of frequent bending of the arm that Petitioner used to alleviate her right shoulder pain. Dr. Chudik's opinion as it relates to Petitioner's right elbow was unrebutted.

Dr. Chudik further opined that Petitioner had not yet reached maximum medical improvement. He recommended additional treatment consisting of right shoulder arthroscopy with exam and manipulation under anesthesia to manage her unresolved right shoulder pain. Dr. Chudik relied on the physical examinations of Petitioner, physical therapy records and imaging that documented Petitioner continued symptoms of pain and loss of range of motion.

The Arbitrator finds it significant that Dr. Thangamani initially agreed with Dr. Chudik that the adhesive capsulitis was causally connected to the work-related accident of September 6, 2023. Dr. Thangamani opined that the treatment to date had been necessary, appropriate and related to the accident.

The Arbitrator also finds the MRI studies significant in weighing the opinions of both Dr. Chudik and Dr. Thangamani. Petitioner underwent an MRI of the right shoulder on September 14, 2023 which revealed mild tendinosis of the supraspinatus tendon with a small focal low-grade interstitial tear of the mid fibers of the distal supraspinatus tendon, hyperintense signal extending between the glenoid and labrum, which was suspicious for a labral tear, frayed posterior-superior labrum, mild tendinosis of the intra-articular segment of the long head biceps tendon and mild to moderate degenerative changes at the acromioclavicular joint. Petitioner underwent a repeat MRI of the right shoulder on March 20, 2024. The MRI revealed findings suspicious of adhesive capsulitis and moderate supraspinatus tendinosis with some bursal surface fraying. The objective MRI findings appear to contradict Dr. Thangamani's opinion that there were no structural abnormalities of the shoulder even though he had previously opined that Petitioner's diagnosis was supported by the objective evidence and the MRIs findings. The Arbitrator finds it important to note Dr. Thangamani never reviewed the actual MRI images before rendering his opinions in this matter.

Dr. Thangamani further opined that Petitioner's symptoms were "purely subjective" and that further treatment was not needed but when on to state she may occasionally require over the counter Advil or Aleve. Dr. Thangamani also opined that there was no objective orthopedic reason for work restrictions but that Petitioner had subjective pain complaints for which she may need restrictions. Again, as to the need for Peititoner to have continued work restrictions, Dr. Thangamani appears to contradict himself by saying at one point she does not need work restrictions but then he goes on to state she may need work restrictions. The Arbitrator notes that Dr. Thangamani's report is silent as it relates to Petitioners right elbow.

Therefore, in light of the finding that the medical opinions of Dr. Chudik outweigh those of Dr. Thangamani, the Arbitrator finds that Petitioner has not reached maximum medical improvement and the current condition of ill-being as it relates to the right shoulder and right elbow are causally connected to the work-related accident of September 6, 2023.

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

Section 8(a) of the Act entitles a claimant to compensation for all necessary first aid, medical and surgical services and all necessary medical, surgical and hospital services "thereafter incurred" that are reasonably required to cure or relieve the effects of injury. 820 ILCS 305/8(a) (West 2004). Prescribed services not yet performed or paid for are considered to have been "incurred" within the meaning of the statute. *Certified Testing v. Industrial Comm'n*, 367 Ill. App. 3d 938, 948, 856 N.E.2d 602, 305 Ill. Dec. 797 (2006)

The Arbitrator concludes that Petitioner is entitled to payment for the medical treatment recommended by her treating physician, Dr. Chudik, including the right shoulder surgery. The Arbitrator concludes that the treatment recommendation constituted reasonable and necessary medical care. In support of this finding, the Arbitrator relies on Petitioner's credible and unrebutted testimony, the medical records admitted into evidence and the opinions of Dr. Chudik.

Dr. Chudik recommended a right shoulder arthroscopy with EUA, possible capsular release and manipulation. Dr. Chudik recommended the surgery since Petitioner had failed conservative care and continued to experience right shoulder pain and loss of range of motion. Petitioner attended 67 sessions of physical therapy. The last physical therapy note documented that Petitioner had decreased range of motion and strength as compared to her left arm. The physical therapist noted that Petitioner was making gains in physical therapy; however, Petitioner continued to have impairment of her shoulder with range of motion and strength that created functional impairments of moving, lifting and reaching. It was recommended that she return to her physician to discuss surgery and the continuation of physical therapy. The physical therapy notes listed Petitioner's employment's physical demand level of medium. (PX 3) The Athletico note dated November 17, 2023 set forth that as part of her job duties, Petitioner lifts up to 75 pounds and the physical demand level is heavy. (PX 3) Petitioner testified that her employment was very heavy. The physical therapy notes revealed that Petitioner could only lift 10 pounds, well below the medium physical demand level.

The Arbitrator considered the opinions of Dr. Thangamani that Petitioner had reached maximum medical improvement and rejected them. Dr. Thangamani admitted that Petitioner had ongoing shoulder pain and the MRIs supported a diagnosis of adhesive capsulitis. However, he felt that no further medical treatment was necessary since Petitioner had full range of motion. The Arbitrator rejects Dr. Thangamani's opinions since he did not appear to consider the physical therapy records which document that Petitioner failed conservative care, ongoing subjective complaints and loss of range of motion. He also did not review the MRI images of Petitioner's right shoulder.

Section 8(a) of the Act provides in relevant part: The employer shall provide and pay for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter *incurred,* limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury. *Plantation Manufacturing Company v. Industrial Commission*, 294 Ill.App.3d 705, 691 N.E.2d 13 (2d Dist. 1997). Based on the medical records and opinions of Dr. Chudik, the Arbitrator awards Petitioner payment for the medical treatment, including right shoulder arthroscopy with EUA, possible capsular release and manipulation as recommended by Dr. Chudik.

Issue L, whether Petitioner is entitled to TTD/TPD benefits, the Arbitrator finds as follows:

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

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n*, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

To be entitled to TTD benefits, it is the claimant's burden to prove not only that he did not work but also that he was unable to work. *Holocker v. Illinois Workers' Compensation Comm'n,* 2017 IL App (3d) 16036WC, P35 (3rd Dist., 2017). The fundamental purpose of the Act is to provide injured workers with financial protection until they can return to the work force. *Id*. When determining whether an employee is entitled to TTD benefits, the test is whether the employee remains temporarily totally disable as a result of a work-related injury and whether the employee is capable of returning to the work force. *Id*. The touchstone for determining whether claimant is entitled to TTD is whether the claimant's conditions had stabilized to the extent that they are able to reenter the workforce. *Id*.

The Arbitrator concludes that Petitioner is entitled to receive temporary total disability benefits from September 8, 2023 through August 5, 2024, the date of hearing. The Arbitrator relies on the credible and unrebutted testimony of Petitioner, the medical records admitted into evidence and the medical opinions of Dr. Chudik. The Arbitrator considered the opinions of Dr. Thangamani and accords them little weight. Respondent does not dispute that Petitioner was entitled to receive temporary total disability benefits for the period of September 6, 2023 through May 3, 2024.

Respondent's dispute to payment of temporary total disability benefits was based on the opinions of Dr. Thangamani that Petitioner had reached maximum medical improvement. Having found that the opinions of Dr. Chudik are more persuasive than those of Dr. Thangamani and that Petitioner is entitled to payment for the surgery recommended by Dr. Chudik, the Arbitrator accords the opinions of Dr. Thanganami that Petitioner could return to work due to no structural abnormalities little weight. Instead, the Arbitrator relies on the opinions of Dr. Chudik that Petitioner is not able to return to work and remains under active medical care. It is significant that Dr. Thangamani stated that Petitioner may require work restrictions due to her pain. The Arbitrator finds that this opinion also supports Petitioner's award of temporary total disability benefits.

In *Freeman United Coal Mining Company v. Industrial Commission*, 318 Ill.App.3d 170, 741 N.E.2d 1144 (2001), the court set forth that "a claimant is entitled to TTD when a 'disabling condition is temporary and has not reached a permanent condition." The dispositive test for determining whether a claimant is entitled to TTD is whether the condition has stabilized. *Id.* The court in *Freeman* based its decision to award TTD benefits on the fact that the Petitioner in that case had not been released to full-duty work and future medical care was being considered by the petitioner's treating physicians. *Id.*

In the instant case, Petitioner has been under active medical treatment from September 8, 2023 through August 5, 2024. Medical treatment included office visits, diagnostic tests, physical therapy, injections and a surgical recommendation. Petitioner has not been released to return to work by Dr. Chudik. Accordingly, the Arbitrator finds that Petitioner is entitled to payment of temporary total disability benefits from September 8, 2023 through August 5, 2024.

CONCLUSION

In light of the above facts and considerations, the Arbitrator finds that Petitioner has not reached maximum medical improvement and her current condition of ill-being as it relates to the right shoulder and right elbow are causally connected to the work-related accident of September 6, 2023. Accordingly, the Arbitrator awards Petitioner payment for the medical treatment, including right shoulder arthroscopy with EUA, possible capsular release and manipulation as recommended by Dr. Chudik. The Arbitrator further finds that Petitioner is entitled to payment of temporary total disability benefits from September 8, 2023 through August 5, 2024.

Arbitrator Efi Poziopoulos James

OCTOBER 16 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC011182
Case Name	Jack Moore v. Knight Hawk Coal, LLC
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0249
Number of Pages of Decision	21
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Casey VanWinkle
Respondent Attorney	Kenneth Werts, Julie Webb

DATE FILED: 5/30/2025

/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

JACK MOORE,

Petitioner,

vs. NO: 20 WC 11182

KNIGHT HAWK COAL, 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, causal connection, and the nature and extent of any 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 January 18, 2024 is hereby affirmed and adopted.

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.

May 30, 2025

/s/ *Raychel A. Wesley*

RAW/mck

O: 5/21/25 /s/ *Stephen J. Mathis*

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/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC011182
Case Name	Jack Moore v. Knight Hawk Coal, LLC
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Kirk Caponi
Respondent Attorney	Kenneth Werts

DATE FILED: 1/18/2024

THE INTEREST RATE FOR THE WEEK OF JANUARY 17, 2024 4.97%

/s/Linda Cantrell, 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

JACK MOORE
Employee/Petitioner

v.

KNIGHT HAWK COAL, LLC
Employer/Respondent

Case # **20** WC **011182**

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 **12/8/23**. 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 **Sections 1(d)-(f) of the Occupational Diseases Act**

FINDINGS

On **1/2/20**, 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 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 **$87,618.96,** and the average weekly wage was **$1,684.98**.

On the date of accident, Petitioner was **65** 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 $**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

Based on the Arbitrator's findings that Petitioner failed to prove by a preponderance of the evidence that he suffered from coal workers' pneumoconiosis or any other occupational disease related to his exposure while employed by Respondent, and failed to prove that his current condition of ill-being is causally connected to such accident/exposure, all claims for permanent partial disability 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.

JANUARY 18, 2024

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JACK MOORE,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 20-WC-011182
	)	
KNIGHT HAWK COAL, LLC,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Herrin on December 8, 2023 on all issues. On 5/13/20, Petitioner filed an Application for Adjustment of Claim alleging he sustained an occupational disease of his lungs and/or heart, pulmonary system, and respiratory tracts as the result of inhaling coal mine dust, including, but not limited to, coal dust, rock dust, fumes, and vapors for a period of 35 years. (AX2) The parties stipulated on the record to amend the last date of exposure to 1/2/20 which was the last day Petitioner worked for Respondent prior to retiring. The issues in dispute are disease, causal connection, the nature and extent of Petitioner's injuries, and Sections 1(d)-(f) of the Occupational Diseases Act. All other issues have been stipulated.

TESTIMONY

Petitioner lives in Perryville, Missouri. He was 68 years old at the time of arbitration and married. Petitioner graduated from high school. He testified that he had training in the mine and some construction training. Petitioner worked in the coal mine for 35 years with 21 of those years being underground. Petitioner testified that he worked in an underground mine from 1976 to 1979 and then worked in strip mining from 1979 to 1992. He went back to underground mining from 1992 to 1999 and then was out of the mine for nine and a half years. Petitioner then went back to the mine and worked for Respondent from 2009 to 2020. Petitioner testified that during his time in the mines, in addition to coal dust, he was regularly exposed to silica dust, roof bolting glue fumes, diesel fumes and smoke from coal fires. Petitioner retired on 1/2/20 from Respondent. Petitioner was 64½ years old when he retired, and his job title was supervisor. Petitioner testified that he retired at that point because he had had enough. Petitioner has not had any post mining employment.

Petitioner's first job in the mine was as a laborer with Ziegler Coal in 1976. For a few months he shoveled coal that had fallen off the belt back on the belt so it could be taken out of the mine. His next job was as a face worker. This was a conventional mine so they drilled and

shot and loaded coal out with machines. He testified that he used a machine that looked like a giant chainsaw to undercut the coal. Then they would drill holes in the coal and shot it with air. Next the machine would come in and pick up the coal and put it on the car so that it could be hauled to the feeder where there were big grinders that ground it down to smaller sizes so it could be put on the belt. Petitioner went to work for Arch Coal in April 1979. Arch was a strip mine and all his work was above ground. His first job at Arch was in the wash plant where they cleaned the coal to remove impurities. His next job was on the overburden drill. He testified that he drilled a nine to ten inch hole in limestone and filled it full of nitro explosives and blew it up so that the big machines could dig out the coal. He testified that he was drilling limestone and even if he wore a facemask when he took it off it he was still blowing out white boogers. He testified that the dust was really bad. He did that job for about nine years and then went to heavy equipment operator and haul truck driver. He pushed the coal on the coal pile with old dozers and loaded coal trucks with the coal loading machine. He worked at Arch until 1992 when he was laid off. After his layoff from the strip mine, he went to work for Arch Coal at its new underground mine as a roof bolter. Petitioner testified that as a roof bolter he would drill holes in the ceiling of the mine with a big machine and put bolts ranging from 36 inches to 10 feet long in the ceiling. With the longer bolts he had to use a two part epoxy glue to hold the roof up. He testified that the glue had an odor that he smelled all day long. He testified that the odor from the glue was enough to take his breath away. He worked as a roof bolter for about a year and a half. He started to have trouble pushing the bolts up because his shoulders were starting to pop and hurt. His next job was on a car to haul the coal from the continuous miner. His next job was operating the continuous miner machine that cut the coal. He testified that at Arch Coal that as they backed out they would pull the pillars and the roof would cave in. He testified that when the roof came down it would pull his hard hat off and he had to cover his face because of the dust. Petitioner testified that he was laid off from Arch in 1999.

Petitioner got out of the coal industry for a while and went to work at Granite City Steel. He worked there for about a year and was laid off. Petitioner next drove a truck for about three years, but he could not take being away from home. Petitioner testified that he had carpenter schooling and experience in the carpenter business. A carpenter construction business in Perryville, Missouri hired him to run a crew to frame homes. He did that for about six months and then started his own construction business. He ran that for about five years until he got a call from Respondent asking if he wanted a job with them. Petitioner went to work for Respondent in 2009 running a continuous miner. He testified that there were two miners running in the unit. While one unit was mining on one side, the other machine was being set up on the other side. He testified that while setting up his machine he would be catching all the dust coming from the other side. Petitioner testified that he ran the miner for about two years and then began working as a supervisor.

Petitioner testified that he first noticed breathing problems when he had shortness of breath while walking the mine before moving the belts. He testified that he would stop and start breathing real heavy. A couple of EMTs in the unit would stop and ask him what was wrong. Petitioner testified that at the same time that he was having those problems he had a wellness test which revealed some heart issues. He had a heart catheterization and found out that he had 40 and 50 percent blockage in two arteries of his heart. Petitioner testified that from the time he first noticed his breathing problems until he left the mine they got worse. Petitioner testified that

before he was 60 years old he walked the face and back and forth where they were mining all the time. He testified that it got to where he would have to sit down and take a break and try to compose himself and then get up and do his job.

Petitioner testified that since leaving the mine his breathing problems have gotten worse because he is a pretty active guy. He testified that he rides a bicycle and does a lot of walking. He testified that he hunts. He testified that he is not supposed to hunt by himself because he gets short of breath when he is walking. He testified that he has gone from a regular bike to an ebike because it is so much easier to ride. Petitioner testified that he could walk on level ground at a normal pace 100 yards before becoming short of breath. Petitioner testified that he has 13 steps in his house that go to the basement. When he walks up those he does not realize it, but other people have asked him why his breathing is so hard when he gets to the top of the steps. He testified that in the morning when he wakes up he normally has to cough up a clear liquid. He testified that this started about the time he retired at age 64. He testified that when he worked in the mines he used to cough up gray or black stuff but after about six months it became kind of clear.

Petitioner testified that Dr. Green is his treating physician. He testified that he went to Dr. Green with the heart problems and also talked to him about his breathing problems. Dr. Green was aware that he worked in the dust. Petitioner testified that in addition to his breathing difficulties he has a problem with his back. He testified that he recently had radio wave ablations because of a compressed spine. Petitioner testified that he also has some cardiac issues. He takes a cholesterol medication and a blood pressure medication.

Petitioner testified that when he retired from Respondent he signed up for Social Security and that when he reached age 65 he signed up for Medicare. Petitioner had 21 years of employment with the United Mine Workers and receives a pension from them. Petitioner testified that he has treated with a Dr. Talbert and also treated on a regular basis with Dr. Green. He testified that Dr. Green was aware of the fact that he was a coal miner. Petitioner shared with Dr. Green that he had been diagnosed with black lung. Petitioner testified that he was always honest with his treating physicians as to what problems he had or did not have.

Petitioner testified that from time to time over the years while he was employed in the mines, he had an opportunity to undergo NIOSH chest x-ray screening for black lung. Petitioner testified that he was not sure if he took advantage of that opportunity. He testified that he did it once when he was young but he did not think he ever did it after that. Petitioner testified that he likes to hunt, mostly deer hunting but he also hunts some small game such as rabbits and squirrel with his grandchildren. Petitioner testified that he also likes to hunt mushrooms. He testified that same can involve some significant walking. Petitioner testified that he rides bikes, and he tries to hike as much as he can. Petitioner testified that his doctor told him to try to keep himself in shape as much as possible. He testified that after he retired he gained 20 pounds. He testified that he had a knee that he had some trouble with but they fixed it with therapy. He testified that he also has back problem which started over time and he will have a day or two of hurting when he picks up something too heavy. Petitioner testified that he and his wife travel to Florida each year and spend about three months. Petitioner testified that he is also a fisherman. He testified that he has fished all over Southern Illinois, Missouri, and Kansas. He testified that he used to tournament

fish but quit when he found out they were cheating him. Petitioner testified that he also uses a kayak to fish. He testified that he does not fish as much as he used to. He testified that he used to get in trouble when he got home from fishing too long so he started fishing less and less.

Dr. Suhail Istanbouly is a physician who specializes in pulmonary, critical care, and sleep medicine. Dr. Istanbouly worked in Southern Illinois from April 2003 until April 2019. During his time in Southern Illinois, he worked at the Black Lung Clinic. (PX1, pp. 4-5). Dr. Istanbouly testified that when he was in Southern Illinois between inpatient and outpatient, 10 to 20% of his practice was the care and treatment of miners or former coal miners. Dr. Istanbouly testified that he performed and interpreted pulmonary function tests. He also interpreted chest x-rays himself. Dr. Istanbouly testified that he is not a B-reader. (PX1, pp. 5-6). Dr. Istanbouly practices at Hines VA in Chicago. (PX1, p. 5).

Dr. Istanbouly examined Petitioner on 10/12/21. He saw Petitioner one time at his attorney's request for a workup for his state lung claim. Dr. Istanbouly testified that for many years he performed five to seven such examinations a month always at the request of a claimant's attorney. He still comes to Southern Illinois for two days each month and he sets aside one of those days to perform the type of examinations he performed on Petitioner. (PX1, p. 19). Dr. Istanbouly testified that Petitioner worked as a coal miner for a total of 35 years with 21 years being underground and 14 being on the surface. In addition to coal mining, he worked for short periods as a truck driver, carpenter and farmer. Petitioner's last month of employment was January 2020. In the last year of employment, Petitioner was a mine supervisor underground. Dr. Istanbouly testified that Petitioner left the mine due to a planned retirement. (PX1, pp. 8-9).

According to Dr. Istanbouly's notes, Petitioner never smoked. He had been coughing on a daily basis for years, but Petitioner admitted that the cough was remarkably worse while working in the coal mine. At the time of Dr. Istanbouly's examination Petitioner's cough was productive of slight dark yellowish sputum. While working in the coal mine the sputum production was more abundant and dark in color. Dr. Istanbouly testified that Petitioner noticed that the cough was triggered by strenuous activities. Petitioner reported that in the past he was treated for acute sinusitis once a year on average, but that had not happened since he left the coal mine. Petitioner has mild exertional dyspnea. Petitioner mentioned to Dr. Istanbouly that he walks one to two miles, two to three times a week, however, after walking for .25 miles his breathing starts to get heavier with an occasional wheezing episodes. Petitioner also reported gaining close to 10 pounds after he left the coal mine. (PX1, pp. 9-10).

Dr. Istanbouly testified that Petitioner's spirometry was within normal range per ATS Guidelines, however, the possibility of early stage underlying obstructive lung disease could not be excluded completely based on the fact the FEV1/FVC was very close to the lower limit of normal. Dr. Istanbouly testified that Petitioner's chest x-ray of 3/11/20 revealed mild bilateral interstitial changes more prominent in the mid and lower lung zones. It was consistent with the profusion of 1/0 per the B-reader, Dr. Henry Smith. (PX1, p. 10). Dr. Istanbouly noted that Petitioner's past medical history included coronary artery disease status post cardiac catheterization several years prior which revealed mild coronary artery disease, managed medically only. (PX1, p. 10). On examination, Petitioner's lungs had good air entry bilaterally with no wheezing or rales. (PX1, p. 11). Dr. Istanbouly assessed simple coal workers'

pneumoconiosis (CWP), early stage related to long term coal dust inhalation and chronic bronchitis for which long term coal dust inhalation was a significant contributing factor. Dr. Istanbouly testified that Petitioner's long term coal dust inhalation was a significant contributing factor to his chronic respiratory symptoms, chronic daily cough, sputum production, occasional wheezing, and exertional dyspnea. Dr. Istanbouly testified that it was advisable for Petitioner, from a medical standpoint, to avoid any further coal dust inhalation to prevent the progression of his lung disease. (PX1, pp. 11-12).

Dr. Istanbouly testified that he could not say that all miners with 30 or so years of exposure get CWP, but a significant percentage of them will get some degree of the disease. Dr. Istanbouly testified that a miner could have radiographic abnormalities of CWP on his chest x-ray, but just not have enough to be positive for CWP. He testified that a negative chest x-ray is not enough to rule out CWP. 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 CWP on his x-ray. (PX1, pp. 16-18).

Dr. Istanbouly testified that Petitioner did not have a past history of respiratory disease. He related mild cough with sputum mostly in the morning. The only trigger he identified for his cough was exertion, not smoke, dust, or fumes. Dr. Istanbouly testified that Petitioner was not taking any breathing medications at the time of his examination and based upon the history he obtained, Petitioner had not taken breathing medications in the past. Medications that he was taking were for cholesterol and high blood pressure. (PX1, pp. 19-20). Dr. Istanbouly testified that the medical history he obtained from Petitioner included mild coronary artery disease. Petitioner did not relate to Dr. Istanbouly leaving the mine at the time he did due to an inability to perform the duties of his job or 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. These would include heart disease and deconditioning. Petitioner reported he had gained weight since his retirement. Dr. Istanbouly testified that Petitioner's BMI of 30.4 was mildly obese. Dr. Istanbouly did not review any treatment records regarding Petitioner. (PX1, pp. 20-22).

Dr. Istanbouly testified that there was no indication of restriction in Petitioner. His FEV1/FVC ratio was 67% and the lower limit of normal for his FEV1/FVC was 64.8%. His FEV1/FVC ratio was 90% of predicted. (PX1, pp. 22-23). Dr. Istanbouly has not reviewed any other pulmonary function testing regarding Petitioner. (PX1, pp. 23-24).

Dr. Istanbouly testified that when he met with Petitioner he was presented with a chest x-ray taken on 3/11/20, along with an interpretation of that study by Dr. Henry K. Smith. Dr. Istanbouly has not seen any other chest imaging or interpretation of chest imaging other than the one film and Dr. Smith's interpretation. Dr. Istanbouly is neither an A or B-reader of films. Dr. Istanbouly does not provide profusion ratings on the films that he interprets for black lung. When he interprets a film for black lung, he determines whether the film is positive or negative for same, and if it is positive, he classifies what he sees as early, moderate, or severe. He characterized what he saw on Petitioner's chest x-ray as mild to early pneumoconiosis. Dr. Istanbouly could not say whether the chest x-ray he reviewed had a profusion of 1/0 or 0/1. (PX1, pp. 24-25). Dr. Istanbouly does not do side by side readings of the chest x-rays he

interprets for black lung using the standard ILO films. Dr. Istanbouly testified that he saw mild bilateral and interstitial changes which were more prominent in the mid and lower lung zones. He testified that by more prominent, he meant they were in the upper lung zones as well but were more prominent in the middle and lower lung zones. (PX1, p. 25). Dr. Istanbouly testified that one must be a susceptible host to develop CWP. He testified that not all coal miners develop pneumoconiosis. (PX1, pp. 25-26).

Dr. Henry K. Smith interpreted Petitioner's chest x-ray of 3/11/20. He interpreted same as positive for pneumoconiosis of profusion 1/0 with P/P opacities in the mid and lower lung zones. Dr. Smith is a board-certified radiologist and NIOSH B-reader. (PX2)

Dr. Cristopher Meyer reviewed chest x-ray of Petitioner dated 4/1/09 from Herrin Hospital and chest x-ray from Harrisburg Medical Center dated 3/11/20. Dr. Meyer testified that the 2009 examination was Quality 2 due to improper position and poor contrast. The 2020 examination was Quality 1. Dr. Meyer's interpretation of the films was that the lungs were clear and there were no small or large opacities. Dr. Meyer testified that the 2009 examination revealed no radiographic findings of CWP. The 2020 examination was essentially normal except for some atherosclerotic calcification in the thoracic aorta. (RX1, pp. 40-41). After reviewing the chest x-rays and completing his B-reading form, Dr. Meyer reviewed Dr. Henry K. Smith's interpretation of the 3/11/20 chest x-ray. (RX1, p. 41). Dr. Meyer testified that Section 4C of the B-reading form is essentially set up to allow the interpreting physicians to not have write out other commonly seen findings on chest radiographs but rather to just check boxes. (RX1, pp. 41-42). Dr. Meyer testified that with regard to the 3/11/20 film, in addition to checking the box for AA, which is calcification in the atherosclerotic aorta, Dr. Smith also checked the box for PI, which is thickening of the minor fissure or the horizontal fissure. Dr. Meyer testified that this finding has nothing to do with exposure to coal dust or vapors. He testified that exposure to other dust such as asbestos, may cause an inflammatory response in the pleura rather than in the lung parenchyma which may cause some thickening of the minor fissure. (RX1, pp. 42-43). Dr. Meyer testified that there is value in having serial chest x-rays to review. If there are findings on a chest x-ray, a follow up examination will tell the reader whether that finding is an acute finding or a chronic finding. He testified that he expects dust exposure to be a chronic and persistent finding. If there are things present on one chest x-ray that disappears on the next, he knows that it is not related to dust exposure. (RX1, p. 45).

Dr. Meyer has been board certified in radiology since 1992. (RX1, p. 7). 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. (RX1, p. 19-21). 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. (RX1, p. 31). 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 and was a member of the ACR Pneumoconiosis Task Force, which completed a new syllabus for the B-reading course as well as a test that was delivered to NIOSH in 2017. (RX1, pp. 31-32).

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. The course participants will then review a series of practice examples with mentors overseeing the practice examples. Dr. Meyer testified that the faculty for the course is typically experienced senior level B-readers who have been involved in the process for quite some time. (RX1, pp. 32-33). Dr. Meyer testified that typically after one takes the B-reading course, he takes the B-reading exam. 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. (RX1, p. 33). Dr. Meyer testified that generally radiologists have about 10% higher pass rate than other specialties. (RX1, pp. 33-34). 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. (RX1, pp. 34-35).

Dr. Meyer testified that the B-reader looks at the lungs to decide whether there are any small nodular opacities and based on the size and appearance of the small opacities they are given a letter score. (RX1, p. 22). 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, are described by small linear opacities. (RX1, p. 28). 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 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. (RX1, pp. 22-23). Dr. Meyer testified that profusion is basically trying to describe the density of the small opacities in the lung. (RX1, p. 30).

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. (RX1, p. 54). 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 CWP. 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. (RX1, pp. 54-55). Dr. Meyer testified that one of the issues with interpreting a chest x-ray for pneumoconiosis is making sure the individual who is interpreting the study has ample experience reading them to be able to sort out what the background variation is for normal. 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 Dr. Meyer 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. (RX1, p. 56). Dr. Meyer testified that on average he performs 100 to 200 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. (RX1, p. 73).

Dr. Meyer testified that there are studies that show that at autopsy 50% or more of long term coal miners have coal macules that can be diagnosed by pathology that have not reached the degree of severity to be seen on chest x-ray. Dr. Meyer testified that if he reads an x-ray as positive and the worker had a sufficient history to cause CWP that would warrant a finding of CWP. He testified that if he finds a chest x-ray negative that would not necessarily rule out that the miner may have pneumoconiosis pathologically. (RX1, p. 95). 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 CWP. (RX1, p. 60). Dr. Meyer testified that it is not possible to have CWP 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. (RX1, p. 62). Dr. Meyer testified that simple pneumoconiosis typically will not progress once exposure ceases. (RX1, p. 98).

Dr. David Rosenberg conducted a review of medical records and a chest x-ray regarding Petitioner at the request of Respondent's counsel. (RX3, pp. 11-12). Dr. Rosenberg has been board certified in internal medicine since 1977. After graduating from medical school Dr. Rosenberg did a pulmonary fellowship at the National Institute of Health in Bethesda, Maryland. Dr. Rosenberg received his board certification in pulmonary disease in 1980. (RX3, p. 5). Dr. Rosenberg testified that he received his board certification in occupational medicine in 1995. (RX3, p. 6). Dr. Rosenberg has been a B-reader since July 2000. He is a member of the American Thoracic Society and American College of Chest Physicians. (RX3, pp. 7-8). Dr. Rosenberg has lectured by invitation on a number of subjects through the years. These topics include interstitial lung disease, chronic obstructive lung disease, pulmonary stress testing, pulmonary function testing, exercise testing and occupational lung disease. (RX3, p. 10). Dr. Rosenberg has patients in his clinical practice who have black lung. (RX3, p. 11).

Dr. Rosenberg reviewed a chest x-ray of Petitioner dated 3/11/20. Dr. Rosenberg testified that the film was considered quality 1 and 0/0 profusion without evidence of a pneumoconiosis. (RX3, p. 25-26). Dr. Rosenberg testified that for a proper reading of a chest x-ray for pneumoconiosis, the reader first assesses the quality of the film. The reader classifies whether there are parenchymal changes present. The reader outlines whether there are small opacities and outlines the type of opacities, whether they are micronodular or linear. The reader then outlines whether the opacities are in the upper, middle or lower lung zones. The reader identifies the profusion rating. He testified that the profusion is the density of the changes present. (RX3, pp. 26-27). Next the reader outlines if there are any large opacities. The reader also notes any type of pleural abnormalities. The reader also notes other abnormalities. (RX3, pp. 26-27). Dr. Rosenberg testified that the film of the patient is looked at side by side with the standard ILO films. He testified that he did this with Petitioner's chest x-ray. He testified that a profusion of 1/0 is a positive film for pneumoconiosis. A profusion of 0/1 is not considered positive for pneumoconiosis. (RX3, pp. 27-28).

Dr. Rosenberg testified that the distinction between a film that is minimally negative or minimally positive for pneumoconiosis is a fine one and one has to be trained and experienced to interpret the film. Dr. Rosenberg testified that the use of profusion ratings avoids imprecise descriptive terms of what is seen on the film such as mild or early pneumoconiosis. He testified

that profusion ratings remove subjective descriptions of interstitial changes. Dr. Rosenberg testified that what mild or early pneumoconiosis means to one person is not necessarily the same as what mild or early would mean to another person. Dr. Rosenberg testified that all A and B-readers know what a profusion of 1/0 means. (RX3, p. 28) Dr. Rosenberg testified that indicating the lung zones where opacities are present is important because different disease processes present in different lung zones. Dr. Rosenberg agreed with Dr. Meyer that CWP is an upper lung zone predominant disease process. He testified that this was not what Dr. Smith saw on Petitioner's chest x-ray. (RX3, pp. 28-29). Dr. Rosenberg testified that he did not see any emphysema on Petitioner's chest x-ray. He testified that none of the B-readers whose reports he reviewed indicated that emphysema was present in Petitioner. Dr. Rosenberg testified that making the distinction between a film that is category 1 pneumoconiosis and a film that is negative for same is a point of emphasis in the B-reading syllabus, course, and exam. (RX3, p. 29).

Dr. Rosenberg testified that it is unlikely for CWP 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 levels until he reaches retirement age. Dr. Rosenberg testified that one must be a susceptible host to develop pneumoconiosis. He testified that not all coal miners develop pneumoconiosis. He testified that most will not develop same. (RX3, p. 22). Dr. Rosenberg testified that the Work-Related Lung Disease Surveillance Report is published by NIOSH every two or three years and the overall prevalence of CWP is a little over 3%. Dr. Rosenberg testified that the duration or intensity of exposure for an individual will not have any importance so far as development of pneumoconiosis if that individual is not a susceptible host. (RX3, pp. 22-23).

Dr. Rosenberg testified that cough is not considered an objective determinant of pulmonary impairment. Dr. Rosenberg testified that the definition of chronic bronchitis is cough and sputum production on a regular basis for three months out of two consecutive years. (RX3, p. 38). Dr. Rosenberg testified that while Dr. Istanbouly outlined chronic coughing in Petitioner's history, such was not outlined in the treatment records. Petitioner had intermittent episodes of acute respiratory infections. The treatment records do not outline chronic bronchitis symptoms or manifestation of chronic cough and sputum production. (RX3, pp. 30-31).

Dr. Rosenberg is familiar with the *AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition*, Chapter 5, the Pulmonary System. He testified 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. (RX3, p. 21). Dr. Rosenberg testified that based on the pulmonary function testing performed on Petitioner there was not any indication of restriction or evidence of obstruction. Petitioner's diffusion capacity was normal. Dr. Rosenberg testified that if he applied Table 5-4 of the *Guides* to the results from the pulmonary function testing performed on Petitioner, he would fall in Class 0 impairment. Dr. Rosenberg testified that this finding was based on Petitioner's having a forced vital capacity that was equal to or greater than 80% of predicted, an FEV1 that was equal to or greater than 80% of predicted, an FEV1/FVC greater than the lower limit of normal or 75% of predicted and a diffusion capacity greater than 75% of predicted. (RX3, pp. 23-24). Dr. Rosenberg testified that

there is not any clinical significance to subradiographic pneumoconiosis. Same would be associated generally with normal pulmonary function test and normal gas exchange. Petitioner's diffusion capacity of 85% would support the fact that there was no clinically significant scarring of the lung parenchyma due to dust. (RX3, p. 24).

Dr. Rosenberg testified that when he has an individual such as Petitioner in his clinical practice with a complaint of exertional dyspnea and results from pulmonary function testing such as he had, he would look to causes other than respiratory disease to explain that symptom. He testified that heart disease would be high on that list. Dr. Rosenberg testified that for individuals of Petitioner's age when his testing was done, he would also consider deconditioning as a potential cause of his exertional dyspnea. Dr. Rosenberg testified that based upon his pulmonary function testing Petitioner was capable of heavy manual labor from a respiratory standpoint. Dr. Rosenberg testified that Petitioner's pulmonary function testing does not explain his complaint of exertional dyspnea. (RX3, pp. 24-25). Dr. Rosenberg concluded that Petitioner did not have pneumoconiosis or any respiratory condition which was caused or aggravated by his employment in the coal mines, and he was not disabled from a pulmonary perspective. (RX3, p. 31).

Dr. Rosenberg testified that a tissue reaction due to trapped coal mine dust is required either in the airways or in the parenchyma to have CWP. He testified that this tissue reaction can be called scarring or fibrosis. (RX3, p. 45). Dr. Rosenberg testified that the scar tissue of CWP cannot perform the function of normal, healthy lung tissue. He testified that most patients with simple disease have preserved lung function. (RX3, p. 46). Dr. Rosenberg testified that for determining CWP between radiographic study and pathologic study, pathology is the gold standard. He testified that an individual can have CWP pathologically with a negative chest x-ray. (RX3, pp. 71-72).

Medical records from Perry County Hospital were admitted into evidence. Petitioner was seen in the emergency department on 9/21/05 with complaints of throat swelling. He related waking up at night with some shortness of breath due to difficulty swallowing. He denied a smoking history. His discharge diagnosis was oropharyngeal swelling. (RX4, pp. 318-322). Chest x-ray was performed on January 14, 2015, with indication for same being acute upper respiratory infection. Study was interpreted as revealing no cardiomegaly, pneumonia or interstitial edema. (RX4, p. 310). Chest x-ray was ordered on August 28, 2015, with indication for same being shortness of breath. X-ray was interpreted as negative with no significant change since January 14, 2015, chest x-ray. (RX4, p. 308). Holter monitoring was performed beginning September 4, 2015. Same revealed no evidence of myocardial ischemia. The doctor noted the rare findings of tachycardia with no significant bradycardia did not appear to explain the symptoms described by Petitioner of shortness of breath, fatigue and palpitations. (RX4, p. 289).

Petitioner was seen by Cape Cardiology Group on September 25, 2015, with complaints of fatigue, shortness of breath and palpitations. Stress test performed on that date was interpreted as revealing class 1 normal treadmill exercise study with 88% of output achieved and no evidence of ischemia. He achieved a METs level of 10.1. (RX4, pp. 282, 255-257). In a consultation note of the same date, Petitioner related chest pains external in location that did not radiate on heavy lifting for the past year. Petitioner was concerned due to family history of cardiac disease. Physical examination of the chest revealed the lungs clear to percussion and

auscultation. Impression was chronic stable angina and hyperlipidemia. (RX4, pp. 253-254). Petitioner underwent treadmill exercise study on November 16, 2015. The treadmill exercise study was within normal limits. The impression was moderate coronary artery disease not symptomatic at this time. (RX4, pp. 225-226).

Petitioner was admitted to the hospital on September 6, 2016, with complaint of worsening upper gastric pain. His past medical history was significant for likely undiagnosed reflux disease. Examination of the chest revealed same clear to auscultation. Chest x-ray was stated to be negative for any acute cardiopulmonary process. (RX4, pp. 221-223). In a consultation note by Dr. Steele, it was noted that Petitioner denied shortness of breath. It was noted he could walk for several blocks and go up and down stairs. (RX4, pp. 217-220). Petitioner was discharged on September 7, 2016, with the discharge diagnosis being duodenitis. (RX4, p. 144). On December 21, 2016, Petitioner underwent treadmill and stress echocardiogram. Indication for same was arterial sclerotic heart disease. The study was interpreted as normal. (RX4, pp. 109-110). Petitioner was seen on April 22, 2022, with complaint of left knee pain. Review of systems respiratory was negative for cough or dyspnea. His past medical history included black lung. Examination of the chest revealed normal breath sounds with no adventitious sounds. (RX4, pp. 39-42). Petitioner underwent physical therapy initial evaluation on October 28, 2022. The diagnosis was lower back pain. In the history it was noted that Petitioner was very active picking up too much weight. He put in new windows and flooring in his home on his own. His medical history was positive for clogged arteries. (RX4, pp. 28-30). In Medicare Functional Limitation Report dated October 28, 2022, it was noted that Petitioner's pain prevented him from walking more than one half mile or sitting more than one half hour. He reported he could perform most of his homemaking/job duties but the pain prevented him from performing more physical stressful activities such as lifting and vacuuming. (RX4, pp. 22-23). On October 31, 2022, Petitioner related that his low back was hurting him yesterday while he was mushroom hunting. He related that walking on a hill increased his pain. (RX4, p. 18). On November 8, 2022, Petitioner related that he had some pain as a consequence of going up and down his tree stand on the prior day. (RX4, p. 14). On November 9, 2022, Petitioner reported that he was going to be off physical therapy for a week due to hunting season and being out of town. (RX4, p. 13). On April 26, 2023, Petitioner underwent lumbar spine MRI because of low back pain. Same revealed multilevel degenerative changes of the lumbar spine. (RX4, pp. 9-10). Petitioner underwent stress test on May 22, 2023. Indication for same was palpitations and dizziness. The impression was clinically normal response to pharmacological stress test. (RX4, pp. 6-7).

Medical records of Perryville Family Clinic were admitted into evidence. Petitioner was seen on January 14, 2015, with cold symptoms. Symptoms had been present since January 12 and included productive cough, scant brown sputum production, wheezing and shortness of breath. Examination of the chest revealed normal respiratory rate and pattern with no adventitious sounds. Influenza testing was positive for type A. Assessment was influenza with other respiratory manifestations. (RX5, pp. 127-130). Petitioner underwent chest x-ray on January 14, 2015. Same was interpreted as revealing no cardiomegaly, pneumonia, or interstitial edema. (RX5, pp. 131-132). Petitioner underwent EKG on August 28, 2015, which was interpreted as normal. Petitioner was seen in the office on August 28, 2015, with complaint of fatigue and shortness of breath. Petitioner was recorded to be a never smoker. He had an active

lifestyle. He related dyspnea/wheezing or shortness of breath for the past year. He reported bilateral lower extremities symptoms at the end of a work day with exercise limitation and that he would get short of breath and often rested to catch his breath. It was charted that pertinent history included occupational exposure in coal mining. Review of systems respiratory was positive for dyspnea with mild exertion. Petitioner also suffered from GERD. Examination of the chest revealed normal respiratory rate with no adventitious sounds. (RX5, pp. 119-124). Petitioner underwent chest x-ray on August 31, 2015. Same was compared to chest x-ray taken on January 14, 2015. The interpretation was negative PA and left lateral chest without significant interval change. (RX5, pp. 117-118). Petitioner was seen on October 5, 2015, for two week recheck of his hyperlipidemia. Review of systems cardiovascular was positive for palpitations. Review of systems respiratory was positive for dyspnea and mild exertion. Examination of the chest revealed normal appearance and rate with no adventitious sounds. (RX5, pp. 108-111). Petitioner was seen on December 14, 2015, for follow up regarding mixed hyperlipidemia. Review of systems respiratory was negative for cough, dyspnea or hemoptysis. Examination of the chest revealed normal appearance and rate with no adventitious sounds. (RX5, pp. 104-106). Petitioner was seen on July 28, 2016, with complaint of chest pain primarily in the left high anterior chest without radiation. Associated symptoms included shortness of breath with exertion. Review of systems respiratory was negative for cough and dyspnea. Examination of the chest revealed normal appearance and rate with no adventitious sounds. (RX5, pp. 99-102). Petitioner was seen on September 14, 2016, in follow up for hospitalization for duodenitis. Review of systems respiratory was negative for cough and dyspnea. Examination of the chest revealed normal appearance and rate with no adventitious sounds. (RX5, pp. 95-97).

Petitioner was seen on February 6, 2017. Review of systems respiratory was negative for cough and dyspnea. Examination of the chest revealed normal appearance and rate with no adventitious sounds. (RX5, pp. 90-93). Petitioner was seen on August 30, 2017. Review of systems respiratory was negative for cough and dyspnea. Examination of the chest revealed normal appearance and rate with no adventitious sounds. (RX5, pp. 83-86). Petitioner was seen on March 5, 2018, in follow up for mixed hyperlipidemia. Review of systems respiratory was negative for cough or dyspnea. Examination of the chest revealed normal appearance and rate with no adventitious sounds. (RX5, pp. 78-81). Petitioner was seen for follow up on October 22, 2018. On that date he related chest pain and shortness of breath. His review of systems respiratory was negative for cough and dyspnea. Examination of the chest revealed normal appearance and rate with no adventitious sounds. His EKG on that date was negative. (RX5, pp. 68-71). Petitioner was seen on May 6, 2019, in follow up for hyperlipidemia. He complained of fatigue, chest pain and shortness of breath with edema. Review of systems respiratory was negative for cough or dyspnea. Examination of the chest revealed normal appearance and rate with no adventitious sounds. (RX5, pp. 59-62). Petitioner was seen on November 12, 2019. He complained of fatigue, chest pain and shortness of breath with edema. He also related some sinus problems with facial pressure, nasal congestion and sore throat present for two days. Examination of the chest revealed normal appearance and rate with no adventitious sounds. Assessment was hyperlipidemia and acute maxillary sinusitis. (RX5, pp. 54-57). Petitioner was seen on November 29, 2019, with complaints of chest pain, cough, headache and sore throat. It was indicated that this began three weeks prior. Examination of the chest revealed normal appearance and rate with decreased breath sounds in the bases and coarse breath sounds in the left lower lobe. Assessment was acute upper respiratory infection. (RX5, pp. 49-52).

Petitioner was seen on May 12, 2020, in follow up for hyperlipidemia. Review of systems respiratory was negative for cough and dyspnea. Examination of the chest revealed normal appearance and rate with no adventitious sounds. (RX5, pp. 46-48). Petitioner was seen on November 10, 2020. Review of systems respiratory was negative for cough or dyspnea. Petitioner was noted to be a never smoker. Examination of the chest revealed normal respiratory rate and pattern with no adventitious sounds. (RX5, pp. 40-42).

Petitioner was seen on May 11, 2021. He complained of right shoulder pain radiating down his right arm. His review of systems respiratory was negative for cough or dyspnea. Examination of the chest revealed normal breath sounds with no adventitious sounds. (RX5, pp. 33-36). Petitioner was seen on November 2, 2021. Review of systems respiratory was negative for cough or dyspnea. Examination of the chest revealed normal breath sounds with no adventitious sounds. (RX5, pp. 27-30). Petitioner was seen on April 22, 2022. Petitioner related pain in the left knee. He gave history of onset three weeks prior while changing windows in his house he was going up and down on a small step stool. Review of systems respiratory was negative for cough or dyspnea. Examination of the chest revealed normal rate and breath sounds with no adventitious sounds. (RX5, pp. 20-23). Petitioner was seen for physical therapy initial examination on April 27, 2022, for left knee stiffness and effusion. Aggravating factor was walking. (RX5, pp. 16-18). Petitioner was seen on October 21, 2022. His only complaint was backache for the last four months. Review of systems respiratory was negative for cough or dyspnea. His past medical history included black lung. Examination of the chest revealed normal breath sounds with no adventitious sounds. (RX5, pp. 8-12).

Medical records of St. Francis Medical Center were admitted into evidence. Petitioner was seen on October 30, 2018, for treadmill stress echocardiogram. Study was interpreted as class 3 probably positive treadmill EKG and echocardiogram based on chest pain symptoms with no evidence of EKG or echocardiographic abnormalities present. It was charted that Petitioner's chest pain was associated with shortness of breath. (RX6, pp. 35-39). Petitioner was admitted to the hospital on October 31, 2018. Review of systems respiratory was negative. Examination of the chest revealed normal effort and breath sounds. The assessment was chest pain and it was noted he suffered coronary artery disease with progressive resistant angina recently increasing. On this date Petitioner underwent cardiac catheterization which revealed left anterior descending artery to have 40% stenosis. (RX6, pp. 92-95, 107-108).

Petitioner was seen on October 19, 2020, for follow up. He denied any chest pain in the past year. He denied dyspnea. It was noted that his past medical history was significant for moderately severe artery disease. Review of systems respiratory was negative. Examination of the chest revealed normal effort and breath sounds. His diagnoses were chronic moderate coronary disease without evidence of ischemia at this time; chronic dyspnea on exertion but stable as well; hyperlipidemia; mild obesity; and hypertension. (RX6, pp. 11-14).

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 causally 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 with Respondent and that his current condition of ill-being is causally related to an occupational exposure.

All of the retained physicians interpreted the chest x-ray of Petitioner dated 3/11/20. In addition, Dr. Meyer reviewed a chest x-ray dated 4/1/09. Dr. Rosenberg described the protocol for a proper reading of a chest x-ray for pneumoconiosis. 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. 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 pneumoconiosis. Dr. Rosenberg testified that the use of profusion ratings avoids imprecise descriptive terms of what is seen on the films such as mild or early pneumoconiosis. Dr. Rosenberg testified that the use of profusion ratings removes subjective descriptions of what interstitial changes are present. Based on the above, the Arbitrator gives no weight to Dr. Istanbouly's interpretation of Petitioner's 3/11/20 chest x-ray.

Dr. Smith interpreted the chest x-ray of 3/11/20 as positive for pneumoconiosis, profusion 1/0 with p/p opacities in the bilateral mid and lower lung zones. He noted no opacities in the upper lung zones on his B-reading form. Drs. Meyer and Rosenberg interpreted the same chest x-ray as negative for pneumoconiosis. Dr. Meyer and Dr. Rosenberg testified that CWP is typically an upper lung zone predominant process and very rarely is CWP found in the mid and lower lung zones and not in the upper lung zones. Dr. Smith's interpretation was not consistent with the general presentation and progression of CWP. Dr. Meyer also interpreted chest x-ray of 4/1/09 as negative for pneumoconiosis. Dr. Meyer testified that it is of value to have serial films for comparison. He testified that if there are findings on a chest x-ray, seeing a follow up examination will tell the reader whether that finding is an acute finding or a chronic finding. The Arbitrator finds Dr. Smith to be less credible than Dr. Meyer. See *Stewart v. The American Coal Co.*, 21 IWCC 0338, *Brotherton v. Coal Field Construction*, 23 IWCC 0282 and *Hudgens v. The American Coal Co.*, 23 IWCC 0528.

The Arbitrator notes the testimony of Dr. Meyer that a negative chest x-ray would not rule out that Petitioner could have CWP 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 CWP. Rather the issue is whether Petitioner has proven that he does. *Quinn v. The American Coal Co.*, 20 IWCC 0326.

Dr. Istanbouly also diagnosed Petitioner with chronic bronchitis. Dr. Istanbouly testified that Petitioner's history of cough productive of sputum met the criteria for chronic bronchitis. He testified that Petitioner's long term coal dust inhalation was a significant contributing factor to his chronic respiratory symptoms including chronic daily cough, sputum production, occasional wheezing and exertional dyspnea. Dr. Rosenberg testified that the history of chronic coughing recorded by Dr. Istanbouly was not outlined in Petitioner's treatment records. Dr. Rosenberg testified that the treatment records did not contain chronic bronchitis symptoms or manifestation of chronic cough and sputum production. The Arbitrator finds that the history of chronic coughing and sputum production provided to Dr. Istanbouly is not corroborated by the treatment records which were admitted into evidence. The Arbitrator finds that Petitioner does not suffer from chronic bronchitis.

The Arbitrator finds that Petitioner failed to prove by a preponderance of the evidence that he suffered from coal workers' pneumoconiosis or any other occupational disease related to his exposure while employed by Respondent.

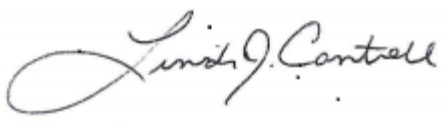
Issue (O): Whether Petitioner proved timely disablement pursuant to Sections 1(e) and (f) of the Occupational Diseases Act?

The Arbitrator finds that Petitioner failed to prove by a preponderance of the evidence that he suffered a timely disablement as described in Sections 1(e) and (f) of the Occupational Diseases Act.

Petitioner testified that he retired on 1/2/20 because he had had enough. Petitioner was 64 and a half years old when he retired. Petitioner did not relate to Dr. Istanbouly a past history of respiratory disease. Petitioner did not relate to Dr. Istanbouly leaving the mine at the time he did due to an inability to perform the duties of his job or due to respiratory disease. There was no evidence that any physician ever restricted Petitioner from work as a result of an occupational lung disease. Petitioner was not taking any breathing medication at the time of Dr. Istanbouly's examination and based upon the history Dr. Istanbouly obtained, Petitioner had not taken breathing medications in the past. Dr. Rosenberg testified that from a respiratory standpoint, Petitioner was capable of heavy manual labor. He testified that Petitioner's objective pulmonary function testing did not explain his complaint of exertional dyspnea.

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

Given the Arbitrator's findings on disease and causation, the Arbitrator denies permanent partial disability benefits herein.



Arbitrator Linda J. Cantrell DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC005133
Case Name	Diego Diaz v. Reliant Transportation/MV Transportation
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0250
Number of Pages of Decision	19
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Jordan Browen
Respondent Attorney	Rich Lenkov

DATE FILED: 5/30/2025

/s/Amylee Simonovich, Commissioner

Signature

25IWCC0250

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

Diego Diaz,

Petitioner,

vs. NO: 23 WC 005133

Reliant Transportation/MV Transportation,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by both parties herein and notice given to all parties, the Commission, after considering the issues of accident, causation, medical expenses, prospective medical, temporary total disability, permanent partial disability, 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.

In the interest of efficiency, the Commission primarily relies on the detailed recitation of facts provided in the Decision of the Arbitrator, however, the Commission also considered the following facts.

A video of the inside of the Petitioner's vehicle at the time of the impact on September 1, 2022 was introduced into evidence by Respondent. RX1. The video showed Petitioner in the driver's seat, with one passenger in the seat next to him and one passenger in the rear seat. The video was 21 seconds long and demonstrated the impact of the collision, with a short interval prior to and following the collision. There was limited motion of the Petitioner as a result of the impact.

Respondent also introduced the Section 12 report of Dr. Nikhil Verma, from his December 1, 2023 examination of Petitioner relative to his left shoulder complaints. RX3. Dr. Verma obtained a history from the Petitioner and reviewed reports and examinations from Regenerative Pain and Spine (10/17/23, 11/29/22, 12/2/22, 12/13/22) and First Choice Occupational Health (2/9/23). He noted Petitioner's past medical and surgical history, current medications, allergies, social history, physical examination and diagnostic imaging.

Dr. Verma diagnosed Petitioner with left shoulder age-related impingement/rotator cuff

disease. Petitioner was not found to demonstrate overt malingering or exaggeration. Petitioner's subjective complaints were consistent with the x-ray findings indicating chronic AC joint arthropathy with secondary impingement. Dr. Verma noted he did not see a clear relationship between the Petitioner's current condition and the work injury. He based this upon the x-ray findings which showed chronic rotator cuff disease, as well as the lack of documentation of an abnormal shoulder examination by the physicians at the time of his visit. Furthermore, Dr. Verma found there had been no prescribed treatment for the shoulder since the initial visit. As such, he opined the current findings were consistent with age-related conditions of the shoulder.

Dr. Verma again noted he did not see clear evidence of any treatment to the shoulder. However, he indicated that if Petitioner had sustained a shoulder strain, the appropriate treatment would have been ice, anti-inflammatories, and a short course of physical therapy over two to four weeks.

He again stated in his opinion, there had been no left shoulder treatment that was related to the work activities and indicated no additional treatment as it related to the work injury was recommended. Dr. Verma found Petitioner could return to work full duty as it related to his left shoulder with no recommended restrictions. He placed Petitioner at maximum medical improvement with regard to the left shoulder.

Given he did not identify any diagnosis of the shoulder related to the work injury, he noted the Petitioner's AMA impairment rating relating to the left shoulder condition would be 0%.

Respondent's other Section 12 examiner, Dr. Kern Singh, was noted by the Arbitrator to have submitted a report of his December 7, 2023 examination of Petitioner. RX4. Dr. Singh reviewed Petitioner's medical history, including reports and examinations from Regenerative Pain and Spine (10/17/23, 11/29/22, 12/2/22, 12/13/22) and First Choice Occupational Health. He noted Petitioner's current symptoms, past medical and surgical history, medications, allergies, childhood illnesses, recreational activities, review of systems, social history, occupational history. He also detailed his findings from a physical examination of Petitioner.

Dr. Singh concluded that Petitioner had suffered cervical and lumbar muscular strains and that these strains were indeed work related. He found the Petitioner's complaints were "non-anatomic" in nature. He found the treatment provided was excessive, noting that a course of four weeks of conservative treatment such as physical therapy was reasonable and necessary to address the soft tissue muscular strain of the cervical and lumbar spine. He determined that the strains were resolved, and that Petitioner could return to work full duty with no restrictions.

Based upon Dr. Singh's finding that Petitioner suffered from cervical and lumbar muscular strains, he opined that the 6th Edition of the AMA Guidelines dictated that the diagnoses defaulted to a Class 0 and no required modifiers, resulting in a 0% impairment rating for both diagnoses.

After considering both the video and opinions of Drs. Verma and Singh indicating that Petitioner had no permanent impairment, the Commission finds that the evidence does not support the Arbitrator's award of 7.5% loss of use of the person as a whole.

25IWCC0250

The Commission modifies the §8.1b(b) Factor (i) on page 9 of the Decision, striking the paragraph in its entirety and replacing it with "With regard to subsection (i) of §8.1b(b), Respondent submitted two AMA ratings for admission. Both Dr. Verma and Dr. Singh assessed a 0% AMA rating, pursuant to the 6th Edition of the AMA Guidelines. This factor is given some weight."

The Commission further affirms the Arbitrator's decision to deny penalties pursuant to §19(l), §19(k) and attorney's fees pursuant to §16.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on October 11, 2024, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical services as provided in Sections 8(a) and 8.2 of the Act, specifically:

1. Advance Spine & Rehab Center: ($11,628.32)
2. Regenerative Pain and Spine: ($19,635.00)
3. Advance Care Rx: ($928.80)
4. Midwest Pain Specialist: ($700.00)
5. American Diagnostic MRI: ($4,500.00)
6. Metro North Surgical Center: ($39,000.00)
7. Gold Coast Anesthesia: ($4,153.00)
8. First Choice Occupational Health ($300.00)

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner permanent partial disability benefits of $480.00/week for 25 weeks, because the injuries sustained caused the 5% loss of use of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

MAY 30, 2025

o: 5/20/2025
AHS/kjj

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

051

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC005133
Case Name	Diego Diaz v. Reliant Transportation / MV Transportation
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Crystal Caison, Arbitrator

Petitioner Attorney	Anthony Ivone, Julio Costa
Respondent Attorney	Rich Lenkov

DATE FILED: 10/11/2024

/s/Crystal Caison, Arbitrator

Signature

INTEREST RATE WEEK OF OCTOBER 8 2024 4.305%

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

Diego Diaz
Employee/Petitioner

v.

Reliant Transportation/MV Transportation
Employer/Respondent

Case # **23** WC **005133**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Crystal L. Caison**, Arbitrator of the Commission, in the city of **Chicago, Illinois**, on **July 3, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ Is Petitioner entitled to any prospective medical care?
L. ☒ What 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, **September 1, 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 $**41,600.00**; the average weekly wage was $**800.00**.

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

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

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

ORDER

The Arbitrator finds that Petitioner did sustain an accident on September 1, 2022 that arose out of and in the course of his employment with the Respondent.

The Arbitrator finds that the Petitioner has met his burden of proving by preponderance of evidence that his current condition of ill-being as to his neck, low back and left shoulder are causally related to the work accident of September 1, 2022.

The Arbitrator orders the Respondent to pay reasonable and necessary medical services as provided in Sections 8(a) and 8.2 of the Act and more specifically as follows:

1. Advance Spine & Rehab Center: **($11,628.32)**
2. Regenerative Pain and Spine: (**$19,635.00)**
3. Advance Care Rx: (**$928.80**)
4. Midwest Pain Specialist: (**$700.00**)
5. American Diagnostic MRI: **($4,500.00**)
6. Metro North Surgical Center: (**$39,000.00**)
7. Gold Coast Anesthesia: (**$4,153.00**)
8. First Choice Occupational Health (**$300.00**)

Respondent shall pay Petitioner the sum of $**480**/week for a period of **37.5 weeks**, because the injuries sustained permanent partial disability to the extent of **7.5%** loss of use of person as a whole, as provided in §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

OCTOBER 11 2024

Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Diego Diaz	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 23WC005133
Reliant Transportation/MV Transportation.	)	
	)	
	)	
Respondent.	)	

PROCEDURAL HISTORY

This matter proceeded to hearing on July 3, 2024 before Arbitrator Crystal L. Caison. The issues in dispute include accident, causal connection, medical bills, nature and extent and penalties (AX 1).

Petitioner offered exhibits 1-13 into evidence. Respondent objected to Petitioner's Exhibit 1 based on relevance. The Arbitrator overruled the objection and admitted Petitioner's Exhibit 1.

Respondent offered exhibits 1-9 into evidence. Petitioner objected to Respondent's Exhibit 1, on the basis of foundation and chain of custody, Exhibits 5, 6 & 8 on the basis of foundation and Exhibit 7 on relevance. Respondent withdrew Respondent's Exhibit 2. The Arbitrator overruled the objections as to Exhibits 1, 6, 7 & 8. As to Respondent Exhibit 5, the Petitioner's objection was sustained and Respondent's Exhibit 5 was rejected by the Arbitrator.

THE ARBITRATOR MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner's Testimony

Petitioner testified that on September 1, 2022, he was employed by Reliant/MV Transportation as a driver. (TX, 22-23). He stated that his main duties included driving children to and from school in the mornings and afternoons, inspecting the buses, and reporting any issues. (TX, 23-24). When asked about the circumstances surrounding his work injury, Petitioner stated that a truck struck his vehicle from the rear while he was stopped at an intersection as he was driving a student home. (TX, 25-26). Petitioner testified that immediately after the collision he "controlled the vehicle… avoided further accidents… reassured [his] passengers," and called a supervisor to review the accident. (TX, 26-27). Petitioner described feeling very

tense, shaken, and in pain following the accident. (TX, 29). He also expressed feeling concerned for himself and his passengers. (*Id.*).

When asked if he sought medical treatment after the collision, Petitioner stated that he did seek medical care and that he informed his doctor that his neck, middle and lower back, and left shoulder were in pain. (TX, 31). Petitioner testified that after his physical examination, he started attending physical therapy about three to five times a week. (*Id.*). He further testified that the therapy did provide some pain relief, but that he was ultimately "not progressing very well." (TX, 32).

Petitioner stated that he saw another doctor who recommended him for diagnostic MRIs. (*Id.*). Petitioner also stated that upon reviewing the results of the MRIs, he was recommended for spinal injections. (TX, 33). Petitioner later received the injections to both his neck and lower back. (TX, 35). When asked if the injections provided any pain relief, Petitioner testified that they did help. (*Id.*). He also testified that throughout this time he continued physical therapy until he was eventually discharged from the course and by his doctor. (*Id.*). Petitioner testified that he still feels pain in his neck, back, and left shoulder. (TX, 35-36). Since the day of the incident, Petitioner's level of pain has declined, however some pain persists.(TX, 36).

After the collision, Petitioner did not return to work at Reliant/MV Transportation. (*Id.*). Petitioner testified that throughout his treatment, he was placed on work restrictions. (*Id.*). Petitioner first attempted to return to work at MV Transportation, but ultimately began working at Range USA where he suffered another, unrelated, work accident that injured his right shoulder. (TX, 37).

On cross-examination, Petitioner confirmed that he suffered a right shoulder injury while working at Range USA on November 6, 2022. (TX, 38). Petitioner also confirmed he received treatment for this injury. (TX, 39). Petitioner clarified that he did undergo a rotary cuff surgery for his right shoulder. (TX, 47). Petitioner did not return to work for Range USA following this accident as he was let go without explanation. (TX, 48-49).

When asked if there are any activities Petitioner cannot do now that he could prior to his November accident but after his September accident, Petitioner stated that what hurts him the most is not being able to professionally drive. (TX, 57). He clarified that this hurts him both financially and physically. (*Id.*). Petitioner testified that when he attempted to return to work as a driver, Reliant/MV Transportation "closed the door." (TX, 58). He further testified that since then he has not applied to be a driver elsewhere, but he did apply and eventually worked for Amazon after his termination with Range USA. (TX, 59).

Petitioner confirmed that he was last treated for his injuries related to his work accident at Reliant/MV Transportation in February 2023 and was released without work restrictions. (*Id.*). He also confirmed that he is not currently taking prescription medication and has not seen a doctor since being

released. (TX, 60-61). Petitioner testified that he is not currently working. (TX, 61). Petitioner agreed that his wages were $20 an hour at Reliant/MV Transportation. (TX, 63).

John Ramonez Testimony

Respondent called John Ramonez, who has been the general manager of MV Transportation for the last five years. (TX, 73). Mr. Ramonez' duties include overseeing the day-to-day operation and finances, ensuring contracts are in compliance, and supporting all staff. (TX, 74). At the time of the incident, Mr. Ramonez was not employed at the Chicago location where Petitioner worked. (*Id.*). Mr. Ramonez testified that he is usually the third person, after dispatch and the safety manager, who is informed of workplace accidents at MV Transportation. (TX, 75). When asked how he became familiar with Petitioner's injury, Mr. Ramonez stated that he was "notified yesterday," the day before the trial on July 3, 2024. (*Id.*).

Mr. Ramonez confirmed MV Transportation's vehicles record videos as an incentive for a safety initiative program that started over ten years ago. (TX, 85). Mr. Ramonez testified that the program allows MV Transportation to identify risky behaviors while driving, and this program was in place on the day of Petitioner's accident. (TX, 86). Mr. Ramonez explained that the video footage is automatically downloaded every time the vehicle returns from a drive and is kept in MV Transportation's drive cam system. (*Id.*). The footage is retrieved by logging into this system and downloading it. (TX, 87). He clarified that no one edits the videos and checks are done periodically to ensure the system is working properly. (*Id.*). Mr. Ramonez testified that he has sometimes reviewed these videos and has reviewed the video of Petitioner's accident on September 1, 2022. (*Id.*). Mr. Ramonez further testified that the video of Petitioner's accident was preserved by following the same process previously mentioned. (TX, 88).

On cross-examination, Mr. Ramonez testified that Petitioner's collision video was automatically uploaded to MV Transportation's system because it was triggered to do so. (TX, 89). Once uploaded, it was reviewed by a safety manager. (*Id.*). On the day of Petitioner's accident, Robert Mendez was the safety manager who downloaded and reviewed the video. (TX, 90).

When asked if the vehicle cameras are on during the entire duration of each drive, Mr. Ramonez stated they are not on the entire duration and instead will only record five seconds before and five seconds after a triggering event. (TX, 90-91). Mr. Ramonez clarified that triggering events might include fast turns, hitting large bumps, and any time a vehicle is impacted. (TX, 91-92). When asked what event triggered the camera to record Petitioner's vehicle, Mr. Ramonez stated that it was the rear-end impact from the other vehicle involved. (TX, 94). Mr. Ramonez stated that once the vehicle was impacted, the camera captured the five seconds leading up to the collision and the five seconds following the collision. (TX, 95). When asked to clarify, Mr. Ramonez testified that he was not 100 percent certain how the system works. (*Id.*). He

further testified that he cannot confirm based on his knowledge whether the cameras are on the entire day. (TX, 96). Mr. Ramonez confirmed that he personally did not download the video from the drive cam system and that he came in possession of the video because it was forwarded to him by Respondent's counsel. (TX, 97-98).

When asked to explain the contents of the video, Mr. Ramonez initially stated he could not identify the people depicted in the video. (TX, 100). He later agreed that the petitioner, assigned attendant, and one student were all in the vehicle. (TX, 101). He pointed out the moment when the vehicle was impacted and when the attendant began notifying dispatch. (*Id.*).

Medical

September 6, 2022-Petitioner presented to Advanced Spine and Rehab Center with complaints of pain in his head, neck, left shoulder, and back. (Petitioner's Exhibit 3, "PX3"). After a physical examination, he was diagnosed with spinal pain with radiculopathy. (*Id.*). The next day, on September 7, 2022, Petitioner presented to Regenerative Pain and Spine, and was seen by Dr. Shoeb Mohiuddin. (Petitioner's Exhibit 4, "PX4"). At this visit, Petitioner was recommended for four to six weeks of physical therapy and was prescribed a TENS Unit to treat his pain. (*Id.*).

October 17, 2022- Petitioner was recommended for lumbar and cervical spine MRIs given his persistent complaints of pain in his neck and back. (*Id.*). The MRIs were later performed on October 25, 2022, at American Diagnostic MRI in Berwyn. (Petitioner's Exhibit 7, "PX7"). The MRI results revealed multilevel disc herniations, multilevel endplate & uncovertebral spurring, and canal/ neuroforaminal impingement. (PX4).

November 1, 2022-Dr. Mohiuddin discussed these results with Petitioner and scheduled lumbar and cervical facet joint injections. (*Id.*). Petitioner continued physical therapy sessions at Advanced Spine and Rehab Center throughout this time. (PX3).

November 4, 2022-Petitioner received Bilateral L4-S1 Lumbar facet joint injections at Metro North Surgical Center. (Petitioner's Exhibit 8, "PX8").

November 29, 2022- Petitioner followed up with Dr. Mohiuddin. Petitioner reported feeling about 70% relief from the lumbar joint injections. (PX4).

December 2, 2022-Petitioner underwent Bilateral C4-C6 Cervical facet joint injections. (PX8). December 12, 2022- Petitioner was discharged from his physical therapy course at Advanced Spine and Rehab Center. (PX3). Petitioner completed about 25 physical therapy sessions between the dates of September 6, 2022, and December 12, 2022. (*Id.*).

December 13, 2022- Petitioner expressed feeling 80% relief from the cervical procedure. (PX4).

Petitioner was discharged from Regenerative Pain and Spine and was recommended by Dr. Mohiuddin to complete his current physical therapy course and graduate to a home exercise program. (PX4).

February 9, 2023, Petitioner presented to First Choice Occupational Health with complaints of pain in his left scapular region, mid-back, and lower back. (Petitioner's Exhibit 10, "PX10"). At this visit, Petitioner was seen by nurse practitioner, Kristin Jeziorny. (*Id.*). Petitioner was again diagnosed with lower back pain, Cervicalgia, and left shoulder pain. (*Id.*). However, it was determined that Petitioner had reached maximum medical improvement and was ultimately discharged with no work restrictions. (*Id.*).

December 7, 2023, Petitioner was evaluated and examined by an Independent Medical Examiner, Dr. Kern Singh. (Petitioner's Exhibit 11, "PX11"). Dr. Singh reviewed Petitioner's medical history, including reports and examinations from Regenerative Pain and Spine and First Choice Occupational Health. (*Id.*). Dr. Singh also conducted a physical examination of Petitioner. (*Id.*). Dr. Singh concluded that Petitioner had suffered cervical and lumbar muscular strains and that these strains were indeed work related. (*Id.*). He determined that the strains were resolved, and that Petitioner could return to work full duty with no restrictions. (*Id.*).

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

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

The Arbitrator observed Petitioner during the hearing and finds him to be a credible witness.

The Arbitrator also observed John Ramonez during the hearing and finds him to be credible, albeit not very persuasive.

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

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

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

Pursuant to Illinois law an accident alleged for the purpose of claiming benefits under the Act, must be traceable to a definite time, place, and cause. Mithiessen & Hageler Zinc Co. v. Industrial Commission, 284 Ill. 378, 120 N.E. 249 (1918) This is a longstanding and necessary requirement that must be met by Petitioner to trigger the protection of the Act. Compensation will be denied if the injury alleged is not shown to be traceable to a definite time, place, and cause. Johnson v. Industrial Commission, 89 Ill.2d 438, 433 N.E.2d 649 (1982)

In this case, the Arbitrator finds Petitioner credibly established a condition of good health prior to his September 1, 2022, accident. The only evidence submitted at hearing of a pre-existing injury relates to an injury on Petitioner's left shoulder for which he received a left elbow tendon repair surgery. However, a careful review of Petitioner's medical records suggests that this prior injury and resulting treatment were inconsequential to his current medical condition and outlook.

It is undisputed that Petitioner was performing his regular duties as a driver at the time of his work accident. Following his injury, Petitioner credibly testified to an immediate onset of pain to his head, neck, mid back, low back, and left shoulder, followed by treatment consisting of MRI testing, physical therapy, and back injections. (PX3, PX4). Petitioner's testimony and medical records show that Petitioner's symptoms have been consistent and ongoing since his work injury on September 1, 2022.

Following the incident, Petitioner presented to Advanced Spine and Rehab Center and Regenerative Pain and Spine with the same complaints previously mentioned. (*Id.*). Petitioner was immediately placed in physical therapy courses by both Drs. Mohiuddin and Fregoso and, after numerous sessions, experienced only mild alleviation and some decrease in pain. (PX3). Due to his slow progression and consistent complaints, Dr. Mohiuddin determined that Petitioner showed "no significant relief with only P[hysical] T[herapy]," and ultimately recommended Petitioner for cervical and lumbar injections. (PX4). In follow-up visits with Dr. Mohiuddin, Petitioner openly and honestly expressed 70-80% relief from the procedures.

Based upon the record as a whole, the Arbitrator finds that the Petitioner met his burden of proving by a preponderance of credible evidence that he did sustain an accident to his neck, low back and left shoulder that arose out of and in the course of Petitioner's employment by Respondent on September 1, 2022.

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).

In this case, the Arbitrator finds Petitioner credibly established a condition of good health prior to his September 1, 2022, accident. The only evidence submitted at hearing of a pre-existing injury relates to an injury on Petitioner's left shoulder for which he received a left elbow tendon repair surgery. However, a careful review of Petitioner's medical records suggests that this prior injury and resulting treatment were inconsequential to his current medical condition and outlook.

It is undisputed that Petitioner was performing his regular duties as a driver at the time of his work accident. Following his injury, Petitioner credibly testified to an immediate onset of pain to his head, neck, mid back, low back, and left shoulder, followed by treatment consisting of MRI testing, physical therapy, and back injections. (PX3, PX4). Petitioner's testimony and medical records show that Petitioner's symptoms have been consistent and ongoing since his work injury on September 1, 2022.

Following the incident, Petitioner presented to Advanced Spine and Rehab Center and Regenerative Pain and Spine with the same complaints previously mentioned. (*Id.*). Petitioner was immediately placed in physical therapy courses by both Drs. Mohiuddin and Fregoso and, after numerous sessions, experienced only mild alleviation and some decrease in pain. (PX3). Due to his slow progression and consistent complaints, Dr. Mohiuddin determined that Petitioner showed "no significant relief with only P[hysical] T[herapy]," and ultimately recommended Petitioner for cervical and lumbar injections. (PX4). In follow-up visits with Dr. Mohiuddin, Petitioner openly and honestly expressed 70-80% relief from the procedures.

Based upon the record as a whole, the Arbitrator finds that the Petitioner has met his burden of proving that his current condition of ill-being relating to his neck, low back and left shoulder are causally related to the work accident of September 1, 2022. However, the Arbitrator notes that the injuries resolved by February 9, 2023 when nurse practitioner, Kristin Jeziorny, returned Petitioner to work without restrictions.

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

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

Having found the Petitioner's current condition of ill-being relating to his neck and right shoulder are causally related to the work accident of September 1, 2022, the Arbitrator finds the Petitioner's treatment through February 9, 2023 to be reasonable and necessary and finds that Respondent has not paid for said treatment. As such, the Arbitrator orders the Respondent to pay reasonable and necessary and related medical charges for treatment through February 9, 2023, as provided in Sections 8(a) and 8.2 of the Act, and more specifically to:

1. Advance Spine & Rehab Center: **($11,628.32)**
2. Regenerative Pain and Spine: (**$19,635.00)**
3. Advance Care Rx: (**$928.80**)
4. Midwest Pain Specialist: (**$700.00**)
5. American Diagnostic MRI: **($4,500.00**)
6. Metro North Surgical Center: (**$39,000.00**)
7. Gold Coast Anesthesia: (**$4,153.00**)
8. First Choice Occupational Health (**$300.00**)

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.

With regard to subsection (i) of § 8.1b(b), the Arbitrator notes that no AMA Impairment Rating was rendered. Therefore, the Arbitrator gives no weight to this factor.

With regard to subsection (ii) of § 8.1b(b), the Arbitrator notes at the time of the accident, Petitioner was performing duties as a bus driver for Respondent. Petitioner testified he took a job with another employer, Range USA after the 9/1/22 accident. Petitioner was released to work without restrictions on 2/9/23. Thus, the Arbitrator gives this factor greater weight.

With regard to subsection (iii) of § 8.1b(b), the Arbitrator notes, at the time of the accident, Petitioner was 52 years old, single with no dependent children. The Arbitrator gives this factor some weight.

With regard to subsection (iv) of § 8.1b(b), the Petitioner's average weekly wage was $800. Petitioner testified that he is not currently working, despite being released to work without restriction on 2/9/23. The Arbitrator concludes Petitioner's September 1, 2022 accident has not resulted in any impact to his earning capacity. The Arbitrator gives this factor greater weight.

With regard to subsection (v) of § 8.1b(b), the Petitioner testified that he still has pain in his neck, back and left shoulder. He further testified that he is not taking prescription medication for his symptoms.

Petitioner's medical records reflect that he treated conservatively, underwent physical therapy, and received two injections. The Arbitrator gives this factor significant weight.

Based upon the findings as to nature and extent, Respondent shall pay Petitioner the sum of $**480**/week for a period of **37.5 weeks**, because the injuries sustained permanent partial disability to the extent of **7.5%** loss of use of person as a whole, as provided in §8(d)(2) of the Act.

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

The Arbitrator declines to impose any penalties and fees.

It is so ordered:

Crystal L. Caison

Arbitrator Crystal L. Caison

OCTOBER 11 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC009011
Case Name	Scott Smith v. Conveyor Specialties
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0251
Number of Pages of Decision	27
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Jack Cannon
Respondent Attorney	Courtney Schoch

DATE FILED: 5/30/2025

/s/Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Scott Smith,

Petitioner,

vs, No. 23WC009011

Conveyor Specialties,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of the causal connection, medical expenses, prospective medical, temporary total disability, 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 (1980).

The Commission modifies the final sentence of the first paragraph of the Petitioner's Testimony section on page two of the narrative portion of the Arbitration Decision from "He was released to full duty by Dr. Khanna on January 10, 2023. (T. 19)" to "He was released to full duty by Dr. Khanna on January 10, 2023. [*sic*] (T. 19)". Similarly, the first sentence of the second paragraph of that section is modified from "Petitioner testified that when he was released full duty on January 10, 2023, he was feeling a lot better, but his leg and the top of his foot were numb. (T. 19)" to "Petitioner testified that when he was released full duty on January 10, 2023, he was feeling a lot better, but his leg and the top of his foot were numb. [*sic*] (T. 19)". The following sentence is added immediately after that: "The Commission notes that Petitioner testified he was released fully duty by Dr. Khanna on January 10, 2023, but the medical evidence reflects this was actually January 10, 2022."

The Commission modifies the fourth paragraph of page 17 of the narrative portion of the Arbitration Decision for issue (K), striking "authorize and pay" and replacing with "provide and pay".

Similarly, in the third paragraph of Order section, the Commission adds "provide and" after "shall".

Finally, the Commission observes Petitioner's personal identity information was unredacted from Petitioner's Exhibits. The Commission cautions the parties to adhere to Supreme Court Rule 138. Ill. S. Ct. R. 138 (eff. Jan. 1, 2018).

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 October 11, 2024, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $157.00 to Orthopaedic Specialists of Northwest Indiana, $3,000.00 to University Spine Surgeons, and $4,987.00 to Northwestern Medicine, as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $1,452.71/week for 41 weeks, commencing September 29, 2023, through July 11, 2024, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for treatment prescribed by Dr. Khanna, specifically the wide revision decompression at L3-4 and L4-5, as well as reasonable and necessary post-operative treatment.

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 $9,200.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

MAY 30, 2025
O052025
AHS/ps

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

051

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC009011
Case Name	Scott Smith v. Conveyor Specialties
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	23
Decision Issued By	James Byrnes, Arbitrator

Petitioner Attorney	Jack Cannon
Respondent Attorney	Courtney Schoch

DATE FILED: 10/11/2024

/s/James Byrnes, Arbitrator
Signature

INTEREST RATE WEEK OF OCTOBER 8 2024 4.305%

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)

SCOTT SMITH
Employee/Petitioner

v.

CONVEYOR SPECIALTIES, INC.
Employer/Respondent

Case # **23** WC **009011**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **James Byrnes**, Arbitrator of the Commission, in the city of **Chicago**, on **July 11, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **4/5/2021**, 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 $**113,311.12**; the average weekly wage was $**2,179.06**.

On the date of accident, Petitioner was **54** 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 $**21,583.12** for TTD (for lost time prior to 9/29/2023), $**0** for TPD, $**0** for maintenance, and $**37,048.55** for other benefits (PPD advance), and $**50,377.32** in medical payments.

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

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $**157.00** to **Orthopaedic Specialists of Northwest Indiana**, $**3,000.00** to **University Spine Surgeons**, and $**4,987.00** to **Northwestern Medicine**, as provided in Sections 8(a) and 8.2 of the Act.

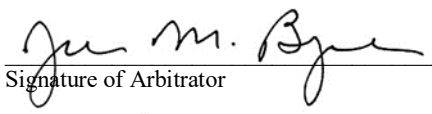
Respondent shall pay Petitioner temporary total disability benefits of $**1,452.71**/week for **41** weeks, commencing **September 29, 2023,** through **July 11. 2024**, as provided in Section 8(b) of the Act.

Respondent shall pay for treatment prescribed by Dr. Khanna, specifically the wide revision decompression at L3-4 and L4-5, as well as reasonable and necessary post-operative treatment.

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

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

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



Signature of Arbitrator

OCTOBER 11 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SCOTT SMITH,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 23WC009011
CONVEYOR SPECIALTIES, INC.,	)	
	)	
Respondent.	)	

MEMORANDUM OF DECISION OF ARBITRATOR

PROCEDURAL HISTORY

This matter proceeded to hearing on July 11, 2024, in Chicago, Illinois before Arbitrator James Byrnes on the basis of a Section 19(b) Petition for Immediate Hearing filed by Petitioner. Issues in dispute include causation, medical expenses, prospective medical treatment, TTD benefits and penalties. Arbitrator's Exhibit 1 (Arb.Ex 1).

FINDINGS OF FACT

Job Duties

The Petitioner, Scott Smith, is a union carpenter, specifically working his whole career as a commercial metal stud carpenter. (T. 10, 23) Petitioner belongs to Carpenters Local 272, which is part of Mid-America Carpenters Regional Council. (T. 37-38)

Petitioner began working for Respondent Conveyor Specialties, Inc., around February 2021. (T. 14) Petitioner's job was to install decking, using corrugated steel, kick plates, and steel handrails. (T. 11) After installing the corrugated steel, he would put finished tongue-in-groove plywood over the surface and screw into the corrugated steel (*Id.*) Since the flooring was not level, it was necessary to stomp on the low spots to get the plywood together. (T. 12) Over the course of a ten-hour day (excluding breaks), they would install about 120 pieces of plywood per day, stomping five to six times on each piece of plywood. This was done while wearing a 50-pound tool belt. (T. 12-14)

Accident

In April 2021, the Petitioner noticed severe pain and sciatica going down his leg. (T. 15) The parties have stipulated to an accident date of April 5, 2021. (Arb. Ex. 1) He tried to work

through the progressively worsening symptoms, before he treated with a chiropractor, specifically Park Forest Chiropractic. (T. 15) Petitioner testified that he had treated with Park Forest Chiropractic for low back pain three years prior to the accident but had not experienced pain after treatment and prior to the accepted accident on April 5, 2021. (T. 15-16) He returned a few times to Park Forest Chiropractic before needing to go to the emergency room at Franciscan Health on May 4, 2021, when he woke up screaming in pain. (T. 16)

Petitioner's Testimony

Petitioner testified that he followed up with his general practitioner, who referred him to an orthopedic doctor, Dr. Nitin Khanna. (T. 17) Petitioner underwent two injections, and Dr. Khanna also recommended physical therapy. (T. 17-18) Petitioner testified that the injections helped with the jolting pain, but it did not help the overall pain. (T. 18) On September 14, 2021, Dr. Khanna performed surgery, and Petitioner thereafter participated in physical therapy into the winter of 2021. (T. 18) He was released to full duty by Dr. Khanna on January 10, 2023. (T. 19)

Petitioner testified that when he was released full duty on January 10, 2023, he was feeling a lot better, but his leg and the top of his foot were numb. (T. 19) He returned to see Dr. Khanna on February 13, 2023, and was told by Dr. Khanna nothing further could be done and the numbness in the leg would slowly improve with time, but it has not. (T. 19-20)

Petitioner continued to work through the pain at Conveyor Specialties for a couple of months in hopes that his pain would improve. (T. 20-21) He worked full duty at a location in Huntley, Illinois for Conveyor Specialties before switching to a job closer to home at Janecyk Construction as a metal stud carpenter (he did not leave Conveyor Specialties because of his back). (T. 21-22) (RX 6) As while working with Conveyor Specialties, he noticed the slowly getting worse, but he tried to work through it. (T. 22) He noticed pain from his back down the back of his leg to his foot, similar symptoms that he experienced before his surgery. (T. 22-23)

Janecyk Construction ran out of work, so Petitioner began working for Rockwell Group doing heavy gauge metal stud priming. (T. 23) (RX 5) The position with this company was closer to home. (T. 24) He worked for Rockwell Group until August of 2023, when work for the company became slow. (T. 40)

The Petitioner was hurting again by the end of the summer of 2023, and since Dr. Khanna had told him there was nothing more he could do for him, the Petitioner decided to seek a second opinion with Dr. Neckrysh. (T. 24) The doctor recommended diagnostic tests, told him he should not be working and recommended surgery, specifically a lumbar fusion. (T. 25) Since his treatment with Dr. Neckrysh was denied by Respondent, Petitioner decided to return to Dr. Khanna, who recommended an MRI scan and thereafter a revision decompression surgery. (T. 25-26) He prefers the surgery recommended by Dr. Khanna over that of Dr. Neckrysh, as he believes the decompression is less invasive than a fusion ("I don't want to have bolts in my back.") (T. 26)

After being taken off work in September of 2023, the Petitioner's workers' compensation benefits were not resumed, but he did receive PPD advances from Respondent. (T. 26-27)

At the request of Respondent's insurance carrier, the Petitioner was examined by Dr. Marc Soriano in Rockford on March 5, 2024. (T. 27) The Petitioner reviewed Dr. Soriano's examination report and disagreed with some of the statements set forth therein, specifically regarding his job duties vis-à-vis stomping of the plywood boards, his ability to perform various movements during the physical examination, and the pain he felt during the examination. (T. 28-30)

Prior Medical Condition

From November 9, 2017, through April 25, 2018, the Petitioner treated at Park Forest Chiropractor for neck pain and low back pain, later also treating for left heel pain. (PX 1, pp. 9-83). He underwent rotator cuff repair to his right shoulder in March of 2019, and thereafter participated in physical therapy at Independence Physical Therapy through October of 2019. (PX 5, pp. 86-124)

On July 23, 2020, he sustained an injury to his right hand while using a circular saw, and he again participated in physical therapy related to that injury at Independence Physical Therapy, from September of 2020 through January of 2021. (PX 5, pp. 139-201)

Summary of Medical Records

On April 27, 2021, Petitioner presented to Park Forest Chiropractic, complaining of right buttock pain, which he described as sharp and burning, going down his right leg to his foot on a constant basis. (PX 1, p. 8) He rated his low back pain at 4/10, neck pain at 4/10, buttock pain at 9/10, right thigh pain at 10/10, right calf pain, and right heel pain at 8/10. (PX 1, p. 84) Diagnoses included right side sciatica, difficulty walking, segmental and somatic dysfunction of sacral region, and piriformis syndrome. (*Id.*) Petitioner continued to treat at Park Forest Chiropractic from May 1, 2021, through June 10, 2021, for the same symptoms and diagnoses. (*Id.,* pp. 94-129).

On May 4, 2021, Petitioner treated at the emergency department of Franciscan Health, complaining of right leg pain that started in the right hip, radiating down the right leg. (PX 2 p. 20) Petitioner reported the pain was getting progressively worse, and he was unable to tolerate the pain. (*Id.*) Petitioner reported that he had been told in the past that he had a bulging disc, but he did not follow up with neurosurgery or orthospine surgery. (*Id.*) The clinical impression of Dr. Downing was acute sciatica of the right side. (*Id.,* p. 24) Petitioner was directed to schedule an appointment with Dr. Khanna. (*Id.,* p. 42)

On May 11, 2021, Petitioner treated with Amie Swardson Barry, FNP, at Marcotte Medical Group, complaining of terrible pain that starts in his right gluteal and moves down to his calf, and half his right foot was numb. (PX 3, p. 6) The assessment was acute low back pain with sciatica, dyslipidemia, and radiculopathy of sacrococcygeal region. The treatment plan included an MRI of the lumbar spine and a course of physical therapy. (*Id.*, p. 7)

The Petitioner was seen for an initial evaluation with Dr. Khanna at Orthopaedic Specialists at Northwest Indiana on June 2, 2021, with complaints of back and right leg pain, present since March 2021. (PX 4, p. 59). He provided a consistent history of the work accident

(installing plywood over sheeting and hurting his back due to stomping on the plywood). (*Id.*) Petitioner indicated he initially had radiating left leg pain and now has severe right leg radiating pain, which he rated at 8/10. (*Id.*) Based on the symptoms, physical examination and review of diagnostics, Dr. Khanna assessed HNP right L4-5 and L5-S1, lumbar radiculopathy on the right, and motor weakness on the right. (*Id.*, p. 60) Dr. Khanna causally related the lumbar injuries to the stomping of the plywood at work and deemed the treatment to date to be reasonable and necessary. (*Id.,* p. 61) He recommended right L4-5 and L5-S1 epidural steroid injections and light duty work. If the Petitioner's symptoms did not resolve as a result of such treatment, the doctor would order a higher resolution MRI scan. (*Id.*)

On June 4, 2021, the Petitioner presented for a physical therapy evaluation at Independence Physical Therapy. (PX 5 p. 208) Petitioner felt sharp pain in back and progressing numbness and tingling down his right leg while working as a carpenter and was unable to lift or walk/stand more than 15-20 minutes at a time without needing to rest due to pain and weakness. (*Id.*) The assessment was significant low back pain with right lower extremity radiculopathy, and it was recommended he participate in physical therapy 3 times per week for the next 8 weeks. (*Id.*, p. 209) The Petitioner continued with physical therapy through July 23, 2021, with some improvement in symptoms, including a reduction of right lower extremity symptoms. (*Id.*, p. 225)

On June 15, 2021, Petitioner underwent right L4-5 and L5-S1 transforaminal steroid injections. (PX 8 p. 78)

The Petitioner followed up with Dr. Khanna on June 28, 2021, after the ESI injections. (PX 4 p. 57). He reported pain at 7/10, which was improved but still with significant right leg pain. Dr. Khanna ordered a higher quality MRI scan and physical therapy. (*Id.,* p. 57)

A lumbar MRI scan was performed on July 7, 2021. (PX 4, p. 87) The impression of this test was (1) slight retrolisthesis with a small broad-based central disc herniation and bony degenerative changes cause minimal to mild central spinal canal stenosis with effacement of lateral recesses and mild right foraminal stenosis; (2) minimal to mild foraminal stenosis at L2-3 and L3-4; (3) a tiny central disc herniation with annular tear results in no significant stenosis at L5-S1; and (4) a questionable tiny disc extrusion at T12-L1 results in no significant stenosis. (*Id.*)

On July 12, 2021, Petitioner returned to Dr. Khanna for a follow-up visit. The Petitioner's pain rating at that time was 5/10 in back and right leg. Dr. Khanna reviewed the MRI scan and noted it demonstrated L4-5 HNP with stenosis. He ordered one more ESI with the goal of avoiding a lumbar micro decompression. (PX 4, p. 56) Dr. Khanna also kept restrictions of 10 pounds in place. (*Id.,* p. 99)

On July 27, 2021, Petitioner underwent a second right L4-5 transforaminal epidural steroid injection. (PX 8, p. 75)

The Petitioner returned to Dr. Khanna on August 11, 2021, following the second ESI. The Petitioner rated his pain at 3-5/10. (PX 4, p. 53) The doctor discussed non-surgical options, including physical therapy, medication, injections and living with the symptoms, as well as the

role of surgery. Dr. Khanna recommended a right L4-5 micro decompression and kept the 10-pound lifting restriction in place. (PX 4, p. 54, 98).

In a letter dated August 20, 2021, Dr. Khanna was notified that Utilization Review found the recommended right L4-5 micro decompression surgery to be medically necessary. (PX 11 p. 10).

On September 14, 2021, Dr. Khanna performed surgery at the Center for Minimally Invasive Surgery in Munster, Indiana. The procedures included (1) right L4-5 microscope-assisted microdecompression, (2) lateral recess decompression, and (3) foraminal decompression. The operative report indicated severe stenosis on right side, with the L4-5 nerve roots completely decompressed in the lateral recess and foraminal as well as lateral recess region. The traversing and exiting nerve root at L4-5 was decompressed. (PX 8, pp. 40-41)

At the post-op evaluation with Dr. Khanna on September 27, 2021, the Petitioner reported that he was feeling much better than prior to surgery, with a pain rating of 0/10 and mild paresthesias in the leg. Dr. Khanna ordered PT, and that Petitioner return to see him back in four weeks. (PX 4, pp. 49-50) He also kept the Petitioner off work. (*Id.*, p. 96)

The initial post-op physical therapy evaluation took place on October 8, 2021, at Orthopedic Specialists of Northwest Indiana. The Petitioner reported decreased intensity of pain as well as decreased sharp radiating pains, but also reported persistent low back discomfort ranging from 2/3-10 up to 8/10, as well as persistent dull numbness and burning along the right lower extremity which worsens with increased activity that involves bending and twisting. It was recommended he undergo a 12-week course of physical therapy, 3 times per week, to reduce symptoms and increase range of motion and function. (PX 4, pp. 198-200)

The Petitioner was seen by Dr. Khanna on October 20, 2021, and reported a current pain level of 0/10 and that he was off all pain medications. Dr. Khanna ordered work conditioning, and anticipated a full duty return to work in 3-4 weeks. (PX 4, pp. 47-48) He kept the Petitioner off work in the meantime. (*Id.*, p. 95)

The Petitioner was discharged from physical therapy on November 1, 2021. At that time, he reported that his back was doing a lot better and was experiencing overall improvement with functional mobility, and 50% improvement since starting physical therapy. He was still experiencing palpable swelling and tenderness along the lumbar surgical scar and in the lumbar paraspinals, more on the right than on the left. It was noted that he was to begin work conditioning to progress towards return to work function. (PX 4, pp. 174-175)

On November 3, 2021, Petitioner commenced work conditioning at Orthopedic Specialists of Northwest Indiana. He reported that his back was doing better and provided a verbal job description, which includes carrying 80 pounds on average, and pushing/pulling 250 pounds on a dolly, as well as frequent ladder and stair climbing, frequent kneeling, and walking/standing constantly. The Petitioner reported continued stiffness in low back, with difficulty with activities of daily living. The therapist set forth several long term goals for the work conditioning program. (PX 4, p. 172)

The Petitioner completed his work conditioning at Orthopaedic Specialists of Northwest Indiana on December 13, 2021. At that time, he reported that he "really doesn't have any pain," but was still very stiff in the lower back and "I just can't sleep." He reported begin 80% better overall, but also complained of right sciatic pain with twisting and turning at times. It was noted he would benefit from returning to work as tolerated, gradually increasing as needed. It was anticipated Petitioner would be discharged from work conditioning at the next visit. (PX 4, pp. 116-117) He was formally discharged from the program on February 1, 2022. (*Id.*, p. 103)

The Petitioner was seen by Dr. Khanna on December 15, 2021. At that time, Petitioner reported a pain level of 0/10, as well as full range of motion of the lumbar spine. Dr. Khanna released Petitioner to return work full duty and anticipated MMI at the next office visit in four weeks. (PX 4, pp. 43-44, 93).

On January 10, 2022, returned for an office visit with Dr. Khanna, and reported pain at a level of 2/10, with some persistent numbness, and full range of motion and no tenderness to palpation. Dr. Khanna deemed Petitioner to have reached MMI and reiterated his ability to work full duty without restrictions, but his job had not allowed a return to work due to lack of work. (PX 4, p. 41-42, 92).

The Petitioner returned to see Dr. Khanna on January 23, 2023, at which time he reported pain at a level of 0/10, but numbness in right anterior thigh. Dr. Khanna noted the Petitioner had ongoing numbness that had not resolved, so he recommended an MRI scan of the lumbar spine, and further noted there may be permanent nerve damage that did not improve after the micro decompression surgery. (PX 4, pp. 39-40) Dr. Khanna deemed Petitioner capable of continuing to work full duty with no restrictions (*Id.*, p. 91)

In a letter dated January 31, 2023, Orthopaedic Specialists of Northwest Indiana was advised that utilization review determined the lumbar MRI scan ordered by Dr. Khanna to be medically necessary. (PX 11, p. 24)

On February 8, 2023, Petitioner underwent an MRI of the lumbar spine at Orthopaedic Specialists of Northwest Indiana. The impression was (1) new postsurgical changes present at L4-5 with central annular tear, with no recurrent disc herniation seen and previously seen effacement of right lateral recess improved. There was a disc bulge and bony degenerative changes with mild to perhaps moderate central spinal canal stenosis with moderate to severe left lateral recess stenosis and mild right foraminal stenosis being unchanged; (2) minimal to mild foraminal stenosis at L2-3 and L3-4 appears stable; (3) tiny central disc herniation with annular tear resulting in no significant stenosis at L5-S1, unchanged; and (4) tiny T12-L1 disc extrusion resulting in no significant stenosis, unchanged. (PX 6, pp. 10-11).

The Petitioner followed-up with Dr. Khanna on February 13, 2023, after the MRI scan was completed. Dr. Khanna reviewed the MRI scan and noted it showed degenerative changes at L4/5 and mild stenosis, but no acute injury and no severe neural compression. Dr. Khanna's assessment was spinal stenosis at L4-5 and lumbar radiculopathy on the right, status post micro decompression. He saw no role for further surgical intervention, noting Petitioner had complete pain relief from surgery, but continues with residual numbness which may be permanent nerve

damage. (PX 4, pp. 37-38). Dr. Khanna again noted that MMI had been reached and Petitioner was capable of full duty work without restrictions. (PX 4, p. 90).

The Petitioner sought a second opinion with Dr. Sergey Neckrysh of University Spine Surgeons on August 10, 2023, complaining of residual numbness traveling in the lateral aspect of his right thigh, lateral ankle, and top and lateral aspect of his right foot, which was gradually getting worse since his surgery at L4-5. Dr. Neckrysh reviewed the lumbar MRI films of May 21, 2021, which demonstrated a disc protrusion at L4-5 with concurrent and significant lateral recess and foraminal stenosis at L4-5. The Petitioner advised the doctor of the more recent MRI scan of the lumbar spine and Dr. Neckrysh requested that he bring the scan in for review, as well as undergo lumbar x-rays and a lumbar CT scan. (PX 6, p. 6)

A CT scan of Petitioner's lumbar spine was performed at Northwestern Medicine Radiology in Palos Heights on September 29, 2023. The impression was multilevel small disc bulging with findings suggestive of congenital spinal canal narrowing and left-sided sacroiliitis. (PX 7, pp. 6-7). The Petitioner also underwent x-rays at that facility on the same date, with the results showing trace retrolisthesis of L4 on L5 and L5 on S1, unchanged in the flexion and extension images. (*Id.*, p. 16)

The Petitioner returned to see Dr. Neckrysh on October 5, 2023, following the completion of the diagnostic tests. Dr. Neckrysh reviewed the February 8, 2023, MRI scan of the lumbar spine and noted new right hemilaminectomy and partial medial facetectomy changes at L4-5, persistent disc bulging with enhanced edema in the central anulus and mild facet hypertrophy. The doctor also noted that previously seen effacement of right lateral recess had improved, but there was continued moderate to severe persistent left lateral recess effacement and moderate central canal and mild right foraminal narrowing which remained unchanged. According to Dr. Neckrysh, both the MRI and CT scans demonstrated the presence of 2- to 3- millimeter, grade 1 retrolisthesis of L4 to L5 consistent with underlying instability. (PX 6, p. 7)

Dr. Neckrysh discussed the diagnostic findings with the Petitioner and advised that given the persistence of mechanical back pain, as well as radicular symptoms, his recommendation would be to proceed with re-operation at the L4-5 level with bilateral decompression with complete facetectomy and decompression of nerve roots, as well as pedicle screw fixation and antibody and posterolateral fusion. (PX 6, p. 7) Dr. Neckrysh advised the Petitioner to remain off work. (*Id.*, p. 8)

The Petitioner returned to see Dr. Khanna on December 4, 2023, and advised him of Dr. Neckrysh's surgical recommendation (revision decompression and fusion). (PX 4, p. 13). The Petitioner stated his desire to avoid a fusion, and so Dr. Khanna ordered a new MRI scan, noting a possible revision with a wide bilateral L4-5 decompression. (*Id.*) He also placed Petitioner on restrictions of no lifting over 25 pounds as of December 4, 2023. (*Id.*, p. 13)

The Petitioner underwent a third MRI scan of the lumbar spine at Orthopaedic Specialists of Northwest Indiana on January 19, 2024. The results showed: (1) postsurgical changes again noted on the right at L4-5, with disc bulging and bony degenerative change with shallow broad-based central disc herniation, mild to moderate foraminal stenosis, slightly greater on the right,

which had progressed mildly, and mild to perhaps moderate central spinal canal stenosis with effacement of the lateral recesses that was relatively unchanged; (2) changes at L3-4, including slight grade 1 retrolisthesis, causing minimal to mild central spinal canal and mild foraminal stenosis, progressed, and (3) degenerative disc disease is mildly progressed.

The Petitioner was next seen by Dr. Khanna on January 22, 2024, at which time the results of the MRI scan were reviewed. Dr. Khanna assessed degenerative disc disease at L3-4 and L4-5, axial back pain, and bilateral radiculopathy, right greater than left, status post micro decompression at L4-5. Dr. Khanna discussed surgery with the Petitioner and recommended a wide revision decompression at L3-4 and L4-5. He also ordered physical therapy to improve Petitioner's conditioning, which would lead to an improved post-operative outcome. (PX 4, pp. 9-10) He kept the Petitioner on a 25-pound lifting restriction at that time. (*Id.*, p. 6)

Expert Reports

Dr. Morris Soriano, Section 12 Examination

On March 5, 2024, Dr. Morris Soriano performed a medical examination of Petitioner, pursuant to Section 12, at the request of Respondent. The Petitioner provided a consistent history of the April 5, 2021, work accident, including the stomping on plywood sheets to get the "tongue-in-groove" pieces to lock together. (RX 3, p. 19) He also provided Dr. Soriano with a history of his medical treatment to date, including with his family physician, Dr. Marcotte, and with Dr. Khanna and Dr. Neckrysh, advising of the surgical recommendations of each doctor. (*Id.*, pp. 19-20)

The Petitioner complained of sciatica into both posterior thighs, with radiation on the right side beyond the knee to the midcalf. The low back pain was in the midline between L4 and S1 and was intermittent in nature, worse with any activity or weightbearing. And Petitioner again noted no change in the numbness or tingling in his right thigh and into his foot. (RX 3, p. 20)

In conjunction with his examination of the Petitioner, Dr. Soriano also reviewed the Petitioner's medical treatment records, including chiropractic records of Park Forest Chiropractic, treatment records of Dr. Khanna, treatment records of Dr. Neckrysh, physical therapy records of Independence Physical Therapy, and the Petitioner's diagnostic test reports. (RX 3, pp. 21-23) He also reviewed the diagnostic imaging studies. (*Id.,* p. 25)

Based on Petitioner's history and physical examination results, as well as his review of the treatment records and radiological studies, Dr. Soriano diagnosed status post L4-5 right hemilaminotomy for mild degenerative changes and subjective complaints of right leg pain with postoperative numbness and tingling in the right anterior thigh, calf, and dorsal foot. (RX 3, p. 26) He also diagnosed persistent pre-injury degenerative changes and degenerative retrolisthesis at multiple levels. (*Id.*) In reference to the recurrent ongoing pain, he felt it was likely related to soft tissue irritation from a combination of deconditioning, the surgery performed, and possibly multilevel spine disease above and below the level of the initial surgery. (*Id.*)

Dr. Soriano also offers the opinion the surgery performed by Dr. Khanna was neither indicated nor necessary for what he believes were recurrent soft tissue injuries related to his (Petitioner's) work environment. As for the postoperative subjective complaints, in his opinion such complaints are related to ongoing soft tissue strains or sprains, as well as preexisting multilevel degenerative changes and not related to the work injury of April 5, 2021. (RX 3, p. 26)

Dr. Soriano is also of the opinion the Petitioner does not require any further treatment for the work injury of April 5, 2021, which, in his opinion, caused soft tissue injuries to the buttocks and low back with radiating pain to the buttocks. (RX 3, p. 26) He does not agree with the recommendation for further surgery, as he saw no findings on the MRI scans which would relate to the Petitioner's bilateral leg pain and back pain. (*Id.*) In his opinion, "there is virtually no chance of relief of his persistent back pain and leg pains bilaterally with decompression or with the fusion recommended by Dr. Neckrysh. Regarding his numbness, which occurred postoperatively, there is no chance that surgery would relieve that numbness." (*Id.*, pp. 26-27) He opines a progressive home exercise program and strengthening program would be beneficial, along with bracing and use of a TENS unit and over-the-counter medications, but such treatment would not be related to the original work injury. (*Id.*, p. 27)

As for the Petitioner's ability to return to work, Dr. Soriano recommended a gradual return to work, due to Petitioner's extended off work status. Specifically, he opined it would be reasonable for Petitioner to initially return to work with a 25-pound lifting restriction for the first four weeks, followed by another four-week period with a 50-pound lifting restriction, and subsequently thereafter unlimited and unrestricted lifting. (RX 3, p. 27)

Based on what he considered an objectively normal examination and on the basis of the radiological studies he reviewed, Dr. Soriano opined that Petitioner had reached maximum medical improvement. (RX 3, p. 27)

Deposition Testimony

Dr. Morris Soriano

The evidence deposition of Dr. Morris Soriano proceeded on June 19, 2024. Dr. Soriano testified that he examined the Petitioner on March 5, 2024, and drafted an 11-page report based on the results of that examination. (RX 3, p. 5) On that date, Dr. Soriano examined the Petitioner's lumbar spine and all the nerves exiting from his lumbar spine into his lower extremities. He also reviewed medical records and certain diagnostic films. (*Id.,* pp. 5-6) Based on his physical examination and review of the medical records and radiological studies, Dr. Soriano diagnosed Petitioner as has having sustained a repetitive soft tissue injury to the low back, buttocks, thighs and probably his hip area, including injury to the ligaments, tendons, and muscles. (*Id.,* p. 6)

Dr. Soriano also diagnosed Petitioner with preexisting long-standing mild to moderate degenerative arthritis in the facets and the discs, as well as post L4-5 lumbar hemilaminotomy and facetectomy on the right side. (RX 3, pp. 7-8)

Regarding the Petitioner's current complaints, Dr. Soriano felt they were a "little bit more than I would have expected since he had been off of work at that point." (RX 3, p. 8) He also noted the Petitioner's complaints seemed out of proportion to what he (Dr. Soriano) found on his exam and in relationship to the MRI and CT scans. (*Id.,* p. 9) During the physical examination, the Petitioner was able to bend in all directions without difficulty, and testing of the hip joints, sacroiliac joints and the sciatic nerve revealed nothing on examination that "would even remotely indicate any limitation mechanically and I found nothing on exam that would indicate a nerve damage except for the numbness in the right foot which wasn't there before surgery but was present after surgery." (*Id.*)

Travelers Insurance Records

In a letter dated September 2, 2021, the Respondent invited Petitioner to register for "MyTravelers® For Injured Employees," described as a "single digital access point for all the resources you will need to take an active role in your recovery." (PX 11, p. 12) This "user-friendly platform" would allow Petitioner to, *inter alia*, "communicate easily with your Claim team by secure messaging." (*Id.*)

On February 15, 2022, Diana Johnson of Travelers mailed (and sent via secure messaging) a settlement offer to the Petitioner, following his discharge from care by Dr. Khanna on January 10, 2022. (PX 11, p. 19; PX 10, p. 49-50) The Petitioner responded to Ms. Johnson the same day, via secure messaging:

> "As the top of my right leg [and] foot are still numb, and seems normal exertion at work makes it worse with numbness going up to my hip, I may need to revisit doctor to find out what's happening. I don't plan on settling till I know exactly what is up with the lack of feeling." (PX 10, p. 50)

On February 16, 2022, Ms. Johnson asked Petitioner to let her know once he had scheduled a follow-up visit with his doctor, to which Petitioner replied:

> "Dr. Khanna told me my numbness should subside over time. I just started back to work 2/14/22 with CSI full time. As long as my numbness doesn't get worse and subsides, like doc said, I may or may not need to revisit him. Time will tell. Hoping for the best. Will let you know how it's going." (PX 10, p. 49)

On May 26, 2022, Ms. Johnson contacted Petitioner to inquire as to whether he was planning to follow up with his doctor and, if not, whether he was willing to discuss settlement or whether she should close his claim "administratively" until he decides what steps he would like to take. (PX 10, p. 51) Ms. Johnson reached out to Petitioner again via letter and secure messaging on June 6, 2022, again asking about a follow-up visit with the doctor or possible settlement, with a deadline of June 20, 2022, before she would close his file. (PX 11, p. 22) The Petitioner replied the same day:

> "My right thigh and middle 3 toes are still numb. Dr. Khanna stated it would take some time for this to subside. It has not yet…. I'm hopeful for full recovery but numbness is

still an issue." (PX 10, p. 55)

Ms. Johnson replied on June 7, 2022, advising that she would administratively close Petitioner's claim and if he wished to follow up with his doctor or settle, he should reach out to her. She also advised Petitioner of the deadlines per the statute of limitations for filing a claim at the Commission. (PX 10, p. 54) Petitioner responded via secure messaging on June 7, 2022 (in part):

> "As I still have numbness I expect to have another MRI for Doc to see why I'm still numb. Want to give as much time as necessary to see if my issues subside as stated by Dr. Khanna." (*Id.*)

On January 23, 2023, the Petitioner contacted Ms. Johnson via secure messaging, advising of the results of his office with Dr. Khanna that same day, specifically concerning the numbness in his right leg and foot and the scheduling of an MRI scan once it is approved. (PX 10, p. 54) The Petitioner subsequently advised Ms. Johnson the MRI scan was scheduled for February 8, 2023, and he had a follow-up appointment with Dr. Khanna set for February 13, 2023, to discuss the results. (PX 10, p. 60)

On March 24, 2023, Ms. Johnson renewed the previous settlement offer to Petitioner. (PX 10, p. 64) The parties engaged in discussion concerning this offer and Petitioner's condition, specifically regarding the ongoing numbness in his leg and foot. Petitioner advised Ms. Johnson (in part) on March 28, 2023:

> "Immediately after surgery I explained to the doctor that my leg & foot were numb. He told me that my feeling should return in time. He never told me that I may have permanent nerve damage. I've waited and hoped that feeling would return, as I went through therapy and work conditioning. That's why I've waited this long. It's been almost a year since being released from care and still numb. That's why I went for a revisit and 2nd MRI. Only now has the doctor told me I must have permanent nerve damage…. I've had issues, these past months, with being able to feel the ground with my foot. Stopping and disrupting many activities. Now, I've just heard, this might be permanent! As I've always been very active in many sports, year round, this is very scary news for me!!!!" (PX 10, pp. 62-63)

In response, Ms. Johnson expressed her appreciation for Petitioner's concern regarding possible permanent nerve damage, but also set forth reasons for why she would not increase the settlement offer and asked that he contact her as to whether he was interested in resolution of his claim on the terms set forth in the offer. (PX 10, p. 62)

The records do not reflect any further communication between Petitioner and Ms. Johnson.

Petitioner's Current Condition

Petitioner testified that he experiences pain and discomfort every day. (T. 30-31) The pain on a day-to-day basis varies and certain activities provoke more pain. (T. 31-32) Petitioner testified that the more he does, the more pain he experiences. (T. 32) He tries to complete work around his

home, but it hurts if he pushes it too far and on a bad day, has to ice his back, take pain medication, "and just relax and stretch." (T. 33)

The Petitioner testified that this past spring, he was able to mow his lawn, water his flowers, scale a ladder to crawl upon the roof to use a small leaf blower to clean his gutters, fix fencing, and power wash the house. He estimated the weight of the ladder at 20 pounds. (T. 41)

In the fall of 2023, Petitioner contacted Respondent about a return to return to light duty work with his 25-pound weight restriction, but never received a call back. (T. 34) He also contacted the other employers he had worked with but did not receive a response from them either. (*Id.*)

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

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).

The Arbitrator finds the Petitioner's testimony to be credible. The Arbitrator notes that Petitioner's testimony was consistent with the medical records as it relates to his symptoms and progress with treatment. The Arbitrator notes that Petitioner's description of the occurrence was consistent with the subjective history portions of the medical records submitted in evidence as well as the subjective history reported to the Section 12 examiner. 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.

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, 11 N.E.3d 453. A work-related injury need not be the sole or principal causative

factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill. 2d 193, 205 (2003).

Cases involving aggravation of a preexisting condition concern primarily medical questions and not legal ones. That is, 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. See *Nanette Schroeder v. Illinois Workers' Compensation Comm'n,* 2017 IL App (4th) 160192WC (2017). "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 (1982).

There is no dispute the Petitioner sustained an injury to his lumbar spine as a result of his work activities on April 5, 2021. In his report of June 2, 2021, Dr. Khanna sets forth a diagnosis of herniated nucleus pulposis at L4-5 and L5-S1, lumbar radiculopathy on the right and motor weakness on the right, and he attributed these conditions to Petitioner's work activities, i.e., stomping on the plywood. (PX 4, pp. 60-61)

Dr. Soriano, on the other hand, diagnosed Petitioner as has having sustained a repetitive soft tissue injury to the low back, buttocks, thighs and probably his hip area, including injury to the ligaments, tendons, and muscles, due to the work activities. (RX 3, p. 6) Dr. Soriano also diagnosed Petitioner with preexisting long-standing mild to moderate degenerative arthritis in the facets and the discs, as well as post L4-5 lumbar hemilaminotomy and facetectomy on the right side. (RX 3, pp. 7-8)

Having considered the evidence in this matter as set forth in the Findings of Fact, the Arbitrator finds the opinion of Dr. Khanna to be more persuasive than the opinion of Dr. Soriano on the issue of causal connection, for the following reasons:

- The medical treatment records set forth a consistent history Petitioner's right-sided lumbar radiculopathy symptoms from the date of accident to the present:
    - April 27, 2021- Petitioner presents to Park Forest Chiropractic, complaining of right buttock pain, which he described as sharp and burning, going down his right leg to his foot on a constant basis, and his diagnosis included right side sciatica. (PX 1, p. 8)
    - May 4, 2021 - Petitioner treats at the emergency department of Franciscan Health, complaining of right leg pain that started in the right hip, radiating down the right leg. (PX 2 p. 20)

- June 2, 2021 – Petitioner initially treats with Dr. Khanna, complaining of severe right leg radiating pain.
- September 27, 2021 – At first post-op visit with Dr. Khanna, Petitioner reports feeling much better than before surgery, but is still experiencing mild paresthesias in the right leg. (PX 4, pp. 49-50)
- October 8, 2021 – At initial post-op physical therapy evaluation, Petitioner reports persistent dull numbness and burning along the right lower extremity which worsens with increased activity that involves bending and twisting. (PX 4, pp. 198-200)
- December 13, 2021 – At final work conditioning session, Petitioner reports being 80% better overall, but also complained of right sciatic pain with twisting and turning at times.
- January 10, 2022 – Petitioner reports pain at a level of 2/10, with persistent numbness. (PX 4, pp. 41-42)
- January 23, 2023 - Petitioner returns to see Dr. Khanna, at which time he reports pain at a level of 0/10, but numbness in his right anterior thigh that remains unresolved. (PX 4, pp. 39-40)
- February 13, 2023 - Petitioner follows-up with Dr. Khanna, who reviews the MRI scan and assesses spinal stenosis at L4-5 and lumbar radiculopathy on the right, which may be permanent nerve damage. (PX 4, pp. 37-38).
- August 10, 2023 - Petitioner sees Dr. Neckrysh for a second opinion, complaining of residual numbness traveling in the lateral aspect of his right thigh, lateral ankle, and top and lateral aspect of his right foot, which was gradually getting worse since his surgery at L4-5. (PX 6, p. 6)
- October 5, 2023 - Petitioner returns to see Dr. Neckrysh, at which time the doctor reviews the February 8, 2023, MRI scan of the lumbar spine and notes new right hemilaminectomy and partial medial facetectomy changes at L4-5, with unchanged moderate central canal and mild right foraminal narrowing. (PX 6, p. 7)
- December 4, 2023 - Petitioner returns to see Dr. Khanna to discuss Dr. Neckrysh's surgical recommendation (revision decompression and fusion). Dr. Khanna orders another MRI scan and discusses a possible lumbar revision surgery. (PX 4, p. 13).
- January 22, 2024 - Petitioner discusses results of January 19, 2024, MRI scan with Dr. Khanna, who assesses degenerative disc disease at L3-4 and L4-5, axial back pain, and bilateral radiculopathy, right greater than left, status post micro decompression at L4-5 and recommends a wide revision decompression at L3-4 and L4-5. (PX 4, pp. 9-10)

- There is no evidence that Petitioner was suffering from the above-noted right-sided lumbar radiculopathy symptoms prior to the work accident of April 5, 2021.

- Dr. Soriano stands alone in his opinion the work accident only caused lumbar "soft tissue" injuries and offers no explanation for the ongoing lumbar radiculopathy symptoms.

- Dr. Soriano is of the opinion the surgery performed by Dr. Khanna on September 14, 2021, was unnecessary, an opinion in opposition to the Respondent's utilization review which certified the procedure prior to the surgery. It does not appear Dr. Soriano reviewed that

or other utilization review reports which certified the treatment rendered to Petitioner throughout the course of the claim.

- Dr. Soriano states the Petitioner's right leg numbness "occurred postoperatively," seeming to ignore the radiculopathy symptoms present since April of 2021, well before the September 14, 2021, surgery. (*See* RX 3, p. 27)

The Arbitrator recognizes the Petitioner's gap in medical treatment, from his discharge by Dr. Khanna on January 10, 2022, to the next office visit on January 23, 2023. The Arbitrator also recognizes that Petitioner returned to his regular work activities as a carpenter during this period (and beyond). But the Arbitrator also notes that, as set forth in the secure messaging conversations between Petitioner and Diane Johnson of Travelers, the Petitioner was continuing to report ongoing right-sided radiculopathy symptoms during the above noted gap in treatment. Since the Petitioner was advised by Dr. Khanna that such symptoms should resolve with time, it was not unreasonable for Petitioner to continue performing his regular work activities and holding off on seeking additional treatment during the year gap in treatment, in the hope that the numbness in his right leg and foot would improve over time. When it did not, and in fact worsened over time, he quite reasonably decided to return to see Dr. Khanna in January of 2023.

Based on the above, the Arbitrator finds Petitioner has proved by a preponderance of the evidence that his current condition of ill-being is causally related to the work accident of April 5, 2021.

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

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

The Arbitrator adopts the above Findings of Fact and Conclusions of Law and incorporates them by reference as though fully set forth herein. As noted above, Respondent does not dispute the work accident of April 5, 2021, and authorized and paid for medical treatment rendered to Petitioner's lumbar spine at least through January 10, 2022.

Respondent's denial of liability for treatment rendered to Petitioner from January 23, 2023, to the present is based on the opinions of Dr. Soriano, in contrast to the opinions and medical treatment rendered by Dr. Khanna and Dr. Neckrysh. Just as the Arbitrator found the opinion of Dr. Khanna more persuasive than that of Dr. Soriano on the issue of causation, the Arbitrator also finds Dr. Khanna and Dr. Neckrysh to be more persuasive on the issue of the reasonableness and necessity of medical treatment rendered to Petitioner, for the multiple reasons set forth above.

The Arbitrator therefore finds that Petitioner has proved by a preponderance of the evidence that the treatment rendered to him as set forth in the Findings of Fact was reasonable and necessary and finds that Respondent has not paid for all of said treatment. As such, the Arbitrator orders Respondent to pay for the following outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act:

- Orthopedic Specialists of Northwestern Indiana: $ 157.00 (PX 4, pp. 2-5)
- University Spine Surgeons: $3,000.00 (PX 6, pp. 9-10)
- Northwestern Medicine: $4,987.00 (PX 7, pp. 29-32)
- Total: $8,144.42

Respondent shall be given credit for medical benefits that were paid prior to trial, as set forth in the medical payment ledger submitted at trial without objection. (RX 2)

Regarding Issue (K), Is Petitioner entitled to any prospective medical care, the Arbitrator finds as follows:

Specific medical procedures or treatments that have been prescribed by a medical service provider have been "incurred" within the meaning of the statute, even if they have not yet been paid for. To limit the scope of section 8(a) to treatments already performed or paid for would be contrary to the remedial purpose of the Act and the mandate to interpret the Act liberally so as to affect that purpose. *Plantation Mfg. Co. v. Industrial Comm'n (Razo)*, 294 Ill. App. 3d 705, 710 (1997), citing to *Hardin Sign Co. v. Industrial Comm'n*, 154 Ill. App. 3d 386 (1987).

The Arbitrator adopts the above Findings of Fact and Conclusions of Law and incorporates them by reference as though fully set forth herein.

As noted *supra,* Petitioner has had pain and discomfort in his leg and back since the accident on April 5, 2021. Petitioner completed an extensive course of conservative treatment without relief including medication, injections, physical therapy, and ultimately surgery on September 14, 2021. This treatment was certified by utilization review and authorized by Respondent. Despite this treatment, Petitioner continues to experience lumbar radiculopathy symptoms and requires additional treatment, according to Dr. Khanna and Dr. Neckrysh, both of whom have recommended surgery. Petitioner would like to proceed with the revision surgery as recommended by Dr. Khanna, specifically a wide revision decompression at L3-4 and L4-5.

Regardless of causation, Dr. Soriano does not agree with the recommendation for further surgery, as he saw no findings on the MRI scans which would relate to the Petitioner's bilateral leg pain and back pain. (*Id.*) In his opinion, "there is virtually no chance of relief of his persistent back pain and leg pains bilaterally with decompression or with the fusion recommended by Dr. Neckrysh. Regarding his numbness, which occurred postoperatively, there is no chance that surgery would relieve that numbness." (*Id.*, pp. 26-27) He opines a progressive home exercise program and strengthening program would be beneficial, along with bracing and use of a TENS unit and over-the-counter medications, but such treatment would not be related to the original work injury. (*Id.*, p. 27)

Having found Dr. Khanna and Dr. Neckrysh to be more persuasive than Dr. Soriano on the issues of causation and the reasonableness and necessity of past medical treatment, the Arbitrator is likewise more persuaded by Dr. Khanna and Dr. Neckrysh that Petitioner's lumbar radiculopathy symptoms, which have not dissipated since the work accident of April 5, 2021, (despite conservative treatment and surgery) will not be alleviated by the home exercise/strengthening/bracing/medications program recommended by Dr. Soriano.

Finally, the Arbitrator notes that the need for a revision surgery is related to the original surgery of September 14, 2021, which was authorized by Respondent as a reasonable and necessary method of treatment for the injuries sustained by Petitioner on April 5, 2021.

As such, the Arbitrator finds that Petitioner has not reached maximum medical improvement from the injuries sustained by Petitioner on April 5, 2021, and further finds Dr. Khanna's prescription for a wide revision decompression at L3-4 and L4-5 to be reasonable, necessary, and causally related to the work accident of April 5, 2021.

Respondent is ordered to authorize and pay for the wide revision decompression at L3-4 and L4-5, as prescribed by Dr. Khanna, and for reasonable and necessary post-operative care.

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

In determining ongoing eligibility for TTD, the dispositive question is whether the claimant's condition has stabilized, including whether further curative measures are prescribed. *Interstate Scaffolding v. IWCC*, 236 Ill.2d 132 (2010); *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 542 (2007) ("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").

The Arbitrator adopts the above Findings of Fact and Conclusions of Law and incorporates them by reference as though fully set forth herein.

The parties stipulated that prior to September 29, 2023, Petitioner was paid TTD benefits for his lost time from work, and the evidence has established that Petitioner was released to full duty work from January 10, 2022, and did in fact return to work. The parties stipulated that Petitioner has been off work since September 29, 2023. As such, the only period now in dispute is from September 29, 2023, through the date of hearing on July 11, 2024.

The medical treatment records establish that Petitioner was kept off work (or placed on restricted work) by his treating physicians during the stipulated period of September 29, 2023, through the date of hearing on July 11, 2024. In addition, the Petitioner requires further treatment, as per Dr. Khanna and Dr. Neckrysh. As such, the Petitioner's condition has not yet stabilized.

The Petitioner testified as to his efforts to return to work within his current restrictions, both with Respondent and other employers, but there was no offer of such work from Respondent or the other employers. This testimony was unrebutted.

Having found causal connection between the work accident and the Petitioner's current condition of ill-being, and based on the medical treatment records noted above, the Arbitrator therefore awards temporary total disability benefits in the amount of $1,452.71 per week for a total of 41 weeks, from September 29, 2023, through July 11, 2024.

Respondent is awarded credit for the $21,583.12 in TTD benefits which the parties agreed it has already paid, to be applied only against Petitioner's lost time from work prior to September 29, 2023, as per stipulation of the parties. (Arb. Ex. 1)

Respondent is also awarded credit for the $37,048.55 in PPD advances paid to Petitioner prior to trial, as per stipulation of the parties. (Arb. Ex. 1)

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

The purpose of the Workers' Compensation Act is to "provide speedy recovery without proof of fault for accidental injuries that occur in the workplace during the course of work." *Reed v. White*, 397 Ill. App. 3d 975, (5th Dist. 2010); see also *Fregeau v. Gillespie*, 96 Ill.2d 479, 486 (1983).

The award of Section 19(l) penalties is mandatory "if 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 49, 514-15 (1998); see also *Ramirez v. Mighty Movers, Inc et. al.*, 24 IWCC 0069). 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) are withheld or refused up to a maximum of $10,000.00. A delay of 14 days or more creates a rebuttable presumption of unreasonable delay." (820 ILCS 305/19(l)) (West 2012)

The imposition of Section 19(l) penalties requires the Petitioner to make a written demand or payment of benefits under Section 8(a) or Section 8(b). It also requires the Respondent to fail, neglect, refuse, or unreasonably delay the payment of benefits without good and just cause. (820 ILCS 305/19(l)) (West 2012)

Regarding the imposition of Section 19(k) penalties and Section 16 attorney fees, the Courts have confirmed that the imposition of these penalties is where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose. These penalties are appropriate when the delay was vexatious, intentional, or merely frivolous. These penalties and fees require a higher standard of proof. See *McMahon v. Industrial Commission*, 183 Ill.2d 499, 515 (1998). In such a situation, "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(k)) (West 2012); See also *Roodhouse Envelope Co. v. Industrial Comm'n*, 276 Ill. App. 3d 576, 580 (4th Dist. 1995).

In this case, the Petitioner was found to be at MMI and discharged to full duty by Dr. Khanna on January 10, 2022, and Petitioner did in fact return to full duty employment and did not seek medical treatment until January 23, 2023. While the parties remained in contact during this approximately one-year gap in treatment (via the My Travelers portal), the Petitioner in fact continued to work and forego additional medical treatment.

After seeking additional treatment from Dr. Khanna in January and February 2023, the Petitioner was again deemed to be at MMI and released again by Dr. Khanna to continue with full duty work. The parties briefly discussed possible settlement in March 2023, and the claims representative (Diane Johnson) advised Petitioner she would be closing her file until such time as Petitioner had made a decision regarding possible settlement.

The Petitioner then went another six months before seeking a second opinion from Dr. Neckrysh in August 2023, and continued his treatment with Dr. Neckrysh through October 2023. He waited another two months to resume his treatment with Dr. Khanna in December 2023 and getting a surgical recommendation from Dr. Khanna in January 2024.

The MyTravelers portal records do not contain any communication between the parties after March 2023, and so the portal provides no evidence as to whether Petitioner sought to communicate with Ms. Johnson or otherwise forward the recent medical treatment records to her attention. The Petitioner did not testify as to his efforts to contact her after seeking a second opinion with Dr. Neckrysh in August 2023 and further treatment with Dr. Khanna in December 2023.

The Commission record reflects that Petitioner filed a Section 8(a) Petition for Medical Treatment on October 19, 2023, a Section 19(b)/8(a) Petition for Immediate Hearing/Medical Treatment on December 8, 2023 and again on January 3, 2024 and March 21, 2024 (*see* PX 9) The Section 19(b) Petitions each refer to the "several occasions" in which Petitioner supplied the Respondent with information and a statement from a medical provider concerning his inability to return to work, but does not set forth when this information was provided (other than as attached to the Petitions). Similarly, the Petitions also refer to conferences between the attorneys on "several occasions," but supplies no further information in terms of dates.

Respondent paid PPD advances to Petitioner totaling $37,048.55 (equivalent to approximately 25.5 weeks [six months] of TTD benefits). (RX 1) The first such payment, in the amount of $8,717.32, was made to Petitioner on January 18, 2024. The second such payment, in the amount of $15,255.28, was made to Petitioner's attorney on March 11, 2024. The third such payment, in the amount of $13,075.95, was made to Petitioner's attorney on May 14, 2024. (*Id.*)

Respondent scheduled a Section 12 examination with Dr. Soriano, which took place on March 5, 2024, five months after the initial surgical recommendation by Dr. Neckrysh (and after Petitioner began losing time from work), and less than two months after the most recent office visit with Dr. Khanna. The Respondent thereafter relied on the opinions of Dr. Soriano to continue to dispute liability for payment of TTD benefits and authorization for medical treatment.

While the Petitioner had a legitimate reason to forego medical treatment for a year and hope his radiculopathy symptoms would resolve with time, the fact remains he was deemed to be at maximum medical improvement twice by Dr. Khanna, initially in January 2022 and again in February 2023. He continued to perform his full duty work from January 2022 through the end of September 2023. According to the various Section 19(b) Petitions, the parties were engaged in discussions concerning medical treatment and lost time from work (although the exact dates of these discussions are unknown), and Respondent made payments to Petitioner in the form of PPD advances during the course of these discussions. The Arbitrator does not find Respondent's actions under such circumstances to be unreasonable, vexatious or in bad faith.

Similarly, while the Arbitrator may disagree with the opinions and conclusions of Dr. Soriano and has chosen to rely on the opinions of Dr. Khanna and Dr. Neckrysh, the Arbitrator does not find Respondent's reliance on Dr. Soriano's opinions to be unreasonable, vexatious or in bad faith. The Section 12 report and his deposition testimony reflects that Dr. Soriano reviewed the Petitioner's medical treatment records and the actual diagnostic films, and simply came to a different medical conclusion based on his review of those records and films, as well as his physical examination of the Petitioner, upon which he found Petitioner's subjective complaints to be "beyond what he would expect."

When the Respondent acts in reliance upon a reasonable medical opinion or where there are conflicting medical opinions, penalties are not ordinarily awarded. *USF Holland, Inc. v. Industrial Comm'n*, 357 Ill.App.3d 798, 805 (2005).

Based on the above, the Arbitrator declines to award penalties to Petitioner under Sections 19(k), 19(l) or Section 16 of the Act.

IT IS SO ORDERED:

James M. Byrnes, Arbitrator

OCTOBER 11 2024